

ASPEN CASEBOOK SERIES

MALLOY  
SMITH

REAL ESTATE  
TRANSACTIONS  
Problems, Cases,  
and Materials

*Fourth  
Edition*



Wolters Kluwer  
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ASPEN CASEBOOK SERIES

# **Real Estate Transactions**

**Problems, Cases, and Materials**

**Fourth Edition**

**ROBIN PAUL MALLOY**

**E. I. White Chair and Distinguished Professor of Law  
Kauffman Professor of Entrepreneurship and Innovation  
Director, Center on Property, Citizenship,  
and Social Entrepreneurism  
College of Law, Syracuse University**

**JAMES CHARLES SMITH**

**John Byrd Martin Professor of Law  
University of Georgia**



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In loving memory of *Celia (Erzilia Sacco) Malloy*, born September 3, 1921 to Angelina Cardarelli and Rocco Sacco, both of Italy (Lazio and Basilicata regions, respectively); died, April 5, 2012.

R.P.M.

For Donna, Nicole, and Kristin in gratitude for your gifts of love and understanding.

J.C.S.



# *Preface*

In this book we focus on three goals.

First, we place transactions in their market context, carefully explaining how various sales and finance markets work. Once students understand how markets operate—how banks, developers, and investors make money—they can then understand what drives transactions: the motivations of the parties, the risks involved, and the ways that parties use the law to advance their interests.

Second, we integrate issues of professional responsibility into our materials, illustrating the stresses of legal practice and the areas in which real estate attorneys most often encounter trouble. Because we want students to see that professional responsibility is not merely an abstraction, we weave discussions of ethical problems into the study of actual cases.

Third, we include problem sets throughout the book to enhance the learning of legal analysis and lawyering skills. Our goal is to balance theory and practice by emphasizing what successful transaction lawyers do on a daily basis.

Our overarching goal is to make the materials comprehensible yet challenging. We assume the student knows nothing beyond the rudiments of property and contract law. Each chapter includes text that highlights the pertinent general rules and transactional considerations. In addition to the text, we present cases and problems that illustrate how the key rules play out in practice. Our selection of cases is designed to highlight the transactional nature of underlying legal problems and the economic dimensions of the parties' exchange. The problems reinforce and test the scope of principles addressed in the text and in the cases. We've also found that the problems provide a rich starting point for the discussion of lawyering strategies and transactional tactics.

Our materials also emphasize the way that modern real estate transactions cross a wide range of subject matters within the standard law

school curriculum. The student will encounter problems that might have arisen in many other courses, among them contracts, commercial law, torts, corporations or business organizations, constitutional law, land use, and environmental law. As is true throughout the book, our goal is to help students understand how real estate transactions fit into a “big picture” so that they can begin to appreciate the rich multidimensional context in which they will practice.

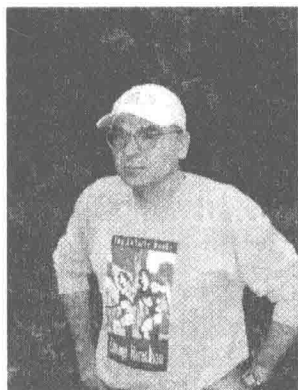
This fourth edition of the book retains the streamlined coverage made popular in our third edition, making it possible to use the entire book in one three-credit hour course. In this edition, we’ve included new cases and the latest information on law, markets, and ethics in every chapter. The result is a better and leaner casebook that professors and students will find comprehensive, understandable, and easy to use.

We could not have prepared this book without the help and support of many people. First and foremost, we thank our family members and friends. In addition, we wish to acknowledge those people who have made special contributions to the success of our project. In particular, we appreciate the continuing support of the management and staff at Wolters-Kluwer (Aspen), with special thanks to Darren Kelly, and grateful appreciation to Carol McGeehan, who had the wisdom to originally commission the first edition of our book. We likewise thank Joel Whitney for assistance with diagrams and Melissa Schreiber-Stahl, John L. Stevens, Jason Hirata, Matthew Oja, and Terance Walsh for research assistance. And finally, we thank the many people who have used our book over the years and who have taken the time to contact us to offer suggestions and comments. Their input helped us to continuously improve the book with each new edition.

We welcome your input.

Robin Paul Malloy  
rpmalloy@law.syr.edu

James Charles Smith  
jim@uga.edu



Robin



Jim

*The successful practice of law, like marathon running, requires a commitment to preparation, hard work, and the relentless pursuit of excellence.*

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## REAL ESTATE TRANSACTIONS

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