

## Property

This course surveys the fundamentals of property law. The class begins by studying the creation of property rights (both real and personal) through such legal doctrines as discovery, capture, and subsequent ownership interests created through voluntary conveyances or involuntary transfers, such as accession, find, and adverse possession. The balance of the course will be spent studying the myriad estates and interests that represent the different ways that a person can legally own something; topics will include possessory estates, future interests, joint tenancies, and leaseholds. The course will conclude by studying differing types of land-use controls, including the law of servitudes, nuisance, zoning and eminent domain. The goal is to provide students with the basic rules of property law, as well as a working knowledge of the social, moral and economic policies that gave rise to these legal rules and which affect their continuing application today.

### **LOGISTICS**

#### **1. Class Schedule**

The class meets Monday and Wednesday, 1:50pm – 3:50pm.

#### **2. Attendance and Class Preparation**

Students are responsible for complying with Scalia Law’s regulations regarding attendance. The regulations are on the law school’s web site, and students should read them before their classes first meet. To ensure compliance, I will take attendance. If you are tardy, it will be counted as an absence unless you tell me to mark you as present before I leave the classroom at the end of class. Two tardies will equal one absence.

Students are expected to read the assignments, and I will call on students randomly to answer questions about the cases and related readings. Students who are consistently prepared and who actively participate in class discussion may receive a “bump up” in their final grades; conversely, if a student is unprepared for class or acts unprofessionally, then this may be taken into account in determining final grades (see below). Do not worry about this distinction: all of your professors can distinguish between a student who has difficulty answering a question given the complexity of a case or legal issue and a student who cannot answer a question simply because he or she has not read the assigned material.

If you are motivated more by carrots than by sticks, there is a general correlation between final grade distributions and class attendance, preparation and participation.

### **3. COVID-19 and Online Class Requirements**

Students are expected to follow university rules or government mandates concerning quarantines or social interactions.

If you exhibit symptoms of COVID-19, do not come to class. If you do so, you only ensure that, even if you are not sick, your symptoms will require others to be quarantined and the entire class may be forced to hold courses online for two weeks, at a minimum. This will negatively impact your educational experience, as well as your fellow classmates.

If you test positive for COVID-19, exhibit any symptoms, or must be quarantined briefly under contact-and-tracing rules, you should attend online. For anyone attending class online—or if the entire class shifts to online due to a shutdown order, the class as a whole must be quarantined, or if the professor is quarantined—the student must ensure that he or she has a proper internet connection and sufficient computer hardware that makes it possible to attend the class. Barring actual COVID-19 symptoms that leave a student incapacitated, the attendance policy applies for anyone attending online or if the entire class shifts to online instruction for any period of time.

For online attendance, students should find a place in one's home that ensures an uninterrupted video feed with minimal disruptions from family or roommates, if possible. Full names must be listed in video panels. Unless there is a disruption to the student's environment or some other problem, students must keep their video turned on. Students must have a current photo in their Zoom profile, preferably a headshot, in case active video feeds must be turned off momentarily. If a disruption requires a student to turn off one's video feed for more than a minute, I should be emailed about the reason and provided confirmation that the student was still attending class. If this regularly occurs, it will count in applying the law school's attendance rules.

Unless a student is speaking, all students must be on mute. It is strongly recommended that students use headphones and microphones.

If a student is unable to log into Zoom via computer, then the student should telephone into class. If this occurs, the student must immediately email me with their telephone number so I can identify the student for that class for purposes of both attendance and class participation. "I could not access Zoom on my computer" is not a valid excuse in applying the attendance policy.

The Antonin Scalia Law School's Honor Code is applicable to students away from the law school but attending classes online.

### **4. Grade**

Your grade is based primarily on a final exam (see below).

Final grades may be adjusted upwards or downwards one grade level (e.g., from B to B+ or from B to B-) based on classroom participation. I may raise a student's final grade for exceptional contributions to classroom discussion. On the one hand, an "exceptional contribution" is defined essentially in terms of quality, not quantity; on the other hand, contributing only once to class discussion—no matter how brilliant the commentary—is insufficient to warrant a mark-up in your

grade. *There is no entitlement to bumping up a grade*; it is only a gratuitous bonus. A student's grade may be lowered for unpreparedness or unprofessional conduct in the classroom, e.g., being rude to your fellow students.

## **5. Final Exam**

The final exam is on December 13, 2021 at 12:00pm.

The final exam will consist of essay questions, although the exact format remains to be determined. If past practice means anything, my exams comprised short answer and short essay questions. To assist students in studying for the exam, I will post at least one of my old exams to the class website (TWEN). I will also discuss the exam at about mid-semester, and I always hold an official exam review session at the end of the semester in which I answer questions and review the answers to last year's Property exam.

The exam will be open book, but this does not mean that students should bring everything written under the sun on property law. Understanding how one prepares for intensive and discrete events, such as contract negotiations, depositions, and trials, is as much a part of good lawyering as is learning the substantive law. If you want to bring five commercial outlines and a variety of "canned" case briefs to the final exam, I will not impede your desire to drown yourself (and your grade) under a mountain of superfluous materials.

With that warning in mind, the best way to succeed in this course is to read all of the assignments, come to every class, and take good notes. When studying for the final exam, I recommend preparing an outline that is detailed and comprehensive. Using the outline, you should also prepare a checklist that lays out the steps you will go through and the issues you will address in answering potential problems on the exam, e.g., creation of a legal interest in land (e.g., types of estates (fee simple, life estate, etc.) and their requirements). The idea is that you will use the checklist as the principal reference guide during the exam, and the more comprehensive outline will serve only as a backup in case you forget something or need more information. Feel free to use commercial outlines or canned case briefs to fill in holes in class notes—speaking with me though is always the best policy—but it is the *preparation* of the outline and checklist that constitutes proper studying for a final exam. If you read the material, attend every class, pay attention to class discussion, and prepare your own outline and checklist, then you will perform at your best on the final exam.

## **6. Technology Requirements**

### **(a) TWEN**

Registration for the class website (TWEN) site is mandatory. (For those who may not have used TWEN yet, go to [lawschool.westlaw.com](http://lawschool.westlaw.com), click on the TWEN tab at the top of the page and follow the instructions.) I will post announcements, updates to the syllabus, and supplemental class materials to the TWEN site. If you do not register with your current email address, you risk not receiving class notices, changes to the syllabus, and whatnot. "I forgot to register at TWEN" is not a defense against applying the grading rules.

## **(b) Zoom**

All students must have a Zoom account before the first class on August 23, 2021 so that we can shift seamlessly to an online format if a shutdown is ordered, if we have to quarantine for two weeks, or if we meet via online for any other reason.

## **7. Office Hours**

Office hours will be held after each class meeting on Monday and Wednesday in the classroom. If the course shifts to online, office hours will be held on Zoom at the end of each class.

I also have an open-door policy for students. Please feel free to stop by whenever you'd like, as I am in my office regularly throughout the workweek. (If my door happens to be closed, please knock and let me know that you are there.)

Students are welcome to email me or to schedule an appointment for us to speak, either in person or by Zoom.

## **8. Learning Outcomes**

The goal of this course is to provide students with the basic rules of property law, as well as a working knowledge of the social, moral and economic policies that gave rise to these legal rules and which affect their continuing application today. Ultimately, students will learn the analytical skills to interpret and understand legal materials, such as court decisions and statutes, and to apply legal rules and policies derived from these legal materials in resolving problems that arise in the use of resources and other valuable assets governed under state and federal laws.

## **9. Miscellany**

Students are not permitted to record lectures without first obtaining my permission to do so.

I RESERVE THE RIGHT TO CHANGE THE SYLLABUS AND ANYTHING ELSE IN IT, except the policies pertaining to attendance and grades, which proverbially will be set in stone as of the first day of class.

## **READINGS**

The required text is Thomas W. Merrill & Henry E. Smith, *Property: Principles and Policies* (3d ed. 2016) ["M&S"]. Additional assigned readings are available on the class TWEN site (in the file "Class Readings" under "Syllabus and Class Assignments").

I will also make cases and other supplemental materials available by posting them on TWEN.

**CLASS SCHEDULE – READING ASSIGNMENTS**

Regardless of whether we discuss them in class, **you are responsible for all assigned material.** (A series of different page ranges, separated by a comma, come from whatever source is designated at the start of the series.) I reserve the right not to cover some material in the readings in order to stay on schedule, and, as a reminder, you will be responsible for all of the readings listed in the syllabus that we do not cover in class.

CLASS	TOPIC	READING ASSIGNMENT
1	First Possession (chattels)	M&S 337, 339-340, 57-72, 82-90  Carol M. Rose, <i>Possession as the Origin of Property</i> , 52 U. CHI. L. REV. 73 (1985) [TWEN]  Adam Mossoff, <i>Locke's Labor Lost</i> , 9 U. CHI. L. SCH. ROUNDTABLE 155 (2002) [TWEN]
2	First Possession (Land)	M&S 338-339, 90-107, 238-255, 32-39
3	First Possession (Water & Body Parts)	M&S 288-311  M&S 209-224
4	Second Owners: Accession & Finder Rules	M&S 132-142  M&S 155-161  M&S 125-132, 200-208
5	Second Owners: Adverse Possession	M&S 161-181  M&S 142-150  Thomas W. Merrill, <i>Property Rules, Liability Rules, and Adverse Possession</i> , 79 NW. U. L. REV. 1122 (1984-1985) [TWEN] – <b>read only pp. 1122-1128, 1133-1135, 1152-1153</b>

6	Adverse Possession (cont.) & Abandonment	M&S 181-187 <i>O'Keefe v. Snyder</i> , 416 A.2d 862 (N.J. 1980) [TWEN] M&S 487-501 M&S 413-417
7	Trespass	M&S 338-339 (review again) M&S 1-10, 417-425 M&S 367-383
8	Conveyances, Licenses & Bailments	M&S 858-869, 871-874, 528 M&S 449-457, 464-481
9	Estate System: Possessory Estates & Future Interests	M&S 503-514 Problem Sets [TWEN] There is less reading assigned for this class so that students have time to work on the problem sets or on the CALI lessons.
10	Estate System: Future Interests (cont.)	M&S 514-521 M&S 545-547 Problem Sets: (1) M&S 521, and (2) Additional Problems on <b>TWEN</b> There is less reading assigned for this class so that students have time to work on the problem sets or on the CALI lessons.
11	Waste Doctrine & Restraints on Alienation	M&S 586-588 ("Vestigial Maintenance Doctrines") M&S 548-566 <i>Morse v. Blood</i> , 71 N.W. 682 (Minn. 1897) [TWEN]

12	Rule Against Perpetuities	M&S 566-586 Problem Set: M&S 572
13	Estate System: Numerous Clauses & Conservation of Estates	M&S 521-545, 589-596 <i>Johnson v. Whiton</i> , 32 N.E. 542 (Mass. 1893) [TWEN]
14	Concurrent Estates & Leaseholds	M&S 596-620, 642-648, 725-728 Problem Sets: (1) M&S 647, and (2) Additional Problems on <b>TWEN</b>
15	Leaseholds (cont.)	M&S 648-665, 680-693
16	Leaseholds (cont.)	M&S 355-361, 670 (Notes) – 673, 698-705 (including “Transfer of Interests”), 709-725
17	Servitudes: Easements	M&S 982-1015
18	Servitudes: Easements (cont.) & Restrictive Covenants	M&S 1021-1050
19	Servitudes: Restrictive Covenants (cont.)	M&S 1050-1067

20	Nuisance	M&S 937-938, 24-30, 938-959  Ronald Coase, <i>Problem of Social Cost</i> , 3 J. L. & Econ. 1 (1960) [TWEN] – read only parts I, II, V, and last paragraph of part VII (pp. 1-2, 8-15, 27-28).
21	Nuisance (cont.)	M&S 959-982  <i>Estancias Dallas Corp. v. Schultz</i> , 500 S.W.2d 217 (Tex. Civ. App. 1973) [TWEN]
22	Zoning	M&S 1067-1079, 1091-1106  Ohio District Court Decision in <i>Euclid</i> [TWEN]
23	Eminent Domain & Regulatory Takings	M&S 1170-1173, 1219-1228, 1237-1254
24	Eminent Domain: Regulatory Takings (cont.)	<i>Cedar Point Nursery v. Hassid</i> (S. Ct. June 23, 2021) [TWEN]  <i>Lucas v. South Carolina Coastal Council</i> , 505 U.S. 1003 (1992) [TWEN]  M&S 1264-1266, 1293-1298 (Notes to <i>Loretto &amp; Lucas</i> )
25	Eminent Domain: Regulatory Takings (cont.)	M&S 1298-1303  <i>Palazollo v. Rhode Island</i> , 533 U.S. 606 (2001) [TWEN]  <i>In re Jacobs</i> , 98 N.Y. 98 (1885) [TWEN]
26	Property & Public Law	M&S 391-413