



**PROPERTY**  
**73848 - LAW 104 - 002**  
Fall 2021

**PROFESSOR DONALD J. KOCHAN**

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**Syllabus**

*“There is nothing which so generally strikes the imagination, and engages the affections of mankind as the right of property; or that sole and despotic dominion which one man claims and exercises to the external things of the world, in the total exclusion of the right of any other individual in the universe. And yet there are very few, that will give themselves the trouble to consider the origin and foundation of this right. Pleased as we may be with the possession, we seem to be afraid to look back to the means by which it was acquired, as if fearful of some defects in our title; or at best we rest satisfied with the decision of the laws in our favor, without examining the reason or authority upon which those laws have been built.”*

**William Blackstone,  
2 COMMENTARIES ON  
THE LAWS OF ENGLAND 2 (1766)**

**COURSE SCHEDULE/MEETING TIMES/TYPE:**

Tuesdays & Thursdays<sup>1</sup>  
9:50 am – 11:50 am

While class will meet in person, students may be informed of some class sessions proceeding remotely as necessary. Please be alert for these and any other messages on class scheduling and other concerns.

The final exam is scheduled for Monday, December 13 at 12:00 pm.

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<sup>1</sup> Except where noted.

**OFFICE HOURS:** Although some weeks may differ, regular office hours will be presumptively be held from 12:30 pm - 12:30 pm on Tuesdays and Thursdays. Professor Kochan will announce alternative office hours as appropriate. Moreover, students may contact Professor Kochan by email to request appointments for office hours, which may be conducted by Zoom.

**REQUIRED TEXTS:**

- DUKEMINIER, KRIER, ALEXANDER, SCHILL, & STRAHILEVITZ, [PROPERTY](#) (9<sup>th</sup> ed. 2018).

Note: CasebookConnect features are not required and no assignments or suggestion swill be made in connection with those features.

Recommended, Non-Required  
Supplements:

\*Herbert Hovenkamp, Sheldon F. Kurtz, & Thomas P. Gallanis,  
[Principles of Property Law](#) (7<sup>th</sup> ed. 2016)

\*Joseph William Singer, [Property](#) (5th ed. 2016)  
[http://www.wklegaledu.com/aspen-student-treatise-series/id-9781454882237/Property\\_Fifth\\_Edition](http://www.wklegaledu.com/aspen-student-treatise-series/id-9781454882237/Property_Fifth_Edition)

\*Donald J. Kochan & Calvin Massey, [EMANUEL LAW OUTLINES: PROPERTY – KEYED TO DUKEMINIER, KRIER, ALEXANDER, SCHILL & STRAHILEVITZ](#)  
(Woltors Kluwer, 9<sup>th</sup> ed. 2018).

- Supplemental readings, required and non-required, will be available on the course TWEN or Blackboard pages.

**COURSE OVERVIEW/DESCRIPTION:**

Property law is studied as a social and legal institution to facilitate the acquisition, disposition, and use of personal and real property. Students explore a variety of rights and responsibilities in property, including (but not limited to): acquisition of property; distinctions between real and personal property; the nature of ownership and possession; adverse possession; present and future estates in land; concurrent ownership; landlord-tenant law; introduction to public lands and natural resource ownership; conveyancing and deeds; recording; introduction to mortgages and real estate transactions; private land-use restrictions (nuisance, easements, covenants, and equitable servitudes); public land-use regulations and eminent domain.

## GOALS & LEARNING OUTCOMES:

Please note that this list of learning outcomes, goals, and objectives is not meant to be an exhaustive description of the goals or objectives of the Property subject which is indeed a rich and diverse area of the law and a foundational building block to one's legal education.

- Students will obtain a sophisticated understanding of the law of property, including the bedrock rules, their interpretation, their applications, and the underlying policies and theories supporting them.
- Students will know and apply basic principles of the substantive and procedural law covered in Property. To accomplish this learning outcome, students will learn to evaluate facts, spot issues, and reach valid conclusions in areas of substantive property-related law; understand legal rules stemming from common law, statutes, and regulations related to property; and analyze fact patterns and apply the correct legal rules associated with property law to make effective legal arguments.
- Students will be able to engage in legal analysis and reasoning as required for the competent practice of the law. To accomplish this learning outcome, students will be required to identify and interpret rules established in primary sources of law; distinguish facts that matter to the resolution of a dispute from those facts that do not matter; apply correct legal rules to fact patterns and articulate legal arguments and rationales favoring all positions on dispute; and be cognizant of important policy concerns that underlay the law.
- Students will orally communicate in a professional manner that is audience appropriate. To accomplish this learning outcome, students will be required to orally present analysis, advice, counsel, and other information during class discussions. And, they will be expected to do so in an organized, persuasive and professional manner, replicating their ability to communicate with colleagues, clients, judges or adversaries. In the process of being prepared to be called on for their analysis and assessment in class, students will be required to demonstrate active listening skills.
- Students will demonstrate an understanding of and an ability to engage in the professional conduct expected of practicing attorneys, and the ethical standards set out in the ABA model rules, required to competently represent clients and to provide for an effectively functioning legal system. Students will be tested on some problems that require them to identify potential ethical violations and correctly apply ethical rules in hypothetical settings or by analyzing the conduct of attorneys in cases studied for class.

**FINAL EXAM / BASIS OF EVALUATION & ASSESSMENTS:** Your grade will be based on a final exam, which may include a mix of essays, short answers, and multiple choice. Professor Kochan reserves the right, in extraordinary circumstances, to apply a single-increment adjustment up or down to your grade for outliers at either end of the spectrum of class participation. The exam will cover all materials assigned in the Textbook, all materials covered in class lectures, and any assigned supplemental material including handouts. The exam will be open book and open note. This means each student may use his/her Textbook, any assigned supplemental materials, any notes or outlines which that student prepared, and any group notes or outlines to which he/she made a *significant* contribution in preparation. No commercial outlines, treatises, or similar materials will be permitted for use during the examination. Sample exam questions will be distributed mid-term; past practice and final exams will be made available on TWEN or Blackboard.

**PARTICIPATION / COURSE RULES / STRUCTURE:**

- All students are expected to participate in class discussions. All students should consider themselves on call for all class sessions. Professor Kochan will use a modified Socratic method where students will be randomly selected to be called on in class to answer questions or engage in discussion on the materials; yet all students are encouraged to volunteer answers and to ask questions during the course of each class (using good judgment when to do so). A successful class session will have a broad mix of selected students and volunteer discussants.
  
- In the event of any remote participation or fully remote class sessions:
  - Cameras must remain on in Zoom throughout the duration of class.
  - Microphones should be muted when not speaking and students should minimize class disruption by re-muting themselves as soon as they are done speaking.
  - Please have your settings such that your full name shows.
  - You may use the chat function to request the floor or when requested to register a response to a professor question (such as a poll). Do not use the chat box to type questions, make commentary, or to interact with other students in side conversations.

**STUDENTS REQUIRED TO REGISTER FOR COURSE TWEN AND BLACKBOARD PAGES:** Before the first class, all students must register for the TWEN page and the Blackboard page for this class. All class-wide announcements and other communications will rely on the TWEN and Blackboard platforms' list of gistered students.

**SYLLABUS SUBJECT TO CHANGE.** Professor Kochan may deviate from the tentative syllabus for reasons including current events, scheduling, new cases, et cetera. Students will be notified of any changes and receive any other updates via TWEN.

**EMAIL COMMUNICATION:** Students are responsible for checking their email with regularity for class announcements, including regarding class instruction, adjustments to readings or class scheduling, and supplemental materials. Students must use their MasonLive email account to receive important University information, including communications related to this class. I will not respond to messages sent from or send messages to a non-Mason email address. As stated above, students must register for the TWEN page associated with this course, as that will be the platform for generating email distribution lists.

**ATTENDANCE:** Regular and punctual attendance are required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Please note that this includes the following: “A student who is not present for at least 75 percent of a session of the course is absent from that session.” AR 4-1.1. In addition, Professor Kochan reserves the right to consider tardiness as an absence. In addition to tardiness of any length possibly resulting in an absence, any student arriving more than 10 minutes after the start of class is presumptively absent for the day’s class and will be logged absent, except and unless the student has pre-approval to be late or contacts Professor Kochan after class for an exception, which Professor Kochan may grant or deny at his discretion. 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. Attendance will be tracked by a visual survey of the classroom, calling roll, or other appropriate means.

**CLASS RECORDINGS BY STUDENTS PROHIBITED:** Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by students 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.

**COVID INSTRUCTIONAL CONTINGENCY PLAN:** In the event that the administration requires this class to transition to a completely remote format, or if for any reason Professor Kochan is unable to teach any class sessions, Professor Kochan or the administration will inform the students as to the manner and type of instruction by which the class will be operated and any other relevant changes.

**STANDING ZOOM LINK:** The following link has been established to be used for remote classes, including in the case of an emergency or last-minute switch to remote: <https://gmu.zoom.us/j/94876347857?pwd=SkVuT1VEdWlZV0FVcHArcVBCcDV0QT09>

**COVID HEALTH & SAFETY REQUIREMENTS:** Please note that under current University health and safety protocols, face coverings and social distancing are required for all persons on campus. These rules must be followed in the classroom. Failure to follow such rules will result in removal from class. Please refer to the most up-to-date University policies [here](#).

**ACADEMIC INTEGRITY:** It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

**CLASSROOM ACCOMMODATIONS:** Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at [ods@gmu.edu](mailto:ods@gmu.edu) or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

**ADDITIONAL SCHOOL POLICIES AND RESOURCES:**

- **STUDENT HONOR CODE** - [Click Here](#)
- **ACADEMIC REGULATIONS** - [Click Here](#)
- **UNIVERSITY LIFE:** University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

*Syllabus Continues on Next Page with  
the Schedule of Course Assignments and Readings*

**COURSE ASSIGNMENTS/SCHEDULE:**

CLASS/DATE	READINGS
1 Aug. 24	Legal Theory Lexicon on “The Rule of Law”, Download at: <a href="http://lsolum.typepad.com/legal_theory_lexicon/2004/01/legal_theory_le_3.html">http://lsolum.typepad.com/legal_theory_lexicon/2004/01/legal_theory_le_3.html</a> Textbook pages xxxi, 1-26
2 Aug 26	Textbook pages 26-top of 34; pages 53-69 Kochan “Bubbles” Short Article – Available on TWEN Madison “On Property” Download (and available on TWEN: <a href="http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html">http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html</a> )
3 Aug. 31	Textbook pages 39-52; 205-223
4 Sep. 2	Textbook pages 70-103
5 Sept. 7	Kochan “Keepings” – Available on TWEN
6 Sept. 9	Textbook pages 223-246
7 Sept. 14	Textbook pages 247-264
8 Sept. 16	Textbook pages 265-272
9 Sept. 21	Textbook pages 278-282; 283-294
10 Sept. 23	Textbook pages 313-326; bottom of 327-top 328 (intro to Executory Interests); 332-336 (skip chart)
11 Sept. 28	Textbook pages 345- top 346 (intro to Rules Furthering Marketability); 349-360; 373-top of 376, 383 n.1
*12 Sept. 29	Textbook pages 387-402 Class 12 is meeting a day early, Wednesday, during your regular Contracts Class Room and Time, 9:50-11:50 pm
No class Sept. 30 – Meeting September 29 <sup>th</sup> instead in your Contracts Time Slot and Room. Follow instructions from Professor Wijia for attending Contracts on September 30 during the Property slot instead.	
13 Oct. 5	Textbook 405-425
14 Oct. 7	Estates Recap – Problems and Review

\*15 Oct. 7 Textbook pages 447-452; 461-470  
Pre-Makeup Class – Details Will Follow

*Oct. 12 NO CLASS – LAW SCHOOL OBSERVING A MONDAY SCHEDULE*

16 Oct. 14 Textbook pages 471-499

\*17 Oct. 14 Textbook pages 500-519

18 Oct. 19 Textbook pages 520-542

\*19 Oct. 21 Textbook pages 553-567  
Class will Meet Remotely

No Class Oct. 26 – Pre-Makeup Scheduled Above

No Class Oct. 28 – Pre-Makeup Scheduled Above

20 Nov. 2 Textbook pages 576-595

21 Nov. 4 Textbook pages 595-623

22 Nov. 7 Read Kochan, *Dealing with Dirty Deeds* (TWEN)  
(you can skip footnotes and stop at page 52)

\*23 Nov. 7 Conclude Real Estate Transactions; Textbook  
pages 729-760, 731-737  
Coase; Calabresi & Malemed –  
Read only the “Legal Theory Lexicon” summaries linked  
below. You are *not required* to read full articles. For the links  
to these short readings, click below:  
[http://lsolum.typepad.com/legal\\_theory\\_lexicon/2003/09/legal\\_theory\\_le\\_1.html](http://lsolum.typepad.com/legal_theory_lexicon/2003/09/legal_theory_le_1.html) &  
[http://lsolum.typepad.com/legal\\_theory\\_lexicon/2006/08/property\\_rules.html](http://lsolum.typepad.com/legal_theory_lexicon/2006/08/property_rules.html)

Class 23 is meeting during your regular  
Economics for Lawyers Class Room  
and Time (extended), 1:50-3:50 pm

24 Nov. 9 761-767; 835-853

\*25 Nov. 9 Lecture on Legislative Land Use Controls and Eminent Domain  
Readings TBA

Class 25 is meeting during your regular  
Economics for Lawyers Class Room  
and Time (extended), 1:50-3:50 pm

No Class Nov. 16 – Pre-Makeup Scheduled Above. Follow instructions from Professor  
Cooper for attending Economics for Lawyers on November 16 during the Property slot  
instead.

No Class Nov. 18 – Pre-Makeup Scheduled Above. Follow instructions from Professor Cooper for attending Economics for Lawyers on November 18 during the Property slot instead.

26      Nov. 23      Review Session