

A Common Course in Real Estate Law

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ABSTRACT

1. Real Estate Law consists of several subjects: (a) different interests in land, conveyancing, mortgaging, registration, tenancy, easements and other encumbrances and (b) eminent domain, survey law and planning. A more broad definition would perhaps also include subjects such as environmental law and tax law. Most surveyors are educated in domestic law in these areas. This papers proposes a course that contains only the subject under (a) above.
2. Comparing between different legal solutions strengthens the understanding of the laws in one's own country. Participation from surveyors in international projects are common today and knowledge of the legal situation in the project land enhances the surveyor's possibilities to perform well. The conclusion is that education in international Real Estate Law should be provided in the academic surveyor's programmes.
3. Courses in Real Estate Law have been arranged for several years at for instance the Swedish surveyor programmes. However good these courses may be, their quality would be increased if an international co-operation could be established within FIG.
4. The article outlines what such a co-operation could look like and talk about the ultimate goal, namely an standardised international course, certified by FIG and a necessary part of the internationally working surveyor's CV.

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1. INTRODUCTION

This paper will demonstrate and discuss how a course in International Real Estate Law for surveyor students can be designed. At the end, the possibilities to utilize FIG for co-operation between teachers in this field will be examined, but this paper is not a formal proposition.

The definition of such a course is discussed below, in section 3, but something should be said about international studies already here. I have no doubts that Land Administration in an international perspective is more relevant for surveyors than the closer subject of Real Estate Law. I also believe, however, that the private law parts of Real Estate demand substantial efforts from teachers and students if the basic mechanisms of ownership and credits shall be understood at all. My conclusion is therefore that a common FIG course in International Land Administration – covering subjects such as Survey Law, Planning Law and Expropriation – should be promoted as well, but this will not happen in this article.

2. REASONS

As I understand it, the majority of education programmes around the world for surveyors dedicate parts of their curricula to law, including Real Estate Law, at least in a broad sense. The proportion for Private Law varies of course, but the basic elements ought to be known by surveyors, with the exception of extremely technically oriented specialists.

The perception of a surveyor here is one who deals so much with land matters, that knowledge of basic Real Estate Law – land definitions, registration, mortgages, other encumbrances and the legal protection of ownership – is necessary.

2.1 International Work

The global interest for land management has clearly been rising during recent years. Another trend is that the importance of title to land is being more and more acknowledged as a necessary foundation for the development of countries. This has led to an increased demand for land and property development, from developing and transition countries and from donor and aid organisations. Surveyors and land administration specialists are therefore sought after.

It is – or at least should be – obvious that a land specialist who is sent on a mission to a foreign country – will do a better job with a basic knowledge of this country's land laws. In reality it is however doubtful whether this normally is the case. I believe that many experts land in an unknown terrain will have to spend a lot of time getting to understand the legal environment in which they are to perform. This is a waste of resources, but even worse things may happen. The specialist may react by proposing the easy solution that the laws of the

country visited should be adapted to fit into the specialist's own views, similar of course to the laws of the specialist's native country.

The present good possibilities for jobs in the international field is something that could be stressed when marketing survey education. The universities can underline this by offering courses on international subjects.

2.2 Comparisons

Comparative studies of law are useful also for the understanding of one's own system. Studies of this kind present alternative solutions and sometimes explain the national law and how certain rules are connected to and dependent on each other.

The best and most natural way to use the comparative perspective is to address the students with a certain problem and ask them to solve it in different national law systems. This also makes it possible to evaluate different solutions with regards to owners, creditors or the general society.

The comparative perspective also makes it simpler to understand foreign law. My experience is that an explanation of, for example, French or English easement law, is best started with a briefing and check-up on Swedish rules. The subject is better put into its context with this method.

2.3 Abilities

Last, but not least, of the reasons for studying international Real Estate Law is that studies of this kind strengthen the student's ability to read and understand complicated texts in a foreign language. Even if the expert, described in 2.1 above, should land in a totally strange legal environment, training in understanding will help him to adapt to the unfamiliar situation. A general skill of this kind is of course useful in other fields than law.

3. COURSE DESIGN

After giving the reasons, I now turn to what the course should look like. It must be emphasized that I am discussing a common standard course for students who live outside the Common Law area. For American, English and other students from Common Law countries an International course will be different.

Something must also be said on the aims of the course. They are partly described in section 2 above; those reasons ought to be promoted by the course and this will reflect its design. It is also meaningful to try to describe the aims as *skills* that the course will give its students. In a narrow sense I think that register information is a key here. I would be satisfied if a student is able to understand the contents from a normal Certificate of Title (ownership and encumbrances) and at the same time is aware of overriding interests and other legally important matters that can't be seen in a certificate.

3.1 Size

Under the circumstances that are described above and below, I think a course with a size of ¼ semester (= 7,5 ECTS) could be of sufficient size. Few national programmes can make room for more than this, I guess, but with less space than this a course can't be more than just a superficial introduction.

3.2 Limitations

Another aspect on size is how wide the course ought to be. As said in the Introduction, this paper discusses a course that deals with private law, and sees Land Administration and Public Real Estate Law as good subjects for another course. There are definitely still some border cases. Expropriation (eminent domain) and takings in general are of course important for ownership and in that sense private in its character. I do not find any problems to include them in a Private Law-based course other than that these subjects take valuable space from other parts.

3.3 Systems or Geography?

Compared to other fields of Private Law, Real Estate Law is a national subject. The Rome Treaty does not include harmonization of this field (but certain parts, connected to the credit market, has been affected). Even the old and well-established cooperation between Nordic countries makes an exception for Real Estate Law.

For educational reasons it is however common to arrange countries and to create groups of legal families. Selections of this kind has been done several times by comparative law experts (see Zweigert & Kötz 1998 chapter 5). One example is René David's five legal families: Western, socialist, Islamic, Hindu and Chinese Law, which seems to follow general political and cultural differences.

Zweigert and Kötz themselves divides the legal systems into four groups: Romanistic, Germanic, Nordic and Common Law. This grouping is based on legal style and they are aware that certain big non-European systems must be considered as well.

Personally, I think that it is possible just to divide the Real Estate Law into one Common Law group and one "Continental". Division lines between the groups and similarities within them, such as the importance of code-making, the role of equity and diversity of tenancy forms, justify this.

I do not think that this division should generate the main pattern of the course. A systematic division, described in the following section, is to be preferred, especially if foreign law is to be compared with national. Inside each sub-subject it is, however, probably often useful to to apply the division between Common Law and "Continental" Law.

3.4 Arranging Subjects

It is fairly simple to point out which subjects that should be studied, once Real Estate Law has been limited to private law. More difficult is to prescribe the best order in which to present them. In the figure below, the order in three books (the four to the left are treatises and the last two case books) on English law and three on American is presented.

All six books deal with general Real Estate Law in the Common Law area. Some of the categories do not need any explanation, but something must be said here on "Land definition" and "ownership". With "Land definition" I mean how of a piece of land is defined while "Ownership" primarily refers to the different legal estates in land (a typical Common Law problem). When subjects are crossed over, it says that they are not treated in that particular book.

Stevens & Pearce (UK)	Cheshire & Burn (UK)	MacKenzie & Phillips (UK)	Stoebuck & Whitman (US)	Bruce & Ely (US)	Donahue, Kauper & Martin (US)
Land definition	Land definition	Land definition	Land definition	Leases	Land definition
Ownership	Ownership	Conveyancing	Ownership	Land definition	Conveyancing
Conveyancing	Leasing	Registration	Leases	Ownership	Ownership
Leases	Easements, covenants	Leases	Easements, covenants	Easements, covenants	Leases
Easements, covenants	Mortgages	Ownership	Conveyancing	Conveyancing	Easements, covenants
Mortgages	Conveyancing	Mortgages	Registration	Mortgages	Registration
Registration	Registration	Easements, covenants	Mortgages	Registration	Mortgages

As demonstrated, it is common to start with Land definition and Ownership, but even in this small group exceptions are to be found. The majority also tends to put registration at the end. An order such as the one Stevens & Pearce have seem to be favoured and probably quite good for law students from England, but is it a good order for the course I am discussing?.

If one looks the most likely practical uses of international Real Estate Law for a surveyor, registration and land definition are probably the most important among the subjects in the table. These two subjects will also stand out if one searches for connections to survey and planning law.

4. MATERIAL AND ACTIVITIES

4.1 Language

The big question, so far not discussed, is what language or languages that can be used on a course like this. If I start with just a Swedish outlook, our high school curricula and university demands limit the foreign studies to the English language (plus the Scandinavian

languages). We cannot expect a whole class to understand neither French nor German, even if everyone there can read *one* of those languages. I am sure that conditions are better in some countries, but when talking about a *common* course, I think limitation to English is necessary. For students with English as their native tongue, French, Spanish or German texts would probably be useful, but I know too little of what there is to be expected in those countries.

Transition countries and developing countries are often better described in English than the industrialised countries. The supply of English texts on Russia is sufficient, but I am still looking for good descriptions of Germany and Japan.

4.2 Treatises and Casebooks

The common European textbook, used in law courses is the treatise. With this I mean a description of the subject, aimed at explaining it to the reader. Legal commentaries would perhaps be a proper synonym. The sizes and ambitions of such books varies. Books in English that describes Real Estate Law in other countries are rare. A sometimes useful category are books that are written to help buyers of real estate in tourist areas. A good and well-written example on this is Henry Dyson's "French Real Property and Succession Law". Another kind – generally not as good – are short overviews, often published by big accounting firms, and stressing the commercial aspects.

The alternative, preferably used in the USA, is the casebook, an anthology with edited cases from the courts, forms, articles from law journals and other material. They are used as instruments for class-room teaching, normally in conjunction with the socratic method.

With the limited size and ambition for this course, a casebook is out of the question. Some studies of cases are still very illustrating and useful, I think.

4.3 Internet

There are today excellent sites on the Internet for searches on legal matters. Most countries provide free governmental information, which means that statutes and cases are quite available. The biggest problem is how to overview the sites and how to find texts in English on non-English speaking countries.

5. ACTIONS

I am not addressing this paper as a proposition to Commission 2, but rather trying to start a discussion and to get responses. Still, it is worth saying something about what could be done in order to promote international courses of this kind.

5.1 Mutual Assistance

I have already complained about the difficulties to find material on certain countries. I could also add that the abundance of books and other material in English on Common Law

countries also creates problems. Tips and recommendations between countries would certainly be very useful here, based on the assumption that I, for instance, easily would be able to pick out English texts on Swedish real estate, compared to what a foreign colleague could do on Sweden. A network or a website with this aim would be excellent to have.

5.2 Virtual Academy

The special advantages with international co-operation makes International Real Estate Law a good subject for the already existing Virtual Academy in FIG.

5.3 Standardisation and Certification

International job opportunities in Land Administration and other legal fields were mentioned above. For such positions CVs are important as well as the fact that staff's merits weigh heavily when tenders on development projects are evaluated. A certified course fits in here. FIG could prescribe standards and allow universities who follow them to use the certification. The development of the course (in all aspects already described) could be financed by a fee, paid for the certification.

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BIOGRAPHICAL NOTES

Ulf Jensen, b. 1952, is professor in Real Estate Information Technology at the department of Real Estate Science at Lund Institute of Technology at Lund University, Sweden. He took his Master of Law degree at Uppsala University in 1981 and he was a tutor in Private Law there 1984–2000. He was Managing Director of the Institute for Real Estate Research at Uppsala University 1994–1999. Ulf Jensen has worked as a consultant with the Central Board of Real Estate Data and the National Land Survey of Sweden since 1989, mainly in projects concerning computerisation of land registers, in Sweden as well as in Malaysia, Botswana, Lithuania and Russia. As a teacher has pioneered courses in International Real Estate Law. He is the author of "Panträtt i fast egendom" (Mortgages in Real Estate), the leading Swedish treatise on this subject with 20,000 copies and five editions since 1989.