PROPERTY(Section 1)
Spring Semester 2013
Professor Wilson Freyermuth
Time: 8:10-9:15 MTWRF
Office: 215 Law School
Office Telephone: 882-1105
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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 edition (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. Each should be available in the library.

JOHN G. SPRANKLING, UNDERSTANDING PROPERTY (LEXIS). Many students find the mini-treatises in LEXIS’s Understanding series to be helpful resources, and this is a good one. There are copies of the Second Edition in the library; LEXIS released a Third Edition in 2012. [If you decide to purchase the book as a study aid, a used copy of the Second Edition is fine if you’re counting pennies.]

HOVENKAMP AND KURTZ, THE LAW OF PROPERTY (6th ed., West). This paperback treatise is moderate in its coverage, and does an excellent job of laying out basic property rules in an extended outline form. It also has a large number of short essay-type problems (with answers) for you to test your understanding of basic concepts.

STOEBUCK AND WHITMAN, PROPERTY (3d ed., West). 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.

CRIBBET AND JOHNSON, PRINCIPLES OF THE LAW OF PROPERTY (3d ed., Foundation Press). This relatively short hornbook is very general in its coverage. It is most useful for those who find they need more detail about the historical material in the course.
ACADEMIC INTEGRITY: Academic integrity is fundamental to the activities and principles of a university. All members of the Law School community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. 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 academic 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.

COURSE WEB PAGE: I maintain a webpage for this course. You can use the following URL http://www.law.missouri.edu/freyermuth/property/spring2013 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 regularly for new information.

CLASS SCHEDULING: The class meets on a “flexible schedule” (the class appears on the schedule for all five days each week). There are several days during the semester where I will have to be away due to professional meetings. Scheduling the class for all five days each week allows for “make-ups” to occur during the regular class hour, rather than at 1:00 p.m. (when conflicts often arise due to other make-ups, student organization meetings, career programs, and the like). Thus, some weeks, the class will meet all five days; other weeks only four days, and others only 3 days.

A complete list of the scheduled class meetings for January and February appears at the end of the Syllabus. [During February, I will update the Syllabus with the list of scheduled class meetings for March and April.] This list is subject to change during the semester if emergency travel or weather-related class cancellations arises. Thus, you should always double-check the course web page each week for confirmation of the scheduled classes for the week.

INTERACTION WITH STUDENTS: I maintain an open-door policy. I do not maintain regular “office hours,” but am in my office much of the time during most weekdays. If you have a question or concern about the course or law school, and I am in my office, please feel free to come and see me. If you need to set up a specific appointment time for scheduling reasons, you are welcome to do so.

Many students find it easy to communicate with me by e-mail: my address is freyermuthr@missouri.edu and 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.]

COURSE OBJECTIVES AND EXPECTATIONS: The Property course focuses upon the way in which the law has recognized and used the concepts of “ownership” and “property” to resolve interpersonal disputes over access to and “rights” in resources, with the most heavy focus on land. We will talk about these
concepts in a variety of different contexts, as identified in the “Course Coverage” outline that appears later in this Syllabus. I have four basic objectives for you as a student in the Property course:

1) That you obtain a good understanding of the substantive rules that apply in these differing contexts (e.g., Estates, Concurrent Ownership, Landlord/Tenant, Easements and Servitudes, Adverse Possession, etc.);

2) That you obtain a good understanding of how these substantive rules reflect the importance of particular public policy concerns relevant to interactions between persons (and in some cases, the balancing of competing concerns);

3) That you can synthesize the application of these concepts and policies across these differing contexts (e.g., How does the law governing Adverse Possession “fit” with the law governing concurrent ownership? What impact does the law’s preference for the transferability of property rights have on the law in these differing contexts?), so as to be able to predict the results of interpersonal disputes over access to and “rights” in resources; and

4) That you are able to get some appreciation of how lawyering requires not only effective advocacy in the resolution of disputes but also the development and implementation of problem solving skills to be applied in the formation and documentation of transactions involving the transfer of property.

In this process, I have several basic expectations of each student in the course:

• **I expect you to be present for each class, to have read the appropriate 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 for the learning of your fellow classmates. You are not fulfilling this responsibility if you are not present in class, not attentive, and not contributing to class discussion.

• **I expect you to be in class, ON TIME, with cell phones and the like turned off, so that class discussion can commence each day promptly at 8:10 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, a negotiator, or in counseling clients — is the ability to process verbal and written information and to respond to extemporaneous questions and/or comments in a concise and articulate way. One of the benefits of the law school classroom is that you can work on developing this ability in an environment where your mistakes don’t have consequences—if you answer a question wrong in class, your client does not go to jail or have a massive judgment entered against her. You and your classmates can (and should) learn not only from one another’s insights, but from one another’s mistakes.

• In reviewing and synthesizing the course material and class discussions, you will inevitably identify remaining questions about which you are uncertain. **I expect you to make an effort to “fill these gaps” in your understanding of the material, such as by (a) posing the question(s) to a fellow classmate, (b) reference to secondary resources, and/or (c) posing the question(s) to me, 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.
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.

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, your professors notice that too.

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

A. **Final Exam.** The final exam will be administered in two portions: a “take-home” portion comprised of one or more essay questions, and an in-class exam comprised solely of multiple choice and short answer questions. The in-class portion of the exam will be administered at the time designated on the exam schedule, which is Thursday, May 16, 2013, at 8:30 a.m. I have not yet made a final decision regarding the administration of the take-home portion of the exam; I will make an announcement regarding the take-home during the first class and update the Syllabus accordingly.

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. As needed, I will call on students randomly during each class period. For each class or topic, I will post a series of discussion questions relating to the assigned material. We will use some or all of these questions as the basis for in-class discussion. To facilitate good class discussion and the optimal use of limited class time, I encourage you to consider these discussion questions (and to discuss them with other class members) prior to class meetings.

Active participation is both encouraged and expected. I reserve the right to add up to two (2) points to a student’s final course grade for **consistent and exceptional** class participation. [Note: Last year, in a class of 63 students, one student’s grade was increased by 2 points, and five students had their grades increased by 1 point.] 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 twice in previous Property classes, but it has happened twice.] 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.

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. The assignment for the first class appears at the end of the paper version of this syllabus, and also appears on the course website.

**COMPUTER POLICY:** You are welcome to use a tablet or laptop computer during class, but use is limited to **class-related use only**. No e-mail, web surfing, shopping, Facebook, IM, etc. Using a laptop for such purposes during class is distracting to (and disrespectful of) your other classmates.

**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](http://www.cali.org).

### REVISED CLASS MEETING SCHEDULE

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COURSE COVERAGE

Please refer to each week’s assignments for precise page assignments for each day’s class.

I. The Nature and Meaning of Property

Jacque v. Steenberg Homes, Inc.
State v. Shack
Kelo v. City of New London
Local 1330, United Steel Workers v. United States Steel Corp.
Moore v. Regents of the University of California

II. Acquiring Interests in Property: The Significance of “Possession”

A. The Principle of “First-in-Time, First-in-Right”
   Pierson v. Post
   Popov v. Hayashi
   Edwards v. Sims
   Joyce v. General Motors Corporation
   Comedy III Productions, Inc. v. Gary Saderup, Inc.

B. “First-in-Time” and Finding Disputes
   Armory v. Delamirie
   Benjamin v. Lindner Aviation

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

A. Bona Fide Purchase
   West v. Roberts

B. Adverse Possession
   Mullis v. Winchester
   Norman v. Allison
   Stump v. Whibco

IV. Transferring Property by Gift

In re Estate of Evans
Lindh v. Surman
Scherer v. Hyland
Gruen v. Gruen

V. The System of Freehold Estates

A. Possessory Estates in Land
   1. Fee Simple and Life Estate
      White v. Brown
      Baker v. Weedon
   2. Defeasible Estates
B. Future Interests in Land and the Rule Against Perpetuities
   Kost v. Foster
   Abrams v. Templeton

VI. Concurrent Ownership
   A. Characteristics of Coownership (Cotenancy)
      Smith v. Rucker
      Smith v. Cutler
      Harms v. Sprague
      Mann v. Bradley
      United States v. Craft
   B. The Relationship Between Coowners (and Partition)
      Schmidt v. Wittinger
      Esteves v. Esteves

VII. Landlord and Tenant
   A. Leasehold Estates: Their Creation and Characteristics
      Cook v. University Plaza
      David Properties v. Selk
   B. Transferability of the Leasehold Estate
      Julian v. Christopher
      Ernst v. Conditt
   C. Use of the Premises
      DVM Co. v. Bricker
   D. The Landlord’s Responsibilities Related to the Premises
      Fidelity Mutual Life Ins. Co. v. Kaminsky
      Poyck v. Bryant
      Hadian v. Schwartz
   E. Landlord Remedies for Tenant Breach
      Gorman v. Ratliff
      Frenchtown Square Partnership v. Lemstone, Inc.
   F. Discrimination in Housing
      Jancik v. HUD

VII. Nonpossessory Interests — Easements, Covenants, and Servitudes
   A. Easements
1. Negative Easements  
   *Patterson v. Paul*

2. Express Easements  
   *Alft v. Clayton*

3. Prescriptive Easements  
   *Melendez v. Hintz*

4. Implied Easements and Licenses  
   *Bob's Ready-to-Wear v. Weaver*

5. Scope of Easements  
   *Heydon v. MediaOne  
   Brown v. Voss*

6. Termination and Relocation of Easements  
   *Graves v. Dennis  
   AKG Real Estate LLC v. Kosterman*

B. Covenants and Servitudes

1. Historical Introduction and the Role of “Privity of Estate”  
   *Bremmeyer Excavating v. McKenna*

2. The “Touch and Concern” Requirement and the New Restatement  
   *Neponsit Property Owners’ Ass’n v. Emigrant Industrial Savings Bank  
   Garland v. Rosenshein  
   Restatement (Third) of Property — Servitudes*

3. Financing and Operating Common Interest Communities (CICs)  
   *Evergreen Highlands Ass’n v. West  
   Nahrstedt v. Lakeside Village Condominium Ass’n  
   Gabriel v. Cazier  
   Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n*

4. Termination and Modification of Servitudes  
   *Fink v. Miller  
   West Alameda Heights Homeowners Ass’n v. Board of County Comm’rs  
   Boyles v. Hausmann*

VIII. Additional Topics (TBA)
INITIAL ASSIGNMENTS
Property § 1
Spring Semester 2013
Prof. Freyermuth

Note that the first class meeting will be Thursday, January 17, 2013.

A. Assignment prior to first class: Please write a note (about a page in length) giving me some biographical information about yourself: where you’re from, your background, why you came to law school, your hobbies/interests, and/or any other information that will help me get to know you better. Submit this to me by e-mail at freyermuthr@missouri.edu on or before Wednesday, January 16.

B. Assignment for Classes #1 and 2, Thursday, January 17 and Friday, January 18: Read pages 1-29 of the casebook. During class, we will discuss Jacque v. Steenberg Homes, Inc. and State v. Shack and the notes following those cases. Consider the following questions as you read this material:

1. Note 1 after Jacque v. Steenberg Homes introduces Guido Calabresi’s conceptual framework for how the law might/does protect claimed entitlements. He suggests that claimed entitlements may be protected by a “property” rule, a “liability” rule, or by no legal protection at all. What is it about the remedy that the Jacques received in this case that demonstrates that the court protected their entitlement using a property rule? What remedy would the Jacques have received if the court had chosen instead to protect their claimed entitlement via a liability rule? [Be as specific as you can.]

2. Why give the Jacques the legal power to exclude Steenberg and others from their land? If it was dramatically easier, cheaper, and safer for Steenberg to deliver the home across the Jacques’ land, why shouldn’t the law allow Steenberg to do so?

3. For years, Rule has owned a $1,000 bill. Last month, Bowman lied to the Dean’s secretary to get the building’s master key (claiming he had mistakenly locked his keys in his office). He took the master key and instead used it to enter Rule’s office, where he took the $1,000 bill. Like most criminals, Bowman was unable to keep his crime a secret and he was ultimately ratted out.

   a) For purposes of this question, assume that Rule demands that Bowman return the $1,000 bill; Bowman instead hands him ten $100 bills instead. If Rule sues Bowman to recover possession of the bill, will he prevail? Why or why not? What if Bowman instead hands him $2,500 in cash (the “fair market value” of the bill, according to collectors)?

   b) For purposes of this question, assume that when Rule demands that Bowman return the bill, Bowman admits that he used the $1,000 bill to pay for dinner and a suite for New Year’s Eve at the Ritz-Carlton in Clayton. Can Rule recover the bill from the Ritz-Carlton? Why or why not?

4. In State v. Shack, what source of law does the court rely upon to reverse the convictions of Tejeras and Shack (note 1, page 27)? On what specific language in the opinion do you base your conclusion? Is the court saying that Tejeras and Shack have a “property” right in Tedesco’s farm? Why or why not?

5. Note 2 on page 25 introduces the concept of “externalities.” Are the actions of Tejeras and Shack imposing external costs on Tedesco? Are Tedesco's actions imposing external costs? If so, on whom? How does this concept influence the judgment in State v. Shack?
6. Consider the questions posed in Note 3 on page 26 and in the Lawyering Exercise on pages 28-29. What advice would you give to the following clients regarding the relevance of *State v. Shack* on the legal issues involved in their respective situations?

a. Your client Raymond wants an injunction to require Trump’s Taj Mahal casino to allow him to play blackjack despite the fact that he is counting cards.

b. Your client Tedesco (the farmer in *State v. Shack*) wants to exclude Lambert, an entrepreneur that wants to enter onto Tedesco’s farm to sell clothing to the migrant workers on the farm.

c. Your client, Freyermuth, owner of Tar Heel Bar & Grill, refuses to serve any Duke basketball fans or Roman Catholics. He also refuses to permit any patron that weighs over 260 pounds from ordering any "All You Can Eat" special unless the patron pays a $12 surcharge.