

**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 Trachtenberg as soon as possible. To request academic accommodations (e.g., 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.

**PROPERTY I (Law 5050)  
(Sections 2 and 3)**

Winter/Spring Semester 2021  
Professor Wilson Freyermuth

Section 2 Time: 12:00 Noon – 12:50 pm MWF, Room 7

Section 3 Time: 2:00 pm – 2:50 pm MWF, Room 7

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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). 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.

**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 at least three copies on library reserve for your use. [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 (4th 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. **Again, don't buy a copy. There are at least three hard copies on library reserve, and it is also available to you for free online through the West Academic Study Aids package.**

**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.

Property I focuses on how the law recognizes and uses the concept of "ownership" to resolve interpersonal disputes over access to, use of, and "rights" in resources, with the greatest focus on land ("real" property). We will talk about this the different contexts identified in the "Course Coverage" outline appearing later in this Syllabus. Students will:

- discuss and learn the substantive legal rules that apply in these different contexts (e.g., Exclusion, Nuisance, Adverse Possession, Gifts, Estates and Future Interests in Land, Concurrent Ownership);
- discuss and learn how these substantive legal rules reflect varying public policy concerns relevant to interactions between persons over resources (and the balancing of these competing policy concerns);
- discuss and learn to synthesize the application of these concepts and policies across these differing contexts (e.g., how do the rules governing Adverse Possession "fit" with the rules governing concurrent ownership between multiple persons?);
- 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 property;
- gain foundational knowledge necessary for the required Property II course as well as the elective course in Trusts and Estates; and
- gain foundational knowledge necessary for success on the Property portion of the bar examination.

**EXPECTATIONS:** To facilitate the accomplishment of the learning outcomes noted above, 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 attentive, not engaged in discussion with your classmates, and not contributing to class discussion generally, you are not fulfilling that responsibility. While I will assign specific students to be “on call” for each set or “Module” of the course material, I expect all students to be prepared to participate, and will sometimes call on students at random.

- **I expect you to be in class, ON TIME, with phones silenced, so that class discussion can commence each day promptly at the scheduled time.**
- **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 work to develop this skill in an environment where your mistakes will not have third-party consequences—i.e., if you answer a question wrong in class, your client does not go to jail, become subject to an enormous monetary judgment, or lose the potential benefit of an advantageous contract. 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 appropriate reference to secondary resources, and/or (d) posing the questions to me outside of class, 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.

**DECREASING THE RISK OF COVID-19:** If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend class and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea. If you are unable to attend a scheduled class due to illness or medical reasons, course sessions will be recorded for your review. See the “**Communication, Accommodation, and Pivot Plan**” below for more information.

You must wear a face covering while in the classroom, unless you have a documented exemption due to a disability or medical condition. You are responsible for bringing your own mask; I will have an extra mask available for your use if you do not have one. You must maintain a 6-foot distance from each other at all times.

**COMMUNICATION, ACCOMMODATION, AND PIVOT PLAN:** While this class is scheduled to meet on a face-to-face basis, note that (1) any class periods are subject to being moved into a synchronous remote format as warranted by data about COVID rates within the

University and Columbia communities; and (2) students who cannot attend a face-to-face class due to illness or medical reasons will be accommodated to facilitate their participation in the course.

In this regard, please note particularly the following:

- **Communication.** This Syllabus addresses how you may communicate with me during the course, both at the beginning and if it becomes necessary to transition the course to remote, whether temporarily or permanently. See “Communication with Students” below for further details.
- **Accommodation.** If you are unable to attend a scheduled class in person due to illness or medical reasons, you should plan to participate as follows:
  - If the scheduled class is already scheduled as a synchronous Zoom class (because of COVID-related reasons), you should plan to participate live in synchronous fashion via Zoom.
  - If the scheduled class is a face-to-face class session, I will conduct the class in-person as scheduled, but with Zoom operating and recording the class session. You should plan to participate live in that class in synchronous fashion via Zoom.

If you cannot attend the synchronous session, you may subsequently access the recording of the class, which will be posted after class (typically, by no later than 5 p.m. on the day of class) on the Canvas site for your review there. [Recordings will appear under the “Panopto Videos” link on the Canvas site.] I will treat you as “present” for the class once you have certified to me that you have reviewed the recorded class and have participated in the Canvas discussion board as explained later in this Syllabus. [See Attendance Policy]

[Note: I will not be posting BOTH videos of both the 12 noon class (Section 2) and the 2:00 p.m. class (Section 3). I will post one or the other as the “official” recorded class for that day. The classes will be covering the same subject matter each session.]

- **Pivot.** If pandemic-related circumstances require class sessions to be moved fully online, class sessions will simply shift to synchronous Zoom sessions. An announcement that any particular class or set of classes will be conducted in a synchronous Zoom session will be posted via announcement on the course Canvas site. Any such sessions will be recorded and posted on the class Canvas site.

**COMMUNICATION WITH STUDENTS:** I have traditionally maintained an “open-door” policy, which is something of a challenge during a pandemic. You are welcome to connect with me in any of the following ways:

- If the class is face-to-face, I will remain in Room 7 after each class session for follow-up questions. During any synchronous class, I will remain on Zoom after each class session for follow-up questions.
- I will have virtual Office Hours on Zoom from 10:00 a.m. to Noon on Tuesdays. By e-mail, you will receive a recurring Zoom invitation that will include a link for these office hour sessions.
- 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](mailto:freyermuthr@missouri.edu).
- If I am in the building and in my office, you are welcome to stop by my office with a question, subject to compliance with the University's social distancing and masking protocols.
- 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 will be conducted via Zoom, outside of class time and participation is voluntary.]

**ATTENDANCE POLICY:** According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. During each class, I will place a sign-in sheet for you to record your attendance on the table in the vestibule at the back of Room 7 as you enter. You are responsible to make sure that your name is on the attendance sheet. Any student that is not signed in as present will be considered absent for that day. I also expect students to be present and ready to begin class *promptly* at the time class is scheduled to begin.

Any student that misses more than **ten (10)** regularly scheduled classes during the semester *will be withdrawn from the course* or, *in my discretion, allowed to remain in the course with a grade reduction for each absence in excess of ten (10) absences.*

If you have to miss a class because of illness, family responsibilities, a job interview, or the like, I would appreciate it if you can provide me with prior notice of your 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.]

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 in question; (2) you review the recording of the class you missed; and (3) you post a timely and relevant question to the Canvas discussion board concerning the material covered in that class and you contribute to discussion on the Canvas

discussion board regarding the material covered in that class. It is your responsibility to demonstrate that you have complied with the attendance policy.

**COMMUNICATION USING THE COURSE CANVAS SITE:** I will maintain a Canvas site for this course, which is available using your MU pawprint and password at [canvas.missouri.edu](https://canvas.missouri.edu) or [courses.missouri.edu](https://courses.missouri.edu). There is one Canvas site that will be used by both sections.

At the end of this Syllabus, you will find a Course Schedule that reflects each Module to be covered in the Property I course. The assigned readings (from the casebook or any handouts) and discussion prompts for each module are posted on the Canvas site. These announcements will be archived on the site all semester.

I will sometimes post an announcement on the Canvas site to clarify a point of confusion that arose in class, or to pass along to the entire class a question (and answer) that a student posed after class or in my office. I will also sometimes use the Canvas discussion board to post a question to prompt interchange in that setting about issues or questions for which class time was not sufficient. Finally, any messages regarding the postponing or rescheduling of classes (or the pivoting of classes to or from “face to face” vs. synchronous mode) will be posted by announcement to the Canvas site, and all class recordings will be archived as Panopto videos on the Canvas site. **You should visit the Canvas page regularly to check for new information about the assignments for upcoming and future class meetings.**

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

A. **Final Exam.** There will be a final examination consisting of two parts:

(1) The first part will be a one-hour multiple choice examination that will be distributed at a date/time to be announced during the final week of scheduled classes and will constitute 25% of your final exam score.

(2) The second part will be a three-hour written response examination comprised of short answer and essay questions. This examination will be administered at the time indicated on the Final Exam schedule and will constitute 75% of your final exam score.

The dates and times of the two parts of the final exam will be announced once the Law School final exam schedule has been finalized, and may be subject to modification or revision thereafter due to COVID-related reasons.

Both Sections 2 and Section 3 will have the same examination, but each Section will be graded separately (e.g., Section 2 grades will be assigned scores on the Law School’s 65-100 grading scale based solely on raw scores of Section 2 papers; Section 3 grades will be assigned likewise based solely on raw scores of Section 3 papers).

Subject to paragraph B below (“Class Participation”), your final exam score will constitute 100% of your course grade in Property I.

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. 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 repeated unpreparedness. [Note: this has happened only three times in previous Property classes, but it has happened three times.] **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.**

For each Module, the reading assignment will include a series of questions relating to the assigned material. These questions will provide the primary 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 carefully prior to class, including discussion with your study group if you have a study group.**

**ASSIGNMENTS:** At the end of the Syllabus, you will find a Course Coverage outline that lays out the tentative order of coverage for the semester, breaking up the coverage into Modules. Some Modules may take only one class period and others may involve two or more class periods. Each assignment Module will be posted on Canvas, along with discussion prompts to help structure class discussion. Prior to each class, all students should have read, and should be prepared to discuss, any portion of the assigned material for the Module.

For each Module, I will identify particular students in each Section who will be "on call" for the class sessions in which the material in that Module is discussed. I will rely significantly on those students to facilitate class discussion, but I expect all students to be prepared to participate, and welcome contributions and questions from students who are not "on call." From time to time, I will also call on students at random.

**CALI LESSONS:** For some topics in this class, there are a number of interactive computer lessons for Property law available from CALI (The Center for Computer-Assisted Legal Instruction). Module 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).

**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 Trachtenberg.

**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 recorded already for posting to the Canvas site pursuant to the Communication, Accommodation, and Pivot Plan discussed above, you may not find it necessary to record the class yourself.**

**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 Trachtenberg, the director of the Office of Students Rights and Responsibilities, the MU Equity Office, or [equity@missouri.edu](mailto: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 Module on the course Canvas site for precise reading assignments and class discussion prompts for each Module.

- I. The “First-in-Time” Concept and the Significance of Possession
  - Module A Tangible Property Rights
  - Module B Intangible Property
  - Module C Found Property
  
- II. The Right to Exclude (and Its Boundaries)
  - Module D Trespass
  - Module E Nuisance
  - Module F Air Rights and Subsurface Rights
  
- III. When Is Prior Possession Not Enough? The Estoppel Concept
  - Module G Nemo Dat and Bona Fide Purchase of Personal and Real Property
  - Module H Adverse Possession: Claims Under Color of Title
  - Module I Adverse Possession: Boundary Disputes
  
- IV. Transferring Property by Gift
  - Module J Absolute Gifts of Present Interests
  - Module K Conditional Gifts and Gifts of Future Interests
  
- V. The System of Freehold Estates (Present and Future)
  - Module L Fee Simple Absolute Estates and Life Estates
  - Module M Legal and Equitable Estates (and the Basics of the Trust)
  - Module N Defeasible Estates
  - Module O Contingent Future Interests and the Rule Against Perpetuities

VI. Concurrent Ownership

Module P	Types and Characteristics of Concurrent Ownership
Module Q	Joint Tenancy and Severance of Joint Tenancy
Module R	Tenancy by the Entirety
Module S	Rules Governing the Relationship Between Co-owners: Accounting, Contribution, and Partition