

## Table of Contents

Introduction: How does a non-lawyer understand American law?	4
(1) The hierarchy of legal authority.	4
(A) The Massachusetts Constitution of 1780	4
(B) Massachusetts Legislation and local legislation (bylaws & ordinances)	5
(C) Massachusetts judiciary and court cases: “common law” or “case law”	6
(i) Where Massachusetts court cases are published in print and online	8
(ii) How court cases are cited – understanding the abbreviations	9
(iii) Supreme Judicial Court (SJC) and Appeals Court	10
(iv) Only published SJC and Appeals Court decisions are binding precedent	11
(v) Role of SJC and Appeals Court as appellate courts	12
(D) Massachusetts administrative agencies and regulations	13
(E) Secondary legal authority: treatises and law reviews	14
(2) Lawyers reason by analogy and distinction to apply legal authority to particular facts	18
(3) How to read a court decision	19
(4) Has a particular court case been followed, distinguished or abrogated by later decisions?	23
(5) Conclusion: Ask lawyers for citations to legal authority!	23
1. Minimizing exposure to malpractice claims: “An ounce of prevention ....”	24
A. Work by the book (250 C.M.R. 5.00 “Standards for Professional Practice” & 6.00 “Land Surveying Procedures and Standards”), but what is “the book”?	24
B. Surveyors are required by 250 CMR 6.02(1), (2) & (5) “Survey Work Affecting Property Rights” to know the “Laws of Evidence,” defined by 250 CMR 2.09 as “a collection of the general rules and principles regulating the admissibility, relevancy, weight and sufficiency of Evidence in legal proceedings as established either by statutory law or by case law, as they pertain to the practice of land surveying.”	27
C. Never, ever, allow yourself to be led astray into behavior that is questionable legally or morally; as a licensed professional, your good name and reputation are all you have.	29
D. Be careful what you write on a plan; Factual statements can be qualified	31
E. Professional malpractice liability insurance for errors and omissions; if you cannot afford liability insurance with adequate coverage limits, then you cannot afford to be in business, unless you enjoy risking everything you own every time you sign and seal a plan.	36

F. Contract clauses limiting liability to the amount of insurance coverage	39
G. Mortgage plot plans	46
2. Surveyor liability to client for negligence	50
A. Duty of reasonable care	51
B. Breach of duty by act or omission.	58
C. Proximate cause	66
D. Injury or damage	73
3. Surveyor liability to client for misrepresentation	74
A. Misrepresentation of material fact, which may occur by implication or half-truth, and need not be intentional	74
B. Reasonable or justifiable reliance on misrepresentation is required, but it need not be the sole or even predominant influence on the recipient	82
C. Representation relieves recipient of duty of inquiry	88
D. Damage resulting from reliance	92
4. Surveyor liability to third parties	94
5. Statute of limitations & discovery rule	104
A. Statute of limitations for negligence and misrepresentation claims is “three years next after the cause of action accrues.” G.L. c. 260, § 2A	104
B. Discovery rule: a cause of action against a surveyor accrues either:	
(1) at the time of the surveyor’s negligent act or omission, or at the time a misrepresentation is made; or,	
(2) at the time the claimant suffers damage proximately caused by a surveyor’s negligence or misrepresentation; or	
(3) when the claimant discovers or reasonably should have discovered that he/she has suffered damage and the likely cause of that damage.	105
6. Statute of repose (G.L. c. 260 § 2B) protection for design and construction professionals does not apply to survey plans not connected with improvements to real property.	108
7. Surveyors, like other licensed professionals, should use written agreements to avoid misunderstandings and disputes concerning fees and scope of the engagement.	112
Sample contract for surveying services, prepared for North Carolina Society of Surveyors by its legal counsel	116