Property Law - Fall 2012  
Law 104 (001) Mon/Wed 1-2:50pm  
Hazel Hall 120

Professor: Helen Alvaré  
Office: 433G  
e-mail: halvare@gmu.edu  
Office Hours: Tuesdays 11-12:00 and by appointment


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 four 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. Final grades may be raised or lowered by a single increment to reflect the quality of your class participation.

Exam: December 17, noon-4pm. Exam format will be discussed thoroughly in class before December.

Attendance: Academic Regulation 4 governs attendance. It provides, in part:

> “Regular and punctual attendance and class preparation are required to earn academic credit.

If a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session.”

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 browse 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*, 7th edition.
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.

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, culture, and conclusions about human nature.

Class # 1 Mon Aug 20
Welcome and Introduction to Property Law
First Possession: Discovery

First Possession: Capture

D&K pp. 1-39

Class # 2 Wed Aug 22
First Possession: Creation

D&K pp. 56-84

Handouts: Motorola, and Feist cases, excerpted.

Class # 3 Mon Aug 27
Right to Exclude

D&K pp. 88-96

Subsequent Possession: Find

D&K, pp. 97-116

Class # 4 Wed Aug 29
Adverse Possession

D&K, pp. 116-149

MONDAY SEPT 3, LABOR DAY HOLIDAY

Class # 5 Wed Sept 5
Adverse Possession, cont’d, and Gift

D&K, pp. 150-58; 161-63; and 164-81
ESTATES AND FUTURE INTERESTS

This section of the course requires particular attention to language and some attention to history. 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. ((West Group) Do not bother working out problems situated in the ancient past offered in this or any workbook).

Class # 6 Mon Sept 10

Property and Economics D&K pp. 39-55
Handout

Present Possessory Estates and Future Interests D&K, pp 191 to top of 192; 194-201

Class #7 Wed Sept 12

Present Poss. Ests. And Future Ints., cont’d D&K pp. 202-22(E); 236-42
Lecture* 222-34

* “Lecture” indicates that the reading is recommended, but not required; I will not direct questions to the class on this material in the course of our class meeting. You are responsible at exam time for the contents of the class lecture.
Class #8 Mon Sept 17
  Future Ints and the Rule Against Perpetuities  
  D&K pp. 253-64(stop before a.); 268d. – 275; 278 (bottom of page)-280; 285-92.

Class #9 Wed Sept 19
  The Rule Against Perps., cont’d  
  Concurrent Interests  D&K pp. 305-17; 319-58 (some of this material may spill over into next class)

Class # 10 Mon Sept 24
  Finish Material on Concurrent Interests from last class  
  Marital Interests  
  D&K, pp. 359-71; 384-93  
  *Lecture only: 371-84

LEASEHOLDS: THE LAW OF LANDLORD AND TENANT

Introduction
  Most law in this area is today a matter of contract law principles. We will cover briefly some of the subjects having their origins in property law.

Class #11 Wed Sept 26
  The Lease, Unlawful Discrimination  
  Defaulting Tenants; LLs’ Remedies, Condition of the Premises  
  D&K, pp 459-69; 479-92

TRANSFERS OF LAND

The purchase and sale of land is another area of law occupied today largely by contract law. Quite a bit of today’s law in this area, however, has its origins in Property law.

MAKE UP CLASS (RE: MY ABSENCE OCT 1)
Class # 12 TBD, EITHER 9/27 OR 29
  Condition of the Premises, cont’d  
  Tort Liability, Decent Housing  
  The Land Transaction  
  D&K, pp. 493-515  
  D&K, pp. 517-529
Class # 13 Wed Oct 3

Land Transaction, cont’d: Statute of Frauds, Marketable Title, Duty to Disclose Defects, Implied Warranty of Quality

D&K, pp. 541-73

MONDAY, OCT 8 COLUMBUS DAY, FALL HOLIDAY

Class # 14 Tues Oct 9, GMU HAS MONDAY CLASSES THIS TUESDAY

The Deed: Warranties

D&K pp 585-599

Title Assurance, Recording

D&K pp.645-58

Class # 15 Wed Oct 10

Recording, cont’d

D&K pp. 661-76

 Marketable Title Acts

D&K pp. 702-704

Title Insurance

D&K pp. 714-27

LAND USE CONTROLS AND EMINENT DOMAIN

This area deals with a great variety of tools for managing competing interests in the use of land, e.g. neighboring properties, or properties in a particular community. It contains the law of nuisance, servitudes, zoning and eminent domain. 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 historic 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.

Class # 16 Mon Oct 15

Nuisance

D&K pp. 731-61

Class # 17 Wed Oct 17

Servitudes

D&K pp. 763-68; 773-99

(some of the servitudes material may spill over into the next class)
Class # 18 Mon Oct 22  
Servitudes: Public Trust Doctrine:  
Assignability and Scope of Easements  

D&K pp. 800-812  
D&K pp. 812-30  

Class # 19 Wed Oct 24  
Negative Easements and Covenant Running With the Land  

D&K pp. 842-76  

Class # 20 Mon Oct 29  
Covenants, cont’d.  

Common Interest Communities  

D&K pp. 876-95  
D&K pp. 896-913  

Class # 21 Wed Oct 31  
Common Interest Communities, cont’d  
Legis. Land Use Controls: Zoning  

D&K, pp. 918 (Notes)-22  
D&K pp. 925-54  

Class # 22 Mon Nov 5  
Zoning: Achieving Flexibility; Aesthetics  

Will handout sample exam questions in this class  

D&K pp. 954-89  

Class # 23 Wed Nov 7  
Zoning: Constitutional Issues  

(Discussion of outlining, upcoming exam and sample exam questions)  

D&K pp. 989-1000  

Class # 24 Mon Nov 12  
Zoning: Household Composition and Exclusionary Zoning  

D&K, pp. 1019-58(stop before note 6.)  

D&K pp. 1061-1096  

Class # 25 Wed Nov 14  
Eminent Domain  

D&K pp. 1096-1131
NOV 21 THANKSGIVING BREAK, NO CLASS

Class # 27 Mon Nov 26
  Eminent Domain, cont’d              D&K pp. 1131-1170

Class # 28 Wed Nov 28
  Eminent Domain: exactions          D&K pp. 1170-1189
  And any “clean up” discussion