Real Estate Transactions and Finance

New York University School of Law

Professor Gerald Korngold

Fall 2019

Syllabus

Course Materials

The assigned materials are:

- Korngold & Goldstein, Real Estate Transactions: Cases and Materials on Land Transfer, Development and Finance (Foundation Press, 6th ed., 2015);
- Korngold & Goldstein, Statute, Form and Problem Supplement to Real Estate Transactions (Foundation Press, 6th ed., 2015);
- and a set of materials titled “Blackboard Supplementary Materials” (available on “NYU Classes” under our course site—sorry, I still like the old-school Blackboard” nomenclature).

Please bring the casebook, Statute and Form Supplement, and Blackboard Supplementary Materials to every class session.

General Information and Expectations

I look forward to an exciting semester together and a joint intellectual endeavor among the professor and the students. This will be an opportunity for students not only to explore an important substantive area of the law, our economy, and society but also to learn how lawyers can create healthy transactions that benefit all parties and to see that the attorney’s role is not only to litigate past deals that have gone bad.

Here are some expectations and information for you to consider carefully:

1. Preparation: In order to maximize our classroom experience, I will use a “panel” approach of calling on people in class—each week a group of students will be assigned to the panel. (I will distribute these assignment weeks once drop/add is done.) The people on the panel must attend class during their week, should have a very strong level of preparation for those classes, and should be ready to be called on and volunteer. Important: all students in the class are encouraged to volunteer comments, answers, and questions on any day of the course.

Also: please note that the Blackboard supp has diagrams of the facts of many of the cases we will cover, so refer to them when preparing for class.
2. **Recording:** no taping or other electronic recording of the class is permitted. (If there is an ongoing medical condition, please see me before the semester begins and we can work out a taping accommodation.) If you are ill on a given day and absent and wish to have a friend tape the class for you, that will be okay but please have him or her speak to me before class. Authorized taping is on the condition that it is only for use by the student whose proxy made the request and that the absent student will listen to the tape soon after the class and then immediately erase the tape.

3. **Seating Chart:** At the second class, I will circulate a seating chart, so please find a seat that you will be comfortable with for the semester.

4. **Class Cancellations:** class is cancelled for Mon Sep 30 and Wed Oct 9 (Jewish holidays). The law school sets makeup slots for those classes. We will, therefore, meet as follows:
   - Friday, Sept 13, 2:00-3:40 (Special room—FH334)
   - Friday, Nov 1, 9:00-9:50 (regular room)
(We only have a 50 minute slot on Nov 1. Rather than doing a third meeting to get enough minutes for the two missed classes, I am going long on Sept 13. Between extended Sept 13 and Nov 1 we’ll have enough time.)

5. **Contact Information:** Please feel free to be in touch with me by email with any questions, comments, etc. gkorngold@nyls.edu. We can also set up an appointment to meet if you wish. (I don’t have an office at NYU for you to drop by.)

**Examination**

The examination will be **modified open book.** For the exam, you **must** have with you the assigned materials—casebook, supplement, and Blackboard supplementary materials (and any other materials that I may distribute); you **may** have with you class notes, and outlines and study materials prepared by you (alone or in a study group). You may **not** bring in commercially produced outlines (e.g., Gilberts, Nutshells, etc.), books, or materials. You may have no electronic devices of any kind other than a Registrar-approved laptop running the exam software. No other materials are permitted. If you have any questions about permissible items, please communicate with me well in advance of the day of the exam.

**Learning Outcomes for the Course**

My expectation is that the course will provide you the opportunity to learn the following:

- Core legal skills: Improve your skills of legal analysis and communication.
- Problem solving: Apply legal knowledge to solve problems and complete transactions rather than to litigate failed deals.
- Substance: learn the vocabulary, “grammar” (i.e., rules), and concepts of real estate transactions law.
• Transaction documents: learn basic concepts in how to read, understand, and draft documents to benefit your client.
• Professionalism: examine the role of the transactional attorney and consider how to ethically and expeditiously achieve the client’s goals.

Assignments

Key: “p.” or “pp.” refers to the casebook; “Supp.” refers to the Statute, Form and Problem Supp.; “BB” refers to the Blackboard Supplementary Materials.

For each class, I have listed the general topic for the session. We will generally be following the order of the casebook, so the Table of Contents of the casebook will give you a good detailed outline of coverage.

NB:
• Sometimes we run behind, sometimes ahead. So, always prepare a portion of the next class’s assignment for each class meeting in addition to the designated assignment.
• You are responsible for ascertaining for yourself where we are in the assignments for the weeks that you are on panel duty.

Class 1: Topic: **Overview of a real estate transaction**
Assignment: pp. 3-14; briefly skim through Supp. 275-278, Supp. 289-360; BB 1-2

Class 2: Topic: **The role of the lawyer**
Assignment: pp. 15-29

Class 3: Topic: **Real estate brokers—right to commission**
Assignment: pp. 29-48; Supp. 275-278

Class 4: Topic: **Real estate brokers—duty to parties**
Assignment: Supp. 1-8; pp. 48-71; Supp. 9-10

Class 5: Topic: **Contracts of sale—risk of loss; financing condition**
Assignment: pp. 73-82; 91-95; skim BB 1-2 and Supp. 289-302

Class 6: Topic: **Contracts of sale—marketable title**
Assignment: pp. 96-103

Class 7: Topic: **Contracts of sale—other problem areas**
Assignment: pp. 103-105; Drafting Exercise #1 (set out below) in connection with Dover Pool

Class 8: Topic: **Contracts of sale—other problem areas**
Assignment: pp. 105-121
Class 9: Topic: **Contracts of sale—remedies**  
Assignment: pp. 121-144; 149-156

Class 10: Topic: **The Closing; Deeds—requirements**  
Assignment: pp. 157-169; Supp. 303-304

Class 11: Topic: **Deeds—delivery, escrow**  
Assignment: pp. 170-176; Drafting Exercise #2 (set out below) in connection with Akivis

Class 12: Topic: **Merger Doctrine; Fitness of the premises**  
Assignment: pp. 229-230; Supp. 11-13; pp. 187-194

Class 13: Topic: **Fitness of Premises (cont.)**  
Assignment: pp. 194-217; Supp. 15-21

Class 14: Topic: **Covenants of Title; Recording system**  
Assignment: pp. 230-235; 237-241; 270-274; Supp. 23-25

Class 15: Topic: **Recording system (cont.)—operation of statutes, chain of title issues**  
Assignment: we will focus on Hypos on BB 3-4, applying statutes (Supp. 23-25) as indicated on BB 3-4; pp. 241-249

Class 16: Topic: **Recording system (cont.)—record notice**  
Assignment: pp. 279-286

Class 17: Topic: **Recording system (cont.)—inquiry notice**  
Assignment: pp. 249-266; briefly skim Supp. 305-336

Class 18: Topic: **Circuits liens; Title insurance**  
Assignment: pp. 267-278; 286-301

Class 19: Topic: **Title insurance (cont.); Marketable title legislation; Mortgages—sources, forms**  
Assignment: pp. 302-323; 337-350; briefly skim Supp. 337-360; read pp. 350-367 as closely as you like: it provides important background on development of mortgage finance system that does not directly relate to nuts and bolts lawyering but will increase your knowledge of the sector and thus your value

Class 20: Topic: **Mortgages (cont.)—predatory lending/subprime, junior liens**  
Assignment: pp. 368-417 (sorry, a lot—long cases, despite editing)

Class 21: Topic: **Mortgages (cont.)—junior liens (cont.); transfers by borrower**  
Assignment: pp. 418-437
Class 22: Topic: Mortgages (cont.)—transfers by the lender; secondary market
Assignment: pp. 437-450

Class 23: Topic: Mortgages (cont.)—default; foreclosure by judicial sale
Assignment: pp. 451-468

Class 24: Topic: Mortgages (cont.)—foreclosure by power of sale; MERS
Assignment: pp. 468-495

Class 25: Topic: Mortgages (cont.)—foreclosure relief
Assignment: pp. 495-520

Class 26: Topic: Installment land sale contracts
Assignment: pp. 520-526; 530-531

Class 27: Topic: Carryover

Class 28: Topic: Course Review (based on questions pre-submitted by students)
Assignment: students submit questions by email to Prof; deadline for email submission: Mon Dec 2, 2:00 PM

The following are the drafting exercises referred to in the assignments for Classes 7 and 11. (They will not be graded or collected, but you SHOULD use the learning opportunity to do them.)

**Drafting Exercise #1** (see assignment for Class 7)

In connection with Dover Pool, please prepare the following:
Turn back the clock to the time that the contract of sale was being negotiated in Dover Pool, before the events and the case occurred. You represent Buyer at that time. Buyer wants to be able to develop and operate a swimming and tennis club on the property and is concerned about whether zoning will permit this. Your task: draft a clause that you will propose to Seller to be inserted in the contract of sale that will address Buyer's concerns. Note: this can be done in a sentence or two.

**Drafting Exercise #2** (see assignment for Class 11)

In connection with Akivis, please prepare the following:
Turn back the clock to the time the contract of sale was being drafted. You are the attorney being asked to hold the escrow funds. You want to provide service to your client but avoid the type of problems described by the Akivis court. Your task: draft a clause that you will propose to the parties to be inserted in the contract of sale that will have you act as escrow but protect you. Note: This can be done in two or three sentences, and you may want to substitute your clause for existing language in the contract in the book.