

SYLLABUS AND COURSE INFORMATION

Real Estate Law

REAL 204/804 & LGST 204/804 Spring 2006
PRELIMINARY VERSION NOVEMBER 28, 2005

Course Description:

This course examines real estate acquisition, ownership and leasing, and development from the perspective of the law and of legal professionals, with an emphasis on commercial transactions. The goal is an interactive understanding of (1) how the legal system constrains, determines or creates rights, duties and opportunities in the use, ownership, development and financing of real estate and (2) how various participants pursue their needs and goals within this system, including through negotiation, risk taking, advocacy and transfer of risk.

NOTE: A WEB CAFE PAGE WILL BE OPEN FOR THIS CLASS. IT WILL HAVE IMPORTANT UPDATES, ASSIGNED CLASS MATERIALS AND COMMUNICATIONS. YOU SHOULD BE ON IT, AND CHECKING IT. STUDENTS WHO ARE NOT ON WEB CAFE FOR THIS CLASS SHOULD FOLLOW THROUGH ON GETTING ONTO WEBCAFE THROUGH THE REAL ESTATE DEPARTMENT OFFICE.

Note: You may email me to get materials for the first few classes, if these are not available to you through web cafe.

Adjunct Lecturer of Real Estate: Doron A. Henkin, Esq., Marvin & Henkin, 8327 Germantown Avenue, Philadelphia, PA 19118. Email address dhenkin@marvinhenkin.com. Office hours will be following class time on Tuesdays and Thursdays 10:40pm to 11:30 pm. Send me an email in advance if you are planning to come, if possible. Room 1469 Steinberg-Dietrich Hall (or by appointment). Email questions, comments and inquiries are welcome at DHenkin@marvinhenkin.com.

Teaching Assistant: To be announced: _____. Teaching Assistant's E-Mail Address is: _____. Teaching Assistant will hold office hours _____ in 310 SH-DH (basement of Steinberg Dietrich, opposite direction of Wharton Reprographics).

Required Text: George Lefcoe, *Real Estate Transactions*, 5th ed, Lexis Nexis Publishing. Note: This is a new edition, just out. **Other Required Readings:** Items as Posted to Web Cafe. There will be no Bulk Pack this year. Additional readings will instead be posted to web cafe. **Recommended Text:** Fillmore Galaty et al, *Modern Real Estate Practice*, 16th Edition, published by Dearborn Real Estate Education. This book is aimed at persons studying for real-estate brokerage license exams, and offers helpful basic summaries of a number of legal and business points. Many of you may find this a helpful alternative or additional approach to these materials.

Assignments, Activities, Quizzes, Attendance:

*It will be difficult for you to succeed in this class without regular attendance and reading. There will be a decreased emphasis on legal cases and a decreased emphasis on full-class tests, in favor of an increased use of real-life and/or hypothetical situations and a number of in-class short quizzes. The quizzes will be aimed at getting us through the basic concepts, in nutshell fashion, *whether or not these are covered in class lectures!* I will expect you to be reading the assigned texts as we go. This approach should free us up to spend more time applying concepts to real-life and hypothetical examples and interests. Students will have some amount of on-point writing/drafting, to be reviewed and responded to by other students, with both aspects ultimately submitted to the instructor. Some of these will be in class, and some may be out of class (typically assigned at one class and due at the next one). Credit will also be given for class participation and regular attendance. *I am especially happy to have participation during the first few classes and the last few classes because this can be hard to get.**

There will be no final examination. "Prospective" dates for the various quizzes and other "activities" will be set out in an updated syllabus by the commencement of class. While none of these activities that are graded will be on a "pop" or surprise basis, there may be a little as two days' warning, because these prospective dates will be subject to change. **Absent emergency or compelling hardship situations, which must be communicated to and accepted by me by e-mail and, in almost all circumstances, in advance, there will be No Make Ups. I will devise some system to deal equitably with the inevitability that some of you will miss one of these "activities" for other reasons, which system will still reward those who complete them all.**

There will be one or more scheduled guest lecturers, presenting their real-world experiences and perspectives on policy and development. Your attendance at such sessions with guest lecturers is **mandatory**.

Assignments:

Read and be prepared to discuss the assigned pages listed in the syllabus by the class dates shown for each. Updates to the syllabus will be posted in Web Café, which should be checked regularly.

Classes 1. and 2. January 10, 2006 (Tues.) and January 12, 2006 (Thurs) Introduction, Basic Concepts, Nature of Real Estate and Law; Role of Government and Legal System; Written Agreements; Home Ownership

Lefcoe, Real Estate Transactions, 1-2, 7-9, 11-19

Lefcoe 63-68, 72-73, 77-80 (Home Ownership -- poss leave for tax later)

Galaty, Modern Real Estate Practice, 3, 4, 13-19, 103-107, 173-180, 398-402

[Class Discussion of Lenape Tribe decision, Kelo Decision and other historical materials]

3. January 17, 2006 (Tues) Brokerage

Lefcoe 23-31, 39-57, 59-60 (Brokerage)

Galaty 39-47, 68-71, 72-73, 78-83, 93 (Brokerage)

4. January 19, 2005 (Thurs) : Agreement of Sale, Contracts and Process, Statute of Frauds, "Following the Money"

Course Selection Period Ends January 20

Lefcoe: 81-92, 95-96, 101-104, 106-115

Galaty 173-174 top, 175-179

5. January 24, 2006 (Tues): Agreements of Sale -- The Subject Property-- Inspections, Defects, Representations, Disclosures, Fixtures, Risk of Loss

Lefcoe: 117-124, 128-136, 138-142

Galaty: 13-19, 180-186

6. January 26, 2006 (Thurs.): Agreements of Sale -- Quality of Title -- Marketability, Defects, Tax Liens, Encumbrances, Insurability,

Legal Descriptions, Intro to Title Insurance, Codes [and Surveys and how to use same], Adverse Possession

Lefcoe: 140-142, 144-147, 148-155, 349-353, 445-456
Galaty: 110-116, 158-168, 212-214

7. January 31, 2006 (Tues): Agreements of Sale: Continuation on Title, Transfer and Recording; Title Insurance, Plus -- Types of Deeds, Time of Performance, Doctrine of Merger,

Lefcoe: 303-312, 315, 322-323 top; 324-331; 333-339; 351-366 top; 367-369 top; 317 middle; 327 bottom to 374 top
Lefcoe: 407-408 top, 410-412, 415-416 top, 422-430
Galaty: 209-212, 192, 200-204

8. February 2 2006 (Tues.) Agreements of Sale: Environmental Liabilities and Diligence; Remedies for Default (to be determined if material re Remedies for Default will be moved earlier in schedule)

Galaty: 355-371 (Environmental)
Lefcoe: 171-199 (Remedies for default)

9 and 10. February 7 and 9, 2006. Doron Henkin will be away this week, as his schedule now stands. Current plan is for there to be in-class writing and drafting assignments, monitored by the teaching assistant, on either February 9 or both February 7 and 9 (with some revision type work to be done between the sessions). Readings for this exercise are to be announced.

Drop Period Ends February 10

11 and 12. February 14, 2006 (Tues.) and February 16, 2006 (Thurs) Land Use Regulation, Controls, Approvals, Entitlements, Exactions, Takings and the Developer's Perspective

Lefcoe: 878-883, 891-899, 901-904 top; 905 bottom to 908 middle; 917-927; 928-934

Galaty: 321-330

Kelo decision.

Additional Pennsylvania based materials to be announced.

Materials on Deal Structuring around these points to be announced.

13. February 21, 2006 (Tuesday) Closings, RESPA, Intro to Tax Matters

Lefcoe 382-385, 399-406

Galaty 372-381, 383-395

Lefcoe 707-718; 721-728 top; [poss review of Home Ownership materials above; poss use of Chirlstein; poss inclusion of local tax law matters; poss use of materials from other Transactions textbook]

14. February 23, 2006 (Thurs): Tax Matters Continued, Forms of Ownership, Choice of Entity; a few Specialized Entities: Condo's, Coop's, REIT's and SPE's.

Lefcoe 743-763

Galaty 123-124 top; 125-128 middle; 129-130

Lefcoe 764-770;

Galaty 130-135

SPE Reading to be announced.

15. February 28, 2006. Likely In Class Written Exercise based on Hypothetical Set of Facts. In the alternative, a continuation of materials from prior classes.

16. March 2, 2006 (Thurs.) Introduction to Financing. Mortgage Markets, Types of Lenders, Prepayment, Underwriting, Valuation, Etc.

Lefcoe: 203-214; 218-226; 238-242, 250 bottom to 251 top; 253-254

Lefcoe 257-271 (Prepayment)

Lefcoe 688-698 (Valuation)

Galaty: 221-225, 236-243, 253-254, 302-311
(appraisal/valuation)

[B Coin Materials on Underwriting]

Spring Break March 3 to March 13

17. March 14, 2006 (Tues)

**Permanent Financing, Underwriting, Comparison of Conduit and other Financing Sources from the Underwriting Perspective
Guest Speaker: Bruce J. Coin, Pro-Gressive Mortgage Corp.**

--One page outline of financing review: Construction vs. Permanent

--“Outline –Permanent Financing – Income Property Loans – 2006”
--“A Different Approach to Underwriting Commercial Property Loans”
--CMBS MARKET/Conduit Lenders Discussed

[Note: Construction Lending in More Specific, including Draws and Mechanics Lien is Deferred to Development Cycle and Right to Rents and Such is Deferred to Leases and Foreclosures]

16. March 16, 2006 (Thurs) Development/Construction Financing, Construction Contracts, Mechanics Liens and Lien Priority Issues, ADA

Lefcoe 575-604, 609-617, 633-636 top; 644, 649-655 middle; 656-663 middle; 664 middle to 670 top;
Galaty 293-29

17. March 21, 2006 (Tues) Lending Continued: Transfers "subject to financing", Sale of Note and Mortgage; Due on Sale and Due on Encumbrance Clauses; Condemnation; Insurance; Other Typical Structural Loan Provisions

Lefcoe 275-294 middle; 298; 469-480

18. March 23, 2006 (Thurs). Wrap up of Lending: Alternatives/ Mortgage Variations; Installment Sale Contracts; Mezzanine Financing; Intro. to Securitization of Real Estate

Lefcoe: 782-784; 787-792; 793-795; 799-802;
Galaty 406-407
--“A Miranda Warning for Potential Conduit Borrowers”

19 and 20. March 28, 2006 (Tues) and March 30, 2006 (Thurs.) Leasing, Management and Financing Leases

Lefcoe 831-834 top; 844-850; 851--852 top; 855-873
Lefcoe 805-810 top; 812-828 (skim)
Galaty 265-276, 294-296
[Possible additional materials re default remedies]

21 and 22. April 4, 2006 (Tues) and April 6, 2006 (Thurs). The Lender's Interest in and Right to Rents/Foreclosure/Pre-foreclosure/Redemption and Deficiency Acts/Alternatives to Foreclosure

Lefcoe: 484-500; 503-521; 526-533; 537-541 middle; 547-553 middle; 561-566; 566-572;

Galaty 230-231

**23. April 11, 2006 and April 13, 2006 (Tues and Thurs)
Bankruptcy**

Materials to be Announced

24. April 18, 2006 (Tues): Continuation of Prior Classes or Coverage of Topic Area Requested By Class. Possible text: Lefcoe 943 bottom to 944, 956-964, 966 to 969 middle; 972-973.

25. April 20, 2005 (Thurs): Last Class: In class written exercise.