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**OFFICE HOURS:** 1:00pm-2:00pm Tu/Th (*note: appointments are most efficient*)

## **OVERVIEW AND GOALS OF THE COURSE**

What constitutes property? Why do we have a property rights system? What should the goals of that system be? What are the rules by which property laws facilitate the goals of the system? How do those goals change over time in response to societal changes, and how does property law facilitate those changes? These are a few of the questions we will explore this semester. Our goal is to balance the study of technical details of property law with an assessment of the theory and broader context within which these laws are derived and implemented.

Property is everywhere. Daily news reports highlight controversies over local land use decisions, state and federal regulation of private lands, probate and disposition of property under wills, landlord/tenant disputes, real estate transactions, environmental and natural resource conflicts, and related property issues. In this course we will explore the common law rules governing the acquisition, transfer, use and management of real and personal property.

In addition to the details of property law, you should take away from this course the notion that property (and law in general) is rarely black and white. Grasping the nuances of this plasticity in the law can make you better litigators, regulators, public servants or any other type of lawyer you plan to become. Not only will this enable you to better develop arguments for your clients, but also to grow confident in your ability to shape the development of the law over time as the needs of society change. As such, a crucial part of this course is learning how to undertake legal analysis and how to apply the principles derived from the material in a variety of ways.

Finally, I should note that property law is a hybrid subject, with its own unique set of principles mixed with contract, tort, constitutional, environmental, along with other law subjects. Thus, it is crucial that you not view each of your courses in a vacuum, but rather as interwoven parts of a holistic body of coursework aimed at making you complete lawyers.

## REQUIRED TEXT

***NONE: Course Materials Provided*** (under “Assigned Readings Materials” on TWEN)

I may assign supplemental readings from time to time. These may be found under “Supplemental Reading Materials” on TWEN. I hope these readings will be informative and interesting, and sometimes they will explore more theoretical aspects of property law.

## CLASS POLICIES

### Attendance

Attendance is expected and required. Students missing five or more classes may be penalized up to one full point grade. In accord with ABA rules, students missing nine or more classes may not be permitted to take the final exam.

### Seating

I will pass around a seating chart during our second class—please sit where you would like to remain for the rest of the semester. This will help me remember your name. You should legibly write your name on the part of the seating chart that identifies where you are sitting.

### Participation and Preparation

Class participation and preparation are required. To facilitate discussion of the readings during class, I plan to call on students, though I may periodically ask for volunteers. All students are encouraged to volunteer comments and questions. I expect you to complete the assigned readings and that you are prepared to participate. Participation and preparation are not based upon *quantity* of comments, but rather *quality*. I will note in my records each time your answer indicates a lack of preparedness. Your final grade may be adjusted (up or down) a +/- letter grade depending upon your level of participation and preparation. I want to emphasize that you will not be penalized for wrong answers, only for lack of preparation.

### Laptop/Mobile Device Policy – \*PLEASE NOTE\*

I do not allow laptop or mobile device (iPhone, iPad, etc.) use in the classroom. While I appreciate that this is an inconvenience to those who prefer typing their notes during class, after having taught both ways I have found that a classroom setting without the distractions created by laptops and mobile devices results in a much better learning environment. Recent scientific research supports this conclusion, and upon request I am happy to point you to the numerous studies demonstrating the negative effects of laptops on learning and retention of material/concepts.

### Examination

Your grade will be based on a closed-book, timed final examination, and it will consist of several fact patterns for which you will write short essays. I will give you additional details later

in the semester. The examination will be based on the assigned readings, class discussions and other relevant materials discussed in class.

## **CLASS RESCHEDULING**

I will need to cancel a few classes throughout the semester for professional reasons. Our class times have been adjusted on the back end of each class period to account for these classes. It is possible that I may need to cancel additional classes for professional or personal reasons. If I anticipate the need to cancel classes, I will either arrange a guest speaker or arrange make-up classes to cover the affected dates. I will do my best to ensure that make-up classes do not conflict with any of your other classes. For anyone unable to attend a make-up class and with an unusual situation preventing attendance, please let me know and we will address it.

## **REQUIRED READINGS**

Rather than attempt to plan the day-to-day discussions months in advance, I will hand out assignment sheets in two-week periods in order to maintain flexibility in our approach. Our goal is to go at a pace that optimizes your understanding of property principles—cramming substantive information into long-term memory is not the primary goal.

You should receive each new assignment sheet by the Friday prior to that assignment. This will allow you plenty of time to read the Tuesday assignment before class on that day.

We will try to cover approximately 20-30 pages of text per every 2 hrs. of class time. Due to the breadth of the book's coverage we will not be able to read the book in its entirety. Rather we will cover topics that will provide you both a strong overview of property principles and assist in developing your legal analysis skills. The chart below represents what we will attempt to cover, but this is only meant as a general guideline for what we will attempt to accomplish this semester. We may not cover every topic listed below, and I may change the assignments or even dispense with entire topics if necessary. Also, I may add reading materials, although you will be given plenty of time to read these in advance.

Your thorough understanding of the topics we do cover is more important than finishing every topic on the syllabus. Regardless of any changes, you will always receive reading assignments in advance, and you will only be tested on what we cover in class. In the event that we discuss a case in class that is not in the book (but that adds to or clarifies our discussion), I will give you the facts, holding, and legal rule in class, as well as provide the citation if you wish to look the case up later.

## **MISCELLANEOUS**

To the extent it is possible we should address problems/questions ahead of time, rather than waiting until the end of the semester to review materials from scratch. So please consider the entire semester a rolling review, rather than waiting until the end of the semester to raise questions or concerns for the first time (though obviously some new questions on older topics will come to mind later in the semester).

Similarly, please keep in mind that as we near the exam I may become increasingly less available. As a result, try as best as you can to arrange a visit to ask any questions that you may have on a rolling basis throughout the semester.

## **COUNSELING AND PSYCHOLOGICAL SERVICES**

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](http://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](http://www.uh.edu/caps/outreach/lets_talk.html).

<p><b>A BRIEF HISTORY OF REAL PROPERTY IN THE UNITED STATES</b></p> <p>Native American Claims and Theories of Property Law</p> <p>Brief History of Land Allocation and Protection in the US, Tragedy of the Commons</p>
<p><b>SOME BASIC RIGHTS AND RESPONSIBILITIES OF THE LANDOWNER</b></p> <p>Trespass, Encroachments, Limits on the Right to Exclude</p> <p>Private Nuisances</p> <p>Public Nuisances, Remedies</p> <p>Public Use Limitation</p>
<p><b>PROPERTY OTHER THAN LAND</b></p> <p>Fish and Wildlife, the Rule of Capture, Oil and Gas</p> <p>Water</p>
<p><b>LAND SALES</b></p> <p>Duty to Disclose, Warranty of Fitness</p>
<p><b>TITLE ASSURANCE</b></p> <p>Types of Recording Acts, Statutory Conditions of Protection</p>

<p><b>DIVIDING OWNERSHIP ACROSS TIME</b></p> <p>Protection of future interests – avoiding waste</p>
<p><b>LANDLORD TENANT LAW</b></p> <p>Types of estates, Rights of Possession &amp; Quiet enjoyment, Warranty of Habitability</p> <p>Tort rights, Environmental Contamination, Right to Assign and Sublet, Landlord's Rights and Remedies</p>
<p><b>SHARED OWNERSHIP</b></p> <p>Common Law Estates, Joint Tenancies, Disagreements Among Cotenants</p> <p>Accounting to Cotenants, Partition</p>
<p><b>NONPOSSESSORY INTERESTS IN LAND: EASEMENTS</b></p> <p>Nonpossessory Interests generally, Express Easements, Easements by Estoppel</p> <p>Easements by Implication and Necessity, Easements by Prescription</p>
<p><b>LOCAL LAND USE CONTROL</b></p> <p>Zoning</p> <p>Variances, Special exceptions, Legislative Decisions, Community Decisions</p> <p>Aesthetic and Architectural Regulation, Historical Preservation, Growth Control</p> <p>Protecting against Discrimination</p>
<p><b>REGULATORY TAKINGS</b></p> <p>Regulatory Takings Intro, Penn Central Balancing Test</p> <p>Bright Line Rules and Per se Takings</p> <p>Takings and Time, Coming to the Regulation</p> <p>Exactions</p>