

LANDLORD AND TENANT LAW

Fall 2017

Tuesday & Thursday 4:00 – 5:30

Professor: Rick McElvaney

Email: RMcElvaney@central.uh.edu

COURSE DESCRIPTION:

This course presents statutes and cases relating to residential and commercial landlord and tenant law in Texas. Additionally, we will explore area that relate to landlord and tenant practice: Texas Fair Housing Act, Texas Deceptive Trade Practices Act, Bankruptcy, federal subsidized housing, negotiation strategies, and lease drafting. After completing this course, students will have the necessary legal and practical knowledge to represent landlords and tenants effectively upon starting to practice law.

Regular course attendance is required! You must attend 23 of the 28 classes to be able to take the final exam. In the event that class needs to be rescheduled at any time, I will give you advance warning on the online class discussion board if practical. There may be times when I plan to have class but get delayed in court. In those situations a notice will be placed on the discussion board and a note will be placed on the door informing you that class has been unavoidably cancelled. This will not happen often, but may happen from time to time. All postponed/cancelled classes will be rescheduled.

The **final exam** is scheduled for **Tuesday December 12, 2017 from 2:00 p.m. until 5:00 p.m.** In the event you have a conflict with the final exam date, you should follow the Law Center policy to request rescheduling the final exam.

This is an ordinary University of Houston Law Center course. Accordingly, Law Center policy requires the final grade average for the course be 2.90 – 3.10 on a 4.0 scale. Class participation, including turning in all assignments, may count toward your final grade.

My office phone is (713) 743 -1236 (UHLC). If you do not find me in my office (BLB-134), you should feel free to call me at any time or Email me regarding questions. There is also an online class discussion board under the “Courses” section within the “Faculty, Staff, and Students” link of the UHLC webpage.

REQUIRED TEXT

1. Cases and Materials for a course in Landlord and Tenant Law (Online).
2. O’Connor’s Texas Property Code Plus (2017)
or 2017 Texas Property Code (West).
3. Additional cases will be provided as handouts and/or posted on the class discussion board.

ASSIGNMENTS

Each student will be assigned a set of cases. (and will serve as backup for same # cases)

* Email me your written case brief of the cases you present in class (prior to that class date).

Justice Court Observation (Due 10/19/17)

Lease Review Checklist (Due 11/16/17)

RESIDENTIAL ASSIGNMENTS – FALL 2016

PART I: RESIDENTIAL TENANCIES

1. Leases

Definitions (p.1)

Texas Property Code § 92.001

SECTION 92.001. DEFINITIONS

Waiver or Expansion of Duties and Remedies (p.1)

Texas Property Code § 92.006

SECTION 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES

Residential Application Deposits (pp. 2-4)

Texas Property Code § 92.351 - § 92.355

SECTION 92.351. DEFINITIONS

SECTION 92.3515. NOTICE OF ELIGIBILITY REQUIREMENTS.

SECTION 92.352. REJECTION OF APPLICANT

SECTION 92.353. PROCEDURES FOR NOTICE OR REFUND

SECTION 92.354. LIABILITY OF LANDLORD

SECTION 92.355. WAIVER

2. Condition of Premises

Habitability/Repairs

Kammarath v. Bennett (pp. 4-7)(#A1)

Housing Codes and Building Codes

Repair or Closing of Leasehold (pp. 7 – 14)

Texas Property Code § 92.051 - § 92.061

SECTION 92.051. APPLICATION

SECTION 92.052. LANDLORDS DUTY TO REPAIR OR REMEDY

SECTION 92.053. BURDEN OF PROOF

SECTION 92.054. CASUALTY LOSS

SECTION 92.055. CLOSING THE RENTAL PREMISES

SECTION 92.056. LANDLORD LIABILITY AND TENANT REMEDIES; NOTICE AND TIME FOR REPAIR

SECTION 92.0561. TENANTS REPAIR AND DEDUCT REMEDIES

SECTION 92.0562. LANDLORD AFFIDAVIT FOR DELAY

SECTION 92.0563. TENANTS JUDICIAL REMEDIES (Note 2009 Change)

SECTION 92.058. LANDLORD REMEDY FOR TENANT VIOLATION

SECTION 92.060. AGENTS FOR DELIVERY OF NOTICE

SECTION 92.061. EFFECT ON OTHER RIGHTS

Texas Rules of Civil Procedure 509 (pp. 15-19)
RULE 509.1. APPLICABILITY OF RULE
RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS
RULE 509.3. CITATION: ISSUANCE; APPEARANCE DATE; ANSWER
RULE 509.4. SERVICE AND RETURN OF CITATION; ALTERNATIVE SERVICE OF
CITATION
RULE 509.5. DOCKETING AND TRIAL; FAILURE TO APPEAR
RULE 509.6. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND
SERVICE; FAILURE TO COMPLY
RULE 509.7. COUNTERCLAIMS
RULE 509.8. APPEAL: TIME AND MANNER; PERFECTION; EFFECT; COSTS; TRIAL
ON APPEAL
RULE 509.9. EFFECT OF WRIT OF POSSESSION

Hypo: Repairs (Posted on Blackboard)

Retaliation (pp. 19-28)

Sims v. Century Kiest Apartments (pp. 19-26)(#A2)

Texas Property Code § 92.331 – 92.335 (pp. 27-28)
SECTION 92.331. RETALIATION BY LANDLORD
SECTION 92.332. NONRETALIATION
SECTION 92.333. TENANT REMEDIES
SECTION 92.334. INVALID COMPLAINTS
SECTION 92.335. EVICTION SUITS

3. Residential Landlord's Lien (pp. 29)

Hall v. Garson (pp. 29-31)(#A3)

Texas Property Code § 54.041 - § 54.048 (pp. 31-36)
SECTION 54.001. LIEN
SECTION 54.002. PROPERTY TO WHICH LIEN ATTACHES
SECTION 54.003. EXCEPTIONS
SECTION 54.004. DURATION OF LIEN
SECTION 54.005. REMOVAL OF PROPERTY
SECTION 54.006. DISTRESS WARRANT
SECTION 54.007. JUDGMENT ON REPLEVIN BOND
SECTION 54.021. LIEN
SECTION 54.022. COMMERCIAL BUILDING
SECTION 54.023. EXEMPTIONS
SECTION 54.024. DURATION OF LIEN
SECTION 54.025. DISTRESS WARRANT
SECTION 54.041. LIEN
SECTION 54.042. EXEMPTIONS
SECTION 54.043. ENFORCEABILITY OF CONTRACTUAL PROVISIONS
SECTION 54.044. SEIZURE OF PROPERTY
SECTION 54.045. SALE OF PROPERTY
SECTION 54.046. VIOLATION BY LANDLORD

SECTION 54.047. OTHER RIGHTS NOT AFFECTED
SECTION 54.048. TENANT MAY REPLEVY

4. Eviction

Hypo: Evictions (See Blackboard)

Title VII – Protecting Tenants at Foreclosure Act (Eff. May 20, 2009) (Supplement – See Blackboard)

Notice to Vacate (pp. 48-49)

Texas Property Code § 91.001

SECTION 91.001. NOTICE FOR TERMINATING CERTAIN TENANCIES

Eviction Suits (pp. 36-48)

Texas Property Code § 24.001 - § 24.006

SECTION 24.001. FORCIBLE ENTRY AND DETAINER
SECTION 24.002. FORCIBLE DETAINER
SECTION 24.003. SUBSTITUTION OF PARTIES
SECTION 24.004. JURISDICTION
SECTION 24.004. JURISDICTION (Effective 1/1/12)
SECTION 24.005. NOTICE TO VACATE PRIOR TO FILING EVICTION SUIT
SECTION 24.0051. PROCEDURES APPLICABLE IN SUIT TO EVICT AND RECOVER UNPAID RENT
SECTION 24.0052. TENANT APPEAL ON PAUPERS AFFIDAVIT
SECTION 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION
SECTION 24.0054. TENANTS FAILURE TO PAY RENT DURING APPEAL
SECTION 24.006. ATTORNEYS FEES AND COSTS OF SUIT
SECTION 24.006. WRIT OF POSSESSION

Texas Rules of Civil Procedure 510 (pp. 49-56)

RULE 510.1. APPLICATION
RULE 510.2. COMPUTATION OF TIME FOR EVICTION CASES
RULE 510.3. PETITION
RULE 510.4. ISSUANCE, SERVICE, AND RETURN OF CITATION
RULE 510.5. REQUEST FOR IMMEDIATE POSSESSION
RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT
RULE 510.7. TRIAL
RULE 510.8. JUDGMENT; WRIT; NO NEW TRIAL
RULE 510.9. APPEAL
RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO
RULE 510.11. DAMAGES ON APPEAL
RULE 510.12. JUDGMENT BY DEFAULT ON APPEAL
RULE 510.13. WRIT OF POSSESSION ON APPEAL

Case Law:

Conroy v. Manos (pp. 56-63)(#A4)
Anarkali Enterprises v. Riverside Drive (pp. 63-66)(#A5)
Hanks v. Lake Towne Apartments (pp. 66-70)(#A6)
Coffee v. Carroll (pp. 70-72)(#A7)
BancTexas Westheimer v. Sumner (pp. 73-74)(#A8)
Sumner v. Pacific Pearl Investments (pp. 75-77)(#A9)
Fandey v. Lee (pp. 77-81)(#A10)
Mullins v. Coussons (pp. 81-82)(#A11)
Chang v. Resolution Trust Company (pp. 83-84)(#A12)
Academy Corp. v. Sunwest N.O.P, Inc. (pp. 84-85)(#A13)
Kennedy v. Highland Hills Apartments (pp. 85-88)(#A14)
Murphy v. Countrywide Home Loans, Inc. (pp. 89-92)(#A15)
Texas Government Code § 27.031 (a)(2)* (Jurisdiction)(pp. 92-93)

SECTION 27.031. JURISDICTION

5. Appeal of an Eviction Judgment to County Court

Texas Rules of Civil Procedure 510 (pp. 93-95)

RULE 510.9. APPEAL
RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO
RULE 510.11. DAMAGES ON APPEAL
RULE 510.12. JUDGMENT BY DEFAULT ON APPEAL
RULE 510.13. WRIT OF POSSESSION ON APPEAL

Texas Property Code § 24.0051 – 24.0054 (pp. 95-99)

SECTION 24.0051. PROCEDURES APPLICABLE IN SUIT TO EVICT AND RECOVER UNPAID RENT
SECTION 24.0052. TENANT APPEAL ON PAUPERS AFFIDAVIT
SECTION 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION
SECTION 24.0054. TENANTS FAILURE TO PAY RENT DURING APPEAL

Writ of Possession (pp. 100-105)

Texas Property Code § 24.0061
SECTION 24.0061. WRIT OF POSSESSION
TRCP RULE 510.13. WRIT OF POSSESSION ON APPEAL

Merritt v. Harris County (pp. 100-105)(#B1)

Warehouseman's Lien (pp. 105-107)

Texas Property Code § 24.0062
SECTION 24.0062. WAREHOUSEMANS LIEN

Hypo: Writ of Possession and Warehouseman's Lien (See Blackboard)

5a. Appeal of Eviction Judgment from County Court (pp. 107-112)

Texas Property Code § 24.007
SECTION 24.007. APPEAL

Marshall v. City of San Antonio Housing Authority (pp. 107-112)(#B2)

6. Lockouts (pp. 112- 129)

Exclusion of the Tenant (pp. 113-114)

Texas Property Code § 92.0081
SEC. 92.0081. REMOVAL OF PROPERTY AND EXCLUSION OF RESIDENTIAL TENANT

Writ of Reentry (pp. 114-115)

Texas Property Code § 92.009
SEC 92.009. RESIDENTIAL TENANTS RT. OF REENTRY AFTER UNLAWFUL LOCKOUT

Exclusion of Commercial Tenants (p. 116)

Texas Property Code § 93.002
SEC. 92.009. RESIDENTIAL TENANTS RT. OF REENTRY AFTER UNLAWFUL LOCKOUT

Commercial Tenant's Right of Reentry (pp. 116-126)

Texas Property Code § 93.003
SEC. 93.003. COMMERCIAL TENANTS RT OF REENTRY AFTER UNLAWFUL LOCKOUT
Warehouse Partners v. Gardner (#B3)
Big State Pawn and Bargain Center v. Garton (#B4)

CHAPTER 24A. ACCESS TO RESIDENCE OR FORMER RESIDENCE TO RETRIEVE PERSONAL PROPERTY
(pp. 126-129)

Sec. 24A.001. DEFINITION

Sec. 24A.002. ORDER AUTHORIZING ENTRY AND PROPERTY RETRIEVAL

PEACE OFFICER TO ACCOMPANY

Sec. 24A.003. AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE OFFICER

Sec. 24A.004. IMMUNITY FROM LIABILITY

Sec. 24A.005. OFFENSE

Sec. 24A.006. HEARING; REVIEW

7. Interruption of Utilities (pp. 129-131)

Electricity Disconnection (p. 130)

Texas Property Code § 92.008
SECTION 92.008. INTERRUPTION OF UTILITIES

Public Utility Commission Rules *

Residential Tenant's Right of Restoration After Unlawful Utility Disconnection (pp. 130-131)

Texas Property Code § 92.0091
SECTION 92.0091. RIGHT OF RESTORATION

Landlord's Liability to Tenant for Utility Cutoff (pp. 131-132)

Texas Property Code § 92.301

SECTION 92.301. LANDLORD LIABILITY TO TENANT FOR UTILITY CUTOFF

Hypo: Lockouts/Interruption of Utilities (See Blackboard)

8. Security Deposits (pp. 132-163)

Texas Property Code § 92.101 - §92.109

SECTION 92.101. APPLICATION

SECTION 92.102. SECURITY DEPOSIT

SECTION 92.103. OBLIGATION TO REFUND

SECTION 92.1031. CONDITIONS FOR RETENTION OF SECURITY DEPOSIT OR RENT PREPAYMENT

SECTION 92.104. RETENTION OF SECURITY DEPOSIT; ACCOUNTING

SECTION 92.1041. PRESUMPTION OF REFUND OR ACCOUNTING

SECTION 92.105. CESSATION OF OWNERS INTEREST

SECTION 92.106. RECORDS

SECTION 92.107. TENANTS FORWARDING ADDRESS

SECTION 92.108. LIABILITY FOR WITHHOLDING LAST MONTHS RENT

SECTION 92.109. LIABILITY OF LANDLORD

Case Law:

Ackerman v. Little (p. 135)(#B5)

Minor v. Adams (p. 138)(#B6)

Jones v. Falcon (p. 141)(#B7)

Marino v. Hartfield (p. 143)(#B8)

Reed v. Ford (p. 147)(#B9)

Leskenin v. Burford (p. 151)(#B10)

Pulley v. Milberger (p. 154)(#B11)

9. Security Devices (pp. 163-173)

Texas Property § 92.151 - § 92.170

SECTION 92.151. DEFINITIONS

SECTION 92.152. APPLICATION OF SUBCHAPTER

SECTION 92.153. SECURITY DEVICES REQUIRED WITHOUT NECESSITY OF TENANT REQUEST

SECTION 92.154. HEIGHT, STRIKE PLATE, AND THROW REQUIREMENTS--KEYED DEAD BOLT OR KEYLESS BOLTING DEVICE

SECTION 92.155. HEIGHT REQUIREME NTS--SLIDING DOOR SECURITY -DEVICES

SECTION 92.156. REKEYING OR CHANGE OF SECURITY DEVICES

SECTION 92.157. SECURITY DEVICES REQUESTED BY TENANT

SECTION 92.158. LANDLORDS DUTY TO REPAIR OR REPLACE SECURITY DEVICE

SECTION 92.159. WHEN TENANTS REQUEST OR NOTICE MUST BE IN WRITING

SECTION 92.160. TYPE, BRAND, AND MANNER OF INSTALLATION

SECTION 92.161. COMPLIANCE WITH TENANT REQUEST REQUIRED WITHIN REASONABLE TIME

SECTION 92.162. PAYMENT OF CHARGES; LIMITS ON AMOUNT CHARGED
SECTION 92.163. REMOVAL OR ALTERATION OF SECURITY DEVICE By TENANT
SECTION 92.164. TENANT REMEDIES FOR LANDLORDS FAILURE TO INSTALL OR REKEY CERTAIN SECURITY DEVICES
SECTION 92.164.1. LANDLORDS DEFENSES RELATING TO INSTALLING OR REKEYING CERTAIN SECURITY DEVICES
SECTION 92.165. TENANT REMEDIES FOR OTHER LANDLORD VIOLATIONS
SECTION 92.166. NOTICE OF TENANTS DEDUCTION OF REPAIR COSTS FROM RENT
SECTION 92.167. LANDLORDS DEFENSES RELATING TO COMPLIANCE WITH TENANTS REQUEST
SECTION 92.168. TENANTS REMEDY ON NOTICE FROM MANAGEMENT COMPANY
SECTION 92.169. AGENT FOR DELIVERY OF NOTICE
SECTION 92.170. EFFECT ON OTHER LANDLORD DUTIES AND TENANT REMEDIES

10. Smoke Alarms (pp. 173-193)

Texas Property Code § 92.251 - § 92.262 (pp. 173-179)

SECTION 92.251. DEFINITION
SECTION 92.252. APPLICATION OF OTHER LAW; MUNICIPAL REGULATION
SECTION 92.253. EXEMPTIONS
SECTION 92.254. SMOKE ALARM
SECTION 92.255. INSTALLATION AND LOCATION
SECTION 92.257. INSTALLATION PROCEDURE
SECTION 92.257.1. ALTERNATIVE COMPLIANCE
SECTION 92.258. INSPECTION AND REPAIR
SECTION 92.259. LANDLORDS FAILURE TO INSTALL, INSPECT, OR REPAIR
SECTION 92.260. TENANT REMEDIES
SECTION 92.261. LANDLORDS DEFENSES
SECTION 92.261.1. TENANTS DISABLING OF A SMOKE DETECTOR
SECTION 92.262. AGENTS FOR DELIVERY OF NOTICE
SECTION 92.263. INSPECTION OF RESIDENTIAL FIRE EXTINGUISHER
SECTION 92.259. DUTY TO REPAIR OR REPLACE

Case Law:

Gilstrap v. Park Lane Town Home Assoc. (p. 179) (#B12)
Coleman v. United Savings Assoc. of Texas (p. 182) (#B13)
Morales v. Joint Properties, Inc. (p. 186) (#B14)
Rao v. Rodriguez (p. 188) (#B15)
Zuniga v. Slazar (p. 193) (#C1)

Hypo: Smoke Detectors (See Blackboard)

11. Premises Liability (pp. 194-285)

Case Law:

Parker v. Highland Park, Inc. (p. 194)(#C2)
Porter v. Lumberman's Investment Corporation (p. 202)(#C3)
Bolin Development Corporation v. Indart (p. 204)(#C4)

Moreno v. Brittany Square Associates (p. 208)(#C5)
Nixon v. Mr. Property Management Company, Inc. (p. 211)(#C6)
Blaustein v. Gilbert-Dallas Co., Inc. (p. 222)(#C7)
Benser v. Johnson (p. 224)(#C8)
Berry Property Management, Inc. v. Bliskey (p. 228)(#C9)
McDaniel v. Continental Apartments (p. 246)(#C10)
Exxon Corporation v. Tidwell (p. 252)(#C11)
Brooks v. National Convenience Stores, Inc. (p. 257)(#C12)
Smith v. Foodmaker, Inc., (p. 265)(#C13)
Wal-Mart Stores, Inc. v. Alexander (p. 270)(#C14)
Stein v. Gill (p. 284)(#C15)

11. Miscellaneous

Disclosure of Ownership and Management (p. 285)

Texas Property Code § 92.201 - § 92.206

SECTION 92.201. DISCLOSURE OF OWNERSHIP AND MANAGEMENT
SECTION 92.202. LANDLORDS FAILURE TO DISCLOSE INFORMATION
SECTION 92.203. LANDLORDS FAILURE TO CORRECT INFORMATION
SECTION 92.204. BAD FAITH VIOLATION
SECTION 92.205. REMEDIES
SECTION 92.206. LANDLORDS DEFENSE

Occupancy Limits (p. 288)

Texas Property Code § 92.010

SECTION 92.010. OCCUPANCY LIMITS

Cash Rental Payments (p. 288)

Texas Property Code § 92.011

SECTION 92.011. CASH RENTAL PAYMENTS

Notice to Tenant at Primary Residence (p. 288)

Texas Property Code § 92.012

SECTION 92.012. NOTICE TO TENANT AT PRIMARY RESIDENCE

Tenant Liens – Landlord Breach of Lease (p. 289)

Texas Property Code § 91.004

SECTION 91.004. LANDLORDS BREACH OF LEASE; LIEN

Subletting Prohibited (p. 289)

Texas Property Code § 91.005

SECTION 91.005. SUBLetting PROHIBITED

Mitigation of Damages (p. 290)

Texas Property Code § 91.006

SECTION 91.006. LANDLORDS DUTY TO MITIGATE DAMAGES

Cole Chem. & Distrib., Inc. v. Gowing (p. 290) (#D1)

11. Miscellaneous (continued)

Landlord's Agent for Service of Process (p. 294)

Texas Property Code § 92.003

SECTION 92.003. LANDLORDS AGENT FOR SERVICE OF PROCESS

Renaissance Park v. Davilla (p.295) (#D2)

Special Rights to Vacate (p. 299)

Family Violence

Texas Property Code § 92.016

SECTION 92.016. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING FAMILY VIOLENCE

Sexual Assault

Texas Property Code § 92.0161

SECTION 92.016. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING SEXUAL ASSAULT

Military Service

Texas Property Code § 92.017

SECTION 92.017. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN DECISIONS RELATED TO MILITARY SERVICE

Rule Changes (Supplement - pp. 287-288)

Texas Property Code § 92.013

SECTION 92.013. NOTICE OF RULE OR POLICY CHANGE AFFECTING TENANTS PERSONAL PROPERTY

Towed Vehicles (p. 303)

Texas Property Code § 92.0131

SECTION 92.0131. NOTICE REGARDING VEHICLE TOWING OR PARKING RULES OR POLICIES

Deceased Tenant's Property (p. 304)

Texas Property Code § 92.014

SECTION 92.014. PERSONAL PROPERTY AND SECURITY DEPOSIT OF DECEASED TENANT

Police/Emergency Assistance (p. 306)

Texas Property Code § 92.015

SECTION 92.015. TENANTS RIGHT TO SUMMON POLICE OR EMERGENCY ASSISTANCE

Liability of Tenant for Governmental Fine (p. 306)

Texas Property Code § 92.018

SECTION 92.018. LIABILITY OF TENANT FOR GOVERNMENTAL FINE

Late Fees (p. 387)

Texas Property Code § 92.019

SECTION 92.019. LATE FEES

11. Miscellaneous (continued)

Emergency Phone Number (p. 307)

Texas Property Code § 92.020

SECTION 92.020. LIABILITY OF GUARANTOR

Liability of Guarantor (p. 307)

Texas Property Code § 92.021

SECTION 92.021. LIABILITY OF GUARANTOR

Revocation of Certificate of Occupancy (p. 308)

Texas Property Code § 92.023 (effective 9/1/11)

12. Texas Fair Housing Act (pp. 308-324)

Texas Property Code § 301.001 - § 301.171

CHAPTER 301. TEXAS FAIR HOUSING ACT

13. Texas Deceptive Trade Practices Act (pp. 324-341)

Texas Business & Commerce Code § 17.41 et seq.*

CHAPTER 17. DECEPTIVE TRADE PRACTICES

14. Federal Subsidized Housing

Subsidized Housing Model Lease/Materials (See Blackboard)

NOTE: Assignments for **D3** thru **D15**. Are in commercial section of the course.