

COURSE INFORMATION

The main course text is: Dukeminier, Krier, Alexander, and Schill (D & K), Property, 8th Edition (Wolters-Kluwer, 2014). Materials also will include the professor's course compilation, Property, Spring 2018.

This course blends practice and theory. You already may be aware that property law is a creature of history. It is equally true that property reflects ethics and social policy. Conceptual themes unite the varied and seemingly unrelated areas of property law. I have designed this course on the assumption that competent and creative practitioners in the field need a sound understanding of conceptual foundations along with knowledge of practice contexts and legal rules. This has practical value for creative legal reasoning, and so the first phase of the course will attend to the origins and policy of property law and will lay the groundwork for ongoing discussions of the values embedded in the American property institution. For experience applying concepts in practice settings, we will close the first segment of the course with an interview of a client in an adverse possession case. In the second unit of the course we will turn to historical concepts of property that have shaped the important modern system of estates. Then we will devote attention to co-ownership of property and a few basics of marital property. We will go on to view a transformation of property law through a unit on landlord and tenant law. Here we will have another practice opportunity to counsel a client on a lease document. From there we will tackle an overview of real estate transactions through residential property purchases and sales, again using real sample documents. Finally, we will turn our attention to fundamental private and public land use and planning concepts. This agenda is ambitious but exciting. I look forward to your curiosity and contributions!

The primary method of evaluation for this course will be an in-class, open-book **Final Examination. Please note now that commercial materials prohibited even copied into student outlines, so do not incorporate these materials into your outlines if you intend to use those in the open book exam.**

I tentatively plan 3-4 written *Quizzes* that together will be worth 15 points out of 100 total course Grade Points. Details will follow on the quizzes. In April the Academic Success office will administer an ungraded practice examination, which I encourage all students to take under exam conditions. The **Property 2018 course materials contain Sample Examination Questions** from previous years (Loder, pp. 113-119). You are encouraged to test your skills with these questions as we cover the relevant material. In addition to those practice questions (some of which we will discuss in class), we will cover review problems at the close of each topical unit.

Course participation can affect borderline grades. Course participation will include in-class contributions and preparation, with class attendance a minimum expectation. The

ABA requires attendance for school accreditation, so I will distribute a written attendance sheet in each class because of the large number of students. You are expected to keep up with all assignments listed on the course outline and announced periodically in class or on TWEN. Pacing of assignments on the course outline will depend on our progress, but generally material grouped under each number (1, 2, 3 . . .) will be covered in one class session. (For example, the reading for the first class is listed under the Syllabus IA1, second class IA2, third class IB1, etc.) **IMPORTANT: Should we not finish all material assigned for a particular class, you are expected to review remaining materials before the next class.** You should get into the habit of doing this without my prompting. Changes in assignments will be announced in class and/or through TWEN, and you are responsible for following those revisions. Please sign up on TWEN.

In a large class it is important to keep distractions to a minimum to avoid disturbing classmates. I allow computer use for note taking but do not permit any other activities like checking email during class time. Please come to class on time and remain in your seat except in an emergency. I will call a 5-minute break sometime toward the middle of the class based on a convenient break in the topic coverage. Do not converse with your classmates during class except as instructed. Do listen to student questions and comments, because important learning occurs through this exchange. I urge you to participate in discussions without fear of making errors. I try to establish a collaborative atmosphere conducive to learning and recognize that we all learn through our mistakes.

SYLLABUS

NOTE ON READING ASSIGNMENTS:

Students are expected to read assignments with care and to prepare problems and questions following cases in the text, except as instructed otherwise. Students are not expected to look up all case/article references in the text notes and problems but are welcome to pursue interesting references in the text (D & K). Pacing for these assignments will be announced in class as we progress. Generally, a group of readings under each number (1, 2, 3 . . .) is the assignment for one class session. Assignments listed on this topical outline may be modified in class and through TWEN email. Expect periodic modifications in accordance with our progress.

I. FUNDAMENTALS: WHAT IS PROPERTY?

A. PROPERTY AS DISCOVERY

1. TWEN: Course Information and Syllabus
Foundations of the Property Institution:
Loder: For the Sake of Sue, etc. pp. 1-4
D & K: start *Johnson*, pp. 1-18
Loder: Seattle; Shiva, pp. 5-14

2. *Origins of Property:*
D & K in Chapter 1 A, finish *Johnson* pp. 1-18 and Loder 5-14 as needed
D & K, Ch. 1B: introduce capture (*Pierson*), pp. 18-26 (top); 26-30 (top) (custom; *Ghen*)

B. PROPERTY AS CAPTURE AND CUSTOM

1. D & K, Ch. 1B capture cont'd (*Keeble*, etc.), pp. 30-40 (Be ready to discuss Problems, pp. 33-36)
Intellectual Foundations of American Property Law:
Loder: "What is Property?" (Locke), pp. 15-22, Questions on Locke, p. 27; (Bentham), pp. 23-24, Ques. p. 27

C. THE CONCEPT OF PROPERTY; CREATION; CONTROL

1. Loder: "What is Property?" continued (Bentham as nec. & Radin), pp. 25-26; finish Questions on "What is Property?" p. 27
D & K in Ch. 1C, Creation: pp. 91-104 (mid) (*Moore*, etc. if time permits); 104-110 Notes
Loder: "Give and Take," pp. 28-30, Brand Third Codicil, pp. 110-111

D. ADVERSE POSSESSION

1. D & K, in Ch. 2 B: Introduce Adverse Possession: pp. 144-163 (mid) (*Van Valkenburgh*, etc.; Prob. 1 *only*, p. 163);
Loder: "Georgia Woman." P. 31
Encroachments:
D & K: pp. 164-169 (*Manillo*, etc.)
2. *Mechanics*, pp. 170-177 (*Howard*, etc.); Disabilities Problems, p. 177
Against Government, D & K, p. 177-178
Loder: "Judge Kicks Squatter off Park Land", pp. 33-34
2. **Review Problem: Client Interview Simulation:**
Adverse Possession Interview and debriefing; Instructions TBA
Loder: Adverse Possession Interview Information, p. 32

II. SYSTEM OF ESTATES (Except Leaseholds)

A. INTRODUCTION TO ESTATES AND TYPES OF ESTATES

1. *Feudal History; Fee Simple; Fee Tail; Life Estate:*

D & K, Ch. 3 A, pp. 207-215 (read for background understanding of history only)

D & K, Ch. 3 B (fee simple), pp. 215-222

D & K, in Ch. 3 C (fee tail), pp. 222-226

D & K, Ch. 3 D (life estate), pp. 226-233 (*White*, etc.)

2. *Life Estate Continued*

D & K, pp. 235-243 (top) (*Baker*, etc.)

Loder: Future Interests (Outline), p. 35; *Melms v. Pabst*, pp. 36-39

Leaseholds: Brief intro. D & K, Ch. 3 E, p. 244 (we'll cover later)

3. *Defeasible Estates:*

D & K, in Ch. 3 F, pp. 244-256 (*Mahrenholz*)

Future Interests: D & K, in Ch. 4A-C, pp. 275-285 [next class continued]

Loder, review Future Interests Outline, p. 35

B. EXECUTORY INTERESTS; CONCURRENT INTERESTS;

1. Finish Future Interests:

Executory Interests:

D & K in Ch. 4 C, pp. 286, 290-297

Common Ownership:

D & K, in Ch. 5 A, pp. 343-359 (top) (*Riddle; Harms*, etc.)

2. *Relations*: D & K, in Ch. 5 B, pp. 361-362 (top), 370-371 (top)

(Note 4), 371-382 (*Spiller, Swartzbaugh*, etc.)

Marital Interests: D & K, in Ch. 5 B, pp. 383-391 (*Sawada*, etc.)

III. LEASEHOLDS

A. TENANCIES

1. *Types*:

D & K: in Ch. 6 A-B, pp. 441-445 (top); sufferance: pp. 449-450 (top);
lease: pp. 450-453

Access:

Loder: Patricia Williams, pp. 40-43; “The Unsheltered Life”, p. 44

B. SELECTION OF TENANTS AND FAIR HOUSING

1. *Discrimination*:

D & K, Ch. 6 C, pp. 453-461

Loder: Fair Housing Act, pp. 45-53 (full version); HUD ads pp. 54,
112

“Discrimination Ruling...” pp. 56-57

C. DELIVERY OF POSSESSION, DEFAULT, AND CONDITION

1. *Delivery of Possession:*
D & K, in Ch. 6 D, Delivery: pp. 461-465 (*Hannan*, etc)
Default: D & K, 6 E, pp. 482-502 (*Berg; Sommer*, etc.)
Condition:
TWEN: *Reste v. Cooper*

D. **Review Problem: Client Counseling Simulation**

1. D & K, in Ch. 6 G, pp. 511-526 (*Hilder*, etc.)
Loder: Cooper Lease Simulation and Debriefing, pp. 58-63
(Instructions TBA)

IV. TRANSFERS OF LAND

A. INTRODUCTION TO REAL ESATE AND CONTRACT OF SALE

1. *Statute of Frauds:*
D & K, in Ch. 7 A, pp. 541-544; pp. 570-576 (*Hickey*, etc.);
Brokers: D & K, pp. 562-563
Purchase & Sale Contract:
Loder: Outline Purchase and Sale of Real Estate, pp. 64-65; Spring
Valley, p. 55
TWEN: VT Purchase and Sale Contract [P & S]
TWEN: sample inspection clause (drafting)
D&K: pp. 547-548(top) (Inspection Clause # 10)
2. *Marketable Title:*
D&K, in Ch. 7C, pp. 576-581 (*Lohmeyer*)
TWEN: *Conklin v. Davi*
Equitable Conversion: D & K, pp. 581-582 (Note)
Disclosure: D & K, pp. 582-593 (top) (*Stambovsky; Johnson*, etc.)

B. CLOSING AND DEED

1. *Merger:* D & K, p. 593 (Note)
Deed Warranties: D & K, in Ch. 7D, pp. 614-620; pp. 623-628
(*Frimberger*, etc., if time permits)
Loder: Sample Deeds, pp. 75-77
Review Problem: Loder: “Tewksbury Woman,” pp. 66-68; Title
Insurance Policy (apply to Tewksbury Woman facts), pp. 69-73

C. TITLE ASSURANCE METHODS

1. Finish Review Problem if necessary.
Searching Title: D & K, in Ch. 8A: pp. 693-699
Recording: D & K, pp. 715-717 (top, not Problems), 741 (Inquiry Notice only)
Loder: Recording Problems, p. 74

V. LAND USE

A. NUISANCE

1. D & K, in Ch. 9 A, pp. 777-786 (top) (*Morgan*, etc.); 806-808 (Note)
Loder: *Prah v. Maretti*, pp. 80-97

B. INTRODUCTION TO PRIVATE LAND USE: SERVITUDES:

1. *The Easement (one of 3 types of Servitudes):*
D & K, in Ch. 10 A, pp. 809-819 (*Willard*, etc.)
Implied Easements: D & K, pp. 825-833 (*Van Sandt*, etc.)
Negative Easements:
D & K: pp. 887-892
Loder: *Petersen v. Friedman*, pp. 78-79

C. REAL COVENANTS AND EQUITABLE SERVITUDES

1. *The Real Covenant (one of 3 types of Servitudes):*
D & K, in Ch. 10 B, pp. 892-898 (top) (difficult material to be read several times; prepare problems)
The Equitable Servitude (one of 3 types of Servitudes):
D & K, pp. 898-903 (include Creation of Covenants) (*Tulk*, etc.)
2. *Implied Equitable Servitudes:* D & K: pp. 903-909 (*Sanborn* etc.)
Assessments and validity: D & K, pp. 909-921 (*Neponsit* etc.)
Loder: Protective Covenants: Hawk Pine Hills, pp. 98-101
3. **Review Problem on Servitudes**
Loder: Past Property Examination Question: p. 119 (*Phillip v. Clark*)

D. ZONING

1. *Basic Zoning:*
D & K, Ch. 11 A, pp. 967-986 (top) (*Euclid*, etc.)
Variations and Special Exceptions: D & K, Ch 11 C, pp. 996-1003
Exclusionary Zoning (if time permits):

D&K, Ch 11 D, pp. 1010-1020 (aesthetics, *Stoyanoff*, etc.)
Loder: households: “Hanover Home Fought,” pp. 102-107
D & K, in Ch 11 D, pp. 1062-1070 (top) (*Belle Terre*)
Loder: Letter to Hon. T. Marshall, pp. 108-109

E. EMINENT DOMAIN AND REGULATORY TAKINGS (as time allows)

1. *Eminent Domain and Public Use:*

D & K, in Ch. 12 A-B, pp. 1107-1123 (*Kelo*, etc.)

2. *Regulatory Takings: Categorical and Balancing*

D & K, in Ch. 12 C, p. 1131 (bottom) - 1132 (intro.); 1153-1162 (*PA Coal*, etc.); 1207-1217 (*Tahoe*)

APPENDIX

SUMMARY OF MAIN COURSE OUTCOMES (KNOWLEDGE, SKILLS, VALUES STUDENT SHOULD ATTAIN FROM INSTRUCTION AND COURSE CONTENT):

-The student should be able to describe fundamental concepts of property law introduced in the course.

-The student should be able to identify property law concepts relevant to fact situations.

-The student should be able to apply property law concepts to fact situations to assess the positions of potential legal parties.

-The student should be able to identify multiple property law concepts relevant in fact situations and synthesize those concepts to assess the positions of potential parties.

-The student should be able to name technical property terms and apply those terms correctly in legal analysis.

-The student should be able to draft basic estates language in a client document (deed or will) that will effectuate the client's stated objectives.

-The student should develop facility in analyzing basic property hypothetical problems through frequent practice.

-The student should be able to elicit the most relevant facts from a client in a preliminary interview necessary to research and then analyze a legal case.

-The student should have rudimentary ability to counsel a client on a property issue so the client can make informed decisions about how to proceed in accordance with the client's stated goals and interests.

-The student should be able to make a basic oral argument applying basic property concepts to a fact situation.

-The student should develop introductory knowledge of the historical roots of American property law.

-The student should be able to identify at least three influential conceptual influences on property law and apply the reasoning of those approaches to particular circumstances and policy issues.

-The student should be able to examine the merits reasoning of judicial opinions and articulate why the student agrees or disagrees with that reasoning.

-The student should evaluate the impact of property laws on social justice and be able to articulate some connections between the law and justice.

-The student should recognize some effects of property concepts on the broader natural environment.

-The student should recognize some hybrid aspects of property law and identify some influences of other legal areas such as contracts and torts.

-The student should be able to identify and work toward resolving some introductory professional ethical issues in property representation.

-The student should acquire knowledge and skills that are practically helpful in common future transactions (e.g., assessing a lease, buying a house).