

Property Law
Fall 2009 – Evening Division
Law 104 (004) Mon/Wed 6pm-7:50
Hazel Hall 121

Professor: Helen Alvaré

Office: 404

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Office Hours: Mondays after class, and by appointment

Required Text: Dukeminier, Krier, Alexander and Schill's *Property*, 6th edition.

Assignments: The syllabus below will be posted on the law school's web site. Regular attendance and class participation are mandatory. I will call on quite a few students randomly during each class.

Grading: There will be a three and one-half hour, closed book examination at the end of the semester. You are responsible for the material covered during class discussions, as well as all of the assigned readings, including those that not discussed in class. Final grades may be raised or lowered by a single increment to reflect the quality of your class participation.

Exam: December 17, 6pm-9:30pm. Exam format will be discussed thoroughly in class before December.

Attendance: Academic Regulation 4 governs attendance. I will have an attendance sheet for your signature during each class.

Internet Policy: Students may not send or receive email or text messages or surf the Internet during class time.

**Please realize that this schedule is subject to slight changes as classes actually unfold. At the end of each class, I will confirm what material I intend to cover in the following class. Also, if weather interferes with our class schedule, I will keep you posted about a new schedule.

All references to D&K are to your required textbook, Dukeminier, Krier, Alexander and Schill's *Property*, 6th edition.

UNIT I SYLLABUS: POSSESSION AND OWNERSHIP

In this first unit, we will study possession and ownership. Both first possession and subsequent possession will be covered. We will also examine the importance of the

relationship between Property Law and Economics, a theme that will reoccur throughout our text and discussions.

During this period, we will pay close attention to a number of the basic skills necessary to form legal habits of mind: the articulation of the relevant facts, holdings, and legal reasoning in cases; the careful reading of statutes; and the ability to discern the public policies at work in the cases and statutes.

You will also come to see how Property Law, one of the oldest areas of law, is influenced not only by economics, but also by history and culture.

1 Mon Aug 24

Welcome and Introduction to Property Law

First Possession: Discovery

D&K, pp. 3-17

First Possession: Capture

D&K, pp. 17-35

2 Wed Aug 26

First Possession: Creation

D&K, pp. 51-69

Also read Handouts: NBA v. Motorola and Feist Publications v. Rural Telephone Service

3 Mon Aug 31

Subsequent Possession: Find

D&K, pp. 95-112

Subsequent Possession: Adverse Possession

D&K, pp. 112-129

4 Wed Sept 2

Adverse Possession, cont'd

D&K, pp. 129-144

Subsequent Possession: Gift

D&K, pp. 157-72

MONDAY SEPT 7, LABOR DAY HOLIDAY

5 Wed Sept 9

Property and Economics

D&K pp. 35-50

Read Handouts

UNIT II: ESTATES AND FUTURE INTERESTS

This section of the Property course requires particular attention to history and to language. Regarding history: much of current law in the area of estates and future interests bears the marks of its feudal origins. This helps to explain its complexity. Some knowledge of this history will also help you understand the purposes these estates and future interests were created to serve, and sometimes continue to serve, in the lives of families and society.

Regarding language: in order properly to construe the conveyances in this section, you will need to pay very close attention to each clause of a conveyance, as well as to the overall intent of the grantor as best it can be discerned. Much is in the details.

Memorization of the names and characteristics of the various estates and future interests will serve you well. But even more important is zeroing in on the distinctions between them. At certain points during the study of this material, we will pause, and create a chart of estates and future interests together.

Finally, for a good understanding of this material, there is no substitute for the patient and repeated working-out of problems. There are a significant number of problems already contained in your textbook. *Please come to class ready to discuss these.* For additional practice, I recommend the following workbook: Charles I. Nelson, Peter T Wendel, A Possessory Estates and Future Interests Primer. (Do not bother working out problems situated in the ancient past, offered in this or any workbook).

6 Mon Sept 14

Possessory Estates

*D&K, 173- to the top
paragraph of 174; 181-89; 189-206*

Present Possessory Estates, cont'd Future Interests, introduced

*Lecture only, pp. 206-15
(*"Lecture only" indicates that you should read the material, but that I will not direct questions to the class on this material in the course of the evening. You are responsible for the lecture material on the exam).*

*Read: 215-221; 225-33; 237-
240*

7 Wed Sept 16

Future Interests, continued The Rule Against Perpetuities

D&K 244-51; 262-74

8 Mon Sept 21
Finish Rule Against Perpetuities Discussion

Concurrent Interests: Tenancy in Common, Joint Tenancy, and Tenancy by the Entireties; Severance; Joint Bank Accounts

D&K, pp. 275-91

9 Wed Sept 23

Concurrent Interests, cont'd: Partition

D&K 291-310

Marital Interests

D&K, pp. 310-22; 335-40
Lecture Only: 322-35

Brief lecture: property and domestic partnerships or civil unions. No accompanying reading on this material as it is fully covered in a Family Law course.

Introduction to Unit III:

This second portion of Property Law both makes use of some of the concepts and tools introduced during the early weeks (first in time possession, law and economics, property and social justice, etc.), and introduces a variety of new, discrete topics, all concerning real property.

It contains areas almost wholly occupied today by contract law -- landlord/tenant law and the purchase and sale of land -- but bearing enough of the marks of their ancient origins in Property Law, to take up part of it still within a Property course.

It also contains nuisance law, a prime subject for observing the overt use of law and economics tools for choosing among both rules and remedies. Nuisance law, like zoning law and the law of servitudes, are tools for managing competing interests in the uses of neighboring properties. We will be observing the differences between these areas of law, as well as their shared goals.

Servitudes can be one of the more complex areas within Property Law. Although modern efforts are underway to streamline this area, it is still full of terms and even ideas drawn from its centuries' old origins. It is very important in the United States today given the number of properties purchased within "common interest communities."

Constitutional law and social justice issues feature prominently in the areas of zoning and eminent domain. The U.S. Supreme Court has been particularly active recently in the latter area, and it remains a vital subject of current public controversy and legislation.

UNIT III: LEASEHOLDS: THE LAW OF LANDLORD AND TENANT

10 Mon Sept 28

Types of Tenancies

The Lease; Unlawful Discrimination

D&K, pp.363-376;
376-84

- Affordable Housing** *D&K, 444-449*
- 11 Wed Sept 30**
Defaulting Tenants; LLs' Remedies *D&K, pp. 403-21*
- Condition of the Premises** *D&K, pp. 421-444*
Tort Liability

TRANSFERS OF LAND

- 12 Mon Oct 5**
Land Transaction: Purchasing a Home; Contract of Sale *D&K, pp. 453-494*

- 13 Wed Oct 7**
**Implied Warranty of Quality; The Deed; Warranties of Title;
Delivery of the Deed**
*D&K, pp.494-502;
513-27; 532-41*

MONDAY, OCT 12 COLUMBUS DAY, FALL HOLIDAY

- 14 Tues Oct 13, GMU HAS MONDAY CLASSES THIS TUESDAY**
The Recording System *D & K, pp. 559-71*

- Recording Acts; Title Assurance**
*D&K, pp.580-89; 612-14;
623-35
Handout*

LAND USE CONTROLS AND EMINENT DOMAIN

- 15 Wed Oct 14**
Land Use Controls: Nuisance *D&K, pp. 639-666*
- 16 Mon Oct 19**
Servitudes: Easements: *D&K, pp 667-71; 675, note 1
to page 701.*

- 17 Wed Oct 21**
Servitudes: Public Trust Doctrine: *D&K, pp 701-09*
- Assignability of Easements** *D&K, pp 709-725.; 735, note 3 – to 736, end of note 4.*
- 18 Mon Oct 26**
Negative Easements *D&K, pp 736-40*
- Covenants and Servitudes** *D&K, pp 740-768, to end of n. 2.*
- 19 Wed Oct 28**
Covenants and Servitudes, cont'd : Scope and Termination.
D&K, pp 768-793
- 20 Mon Nov 2**
Common Interest Communities *D&K, pp 798-819*
- 21 Wed Nov 4**
Legislative Land Use Controls: Zoning
D&K, pp 821-49
- 22 Mon Nov 9**
Zoning: Achieving Flexibility *D&K, pp 849-71*
- 23 Wed Nov 11**
Zoning: Aesthetics: Constitutional Issues
D&K, pp 871-901
- 24 Mon Nov 16**
Zoning: Household Composition and Exclusionary Zoning
D&K, pp 901-911; 918-39
- 25 Wed Nov 18**
Eminent Domain *D&K, pp. 941-73*
- 26 Mon Nov 23**
Eminent Domain *D&K, pp. 980-1006*
- NOV 25 THANKSGIVING BREAK, NO CLASS**
- 27 Mon Nov 30**
Eminent Domain *D&K, pp. 1006-1042*
- 28 Wed Dec 2 Last Class, “Clean Up” and Review Session**