Classroom: Hazel 120  
Meeting Times: Tuesday, Thursday, 10 a.m. - 11:50 a.m.  
Exam: Monday, Dec. 17, noon – 4 p.m.

Office hours and whereabouts

My office is on the fourth floor, in the faculty suite, Room 420. My phone number is (703) 993-8247. My email address is eclaeys@gmu.edu. The course also has a TWEN site, and I am reachable on the discussion board of that site.

This semester, I will hold office hours Tues. afternoons, 1 – 2 p.m. These are “walk-by” hours, meaning that I do not have any other appointments during them and you are free to come in to my office without appointment. However, I am happy to schedule appointments if you have a conflict during office hours or if you prefer for other reasons.

Cancellations and make-up classes

At this time, I do not anticipate canceling any classes. If I need to cancel class suddenly due to illness or some emergency, I will have my secretary post notices in the atrium and on the door of Hazel 120, and I will send an email to the class.

Class reading

Reading will vary anywhere from 5 pages per hour (10 pages per 2-hour class block) to 20 pages per hour (40 pages per class block). When I assign readings at the low end of this range, you should assume I’ll parse the assigned readings very closely in class discussion and question students actively; when I assign readings at the high end of this range, you should assume I’ll discuss the materials generally and lecture.

To help you read ahead, the assignments below forecast the reading I anticipate covering for the entirety of the course. However, this forecast is not a promise but a projection. I reserve the right to change the projected reading schedule depending on how fast or slow we are going. If you read more than a class ahead, you assume the risk of reading material I decide to leave on the cutting room floor.

Class expectations

I expect you to be prepared for class. For any case excerpted at any length longer than a page, I expect you to understand the facts, the lawsuit, the theories of the case adopted in the majority and any separate opinions.
When I or the casebook presents a “squib” case—that is, a case consolidated into a paragraph or so, I expect you to know the facts, the holding, the rationale, and the contribution to the general line of doctrine covered in class.

When the casebook or excerpted cases refer to statutes, I expect you to read them closely enough to answer questions about them.

I expect you to attend class on a regular basis, and the ABA makes it a general condition of accreditation that students not miss more than 2 weeks of class. I keep attendance by having you sign in each day.

If you miss more than 8 class hours (the equivalent of 4 classes), I will not seat you for the examination and to give you a “forced withdraw” grade for the course.

With two exceptions, this is a “strict liability” policy: I do not waive this requirement because you are sick, have a job interview, personal emergency, &c. Except as specified below, you do not need to let me know in advance that you will be absent (and I prefer not to be notified), but by the same token I will not excuse absences in general.

Exception 1: I do not enforce the attendance policy when I need to reschedule class because I am canceling class due to non-GMU commitments.

Exception 2: I also do not enforce the attendance policy if the GMU Provost’s office designates the day a day of observance for a religion and you certify to me that you are a member of that religion. The GMU Provost’s Guidelines require students to provide faculty with reasonable notice of the dates of major religious holidays on which they will be absent. To implement that guideline, I require students, within the first two weeks of the semester, to notify me of the dates for which they are requesting an excused absence for participation in any university-sponsored activity scheduled prior to the start of the semester. If you want me to grant permission for you to record a class for such an absence, you must ask me to do so when you notify me of your absence.

Otherwise, I expect you to self-regulate interviews, personal emergencies, illnesses, and other occurrences that may cause you not to attend class, so that you do not miss more than 4 classes or 8 class hours’ worth of time.

I expect you to prepare for class. I call on students during class, to discuss material that a lawyer should have been able to digest from the reading without much assistance. If I call on you and you are unprepared, that counts as an absence for 1 hour (i.e., ½ of one of your 4 class absences, or 1/8 of the total time you may be absent without going over the limit). If you are unprepared and wish to avoid getting called on, please notify me before the beginning of class and I will mark you for a 30-minute absence (i.e., 1/4 of one of your 4 class absences, or 1/16 of the total time you may be absent without going over the limit).
During class, I expect you to be generally respectful to me and your classmates. Imagine the standards of comportment you would use if you were a lawyer, sitting in front of a judge, watching as the judge engages another lawyer in the proceeding. Please treat me and any of your colleagues with whom I am conversing with the same professional courtesy.

**Recording classes**

I reserve all property rights in my class lectures, presentations, and discussions. As a general rule, I prefer that classes not be recorded. However, I will grant permission in specific cases when a student can demonstrate a special need. For example, as noted above, if you are missing class to observe a religious holiday I will allow you to make arrangements to have a classmate record class. If you think you have such a need, please ask and we can discuss. If you prefer to ask anonymously, please contact Annamaria Nields, Associate Dean of Students, and she can ask me on your behalf.

**Grading**

The grade for this class will be based solely on a 4 hour examination. The examination will be closed-book.

**Course materials**

For this course, please acquire a copy of


And


On or immediately after the first day of class, I will also make available a course supplement. Please pick up a copy of this supplement from the Printing Services office, in the library on the first floor.
Course reading

References to “M&S” are to Merrill & Smith, Property: Principles and Policies, 2d ed.

References to Wendel are to Wendel, A Possessory Estates & Future Interests Primer, 2007.

References to “Supp.” are to the supplement.

Please note that the readings below are forecasts (that is, for every class after our first class on August 16). I reserve the right to add to, subtract from, restructure or otherwise modify reading depending on how class proceeds.

Class 1. Thursday, August 16. Acquisition: Chattels

Hour 1: M&S pp. 82-90. Pierson v. Post.


Class 2. Tuesday, August 21.

Hour 1. Acquisition: Chattels (cont’d)


Hour 2. Acquisition: Land


Class 3. Thursday, August 23.

Hour 1. Adverse Possession


Hour 2. Sidebar on Labor Theory, the Acquisition of Land, and Adverse Possession

Excerpts from John Locke, Two Treatises of Government. Supp. 1-3.

Class 4. Tuesday, August 28. Public Property


Class 5. Thursday, August 30. Water Law


Class 6. Tuesday, September 4.

Hour 1. Accession.


Hour 2. Sequential possession.


Class 7. Thursday, September 6. Competing principles of acquisition.


Class 8. Tuesday, September 11. Control Rights in Land (and the possessory interest in control in tort)


M&S pp. 369-71. Notes on criminal law actions protecting real property.

[more reading for Sept. 11 on next page]
Class 8 (Sept. 11) cont’d.


9. Thursday, September 13. Control Rights in Land (and their protection in equity)

M&S pp. 41-60. Overview of equity, Baker, the Pile litigation, Golden Press.

10. Tuesday, September 18. Control Rights in Chattels (and their protection in tort and equity, and their specification in relation to contract)

M&S pp. 367-69. Notes after Olivo about criminal-law actions protecting personal property. (To be clear, don’t read the Olivo case.)

M&S pp. 372-74. Note on civil law actions protecting personal property.

Excerpt from Restatement of Torts § 218, cmt. e, illus. 2. Supp. 47.


Hour 1: Restitution


Hour 2: Self-help

12. Tuesday, September 25. The Property/Contract Interface


M&S pp. 464-73. Allen, the bailee’s duty of care.


13. Thursday, September 27.

Hour 1: The Powers to Give and Destroy and their Limits


Hour 2: What Is Property, Anyway?


14. Tuesday, October 2. Estates and Future Interests (I)

**Present possessory estates:** Fees simple absolute and defeasible

Wendel chs. 1-3, pp. 1-41

Be prepared to discuss and do in class the problem sets at the ends of chs. 2 and 3.

If we make it through all the problems, I’ll make a presentation about finite estates, in anticipation of the reading for class 18.
15. Thursday, October 4. Estates and Future Interests (II)

**Present possessory estates**: Finite estates

Wendel ch. 4, pp. 42-57

Be prepared to discuss and do in class the problem set at the ends of ch. 4.

**Future interests**: Remainders

Wendel chs. 5 & 6, pp. 58-97

Be prepared to discuss and do in class the ch. 6 problem set and the problems in Review Problem Set 1.

16. Thursday, October 11. Estates and Future Interests (III)

**Future interests**: Executory interests

Wendel ch. 7, pp. 98-118. Be prepared to discuss and do in class the problems at the end of ch. 6 and in Review Problem Set 2.

**Future interests**: Conditions precedent, conditions subsequent, and divesting conditions

Wendel ch. 8, pp. 124-36. Be prepared to discuss & do ch. 8 problems.

17. Tuesday, October 16. Estates and Future Interests (IV)

**Future interests**: Class gifts.

Wendel ch. 11, pp. 159-66. Be prepared to discuss and do in class the problems at the end of ch. 11.

**Rules preventing restraints against alienation**: Rule against perpetuities.

Wendel ch. 12, pp. 172-205. Be prepared to discuss and do in class the problems at the end of ch. 12.
18. Thursday, October 18.   **Estates and Future Interests** (V)

[hour 1 will catch up if necessary, or we’ll do more problems]

**Hour 2:** Legal principles influential in the estate system

M&S pp. 518-23. Conservation of estates; **Williams**.

M&S pp. 535-45. The *numerus clausus*; **Johnson**.

M&S pp. 551-61. Waste; **Brokaw**.

19. Tuesday, October 23.   **Co-ownership**

M&S pp. 594-617. Basics of co-tenancy, partition, **Delfino**, accounting, **Gillmor**, **Harms**.

20. Thursday, October 25.   **Security Interests**

M&S pp. 807-23. **Tappenden**.

M&S pp. 823-33. **Murphy**.

M&S pp. 849-58. **Ibanez**.

Tuesday, October 30. **Class Cancelled Due to Hurricane Sandy**

21. Thursday, November 1.   **Recordation and Transfer of Property**.

M&S pp. 859-71. Statute of Frauds, overview of delivery, **Irons**, **Foster**.


M&S pp. 885-91. **Nemo dat** and **Elicofon**.

M&S pp. 891-97. Good faith purchasers, and **Kotis**.


23. Thursday, November 8. Nuisance (I)

M&S pp. 938-60. Adams, Campbell.


24. Tuesday, November 13. Nuisance (II)


M&S pp. 1013-17 end n.1. Fountainbleau Hotel. Read also 1019-20 nn. 5-6.


25. Thursday, November 15. Easements


26. Tuesday, November 20. Covenants Running with the Land (I): Real Covenants & Equitable Servitudes

M&S pp. 1025-40. Tulk; Neponsit Property Owners’ Association; note on Real Covenant Theory.

27. Tuesday, November 27. *Covenants Running with the Land* (II)

**Hour 1:** Practical problems


**Hour 2:** Termination


28. Friday, November 30. *Public Law Land-Use Regulation*

**Hour 1:** Zoning


After you read Euclid and Krause, assume that this model act authorized the municipalities in these cases to promulgate the land-use regulations under challenge. Which provisions of the model act would have justified the various regulations? Why?


**Hour 2:** Eminent domain


M&S pp. 1267-68. Overview of regulatory takings.
