

Property Law - Fall 2023 – Professor Helen Alvaré
Mon/Wed 1:50-3:50 pm

Office: 433G

Email: halvare@gmu.edu

Office Hours: Monday 3:50-5 and by appointment. I also make it a practice to linger after class to field questions and commentary, and to respond promptly to emails.

Required Text: Dukeminier, Krier, et al, *Property*, 10th edition (Aspen Publishing, 2022).

Assignments and Participation: The syllabus below will be posted on the law school’s web site and on TWEN. I will call on several students randomly during each class. Academic Regulation 4.1.1 governs attendance. It provides, in part:

“If a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session.”

I will take attendance at each class by sign-in sheet.

Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g., a serious illness), you should immediately contact the Associate Dean for Administration and Student Affairs, Annamaria Niels.

Learning Outcomes:

1. Students will understand and be able to communicate, both orally and in writing, the leading principles of Property Law.
2. Students will be able to examine factual scenarios implicating one or more Property Law questions, and to determine the precise legal questions raised, the possible legal outcomes, and the benefits and costs of each of these outcomes.
3. Students will understand the action and interaction of governmental powers affecting property disputes, at both the federal and state levels, and how to read and understand Property Law statutes, cases and regulations.

Grading: There will also be a 3.5-hour, closed-book, closed notes, closed Internet examination at the end of the semester. You are responsible for the material covered during class discussions, as well as all of the assigned readings. Final grades based upon the final exam may be raised or lowered by a single increment to reflect the quality of your class participation; this is based not only upon your performance when called upon, but also upon the quality of all your contributions, and your willingness to volunteer. Exam formats will be discussed thoroughly in class before the December exam.

Exam Conflicts: In accordance with AR 4-4.1 (a): Excuses and requests for permission not to sit for an examination when scheduled must be presented, with appropriate documentation, to the law school’s Registrar’s office in a timely fashion. Except in

emergencies, such requests should be presented no later than two weeks before the date of the examination.

Online Policies:

-Students should not send or receive email or text messages or browse the Internet during class time.

-Students participating in online classes should keep their cameras ON at all times during class, unless there is a special need of the student, communicated to me prior to class, to do otherwise. Students should also keep their mics OFF until they are volunteering or called upon to speak to the class.

-Regarding the use of Generative Artificial Intelligence (GAI). Students are forbidden to use in any manner in connection with this class according to the [Academic Regulations](#), 4-3:

4-3 Limitations on the Use of Generative Artificial Intelligence (GAI) in Academic Work . . .

(d) In no instance are instructors allowed to permit any use of GAI prohibited in (b) or (c) in the Law School's required courses specified in AR 3-3.2(a) (except for LRWA IV). Any midterms or exams in these courses must be given in a closed-internet format.

Class Recordings Prohibited: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me. I will, however, be recording certain course sessions and making these available to students upon express direction from the Associate Dean for Administration and Student Affairs, if necessary to accommodate a student for certain absences.

COVID Instructional Contingency Plan: In the event the University requires remote instruction, in-person classes will transition to an online format.

COVID Health & Safety Requirements: University health and safety protocols will be observed at all times in this class. Should University policies change, this will be communicated immediately to the class.

COURSE ASSIGNMENTS AND SCHEDULE:

**Please realize that this schedule is subject to slight changes as classes actually unfold. At the end of each class, I will confirm what material I intend to cover in the following class. Also, if weather interferes with our meeting in person, we will meet online.

All references to *D&K* are to your required textbook, Dukeminier, Krier, et al, *Property*, 10th edition.

POSSESSION AND OWNERSHIP

In this first unit, we will study possession and ownership. Both first possession and subsequent possession will be covered.

During this period, we will pay close attention to a number of the basic skills necessary to form legal habits of mind: the articulation of the relevant facts, holdings, and legal reasoning in cases; the careful reading of statutes; and the ability to discern the public policies at work in the cases and statutes.

You will also come to see how Property Law, one of the oldest areas of law, is influenced not only by economics, but also by history, culture, and presumptions about human nature.

Class # 1 Mon Aug 21

Discovery/Capture Text 3 - 48

Class # 2 Wed Aug 23

Capture cont'd

Find Text 55-73

Adverse Possession Text 73-99 (will spill over into next class)

Class # 3 Mon Aug 28

Adverse Possession Text 99-107;

Gift Text 118-133;

Creation Text 139-170

Class # 4 Wed Aug 30

Creation (cont'd) Text 171-223

ESTATES AND FUTURE INTERESTS

This section of the course requires particular attention to language, and some attention to history. Regarding history: much of current law in the area of estates and future interests bears the marks of its feudal origins. This helps to explain its complexity.

Regarding language: in order properly to construe the conveyances in this section, you will need to pay very close attention to each clause of a conveyance, as well as to the overall intent of the grantor as best it can be discerned. Much is in the details.

Memorization of the names and characteristics of the various estates and future interests will serve you well. But even more important is zeroing in on the distinctions between them. At certain points during the study of this material, we will pause, and create a chart of estates and future interests together.

Finally, for a good understanding of this material, there is no substitute for the patient and repeated working-out of problems. There are a significant number of problems already contained in your textbook. *Please come to class ready to discuss these.* For additional practice, I recommend the following workbook: Charles I. Nelson,

Possessory Estates and Future Interests Primer. Do not bother working out problems situated in the ancient past offered in this or any workbook.

LABOR DAY HOLIDAY SEPTEMBER 4

Class # 5 Wed Sept 6

Excluding and Alienating	Text 223-31
Abandonment	Text 242-51
Present Poss. Ests.	Text 267- 68; 272 - 79

Class #6 Mon Sept 11

Pres. Poss. Ests.	Text 279 – 311; 318-20
--------------------------	------------------------

Class #7 Wed Sept 13

Future Interests	Text 321 – 35 (end right before “a.”); 339 – 346 (end before <i>Broadway</i>)
-------------------------	---

Class# 8 Mon Sept 18

Trusts and the Rule Ag. Perps	Text 355-66; 379 (begin at “b.”) -93
--------------------------------------	--------------------------------------

Class # 9 Wed Sept 20

Concurrent Interests, including Marriage	Text 395-436 (* <i>Lecture</i> 437-61)
---	---

**“Lecture” indicates that the reading is recommended, but not required; I will not direct questions to the class on this material in the course of our class meeting, although we can have class discussion, as desired. You are responsible at exam time for the contents of the class lecture.*

LEASEHOLDS: THE LAW OF LANDLORD AND TENANT

Most law in this area is today a matter of contract law. We will cover briefly some of the subjects having their origins in property law.

Class # 10 Mon September 25

Landlord/Tenant	Text 471-80; 490 (begin note 4) – 495 (through note 7)
------------------------	--

Class # 11 Wed September 27

Landlord/Tenant	Text 518 – 28; 538-68
------------------------	-----------------------

TRANSFERS OF LAND

The purchase and sale of land is another area of law occupied today largely by contract law. Quite a bit of today's law in this area, however, has its origins in Property Law

Class # 12 Mon Oct 2
Land Transactions

Text 569 - 98

Class # 13 Wed Oct 4
Land Transactions
Recording

Text 599-613;
Text 675-709 (stop before 4.); 720-23

MON OCT 9, Fall Break

LAND USE CONTROLS AND EMINENT DOMAIN

This area deals with a great variety of tools for managing competing interests in the use of land, *e.g.* neighboring properties, or properties within the legal boundaries of a particular community. It contains the law of nuisance, servitudes, zoning and eminent domain. We will be observing the differences between these areas of law, as well as their shared goals.

Servitudes can be one of the more complex areas within Property Law. Although modern efforts are underway to streamline this area, it is still full of terms and ideas drawn from its historic origins. It is very important in the United States today, given the number of properties purchased within "common interest communities" possessing the equivalent of "homeowners associations."

Constitutional law and social justice issues feature prominently in the areas of zoning and eminent domain. The U.S. Supreme Court has been particularly active recently in the latter area, and it remains a vital subject of current public controversy and legislation.

Class # 14 Tues Oct 10 THE SCHOOL OBSERVES A MONDAY SCHEDULE

Land Transactions (Cont'd) Title Text 725 – 736

Land Use Controls: Nuisance Text 737 – 66 (will continue this material in next class too)

Class # 15 Wed Oct 11–
Servitudes: Easements

Text 767 - 804

Class # 16 Mon Oct 16

**REVIEW PRACTICE MIDTERM EXAM
QUESTIONS (Does Not Count for any Grade; strictly
for practice)**

Class #17 Wed Oct 18
Easements (cont'd)

Text 804 – 22; 834 – 40 (stop before "C.")

Class # 18 Mon Oct 23
Covenants and Servitudes Text 840-80 (**Lecture 881-93*)

Class # 19 Wed Oct 25
Common Interest Communities Text 893-911; 918-920

Class #20 Mon Oct 30
Zoning Text 921 - 959 (stop before “2.”)

Class # 21 Wed Nov 1
Zoning (cont’d) Text 959-996

Class # 22 Mon Nov 6
Zoning Text 996-1017
Eminent Domain Text 1019-23

Class # 23 Wed Nov 8
Eminent Domain Text 1023 - 1054

Class # 24 Mon Nov 13
Implicit Takings Text 1054 -1092

Class # 25 Wed Nov 15
Implicit Takings Text 1092 - 1122

Class # 26 Mon Nov 20 LAST CLASS
Exactions/Personal Prop. Text 1122-1153