

PROPERTY

Spring 2013

Credits: 4

Time: 9:00-10:20 a.m. Wed/Th/Fri

Location: TBA

Professor Kellen Zale

University of Houston Law Center

Email: kbzale@central.uh.edu

Phone: 713.743.0325

Office: BLB-128

Overview and Course Goals: This course covers the doctrines, underpinnings and policy of property law. We will examine what makes property rights distinctive; how property rights are created, transferred, and destroyed; and what the powers and duties of property owners are. This course will serve as a foundation for a variety of upper-division courses, including intellectual property, real estate transactions, environmental law, land use, and trusts and estates.

Required Text: The required text is DUKEMINIER, KRIER, ALEXANDER & SCHILL, PROPERTY (7th ed.).

Required Supplement: EDWARDS, ESTATES IN LAND AND FUTURE INTERESTS: A STEP-BY-STEP GUIDE (3rd ed.) Additional supplemental readings may be assigned from time to time and will be posted on the course website.

Course Website: Please check Blackboard regularly for assignments and other updates related to the course. You can log on through the UH website (<http://www.uh.edu/blackboard/>).

Grading: The final grade will be primarily based on an open-book, in-class exam. Details of the exam will be discussed later in the semester.

Participation: Students are expected to be prepared for every class. Any student is welcome to volunteer or ask questions at any time, but for purposes of class discussion, I will divide the class into three panels and assign each panel a day when it is "on call." Students in the on call panels will be called on to present cases and to comment on the issues we are discussing. If your panel is on call but you are unprepared, you may let me know before class and I will not call on you that day; you may do this twice during the semester before your grade will be affected. Repeated absences or lateness may also be taken as evidence of lack of preparation. Final grades may be modified up or down by one level (i.e., from a B to a B+ or A to A-) based on class participation.

Attendance: An attendance log will be silently passed around each class; initial the log to mark your attendance. Falsifying attendance violates the Law Center's Honor

Code. Pursuant to Law Center's policy, you must attend at least 80% of the classes (though you should strive to attend every class). If you miss more than 20% of the classes, I reserve the right to take appropriate disciplinary action, consistent with the Law Center's policies. If a class must be cancelled, a make-up class will be scheduled, consistent with the Law Center's policies.

Office Hours: Thursdays, 12:00 – 1:30 p.m., BLB-128. If you would like to meet at another time, please email or call to schedule an appointment.

Class Teaching Assistant: The teaching assistant will provide students with his contact info and the time/location of his office hours during the first week of class.

Use of Technology: Computers are permitted, but should only be used for note-taking purposes. I reserve the right to treat violations of this policy as lack of preparation. Please ensure all other electronic devices (cell phones, etc.) are in silent mode or turned off during class.

Accommodation: If you have a disability and require an accommodation, please contact the Center for Students with Disabilities.

Course Structure: Below is an outline of the topics to be covered during the semester. Because it is difficult to predict how far we will get in every class, the schedule is subject to adjustment as course progresses. Additional supplemental material may also be posted on the course website that you will be responsible for. You will be given notice of any changes or supplemental materials in class and/or via the course website.

When notes/problems from the Dukeminier book are part of the assigned reading, it is not necessary to write out your answers, but you should consider how you would answer the question, since it will be part of the class discussion.

When practice exercises from the Edwards book are part of the assigned reading, you should write out your answers. They will not be collected, but in order to discuss them in class, it will be helpful to have your answers written out.

In the syllabus below, "DK" refers to the Dukeminier text; "Edwards" refers to the Edwards text; "Supp" refers to supplemental readings posted on the course website.

Syllabus

Part I – Creation and Allocation of Property Rights

1. Acquisition by Discovery
 - DK: 3-18
2. Acquisition by Capture

- DK: 18-29; 36-39
- 3. Theories of Property Rights
 - DK: 39-55
 - Supp: Hardin, *Tragedy of the Commons*
- 4. Acquisition by Creation
 - DK: 56-70
- 5. Property in One's Person
 - DK: 70-96
 - Supp: Grady, *A lasting gift to medicine that wasn't really a gift* (NYT, 2/2/10)
- 6. Subsequent Possession: The Law of Finders
 - DK: 97-116
 - Supp: *Obscure Maine Lost-Goods Law Turns Finders into Weepers* (NYT, 1/5/97)
- 7. Subsequent Possession: Adverse Possession
 - DK: 116-41
 - Supp: Correll, *This land is their land – now* (LA Times, 12/3/07)
- 8. Subsequent Possession: Adverse Possession (cont.); Adverse Possession of Chattels
 - DK: 142-164
 - Supp: Texas Adverse Possession statute (Texas Civil Practices & Remedies Code Sec.16.021 et seq.)
- 9. Subsequent Possession: Gifts
 - DK: 164-181

Part II – The System of Estates

- 10. Introduction to Possessory Estates; limitations added to possessory estates; future interest in a grantor
 - Edwards: 1-49 (review all study questions; even-numbered practice exercises only).
- 11. Possessory Estates (cont.); Future interest in third parties – Estates followed by remainders and estates followed by executory interests
 - DK: 198-201 (The Fee Tail); 226-31 (*Mahrenholtz*)
 - Edwards: 51-83 (review all study questions; even-numbered practice exercises only).

12. Future Interests – Accounting for Additional Future interests, class gifts and subsequent divesting
 - Edwards: 85-102 (review all study questions; even-numbered practice exercises only).
13. Future Interests – The Rule Against Perpetuities and Modifications/Reforms to RAP
 - Edwards: 137-156 (review all study questions).
 - DK: 305-10
 - Supp: Smith, *Does it Matter Where This Painting Hangs?* (NYT, 12/14/2004); Harrison, *Lincoln U Controls an Art Collection Worth \$1 Billion* (Chronicle of Higher Ed., 2/14/90); Professor's Corner: The Barnes Foundation Opening, <http://blsadvocate.org/2012/09/professors-corner-the-barnes-foundation-opening/> (9/24/12)

Part III – Concurrent ownership

14. Introduction to concurrent ownership: Joint Tenants, Tenants in Common and Tenancy by the Entirety
 - DK: 319-335
15. Relations among Concurrent owners; Waste
 - DK: 337-358; 217-21
16. Marital Interests: The common law system and community property system
 - DK: 359-367 (stop after Note 1); 387-92.

Part IV – Leaseholds: Landlord/Tenant Law

17. Leasehold estates
 - DK: 421-42
18. Subleases and Assignments; Evictions
 - DK: 442-469
19. Abandonment of Possession
 - DK: 469-81
20. Rights and Duties of Landlord and Tenant; Implied Warrant of Habitability
 - DK: 482-503

Part V – Land Transactions

21. Introduction to the Land Transaction
 - DK: 519-20; 541-563
22. The Deed

- DK: 585-93; 605-615

23. The Recording System

- DK: 645-47; 667-76

Part VI – Land Use Controls

24. Judicial Land Use Controls: Nuisance Law

- DK: 731-61

25. Private Land Use Controls: Introduction to Easements

- DK: 763-779

26. Easements (cont.); Public Trust Doctrine

- DK: 779-812

27. Easements (cont.): Scope, Termination, Negative Easements, Conservation Easements

- DK: 820-47

28. Covenants and Equitable Servitudes

- DK: 842-82

29. Common Interest Communities

- DK 896-924
- Supp: Hanna, *New Homeowner Association Laws in Texas designed to curb abuses* (Ft. Worth Star-Chron., 12/26/11)

30. Legislative Land Use Controls: Introduction to Zoning

- DK: 925-45

31. Zoning (cont.): Non-conforming uses, variances, special exceptions, amendments

- DK: 945-68

32. Zoning (cont.): Expanding the aims (and exercising the muscle) of Zoning

- DK: 968-89; 1019-28

Part VII – Eminent Domain and Takings

33. The Power of Eminent Domain

- DK: 1061-80

34. Physical Occupations and Regulatory Takings

- DK: 1081-1103

35. Rules based on measuring and balancing

- DK: 1103-31

36. A Third categorical Rule – Regulations creating total economic loss; Judicial takings

- DK: 1131-66
- Supp: Lord, *After Nearly 50 Year's, He's Ready to Build* (Prov. Journal-Bull., 6/25/08); Rice, *A Stake in the Sand* (NYT, 3/19/10); *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot.*, 130 S. Ct. 2592

37. Exactions

- DK: 1170-89