Property in Context

This course explores the fundamentals of one of the three great branches of the common law. Property law considers individuals’ ownership of 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 large measure, Criminal Law and Constitutional Law also consider protection for property rights.

“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 to 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 and government regulation of real property (i.e., land and permanent improvements to land), and with residential real estate transactions. 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 Trusts and Estates, and Estate Planning.

Other courses also have large property components. For instance, Taxation involves government exactions based primarily on periodic accretions and diminutions in the taxpayer’s property. Much of family law is concerned with 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) basic legal skills, such as how to read a case, (2) property law theory, (3) property law doctrine, and (4) how lawyers apply theory and doctrine in dealing with typical property transactions and disputes.

Attendance and Class Preparation

The Law School posts requirements for class attendance on its web site. You should become familiar with these before the first class. I am obligated to take attendance. Should your absences exceed those permitted, you will be dropped from the course. If you have questions about GMUSL’s attendance policy, please check with the Recorder’s Office.
The first year of law school is difficult, and 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 class meeting. I suggest that you read assigned cases and materials quickly at first to get their overall flavor, and then go back and reread them very carefully, this time taking notes. There will be words that clearly are foreign to you. It is obvious that you should look those up in your law dictionary. However, and less obvious, you will come upon idiomatic expressions that you do not recognize, or words that do not look exactly right in context. Often, these denote 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 summary, which is called a case brief. There are many styles of legal case briefs available. You should select the method with which you are most comfortable, and which best enables you to describe the case and to answer questions posed in class.

Under the most common style of class brief, dubbed “IRAC” for short, you would sequentially state the issue raised by the case; the legal rule that governs its resolution; the application of the governing 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 reviewing a trial court’s decision typically would use a different standard for reviewing the facts than that employed by the trial court.

You should beware of purchasing commercial “canned briefs.” These are of very uneven quality. Much 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 it. It is possible for you to jot a few words in the margins of your casebook in lieu of a fully prepared brief. Some upper-class students may get by with that so-called “book brief,” but my long experience suggests that it is sheer folly for first year students to try it.

The most important aspect of your brief is the first component under the IRAC system—identifying the issue before the court. Refining the legal issue before the court is much harder at first than it looks. Since you cannot resolve the issue before you correctly define it, you should devote lots of attention to this.

Finally, much of your learning will derive not from the study of individual cases, but rather from patterns that you will discern from considering the topic at hand as a whole. The relationships among cases, the editors’ comments, and the questions posed in the casebook all should contribute to your understanding. Casebook editors sometimes chose cases because they contain definitive statements of the law. However, cases often are chosen because they show the historical progression of legal doctrines, contain entertaining facts, or even because they display egregious legal reasoning!
In Class

The typical undergraduate lecture course permits students a passive role in the classroom. Law school classes are more demanding. Most law classes have some lecture component, typically regarding preliminary or secondary matters. The heart of the class, however, is the Socratic dialogue. The instructor asks questions about the case or other subject at hand, and the student responds. Sometimes the student has volunteered, but often responds to a cold call.

It is natural for you to feel uncomfortable with being placed on the spot. For that reason, I want to emphasize that the law school practice of cold calling reflects that the primary purpose of legal education is to prepare you for the practice of law. It is much better to start becoming acclimated to the need for careful preparation, to thinking on your feet, and to defending your position now, than it would be for you to first experience the process in front of a judge, with opposing counsel anxious to pounce on your every mistake, with a client whose property or liberty is in your hands, and with a legal stenographer taking down every word you say.

The Socratic method permits you to make rookie mistakes in class, and to learn from them. Indeed, getting the “wrong” answer in class sometimes results not from your having made an error, but rather from your being unacquainted with considerations germane to resolving the issue not apparent from your readings. I and your other instructors do not necessarily expect that you will give the “right” answer in response to a question. What we do expect is an answer that reflects a good faith effort to prepare for class and to grapple with the issues. If your answers reflect preparation and thought, you can be sure that some of your classmates will have thought the issues through in the same way you did. Your comments and their aftermath will be instructive to them, as well as to you.

One caveat: While any good faith answer helps advance the discussion, you should never bluff in class. If you are unprepared, you should say so. That is much better for all than wasting your classmates’ time.

I very much 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, it is a wonderful way to get instant feedback on how you are doing.

Some instructors, I not among them, ban laptop computers in class. This is less because of the beguiling distractions they can provide than because of the ease with which laptops allow students to take notes. That seems counterintuitive. However, when you write in longhand, you can take down very little. You are forced to listen attentively for the outline of the argument and the most salient points. Correspondingly, fast keyboarding permits you to copy much more, and to assume that you can make sense of it later. It doesn’t work that way. Your main job in class is to listen carefully, follow the gist of the discussion, and to participate in it. Your notes will be sparser, but you will learn more. Your laptop computer is a job tool—and your job is not that of legal stenographer.
Supplemental Readings and Examination Review Materials

There are many supplemental materials available for explication of topics you find interesting or difficult, and for exam review. This selective list includes some that might be particularly helpful. In addition to the materials mentioned here, the casebook web site contains much useful information. The casebook contains access information.

**General**

Richard Powell, *Powell on Real Property*. This voluminous treatise is useful for specialized questions or advanced work, but not for day-to-day student use.


Julian C. Juergensmeyer & Carol Necole Brown, *Property* (5th ed. 2011). This Westlaw “Quick Review” publication is a skeletal outline of property law.


John G. Sprankling, *Understanding Property Law* (2d ed. 2007). This Lexis Publishing paperback is midway in length between the West Hornbooks and shorter study guides. It restates basic property principles with some case illustrations.


**Estates in Land**

Sheldon F. Kurtz, *Moynihan's Introduction to the Law of Real Property* (5th ed., 2011). This short West Hornbook, an updated version of the classic text in this field, is an excellent review of common-law estates in land (including future interests and the Rule against Perpetuities).

Raymond R. Coletta, *Workbook on Estates and Future Interests* (West, 2007). This workbook contains estates in land problems and, on the opposite page, model answers.

**Real Estate Finance**

Jon Bruce, *Real Estate Finance in a Nutshell* (5th ed. 2004) is a very useful West Nutshell. It is especially recommended for review.
Exam Review


**Final Examination and Grade**

Your grade will reflect 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 final examination will be closed book, three hours in length, and containing both essay and multiple-choice components. It will cover most major areas of the course and will reflect assigned readings and class discussion. My emphasis is on whether you understand, and are able to apply, the concepts and doctrines we stress in class. If you can answer the questions that are discussed the classroom, your prospects are good for the exam room.

I very much encourage you to take the essay part of the exam on your laptop computer. The exam software will lock out other files during the exam. The Recorder’s Office will distribute information about use of laptops in the exam and software during the latter part of the semester.

**Instructor Contact Information and Office Hours**

My office is in Room 317, and my office hours are on Mondays and Wednesdays from noon to 2:00 p.m. In addition, whenever my office door is open you should feel free to inquire if that is a good time to talk.

Since I often work at home or travel on non-class days, the preferred and easiest way to reach me is by e-mail at seagle@gmu.edu. Please be sure to include “Property Class” on the subject line and your full name and contact information. My office telephone number is (703) 993-8054. My assistant, Ms. Jane Barton, is very helpful. Her desk is at the center entrance to the faculty wing on the third floor, and her telephone number is (703) 993-8030.