PROPERTY II (Section 1)
Fall Semester 2020
Professor Wilson Freyermuth
Time: 12:00 MWF (Online: Synchronous Class Sessions)
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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). This is the same book you used in Property I. If you don’t still have your copy, it can be purchased online from a variety of sources, including Westlaw’s online bookstore. The following is a list of suggested secondary materials to 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 several copies on library reserve. [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. Don’t buy a copy; 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

NOTICE TO STUDENTS WITH DISABILITIES: If you need accommodations because of a disability, if you have emergency medical information, or if you need special arrangements in case the building must be evacuated, please notify me or Dean Mitchell as soon as possible. To request academic accommodations (for example, a note taker), students must also register with the Office of Disability Services, S5 Memorial Union, 882-4696. This is the campus office responsible for reviewing documentation provided by students requesting academic accommodations, and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on “Disability Resources” on the MU homepage.
several hard copies on library reserve. Again, don’t buy a copy; an electronic version is available to you for free online through the West Academic Study Aids package.

COMMUNICATION, ACCOMMODATION AND PIVOT PLAN: Because Property II is being offered only once during the 2020-2021 academic year, and the class enrollment exceeds the maximum number allowed to be physically present in Room 7, class meetings will be synchronous classes conducted via Zoom. As a result, this Syllabus does not include a “Pivot Plan” (which is or should be included in the Syllabi for your other face-to-face or blended/hybrid classes, and which explains how the course would “pivot” to remote instruction if conditions so require).

Please note that:

- All class sessions will be recorded and posted to the Canvas site for Property II after each class meeting, where they will remain accessible throughout Fall Semester 2020.

- Communication. This Syllabus addresses how you may communicate with me during the course. See “Communication with Students” below for further details.

- Accommodation. This Syllabus addresses the attendance policy for this course and how students will satisfy the expectations for class attendance and participation. See “Expectations” and “Attendance Policy” below for further details.

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.

The Property II course builds on how the law recognizes and uses the concept of “ownership” to resolve interpersonal disputes over access to, use of, and “rights” in land. In particular, Property II does this with a focus on the laws and practices that govern land development and the transfer of possessory and nonpossessory interests in land. The course addresses the following subjects: Landlord and Tenant; Servitudes (Easements and Covenants); Contracting for the Transfer of Land; Deeds and the Operation of the Recording System; and Land Use Control (Zoning, Eminent Domain, and the Constitutional Limits of Permissible Land Use Control). During the course, students will:

- discuss, learn, and apply the substantive legal rules governing these different settings;

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

- discuss and learn to synthesize the application of these concepts and policies across these differing contexts;

- 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 interests in property;

- gain foundational knowledge necessary for upper-level real estate-related courses such as Real Estate Finance or Land Use Controls; and

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

At the end of this Syllabus, you will find a Course Schedule that reflects each “module” to be covered in the Property II course. Each module begins with specific learning outcomes for that module. The assigned readings and discussion prompts for each module are posted on the Canvas site for the Property II course (http://courses.missouri.edu). In some cases, the assignment will include suggestions for supplementary readings, links to a CALI lesson relevant to the assigned topic, or a link to one of Prof. Dale Whitman’s video lectures relevant to the assigned topic.

Each module also includes a “pre-assessment Practice Quiz” for you to complete and submit on Canvas prior to the class meeting in which we begin discussion of that module. [These quizzes are typically anywhere between 9 and 12 true-false, multiple choice, or multiple answer questions designed to test your comprehension and application of the assigned readings.] These practice quizzes do not factor into your course grade. However, when you submit the quiz, you can see the correct answers and explanations (so your completion and submission of them is a useful diagnostic tool for you with regard to your learning of the assigned material. Also, as explained below, your completion of the practice quizzes is a necessary part of you demonstrating your satisfying the attendance requirement for any class sessions you missed (see “Attendance Policy” below).

EXPECTATIONS: To facilitate the accomplishment of the general learning outcomes noted above, and the specific learning outcomes for each course module, 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 paying attention, not engaged in discussion with your classmates, and not contributing to class discussion generally, you are not fulfilling that responsibility.

- **For each module, I will assign a set of students to be “on call” during class discussion.** The students who are “on call” for the particular module are listed in the Assignment for that module, which you can find on the course Canvas site. During class discussion of the material in that module, I will call primarily on those students, although I reserve the right to call on others, and certainly welcome voluntary participation and/or questions from other students who are not “on call” for that module.
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 by e-mail or on the Canvas discussion board. I particularly encourage you to pose questions immediately following a class meeting, while those questions are fresh in your mind.

The Canvas site for the course includes a discussion board. From time to time, I will use the discussion board for the purpose of posting messages after a class to address or clarify questions that arose during class or after class. If you have a question regarding the material, I encourage you to post it to the discussion board. Likewise, as the discussion board is an extension of in-class discussion (where I expect everyone to participate), I expect students to contribute to discussion of questions posted to the board (and will consider and evaluate that participation as part of course participation).

ATTENDANCE POLICY: According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. I will record your attendance as you log into each Zoom session. To facilitate being able to start class on time at noon, please try to be logged into Zoom a few minutes prior to noon.

If you cannot attend a particular class session for any reason (e.g. you are sick or are taking care of someone who is sick, you have a doctor’s appointment, you have a job interview), I will count you as “present” for that class session if: (1) you advise me of your absence by e-mail, either before or immediately after the class; (2) you review the recording of the class you missed; (3) you completed the pre-assessment Practice Quiz for the module being discussed in the class; and (4) you post a timely question to the Canvas discussion board concerning the material covered in that class and/or contribute in discussion on the discussion board regarding the material covered in that class. It is your responsibility to demonstrate that you have complied with the attendance policy.

If you are “absent” for more than twelve (12) sessions, you will have to submit a paper assignment (in addition to the other course requirements) to complete the Property II course successfully.
COURSE WEB PAGE: I will maintain a webpage for this course. You can use the following URL [http://mulaw.missouri.edu/freyermuth/propertyII/fall2020/index.html](http://mulaw.missouri.edu/freyermuth/propertyII/fall2020/index.html) to reach the course webpage. A copy of this syllabus is posted on the webpage. The webpage includes a link to the course’s Canvas site. All of the assignments (including the on-call assignments), discussion prompts, and practice quizzes will be posted ONLY on the Canvas site. Likewise, class recordings will be posted ONLY on the Canvas site. Any messages regarding the postponing or rescheduling of classes, Q&A sessions, and office hours will be posted to the course webpage. **You should thus check the course webpage, and the course Canvas site, on a daily basis for any new information.**

COMMUNICATION WITH STUDENTS: I have traditionally maintained an “open-door” policy. This is more challenging, obviously, during a pandemic. You are welcome to communicate with me in any of the following ways:

- Because our regular class session precedes the 1:00 open hour, I will remain on Zoom after each class session for follow-up questions. [Note: one Friday each month, there will be a faculty meeting at 1:00 p.m., and thus I will not be able to remain after class on those dates.]

- Weather permitting, I will be available in-person each Monday, Wednesday, and Friday morning at 8:00 a.m. for coffee (bring your own). We’ll meet in an appropriately socially distanced manner, either in the Law School courtyard or in a portion of the amphitheater on the Carnahan Quadrangle.

- I will have at least three (3) virtual Office Hours on Zoom at varying times each week (including at least one during evening hours). Check the class webpage for each week’s times.

- If you need to set up a specific appointment time for a virtual office visit, send me an e-mail to schedule a time.

- You are welcome to communicate with me by e-mail to raise questions or concerns at any time, if that is convenient for you. My address is freyermuthr@missouri.edu.

- During the semester, as we finish each assigned Chapter in the casebook, I will schedule a question/answer session to assist students in their review and synthesis of the course materials.

- If I am in the building and in my office, you are welcome to stop by my office with a question (subject to your compliance with the University’s social distancing and masking protocols).

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

A. **Formative Assessment.** Every two weeks during the course, there will be a one-hour formative assessment quiz consisting of multiple choice and short answer/short essay
questions. Each quiz will focus primarily on the material in modules completed since the preceding quiz, although questions will sometimes require synthesis with material covered on earlier quizzes. The quiz will be administered via Canvas; you will have a 24-hour window in which to complete it, without assistance from a classmate or any other person. **No extensions will be granted.** During that 24-hour window, once you open the quiz, you will have one hour to complete it. Likewise, during that 24-hour window, you should not discuss the contents of the quiz within anyone else in the class. **Your submission of the quiz via Canvas will constitute your certification that your performance on the quiz satisfied the Law School’s Honor Code.**

There will be **seven (7)** such quizzes over the course of the semester; **your grade for the formative assessment quizzes will be comprised of your six (6) highest quiz scores. [This means you can drop 1 quiz score or miss 1 quiz altogether without consequence.]** Collectively, these quizzes will constitute **thirty-five percent (35%)** of your course grade.

The dates of the quizzes will be:

- Friday, September 4
- Friday, September 18
- Friday, October 2
- Friday, October 16
- Friday, October 30
- Friday, November 13
- Friday, December 4

**B. Summative Assessment.** There will be a final examination consisting of a combination of multiple choice, short answer and essay questions. **It will be administered at the time indicated on the Final Exam schedule, and will constitute sixty-five percent (65%) of your course grade.**

At present, it is not certain whether it will be possible to administer final examinations in person at the law school or whether they will have to be administered remotely. When that determination can be made, I will make an announcement in class, and information regarding the timing and administration of the final exam will be posted on the course webpage.

**C. 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 the course. 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 unacceptable participation. [Note: this has happened only three times in previous Property classes, but it has happened three times.] Class participation includes not only active participation during synchronous class sessions, but also participation through the Canvas discussion board and the completion of the ungraded pre-assessment practice quizzes.
For each module, the assigned materials include a series of questions/prompts relating to the reading. We will primarily 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, particularly on the days that you are assigned to be “on call.”

CALI LESSONS AND VIDEO RECORDINGS: There are a number of interactive computer lessons for Property law available from CALI (The Center for Computer-Assisted Legal Instruction). Assignments will indicate the modules 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).

Professor Dale Whitman (former Dean and Missouri Endowed Professor here at Mizzou, who retired in 2007) has a series of narrated powerpoint videos [ProfDale’s Property Videos] which he has made available for student use and review via his youtube channel. You can find the videos at [https://www.youtube.com/channel/UCwnFN8lde5ePT8wqw4USrfw/videos](https://www.youtube.com/channel/UCwnFN8lde5ePT8wqw4USrfw/videos). Videos 21-46 are the ones with relevance for the topics in this course. Each module will include a link or reference to the numbered video or videos which are germane to the topic of that module. These are great resources which you are welcome (though certainly not required) to use.

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. Note: Because this class is being offered in online synchronous fashion, each class session is being recorded, and recordings posted on the course Canvas site.
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 Canvas page for precise reading/page assignments for each module. The page numbers given below correspond with the reading material in the casebook generally, but specific reading assignments for a module may also include supplementary materials (which will be posted and available on the Canvas page).

I. Landlord and Tenant (≈10 classes)

Module A: The Nature of the Leasehold Estate 393-405
Module B: Creating a Leasehold Estate 405-417
Module C: Transferability of a Leasehold Estate 417-430
Module D: Restrictions on Use of the Premises 432-440
Module E: Condition of the Premises 440-473
Module F: Breach/Remedies 484-506

II. Easements (≈5 classes)

Module A: Types of Express Easements 520-534
Module B: Implied and Prescriptive Easements 534-553
Module C: Scope and Termination of Easements 553-582

III. Covenants Running with Land and Equitable Servitudes (≈5 classes)

Module A: General Rules Governing Creation/Enforcement 582-609
Module B: Servitudes and the “Common Interest Community” 609-645
Module C: Modification and Termination of Servitudes 645-665

IV. The Transfer of Land (≈11-12 classes)

Module A: Real Estate Brokers 666-678
Module B: The Statute of Frauds 679-691
Module C: Condition of the Land 691-708
Module D: Breach/Remedies 708-715
Module E: Deeds and the Recording System 715-756
Module F: Title Assurance (Pre-Closing) 758-766
Module G: Title Assurance (Post-Closing) 766-791
Module H: Financing the Purchase of Land 791-813
V. Land Use Controls (≈ 9-10 classes)

Module A: Zoning and Its Constitutional Foundations 841-851
Module B: Flexibility in Zoning (Amendments, Variances, Conditional Uses) 855-878
Module C: Nonconforming Uses 878-887
Module D: Eminent Domain 30-43 896-905
Module E: Regulatory Takings 906-956
Module F: Exactions 956-970