

# Property Law

## (LAW-518-002)

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### Course Information

Meetings:	Monday & Wednesday, 10:00-11:50 AM
Location:	Y116
Credits:	4
Office hours:	Tuesday at 3:30-4:30 PM Thursday at 3:00-4:00 PM
Prerequisites:	None.
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## Contents

<b>About This Course</b>	<b>2</b>
Learning Outcomes . . . . .	3
Who Am I? . . . . .	4
<b>Course Logistics</b>	<b>4</b>
Reporting Attendance . . . . .	4
Books and Materials . . . . .	5
Writing Assignment . . . . .	6
<b>Schedule</b>	<b>6</b>
Beginnings . . . . .	6

Exclusion . . . . .	7
Possession . . . . .	7
Transfers . . . . .	7
Operation of Law . . . . .	7
Leases . . . . .	8
Simultaneous Owners . . . . .	8
Conflicts . . . . .	8
Covenants . . . . .	8
Property and Society . . . . .	9
<b>Course Policies</b>	<b>9</b>
Attendance and Participation . . . . .	9
Grading and Evaluation . . . . .	10
Artificial Intelligence and Other Assistance . . . . .	11

## 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.

## Learning Outcomes

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 and anticipated learning outcomes of this course are as follows.

**Outcome 1** To learn the basic outline of real and personal property law doctrines.

- **Learning experience:** Through readings and classroom discussion, you will learn how property is acquired, divided, used, asserted, and disposed. Exercises in the textbook and in class will let you practice reasoning about property rights in a factual situations.
- **Assessment:** You will be assessed on your mastery of these doctrines through in-class discussions and a final examination.

**Outcome 2** To explore conceptual frameworks that explain law's structure.

- **Learning experience:** 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.
- **Assessment:** Your ability to work with these conceptual frameworks will be a component of your in-class participation and your writing assignment.

**Outcome 3** To appreciate the breadth of what can be “property,” and to connect your personal experiences and intuitions with formal doctrines.

- **Learning experience:** 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. Yet at the same time, property concepts often extend well beyond the traditional range of land and objects. The readings in the

textbook have been selected to reflect this breadth of the subject, and discussions in class will often focus on drawing these connections between law and the world as you know it.

- **Assessment:** You will have the opportunity to engage with the wide scope of “property” as a concept, through in-class participation and the writing assignment.

#### **Outcome 4** To work with law as a tool for solving problems.

- **Learning experience:** 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.
- **Assessment:** In-class discussions, the writing assignment, and the final examination will give you opportunities to engage in problem-solving through law.

### **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. Between 2013 and 2022, I worked at nonprofit organizations on 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.

### **Course Logistics**

#### **Reporting Attendance**

Please record your attendance and absences on the following website:

<https://www.cduan.com/attend/?course=LAW-518-002> ↗

This website will also contain the Zoom link for attending virtually, and will provide access to recordings of class if you are absent.

There is no need to email me in advance for absences; just report them, ideally in advance, on this website. You are also permitted to update your attendance record after the fact. For example, if you forgot to sign in during class, you can do so at home using this same website later.

The policy for absences is later in this document.

## Books and Materials

Generally, if you need to find materials for this course, check the following places:

- My personal website, <https://www.cduan.com/teaching.shtml> ↗. This will contain the official version of the syllabus, plus other materials for this course and for prior years.
- Canvas, particularly the Files section for this course.

The textbook for this course will be *Frameworks of Property Law*, available online at ↗. A paper copy is available on Amazon, Volume I ↗ and Volume II ↗. **Do not print the book out yourself!** It will cost you much more than the Amazon copy.

The textbook is based on *Open Source Property* by Stephen Clowney, James Grimmelmann, Michael Grynberg, Jeremy Sheff, and Rebecca Tushnet, which you can find at <https://opensourceproperty.org/> ↗. (I have changed the book title to avoid people mistakenly ordering someone else's version of the book.) The original texts from that website are highly recommended, as they often present more detail than what the textbook will cover.

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.

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

**Sample exams** See my personal website listed above. Several more are on the website of Professor James Grimmelmann [↗](#), one of the casebook authors. I will also give out practice multiple choice questions during the semester.

## Writing Assignment

There will be one short required writing assignment for this course. We will discuss this in more detail a few weeks into the course, but the basic idea will be that you will write a short blog post about a current event relating to property law. For now, pay attention to news or personal happenings that seem to raise interesting questions about property, which you might be interested in writing about. You may work in groups of up to three people on this project.

You can read past students' posts at <https://www.propertylawtoday.com> [↗](#).

Although it is mandatory, this writing assignment will be ungraded, and count as part of your class participation. The assignment has two primary purposes. First, it will give you an opportunity to practice the sort of writing you will need to do for the final exam, and give me an opportunity to provide you with early feedback on this. Second, you will have the option of publishing your work online, on a blog that I will set up, which will allow you to add a publication credit to your résumé.

## Schedule

Generally, we will read one chapter of the textbook for each class meeting.

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 my website and announced on Canvas.

## Beginnings

### January 12—Theory of Property

*Read:* Frameworks of Property Law, pages 3–32, Ch. I.1.

**January 14**—Intellectual Property

*Read:* FPL, pages 33–67, Ch. I.2.

**January 19**—NO CLASS: MLK Day

## **Exclusion**

**January 21**—The Right to Exclude

*Read:* FPL, pages 69–98, Ch. II.3.

**January 26**—Property Boundaries

*Read:* FPL, pages 99–127, Ch. II.4.

## **Possession**

**January 28**—Possession of Personal Property

*Read:* FPL, pages 129–158, Ch. III.5.

**February 2**—Adverse Possession

*Read:* FPL, pages 159–189, Ch. III.6.

## **Transfers**

**February 4**—Formalities

*Read:* FPL, pages 191–218, Ch. IV.7.

**February 9**—Protecting Buyers

*Read:* FPL, pages 219–249, Ch. IV.8.

## **Operation of Law**

**February 11**—Estates and Future Interests

*Read:* FPL, pages 251–264, Ch. V.9.

**February 16**—Issues with Estates

*Read:* FPL, pages 265–288, Ch. V.10.

**February 18**—Security Interests

*Read:* FPL, pages 289–325, Ch. V.11.

## **Leases**

### **February 23**—Leases: Types and Lifecycle

*Read:* FPL, pages 327–360, Ch. VI.12.

### **February 25**—Leases: Landlord Duties

*Read:* FPL, pages 361–391, Ch. VI.13.

## **Simultaneous Owners**

### **March 2**—Concurrent Ownership

*Read:* FPL, pages 393–426, Ch. VII.14.

### **March 4**—Institutional Ownership

*Read:* FPL, pages 427–460, Ch. VII.15.

### **March 8–15**—NO CLASS: Spring Break

### **March 16**—Easements

*Read:* FPL, pages 461–491, Ch. VII.16.

## **Conflicts**

### **March 18**—Allocation

*Read:* FPL, pages 493–524, Ch. VIII.17.

### **March 23**—Conflicts Across Property Types

*Read:* FPL, pages 525–556, Ch. VIII.18.

### **March 25**—Nuisance

*Read:* FPL, pages 557–587, Ch. VIII.19.

## **Covenants**

### **March 30**—Restrictive Covenants

*Read:* FPL, pages 589–618, Ch. IX.20.

### **April 1**—Common-Interest Communities

*Read:* FPL, pages 619–647, Ch. IX.21.

## Property and Society

### April 6—Zoning

*Read:* FPL, pages 649–680, Ch. X.22.

### April 8—Fundamental Rights

*Read:* FPL, pages 681–708, Ch. X.23.

### April 13—Takings

*Read:* FPL, pages 709–742, Ch. X.24.

### April 15—Regulatory Takings

*Read:* FPL, pages 743–776, Ch. X.25.

### April 20—The Commons

*Read:* FPL, pages 777–809, Ch. X.26.

## 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).

**Attendance** The manner of recording your attendance is given above in this document. On any day when class is held, your attendance status is one of the following:

- Present: you are physically in class that day and indicated this on the attendance form (including if you forgot to fill in the form and entered your presence later).

- Excused absence: you attended by Zoom, or you entered an explanation in the attendance form that justifies your absence. There is no limit on excused absences.
- Unexcused absence: you neither entered your presence on the attendance form nor entered a sufficient explanation on that form. You are permitted **up to four unexcused absences** without penalty. 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.

**Recordings** 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.

**Participation** 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.

## **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.

As a matter of fairness to everyone, I require that any meetings be held or emailed questions be submitted to me at least 48 hours before the exam. (That time is subject to change depending on the date the exam is scheduled.)

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.

## **Artificial Intelligence and Other Assistance**

The following quotation is the official policy of this course with respect to generative AI; the rest is just for you to think about.

The use of generative AI programs is permitted for completing any written take-home assignments in this course. While AI is a powerful tool, it should not be used as a substitute for independent studying and work; further, there are inherent risks and potential ethical violations when using AI. As such, students must affirm that they have verified the authenticity and attest to the accuracy of the AI output upon submission of their work. Failure to do so could result in a lower grade on the respective assignment and potentially constitute an Honor Code violation.

Please attach the following certification to any work to which more than one non-quoted sentence was initially generated by AI or any other source: "I certify that any language drafted by generative artificial intelligence, including quotations, citations, paraphrased assertions, and legal analysis, has been checked by me for accuracy, using, for example, print reporters or traditional legal databases. I understand I will be held responsible for the contents thereof according to applicable rules of the course syllabus and WCL Honor Code, regardless of whether generative artificial intelligence drafted any portion of this submission."

I'm generally permissive about what tools you use to produce writing. I study technology, after all, and have used computer programs to assist my writing for years. You'll have these tools available in your work, and lawyers have been using

automation to speed up their workflow ever since the invention of the printing press.

That said, I would be cautious about over-relying on AI at this early stage in your legal career, for three reasons.

**Writing is practice.** You can't get good at the piano by listening to recordings; you have to move your fingers to learn. In the same way, if you want to be a great communicator of legal arguments—that is, a lawyer—you can't just sit back and listen to what ChatGPT says; you need to do the skill of communicating, over and over again, faster and faster. Law school writing is the slow practice of argument: Today you spend an hour every day writing IRAC paragraphs in the comfort of your home, so that tomorrow you can spin out IRAC paragraphs with your voice in seconds before an adversarial court. AI can help you write something right now, but it can't build your memory bank of turns of phrase and sentence structures that will serve you for the rest of your career.

**Skepticism is your job.** It is the very role of lawyers to challenge purported claims of the law, and to do so by digging deep into sources of authority. If opposing counsel puts forward a legal rule under which your client loses, you wouldn't just blindly trust it—you'd scrutinize all of the cases and laws cited, and research the counterarguments. So should you blindly trust AI in the same way? Instead, use generated statements the same way you would use any other slick-sounding but probably biased source of opinion (which, by the way, includes *lots* of third-party legal sources): a helpful starting point, but something to be verified.

**Where we're going, we don't need AI.** Practice these skills of constructing arguments and skeptical research enough, and faster than you expect you'll discover what top lawyers know already—legal writing and reasoning are not that hard once you've done them enough, and AI isn't much of a speed help. That might be hard for you to believe today. But remember when you were learning to add and complained that you could just use a calculator? How fast can you solve  $5 + 7$  now?

Right now, writing feels like a slog, and it's hard to see why you need to do it when this shiny new tool can. But put in the work, and soon enough you'll produce arguments as easily as ChatGPT—and yours will be better.