COURSE INFORMATION

TEXTS: The main course text is Dukeminier, Krier, Alexander, and Schill (D & K), Property, 9th Edition (Wolters-Kluwer, 2018). Materials also include the professor’s course materials, Property, Spring 2022. Used copies are available for both.

PROPERTY LAW COVERAGE: You already may be aware that property law is a creature of history. It is equally true that American property law reflects fundamental ethical and social policies. Although the practice fields of property law are quite diverse, you will come to see that conceptual themes unite the varied areas. I have designed this course on the assumption that competent and creative practitioners need to understand conceptual foundations of law along with legal rules and practice contexts. This broad approach will help to develop your legal reasoning as well as practical skills. The first phase of the course will address the origins and policies of American property law using classic case law and concepts, building your ability to reason about property law and preparing for ongoing discussions of possible law reform. The course will use an experiential approach, applying principles to solve problems that might arise in practice. For example, we will close the first segment of the course with an in-class interview of a client in an adverse possession case. In the second unit we will study historical concepts of property that persist in the modern system of estates. Then we will devote attention to co-ownership of property and a few basics of marital property. We will view modernization of property law through a unit on landlord and tenant law, timely in the covid 19 context. If time allows, we will have another simulated practice opportunity to counsel a client in class on a lease document. From there we will tackle real estate transactions through an overview of residential property purchases, using sample documents for illustration. Finally, we will turn our attention to fundamental private and public land use law and planning concepts. This agenda is ambitious, and we will need to revise some expectations as we proceed. You will notice that I have flagged some material in the syllabus to be covered “if time allows,” and we may have to omit some of that material. If that happens, the syllabus includes references for your further independent reading. I have concentrated on material that is valuable in developing reasoning skills for property practitioners, material that raises significant issues of policy and justice, and material that is covered on the Bar Examination.

I look forward to your curiosity and contributions in the semester ahead!

IN-CLASS EXPECTATIONS: 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 computer or telephone activities like checking email or searching the web during class time. Always remember to turn off your phones before class. Come to
class regularly and promptly and remain in your seat except in cases of necessity. 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 use a combination of volunteer speakers and “cold-calling,” and I expect students to be prepared. I urge you to participate in discussions without fear of making errors. I aim to establish a collaborative atmosphere conducive to learning and recognize that we all learn through our mistakes. Please take that last point seriously and do not hesitate to ask questions or venture a considered but uncertain response. *Learning Property is like learning a new language,* and I guarantee that everyone in class will have questions and uncertainties, many just like your own!

Course participation can affect borderline grades. I emphasize the quality of participation over quantity. Participation includes 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 (Class 1, 2, 3 . . .) will be covered in one class session. **IMPORTANT:** If we do not finish all material assigned for a particular class, you are expected to review remaining material before the next class even if I do not specify this. It is not an excuse for unpreparedness to say, “I read this for the last class, so the material is hazy in my mind.” You should get into the habit of reviewing this material 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. I use **TWEN email** regularly to contact students about various matters, so please check it regularly. I do not text.

**TEAMS CLASSES:** You can expect to have class using the TEAMS platform in the event of winter weather events or covid outbreaks. This will prevent us from having numerous makeup classes. TEAMS is not intuitive in its operations, so I ask for your patience and assistance in navigating some of the cyber issues that inevitably will arise. Plan to participate in the TEAMS classes as you would normally and please leave your cameras on so that class can feel as authentic as possible. I will give you as much advance notice as possible of a switch to TEAMS classes.

**EVALUATION:** The primary method of evaluation for this course will be an in-class, open-book **Final Examination. Please note now that use of the Dukeminier casebook and commercial materials are prohibited, even copied into student outlines, so do not incorporate these materials into your outlines if you intend to use the outline in the open book exam.** I am notifying you of this now so you can prepare your notes and outlines with this restriction in mind.

Most likely I will give an objective answer (multiple choice/ true-false) **Midterm Quiz** that will be scored and count no more than 20% of your final grade. (Details will follow about this decision.) If I do this, you will receive your scores plus answers to the questions together with full explanations. In April the Academic Success office will
administer an ungraded practice examination (from one of my prior final examinations),
which I encourage you to take under exam conditions. I will supply answers and
explanations for that practice exam.

The Property 2022 Loder Course Materials contain Sample Examination Questions
from previous years that are in the back of the book. You are encouraged to tackle these
questions as we cover the relevant material. In addition to those questions, we will cover
review problems at the end of each unit. If you do the review problems, you will be well
prepared for the Final Examination, which will resemble those practice exercises.

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. Some questions in
the book are deliberately open-ended and designed to provoke your thought rather than
produce fixed “answers.” Students are not expected to look up all case/article references
in the text notes and problems but are welcome to pursue interesting references.
Generally, the material for one class is grouped under Class 1, 2, etc. Remember that
assignments may be modified in class and through TWEN email. Expect periodic
modifications in accordance with our progress.

FUNDAMENTALS: WHAT IS PROPERTY?

PROPERTY AS DISCOVERY

Class 1: TWEN: Course Information and Syllabus
Foundations of the Property Institution:
Loder: For the Sake of Sue, etc. pp. 1-4
Origins of Property:
D & K: Johnson, pp. 3-19
Loder: Chief Seattle, pp. 5-7; Shiva, pp. 8-10

PROPERTY AS CAPTURE AND CUSTOM

Class 2: D & K in Chapter 1 A, finish Johnson pp. 3-19 and Loder
5-10 if needed
PROPERTY AS CAPTURE AND CUSTOM
D & K, Ch. 1B: introduce capture (Pierson), pp. 19-27
(top); D&K, pp. 27-35 (top) (Ghen); (Keeble, etc.), pp. 35-42 (top)

CONCEPTUAL ROOTS OF PROPERTY LAW
Class 3: D & K: pp. 42-46 (Be ready to discuss Problems, D&K pp. 42-43.)
Loder: “What is Property?” (Locke), pp. 11-18, Questions on Locke, p. 23; Loder: “What is Property?” Bentham, pp. 19-20; Radin), pp. 21-22; finish Questions on “What is Property?” p. 23

ADVERSE POSSESSION

Class 4: Introduce Adverse Possession: D & K, Ch. 2B, pp. 70-88 (mid) (Van Valkenburgh)  
Color of Title: pp. 88-89, Prob. 1 only  
Encroachments: D & K: pp. 89-95 (Manillo, etc.)

Class 5: Finish last class as necessary  
Mechanics, pp. 95-102 (top) (Howard)  
Mechanics: Disabilities Problems, D&K, p. 102  
Instructions for Adverse Possession next-class Interview  
Information, Loder, p.27 (assignment explained in class; volunteers requested)  
Against Government: D & K, p. 102 (bottom)-103 (Note)  
Loder: “Judge Kicks Squatter off Park Land”, pp. 28-29 (We may do this after the client interview.)

Class 6: Review Problem: Client Interview Simulation:  
ADVERSE POSSESSION INTERVIEW SIMULATION and debriefing in class  
Loder: Interview Information, p. 27

PROPERTY RIGHTS AND LIMITS

Class 7: Right to Exclude: D & K, Ch. 3C, pp. 205-211(Jacque v. Steenberg; State v. Shack, etc.)

SYSTEM OF ESTATES (Leaseholds considered later)  
INTRODUCTION TO ESTATES AND TYPES OF ESTATES  
Feudal History; Fee Simple; Fee Tail; Life Estate:  
D & K, Ch. 4A & B, pp. 247-255 (read for historical context only); Intro. To Fee Simple and concept of Estate: pp. 255 (bottom) - 256 (mid)

Class 8: D & K, Ch. 4C (Fee Simple), pp. 255-258  
D & K, pp. 258-261 (Inheritance: takers by Intestacy, or when deceased dies without a will)  
D & K, in Ch. 4D (Fee Tail), pp. 261-265 (great differences between historical and modern concept)
Life Estate Introduction, D & K, Ch. 4E (life estate), pp. 265-273 (White)

Class 9: Life Estate Continued:
D & K, pp. 274-280 (top) (Baker; Trust alternative)
Loder: Future Interests (Outline), p. 30
Common Law Waste: D & K, 280-282 (top); Loder: Melms v. Pabst, pp. 31-34

Class 10: Leaseholds: Very brief intro. (covered in subsequent chapter) D & K, Ch. 4F, 282-283 (top)
Defeasible Estates:
D & K, in Ch. 4G, pp. 283-294 (Mahrenholz, etc.)

Future Interests: D & K, in Ch. 5A-C, pp. 313-317 (bottom); Problems pp. 316, 317-320; p. 321 Problems done independently or w/ assistance of TAs

Class 12: Executory Interests (another type of future interest)
D & K in Ch. 5C3, pp. 327 (bottom)-328 (mid); 332-333; p. 338 (D & K Future Interests Chart)

CONCURRENT INTERESTS
Co-Ownership: D & K, in Ch. 6A, pp. 387-392
Severance: D & K, pp. 392-403 (top) (Riddle; Harms)

Class 13: Relations and Partition: D & K, pp. 405; 414 (mid)-419 (problems; “heir property,” Spiller); D & K, pp. 419-424 (Swartzbaugh, etc.)
Co-Owner Responsibilities: pp.425-426
Marital Interests: D & K, in Ch. 6B, pp. 427-437 (Sawada)

LEASEHOLDS: TENANCIES

Class 14: Types: D & K: in Ch. 7A, pp. 461-463 (top); sufferance: pp. 467-468 (top); What is a Lease? pp. 468-471 (top)
Access: Loder: Patricia Williams, pp. 35-38

SELECTION OF TENANTS AND FAIR HOUSING

Class 15: Selection & Discrimination:
D & K, Ch. 7C, pp. 471-478
Loder: Fair Housing Act, pp. 39-47 (full version); HUD ads pp. 48, 97
DELIVERY OF POSSESSION, DEFAULT

Class 16: Delivery of Possession: D & K, in Ch. 7D, Delivery: pp. 478 (bottom)-482 (Hannan, etc.)
Tenant in Possession: D & K, 7F, pp. 500-510 (top) (Berg, etc.); Abandonment, D & K, pp. 510-519 (Sommer, etc.)
p. 521, Security Deposits (if time allows)

CONDITION OF LEASEHOLD PREMISES AND MODERN REMEDIES

Class 17: Remedies for Condition:
D & K, Ch. 7G: p. 522; 528 (bottom) – 532
Covenant of Quiet Enjoyment and Constructive Eviction:
TWEN: Reste v. Cooper
Illegal Lease: Note, Brown, etc. p. 532
Implied Warranty of Habitability: D & K, in Ch. 7G, pp. 533-543 (top) (Hilder, etc.)
*Instructions for next-class Counseling Simulation, Loder, (pp. 50-55), Cooper Lease; volunteers requested

Class 18: Review Problem: Client Counseling Simulation
Loder: Cooper Lease Simulation in class and Debriefing, pp. 50-55 (if time allows); (Instructions provided in last class)

TRANSFERS OF LAND (PURCHASES AND SALES OF REAL ESTATE)

INTRODUCTION TO REAL ESTATE AND CONTRACT OF SALE

Class 19: Introduction and Statute of Frauds:
D & K, in Ch. 8A, pp. 553-554; pp. 569-576 (top) (Hickey, etc.)
Loder, Outline: Purchases and Sales of Real Estate:
Summary of Stages and Problems, pp. 56-57; Spring Valley ad (discrimination in sales), p. 49
Purchase & Sale Contract:
TWEN: VT Purchase and Sale Contract [P & S] (Read the following Paragraphs: 1-4, 6-8, 10, 12, 15, 17, 20-21, 25-26, 29) This contract is an illustrative teaching tool.
Students do not have to know its precise terms.

Class 20: Marketable Title:
D&K, in Ch. 8B2, pp. 576-580 (Lohmeyer)
TWEN: Conklin v. Davi
Equitable Conversion: D & K, pp. 580-581 (Note)
(Stambovsky; Johnson)

CLOSING AND DEED

Merger: D & K, Ch. 8B, p. 591(bottom)-593
Instructions explained for next-class Tewksbury Woman problem (Loder, pp. 58-65)

Title Insurance, D & K, pp.719-720 (top)
Deed and Deed Warranties: D & K, in Ch. 8C, pp. 595-600; 600-605 (Frimberger, etc., if time allows)

TITLE ASSURANCE METHODS

Class 23:  Loder: Sample Deeds, pp. 66-68
Recording System; Searching Title: D & K, in Ch. 9A: pp. 661-667
Recording Acts: D & K, pp. 682 (bottom) - 685 (top) (not problems); 702 mid) (Inquiry Notice only)
Loder: Recording Problems, TWEN (if time allows; may be handled by TA session)
 Marketable Title Acts: D & K, p.707

LAND USE

NUISANCE

Class 24:  D & K, in Ch. 10A, pp. 729-738 (Morgan, etc.)
Loder: Prah v. Maretti, pp. 71-88

INTRODUCTION TO PRIVATE LAND USE:

SERVITUDES:

Class 25:  1. The Easement (one of 3 types of Servitudes):
D & K, in Ch. 11A, pp. 761-772 (Willard, etc.; licenses)
Implied Easements: D & K, pp. 777-785 (Easement Implied from Pre-Existing Use; Van Sandt, etc.)

Class 26:  More Implied Easements: Easement by Necessity;
Easement by Prescription, D & K, pp. 793-797
Termination of Easements, D & K, p. 818
Negative Easements: D & K: pp. 829-834
Loder: Petersen v. Friedman, pp. 69-70
REAL COVENANTS AND EQUITABLE SERVITUDES

Class 27:  **2. The Real Covenant** (one of 3 types of Servitudes):
D & K, in Ch. 11C, pp. 835-838 (difficult material to be read several times; prepare problems)

Class 28:  **3. The Equitable Servitude** (one of 3 types of Servitudes):
D & K, Ch. 11Cb, pp. 838 (bottom) -843 (top) (Tulk)
Assessments and validity: D & K, pp. 843-853 (Neponsit)

Class 29:  **Implied Equitable Servitudes** (**Common Scheme**):
D & K: pp. 854-859 (Sanborn etc.) (if time allows)
Termination of Covenants: p.865
**Common Interest Communities** (if time allows) D & K, pp. 873-876
Loder: Protective Covenants (sample): Hawk Pine Hills, pp. 89-92
D & K, pp. 888 (bottom) - 889

**Review Problem on Servitudes:**
Loder: Past Property Examination Question: p. 110 (Phillip v. Clark)

ZONING

Class 30:  **Introduce Basic Zoning**:
D & K, Ch. 12A, pp. 895-913 (Euclid, etc.)
Flexibility in Zoning:
**Variances and Special Exceptions**: D & K, Ch 12C, pp. 923-931

Class 31:  **Expansion of Zoning**: (if time allows)
D&K, Ch 12D, pp. 937-946 (aesthetics, Stoyanoff, etc.)
Household composition (if time permits); D & K, in Ch 12D, pp. 962-972 (top) (Belle Terre etc.)

EMINENT DOMAIN AND REGULATORY TAKINGS (as time allows)

Class 32:  **Eminent Domain and Public Use**:
D & K, in Ch. 13A-B, pp. 997-1013 (Kelo, etc.)

Class 33:  **(Implicit) Regulatory Takings: Categorical and Balancing**
D & K, in Ch. 13, pp. 1042-1050 (PA Coal, etc.); pp. 1068-1084 (Lucas), pp. 1088-1102 (Murr)
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.
- 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 reason with property concepts in advocating positions.
- The student should be able to use and apply technical property terms correctly.
- The student should be able to identify and draft basic estates language correctly.
- The student should develop facility in analyzing basic property hypothetical problems.
- The student should be able to identify the most relevant facts in a legal case.
- 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 some historical and conceptual roots of American property law.
- The student should be able to examine judicial reasoning critically and state why the student agrees or disagrees with that reasoning.
- The student should be able to describe some connections between property law and justice.
- The student should recognize some impacts of property law on the broader natural environment.
- The student should recognize some influences of other legal fields such as contracts and torts on property law.
- 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., entering a lease, buying a house).