

PROPERTY

FALL 2019

INSTRUCTOR

KELLEY AUSTIN

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THE INSTRUCTOR

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NOTES FROM THE PROFESSOR:

Blackboard Page: texasu.blackboard.edu (SEARCH FOR COURSE)- **Some class sessions will be conducted via Blackboard. Dates to be announced.**

TWEN: Register through Lexis and sign into the class page.

Guiding Values: Our class will center around four values:

1. Inquiry
2. Collaboration
3. Integrity
4. Professionalism

Helpful Hints on Bar Essay Writing (Formerly on the website of the Texas Board of Law Examiners, 2012)

1. Read each question carefully and analyze it fully. Serious errors may result from failure to read or understand the facts or from failure to organize the answer. Do not copy the question or restate the facts except for emphasis or to make a particular application of law to the facts.
2. Write concisely and clearly. Confine your answer to a discussion of the particular issues raised by the question, but give a complete answer to those issues. Do not waste time by volunteering irrelevant information or by repeating points. If a direct question is asked, answer it directly. If you present arguments for different possible views, be certain you decide the issue. Use complete sentences in framing your answer. Do not use slang or abbreviations other than for names of parties (i.e., D for defendant; or H for husband).
3. Each answer should show an understanding of the facts, a recognition of the issue or issues involved, the principles of law applicable, and the reasoning employed to reach your conclusion. Questions are intended to be inquiries on fundamental points of law on each subject. Do not search for hidden meanings, "catches," or remote exceptions, since none are intended. Use your best judgment to determine the plain meaning of the question.

COURSE BOOKS & MATERIAL

Required Text

Jesse Dukeminier & James E. Krier, Property 9th edition, 1998, Little, Brown and Company

Recommended Text

Through the syllabus I make reference and reading suggestions about outside sources that I recommend. The bookstore as well as the library has available for those interested copies of the recommended materials.

The Law of Property by Herbert Kovenkamp and Sheldon Kurtz, 5th edition, 2001, West Publishing.

Robert Lawrence & the Honorable Pamela Minzner, A Student's Guide to Estates and Future Interests, 3rd edition, 2012, Carolina Academic Pr.

Select Texas cases, real property statutes and/or regulations, and real property forms as needed (Please download from Westlaw, Lexis/Nexis, Bloomberg, the Texas Legislature's and the Texas Railroad Commission's websites).

Helpful: O'Connor's Texas Property Guide Plus 2015-16, Jackson et al.

COURSE OBJECTIVES

Property is a first year-required course. It is the objective of this course to help students navigate through the influences of tort and contract doctrines into property law. A series of practice problems 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. 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 typically required during undergraduate-level study and even that required typically for graduate level study. 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.

GRADING

Sixty percent (60%) of your grade is determined by me. The final comprehensive exam will provide the other forty percent (40%). Your grade (ranking) from me will be determined by the following formula:

1. Class Participation: 20% (includes participation in class, case briefs, suggested meetings, and any other assignments/requirements/etc. at the instructor's discretion)
2. Midterm: 40% (Essay Exam)
3. Final: 40% (Comprehensive Final Exam)

ACCOMMODATIONS

If you require special accommodations, please fill out the necessary forms with the Dean's office. Your application and documentation will remain confidential. Your prompt attention will allow the law school to accommodate you, as soon as it has been made aware of your situation.

Please see:

http://www.tsulaw.edu/student_affairs/docs/2011-2012AccommodationsHandbook.pdf

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

PARTICIPATION:

Although we will generally proceed through the assigned materials in the order indicated in the schedule of daily assignments, how much time we spend on each subject will depend on the importance and difficulty of the material. In addition to the reading material assigned, you should plan to be prepared approximately 50 pages ahead of the place in the book where the discussion left off in the previous class. Not every case, note, problem or question in the casebook will be discussed in class. Class time will be devoted to highlighting the most important cases, to consider some topics in more detail and to give you an opportunity to raise issues about which you are confused and/or concerned.

Each person enrolled in this section of Property is expected to come to class prepared to participate in the discussion of the assigned cases and materials and of any hypothetical posed by the instructor. If a student finds himself/herself unprepared, the student is encouraged to still to come to class and listen and to participate in the discussion without being disruptive. A significant part of the benefit of class sessions is to provide students with an opportunity to articulate their understanding of the concepts under study. Failure to participate fully in class discussion of the materials significantly lessens your opportunity to test your understanding of the doctrine and processes of the law of property.

You must prepare adequately for class. Preparation is key to participation in class as well as understanding and retention of the material discussed.

1. You should take note of the chapter and section headings and subheading in the casebook to orient yourself to the concept that will be discussed in class. These will tell the topic to which the assigned cases relate and where this topic fits in the overall course.
2. Each assigned case in the casebook should be briefed. If called upon, you should be prepared to answer questions regarding the assigned cases.
3. Always read the notes after the cases and try to work out the problems provided by the author of the textbook and prepare tentative answers to the problems and questions posed by the authors of the casebook.

ATTENDANCE:

Per the Student Rules of Matriculation, students missing more than five (5) classes may have their grades reduced by up to two letter grades or be administratively withdrawn from the course. You will have assigned seating. The roll will be taken at the start of every class period by observation of whether or not you are in your assigned seat at the start of each class period.

If you are not in attendance when the seating chart is checked, you are **absent** for that day. If you are absent, for whatever reason, you are absent. If you are **late**, you will be counted **absent**. For number of absences permitted and for penalties for exceeding the permitted numbers of absences see your Student Rules and Regulations. If you have to be absent from class, it is the student's responsibility to confer with colleagues to ascertain what was missed. I do not entertain questions of "excused" absences. The Student Rules and Regulations do **not** provide for excused absences under any circumstance(s).

PROFESSIONALISM:

Because law school is a professional program, students are expected to act professionally. Acting professionally includes coming to class prepared and having read and thoroughly digested the reading assigned for homework. It also means avoiding disruptive conduct during class, such as talking, using cell phones, coming in late, leaving the classroom during class, or surfing the Internet. 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. Please review “The Texas Lawyer’s Creed: A Mandate for Professionalism” to understand the level of professionalism expected of lawyers in Texas, *available at* https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Texas_Lawyers_Creed.aspx

ACADEMIC CALENDAR

Academic Calendar (Fall 2019 Semester 16- Week)	
Fall Web registration period for all students	Monday, April 15 – Sunday, August 25
Last day to apply for fall admission	Friday, August 16
Freshmen Housing Move-In	Sunday, August 18
Housing Move-In (All Students Except Freshmen)	Wednesday, August 21
Last day to pay tuition and fees without a late fee 11:59 p.m. All Classes will be dropped if payment plan has not been secured.	Sunday, August 25
Drop all unpaid course selections 12:01 a.m. All Classes will be dropped if payment plan has not been secured.	Monday, August 26
<u>CLASSES BEGIN</u>	Monday, August 26
Drop and Add courses (no late fees associated with adding and/or dropping courses)	Monday, August 26- Saturday, August 31
Fall Web late registration period with \$150.00 late fee for students with no courses for the semester.	Monday, August 26- Saturday, August 31
<u>Labor Day Holiday (no classes)</u>	Monday, September 2
Academic Clean-Up in Colleges/Schools	Tuesday, September 3- Thursday, September 5
Last day to drop classes or withdraw from school without grades of W	Monday, September 9
<u>TWELFTH (12th) CLASS DAY Census</u>	Monday, September 9
<u>Administrative Drop Date</u> Drop all unpaid course selections 12:01 a.m. All classes will be dropped if payment plan has not been secured	Wednesday, September 11
Opening Convocation - FOUNDERS' DAY	Thursday, September 12
Last day to be reinstated for the semester if courses were dropped due to nonpayment. Payment arrangements for tuition and fees must be completed by 11:59 p.m. (late fee will be assessed)	Monday, September 16
All classes will be dropped if payment plan has not been secured by 11:59 p.m., no reinstatements after this date.	Tuesday, September 17
<u>TWENTIETH (20th) CLASS DAY</u>	Wednesday, September 18
<u>2019 TSU Homecoming Week</u>	Sunday, October 7- Sunday, October 12
<u>Mid-Semester Examinations</u>	Monday, October 14 – Saturday, October 19
Mid-semester Grades are due 11:59 pm	Tuesday, October 22
Project Graduation B.R.A.G. Event for students with 90+ hours	Thursday, October 24
Application Deadline for Spring 2020 graduation	Friday, November 1
Last day to drop classes or withdraw from school with grades of W	Friday, November 8
Wintermester 2019 and Spring 2020 Registration for all students	Monday, November 11- Sunday, January 12, 2020

<u>Thanksgiving holidays</u>	Thursday, November 28 - Saturday, November 30
Classes resume	Monday, December 2
<u>Last Day of Classes</u>	Friday, December 6
<u>FINAL EXAMINATIONS</u>	Saturday, December 7- Thursday, December 12
Commencement Rehearsal HPE Arena	Friday, December 13
<u>Commencement Exercises, 9:30 a.m.</u>	Saturday, December 14
Residence Halls closes	Saturday, December 14
<u>Final Grades Due (11:59 p.m.)</u>	Tuesday, December 17

Installments Dates:

http://www.tsu.edu/About/Administration/Finance/Business_Affairs/student_accounting/payments_installments.php

Please note that the academic calendar dates are subject to change.

POLICIES & PROCEDURES

Please refer to the Thurgood Marshall School of Law's [Student Rules and Regulations Handbook](#).

Make-up Classes: There may be times when make-up classes will be held when class may not be held at the regularly scheduled class hour. Times for these sessions will be posted on the classroom door, sent by e-mail, or announced in class. Some classes will be held via TSU Blackboard or TWEN.

Syllabus: This Syllabus is subject to change at the instructor's discretion with or without notice and is not a contract.

READING ASSIGNMENTS

Note: I want to acknowledge the contributions to this syllabus of Professor Fernando Colon-Navarro and Thomas Kleven. I have borrowed from their materials because I found them to be excellent.

PURPOSE OF THE READING ASSIGNMENT (syllabus)

The purpose of this syllabus is to provide students with information relating to the course. Information contained in the syllabus should help the student prepare for class and also provide a roadmap of the course. A syllabus should not and cannot answer all of the questions that will arise during the semester. Therefore, it is the student's responsibility to ask questions about the course.

Reading Assignments-Property (Fall 2019)

Reading assignments are primarily found in the Dukeminier "Property" casebook.

When reading a case or answering a hypothetical always ask yourself the following questions?

What is the stated "rule of law"?

What are the "key facts"?

What are the policy reasons for the implementation or rejection of the articulated "rule of law"?

Based on the reasoning/analysis provided by the court, is the "rule of law" properly applied in the case?

Is there a more compelling reason to either apply or reject the application of the "rule of law" to the case or hypothetical you are studying?

The specific reading for each week ordinarily will be announced in class; below is a rough outline, and it is subject to change.

SECTION 1- INTRODUCTION TO PROPERTY FUNDAMENTALS

CHAPTER 1. ACQUISITION BY FIRST POSSESSION

First Possession: Acquisition of Property by Discovery (conquest), Capture and Creation

1. Acquisition by Conquest/ Discovery

Dukeminier

Johnson v. M'Intosh

Tee-Hit-Ton Indians v. USA

2. Acquisition by Capture

Dukeminier

Pierson v. Post

Keeble v. Hickeringill

Ghen v. Rich

Popov v. Hayashi

CHAPTER 2. ACUISTION BY SUBSEQUENT POSSESSION

1. Acquisition by Find

Dukeminier

Armory v. Delamirie

Hannah v. Peel

McAvoy v. Medina

2. Acquisition by Adverse Possession

Theory and Elements

Acquisition of title to property solely by reason of long-standing possession of land

Dukeminier

Van Valkenburgh v. Lutz

Manillo v. Gorski

Howard v. Kunto

O'Keefe v. Snyder

Questions:

When does the adverse possession statute begin to run?

What is "hostile"?

When is possession open and notorious?

What is the effect of the true owner's disabilities (if any) on the statute of limitations?

Once the statutory period begins, for how long must the adverse possessor stay in possession of the land?

What is the effect of successive possession by different owners during the statutory period?
[tacking]

Against who does the statute of limitations for ejectment runs?

Under what circumstances is the possession by the adverse possessor interrupted?

What are the qualities of the title acquired by the adverse possessor?

Is the running of the statute of limitations for personalty different than for realty?

3. Acquisition by Gift

Dukeminier

Newman v. Bost

Gruen v. Gruen

Questions:

What are the requirements for the transfer of property by gift?

How do we measure intent?

When has a gift been "delivered"?

What is a gift causa mortis?

When is the recipient of a gift in "possession"?

CHAPTER 3. THE LIMITS AND POSSIBILITIES OF REAL PROPERTY, PERSONAL PROPERTY AND INTELLECTUAL PROPERTY

1. Acquisition by Creation
 - International News v. Associated Press
 - Fiest Publications v. Rural Telephone
 - Diamond v. Chakrabarty
 - Moore v. Regents of the Univ. of Cal.
2. Acquisition by Public Domain
 - Matthews v. Bay Head Improvement Association
 - Eldred v. Ashcroft
 - In re Cordua Restaurants, Inc.
3. What Ownership Entails
 - The Right to Exclude, Transfer, Abandon or Destroy and Restraints on Alienation*
 - Davis v. Davis
 - Hawkins v. Mahoney
 - Pocono Springs Civic Asso v. MacKenzie
 - Eyerman v. Mercantile Trust Co.
 - In re Estate of Kievernagel

SECTION 2. THE SYSTEM OF ESTATES

CHAPTER 4. POSSESSORY ESTATES

1. Introduction to Estates and Future Interests
 - Dukeminier
 - Modern Relevance of Estates
 - Historical Origins of the Estate System
 - Fee Simple
 - Fee Tail
2. Present Possessory Estates Freehold
 - Dukeminier
 - The Life Estate*
 - White v. Brown
 - Baker v. Weedon
3. Present Possessory Estates Non-Freehold
 - Dukeminier
 - Garner v. Gerrish
4. Present Future Interests
 - a. Before 1536
 - Dukeminier

b. After 1536- The Executory Interest; Trusts

Dukeminier

Broadway National Bank v. Adams

c. Rules Furthering Marketability

Dukeminier

Brown v. Independent Baptist Church

Central Delaware County v. Greyhound

Jee v. Audley

d. Defeasible Estates

Dukeminier

Mahrenholtz v. County Board of Trustees

Mountain Brow Lodge v. Toscano

Ink v. City of Canton

Questions:

What is an estate?

What is the difference between present estates and future estates?

What is the difference between freehold estates and nonfreehold 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 are the interest to which the rule against perpetuities applies?

What is a life in being?

What is a measuring life?

CHAPTER 5. FUTURE INTERESTS

1. Introduction

Dukeminier

2. Future Interests in the Transferor

- Reversion
 - Possibility of Reverter
 - Right of Entry
3. Future Interests in Transferees
 - Remainders
 - Executory Interests
 4. The Trust
 - Dukeminier
 - Broadway National Bank v. Adams
 5. Rules Furthering Marketability by Destroying Contingent Future Interests
 - Dukeminier
 - Jee v. Audley
 - The Symphony Space, Inc. v. Pergola Properties, Inc.

CHAPTER 6. CO-OWNERSHIP

1. Introduction
 - Dukeminier
 - *Types, Characteristics, Creation*
2. Severance of Joint Tenancies
 - Dukeminier
 - Riddle v. Harmon
 - Harms v. Sprague
3. Bank Accounts
 - Dukeminier
4. Relations Among Concurrent Owners
 - Dukeminier
 - Delfino v. Valencia
 - Spiller v. Mackereth
 - Swartzbaugh v. Sampson
5. Marital Interests
 - Sawada v. Endo
 - In re Marriage of Graham
 - Obergefell v. Hodges

Questions:

What are the three types of concurrent estates?

What are the characteristics of a joint tenancy? [traditional common law, modern law]

Define the "four unities."

How is a joint tenancy created and/or destroyed?

What is the effect of the "destruction" of a joint tenancy?

How is a "tenancy by the entirety" created and/or destroyed?

How is a "tenancy in common" created and/or destroyed?

What are the rights and liabilities of cotenants?

SECTION 3. Nuisance

3.1 Introduction, and Private and Public Nuisance

3.2 Water and Support Rights, and Light and Air

3.3 Judicial Land Use Controls: The Law of Nuisance

SECTION 4. MISC TOPICS

1. Regulating Conveyances
2. Rules Against Perpetuities

MIDTERM – 10/16 + Pre-exam review and Post-exam feedback

LAST CLASS DAY – 12/06

FINAL EXAMS- 12/07-12/12