Supplementary Statement of the Task Force on Real Property Law Curriculum November 8, 2008

Out of concern over the current status of the basic real property course in law schools, the Real Property, Trust and Estate Law Section of the ABA created a Task Force on Real Property Law School Curriculum. The concern was based upon the widespread perception that current property courses have increasingly deemphasized the theories and concepts of property law that are actually used by lawyers practicing in the field. As a consequence, law schools are failing to produce graduates who are sufficiently familiar with the essential principles of real estate law to be useful to the public, thereby forcing law firms to spend considerable time and effort making new associates competent in this field.

The Task Force, with the assistance of the American Bar Foundation, undertook to investigate the current state of the property course in law schools. It issued its First Report in the September/October 2007 issue of Probate and Property.

That report showed that that the property course had generally diminished from its former allotment of six units down to four (or sometimes five) units; this trend was particularly pronounced in higher tier institutions. As course credits have been reduced, the topics of real estate transactions and real estate finance ("conveyancing") have suffered the most (together with a slight reduction of coverage of the area of land use), whereas attention to estates in land (including future interests) has comparatively increased. Many property professors regretted the shrinkage of conveyancing topics, and also expressed their preference for devoting less time to estates, contrary to what in fact is occurring. Commercial real estate transactions also received relatively slight attention, despite its obvious importance in practice. (Charts supporting these conclusions all appear in the Probate and Property Article.)

The Task Force then made five Recommendations:

- 1. That property coverage not be reduced below its traditional six units. Given the increasing complexity of transactions as well as the significant inclusion and growth of new fields affecting real estate practice, the Task Force believes that six units of coverage remains essential, whether they are offered in one integrated first course or divided between that and advanced (but not completely elective) advanced courses.
- 2. That coverage of the rules of estates in land and future interests not be overemphasized. Their lack of relevance to contemporary real estate practice and dependence upon a methodology that is far more historical than analytical or policy-based mean that much of the class time these topics consume could be better allocated elsewhere. The same de-emphasis of this area should be announced by the bar examiners as well.
- 3. That real estate transactions and real estate finance not be completely eliminated from first year property courses, even where the credit value of that course has been reduced. The significance and centrality of topics such as priorities and liens is too important to go entirely uncovered until a later, specialized course is (possibly) taken. Furthermore, as skills training becomes increasingly integrated into the first year curriculum, the area of real estate transactions provides an ideal opportunity for such activities
- 4. That credit reduction for property courses not lead to a reduction of scholarship in the field. Too many of those who responded to the Task Force's questionnaire indicated their interest in writing in other fields instead, despite the real need of the practicing bar for intellectual guidance and leadership in this rapidly changing area.

5. That the bar examiners discontinue their current omission of real estate development (including land use) and other contemporary issues from the scope of their exams. The Task Force believes that the bar examiners should, instead, declare their intent to cover this major area in the future, in order to make coverage of it more defensible in crowded courses.

With regard to those recommendations, the RPTE Section has unanimously voted that it "endorses the investigations, conclusions, and recommendations of the Section's Task Force on Real Property Law Curricula, as set forth in "A Study of the Law School Property Curriculum in ABA Approved Law Schools" and as set forth in summary form in R. Bernhardt & J. Martin, "Teaching the Basic Property Course in U. S. Law Schools," Prob. & Prop. (Sept./Oct. 2007)." The Executive Committee of Real Property Law Section of the State Bar of California has "voted enthusiastically to endorse the recommendations of the Task Force on Real Property Law Curriculum". A similar endorsement was given, in October 2008, by the American College of Mortgage Attorneys and is currently being considered by other relevangt organizations.

The Task Force has since made a further investigation designed to gather relevant information from young lawyers who identified themselves as practicing in the real estate area. Generally, that survey confirms the descriptions and conclusions drawn from the questionnaire earlier sent to law school professors, which results constituted the basis for the Task Force's First Report, which is to say that students perceived being taught the same subjects, with the same comparative emphasis, as their professors had reported teaching.

In particular, 72.3% of these young lawyers reported that their first year property course did not cover "real estate financing", and only 27.7 described it as emphasized or being given some attention. They reported that "purchases and sales/residential" and "purchases and sales/commercial" was not covered in 52.2% and 62.3% of their courses, respectively (the topics being "emphasized" or given "some attention" in 47.8% and 37.7%). Conversely, "forms of ownership" was reported as being emphasized in 81.5% of courses, getting some attention in 17.3%, and not covered in only 1.2%, all of which tends to mirror the responses given to us by the professors.

Furthermore, the same differences between high and low ranking schools as to many conveyancing topics appear, being reported by young lawyers as covered in near 90% of 4th tier schools and only 40-50% of the top twenty schools. Students in lower tier schools were also more likely to have taken courses that emphasized landlord/tenant matters and less likely to have taken courses that covered land use than those in upper tier schools. Unsurprisingly, a majority felt that real estate transaction topics should have received more attention than they did, along with, to a lesser extent, land use and landlord/tenant, and this was an attitude that cut across all initial property courses, regardless of school ranking. Only 20-30% of these lawyers reported that their coverage of transactional topics "prepared me for practice" or even "gave me a foundation", whereas roughly 18% believed that "coverage was useless" (45-61% reporting the topics as "not covered"). Different numbers appeared as topics in upper level courses, but it was impossible for the Task Force to generalize as to them, given the great diversity of such advanced courses. (It also was impossible for the Task Force to conclude how parties responding felt about future interests, since the topic as described in the questionnaire "forms of ownership" may have been taken by them to also comprise choice of entity considerations.)

The Task Force believes that this additional study provides further support for the recommendations stated in its First Report and repeated in this Second Report. It urges bar organizations, law schools, and bar examiners to seriously consider its recommendations so as to make the current property course a more gratifying and valuable learning experience.