PROPERTY I (Section 1)
Winter/Spring Semester 2020
Professor Wilson Freyermuth
Time: 9:00-9:50 MWF, Room 7
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Course Information and Policies

TEXT AND MATERIALS: The required text for this course is FREYERMUTH, ORGAN & NOBLE-ALLGIRE, PROPERTY AND LAWYERING, 3d ed. (WestGroup 2011). Copies are available in the campus bookstore, or can be purchased online from a variety of sources, including Westlaw’s online bookstore.

The following is a list of suggested secondary materials that should aid your study outside of class.

JOHN G. SPRANKLING, UNDERSTANDING PROPERTY (Carolina Academic Press). Many students find the mini-treatises in the Understanding series to be helpful resources, and this is a good one. The current edition is the Fourth Edition (2017), but either the 2d or 3d edition is also perfectly functional as a study aid. There are at least three copies on library reserve for your use. [Note: This is the only one of the secondary materials listed here that is not available electronically as part of the Library’s Study Aids packages.]

HOVENKAMP & KURTZ, PRINCIPLES OF PROPERTY LAW (6th ed., West). This paperback treatise (part of West’s Concise Hornbook series) is moderate in its coverage, and does an excellent job of laying out basic property rules in an extended outline form. It has a large number of short essay-type problems (with answers) for you to test your understanding of basic concepts. It is available to you for free online through West Academic Study Aids package available through the Law School library.

WHITMAN, BURKHART, FREYERMUTH & RULE, THE LAW OF PROPERTY (4d ed., West). Published in 2019, this hornbook is the most detailed in its coverage. If you
cannot find a satisfactory explanation in one of the other two hornbooks, consult this one. There are at least three hard copies on library reserve, and it is also available to you for free online through the West Academic Study Aids package.

LEARNING OUTCOMES: In compliance with Standard 301(b) of the American Bar Association’s Standards and Rules of Procedure for Approval of Law Schools, the following statement reflects the learning outcomes for this course.

Property I focuses on how the law recognizes and uses the concept of “ownership” to resolve interpersonal disputes over access to, use of, and “rights” in resources, with the greatest focus on land (“real” property). We will talk about this the different contexts identified in the “Course Coverage” outline appearing later in this Syllabus. Students will:

- discuss and learn the substantive legal rules that apply in these different contexts (e.g., Exclusion, Nuisance, Adverse Possession, Gifts, Estates and Future Interests in Land, Concurrent Ownership);

- discuss and learn how these substantive legal rules reflect varying public policy concerns relevant to interactions between persons over resources (and the balancing of these competing policy concerns);

- discuss and learn to synthesize the application of these concepts and policies across these differing contexts (e.g., how do the rules governing Adverse Possession “fit” with the rules governing concurrent ownership between multiple persons?);

- discuss and learn how lawyering requires not only effective advocacy in the resolution of disputes, but also the development and implementation of problem solving skills and the use of those skills in forming and documenting transactions involving the transfer of property;

- gain foundational knowledge necessary for both Property II and the upper level course in Trusts and Estates; and

- gain foundational knowledge necessary for success on the Property portion of the bar examination.

EXPECTATIONS: To facilitate the accomplishment of the learning outcomes noted above, I have several basic expectations of each student in the course:

- I expect you to be present for each class, to have read the assignment for the class period, and to be prepared to participate in class discussion. Each of you has a responsibility for your own learning and that of your fellow classmates. If you are not present in class, not attentive, not engaged in discussion with your classmates, and not contributing to class discussion generally, you are not fulfilling that responsibility.
• I expect you to be in class, ON TIME, with phones silenced, so that class discussion can commence each day promptly at 9:00 a.m.

• I expect you to participate actively in class discussion, even if you are not sure of the “right” answer. One of the most important lawyering skills that you must develop—whether as an advocate or a counselor—is the ability to process verbal and written information and to respond to extemporaneous questions or comments in a concise and articulate way. One of the benefits of the law school classroom is that you can develop this ability in an environment where your mistakes do not have third-party consequences—i.e., if you answer something wrong in class, your client does not go to jail or become subject to an enormous monetary judgment. You and your classmates can (and should) learn not only from one another’s insights, but also from one another’s mistakes.

• In reviewing and synthesizing the course material and class discussions, you will inevitably identify questions or issues about which you are uncertain. I expect you to make an effort to “fill the gaps” in your understanding of the material, such as by (a) posing questions in class; (b) posing questions to a fellow classmate outside of class, (c) making reference to secondary resources, and/or (d) posing the questions to me outside of class, either in person or by e-mail. I particularly encourage you to pose questions immediately following a class meeting, while those questions are fresh in your mind.

COURSE WEB PAGE: I maintain a webpage for this course. You can use the following URL http://www.law.missouri.edu/freyermuth/property/winter2020/index.html to reach the course webpage. A copy of this syllabus is posted on the webpage. By each Friday, I will post the assignments for the following week, and the website will archive assignments throughout the semester. In addition, I may occasionally post a new hypothetical (i.e., one not included in the course materials) for a following class period’s discussion. Any messages regarding the postponing or rescheduling of classes will be posted to the course webpage. Finally, after some class periods, students may pose one or more questions after class, and in many circumstances, I will prepare and post on the website a “question/answer memo” that identifies such questions and provides an answer for the benefit of the class. As a result, you should check the course webpage daily for new information.

INTERACTION WITH STUDENTS: I maintain an open-door policy. I do not have “regular” office hours, but I am in my office most of the time during most weekdays, and you are welcome to come to my office at any time. If you need to set up a specific appointment time for scheduling reasons, you are welcome to do so. Many students also find it easy to communicate with me by e-mail: my address is freyermuthr@missouri.edu; you are welcome to raise questions or concerns by e-mail if it is convenient for you.

During the semester, as we finish certain chapters in the casebook, I will schedule a question/answer session to assist students in their review and synthesis of the course materials. [These sessions are scheduled outside of class time and attendance is voluntary.]
**ATTENDANCE POLICY:** According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. At each class, I will circulate a sign-in sheet for you to record your attendance. You are responsible to make sure that your name is on the attendance sheet. **I also expect students to be present and ready to begin class promptly at the scheduled time.** Any student that misses more than ten (10) regularly scheduled classes during the semester will be dropped from the course or (if allowed to remain in the course) subject to a grade reduction for each absence above the limit.

From time to time, you may have to miss a class because of illness, family responsibilities, or the like. I expect that you will provide me with prior notice of any anticipated absence (an e-mail message is fine) or, in cases of emergency when notice prior to class is impossible, as promptly as possible afterwards. In practice, clients and colleagues will expect such courtesy, so I encourage you to get in the habit of providing notice when you must miss class. Keep in mind (for this class and others) that most of you will need one or more of your professors to provide valuable references for you in the future — whether for the bar examiners or for potential future employers. If you are present and prepared for class discussion, and provide your professors with prior notice on the rare occasions when you must be absent, your professors will take note of your diligence and discipline — and will not hesitate to share that impression with persons seeking information about you. If you are often absent without explanation or excuse (or are in attendance but disengaged during class), your professors notice that too.

**COURSE GRADE:** Grades in this course will be based upon the following:

A. **Final Exam.** There will be a final examination consisting of a combination of multiple choice, short answer and essay questions. The examination will be administered at the time indicated on the Final Exam schedule.

B. **Class Participation.** Participation in class discussion is an integral part of the law school learning experience. As a result, I both encourage and expect you to participate in class discussion. I reserve the right to add up to two (2) points to a student’s final course grade for consistent and exceptional class participation. I also reserve the right to deduct up to two (2) points from a student’s final course grade for repeated unpreparedness. [Note: this has happened only three times in previous Property classes, but it has happened three times.] I also reserve the right to deduct one (1) point for each absence in excess of the ten (10) absences permitted by the attendance policy.

For each class or topic, I will post a series of questions relating to the assigned material. We will use these questions as a basis for in-class discussion. To facilitate good class discussion and the optimal use of limited class time, **I encourage you to review and discuss the questions with your classmates prior to class.**

**ASSIGNMENTS:** Before each Friday, I will post a message containing specific daily assignments for the following week’s classes on the course Web page. Prior to each class, all students should have read, and should be prepared to discuss, any portion of the assigned material.
COMPUTER POLICY: You are welcome to use a tablet or laptop computer during class, but use is limited to **class-related use only**.

CALI LESSONS: There are a number of interactive computer lessons for Property law available from CALI (The Center for Computer-Assisted Legal Instruction). Weekly assignments will indicate the course topics for which there are currently CALI lessons available. Where the weekly assignments indicate that a CALI lesson is available, you may wish to review that lesson in conjunction with the assigned reading from the casebook. The lessons are available via the web from CALI’s website, which is www.cali.org.

ACADEMIC INTEGRITY: Academic integrity is fundamental to the activities and principles of a university. All members of the Law School community must acquire, develop, and present their work responsibly and honorably. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include grade sanctions (up to and including failing the course) and disciplinary sanctions ranging from probation to expulsion. I encourage you to make sure that your work in this and other courses complies in all respects with the Law School’s Honor Code. If you have any question regarding whether your conduct complies with the Honor Code, you should contact me for clarification. If you become aware that you or another student have violated the Honor Code, you MUST report the violation promptly to me or to Dean Mitchell.

RECORDINGS: UM System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations of the University of Missouri. In this class, students may make audio recordings of course activity. However, any distribution or redistribution of such recordings of statements or comments from the course to individuals who are not students in the course (including, but not limited to, any posting of a recording to social media) is prohibited without my express permission and the permission of any other student in the class who was recorded. Students who violate this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

INTELLECTUAL PLURALISM: The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact Dean Lidsky or Dean Mitchell, the director of the Office of Students Rights and Responsibilities, the MU Equity Office, or equity@missouri.edu. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of the course.
COURSE COVERAGE

Please refer to each week’s assignments on the course webpage for precise reading/page assignments for each day’s class. During the semester, I will update this summary outline with new/additional cases. Each time I update the summary outline, I will post the updated outline on the course webpage. Some of the listed cases do not appear in the Casebook and will be distributed in the posted weekly assignments.

1. The “First-in-Time” Concept and the Significance of Possession

   Pierson v. Post
   Popov v. Hayashi
   Edwards v. Sims
   Joyce v. General Motors Corporation
   Armory v. Delamirie
   Benjamin v. Lindner Aviation
   Johnson v. M’Intosh

II. The Right to Exclude (including Trespass, Nuisance, and Ownership/Control of Natural Resources)

   Jacque v. Steenberg Homes, Inc.
   State v. Shack
   Carpenter v. The Double R Cattle Co., Inc.
   Labreyere v. Bohr Farms
   Brown v. Cedar Creek Rod & Gun Club
   United States v. Causby
   Hammonds v. Central Kentucky Natural Gas Co.

III. When Is Prior Possession Not Enough? The Estoppel Concept

   A. Bona Fide Purchase

      West v. Roberts
      Deeds and Recording Statutes

   B. Adverse Possession

IV. Transferring Property by Gift

V. The System of Freehold Estates (Present and Future)

   A. Fee Simple Absolute Estates and Life Estates

   B. Legal and Equitable Estates (and the Basics of the Trust)
C. Defeasible Estates

D. Contingent Future Interests and the Rule Against Perpetuities

VI. Concurrent Ownership