

Table of Contents

Course Description	vii
Homework Assignment Schedule	xi
Course Schedule	xiii

SECTION 1

Part 1. Legal Specialties Requiring Appraisal Services

Preview Part 1.....	1
Real Estate	5
Litigation Appraisals	5
Sources of Litigation Appraisal Assignments	5
Appraisal Standards	10
Properties Commonly Containing Non-realty Value.....	12
Review Part 1.....	13

Part 2. Effective Communication with the Trier of Fact

Preview Part 2.....	15
Advocate a Value Opinion, Not the Position of a Particular Litigant.....	17
Multiphase Employment Arrangements Help to Avoid Advocacy.	17
The Trier of Fact is the Appraiser's Audience	18
Prepare Exhibits for the Trier of Fact to Review During Testimony.	18
Miscellaneous Pointers.....	19
Review Part 2.....	23

Part 3. Environmental Issues

Preview Part 3.....	25
Recognizing Indicators of Possible Environmental Contamination	27
Stigma	32
Analysis of an Expert's Report for Reliability	32
Alternative Methods of Quantifying Contamination's Impact on Property Values... ..	36
Other Environmental Issues Arising in Litigation Cases.....	48
3.3 Problem. Endangered Species	53
Review Part 3.....	59

SECTION 2

Part 4. Tax Appeal Issues

Preview Part 4.....	61
Mass Appraisal Techniques.....	63
Real Estate Tax Expense.....	63
Three Phases of a Tax Appeal.....	65
USPAP and the Code of Professional Ethics of the Appraisal Institute.....	65
Role of the Appraiser.....	65
Initial Tax Assessment Review.....	66
Equitable Tax Assessments.....	71
Assessed Value Versus Market Value.....	72
Valuation Issues Regarding Ad Valorem Tax Assessments.....	72
Loading the Capitalization Rate.....	74
Review Part 4.....	81

Part 5. Construction Defects

Preview Part 5.....	83
Construction Defects.....	87
Conclusions.....	89
Review Part 5.....	99

SECTION 3

Part 6. Bankruptcy and Deficiency Judgments

Preview Part 6.....	101
Automatic Stay Provisions.....	103
Bankruptcy Petitions.....	105
Deficiency Judgment.....	113
Review Part 6.....	117

Part 7. Fraud, Misrepresentation, and Breach of Contract

Preview Part 7.....	119
Fraud Versus Misrepresentation.....	121
Principles of Contract Law.....	123
Burden of Proof and Damages—Criminal Versus Civil Litigation.....	124
Review Part 7.....	131

Part 8. Reviewing Appraisals for Litigation

Preview Part 8..... 133
Appraisal Standards 135
Appraiser Credibility..... 137
Real Estate Appraisers as Experts..... 137
Appraisers Who Review Other Appraiser’s Work..... 138
Review Part 8..... 143

SECTION 4

Part 9. Miscellaneous Litigation

Preview Part 9..... 145
Divorce Assignments 147
Income, Gift, and Estate Tax Laws..... 148
Partition Litigation 149
Insurance Litigation 149
Private Disputes 150
Appraiser Liability 151
Regulatory Takings 153
Review Part 9..... 161

Part 10. The Appraiser as Consultant

Preview Part 10..... 163
Consulting Assignments..... 165
Land Use Issues 166
Mediation and Arbitration 167
Review Part 10..... 169

Part 11. Course Review

Preview Part 11 171
Advocacy 173
Effective Communication with the Trier of Fact—Testimony..... 173
Environmental Issues 173
Tax Appeal Issues 175
Construction Defects 175
Bankruptcy and Deficiency Judgments..... 176
Reviewing Appraisals for Litigation 176
Miscellaneous Litigation 177
Review Part 11..... 179

Bibliography

Books and Articles 181

Overview

Course Description

Litigation Appraising: Specialized Topics and Applications is one of three courses in the Professional Development Program designed to provide appraisers with the educational foundation needed to engage in litigation valuation work. This two-day course provides a broad overview of numerous specialized topics involving areas of the law where the valuation of real estate is frequently an issue.

Examples of these topics include environmental contamination, ad valorem tax assessments, construction defects, bankruptcy, fraud and misrepresentation, income and estate tax disputes, and equitable distribution in divorce cases, among others. Participants will gain an understanding of the terminology and concepts involved in providing litigation-valuation services in these and other specialty areas. Moreover, upon completion of the course, real estate appraisers will be better informed about the many opportunities available for expanding their practices in the area of litigation valuation.

Good attorneys are experts at rules of evidence and can be masters of persuasion, but they are seldom well versed in real estate, let alone real estate values or valuation methodologies. Consequently, the importance of the appraiser's role in educating the attorney about real estate-oriented issues cannot be underestimated. When real estate values or market conditions constitute the primary issue of fact in a case, the ultimate outcome depends, to a great extent, upon the real estate experts' testimonies. The expert whose analysis and reporting of the real estate issues and values in question is most credible, and whose opinion is most clearly and convincingly communicated, will likely exert the greatest influence on the trier of fact. Through practice problems and group discussion questions, participants will apply these new concepts and address how to best handle valuation and reporting issues in a professional setting.

An underlying theme of the course is that strict compliance with the applicable appraisal standards establishes a minimum standard for appraisal analysis and reporting. Failure to comply with appraisal requirements can be presented as evidence of negligence in appraiser liability litigation. Part 9, detailing the appraiser's role in the context of a litigated case, discusses the review of other appraisers' reports for compliance with applicable appraisal standards and theoretical and mathematical errors.

Upon successful completion of the three courses that make up the litigation program (*Condemnation Appraising: Principles and Applications*, *Litigation Appraising: Specialized Topics and Applications*, and *The Appraiser as an Expert Witness: Preparation and Testimony*) and passing the related program exams, Designated members will be placed on the Program's Registry. For more information about the program, go to the Appraisal Institute's Web site: www.appraisalinstitute.org. Choose "Education" from the menu and click on "Professional Development Programs" under "Your Career."

Note. Participants who complete courses in a *Professional Development Program* represent that they have completed the program's curriculum and passed the examinations. Participants may not represent themselves as having a specialization, certification, competency, or expertise based solely on the successful completion of the program. The program provider does not assume any duty to the public for the services.

USPAP References in this Course

All references in this course to the Uniform Standards of Professional Appraisal Practice are taken from the 2018-2019 edition (Washington, D.C.: The Appraisal Foundation).

Learning Enhancements

The course has been designed with a variety of elements to enhance your learning experience.

- **Preview.** To give you a taste of what is to come, you will find a Preview page that begins each Part. Included on the Preview page is a brief overview of the content and learning objectives to consider as you move through the content and learning tips that will assist you in understanding the information you're about to learn.
- **Learning Objectives.** Each learning objective covers essential information you need to know to fully understand the concepts in the course. Look them over before the Part begins so that you have a frame of reference as you move through the material. At the end of each Part, reread the objectives. Are you able to do what is stated? If not, this is the time to ask your instructor for help or review the concepts that you do not understand.
- **Examples, Problems, and Discussion Questions.** Supplementing the discussions, we've included examples and problems to help you visualize and practice what you are learning.
- **Review.** Each Part concludes with a review. Included in the review are the learning objectives and key terms and concepts that have been covered. Also included are recommended readings that will reinforce what you have learned in class.
- **Solutions booklet.** This booklet contains solutions to the problems worked in class. Please use the solutions booklet as it is intended. The problems provided in the Course Handbook will help you to comprehend and review the content necessary to pass the final exam. It is in your best interest to check solutions only after you have challenged the questions.

Classroom Guidelines

To make the learning environment a positive experience for everyone attending, please follow these guidelines when class is in session:

- 100% attendance is required. No exceptions.
- Limit use of computers to classroom projects.
- Communicate with business associates during break time instead of class time.
- Put away reading materials such as newspapers and books that are not used in class.
- Silence cell phones.
- Please do not record the lectures. Recordings are not permitted.
- Refrain from ongoing conversations with those seated near you and other distracting behavior.

General Information

- **Calculators.** A financial calculator is required. The accepted model used in the course is the HP-12C. **Important Note.** Laptops, cellular phones, tablets, iPads, wearable technology (smart watch, Apple Watch, Google Glass, etc.) and other devices that can store data or connect to the Internet are **NOT** permitted during the exam. In addition, all watches, wallets, bags, and purses must be removed and stored out of reach prior to taking the exam.

For additional help, go to the “Using a Financial Calculator” section of the Appraisal Institute’s Web site: <http://www.appraisalinstitute.org>

Choose “Education” from the menu and then click on “Using a Financial Calculator” under “Education Resources.”

- **Breaks.** There will be two 10-minute breaks during the morning session and two 10-minute breaks during the afternoon session unless noted otherwise by the course sponsor. The lunch break is one hour.
- **Attendance sheets** will be distributed during class to verify your attendance during the morning and afternoon sessions. 100% attendance is required.
- **Certificates of completion** will be e-mailed after completion of the course, and attendance during the entire course is required.

Recommended Texts

- J.D. Eaton, MAI, SRA, *Real Estate Valuation in Litigation*, 2nd ed. Chicago: Appraisal Institute, 1995.

Note. Table 23.1 on Page 532 of this textbook needs to be updated. Canon 6, which is shown in the table, has been deleted from the Code of Professional Ethics of the Appraisal Institute.

- Jeffrey A. Johnson, MAI, and Stephen J. Matonis, MAI, *Applications in Litigation Valuation: A Pragmatist's Guide*. Chicago: Appraisal Institute, 2012.

Homework Assignment Schedule

Evening of Day 1

Required reading

- Review Parts 1–5 in the Course Handbook.
 - Part 1. Legal Specialties Requiring Appraisal Services
 - Part 2. Effective Communication with the Trier of Fact
 - Part 3. Environmental Issues
 - Part 4. Tax Appeal Issues
 - Part 5. Construction Defects

Recommended reading

- Additional readings covering information that was discussed in Day 1 of the course can be found in *Real Estate Valuation in Litigation*, 2nd ed., P. 503–529, and in *Applications in Litigation Valuation: A Pragmatist's Guide*, P. 11–19.

Required reading

- Read Parts 6–10 in the Course Handbook.
 - Part 6. Bankruptcy and Deficiency Judgment
 - Part 7. Fraud, Misrepresentation, and Breach of Contract
 - Part 8. Reviewing Appraisals for Litigation
 - Part 9. Miscellaneous Litigation
 - Part 10. The Appraiser as Consultant

Optional reading

- Additional readings covering information to be covered in Day 2 of the course can be found in *Real Estate Valuation in Litigation*, 2nd ed., P. 445–502, and in *Applications in Litigation Valuation: A Pragmatist's Guide*, P. 189–221, 243–258, and 279–298.