

Law & Contract

Profession & Business 1

Level 5

Mod Code: M5X01982



The importance of Law

Ignorantia Juris Non Excusat

The well-worn maxim that ignorance of the law is no excuse applies with equal force to everyone, including architects.

Everyone who offers a service to others and claims expertise to do what he/she offers has a responsibility to society in general and to his/her clients in particular to know the law.

Architects, like other professional people, have a duty to acquire a working knowledge of the law as it affects their professional work.

In the case of an architect, the relevant fields of law are notably:

- **Contract Law** – especially the standard forms of contract and the various statutory regulations.
- **Planning Law**
- **Health and Safety Law** (CDM regulations)
- **European procurement law**

Other elements of the law that can directly affect an architect:

- **Employment Law** – to Employ or be employed.
- **Copyright Law**
- **Insurance**

- How to avoid being sued.
- How to claim or protect what is rightfully yours.

We are looking at English Law which covers England, Wales and Northern Ireland. Scottish Law is based on Roman principles.



The Law

English Law is basically a body of rules aimed at preserving the fabric of society and is broken down into 3 categories:

- COMMON LAW
- STATUTE LAW
- EQUITY

Common Law

The basic 'rules' of society have developed through the common law, and are governed by the doctrine of 'stare decisis', constraining English & Welsh judges to stand by the past decisions of superior courts.

Although decisions must be made based on similar previous cases, the judge may still draw relevant distinctions pertinent to each new case, enabling the common law to continually develop and adapt to the changing values of society.

(However, where a conflict between the common law and Statute, the latter prevails.)

Statute Law

Statutes are laws officially approved by Parliament. They are suggested by concerned parties (often Government Ministry), prepared and laid before both House of Lords and the House of Commons in the form of a Bill, and, if approved, become Acts of Parliament.

The Act serves as the enabling legislation, empowering more specific requirements to be made in the form of Rules, Orders and Statutory Instruments.

(The building Act 1984 empowered the creation of the Building Regulations 1985 (as amended) as Statutory Instruments.)

Equity

Equity provides a measure of fairness or natural justice not always available under statute or common law, by allowing additional remedies and procedures based on principles of 'conscience' to supplement the law.

From a more practical standpoint, law can be classified into two branches:

- CRIMINAL LAW
- CIVIL LAW

Criminal Law

This is the public law, concerned with offences against society as a whole. E.g. robbery, murder, theft etc.

Crimes may also be acts which, although not anti-social in a moral sense, infringe rules existing to ensure the smooth administration of the country. E.g. Tax offences, certain road traffic offences, etc.

Criminal Law is **STATE v PERSON**

Civil Law

This is private law, concerned with the rights and obligations of individuals and corporations in their dealings with each other.

Matters covered by civil law include:

Succession

Family

Contract

Property

Tort

Employment

Civil Law is **PERSON v PERSON.**



To the architectural practice, the most relevant branches of civil law are:

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- **Contract Law** – Which concerns the legally binding rights and obligations of parties who have made an agreement for a specific purpose.

And

- **Tort** – Literally a ‘wrong’ done by one individual or corporation to another for which a remedy may be sought. (e.g. Compensation or Injunction.)
- Torts can be defined as:
- Negligence
- Trespass
- Nuisance
- Defamation

THE ARCHITECT'S LIABILITY

The architect's legal obligations and responsibilities are governed by both statute and common law.

However, the areas which require the greatest attention are:

- Breach of Contract
- Negligence

Legal obligations to other parties

- Tortious
- Statutory
- Contractual
- Professional

Legal obligations to other parties

Architect – Employer

Architect – Employees

Architect – Public

Architect – Others involved in Building Process

Architect – State

Legal obligations to other parties

Architect – Employer

- Tortious
- Contractual
- Professional

Architect – Employees

- Statutory
- Contractual
- Tortious

Architect – Public

- Tortious
- Statutory
- Professional

Architect – Others involved in Building Process

- Tortious
- Professional

Architect – State

- Statutory

Breach of Contract

THE ARCHITECT IS NOT A PARTY TO THE BUILDING CONTRACT.
But has a separate contractual relationship with the employer.

In this, the architect agrees to carry out the work with reasonable skill and care. Failure to meet these standards will be in breach of the contract, possibly resulting in the architect being liable for damages.

Negligence

Outside the discernible contractual obligations imposed by the contract exists the duty under the law of Torts, particularly in negligence.

The architect may be liable for the consequences arising from his/her negligent behaviour, even where no contractual relationships exists.

Contracts.

- What is a Contract?
- An agreement made between two or more persons which is binding in law, and is capable of being enforced by those persons in court or other tribunal.
- The people who made the contract are described as being party or 'privy' to it and they are said to enjoy 'privy to contract'.

For most types of contract there is no requirement for a written document at all and an oral contract is just as binding in law, although in a dispute, evidence of an oral contract is very sketchy.

Contracts under seal are used to enforce the binding details of the contract and the seal is a representation of the agreeance of all parties.

Forms of Contract.

- Oral agreement
- When you purchase an item
- When you agree to complete an act in written form. (Letter, e-mail etc)
- Standard Contracts – Employment, service provision, utilities, etc

Standard Forms of Agreement for Appointing and Architect

- The architect when appointed by a client is recommended, but not bound to use a standard form of agreement.
- RIBA SFA 2010 (revised 2012) is compatible with the RIBA Plan of works 2013

RIBA Standard Form of Agreement

The SFA should include the following:

- The Memorandum of Agreement
- The Conditions
- Schedules
- RIBA Work Stages

The Memorandum of Agreement

This identifies:

The Parties involved

Defines the Nature, Scope and Cost of the professional services

Times and Dates

The Conditions

Part One: Common to all commissions

- Governing Law
- Architect's Obligations
- Client's Obligations
- Assignment and Sub-letting
- Payment
- Suspension, resumption and termination
- Copyright vested in the Architect
- Dispute Resolution

The Conditions

Part two: Pre-construction phase

- Authority for changes
- Statutory approvals
- Third Party interests
- Collateral Agreements
- Procurement method
- Copyright – terms of licence

The Conditions

Part Three: Administration of the construction contract

- Visits to site
- Emergency changes in design
- Contractor's responsibilities
- Contractor's Collateral Agreement
- Architects instructions
- Appointment of site staff

The Conditions

Part Four: appointment of consultants and specialists.

- Nomination of consultants/specialists
- Consultant/specialists collateral agreements
- Authority of lead consultant/specialists
- Consultant/specialists responsibilities

The Schedules

Schedule One: Sets out the information to be supplied by the client.

- Client's requirements
- Timetable
- Budget
- Ownership
- Boundaries
- Easements
- Planning Consents
- Surveys
- Schedules of Accommodation

The Schedules

Schedule Two: sets out the services to be provided by the architect

- Standard Services
- Interior Design
- Graphic Design
- Life Cycle Analysis
- Investigation of building failure

The Schedules

- Schedule Three: Fees and Expenses
 - Fees
 - Time Rates
 - Expenses
 - Disbursements
 - Instalments
 - Site Staff
 - Interest due to overdue accounts
- How do you charge for your time?



RIBA
Plan of
Work
2013

RIBA



The RIBA Plan of Work 2013 organises the process of briefing, designing, constructing, maintaining, operating and using building projects into a number of key stages. The content of stages may vary or overlap to suit specific project requirements. The RIBA Plan of Work 2013 should be used solely as guidance for the preparation of detailed professional services contracts and building contracts.

www.ribaplanofwork.com

	Stages 0 1 2 3 4 5 6 7							
	Strategic Definition Preparation and Brief Concept Design Developed Design Technical Design Construction Handover and Close Out In Use							
Tasks								
Core Objectives	Identify client's Business Case and Strategic Brief and other core project requirements.	Develop Project Objectives , including Quality Objectives and Project Outcomes , Sustainability Aspirations , Project Budget , other parameters or constraints and develop Initial Project Brief . Undertake Feasibility Studies and review of Site Information .	Prepare Concept Design , including outline proposals for structural design, building services systems, outline specifications and preliminary Cost Information along with relevant Project Strategies in accordance with Design Programme . Agree alterations to brief and issue Final Project Brief .	Prepare Developed Design , including coordinated and updated proposals for structural design, building services systems, outline specifications, Cost Information and Project Strategies in accordance with Design Programme .	Prepare Technical Design in accordance with Design Responsibility Matrix and Project Strategies to include all architectural, structural and building services information, specialist subcontractor design and specifications, in accordance with Design Programme .	Offsite manufacturing and onsite Construction in accordance with Construction Programme and resolution of Design Queries from site as they arise.	Handover of building and conclusion of Building Contract .	Undertake In Use services in accordance with Schedule of Services .
Procurement *Variable task bar	Initial considerations for assembling the project team.	Prepare Project Roles Table and Contractual Tree and continue assembling the project team.	The procurement strategy does not fundamentally alter the progression of the design or the level of detail prepared at a given stage. However, Information Exchanges will vary depending on the selected procurement route and Building Contract . A bespoke RIBA Plan of Work 2013 will set out the specific tendering and procurement activities that will occur at each stage in relation to the chosen procurement route.			Administration of Building Contract , including regular site inspections and review of progress.	Conclude administration of Building Contract .	
Programme *Variable task bar	Establish Project Programme .	Review Project Programme .	Review Project Programme .	The procurement route may dictate the Project Programme and may result in certain stages overlapping or being undertaken concurrently. A bespoke RIBA Plan of Work 2013 will clarify the stage overlaps. The Project Programme will set out the specific stage dates and detailed programme durations.				
(Town) Planning *Variable task bar	Pre-application discussions.	Pre-application discussions.	Planning applications are typically made using the Stage 3 output. A bespoke RIBA Plan of Work 2013 will identify when the planning application is to be made.					
Suggested Key Support Tasks	Review Feedback from previous projects.	Prepare Handover Strategy and Risk Assessments . Agree Schedule of Services , Design Responsibility Matrix and Information Exchanges and prepare Project Execution Plan including Technology and Communication Strategies and consideration of Common Standards to be used.	Prepare Sustainability Strategy , Maintenance and Operational Strategy and review Handover Strategy and Risk Assessments . Undertake third party consultations as required and any Research and Development aspects. Review and update Project Execution Plan . Consider Construction Strategy , including offsite fabrication, and develop Health and Safety Strategy .	Review and update Sustainability, Maintenance and Operational Strategies and Risk Assessments . Undertake third party consultations as required and conclude Research and Development aspects. Review and update Project Execution Plan , including Change Control Procedures . Review and update Construction and Health and Safety Strategies .	Review and update Sustainability, Maintenance and Operational Strategies and Risk Assessments . Prepare and submit Building Regulations submission and any other third party submissions requiring consent. Review and update Project Execution Plan . Review Construction Strategy , including sequencing, and update Health and Safety Strategy .	Review and update Sustainability Strategy and implement Handover Strategy , including agreement of information required for commissioning, training, handover, asset management, future monitoring and maintenance and ongoing compilation of 'As-constructed' Information. Update Construction and Health and Safety Strategies .	Carry out activities listed in Handover Strategy including Feedback for use during the future life of the building or on future projects. Updating of Project Information as required.	Conclude activities listed in Handover Strategy including Post-occupancy Evaluation , review of Project Performance , Project Outcomes and Research and Development aspects. Updating of Project Information , as required, in response to ongoing client Feedback until the end of the building's life.
Sustainability Checkpoints	Sustainability Checkpoint — 0	Sustainability Checkpoint — 1	Sustainability Checkpoint — 2	Sustainability Checkpoint — 3	Sustainability Checkpoint — 4	Sustainability Checkpoint — 5	Sustainability Checkpoint — 6	Sustainability Checkpoint — 7
Information Exchanges (at stage completion)	Strategic Brief .	Initial Project Brief .	Concept Design including outline structural and building services design, associated Project Strategies , preliminary Cost Information and Final Project Brief .	Developed Design , including the coordinated architectural, structural and building services design and updated Cost Information .	Completed Technical Design of the project.	'As-constructed' Information.	Updated 'As-constructed' Information.	'As-constructed' Information updated in response to ongoing client Feedback and maintenance or operational developments.
UK Government Information Exchanges	Not required.	Required.	Required.	Required.	Not required.	Not required.	Required.	As required.

*Variable task bar – in creating a bespoke project or practice specific RIBA Plan of Work 2013 via www.ribaplanofwork.com a specific bar is selected from a number of options.

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Construction Contracts

There are various suites or families of building contracts in use in the UK. These are the main ones:

- International Federation of Consulting Engineers (FIDIC)
- Institution of Chemical Engineers (IChemE)
- The Joint Contracts Tribunal (JCT)
- New Engineering Contract (NEC)
- Public Procurement Contract 2000 (PPC 2000)
- Scottish Building Contract Committee (SBCC)

JCT Contracts

Standard Building Contract

The JCT Standard Building Contract is designed for large or complex construction projects where detailed contract provisions are needed. Standard Building Contracts are suitable for projects procured via the traditional or conventional method.

Intermediate Building Contract

The JCT Intermediate Building Contract is designed for construction projects involving all the recognised trades and skills of the industry, where fairly detailed contract provisions are needed, but without complex building service installations or other specialist work. Intermediate Building Contracts are suitable for projects procured via the traditional or conventional method.

Minor Works Building Contract

The JCT Minor Works Building Contract is designed for smaller, basic construction projects where the work is of a simple nature. Minor Works Building Contracts are suitable for projects procured via the traditional or conventional method.

Major Project Construction Contract

The JCT Major Project Construction Contract is designed for large-scale construction projects where major works are involved. It is used by employers who regularly procure large-scale construction work, and the work is carried out by contractors with the experience and ability to take greater risk than would arise under other JCT contracts. Major Project Construction Contracts are suitable for projects procured via the design and build method.

Design and Build Contract

The JCT Design and Build Contract is designed for construction projects where the contractor carries out both the design and the construction work. Design and build projects can vary in scale, but the Design and Build Contract is generally suitable where detailed provisions are needed.

Management Building Contract

The JCT Management Building Contract is designed for construction projects where the employer appoints a management contractor to oversee the works. Construction is completed under a series of separate works contracts, which the management contractor appoints and manages for a fee. Management building contracts are suitable for projects procured via the management method.

Construction Management Contract

The JCT Construction Management Contract is for use on construction projects where the employer appoints separate trade contracts to carry out the works, and a construction manager to oversee the completion of the works for a fee. Construction Management contracts are suitable for projects procured via the management method.

JCT-CE Contract

JCT has collaborated with Constructing Excellence to develop the JCT - Constructing Excellence Contract. The JCT - Constructing Excellence Contract can be used to procure a range of construction services and is specifically tailored for use in partnering and where participants wish to engender collaborative and integrated working practices.

Measured Term Contract

The JCT Measured Term Contract is designed for use by employers who have a regular flow of maintenance, minor works and improvements projects that they would like to be carried out by a single contractor over a specified period of time. Measured Term Contracts are suitable for projects procured via the traditional or conventional method, using a measurement payment structure.

- **Prime Cost Building Contract**

- The JCT Prime Cost Building Contract is designed for projects that require an early start on site, often for alterations or urgent repair work (such as fire damage). The exact nature and extent of the work is not known until the project is underway, so full design documents are not completed until work has commenced. Prime Cost Building Contract is suitable for projects procured via the traditional or conventional method, using a cost reimbursement or cost plus payment structure.

- **Repair & Maintenance Contract**

- JCT's Repair and Maintenance Contract is designed for use on individual projects that involve a defined programme of repair and maintenance works to specified buildings or sites. This contract is primarily for use by local authorities and other employers who regularly place small and medium-size contracts for jobbing work and are sufficiently experienced that an independent contract administrator is not required.

- **Home Owner Contracts**

- JCT's Home Owner Contracts are designed specifically for people looking for the benefits and protection of a contract when appointing consultants or contractors to carry out their building work.

Legal and Contractual Procedures for Architects (Fourth Edition)

Butterworth Architecture Legal Series

Bob Greenstreet & David Chappell

ISDN 0-7506-1617-2

Architect's Legal Handbook (Eighth Edition)

Architectural Press

Anthony Speaight & Gregory Stone

ISDN 0-7506-6130-5

Construction Law

Macmillan

Michael F. James

ISDN 0-333-59450-9

Architect's Handbook of Practice Management

RIBA Publications

Sarah Lupton

Which Contract? Choosing the Appropriate Building Contract.

RIBA Publications

Hugh Clamp, Stanley Cox & Sarah Lupton

Understanding JCT Standard Building Contracts

Taylor & Francis

David Chappell

Architect's Job Book

RIBA Publications

