



PROPERTY

70394: LAW 104-002
Fall 2026

PROFESSOR DONALD J. KOCHAN

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“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:

Mondays & Wednesdays¹

9:40 am – 11:40 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 Friday, December 14 at 12:00 pm.

OFFICE HOURS: Regular open office hours will occur from 12:00 pm – 1:00 pm on Mondays. Additional or substitute office hours may be announced as needed. Students may contact Professor Kochan by email to request appointments for office hours, which may be conducted by Zoom; if making such a request, the student should explain what circumstances make it impossible to attend regularly scheduled office hours.

REQUIRED TEXTS:

- ALEXANDER, STRAHILEVITZ, & SCHLEICHER,
[DUKEMINIER & KRIER'S PROPERTY](#) (11th ed. 2026).

Note: Earlier editions of this textbook are not acceptable substitutes. CasebookConnect features are not required and no assignments or suggestions will be made in connection with those features.

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

*Joseph William Singer & Nestor M. Davidson, [Property](#) (7th ed. 2026).

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

*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, 9th 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 and videos, will be available on the course TWEN page.

¹ 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 rules stemming from common law, statutes, and regulations related to property; and analyze fact patterns, applying relevant 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 or recordings. The exam will cover all materials assigned in the Textbook, all materials covered in class lectures, and any assigned supplemental material including handouts and recordings.

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 be closed book and closed notes. No books or notes or any other materials may be brought into the exam.

Only a computer that is securely locked out from accessing any files or external websites or resources will be permitted in the exam room and that device may only be used for purposes of typing exam responses. **No smart phones, smart watches, or other electronic secondary devices will be allowed in the exam room** – these should be left at home or in a locker. Leaving them in a pocket or in a bag is not sufficient. Students with any extra devices on their person will not be allowed to sit for the exam. This applies to anyone taking the exam in any room where their exam is being administered. In light of these conditions, it should be unnecessary to state the following, but it will be stated just in case: 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. **Included in this ban – students may not ask ChatGPT or other AI or search with Google or other search engines to try to find an answer to a question posed by Professor Kochan during class.**
- 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.*
- 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 Matriculation Oath, Academic Standards, and Honor Code](#). **Read them.** 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.

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 [Disability Services](#) 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 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** - [Academic Standards](#)
- **ACADEMIC REGULATIONS** - [Academic Regulations page](#)
- **UNIVERSITY LIFE:** University Life provides student support resources such as **Counseling and Psychological Services (CAPS)**, **Student Health Services (SHS)**, and the **Student Support and Advocacy Center (SSAC)**. For more information about University Life on the Arlington Campus, please visit: [University Life Mason Square](#)

COURSE ASSIGNMENTS/SCHEDULE:

CLASS/DATE	READINGS
1 Aug. 17	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) Legal Theory Lexicon on “The Rule of Law”, Download at: https://legaltheorylexicon.com/2004/01/legal_theory_le_3-6/ Textbook pages xxix (preface to First Edition), 1-3, 9-17 * * * *
2 Aug. 19	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 17-31; 41-46 <i>Swift v. Gifford</i>, 23 F. Cas. 558, 559 (D.Mass. 1872) (No. 13,696) (see TWEN) Madison “On Property” Download (and available on TWEN): http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html * * * *

- 3 Aug. 24 **Property Fundamentals continued (includes deed interpretation; Coase Theorem; Property Rules v. Liability Rules; trespass and minor encroachments)**
- **Watch “Survey of Property Law” Recording
 – link to be provided
- 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:
- https://legaltheorylexicon.com/2003/09/legal_theory_le_1-16/
 - https://legaltheorylexicon.com/2006/08/property_rules/
- Amoco Production Co. v. Southern Ute Indian Tribe, 526 U.S. 865 (1999) (download from TWEN)
- 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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- 4 Aug. 26 **The Right to Exclude, Include, Alienate, Keep, Abandon, and Destroy; Ownership Understanding**
- Textbook pages 188-236
- * * * * *
- 5 Aug. 31 **Acquisition by Find; Acquisition by Gift and Distinguishing Gratuitous Promises and Mere Expectancies**
- Textbook Pages 49-63; 99-112
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- 6 Sept. 2 **Acquisition by Adverse Possession;**
- Textbook Pages 64-90
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- [Sept 7 – NO CLASS: Labor Day; University Closed]

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- 7 Sept. 9 **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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- 8 Sept. 14 **Numerus Clausus and Estates Terminology; Fee Simple; Life Estates**

Textbook pages 237-261

Required Video Tutorial Part 1:
<https://echo360.org/media/a5b1ef3c-d86a-43ae-bb88-606c5c30871e/public>

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- 9 Sept. 16 **Estates in Land; Leasehold Estates; Defeasible Estates: Fees Subject to Executory Interests, Determinable Fees, Fees Subject to Condition Subsequent**

Textbook pages 261-277

Required Video Tutorial Part 2:
<https://echo360.org/media/42755804-1c1e-470a-a596-724193994177/public>

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- 10 Sept. 21 **Future Interests: Reversion, Remainders, Possibility of Reverter, Right of Entry, Executory Interests Shifting v. Springing; Vested v. Contingent**

Textbook pages 277-295

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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- 11 Sept. 23 **“Policing Doctrines” – Rules Furthering Marketability by Destroying Contingent Remainders; Rule Against Perpetuities and Perpetuities Reform Efforts**

Textbook pages 305-326

Required Video Tutorial Part 5:

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

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- 12 Sept. 28 **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 327-257

Required Video Tutorial Part 6:

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

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- 13 Sept. 30 **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 381-386; 404-407

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- 14 Oct. 5 **Landlord-Tenant: Subleases and Assignments;
Tenant Who Defaults; Evictions; Summary Proceedings**

Textbook pages 408-431

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- 15 Oct. 7 **Landlord-Tenant: 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 431-468

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[Oct. 12 – NO CLASS; Fall Break]

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- 16 Oct. 14 **FLEXIBLE DAY – ASSIGNMENT TO BE ANNOUNCED**

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- 17 Oct. 19 **Real Estate Transactions; Title Assurance; Recording**

Textbook Pages 469-485; Overview lecture

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- 18 Oct. 21 **Real Estate Transactions**

Textbook pages 485-516

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- 19 Oct. 26 **Recording; Types of Recording Acts; Types of Notice**

Textbook pages 563-592

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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20 Oct. 28 **Recording; Inquiry Notice; Marketable Title Acts**

Textbook pages 593-620

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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21 Nov. 2 **Introduction to Land Use Controls;
Judicial Land Use Controls: Trespass and Nuisance;
Brief Summary of Public Land Use Controls**

Textbook pages 621-654

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22 Nov. 4 **Private Land Use Controls: Easements, Covenants &
Equitable Servitudes**

Textbook pages 655-top of 659;
664 Note on Licenses only;
681 (bottom) – 686 (top);
702 (Note 5 Only);
711-716 (Note 6);
715 (Part C)-722;
731-732 (Restatement and intro paragraph under subheading 3);
742 (Intro paragraph in subheading 5 only);
759-762

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23 Nov. 9 **Eminent Domain; Takings
Fundamentals; Power to Take; Public Use; Just Compensation**

Textbook pages 909-929

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24 Nov. 11 **Eminent Domain; Implicit or So-Called “Regulatory” Takings**
Textbook pages 930-973

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25 Nov. 16 **Eminent Domain; Implicit or So-Called “Regulatory” Takings**
Textbook pages 974-987; 999-1001; 1026-1045

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26 Nov. 18 **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 22 at 5 pm.
- Freezeout Period after which I will no longer take questions before the exam:
Wednesday, Dec. 12 at 2 pm.
- Questions Protocol for Email and Office Hours:
 - 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 sending it 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 and why.
 - Very few questions can be answered well or helpfully by email; so, do not be surprised if an email question generates a response from Professor Kochan requesting that you bring the question to office hours.