



# PROPERTY

71978: LAW 104-002  
Fall 2024

## PROFESSOR DONALD J. KOCHAN

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### Initial Assignment & Syllabus Narrative

*“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>  
1:50 pm – 3:50 pm

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 16 at 12:00 pm.

**OFFICE HOURS:** Regular open office hours will be announced each week. Due to Law & Economics Center events, office hours may not be able to remain consistently on the same days and at the same times, but they will be scheduled when you do not have other classes. 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](#) (10<sup>th</sup> ed. 2022).

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

Recommended, Non-Required  
Supplements  
(older editions of each  
will be equally helpful):

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

\*Joseph William Singer & Nestor M. Davidson, [Property](#) (6th ed. 2022).

\*Donald J. Kochan & John Copeland Nagle, [QUESTIONS & ANSWERS: PROPERTY](#)  
(Carolina Academic Press, 3rd ed. 2022).

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

\*Donald J. Kochan, [“Thinking” in a Deweyan Perspective:  
The Law School Exam as a Case Study for Thinking in Lawyering](#),  
12 NEVADA LAW JOURNAL 395 (2012).

- Supplemental required readings and suggested supplemental non-required readings, will be available on the course TWEN page.

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

## **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. You are responsible for the material covered during class discussions, as well as all of the assigned readings. 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. No use of ChatGPT or other AI technology is permitted, and no electronic devices other than your computer (with blocked access) may be present or used during the exam. Sample exam questions will be distributed mid-term; past practice and final exams will be made available on TWEN.

**Exam Conflicts:** In accordance with AR 4-4.1 (a): Excuses and requests for permission not to sit for an examination when scheduled must be presented, with appropriate documentation, to the law school's Registrar's office in a timely fashion. Except in emergencies, such requests should be presented no later than two weeks before the date of the examination.

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

- Regarding the use of Generative Artificial Intelligence (GAI). Students are forbidden to use GAI in any manner in connection with this class according to the Academic Regulations, 4-3:
  - *4-3 Limitations on the Use of Generative Artificial Intelligence (GAI) in Academic Work . . .*
    - (d) *In no instance are instructors allowed to permit any use of GAI prohibited in (b) or (c) in the Law School's required courses specified in AR 33.2(a) (except for LRWA IV). Any midterms or exams in these courses must be given in a closed-internet format.*
- Standing Zoom Link: The following link has been established for remote classes, including in the case of an emergency or last-minute switch to remote (e.g. if there is a “snow day”).  
<https://gmu.zoom.us/j/94876347857?pwd=SkVuT1VEdWlZV0FVcHArcVBcCzDV0QT09>
- 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 PAGE:** Before the first class, all students must register for the TWEN page for this class. All class-wide announcements and other communications rely on TWEN’s list of registered students.

**SYLLABUS SUBJECT TO CHANGE.** Professor Kochan may deviate from the originally-distributed or subsequent revised versions of the 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, TWEN 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.

**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 (person or machine) as their own, and to never provide or accept unauthorized assistance (from a person or machine) on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

**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.

**COVID HEALTH & SAFETY REQUIREMENTS:** Students are required to follow current University health and safety rules and protocols. 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](#).

**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 [hppt://ds.gmu.edu/](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/>

**COURSE ASSIGNMENTS/SCHEDULE:**

| CLASS/DATE | READINGS   |
|------------|--|
| 1 Aug. 22  | <p><b>The Rule of Law; Property Fundamentals; Lecture element on Acquisition by Discovery; Acquisition by Capture; Origin of Property Rights and Attributes of Ownership; Right to Exclude; Deed Interpretation; Property Conflicts and Remedial Options (including Property Rules v. Liability Rules)</b></p> <p>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></p> <p>Textbook pages xxix (preface to First Edition), 1-3, 11-27</p> <p>Amoco Production Co. v. Southern Ute Indian Tribe, 526 U.S. 865 (1999) ((download from TWEN)</p> <p>Coase; Calabresi &amp; Malemed –<br/>Read <i>only</i> the “Legal Theory Lexicon” summaries linked below. You are <i>not required</i> to read full articles. For the links to these short readings, click below:<br/><a href="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</a> &amp;<br/><a href="http://lsolum.typepad.com/legal_theory_lexicon/2006/08/property_rules_.html">http://lsolum.typepad.com/legal_theory_lexicon/2006/08/property_rules_.html</a></p> |

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2 Aug. 27 **Property Fundamentals continued (includes discussion of Property Rules v. Liability Rules in the context of trespass and minor encroachments)**

Wheelock v. Noonan, 108 N.Y. 179 (1888) (download from TWEN).

Peters v. Archambault, 361 Mass. 91 (1972) (download from TWEN)

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3 Aug. 29 **Property Fundamentals continued; Acquisition by Capture; Role of Custom, including as it Relates to Notice and the Rule of Law; Prerequisites of Establishing Verifiable Claims to Property and Consequences of Same; Breadth of Ownership Concept and Property Rights; Bailments; Acquisition by Find; Acquisition after Abandonment**

Textbook Pages 28-36

*Swift v. Gifford*, 23 F. Cas. 558, 559 (D.Mass. 1872) (No. 13,696) (see TWEN)

Textbook pages 41(starting with note 2) – top of 44; 48-71 (stop after note 6).

Madison “On Property” Download (and available on TWEN):  
<http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html>

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4 Sept. 3 **The Right to Exclude, Alienate, Keep, Abandon, and Destroy**

Textbook pages 223-266

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5 Sept. 5 **The Right to Exclude; the Right to Include; Ownership Understanding; and the Sharing Economy**

Donald J. Kochan, *I Share, Therefore It's Mine*, 51 UNIVERSITY OF RICHMOND LAW REVIEW 909 (2017), available at link or on TWEN.

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6 Sept. 10 **Acquisition by Adverse Possession; Acquisition by Gift and Distinguishing Gratuitous Promises and Mere Expectancies**

Textbook Pages 73-79; 118-138

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7 Sept. 11

*Makeup Slot*

NOTE: *Wednesday Property Pre-Makeup Class held during your normal Econ for Lawyers Class slot and in that room*

**The Right to Keep, the Right to Retain, the Right to Refuse to Sell; Understanding the Hohfeldian Framework of Immunities and Disabilities; reviewing and introducing myriad key property doctrines and their elements along with new terms you must know**

Donald J. Kochan, [\*Keepings\*](#), 23 NEW YORK UNIVERSITY ENVIRONMENTAL LAW JOURNAL 355 (2015) (downloadable at link or available on TWEN)

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***Sept. 12 No Class (Make up Held on Sept. 11)***

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8 Sept. 17 **Numerus Clausus and Estates Terminology; Fee Simple; Life Estates**

Textbook pages 267-284; 289-294

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9 Sept. 19 **Real Estate Transactions**

Textbook pages 571-594; 599-610

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10 Sept. 24 **Real Estate Transactions; Title Assurance; Recording**

Textbook pages 610-top of 620; 675-708

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11 Sept. 26 **Recording; Types of Recording Acts; Types of Notice**

Donald J. Kochan, [\*Dealing with Dirty Deeds: Matching Nemo Dat Preferences with Property Law Pragmatism\*](#), 64 UNIVERSITY OF KANSAS LAW REVIEW 1 (2015) (skip footnotes) (downloadable at link or available on TWEN).

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12 Oct. 1 **Recording; Inquiry Notice; Marketable Title Acts**

Textbook 709-736

Donald J. Kochan & James Charles Smith, [\*When Inquiring Minds Ought to Know . . .\*](#), PROBATE & PROPERTY, July/August 2017, at 57-63 (downloadable at link or available on TWEN).

Donald J. Kochan & James Charles Smith, [\*When Inquiring Minds Ought to Know . . ., Part II\*](#), PROBATE & PROPERTY, January/February 2018, at 48-53 (downloadable at link or available on TWEN).

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13 Oct. 3 **Introduction to Land Use Controls;  
Judicial Land Use Controls: Trespass and Nuisance**

Textbook pages 737-766

Donald J. Kochan, [\*A Framework for Understanding Property Regulation and Land Use Control from a Dynamic Perspective\*](#), 4 MICHIGAN JOURNAL OF ENVIRONMENTAL & ADMINISTRATIVE LAW 303 (2015) (downloadable at link or available on TWEN).

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14 Oct. 8 **Private Land Use Controls: Easements**

Textbook pages 767-778; 812-836

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15 Oct. 10 **Private Land Use Controls: Covenants & Equitable Servitudes**

Textbook pages 840-863

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16 Oct. 15 **Servitudes; Covenants; Zoning**

Textbook pages 893-897; 921-939

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17 Oct. 17 **Estates in Land; Leasehold Estates; Defeasible Estates:  
Fees Subject to Executory Interests, Determinable Fees, Fees  
Subject to Condition Subsequent**

Textbook pages 294-302; 318-320; 1175-1176

Required Video Tutorial Part 1:

<https://echo360.org/media/a5b1ef3c-d86a-43ae-bb88-606c5c30871e/public>

Required Video Tutorial Part 2:

<https://echo360.org/media/42755804-1c1e-470a-a596-724193994177/public>

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*Oct. 22 No Property Class (Makeup Scheduled for Nov. 20)*

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*Oct. 24 No Property Class (Makeup Scheduled for Nov. 21)  
BUT you will meet in this time slot for Econ for Lawyers*

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- 18      Oct. 29      **Future Interests: Reversion, Remainders,  
Possibility of Reverter, Right of Entry, Executory Interests  
Shifting v. Springing  
Vested v. Contingent**

Textbook pages 321-344; 1177-1178

Required Video Tutorial Part 3:

<https://echo360.org/media/d0438bf0-bc95-4062-99d9-41c145fb54ca/public>

Required Video Tutorial Part 4:

<https://echo360.org/media/6d49cdc1-b43d-4d73-9106-1c8df1c4da57/public>

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- 19      Oct. 31      **“Policing Doctrines” – Rules Furthering Marketability  
by Destroying Contingent Remainders;  
Rule Against Perpetuities and Perpetuities Reform Efforts**

Textbook pages 350-351; 355-365; 381-383

Required Video Tutorial Part 5:

<https://echo360.org/media/7f97f82b-6ed9-4e81-b1da-6f021a625b69/public>

Required Video Tutorial Part 6:

<https://echo360.org/media/c76ee9ce-fe01-413c-883d-9501f64e7c56/public>

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***Nov. 5      Election Day! Vote! Classes do not meet.***

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- 20 Nov. 7 **Estates in Land: Common Law Co-ownership and Marital Interests; Common Law Concurrent Interests: Tenancy in Common, Joint Tenancy, and Tenancy by the Entirety; Severance of Joint Tenancies Relations Among Concurrent Owners**

Textbook pages 395-405; 412-436

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- 21 Nov. 12 **Leasehold Estates: Term of Years, Periodic Tenancy, and Tenancy at Will; Tenancy at Sufferance and Holdovers; Statute of Frauds; Bargaining Power; Delivery of Possession**

Textbook pages 471-478; 496-500

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- 22 Nov. 14 **Landlord-Tenant: Subleases and Assignments; Tenant Who Defaults; Evictions; Summary Proceedings; Evictions and the Pandemic; Tenant Who Abandons; Landlord’s Duty to Mitigate; Landlord’s Other Remedies and Security Devices**

Textbook pages 500-516; 518-40

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- 23 Nov. 19 **Eminent Domain; Takings Fundamentals; Power to Take; Public Use; Just Compensation**

Textbook pages 1019-1043

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- 24 Nov. 20 *Makeup Slot*  
*NOTE: Wednesday Property Makeup Class held during your normal Econ for Lawyers Class slot and in that room*

**Eminent Domain; Implicit or So-Called “Regulatory” Takings**

Textbook pages 1043-1074; 1079-1092

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- 25     Nov. 21     *Makeup Slot*  
*Although we are observing a “Thursday” Schedule, because Professor Dillbary will not be using this slot for Econ for Lawyers on this day, we will use that slot for a makeup Class.*  
*NOTE: Wednesday Property Makeup Class held during your normal Econ for Lawyers Class slot and in that room*

**Eminent Domain; Implicit or So-Called “Regulatory” Takings**

Textbook pages 1092-1107; 1122-1124; 1152-1169

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- 26     Nov. 22     *Regularly Scheduled Slot:*  
*School is Observing a Tuesday Schedule,*  
*so we meet as if it were a Tuesday*

**Review Session**

No new reading

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ADDITIONAL NOTES:

- Extra Office Hours will be offered during the reading period before exams.
- No practice exams will be reviewed if received after Sunday, November 24 at 5 pm.
- Freezeout Period after which I will no longer take questions before the exam: Friday, Dec. 13 at 5 pm.
- All email and office hours questions throughout the semester (and particularly close to exams) should include the student making an attempt at answering the question when posed to Professor Kochan – i.e., as a pedagogical best practice, you should always try to answer your own questions and then we can discuss whether you are on the right or wrong track.