

PROPERTY SYLLABUS

Spring 2015

Professor: Dave Fagundes
Office: MPS Room 201M
Phone: 713.743.1431
Email: dfagunde@central.uh.edu
Twitter: @DFclasses

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-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 initial moral instincts.

Class meetings

We will meet Mondays, Wednesdays, and Fridays from 10.30-11.50am in **TBA**. By tacking on 10min to the end of our classes, we will bank a total of 370 minutes, which will allow us to cover all the material in five fewer class sessions. This way we can take some Fridays off, and/or end the course early so you all have more time to study for finals.

Required text

The text for this course is Dukeminier et al., *Property* (7th ed.). Please note that this is not the most recent edition of Dukeminier, but used versions of the seventh edition should be available both in the campus bookstore and from 2Ls and 3Ls via the coursebook exchange about which you were notified in October.

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

Class preparation

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 materials, including cases, case notes, statutory sections, and problem sets. If you are unprepared when called on, I will mark you absent, and will hold you responsible for substantial class participation the subsequent day.

I understand that you will not always be able to prepare completely for class. If you are not able to prepare for class on a particular day, you can avoid being called on by notifying me by email or otherwise prior to the start of class (this includes, for example, simply mentioning to me just before class that you are unprepared and would like to take a pass). You can choose to opt out of class participation a total of three times this semester. Please feel free to take these passes for any reason, and you need not explain or justify the basis for your decision to take a pass on a given day. Taking a free pass will not, of course, result in your being charged with an absence.

Please take note that it is your responsibility to inform me ahead of class of your desire to take one of these three free passes. If I don't get reasonable notice of your desire to take a pass, then you will be assessed as unprepared should I call on you. One suggestion: if you decide to take a pass only a few minutes before class starts, please notify me in person rather than sending me an email, since I likely will not be checking email shortly before class starts.

Problem sets

This course focuses substantially on application of rules to hypothetical problems in addition to reading and analyzing cases. These are all contained in PowerPoint slides to which I refer as "problem sets." The problem sets will be available on TWEN by early January for all classes this semester.

I expect you to complete all the problem sets in advance of the class sessions in which they will be covered. I will call on students to discuss the problems, and I expect students to be able to both express an opinion about the right answer to the problem as well as to give a reason for that answer. In order to make sure that you can participate fully in this aspect of class, I strongly recommend that you write down your answers and reasoning for each problem. While I am not currently planning to require you to submit written answers to the problems, if preparation of the problems is consistently poor, I reserve the right to implement such a policy.

The answers to problem sets will be revealed in class lectures, and will also be made available along with class slides 48 hours after class.

Attendance

Attendance is mandatory, and will be taken every class through distribution of an attendance sheet. If you do not personally initial the sign-in sheet during or immediately after class, you will be considered absent. 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. Lack of preparation, early departure, late arrival, or inappropriate behavior may result in your being marked absent.

UHLC strictly applies the ABA requirement that no student can receive credit for a class from which they have been absent more than 20% of the time. If you are absent in excess of 20% of our course meetings, I will refer the matter to the academic dean, which may result in administrative withdrawal. Substantial absences accumulated short of the 20% threshold may serve as a basis for grade reduction (see below). It is the responsibility of students to keep track of their own absences.

Examination and grading

The grade for this course will be primarily determined by a four-hour, closed-book 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.

A 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.

Generally, I allow students to audio record classes on two conditions: first, that you ask me for permission so I am aware the recording is being made; and second, that you agree not to post the recording online or make it public in any way, such as posting it on the internet.

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, 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. 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'm around, but chances are that I'll be unavailable. And as a general rule, I tend to be unavailable starting about one hour 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: utility, identity, trespass

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 & nn.3-4 (18-22, 24-26)

Note on other fugitive resources (36-39)

B. Subsequent possession

1. Acquisition by find

Armory v. Delamirie & nn.1, 4 (97-100)

Hannah v. Peel & n.3 (101-07)

McAvoy v. Medina & note a (107-10 & nn.1-3)

2. Acquisition by gift

Gruen v. Gruen & n.1 (174-80)

Gifts causa mortis: 173 n.1 & problems

3. Adverse possession

Adverse possession overview (116-22)

Van Valkenburgh v. Lutz & n.2 (122-34)

Notes on color of title (134-35); tacking (148-49); disabilities (149); adverse possession against the government (150)

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

III. Temporally subdividing private possession: present possessory estates

- A. Present possessory estates (191-96; 198-200; 202; 222-25)
- B. Life estates and waste
 - Woodrick v. Wood* & n.1, 3 (218-21)
- IV. Temporally subdividing private possession: future interests
 - A. Future interests in transferors (253-257)
 - B. Future interests in transferees (258-62; 264; 268-70)
 - C. Rule against perpetuities (285-89)
- V. Individually subdividing private possession: simultaneous ownership
 - A. Co-ownership
 - Co-ownership overview (319-22)
 - Harms v. Sprague* & n.1 (330-34)
 - Delfino v. Vealencis* & nn.1-2 (338-460)
 - Spiller v. Mackereth* & nn.1-3 (347-51)
 - B. Married couples as co-owners
 - Sawada v. Endo* & nn.1-2 (359-69)
 - In re Graham* & 1-2 (369-77)
 - C. Landlord/Tenant Relations
 - 1. Formation of the landlord/tenant relationship
 - Lease typology (421-22)
 - Garner v. Gerrish* & nn.2-3 (423-26)
 - Tenancies at sufferance, lease overview (427-31)
 - 2. Transferring the tenant's interest
 - Ernst v. Conditt* & nn.1-2 (442-48)

3. Landlord remedies for tenant breaches

Berg v. Wiley & nn.1-2 (460-66)

Note on eviction (467-69)

Sommer v. Kridel & nn.2-3 (469-78)

4. Tenant remedies for landlord breaches

Reste Realty Corp. v. Cooper & nn.1-4 (483-91)

Hilder v. St Peter & nn.1-2 (493-500)

Note on retaliatory eviction (503)

5. Fair Housing Act (TWEN)

*****Mid-semester review session*****

VI. Transfers of Land

A. Executory real estate contracts

1. Statute of frauds (541-42)

Hickey v. Green (542-45)

2. Marketable title

Lohmeyer v. Bower (547-50)

Note on equitable conversion (552-53)

2. Duty to disclose defects

Stambovsky v. Ackley & notes c, e (553-57)

Johnson v. Davis & nn.1-3 (557-61)

B. The deed & title covenants (563-64, 585-86, 587-89 nn.1-4)

Note: Estoppel by Deed (605)

Deed delivery (605-06; 609-10)

C. Mortgages (616-20, 629-30)

Popular articles on the mortgage crisis (TWEN)

D. The title recording system

Overview of the recording system (645-51)

Types of recording systems (667-69)

Inquiry notice: *Harper v. Paradise* (693-96); *Waldorff Ins. & Bonding, Inc. v. Eglin Nat'l Bank* (697-700)

VII. Private Land Use Controls

A. Easements

1. Easements overview (763-68)

Note: Licenses (773-74)

2. Implied easements

Holbrook, Shepard, Henry & nn.1-4 (774-79)

Van Sandt v. Royster & nn.2-3 (779-86)

Othen v. Rosier (786-92)

3. Assignability of easements

819-20: nn.1-2

4. Scope of easements

Brown v. Voss & n.1 (820-28)

5. Termination of easements

Preseault v. United States & n.3 (831-42))

B. Covenants

1. Covenants overview—elements & examples (847-51; 857-58: nn.3-5)
2. Enforcing restrictions in common-interest communities
Nahrstedt v. Lakeside Village Condominium Association, Inc. (TWEN)
3. Termination of covenants
Western Land v. Truskolaski (882-87); Restatement of Servitudes § 7.10 (888)

VIII. Eminent domain and takings

- A. Overview: history, text, structure (1061-65)
- B. “Takings”
Measuring and balancing approaches
Penn Central Transp. Co. v. City of New York & n.2 (1113-29)
- C. “Public use”
Kelo v. City of New London & n.2 (1065-76)
- D. “Just compensation”
Brief overview (1077-80)
United States v. Sioux Nation of Indians (TWEN)

TBA

Overflow sessions and exam Q&A session