

Eminent Domain and Private Property Rights
Fall 2026

GENERAL INFORMATION

Adjunct Professor:

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I. Schedule

- A. **Class Meetings:** Wednesday, 1:00-3:00 pm.
- B. **Office Hours:** By appointment only. I am open to meet with students as schedules permit.

II. Course Materials

- A. **Required Materials:** Course-case Packet. Supplemental Materials will be circulated and/or posted electronically in advance of class and will consist of selected readings and case law from various Reference Materials.
- B. **Reference Materials:**

Selected case law. *See* Course Packet.

III. Course Description

This is a course about the Fifth Amendment to the United States Constitution and Article I, Section 17 of the Texas Constitution. Both guarantee that private property shall **not** be taken for public use without just compensation. Eminent domain is sometimes referred to as the “last refuge of the Constitution,” as it represents the government’s most powerful tool to acquire private property for public purposes. However, this power must be exercised within the bounds of the Constitution and with respect for private property rights.

Recent census data indicates that Texas is one of the fastest-growing states in the country, with its population projected to double by 2050. With this growth comes significant challenges in infrastructure planning and construction, particularly in the context of roadways, pipelines, and natural disasters like hurricanes that cause substantial flooding. Flood control projects, for instance, may require the exercise of eminent domain to acquire the necessary land.

Throughout this course, we will examine the legal and ethical issues surrounding eminent domain in Texas. We will explore the tension between private property rights and governmental control and power, as well as the impact of eminent domain on individuals, communities, and the public interest. We will also discuss the various factors that can influence eminent domain cases, including the size and scope of the public project, the nature of the property being taken, and just compensation offered to property owners.

By the end of this course, you will have a deep understanding of the legal principles governing eminent domain.

IV. Course Requirements.

- A. **Attendance.** Class attendance is required and will be monitored. I reserve the right to adjust your grade downward by 1/3 of a point should you have more than two unexcused absences during the course of the semester. For example, if you have more than two unexcused absences and you receive an A-, then I reserve the right to adjust your grade downward to a B+. Please communicate with me about all absences by email.
- B. **Class Participation.** I expect students to be prepared for class. I reserve the right to adjust your final grade upward or downward 1/3 of a point for truly exceptional or poor contributions to the class during the course of the semester. For example, if you provide truly exceptional contributions to the class and receive an A-, then I reserve the right to adjust your grade upward to an A. The inverse may happen for a lack of preparation or poor contributions to the class.
- C. **Class Decorum & Laptops.** I expect you to behave in a professional manner in class. I approve of laptop use during class, but only for the purposes of taking notes and related class participation. I reserve the right to ban laptops if their use becomes a detriment to the class.
- D. **Final Examination.** Your final grade will be based on a two-hour essay examination at the end of the course. You may use the required materials, reference materials, your own outlines, or outlines you have helped prepare in collaboration with your classmates.

V. Counseling and Psychological Services (CAPS):

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

VI. Mental Health and Wellness Resources

The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

VII. Title IX/Sexual Misconduct

Per the UHS Sexual Misconduct Policy, your instructor is a "responsible employee" for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

VIII. Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

IX. Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

X. Honor Code

The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

XI. AI Generated Text

The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as "generative" large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of other text/documents/code/images. The output, the AI Generated Text, appears to have human-mimicking "intelligence" and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/other in applying the plagiarism policy to this course. The term "assessment" means any work product generated for this course that is submitted to the instructor or presented in a class session, regardless whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non-proctored environment, such as a "take-home" final examination unless specified as an exception below. The parts of the Honor Code that refer to unauthorized materials or aid are specifically prohibited from any use of AI Generated Text in this course unless

specified as an exception below.

The following activities are exceptions to the immediately preceding paragraph; the intent of these exceptions is to allow use of AI Generated Text for specifically and narrowly defined activities in relation to this course:

- Creating content for an outline that you use to summarize the course content
- “conversing” with the AI Generated Text software system to create hypotheticals to better understand course content, alone or with others
- checking text drafted by you for misspellings, grammar and punctuation errors, strength and clarity of prose, verbosity, effective transitional language and thesis sentences, word choice, excessive passive voice, and like things

XII. Learning Outcomes

During your time in this course, you will develop competence in (1) the constitutional and legal framework governing eminent domain, including the Takings Clause of the Fifth Amendment, Article I, Section 17 of the Texas Constitution, and Chapter 21 of the Texas Property Code, (2) the policy goals and considerations underlying eminent domain, such as promoting economic development, preserving public health and safety, and protecting individual property rights, (3) the various forms of government action, including those delegated to private companies, that may constitute a taking, including physical takings, regulatory takings, and inverse condemnation, and (4) the procedural safeguards and remedies available to property owners subject to eminent domain, including the right to just compensation, the ability to challenge the public use and necessity of the taking, and the right to judicial review. The objective of this course is to be able to apply the principles and concepts learned in class to real-world scenarios and case studies, including recent and historic examples of eminent-domain cases and litigation.

READING ASSIGNMENTS

I.

Overview: Origins of Eminent Domain

Class No. 1

Topic: Course Introduction and What Is Property?

What is a taking?

Who has the power to condemn? Why?

Kelo v. City of New London, 545 U.S. 469 (2005)

Kelo Reactions

TEX. GOV'T CODE § 2206.001 (b)(1)

Texas Constitutional Article I, § 17.

KMS Retail Rowlett vs. City of Rowlett, 593 S.W.3d 175 (Tex. 2019) (Blacklock, J., dissenting)

II. Public Use & Public Necessity

Class No. 2

Topics: Public Use vs. Public Necessity—Who Decides What’s Needed and How Is It Decided?

Boom Co. v. Patterson, 98 U.S. 403 (1878).

City of Austin v. Whittington, 384 S.W.3d 766 (Tex. 2012).

Maher v. Lasater, 354 S.W.2d 923 (Tex. 1962).

Miles vs. Tex. Cent. R.R. & Infrastructure, Inc., 647 S.W.3d 613 (Tex. 2022) (Young, E., concurring)

III. Administrative Phase

Class No. 3

Topic: Pre-Condemnation Negotiations, Final Offer, Filing Requirements, the Special Commissioners’ Hearing, Procedural Deadlines, and Jurisdiction.

TEX. PROP. CODE Ch. 21

In re Lazy W District No. 1, 493 S.W.3d 538 (Tex. 2016).

Hubenak v. San Jacinto Gas Transmission Co., 141 S.W.3d 172 (Tex. 2004).

IV. Physical Taking vs. Regulatory Taking

Class No. 4

Topic: Physical Takings, Regulatory Takings, and Inverse Condemnation

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 US 304 (1987).

Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002).

Sheffield Development v. City of Glenn Heights, 140 S.W.3d 660 (Tex. 2004).

Horne v. Dept. of Agric., 135 S.Ct. 2419 (2015).

Sheetz v. El Dorado County, 601 U.S. 267 (2024).

V.
Judicial Phase and
“Just” Compensation

Class No. 5

Topics: How Court’s Determine “Just” Compensation - Highest and Best Use

State v. Carpenter, 89 S.W.2d 979 (Tex. 1936).

City of Austin v. Cannizzo, 267 S.W.2d 808 (Tex. 1954).

Religious of Sacred Heart of Texas v. City of Houston, 836 S.W.2d 606 (Tex. 1992).

State v. Windham, 837 S.W.2d 73 (Tex. 1992).

City of Baytown v. Shrock, 645 S.W.3d 174 (Tex. 2022) (Young, E., concurring).

Class No. 6

Topic: Limitations on “Just” Compensation—Why Some Market Damages Are Not Recoverable

City of Austin v. Avenue Corp., 704 S.W.2d 11 (Tex. 1986).

State v. Schmidt, 867 S.W.2d 769 (Tex. 1993).

City of Harlingen v. Sharboneau, 48 S.W.3d 177 (Tex. 2001).

Interstate Northborough P’ship v. State, 66 S.W.3d 213 (Tex. 2001).

Class No. 7

Topic: Billboards, the Property Owner Rule, and Jury Charge

State v. Central Expressway Sign Associates, 302 S.W.3d 866 (Tex. 2009).

Westgate, Ltd. v. State, 843 S.W.2d 448 (Tex. 1992).

State v. Petropoulos, 346 S.W.3d 525 (Tex. 2011).

Reid Road Municipal Utility District No. 2 v. Speedy Stop, 337 S.W.3d 846 (Tex. 2011).

Class No. 8

Topic: Admissibility of Market Evidence, the Economic Unit, Burden of Proof of Damages, Leaseholds, and Cross Examination of Appraisers

In re State, 355 S.W.3d 611 (Tex. 2011).

State v. Windham, 837 S.W.2d 73 (Tex. 1992).

Ex Parte Shepperd, 513 S.W.2d 813 (Tex. 1974).

Class No. 9

Topic: Date of Taking, Project Influence, and Value to the Taker

City of Fort Worth v. Corbin, 504 S.W.2d 828 (Tex. 1974).

Caffe Ribs, Inc. v. State, 487 S.W.3d 137 (Tex. 2016).

Enbridge Pipelines (E. Tex.) L.P. v. Avinger Timber, LLC, 386 S.W.3d 256 (Tex. 2012).

Class No. 10

Topic: Delegation of Power — Easements (Pipelines, Power lines, and Utility Lines)

Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC, 363 S.W.3d 192 (Tex. 2012) (Denbury I).
Denbury Green Pipeline-Texas, LLC vs. Texas Rice Land Partners, Ltd., 510 S.W.3d 909 (Tex. 2017) (Denbury II).
Exxon Pipeline Co. v. Zwahr, 88 S.W.3d 623 (Tex. 2002).
Hlavinka vs. HSC Pipeline Partnership, 650 S.W.3d 483 (Tex. 2022).

Class No. 11

Topic: Federal Condemnation Actions

FED. RULE CIV. P. 71.1.
Kirby Forest Indus., Inc. v. United States, 467 U.S. 1 (1984).

VI.

Current Trends, Disputed, and Future Issues

Class No. 12

Topic: Flooding Cases and Water Rights

Tarrant Regional Water Dist. v. Gragg, 151 S.W.3d 546 (Tex. 2004).
Arkansas Game and Fish Com'n v. U.S., 568 U.S. 23 (2012).
Edwards Aquifer Auth. v. Day, 369 S.W.3d 814 (Tex. 2012).
DeVillier v. Texas, 601 U.S. 285 (2024).

Class No. 13

Topic: Emergencies, Police Power, Commandeering, Compensation for Intellectual Property Rights, and Takings to Satisfy Taxes

National Bd of YMCA v. United States, 395 U.S. 85 (1969).
Jim Olive Photography vs. University of Houston, 624 S.W.3d 764 (Tex. 2021).
Tyler v. Hennepin County, 598 U.S. 631 (2023).

Final Exam