

COLUMBIA UNIVERSITY
LAW FOR PRESERVATIONISTS (A 6795) SYLLABUS
AVERY 115
PROF. WILLIAM J. COOK
FALL 2013

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Course Overview: Law for Preservationists will examine the federal, state, and local laws concerning historic preservation, including tax laws and real estate opportunities (and easements for structures, open areas and historic monuments, locations, and other nationally recognized properties). Additionally reviewed are current developments in historic preservation law litigation, recent decisions in the “takings” area and other constitutional developments relating to landmarking of properties.

By the conclusion of the course, students will be able answer the following questions all preservationists need to know about the law:

1. Where does government get the authority to regulate private property for preservation purposes?
2. What are the appropriate limits to government regulation of private property?
3. From a legal perspective, what are historic resources?
4. What regulatory tools exist to protect historic resources from private actions?
5. What regulatory tools exist to protect historic resources from government actions?
6. What are special legal considerations regarding the protection of religiously owned properties?
7. What laws address the protection of other specific historic resources?
8. What legal tools encourage the voluntary protection of historic resources?
9. What other legal strategies can be employed to save historic resources?
10. What are the latest trends and developments in preservation law?

In the process of learning the answers to these questions students will develop an understanding of preservation law and a working knowledge of the legal system, as well as understand the interface between preservationists and lawyers.

Texts:

- Robert E. STIPE, ED., A RICHER HERITAGE: HISTORIC PRESERVATION IN THE 21ST CENTURY (2003).
- SARA C. BRONIN & J. PETER BYRNE, HISTORIC PRESERVATION LAW (2012).

You will also receive supplementary materials, which I will distribute electronically as needed.

Assignments:

- Role playing in interactive classroom sessions
- Completion of assigned reading
- Active participation in class discussions
- Monitor breaking preservation legal issues in popular press
- Written testimony for mock landmark designation hearing
- Written testimony for mock hardship hearing
- Section 106 comment letter
- Two papers (5-10 pages)
- Take-home final exam

Final Grade: Your grade will consist of a take-home final examination (80%) and 20% for class participation (includes all assignments).

Session 1: September 6

Course introduction, administrative matters, and planning

Overview lecture: preservation law fundamentals and philosophical underpinnings

Special Session: Legal “Boot Camp”: September 7; 1-5 p.m.

- How to read and analyze legal cases: briefing techniques
- How to read and interpret statutes: the “plain meaning rule”
- Legal principles: jurisdiction, ripeness, standing, *stare decisis*
- Standards of review: abuse of discretion v. *de novo*
- Concepts of takings and the police power
- Federalism
- Court system overview
- Legal terms: *amicus curiae* brief, procedural v. substantive due process, injunctions, rational basis, substantial evidence
- Facial v. “as applied” challenges

Session 2: September 13

An examination of the underlying purposes of historic preservation as a policy of national, state, and local government. What are the legal bases upon which the policy rests? Does it matter? Is it evolving? Is it inherently a good, or just another form of land use regulation? How does it compare to zoning? Does preservation have any negative consequences, or raise serious class, racial, education, or geographic distinctions?

- STIPE, RICHER HERITAGE: Introduction (America's Preservation Ethos: A Tribute to Enduring Ideals); Ch. 1 (Preservation Fundamentals)
- BRONIN & BYRNE, HISTORIC PRESERVATION LAW, Ch. 1 (Historic Preservation Law in Context)
- JULIA H. MILLER, A LAYPERSON'S GUIDE TO HISTORIC PRESERVATION LAW: A SURVEY OF FEDERAL, STATE & LOCAL LAWS GOVERNING HISTORIC RESOURCE PROTECTION (2008)

Session 3: September 20

Overview of preservation efforts at the federal level. The National Historic Preservation Act of 1966 (NHPA) and the concepts of "undertaking," "adverse effects," and mitigation. Elements of the federal, state, and local partnership. Creation of the National Register of Historic Places; legal effect of listing and determinations of eligibility; owner consent. Role of the Advisory Council on Historic Preservation v. National Trust for Historic Preservation.

- STIPE, RICHER HERITAGE: Ch. 2 (The Federal Preservation Program) & Ch. 3 (The Players)
- BRONIN & BYRNE, HISTORIC PRESERVATION LAW, Ch. 2 (Designation)
- JULIA H. MILLER, A LAYPERSON'S GUIDE TO HISTORIC PRESERVATION LAW: A SURVEY OF FEDERAL, STATE & LOCAL LAWS GOVERNING HISTORIC RESOURCE PROTECTION, PP. 1-7 (2008)
- Explore websites: Advisory Council on Historic Preservation (www.achp.org) and National Trust for Historic Preservation (www.preservationnation.org)