Kenneth S. Kasdan '76 Builds Success

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California has been a magnet for new construction of all kinds as development has escalated over the past 20 years," says Kenneth S. Kasdan, Class of 1976. "But despite the existence of clear building codes, construction defects have continued to surface, seriously impacting the integrity and value of many structures, both residential and commercial. I attribute many of these problems to haste, lack of caring and cost-cutting in construction.

"As I've said a hundred times, if builders would just follow the building codes, they would put my law firm out of business."

Nationally renowned as an authority in construction defect litigation, Kasdan is senior partner in the Orange County, California-based law firm Kasdan, Simonds, McIntyre, Epstein & Martin, with offices in Irvine and San Jose. Soft-spoken and understated, his attention to detail in representing plaintiffs in major cases while forcefully communicating the facts has helped him and his fellow attorneys create a unique legal specialty.

Kasdan recently came to Buffalo to share that expertise with law students. He taught a bridge course that focuses on his own real-world experiences, including: case management of complex civil litigation; the use of expert witnesses and presentation of evidence in complex litigation; and a summary of litigation techniques as practiced by his firm.

"I feel a special bond to UB Law that comes from knowing that its graduates are soundly prepared for success," Kasdan says. "The rest is up to the individual. But this school gets you ready to strive for the top of the legal profession."

Kasdan serves as a judge pro tem of the Orange County, Calif., Superior Court and as a member of the Orange County Superior Court Judicial Arbitration Panel. In addition to memberships in traditional legal organizations, such as the American Bar Association and Consumer Attorneys of California, Kasdan also belongs to organizations not commonly supported by lawyers.

For example, he is a member of the International Conference of Building Officials, where he is involved in the development and maintenance of building codes, and has offered testimony before nationwide code conferences. He is also a member of the American Concrete Institute (ACI), an industry organization drafting model codes. Kasdan believes this is extremely important, because the present recognition of plaintiffs' rights in construction defect litigation is critical to the protection of consumers in the nation's homebuilding industry.

His message is simple but powerful: Just build it right.

Kasdan notes that one of the most serious chronic defects — and one which is clearly addressed in the Uniform Building Codes — stems from the use of substandard cement mixture which can become a victim of sulfate attack in California's salty coastal soil.

"Since this defect impacts critical load-bearing foundations and walls, the net effect is the most serious kind of damage to many structures. Some of those hit hardest have been individual homeowners who had, in good faith, purchased new homes built by California's largest homebuilders," he says.

Kasdan's firm recently won a trailblazing case against a major builder that involved sulfate damage to homes in the Orange County city of Yorba Linda. In the first such construction defect trial in the United States including sulfate attack to residential structures, 24 homeowners were awarded $1.75 million by an Orange County Superior Court jury. All previous sulfate cases handled by Kasdan's firm were settled out of court, or during initial stages of trial.
Before Kasdan came onto the scene, construction defects litigation on behalf of property owners was routinely directed by construction experts brought in to handle the cases while attorneys complacently stood on the sidelines. Kasdan, however, perceived that an inequity existed. Property owners typically might be paid an average of $25,000 to settle a construction defect case, when the entire value of their homes had been compromised and the structures rendered potentially unsafe — all because of a clear violation of existing building codes.

"Today, because of what I would like to believe is our diligence on behalf of our plaintiff clients, virtually all of whom are homeowners, the compensation awarded is more often tens of thousands — or even hundreds of thousands of dollars — in these types of cases," Kasdan says.

This is in response to greater legal recognition of property damages, lost value, violations of the codes, and personal hardship endured by the plaintiffs, frequently in cases in which the defective property was heavily promoted by the developer to be of the finest quality. In production housing, Kasdan points out, any defect will probably be repeated over and over with commensurate results.

"Don't blame the lawyers," Kasdan notes. "We didn't design or build them.

"Once my colleagues and I recognized that the system, and the so-called experts, gave insufficient attention to the extent of the losses involved," Kasdan adds, "I had to turn myself into a construction expert in order to impact a system where I was literally fighting the proverbial city hall, at least at first. Judges, juries, other attorneys, and of course all the experts had to be educated on the codes and the cause and effect of neglecting them. I was literally building how-to and training mockups to bring into court.

"Moreover, I have always been committed to retaining the trust of my clients, and believe in putting all my abilities behind a case, not just superficially relying on the experts. When necessary, we have put our own funds behind a client whose case we believe in."

Kasdan says that if he learned anything at UB Law School, it is to analyze every detail of the evidence, then commit the resources to make the case. "I have never stopped asking questions and learning. Consequently, we have succeeded in ratcheting up the quality of the fact-finding and presentation processes we now use. I believe we have had a very positive impact on the way the judicial system handles construction defect litigation, at least in California."

Thanks in large measure to Kasdan's commitment to understanding all of the evidence and its implications, California's judicial environment has changed significantly in recognizing property owners' rights in construction defect cases. His firm now ranks among the top construction defect practices, both in California and throughout the country.

As for personal satisfaction, Kasdan, who lives in south Orange County with his wife and son, says one of his greatest compliments came from a judge who, responding to Kasdan's obvious construction expertise, asked if he were an engineer.

"No, I'm just a lawyer," Kasdan replied. "At least in part because of our efforts in aggressively pursuing the rights of homeowners, I feel they are now getting a better, safer product. Builders know they must do a much better job — or face the consequences in court."