

**The Changing Architecture of Legal
Education:
Real Estate Transactions as a Case Study**

2021 AALS Annual Meeting, Sections on Real Estate Transactions and
Academic Support

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January 6, 2021

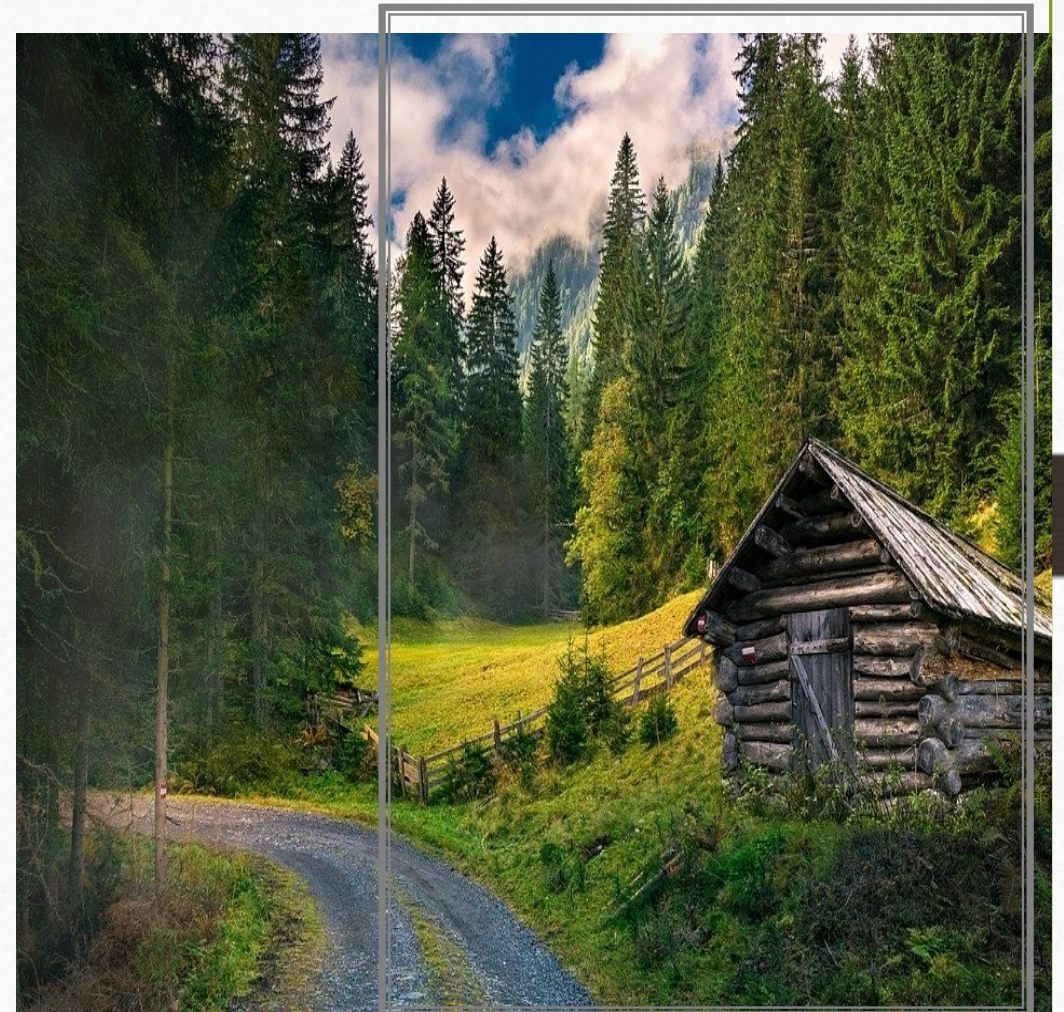
WHY REAL ESTATE TRANSACTIONS?

- (1) traditionally an integrated part of the foundational Property Law requirement, taught socratically;
- (2) a doctrinal class, its reigning rules and concepts are heavily tested on the bar;
- (3) a transactional class, it is situated in a law practice, problem-solving context; and
- (4) a class bearing the accumulated weight of Property Law's long lineage, its content is deeply implicated in the inequities inscribed into Property doctrine

Altering landscapes, emerging expectations

Changing economics and technologies of
real estate practice

Heighten expectations for practice-ready
graduates attuned to the imperatives of
social equity



Overview

Where does RET fit in an altered legal and educational landscape?

How does RET connect to the realms of legal doctrine, policy, and practice?

How does RET implicate two distinct aspects of a skills-based curriculum: lawyering skills and academic skills?



Relationship between Property and RET in the law school curriculum



Course design combines doctrine, lawyering skills, and critical reflection



Instructional design informed by Academic Support principles

Situating relationship between Property and RET in the law school curriculum

Doctrinal

- Doctrinally-oriented categorization situating RET either as a
- required, second part of the Property course, or
- elective with Property as a pre-requisite.

Lawyering/integrative

- Alternative “lawyering” conceptualization:
- offered in a simulated context
- featuring counseling, drafting, and/or negotiation modules as a
- later-term elective, or
- part of a menu of required lawyering skills courses

Course design for RET elective

Combine elements of a
doctrinal and lawyering-focused
elective

Heighten attention to lawyering
skills

Use multiple approaches to
address sociolegal and social
justice issues implicated in the
structures of RET law

- Taught individually or in a team-teaching approach:
 - permanent faculty with adjunct in practice or
 - doctrinal and lawyering/clinical colleagues in collaboration
- Draws on the Carnegie Report's recommendation to integrate doctrine, lawyering skills, and reflection on professional identity
- Incorporates lawyering skills assignments related to transactional work and client counseling
- Engages critical reflection of course topics, including writing-based analysis of structural inequity issues
- Contemplates active consultation with Academic Support faculty

Course design: use of simulated client narrative

Sets up discussion and application of lawyering skills relevant to client representation

- Client narrative unfolds throughout the semester in a video recorded or in-class role-play to parallel coverage of doctrinal material
- Narrative based on series of client-attorney interactions concerning the client's first-time purchase of a home
- Client-attorney interactions entail lawyering exercises, e.g., interviewing and counseling, drafting, or document review, including replay/reenactment of the interaction

Course design: use of simulated client narrative

Raises racial and social equity questions

- Presents questions and concerns confronted during the process, such as client being “steered” to
 - particular neighborhoods by a real estate broker
 - suboptimal financing options, and
 - alternatives to outright purchase such as contract for deed

Course design: use of critical reflection

Syllabus incorporates readings drawing attention to structural inequity and social justice issues

- Use of critical perspective and sociolegal readings paired with assigned judicial cases and legislation deepens structural analysis of racial equity issues
- Examples:
 - pairing article on contract for deed, “A House You Can Buy But Never Own,” with pleading/opinion challenging the practice under state and federal law
 - discussing SCOTUS amicus brief in *City of Miami v. BOA* documenting reverse redlining with study of mortgage financing options and abuses

Course design: use of critical reflection

Graded assignment
embeds prompts addressed
to structural inequity in
doctrine

Offers opinion writing
option

- Graded written reflection assignment considers interplay of legal doctrine and structural inequities:
- --specific prompts address relationship between doctrine and perspective/reflective readings
- prompts invite reflection on students' developing professional identity and responsibility
- Alternative opinion rewriting assignment offers opportunity to reimagine rationale and outcome of an assigned opinion to achieve a more just result

Instructional design: insights from Academic Support

Using formative
assessment to motivate
and reinforce learning

- Responsive to lessons learned from Academic Support colleagues, build in formative assessment of legal doctrine throughout the semester:
- Students consolidate their understanding of new material more effectively when they
- engage with,
- are assessed on, and then
- build upon, smaller “chunks” of material throughout the semester

Instructional design: insights from Academic Support

A multiple-
reinforcement
approach to doctrinal
learning

- Frequent reviews and periodic lower-stakes graded quizzes
- Participation-credit exercises covering a range of written formats included on current bar exam: doctrinal essay and multiple-choice questions, and variation on multistate performance test question
- Engage students to identify “takeaways” for key doctrinal points

Instructional design: drawing on the Carnegie Report

An integrative approach
to reinforcing doctrinal
learning

- Integrating rather than “siloing” use of lawyering, narrative, and reflective units from doctrinal analysis directly reflects Carnegie Report recommendations
- Integration offers multifaceted opportunities to engage and animate learning through performative assignments that reinforce understanding of legal doctrine

Projected benefits

- Taps into a range of student capacities and forms of intelligence
- Offers strong potential to increase engagement and motivation to learn, both in face-to-face and “remote” learning contexts
- Centers the client and introduces transactional contexts
- Addresses the sociolegal realities of law practice and promotes professional identity formation
- Helps prepare students for the expected rigors and formats of the bar examination

Selected Bibliography: RET and Social Equity

Perspective/reflective readings to
accompany doctrinal assignments

Link to practice-based, sociolegal,
and professional identity
dimensions of the course

- Fair Housing
- Freiberg, “Fair Housing for All,” Urban Omnibus, <https://urbanomnibus.net/2017/04/brass-tacks-fair-housing-for-all/> Apr. 2017
- Nikole Hannah-Jones, “Living Apart: How the Government Betrayed a Landmark Civil Rights Law,” <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law> (June 25, July 8 2015)
- Alana Semuels, “A House You Can Buy But Never Own,” <https://www.theatlantic.com/business/archive/2018/04/rent-to-own-redlining/557588/> (April 10, 2018) (contract for deed)
- Leaseholds: Landlords and Tenants
- Kriston Capps, “The Right to Eviction Counsel is Gaining Momentum,” CityLab, <https://www.citylab.com/equity/2019/12/eviction-protection-right-to-legal-counsel-tenant-rent-court/605562/> (December 13, 2019)
- Laurie, “Housing Court,” Urban Omnibus, <https://urbanomnibus.net/2018/02/housing-court/> (Feb. 2018)
- New Settlement Apartments’ Community Action for Safe Apartments (CASA) & The Community Development Project (CDP) at the Urban Justice Center, Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court
- Predatory Lending and Reverse Redlining
- Housing Scholars’ Amicus Brief, *City of Miami v. Bank of America*, http://www.scotusblog.com/wp-content/uploads/2016/10/15-1111_15-1112_amicus_resp_housing_scholars.pdf
- Richard Rothstein, “The Making of Ferguson: Public Policies at the Root of its Troubles,” Economic Policy Institute, <https://www.epi.org/publication/making-ferguson/> (October 15, 2014) (Executive Summary and section titled Regulatory support of policies in the real estate and financial sectors that promoted segregation)
- Janis Sarra & Cheryl L. Wade, *Predatory Lending and the Destruction of the African-American Dream* (Cambridge Univ. Press 2020)
- Keenanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (Univ. North Carolina Press 2019)
- The Giant Pool of Money, <http://www.thisamericanlife.org/radio-archives/episode/355/the-giant-pool-of-money> (May 9, 2008)
- The Untouchables, <http://video.pbs.org/video/2327953844> (January 22, 2013)

Writing-based assignment engaging critically reflective capacity

Option (A): Reflection paper (10% of final grade):

Draft a reflection of 5 double-spaced pages in response to a deep background/perspective reading addressed in the class.

- (a) Did the reading reinforce your understanding of legal doctrine, or did it offer a different perspective?
- (b) To what extent did the reading shed light on the social-justice dimensions of real property law/real estate transactions?
- Address either (i) or (ii): (i) If the reading addressed the need for reform of real property law (e.g., mortgage foreclosure process, fair housing/access to housing, contracts for the purchase of real estate) what did it propose, and what is your response to the proposal/argument for reform?; or
- (ii) If the reading addressed race, class, gender, sexual orientation, or other aspect of identity in relation to real property law, discuss whether/how it was effective in addressing the need for equity and/or inclusiveness in the law

Option (B): Judicial opinion rewrite (10% of final grade)

- Rewrite a portion (approx. 3 double-spaced pages) of one of the opinions we read for class that you believe led to an unjust outcome.
- Choose ONE of the four ((a)-(d)) options listed below
- (1)(a) rewrite the main opinion, by changing the opinion's legal-doctrinal or policy reasoning and conclusion;
- (b) rewrite the main opinion, by retaining its conclusion but changing or adding to its legal-doctrinal or policy reasoning;
- (c) write a dissenting opinion; or
- (d) revise an existing dissenting opinion by changing or developing its legal-doctrinal or policy reasoning AND
- (2) Include a 1-2-page double-spaced explanation of your (a) reason for choosing this opinion and (b) the basis for your rewriting choices, including the point(s)/idea(s) you emphasized.