



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

PROPERTY II
507 SECTION 3
SPRING 2023

PROFESSOR MAURICE HEW, JR.

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THE PROFESSOR

NAME: Maurice Hew, Jr.*

TELEPHONE: 713 313 1066 (I rarely ever check my phone messages.)**

EMAIL: Maurice.Hew@tmslaw.tsu.edu

LOCATION: 106

OFFICE HOURS:

(By appointment only)

NOTE FROM THE PROFESSOR:

* Professor of Law

Board Certified, Immigration and Nationality Law, Texas Board of Legal Specialization
Licensed in Texas, Louisiana, and before several federal courts, including the Supreme Court of
the United States.

**The best way to communicate with me is through email. I normally check my email once a
day.

You may not tape, record, or otherwise electronically record this class without prior permission.

Cell phones, pagers, computer alarms, and other noise making devices must be turned off during
class. Students who disrupt the class will be asked to leave and will be counted absent for that
class.

This syllabus is subject to change at the discretion of the professor and
without notice to the student.

MY TUTORS

Zacarias Gonzales

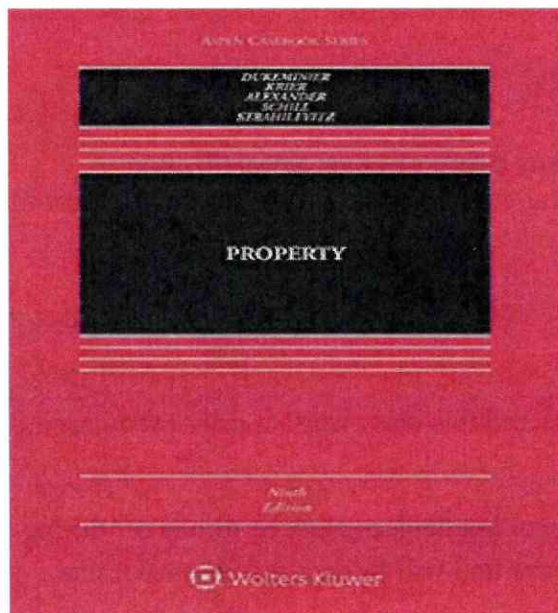
COURSE BOOKS & MATERIAL

REQUIRED-DO NOT PURCHASE THE ELECTRONIC VERSION OR THE WRONG EDITION AS THIS WILL HINDER YOU AND YOUR CLASSMATES.

The publisher has issued a tenth edition of this textbook. Do not purchase the tenth edition as I will be using the ninth.

REQUIRED

Dukeminier, Krier, Alexander, Schill, and Strahilevitz. *PROPERTY*. (9th ed. 2018) Wolters Kluwer. ISBN 978-1454881995.



This semester I plan to cover the following:

- Chapter 7 The Law of Landlord and Tenant
- Chapter 8 The Land Transaction
- Chapter 9 Title Assurance
- Chapter 11 Servitudes
- Chapter 12 Zoning
- Chapter 13 Eminent Domain and Takings.

COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION:

This two-part required introductory course covers the law governing real and personal property. Course topics include: what property rights consist of, how they are acquired, and the economic and philosophical basis of property rights; types of interests in land, including **landlord and tenant**, present and future estates, concurrent ownership, **easements, and covenants running with the land; conveyancing of land, including contracts for sale, deeds, recording systems, title insurance, and mortgages; and the regulation of land use through nuisance law and zoning.**

OBJECTIVE:

- 1) To familiarize the students sufficiently with property law to be able to pass the bar examination and to have a basic understanding of property law for effective, ethical, and responsible participation as a member of the legal profession
- 2) To help the students develop the analytical skills necessary to understand the law-making process and to function as competent practicing attorneys

STUDENT LEARNING OUTCOMES

Demonstrate proficiency in understanding the law of property through in-class responses and performance on essay and multiple-choice exams. Demonstrate proficiency in analytical ability, meaning the ability to present both sides of legal disputes through competing rules of law and policy justifications for the competing rules.

GRADING

THERE WILL BE A MID-SEMESTER TIMED ESSAY EXAMINATION.

THERE WILL BE A FINAL TIMED EXAMINATION

THERE ARE ALSO TIMED SCHEDULED QUIZZES.

At my discretion, I might also issue a timed unscheduled quiz. You will be expected to bring number 2 lead pencil to fill in the bubbles. If you do not bring a pencil and there is a quiz, I will not supply you with a pencil.

I am also allowed to award 5% for participation/attendance. This 5% is not automatic. It must be earned by participating in class and being present in class. Attendance at the tutor sessions will also count to your participation grade. If you are not present in class, do not participate, or are unprepared, you cannot earn this 5%.

The midsemester essay examination, final examination, scheduled and random quizzes, and participation counts towards the professor's grade for the semester. The professor's grade accounts for 50% of the final grade for the semester.

The final examination will be 50% of the professor's grade.
The midterm examination will be 25% of the professor's grade.
The quizzes, scheduled and unscheduled will represent 25% of the professor's grade.

The other 50% of the final grade is based on a comprehensive 60 multiple-choice examination taken by all first-year students at the end of each semester.

PROPERTY COMPREHENSIVE EXAM COVERAGE SPRING SEMESTER

Subject	Questions/Percentage	
landlord & tenant	11/18%	Chapter 7
easements	10/17%	Chapter 11
covenants/servitudes	10/17%	Chapter 11
zoning	2/3%	Chapter 12
real estate contracts	10/17%	Chapter 8
deeds	6/10%	Chapter 8
statute of frauds	2/3%	Chapter 8
recording	4/7%	Chapter 9
title insurance	2/3%	Chapter 9
mortgages	<u>3/5%</u>	Chapter 8
TOTAL	60/100%	

ACCOMMODATIONS

In accordance with TMSL Student Rules and Regulations and Student Accommodations Handbook.

TSU Student Accessibility Services Officer (SASO). Managed by Sharon Benavides, SASO, specializes in accommodation services and will provide efficient and professional services to Thurgood Law Students who may need accommodations. Contact SASO via email DISABILITYSERVICES@TSU.EDU or phone 713 313 4210

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

Class attendance is required of all students. Absence shall be defined as either a failure to attend class, or a failure to be present at the commencement of class. I do not differentiate between excused or unexcused absences.

If you are absent from class, I do not need to know the reason why you are absent. I will simply mark you absent if you are not present at the commencement of class.

The Law School's attendance policy will be enforced per the TMSL Student Rules and Regulations. It is my understanding the Dean's office can drop your final grade based on absences from class.

If you are not prepared for class, I reserve the right to mark you absent even though you are physically present. If you are not prepared for class, I cannot award you 5% for participation either.

At my discretion, I reserve the right to remove a student from the class who is disruptive and is not professional towards his professor or other classmates.

COVID-19 Policy

The law school has a Covid-19 policy which intersects with the attendance rules. I have posted them on Blackboard.

ACADEMIC CALENDAR



THURGOOD MARSHALL SCHOOL OF LAW

TEXAS SOUTHERN UNIVERSITY
ACADEMIC CALENDAR 2022 – 2023

SPRING SEMESTER 2023

SPRING SEMESTER 2023 (SEVENTY DAYS OF CLASSES)

School Opens	Monday	January 2, 2023
First Day of Class	Monday	January 9, 2023
Last Day to ADD/DROP	Wednesday	January 11, 2023
M L K Holiday (No Classes)	Monday	January 16, 2023
<i>Purge of all unpaid course selections</i>	Monday	February 2, 2023
Mid Term Examinations	Mon – Fri	March 6 - 10, 2023
Spring Break	Mon – Fri	March 13 – 17, 2023
Good Friday (No Classes)	Friday	April 7, 2023
Last Day to Drop a Class	Monday	April 10, 2023
Last Day of Classes	Wednesday	April 26, 2023
First Year Professors' Grades Due	Wednesday	April 26, 2023
Reading Period (No Classes)	Thur – Sun	April 27 – April 30, 2023
Final Examinations	Mon- Fri	May 1 – May 12, 2023
Hooding Ceremony	Friday	May 12, 2023
Commencement Exercises	Saturday	May 13, 2023

POLICIES & PROCEDURES

TITLE IX

Texas Southern University is committed towards encouraging and supporting a welcome inclusive university community where all community members enjoy a community free from sex discrimination, harassment and violence. As a result, you should know that university faculty members and staff are required to notify the University Title IX Coordinator of any instances of sex discrimination and harassment, sexual violence, dating violence, domestic violence, or stalking. Sharing this information ensures that those harmed are provided support resources. What this means is that as your professor, I am required to report any incidents that are directly disclosed to me, or of which I am somehow made aware. The University's Counseling Center is available to you if you want to speak with someone confidentially. Please visit the University's Counseling Center's website www.tsu.edu/ucc for additional information.

READING ASSIGNMENTS

January	9,11,13,18,20,23,25,27,30	09
February	1,3,6,8,10,13,15,17,20,22,24,27	12
March	1,3,6,8,10,20,22,24,27,29,31	11
April	3,5,10,12,14,17,19,21,24,26	<u>10</u>
	TOTAL	42

1. January 9, 2023 **Housekeeping/Chapter 7.** Leaseholds: The Law of Landlord and Tenant pp. 461-478

- A. The Leasehold Estates
 - 1. The Term of Years
 - 2. The Periodic Tenancy
- Problems
 - 3. The Tenancy at Will
 - Garner v. Gerrish*
 - Question and Problems
 - 4. The Tenancy at Sufferance: Holdovers

2. January 11, 2023 **pp. 478-500**

- B. The Lease

- D. Delivery of Possession
 - Hannan v. Dusch*
 - Notes and Questions
 - Problems
- E. Subleases and Assignments
 - Ernst v. Conditt*
 - Notes and Problems
 - Kendall v. Ernest Pestana, Inc.*
 - Notes and Questions
 - Problems

What is a term of years? What is a periodic tenancy? What is a tenancy at will? What is a tenancy at sufferance? What is the difference between an assignment and a sublease? What are the practical differences?

3. January 13, 2023 **pp. 500-521**

- F. The Tenant Who Defaults
 - 1. The Tenant in Possession
 - Berg v. Wiley*



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Notes and Questions

Notes: Summary Proceedings—Purpose and Problems

Note: Landlord's Remedies in Addition to Eviction

2. The Tenant Who Has Abandoned Possession

Sommer v. Kridel

Notes and Questions

Notes: Landlord's Remedies and Security Devices

What is the common law and modern rule for self-help? What is the common law rule for mitigation of damages caused by a defaulting tenant? When does a landlord accept a tenant's surrender of a lease? What are the landlord's remedies against a holdover? What are the landlord's remedies against a defaulting tenant?

4. January 18, 2023 pp. 522-532

G. Duties, Rights, and Remedies (Especially Regarding the Condition of the Leased Premises)

1. Landlord's Duties; Tenant's Rights and Remedies

a. Quiet Enjoyment and Constructive Eviction

Village Commons, LLC v. Marion County Prosecutor's Office

Notes and Questions

Problems

5. January 20, 2023 pp. 532-552

b. The Implied Warranty of Habitability

Hilder v. St. Peter

Notes, Questions, and Problems

Note: Retaliatory Eviction

Notes: Law Reform and the Problem of Decent Affordable Housing

Note and Problems: Landlord's Tort Liability

2. Tenant's Duties; Landlord's Rights and Remedies

What is the covenant of quiet enjoyment? What is the implied warranty of habitability? Why do we have two similar doctrines? What is a retaliatory eviction?

CHAPTER 8.

6. January 23, 2023 pp. 553-569

A. Introduction to Buying and Selling Real Estate

Questions and Problems

B. The Contract of Sale



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7. January 25, 2023 pp. 569-581

1. The Statute of Frauds

Hickey v. Green

Notes and Problems

Note: The Statute of Frauds and Electronic Transactions

What are the basic steps for buying/selling a house? What is a Purchase and Sale Contract and for how long does it govern? What document transfers the property? How does the Statute of Frauds apply to property sales and what exceptions does it have?

2. Marketable Title

Lohmeyer v. Bower

Notes and Questions

Note: Equitable Conversion

What is a marketable title and how does it protect the buyer? How do restrictive covenants and municipal ordinances affect marketable title? What is an equitable conversion? What are the three approaches to the duties to disclose defects?

8. January 27, 2023 pp. 581-594

3. The Duty to Disclose Defects

Stambovsky v. Ackley

Johnson v. Davis

Notes and Questions

Note: Merger

What is merger? What is the implied warranty of quality and when does it apply? What are the remedies to breach of the sales contract? If a purchaser defaults, what are the seller's options? What are the elements of a deed and what are the 3 types of deeds?

9. January 30, 2023 pp. 595-611

C. The Deed

1. Warranties of Title

Notes and Questions: The Deed

Brown v. Lober

Questions

Frimberger v. Anzellotti



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Notes, Questions, and Problems

Rockafellor v. Gray

Notes and Problems

Note: Estoppel by Deed

What are the present and future covenants? When do they respectively apply?

10. February 1, 2023 pp. 611-623

2. Delivery

Rosengrant v. Rosengrant

Notes and Questions

D. Financing Real Estate Transactions

1. Introduction to Mortgages and the Mortgage Market

Problem and Notes

2. Mortgage Foreclosure

11. February 3, 2023 pp. 623-640

Murphy v. Fin. Dev. Corp.

Grant S. Nelson & Dale A. Whitman, Real Estate

Finance Law §7.21

Notes and Questions

3. The Mortgage Crisis and the Great Recession

Commonwealth v. Fremont Investment & Loan

12. February 6, 2023 pp. 640-660

U.S. Bank Natl. Assn. v. Ibanez

Notes and Questions

How are mortgages created? How does priority work when multiple banks hold mortgages on the same property? What is a subprime mortgage? What are some of the factors that contributed to the mortgage crisis?

Mortgage Substitutes: The Installment Land Contract

Sebastian v. Floyd

Notes

13. February 8, 2023 QUIZ Chapters 7 and 8



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Chapter 9.

14. February 10, 2023 pp. 661-677

1. Introduction

2. The Indexes

Luthi v. Evans

Notes and Questions

Note: Description by Government Survey

What is title and how does one search it? What is the difference between a race, race notice, and notice jurisdiction? What are the three types of notice?

15. February 13, 2023 pp. 678-692

Orr v. Byers

Notes and Problem

3. Types of Recording Acts

Problems and Note

Messersmith v Smith

Notes and Problem

16. February 15, 2023 pp. 692-719

4. Chain of Title Problems

Board of Education of Minneapolis v. Hughes

Questions and Problems

5. Persons Protected by the Recording System

Lewis v. Superior Court

Notes

6. Inquiry Notice

Harper v. Paradise

Notes, Problem, and Questions

7. Marketable Title Acts

Walter E. Barnett, Marketable Title Acts— Panacea
or Pandemonium?

Problem and Notes

8. Recording Systems and the Mortgage Meltdown

B. Registration of Title

Thomas J. Miceli & C.F. Sirmans, Torrens vs. Title



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17. February 17, 2023 pp. 719-727

Introduction, TITLE Insurance

Walker Rogge, Inc. v Chelsea title and Guaranty Co.

18. February 20, 2023

Kelo

19. February 22, 2023

Kelo

**Chapter 11.
Easements**

20. February 24, 2023

pp. 761-772

Background,

Creation of Easements: *Willard v. First Church of Christ,*

21. February 27, 2023 pp. 772-785

Licenses: *Holbrook v. Taylor, 772-777*

Notes and Questions

Van Sandt v Royster

Notes and Questions

22. March 1, 2023 pp. 785-799

Implied Easements: *Othen v. Rosier,*

Easements by Necessity & Prescription:

Easements by Prescription:

23. March 3, 2023 pp. 799-834

Assignability of Easements: *Miller v. Lutheran Conference & Camp Association,*

Scope of Right Acquired: *Brown v. Voss,*

Marvin M. Brandt Revocable Trust v United States

What is an easement and how is it created? What is the difference between an easement appurtenant and an easement in gross? What are the three types of implied easements? How is an easement by estoppel created? What are the two types of easements by judicial implication and how are they created under the common law? What is a profit? What is a license? How are easements terminated? What are negative easements?

24. March 6, 2023 MIDTERM EXAM



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COVENANTS

25. March 8, 2023 pp. 835-838

Introduction to Covenants

26. March 10, 2023 pp. 838-853

Equitable Servitudes: *Tulk v. Moxhay*,

Neponsit Property Owners Assoc. v. Emigrant Industrial Savings Bank,

Restatement (Third) Approach:

27. March 20, 2023 pp. 854-872

Creation of the Covenants: *Sanborn v. McLean*,

Discriminatory Covenants: *Shelley v. Kraemer*,

Termination of Covenants: *Western Land v. Truskolaski*,

28. March 22, 2023 pp. 873-894

Nahrstedt v. Lakeside Village Condominium Association, Inc.

California Civil Code §1360.5

Notes and Questions

Problems

Timothy Egan, *The Serene Fortress: Many Seek*

Security in Private Communities

What are the four requirements for establishing a real covenant? How do two parties establish a horizontal privity? How do two parties establish a vertical privity? What kind of privity is required to make a burden run? What kind of privity is required to make a benefit run? How do you define touch and concerning the land?

CHAPTER 12

29. March 24, 2023 pp. 895-914

Introduction, 898-899

Village of Euclid v. Ambler Realty Co.,

Enabling Legislation,

The “comprehensive plan”

The economics of zoning

30. March 27, 2023 pp. 915-931

Nonconforming uses: *Pa NW Distributors v. Zoning Hearing Board*,



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Variances:

Special Exceptions: *Cope v. Inhabitants of the Town of Brunswick*,

31. March 29, 2023 pp. 931-946

Zoning Amendments: *State v. City of Rochester*,
Expanding the Aims of Zoning
Aesthetic Regulations:
State ex rel Stoyanoff v. Berkeley

32. March 31, 2023 pp. 947-962

Anderson v. Issaquah: 947-957
Zoning and the First Amendment's Free Speech Clause:
Protection of religious uses

33. April 3, 2023 pp. 962-996

Controls on Household Composition: *Village of Belle Terre v. Boraas*,
Notes:
Exclusionary Zoning: *Southern Burlington County NAACP v. Township of Mt. Laurel*,
Notes:

What is Euclidian zoning? Why are some people against zoning? What is a nonconforming use?
What is amortization and is it permissible?
What is a variance? What is the test for receiving a variance? What are the special exceptions?

34. April 5, 2023 Quiz

CHAPTER 13

35. April 10, 2023 Comprehensive Exam Review Day

36. April 12, 2022 Comprehensive Exam Review Day

37. April 14, 2022 pp. 1021-1042

Implicit Takings:
Loretto v. Teleprompter Manhattan CATV Corp.
Horne v. U.S. Department of Agriculture
Hadacheck v. Sebastian, 1035-1042

38. April 17, 2022 pp. 1042-1063

Rules Based on Measuring and Balancing
Pennsylvania Coal Co. v. Mahon
Notes and Questions
Penn Central Transportation Company v. City of New York
Notes and Questions



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39. April 19, 2022 pp. 1065-1088

Notes: Matters of Remedy

Another categorical rule
Lucas v. South Carolina Coastal Council
Notes and Questions

40. April 21, 2023 pp. 1088-1102

Wisconsin v. Murr
Notes and Questions

41. April 24, 2023 pp. 1102-1131

4. Takings of Personal Property
Horne v. Department of Agriculture
Notes and Questions

What is a regulatory taking? What is an inverse condemnation proceeding? What happens if the government permanently, physically invades someone's property? What happens if nuisance law causes the value of property law to drop?

5. Judicial Takings

Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection
Notes and Questions

42. April 26, 2023 FINAL