

Property Syllabus

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Office Hours Tuesday 2-4 pm and by appointment (Skype ID “ezrarosser”)
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Overview of Property

Property law is the study of the acquisition, use, and limitations of property. The class explores how property rights come into existence; the advantages and disadvantages of property rights; the ways in which property rights protect the rights of owners, neighbors, and non-owners; how property law allows for property rights to be split among multiple parties and through time; and the power of the government over private property as well as limits on that power. Property law is central to how society is organized, how resources are managed and distributed, and how individuals interact with others and with the government. It also is an area of law in which historical practices play a significant role shaping the rights and duties of owners. Though property law often presents itself as a series of small boxes or categories of rules, understanding the larger picture of the field requires an ability to see how micro level rules combine to form the larger structure of property law.

CLASS POLICIES

MyWCL

You are responsible for any announcements posted to the course’s myWCL site. Additionally, supplemental readings and material will be posted to the site.

Learning Outcomes and Assessments (the ABA and the law school is mandating inclusion of this section on the syllabus):

GOALS	OUTCOMES	ASSESSMENTS
For students to improve their critical thinking ability.	<i>Students will be able to demonstrate the ability to think critically about complex rules and doctrines.</i>	<i>Students must use critical thinking to engage in the class discussion (which is assessed through the class participation expectation) and in the final exam.</i>
For students to improve their logical reasoning when faced with alternative fact patterns or rules.	<i>Students will be able to consider alternative rules or fact patterns and use logical reasoning to create arguments for what the law is or should be in those alternative situations.</i>	<i>Students must show comfort engaging in logical reasoning in both their contributions in class and in their final exam.</i>
For students to be able to put themselves into the shoes of different parties, understanding how parties to a dispute will view things from their unique perspectives.	<i>Students will be able to make intelligent and thoughtful arguments for both sides of the disputes they encounter in class.</i>	<i>Students will be called upon to put themselves in the shoes of different parties when called upon in class and will also be called upon to give a fair interpretation of conflicting claims in the final exam.</i>

For students to learn the basics of U.S. property law.	<i>Students will be able to demonstrate a basic understanding of the U.S. property law system, including major areas of property law doctrine and shared traits of the system that inform the whole of property law.</i>	<i>This is primarily assessed through a final exam, though in class participation and questioning also provides a limited assessment opportunity.</i>
For students to better understand the value of hard work. This is both an independent goal and one that is important for students to do well after graduation on the bar exam and in their careers.	<i>Students will be able to demonstrate that they have done the work necessary to understand a complex area of law.</i>	<i>The final exam tests many things, including ability to work hard. High in class participation expectations and targeted questions similarly assess students on their work ethic.</i>
For students to learn to pay more attention to facts and details, not just the applicable rules or black letter law. Law is more than simply a series of rules announced by appellate courts and the goal is for students to be better able to appreciate and use facts and details when making arguments or considering new situations.	<i>Students will be able to demonstrate an appreciation for the importance of facts and details when it comes to legal disputes.</i>	<i>The final exam and in class participation questions both call on students to pay close attention to facts and details, analogizing and distinguishing facts and details in hypotheticals from the facts and details in cases assigned as homework.</i>
For students to become interested and perhaps even enthusiastic about Property Law topics.	<i>Students may or may not become enthusiastic about Property Law.</i>	<i>Not assessed directly.</i>

Grades

Your grade will be based on an anonymously-graded, closed-book final examination that consists of a 2 hour multiple choice section and a 2 hour essay portion. Any requests to take the exam on an alternative date from the date assigned by the school must be directed to the Registrar's Office. You are expected to either use the school's exam software or to handwrite your exam. I know that many of you do not like using such exam software, but it is required to ensure the integrity of the exam process. Finally, I reserve the right to adjust borderline letter grades up or down a single grade based on participation and class preparation, though such adjustments are infrequent. There will be two optional review sessions for the class, one mid-semester and one at the end of the year. Finally, for the purposes of planning, it is worth noting that in the interest of fairness, I will cease responding to questions about material or the exam three days prior to the date of the final exam.

Class Participation

You and your peers have many valuable contributions to make to the class. Your peers will make points that are well worth noting, and you are expected to note their contributions

without the professor necessarily repeating the same points.

Your attendance in class is expected. Please be on time to class and this includes returning from break in a timely fashion. If you are unprepared to participate in class, let me know before class begins both by email and at the podium, otherwise I will proceed under the assumption that you are prepared to respond to questions. I will be relying upon a mix cold-calling and volunteers, doing so in a way designed to ensure that everyone has a chance to participate. The classroom is a learning environment and your responses need not be brilliant; wrong answers can be valuable. That being said, I have high expectations regarding preparation and time in class will reflect that. Our discussions will *quickly* move beyond blackletter law and, because as second semester law students you should be able to pick out the rules from the cases, I will assume mastery of the rules to a greater extent than was true your first semester. The cases you will read are often borderline cases, so pay close attention to the facts as you will be responsible for both rules and facts.

Those students who tend to do best in this class have a solid mastery of the blackletter law and are also able to think about the limits and nuances of such rules. Although the correlation is not perfect, generally speaking, those who brief the cases themselves throughout the semester and who during class are prepared to answer questions have performed better on the final than those who come to class having only done the reading. The material in this class is cumulative, which means that you can only understand and enjoy what comes later in the semester if you have stayed on top of the material from the first class. Property is central to how we relate to one another and to how our society is organized. Though full of arcane rules, Property Law, if approached with an open and curious mind, can be an intellectually interesting and enjoyable class.

I will not podcast any class sessions. Part of the learning experience depends upon active engagement in the classroom and for that reason I will not podcast class sessions. Should you miss a class, I encourage you to get notes from one of your classmates.

READINGS

Below are the course assignments. The readings generally follow the “blocks” below, with each class readings consisting of a “block,” but changes may be announced if required by the classroom discussion and our progress through the material.

The primary text for the class is: Dukeminier, Krier, Alexander, Schill & Strahilevitz, *Property* (8th Ed., 2014). All readings from the textbook will be identified with DKASS p#-p#. The publisher does have a supplemental website associated with the book, www.dukeminier-property.com. Though I will not refer to this website often, use the ID “dukeminier” and the password “book2K9” to access the site. NOTE, we are using the 8th edition of the book, not the new 9th edition for reasons I will explain in class.

A note about the textbook: You do not need to look up the citations that accompany the questions that follow the cases; those citations are there in case you are particularly interested in something and so that you can use the textbook as a resource when you are done with law school.

A. “First” Possession

Acquisition by Discovery & Capture

DKASS 1-40

myWCL: Indian Title Search

Theories of Property Rights Creation and Acquisition by Creation I

DKASS 40-76

optional on myWCL: Hardin, The Tragedy of the Commons

Acquisition by Creation II

DKASS 76-104

B. Subsequent Possession

Acquisition by Find & Adverse Possession

DKASS 125-162

Acquisition by Adverse Possession cont. & Encroachments

DKASS 162-189

myWCL: *Pile v. Pedrick*, *Raab v. Casper*

Acquisition by Gift

DKASS 189-206

C. System of Estates

Note: We are going to spend 2 and 1/2 classes on Estates and 1 and 1/2 class on co-ownership. Because Present Estates relate closely to corresponding Future Estates, it is recommended that you read ahead as much as possible before the first class then review materials before the second class. For the third class read the co-ownership section through p. 385 and we will cover the rest of the co-ownership section in the fourth class. For Estates, the historical background materials will not be discussed in class and will not be tested.

Present Interests

DKASS 215-226, 244-247, 253-256, 272-273 review problems

Future Interests, Rule Against Perpetuities & Perpetual Trusts

DKASS 275-286, 290-297, 307-317 rule against perpetuities, 328-341

D. Co-Ownership

Types & Characteristics

DKASS 343-348, 353-354, 359-362, 367-375, 380-385, 390-401, 407-440

E. Nuisance

Nuisance Rules

DKASS 777-808

myWCL: *Jost v. Dairyland Power Cooperative*

F. Landlord/Tenant

Assignment: If applicable, bring in a copy of your lease (whether you are the tenant or you have a tenant) to the four landlord/tenant classes.

Overview

DKASS 441-465

Subleases and Assignments

DKASS 465-482

Default by Tenant

DKASS 482-504, 528-530

Landlord Duties

DKASS 504-528

myWCL: Javins Material

G. The Bundle and the Poor

Introductory Overview

DKASS 104-124, 531-540

H. Easements

Introduction and Creation of Easements

DKASS 809-842

Easements by Prescription & Assignability

DKASS 842-865

Easements: Scope, Termination, & Negative Easements

DKASS 865-892

I. Real Covenants & Equitable Servitudes

Covenants Running with the Land & Discrimination

DKASS 892-927

Scope & Termination of Covenants, Common Interest Communities
DKASS 927-966

J. Zoning

Zoning Introduction
DKASS 967-996

Flexibility and Aesthetic Control
DKASS 996-1031

Household Composition & Exclusionary Zoning
DKASS 1062-1105

K. Eminent Domain

Introduction
DKASS 1107-1145

Balancing
DKASS 1146-1179

Regulatory Takings
DKASS 1179-1221

Judicial Takings
DKASS 1222-1266

End of Semester