

Contents

<i>About the Authors</i>	xxvii
<i>Preface</i>	xxix
<i>Acknowledgments</i>	xxxii

Part I: Real Property Interests 1

Chapter 1: Introduction to Real Estate Law	3
<i>Chapter Outline</i>	3
<i>Learning Objectives</i>	3
Introduction	4
The Importance of Real Estate in Our Economy	4
Types of Property	4
Real Versus Personal Property	4
Tangible Versus Intangible Property	5
Fixtures	6
Fixture Tests	6
Intention (Agreement) of the Parties	6
Character and Adaptation	7
Actual or Constructive Annexation	7
Substantial Harm	7
Trade Fixtures	8
Attachments	8
Landowners' Rights	8
Air Rights	9
Transferability of Air Interests	9
Rights to Sunlight and Views	9
Mineral Rights, Including Oil and Gas Rights	10
Rights to Support of Land	11
Lateral Support	11
Subjacent Support	12
Water Rights	12
Riparian Rights	13
Prior Appropriation Doctrine	13
CASE 1.1 <i>Southwest Weather Research v. Jim Duncan</i>	13
Surface Waters	14
Groundwater	15
Real Property Estates and Interests	15
Fee Simple Absolute	16

Fee Simple Defeasible	16	
Fee Simple Determinable	16	
Fee Simple Determinable: The Future Interest	17	
Fee Simple Subject to Condition Subsequent	17	
Fee Simple Subject to Condition Subsequent: The Future Interest	17	17
Fee Tails: Keeping It in the Family	18	
Life Estates	19	
Remainders and Reversions	19	
Executory Interests	20	
Acquiring Real Property	21	
Purchase and Sale	21	
Gift	22	
Inheritance	22	
Adverse Possession	22	
Adverse	23	
Actual Possession	23	
Color of Title	23	
Exclusive Possession	23	
Open, Visible, and Notorious Use of the Property	24	24
Continuous for the Statutory Period	24	
Tacking of Time	24	
<i>Key Terms and Concepts</i>	25	
<i>Review Questions</i>	25	
<i>Practice Problems</i>	25	
<i>Chapter Assignments</i>	26	
Chapter 2: Nuisance, Trespass, and Duties to Third Persons		27
Chapter Outline	27	
Learning Objectives	27	
Introduction	28	
Nuisance	28	
Private Nuisance	28	
CASE 2.1 <i>Obolensky v. Trombley</i>	29	
Public Nuisance	30	
Nuisance <i>Per Se</i>	31	
Coming to the Nuisance Defense	31	31
Remedies for Nuisances	31	
Trespass to Land	32	
Intentional Invasion	32	
Tangible Object	33	
Defenses to Trespass to Land	33	
Consent	33	
Necessity	33	
Recapture of Personal Property	33	33
EXERCISE 2.1	34	
Landowners' Duties to Persons Entering Land	34	34
Trespassers	34	
Child Trespassers	35	
Licensees	35	
Invitees	35	
EXERCISE 2.2	36	
<i>Key Terms and Concepts</i>	37	
<i>Review Questions</i>	37	
<i>Practice Problems</i>	37	
<i>Chapter Assignments</i>	38	

Chapter 3: Easements, Licenses, and Profits 39

<i>Chapter Outline</i>	39
<i>Learning Objectives</i>	39
Introduction	40
Easements	40
Classification of Easements	40
Affirmative or Negative	40
Appurtenant or in Gross	40
EXERCISE 3.1	41
Creation of Easements	41
Easements by Grant	42
Easements by Implication	44
Easements by Necessity	44
Easements by Prescription	45
CASE 3.1 <i>Walsh v. Ellis</i>	45
Termination of Easements	46
Profits	47
Licenses	47
EXERCISE 3.2	47
Covenants	48
<i>Key Terms and Concepts</i>	48
<i>Review Questions</i>	48
<i>Practice Problems</i>	48
<i>Chapter Assignments</i>	49

Chapter 4: Surveying and Legal Descriptions of Land 55

<i>Chapter Outline</i>	55
<i>Learning Objectives</i>	55
Introduction	56
Surveying	56
Why Get a Survey?	56
Types of Surveys	57
Surveyor Licensing	57
Survey Detail Requirements	57
Reviewing a Survey	58
Land Description Systems	59
Metes and Bounds	59
Describing a Call	60
Point of Beginning	61
Curved Boundaries	62
Public Land Survey System	62
Principal Meridians and Base Lines	65
Guide Meridians and Correction Lines	65
Range Lines and Township Lines	65
Sections	67
Aliquot Parts	67
Putting It All Together	68
EXERCISE 4.1	69
CASE 4.1 <i>Williams v. River Bend of Cocoa Beach, Inc.</i>	70
Subdivision Plats or Maps	71
Informal References	72
Assessor Parcel Numbers	72
Street Address	73

Popular Name	73
General Descriptions	73
<i>Key Terms and Concepts</i>	74
<i>Review Questions</i>	74
<i>Practice Problems</i>	74
<i>Chapter Assignments</i>	75

Part II: Purchasing, Financing, and Conveying Real Estate 91

Chapter 5: Agency and Real Estate Brokers 93

<i>Chapter Outline</i>	93
<i>Learning Objectives</i>	93
Introduction	94
Nature of Agency Relationships	94
Authority of the Agent	94
Power of Attorney	95
Real Estate Brokers and Salespersons	96
Real Estate Brokers	96
Real Estate Salespersons	97
Real Estate Agency Relationships	97
Listing Agent	97
Buyer Agent	97
Dual Agent	97
Designated Agent	98
Nonagent Brokers	98
Retaining the Broker	98
Types of Listings	98
Open Listing	99
Exclusive Agency	99
Exclusive Right-to-Sell	99
Advertising the Listing	99
Multiple Listing Services	100
Internet Listing Services	100
Compensating the Broker	100
Net Listing	101
Compensation Entitlement	101
CASE 5.1 <i>Transnational Ventures, Inc. v. Derr Plantation, Inc.</i>	101
Expired Listing Commissions	102
Brokers' Fiduciary Duties	102
Duty of Care	103
Duty of Loyalty	104
Duty of Obedience	104
Duty of Accounting	105
Brokers' Duties to Third Parties	105
Misrepresentation	105
Intentional Nondisclosure	105
Mandatory Disclosures Required by States	106
EXERCISE 5.1	106
Duties of the Client to the Broker	106
Federal Laws Regulating Brokers	107
Housing Discrimination	107
Fair Housing Act	107

Racial Steering	108
Blockbusting	108
<i>Key Terms and Concepts</i>	108
<i>Review Questions</i>	108
<i>Practice Problems</i>	109
<i>Chapter Assignments</i>	109

Chapter 6: The Purchase Contract 117

<i>Chapter Outline</i>	117
<i>Learning Objectives</i>	117
Introduction	118
Contract Formation	118
Agreement	118
Termination of Offers	118
Option Contracts: Limiting the Right to Revoke	119
Acceptance	119
Consideration	120
Capacity of the Parties	120
Legality of the Subject Matter	121
The Statute of Frauds	121
Part Performance Exception	122
EXERCISE 6.1	122
Essential and Important Terms of a Real Estate Contract	122
Identification of the Parties	123
Property Description	123
Fixtures and Personal Property	123
Broker Relationship	123
Purchase Price and Payment	124
Deposit	124
Quality of Title	124
Possession of the Property	125
Allocation of Costs and Apportionment	125
Closing or Settlement Date	125
Closing Documents	126
Buyer's Inspection of Property	126
Statutory Disclosures	126
As Is Provision	126
Risk of Loss	127
Time Is of the Essence	127
Assignment	128
Warranties	128
Contingencies	129
Entire Agreement (Integration Clause)	130
Governing Law	130
Attorney Fees	130
Survival	130
Execution	130
Interpretation of Contracts	132
Parol Evidence Rule	132
Remedies for Breach of Contract	133
Specific Performance	133
Liquidated Damages	133
CASE 6.1 <i>Uzan v. 845 UN Limited Partnership</i>	134
Monetary Damages	135
Rescission	135

<i>Key Terms and Concepts</i>	136
<i>Review Questions</i>	136
<i>Practice Problems</i>	136
<i>Chapter Assignments</i>	137

Chapter 7: Valuation and Financing of Real Estate 189

<i>Chapter Outline</i>	189
<i>Learning Objectives</i>	189
Introduction	190
Property Appraisals	190
Factors Influencing Valuation	190
Appraisal Valuation Methods	190
Market Approach (Sales-Comparison Approach)	190
Cost Approach	191
Income Approach	192
EXERCISE 7.1	192
Introduction to Mortgages	193
The Mortgage Process	193
Loan Application	193
Processing and Document Gathering	194
Underwriting	194
Approval or Denial	194
Sale in Secondary Market	195
Ownership of Mortgaged Property	195
Mortgage Creation and Terms	195
Creation of a Promissory Note	195
Terms in a Promissory Note	197
Creation of a Mortgage	200
Mortgage Terms	200
First and Second Mortgages	201
Purchase Money Mortgage	201
Types of Loans	202
Conforming Versus Nonconforming Loans	202
Government-Insured Versus Conventional Mortgages	202
Government-Sponsored Mortgage Programs	203
FHA-Insured Loans	203
VA-Guaranteed Home Loans	203
Conventional Loans	203
Private Mortgage Insurance	204
Other Types of Loans	204
Types of Loan Payments	205
Fixed-Rate Mortgages (Amortized Loans)	205
Adjustable-Rate Mortgages	205
Interest-Only Mortgages (Straight Loans)	206
Piggyback Mortgages	206
Reverse Mortgages (Home Equity Conversion Mortgages)	206
Home Equity Loans	207
Other Forms of Lending	207
Sale Leaseback	207
Wraparound Mortgages (Subordinate Loans)	207
Taking Subject to and Assuming Mortgages	208
Taking Subject to a Mortgage	208
Assuming an Existing Mortgage	209
Deeds of Trust	210

Regulation of Home Mortgage Lending	210
Equal Credit Opportunity Act of 1974	210
Truth-in-Lending Act	211
TILA-RESPA Integrated Disclosure Rule (TRID)	211
TRID Loan Estimate	211
Contents of the Loan Estimate	211
Page 1 of the Loan Estimate	211
Page 2 of the Loan Estimate	215
Page 3 of the Loan Estimate	215
Special Information Booklet	215
Right of Rescission	215
CASE 7.1 <i>Gancedo v. Del Carpio</i>	216
Advertising	217
EXERCISE 7.2	217
Dodd-Frank Wall Street Reform and Consumer Protection Act	217
Security Agreements	218
Debtor's Name	218
Description of Collateral	218
Location of Filing	219
When a Filing Is Improper	219
Construction Loans	219
Loan Commitment	219
Construction Loan Agreement	221
Disbursement of Loan Proceeds	221
Installment Land Sale Contracts	221
Risks to the Buyer	221
Advantages to the Seller	222
<i>Key Terms and Concepts</i>	222
<i>Review Questions</i>	222
<i>Practice Problems</i>	223
<i>Chapter Assignments</i>	223
Chapter 8: Deeds	263
<i>Chapter Outline</i>	263
<i>Learning Objectives</i>	263
Introduction	264
Deeds	264
Requirements for a Deed	264
The Deed Must Be in Writing and Signed by the Grantor	265
The Grantor and Grantee Must Be Clearly Identified	267
The Grantor Must Have Legal Capacity	268
The Property Must Be Adequately Described	268
The Deed Must Express the Intent to Immediately Convey a Property Interest to the Grantee	268
The Deed Must Specify the Type of Interest and Rights Given to the Grantee	269
The Deed Must Be Acknowledged	269
The Deed Must Be Delivered by the Grantor and Accepted by the Grantee	269
Acceptance	270
Components of a Deed	270
Caption	270
Preamble Clause	270
Granting Clause	270

Description	270	
<i>Habendum</i> Clause	270	
Warranties of Title	270	
Execution or Testimonium Clause		270
Title Assurance	272	
Types of Deeds	272	
General Warranty Deed	272	
Present Covenants	272	
Future Covenants	273	
Warranty Period	273	
Damages	273	
Special Warranty Deed	273	
Grant Deed	273	
Quitclaim Deed	274	
Special Purpose Deeds	274	
Deed of Bargain and Sale	274	
Judicial or Sheriff's Deed	274	
Trustee Deeds	274	
Merger of Contract	275	
CASE 8.1 <i>Talmadge Crossings, LLC v. The Andersons, Inc.</i>		275
Recording	277	
What Documents Can Be Recorded	277	
Where Documents Are Recorded	277	
How Real Estate Records Are Maintained		278
Recording Statutes	278	
Race Statute (Pure Race)	278	
Notice Statute	279	
Race-Notice Statute	279	
EXERCISE 8.1	280	
<i>Key Terms and Concepts</i>	280	
<i>Review Questions</i>	281	
<i>Practice Problems</i>	281	
<i>Chapter Assignments</i>	281	
Chapter 9: Title Examination and Title Insurance		285
<i>Chapter Outline</i>	285	
<i>Learning Objectives</i>	285	
Introduction	286	
Marketable Title	286	
Attorney's Title Opinion	287	
Process	287	
Examination of Title Documents	287	
Other Records to Examine	288	
Attorney's Title Opinion	288	
Title Insurance	289	
Reasons for Title Insurance	289	
Endorsements	290	
Disadvantages of Using a Warranty Deed for Title Assurance	291	
Disadvantages of Relying Upon the Recording Laws for Title Assurance		292
Rights and Interests That May Be Insured by Title Insurance	292	
Types of Title Policies	292	
The Real Estate Professional's Role	292	
Selecting the Title Company	293	
CASE 9.1 <i>Davis v. Ivey</i>	294	
Preliminary Report	295	

ALTA Title Insurance Policies	296
ALTA Owner's Policy	296
Covered Risks	296
Exclusions from Coverage	297
Schedule A	299
Schedule B	299
Conditions of the Title Insurance Policy	299
ALTA Loan Policy	300
Covered Risks	300
Exclusions from Coverage	300
Schedule A	300
Schedule B	300
Recovering Damages from a Title Insurer	301
Title Registration — The Torrens System of Title Assurance	302
<i>Key Terms and Concepts</i>	302
<i>Review Questions</i>	302
<i>Practice Problems</i>	302
<i>Chapter Assignments</i>	303
Chapter 10: Real Estate Closings	339
<i>Chapter Outline</i>	339
<i>Learning Objectives</i>	339
Introduction	340
Closing or Settlement	340
Initiating the Closing	340
Closing Practices	341
Types of Closings	341
Settlement Process or Table Closing	341
Escrow	342
Other Types of Closings	344
Cast of Characters to a Closing	345
First Due Diligence Actions	346
The Loan Commitment	347
Duties of the Settlement Agent or Escrow Holder	349
Unauthorized Practice of Law and Real Estate Settlement	
Agents and Escrows	350
Drafting and Reviewing Closing Instructions	350
CASE 10.1 <i>In re Motors Liquidation Company et al. v. JPMorgan Chase Bank, N.A.</i>	351
Deposit of Property with the Settlement Agent	353
Duties with Respect to Timely Recording	353
Closing Protection Letters	354
Processing Documents and Disbursing Funds	354
Allocating Expenses	355
Problems with Payoff Amounts	355
Documents Exchanged at Closing	356
How Long Does It Take to Close?	356
Electronic Delivery	357
Post-Closing and Final Closeout Procedures	357
Retain Holdbacks	357
Record the Documents	357
<i>Key Terms and Concepts</i>	360
<i>Review Questions</i>	360
<i>Practice Problems</i>	360
<i>Chapter Assignments</i>	361

Chapter 11: Real Estate Closing Documents and Forms

367

<i>Chapter Outline</i>	367
<i>Learning Objectives</i>	367
Introduction	368
Between Loan Commitment and Closing	368
Closing Items for All Closings	368
Real Estate Settlement Procedures Act (RESPA)	373
TILA-RESPA Integrated Disclosure Rule (TRID)	373
TRID Rule Coverage	374
TRID Rule Terminology	374
TRID Closing Disclosure	375
Page 1 of the Closing Disclosure	375
Page 2 of the Closing Disclosure	376
Loan Costs	376
Other Costs	376
Page 3 of the Closing Disclosure	377
Calculating Cash to Close	377
Summaries of Transactions	377
Page 4 of the Closing Disclosure	377
Page 5 of the Closing Disclosure	378
Loan Calculations	378
Other Disclosures	378
Contact Information	378
Confirm Receipt	378
Compliance Responsibility	384
Mortgage Servicing Transfer Disclosure	384
Affiliated Business Arrangement Disclosure	384
RESPA Prohibited Conduct	384
Penalties for RESPA Prohibited Conduct	385
CASE 11.1 <i>Freeman v. Quicken Loans, Inc.</i>	385
Board Resolutions	386
Other Commercial Closing Documents	387
Opinion of Counsel Letters in Commercial Transactions	389
<i>Key Terms and Concepts</i>	390
<i>Review Questions</i>	390
<i>Practice Problems</i>	390
<i>Chapter Assignments</i>	390

Chapter 12: Defaults, Workouts, and Foreclosures

411

<i>Chapter Outline</i>	411
<i>Learning Objectives</i>	411
Introduction	412
Default	412
Remedies for Loans in Default	412
Workouts	413
Gather Loan Documents	413
Review of Loan Documents	414
Determine If Borrower Has Any Common Law Remedies	414
Types of Pre-foreclosure Workout Plans	416
Loan Reinstatement (The Borrower Cures the Default)	416
Modification of the Terms of the Loan	416
How to Review the Note and the Mortgage or Trust Deed	416
Review Prior Disclosures to the Consumer	420

Voluntary Conveyance to the Lender (Deed-in-Lieu of Foreclosure)	421
Short Sale to Third Party	422
Lender Takes Over the Property	422
Foreclosure	423
Judicial Foreclosure	423
File and Serve Complaint	424
Trial and Order of Foreclosure Sale	424
Equity Redemption Rights	424
Statutory Redemption Rights	425
Setting Aside Foreclosures	425
CASE 12.1 <i>Venezia v. Wells Fargo Bank, N.A.</i>	425
Foreclosure by Power of Sale (Trustee Sale)	426
Notice of Default	427
Set Sale Date	427
Trustee Sale	427
Redemption Rights	428
Benefits and Detriments of Trustee Sales	428
Strict Foreclosure	429
Disbursement of Sale Proceeds	429
Deficiency Judgment	429
Purchase Money Mortgages	429
Effects of Foreclosure upon Other Liens	430
Tax Sales	431
Mortgage Guaranty Insurance	431
Federal Housing Administration (FHA)	431
Department of Veterans Affairs (VA)	431
Private Mortgage Insurance (PMI)	432
The Effect of the Borrower's Bankruptcy	432
Types of Bankruptcy Filings	432
Chapter 7	432
Chapter 11: Reorganization	433
Chapter 13: Individual Repayment Plan	433
Automatic Stay	433
Property Exempt from the Bankruptcy Estate	434
Bankruptcy Discharge	434
Chapter 7 Discharge	434
Chapter 11 Discharge	434
Chapter 13 Discharge	435
Key Terms and Concepts	435
Review Questions	435
Practice Problems	435
Chapter Assignments	436

Part III: Owning and Operating Real Estate 447

Chapter 13: Ownership of Real Property 449

Chapter Outline	449
Learning Objectives	449
Introduction	450
Concurrent Ownership	450
Tenancy in Common	450
Creation of Interest	451
Possession	451
Conveyance of Interest	451

Joint Tenancy	451	
Creation of Interest	452	
What to Do When a Unity Is Missing		452
CASE 13.1 <i>Reicherter v. McCauley</i>	452	
Conveyance of Interest	453	
Severance of Joint Tenancy	453	
Marital Property Concurrent Ownership		455
Tenancy by the Entirety	455	
Creation of Interest	455	
Conveyance Rights	455	
Creditor's Rights	455	
Community Property	455	
Separate Property	456	
Conveyance of Interest	456	
Creditor's Rights	456	
Pre- and Postnuptial Spousal Property Agreements		457
Common Law Marriage	458	
Dower and Curtesy	458	
Rights and Duties of Co-Tenants		458
Partition	459	
Business Organization Forms of Holding Property		460
Sole Proprietorship	460	
Advantages	460	
Disadvantages	460	
General Partnerships	461	
Creation	461	
Characteristics	461	
Taxation	461	
Limited Partnerships	461	
Creation	461	
Characteristics	461	
Taxation	462	
Corporations	462	
Creation	462	
Characteristics	462	
Taxation	462	
Limited Liability Companies		462
Creation	463	
Characteristics	463	
Taxation	463	
Real Estate Investment Trusts		464
<i>Key Terms and Concepts</i>	465	
<i>Review Questions</i>	465	
<i>Practice Problems</i>	465	
<i>Chapter Assignments</i>	466	

Chapter 14: Real Estate Taxation, Zoning, and Land-Use Issues 473

<i>Chapter Outline</i>	473	
<i>Learning Objectives</i>	473	
Introduction	474	
Income Tax and Real Property Transactions		474
Sale of a Residential Real Property		474
Capital Gains or Losses	474	

Calculating the Basis	474	
Calculation of Realized Gain or Loss	475	475
Income Tax on Realized Gain	475	
Principal Residence Exemption	475	
Sale of Commercial Property	476	
Depreciation Deductions	476	
Calculation of Realized Gain or Loss	476	
Like-Kind Property Exchanges: IRC Section 1031	477	477
Requirements for a Real Property Like-Kind Exchange		477
Real Estate Property Taxes	478	
Property Exempt from Property Taxes	478	
Tax Assessment	479	
Nonpayment and Tax Lien Sales	479	
Priority of Tax Liens	479	
Tax Lien Sale	479	
Redemption Rights	479	
Public Control of Land — Eminent Domain	479	
Taking of Private Property	480	
Taking for Public Use or Public Purpose	481	
CASE 14.1 <i>Kelo v. City of New London, Connecticut</i>	481	481
Just Compensation to the Property Owner	482	
Public Control of Land — Zoning	483	
Zoning Authority	483	
Delegation of Authority to Local Governments	483	483
Master Plan	483	
Zoning Categories	484	
Zoning Ordinances	484	
Exclusive Use and Cumulative Zoning	484	484
Intensity Zoning	485	
Incentive Zoning	485	
Aesthetic Zoning	485	
Spot Zoning	486	
Exclusionary Zoning	486	
Inclusionary Zoning	486	
Nonconforming Uses and Structures	487	
When Nonconforming Uses Must Follow Current Zoning	487	487
Amortization of Nonconforming Uses	487	
Exceptions from Zoning Ordinances	488	
Variance	488	
Conditional Use Permits	488	
Changing Zoning Ordinances	489	
Religious Land Use and Institutionalized Persons Act	489	489
Private Restrictions on Land Use	489	
Covenants	490	
Covenants, Conditions, and Restrictions (CC&Rs)	490	490
Key Terms and Concepts	490	
Review Questions	491	
Practice Problems	491	
Chapter Assignments	491	
Chapter 15: Multiunit Dwellings	495	
Chapter Outline	495	
Learning Objectives	495	
Introduction	496	

Common Interest Communities	496	
Laws Governing Common Interest Communities		496
Types of Common Interest Developments	497	
Condominiums	497	
Condominium Creation	497	
Assessments	498	
CASE 15.1 <i>Feather Trace Homeowners Association, Inc. v. Luster</i>		498
Conveyance Rights	499	
Insurance	500	
Townhouses	500	
Common Areas	500	
Townhouse Creation	500	
Insurance	500	
Cooperatives	501	
Proprietary Lease	501	
Creation of a Cooperative	501	
Insurance	501	
Building Operating Costs	501	
Financing	501	
Conveyance Rights	502	
Timeshares	502	
Types of Timeshares	502	
Conveyance Rights	502	
Regulation	502	
Condominium Hotels	503	
Creating a Homeowners Association	503	
Regulation	504	
Recorded Declaration	504	
Association Powers	504	
Resolving Disputes	504	
Fiduciary Duty of Boards	505	
Standards of Review	505	
Amending the CC&Rs	505	
Liability	505	
<i>Key Terms and Concepts</i>	507	
<i>Review Questions</i>	507	
<i>Practice Problems</i>	507	
<i>Chapter Assignments</i>	507	
Chapter 16: Residential and Commercial Leases		515
<i>Chapter Outline</i>	515	
<i>Learning Objectives</i>	515	
Introduction	516	
Types of Tenancies	516	
Tenancy for Years	516	
Termination	516	
Writing Requirement	517	
Duration of Tenancy for Years Leases	517	
Periodic Tenancy	517	
Creation	517	
Continuous Renewal	518	
Termination	518	
Tenancy at Will	519	
Termination	519	
Tenancy at Sufferance	519	

Rental Rates	520	
Types of Rental Rates	520	
Gross Lease	520	
Percentage Lease	521	
Triple Net Lease	522	
Rental Rate Increases	522	
Rent Control	522	
Writing Requirements	522	
Common Lease Provisions	523	
Premises	523	
Term	523	
Possession	523	
Rent	523	
Common Area Maintenance	524	
Use	524	
Deposits	524	
Security Deposits	524	
Prepaid Rent	524	
Lease Guaranty	524	
Maintenance and Repairs	525	
Waste	525	
Notice of Repair	525	
Alterations	525	
Insurance	525	
Indemnity	526	
Noncompetition Clauses in Commercial Leases	526	
Estoppel Certificate	526	
Tenant Rights and Landlord Duties	526	
Implied Warranty of Habitability	526	
Tenant's Remedies for Breach of the Implied Warranty of Habitability	527	
CASE 16.1 <i>Terry v. O'Brien</i>	527	
Application to Commercial Leases	528	
Covenant of Quiet Enjoyment	528	
Memorandum of Lease	529	
Tenant Remedies	529	
Landlord Rights and Tenant Duties	530	
Landlord's Right to Access the Premises	530	
Landlord's Right to Cure Tenant Defaults	531	
Americans with Disabilities Act (ADA)	531	
When Does the ADA Apply?	531	
What Does the ADA Require?	531	
Tenant Issues	532	
Landlord's Tort Liability	532	
Landlord's Liability to Third Parties for Tenant's Activities	532	
Landlord's Liability for Criminal Acts by Third Parties	532	
Exculpatory Clause	533	
Lease Defaults and Evictions	533	
Mitigation of Damages	533	
Selecting Tenants	533	
Federal Laws	533	
State Laws	534	
Assignments and Subleases	534	
Assignments	534	
Rights and Duties	535	
Subleases	535	

Rights and Duties	535	
Potential Issues	536	
Prohibition Against Assignments and Subleases		536
<i>Key Terms and Concepts</i>	537	
<i>Review Questions</i>	538	
<i>Practice Problems</i>	538	
<i>Chapter Assignments</i>	539	
Chapter 17: Construction Law and Remedies		571
<i>Chapter Outline</i>	571	
<i>Learning Objectives</i>	571	
Introduction	572	
The Contracting Team	572	
The Owner	572	
Public Owners	572	
Private Owners	572	
Prime Contractor	572	
Subcontractors	573	
The Design and Engineering Professionals		573
Insurance Companies	573	
Financing Parties	574	
Construction Management	574	
Licensure of Contractors	574	
Forms of the Owner-Prime Commercial Contract		575
Fixed Price	575	
Cost-Plus	575	
Guaranteed Maximum Price	576	
The Owner's Implied Warranty as to Its Plans and Specifications		576
The Construction Contract: The Essential Terms		577
Defining the Scope	577	
Bid	577	
Schedule	577	
Time Is of the Essence	577	
Delays	578	
Liquidated Damages	578	
Early Termination of the Contract		578
Change Order	579	
Indemnity and Insurance	579	
Payment and Retention	579	
Construction Defects	580	
Filing a Construction Defect Lawsuit		580
Case Management Orders (CMO)		581
A Special Form of Contract: The Home Improvement Contract		581
Mechanic's Liens	582	
Permanent Improvements	582	
Property Subject to a Mechanic's Lien		582
Who Is Affected by Mechanic's Liens?		583
Tenant's Leasehold Improvement		583
Public Policy Behind Mechanic's Liens		584
Mechanic's Lien Requirements	584	
Notice to Owner	584	
Recording the Mechanic's Lien		585
Priority of Mechanic's Liens		585

CASE 17.1	<i>Bob DeGeorge Associates v. Hawthorn Bank</i>	586
	Timely Foreclosing on the Mechanic's Lien	587
	Release of Mechanic's Liens	587
	Stop Notices	588
	Payment and Performance Bonds	589
	Payment Bonds	589
	Performance Bond	590
	<i>Key Terms and Concepts</i>	590
	<i>Review Questions</i>	590
	<i>Practice Problems</i>	591
	<i>Chapter Assignments</i>	591
	<i>Glossary</i>	613
	<i>Index</i>	627