

**FALL 2009– BUSINESS LAW 481 (REAL ESTATE LAW)**

**CLASS #12875 – TUESDAYS AND THURSDAYS 2:00 TO 3:15**

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Class Hours: Tuesdays and Thursday – 2:00 p.m. to 3:15 p.m. in Room 1234, Juniper Hall.

Office Hours: Tuesdays 10:45 a.m. to noon; Thursdays 3:30 to 4:30 p.m.; and Fridays 11:00 to noon; or by appointment.

**Texts:**

**Real Estate Law, Marianne M. Jennings, 8th ed., (2005).** The Jennings text will be our primary textbook during the semester. You MUST have the textbook prior to the start of class. In fact, there will be a modest reading assignment that you should complete BEFORE the first class session (see below). You may purchase a hard copy from the bookstore. The hard copy is recommended, but as part of the Business Law Department's textbook affordability initiative, you may also purchase electronic copies of the applicable "e-chapters" through the publisher, Cengage. Instructions can be found in the Business Law Department website under Student Resources. Last year, another alternative was to purchase chapters at [www.ichapters.com](http://www.ichapters.com) by entering the author's name in the search field and then clicking on the hyperlink for Real Estate Law, 8th Edition.

**Getting to Yes, Fisher and Ury, 2<sup>nd</sup> edition (1981).** This relatively short paperback book is an essential text about negotiations and will be the source of some exercises during our semester. (Please note that the reading assignments for this Fisher and Ury text have NOT been fully incorporated into the Syllabus and will be added during the semester). This book is readily available on a used based on Amazon and Amazon companion sites. You should be able to get a used version for under \$10. I have also found it on a website – here is the link: <http://www.scribd.com/doc/5117690/Fisher-Ury-Getting-To-Yes>. That may not always "work" but it's there as a potential resource. The book is a great text and is worth having, owning, keeping, etc.

**"Lefcoe" Text** – As noted in the Syllabus assignments below, for our 17<sup>th</sup> and 23<sup>rd</sup> class sessions, I will distribute pdf's of two selections from Prof. George Lefcoe's text, REAL ESTATE TRANSACTIONS, Fourth edition, 2003, published by Lexis/Nexis, and distributed with permission from Prof. Lefcoe. I will email pdf's of the chapters later in the semester in time for you to complete the reading assignments in this text. Be sure to print out and keep these chapters in preparation for the relevant class sessions and the final exam.

### **Course Overview:**

The course provides an overview of real estate law, including the acquisition of real property and the rights of ownership and tenancy. Topics covered in the course include landlord and tenant relationships, property ownership and rights, easements, zoning and development, contract requirements, the role of brokers, eminent domain, real estate financing and adverse possession. Students prepare written briefs, analyze problems, and conduct research. The course is taught through lecture and class discussion.

### **Communicating/Class Room Discussion/Homework:**

While of course one of our key goals will be to learn basic principles of real estate law and to critically evaluate those principles in various factual situations, from a practical perspective, this course will demand that students communicate, both in writing and orally, the results of their reasoning and thinking – and that communication will involve both oral communication in class and in written communication in a few written assignments and of course the mid-term and final exam. In the “real world,” understanding the law is important, being able to apply the law to a given set of facts is even more important, but being able to communicate it effectively, in writing or orally, is critical.

Thus, the class room will be an active learning environment. Classes will be conducted in a combination of lecture (small percentage), active class discussion and the “Socratic Method” of instruction. That means that it’s critical to read the assigned text and cases *before* class begins. (Please note in some cases, additional/supplemental readings will be emailed to you and you will be expected to read those materials as well as the Syllabus referenced items. Of course, the Syllabus assignments may be changed from time to time as well).

In class, you should be prepared to orally defend your interpretation of the cases (and answer hypothetical questions) in open class discussion. You should learn to argue alternate sides of a dispute regardless of personal belief. Expect to be called on randomly in class – participation will NOT be limited to “volunteers”.

Frankly, the success of the class as a whole and your own success in it are highly dependent on your ability to be prepared for class, including doing the “Brief” and “Answer” requirements set forth below.

### **Briefing and Answering Assignments:**

When the Syllabus indicates a requirement to “Brief” a specific case or to “Answer” the identified Chapter Problems/Consider issues described in the text, you should do so in writing – either handwriting or typing is acceptable. All “Briefs” and “Answers” must be in writing, but – IN GENERAL – I do not intend to have students turn them in – there WILL be ONE random “surprise” requirement to turn the briefs in to keep you on your toes. I will also call on students at random during the class and ask them to read from their “Briefs” or “Answers”. Having the writing in hand will help you be prepared and serves as great practice for written communication. On 2 occasions during the semester, I will require that the designated Brief or Answer must be turned in as a homework/writing assignment – I will give advance notice of that requirement. On a third

occasion, I will make this a “pop” assignment such that I will simply announce that the brief required for that day be turned in, with no advance notice, thus keeping you on your toes.

Briefing a Case successfully requires the following four step format – **PLEASE NOTE THIS IS DIFFERENT FROM THE “IRAC” FORM THAT MANY OF YOU USED IN EARLIER BLAW CLASSES:**

· Facts: Summarize the most important facts of the case. Being able to distinguish the relevant from the extraneous is critical to understanding the issue presented to the court. Typically, this will be 2-3 paragraphs although some cases are complicated.

· Issue: What is the central legal issue that this case is really about? This will be phrased as legal question and, when answered by the court, drives the court’s decision. Typically this will be able to be written in one or two sentences. The “Issue” should be expressed as a legal question, which, when answered, gives a result in the particular case. Be sure you are specific (e.g., “Has there been a constructive eviction by the landlord based on the in habitability of the apartment due to the leaks?”) and based on the facts of the case rather than a general statement such as “was the landlord liable to the tenant for constructive eviction?” Another way of stating the issue is to raise a question that could apply to more cases – “what constitutes the basis for a constructive eviction claim by a tenant for uninhabitable apartments?”

· Holding: There are normally several rules of law that a court may cite in its opinion, but there is one (or two) specific ruling(s) or “holding(s)” that serve as the fundamental basis for the court’s ruling. This should be written as a short paragraph. You may want to indicate the party which “won” to help recall that at class time.

· Reasoning: Summarize the court’s reasoning that led to the “holding”—in other words, in a short paragraph or two, tell “why” the court made its decision and how it applied the law to the facts at hand.

For assignments requiring you to “Answer” the Chapter Problems or the “Consider” Problems, the above format is helpful, too, but not required – typically shorter answers will be sufficient and you will not need to summarize the facts.

PLEASE BE PREPARED FOR CLASS – IN PAST SEMESTERS, THE STUDENTS THAT WERE MOST PREPARED FOR CLASS (THROUGH READING MATERIAL ON TIME, PREPARING BRIEFS, ETC.) NOT ONLY “SCORED” BETTER ON THE HOMEWORK ASSIGNMENTS AND CLASS PARTICIPATIONS, BUT WERE NOTICEABLY MORE PREPARED AND SCORED HIGHER ON THE MID-TERM AND FINAL EXAMS.

## Exams and Grading

Grading is based on a combination of evaluation of written assignments, class participation, mid-term exam and final exam.

The grade allocation is as follows:

- A. Written assignments – collectively 25% of course grade – these include the 2 case briefings/questions answered described above, the “pop” briefing assignment, plus the two “Negotiations” assignment(s) that will be assigned during the Semester. These five assignments will each be graded on a “check” (84), “check minus” (70) or “check plus” (95) basis and the homework grade will be the average of these five assignments.
- B. Class participation – 10% of course grade – at the end of the semester, I will assign a numeric grade (0-100) for class participation for the semester. This will have a 10% impact on your grade. See further, below.
- C. Mid-term exam – 25% of course grade.
- D. Final exam – 40% of course grade.

Both the mid-term and final exams will be composed of: (i) one or more essay questions – some “short” and some “long” which require you to analyze the facts, identify legal issues and apply the law in determining the outcome of hypothetical cases and (ii) multiple-choice, true-false and/or fill-in-the-blank questions – often focusing on key terms and basic principles.

Class participation – As noted above, your semester grade is affected by whether you have been prepared when called on for discussion and case briefs – and for general voluntary class participation. As noted above, you may give a note before class, ONCE during the term stating that you are unprepared, and no negative mark will be made. Your class participation grade is also affected by class attendance; students who miss significant class time will logically be marked lower for class participation.

Exams – Both exams will be “semi-closed book”. By “semi-closed,” this means that you may bring a maximum of one side of one 8.5” by 11” piece of paper) of notes (typed or handwritten) to the exam and use that single side of one sheet during the exam. All other study materials must be completely out of sight. Whatever font or margins you want to use on the one side of paper are OK.

Assignments – The following chart outlines the Class Sessions, Topics and Work to be done in time for that class. In other words, for the date shown, the applicable “Work” is to be completed PRIOR to the start of that day’s class. (Of course, this syllabus is subject to change during the semester and assignments may be altered. Announcements will be made in class, therefore attendance is essential).

### ASSIGNMENTS

Date	Class Topics	Work Due
Tuesday August 25  Class 1	Why Study real estate law – sources -- class expectations – Socratic Method	Please be sure to read these BEFORE the first class session:  Preface (xiii-xiv) and Pages 1-13 of Jennings text.  Be prepared to discuss the <u>Solow</u> and <u>Poyck</u> cases  Answer “Consider 1.1” on pages 12-13
Thursday August 27  Class 2	Landlord-Tenant relationship in Residential Leases	Read 185-197  Answer – Consider 9.2  Brief – <u>Fisher</u> case and answer <u>Fisher</u> case questions  Read – California Residential lease form (here is a link – print and keep):  <a href="http://www.ilrg.com/forms/lease-res/us/ca">http://www.ilrg.com/forms/lease-res/us/ca</a> .
Tuesday September 1  Class 3	Landlord-Tenant relationship in Residential Leases	Read 198-210; and 214-215.  Answer <u>Minjak</u> case questions on 204  Brief <u>Ambriz</u> case

		<p>Prepare to discuss Cautions and Conclusions on page 215.</p> <p>Review the Form lease, again.</p>
<p>Thursday September 3</p> <p>Class 4</p>	<p>Commercial Leases</p>	<p>Read 219-234 of Text.</p> <p>Brief – <u>Bijan</u> and <u>Circle K</u> cases</p> <p>Answer – Consider 10.4</p> <p>Read Introduction and Chapter 1 of “Getting to Yes” (called “Don’t Bargain over Positions”)</p>
<p>Tuesday September 8</p> <p>Class 5</p>	<p>Commercial Leases</p>	<p>Read 234-247 -- Brief – <u>Pichardo</u> and <u>Pearle Vision</u> cases - Answer – Consider 10.5 and Chapter Question 9</p> <p>Read Chapter 2 of Getting to Yes – “Separate the People from the Problem.”</p> <p>Read LA Times Story – <a href="http://www.latimes.com/news/local/la-me-billboard7-2009jan07_0,2816919.story">http://www.latimes.com/news/local/la-me-billboard7-2009jan07_0,2816919.story</a>.</p>
<p>Thursday September 10</p> <p>Class 6</p>	<p>Land Interests</p>	<p>Read “Economic Theory” on pages 34-35 then read pages 17-28 -- Review Figures 2.1 and 2.2</p> <p>Answer Consider 2.4 (a-through-c)</p> <p>Read Chapter 3 of Getting to Yes – “Focus on Interests, not Positions”.</p>
<p>Tuesday September 15</p> <p>Class 7</p>	<p>Air, Surface, and Light Rights</p>	<p>Read 39-46, 49-53 and 56-57</p> <p>Brief <u>Causby</u> and <u>Fontainebleu</u> cases</p> <p>Read Chapter 4 of “Getting to Yes” – Invent Options for Mutual Gain</p>

Thursday September 17  Class 8	Trespass; Nuisance; Duties of Landowners	Read 58-66  Brief <u>Spur</u> and <u>Paragon</u> cases  Answer Consider 3.8 and Chapter Problem 10 -- Review Figure 3.4
	Negotiations	FIRST NEGOTIATION ASSIGNMENT TO BE DISTRIBUTED – MUST BE COMPLETED BY SEPTEMBER 25 <sup>TH</sup> – REQUIRES FACE TO FACE NEGOTIATION AND A WRITTEN ASSIGNMENT
Tuesday September 22  Class 9	Easements, Profits, Licenses & Covenants	Read 71-79  Brief <u>Frierson</u> case and answer case questions  Brief <u>Thomas v. Madsen</u> – answer case questions  Answer Consider 4.1 (a-through-d) and Consider 4.2
Thursday September 24  Class 10	Easements, Profits, Lic's & Covenants	Read 79-90 – focus on <u>Garfink</u> and answer the case questions –  Answer Consider 4.7 and 4.8 and answer Chapter problems 1 and 6 –  First negotiation assignment due to be completed – both negotiation and the written assignment are due at the beginning of class on 9/24. HOWEVER, IT WILL REALLY HELP IF WRITTEN ASSIGNMENTS ARE ALSO EMAILED TO PROF. PACHINO BY Tuesday night 9/22 SO THE RESPONSES CAN BE REVIEWED AND ASSESSED BEFORE THE CLASS SESSION ON THE 24 <sup>th</sup> .
Tuesday September 29  Class 11	Fixtures and Liens	Read 93-96 and 102-103 re Fixtures. Answer Consider 5.4 and 5.5  Read 113-123 and 127-135 re Liens. Brief Ontiveros (pages 121-123).  Read Chapter 5 of <b>Getting to Yes</b> ("Using Objective Data").

Thursday October 1 Class 12	Methods of Transfer (Types of Deeds and Adverse Possession)	<p>Read 331-333, and 335-343</p> <p>Answer Consider 13.1</p> <p>Brief <u>Schorsch</u></p> <p>Read 344-349</p> <p>Brief <u>Williams</u></p> <p>Answer Consider 13.6</p>
Tuesday October 6 Class 13	Co-Ownership	<p>Read 157-167 and brief <u>Quick</u> and <u>Gayton</u> cases</p> <p>Read 167-179</p> <p>Brief <u>Diosdado</u></p> <p>Read <u>Bonds</u> and answer the case questions to that case.</p>
Thursday October 8 Class 14	Communities and Associations	<p>Read 251-255, 257-261</p> <p>Brief <u>Armstrong</u></p> <p>Read 264-266</p> <p>Brief <u>Nahrstedt</u></p> <p>Answer Consider 11.4</p> <p>Read 272-273</p>

<p>Tuesday October 13 Class 15</p>	<p>Legal descriptions of land interests;  Mid-term prep</p>	<p>Read Chapter 7 of Jennings (139-155)  Brief: <u>Foreman</u> and <u>Triplett</u> cases  Answer – Consider 7.2, Chapter Problems 4 (a) through 4 (g).  Last 30 minutes of the class devoted to review upcoming mid-term exam.</p>
<p>Thursday October 15 Class 16</p>	<p>Mid-Term exam</p>	<p>The entire class period will be used for the mid-term exam.</p>
<p>Tuesday October 20 Class 17</p>	<p>Introduction to Real Estate Transactions – Buying and Selling a Home</p>	<p>Read pages 61-81 of Lefcoe text – materials to be distributed by pdf on October 15<sup>th</sup>.  Answer Questions 1-3 on page 74 of Lefcoe handout.  NEGOTIATION EXERCISE #2 WILL BE DISTRIBUTED AT THE END OF CLASS. To be completed by October 27, see below.</p>
<p>Thursday October 22 Class 18</p>	<p>Buying and Selling a Home, Part 2</p>	<p>Read 367-375 and 379-381 of the Jennings text.  Brief <u>Norkunas</u> case on pages 373-375. Also, answer the case questions on <u>Norkunas</u>.  Answer Chapter Problem 1 on page 403.  Read CAR Residential Purchase Agreement/Joint Escrow Instructions form.  <a href="http://filelibrary.myaasite.com/Content/2/2822/7943294.pdf">http://filelibrary.myaasite.com/Content/2/2822/7943294.pdf</a>.</p>

<p>Tuesday October 27</p> <p>Class 19</p>	<p>Negotiations Exercise #2 Review</p> <p>Catch-up day for real estate material</p>	<p>Complete exercise that was distributed on Tuesday October 20<sup>th</sup> before beginning of this class session. The negotiation and the written summary must be completed before this class and turned in no later than the beginning of class.</p> <p>To be completed (requires face to face negotiation by students) and will be reviewed in entire class.</p> <p>Written assignment must be turned in no later than Tuesday October 27<sup>th</sup> at the beginning of class – HOWEVER, IT WILL REALLY HELP IF IT'S EMAILED TO PROF. PACHINO BY MONDAY THE 26th SO THE RESPONSES CAN BE REVIEWED AND ASSESSED BEFORE THE CLASS SESSION ON THE 27th.</p>
<p>Thursday October 29</p> <p>Class 20</p>	<p>The Purchase Contract -- Remedies for contract breach</p>	<p>Read 394-406 of text –</p> <p>Brief <u>Perroncello</u> case.</p> <p>Answer Chapter problems 7, 9, 10 and 11 on pages 405-406 of Jennings.</p>
<p>Tuesday November 3</p> <p>Class 21</p>	<p>Financing in the Transfer of Real Estate – Mortgage/Deed of Trust</p>	<p>Read pages 407-425 and 445-446 of the Jennings text.</p> <p>Brief <u>Carmichael</u> case and answer case questions thereof.</p> <p>Answer Ethics issue on page 416.</p> <p>Answer Consider 15.2.</p>

<p>Thursday November 5  Class 22</p>	<p>Financing Issues, continued.</p>	<p>Review pages 421-425 and 425-438 OF JENNINGS TEXT.</p> <p>BRIEF <u>COMERICA</u> AND <u>FIRST UNION</u> CASES –</p> <p>ANSWER CONSIDER 15.3</p> <p>Read <u>NYTimes</u> article entitled, “Once Trusted Mortgage Pioneers, Now Pariahs” – December 25, 2008 – copies may be distributed. Be prepared to discuss article which is available at:</p> <p><a href="http://www.nytimes.com/2008/12/25/business/25sandler.html?_r=1&amp;scp=3&amp;sq=world%20savings&amp;st=cse">www.nytimes.com/2008/12/25/business/25sandler.html?_r=1&amp;scp=3&amp;sq=world%20savings&amp;st=cse</a>.</p> <p>(Also can use NYTimes website search function for “World Savings”).</p>
<p>Tuesday November 10  Class 23</p>	<p>California Anti-Deficiency Legislation; and Foreclosure Alternatives</p>	<p>Read Chapter 17 (and a bit of Chapter 18) from the LEFCOE TEXT – pages 437-449 and 453-459 thereof. THESE PAGES HAVE BEEN PREVIOUSLY DISTRIBUTED.</p> <p>In Jennings text, answer Chapter problems 3, 5 and 8.</p> <p>Self-test on the multiple choice “test” on pages 454-455 of the Jennings text.</p>
<p>Thursday November 12  Class 24</p>	<p>FINAL NEGOTIATION DISCUSSION – AND CATCH UP ON ANY OF THE ABOVE READINGS NOT COMPLETED PREVIOUSLY</p>	<p>TO PREPARE FOR THIS CLASS, PLEASE READ CHAPTER 7 (“What if they won’t play?”) of Fisher/Ury Getting to Yes and the Conclusion of the book, too.</p> <p>We will discuss this section of Getting to Yes during class.</p> <p>We will also use the class to catch up on any Financing and/or Mortgagee Remedies Issues not completed as of the April 16<sup>th</sup> class.</p>

<p>Tuesday November 17 Class 25</p>	<p>Brokers &amp; Agents</p>	<p>Read 287-300 in Text -- Brief <u>Island Realty</u> and answer case questions 1-4.</p> <p>Answer Consider 12.1.</p> <p>Print out/read CAR Residential Listing Agreement form – prepared to discuss.</p> <p><a href="http://www.condosource.com/pdf/residential_listing.pdf">http://www.condosource.com/pdf/residential_listing.pdf</a>.</p>
<p>Thursday November 19 Class 26</p>	<p>Brokers &amp; Agents</p>	<p>Read 300-320 of the Text.</p> <p>Brief <u>Capicconi</u> and <u>Fuller</u> cases. <b>THE BRIEFS OF THE CAPICCONI AND FULLER CASES ARE REQUIRED TO BE TURNED IN AT THE BEGINNING OF CLASS – THIS IS THE LAST HOMEWORK ASSIGNMENT OF THE SEMESTER.</b></p> <p>Answer Consider 12.5 and 12.6. –</p> <p>ANSWER CHAPTER PROBLEMS 1 AND 2. (The “consider” and chapter problems in this assignment are NOT part of the homework to be turned in but be prepared to discuss).</p>
<p>Tuesday November 24 Class 27</p>	<p>Closing of Transactions; Escrow</p>	<p>Read 351-364 of Text (beginning at “Protection of Title”).</p> <p>Brief <u>Gensheimer</u> and <u>New England Federal Credit Union</u> and answer case questions for each case.</p> <p>Read the following form of Closing Escrow Instructions:</p> <p><a href="http://www.dearborn.com/download/CAREEscrow/EscrowInstructionsNorthernCA.pdf">http://www.dearborn.com/download/CAREEscrow/EscrowInstructionsNorthernCA.pdf</a>.</p> <p>Be prepared to discuss issues re the Closing Instructions form.</p> <p>Answer Consider 13.9.</p>

Thursday November 26	NO CLASS	THANKSGIVING HOLIDAY
Tuesday December 1  Class 28	Zoning and Eminent Domain	Read 517-535  Answer Consider 18.1.  Brief <u>Salib</u> , <u>Lim</u> and <u>Lucas</u> cases.  Answer case questions to <u>Lucas</u> case (pg. 535) and answer Chapter problem 9.
Thursday December 3  Class 29	Zoning and Eminent Domain –	Read 543-556 (skip Loretto v. Teleprompter case)  Brief <u>Kelo</u> , and <u>Nollan</u> cases.  Answer Consider 19.2. -- Answer Consider 19.3
Tuesday December 8  Class 30	Review for Final Exam	Any needed "catch-up" to be completed.  Review for Final Exam
Thursday December 10  Final Exam	Final Exam	Final Exam will take place on December 10 <sup>th</sup> from 3 to 5 p.m.