

# SYLLABUS AND COURSE INFORMATION

## REAL ESTATE LAW

Spring 2007

Version date: January 4, 2007

### **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.

### **Adjunct Lecturer of Real Estate:**

Doron A. Henkin, Esq. Marvin & Henkin

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Email address [dhenkin@marvinhenkin.com](mailto:dhenkin@marvinhenkin.com). Office hours TBD, 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:** TBD. Teaching Assistant will hold office hours \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_ in 310 SH-DH (basement of Steinberg Dietrich, opposite direction of Wharton Reprographics).

**Required Text:** George Lefcoe, *Real Estate Transactions*, 5<sup>th</sup> ed, Lexis Nexis Publishing. Note: This is the new edition, out last year. It is different from the 4th edition, which may also still be in print. **Other Required Readings:** Items as Posted to Web Cafe.

### **Assignments, Activities, Quizzes, Attendance:**

- There will be a number of "opportunities" for quick turn-around assignments (typically, given out Thursday, due by Monday afternoon) based upon real-life, case files and/or hypothetical situations. There will likely be a smaller number of "opportunities" for in-class presentations or discussion leadership. It will be expected that each of you will do at least two of these during the year. Please do not wait until the class is nearly done to get on with these assignments, you may run out of room to do them or for me to evaluate them.
- As part of and/or in addition to this, 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)

- There will also be a number of in-class quizzes. The quizzes will be aimed at getting us through basic concepts applications, including materials from the readings *whether or not these are covered in class lectures!*
- **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 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.***

### **1 & 2 January 9, 2007 (Tues.) and January 11, 2007 (Thurs) Introduction, Basic Concepts, Nature of Real Estate and Law; Role of Government and Legal System;**

#### **Introduction to Legal and Real Estate Framework**

Readings from Web Cafe

- a. - From Galaty, Modern Real Estate Practice (for Tuesday January 9, 2007) pages 13-19: Land, Real Estate, Real Property and Personal Property
- b. - Case: Delaware Nation v. Commonwealth of Pennsylvania (primarily for discussion on Thursday January 11)
- c. "A Federal Legal System" -- overview of US legal system and approaches

[Class Discussion of Penn Charter and Lenape Tribe decision, Sources of Real Estate Rights, materials re judicial system]

First Turnaround Assignment opportunity follows the Thursday class.

### **3. January 16, 2007 (Tues) Written Agreements; Home Ownership; Attorneys and Brokerage**

Continuation of discussion re Delaware Nation Case as needed

Lefcoe 1-2 Stages of Real Estate Sale  
7-9 and 11-19 Role of Attorney and Attorney's Professional Responsibilities  
Lefcoe 23-31, 39-57, 59-60 (Brokerage)  
Web Cafe Pages from Galaty:  
39-47 Introduction, Law of Agency, Duties  
68-71 Compensation

78-83, 93 (Listing Agreements, Termination of Listings)

**4. January 18, 2007 (Thurs) Agreement of Sale, Contracts and Process, Statute of Frauds, "Following the Money" Inspections, Defects, Representations, Diligence, Disclosures, Fixtures, Risk of Loss, ADA & Property Insurance. Some of this material will spill over into class 5.**

**Course Selection Period Ends January 19**

Lefcoe, Real Estate Transactions 63-73 (The Case for Home Ownership)

Web Cafe Materials:

Galaty 173-186 (Contract Law, Discharge of Contracts, Contracts used in the Real Estate Business)  
293-296 (ADA, insurance)

Lefcoe: 81-92, 95-96, 101-104, 106-115, 117-124, 128-136, 138-142

Second Turnaround Assignment opportunity follows this class [case file materials?].

**5. January 23, 2007 (Tues): : FIRST QUIZZ--15 Minutes -- COVERS MATERIALS FROM 4 PRIOR CLASSES ONLY**

**Agreements of Sale -- The Subject Property continued,-- Environmental Matters,**

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

Web Cafe: Galaty: 355-371 (Environmental)  
Possible Additional or Alternative Materials on Environmental Law [TBD]

**6. January 25, 2007 (Thurs.): Agreements of Sale – Liens and Encumbrances, Quality of Title – Marketability and Insurability,**

**Defects, Tax Liens, Legal Descriptions, Intro to Title Insurance, Surveys and how to use same, Adverse Possession**

Lefcoe: 140-142, 144-147, 148-155, 349-353, 445-456  
Web Cafe Pages: From Galaty: 110-116 Encumbrances, Liens, Easements, Water and Shore Rights; 158-168 Taxes, Mortgages, Judgments and Other Liens; 212-214 Abstract of Title/Title Report, Marketable Title, Title Insurance

Third Turnaround Assignment Follows this Class

**7. January 30, 2007 (Tues): Agreements of Sale: Continuation on Title, Transfer and Recording; Title Insurance, Deeds, Time of Performance, Doctrine of Merger {Financing and Leases and Land Use Permits/Approvals are not addressed as part of Agreement of Sale Process because picked up later in the course}**

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  
Web Cafe: Galaty 209-212 Title Records, Recording Searches  
192, 194-198 Transfers, Types of Deeds

**8. February 1 2007 (Thurs.) Remedies for Default**

Lefcoe: 171-199 (Remedies for default)

Turnaround Opportunity follows this Class

**9 February 6 (Tuesday):**

**Quiz-15 minutes, Materials from Classes 5-8.**

**Spillover Materials, if any from prior Classes**

**In-Class Writing Process/ Agreements of Sale [Continues on into following class]**

**10. February 8 (Thursday)**

**Continuation of In Class Writing Process**

## **Closings, RESPA, Intro to Tax Matters**

Lefcoe 382-385, 399-406

Galaty 375-381 Closings, RESPA

383-395 Closing Statements, Fees, Prorations

Lefcoe 707-718; 721-728 top [NB if this is tax it belongs in class 14];

## **11 and 12. February 13, 2007 (Tues.) and February 15, 2007 (Thurs) Land Use Regulation, Controls, Approvals, Entitlements, Exactions, Takings, Eminent Domain and the Developer's Perspective**

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

Web Pages: Galaty: 321-330 Land Use Controls, Comprehensive  
Plan, Zoning, Building Codes, Subdivision, Private Controls

Kelo decision (opinions, PA and other legislative responses, Ardmore  
controversy).

Turnaround Assignment before next class.

## **13 - 15. February 20, 2007 (Tuesday), February 22 (Thursday), February 27 (Tuesday)**

### **Tax Matters.**

Federal and also Local (including transfer taxes and taxes on mortgage  
recording)

### **Lefcoe 743-763**

**Web Cafe: Materials Re Taxes from Marvin A. Chirlstein, Federal  
Income Taxation (9<sup>th</sup> Ed.) Foundation Press (2002) This offers more in  
depth treatment of the Lefcoe covered areas, and, in addition, some  
areas that are not much covered in the Lefcoe books. If you get stuck  
in any section, keep going on until you get to parts that are helpful to  
you.**

**Pages 44 to 51 : Borrowings (generally covered 2/23),  
Cancellation of Indebtedness (skim most, but look in**

**particular at the cancellation of indebtedness portion at the end)**

**Pages 158 to 172 Depreciation (you can skim the first 2/3 or so of this which is historical information, and skim the comparison of the Magruder analysis, but look to materials on the current set up, which comes at the end)**

**Pages 295 – 318 (Recognition: including Transactions in Mortgaged Property 296 to 305**

**Tax Shelters, At Risk and Passive Activities 305 to 311**

**Mortgages of Appreciated Property 311 to 314**

**Disposition of Encumbered Assets 314 to 318**

**Pages 327 to 330 (Deferred recognition, installments)**

**Pages 333 to 338 (Non-Recognition Transactions: including Like-Kind Exchanges under Section 1031 [a hot topic in the industry today]**

**Pages 339 to 342: Non-Recognition: Sale of Personal Residence**

**Additional background reading re 1031 Exchanges/Lawyers Title (posted to web café)**

## **16. March 1, Quiz**

### **Choice of Entity and Co-Ownership**

Web Cafe: Galaty 122-124 top Co-Ownership  
125 middle-128 middle Partition, Entireties, Trusts  
129-133 Partnerships, Corporations, LLC's, Condos, Coops  
Lefcoe 764-770

### **Introduction to Lending**

Lefcoe: 203-214; 218-226; 238-242, 250 bottom to 251 top; 253-254 Finance Markets and Basic Loan Types 406-407 (Introduction to Syndicates, REITs and CMBS)

## **Spring Break March 2 to March 11**

**Readings over break (intro to financing materials): Mortgage Markets, Types of Lenders, Prepayment, Underwriting, Valuation, Etc.**

Lefcoe 257-271 (Prepayment)

Lefcoe 688-698 (Valuation)

Galaty: 221-229 Title and Lien Theories, Background to Notes, Mortgages and Deeds of Trust, Interest and Fees 236-243, 253-254

### **17. March 13, 2007 (Tues)**

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

- Materials Provided by Bruce Coin, **these are posted to Web Café** as part of Class Materials Folder. Please read through the materials in advance of class. The Case Study, in these materials, need not be prepared in advance.

**Note: These Materials are treated as having same or equal weight with Galaty or Lefcoe books in terms of future quizzes and coverage!**

[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]

### **18 -21 [Through March 29, 2007]**

**Lending/Making Loans/Legal Issues/Liens/Priorities/Issues**



**(A) Discussion of materials listed above (and repeated below here for convenience) on Lending**

Lefcoe 257-271 (Prepayment)

Lefcoe 688-698 (Valuation)

Galaty: 221-229 Title and Lien Theories, Background to Notes, Mortgages and Deeds of Trust, Interest and Fees 236-243, 253-254

**(B) Quiz/ and Discussion of Loan Commitment Process and Remedies (viz prior year Library Assignment #3) (Thursday March 22)**

**(D) Discussion of Lender Liability Issues**

**(E) Development/Construction Financing, Construction Contracts, Mechanics Liens and Lien Priority Issues**

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

**(F) Transfers "subject to financing", Sale of Note and Mortgage; Due on Sale and Due on Encumbrance Clauses; Condemnation; Insurance; Other Typical Structural Loan Provisions and Issues**

Lefcoe 275-294 middle; 298; 469-480

**(G) 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 253-254, 406-407 (review: see above)

Article (to be posted) "A Miranda Warning for Potential Conduit Borrowers"

**22. April 3, 2007 (Tuesday) No Class -- Passover**

**23 and 24. April 5, 2007 (Thurs) and April 10, 2007 (Tues).**

**Quiz on Prior Materials April 5, 2007 -- warning, there is a possibility that the quiz may be postponed to April 10, 2007**

**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;  
Web Cafe Galaty 230-231 Foreclosure and Related Materials  
To be added: materials from PBI Seminar

**25. April 12, 2007**

**Possible Guest Speaker [Last Year's Speaker was Sharon Barr: Public/Private Projects and Financing Matters: The Naval Yard and PIDC project.] Or Alternative Topic TBD.**

**\*26 and 27. April 17 and April 19, 2007) Leasing, Management and Financing Leases [and Sale-Leaseback and Taxes re: same]**

Lefcoe 831-834 top; 844-850; 851--852 top; 855-873  
Lefcoe 805-810 top; 812-828 (skim)  
Web Cafe: Galaty 265-276 Law of Lease Generally, Basic Provisions, Types of Leases, Terminations

**Possible additional text: Lefcoe 943 bottom to 944, 956-964, 966 to 969 middle; 972-973.**

**Possible Quiz or In Class Matter or Assignment April 17.**