CHAPTER ONE

INTRODUCTION AND SOURCES OF REAL ESTATE LAW

OBJECTIVES:

1. To introduce the student to the sources of real estate law, the topics covered in each source and where to find the sources
2. To introduce the student to the concepts of legal reasoning, interpretation of statutes and *stare decisis*
3. To help the student understand the costly significance of knowing and understanding real estate law

RESOURCES:

Alexander, "History as Ideology in the Basic Property Course," 36 J. of Legal Educ. 381-89 (Sept. 1986).
Anderson, “Comparative Perspectives on Property Rights: The Right To Exclude,” 56 J. Legal Educ. 539 (2006).
Blackstone, *Commentaries on the Laws of England, Book II, Of the Rights of Things*, Baton Rouge, LA: Claitor's Publishing Division.
Cribbet, "Property in the First Year," 18 J. of Legal Educ. 55 (1965).
Haar and Liebman, *Property and the Law*, Chapter 1.
Hamilton, “The Ancient Maxim Caveat Emptor,” Yale L. J. Vol. XL No. 8, 1931, 1133-1187.
Jennings, “The Year in Review 2006: Best of the Courts 2006 (in the humorous sense),” 35 Real Est. L. J. 586 (2007).
Madison, “The Real Properties of Contract Law,” 82 B.U.L. Rev. 405 (April 2002).
Nash, “Packaging Property: The Effect of Paradigmatic Framing of Property Rights,” 83 Tul. L. Rev. 691 (February 2009).
Palais Partners v. Vollenweider, 660 N.Y.S.2d 272 (City Civ. Ct. 1997).
Smith, “Mind the Gap: The Indirect Relation Between Ends and Means in American Property Law,” 94 Cornell L. Rev. 959 (May 2009).

LECTURE OUTLINE:

I. Sources of Real Estate Law

Use FIGURE 1.1 (the pyramid) to help students follow along in your discussion of the sources of real estate law – POWERPOINT SLIDE AVAILABLE

A. U.S. Constitution

1. Found at the base of the pyramid because it is the basis of all other laws
2. Very general and provides the legal constraints within which the other laws must fall
3. Examples of U.S. Constitutional provisions affecting real estate:

a. Fourth Amendment – covers unlawful searches and seizures and the issuance of search warrants for the search of property
b. Fifth Amendment – due process protections

See e.g., *Fuentes v. Shevin,* 407 U.S. 67 (1972); debtors are entitled to notice before their property is taken.

c. Fifth Amendment – eminent domain procedures and protections

See e.g., *U.S. v. Causby*, 328 U.S. 256 (1946) (Chapter 3) – Farmer whose chickens were being killed and having nervous break-downs because of noisy Air Force jets landing near the Causby farm was entitled to compensation for a taking.

d. Fourteenth Amendment – same language as the Fifth Amendment but applicable to states; also includes the Equal Protection Clause.

See, e.g., brokers and steering – Brokers' and agents' control of racial composition of neighborhoods by steering potential buyers to prevent desegregation is an example of an equal protection issue.

More recently, prohibitions on group homes for retarded citizens and AIDS patients have been subject to equal protection challenges.

SEE CHAPTER 19 FOR MORE DETAILS ON CONSTITUTIONAL ISSUES RELATING TO REAL ESTATE

B. Federal Legislative Enactments

1. Passed by Congress and found in the United States Code (U.S.C.)

2. Explain system of citation – title number precedes the U.S.C. and the section number appears behind

3. Use examples listed in the text and the following:

Clean Air Act of 1990 is part of U.S.C.

All federal financing agencies are established in U.S.C. and provide rules and regulations for loans, contracts, assumptions, secondary sales, etc. including:

Department of Housing and Urban Development
Federal National Mortgage Association
FHA

Soldier's and Sailor's Relief Act (see Chapter 15) – requires special paperwork in the event a mortgage involves active enlisted people; provides for delays in foreclosure when mortgagors are active service people on duty outside the country. NOTE: War in Iraq caused an uptick in the use of this Act with many active duty soldiers afforded protection; national guard members called into active service with resulting pay cuts were protected.

Federal securities laws (See Chapter 21) – contain the provisions governing certain types of real estate investments and syndications – see 15 U.S.C. Sections 77 *et seq.*

The National Environmental Policy Act – (See Chapter 20) provides for maintenance and protection of the environment and imposes restrictions on use – see 42 U.S.C. Sections 4321 *et seq*.

Note that 2008 saw American Recovery and Reinvestment Act of 2009 (ARRA) with mortgage relief.

C. Federal Administrative Regulations

1. Federal agencies are created by Congress to enforce the U.S.C. statutes and to promulgate their own regulations on the topics covered in the statutes; will provide the details needed for compliance with the laws

e.g. – forms for securities registration and property reports under Interstate Land Sale Full Disclosure Act (ILSFDA)

2. Examples of federal agencies involved in real estate transactions

EPA – Environmental Protection Agency

HUD – Department of Housing and Urban Development – involved in providing low-cost housing and enforcement of Interstate Land Sales Full Disclosure Act
FHA – Federal Housing Administration – provides low interest loans and insurance for lenders

Department of Energy – energy policies

Interior Department – management of federal parks and lands

3. Regulations are found in the Code of Federal Regulations (CFR)

Paperback series; reprinted each year; updated daily by the Federal Register

D. State Constitutions

1. Will contain provisions similar to the U.S. Constitution – the organization of the state government

2. Will also contain specifics on real estate transactions

a. Use examples from text
b. Find examples in your own state's constitution
c. Use the following:

Texas – A section providing a homestead exemption (a protection from creditors discussed in Chapters 4 and 15)

California – A section providing a right eminent domain for all frontages on navigable waters in the state (Article 10, Sect. 1)

E. State Legislative Enactments

1. Describe name/cite of your state statutes:

e.g. – Florida Statutes Annotated – F.S.A. 689.91; Colorado Revised Statutes C.R.S. 39-5-12; West's Annotated California Code West's Ann. Cal. Fin. Code 31401

2. Subject matter of state legislative enactments:

Real estate licensing
Insurance law
Contract law
Water rights
Partnership and corporation law
Lien laws
Wills, trusts and probate
Deeds and recording

F. State Administrative Regulations

1. Same purpose and set-up as federal regulations

2. Describe the agencies (name) in your state responsible for each of the following:

Real estate licensing
Corporations
Securities registration
Contractors' licensing
Insurance licensing and regulation
Utilities regulation

G. County, City, and Borough Ordinances

1. Passed at the city, county or borough level

2. Discuss some examples in your area relating to:

Zoning
Construction, inspection, and permits
Curfews
Parking limitations
Parks
Building and construction codes

H. Private Law

1. Created by individuals to control their relationships

2. Areas of private law

Landlord/tenant – pool use, cleaning deposits, noise regulations and other lease terms

Deed restrictions – square feet minimums, architectural controls, parking restrictions, limitations on pets

Townhouses and condominiums – rights of use, association fees, liabilities

Transfer restrictions – fee simple determinable

Age zoning and restrictions

3. Private land ownership rights as found in public records

I. Court Decisions

1. Interpretation of all laws is necessary

e.g. – A city ordinance prohibits "the use of any vehicle in any form in a city park." Does the ordinance apply to the following?

Bicycle – no
Child's tricycle – no
Car – yes
City maintenance truck – no
Emergency vehicle – no
War memorial with a vehicle – no

Reason for variations in the answers is that intent of the ordinance is probably safety and noise reduction in city parks.

2. Language of the law is examined

3. Legislative intent is examined

4. Law is applied in each case

5. Court cases are reported and published

Cases appear throughout the text

Explain your state court system and the appellate review of cases

USE IMPLIED WARRANTY STATUTE FROM NEW YORK (WHICH IS THE UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT PROVISION) AND *SOLOW* AND *POYCK* CASES AS EXAMPLES OF STATUTORY INTERPRETATION – POWERPOINT SLIDE AVAILABLE

CASE BRIEF: *Solow v. Wellner*
658 N.E.2d 1005 (N.Y. 1995)

FACTS: Solow manages a 300-unit luxury apartment building in Manhattan. Rent range: $1064-$5379/month. Each tenant was given a brochure that described a luxurious setting with numerous amenities. The tenants stopped paying rent alleging lack of elevator service, accumulation of garbage, mice, exposed wiring, security problems, flooding, air conditioning problems, soiled carpet and inoperative laundry room facilities.

ISSUE: Was there a breach of the warranty of habitability?

DECISION: Yes, but only with respect to elevators. Promises in brochures do not impose additional standards with respect to habitability.

ANSWERS TO CASE QUESTIONS:

1. The building was in the upper east side of Manhattan, rents were high and it was touted as a luxury apartment building.
2. a. elevators did not work, were slow, were inadequate for the building
   b. garbage not picked up
   c. rodent infestation and lack of exterminators
   d. exposed wiring
   e. flooded front entrance
   f. package delivery delays
   g. lobby air conditioning inoperative
   h. fire alarms did not work
   i. dirty carpets in lobby
   j. laundry room dirty with inoperative facilities
   k. buckling floors from poor drainage
   l. graffiti on walls
   m. one vacuum for entire building
3. The court holds that the statute on habitability is independent of the lease agreement and must be that way so that tenants without any lease provisions still have protections. There is one standard for habitability and it is not changed by the lease terms.
4. The court notes that the brochures promised features that were not related to the warranty of habitability and that the tenants had contract remedies for misrepresentation in brochures.

ANSWER TO ETHICAL ISSUE:

In a case related to the *Solow* case, one attorney for 62 of the tenants/plaintiffs was sanctioned $1,000 for each plaintiff's proceeding, for a total of $62,000 for "frivolous conduct." *Solow v. Wellner*, 618 N.Y.S.2d 845 (Sup. 1994) The New York Supreme Court held that Ray L. LeFlore had engaged in "frivolous conduct" that was "undertaken primarily to delay or prolong the resolution of litigation, or to harass or maliciously injure another."

Discuss the UCC warranty provisions with the students that are made in the sales of goods. A promise made in the sale of a good, such as in a brochure, counts. In the *Solow* case, the court held that such language and promises were not part of any implied warranty. Point out to the students the distinction in the nature of living quarters vs. goods and the potential for litigation. There are the problems of prolonged litigation and payment of rent during the time of the litigation. Practical issues may be at the heart of the restraint of the courts in implying such warranties.

CASE BRIEF: *Poyck v. Bryant*
820 N.Y.S.2d 774 (2006)

FACTS: Plaintiff Peter Poyck brought suit to collect rent and late charges for the months of August, 2001 through December, 2001, at $2,597 per month against Stan Bryant and Michelle Bryant ("defendants," "tenants," or "the Bryants"). The Bryants leased a unit in a condominium project from Poyck. The Bryants alleged a defense of breach of the implied warranty of habitability and constructive eviction due to secondhand smoke. Poyck moved to dismiss the affirmative defense of secondhand smoke as a breach of the warranty of habitability.

ISSUE: Is secondhand smoke a possible breach of the warranty of habitability?

DECISION: Yes. Inasmuch as there are triable issues of fact as to whether the secondhand smoke breached the implied warranty of habitability and caused a constructive eviction, plaintiff's motion to strike and/or dismiss the defendants' third and fourth affirmative defenses and first and second counterclaims must be denied.

The intent of the implied warranty of habitability statute included addressing public health and physical harm issues. Secondhand smoke is clearly within the intent of the statute.

ANSWERS TO CASE QUESTIONS:

1. After living in the apartment for approximately three years, in March, 2001, new neighbors moved next door to the Bryants. The new neighbors constantly smoked in the common fifth floor hallway and in apartment 5-C. The tobacco smoke or secondhand smoke penetrated into the Bryants' apartment. At that time, the Bryants complained to the building superintendent, Frank Baldanza ("Super"), about the hazardous secondhand smoke condition. The Super spoke to the neighbors to no avail. The incessant smoke continued unabated.
   Bryant described his remedies as follows:

   To try to remedy the situation, I have sealed my apartment entry door with weather stripping and a draft

barrier. I operate two hepa air filters round the clock, incurring additional electric charges. Despite these efforts, we can still smell the smoke from 5-C in our apartment. If you can help in any way to remedy this problem, we would be extremely appreciative. Failing that, we must consider finding a healthier living situation.

The landlord took no action to curtail their neighbors' smoking that was invading the Bryants' home. About thirty days later, the Bryants left their apartment and wrote a letter to their landlord dated August 1, 2001, notifying him of their decision.

2. The court notes there are numerous cases that have held landlords accountable under the warranty of habitability for conditions caused by others and secondhand smoke is no exception.
3. Some examples could include drug trade, meth labs, noise (musicians) – activities landlord can control or prohibit.

ANSWER TO CONSIDER (1.1A):

The court held Axelrod was liable. The implied warranty of habitability is not waived by a clause in a lease. Prior notice of a problem is not required to find a breach of warranty. The *Benitez* case is one in which the landlord had prior knowledge. The nature of the problems was an issue – one was sudden and an accident, and another was deliberate. But in both, the implied warranty of habitability applies.

ANSWER TO CONSIDER (1.1B):

In *Kachian v. Aronson*, 475 N.Y.S.2d 214 (1984), the court found that the lack of mail boxes and door bells and buzzers were not a breach of the warranty of habitability. The court noted that the tenants were leasing a different type of property at a lesser rent level and would not have the same levels of protection as in the case of traditionally residential property. Even so the mail boxes and the buzzers were not the types of items that affect safety and hence do not violate the habitability standards of the statute.

ANSWER TO CONSIDER (1.1C):

The warranty of habitability has been extended only in the residential lease – not the commercial lease. However, commercial tenants have enjoyed some success in alleging breach of contract – provided the lease terms include some guarantee of usage and accountability for interruption of business or services.

ANSWER TO CONSIDER (1.1D):

In *Auburn Leasing Corp. v. Burgos*, 609 N.Y.S.2d 549 (1994), the court finds that the living conditions at 37-20 45th Avenue, Flushing, had become dangerous for the tenant and her family. From the beginning of 1989 until the tenant moved out on 12/5/89 the tenant and her family were bullied, harassed, threatened with violence in many forms and, as a result, terrified and in fear of their lives and safety.

The court finds, further, that the landlord became obliged to take steps to protect the tenants from this violation of their right of quiet enjoyment of the premises. Despite the undisputed knowledge of the various incidents around the immediate vicinity of the premises the landlord took inadequate steps to remedy the situation. The summary proceedings initiated primarily through the efforts of the tenant was too little and too late to protect the tenant who became the target of her drug dealing co-tenant.

The court finds that the plaintiff-landlord has thus breached the statutory implied warranty of habitability guaranteed every tenant under Section 235-b of the Real Property Law as well as the express warranty of use and quiet enjoyment in the defendant-tenant's lease. In *Park West Mgt. Corp v. Mitchell,* 47 N.Y.2d 316, 418 N.Y.S.2d 310, 391 N.E.2d 1288, Chief Judge Cooke states that the statute [Real Property Law Section 235-b] was designed to give rise to an implied promise on the part of the landlord that both demised premises and areas within the landlord's control are fit for human occupation at the inception of the tenancy, and the premises will remain so throughout the lease term. In *Brownstein v. Edison,* 103 Misc.2d 316, 425 N.Y.S.2d 773, and *Sherman v. Concourse Realty Corp,* 47 A.D.2d 134, 365 N.Y.S.2d 239, where the landlord had installed special locks and buzzers on the front door to prevent criminals from entering the apartment buildings and the locks and buzzers became inoperative and in *Brownstein,* (supra) a tenant was murdered in the lobby and in *Sherman,* (supra) a tenant was severely assaulted, the courts held that the landlord had assumed the duty to provide some degree of protection to the tenants by providing these protective devices, and the landlords in both cases were to render an essential service affecting habitability. Thus, when the locks and devices became inoperable, the landlord(s) breached the implied warranty of habitability.

Finally, the court relies on *Highview Assoc. v. Koferl,* 124 Misc.2d 797, 477 N.Y.S.2d 585, where plaintiff-landlord of a 366-unit garden apartment complex breached the implied warranty of habitability, as well as the express warranty of use

and quiet enjoyment, by its failure to take any steps to protect its tenants in the face of the many (i.e., 10) notices of theft and burglaries committed in the complex in one year.

The defendant-tenant acted reasonably and prudently in vacating the apartment before the expiration of the lease since it became evident that it was not safe for her or her family to live in the apartment any longer.

The court notes that had this been a summary proceeding in the Housing Part of the Civil Court the court would have been well within its rights to abate the rent on the grounds that pursuant to RPAPL 755(1)(b) the tenant had been constructively evicted because the premises had become dangerous to life, health or safety.

Accordingly, Judgment for the defendant. The Plaintiff's complaint is dismissed with costs to the defendant.

II. Justification for Studying Real Estate Law: Some Cautions and Conclusions

A. Explain To The Students The Complexities Of Real Estate Transactions Such As Recording, Second Mortgages, Etc.

B. Explain The Costs Of Not Understanding The Type Of Financing And Security Involved With Your Property

C. Explain The Need For A Working Knowledge Of Terms To Be Able To Negotiate

D. Explain How Knowing The Law Can Help A Buyer, Seller Or Broker Ask The Right Questions In A Real Estate Transaction

E. Competence In Legal Issues Can Increase Returns On Investment By Decreasing Troublesome Legal Questions And Costly Litigation

III. The Most Frequently Asked Questions in Real Estate

Discuss the questions with the students. A possible class exercise is to survey the students to determine whether they have had or do have the questions as they are listed.

ANSWER TO CONSIDER (1.2):

1. State statutes; state regulations; local ordinances, private law (the rental agreement); case law
2. State statutes; state regulations; private law (the listing agreement/sales contract); case law
3. State statutes; state regulations; private law (the sales contract/escrow instructions); case law
4. State statutes; state regulations; case law
5. State statutes; state regulations; private law (the sales contract); local law (recording process); case law
6. State statutes; private law (insurance contracts); case law
7. State statutes; private law (antenuptial/prenuptial agreements); case law
8. State statutes; private law; case law
9. State statutes; private law (mortgage contract; note)
10. State statutes; case law
11. State statutes; local laws; case law; private law (deeds)
12. Federal statutes; federal regulation; case law
13. State statutes; private law (listing agreement); state regulations; case law
14. State statutes; local laws (recording); case law
15. State statutes; local laws (recording); case law

ANSWERS TO CHAPTER PROBLEMS:

1. Vollenweider's allegations about the neighbor's acts, even if true, are insufficient as a matter of law. Neither the pleading nor the proof demonstrates that the neighbor's acts rendered the leased premises unfit for human habitation, or that they created conditions that were dangerous to life, health or safety or that they denied defendant any essential functions. See, *Solow v. Wellner,* 86 N.Y.2d 582, 635 N.Y.S.2d 132, 658 N.E.2d 1005. By definition, the warranty of habitability does not extend to aesthetics or inconveniences which do not render premises dangerous or unsafe (*Park West Mgt*., supra, at 328, 418 N.Y.S.2d 310, 391 N.E.2d 1288) even if unexpected in a luxury building. Disinclination to catch an occasional glimpse of a neighbor under the circumstances set forth here does not constitute breach of the warranty of habitability. *Palais Partners v. Vollenweider,* 640 N.Y.S.2d 272 (City Civ. Ct. 1997).

2. Interstate Land Sales Full Disclosure Act – federal statutes, United States Code (USC); possibly state laws on fraud and related state and federal regulations.

3. The issue raised here is one of eminent domain and economic development. There is more on this issue later in the text. However, the law covering the situation would be constitutional law and the Fifth Amendment takings clause as well as local ordinances and zoning laws and local procedural laws.

4. Local laws on zoning and perhaps a case of misrepresentation under state law. Also, covenants and deed restrictions could help.

5. California Code Annotated – State regulatory body and related regulations.

6. Should have been drafted more clearly, but garages and porches are generally not livable areas even though they are under the roof and would not be included. Case law would be helpful in defining "living space."

7. The EPA has authority to mandate clean-up under federal environmental statutes and federal regulations.

8. These federal land exchanges are quite complex and require the individuals involved to go through their Congress members, state and local officials (including zoning boards at city and county levels). Virtually every agency at the federal and state levels is also involved from HUD to BLM to city hall.

9. State laws on broker relationships; state regulations on broker; private law which would include their listing contract and case law which has addressed this issue specifically (see Chapters 12 and 13).

10. In the *Kekllas* case, the court held that the odor from the cats was so strong as to make the premises dangerous for the health of the occupants of the house. While an odor is not a basic service that is generally the basis of a breach of the warranty of habitability, it can exist to a point where the premises become unhealthy and uninhabitable. *Kekllas v. Saddy,* 389 N.Y.S.2d 756 (Dist. Ct. 1976).

IN-CLASS EXERCISES:

The following materials can be used as an in-class exercise for the students as an additional experience in statutory interpretation.

The following case represents the interpretation of a section of the Model Residential Landlord Tenant Act on nonpayment of rent by a tenant. This model act is one drafted by various experts in the field of landlord and tenant relationships and has been adopted, with some variation, by many states in their legislative enactments to govern the landlord/tenant relationships in their states (See Chapter 9). This particular case involves the interpretation of Arizona's adoption of A.R.S. Section 33-1365.

Under this section the tenant is entitled to present claims and reasons for not paying rent in the event the landlord brings suit for nonpayment of rent. However, another procedural statute provides that a tenant may not present such claims or defenses (counterclaims) when a landlord brings an action for rent (A.R.S. Section 12-1177A). The court faces the issue of resolving a conflict between the two statutes. The action being brought by the landlord is a special suit called a *forcible detainer action*, which is an action that seeks to have a tenant dispossessed of the rental property for nonpayment of rent.

MEAD, SAMUEL & CO. v. DYAR
622 P.2d 512 (Ariz. 1980)

Mead, Samuel, and Company (landlord/appellee) leased an apartment to Randall Dyar (tenant/appellant). Dyar contracted with the landlord's agent to clean carpets in the apartment complex for $10 per apartment. Dyar cleaned eight apartments and withheld $80 from his rent payment under the claim that the landlord owed him that amount. After an argument between Dyar and the landlord's agent, the landlord filed charges of breaching the peace with the city of Phoenix police. As a result of these charges, Dyar was arrested and imprisoned for one night and then released upon the police determination that Dyar had not breached the peace as the landlord had alleged.

The landlord then brought a forcible detainer action asking as relief the following:

1. Possession of Dyar's apartment
2. Payment of rent in the amount of $121.47
3. Costs and attorney's fees

Dyar counterclaimed in the suit for an offset of the $80.00 in wages against the $121.47 and for false arrest and false imprisonment caused by the landlord's actions and sought $2500 in compensatory damages for the night he was forced to spend in jail.

The trial court dismissed Dyar's counterclaim because it held the counterclaim was not permitted under the landlord/tenant act and then granted the landlord all requested relief.

HAIRE, Presiding Judge

The question presented is how to reconcile the apparent conflict between A.R.S. Section 33-1365 – the landlord/tenant statute which now permits some counterclaims in forcible detainer actions – and the prior case law which interprets the procedural statute – A.R.S. Section 12-1177A – as not permitting any counterclaims in such an action. The first sentence of A.R.S. Section 33-1365 states:

> In any action for possession based upon nonpayment of the rent (forcible detainer) or in an action for rent where the tenant is in possession, the tenant may counterclaim for any amount which he may recover under the rental agreement of this chapter.

This statute conflicts with 12-1177A which prohibits such counterclaims and to the extent that statutes are in irreconcilable conflict, the general rule is that the more recent statute applies.

Since the Arizona Residential Landlord and Tenant Act was enacted in 1973, subsequent to each of the decisions that interpreted A.R.S. 12-1177A, it appears the Legislature sought to change the judicial construction of 12-1177A.

There were no written rental agreements in the present case. Appellant contends that both of the claims included in his counterclaim arose out of the landlord tenant relationship and that therefore the damages he sought by his counterclaim were amounts he could recover.

In our opinion, A.R.S. 33-1365 cannot be construed so broadly. The statute must be read in the context of 12-1177A, which for many years had been construed as providing an expeditious summary remedy for possession, isolated from collateral controversies not directly related to the single issue of possession. By enacting 33-1365, the Legislature broadened the scope of a forcible detainer proceeding to the extent of the rental agreement itself or established within the act itself. We are unable to glean an intent by the Legislature to allow any counterclaim which may be said to have risen in some general manner out of the landlord/tenant relationship.

Since there was no rental agreement, we now proceed to a determination of whether the counterclaims asserted by the appellant come within the provisions of the Arizona Residential Landlord and Tenant Act.

Essentially, appellant pleaded the common law tort of false arrest. This is not within the purview of 33-1365.

With respect to the wage counterclaim, the lower court was correct in dismissing it in its entirety. The agreement between the parties in which appellant undertook to clean carpets was an independent contractual arrangement, unrelated to the use and occupancy of the premises.

Our holding that counterclaims were properly dismissed in the lower courts does not mean appellant has no remedy for claims alleged. They may be asserted in a separate proceeding.

Affirmed.

After the students have read the case, have them work through the following hypotheticals:

1. Tom George rented an apartment from Big Sky for $575 per month. Tom agreed to act as night manager for a salary of $375 per month. For three months, Tom has paid only $200 rent. In a forcible detainer action brought by Big Sky, can Tom properly counterclaim for the $375 salary for three months?
2. Alfreda Gulusko rented an apartment from Big Sky for $325 per month. The apartment was located in Boston, and during December, Alfreda's heater would not work. The temperatures in Boston averaged 25 degrees that month. In spite of Alfreda's repeated requests, Big Sky did not repair the heating problem. Alfreda had the heating repaired at a cost of $325 and then withheld payment of her January rent. In a forcible detainer action by Big Sky, can Alfreda counterclaim for cost of the repair?
3. Jane Smith leased an apartment from Big Sky, Inc. in the Big Sky Villas for six months at a rental rate of $325.00 per month. Jane shared the apartment with Sue Jones, a tenant already located at Big Sky who was recommended to Jane by Big Sky's manager. After Jane moved in, she noticed that she seemed to be spending cash more quickly and that some of her jewelry had disappeared. Jane complained to management because she suspected Sue. In spite of on-going complaints during the two-month period, the manager did not switch Jane's roommate. Eventually, Jane returned home from work one day only to find all of her belongings and Sue gone. Jane stopped paying rent to Big Sky and it brought a forcible detainer action. Jane counterclaimed for the value of her property because Big Sky had recommended Sue as a roommate and because of the failure to take action on Jane's complaints. Big Sky knew of Sue's prior conviction for burglary at the time the recommendation was made to Jane. Does Jane have a proper counterclaim under the *Mead* standard?

SUGGESTED ANSWERS:

1. If Tom can establish that the night manager salary was understood to be consideration for the lease agreement, he has a proper counterclaim. If the money was strictly supplemental, then Tom falls into the *Mead* case and cannot assert the matter as a counterclaim but would have to bring a separate proceeding to collect the rent.
2. This is an example of a counterclaim related to the rental contract. It would be an appropriate counterclaim.
3. Jane's problem is very similar to the *Mead* case. She may recover from Sue Jones or sue Big Sky for negligence, but her counterclaim is unrelated to the rental agreement.