

# LAW-518-002: Property Law

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Meetings: Tuesdays and Thursdays, 10:00–11:50.  
Room: TBD.  
Prerequisites: None.  
Credit hours: 4.  
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Office Hours: Mondays and Wednesdays 11:00–12:00,  
or by appointment.

## About This Course

Welcome to Property Law! The official description of this course is:

A survey of the law of real and personal property; possession and present and future estates in land; the relationship between owners of successive interests in land; transmission of ownership between living persons; and conveyancing.

That’s an accurate and traditional description, but it’s not complete. Real and personal property—land and physical objects—are the canonical examples, and the classic fare of property courses. But “property” can also refer to debts, information, brand names, personalities, radio frequencies, and more. How do the

legal rules and theories about property apply to this wider universe? That is what we will explore in this course.

Property law is sometimes called the “sampler platter” of the first-year curriculum. Every topic sits atop a whole body of law and policy: corporations, wills and estates, environmental regulation, urban planning, intellectual property, constitutional theory, and more. We will be moving fast, and if any small point strikes you as intriguing, you can probably take a whole course on it in the future.

## Objectives

Why study property law? There are many answers to this question, but the most important is that the doctrines, theories, and frameworks learned in this course will have general application to your future studies in law and to how you reason about legal rules and policies.

In particular, the objectives of this course are as follows:

- **To learn the basic outline of real and personal property law doctrines.** You will learn how property is acquired, divided, used, asserted, and disposed, and will be able to reason about the status of property rights given a factual situation.
- **To appreciate the breadth of what can be “property.”** This course will stretch the boundaries of property to see how far it can go, and in the process will stretch your own thinking.
- **To explore conceptual frameworks that explain law’s structure.** Property law offers rich opportunities to build taxonomies of rights, understand the relationship between public and private spheres, untangle conflicts between competing policies, and follow canonical moves of legal dialogue. You will apply these concepts through discussions in class and in writing arguments of law and policy.
- **To connect your personal experiences and intuitions with formal doctrines.** You deal with property law on a daily basis, and what you learn in the classroom will connect—or conflict—with what you observe in the world. Recognizing these connections and conflicts will enhance your capacity as a lawyer and as a citizen.

- **To work with law as a tool.** While legal rules often seem like mechanical computations applied to preexisting facts, the most effective lawyers think creatively to achieve results that may be unexpected or unintuitive. Property law offers many opportunities to think about how to use the law to work for your clients, for yourselves, and for the world.

## Who Am I?

I am a former patent attorney, working in the field of law that deals with exclusive rights (some would call them property rights—we’ll talk about this) in inventions and new technologies. My practice focused on computer and communication technologies. For the last ten years, I have been at nonprofit organizations working in patent and technology policy. In this capacity, I write *amicus curiae* briefs in key patent and copyright cases, comment on legislation, have testified in Congress, and serve on advisory boards providing thoughts on how patent and technology policy changes may affect the public interest.

I am happy to meet in person or virtually; just send me an email to set up a time, or come by during the office hours posted above.

## Books and Materials

The “textbook” for this course will be *Open Source Property: A Free Casebook* by Stephen Clowney, James Grimmelman, Michael Grynberg, Jeremy Sheff, and Rebecca Tushnet. The book has been custom-assembled for this course, and are available on Canvas in two volumes [↗](#) (Vol. I), [↗](#) (Vol. II).

The source materials are available on the *Open Source Property* website [↗](#). Both my arrangement of the textbook and the underlying modules are works in progress, so please feel free to provide feedback on any of these materials.

If you would like additional study aids and materials, here are some recommendations:

- John G. Sprankling, *Understanding Property Law*. This is a student treatise and is highly recommended by many property law scholars for its clear explanations of legal rules.

- Joseph William Singer, *Property*. Professor Singer was my property professor, and is an expert in presenting the policy arguments behind property law rules.

Additionally, you may wish to peruse the complete list of modules available for *Open Source Property*. They are wide-ranging, thought-provoking, and well-written (and also free).

Canvas will be my main point of electronic contact with you. Please follow the announcements posted for this course there.

## Course Policies

In addition to the policies below, please note the Honor Code for the Washington College of Law, the Grading and Examination policies of the Registrar, and other policies stated in the WCL Catalog [↗](#) and the American University Student Conduct Code [↗](#).

## Attendance and Participation

I expect that all students will attend class regularly, complete the assigned readings and any assigned practice questions, arrive to class promptly and be prepared to participate in the class discussion when called upon. To be prepared for class means that you have read the assignment and have made an effort to think through the materials and any problems or questions in the notes (though no outside research is necessary or encouraged).

I will call on students based on a random list. The purpose of randomized cold-calling is to make sure that everyone has the opportunity to practice speaking and reasoning about the materials. Participation in class is not just important for meeting the learning outcomes of this course and understanding the materials; it is essential practice for the lawyering skills of thinking on the fly, organizing thoughts, and communicating effectively. My goal is always to engage your minds and ensure that the classroom is a welcoming space for thoughtful discussion. To the extent that there are things I can do to improve along these lines, I'd certainly welcome your feedback.

You may miss up to four class sessions for any reason and without penalty (no need to email me in advance). Any additional absences must be excused for good cause in advance of the class meeting. Further unexcused absences will have a negative impact on your grade, at my discretion. If you face particular challenges that make attendance difficult, contact the Office of Student Affairs.

Classes will be recorded to the extent possible, but the recordings will only be made available to individual students with excused absences. Please let me know in advance if you will be absent, so that I am aware and can send you the recording. If I do, keep in mind that the recordings are for personal use and should not be retained or shared with others.

## **Grading and Evaluation**

Your grade will primarily be based on the results of a final examination. It will be a scheduled, four-hour final examination at the end of the semester. The examination will consist of a combination of essay questions and written short-answer questions.

The examination will be “open materials/closed Internet,” meaning that students may use any materials they bring with them (including digital materials) but access to the Internet during the examination is prohibited. For purposes of fairness, I will cease responding to questions about material or the exam three days prior to the date of the final exam.

I may adjust grades up or down by one step (e.g., B+ to A– or B) based on your preparation for and participation in class. Good participation demonstrates engagement with the subject matter of the course and contributes to your fellow students’ learning. Discussions via email, participation in group in-class exercises, and conversations during office hours will all be considered part of class participation.

If you would like sample exams, several are on the website of Professor James Grimmelmänn [↗](#), one of the casebook authors.

## Schedule

Although I hope to keep to this schedule as much as possible, it is subject to change depending on the pace of the class and external events such as important judicial decisions or guest speakers. If there are any updates, a revised syllabus will be posted on Canvas.

### Introduction

**January 16**—What Is Property Law?

*Read:* Textbook, pages 3–33, Ch. I.1.

**January 18**—What Can Be Property?

*Read:* Textbook, pages 33–67, Ch. I.2.

**January 23**—Property in Information

*Read:* Textbook, pages 67–97, Ch. I.3.

### The Right to Exclude

**January 25**—Scope of Exclusion

*Read:* Textbook, pages 99–133, Ch. II.4.

**January 30**—Losing Exclusivity

*Read:* Textbook, pages 133–165, Ch. II.5.

**February 1**—Unauthorized Possession

*Read:* Textbook, pages 165–193, Ch. II.6.

**February 6**—Authorized Possession

*Read:* Textbook, pages 193–221, Ch. II.7.

### Transferring and Dividing

**February 8**—Selling Property

*Read:* Textbook, pages 223–253, Ch. III.8.

**February 13**—Transfers and Recordation

*Read:* Textbook, pages 253–283, Ch. III.9.

**February 15**—Dividing Property Over Time

*Read:* Textbook, pages 283–307, Ch. III.10.

**February 20**—Controlling Future Uses

*Read:* Textbook, pages 307–335, Ch. III.11.

## **Sharing Ownership**

**February 22**—Leases: Types and Lifecycle

*Read:* Textbook, pages 337–369, Ch. IV.12.

**February 27**—Leases: Landlord Duties

*Read:* Textbook, pages 369–399, Ch. IV.13.

**February 29**—Concurrent Ownership

*Read:* Textbook, pages 399–437, Ch. IV.14.

**March 5**—Family Ownership

*Read:* Textbook, pages 437–469, Ch. IV.15.

**March 7**—Easements

*Read:* Textbook, pages 469–503, Ch. IV.16.

**March 12**—**NO CLASS:** Spring Break

**March 14**—**NO CLASS:** Spring Break

## **Property Versus Property**

**March 19**—Conflicts of Acquisition

*Read:* Textbook, pages 505–539, Ch. V.17.

**March 21**—Competing Types of Property

*Read:* Textbook, pages 539–573, Ch. V.18.

**March 26**—Nuisance

*Read:* Textbook, pages 573–603, Ch. V.19.

**March 28**—Restrictive Covenants

*Read:* Textbook, pages 603–637, Ch. V.20.

**April 2**—Common-Interest Communities

*Read:* Textbook, pages 637–654, Ch. V.21.

## **Property and the Government**

**April 4**—Zoning, Part 1

*Read:* Textbook, pages 667–699, Ch. VI.22.

**April 9**—Zoning, Part 2

*Read:* Textbook, pages 699–735, Ch. VI.23.

**April 11**—Takings

*Read:* Textbook, pages 735–769, Ch. VI.24.

**April 16**—Regulatory Takings

*Read:* Textbook, pages 769–802, Ch. VI.25.

**April 18**—Review