About the Author, xix
Preface, xxi
Acknowledgments, xxiii

PART 1

Overview 1

CHAPTER 1 The Engineer and Design Professional in Management 3

Highlights, 3
Engineering and Design Management, 4
  Communication Skills, 4
  People-Management Skills, 4
  Ability to Focus on the Bottom Line, 4
  Legal Knowledge, 5
Executive Qualities, 5
  Leadership, 5
  Delegation, 6
  Decision Making, 6
  Discipline, 7
Engineering Projects, 7
  Project Phases, 7
  Law and Engineers, 8
Legal Analysis, 9
Review Questions, 10
Suggested Readings, 10

CHAPTER 2 Ethics 11

Highlights, 11
Federal Definition of a Professional, 11
State Registration Laws, 12
Professional Societies, 13
  Accreditation Board of Engineering and Technology
  and the American Association of Engineering Societies, 13
  Institute of Electrical and Electronics Engineers, 13
  National Society of Professional Engineers, 14
  American Institute of Architects, 14
Public Service, 14
Code of Ethics, 14
  Definition, 14
  A Conversation with Julie Ryan on Ethics, 15
  Establishment of Moral Patterns, 15
  Law and Ethics, 15
  Gifts and Favors, 16
Foreign Corrupt Practices Act and Truthful Cost or Pricing Data, 16
  Foreign Corrupt Practices Act, 16
CHAPTER 3 Development of Law

Highlights, 21
Beginnings of Law, 21
Divine Laws, 22
Civil and Common Law Foundation, 22
Enforcement, 22
United States Legal Structure, 23
Constitutional Law, 23
Statutory Law, 23
Court Decisions or Case Law, 24
Criminal Law, 28
Cases, 30
PEOPLE v. FURNESS, 2016 CAL. APP. UNPUB. LEXIS 1674 (CAL. APP. 6TH DIST.), MAR. 7, 2016., 33
Review Questions, 37
For Discussion, 37

CHAPTER 4 Courts, Trial Procedure, and Evidence

Highlights, 39
Courts, 39
Federal Courts, 40
State Courts, 41
Jurisdiction, 41
Pretrial Procedure, 42
Pleadings, 42
Discovery, 43
Pretrial Motions, 44
Joining Additional Parties and Claims, 44
Trial Procedure, 45
The Jury, 45
Courtroom Procedure, 45
New Trial or Appeal, 45
Equity Suits, 46
Cases, 46
Types of Evidence, 47
Real Evidence and Testimony, 47
Judicial Notice, 48
Conclusive and Prima Facie Evidence, 48
Direct and Circumstantial Evidence, 48
Best or Primary Evidence, 48
Hearsay Evidence, 48
Parol Evidence Rule, 49
Opinion Evidence, 49
Testimony, 49
PART 2
Contracts

CHAPTER 5
Introduction to Contracts

Highlights, 61
Definition of Contract, 62
Sources of Contract Law, 62
Elements of a Valid Contract, 63
Parties, 63
Agreement, 64
Consideration, 64
Lawful Purpose, 64
Form and the Statute of Frauds, 64
Classifications of Contracts, 65
Contract Creation, 65
Legal Status and Enforceability, 66
Formality, 66
Cases, 67
SAK & ASSOCIATES, INC. v. FERGUSON CONSTRUCTION, INC., 189 WASH. APP. 405; 357 P.3D 671; 2015 WASH. APP. LEXIS 1871, AUGUST 10, 2015., 67
XPERTUNIVERSE INC. v. CISCO SYSTEMS, INC., 597 FED. APPX. 630, 2015 U.S. APP. LEXIS 1053 (FED. CIR. 2015), 71
Review Questions, 76
For Discussion, 76

CHAPTER 6
Parties

Highlights, 77
Infants, 77
Age of Infancy, 77
Partnership, 78
Agency, 78
Disaffirmance, 78
Ratification, 79
Binding Contracts, 79
Parents’ Liability, 80
CHAPTER 7  Third-Party Rights

Highlights, 97
Assignment, 98
  Rights and Duties, 101
  Assignee’s Rights, 101
  Notice, 102
  Wages, 102
Third-Party Beneficiary Contracts, 103
  History, 103
  Donee Beneficiary, 103
  Creditor Beneficiary, 103
  Current Law, 104
  Intended Beneficiary, 104
  Incidental Beneficiary, 105
  Insurance and Bonding Contracts, 105
Warranties, 106
Cases, 108
  SILVERBOYS, LLC, et al. v. YANNI SKORDAS, 2015 NY SLIP OP 31711(U), SEPTEMBER 4, 2015, 108
  JOHN ROSS v. KAREN LOWITZ, 94 A.3D 910 (N.J. 2014), 111
Review Questions, 115
For Discussion, 115

CHAPTER 8  Agreement

Highlights, 117
Contract Formation, 117
  Offer, 117
  Acceptance, 120
  Time of Revocation, 121
  Silence as Acceptance, 121
  The “Battle of the Forms”, 121
Electronic Contracting, 123
  UETA and UCITA, 123
CHAPTER 9  Reality of Agreement  135

Highlights, 135
Situations in Which Assent is Not Voluntary, 136
Mistake, 136
Fraud, 137
Misrepresentation, 139
Duress, 140
Undue Influence, 141
Remedies, 141
Cases, 142
DAVID ABBO, COLORADO TOYZ, INC., et al. v. WIRELESS TOYZ FRANCHISE, L.L.C., et al., 149536 (MICH. 2015), 142
GONGLOFF CONTRACTING, L.L.C., IN THE SUPERIOR COURT OF PENNSYLVANIA v. L. ROBERT KIMBALL & ASSOCIATES, ARCHITECTS AND ENGINEERS, INC., 2015 PA. SUPER 149 (PA. SUPER. CT JULY 8, 2015), 149
Review Questions, 154
For Discussion, 154
Recommended Readings, 154

CHAPTER 10  Consideration  155

Highlights, 155
Essentials of Consideration, 155
Seal of Consideration, 157
Theories of Consideration, 158
Mutuality, 158
Legal Detriment, 159
Forbearance, 159
Pre-Existing Duty, 159
Cases, 161
AMERIGAS PROPANE, L.P. v. COFFEY, 2015 NCBC 93, 161
HARTFORD FIRE INSURANCE COMPANY v. CITY OF MONT BELVIEU, TEXAS, 611 F.3D 289; 2010 U.S. APPELLEXIS 14277 (5TH CIR. 2010), 168
Review Questions, 173
For Discussion, 173

CHAPTER 11  Lawful Subject Matter  175

Highlights, 175
Intent, 175
Contracts Contrary to Statute or Common Law, 176
Law Passage Following Contract Formation, 176
Type of Statute, 176
Harm to Third Person, 177
Contracts that Restrain Trade—Anticompetitive Agreements, 177
Usury, 178
Wagering Contracts, 178
Other Types of Violations, 179
Contracts Contrary to Public Policy, 179
Fraud or Deception, 180
Breach of Trust or Confidence, 180
Sources of Public Policy, 180
Effect of Illegality on Contracts, 180
Cases, 182
ASCENSION INSURANCE HOLDINGS, LLC v. ROBERTS F. UNDERWOOD AND ALLIANT INSURANCE SERVICES, INC., 2015 DEL. CH. LEXIS 19 (DEL. CH. JAN. 28, 2015), 182
UNITED STATES OF AMERICA v. THOMAS GREGORY HARRIS, 821 F.3D 589; 2016 U.S. APP. LEXIS 7734, 185
Review Questions, 191
For Discussion, 191

CHAPTER 12 Statute of Frauds

Highlights, 193
English Statute of Frauds, 193
Fourth Section, 194
Sixteenth Section, 194
Contemporary Application of the Statute of Frauds, 194
Promises Requiring More Than a Year to Perform, 195
Sale of Goods, 196
Other Activity Regulated by the Statute of Frauds, 197
Promises of Executors or Administrators, 197
Promises to Act as Surety, 198
Promises in Consideration of Marriage, 198
Real Property Transactions, 199
Cases, 200
KAUFMAN v. ERIC CHARLES DESIGNS, et al., 2014 MICH. APP. LEXIS 982 (MICH. CT. APP. MAY 29, 2014), 200
Review Questions, 207

CHAPTER 13 Performance, Excuse of Performance, and Breach

Highlights, 209
Performance, 210
Conditions Precedent and Subsequent, 210
Satisfactory Performance, 210
Completion Date, 211
Substantial Performance, 211
Impossibility of Performance, 212
Modifications by Agreement, 214
Tender of Performance, 216
Anticipatory Repudiation, 217
By Operation of Law, 218
Alteration of the Contract, 218
Statute of Limitations, 219
Statutes of Repose, 219
Bankruptcy, 220
Creditors’ Compositions, 223
Cases, 225
BOONE COLEMAN CONSTR., INC. v. VILLAGE OF PIKETON, 2016-OHIO-628, 2016 OHIO LEXIS 441 (OHIO, FEB. 24, 2016), 225
SOUTHERN MILLS, INC. v. NUNES, 746 F.3D 1223, 2014 U.S. APP. LEXIS 5610 (11TH CIR. GA. 2014), 229
CONSOLIDATED HARDWOODS, INC. v. MAYHEW (IN RE MAYHEW), 2015 U.S. DIST. LEXIS 42212 (D. COLO. MAR. 31, 2015), 231
Review Questions, 235

CHAPTER 14 Remedies
Highlights, 237
Damages, 238
Compensatory Damages, 238
Exemplary (Punitive) Damages, 240
Liquidated Damages, 240
Duty to Mitigate Damages, 241
Economic Loss Rule, 241
Restitution, 242
Equitable Remedies, 242
Specific Performance, 242
Injunction, 243
Enforcement of Remedies, 243
Cases, 245
LANDSTAR INWAY, INC. v. SAMROW et al., 181 WN. APP. 109, 325 P.3D 327, 2014 WASH. APP. LEXIS 1101 (2014), 245
21ST CENTURY SYSTEMS, INC., et al. v. PEROT SYSTEMS GOVERNMENT SERVICES, INC., 284 VA. 32. 726 S.E.2D. 236 (2012), 251
Review Questions, 256
For Discussion, 256

CHAPTER 15 Sales and Warranties
Highlights, 257
Ownership, 258
Title, 258
Risk of Loss, 259
Security Interest, 261
Sale on Approval and Sale or Return, 262
Sales Contracts, 262
Warranties, 263
Express Warranties, 264
Implied Warranties, 265
Disclaimers, 266
Performance and Breach, 266
Seller’s Remedies, 267
Withholding Delivery, 267
Seller’s Resale, 268
Buyer’s Remedies, 269
PART 3

Project and Contract Management

CHAPTER 16 Project Design and Contracting Procedures

Highlights, 283

Project Stages, 283

Conception of the Idea, 283
Reduction to Practice—Design, 284
Interview with Rhea Vaflor on Interior Design, 285
Refinement and Oversight, 285

Parties to a Contract, 286

Types of Construction, 286
Private Works, 286
Public Works, 287

Project Delivery Systems, 287
Design-Bid-Build, 287
Design-Build, 288
Multi-Prime, 288
Construction Management, 288
Integrated Project Delivery, 288

Construction, Manufacturing, Engineering and Architectural Services, 289

Direct Employment or Contract, 289
The Owner–Contractor Relationship, 290
Cost, 290
Flexibility, 290
Subsequent Maintenance, 291
Grievances, 291
Specialization, 291
Public Relations, 291

Payment Arrangements, 291
Lump-Sum or Fixed-Price Contract, 291
Cost-Plus-Percentage Contract, 292
Cost-Plus-Fixed-Fee Contract, 293
Unit-Price Contract, 294
Variations, 294

Contractor’s Costs, 295
Direct Labor, 295
Materials, 296
Overhead, 297
Contingencies, 297
Profit, 297
Cases, 298

HAMILTON PACIFIC CHAMBERLAIN, LLC, B-410955, MARCH 30, 2015, 298
MOSTARDI-PLATT ASSOCIATES, INC., v. LEONARD CZERNIEJEWSKI, et al., 399 ILL. APP. 3D 1205; 929 N.E.2D 94; 2010 ILL. APP. LEXIS 402; 340 ILL. DEC. 790 (ILL. APP. CT. 5TH DIST. 2010), 300

Review Questions, 303

CHAPTER 17 Contract Preparation, Specifications and Management

Preparation of Contract Documents, 305
Advertisement, 306
Instructions for Bidders, 307
The Proposal, 307
Agreement, 308
Bonds, 308
General Conditions, 309
Specifications and Drawings, 310

Specification Writing, 311
Style, 311
Precise Wording, 311
Reference Specifications, 312

Arrangement, 312
General Provisions, 313
Detail Specifications, 315

Managing a Contract Award, 316
Collusion, 316
Lowest Responsible Bidder, 317

Cases, 318
RAPID DEMOLITION COMPANY, INC. v. STATE OF NEW YORK, 864 N.Y.S. 2D 503 (N.Y. APP. DIV. 2008), 318
RELIABLE CONTRACTING GROUP, LLC v. DEPT OF VETERANS AFFAIRS, 779 F.3D 1329, 2015 U.S. APP. LEXIS 3548 (FED. CIR. 2015), 320

Review Questions, 324

CHAPTER 18 Agency

Creation of Agency, 326
Agreement, 326
Ratification, 327
Estoppel, 328
Necessity, 328
Agent’s Authority, 329
Agent’s Duties, 330
Obedience, 330
Care and Skill, 330
To Act for One Principal, 331
Loyalty, 331
Accounting, 331
Principal’s Duties, 332
  Payment, 332
  Expenses, 333
  Indemnity, 333
Third-Party Rights and Duties, 333
  Duty to Question Agent’s Authority, 333
  Determination of Who Should Collect, 334
  Transactions Binding Agent, 334
  Tort, 334
  Undisclosed Principal, 335
Termination, 335
  By Law, 335
  By Acts of the Parties, 336
  Agency with an Interest, 336
  Notice, 336
Partnerships and Corporations, 336
Cases, 338
  LAWSON v. FMR LLC, 134 S. CT. 1158, 188 L. ED. 2D 158,
  2014 U.S. LEXIS 1783 (2014), 338
  F.H. PASCHEN, S.N. NIELSEN & ASSOCIATES, LLC v.
  SOUTHEASTERN COMMERCIAL MASONRY, INC.,
  2015 U.S. DIST. LEXIS 153165, 343
Review Questions, 347

PART 4

Property

CHAPTER 19  Tangible Property

Highlights, 351
Real Property, 351
  Evolution of Property Rights, 352
  Kinds of Estates, 352
Transfer of Real Property, 353
  Will, 353
  Deed, 355
  Mortgages, 356
  Land Contracts, 358
  Eminent Domain, 359
  Dedication, 359
  Adverse Possession, 360
  Prescription, 360
Tangible Personal Property, 360
  Acquisition, 361
  Bailment, 363
  Fixtures, 365
Forms of Ownership, 366
  Trusts, 366
  Rights in Common, 366
  Real Property Leases, 367
  Easement, 370
CHAPTER 20  Introduction to Intellectual Property  389
Highlights, 389
Brief History of Intellectual Property Law, 389
The Future of Intellectual Property, 390
A Conversation with Phil Bernstein on the Internet of Things, 390
Intellectual Property and Criminal Law, 391
Cases, 393
CRAIGSLIST INC. v. 3TAPS INC. et al., 942 F. SUPP. 2D 962, 2013 U.S. DIST. LEXIS 61837 (N.D. CAL. 2013), 393
Review Question, 401

CHAPTER 21  Patents  403
Highlights, 403
History, 403
Major Changes to the Patent Law, 404
What Is Patentable?, 405
The Patent Right, 405
Patent Transferability, 407
The Patent Application Procedure, 409
Infringement and Remedies, 414
Cases, 416
IN RE: MAGNUM OIL TOOLS INTERNATIONAL, LTD., 2016 U.S. APP. LEXIS 13461 (FED. CIR. JULY 25, 2016), 419
Review Questions, 425

CHAPTER 22  Trademarks  427
Highlights, 427
History, 427
What Can be Protected by Trademark?, 427
Trademark Rights, 428
CHAPTER 23 Copyrights

Highlights, 443
History, 443
What Is Copyrightable?, 444
Copyright Rights, 445
Copyright Transferability, 447
Copyright Registration Procedure, 449
Infringement and Remedies, 450
Cases, 452
Review Questions, 462

CHAPTER 24 Trade Secrets

Highlights, 463
What Qualifies as a Trade Secret?, 464
What Constitutes Liability?, 465
Remedies, 466
Cases, 467
HENRY SCHEIN, INC. v. COOK, 2016 U.S. DIST. LEXIS 81369 (N.D. CAL. JUNE 22, 2016), 467
E. I. DU PONT DE NEMOURS AND COMPANY v. KOLON INDUSTRIES, INC., 2011 U.S. DIST. LEXIS 79406 (USDC EDVA 2011), 472
Review Questions, 479

PART 5 Torts

CHAPTER 25 Common Torts

Highlights, 483
Who can be Sued Under Tort Law, 484
Negligence, 484
Duty, 485
Breach of Standard of Care, 485
Proximate Cause, 486
CHAPTER 26  Products Liability  513

Highlights, 513

History, 513
  Early History, 514
  The Twentieth Century, 514

Product Liability Claims and 21st Century Trends, 516
  Risk/Benefit Analysis (Restatement (Third) of Torts) versus Consumer Expectations (Restatement (Second) of Torts), 517

21st Century Trends, 517
  Defective Product, 518
  Hidden Defects, 520
  Discovery, 520
  Damages, 520
  Defenses, 520
PART 6

Governmental Regulation

CHAPTER 27 Administrative Law

Highlights, 535
Why Agencies?, 535
   Administrative Abuses, 537
Administrative Agency Activities, 537
   Hearings, 538
   Rules and Rule Making, 539
   Supervision, 540
Agency Oversight, 543
Appealing an Agency Decision, 543
   Standing, 543
   Ripeness, 543
   Scope of Review, 544
Cases, 546
   UNITED STATES ARMY CORPS OF ENGINEERS v.
   HAWKES CO., INC., et al., 136 S. CT. 1807, 195 L. ED. 2D 77,
   2016 U.S. LEXIS 3489, (2016), 546
   STATE OF WYOMING, STATE OF COLORADO, et al. v.
   UNITED STATES DEPARTMENT OF THE INTERIOR;
   SALLY JEWELL, IN HER OFFICIAL CAPACITY AS
   SECRETARY OF THE INTERIOR, 2016 U.S. DIST. LEXIS
   82132, 46 ENVTL. L. REP. 20114 (D. WYO. 2016), 549
Review Questions, 553

CHAPTER 28 Labor

Highlights, 555
Historical Background, 555
   Criminal Conspiracy, 556
   Antitrust Laws, 556
   Other Union Constraints, 556
   Union-Supportive Legislation, 557
   National Labor Relations Act, 557
CHAPTER 29  Workers’ Compensation  583

Highlights, 583
The Historical Perspective, 583
Assumption of Risk, 583
Contributory Negligence, 584
Fellow Servant Rule, 584
Employers’ Liability Acts, 584
Workers’ Compensation Laws, 585
Coverage, 586
Premiums, 586
Second Injury Funds, 587
Amount of Compensation, 587
Determination of Compensability, 588
Cases, 592
CRAIG MCLAURIN v. WORKERS’ COMPENSATION APPEAL BOARD (SEPTA), 980 A.2D 186 (PA. COMMW. CT. 2009), 592
BROWN v. AJAX PAVING INDUSTRIES, et al., 752 F.3D 656, 2014 FED APP. 102P (6TH CIR.), 595

Review Questions, 597

CHAPTER 30  Safety  599

Highlights, 599
OSHA, 600
Applicability, 600
The OSHA Agency, 601
NIOSH, 601
State Programs, 602
On-Site Consultation, 602
Standards, 603
Inspections, 604
Record Keeping, 606
OSHA and the Political Environment, 607

Cases, 608
THOMAS E. PEREZ, Secretary of Labor v. OHIO BELL TELEPHONE COMPANY, 2016 U.S. APP. LEXIS 13062, 2016 FED APP. 394N (6TH CIR. OHIO 2016), 608
STEEL ERectors ASSOCIATION OF AMERICA, INCORPORATED v. OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION; UNITED STATES DEPARTMENT OF LABOR, 636 F.3D 107 (4TH CIR. 2011), 612

Review Questions, 617
For Discussion, 617