

Real Estate Transactions **Negocios Civiles Inmobiliarios**

Code # 31555
Fall 2015
Fridays 18:00-20:00
Classroom 40.113

SYLLABUS

Professor: Josep Santdiumenge
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Office hours: FRIDAYS from 8:00 p.m. to 9:00 p.m. and by appointment.

COURSE DESCRIPTION

Required Materials:

1. T. Merrill / H. Smith *Propiedad y Derechos Reales*. Thomson Aranzadi. 2013.
2. CampusGlobal. Each student is required to check for “handouts” in the course website.

All reading assignments are in these texts, except where supplemental reading is noted. All supplemental readings are required as well and are posted on CampusGlobal. Please make sure to check the CampusGlobal site regularly for course materials.

Recommended Reference Material:

1. Contracts

A. Carrasco *Contratos*. Aranzadi. 2010. (treatise)**

2. Property

(Spanish Law)

L. Diez-Picazo *Fundamentos de Derecho Civil Patrimonial*. Vol VI *Derechos Reales*. Civitas, 2012 (treatise)

R. Arnaiz *Terreno y Edificación, Propiedad horizontal y Prehorizontalidad*. Civitas, 2010.

(Catalan law)

P. del Pozo / A. Vaquer / E. Bosch *Derecho civil de Cataluña. Derechos reales*. Marcial Pons, 4d ed. 2012 (treatise)

3. Construction Law

A. Carrasco / E. Cordero / C. González *Derecho de la Construcción y la Vivienda*. Dykinson. 2012 (treatise)**

A.E. Humero *Tratado Técnico-Jurídico de la Edificación y el Urbanismo*, Tomo III Derecho civil. Aranzadi, 2010.

All these books are available on reserve in the library. It is not necessary for you to buy them. I recommend any of these books as a helpful treatise if you find yourself in need of one for further study.

Course Goals:

The course is not theoretical. I hope to provide enough materials to introduce you beforehand to the main topics of discussion. The class sessions require you to take an active part. The course is short, so there is insufficient time to cover everything. However feel free to contact me anytime if you require any further information.

The course is divided into 9 sections. Although each section focuses on a separate area of content in Real Estate they are not completely free standing. The sections are strongly interconnected and therefore the methodological approach requires a holistic view of the whole subject. The course will provide an overview of property law, including the substantive law governing co-ownership, legal interests, leasing real property, selling real property, and private land use planning. The course will also provide an overview to the theoretical developments of the law of property. The course materials draw on case law, statutes, theory and policy from a variety of jurisdictions (EU law, US Law, Spanish Law and Catalan Law). The basic terms in Common Law jurisdictions will be explained in detail to go through the Civil law equivalent concepts and to look at beyond the course.

Through this course students will understand the key concepts of property law and learn how to conduct legal analysis to apply those concepts to a variety of factual situations. Students also will learn how to think critically about the law and related legal systems, understand the role of lawyers and clients in creating the law, and understand the law in action. My approach to learning is to provide you with ideas, tools and resources for further independent research work.

Whether you intent to be a legal scholar or become a partner at a law firm you'll always need to be aware of the most recent developments of the law in other jurisdictions. Property law is more global today than ever, and even though real estate transactions are still governed by national laws, some areas are being increasingly regulated by EU directives (timesharing, procurement) or by specific common practices (FIDIC contracts of construction).

Special session: A guest may be invited to participate in a class session in order to provide insights from the legal business day-to-day. Feel free to ask him any questions.

Attendance:

You are expected to attend each class on time. Every class session will last 2 hours.

I will pass around a sign-in sheet each class session. It is your responsibility to ensure that you sign this sheet, as it is the official record of your attendance. You may have no more than 5 absences during the trimester. A student whose absences exceed this limit may face grading penalties (unless absences were justified). Each student is responsible for keeping track of his/her attendance record and for contacting me if there are any questions.

I encourage the use of laptops for notetaking and accessing the internet for class-related information. However, if you are discovered to be using your computer for purposes unrelated to productive class participation, I'll ask you to leave the classroom for that day.

Rubric:

Assessment:

You will be graded according to your performance on two take-home exams and your regular active class participation. The goal of this exam is to provide an assessment of your ability to conduct research on a controversial issue or/and to make a proper legal analysis of a recent court decision.

1) First take-home exam (common case for the whole class group): At 8.00 p.m. on November 13th, 2015, at the latest, you will submit your exam response to the instructor (personally) in the classroom 40.113 or send it by Email (josep.santdiuenge@upf.edu). Instructions sheet will be provided.

2) Second take-home exam (individually assigned to each graduate student): by midnight on December 18th, 2015, at the latest, you will submit your exam response to the dropbox located in room 40.116 or send it by Email (josep.santdiuenge@upf.edu). Instructions sheet will be provided.

If your class participation is of a consistently high quality, you may receive an increase in

your final grade. If your class participation is of a consistently poor quality, you may receive a decrease in your final grade.

Grading scheme:

- 80% of your final course grade will be based on two cumulative take-home exams.
- 10% of your final course grade will be connected with active class participation.
- An additional 10% of your grade will be based on non compulsory assignments:
 - a) Project #1: A 3-page written self-reflection paper on a current property issue (from a papers' reading list), or
 - b) Project #2: A memorandum of your Title Search Project at the Barcelona Land Registry No. 7 (c/ Joan Miró 23, 2nd floor).

Make-up examination: Those students who did not reach the minimum final grade (5.0 out of 10) will be required to complete a piece of assessed work at the latest by the first month of instruction in the next regular trimester. Restrictive access to the Make-up Exam: Only those graduate students who personally submitted on time the required assignments will be eligible to take part in the make-up exam.

Assignments:

Specific reading assignments are set forth below. All materials assigned for specific class sessions and for exams will be available (in due time) through CampusGlobal.

If necessary, this syllabus may be modified during the trimester. Any modifications will be announced in class and/or posted on CampusGlobal. All reading materials identified as "handouts" will be available on CampusGlobal.

Students are expected to prepare in advance the weekly reading assignments, to attend each class on time, to timely complete the assignments, and to engage in the in-class discussion of the readings and problems. Do not hesitate to bring the relevant texts to each class session.

Consistently active participation, demonstrating that you have read and thought about the class assignment, is expected.

Call to participation:

Socratic method: I will use a participants' list with your name for randomly selecting students on which to call each class. I will also expect and provide an opportunity for volunteering students to participate in the class discussions.

Seating chart: I will distribute a seating chart on the first day of class. Please sign the chart in the place where you intend to sit during the trimester. Please sit in your seating chart place for each class. This will help me put your name and face together.

SPECIFIC TOPICS AND ASSIGNMENTS:

DATE	TOPIC	READINGS, CASES AND CLASS MATERIALS
October 2, 2015	Real Estate Development Regulation Key Players in the Building Process	Press article: Spain on Sale (PPT Slides)
October 9, 2015	Concept of Property: Limits & Limitations Acquisition of Real Rights	Social Function of Property: Empty dwellings problem and the expropriation of mortgaged homes– Kelo case (2005) Reading assignment: Merrill/Smith <i>Propiedad</i> (Ch. 9) handout (PPT Slides)
(To be announced: mid October)	<u>1st Take-Home Exam</u> (common case): Submission Deadline: 13 November 2015	Common Case Choice: 1) STC 93/2015, 14.5.2015 (BOE 19.6.2015) (topic: social function of housing according to the Andalusian Act 1/2010) 2) STS, 1 ^o , 10 April 2015 (rec. 178/2015) (topic: hold-up mistake & good faith acquisition of property as recorded in the LRegistry)
October 16, 2015	Commonhold Joint Tenancy Horizontal Property Germanic-type Commonhold	Elevators Nuisance Val d'Aran common property case Grammercy Park, NY (PPT Slides)
October 23, 2015	Timesharing	EU Directive / Spanish Statute (2012) / Catalan Civil Code (PPT Slides)
October 30, 2015	Contract of services	EU Law – DCFR Proposal (PPT Slides)
(To be announced: mid November)	<u>2nd Take-Home Exam</u> (specific case): Submission Deadline: 18 December 2015 In-class comments to the 1 st Take-home Exam (common case)	Assignment of Individual cases (students can choose a case from the professor's list on recent court decisions –first come first served basis–)

DATE	TOPIC	READINGS, CASES AND CLASS MATERIALS
November 6, 2015	Contract of Work	Spanish Civil Code FIDIC Contracts (PPT Slides / Cases and court decisions)
November 13, 2015	Liability arising from building construction Construction and Insurance	LOE-Statute / CC / LGDCU Cases and decisions (PPT Slides)
November 20, 2015	Transfer Development Rights Transfer of a lot in exchange of dwellings built as a result of it	Cases: B. Suitum v. Tahoe Reg'l Agency / TAU's (Spain) Cat. Law 2001 (PPT Slides)
November 27, 2015	Right to Erect a New Floor Right of Superficies	Spanish & Catalan Law Cases (PPT Slides)
December 4, 2015	Private Land Use Planning: Easements, Covenants, Servitudes and Nuisance	Cases (PPT Slides)
December 11, 2015	Mortgages, Defaults and Eviction What does abusive clauses mean? Title supervision by Land Registries (voluntary homework and site visit)	ECJ decision (2013) Other court decisions: SJMBar (2013, 2014), STS (2014, 2015)
December 18, 2015	Real Estate Transactions Sale of Commercial Premises Securities in Business & Real Estate Transactions	Sale and Leaseback Law Firms' Experiences Cape Town Convention on asset security interests

Languages:

Classes will be taught in Spanish. Please note that a few readings and class materials will be available only in English. An active and passive command of the English language is therefore necessary.