

PROPERTY SYLLABUS

Fall 2016

Professor: Dave Fagundes
Office: Teaching Unit II, Room 226
Phone: 713.743.1431
Email: dfagunde@central.uh.edu

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). This book will be available new at the UHLC bookstore, but less expensive versions should also be available on secondary markets. You are welcome to buy any version of *this edition* of the text; please be careful though not to buy an earlier edition, because cases and pagination will be substantially different.

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

Expectations and attendance

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

Attendance in each class session is both required and encouraged. Per UHLC and ABA rules, you must attend a minimum of 80% of class meetings to receive credit. I circulate an attendance sheet to keep track of this statistic. If you do not personally initial the sign-in sheet during or immediately after class, you will be charged with an absence. This is true even if (as may well be the case) the attendance sheet does not circulate to you during class, or if you simply forget to initial the sheet. I will always have the attendance sheet at the podium after class for anyone who has not had a chance to sign it.

UHLC's Honor Code applies to initialing the attendance sheet. Students may initial only their own names, not those of other students, and initialing the name of other students is considered a violation of the Honor Code.

Class discussion

The structure of class sessions will be dialogic (though not strictly Socratic), and your participation in the discussion is both required and encouraged. I expect students to carefully prepare the assigned reading and the relevant problems.

To facilitate our class discussion, we will use discussion panels instead of an on-call system. You must sign up for **TBA** discussion panels. I will arrange panels using Sign Up Genius shortly after our first class meeting, and will explain how this system works in our first class meeting. If you don't sign up by Friday, August 26, I will send a reminder to sign up, and after that will randomly assign you to under-enrolled panels by the end of the following day. For the first two days of classes, participation will be voluntary; panels will begin only on the third day of class (Thursday, August 25).

The panels will correspond to substantive material, which will likely (though not certainly) be covered on the day indicated in the syllabus. When we cover the material for which you are responsible, you should have prepared it extensively and should expect to be called on. And while members of each panel will be my "go-to" people for that topic, all students are

encouraged to participate in the discussion. Participation beyond your panel's obligations is a minimum condition for being eligible for a participation-based grade enhancement.

Problem sets

Our class discussions will focus largely, sometimes even predominantly, on problems that are contained in problem sets that I will distribute on TWEN before each class. You are expected to prepare the problems associated with the material for which you are on panel just as carefully as you prepare the reading. Failing to prepare the problems amounts to being unprepared for 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 and engagement in class discussions. I expect that you will be well prepared for class meetings when you are on panel. Quality participation on such occasions merely represents meeting expectations; failing to be sufficiently prepared will presumptively result in lowering of your final grade. Raising your final grade would require consistent, quality participation beyond days when you are on panel.

Office hours & open door policy

I hold office hours on Wednesdays from 3:30-5.30pm. 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 or post questions to the TWEN discussion boards.

TWEN

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.

Course Topics and Reading

August 23-24

- I. Private acquisition of property: first, subsequent, and adverse possession
 - A. First possession
 - 1. Acquisition by capture
Pierson v. Post & note g (8-15)

PROBLEM SET: ACQUISITION BY CAPTURE
 - 2. Note on fugitive resources (TWEN)

August 25-29

- 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)

PROBLEM SET: ACQUISITION BY FIND
 - 2. Acquisition by gift

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

PROBLEM SET: ACQUISITION BY GIFT

August 30-31

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