

SYLLABUS OF READINGS FOR REAL ESTATE TRANSACTIONS PROFESSOR CRUMP, SPRING 2020

This is a list of readings from the casebook and other sources. The list is not exhaustive – there will be certain other readings and projects, including certain individual projects—and it may at times become necessary to deviate from the syllabus.

Certain readings are set out in CAPITAL letters. These cases or readings are to be emphasized. Others are in lower case; this indicates that our treatment of the case will be by lecture, and it accordingly indicates that you should not concentrate on that case as heavily as upon other readings. I hope that this device will help you manage the reading better!

Welcome to Real Estate Transactions! This is a difficult, challenging course, but it also is a wonderful, exciting course, one that will repay the hard work you and I will put into it. Of all of your courses, this is the one that will most emphasize private arrangements as “the law between the parties.” This course will be different from other courses, but that is why it will be valuable. It is about the ways in which lawyers build things through agreement or consensus, rather than about how they pursue disputes through lawsuits.

1. Real Estate Transactions, I: The Purchase Agreement

A. The "Road Map" of a Typical Transaction

-A SIMPLIFIED ROAD MAP (133) (Read carefully. It will show you the "big picture" of the next four chapters.)

B. The Atmosphere of Risk in Which Property Transfers Are Negotiated

-Isaac Asimov, Foundation (135); NOTES AND QUESTIONS (136); McElroy article ("Ross and Me") (137); NOTES AND QUESTIONS (141); Notes and Questions on Disadvantages of Litigation (142)

-Tina L. Stark, Thinking Like a Deal Lawyer (143); NOTES AND QUESTIONS (147)

-HOW TO READ A CONTRACT PROPOSAL (38)

-SIMULATION EXERCISE 2A (45 + D1-D5)

End Class 1

C. Brokerage

-Note on Brokerage (147); FRADY V. MAY (149); Notes and Questions (151); Hoffman v. Connall (153); NOTES AND QUESTIONS (156); Miller v. Keyser (157) (the Texas rule is different!); BROKERAGE AGREEMENT (158); Notes (161)

D. Negotiations for a Contract of

Purchase

-*Agreements to Negotiate*: Vestar Development v. General Dynamics (162); NOTES AND QUESTIONS (163)

End Class 2

-*Negotiation Techniques*: Dorsaneo & Crump Article (166); Notes (172); Problems (173) (read the Problems briefly)

E. Conditions and Requisites of the Document Expressing the Agreement

- Statute of Frauds*: Note (177); NOTES (181)
- SIMULATION 4A (182); APPENDIX D16-D25
- Conditions*: Note on Inspection (182); ALLEN V. CEDAR REAL ESTATE GROUP (183); Frady v. May (187); NOTES AND QUESTIONS (188); Note on Title Conditions (189); NOTES AND QUESTIONS (190)

End Class 3

- Options*: Note (190); Beale Street Development Corp. v. Miller (191); NOTES 2-4 (193)
- Escrows and Earnest Money*: Note (193); In the Matter of Akivis (194); NOTES (195)
- F. The Provisions of a Typical Real Estate Agreement*
 - Note (196); A SAMPLE AGREEMENT (199); NOTES AND QUESTIONS (206)
 - SIMULATION EXERCISE 3A (824 + D6-D10)
- G. Liability Outside the Contract*
 - Note (209); Note on Types (210); NOTES AND QUESTIONS (210); Stambovsky v. Ackley (212); NOTE 1 (214) (the Texas rule is different!)

End Class 4

- AMYOT V. LUCHINI (214); Notes (217); Notes and Question (220)
- H. Contract Renegotiation*
 - SIMULATION EXERCISE 4B (221); APPENDIX D26-D27

2. Real Estate Transactions, II: Financing and Conveyancing Documents

- Note on Lenders (223); Note on Documentation ("Big Picture") (224)
- A. The Core Documents : Note, Deed, and Security Instrument*
 - Note on the Core Documents (227)
 - Promissory Notes*: Note on Promissory Notes (229); Note on How to Read the Case (230); MOORE V. BANK MIDWEST (231); Notes (234); Sample Promissory Note (235); NOTES AND QUESTIONS (238)

End Class 5

- Note on Ownership of Promissory Notes (420, in Chapter 8); Cadle Co. v. Errato (421); Note 3 (423); Note on Holder in Due Course (423); WILSON V. TOUSSIE (425); Notes 1-2 (416)
- Deeds*: Note on Deeds (239); THOUGHT PROBLEM (240); Note on Descriptions (241); How to Read the Case (242); FERRITER V. BARTMESS (242); NOTE 2-3 (245)
- Ohio Rev. Code Sections (246); NOTES AND QUESTIONS (248); Note on Covenants (250); BROWN V. LOBER (250); Notes 1-2 (253)

End Class 6

- SIMULATION EXERCISE 3B (109 + D11-D15); DEED FORMS (110-112); NOTE (112)
- The Mortgage or Deed of Trust*: Notes and Diagram (254-255)
- Note on the "Straight" Mortgage (255); NYCTL v. Rosenberger (256)

- Note and Diagrams on the Deed of Trust Mortgage (257); DREYFUSS V. UNION BANK (259); Notes (262); Note on How to Read This Document (265);

End Class 7

SAMPLE DEED OF TRUST (268); NOTES (274); NOTE ON DUE ON SALE (273); Note (263)

B. Mortgage Foreclosure

- The Process*: BANK-FUND CREDIT UNION V. VIVADO (274); Notes (279); Notice Form (280); SIMULATION EXERCISE 5B (285); APPENDIX D32-D37)
- The Equity of Redemption*: Note (281)

End Class 8

- EMANUEL V. BANKER'S TRUST (283); Notes (285); Note on Clogging (296)
- Texas Statutes (Photocopied Supplement)
- Wrongful Foreclosure*: HWANG V. STEARNS (287); Notes (290); Note 3 on Adams case (photocopied Supplement)

C. Liens That Arise by Operation of Law: The Vendor's Lien and Construction Liens

- Text on Vendor's Lien (293); Chrissikos v. Chrissikos (293); NOTES (295)
- Lee's Home Ctr v. Akins (296) & Note

End Class 9

- D. Sale of Mortgaged Property: Assumption and Subject-to Sales*
- SIMULATION 5C (298 + D38-D43)

6. Real Estate Transactions, Part III: Title Assurance

A. Title Requirements in Purchase Agreements

- Note (299); CONKLIN V. DAVI (300); Notes (301)
- Note on Texas Custom of Contracting (photocopied Supplement)

B. Public Recording Acts: Race, Notice, and Race-Notice Types

- Note (302)
- Notes and DIAGRAMS (312-13)

C. The Title Search and the Chain of Title

- Note on Remote Purchaser & Diagram (313-14)
- Ellingsen v. Franklin County (314)
- Note on Indexing (317); Note on Chain of Title (317); In re Dlott (319); How to Read the Nally Case (320); NALLY V. BANK OF NEW YORK (322); Notes (326)

End Class 10

D. Indexing by Tract

- Text and Notes (329)

E. Title Insurance

- MANLEY V. COST CONTROL (330); Notes and Questions (332); Note on Extra-Contractual Liability (333); SOMERSET SAVINGS BANK V. CHICAGO TITLE (334); Notes (337); Columbia Town Center v. 100 Investment (337)
- NOTE ON THE TITLE POLICY (338); AMERICAN LAND TITLE ASS'N POLICY

(340); NOTES (345)

-Note on Third Party Liability (347)

End Class 11

F. Curing Title

-Note (348); SIMULATION 6A + B (349 + D44-D55)

-Text (349); Morgan, Client and Public Relations (350)

7. Real Estate Transactions, IV: Closing, Termination, Remedies

A. The Closing

-Note (355)

B. Termination Short of Closing

-Note on Clauses (356); THOUGHT PROBLEM (357); PENDLETON V. WITCOSKI (354); Note

C. Functionality v. "Plain English"

-Closing Statement (362); Note and Article (364-65); NOTES 1-3 (365)

D. Destruction before Closing

-Hillard v. Franklin (367); NOTES AND QUESTIONS (368)

E. Contract for Deed

-Note (369); Turbiville v. Hansen (370)

End Class 12

F. Damages as a Remedy

-Note (372); HARRISON V. MCMILLAN (375); NOTES AND QUESTIONS (379);
Mihalich v. Heyden (380); Note on Valuation (381); Note on Restrictions on
Remedies (381)

-KELLY V. MARX (382); Notes

G. Title Litigation

-Note on Equity (385); Notes on Specific Performance (386); Notes on Remedies
& Reformation (388)

-Notes on Lis Pendens (387)

-Texas Rules on Trespass to Try Title, in photocopied Supplement (skim these, only to
obtain a general sense of their contents)

End Class 13

8. A Concrete Example of a Complete Real Property Transaction

-Reconsider the Simplified Road Map (131: Big Picture)

-CRUMP & CURTIS, THE ANATOMY OF A REAL PROPERTY TRANSACTION
(spiral bound photocopy) (concentrate on questions in notes). This little book
will expose you to the realities of real property transactions: the documents,
methods, customs, and terminologies that appear in the casebook. The
professor will cover most of the documents and will call on students for
roughly half of the questions in the notes.

End Class 16

10. Land Use Regulation: From Zoning to the Environment

A. Euclidean Zoning

- The Concept*: Note (521); Standard Zoning Act (524)
- Politics*: Standard Zoning Act (543); NOTES AND QUESTIONS (544)
- The Houston Difference*: NOTES AND QUESTIONS ON DOING WITHOUT ZONING (551)

B. Variances and Non-Euclidean Zoning

- Note on Variances (556);
- Notes on Flexible Zoning (547)

C. Presentation to a Zoning Authority

- SIMULATION 10A (561+ D56-D59)

D. Subdivision Regulation

- Notes (561); Kaufman v. Commission (563); Notes on Exactions (568); PROBLEM 9B (in Ch. 9, 497-504); NOTES (504-06)

End Class 17

E. Regional Planning

- Note on Extraterritorial Jurisdiction (581)

F. Environmental Regulation

- Note on CERCLA (582); NORTHEAST DORAN V. KEY BANK (584) & Notes
- Note on Impact (588)

11. Easements, Covenants, Etc.: Private Land-Use Controls

A. Easements: Creation

- Easement Litigation Problem*: SIMULATION 11A (622 + D60-D68)
- Easement Creation Problem*: PROBLEM 11B (631 + D69-D71)

End Class 18

B. Covenants That Run with the Land

- Real Covenants*: Klefstad Co. v. New Boston (635)
- In Business Developments*: Note (642); Davidson Bros. v. Katz (642)

D. Neighborhood Governance through Covenants

- Architectural Approval*: Note (657); RAINTREE HOMEOWNERS ASS'N V. BLEIMANN (659); Note 1 (661); NOTE 5 (663)
- Assessments and Liens*: REGENCY HOMES ASS'N V. EGERMAYER (663); NOTES 1, 4 (668-70)

End Class 19

13. Landlord & Tenant, Part I: Modern Regulation

A. Implied Covenants of Quiet Enjoyment and Habitability

- Note (834); PFEIFLE V. TANABE (834); Notes 1-4 (839)
- Note on Commercial Habitability (850); Gyn-N-I Playgrounds v. Snyder (851)

B. Landlords' Remedies for Tenants' Breaches

- Note 3 on Mitigation (855); Austin Hill Country Realty v. Palisades Plaza (855) and Notes; STONEHEDGE SQUARE V. MOVIE MERCHANTS (859); Notes (860);

- Note on Legislative (861)
-Notes on Self-Help (862); NOTE ON EVICTION (864); Texas Statutes and Rules on Forcible Entry & Detainer (photocopied Supplement) (skim these, to have a general sense of their contents)

14. Landlord and Tenant, II: The Lease as a (Private) Conveyance and as a Contract

A. Different Types of Tenancies

- Note on Tenancy Types (753); MILLER & DESATNIK V. BULLOCK (754); Notes on Statute of Frauds (759)

End Class 20

B. Transfer of the Leasehold: Assignment, Sublease, Subordination, Attornment

- Note (760); Note on How to Read the Case (761); Kendall v. Earnest Pestana (762); California Code (767); TRINITY PROFESSIONAL PLAZA V. METROCREST (768)

-Note on the Difference between Assignments & Subleases (772); Bob Ferstl V. Budget (773)

- Notes (774); Note on How to Think about the SNDA clause (776); MISCIONE V. BARTON DEVELOPMENT and Notes (778)

C. The Premises: Use, Occupation, Continuous Operation, Physical Quality

- Keydata Corp. v. United States (783)

End Class 21

- OKLAHOMA PLAZA INVESTORS V. WAL-MART (786); Oklahoma Plaza v. Wal-Mart (reversal) (790); Notes (790)

- Wesson v. Leone Enterprises (794); NOTES (796)

- ARMSTRONG V. MABEE (797); Fortis Financial v. Fimat (798) & Notes 1-2

- Cramer v. Balcor Management (803); NOTES (803)

D. Rent Clauses

- Note on Variations (806); How to Read the McLaren Case (809); UNITED STATES EX REL GOODSTEIN V. McCLAREN (808); Notes (813); In re Adoption of a Prohibition (815)

End Class 22

- Note on Holdovers (822)

E. The Lease Instrument

- Note on Residential Leases (824)

- Note on Commercial Leases (825); SIMULATION EXERCISE 13A (830 + D72-74)

End Class 23

15. Possible Coverage – Complex Commercial Transactions: Purchase and Sale of an Office Building, Retail Center, or apartment Building (handout materials)

Professor's Policies in Assigning Reading

1. *I try to make assignments for the semester as a whole. This policy decreases flexibility, but it assists students in planning.*
 2. *On some occasions, difficulties in understanding will prevent finishing an assigned reading. In the next class, we'll pick up where we left off and catch up. The professor then must allow for decreased student memory of past material. Also, Problems sometimes have to be postponed.*
 3. *I try to avoid a "crunch" of abnormally long assignments at the end of the course.*
 4. *In fact, if possible, I arrange lighter assignments for the last hours of the course.*
 5. *I try to keep assignments reasonable in length and to disclose estimates of pages per class hour.*
 6. *Please observe the difference between emphasized readings (capital letters on the Syllabus) and lesser intensity for other readings. This difference should make your time usage for the assignments more efficient.*
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MY POLICIES FOR CONDUCTING CLASS
PROFESSOR CRUMP

1. Welcome to the Course in Property! This is a wonderful subject to study: fascinating, challenging and practical. It also will be a demanding course, but your hard work will be rewarded when you practice law.

It is necessary to implement policies or rules for such a class. Therefore, please understand the businesslike tone of the following items.

2. You Need Not Communicate With the Professor Concerning the Reasons for Your Absences. If you are absent, I always assume you have a good reason. As long as you comply with the law school's attendance requirements, I don't need to know the reason. Exception: See Item 10 below!

3. You Need Not Communicate With the Professor Concerning Your Unpreparedness. If you are unprepared on a given day when I happen to call on you, my approach is to go ahead and call on you. The (relatively mild) sanction for occasional unpreparedness is that you must stand up and admit it. For this and other reasons, I request that you not inform me about unpreparedness. I assume (and I think your classmates assume) that even good students may be unprepared occasionally. (I may, however, call on you again in the near future, and I do begin to take unpreparedness more seriously if it occurs repeatedly.)

4. Hold Up Your Hand Before Talking; Realize That the Professor Can't Always Recognize Everyone and Must Determine When We Must Move Along. This will be a large class, and there is no responsible way to teach it without covering a lot of ground. I have to consider the need to cover the material and the need to bring a variety of students into the discussions. Therefore, please hold up your hand before speaking out. Please understand if we have to cut off discussion and move on.

5. SPEAK LOUDLY When You Are Called On. Every student must speak loudly enough for everyone else to hear. Conversely, one of the skills you should learn is how to stand up in a group of people and speak extemporaneously and persuasively on difficult subject matter. One of the habits that will most annoy your classmates is speaking so that they have to strain to hear you. Even if you're not sure of the answer, it's best if we all can hear you.

6. Out-of-Class Assignments. Every student, at some point, will be given a practical, out-of-class assignment that will involve document analysis, document preparation, negotiation, or the like. These outside assignments will be discussed in class.

7. Reading The Anatomy of a Real Property Transaction (Spiral-Bound Photocopy). We shall use the paperback book, The Anatomy of a Real Property Transaction, in addition to the casebook. We shall discuss the full Anatomy book. I think you will find this book valuable. It will show you something real: all of the essential documents in an actual land purchase.

8. Unconventional Subjects. Law school usually leaves three areas uncovered: practice methods, analytical methods, and personal management. This course will attempt to cover these gaps at least to some degree. The course will seem "unconventional," naturally, at these times.

9. Practice Examination; Final Examination; Grading. Sometime about the middle of the semester, we'll have a practice examination. It will be announced in advance and will not count toward your grade in any way. It will be administered outside class time.

Your grade for the course will be determined by an anonymous final examination and will be based on a curve, which in turn will conform approximately to the law school average for first-year classes. At appropriate times during the semester, I'll try to help you to know what to expect and how to take law school exams. In addition, repeated unpreparedness may affect your grade.

10. Attendance. It is required that you comply with the law school's attendance requirements, which mandate 80% attendance. I do not take attendance daily, and the enforcement of the rule is by the honor code on the examination. You certify compliance by taking the examination.

11. Seating Chart. Please sit in your assigned seat. Even if you come in late or leave early for emergency reasons, occupy your assigned seat.

12. Disability. Any student with a disability requiring accommodation should explain both to the professor (except as to the exam, for which accommodation is to be arranged through the law school administration).

CAPS Required Language. Counseling and Psychological Services (CAPS): CAPS can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html