

## **PROPERTY SYLLABUS**

### **Fall 2016**

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### **Course overview**

What does it mean to own something? Laypeople often use terms like “ownership” or “property” in casual discourse. This course seeks to explore these terms as legal, rather than popular, ideas. We will do that to a large extent by examining the blackletter law of property, which derives from very different sources of law (cases, statutes, scholarship), spans numerous bodies of doctrine (adverse possession, landlord/tenant, eminent domain), and deals with a wide variety of things that these sources and authorities govern (foxes, wedding rings, and plain old plots of land). This discussion about what the law *is* will be guided by normative frameworks, both consequentialist and deontic, that tell us what the law *should be*.

The goals of this course are methodological as well as substantive. Property’s long history and sprawling present will help you learn to parse different legal sources, including both cases and statutes, from a variety of different jurisdictions and eras. Applying complex regulatory schemes like estates in land and title recording will build rigorous logical and analytical skills. And the various policy issues engaged by the topics we explore will require you to think about, and to talk about, property like a lawyer. What that means to me is that lawyers think about property in a way disciplined both by a sense of what the law actually is, and in a way that is reflective about, rather than controlled primarily by, our moral intuitions.

### **Class meetings**

We will meet Tuesdays and Thursdays from 6-7.20pm, and Wednesdays from 7.30-8.40pm in BLB 3.

### **Required text**

The text for this course is Sprankling & Coletta, *Property: A Contemporary Approach* (3d ed. 2015).

All page numbers in the syllabus refer to this text. Other readings to be made available on TWEN will be so indicated.

## **Expectations**

Lawyers are expected as a minimum professional baseline to be on time, be prepared, and stay mentally and physically present during work hours. Accordingly, I expect that you will be on time for class; be prepared for class; and stay mentally and physically present during class.

## **Examination and grading**

The grade for this course will be primarily determined by a four-hour final examination. The examination will consist of both an essay and a multiple choice portion, each of which will be equally weighted in determining your examination grade.

I reserve the right to raise or lower a student's letter grade by one-third (e.g., from a B to a B+, or from a B to a B-) based on the student's preparedness for class, engagement during class, and quality participation in class discussions. This is a qualitative, not a quantitative assessment. Merely participating frequently in class, and/or knowing answers to basic questions, will not result in having your grade increased. And excessive and/or non-constructive participation in class may result in a student's grade being lowered.

## **Laptops and other electronic devices**

I do not ban laptops in class, but I am concerned about the negative impact they can have on learning and class atmosphere. If I call on you and you are obviously paying more attention to the internet than to our class discussion, it may result in your being assessed as unprepared. And if you find that a classmate's use of their laptop is especially distracting, please feel free to let me know about this concern.

## **Office hours & open door policy**

I hold office hours on TBA. During office hours, I will presumptively be available to talk to any students who drop by on an informal basis. If any student wants to reserve a specific fifteen-minute block to meet with me during that time, email me ahead of time and I will reserve that time to meet with that student exclusively.

Because office hours will almost certainly not be a convenient time for all students (especially part-time students), I welcome office meetings outside normal office hours, and to set one up simply email me and we'll work out a mutually agreeable time. In order to accommodate

your schedules, I can also schedule virtual meetings either by phone or Skype, including on weekends if necessary. If you want to set up one of the latter meetings, let me know and I will share my contact information with you once we have set a time.

Finally, I also have an open door policy, so that if my door is open, you should feel free to come on in to discuss issues related to class. If my door is closed, you can still knock to see if I am around, but chances are that I'll be unavailable. And as a general rule, I tend to be unavailable in the several hours before any class I teach in order to do final preparation. You are also most welcome ask me questions via email, Twitter, or post questions to the TWEN discussion boards.

### **TWEN & Twitter**

I will maintain a course TWEN page. It will host course documents (latest updated syllabus, PowerPoint slides from class, problem sets) and provide two different forums to which you are all invited to post ("Procedural Issues" for topics related to course organization, scheduling, and other administrative matters; and "Substantive Issues" for questions about material covered in class, recent developments in the law, and any other aspects of copyright itself). You are responsible for remaining up to date on any information posted to TWEN, so be sure to check it frequently, and consider setting up email alerts for new postings to the site.

I also maintain a course Twitter feed: @DFclasses. I use the feed to keep students up to date on issues related to class administration (i.e., if there is a change to the reading assignment) and substantive issues (i.e., passing along links and retweets relevant to property law). The feed is public, so you need not be a Twitter user to access it. And I expect you to be aware of any information posted to the feed, so I recommend bookmarking the URL <http://twitter.com/DFclasses> to facilitate this. You are not required to follow me on Twitter, of course, and my policy is not to follow any students.

Course Topics and Reading

I. Elemental concepts in property: owners' rights, trespass, and social cost

*Jacque v. Steenberg Homes* (TWEN)

II. Private acquisition of property: first, subsequent, and adverse possession

A. First possession

1. Acquisition by capture

*Pierson v. Post* & note g (8-15)

2. Note on fugitive resources (TWEN)

B. Subsequent possession

1. Acquisition by find

*Armory v. Delamirie* (175-76)

*Hannah v. Peel* & notes e-f (178-85)

*McAvoy v. Medina* & notes a-b (186-87)

2. Acquisition by gift

*Gruen v. Gruen* & notes a-b, d (212-22)

3. Adverse possession

Adverse possession overview (98-100), note f (106)

*Van Valkenburgh v. Lutz* & note e (107-15)

Notes on other adverse possession issues (132-33 (a, d)); 133-34 (a))

TX adverse possession, popular articles about adverse possession (TWEN)

III. Temporally subdividing private possession: present possessory estates

A. Present possessory estates overview (311, 314-17, 321-23, 333-34, 335-39, 351 (chart))

B. Life estates and waste

*Woodrick v. Wood* & note b (330-32)

IV. Temporally subdividing private possession: future interests

A. Future interests in transferors (351-55)

B. Future interests in transferees (355-61, 362 (chart))

Estates in land and future interests problem sets (available on TWEN)

C. Rule against perpetuities (368-72, 375-77 (a-c, e-f))

Rule against perpetuities problem set (TWEN)

V. Individually subdividing private possession: simultaneous ownership

A. Co-ownership

Co-ownership overview (383-86)

*Tenhet v. Boswell* & notes b-c (390-94)

*Ark Land Co. v. Harper* & notes a, c, e (395-402)

*Esteves v. Esteves* & notes a-d (403-07)

B. Married couples as co-owners

Marital property overview (407-11)

*Sawada v. Endo* & notes c-e (411-418)

*Guy v. Guy* (419-23)

C. Landlord/Tenant Relations

1. Formation of the landlord/tenant relationship

Overview and typology of leases (464-67)

*Kajo Church Square, Inc. v. Walker* (467-70)

2. Transferring the tenant's interest

*Ernst v. Conditt* & notes a-e, g (501-10)

3. Landlord remedies for tenant breaches

*Hillview Associates v. Bloomquist* (528-33)

*Sommer v. Kridel* & note d (519-26)

4. Tenant remedies for landlord breaches

*Fidelity Mutual Life Insurance v. Kaminsky* & notes a-f (481-86, 489-90)

*Wade v. Jobe, Teller v. McCoy* & notes c-d, h (491-500)

5. Housing policy: antidiscrimination (450-51, 456-58 (notes a, c-f))

*Fair Housing Council of San Fernando Valley v. Roomate.com, LLC* (459-63)

**Mid-semester review exercise**

VI. Transfers of Land

A. Executory real estate contracts

1. Statute of frauds

*Hickey v. Green* & notes e-f (544-49, 551)

2. Duty to convey marketable title

*Lohmeyer v. Bower* & notes c-d (553-57)

3. Note on equitable conversion (559)

4. Duty to disclose defects

*Stambovsky v. Ackley* & notes c, e (564-71)

B. The deed & title covenants (576-77, 609-11)

C. Mortgages (588-89, 594-97 (notes a-f))

Mortgage law overview outline (TWEN)

CBS documentary, House of Cards (available online)

D. The title recording system

Overview of the recording system (618-21, 629-31)

Title recording problems: 637-38 (notes e-f), 640-43 (note e), 646-48 (notes e-f),

Overview of inquiry notice: notes a-c (653-54)

VII. Private Land Use Controls

A. Easements

1. Easements overview (665-68)

2. Creation

*Van Sandt v. Royster* & note b, d, f (672-78)

*Berge v. State of Vermont* & notes b-e (679-84)

*O'Dell v. Stegall* & note b (685-91)

*Kienzle v. Myers* & note c, f (693-99)

3. Assignability of easements

Lecture—no reading

4. Scope of easements (706-07 (d-f))

*Brown v. Voss* (TWEN)

5. Termination of easements

*Preseault v. United States* & note e (707-14)

B. Covenants

1. Covenants overview—elements & examples (716-19, 724-25 (b-c))

2. Enforcing restrictions in common-interest communities

*Nahrstedt v. Lakeside Village Condominium Association, Inc.* & notes c-d (730-41)

3. Termination of covenants

*Western Land v. Truskolaski* (TWEN)



VII. Eminent Domain & Takings

A. Overview: history, text, structure (901, 925-26, 933-34 (notes b, d, f))

B. “Takings”

Measuring and balancing approaches

*Penn Central Transp. Co. v. City of New York* & note f (938-47, 950)

C. “Public use”

Overview (902-03)

*Kelo v. City of New London* & notes c, e (910-921)

D. “Just compensation”

Brief overview (909-10 (note f))

*United States v. Sioux Nation of Indians* (TWEN)

**Review sessions TBA**