PROPERTY

COURSE 506 SECTION 1

FALL 2021-SPRING 2022

PROFESSOR THOMAS KLEVEN
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THE PROFESSOR

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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 2021 (SEVENTY DAYS OF CLASSES)

Orientation Monday-Friday August 9-13, 2021
First Day of Class Monday August 16, 2021
Last Day to ADD/DROP Wednesday August 18, 2021
Labor Day (NO CLASSES) Monday September 6, 2021
Purge of all unpaid course selections Wednesday September 15, 2021
Mid Term Examinations Mon – Fri October 11-15, 2021
Last Day to Drop a Class Friday November 5, 2021
Last Day of Classes Tuesday November 23, 2021
First Year Professors’ Grades due Tuesday November 23, 2021
Reading Period Wed November 24, 2021
Thanksgiving Holiday Thurs – Fri November 25-26, 2021
Reading Period Sat- Sun November 27-28, 2021
Final Examinations Monday - Friday November 29-Dec. 10, 2021
Commencement Exercises Saturday December 11, 2021
POLICIES & PROCEDURES

In accordance with University and TMSL Student Rules and Regulations.

Texas Southern University is committed to fostering a safe learning environment for its students. Toward that end, I am required as your professor to report to the University Title IX Coordinator any information you choose to share with me or of which I become aware regarding discrimination based on sex, including sexual harassment, sexual violence, dating violence, domestic violence, and stalking. Other than so reporting, I will seek to keep any information you share with me private and confidential. The University encourages students who have experienced sexual misconduct to report it to the Title IX Coordinator, although students are not required to do so if they choose not to. Students who need help in coping with sexual misconduct can obtain it through the University Counseling Center.
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
5. Bernhardt & Burkhart 344-347

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
2. Lake Michigan Federation v. Army Corps of Engineers
3. Raleigh Avenue Beach Ass'n v. Atlantis Beach Club, Inc.
4. Kaiser Aetna v. United States
5. Pruneyard Shopping Center v. Robins
6. Hawaii Housing Authority v. Midkiff
8. County of Wayne v. Hathcock

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
2. Restraints on Alienation
   a. Northwest Real Estate Co. v. Serio
   b. Funk v. Funk
   c. Gale v. York Center Community Cooperative
   d. Bernhardt & Burkhart

3. The Rule Against Perpetuities
   a. City of Klamath Falls v. Bell
   b. Connecticut Bank and Trust Co. v. Brody
   c. Berry v. Union National Bank
   d. Bernhardt & Burkhart

B. Concurrent Estates

   Bernhardt & Burkhart

1. Types of Estates
   a. People v. Nogarr
   b. Miller v. Reigler
   c. Holbrook v. Holbrook

2. The Relationship Among Cotenants
   b. Giles v. Sheridan
   c. Massey v. Prothero
   d. Baird v. Moore
   e. Johnson v. Hendrickson
   f. Carr v. Deking
   g. White v. Smyth

VI. Landlord and Tenant

   Bernhardt & Burkhart

A. Types of Leaseholds
   1. Providence Land Services v. Jones
   3. Commonwealth Building Corp. v. Hirschfield
   4. David Properties v. Selk
   5. Maguire v. Haddad
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
5. Seawall Associates v. City of New York  

VII. Easements

A. The Nature of Easements
1. Deterding v. United States  
2. Evans v. Holloway Sand and Gravel, Inc.  
3. Todd v. Krolley  
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.  VIII.A.15-VIII.A.18
6. Bernhardt & Burkhart  190-193

B. Owners in Fee
1. Keppell v. Bailey  VIII.B.1-VIII.B.4
2. Trustees of Columbia College v. Lynch  VIII.B.5-VIII.B.8
5. Davidson Bros., Inc. v. D. Katz & Sons, Inc.  VIII.B.17-VIII.B.22
7. Bernhardt & Burkhart  222-231

C. The Common Plan
1. Charping v. J.P. Scurry & Co.  VIII.C.1-VIII.C.4
2. Graham v. Beermunder  VIII.C.5-VIII.C.9
3. Rodgers v. Reimann  VIII.C.10-VIII.C.12
4. Snow v. Van Dam  VIII.C.13-VIII.C.15
5. Riley v. Bear Creek Planning Committee  VIII.C.16-VIII.C.20
8. Bernhardt & Burkhart  231-236

D. Termination and Extinguishment
2. Nelle v. Loch Haven Homeowners' Association, Inc.  VIII.D.3-VIII.D.4
4. Armstrong v. Ledges Homeowners Ass’n, Inc.  VIII.D.7-VIII.D.11
5. Cherry v. Board of Home Missions  VIII.D.12-VIII.D.14
7. Western Land Co. v. Truskolaski  VIII.D.17-VIII.D.19
8. Bernhardt & Burkhart  237-240

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
   f. Bernhardt & Burkhart 288-290, 293-300

2. The Notice Issue
   a. The Title Search X.B.16-X.B.20
   d. Brock v. Yale Mortgage Corp. X.B.29-X.B.31
   e. Mugaas v. Smith X.B.32-X.B.33
   f. Morse v. Curtis X.B.34
   g. Stegall v. Robinson X.B.35-X.B.37
   h. Bernhardt & Burkhart 290-293, 300-308

C. Title Insurance
1. Sample Title Policy X.C.1-X.C.3
2. Lick Mill Creek Apartments v. Chicago Title Insurance Co. X.C.4-X.C.9
4. Heyd v. Chicago Title Insurance Co. X.C.14-X.C.17
5. Radovanov v. Land Title Co. of America X.C.18-X.C.22
6. Bernhardt & Burkhart 317-320

D. Contract for Sale
1. Sample Real Estate Contract X.D.1-X.D.4
2. Statute of Frauds
   a. Uniform Land Transactions Act X.D.5
   b. Cash v. Maddox X.D.6-X.D.7
   c. Wiley v. Tom Howell & Associates, Inc. X.D.8-X.D.10
   d. Shaughnessy v. Eidsmo X.D.11-X.D.14
   e. Hickey v. Green X.D.15-X.D.17
   f. Bernhardt & Burkhart 255-258

3. Equitable Conversion
   a. Shay v. Penrose X.D.18-X.D.19
   d. Bernhardt & Burkhart 263-265
4. Quality of Title
   b. Reed v. Hassell               X.D.29-X.D.32
   c. American National Self Storage,
      Inc. v. Lopez-Aguiar         X.D.33-X.D.34
   d. Luette v. Bank of Italy National
      Trust & Saving Asso.       X.D.35-X.D.36
   e. Hebb v. Severson            X.D.37-X.D.40
   f. Conklin v. Davi             X.D.41-X.D.43
   g. Bernhardt & Burkhart       259-263

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
   f. Giannini v. First National Bank
      of Des Plaines             X.D.64-X.D.66
   g. Bartos v. Czerwinski       X.D.67-X.D.69
   h. Bernhardt & Burkhart       259-269

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