

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 Trachtenburg 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.

PROPERTY II (Section 1)

Fall Semester 2021

Professor Wilson Freyermuth

Time: MWF 4:30 pm to 5:20 (Room 4)

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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 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

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.**

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.

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, an audio recording of the class will be posted on the course Canvas site for your review, and any Powerpoint materials used during the class will also be posted on the course Canvas site. See the **"Communication, Accommodation, and Pivot Plan"** below for more information.

COMMUNICATION, ACCOMMODATION, AND PIVOT PLAN: While this class is scheduled to meet on a face-to-face basis, note that 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. 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 has been pivoted to 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. I will make an audio recording of the class session, which I will post following class on the Canvas site, along with any Powerpoint materials covered during the class 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 or outside Room 4 after each class session for follow-up questions. [If a pivot is necessary, following any synchronous class, I will remain on Zoom after each class session for follow-up questions.]
- I will have in person Office Hours in Room 215 from 9:00 a.m. to Noon on Monday.
- I will schedule a series of lunch meetings with small groups of students to get better acquainted. See the sign-up on the door to my office (Room 215).

- Each week, I will also have a Zoom office hour in the evening. The date and time of the Zoom office hour each week, and the Zoom link for that office hour, will be posted each week on Sunday by an Announcement on the Canvas site.
- If the regular Office Hours or Zoom hour doesn't work in your schedule and you'd like to set up a specific appointment time, send me an e-mail at freymuthr@missouri.edu to schedule a time.
- You are also 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 freymuthr@missouri.edu.
- If I am in the building and in my office, you are welcome to stop by my office with a question, even outside of office hours — subject to the caveat that if I am tied up with another deadline or preparing for class, I may ask you to schedule more convenient time.
- During the semester, as we finish certain chapters in the casebook, I will schedule a general question/answer session to assist students in their review and synthesis of the course materials. Dates and times will be posted as Announcements on the Canvas site.

At the time of this Syllabus, while the University has chosen not to require COVID vaccination, the University has adopted the following temporary indoor masking policy:

As of Aug. 2, all students, faculty, staff and visitors, regardless of vaccination status, will be required to wear masks in classrooms, as well as meeting spaces where social distancing is not possible. For the remaining indoor spaces on campus, if you are not fully vaccinated, you are required to wear a mask. Even if you are fully vaccinated, the university recommends wearing a mask in these other indoor spaces, which is aligned with latest CDC recommendations.

Consistent with these instructions, you must wear a mask during class. Likewise, while you are welcome to come to my office with a question, you must wear a mask while doing so. The University's next update with regard to COVID and masking policy is expected by September 15. If the policy changes, an announcement to that effect will be posted by Announcement on the class Canvas site.

ATTENDANCE POLICY: According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. During each class, I 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. Any student that misses more than **twelve (12)** regularly scheduled classes during the semester ***will be withdrawn from the course.***

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, 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 **health** reasons, 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.

COURSE SCHEDULE/MODULES: 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 is available on course Canvas site. Each Module contains (a) specific learning outcomes for that Module, (b) the assigned readings for the Module, and (c) class discussion prompts. Many Modules will also include suggestions for supplementary readings or resources, links to a CALI lesson relevant to the assigned topic, or a link to one of Prof. Dale Whitman’s online video lectures relevant to the assigned topic. The supplementary readings, quizzes, or videos are not required, but you may find them useful in your study and you are welcome to use them.

Note: Each Module 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. Each quiz involves between 9 and 12 true-false, multiple choice, or multiple answer questions designed to test your comprehension and application of the assigned readings. **The score that you receive on these practice quizzes does not factor into your course grade.** However, when you submit the quiz, you can see the correct answers and explanations; thus, your completion and submission of them is a useful diagnostic tool for you with regard to your learning of the assigned material and in that regard will provide useful formative assessment of your grasp of the reading material. **Please complete and submit each pre-assessment Quiz by 12 Noon on the day that we are scheduled to begin class coverage of the material in that Module** (this due date and time appears on the link to each of the pre-assessment Quizzes in Canvas). Again, while your score will not factor into your course grade, your timely completion of the pre-assessment Quizzes is considered as part of class participation (which, as discussed below under “Course Grade,” can affect your final grade in the Property II course).

Also, some of the more straightforward principles in each Module are tested in the pre-assessment Quizzes and may not be directly discussed during class time. If you miss a question on the pre-assessment Practice Quiz and you are not clear why you missed it after referring to the explanations provided, be sure to raise the question during or after the next scheduled class meeting.

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:

- **Be present on time for each class, have completed the reading assignment for the class period, and 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.

- **Be prepared to participate actively if you are “on call” for the relevant Module.** 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.”
- **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 and the minds of your classmates.

The Canvas site for the course includes a discussion board. From time to time, I will use the discussion board for the purpose of posing a question after a class, or will moderate discussion of that question or another question posed by a student. 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).

COURSE CANVAS SITE: I have set up a Canvas site for this course. You can access it at <http://courses.missouri.edu>. A copy of this Syllabus is posted on the site. All of the assignments (including the on-call assignments), discussion prompts, and practice quizzes will be posted on the Canvas site, along with class recordings and powerpoints. Any messages regarding the postponing or rescheduling of classes, Q&A sessions, and office hours will be posted to the Canvas site as well. **You should thus check the Canvas site regularly for new information.**

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

- A. **Formative Assessment.** There will be three one-hour formative assessment quizzes 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 during a 48-hour window starting on the dates indicated below. **No extensions will be granted.**

During that 48-hour window, once you open the quiz, you will have one hour to complete it, without the assistance of anyone else. During that 48-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 **three (3)** such quizzes over the course of the semester. Collectively, these quizzes will constitute **forty-five percent (45%)** of your course grade. The dates of the quizzes are:

- Friday, September 17
- Friday, October 15
- Friday, November 19

- 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 fifty-five percent (55%) of your course grade.**
- 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 class sessions, but also participation through the Canvas discussion board and the completion of the ungraded pre-assessment practice quizzes.

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 are welcome 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.

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 via his Youtube channel. You can find the videos at <https://www.youtube.com/channel/UCwnFN8ldc5cPT8wqw4USrfw/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 (some modules will have several; others will not have one). These videos are resources which you are welcome (although 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 Trachtenburg.

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 I am making audio recordings of each class session and posting them on Canvas, you should not need to make an audio recording on your own.**

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 Trachtenburg, 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 (≈10-11 classes)

Module A: The Nature of the Leasehold Estate	393-405
Module B: Creating a Leasehold Estate	405-417
	506-517
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 (≈ 5-6 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 (≈ 5-6 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 (≈ 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 (≈ 6 classes)

Module A: Zoning and Its Constitutional Foundations	841-851
Module B: Flexibility in Zoning (Amendments, Variances, Conditional Uses)	TBA
Module C: Nonconforming Uses	878-887

Module D: Eminent Domain	30-43
	896-905
Module E: Regulatory Takings	TBA
Module F: Exactions	956-970