


Legal Aspects of Code Administration

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Today's topics

- Guidelines for:
 - Effective code administration
 - Enforcement of the legal aspects of the code
- Subject matter



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What is our goal today?

- Learn techniques in executing the legal aspects of your job.



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What are the objectives?

Upon completion, participants will be better able to:

- Recognize complacency cycle
- Apply key legal concepts.
- Identify your legal authority.
- Describe how laws apply to you
- Identify the responsible parties
- Identify problems in the permit process.

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More objectives

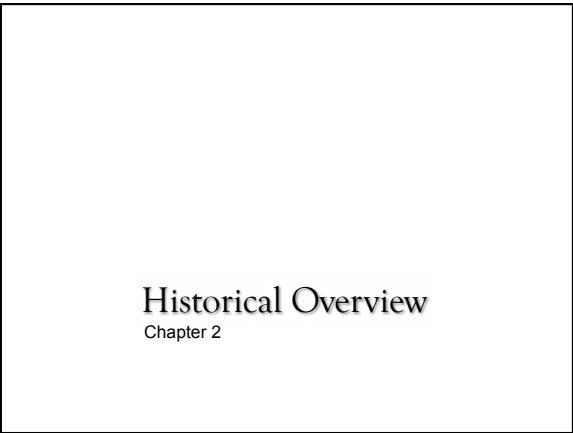
- Gather evidence
- Draft written notices/complaints
- Conduct inspections (Fourth Amendment compliant)
- Understand court process
- Be a good witness.
- Reduce exposure to liability lawsuits.

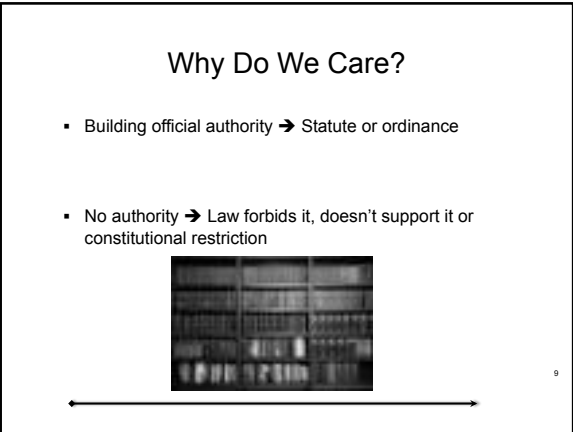


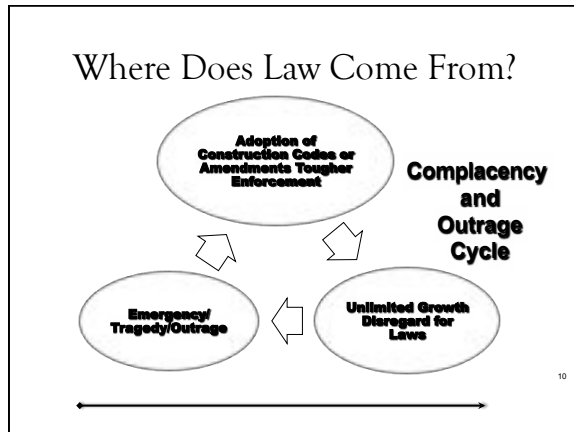
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Where Do Laws Come From?

- Code of Hammurabi
- 27 A.D. Roman Empire
- 64 A.D. Roman Empire
- 1666 The London Building Act



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Development of Modern Codes

- 1905 National Building Code
- 1927 Uniform Building Code
- 1945 Southern Standard Building Code
- 1950 Basic Building Code
- 2000 International Building Code


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Federal Legislative Law

Chapter 5

Hierarchy of laws


- U.S. Constitution
- State constitution
- State legislature and statutes
- Local governments and ordinances



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Terms

- **Common law** - judicial decisions
- **Legislative law** - written by legislature
- **Act** - another name for a statutory law
- **Immunity** - being free from the law



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How the states get power

- Tenth Amendment of the U.S. Constitution – States are granted authority to adopt laws to protect and promote health, safety, morals and general welfare of its citizens. :
"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."



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Where laws come from

- U.S. Congress and U.S. Courts
- State Legislature and State Courts
- Local Governments



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Forms of Government

- Federal
- State
- County
- Municipal Corporations
 - Cities, Villages, Towns, Townships, Boroughs
 - Class differentiation



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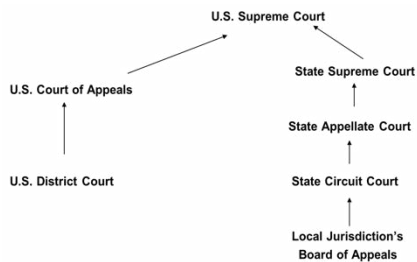
Checks and Balances



- Legislative branch - makes laws
- Executive branch - power to veto or approve laws
- Judicial branch - power to review laws

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Appellate Structure



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Role of the federal government and building codes

- Very limited
- Most states give power to local government
- Administration and enforcement remains with local jurisdiction



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Doctrine of Preemption

- Supremacy Clause
- Congress deprives states of power
- To regulate of commerce



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What's preempted by the feds?

Child car seats



Toys



Drywall



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The Doctrine of Sovereign Immunity



- You can't sue the king!
- Local jurisdictions can't regulate state buildings
- Unless
 - Waiver by state
 - Waiver by state re certain buildings
 - Request for help



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Sovereign Immunity

- Federal government immune from:
 - Local building codes and zoning ordinances
 - Includes courthouses, post offices and office
 - What about leased buildings?



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State Legislative Law

Chapter 4

Basis for the Building Official's Duties and Powers

- State law adopts building code or police powers that sets forth his or her authority or implies the authority for:
 - Local governments to adopt building codes that set forth his or her authority



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Dillon's Rule: A municipal corporation has only those powers which are:

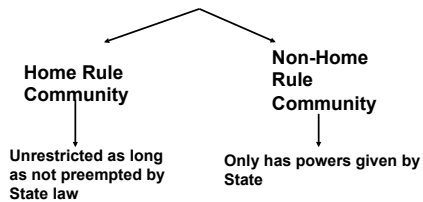
- Expressly granted
- Implied or necessarily incident to express power and
- Essential and indispensable



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Dillon's Rule - Ultra Vires

- Power Derived from the State



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Home Rule Municipalities

- Different types
- Establish their own charter, rather than state legislated
- Building codes adopted without state authorization.
- Free to regulate own affairs

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Related Legislative Provisions

- Storm water management
- Protected development permitted in flood plain
- No development in floodway.
- Local jurisdiction adopts state law as its own



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Local Governmental Law Chapter 3

How to adopt building code

- Determine authority
- Publish notice of intent
- File code with the county or municipal clerk
- Hold public hearing
- File copies



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So many codes

- Building Code
- Residential Code
- Fire Code
- Property Maintenance Code
- Zoning Ordinances – Land Use Ordinances
- Storm Water Management – National Flood Insurance Program (FEMA)

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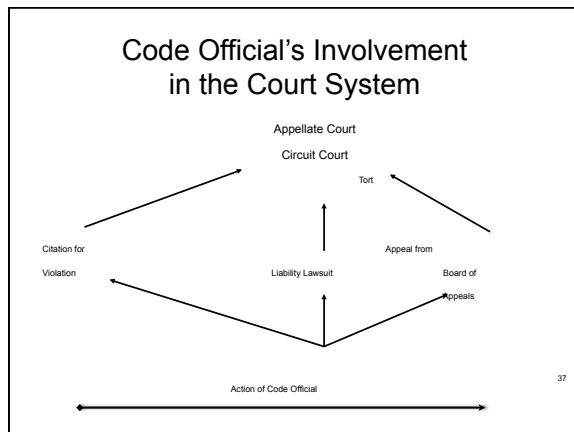
Board of Appeals

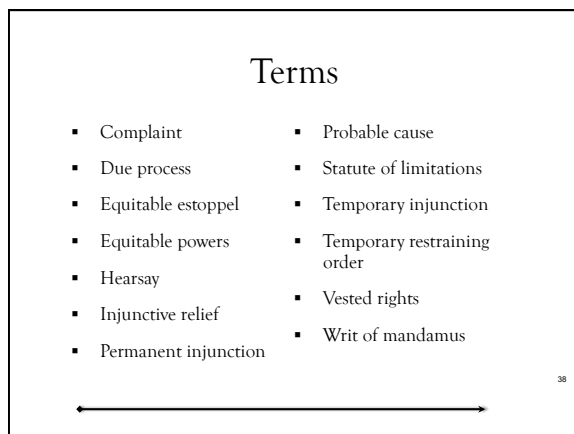
- May hear appeals of a building official's decision
 - If true intent of code or rules have been incorrectly applied
 - Provisions of the code do not fully apply
 - Empowered to consider new and innovative building materials and techniques if these are equally good or better than the code
- No authority to waive requirements of the code

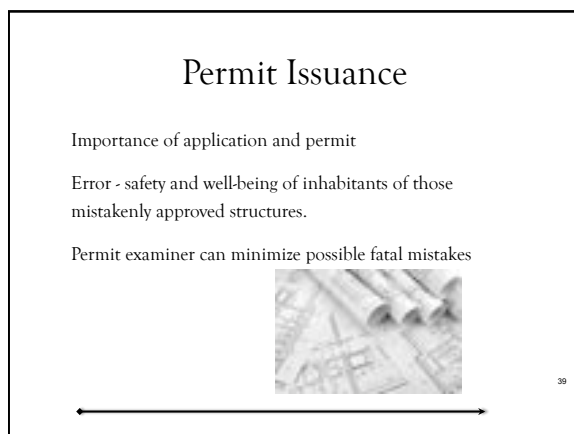
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Administration and Enforcement

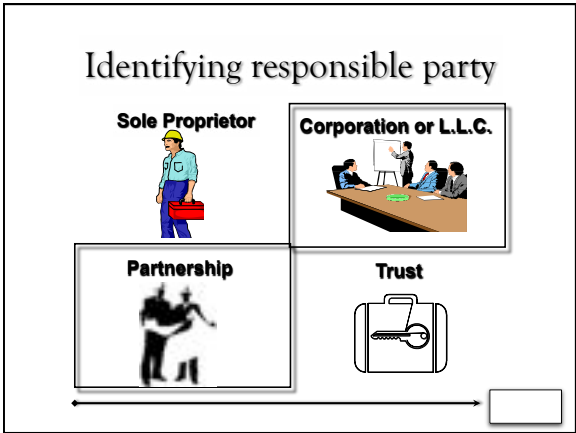
Chapter 6

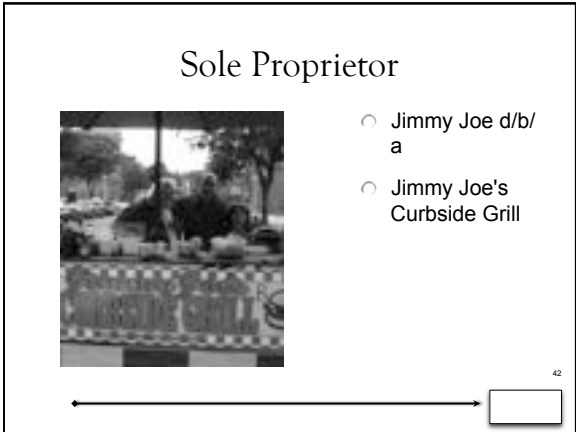














Common Mistakes Name (Individual)

- ☐ Wrong
 - ☐ Jimmy Joe's Curbside Grill
Cindy Adams, manager
- ☐ Correct
 - ☐ Jimmy Joe Smith d/b/a Jimmy Joe's Curbside Grill



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Corporation or Limited Liability Company




Jimmy Joe's Curbside Grill, Inc.

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How Do You Know It's a Corporation or LLC?

- ☐ Corporation or Corp.
- ☐ Incorporated or Inc.
- ☐ Company or Co.
- ☐ Limited or Ltd.
- ☐ Limited Liability Company or LLC



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Alias or Assumed Names



- Check with County Clerk or
- Secretary of State

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Registered Agent




- Agent registered with the Secretary of State
- Accepts notices, service of process
- Never name in a citation

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Common Mistakes Name (Corporation)

○ Wrong	○ Correct
○ Jimmy Joe's Curbside Grill	○ Jimmy Joe's Curbside Grill, Inc.
○ Jimmy Joe Smith	
○ Jane Smith, registered agent for Joe's Hot Dog Stand, Inc.	
○ Barry Adams, manager	




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Online corporate search

GOPLLL - CERTIFICATE OF GOOD STANDING

03/10/18 11:42 AM



CORP/LIC - CERTIFICATE OF GOOD STANDING

180027

Step 1
CHOOSE THE TYPE OF SEARCH:
☐ Corporate and LLC
☐ Corporate
☐ LLC
☐ PLEASE CHOOSE A SEARCH METHOD:
☐ By Name (your search has beginning of name)
☐ By Zip Word (often may require address in case)
☐ By Fetched Word (displays all of your search results)
☐ By File Number

Step 2
ENTER YOUR SEARCH: *

* = Required field

[Website notice](#)

Click now to [authenticate certificate of good standing](#)

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BACK TO [CORPORATIONS&LLCS PAGE](#) OR [HAWAII PAGE](#)

<http://www.hawaii.state.gov/gopl/llc/>

Page 1 of 2

CYBERCYRILLINO			
ADDRESS	PACKAGE	STATUS	PUBLICATIONS
CORPORATION FILE DETAIL REPORT		DEPARTMENTS	CONTACT
Entity Name	LOUISIANA POWER AND LIGHT, INC.	File Number	00000000
Address	600 Poydras		
Entity Type	CORPORATION	Type of Group	COMPANY INC.
Registration State	LOUISIANA	State	STATE OF LA
Agent Name	W. J. CROOKER & CO.	Agent Change Date	01-01-2000
Agent Street Address	200 N. LAFAYETTE ST.	Executive Name & Address	ANDREW J. CROOKER 200 N. LAFAYETTE ST. SUITE 1000 NEW ORLEANS, LA 70112
Agent City	NEW ORLEANS	Secretary Name & Address	ANDREW J. CROOKER 200 N. LAFAYETTE ST. SUITE 1000 NEW ORLEANS, LA 70112
Agent Zip	70112	Director Name	CROOKER ANDREW J.
Agent Request Party Name	CROOKER AND	Ref Name	AND
Account Name	LOUISIANA POWER AND LIGHT COMPANY		
Old Data Name	LOUISIANA POWER AND LIGHT COMPANY		

TRUST DISCLOSURE LETTER (SAMPLE)

Lake Bank and Trust [Trustee or management company of property]
123 Lake Dr.
Chicago, IL 60000

Re: Trust No. _____, Property address

Dear Sir or Madam:

Please be advised that we possess information indicating that you are a trustee pursuant to a trust instrument regarding the above real property. Pursuant to 765 ILCS 425/1, the Village of _____ is demanding at this time that you notify us within ten (10) days about the identity of the beneficial owner or owners of the property. The Village of _____ has found that this property is in violation of the following health/safety ordinance: (description).

Should you have any questions, please contact me.

Very truly yours,

Building Official

Common Ownership Mistakes

- Wrong
 - Assumes person is the owner
 - Assumes taxpayer is the owner
 - Assumes there is only one owner
 - Doesn't do trust disclosure letter
 - Assumes management company is the defendant
- Correct
 - Checks with Recorder of Deeds / orders a tract search
 - Checks with Secretary of State about corporation
 - Sends and follows-up on trust disclosure letter
 - Gets admission from the defendant
 - Notifies and/or charges multiple owners

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Permit Revocation

- Revocation or suspension under the code
- Due process - vested interest
- Can't rely on courts
- Equitable estoppel.



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Disclaimers

- Print disclaimer on building permit and application
- Permit issued wrongfully - revoke
- Writ of mandamus possible

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Plans Examination

- Potential liability
- Qualified plans examiners
- Can't rely on stamp of licensed architect or engineer



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Inspection

- IBC Section 109
- Documenting an inspection
 - Record date, address and description of observations violations and impressions.
 - Section of building code violated.
 - Take photographs or videos
 - Keep a copy of report




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Where Do You Begin When Things Go Wrong?


- Who owns the property?
- Who occupies it?



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Owner – IBC Chapter 2

- Any person, agent, operator, firm or corporation having a legal or equitable interest in the property



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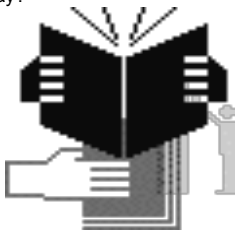
Person – IBC Chapter 2

- An individual, heirs, executors, administrators or assigns and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

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But Who is Responsible?

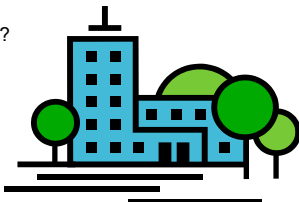
- What does the Code say?



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Violations (Unlawful Acts) – IBC 114.1


- Who is responsible?
 - Person
 - Firm
 - Corporation



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Failure to Obtain Permit – 105.1

- Any owner
- Authorized agent



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Injunctive Relief

- Temporary restraining order
- Temporary injunction and
- Permanent injunction
- Issued by a court of equity or chancery court



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How to handle complaints

- Obtain as much information as possible
- Route to the proper inspector.
- Make inspection, complete report which details action taken.
- Notify complainant
- Have a procedure for anonymous complaints

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SAMPLE FORM: NOTICE TO RESPONSIBLE PARTY – NO CERTIFICATE OF OCCUPANCY – PRIOR BUILDING PERMIT –

October 3, 20XX

A.J. Murphy, President
Big Al's Trucking Co.
6560 Hollywood Blvd.
Everytown, USA

Re: 6560 Hollywood Blvd., Everytown, USA
Property Index Number: 01-0001-001-00

Dear Mr. Murphy:

An inspection of your company's property at 6560 Hollywood Blvd., Everytown, USA, on October 2, 20XX shows the following violations of the code of ordinances of City of Everytown:

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Notice of Violation

Occupying* a Structure without a Certificate of Occupancy in violation of IBC 111.1 as amended and adopted by reference in Section 8-1D-1 of the City of Everytown Code

- an addition to the building, being a storage area for the trucks, is being occupied** without a certificate of occupancy. A permit was obtained on June 11, 2000, for the addition, but a final inspection was never performed.

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Notice of Violation

You must discontinue this illegal activity and abate the violation. You must cease occupancy*** of the addition until a certificate of occupancy is obtained. You need to arrange for a final inspection by October 20, 20XX, and pay all necessary fees for a reinstatement or extension of the prior permit****. A certificate of occupancy must be obtained by the close of business on November 22, 20XX, or a complaint will be filed against your company in a court of local jurisdiction.

Please feel free to contact me to discuss this matter further.

Very truly yours,

John Black

Building Official

* Or using.

** Or used.

*** Or use.

**** Use this language if the jurisdiction requires the payment of additional fees.

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SAMPLE FORM: PROOF OF SERVICE OF NOTICE-PROOF OF SERVICE

To:*

Name: Mr. John Fincham

Last known address: 6560 Hollywood Blvd.
Minneapolis, USA

On April 3, 20XX, I, Karyn Byrne, on oath state that:**

- o I served this notice by delivering a copy personally to each person to whom it is directed.
- o I served this notice by mailing a copy to each person to whom it is directed and depositing the same in the U.S. Mail at Seven Plaza Drive, Minneapolis, USA, with the proper first-class postage prepaid.
- o I served this notice by mailing a copy to each person to whom it is directed by certified mail and depositing the same in the U.S. Mail at Seven Plaza Drive, Minneapolis, USA, with the proper postage prepaid. Certified mail number _____.
- o I served this notice by posting it in a conspicuous place in or about the structure affected by the notice, being 6560 Hollywood Blvd., Minneapolis, USA.

Subscribed and sworn to before this:

Date: April 3, 20XX

Karyn Byrne
Deputy Code Official

Notary Public

* List the name and addresses of all parties to whom the notice is directed.

** Check the appropriate box.

Comment: When serving the notice by posting it, the inspector should take a picture of the notice on the building so the defendant does not claim it was never there.

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Quasi-criminal prosecutions

Complaint elements:

- Name of person or entity to be charged;
- Designating the charge;
- Body of the charge;
- Date and time of the offense;
- Signature of the complaining witnesses; and
- Notary or affidavit.



Where's the Evidence?

- Bring everything you need to court:

- Files
- Pictures
- Review everything



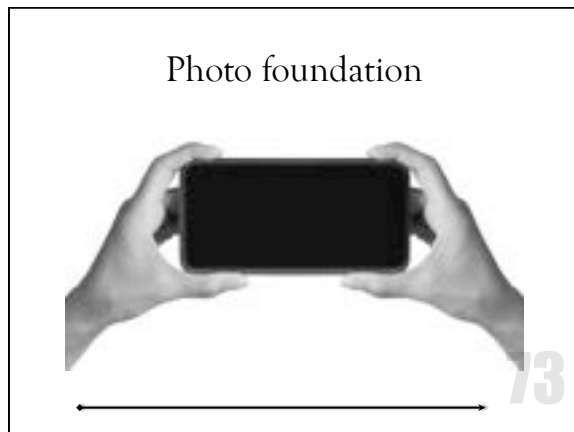
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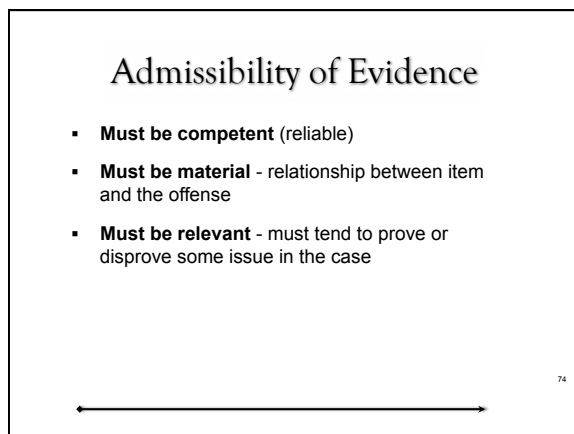


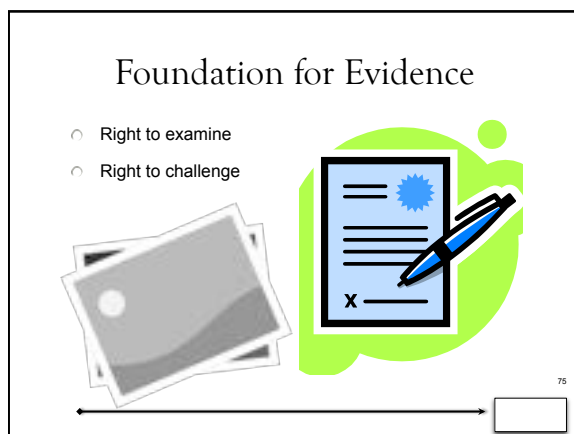
Types of Evidence

- Conversations
- Documents
- Audio or video files
- Photos
- Observations



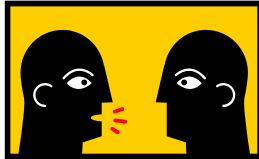






Types of Evidence - Conversations

- Conversations
 - No hearsay except:
 - Statements of defendant - Admissions of a party opponent
 - Foundation required - date, time, place, who was present



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Types of Evidence - Documents

- Common Documents
 - Deeds
 - Secretary of State corporate papers
 - Permit applications
 - Maps
 - Inspection reports
 - Certified copy of public documents



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Source of Documents

- Recorder of Deeds
- Secretary of State - corporation dept.
- Local jurisdiction
- Inspector's file
- Websites of public agencies



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Common Mistakes (Records)

- | | |
|--|---|
| ○ Wrong | ○ Correct |
| ○ Insufficient notes | ○ Sufficient notes to refresh recollection |
| ○ Can't remember dates, times, places and admissions | ○ Copies of all records, correspondence, return receipts, pictures, inspections |
| ○ Insufficient documentation | |

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Types of Evidence - Observations and Photographs

- Observations of inspector
- Photographs and/or video - must truly and accurately depict subject matter therein



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Where's the perspective?



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←————→

Here it is!



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←————→

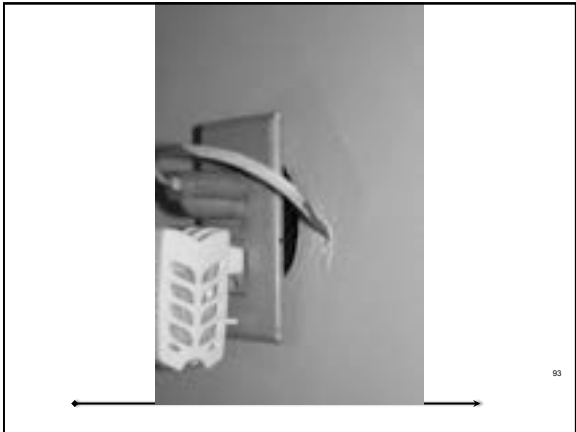


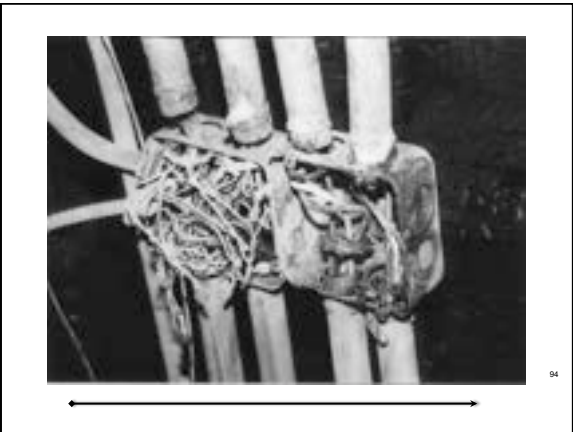












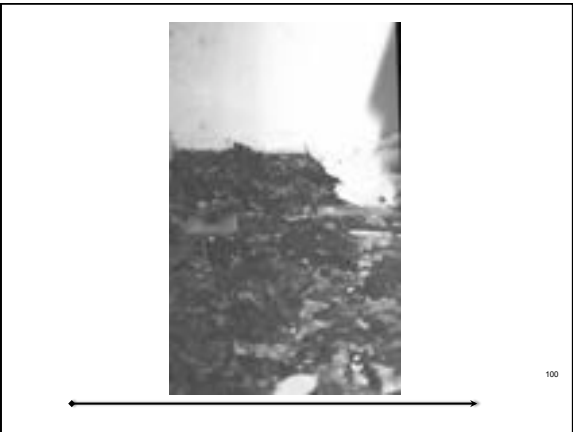




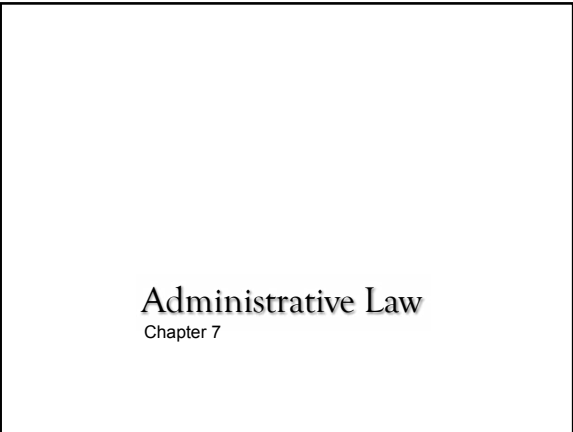












Terms and Definitions

- Administrative action
- Answer
- Burden of proof
- De Novo

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Creation of the BBCA

- Governing body adopts procedures
- BBCA becomes involved after denial of permit
- Application to Board if application denied by building inspector
- Advise applicant of right to appeal



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Powers of the Board – IBC 105.3.1

- An appeal is allowed:
 - If the true intent of this code or the rules legally adopted has been incorrectly interpreted;
 - The provisions do not fully apply;
 - An equally good or better form of construction is proposed.
- Board has no authority to waive requirements of this code.

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Appeals Procedures

- Rules of Procedure
- Notice
- Burden of Proof and Presentation
- Granting Remedies
- Administrative Discretion
- Rehearings
- Orders

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Zoning Board of Appeals

- Considers and acts upon appeals to the officials decisions
- Can grant variations to the restrictions of the ordinance
- Can make special exceptions to the ordinance itself

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Related Property Law Concepts

Chapter 9

Zoning Ordinances

- Local ordinances regulate use and development of property
- Specific districts based on types of uses for an area – residential, commercial and industrial



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Zoning establishes guidelines

- Lot sizes, height and area restrictions, setbacks, number of structures, parking areas, etc. ...

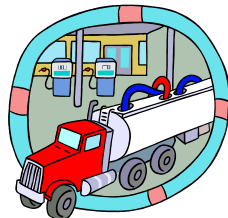


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Conditional Use or Special Use Permit

- Conditional Use, Nonconforming Use, Special Use Permit
- Carries specific terms, restrictions, conditions, or requirements



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First Amendment Issues

- Adult entertainment



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Covenants

- An agreement or promise between two or more parties to either do something or to refrain from doing something.
 - Affirmative
 - Negative
 - Restrictive



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Affirmative Covenant

- *Glenstone Homeowners Ass'n v. State, Dept. of Transp.* 48 Ill.Ct.Cl. 388, Not Reported in N.E.2d, 1996 WL 1057751 Ill.Ct.Cl. 1996. - promise to pay subdivision assessments even applies to IDOT

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Negative Covenant

- Shelley v. Kraemer 334 U.S. 1, 68 S.Ct. 836(1948).
- Case struck down restrictive covenant prohibiting transfer of land based on race

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Restrictive Covenant

- Save the Prairie Soc. v. Greene Development Group, Inc. 323 Ill.App.3d 862, 752 N.E.2d 523 Ill.App. 1 Dist., 2001. - Can only build single family homes on land

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Easements

- Grant use or interest in land by entitling a person to use the land possessed by another person.



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Types of Easements

- Affirmative easement - travel across or between adjoining properties
- Implied easement - owner of 2 or more adjacent lots sells part thereof, grants easements needed to use the property
- Utility easements



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Subdivision Regulations

- Developed to control future development and expansion of urban and municipal properties.



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Constitutional Law

Chapter 8

Fourth Amendment:

- The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall be issued, but upon probable cause supported by Oath or affirmation and particularly describing the place to be searched and the persons or things being seized.



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Consequences of Violation of Fourth Amendment

- Exclusionary Rule
- Motion to Suppress Evidence
- Civil Rights lawsuit for violating the Fourth Amendment

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Leading U.S. S.Ct. Cases

- *Camara v. San Francisco* 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930(1967) – apartment building and health and safety inspection
- *See v. Seattle* – commercial warehouse
387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943(1967) – fire inspection

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Key Question

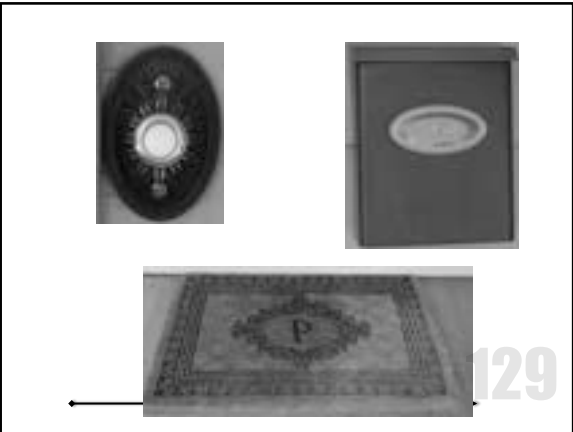
○ What is the person’s reasonable expectation of privacy that society is prepared to accept?



















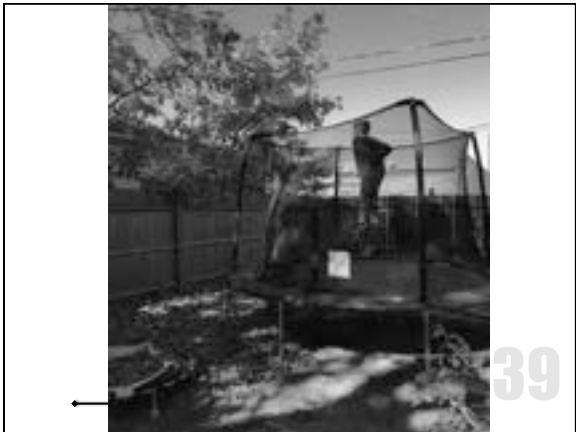








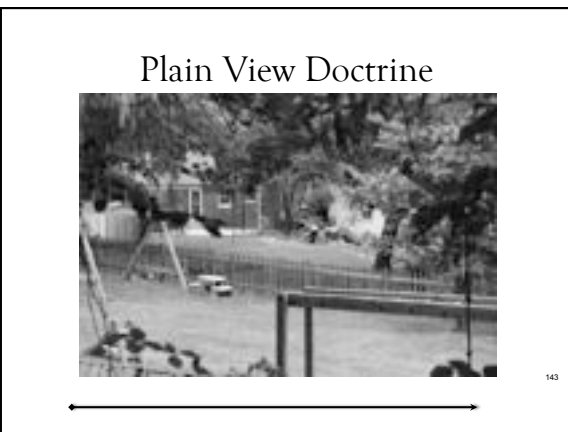


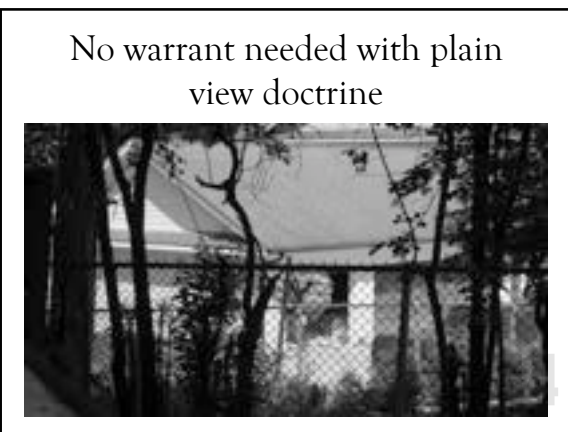













Plain view doctrine

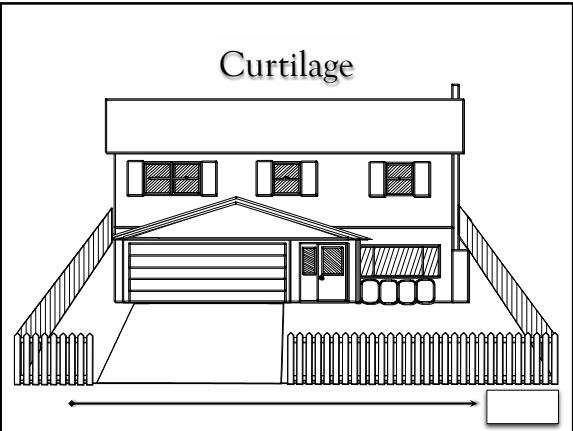


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5

Curtilage



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5

Open Fields

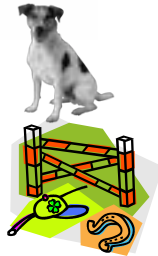
- Area beyond curtilage
- No reasonable expectation of privacy
- *Widgren v. Maple Grove township*, 429 F.3d 575(2005)



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State v. Berry, 92 S.W.3d 823 (2003)



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Vacant Property



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Is It Abandoned?



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No expectation of property on for abandoned property

- A person has no expectation of privacy in premises which he has intentionally or constructively abandoned, and police entry of such premises is not a search under the Fourth Amendment.
- *Abel v. U.S.*, 362 U.S. 217, 80 S. Ct. 683, 4 L. Ed. 2d 668 (1960)

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Abandoned Property

- Look at all the relevant circumstances.
- Clear unequivocal and decisive evidence.
- Questions of fact and intent of the person who allegedly abandoned the premises.
- Infer intent from relevant circumstances and objective facts.



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Fourth Amendment and commercial property



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Are all businesses created equal regarding inspections?



Closely regulated business

- Exceptions
- Closely Regulated Business
 - History of regulation
 - Substantial interest by state
 - Regulation serves that interest
 - Warrantless search is necessary
 - Adequate substitute for warrant



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Contreras v. City of Chicago - 119 F.3d 1286(1997)

- Owner and employees of pizza restaurant that city temporarily shut down after conducting inspection brought § 1983 action against city and city officials, alleging that racial animus led to shut down.
- Sanitarians found refrigerator not working, paint peeling from the wall, thermometers were missing from two coolers, window was missing, rodent droppings and observed raw meat sitting out at room temperature
- Warrantless search did not violate 4th Amendment

New York v. Burger, 482 U.S. 691, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987)

- Safety of the food provided is an obvious "substantial governmental interest"
- Warrantless searches *in general* must be necessary to further the regulatory scheme
- Requirement of "certainty and regularity" in the application of any regulatory scheme that uses warrantless searches.

New York v. Burger, 482 U.S. 691, 107
S.Ct. 2636, 96 L.Ed.2d 601 (1987)

- Regulatory statutes that authorize warrantless searches must perform two of the functions that warrants do:
- 1) an owner of a searched premises must be advised that the search is pursuant to the law and has a properly-defined scope, and
- 2) the discretion of the inspecting officers must be limited.
- Inspection was reasonable in Contreras case.



Drones, aerial maps and the Fourth Amendment



161

California v. Ciraolo, 476 U.S. 207, 221 (1986)

- To investigate an anonymous tip that Ciraolo was growing marijuana in his backyard, police officers flew an airplane over his property, photographing marijuana plants discovered on the property from one-thousand feet above.



162

Dow Chem. Co. v. United States, 476 U.S. 227(1986)

- Whether the curtilage or open-fields doctrine applied to the open areas between buildings on a large industrial property?
- Court concluded that the complex was more similar to an open field so no fourth amendment violation.



163

United States v. Jones, 132 S. Ct. 945 (2012)

- Whether attaching a Global Positioning System (GPS) to a suspect's vehicle and monitoring his movements on public roads for 28 days without a warrant constituted an unreasonable search?
- Supreme Court found that it violated the Fourth Amendment but judges couldn't agree on the theory: trespass v. reasonable expectation of privacy.



164

Florida v. Jardines, 133 S. Ct. 1409 (2013).

- Officers brought drug-sniffing dog onto private property so it could sniff from outside the door.
- Violated Fourth Amendment because it was beyond an implicit license to approach a home and solicit its occupants



Kyllo v. United States, 533 U.S. 27 (2001)

- Use of thermal-imaging device
- Conduct constitutes unreasonable search when technology “is not in general public use.”
- Mapmaking cameras are conventional so aerial maps are fine.

166

Katz v. United States, 389 U.S. 347, 351 (1967)

- Wiretap on public phone booth.
- Established reasonable expectation privacy standard



167

Florida v. Riley, 488 U.S. 445 (1989)

- Whether warrantless, naked-eye aerial observation interior of partially enclosed greenhouse violated the Fourth Amendment?
- 400 feet flight by helicopter okay
- 160



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Issues

- No trespass if above 400 feet (public air space)
- What if you don't know someone is watching your property?
How can you have a subjective expectation of privacy?
- State statutes restrict use by law enforcement
- Could be constitutional but not legal under a state statute

169

Rental Inspection Ordinance



- Ashworth v. Moberly, 53 S.W.3d 564(2001)
- Rozman v. City of Columbia Heights, 268 F.3d 588(2001) - standing
- Jones v. Wildgen, 450 F. Supp.2d 1265(2006)

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Towing Vehicles Off Private Property



- Bezayiff v. City of St. Louis, 963 S.W.2d 225(1998) (need a warrant)
- Redwood v. Lierman, 265 Ill.Dec. 432(2002)

171

But, is condemnation a Fourth Amendment taking?

- Freeman v. Dallas, 242 F.3d 642(2001)
- Seizure under state law - reasonable



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Third Party Consent

- Co-owner
- Roommates
- Child



173

What If One Consents and One Refuses?

- Georgia v. Randolph, 547 U.S. 103, 126 S.Ct. 1515(2006)
- Fernandez v. California, 134 S. Ct. 1126(2014)



174

Apparent Authority

- Illinois v. Rodriguez, 497 U.S. 177(1990)
- People v. Garza, 276 Ill.App.3d 659(1995)



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Montville v. Lewis 87 F.3d 900 (1996)

- Apparent authority of contractor where no permit had been issued
- Qualified immunity



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Third Party Consent - Age



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Search Warrant Exceptions:

- Consent (i.e. waiver of Fourth Amendment right)
- Exigent Circumstances
 - Public Health or Safety
 - Closely Regulated Business
- No Search (e.g., observation from public area, open fields doctrine) - *Artes-Roy v. City of Aspen*, 31 F.3d 958(1994) Stop work order
- Good faith exception to exclusionary rule



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Consent

- Verbal or in writing by someone having authority over the property
- Permits
- Make sure you memorialize it



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Exigent Circumstances

Public Health or Safety



Closely Regulated Business



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When a Building Can Be Entered

>>>

- To put out a fire
- Conduct an initial inspection for its cause
- Seize evidence in plain view
- Michigan v. Tyler, 436 U.S. 499(1978) (Slight interruption OKAY)
- If owner consents



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When a Building Can Be Entered

- (When the emergency is over)
- With consent
- With a Search Warrant
- Michigan v. Clifford, 464 U.S. 287(1984)



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To Get a Search Warrant >>>

- Need probable cause or
- Administrative inspection
 - May be based on the passage of time
 - Nature of the building
 - Condition of the entire area
 - Specific knowledge of conditions



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Common Mistakes (Search and Seizure)

- | | |
|--|---|
| <ul style="list-style-type: none">○ Wrong<ul style="list-style-type: none">○ Fails to ask for consent○ Gets consent, but no authority○ Lacks probable cause to search○ Fails to get administrative search warrant | <ul style="list-style-type: none">○ Correct<ul style="list-style-type: none">○ Obtains consent from owner or tenant○ Searches under exigent circumstances○ Sees violation from area where a code official has a right to be○ Obtains administrative search warrant |
|--|---|



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Administrative Search Warrant Requirements >>>



- Complaint
 - Sets forth authority of code official to search
 - Sets forth probable cause in narrative form
 - Describes place to be searched
 - Cites code provisions violated
 - If no known violations, sets forth factors justifying warrant

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Administrative Search Warrant Requirements



- Search Warrant
 - Sets forth address of place to be searched and particular areas. if appropriate (e.g. Closets, drawers) and things to be seized
 - Recites finding of probable cause
 - Signature of neutral magistrate
 - Date and time of issuance
- Search Warrant Return
 - Sets forth when warrant was served, or
 - Sets forth that warrant was not served
 - If anything seized, lists inventory of property taken

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STATE OF ILLINOIS)
) ss.
COUNTY OF)

TO THE _____ JUDICIAL CIRCUIT IN _____ COUNTY, ILLINOIS

IN THE MATTER OF)
) CASE NUMBER:
)
)

COMPLAINT FOR ADMINISTRATIVE SEARCH WARRANT

I, NOW APPEAR, Building and Code Enforcement Officer for the Village
of _____, Complainant, before the undersigned Judge of the _____ Judicial Circuit, and
request the issuance of an Administrative Search Warrant, to inspect the premises of
_____, In accordance if said premises are constructed in compliance with the
ordinances of the _____, Being the 2007 International Property Maintenance Code
(IPC), IMAC) of the "UNOCODECOV, as adopted and amended in location _____ of the
_____ Code. In support hereof, I complainant states as follows:

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I, _____ That I am a Building and Code Inspector for the _____.

Legal Aspects for Code Administration

3. The 2015 International Property Maintenance Code as amended and adopted by reference in Section _____ of the _____ Code prescribes minimum maintenance standards for all structures and premises for basic equipment and facilities for light, ventilation, occupancy loads, heating, plumbing, electricity and sanitation, for safety from fire, for space, use and location, and for safe and sanitary maintenance for all structures and premises now in existence.

3. Section 204.4 of the 2015 International Property Maintenance Code as amended and adopted by reference in Section _____ of the _____ Code provides that: "The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law."

8. *Carmen v. Municipal Court of San Francisco*, 87 S.Ct. 1725 (1967) provides that the issuance of a search warrant authorizing municipal health and safety inspections to enter and

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inspect dwellings include those situations where there is probable cause to believe there is a violation of the codes but need not be confined to cases in which inspectors possess probable cause to believe. Administrative search warrants are not limited to the issue as to whether that particular dwelling contains violations of minimum standards prescribed by the code being enforced. The court can look at the passage of time, the nature of the building or the conditions of the entire area in addition to specific knowledge of conditions.

3. *People v. Superior Motorcycle Club, Ltd.*, 134 Ill.App.3d 448, 89 Ill.Dist. 158, 801 N.E.2d 940, 2nd Dist. 1993 provides that the powers to inspect and pursue an administrative search warrant are implied powers necessary to achieve enforcement of a code (in that case a county zoning ordinance). In this matter, the property maintenance code sets forth provisions for the code official to pursue recourse as provided by law to gain entry for inspections. In order to be able to enforce the _____'s property maintenance codes, it is necessary to perform inspections. When entry is refused or cannot be obtained, it must obtain an administrative search warrant as authorized by *Carmen v. Municipal Court of San Francisco* in order to achieve the reasonable public goal of making sure that the dwelling meets minimum safety standards.

4. The Complainant, if allowed entry into the premises, shall inspect the items listed on the attached inspection form that is attached hereto and make a photograph.

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7. There is probable cause and a reasonable basis for the issuance of an administrative search warrant due to the following evidence:

a. _____ is the owner and occupant of _____ a single-family residence in the _____ County Recorder on record and the records show that in the last seven (7) years, I also know this location I have that with a number of times in 2015 and 2017 (dates I am aware of) his residence and he has admitted that he lives in the residence.

b. I have become involved with this property when I submitted a court order from my profession, XXXXXXXXXX, on (date) _____. I have been issued court orders in the past for existing code violations on the property at _____ On June 5, 2020, the _____ issued citations for the following code violations of the 2015 International Property Maintenance Code of the _____ as adopted and amended in Section _____ of the _____ Code for the purpose of the property at _____ (see attached Complaint, Village Exhibit 4):

Failure to Maintain Driveway, 2015 IPMC 301.3
Storage of Inoperable Vehicles, 2015 IPMC 301.4
Failure to Provide Protective Treatment 2015 IPMC 301.4

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Failure to Maintain Roof and Drainage 200N SPAC 304.7
Accumulation of Rubbish, 200N SPAC 307.1
Though one vehicle has been removed, there is no compliance for the remaining violations based on my inspection on site(s).

a. These charges were based on my inspections on site(s) during which I saw that the roof and fascia boards on the home are missing, rotting and stuffed with random debris such as leaves, garbage and plastic toy particles (see attached Village Exhibit B). The roof and roof supports appear to be sagging and there are large holes on the southeast side of the home allowing animals to enter the structure and which allow rainwater from rain and snow to enter the interior of the property (see attached Village Exhibit C). I was told by _____'s neighbor, on site(s) that he saw animals such as squirrels, mice and raccoons entering into the structure. There is an unlicensed, inoperable red vehicle in the backyard which cannot be removed unless north-side are cut down to get the car out of the rear yard (see attached Village Exhibit D). Due to these various problems, the exterior of the property is in a dilapidated condition. The interior of the structure needs to be checked to see if there is damage to the structure because of water infiltration due to the holes in the exterior.

d. The 200N SPAC as amended and adopted by reference in Section _____ of the _____ Code provides:

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302.1 Exterior Finishings: All structures and exterior property shall be kept free from unsound finishings and deterioration.

304.2 Protective treatment: All exterior surfaces, including but not limited to, doors, door and window frames, awnings, porches, terraces, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective coating or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building overhangs and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight.

304.7 Roofs and drainage: The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions.

a. On _____, 200N _____ placed guilty to each and every code violation as set forth in the complaint, Village Exhibit A.

f. On the _____, 200N court hearing _____ admitted in open court that he did not have running water or a working toilet in the home and had not had sanitary facilities for an extended period of time. The _____ water records show no usage other than sitting.

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g. I met _____ at his home on _____, 200N with a representative from the water department to verify that the water was on at the 1-1/2 hrs. The _____ water department verified that the water was on at the main connection but not getting into the home due to an internal problem inside the structure.

h. On site(s) I checked with the Sanitary District which verified that _____'s sanitary line is 90-95% blocked. This was discussed when we saw how much water being lost on _____ Street in that area during some period.

i. On site(s) I checked with _____ at the Public Works Department and found out that _____ has refused to allow a new water meter to be installed at the residence.

j. The 200N SPAC as amended and adopted by reference in Section _____ of the _____ Code provides:

304.1 General: Plumbing Systems and Fixtures: All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

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Legal Aspects for Code Administration

305.3 Water Supply The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appliances in sufficient volume and at pressure adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

306.2 Maintenance Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

b. I have checked the refuse records from the _____ that show that _____ has not had garbage pickup since _____ of 2000.

i. Or, in about (circle) I spoke to _____'s next-door neighbors on both sides of his residence. They both stated that there is a foul odor that they both smell emanating from his house especially in the warmer months. It is so strong that they cannot see the exterior of their properties in business. I verified this odor on or about (circle) when I was walking the property with _____ discussing his code violations with him. The odor smells like a combination of rotting garbage and human waste. I smelled this odor when _____ opened his door. He has not allowed me to check out the odor inside his residence. _____ appears not to have failed to maintain in that he appears concerned with dirt and smells like urine and rotting garbage.

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30. The 2005 IPAC is amended and adopted by reference in Section of the Code provided:

308.1.3 Structures with fire losses occupancy. A structure is with fire losses occupancy whenever the code official finds that such structure is unsafe, unhealthful or because of the degree to which the structure is in disrepair or lacks maintenance, is hazardous, unsafe or not protected, contains fire and communication, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

308.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition.

308.1 Accumulations of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

[illegible]

a. On _____, 20____, I arrived _____ the street of _____ St. in the _____ Court with both a Notice of Commencement (Village Exhibit E) under the 2005L 07482, and a 33-Day Notice to Demolish or Repair (Village Exhibit F) due to the structure. Since that time, I am not aware of anything _____ but desire to abate the problem except for getting a handwritten "Not Safe" sign on the property.

b. The Complainant, along with inspectors from the _____ and representatives of other public agencies if necessary if behavioral conditions are found in the interior due to a lack of better facilities, if allowed entry into the premises, would inspect the premises to determine if code violations exist. A _____ police officer would accompany said persons for the limited purpose of providing security.

c. Based on my observations, there is probable cause to believe that the following sections of the 2005L International Property Maintenance Code as amended and adopted by ordinance in Section _____ of the _____ Code have been violated:

Structures Unsafe for Human Occupancy, 208.1.2,
Roofing Barriers, 202.7
Failures to Maintain Exterior Surfaces, 204.2,
Failures to Maintain Roof, 204.7,
Failures to Maintain Interior Structures in Sanitary Condition, 203.1,

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[illegible]

Accumulation of Rubbish or Garbage, 507.5,
Failure to Maintain Plumbing System, 504.3,
Failure to Maintain Water Supply 503.3
Failure to Maintain Forest Lane 506.2 Maintenance

WHEREFORE, Complainant prays that this Court issue an Administrative Search
Warrant, to inspect the exterior and interior structure and property at _____
_____ IL _____ to determine if the building, and
plumbing components in the home meet the minimum standards set forth in the codes cited in
this complaint.

Complainant:
Building and Code Enforcement Inspector

Subscribed and sworn to before me
On this _____ day of _____, 2023.

Judge: _____

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INSPECTION LIST - _____, Illinois

Check all that apply:

- ☐ Structural members will be checked for any evidence of deterioration that would render them incapable of carrying the imposed loads.
- ☐ The exterior of the property and premises will be inspected to determine that it is in a clean, safe, and sanitary condition free from the accumulation of rubbish or garbage and to ensure that the exterior structure is in good repair and structurally sound.
- ☐ The interior of the structure and its equipment will be examined to make sure it is in good repair, structurally sound and in a sanitary condition so as not to pose a threat to the health, safety or welfare of the occupants or visitors and to protect the occupants from the environment.
- ☐ The structure will be checked for damages that would be conducive to decay or deterioration of the structure.
- ☐ The condition of the structure will be inspected to ensure that it is in a clean and sanitary condition free from any accumulation of rubbish or garbage.

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- ☐ The plumbing facilities will be inspected to ensure that they are in proper operating conditions, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste. The plumbing fixtures will be examined to ensure they are maintained in a safe and usable condition and to make sure they are of approved material. The sink, lavatory, bathtub or shower, water closet or other facility will be inspected to ensure that they are properly connected to either a public water system or to an approved private water system.
- ☐ All mechanical equipment will be checked to ensure it is properly installed and safely maintained in good working condition, and be capable of performing the function for which it was designed and intended.
- ☐ All electrical equipment, wiring and appliances shall be inspected to ensure they are installed and maintained in a safe manner.
- ☐ The residence shall be inspected for any signs of insects, rats, or other pests that could require extermination.

PLUMBING AND MECHANICAL

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STATE OF ILLINOIS)
) ss.
COUNTY OF _____)

IN THE JUDICIAL CIRCUIT, _____ COUNTY,
ILLINOIS

IN THE MATTER OF _____)
) CASE NUMBER:
_____))
_____ Illinois)

ADMINISTRATIVE SEARCH WARRANT

TO: All peace officers and inspectors in the State of Illinois:

On this day, _____ 20____ at _____ o'clock p.m., Complainant, _____ has authorized and sworn to a Complaint for an Administrative Search warrant before me. Upon examination of the Complaint, I find that it states facts to show a reasonable basis and probable cause, and I therefore command that the structure and property, both the exterior and interior of _____, be inspected and said inspection shall include the items listed on the attached inspection form which is attached hereto and made a part hereof, using such force as is necessary to make entry in the event the owner or occupant refuses entry, to determine if said premises is in compliance with the ordinance(s) of the City of _____ being the 20____ International Property Maintenance Code (IPMC), and if so, _____ of the _____ Code specifically, but not limited to the following sections of the code of the _____.

Legal Aspects for Code Administration

200A IPAC NO.1 Failure to Maintain Plumbing System in Working Order: All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

200A IPAC NO.3 Water Supply: The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appliances in sufficient volume and at pressure adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

200A IPAC NO.2 Maintenance: Every plumbing trap, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

And inspection may be videotaped and/or photographed. A peace officer may accompany the inspectors for the limited purpose of providing security.

Time and date of issuance: _____, 200X, at _____ a.m.
Judge _____

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STATE OF ILLINOIS)
COUNTY OF _____)
IN THE JUDICIAL CIRCUIT OF _____ COUNTY,
ILLINOIS)
IN THE MATTER OF) CASE NUMBER:
_____, Plaintiff)
vs. _____, Defendant)

ADMINISTRATIVE SEARCH WARRANT RETURN

Position: _____, Ward: _____

I served this Administrative Search Warrant at the above named Position and filed it in its execution, this _____ day of _____ at 2015.

Date: _____
Complainant: _____

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Or

I did not serve this Administrative Search Warrant within _____ hours of the time of issuance, and it is hereby returned to the Court as void and not executed.

Date: _____
Complainant: _____

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Overcrowding

- *Platteville Area Apartment Association v. City of Platteville*, 179 F.3d 574(1999)
- Special rules for overcrowding search warrants



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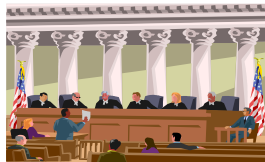


Civil Rights Act of 1871

Title 1983 Action

1. Color of state law
2. A deprivation of federal constitutional or statutory rights
 - a. Fourth Amendment - search and seizure
 - b. Fourteenth Amendment- due process/equal protection
 - c. Discrimination- race / disability / religion

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Defenses

- Absolute immunity
- Qualified immunity

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Post-deprivation Hearing

- Flatford v. City of Monroe, 17 F.3d 162(1994)
- What process is due when government evicts citizens from their houses in an emergency?
- Building condemned after inspection
- Inspector entitled to qualified immunity for lack of pre-deprivation hearing but not post-deprivation hearing - residents must be notified and are entitled to a hearing

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Pretextual Searches

- Jones v. City of Youngstown, 980 F. Supp. 908(1997)
- Police accompanied inspectors who ordered residence be vacated due to emergency
- Inspectors should have informed residents of right to appeal order
- Police officers focused on drug violations and violated 4th Amendment
- Lack of post-deprivation hearing

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Liability for Intentional Wrongdoing

Chapter 10

Government v. Individual Liability

- Each may be sued
- Government will provide attorney for individual sued



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Intentional Torts v. Negligence

- **Intentional tort** - involves conduct the person intended to occur
- **Negligence** - no intent involved but harm caused and breach of duty of care



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Intentional Torts

- Malicious prosecution
- Institution of criminal, civil or administrative proceedings
- Termination of proceedings in favor of the accused
- Absence of probable cause
- Malice



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Summary of Malicious Prosecution

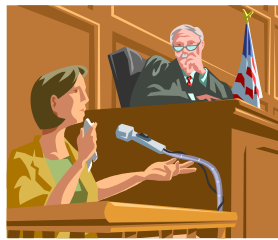
- Examples of individuals who might file malicious prosecution suits against building officials include:
 - Contractors who do not follow building plans and specifications.
 - Contractors who do not call for necessary inspections.
 - Developers who begin construction without a permit.

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Workbook Page 91

Intentional Torts

- Abuse of Process
- False Imprisonment
- Intentional Infliction of Emotional Distress
- Assault and Battery
- Trespass



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Negligent Wrongdoing

Chapter 11

Public duty doctrine

- Plaintiff must prove that municipality owed a duty to the plaintiff not just the general public when performing the activity that gave rise to the action



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Negligence

- Elements:
 - Duty owed to another to act according to a certain standard
 - Failure to act in accordance with the standard
 - Breach of duty
 - Misfeasance – improper performance
 - Malfeasance – doing something you shouldn't do
 - Nonfeasance – failure to do something
 - Proximate cause of injury or damage to another

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Breach of Duty

- Breach of duty is the third element of a negligence cause of action.

There are two ways a duty can be breached:

- By action, such as an improper inspection.
- By inaction, such as failure to inspect.

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Malfeasance

- The performance of some act which a person ought not do at all.
- An inspector falsifies an inspection report

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Misfeasance

- The improper performance of some act which a person may lawfully do.
- During an inspection of a townhouse, the inspector fails to check to see if the deck is properly connected to the structure which later collapses because it was not.

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Nonfeasance

- The nonperformance of some act which a person is obligated or has the responsibility to perform.
- An inspector fails to conduct an electrical inspection at a business and the problem overlooked causes a fire.

228

Summary of Defenses and Immunities

- Contributory Negligence
- Assumption of Risk
- Sovereign immunity

229

Summary of State Tort Liability Acts

- Many states have enacted state tort liability acts. Acts determine amount of immunity for government
- Goals:
 - Easier to sue government.
 - Clarifies the in which the government and its officials can be sued.

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Summary of Indemnification and Insurance

- Errors and omissions insurance protects in situations where an error is made which could give rise to liability. It applies only to areas of specialized skill to knowledge, such as the issuance of a building permit.

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Tort Immunity Laws

- Replaces abolished doctrine of sovereign immunity
- Protects local public entities and public employees from liability
- Don't want to dissipate public funds for private damage awards

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What Does the Tort Immunity Act Provide?

- Confers immunities and defenses
- Not new duties
- Local government may have a duty but may be immune under the Act



Tort immunity

- A local public entity and public employees are not liable for injury caused by their failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property, other than that of the public legal entity, to determine whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.
- 745 ILCS 10/2-105



Tort immunity

- A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.
- 745 ILCS 10/2-202



Tort immunity

- A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.
- 745 ILCS 10/2-206



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Tort immunity

- . A public employee is not liable for an injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than that of the local public entity employing him, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.
- 745 ILCS 10/2-207



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Absolute v. Qualified Immunity

Gray v. Derderian 400 F.Supp.2d 415 D.R.I.,2005

- State fire marshal immune in absence of proof of bad faith or malice for failure to enforce fire code
- Under Rhode Island law, allegations that town officials failed to fulfill their common law duty to act with care in inspecting nightclub and enforcing fire code stated negligence claim against town and officials, to be analyzed under public duty doctrine, in action arising from nightclub fire that was triggered by fireworks ignited at concert and caused numerous injuries and deaths.



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Station Nightclub Fire 2003*

- Located in West Warwick, Rhode Island and built in 1946.
- The Club, a wood frame structure, was equipped with non-fire resistant soundproof foam boards to limit the noise level.
- Soundproofing board obstructed a couple exits.
- The building was equipped with an automatic fire alarm system.
- Building not equipped with a sprinkler system due to an overlooked code requirement when the building changed occupancies...which required a sprinkler system to be installed as it no longer met a code exception.
- *Excerpt from: History of Fire and Fire Codes by Department of Public Safety, State of Iowa
- For a detailed examination: Trial by Fire

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Station Fire

- There were 462 occupants in a building built for only 300.
- The building had 4 working exits.
- Building had passed the annual fire inspection.
- On February 20, 2003 the band "Great White" was playing at the club.
- The band used pyrotechnics without obtaining a required permit from the city.
- The band used pyrotechnics without obtaining a required permit from the city.
- The band tour manager ignited a set of pyrotechnics during the show.

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Station Fire

- Sparks from the pyrotechnics reached the ceiling and eventually hit the non-fire resistant soundproof boards.
- The soundproof boards caught fire.
- The flames were believed to be part of the act until the spectators realized the flames and smoke were out of control.
- In less than a minute, the stage was completely involved in flames.
- The crowd, band members, and staff started to rush towards the doors.

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Station Fire

- The fire alarm activated as the stage became fully involved with fire.
- Burning soundproofing foam created dense, toxic smoke throughout building.
- No emergency lighting units within the building.
- Most people rushed for the Main Front Door entrance.
- The Front Door was ultimately blocked due to the rush for the door.
- Fire engulfed the club within approximately 3 minutes.
- Due to the stampede for the exits, many were killed or injured.
- Burns, smoke inhalation, and blunt force trauma from trampling were the main causes of death in this fire.
- DEATH AND DAMAGE TOLL
100 killed and approximately 230 injured.

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The Role of the Witness

Chapter 13

Terms

- Cross-examination
- Direct examination
- Discovery
- Expert witness
- Fact witness
- Hypothetical question
- Redirect
- Rule of sequestration
- Voir dire
- Impeachment
- Subpoena duces tecum

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Summary of Role of the Fact Witness

- Main witness = best field inspector
- Well versed in building code and able to communicate effectively



245

Testifying Effectively - Listen

- Listen to the question asked
- Don't volunteer information
- If more information is needed, let attorney ask the question



246

Analyze

- Say "I don't know" if you don't know the answer.
- Don't guess!



Speak Up

- The judge needs to hear you.
- If there is a court reporter, she or he needs to hear you.



248

Objections

- Stop testifying until judge has ruled
- Objection overruled – you may answer
- Objection sustained – don't answer



249

Keep Your Cool

- Trying to rattle your opponent is a trial tactic
- Be polite but testify with authority
- Be the nicest person in the courtroom

250

Confused?

- Ask for the question to be repeated or rephrased
- Don't be pressured to answer a question you don't understand.



251

Feeling Frisky?


- Don't interrupt
- Never interject comments
- Don't talk back to anyone



252

Do You Swear to Tell the Truth?

- Always tell the truth even if it hurts your case
- Your reputation is paramount



253


Guidelines for Witnesses

- Leading questions suggests answers.
- “Wasn’t the building foundation already laid by March 1, Mr. Building Official?”

254

Guidelines for Witnesses

- Do not get angry under cross-examination.
- When addressing a judge and jurors:
 - Speak clearly and audibly.
 - Look directly at them.
 - Look and sound confident.



255

Guidelines for Witnesses

- Wear neat everyday clothes
- Attorney should prepare you for what will happen
- If either attorney raises an objection, wait until the judge rules on the motion.

256



Sequestration of Witnesses

- Keep witnesses apart
- Talking to opposing counsel
- Might get to sit with counsel

257

