

REAL ESTATE TRANSACTIONS, FALL 2019
LOYOLA UNIVERSITY NEW ORLEANS COLLEGE OF LAW
Crusto (LAW L 836-001) (3.0 units), DRAFT.6.8.19

Professor Mitchell F. Crusto
Email: mfcrusto@loyno.edu

Monday & Wednesday: 11:00 am-12:15 pm
Location: TBA

I. COURSE READING AND PROFESSOR'S CREDENTIALS:

A. Textbook: Dukeminier, Krier, Alexander, Schill, PROPERTY (**Seventh Edition**), ISBN: 9780735588998 (Please note that there is an Eighth and Ninth Editions, but the Seventh will be used for the course. Please let the professor know if you have any problems obtaining the 7th Edition.) The Loyola bookstore currently has 40 copies of the Seventh Edition available.

B. Sources of Law

1. State real property statutory law,
2. State real property common law (judicial pronouncements),
3. Contractual provisions allowed by law,
4. Real estate finance practices and provisions, and
5. Real property uniform rules.

C. Optional Background Reading

1. In a Nutshell, Real Property
2. In a Nutshell, Real Estate Finance
3. Mitchell F. Crusto, *Obama's Moral Capitalism: Resuscitating the American Dream*, 63 U. Miami L. Rev 1011-1040 (2009) (positing a constitutional right to protection from economic predation, including predatory lending).

D. Professor's expertise:

Professor Mitchell F. Crusto has been teaching Property Law and related Real Estate Transactions and related courses for over twenty years at Loyola University, and as a Visiting Professor at the Washington University (St. Louis) School of Law, the University of Miami School of Law, and the Vermont Law School. He has practiced with corporate law firms in New York City, Washington D.C., London, and New Orleans; was a corporate executive at major and small corporations, and a senior policy official in two Presidential administrations. He is published in the area of property law and its intersectionality with and legal history of U.S. enslavement of people as property and on environmental management issues. See Crusto's full curriculum vitae on Loyola's website, on Faculty. He is a member (inactive) of the Illinois, Louisiana, and Missouri bars. He was a member of a drafting committee for the Multistate Bar Examination for Property Law.

E. Professor's Assistance and Teaching Assistant

Please consult with Professor Crusto anytime by email at mfcrusto@loyno.edu. Professor Crusto will be available for group and individual questions/discussion on **Monday 3:30-5:00 pm and Wednesday, from 9:00-10:30 am, in room 413**. His Faculty Assistant is Stephanie Russell, email: sbrussel@loyno.edu, room 427, telephone number (504) 861-5798. **Please regularly visit Blackboard for the posting of the class syllabus, course materials, assignments, and scheduling changes, located at <http://loyno.edu.blackboard.com/>. If you have a need to reach the Professor for academic emergencies only, you can text him at (314) 323-9307.**

To provide students with support in mastering this course, students may access a teaching assistant. The TA is Lindsey Freihoff. Ms Freihoff is a third year student who is familiar with Professor Crusto's teaching style. She can be reached at lfreiho@my.loyno.edu.

II. COURSE DESCRIPTION - REAL ESTATE TRANSACTIONS

A. Overview

In this course, we will examine fundamental issues in real estate transactions, including financing, contracting, and conveyancing, with a primary focus on **residential (not commercial)** transactions. Topics to be covered include: the structure of mortgage markets and the regulation of loan transactions; the law governing mortgages and related financing structures (such as installment land contracts and ground leases), including foreclosure and borrower protections; construction finance; suretyship (guaranties and related contracts); recording and lien priorities; contracts for the purchase and sale of real estate; conveyancing issues; and title insurance.

This course qualifies for one hour of skills credit, upon completion of all skills exercises, see below.

B. Course Outline

This course will cover the following substantive areas of real estate transactions law: (See III. SPECIFIC TOPICS OF PROFICIENCY, herein for a list of questions that correlate to the questions listed below in the course outline.)

Five Substantive Areas of Property:

1. Discovery, Conquest, and Estates, including Future Interests and the Rule Against Perpetuities
2. Transfers of Land (Conveyancing)
3. Title Assurance, Including Recordation
4. Co-Ownership (Joint Tenancy, Tenancy in Common, Tenancy by the Entirety, and Community Property), and

5. Servitudes (Licenses, Easements, Real Covenants, Equitable Servitudes)

This course will not cover leaseholds or zoning.

C. Social Responsibility, Legal History, Ethics, Professionalism, and Morality

Social responsibility, legal history, ethics, professionalism, and morality issues will be analyzed throughout the course.

D. Legal Methods and Skills

This course will develop the practical skills needed to practice law in this area as well as the background needed to prepare to pass the bar examination in this area. This course will develop analytical reading, thinking, speaking, and writing skills (“like a lawyer”), utilizing the “Crusto TSIRRAAC” system. When time permits, we will use “Socratic” dialogue in class to discuss the students’ reading and analyzing of judicial appellate decisions. In addition, the course will also include several “skills training” exercises.

E. Caveat Student

This course is an advanced course on the subject. It is targeted to prepare a student to pass the bar examination and to prepare a student to practice law in this area under supervision. This course will be taught from a “common law” perspective, as is the national norm, and tangentially provides a background in Louisiana law (“civil law”). *Students are advised that while in law school, they should not provide legal advice to the public, as they are unlicensed and prohibited from doing so, unless under clinic supervision.*

F. Accessible Education; Emergency Procedures; Counseling Center; Information Technology

1. Office for Accessible Education

Loyola is committed to offering classes that are inclusive in their design. If you encounter disability related barriers in a course, please let the Office for Accessible Education (OAE) know immediately. OAE welcomes your feedback, which will assist us in improving the usability and experience for all students. To find out more about the accommodations process or if you need to discuss the accommodations you may be eligible for, please see our contact information below:

Office for Accessible Education: Monroe Library, 2nd Floor; 504-865-2990 (front office) Email: oe@loyno.edu; Website: <http://www.loyno.edu/success/disability-services>. Law students should contact Carol Magendie, Law Building room 345; Phone: 504-861-5494 Email: magendie@loyno.edu

2. Emergency Procedures

At times, ordinary University operations are interrupted as a result of tropical storms, hurricanes, or other emergencies that require evacuation or suspension of on-campus activities. To prepare for such emergencies, review the instructions at this link, <http://academicaffairs.loyno.edu/students-emergency-responsibilities>. Please note that students who are not living on campus need not file an evacuation plan with student affairs.

3. University Counseling Center

The University Counseling Center, located on the 2nd floor of the Danna Center, provides mental healthcare for all currently enrolled Loyola students. Office hours are Monday-Friday, 8:30 a.m. to 4:45 p.m., and services are free. Counseling is available 24/7 by contacting the UCC counselor-on-call. During business hours, call 504- 865-3835 to schedule an appointment and/or to request to speak with the counselor on-call. After hours and on weekends, call 504-865-3835 and press 1 at the voicemail prompt to be immediately connected to a trained and licensed mental health professional. Please visit our website at <http://studentaffairs.loyno.edu/counseling> for more information.

4. Information Technology

Information Technology provides on-campus computer systems assistance and technical support to students, faculty, and staff, through the support units of client services, computer services, distributed systems, telecommunications, and information management. Visit us on the 2nd floor of the Monroe Library, online at <http://academicaffairs.loyno.edu/infotech/student-computing>, or by phone at 504- 865-2255.

III. COURSE REQUIREMENTS/GRADING SYSTEM:

A. Grading, Final Examination and Paper Option

Students have an **option** here:

1. You can complete a thirty page research paper on a topic of your choice, for which a grade will be issued. *This paper can be used to qualify for the writing requirement needed to graduate. If you choose to complete a paper, the final draft is due on Monday, November 18th. If you do not turn in the paper by then, then you must sit for the final examination. Students are advised to consult with Professor Crusto early on as to the subject of their paper. Papers must meet the same quality as one submitted for independent study or a law review comment. It should be publication-worthy and should identify a legal problem, suggest and argue a solution, and analyze why the solution is a good idea. It is not a same as a college term paper. It should be the quality of paper that can be used as a writing sample for a job application. It should exhibit a student's ability to research a legal issue, to analyze it, and to present it clearly in writing. Professor Crusto will be available to discuss the organization of student papers. Additionally, he will be available to review*

working drafts.

2. Or you may sit for a three hour, closed book final examination. As usual, the final examination is “blindly graded” as to protect the exam taker’s identity. The final examination is scheduled for Friday, December 13, 2019, at 1:30 pm. **Please note that past examinations for this course and “best” exams have been posted and are available on the library website. While past “best” exams are posted on the library website, this is not to say that such exams are guaranteed to give students in the current course an “A” grade. You should not just memorize/study off the answers from previous student years, as more is expected each year.**

B. Extra Credit Bump in Final Grade

Important note: For all students, whether you write a paper or sit for the final exam, you can earn a half-grade bump by completing a (1) take-home, open book practice exam, (2) the completion of all homework assignments, and (3) the completion of all quizzes. The homework assignments

C. Homework is Mandatory pursuant to ABA Rule 310

Pursuant to ABA Standard 310, “a credit hour must reasonably approximate ...two hours of out of class student work per week” This means that for a three credit course such as this one, a student must spend *at least six hours of per week in out of class time*, preparing and reviewing the course materials.

Important note: Failure to complete and turn in all of the homework assignments will result in a half-grade bump down in the final, recorded grade. For example, an A- exam grade would be bumped down to a B+ final grade.

D. Daily Quizzes and Class Participation

We shall begin each class session with a quiz on the assigned materials. Please kindly come to class prepared to participate by reading, analyzing, and briefing the assigned reading. When called on, you are expected to respond with knowledge and analytical appreciation of the reading assignment. We shall review the answers to the quizzes during the class time. Students will self-grade their quizzes. **To receive full consideration for the half-grade bump, all quizzes will be collected and returned to students on a completion basis.**

E. Class Attendance, Seating Chart, Attire, and Computers

1. On time class attendance is required, and attendance will be taken each class. **You are greatly encouraged to attend all classes** (subject to excused or unexcused absences, pursuant to Law School policies).

2. *Caps, cell phones, and computers are not allowed to be used during class, as they distract other students’ focus on the in-class discussion.*

E. Class Participation

Please kindly come to class prepared to participate by reading, analyzing, and briefing the assigned reading. When called on, you are expected to respond with knowledge and analytical appreciation of the reading assignment.

E. Final Examination, Schedule, Blindly-Graded, and Honor Code

The Final Examination is a three-hour, scheduled closed-book examination. It is scheduled to be given on Friday, December 13, 2019 at 1:00 pm. The Final Examination is "blindly graded" as to protect the exam taker's identity. Please note that the Law School has an honor code that each student is expected to review and follow, especially during the final examination period and process.

F. Skills Credit and "Buddy" Teams

In order for students to have a realistic sense of the practice of law in the real estate transactions law area, Professor Crusto will assign for each class, Skill Assignments. These are team based, interactive transactional skills and/or research assignments, including as follows: a. Each student should self-pair with one or two buddies for the semester. b. Each buddy team will act as attorney and client interchangeably. And c. Each buddy team may complete the skills assignments which are a part of the homework assignment. *It is alright for buddies to work together to work on the homework assignments, but the assignments should be submitted types only one student's name on it.*

IV. LEARNING OUTCOMES/SPECIFIC TOPICS OF PROFICIENCY:

Students are responsible to exhibit a working knowledge of the issues, rules (including relevant authorities, statutory, and cases found in the Course material described herein), rationale, and application of specific topics of property law. Listed below are the specific topics to be covered in this course. Each topic is followed by an essential question. A proficient student will be able to answer each question after taking this course, knowing the relevant legal principles/rules of law and their application.

1. Discovery and Conquest

What moral issues arise when real property is acquired by discovery/conquest?

2. Feudalism and Estates

How does feudalism influence the modern concept of an estate?

3. Fee Simple, Inheritance, and Fee Tail

What is a fee simple, a fee tail, and how are they created? What is intestate succession?

4. Life Estate, Defeasible Estates

What is a life estate? What types of defeasible estates are there?

5. The Rule Against Perpetuities (RAP)

What is the Rule Against Perpetuities; how does it operate; what is its purpose?

6. Land Transactions (Conveyancing)

By what legal process is title to real property transferred?

7. Brokers (Real Estate Agents)

What legal role do real estate brokers/agents play in the sale of property?

8. The Statute of Frauds

What is the Statute of Frauds and what is its role in the transfer to title to real property?

9. Marketable Title

What is marketable title; what is “perfect” title?

10. Equitable Conversion

What property interest does a buyer have upon agreeing to purchase real property?

11. Duty to Disclose

What is a seller’s legal duty to disclose known or hidden defects in a property?

12. Merger

What is the doctrine of merger; what its effect on a seller’s duties to a buyer?

13. Implied Warranty of Quality

Does a seller have a duty to provide a buyer with a quality home?

14. Remedies for Breach of the Sales Contract

What legal remedies are available to a seller/buyer for breach of a property sale contract?

15. Deed

What is a deed; what are the types of deeds; and why do they matter?

16. Warranties of Title

Does a seller warrant the quality of a title to a buyer; if so, what warranties matter?

17. Estoppel by Deed

What is an estoppel by deed?

18. Delivery

Does it matter legally whether a deed is “delivered” from the seller to the buyer?

19. Mortgage

What is the role of a mortgage in the conveyancing process; cash sale; owner financing?

20. Title Assurance

What should a buyer do to assure that he/she is receiving good title to property?

21. Description by Government Survey

How is real property legally identified?

22. Idem Sonans

How do you know the person seller has the right to transfer title to property?

23. Recording Acts

What systems of recording title have been established to assure that a seller passes good title to a buyer?

24. Chain of Title Problems

What practical problems exist within the chain of title system?

25. Persons Protected

Who do the recording statutes protect relative to quality of title; who is not protected?

26. Inquiry Notice

When does the law hold a buyer to a duty to inquire about the quality of title?

27. Marketable Title Acts

How do marketable title acts work to assure quality title?

28. Registration of Title

How does title registration differ from title recordation?

29. Title Insurance

What does title insurance insure against; who is protected?

30. Co-ownership- Joint Tenants, Tenants in Common, Tenancy by the Entirety

What are a joint tenancy, a tenancy in common, and a tenancy by the entirety?

31. Community Property and Domestic Partners

What is community property, the issue of mitigating couples, and the property rights of domestic partners?

32. Relations Among Co-Owners

What are the rights/duties between co-owners?

33. Servitudes

What non-possessionary rights are incidental to ownership of land?

34. Easements

What are easements and licenses; how are they created, transferred, and terminated?

35. Easements by Necessity/Prescription

What are easements by necessity and an easement by prescription?

36. Assignability and Scope of Easements

Are easements assignable; what is their scope?

37. Termination of Easements

How are easements terminated?

38. Negative Easements/Real Covenants/Equitable Servitudes

What are negative easements, real covenants, and equitable servitudes?

39. Creation of Covenants Running with the Land

What are "covenants running with the land," and how are they created?

40. Scope/Termination of Covenants

What is the scope of covenants and how are they terminated?

41. Common Interest Communities

What role does the law of covenants play in "common interest communities" such as condominiums?

V. LECTURE SCHEDULE AND READING ASSIGNMENTS:

(All pages listed refer to the Dukeminier casebook, unless otherwise indicated.)

1. Monday, August 19	1. Discovery & Eminent Domain Rationale: Johnson v. M'Intosh - pp. 3-18, Kelo v. City of New London, pp. 1061-72, 2. "New Orleans City Council Taking Another Stab at Affordable Housing Crisis," https://www.theadvocate.com/new_orleans/news/article_3e89fbe2-9c00-11e8-aebd-af5d5b691ff7.html There will be an assignment posted on blackboard in advance for the first day of classes.
2. Wednesday, August 21	Feudalism, Estates, Seisin, Standardization - pp. 183-191, 197-8, 221-222; Fee Simple, Fee Tail, Life Estate, White case - pp. 191-195, 198-210
3. Monday, August 26	Heritability (Revisited) & Inheritance & Waste - pp. 192, 195-197, 217-218
4. Wednesday, August 28	The Rule Against Perpetuities and Reforms: The Symphony Space, Inc. v. Pergola Properties, Inc. - pp. 285-310
5. Monday, September 2	NO CLASS- LABOR DAY HOLIDAY

6. Wednesday, September 4	1. Multiboard Residential Real Estate Contract 3.0 - pp. 520-528 2. Louisiana Residential Agreement to Buy or Sell, https://www.lrec.state.la.us/files/Residential_Agreement_to_buy_and_sell_2013_Form_Letter.pdf . 3. Land Transactions & Executory Purchase Contracts - pp. 517-529
7. Monday, September 9	Brokers and Property Listing Agreements - pp. 529-540
8. Wednesday, September 11	The Statute of Frauds, Exceptions, & Electronic Signatures: Hickey v. Green - pp. 541-547
9. Monday, September 16	Marketable Title & Equitable Conversion: Lohmeyer v. Bower - pp. 547-553
10. Wednesday, September 18	Duty to Disclose: Stambovsky v. Ackley & Johnson v. Davis - pp. 553-563
11. Monday, September 23	Merger & Implied Warranty of Quality: Lempke v. Dagenais - pp. 563-573
12. Wednesday, September 25	Remedies for Breach of Executory Sales Contracts: Jones v. Lee & Kutzin v. Pirnie - pp. 573-585
13. Monday, September 30	Deeds, Warranties of Title: Brown v. Lober - pp. 585-593
14. Wednesday, October 2	Estoppel Deed, Delivery & Financing : Sweeney - pp. 605-621
15. Monday, October 7	NO CLASS- UNIVERSITY HOLIDAY, CLASS WILL BE HELD ON TUESDAY, OCTOBER 9
16. Tuesday, October 8	Foreclosures & Subprime Crisis: Murphy v. Fin. Dev. Corp. - pp. 616-630, 636-640, 643-4, Crusto, Obama's Moral Capitalism, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1573770
17. Wednesday, October 9	Title Assurance and Idem Sonans: Luthi v. Evans - pp. 645-660, 665-7
18. Monday, October 14	Recording Acts: Messersmith v. Smith - pp. 667-676
19. Wednesday, October 16	Chain of Title Problems: Bd of Ed of Minn. v. Hughes - pp. 677-686
20. Monday, October 21	1. Inquiry Notice: Harper v. Paradise & Waldorff Insurance and Bonding, Inc. v. Eglin National Bank- pp. 697-702 2. Persons Protected, pp. 686-693
21. Wednesday, October 23	1. Marketable Title Acts – pp. 702-704; 2. Registration of Title - pp. 704-713
22. Monday, October 28	Title Insurance: Walker Rogge, Inc. v. Chelsea Title & Guaranty Co. - pp. 714-721, 726-727

23. Wednesday, October 30	1. Co-Ownership - Joint Tenants; Tenants in Common; Tenants by the Entirety; Community Property - pp. 319-335: Riddle v. Harmon; Harms v. Sprague; 387-396
24. Monday, November 4	1. Relations Among Co-Owners, Partition - pp. 337-347: Delfino v. Vealencis; 2. Sharing Benefits/Burdens - pp. 347-358: Spiller v. Mackereth; Swartzbaugh v. Sampson
25. Wednesday, November 6	1. Servitudes: Easements - pp.763-773: Willard v. First Church of Christ; 2. Licenses, Easements, & Implied Easements - pp. 773-785: Holbrook v. Taylor; Van Sandt v. Royster; 3. Easements by Necessity/Prescription - pp. 785-799: Othen v. Rosier
26. Monday, November 11	1. Assignability of Easements – pp. 812-820: Miller v. Lutheran Conference & Camp Association; 2. Scope of Easements – pp. 820-830: Brown v. Voss; 3. Termination of Easements and Eminent Domain - pp. 831-842: Preseault v. United States
27. Wednesday, November 13	1. Negative Easements/Conservation Easements/Real Covenants/Servitudes - pp. 842-851, pp. 854-859: Tulk v. Moxhay
28. Monday, November 18	1. Covenants, Termination - pp. 882-887: Western Land Co. v. Truskolaski 2. Covenants, Modification - pp. 888-896: Restatement (Third) of Property, §7.10 and Pocono Springs Civic Association v. MacKenzie
29. Wednesday, November 20	1. Covenants, Abandonment - pp. 892-899: Pocono Springs Civil Association, Inc. v. MacKenzie, Restatement, §7.12 2. Common Interest Communities, pp. 896-899, 909-910 (tale of Boo-Boo), 912-913, 924
30. Monday, November 26	Course Overview and Examination Review
31. Wednesday, November 29	NO CLASS- THANKSGIVING HOLIDAYS
32. Friday, December 13, at 1:30 pm.	Final Examination

Skills Credit Approved:

A student may earn one hour of skills credit for this course, if a student completes the following assignments which are included in the homework assignments:

1. All homework assignments
2. Interactive transactional skills assignments, including as follows:
 - a. Each student will be paired with a buddy for the semester
 - b. Each buddy couple will act as attorney and client interchangeably
 - c. Each buddy couple will complete the following assignments
 - i. Interview client to determine property needs and goals, one as buyer and another as seller;
 - ii. Draft a memorandum documenting same and sharing with client and getting client's buy-in and approval;
 - iii. Walk client through the various stages of the real estate transaction from contract to closing;
 - iv. Interview client on the use of a real estate agent/broker, one as buyer and another as seller;
 - v. Draft a memorandum documenting same and sharing with client and getting client's buy-in and approval;
 - vi. Obtain and review a standard real estate selling "listing agreement," discuss same with seller client, highlighting legal issues and potential pitfalls;
 - vii. Meet with potential listing agent and negotiate the terms of a "listing agreement";
 - viii. Back to vi, do the same for a buyer client, relative to employing a "buyer's agent," highlighting legal issues and potential pitfalls;
 - ix. Back to vii, do the same for a buyer client, relative to negotiating a "buyer's agent agreement";
 - x. Similar as above for the following transactions
 1. Qualifying for a mortgage, analyzing credit
 2. Reviewing a draft mortgage, understanding legal features of a mortgage, negotiating for a mortgage, terms
 3. Drafting/Making an offer to purchase
 4. Analyzing legal issues relating to an offer and acceptance of offer
 5. Draft a contract to purchase, and the nature of contingencies to performance
 6. Assess legal issues relating to discrimination in housing, advertising, purchasing, financing
 7. Title assurance, what are a seller's duties, a buyer's duties
 8. Analyze the nature of title issues, and what constitutes marketable title
 9. Understanding and negotiating the type of deed one is seeking in a real estate transaction
 10. Understanding and negotiating the inspection of property, and contracting with inspectors, and with buyer/seller after inspection report
 11. Understanding and negotiating possession of property
 12. Understanding and negotiating property insurance, risk of loss, and equitable conversion, working with insurance agents
 13. Understanding and negotiating title insurance

14. Understanding and negotiating closing of sale issues
15. Understanding and negotiating post-closing of sale issues
16. Understanding and negotiating leasing and leases
17. Understanding and negotiating the nature of a condominium
18. Understanding and negotiating the nature of marital issues on the ownership of property
19. Understanding and negotiating the nature of legal issues relating to concurrent ownership of property
20. Understanding and negotiating of inheritance and descendability of property
21. Understanding and negotiating use restrictions, including servitudes and zoning issues