CURRENT AS OF October 8, 2015

Meeting Times: Monday, Wednesday, 10 a.m. - 11:50 a.m.
Exam: Friday, Dec. 18, noon – 4 p.m.

Office hours and whereabouts

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 Mondays and Wednesdays 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 our classroom, 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 30 pages per hour (60 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.

When you start reading materials from the course supplement, you’ll find that they are not edited anywhere near as heavily as legal source materials in the casebook. As a general matter, you are responsible for figuring out which passages in those source materials are directly relevant to class discussions and which are not. I will edit some supplemental materials. I will assign some supplemental materials unedited, but then give questions in the reading assignments to signal on what topics or issues you should focus. Otherwise, it’s your responsibility to sift the wheat from the chaff.

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 I will 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 notice of the dates of major religious holidays on which they will be absent, during the first 2 weeks of the semester.

   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., $\frac{1}{2}$ of one of your 4 class absences, or $\frac{1}{8}$ 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.

If you need to miss class to observe a major religious holiday (and give me advance notice in the first two weeks as specified above), I will make arrangements to have the class recorded for your use later.

I will also consider other requests on an as-needed basis. 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 will be happy to 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

This course will require three materials. The first is a book that should already be available in the bookstore.


The second is a book that should be available at the bookstore by the beginning of classes (8/19):

On the first day of class, I will also make available a course supplement. I will bring the supplement to class on the first day and then make available on a desk outside the faculty offices on the 4th floor, on the side of the building facing Founders’ Hall.

Course reading

References to “M&S” are to Merrill & Smith, 2d ed.

References to “LAM” are to Laurence, Anderson, & Minzer, 3d ed.

References to “Supp.” are to the supplement. “Supp. Doc. 1” refers to the first tabbed document in the course supplement.

Please note that the readings below are forecasts (that is, for every class after our first class on August 19). I reserve the right to add to, subtract from, restructure or otherwise modify reading depending on how class proceeds.

Class 1. Wednesday, August 19. Acquisition: Chattels and capture

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


M&S pp. 105-110. Other applications of first possession (not involving oil, or gas).


Hour 1: Acquisition: Chattels, creation, and unfair competition


M&S pp. 109-10. How would you decide the Popov case?


Hour 2: Acquisition: Land


Class 3. Wednesday, August 26. Adverse Possession


Class 4. Monday, August 31. Accession (or, delineating the scope of the “thing” regarded as property)


Class 5. Wednesday, September 2.

Hour 1. Appropriation: Sequential possession.


Hour 2. Appropriation and accession: what happens when they conflict?


[No class Mon. Sep. 7 in observance of Labor Day]


M&S pp. 400-03. Ploof.


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


Class 7. Monday, September 14. The Possessory Interest in Exclusive Disposition of Land (and its specification in remedies)

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

M&S pp. 65-74. Producers’ Lumber v. Olney. [Note: We didn’t get to this on 9/14, and will discuss on 9/16.]

Class 8. Wednesday, September 16. The Possessory Interests in Control and Disposition for Chattels (and their specification in tort and equity)

M&S pp. 367-69, 372-74. Notes after Olivo about criminal-law actions protecting personal property. (To be clear, don’t read the Olivo case.) Note on civil law actions protecting personal property.


M&S pp. 75-81. Olwell. [continued on next page]
[continuing reading for class 8, 9/16]

M&S pp. 374-87. Intel v. Hamidi. [This case was assigned in earlier editions of the syllabus but I am deleting it.]

M&S pp. 65-74. Producers’ Lumber v. Olney. [originally assigned on 9/14] Ask this: Change the facts slightly. Assume that Orts didn’t destroy the home on Lot 8. Assume that he instead transferred title and possession of Lot 8 to Producers’ Lumber or Montgomery. What cause of action would give Orts a legal claim to recover the $5000 attributable to the improvements he made when he mistakenly built a house on Lot 8? What standards would govern whether Orts had a meritorious claim for that $5000?

I doubt we’ll have time to discuss this in class, but you might ask in review: Review Ghen v. Rich (class 1, pp. 90-92), and the materials on salvage (class 1, pp. 106-08). What would have happened if Ellis had intervened in the in rem proceeding in Ghen and asked for a finder’s fee? Now assume that Ellis had given Ghen the whale carcass before Ghen instituted a libel in admiralty—but then that Ghen wouldn’t pay the finder’s fee. Could Ellis recover the finder’s fee and if so how? Ask similar questions about salvage cases, as between the title owner of the sunken vessel and the salvor.


Bailments:

M&S pp. 449-57. Wood v. Leadbitter,

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


Class 10. Wednesday, September 23. Public Property: Land and water bodies


Expect we’ll spend most time in class on Evans and Coffin, and I’ll treat Higday more quickly. When we cover Evans and Coffin, the most important questions to discuss are those flagged in n.2 after Coffin. But be prepared to answer as well the statutory-interpretation questions flagged in n.1 after Coffin.

Class 12. Wednesday, September 30. Public property, entitlement-specification, appropriation, and trespass for minerals


Supp. Doc. 15. Oliver Wright, “Fracking Could Be Delayed for Up to Two Years across UK.”


Class 13. Monday, October 5. The system of estates and future interests (1 of 4)

LAM Chs. 1-2. [Guidelines about our discussion of estates & fut. interests on next page.]
[I assigned chapter 3, but we didn’t get to it on 10/13.]

Note on the classes from Oct. 5 to Oct. 14: I may lecture briefly about the assigned reading. For the most part, however, I will review problems from the reading. You are expected to have read the material. You are also expected to have worked through all of the review problems assigned in each of the chapters.

I will not work through all of the review problems in each chapter. However, if you want me to discuss a problem in class, please indicate as much on the discussion board for the class TWEN site, by 8 p.m. the night before class. (I strongly prefer to work through problems that you all have picked over problems I pick.)

Class 14. Wednesday, October 7. The system of estates and future interests (2 of 4)

LAM Chs. 3-4. The instructions for Class 13 apply as well here. [In class, we reviewed a few hard examples in Ch. 2 (ex.'s 49 & 50, p. 27), and we covered chapter 3. We’ll cover chapter 4 in class 15.]

Class 15. Tuesday, October 13. The system of estates and future interests (3 of 4)

[Note that this class is on a Tuesday because (1) Mon. Oct. 12 is the law school fall recess and class is cancelled but then (2) Oct. 13 is then scheduled as a legislative Monday.]

Review LAM ch. 4 (assigned for 10/7, class 14). We’ll go over selected problems pp. 84-87. Prepare LAM ch. 5. We’ll go over selected problems pp. 112-15.

Class 16. Wednesday, October 14.

Hour 1: The system of estates and future interests (4 of 4)

Read LAM ch. 6. We won’t go over the problems after ch. 6. We will cover selected problems from Appendix II. When we do problems from Appx. II, assume that the Rule Against Perpetuities and all other rules limiting or destroying future interests apply. But don’t worry (as the answer key does) about all the variations in local statutes—we’re skipping ch. 7 and that topic generally.

Hour 2: General principles regulating estates and future interests


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

Class 17. Monday, October 19. Co-ownership

Class 18. Wednesday, October 21. Security Interests


Class 21. Monday, November 2. Nuisance (1/2)
M&S pp. 938-60. Adams, Campbell. Disregard the passage of Campbell, pp. 953-55, about the appropriate remedy.
Class 22. Wednesday, November 4. Nuisance (2/2)

Hour 1: Non-nuisances


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

Hour 2: Nuisance remedies

M&S pp. 953-55. Passage from Campbell about the appropriate remedy.


Class 23. Monday November 9. Easements


Class 24. Wednesday, November 11. Covenants Running with the Land (1/2): Real Covenants & Equitable Servitudes

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


Class 25. Monday, November 16. Covenants Running with the Land (2/2)

Hour 1: Practical problems


Hour 2: Termination


Class 26. Wednesday, November 18. Local Land-Use Regulation

Hour 1. The Constitutional Grounds for Zoning


After you read Euclid, assume that the model SZEA had authorized Euclid to promulgate the land-use regulations under challenge. Which provisions of the model act would have justified the various regulations? Why?

Hour 2. The Standards of Review Applicable to Challenges to Zoning in Court


Class 27. Monday, November 23. Eminent domain (1/2)

Hour 1: Regulatory takings, and regulatory touchings


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


Hour 2. Regulatory takings, and “per se” takings and their limits


M&S pp. 1336-38. The “denominator” problem, and Tahoe-Sierra.
Class 28. Monday, November 30. Eminent domain (2/2)

Hour 1. Exactions, and the latest on takings


Supp. Doc. 34. Horne. Expect that I’ll lecture on Dolan (and Nollan), and that we’ll spend more class time on Koontz and Horne.

Hour 2. Public use.