COURSE SYLLABUS + SCHEDULE

Course Summary:
An introduction to the legal mechanisms used to protect historic resources in the built environment, focusing on the legal principles underlying preservation laws, including constitutional issues related to governmental regulation of real property, as well as federal, state, and local historic preservation laws.

Instructor: Anne Nelson, 202-588-6142 (work), 214-734-8952 (cell), anelson@savingplaces.org

Office Hours: By appointment Fridays. Accessible by phone, email, and text as well.

Course Objectives:
1. To provide students with an understanding of the legal platform on which the preservation network is constructed, including a broad understanding of the relevant legal foundations for historic preservation activities; procedures of federal, state, and local historic preservation efforts; and the legal constraints on these activities and procedures.
2. To provide students with a common vocabulary and understanding of policies and programs in historic preservation at the federal, state, and local levels so they can establish a dialogue with peers and allied professionals within the field.
3. To provide students with an understanding of the legal and advocacy tools, strategies, and responsibilities of public and private organizations in the historic preservation field.
4. To provide sufficient information so students will be able to identify legal issues, know resources for information and assistance on those issues, communicate effectively with attorneys, and be stronger advocates.

Required Course Texts: Historic Preservation Law by Sara Bronin and Peter Byrne (Second Edition)
Additional readings will be on Canvas.

Course Requirements & Grading:
- Class Participation & Attendance (25% of grade)—Each student should complete assigned readings, assignments (questions & case briefs), and participate actively in class discussions.
- Mid-Term Examination (25% of grade)—A short true/false mid-term exam will be administered in class.
- Final Examination (25% of grade)—A “take home” final exam will be an essay format.
- Local Preservation Ordinance Analysis (25% of grade)—Each student will select a preservation ordinance and prepare: (a) a written summary and analysis of the local law; and (b) an evaluation of the likely effectiveness of the ordinance.
- Auditors—Auditors are expected to do all of the reading, participate in class discussion as well as the Local Preservation Ordinance Analysis. Auditors will not be required to take the midterm or final exam.

Academic Integrity:
Please read the University’s Code of Academic Integrity, which is available at:
https://next.catalog.upenn.edu/pennbook/code-of-academic-integrity/
SYLLABUS:

Week #1, Friday, January 14, 2022

Introduction to Course

Courts, Cases & How (and Why) to Write a Case Brief

Who’s Who in Historic Preservation

Brief Overview of Federal Preservation Laws

Readings:
1. United States Constitution (Note especially Article I, clause 7-8; Article II, clause 1; Article III, clauses 1-2; and the First, Fifth, and Fourteenth Amendments.)
2. Chart of the United States Courts of Appeals (with geographic boundaries)
3. About the ACHP Fact Sheet
4. What is a Case Brief?

Optional:
8. Section 106 Regulations, 36 C.F.R. Part 800
9. Identifying Standards for Review
10. U.S. v. Gettysburg – sample case brief
11. Explore achp.gov + savingplaces.org

Due: Complete and submit your student profile.

Week #2, Friday, January 21, 2022

The Federal Government’s Role in Historic Preservation

- Section 106 & 110 of the National Historic Preservation Act
- Section 4(f)
- National Environmental Policy Act
- Common Legal Challenges under Federal Preservation Laws

Guest Speaker: Elizabeth Merritt, Deputy General Counsel, National Trust

Readings:
1. National Register Designation—Bronin + Byrne, pp. 65-84
5. NEPA—Bronin + Byrne, pp. 173-188 (incl. Recent Past Preservation Network v. Latchar (Cyclorama))
6. Section 106 Regulations, 36 C.F.R. Part 800 (particularly Sections 800.1, 800.5, 800.6) (skim)

Optional:
7. Federal Preservation Laws – Comparison Chart

Due: Two questions based on reading due by email Thursday before class.
Case briefs of National Trust v. Blanck and Citizens to Preserve Overton Park v. Volpe due prior to class.

Week #3, Friday, January 28, 2022

Constitutional Law and Historic Preservation: Takings & Eminent Domain

- Fifth Amendment of the Constitution
- Regulatory Takings (Penn Central)
- Evolution of the Penn Central test (Lucas)
- Eminent Domain (Kelo)

**Readings:**

1. U.S. Constitution: Fifth Amendment (and 14th Amendment)
6. Duerksen, Christopher and Richard Roddewig, *Takings in Plain English* (skim)

**Optional:**


**Due:**

Two questions based on reading due by email Thursday before class.
Case briefs of *Penn Central Transportation Co. v. City of New York* and *District Intown Properties LP v. DC* due prior to class.

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**Week #4, Friday, February 4, 2022**

Constitutional Law and Historic Preservation: RLUPIA & Funding of Religious Properties

**Guest Speaker:** Tad Heuer, Partner, Foley Hoag LLP [to be confirmed]

**Readings:**


**Optional:**


**Due:**

Two questions based on reading due by email Thursday before class.
Case brief of *St. Bartholomew’s Church v. City of New York* due prior to class.

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**Week #5, Friday, February 11, 2022**

Constitutional Law and Historic Preservation: Due Process

- Understanding and Applying Procedural Requirements

**Public Lands Issues, Archaeology + NAGPRA**

- Antiquities Act of 1906
- Wilderness Act of 1964
- Archaeological Resources Protection Act
- Native American Graves Protection and Repatriation Act

**Readings:**

5. Wilderness Act of 1964 (selected portions)
13. *U.S. v. Díaz*, 499 F.2d 113 (9th Cir. 1974)

15. NAGPRA, ARPA + NHPA Comparison Chart

Due: Two questions based on reading due by email Thursday before class.
Case brief of *Metropolitan Baptist Church v. D.C.* due prior to class.
Identification of town/city for preservation ordinance analysis.

Week #6, Friday, February 18, 2022

The State Government’s Role in Historic Preservation
- SEPA’s
- State 4(f)’s
- State Historic Registers
- State Enabling Legislation

Midterm Review

Readings: 1. SEPA’s—Bronin + Byrne, pp. 192-208 (incl. *Architectural Heritage Association v. County of Monterey*)
2. “State Preservation Laws: Best Practices” by Julia Miller
3. State 4(f)’s—Bronin + Byrne, pp. 258
5. Pennsylvania Constitution, Article 1, Section 27.5 (skim)
7. Pennsylvania History Code, Title 37 (skim)
8. PHMC Policy for Determining Historical Significance of Local Historic Districts and Boundary Justification Pursuant to PA Historic Districts Act & Checklist to Establish a Historic District

Optional: 9. *Amici Curiae* Memorandum of National Trust et al. for *State of Connecticut, Department of Economic and Community Development v. WMC Realty, LLC*

Due: Two questions based on reading due by email Thursday before class.
Case briefs of *Architectural Heritage Association v. County of Monterey* and *Reiter v. The City of Beloit* due prior to class.

Week #7, Friday, February 25, 2022

Preservation Practice—Taking Direct Action to Save Historic Places
• Direct Action Case Studies—Union Station (Washington, DC), Shockoe Bottom (Richmond, VA), and Little Havana (Miami, FL)
• Community Outreach and Effective Advocacy

The Local Government’s Role in Historic Preservation
• Designations (generally)
• Reading an Ordinance

Midterm Exam Review

Guest Speaker: Rob Nieweg, Vice President, Preservation Services & Outreach & Attorney, National Trust

Readings:
10. A Layperson’s Guide to Historic Preservation Law, pp. 7-13

Due: Two questions based on reading due by email Thursday before class.
Case brief of A-S-P Associates v. City of Raleigh and Turchi v. Philadelphia Board of License & Inspection Review due prior to class.

Week #8, Friday, March 4, 2022

Midterm Exam

Week #9, Friday, March 11, 2022 No Class

Spring Break

Week #10, Friday, March 18, 2022

The Local Government’s Role in Historic Preservation (cont.)
• Designations (including objects and interiors)
• Effects of Local Designations & Applying the Ordinance
• Economic Hardship
• Conservation Districts + Other Tools

Readings:
3. New Construction—Bronin + Byrne, pp. 324-332 (incl. Sanchez v. Town of Beaufort)
5. Designation as an Object—Merriam v. Philadelphia Historical Commission (Dream Garden) (Commonwealth Court, 2001)


8. **Conservation Districts**—Bronin + Byrne, pp. 344-345

**Optional:**

9. National Trust’s Brief of *Amici Curiae* in Support of the City of Chicago (March 5, 2013)
10. Amicus Brief for *Powell v. City of Houston* (Aug. 6, 2020)
11. Zaruba Case Materials

**Due:** Two questions based on reading due by email Thursday before class.

Case brief of *Sanchez v. Town of Beaufort* and *Zaruba v. Village of Oak Park* due prior to class.

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**Week #11, Friday, March 25, 2022**

**Why Old Places Matter—The Right to Preserve and the Development of Preservation Laws**

• Relationship to Other Themes of the Class—Property, Societal Rights, Religion

**Legal Issues with Confederate Monuments**

**Guest Speaker:** Thompson Mayes, Chief Legal Officer and General Counsel, National Trust

**Readings:**

2. National Trust’s Statement on Confederate Monuments (June 18, 2020)
3. National Trust’s FAQ on Confederate Memorials
5. Executive Order on Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence (June 6, 2020)
6. Executive Order on Building and Rebuilding Monuments to American Heroes (July 3, 2020)
10. National Monument Audit, Monuments Lab

**Optional:**


**Due:** Two questions based on reading due by email Thursday before class.

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**Week #12, Friday, April 1, 2022**

**Federal and State Tax Incentives**

• Intro to Federal Historic Tax Credit
• Legal Structures for Syndication of Credit
• Tax Reform Changes to HTC/Saving the Tax Credit
• State Tax Credits, including the Pennsylvania credit

**Final Exam Discussion**

**Readings:**

1. Bronin + Byrne, pp. 603-632
3. NPS Statistical Report and Analysis for Fiscal Year 2016
4. NPS Annual Report for Fiscal Year 2020
5. One-pager on the Secretary’s Standards for Rehabilitation
6. IRS Procedures (12/2012)

**Optional:**

8. Rehab Tax Credit ATG from IRS
Due: Two questions based on reading due by email Thursday before class.

Week #12, Friday, April 8, 2022

Preservation Easements + Other Preservation Real Estate Tools

Guest Speaker: Ross Bradford, Deputy General Counsel

2. “Easements that Protect the Built Environment” (excerpt from The Conservation Easement Handbook)
3. Fisher-Kahn House Deed of Preservation and Conservation Easement

Due: Two questions based on reading due by email Thursday before class.
Case brief of Herman v. Commissioner due prior to class.

Week #13, Friday, April 15, 2022

Historic House Museums: Issues and Legal Considerations
- Restrictions on historic sites
- Co-stewardship and Shared Use Agreements
- Legal Considerations for reimagining and reuse of historic sites (art installations, artist-in-residence programs, event rentals, filming, etc.)

Final Exam Discussion + Review (Cont.)

Readings: 1. Bronin + Byrne, pp. 633-658, 661-681
4. Artist Agreement Template (skim)
7. Malone-France, Katherine, When Buildings and Landscapes are the Collection, Forum Journal (Summer 2014)

Optional: 8. Sample Co-Stewardship Agreements
9. Sample Shared Use Agreements

Due: Two questions based on reading due by email Thursday before class.
Preservation ordinance analysis and brief class presentations.

Week #14, Friday, April 22, 2022

Local Ordinance Presentations

Historic Preservation Law Tour of Philadelphia

Friday, April 29, 2022 No Class

Reading Day

Friday, May 6, 2022 No Class

Final Exams Due via E-Mail by 5:00 PM EST