

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 legal interests that represent the different ways that a person can 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 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, 9:40am – 11:40am.

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 applying a "bump down" in the final grade (see "Grade" below). Do not worry about this distinction: 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. No Digital Devices in Class Meetings

The age of AI is upon us, and it is a tremendous new tool that can vastly expand our capabilities as lawyers. But AI is only a tool, and a tool is only as good as the person who wields it. The function of law school is for students to learn the analytical skills necessary to both understand legal materials and use these materials in effective legal and policy arguments. These are practical intellectual skillsets that can be learned only by doing the work yourself—just like practical physical skillsets can be learned only by doing the work yourself, such as riding a bicycle, operating a sailboat, or playing a sport. You cannot learn the analytical skills comprising “thinking like a lawyer” if AI and other digital tools are used in lieu of this initial work in our classes.

For this reason, **laptops and other digital devices, such as tablets and smartphones, cannot be used during class meetings.** Students may have their devices with them, such as smartphones, in case they have family, childcare, or work emergencies that may require immediate responses. If one of these exigencies arises, the student should leave the classroom to respond to the text or call, as these devices shall not be accessed during class or used for any classroom purposes. For students with legal medical accommodations or other legal mandates to use digital devices, they must sit in the back of the classroom to avoid disrupting their fellow classmates with their screens.

Again, if you are motivated more by carrots than by sticks, this policy is supported by empirical studies that have consistently found that the use of digital devices by students in classes has negative effects on students given the distractions in the use of a digital device for activities unrelated to the class discussion—both to the student using the device and to neighboring students for whom these distractions are imposed on without their consent. Other studies have found more modest results that using laptops instead of taking notes by hand reduces overall comprehension of the course material. AI only magnifies these concerns. Advanced AI apps like Claude and ChatGPT are now incredibly efficient and easy to use by students in answering in-class questions, obtaining definitions or explanations of doctrines and cases, and to perform other analytical tasks in lieu of the students learning these skills themselves. You will perform better in law school and become a better lawyer without using digital devices in the classroom.

For this reason, **students must buy a hardcopy (physical copy) of the casebook,** because tablets or laptops cannot be used in the classroom to access eBooks.

Students are permitted to use their digital devices outside of the classroom to synthesize notes, create outlines, access TWEN, download supplemental reading materials from TWEN, etc. But be forewarned: If the digital devices are used, not as *tools* to assist you, but as *replacements* for the necessary work in learning and using your new skills in legal and policy analysis, you will not perform as well as you wish in your exams and you will start law school already lagging behind your fellow classmates who have done this work and are excelling in their studies.

4. Online Class Requirements (Makeup Classes, Professor Sick Days, Snow Days, Etc.)

For online class 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.

Students must be on mute, unless a student is speaking. It is recommended that students use headphones and microphones, but it is not required.

If a student is unable to log into Zoom via computer, then the student should telephone into Zoom. 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" or "I forgot to send the required email" is not a valid excuse in applying the Scalia Law attendance policy.

For online classes, students should use their computers or smartphones solely for the purpose of logging into Zoom and attending class. Laptops and smartphones are still prohibited for taking notes or other activities during an online class.

The George Mason University Academic Standards apply to students attending classes online.

5. Grade

Your grade is based primarily on a final exam (see "Final Exam" 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.

6. Final Exam

The final exam is on December 14, 2026 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 one of my prior Property exams to 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 the Property exam that has been posted on TWEN.

The exam will be open book, but AI is prohibited. Also, an open book exam 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, or 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—as 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.

7. TWEN

Registration for the class website (TWEN) site is mandatory. (For those of you who have used TWEN, after you receive your Westlaw account in orientation, go to 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.

8. Office Hours

Office hours will be held after each class meeting on Monday and Wednesday in the classroom.

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.

9. 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.

10. 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, grades, and digital devices, which are proverbially set in stone as of the first day of class.

READINGS

The required text is Thomas W. Merrill, Henry E. Smith, and Maureen Brady, *Property: Principles and Policies* (4th ed. 2022) [“MSB”]. **Students must purchase a hardcopy of the casebook.**

Additional assigned readings are available for pickup in the faculty suite on the third floor in the administrative assistant area outside Professor Mossoff’s office. These assigned reading materials are also available as PDFs on TWEN (in the file “Class Readings” under “Syllabus and Class Assignments”), if students wish to download and print their own copies.

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)	MSB 339-340 (“Civil Actions”), 341-343 (“Civil Actions Protecting Personal Property”), 53-73, 255-260 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)	MSB 340-341, 82-99, 33-40, 239-245
3	First Possession (Water and Body Parts)	MSB 311-334 MSB 209-224, 246-255

4	Second Owners: Accession & Finder Rules	MSB 124-129, 113-117, 138-151, 117-124
5	Second Owners: Adverse Possession	MSB 155-175 MSB 129-138 Thomas W. Merrill, <i>Property Rules, Liability Rules, and Adverse Possession</i> , 79 NW. U. L. REV. 1122 (1984-1985) [TWEN] – read only pp. 1122-1128, 1133-1135, 1152-1153
6	Adverse Possession (cont.) & Abandonment	MSB 175-182 <i>O’Keefe v. Snyder</i> , 416 A.2d 862 (N.J. 1980) [TWEN] MSB 488-502 <i>Property and Equity</i> [TWEN]
7	Trespass	MSB 340-341 (review again) MSB 1-10, 417-425 MSB 369-386
8	Conveyances, Licenses & Bailments	MSB 848-859, 862-864, 528 (“Disclaimer”) MSB 450-459, 465-483
9	Estate System: Possessory Estates & Future Interests	MSB 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.)	MSB 515-521 MSB 545-547 Problem Sets: (1) M&S 521, and (2) Additional Problems on 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.
11	Waste Doctrine & Restraints on Alienation	MSB 587-589 (“Vestigial Maintenance Doctrines”) MSB 547-566 <i>Morse v. Blood</i>, 71 N.W. 682 (Minn. 1897) [TWEN]
12	Rule Against Perpetuities	MSB 566-587 Problem Set: M&S 572
13	Estate System: <i>Numerus Clauses &</i> Conservation of Estates	MSB 521-545, 589-597 <i>Johnson v. Whiton</i>, 32 N.E. 542 (Mass. 1893) [TWEN]
14	Concurrent Estates & Leaseholds	MSB 597-620, 636-642, 713-716 Problem Sets: (1) MSB 642, and (2) Additional Problems on TWEN
15	Leaseholds (cont.)	MSB 643-653, 660-681
16	Leaseholds (cont.)	MSB 356-364, 658 (Notes) - 660, 686-693 (including “Transfer of Interests”), 697-713

17	Servitudes: Easements	MSB 979-1012
18	Servitudes: Easements (cont.) & Restrictive Covenants	MSB 1019-1047
19	Servitudes: Restrictive Covenants (cont.)	MSB 1047-1065
20	Nuisance	MSB 933-934, 950-964, 25-32, 941-950 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.)	MSB 964-979 <i>Estancias Dallas Corp. v. Schultz</i> , 500 S.W.2d 217 (Tex. Civ. App. 1973) [TWEN]
22	Zoning	MSB 1065-1078, 1089-1105 Ohio District Court Decision in <i>Euclid</i> [TWEN]
23	Eminent Domain & Regulatory Takings	MSB 1107-1108, 1165-1168, 1211-1221, 1230-1247
24	Eminent Domain: Regulatory Takings (cont.)	MSB 1269-1291 <i>Lucas v. South Carolina Coastal Council</i> , 505 U.S. 1003 (1992) [TWEN] MSB 1302-1307

25	Eminent Domain: Regulatory Takings (cont.)	MSB 1307-1313 <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	MSB 393-415