

FOREWORD FROM THE BENCH

Hon. John McClellan Marshall, Senior Judge, Fourteenth Judicial District of Texas

The first question that a reader of this book is likely to ask is, “Why does an engineer or an architect need to understand the law? That is what lawyers are for.” To phrase the question thus is to define the cross-disciplinary necessity for a book of this type. Engineers and architects are, by their training and experience, characteristically practical people whose professional lives are defined by mathematical and physical realities. As a result, the notion that something seemingly as fluid as the law should be of importance to that world is something that escapes many engineers and architects. The fact that this idea is erroneous was summed up best by the late Justice of the United States Supreme Court Oliver Wendell Holmes, Jr., who said, “The life of the law has not been logic; it has been experience.” Nothing could be more practical than that, so why should an engineer study the law?

There are many possible answers to the question, but first and foremost, everything that an engineer or architect does in the course of a project, large or small, is governed by the contract that was signed to set it in motion every bit as much as the laws of mathematics and materials. The most basic rule of looking at a contract is that it must express the intention of the parties signing the contract so it can be upheld. If an engineer reads the contract, and it is not written in a vocabulary that the engineer understands, then it may not be enforceable from the start, and an engineer who has studied some law will know that it is time to ask a lawyer questions to clarify the situation on paper. Certainly it may be true that an engineer probably does not need to know too much about how a contract is formed, what makes contract law different from a tort law that may deal with a car wreck, or a worker shot with a nail gun. The philosophy of the law is not the point that the engineer should be considering. When a contract fails to be completed, one of the first things lawyers consider is who their witnesses will be, and the first person they look to may well be the design professional who worked on the project. If that engineer or architect should not understand some aspects of the law, then the testimony that comes into court will be confusing at best or opaque at worst. By studying the law, the engineer or architect can learn how to reconcile the vocabulary of his or her professional expertise with the fact that the jury to whom the testimony is presented is generally not made up of other engineers.

If a design professional should be presented as an expert witness to the court, then the test of expertise by the judge as “gatekeeper” will be both as to background and method of examining the problem at hand. An engineer or architect who has had some exposure to the study of law will have a credential that likely will weigh in his or her favor in determining expertise. Also, the methodology employed will likely conform more nearly to those norms that a trial judge is accustomed to expecting from an expert. This is of critical importance because only a vanishingly small number of judges have any background in engineering. Judges are almost all liberal arts majors, no closer to engineering than physics is to existential philosophy. To get the point across, the engineer-witness must speak the language of the judge and jury, and that means that some familiarity with the law undoubtedly will be of help.

As viewed from the bench, it is safe to say that those engineers and architects who have had more than a passing acquaintance with the law tended to make the best witnesses, whether expert or simply fact, and enjoyed significantly higher success with a judge or jury than those who did not. If there should be a reason for engineers and architects to study the law, then that could serve as the quantifiable justification. More importantly, because the trial process is in its essence a search for the truth of the matter, the better informed the witness is, the higher the probability that the truth will be revealed by the verdict.

It is in the knowledge that this book is written to provide that basic cross-disciplinary education that I am honored to commend it to the reader as both a practically and philosophically sound presentation of the topic in such a way that even a lawyer might understand it.