



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

PROPERTY
COURSE 506 SECTION 1
FALL 2021-SPRING 2022
PROFESSOR THOMAS KLEVEN

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THE PROFESSOR

NAME: Thomas Kleven

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LOCATION: 221C

OFFICE HOURS: MWF 9-11, TR 9-11 (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 & Burkhardt, 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

SPRING SEMESTER 2022 (SEVENTY DAYS OF CLASSES)

School Opens Monday January 3, 2022
First Day of Class Monday January 10, 2022
Last Day to ADD/DROP Friday January 14, 2022
M L K Holiday (No Classes) Monday January 17, 2022
Purge of all unpaid course selections Monday February 7, 2022
Mid Term Examinations Mon – Fri March 7 - 11, 2022
Spring Break Mon – Fri March 14 - 18, 2022
Last Day to Drop a Class Monday April 11, 2022
Good Friday (No Classes) Friday April 15, 2022
Last Day of Classes Wednesday April 27, 2022
First Year Professors' Grades Due Wednesday April 27, 2022
Reading Period (No Classes) Thur – Sun April 28 - May 1, 2022
Final Examinations Mon- Fri May 2 – May 13, 2022
Hooding Ceremony Friday May 13, 2022
Commencement Exercises Saturday May 14, 2022

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
2. Pierson v. Post I.A.2-I.A.5
3. South Staffordshire Water Co. v. Sharman I.A.6-I.A.7
4. Commonwealth v. Agway, Inc. I.A.8-I.A.10
5. Pennsylvania Law I.A.11
6. *Bernhardt & Burkhart* 42-46, 51-52

B. Discovery and Conquest

1. Johnson v. M'Intosh I.B.1-I.B.6
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
2. Houston v. United States Gypsum Co. I.C.3-I.C.8
3. Peters v. Juneau-Douglas Girl Scout Council I.C.9-I.C.15
4. Mendonca v. Cities Service Oil Co. I.C.16-I.C.17
5. Carpenter v. Huffman I.C.18-I.C.19
6. Patterson v. Reigle I.C.20-I.C.21
7. Carpenter v. Ruperto I.C.22-I.C.25
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
2. Gissel v. State II.A.3-II.A.5
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
4. Cedar Point Nursery v. Hassid II.B.13-II.B.15



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4. Western Pennsylvania Socialist Workers 1982 Campaign v. Connecticut General Life Insurance Company II.B.16-II.B.23
 5. *Bernhardt & Burkhart* 344-347
- C. The Right to Transfer
1. Jones v. Alfred H. Mayer Co. II.C.1-II.C.9
 2. Zendman v. Harry Winston, Inc. II.C.10-II.C.13
 3. Sheridan Suzuki, Inc. v. Caruso Auto Sales II.C.14-II.C.16
- D. The Right to Use
1. Nicholson v. Connecticut Half-Way House, Inc. II.D.1-II.D.3
 2. Armory Park Neighborhood Park Association v. Episcopal Community Services in Arizona II.D.4-II.D.8
 3. Village of Belle Terre v. Boraas II.D.9-II.D.13
 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
 2. Moore v. Board of Regents III.A.9-III.A.18
 3. Time, Inc. v. Hill III.A.19-III.A.31
 4. Goldberg v. Kelly III.A.32-III.A.39
 5. Board of Regents v. Roth III.A.40-III.A.45
 6. Perry v. Sindermann III.A.46-III.A.49
- 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
 3. Metro-Goldwyn-Mayer-Studios, Inc. v. Grokster III.B.19-III.B.27
- C. Social Utility
1. Boomer v. Atlantic Cement Co. III.C.1-III.C.6
 2. Spur Industries, Inc. v. Del E. Webb Development Co. III.C.7-III.C.13
 3. The Clean Air Act III.C.14-III.C.15
 4. American Textile Manufacturers Institute v. Donovan III.C.16-III.C.25



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- D. Private Versus Public Property
1. Henry George III.D.1-III.D.2
 2. Lake Michigan Federation v. Army Corps of Engineers III.D.3-III.D.6
 3. Raleigh Avenue Beach Ass'n v. Atlantis Beach Club, Inc. III.D.7-III.D.9
 4. Kaiser Aetna v. United States III.D.10-III.D.14
 5. Pruneyard Shopping Center v. Robins III.D.15-III.D.19
 6. Hawaii Housing Authority v. Midkiff III.D.20-III.D.24
 7. Kelo v. City of New London III.D.25-III.D.32
 8. County of Wayne v. Hathcock III.D.33-III.D.39
- IV. Property Rights in Natural Resources
- A. Below the Surface
1. Edwards v. Sims IV.A.1-IV.A.4
 2. Edwards v. Lee's Administrator IV.A.5-IV.A.7
 3. Elliff v. Texas Drilling Co. IV.A.8-IV.A.11
 4. Ohio Oil Co. v. State of Indiana IV.A.12-IV.A.14
 5. Noone v. Price IV.A.15-IV.A.19
 6. *Bernhardt & Burkhardt* 342-344
- B. Above the Surface
1. Hinman v. Pacific Air Transport IV.B.1-IV.B.5
 2. United States v. Causby IV.B.6-IV.B.10
 3. Thornburg v. Port of Portland IV.B.11-IV.B.16
 4. *Bernhardt & Burkhardt* 350-351
- C. Water
1. Collens v. New Canaan Waer Co. IV.C.1-IV.C.4
 2. Coffin v. The Left Hand Ditch Co. IV.C.5-IV.C.6
 3. Michigan Citizens for Water Conservation v. Nestle Waters North America Waters Inc. IV.C.7-IV.C.13
 4. California Water Code IV.C.14-IV.C.15
 5. *Bernhardt & Burkhardt* 337-341
- V. Estates in Land
- A. Present and Future Estates
1. Types of Estates
 - a. Storke v. Penn Mutual Life Insurance Co. V.A.1-V.A.4
 - b. Browning v. Sacrison V.A.5-V.A.7
 - c. Brokaw v. Fairchild V.A.8-V.A.11
 - d. Brokaw v. Fairchild V.A.12-V.A.13
 - e. Baker v. Weedon V.A.14-V.A.17



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f. <i>Bernhardt & Burkhardt</i>	85-100, 354-356
2. Restraints on Alienation	
a. Northwest Real Estate Co. v. Serio	V.A.18-V.A.20
b. Funk v. Funk	V.A.21-V.A.25
c. Gale v. York Center Community Cooperative	V.A.26-V.A.28
d. <i>Bernhardt & Burkhardt</i>	117-119, 188-189
3. The Rule Against Perpetuities	
a. City of Klamath Falls v. Bell	V.A.29-V.A.33
b. Connecticut Bank and Trust Co. v. Brody	V.A.34-V.A.39
c. Berry v. Union National Bank	V.A.40-V.A.42
d. <i>Bernhardt & Burkhardt</i>	100-109
B. Concurrent Estates	
<i>Bernhardt & Burkhardt</i>	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	
a. Ark Land Company v. Harper	V.B.10-V.B.13
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	
<i>Bernhardt & Burkhardt</i>	151-188
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1. Providence Land Services v. Jones	VI.A.1-VI.A.3
2. Arbenz v. Exley, Watkins & Co.	VI.A.4-VI.A.6
3. Commonwealth Building Corp. v. Hirschfield	VI.A.7-VI.A.9
4. David Properties v. Selk	VI.A.10-VI.A.14
5. Maguire v. Haddad	VI.A.15-VI.A.16



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- B. Landlord's Remedies
1. Brown's Administrators v. Bragg VI.B.1-VI.B.2
 2. Bass v. Boetel & Co. VI.B.3-VI.B.6
 3. The Liberty Plan Co. v. Adwan VI.B.7-VI.B.9
 4. Austin Hill Country Realty, Inc. v. Palisades Plaza, Inc. VI.B.10-VI.B.13
 5. Aurora Business Bank Associates v. Michael Albert, Inc. VI.B.14-VI.B.16
- 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
 - b. Anderson Drive-In Theatre, Inc v. Kirkpatrick VI.C.18-VI.C.20
 - 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



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- A. The Nature of Easements
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 2. Evans v. Holloway Sand and Gravel, Inc. VII.A.5-VII.A.8
 3. Todd v. Krolick VII.A.9-VII.A.11
 4. Waldrop v. Town of Brevard VII.A.12-VII.A.14
 5. United States v. Blackman VII.A.15-VII.A.20
 6. Bernhardt & Burkhart 201-203
- B. Extent of and Limitations on Use
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 2. Brown v. Voss VII.B.4-VII.B.7
 3. Geffine v. Thompson VII.B.8-VII.B.10
 4. Stanton v. T.L. Herbert & Sons VII.B.11-VII.B.13
 5. Martin v. Music VII.B.14-VII.B.16
 6. Pasadena v. California-Michigan Land & Water Co. VII.B.17-VII.B.19
 7. Loch Sheldrake Associates v. Evans VII.B.20-VII.B.24
 8. *Bernhardt & Burkhart* 210-215
- C. Creation and Extinguishment
1. Stoner v. Zucker VII.C.1-VII.C.3
 2. Roy v. Euro-Holland Vastgoed, B.V. VII.C.4-VII.C.6
 3. Van Sandt v. Royster VII.C.7-VII.C.10
 4. Interior Trails Preservation Coalition v. Swope VII.C.11-VII.C.12
 5. State ex. rel Haman v. Fox VII.C.14-VII.C.17
 6. Tract Development Service, Inc. v. Kepler VII.C.18-VII.C.23
 7. Frenning v. Dow VII.C.24-VII.C.25
 8. M.P.M. Builders, LLC v. Dwyer VII.C.26-VII.C.29
 9. *Bernhardt & Burkhart* 203-210, 216-218

VIII. Covenants/Servitudes/Deed Restrictions

- A. Landlord and Tenant
1. Abernathy v. Adous VIII.A.1-VIII.A.6
 2. Gerber v. Pecht VIII.A.7-VIII.A.8
 3. First American National Bank of Nashville v. Chicken System of America, Inc. VIII.A.9-VIII.A.12
 4. Jaber v. Miller VIII.A.13-VIII.A.14



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6. *Bernhardt & Burkhardt* 190-193
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 1. Keppell v. Bailey VIII.B.1-VIII.B.4
 2. Trustees of Columbia College v. Lynch VIII.B.5-VIII.B.8
 3. Moseley v. Bishop VIII.A.9-VIII.A.12
 4. Caullett v. Stanley Stillwell and Sons, Inc. VIII.B.13-VIII.B.16
 5. Davidson Bros., Inc. v. D. Katz & Sons, Inc. VIII.B.17-VIII.B.22
 6. Regency Homes Association v. Egermeyer VIII.B.23-VIII.B.29
 7. *Bernhardt & Burkhardt* 222-231
- C. The Common Plan
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 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
 6. Sanborn v. McLean VIII.C.21-VIII.C.23
 7. Petersen v. Beekmere, Inc. VIII.C.24-VIII.C.28
 8. *Bernhardt & Burkhardt* 231-236
- D. Termination and Extinguishment
 1. Suttle v. Bailey VIII.D.1-VIII.D.2
 2. Nelle v. Loch Haven Homeowners' Association, Inc. VIII.D.3-VIII.D.4
 3. Ridge Park Home Owners v. Pena VIII.D.5-VIII.D.6
 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
 6. Raintree of Albermarle Homeowners Association, Inc. v. Jones VIII.D.15-VIII.D.16
 7. Western Land Co. v. Truskolaski VIII.D.17-VIII.D.19
 8. *Bernhardt & Burkhardt* 237-240
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 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



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4. Lucas v. South Carolina Coastal Council IX.A.16-IX.A.25
 5. Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency IX.A.26-IX.A.29
 6. *Bernhardt & Burkhardt* 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
 4. Southern Burlington N.A.A.C.P. v. Village of Mount Laurel IX.B.16-IX.B.22
 5. Hills Development Co. v. Township of Bernards IX.B.23-IX.B.25
 6. *Bernhardt & Burkhardt* 384-387
- X. Conveyancing
- A. The Deed
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 - 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 & Burkhardt* 272-273, 279-284
 2. Covenants of Title
 - a. Brown v. Lober X.A.18-X.A.21
 - 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 & Burkhardt* 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
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- B. The Recording System
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 - 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 & Burkhardt* 288-290, 293-300
 2. The Notice Issue
 - a. The Title Search X.B.16-X.B.20
 - b. Brinkman v. Jones X.B.21-X.B.24
 - c. Messersmith v. Smith X.B.25-X.B.28
 - 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 & Burkhardt* 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
 3. Bothin v. California Title Insurance & Trust Co. X.C.10-X.C.13
 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 & Burkhardt* 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 & Burkhardt* 255-258
 3. Equitable Conversion
 - a. Shay v. Penrose X.D.18-X.D.19
 - b. Brush Grocery Kart, Inc. v. Sure Fine Market, Inc. X.D.20-X.D.22
 - c. Clay v. Landreth X.D.23-X.D.24
 - d. *Bernhardt & Burkhardt* 263-265



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 - a. Wallach v. Riverside Bank X.D.27-X.D.28
 - b. Reed v. Hassell X.D.29-X.D.32
 - c. American National Self Storage, Inc. v. Lopez-Aguilar X.D.33-X.D.34
 - d. Lulette v. Bank of Italy National Trust & Saving Asso. X.D.35-X.D.36
 - e. Hebb v. Severson X.D.37-X.D.40
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 - b. Cohen v. Kranz X.D.50-X.D.52
 - 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 & Burkhardt* 265-269

- E. Mortgages
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 3. Introduction to Mortgage Financing X.E.5-X.E.8
 4. Prepayment X.E.9
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 6. Garn-St.Germain Act X.E.16-X.E.17
 7. Default and Foreclosure X.E.18-X.E.22
 8. Murphy v. Financial Development Corporation X.E.23-X.E.27
 9. *Bernhardt & Burkhardt* 323-332