

MODERN REAL ESTATE DEVELOPMENT
Summer 2010
SYLLABUS

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Administrative Matters

Class meets on Tuesdays and Thursdays, 10:15 – 11:45. Office hours are Thursdays, 12:30-2:30, or by appointment. *There will be no class on Tuesday, July 6; instead, an advance make-up class will be held on Friday, June 18 at 8:30 a.m.*

Evaluation

Two-thirds of your evaluation will be based on a take-home exam. One-third of your evaluation will be based on a problem involving a drafting exercise, a negotiation outside of class, and an in-class discussion of the problem. Strong class participation will be noted on the evaluation.

Reading Assignments

The readings outlined below are tentative and subject to change, particularly with respect to when exactly they will be assigned. This is an ambitious syllabus, and it is very possible that we will fall behind. Classes 21 and 22 on the syllabus are currently designated “Open”, to allow for the possibility of moving some material later in the course as needed. As the course progresses, I will post revisions to the syllabus on the TWEN website and will also announce changes in class.

“CB” refers to the readings in Korngold & Goldstein, Real Estate Transactions (5th ed. 2009).

“Supp” refers to the supplemental reading packet, available from Gnomon Copy. “TWEN” refers to the Westlaw TWEN website dedicated to this course. Rather than requiring purchase of a statutory supplement, I expect you to find the statutory provisions included in the required reading on-line at the URLs listed below, or on Lexis or Westlaw.

I will rely heavily on two devices as an aid to understanding the nature of real estate transactions. Especially in the first half of the course, I will include drafting exercises in your reading assignments in order to give you a specific sense of how transactional lawyers deal with the issues we will be studying. I will expect you to complete these short exercises prior to coming to class. In addition, especially in the second half of the course, we will focus on the contracts and other legal documentation for a particular affordable housing transaction. Careful analysis of all of the contracts in the reading assignments is central to this course.

I. THE CONTRACT OF SALE

- Class 1** **Real estate transactions in a nutshell; buying a condominium**
(6/1/10) CB 2-7, 14-15 (n. 3), 94-99 (Contract Conditions; *Homer v. Malas* & notes); 588-594 (Building on the Basics: Condominium and Other Communal Arrangements for Home Ownership)
 Supp 1-4 (Standard Form Condominium Purchase and Sale Agreement)
- Class 2** **Residential purchase and sale agreements, continued**
(6/3/10) CB 99-107 (*Caselli v. Messina* & notes); 117-121 (*Moran v. Erk*); 123-126 (2d ¶ n. 3 – n. 7); 76-83 (*Sanford v. Breidenbach* & n. 1-2)
 Supp 5 (Drafting Problem 1)
- Class 3** **Commercial contracts of sale**
(6/8/10) CB 617-619 (introduction); 179-180 (n. b)
 Supp 7-21 (Commercial Purchase and Sale Agreement)
 TWEN: Drafting Problem 2

II. DEEDS, RECORDING AND TITLE

- Class 4** **Deed elements and description**
(6/10/10) CB 172-177 (Deed Elements & Construction; *Barrier v. Randolph* & notes); 183 (middle)-192 (The Description; Brown, Boundary Control & Legal Principles; Cunningham excerpt (skim Cunningham)); 197-204 bottom (*Marshall v. Sofer* & notes)
 Supp 23-34 (Warranty Deed, Survey of Lot A, ALTA/ACSM 2005 Minimum Standard Detail Requirements for Land Surveys)
 TWEN: Drafting Problem 3
- Class 5** **Deed warranties, covenants and merger**
(6/15/10) 248-255 (Title; *Brown v. Lober* & notes), 204-210 (Liabilities that Survive the Deed; *Reed v. Hassell* & n. 1-3)
 Supp 11-12, 16-17, 35-36 (Sections 7 and 15 of Commercial P&S (re-read), Uniform Settlement Statement)
 TWEN: Drafting Problem 4
 [Note: I recommend you read ahead, as the readings for Class 6 are much longer.]
- Class 6** **Recording and Title Insurance**
(6/17/10) CB 256-257 (The Record System), 266-271 (n. 1 & 2, Johnson & Mattis excerpts & related notes - skip n. 3 on 267); 278-285 (top) (*Sanborn v. McLean* & n. 1-5 & 7; skip n. 6 on 285), 297 (bottom) – 301 (Bade excerpt & n. 1-23); 314, (Abstracts, Opinions & Title Insurance), 324 (bottom)- 334 (middle) (Burke, Law of Title Insurance; *Laabs v. Chicago Title Ins. Co.* & n. 1), 335-337 (n. 3-5)
 Supp 37-48 (ALTA Owner's Policy)
 TWEN: Drafting Problem 5

[MAKE-UP CLASS SCHEDULED FOR 8:30 A.M. ON FRIDAY, JUNE 18, 2010]

III. ADDITIONAL DUE DILIGENCE: ZONING AND ENVIRONMENTAL CONCERNS

Class 7 Property Investigations: Zoning and Environmental

(6/18/10, 8:30a.m.) CB 107-109 & n. 1 pp. 121-123 (*Dover Country Club*); CB 914-920 (top) (The Impact of Environmental Regulation on Real Estate Transactions; Healy excerpt); 925-932 (n. 1-6) Supp 9, 10-11, 16-17 review Sections 3(b)(vii), 5(a) and 15 of Commercial P&S <http://www.bostonredevelopmentauthority.org/pdf/ZoningCode/Chapter665.pdf>, pp. i-x only (Boston Zoning Enabling Act – focus on §§ 2, 5, 7-10, skim 1, 3-4, 10A-11) <http://www4.law.cornell.edu/uscode/42/9601.html>, <http://www4.law.cornell.edu/uscode/42/9607.html> (CERCLA §§ 9601 and 9607 – focus on the portions of these statutes mentioned in the readings; skim the rest)

Class 8 Environmental due diligence continued

(6/22/10) CB 932-966 (*United States v. Serafini*, Memorandum Opinion & subsequent Order; Wiegard excerpt re The Brownfields Act & *Niecko v. Emro Marketing Co.* & n. 1-8)

IV. FINANCING

Class 9 Construction financing

(6/24/10) CB 709-722 (top) (Smith & Lubell, The Promissory Note; *McElroy v. Grisham* & notes) Supp 49-77 (\$2,700,000 Construction Loan Promissory Note and Open-End Leasehold Mortgage and Security Agreement)

Note: We will be discussing the transaction documents in both Class 9 and Class 10; the Mortgage and Note each make reference to terms found in the Construction Loan Agreement, assigned for Class 10. As you find those references in other documents, flip through the Construction Loan Agreement to find the corresponding provisions.

Class 10 Construction financing, continued

(6/29/10) CB 729 (bottom) - 740 (Hall excerpt; *J.I. Kislak Mortgage Corp. v. William Matthews Builder, Inc.*; Note re Obligatory & Optional Advances) Supp 79-109 (“How to Read a Complex Transaction Document” and Construction Loan Agreement)

Class 11 Construction financing, continued

(7/1/10) CB 740-777 (Davis excerpt; *Penthouse International, Ltd. v. Dominion Federal Savings & Loan Association* & notes)

Note: The *Penthouse* case is very complex, with many parties involved – I recommend that you create a chart with parties & roles to avoid confusion.

NO CLASS ON TUESDAY, JULY 6

Class 12 Residential mortgage loans, defaults and remedies

(7/8/10) CB 367-376 (Rudder & Mosely, An Outline of the Law of Mortgages & *Tahoe National Bank v. Phillips*, & n. 1- 3); 379 (n. 7); 393-395 (Schill excerpt); 402-403 (top)(Terms); 409-413 (n. 1- 3); 535-547 (Osborne excerpt re deeds in lieu; Skillton re redemption; *Matcha v. Wachs* & notes) Supp 111-134 (Dyal-Chand "Status to Contract" excerpt, PLI "Workouts" excerpt, Nelson & Whitman “Reforming Foreclosure” excerpt)

Class 13 Cash flow, leverage and taxation

- (7/13/10) CB 620-623 (Tax Planning: How Property is Held & *Malat v. Riddell*), 639-645 (top) (Rabinowitz, Real Estate and the Federal Income Tax & notes), 659-667 (Weidner, Realty Shelters: Nonrecourse Financing, Tax Reform and Profit Purpose), 675 (note c)
<http://www4.law.cornell.edu/uscode/26/167.html>
<http://www4.law.cornell.edu/uscode/26/465.html>
<http://www4.law.cornell.edu/uscode/26/469.html>
<http://www4.law.cornell.edu/uscode/26/1001.html>
<http://www4.law.cornell.edu/uscode/26/1011.html>
<http://www4.law.cornell.edu/uscode/26/1012Basisofproperty.html>
<http://www4.law.cornell.edu/uscode/26/1221.html>
(Internal Revenue Code §§ 167, 465, 469, 1001, 1011, 1012, 1031 and 1221 – focus on the portions of each statute mentioned in the readings; skim the rest)

Class 14 Financing for leaseholds

- (7/15/10) CB 812 (bottom) – 818 (top) (Grenert, Ground Lease Practice), 820-839 (ABA excerpt re Ground Leases and Their Financing; *Balch v. Leader Federal Bank for Savings* & notes)
Supp 135-146 (Ground Lease)

Class 15 Operating a Commercial Property: Shopping Center Development Issues

- (7/20/10) CB 1006 (Building on The Basics: The Shopping Center Development); 1010-1014 (Beyard & O'Mara); 1015-1020 (Halper, Giant Jigsaw: Putting Together a Shopping Center Site); 1021-1035 (multiple excerpts from Shopping Center Development Handbook & related notes & McAndrews excerpt); 1035-1043 (*Ingannamorte v. Kings Super Markets, Inc. & Piggly Wiggly Southern, Inc. v. Heard*); 1058-1062 (*Rowe v. Great Atlantic & Pacific Tea Co., Inc.*)

Class 16 Operating a Commercial Property: Complex Relationships Among Owners,

(7/22/10) Tenants and Lenders

CB 1043-1051 (top) (*Providence Square Assoc. LLC v. GDF Inc.*); 1062-1067 (*Hartig Drug. Co. v. Hartig*); 1067-1086 (*Miscione v. Barton Development Co* & n.1-4, 5).

Class 17 Bankruptcy

- (7/27/10) CB 879-914 (“Bankruptcy”; Klee excerpt; *BFP v. Resloution Trust Corp.*; *In re Pinetree Partners, Ltd.* & n. 1-9)
<http://www4.law.cornell.edu/uscode/11/362.html>
<http://www4.law.cornell.edu/uscode/11/548.html> (Bankruptcy Code §§ 362(a) and 548)
<http://www.uscourts.gov/bankruptcycourts/bankbasics.pdf> (Bankruptcy Basics), Introduction, pp. 5-8 ONLY.

Class 18 In-Class Negotiation Presentation – Group 1

- (7/29/10) Readings to be announced.

Class 19 In-Class Negotiation Presentation – Group 2

- (8/3/10) Readings to be announced.

Class 20 Residential mortgage securitization & secondary market; predatory lending and

(8/5/10) the subprime meltdown

Supp 147-191 (NCLC Foreclosures excerpts §§ 1.2.5, 1.2.3 & 1.2.4; Engel & McCoy
“Three Markets” excerpt; Engel & McCoy "Blind Eye" excerpt)

CB 386-393 (top) (Eggert excerpt re predatory lending & securitization), 395-400
(Korngold, Legal & Policy Choices in the Aftermath of the Subprime & Mortgage
Financing Crisis & n. 1), 509-512 (top) (Skilton articles)

Optional:

Supp 193-201 (Krinsman “Subprime Mortgage Meltdown”);

TWEN Rubin, “Stabilizing the National Stabilization Act”, ABA Journal on Affordable
Housing (fall 2009).

Class 21 OPEN

(8/10/10)

Class 22 OPEN

(8/12/10)