PROPERTY

COURSE 506 SECTION 3

FALL 2020-SPRING 2021

PROFESSOR THOMAS KLEVEN
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OFFICE HOURS: MWF 10-1, TR 9-11 During the Coronavirus, individual conferences with students will by phone or online by advance appointment (All other times by appointment only)

NOTE FROM THE PROFESSOR:

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COURSE BOOKS & MATERIAL

Kleven, Property Law, vol. 1 & vol. 2
Bernhardt & Burkhart, Property, 6th ed.
COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION:
An introduction to 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 students sufficiently with property law to be able to pass the bar exam and to have a basic understanding of property upon entering practice; and (2) to help 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

Each semester there will be a mid-semester essay exam and a final exam consisting of multiple choice questions and an explanation of the reasoning process in selecting the answer. The mid-semester and final exams each count 50% of the professor’s grade for the semester. The professor’s grade accounts for 50% of the final grade for the semester. The other 50% of the final grade is based on a comprehensive multiple choice exam taken by all first year students at the end of each semester.
ACCOMMODATIONS

In accordance with TMSL Student Rules and Regulations and Student Accommodations Handbook.
PARTICIPATION, ATTENDANCE & PROFESSIONALISM

Attendance will be taken at the start of each class based on a seating chart or roll call. The Law School’s attendance policy will be enforced per the TMSL Student Rules and Regulations.
ACADEMIC CALENDAR

FALL SEMESTER 2020 (Modified 13-Week Schedule)
Orientation Mon-Fri August 3 – 7, 2020
First Day of Class Monday August 10, 2020
Last Day to ADD/DROP Wednesday August 12, 2020
Labor Day (NO CLASSES) Monday September 7, 2020
Purge of all unpaid course selections Monday September 14, 2020
Mid Term Examinations Mon – Fri October 5-9, 2020
Last Day to Drop a Class with grade of “W” Friday October 30, 2020
Last Day of Classes Wednesday November 4, 2020
First Year Professors’ Grades due Wednesday November 4, 2020
Reading Period (NO CLASS) Thurs- Sun November 5-8, 2020
Final Examinations Mon – Thu Nov 9 – 19, 2020
Commencement Exercises Saturday November 21, 2020

SPRING SEMESTER 2020 (TO BE ANNOUNCED)
POLICIES & PROCEDURES

In accordance with TMSL Student Rules and Regulations
READING ASSIGNMENTS

PROPERTY LAW
PROFESSOR KLEVEN
SYLLABUS

I. Ownership Through Occupancy

A. Possession
1. John Locke I.A.1
5. Pennsylvania Law I.A.11

B. Discovery and Conquest
2. United States v. Percheman I.B.7-I.B.10
3. Tee-Hit-Ton Indians v. United States I.B.11-I.B.14

C. Adverse Possession
1. Statutes of Limitation I.C.1-I.C.2
8. Bernhardt & Burkhart 63-82

II. The Attributes of Ownership

A. The Right to Possess
1. Jeffries v. The Great Western Railway Co. II.A.1-II.A.2
3. Tapscott v. Cobbs II.A.6-II.A.8
4. Winchester v. City of Stevens Point II.A.9-II.A.11
5. Bernhardt & Burkhart 46-51

B. The Right to Exclude
1. Geragosian v. Union Realty Co. II.B.1-II.B.3
2. Somerville v. Jacobs II.B.4-II.B.7
3. State v. Shack II.B.8-II.B.12
C. The Right to Transfer
1. Jones v. Alfred H. Mayer Co. II.C.1-II.C.9

D. The Right to Use
2. Armory Park Neighborhood Park Association v. Episcopal Community Services in Arizona II.D.4-II.D.8
4. City of Cleburne v. Cleburne Living Center II.D.14-II.D.20
5. Bernhardt & Burkhart 347-350

III. Theories of Property

A. Human Dignity
1. Dred Scott v. Sanford III.A.1-III.A.8
5. Board of Regents v. Roth III.A.40-III.A.45

B. The Labor Theory
1. International News Service v. Associated Press III.B.1-III.B.9
2. Sony Corp. v. Universal City Studios III.B.10-III.B.18

C. Social Utility
1. Boomer v. Atlantic Cement Co. III.C.1-III.C.6
3. The Clean Air Act III.C.14-III.C.15

D. Private Versus Public Property
1. Henry George III.D.1-III.D.2
2. Lake Michigan Federation v. Army
IV. Property Rights in Natural Resources

A. Below the Surface
1. Edwards v. Sims
2. Edwards v. Lee’s Administrator
4. Ohio Oil Co. v. State of Indiana
5. Noone v. Price
6. Bernhardt & Burkhart

B. Above the Surface
1. Hinman v. Pacific Air Transport
2. United States v. Causby
3. Thornburg v. Port of Portland
4. Bernhardt & Burkhart

C. Water
2. Coffin v. The Left Hand Ditch Co.
4. California Water Code
5. Bernhardt & Burkhart

V. Estates in Land

A. Present and Future Estates
1. Types of Estates
   b. Browning v. Sacrison
   c. Brokaw v. Fairchild
   d. Brokaw v. Fairchild
   e. Baker v. Weedon
   f. Bernhardt & Burkhart

   V.A.1-V.A.4
   V.A.5-V.A.7
   V.A.8-V.A.11
   V.A.12-V.A.13
   V.A.14-V.A.17
   85-100, 354-356
2. Restraints on Alienation
   b. Funk v. Funk V.A.21-V.A.25
   c. Gale v. York Center Community Cooperative V.A.26-V.A.28
   d. Bernhardt & Burkhart 117-119, 188-189

3. The Rule Against Perpetuities
   a. City of Klamath Falls v. Bell V.A.29-V.A.33
   c. Berry v. Union National Bank V.A.40-V.A.42
   d. Bernhardt & Burkhart 100-109

B. Concurrent Estates

Bernhardt & Burkhart 123-147

1. Types of Estates
   a. People v. Nogarr V.B.1-V.B.3
   b. Miller v. Reigler V.B.4-V.B.7
   c. Holbrook v. Holbrook V.B.8-V.B.9

2. The Relationship Among Cotenants
   b. Giles v. Sheridan V.B.14-V.B.16
   c. Massey v. Prothero V.B.17-V.B.19
   d. Baird v. Moore V.B.20-V.B.24
   e. Johnson v. Hendrickson V.B.25-V.B.28
   f. Carr v. Deking V.B.29-V.B.30
   g. White v. Smyth V.B.31-V.B.36

VI. Landlord and Tenant

Bernhardt & Burkhart 151-188

A. Types of Leaseholds
   1. Providence Land Services v. Jones VI.A.1-VI.A.3

B. Landlord's Remedies
   2. Bass v. Boetel & Co. VI.B.3-VI.B.6
   3. The Liberty Plan Co. v. Adwan VI.B.7-VI.B.9
C. Fitness of the Leased Premises

1. Actual and Constructive Eviction
   a. Suydam v. Jackson VI.C.1-VI.C.2
   b. Barash v. Pennsylvania Terminal Real Estate Corp. VI.C.3-VI.C.6
   c. Reste Realty Corp. v. Cooper VI.C.7-VI.C.12
   d. Blackett v. Olanoff VI.C.13a-VI.C.13b
   e. Charles E. Burt, Inc. v. Seven Grand Corporation VI.C.14a-VI.C.14b

2. Implied Warranty: The Inception of the Lease
   a. Hannan v. Dusch VI.C.15-VI.C.17
   c. Warshawsky v. American Automotive Parts Co. VI.C.21-VI.C.23
   d. Lemle v. Breeden VI.C.24-VI.C.28
   e. Brown v. Southall Realty Co. VI.C.29-VI.C.30

3. Implied Warranty: During the Term of the Lease
   a. Javins v. First National Realty Corp. VI.C.31-VI.C.35
   b. Chicago Board of Realtors, Inc. v. City of Chicago VI.C.36-VI.C.39
   c. Davidow v. Inwood North Professional Group VI.C.40-VI.C.42
   d. Lindsey v. Normet VI.C.43-VI.C.45
   e. Robinson v. Diamond Housing VI.C.46-VI.C.51
   f. Foisy v. Wyman VI.C.52-VI.C.53

D. Rental Housing as a Public Utility
   1. Cotati Alliance for Better Housing v. Cotati VI.D.1-VI.D.5
   2. 152 Valparaiso Associates v. City of Cotati VI.D.6-VI.D.9
   3. 447 Associates v. Miranda VI.D.10-VI.D.14
   4. Loeterman v. Town of Brookline VI.D.15-VI.D.17
VII. Easements

A. The Nature of Easements
1. Deterding v. United States  
2. Evans v. Holloway Sand and Gravel, Inc.  
3. Todd v. Krolick  
4. Waldrop v. Town of Brevard  
5. United States v. Blackman  
6. Bernhardt & Burkhart

B. Extent of and Limitations on Use
2. Brown v. Voss  
3. Geffine v. Thompson  
4. Stanton v. T.L. Herbert & Sons  
5. Martin v. Music  
7. Loch Sheldrake Associates v. Evans  
8. Bernhardt & Burkhart

C. Creation and Extinguishment
1. Stoner v. Zucker  
2. Roy v. Euro-Holland Vastgoed, B.V.  
3. Van Sandt v. Royster  
4. Interior Trails Preservation Coalition v. Swope  
5. State ex. rel Haman v. Fox  
7. Frenning v. Dow  
8. M.P.M. Builders, LLC v. Dwyer  
9. Bernhardt & Burkhart

VIII. Covenants/Servitudes/Deed Restrictions

A. Landlord and Tenant
1. Abernathy v. Adous  
2. Gerber v. Pecht  
4. Jaber v. Miller  
5. Burton v. Chesapeake Box & Lumber Corp.  
6. Bernhardt & Burkhart
IX. Zoning

A. Guiding Community Development and Character
1. Village of Euclid v. Ambler Realty IX.A.1-IX.A.6
2. State ex rel Stoyanoff v. Berkeley IX.A.7-IX.A.9
3. Golden v. Planning Board of Town of Ramapo IX.A.10-IX.A.15
5. Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency IX.A.26-IX.A.29
6. Bernhardt & Burkhart 360-384
B. Exclusionary and Inclusionary Zoning

1. Shelley v. Kraemer IX.B.1-IX.B.4
2. Village of Arlington Heights v. Metropolitan Housing Development Corp. IX.B.5-IX.B.8
3. Huntington Branch NAACP v. Town of Huntington IX.B.9-IX.B.15
5. Hills Development Co. v. Township of Bernards IX.B.23-IX.B.25
6. Bernhardt & Burkhart 384-387

X. Conveyancing

A. The Deed

1. Delivery and Escrows
   a. Metzger v. Miller X.A.1-X.A.3
   b. Robben v. Obering X.A.4-X.A.6
   c. Salter v. Hamiter X.A.7-X.A.10
   d. First National Bank & Trust Co. of Woodbury v. Scott X.A.11-X.A.13
   e. Clevenger v. Moore X.A.14-X.A.17
   f. Bernhardt & Burkhart 272-273, 279-284

2. Covenants of Title
   b. Foley v. Smith X.A.22-X.A.26
   c. Schofield v. The Iowa Homestead Co. X.A.27-X.A.28
   d. St. Paul Title Insurance Corp. v. Owen X.A.29-X.A.32
   e. Bernhardt & Burkhart 312-317

3. Interpretation and Construction
   a. Methods of Description X.A.33-X.A.38
   b. Hoban v. Cable X.A.39-X.A.40
   c. Hall v. Eaton X.A.41-X.A.44
   d. Loverkamp v. Loverkamp X.A.45-X.A.46
   e. Arnold v. Hanson X.A.47-X.A.48
   f. Bernhardt & Burkhart 273-279

B. The Recording System

1. Who Gets Protected
   a. Sample Recording Statutes X.B.1
   b. Hood v. Webster X.B.2-X.B.5
   c. Eastwood v. Shedd X.B.6-X.B.7
   d. Gregerson v. Jensen X.B.8-X.B.9
   e. Osin v. Johnson X.B.10-X.B.12
2. The Notice Issue
   a. The Title Search
   b. Brinkman v. Jones
   c. Messersmith v. Smith
   d. Brock v. Yale Mortgage Corp.
   e. Mugaas v. Smith
   f. Morse v. Curtis
   g. Stegall v. Robinson
   h. Bernhardt & Burkhart

C. Title Insurance
   1. Sample Title Policy
   2. Lick Mill Creek Apartments v.
      Chicago Title Insurance Co.
   3. Bothin v. California Title Insurance
      & Trust Co.
   5. Radovanov v. Land Title Co. of
      America
   6. Bernhardt & Burkhart

D. Contract for Sale
   1. Sample Real Estate Contract
   2. Statute of Frauds
      a. Uniform Land Transactions Act
      b. Cash v. Maddox
      c. Wiley v. Tom Howell &
         Associates, Inc.
      d. Shaughnessy v. Eidsmo
      e. Hickey v. Green
      f. Bernhardt & Burkhart
   3. Equitable Conversion
      a. Shay v. Penrose
      b. Brush Grocery Kart, Inc. v. Sure
         Fine Market, Inc.
      c. Clay v. Landreth
      d. Bernhardt & Burkhart
   4. Quality of Title
      a. Wallach v. Riverside Bank
      b. Reed v. Hassell
      c. American National Self Storage,
         Inc. v. Lopez-Aguilar
      d. Luette v. Bank of Italy National
         Trust & Saving Asso.
      e. Hebb v. Severson
5. Remedies
   a. Miller v. Almquist X.D.47-X.D.49
   c. Donovan v. Bachstadt X.D.53-X.D.56
   d. Orr v. Godwin X.D.57-X.D.59
   e. Skendzel v. Marshall X.D.60-X.D.63
   g. Bartos v. Czerwinski X.D.67-X.D.69
   h. Bernhardt & Burkhart 265-269

E. Mortgages
   2. Bruyere v. Jade Realty Corp. X.E.4
   3. Introduction to Mortgage Financing X.E.5-X.E.8
   4. Prepayment X.E.9
   5. Wallenkamp v. Bank of America X.E.10-X.E.15
   7. Default and Foreclosure X.E.18-X.E.22
   9. Bernhardt & Burkhart 323-332