



# PROPERTY LAW SYLLABUS

FERNANDO COLON-NAVARRO

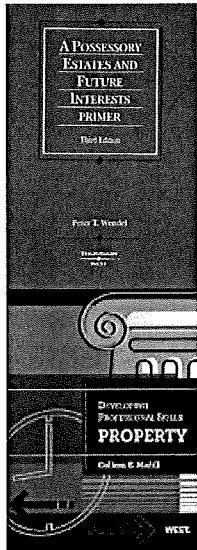
Fall 2019

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Office hours: Tuesday to Friday 10:00 am to 12:00 noon

## Required Literature:

Fernando Colon-Navarro, PROPERTY, (Third ed. 2012)



Peter T. Wendell, POSSESSORY ESTATES AND FUTURE INTEREST PRIMER  
(Third ed. 2007)

## Objective

Property is a first year-required course. Property law is deeply grounded in the common law and is based upon rules dating back to feudal England. Modern law, in the form of torts and contracts-based doctrines, also influences property law. It is the objective of this course to help students navigate through these influences. A series of practice problems, drafting exercises, and graded exams will be administered to help gauge the students' understanding. Additionally, this course introduces students to the process of reading cases and statutes, as well as a series of value sets aimed at preparing them for the practice of law, in general. By the end of the academic year, students should be able to successfully pass the comprehensive exam, and they will have acquired the knowledge and skills required for the bar exam as well.

## Purpose

The purpose of this syllabus is to provide students a roadmap of the course to help them prepare for class. This syllabus is not intended to answer all the questions that will arise during the semester; therefore, it is their responsibility to ask questions.

**NOTE: ALL INSTRUCTIONAL LESSONS AND EXAMS IN THIS SYLLABUS ARE SUBJECT TO CHANGE.**

## CLASSROOM RULES

The use of electronic devices for anything other than classroom participation will result in dismissal from class. Unprofessional conduct towards others will result in dismissal from class. Use of an incorrect exam number will result in a loss five points on each respective exam or assignment. Attendance is mandatory. Missed tutorial sessions will count as absences, unless otherwise instructed. Proper attire is mandatory. Habitual lateness will result in grade reductions.

**\*Always read the notes following the cases, and work the problems. Brief the cases and be ready to identify the issue and the rule of law in each case and to synthesize them into a general rule of law.**

### GRADES:

**Fall Midterm: 40%**

**Fall Final: 60%**

- **FURTHER NOTE** – the grading break down, just like *anything* in this syllabus, is subject to change by the Professor.

## SECTION 1. FOUNDATION OF PROPERTY LAW

*Student Learning Outcomes.* Students will understand the basics of what it means to be a lawyer. Students will also understand what it means to think like a lawyer. Lastly, students will understand that law school requires a very particular level of effort and comprehension, which exceeds that required in a typical undergraduate-level—and even a typical graduate level—education.

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|---|---|
| <ul style="list-style-type: none"> <li>• Acquisition by Discovery</li> <li>• Acquisition by Conquest</li> </ul> | <ul style="list-style-type: none"> <li>➤ Read :</li> <li>➤ Johnson v. M<sup>o</sup>Intosh</li> <li>➤ Read:</li> <li>➤ Tee-Hit-Ton Indians v. USA</li> <li>➤</li> <li>➤</li> </ul> |
| <ul style="list-style-type: none"> <li>• Acquisition by Capture</li> </ul>                                      | <ul style="list-style-type: none"> <li>➤ Read</li> <li>➤ Pierson v. Post</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Acquisition by usage</li> </ul>  | <ul style="list-style-type: none"> <li>➤ Read</li> <li>➤ Ghen v. Rich</li> <li>➤ Keeble v. Hickeringill</li> </ul>  |

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| <ul style="list-style-type: none"> <li>• Labor and Investment</li> </ul>              | <p>International News Service v Associated Press</p> <p>Popov. Haytashi</p>   |
| <ul style="list-style-type: none"> <li>• Creation</li> </ul>                          | <ul style="list-style-type: none"> <li>➤ <b>Fiest Publications v. Rural Telephone</b></li> <li>➤ <b>Moore v. Regents of the Univ. of California</b></li> <li>➤</li> </ul> |
| <ul style="list-style-type: none"> <li>• Acquisition by find and Bailment</li> </ul>  | <ul style="list-style-type: none"> <li>➤ <b>Armory v. Delaware\</b></li> <li>➤ <b>Hanna v. Peel</b></li> <li>➤ <b>McAvoy v. Medina</b></li> </ul>                         |
| <ul style="list-style-type: none"> <li>• Lecture and exercise on Synthesis</li> </ul> |   |

## SECTION 2. CONCURRENT OWNERSHIP

*Student Learning Outcomes.* Students will describe what an estate is and label the three types of concurrent estates. Students will associate the requirements of each concurrent estate, in order to compare and contrast the characteristics. Through practice and application students, will be able to list the characteristics of a joint tenancy: that the tenancy was created with the right of survivorship; and the interest was created in the same: 1) time, 2) title, 3) interest, and 4) possession. Furthermore, students will differentiate between the modern view and the traditional view of a joint tenancy. Additionally, students will summarize how to convey a co-ownership and how a joint tenancy is created and destroyed. Students will formulate what the effect of destruction is to a joint tenancy and how a tenancy in common is created. Following the creation of a tenancy in common students will determine how a tenancy in common is destroyed. Students will also evaluate how a tenancy by the entirety is created and destroyed. Finally, students will conclude about what the rights and liabilities are of cotenants. Through a series of pre-test and post-test practice exams students will be able to judge and evaluate the three types of concurrent estates.

To facilitate these outcomes, students should be prepared to answer the following questions throughout in-class discussion:

- What is an estate?
- What are the three types of concurrent estates?
- What are the characteristics of a joint tenancy?
- What are the four unities of a
- How is co-ownership conveyed?
- How is a joint tenancy created and/or destroyed
- What is the effect of the “destruction” of a joint tenancy?
- How is a “tenancy in common” created and/or destroyed?
- What is a tenancy by the entirety?
- What are the rights and liabilities of cotenants?

Lesson :formative assessment pre-test on concurrent ownership. Read Property pages 331-371 (up to Partition). Also, read Riddle v. Harmon and Harms v. Sprague. Do problems on page 355.

Lesson: read Property pages 371-392, Delfino v. Valencia, Spiller v. Mackereth, and Swartzbaugh v. Sampson.

### Section Exercise

- 1) A rectangular parcel of undeveloped land contained three acres and had 150 feet of frontage on a public street. The applicable zoning ordinance required that a buildable lot contain at least two acres and have frontage of not less than 100 feet on a public street. A brother and sister owned the land as tenants in common, the brother owning a one-third interest and the sister owning a two-thirds interest. Neither of them owned any other real property. The sister brought an appropriate action to partition the land and proposed that a two-acre rectangular lot with 100 feet of frontage be set off to her and that a one-acre rectangular lot with 50 feet of frontage be set off to the brother. The brother's defense included a demand that the land be sold and its proceeds be divided one-third to the brother and two-thirds to the sister. Who will prevail?

- 2) Hansel and Gretel were joint owners with right of survivorship of Greenacre. Gretel conveyed all of her interest using a deed to Scumball, a close and dear friend, without Hansel's knowledge. Shortly thereafter Gretel died. Who has title to Greenacre and how is it held?
- 3) Grace and Kiri inherit Virendell Nursery from their parents as joint tenants. One-quarter of the land is currently farmed and another % is an extensive propagating greenhouse. The remaining 1/2 is vacant. Kid decides that in order to make more money off the land, they should plant the remaining half with several varieties of perennials. She goes ahead and does this. Grace refuses to participate, and Kid sues seeking 1/2 the costs of the improvements that she spent on planting. What is the result of the suit?
- 4) Gaston and Teresa Curtis are a married couple looking for an expensive home in Mendham. The required down payment is astronomical, and Gaston's mother, Vida, offers to lend the young couple some initial cash. Gaston offers to put her name on the title until they repay the debt and Vida agrees. They buy the house and the title reads: "Gaston and Teresa Curtis, and Vida Curtis as joint tenants with right of survivorship." Vida pays half of all expenses for the house over the years. Teresa dies unexpectedly young and Teresa's will reads: "All my interest in real property to my son from my first marriage." The question becomes, in probate, what interest of the house shall pass to Teresa's son. Gaston offers to prove that Vida's interest was only placed in the title as a security interest. How should the court rule regarding title to the property?
- 5) Husband and wife own Blackacre in joint tenancy with right of survivorship. This particular jurisdiction does not recognize a tenancy by the entirety nor are any community property principles recognized. Thereafter husband and wife deeded 10% of Blackacre to their daughter. Later they deeded another 10% of Blackacre to their son-in-law. What are the rights of the parties to Blackacre?

## **SECTION 3. Nuisance**

### **3.1 Introduction, and Private and Public Nuisance**

#### Lesson

Read textbook, pages 865-895

### **3.2 Water and Support Rights, and Light and Air**

#### Lesson

Read textbook, pages 895-906

#### Lesson

Read textbook, pages 895-906

### **3.3 Judicial Land Use Controls: The Law of Nuisance**

#### Lesson

Read textbook, pages 906-924, including *Morgan v. High Penn Oil Co.*, *Estancias Dallas Corp. v. Schultz*, *Boomer v. Atlantic Cement Co.*, *Spur Industries, Inc. v. Del E. Webb Development Co.* (tentative)

## **SECTION 4. ADVERSE POSSESSION**

### **4.1 Acquisition by Adverse Possession**

Lesson (Re: Adverse Possession [not including the case material])

Read textbook pages 667-697

Lesson

Read textbook pages 699-740, including *Van Valkenburgh v. Lutz*, *Mannillo v. Gorski*, *Howard v. Kunto*, and *O'Keefe v. Snyder*

## **SECTION 5. PRIVATE INTERESTS IN LAND: ESTATES AND FUTURE INTERESTS**

*Student Learning Outcomes.* Students will define “estate” and recognize the difference between present estates and future estates. Subsequently, students will indicate the difference between freehold estates and non-freehold estates, and differentiate between an absolute estate and a qualified estate. Students will describe how a fee simple, fee tail and a life estate are created. Separately, students will examine the rights and obligations for a life tenant. Students will analyze what an estate for years is and how it is created and later terminated. Students will review the difference between a tenancy at will and a tenancy at sufferance. After the students have established the components of present estates, students will be introduced to future interests in estates. Students will diagram what a reversionary interest is as well as what a non-reversionary future interest is not. Students will contrast between a remainder and an executory interest. Students will differentiate between a contingent and a vested remainder based on unique facts patterns and practice problems. Furthermore, students will define the difference between a shifting and springing executory interest. After future interests have been defined, students will be given the rule against perpetuities to apply to the fact patterns. The rule against perpetuities will have students formulate a life in being as well as specifying a measuring life. By the end of this section, students should be able to correctly define and apply different estates and additionally, be able to read fact patterns to determine future interests while applying the rule against perpetuities.

To facilitate these outcomes, students should be prepared to answer the following questions throughout in-class discussion:

What is an estate?

What is the difference between present estates and future estates?

What is the difference between freehold estates and non-freehold estates?

What is the difference between an absolute estate and a qualified estate?

How is a fee simple created?

How is a fee tail created?

How is a life estate created?

What are the rights and obligations of the life tenant?

What is an estate for years?  
 How is an estate for years created and terminated?  
 What is a tenancy at will?  
 What is a tenancy at sufferance?  
 What are the types of qualified estates?  
 What is a reversionary future interest?  
 What is a non-reversionary future interest?  
 What is the difference between a remainder and an executory interest?  
 What is the difference between a contingent and a vested remainder?  
 What is the difference between a shifting and springing executory interest?  
 What is the interest to which the rule against perpetuities applies?  
 What is a life in being?  
 What is a measuring life?

## **5.1 Estates and Future Interests**

Lesson, there will be a formative assessment – post-test on concurrent ownership and a pre-test on estates and future interest

## **5.2 Present Possessory Estates**

Lesson, Wendell pages 1-15 (Chapters 1-2), and 42-54(Chapter 4)

## **5.3 Defeasible Estates**

Lesson, Wendell pages 17-37, and pages 58-93.

## **5.4 Future Interests**

Lesson, Wendell pages 98-134 (Chapter 7-).

### **Section Exercises**

- 1) Olive owned Blackacre, a single-family residence. Fifteen years ago, Olive conveyed a life estate in Blackacre to Lois. Fourteen years ago, Lois, who had taken possession of Blackacre, leased Blackacre to Trent for a term of 15 years at the monthly rental of \$500. Eleven years ago, Lois died intestate leaving Ron as her sole heir. Trent regularly paid rent to Lois and, after Lois's death, to Ron until last month. The period in which to acquire title by adverse possession in the jurisdiction is 10 years. In an appropriate action, Trent, Olive, and Ron each asserted ownership of Blackacre. Describe the estate.
- 2) Thirty years ago, a landowner conveyed land by warranty deed to a church (a charity) "so long as the land herein conveyed is used as the site for the principal religious edifice maintained by said church." Twenty years ago, the landowner died intestate, survived by a single heir. One year ago, the church dissolved and its church building situated on the land was demolished. There is no applicable statute. The common law Rule Against Perpetuities is unmodified in the jurisdiction. In an appropriate action, the landowner's heir and the attorney general, who is the appropriate official to assert public interests in charitable trusts, contest the right to the land. In such action, who will prevail?
- 3) Testator made out a will and left his land to his son, Bob, for life and then to the children of Bob. If there were no children, to Dora and her children. Testator dies. Bob is a

bachelor with no children and Dora has two minor children. What are the rights of the parties?

- 4) Kendis owns Villa Morris in fee simple, and following her husband's death she conveys Villa Morris: "To my only child Canda, for life, remainder to the children of Ace in fee simple." Ace was Canda's only child at the time that conveyance was made. Note, however, that both Canda and Ace were married, but Ace had no children at the time of conveyance. With regards to Ace's own children (Kendis's great-grandchildren), what interest would they hold on conveyance? Why?
- 5) Florence conveys land, "To Lisa and her heirs, except if Lisa tries to convey the property, then to Eric and his heirs." During Eric's lifetime, describe his interest?
- 6) Leroux owns Lorient Gardens in fee simple and in 1970 converts the land "to Jamal for life and to the first child of Jamal's brother Kurt, who shall reach the tender age of 21 years." At the time of the conveyance in 1970, Kurt is unmarried. In 1976, Kurt marries and in 1978 Kurt has a daughter, Lorient. Assume that Kurt dies before Lorient becomes 21 and the jurisdiction does not have the common law rule of destructibility of contingent remainders. Who owns Lorient Gardens?
- 7) Romeo owns ocean front property and conveys it, "To the woman who is the most precious and special person I have ever known, Juliet, for life, then to the heirs of my brother, Monty." At the time of the conveyance, Monty has not yet married, preferring the swinging singles life, and has no children that he knows of. At the time of Juliet's death, Romeo is still alive and Monty is unmarried and childless. When Juliet dies, to whom should her interest go? Why?
- 8) Bruce owns Icebellow Farm. He is nearing retirement, but his kids show no interest in farming the earth and raising grain. He puts his highest hopes in his son Murray, a cheesemaker, thinking that he will someday come around, after a few years. Bruce is diagnosed with a week to live, based upon a tetanus infection, and drafts his will. It reads: "I leave Icebellow Farm to my best friend and good neighbor, Wong, for life, then to my eldest son Murray in fee simple absolute." The remainder of Bruce's property is to be divided among his remaining children, his only heirs at the time of his death. Bruce passes away and his estate is dispersed. Weeks later, Wong discovers that Icebellow Farm has diamonds beneath the surface and begins to start mining the property and digging tunnels. Murray asks Wong to stop the mining, but Wong (who has 3 kids in college) refuses. Murray sues seeking to stop Wong. How should the court rule? Why?

## **5.5 Regulating Conveyances**

Lesson, Wendell pages 146-167 (Chapter 10-11)

## **5.6 Rules Against Perpetuities**

Lesson, Wendell pages 172-205 (Chapter 12)

Lesson, formative assessment (post-test) on estates and future interests.



### Sample Exercise

- 1) Arthur's estate plan included a revocable trust established 35 years ago with ABC Bank as trustee. The principal asset of the trust has always been Blackacre, a very profitable, debt-free office building. The trust instrument instructs the trustee to pay the net income "to -Arthur for life, and, after the death of Arthur, to pay the net income to his wife, Alice, for -life; and, after her death, to distribute the-net trust estate as she may appoint by will, or in default of her exercise of this power of -appointment, to my son (her stepson), Charles." Arthur died 30 years ago survived by Alice -and Charles. Arthur had not revoked or amended the trust agreement. A few years after Arthur s death, Alice remarried; she then -had a child, Marie; was widowed for a second time; and, last year, died. Her will contained -only one dispositive provision: I give my - -entire estate to my daughter, Marie, and I -intentionally make no provision for my stepson, Charles. Marie is now 22 years old. -The common-law Rule Against Perpetuities is unmodified by statute in the jurisdiction. There-are-no-other-applicable-statutes-- Charles brought an appropriate action against Marie to determine who was -entitled to the net trust estate and thus to Blackacre. Discuss all possible issues.
- 2) Mame is affluent and in her will dated March 1, 1950 leaves everything to Patrick. Mame dies in 1991. When Patrick meets with Mame's executors, Patrick learns that 2 pieces of property were deeded to others; namely, the Rough Ride Ranch to Brigitta in 1975, and the Vino Vicarage to Rosalind in 1990. The deed to the ranch includes the clause: "for so long as the property is used to house sick parakeets. If the property is used for any other purpose, then it goes to the Able Aviary Association." The deed to Vino Vicarage includes: "as long as the vicarage is used as a headquarters in campaigning for a tax cut for the wealthy to pass by 2000. However, if the tax cut is passed before 1990, then the property should pass to Patrick at that time." Mame died leaving only one son, Fred, who was a bastard who never called his mother and so received nothing at all in Mame's will. This is a common law jurisdiction, and the state's probate laws provide that future interests, or estates in real property, may be passed by will or descent in the same manner as present or possessory interests. (Note that neither Brigitta, nor Rosalind qualify as a charitable institution.) At the time of Mame's death, describe Patrick's interest.

### Fall Final