

PROPERTY SYLLABUS Spring 2019

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 10.30am-noon, and Wednesdays from 1-2.30pm in TU-II 240.

Required text

The text for this course is Sprankling & Coletta, *Property: A Contemporary Approach*. The authors of this casebook just came out with a new fourth edition. This edition of the book will be available new for sale in the campus bookstore. I don’t think there are going to be any copies available used on secondary markets, but if there are you are most welcome to get one that way.

The fourth edition of this book is pretty similar to the third edition, which came out in 2015. Property is a great subject but it doesn’t change much from year to year, so there’s no reason for there to be a new edition so soon. For that reason, if you can find a copy of the third

edition on secondary markets for an appealing price, feel free to buy it. I will make available a separate list of readings for users of the third edition.

All page numbers in the syllabus refer to the fourth edition of the 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.

Problem sets

Our class discussions will focus largely, sometimes 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. *If you don't prepare the problems, you are not prepared 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 from 3-4.15pm on Wednesdays. 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. Email me if you want to set up one of the latter types of meetings.

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. 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 (syllabus, PowerPoint slides from class, problem sets) and provide discussion forums to which you are all invited to post topics related to course organization, scheduling, and other administrative matters as well as questions about material covered in class, recent developments in the law, and any other aspects of copyright itself. I will also often post information about class to the TWEN discussion boards. 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.

Class recordings

All classes will be video recorded and made available online. To access the webpage, visit this address: <http://uh.mediasite.com/mediasite/Catalog/catalogs/law-property-fagundes>. You will need your CougarNet ID and password to access the site.

Because class recordings are freely available at this location, I ask that you please not audio or video record any portion of the class for your personal use unless necessary for disability accommodation.

*CAPS (this paragraph is now a requirement per Provost)

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

COURSE TOPICS AND READING

I. Ownership and trespass

Date	Topic	Reading
1.15	Owners' rights and trespass: <i>Jacque v. Steenberg Homes</i>	51-58 & notes a-g
1.16	Ad coelum and its limits: <i>U.S. v. Causby</i> , <i>Chance v. BP Chemicals, Inc.</i> ; <i>Ad coelum</i> hypotheticals	135-41 & notes e-f; 141-48 & notes b-c; TWEN

II. The variations of acquisition: first, subsequent, and adverse

Date	Topic	Reading
1.17	First possession: <i>Pierson v. Post</i> ; Capture hypotheticals	8-14 & notes a-d
1.22	<i>Sipriano v. Great Spring Waters</i> ; Note on fugitive resources Acquisition by find: <i>Armory v. Delamirie</i> ; Find hypotheticals #1-4	175-77 & notes a-c; TWEN
1.23	Acquisition by find: <i>Hannah v. Peel</i> ; <i>Medina v. McAvoy</i> ; Find hypotheticals #5-7	178-88 & all notes; TWEN
1.24	Acquisition by gift: <i>Gruen v. Gruen</i> & notes a-c; note on gifts causa mortis; Gift hypotheticals	209-18; 220-21; TWEN
1.29	Adverse possession overview & <i>Gurwit v. Kannatzer</i> ; Adverse possession hypotheticals #1-8	95-104 & notes a-e; TWEN

1.30	<i>Fulkerson v. Van Buren</i> ; <i>Tioga Coal v. Supermarkets General Corp.</i> ; <i>Howard v. Kunto</i> ; Adverse possession hypotheticals #9-10	114-131 & notes b-c (120), d-e (124-25); a (131); TWEN
1.31	Note on disabilities & state actors; note on constructive adverse possession ; Adverse possession hypotheticals 11-13; TX statutory exercise; popular articles about adverse possession	Notes a-b (132-33); TWEN

III. Temporally subdividing private possession: present possessory estates

Date	Topic	Reading
2.5	Present possessory estates overview	303-09; 313-15; 325-26; 328-31; 344 (chart)
2.6	Estates in land hypotheticals #1-15; <i>Woodrick v. Wood</i> ; Estates in land hypothetical #16	322-25 & notes a-b; TWEN

IV. Temporally subdividing private possession: future interests

Date	Topic	Reading
2.7	Future interests in grantors and grantees	344-54; 356 (chart)
2.12	Future interests hypotheticals	TWEN
2.13	Rule against perpetuities	362-66; 369-71 (notes b-c, e-g)
2.14	Rule against perpetuities hypotheticals	TWEN

V. Individually subdividing private possession: co-ownership

Date	Topic	Reading
2.19	Co-ownership overview (383-86); Co-ownership hypotheticals #1-9; <i>Tenhet v. Boswell</i> & notes b-c (384-89); Co-ownership hypothetical #10	377-80; 384-88;
2.20	<i>Ark Land Co. v. Harper</i> (395-402); Co-ownership hypothetical #11; <i>Esteves v. Esteves</i> & notes a-d (403-07)	389-96 & notes a, c-d; 397-401 & notes a-d
2.21	<i>Olivas v. Olivas</i> ; marital property overview; <i>Sawada v. Endo</i> ; <i>Guy v. Guy</i>	TWEN; 401-12 & notes a, c-e; 413-19 & notes a-e
2.26	Overview & typology of leases; Landlord-tenant hypothetical #1; <i>Effel v. Rosberg</i> ; <i>Keydata Corp. v. United States</i>	456-59 & notes a-b; 459-63 & notes b-d; 463-69 & notes b-d
2.27	<i>Ernst v. Conditt</i> ; Landlord-tenant hypotheticals #2-3; transfer-limiting lease clauses; Landlord-tenant hypothetical #4; <i>Elk Creek Management v. Gilbert</i>	492-501 & notes a-e; 502 (second box); 520-25 & notes b-d
2.28	<i>Sommer v. Kridel</i> ; Landlord-tenant hypotheticals #5-8; <i>Fidelity Mut. Life Ins. Co. v. Kaminsky</i> ; <i>JMB Properties v. Paolucci</i> ; Landlord tenant hypotheticals #9-10	511-17 & notes a-c; 472-81 & notes a-e
3.5	<i>Wade v. Jobe</i> ; <i>Teller v. McCoy</i> ; Landlord-tenant hypotheticals #11-15; Housing antidiscrimination (Fair Housing Act of 1968)	482-90 & notes a-d; 442-43; 448-49, notes a-d; TWEN

3.6	<i>Fair Housing Council of San Fernando Valley v. Roommate.com, LLC</i> ; <i>Texas Dep't Hous. & Comm. Aff. v. Inclusive Comms. Project</i> ; Housing discrimination hypotheticals	451-56 & notes a-c; TWEN
3.7	Mid-semester review exercise	TWEN

VI. Transfers of Real Property

Date	Topic	Reading
3.19	<i>Hickey v. Green</i> & notes e-f (544-49, 551); Real estate transactions hypotheticals #1-2; <i>Lohmeyer v. Bower</i> & notes c-d (553-57); Real estate transactions hypothetical #3	344-54; 356 (chart); TWEN
3.20	Note on equitable conversion; <i>Stambovsky v. Ackley</i> ; Real estate transactions hypotheticals #4-5; MBE real estate contracts questions	551-52; 556-63 & notes b, d-f; TWEN
3.21	The deed & title covenants; Real estate transactions hypotheticals #6-8; mortgages overview; Real estate transactions hypotheticals #9-10	586-89; 643-47 & notes a-d; 648-53 & notes a-c; 664-71; TWEN
3.26	MBE deed questions; MBE mortgages questions; Title recording overview; Title recording problem set #1-5	607-09; TWEN
3.27	MBE title recording questions; shelter rule; Title recording problems #6-13; <i>Raub v. General Income Sponsors of Iowa, Inc.</i>	615-16; 626-32 & notes a-c; TWEN

VII. Private Land Use Controls

Date	Topic	Reading
3.28	Easements overview; Easements hypothetical #1; <i>Emanuel v. Hernandez</i> ; <i>Berge v. State of Vermont</i>	683-87; 690-96 & notes b-d; 697-702 & notes a-d; TWEN
4.2	<i>O'Dell v. Stegall</i> ; <i>Kienzle v. Myers</i> ; Easements hypotheticals #2-5	704-11 & notes b-c, e-f; 712-18 & notes a-e; TWEN
4.3	<i>Marcus Cable Assocs., L.P. v. Krohn</i> ; <i>Preseault v. United States</i> ; Negative easements; Easements hypotheticals #6-7	718-26 & notes b, d-f; 726-35 & notes a-e; TWEN
4.4	Covenants overview; <i>Deep Water Brewing, LLC v. Fairway Resources, Ltd.</i> ; <i>Gambrell v. Nivens</i>	736-45 & notes a-c; 745-51 & notes c, e
4.9	Common plans; Restatement approach; <i>Fink v. Miller</i> ; Covenants hypotheticals	749 note b; 751-52; 753-68 & notes a-e; TWEN
4.10	<i>Vernon Township Volunteer Fire Dep't, Inc. v. Connor</i> ; <i>Nahrstedt v. Lakeside Village Condominium Association, Inc.</i> & note e; <i>Schaefer v. Eastman Community Ass'n</i> ; Covenants hypotheticals	768-75 & notes b-e; 753-63; 775-82 & notes a-d; 753-63 & notes a, d-e

VIII. Eminent Domain & Takings

Date	Topic	Reading
4.11	<i>Pennsylvania Coal Co. v. Mahon</i> ; <i>Penn Central Transp. Co. v. City of New York</i> ; Takings hypotheticals	943-53 & notes a-b, f; 956-69 & notes b-e; TWEN
4.16	<i>Loretto v. Teleprompter Manhattan CATV Corp</i> ; <i>Lucas v. South Carolina Coastal Council</i> ; Note on exactions; Takings hypotheticals	972-79; 983-93; 998-1000; TWEN
4.17	<i>Hawaii Housing Auth. v. Midkiff</i> ; <i>Kelo v. City of New London</i> ; Public use hypotheticals	919-27 & notes b, d-e; 928-39 & notes a-d
4.18	Overview; <i>Sioux Nation v. U.S.</i>	927-28 note f; TWEN

4.23 – 4.25 Overflow days & review sessions