

GEORGE MASON UNIVERSITY SCHOOL OF LAW

Fall 2009

Prof. Steven J. Eagle

**Property Syllabus and Course Guide**

Date	Pages	Topic
<b>What is Property</b>		
Aug. 24	1-22	Conceptions of Property
Aug. 26	22-50	Distinguishing Trespass from Nuisance
Aug. 31	50-81	Property Rules, Liability Rules, and Equitable Relief
<b>Original Acquisition</b>		
Sept. 2	81-110	First Possession
Sept. 9	110-147	Discovery and Creation
Sept. 21	194-220	Adverse Possession
Sept. 23	220-242	Sequential Possession, Competing Principles of Acquisition
Sept. 24*	292-333	Perspectives on Property; Public Rights
<b>Rights of Property Owners and Their Limitations</b>		
Sept. 30	401-439	Limitations on the Right to Exclude
Oct. 5	480-518	Licenses and Bailments
<b>Forms of Ownership</b>		
Oct. 7	531-553	Transfer of Ownership, Present Interests in Land
Oct. 8*	554-576	Future Interests in Land
Oct. 13†	576-595	Managing the Estates System
Oct. 14	595-618	Mediating Conflicts Over Time
Oct. 19	633-664	Concurrent Tenancies
<b>Entity Property</b>		
Oct. 21	684-719	Leases as Conveyance
Oct. 22*	719-746	Leases as Contract
Oct. 26	746-772	Transfer of Tenants' Interests, Rent Control
Oct. 28	772-801	Condos, Coops, and Common-Interest Communities

<b>Security Interests</b>		
Nov. 2	830-863	Introduction to Security Interests
<b>Title Records and Transfer of Property</b>		
Nov. 4	917-937	Recording Acts and Title Examination
<b>Private Coordination of Land Uses</b>		
Nov. 9	971-1001	Easements
Nov. 11	1001-1028	Real Covenants
Nov. 16	1028-1049	Equitable Servitudes
<b>Public Control of Land Use and Arrogation of Ownership</b>		
Nov. 18	1049-1083	Zoning and Land Use Planning
Nov. 23	1258-1286	Regulatory Takings
Nov. 30	1286-1321	Categorical Takings Rules
Dec. 2	None	Review and Questions

Assignments indicate our *approximate* schedule. Page references are to Merrill & Smith, *Property: Principles and Policies* (2007) (Foundation Press) (ISBN 1-59941-011-7).

\* Make up classes for Sept. 14, 16, and 28. We will meet in Room 121 from noon-1:50 p.m. (morning section) and 4:00-5:50 p.m. (afternoon section).

† GMUSL Monday classes are shifted from Oct. 12 to Oct. 13.

### **Property in Context**

This course explores the fundamentals of one of the three great branches of the common law (*i.e.*, the body of customs, expectations, and practices within communities that were discerned and applied by English (and later American) judges. Property law considers how individuals come to own rights with respect to things. Contract law considers the consensual exchange of those rights. Tort law deals with the rectification of harm to property rights. In addition to this private law trilogy, two fundamental public law courses, Criminal Law and Constitutional Law, also provide protection for property interests.

“Property” is a very broad concept, applicable not only to physical things, but also to intangibles (such as corporate stock), “intellectual property” (such as patents and copyrights), and rights in the integrity of one’s physical person (vindicated by tort suits for physical injury) and character (the basis of tort suits for defamation of one’s good name).

This course deals primarily, although by no means exclusively, with private ownership of real property (*i.e.*, land and permanent improvements to land). The real estate transactions

that we will discuss mostly involve houses and apartments. Property is the prerequisite to courses in Real Estate Finance and Development (which primarily treats commercial real estate transactions) and Land Use Planning (which deals with public coordination of land uses). Property also is the principal gateway course to courses in Trusts and Estates, and Estate Planning.

Other courses also have large property components. For instance, Taxation largely is based upon the treatment of gains and losses with respect to property. Much of family law covers the disposition of marital property. Business law courses (including Bankruptcy) also are devoted in large measure to the control and disposition of property.

### **Goals for this Course**

In this course you will learn (1) the habits of mind cultivated by attorneys, (2) property law theory, (3) property law doctrine, and (4) how lawyers apply theory and doctrine in dealing with typical transactions and disputes.

The law is an art emphasizing creativity. It is also a craft emphasizing the careful reading of cases and statutes, the discernment of public policy considerations, the application of logical reasoning, and clarity and persuasiveness in oral and written expression.

Contemporary American property law reflects the goals of society and individuals through a thousand years of development in this country and England. Cultural and technological changes have tended to produce corresponding adjustments in property law. In a world of material scarcity, the production of wealth often (but not always) has been an important element in the evolution of property law. Making the best use of limited resources is the purview of economics, which Lionel Robbins defined as “the science which studies human behaviour as a relationship between ends and scarce means which have alternative uses.” Economics has many applications to property, some of which we will discuss this semester. It is important to note at the outset that economics is not about money, nor about wealth maximization. Rather, it is about achieving the best results, by our own lights, through use of the scarce materials at hand.

### **Attendance**

The Law School posts requirements for class attendance on its web site. You should become familiar with these before the first class. I do take attendance, and automatically exercise my limited discretion to deem absences as being for good cause in your favor. Since absences exceeding those permitted will result in your being dropped from the course, I urge you to consult with the Recorder’s Office should you have questions regarding GMUSL’s attendance policy.

### **Class Preparation**

The first year of law school covers territory that is unfamiliar to you, and requires more effort than most undergraduate programs. You will have to spend a substantial amount of time

preparing for each class. The generally accepted minimum is six hours of preparation for each two-hour meeting. I suggest that you read assigned cases, materials, and questions quickly at first, and then go back and reread them very carefully, this time taking notes. There will be words that will be foreign to you, and you should look these up in your law dictionary. Less obvious, you will come upon idiomatic expressions that you do not recognize, or words that not look exactly right in context. Often these are legal terms of art. You should check such usages in the legal dictionary, as well.

Your careful review of each principal case should culminate in your preparation of a brief (i.e., an abstract) of it. There are many styles of legal case briefs, and you should select the method with which you are comfortable and that best enables you to describe the case and to answer questions about it that are posed in class.

Under the most common style of class brief, dubbed “IRAC,” you would state the *issue* raised by the case; the legal *rule* that governs its resolution; the *application* of the rule to the particular facts; and the court’s *conclusion*. In addition, it is important that you understand the *procedural posture* of the case. For instance, a trial court would employ a different standard in reviewing a motion to dismiss a case based on the initial pleadings than it would in deciding the case after all the evidence is heard. Likewise, an appellate court typically would use a different standard than the trial court.

You should beware of purchasing commercial “canned briefs.” These are of very uneven quality. More important, the prime benefit that comes from a brief lies not in having it in your possession, but rather in going through the process of reading and thought that culminates in your preparing the brief. It also is possible to jot a few words in the margins of the case book in lieu of a fully prepared brief, the so-called “book brief.” Some upper-class students can get by with this, but my long experience suggests that it is folly for first-year students to try it.

The most important aspect of your brief, also the first component under the IRAC system, is identifying the issue before the court. Refining the issue is much harder than might appear at first blush, and you will need to practice. Since you cannot resolve the issue before you correctly define it, you should devote lots of attention to this.

As important a skill as it is, analyzing individual cases is not the goal of your study. It is the relationships among cases, the editors’ comments, and the questions posed in the casebook that together contribute to your understanding of the topic you are considering.

Law students typically form informal study groups for class preparation and exam review purposes. You will learn not only from your classmates, but by helping them as well.

## **In Class**

**Socratic Dialogue** — The typical undergraduate lecture class permits students a passive role in the classroom. Law school classes are more demanding. Most have some lecture

component, typically regarding preliminary or secondary matters. The heart of the class, however, is the Socratic Dialogue, where the instructor asks questions and students respond.

Instructors sometimes ask for student volunteers, but often simply select students to recite. While it is natural to feel uncomfortable at being thus placed on the spot, cold calling reflects the fact that law school is a professional school, designed to prepare you for the practice of law. It is much better to become acclimated to thinking on your feet and defending your position in class than it would be while in front of a judge, with opposing counsel anxious to pounce on your every mistake, a client whose property or liberty is in your hands, and a legal stenographer taking down every word that you say.

You will make mistakes in class, but the goal of the Socratic Method is that you learn from your mistakes. Don't worry about getting the "wrong" answer in class. All that your teachers expect of you is an answer that reflects a good faith effort to prepare for class and to grapple with the issues. Some of your classmates undoubtedly will have thought the issues through in the same way that you did, and your contribution to the dialogue and the ensuing discussion will help them as well as you. The only caveat is that you should never bluff in class. If you are unprepared, say so.

I urge you to volunteer in class. You might find it fun, and you certainly will learn more if you take an active part in the discussion. Also, volunteering to answer a question for which you are primed is a wonderful way of getting instant feedback on how you are doing.

**Recording of Classes** — Classes may not be recorded except as an accommodation arranged through the GMU Office of Disability Services.

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

### **Course Review, Research and Study Aides**

Our final class session will consist of review of the semester's work and an opportunity for you to ask questions.

#### **Texts**

Michael Allan Wolf, Gen. Ed., *Powell on Real Property* 17 Vols. Lexis Law Publishing (2009). *Powell* is a huge, all-inclusive treatise (not for everyday use, its contents tend to be sprawling, but it's a treasure trove for specialized research).

William B. Stoebuck & Dale A. Whitman, *Hornbook on the Law of Property*, 3d (Hornbook Series) West Publishing (2000) (an excellent hornbook that bridges the gap between extensive research materials and study aides).

Lewis M. Simes, *Hornbook on Future Interests*, 2d (Hornbook Series) (West Publishing (1966) (a specialized text on future interests).

Herbert Hovenkamp & Sheldon F. Kurtz, *Principles of Property Law*, 6th (Concise Hornbook Series) West Publishing (2005) (a shorter text than Stoebuck & Whitman, but contains useful analysis).

### **Study Aides**

The campus bookstore and on-line sources have many study guides. Here are two of the better ones.

James Charles Smith, *The Glannon Guide to Property*, Aspen Publishers (2008) (multiple choice questions and analysis).

Barlow Burke & Joseph Snoe, *Property: Examples & Explanations*, Third Edition (Aspen Publishers (2008) (“textual material with well-written examples, explanations, and questions that test the reader’s understanding of the material covered”).

### **Final Examination and Grade**

Your grade will be based upon your performance on the examination. However, I reserve the right to adjust grades for outstanding class participation, or for chronic lack of preparation or unprofessional conduct.

The three-hour final examination will include essay and multiple-choice components. The exam will cover most major areas of the course and will reflect assigned readings and class discussion. The emphasis is on your understanding of, and ability to apply, the concepts and doctrines stressed in class. If you can answer questions posed in the classroom, your prospects are good in the exam room.

You may bring to the exam only your casebook and a printed copy of class notes prepared by you or within your small study group. This precludes commercially-prepared materials. I encourage you to take the essay part of the exam on your laptop computer. The Recorder’s Office will supply information about laptop use during the latter part of the semester.

### **Instructor Contact Information and Office Hours**

My office is in Room 317, and my office hours are Mondays and Wednesdays from 4-5 p.m., and Tuesdays from 10 am to noon. In addition, you should feel free to inquire if it is a good time to talk whenever my office door is open.

I am very easy to reach by e-mail (seagle@gmu.edu). You should include “Property Class” on the subject line (lest your message summarily be disregarded as spam), and your full name and contact information together with your question or comment. I also can be reached by phone at 703-993-8054.

My assistant is Ms. Jane Barton, who is very helpful. Her desk is at the center entrance to the Third Floor faculty wing, her phone number is 703-993-8030, and her e-mail address is [jbarto1@gmu.edu](mailto:jbarto1@gmu.edu).