

Property Law - Fall 2021 – Professor Helen Alvaré

Day 104 (003)

Tu/Thurs 9:50-11:50 am

Office: 433G

Email: halvare@gmu.edu

Office Hours: Tuesday 1:15-3:15pm, and by appointment, including the availability of a Zoom personal room and by phone. I also make it a practice to linger after class to field questions and commentary, and to respond promptly to emails.

Required Text: Dukeminier, Krier, et al, *Property*, 9th edition.

Assignments and Participation: The syllabus below will be posted on the law school's web site and on TWEN. I will call on several students randomly during each class. Academic Regulation 4.1 governs attendance. It provides, in part:

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. (See:

https://www.law.gmu.edu/academics/regulations#AR_3_Matriculation_Registration_and_Graduation_Requirements_3).

I will take attendance at each class, by roll call or sign-in sheet, as appropriate.

Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g., a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs.

Learning Outcomes:

1. Students will understand and be able to communicate, both orally and in writing, basic principles of Property Law.
2. Students will be able to examine factual scenarios implicating one or more Property Law questions, and to determine the precise legal questions raised, the possible legal outcomes, and the benefits and costs of each of these outcomes.
3. Students will understand the separation and interaction of governmental powers affecting property disputes, at both the federal and state levels, and how to read and understand Property Law statutes, cases and regulations.

Grading: There will also be a 3.5-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 based upon the final exam may be raised or lowered by a single increment to reflect the quality of your class participation; this is based not only upon your performance when called upon, but also upon the quality of all

your contributions, and your willingness to volunteer. Exam formats will be discussed thoroughly in class before the December exam.

Exam Conflicts: In accordance with AR 4-4.1, excuses and requests for permission not to sit for an examination when scheduled must be presented, with appropriate documentation, to the Assistant Dean, Student Academic Affairs. Except in emergencies, such requests should be presented no later than two weeks before the date of the examination.

Online Policies:

-Students should not send or receive email or text messages or browse the Internet during class time.

-Students participating in online classes should keep their cameras ON at all times during class, unless there is a special need of the student, communicated to me prior to class, to do otherwise. Students should also keep their mics OFF until they are volunteering or called upon to speak to the class.

-In order to be recognized to speak, students participating online should say “Student A here,” and I will then recognize you and invite you to speak. If several students want to contribute simultaneously, I will recognize students in an order I announce.

Class Recordings Prohibited: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me. I will, however, be recording certain course sessions and making these available to students upon express direction from Assistant Dean, Student Academic Affairs, if necessary to accommodate a student for certain absences, including COVID-related absences.

COVID Instructional Contingency Plan: In the event the University requires remote instruction, in-person classes will transition to an online format. In the event that I am unable to attend in-person in any format, due to illness or other emergency, another Property Law professor will step in to teach this course.

COVID Health & Safety Requirements: University health and safety protocols will be observed at all times in this class. Should University policies change, this will be communicated immediately to the class.

COURSE ASSIGNMENTS AND SCHEDULE:

**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, et al, *Property*, 9th edition.

POSSESSION AND OWNERSHIP

In this first unit, we will study possession and ownership. Both first possession and subsequent possession will be covered.

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 presumptions about human nature.

Class # 1 Tu Aug 24

Discovery/Capture Text 3 - 46

Class # 2 Thurs Aug 26

Capture

Find Text 53-70

Adverse Possession Text 70-100 (will spill over into next class)

Class # 3 Tu Aug 31

Adverse Possession Text 100-103;

Gift Text 114-129;

Creation Text 131-160

Class # 4 Thurs Sept 2

Creation and Public Domain Text 161-205

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.

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 and 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 # 5 Tu Sept 7

**Excluding and Alienating
Present Poss. Ests.**

Text 205-23
Text 247-49 (stop before B.); 255 - 74

Class #6 Thurs Sept 9

Pres. Poss Ests.

Text 274 – 86; 296 – 302; 309 – 11 (*Lecture* 286 – 96).

**“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, although we can have class discussion, as desired. You are responsible at exam time for the contents of the class lecture.*

Class #7 Tu Sept 14

Future Interests

Text 313 – 28; 332 – 39; 349 – 60

Class# 8 Thurs Sept 16

**Trusts and the Rule Ag. Perps
Concurrent Interests, including Marriage**

Text 373-85;
Text 387-414

Class # 9 Tu Sept 21

Concurrent Interests, including Marriage Text 416-38; 444-54
(*Lecture* 438-44)

LEASEHOLDS: THE LAW OF LANDLORD AND TENANT

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

Class # 10 Thurs September 23

PROFESSOR OUT OF TOWN. CLASS WILL PROCEED ONLINE AT A TIME TO BE AGREED WITH STUDENTS. IT WILL BE TAPED AND AVAILABLE TO ALL STUDENTS,

Landlord/Tenant Text 461-63; 467-78; 500-10
(Lecture, impact of *Bostock v. Clayton County*)

Class # 11 Tu September 28

Landlord/Tenant Text 519 - 50

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

Class # 12 Thurs Sept 30

Land Transactions Text 553 - 86

Class # 13 Tu Oct 5

Land Transactions Text 586-605; 661-74

MONDAY OCT 12 FALL BREAK

Class # 14 Thurs Oct 7

Land Transactions, Title, Recording, Title Insurance
Text 674 – 92; 707-10; 719 – 27

TUES OCT 12, THE LAW SCHOOL OBSERVES A MONDAY SCHEDULE.

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 within the legal boundaries of 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 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” possessing the equivalent of “homeowners associations.”

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 # 15 Thurs Oct 14 – Nuisance	Text 731 - 60
Class # 16 Tu Oct 19	MIDTERM EXAM
Class #17 Thurs Oct 21 Servitudes: Easements	Text 761 – 66; 772 - 99
Class # 18 Tu Oct 26 Scope of Easements Covenants and Servitudes	Text 807-18; (<i>Lecture</i> 818-29); Text 829-43
Class # 19 Thurs Oct 28 Covenants and Servitudes	Text 843-72
Class #20 Tu Nov 2 Common Interest Communities	Text 873-92
Class # 21 Thurs Nov 4 Zoning	Text 895-923
Class # 22 Tu Nov 9 Zoning	Text 923-59
Class # 23 Thurs Nov 11 Zoning	Text 962-96
Class # 24 Tu Nov 16 Zoning	Text 997-1021
Class # 25 Thurs Nov 18 Eminent Domain	Text 1022-68
Class # 26 Tu Nov 23 LAST CLASS Eminent Domain	Text 1068-1102