

Property Law (LAW-518-003)

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Course Information

Meetings: Monday & Wednesday, 1:00-2:50 PM
Location: YT17
Credits: 4
Prerequisites: None.
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Office Hours: Mondays and Wednesdays, 11:00-12:00.

About This Course

Welcome to Property Law! The official description of this course is:

A survey of the law of real and personal property; possession and present and future estates in land; the relationship between owners of successive interests in land; transmission of ownership between living persons; and conveyancing.

That's an accurate and traditional description, but it's not complete. Real and personal property—land and physical objects—are the canonical examples, and the classic fare of property courses. But “property” can also refer to debts, information, brand names, personalities, radio frequencies, and more. How do the legal rules and theories about property apply to this wider universe? That is what we will explore in this course.

Property law is sometimes called the “sampler platter” of the first-year curriculum. Every topic sits atop a whole body of law and policy: corporations, wills and estates, environmental regulation, urban planning, intellectual property, constitutional theory, and more. We will be moving fast, and if any small point strikes you as intriguing, you can probably take a whole course on it in the future.

Objectives

Why study property law? There are many answers to this question, but the most important is that the doctrines, theories, and frameworks learned in this course will have general application to your future studies in law and to how you reason about legal rules and policies.

In particular, the objectives of this course are as follows:

- **To learn the basic outline of real and personal property law doctrines.** You will learn how property is acquired, divided, used, asserted, and disposed, and will be able to reason about the status of property rights given a factual situation.
- **To appreciate the breadth of what can be “property.”** This course will stretch the boundaries of property to see how far it can go, and in the process will stretch your own thinking.
- **To explore conceptual frameworks that explain law’s structure.** Property law offers rich opportunities to build taxonomies of rights, understand the relationship between public and private spheres, untangle conflicts between competing policies, and follow canonical moves of legal dialogue. You will apply these concepts through discussions in class and in writing arguments of law and policy.
- **To connect your personal experiences and intuitions with formal doctrines.** You deal with property law on a daily basis, and what you learn in the classroom will connect—or conflict—with what you observe in the world. Recognizing these connections and conflicts will enhance your capacity as a lawyer and as a citizen.
- **To work with law as a tool.** While legal rules often seem like mechanical computations applied to preexisting facts, the most effective lawyers

think creatively to achieve results that may be unexpected or unintuitive. Property law offers many opportunities to think about how to use the law to work for your clients, for yourselves, and for the world.

Who Am I?

I am a former patent attorney, working in the field of law that deals with exclusive rights (some would call them property rights—we'll talk about this) in inventions and new technologies. My practice focused on computer and communication technologies. Between 2013 and 2022, I worked at nonprofit organizations on patent and technology policy. In this capacity, I write *amicus curiae* briefs in key patent and copyright cases, comment on legislation, have testified in Congress, and serve on advisory boards providing thoughts on how patent and technology policy changes may affect the public interest.

I am happy to meet in person or virtually; just send me an email to set up a time, or come by during the office hours posted above.

Books and Materials

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

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

The textbook for this course will be *Open Source Property: A Free Casebook* by Stephen Clowney, James Grimmelman, Michael Grynberg, Jeremy Sheff, and Rebecca Tushnet. The book has been custom-assembled for this course, and is available online, [↗](#). If you would like a paper copy, a print-on-demand version will be made available on Amazon. **Do not print the book out yourself!** Besides the print-on-demand copy being cheaper than a usual copy shop (they are sold at cost), I am still reviewing the second volume of the book, and so it is subject to change.

The source materials are available on the *Open Source Property* website [↗](#). Both my arrangement of the textbook and the underlying modules are works in progress, so please feel free to provide feedback on any of these materials.

If you would like additional study aids and materials, here are some recommendations:

- John G. Sprankling, *Understanding Property Law*. This is a student treatise and is highly recommended by many property law scholars for its clear explanations of legal rules.
- Joseph William Singer, *Property*. Professor Singer was my property professor, and is an expert in presenting the policy arguments behind property law rules.

Additionally, you may wish to peruse the complete list of modules available for *Open Source Property*. They are wide-ranging, thought-provoking, and well-written (and also free).

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

Writing Assignment

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

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

Course Policies

In addition to the policies below, please note the Honor Code for the Washington College of Law, the Grading and Examination policies of the Registrar, and

other policies stated in the WCL Catalog [↗](#) and the American University Student Conduct Code [↗](#).

Attendance and Participation

I expect that all students will attend class regularly, complete the assigned readings and any assigned practice questions, arrive to class promptly and be prepared to participate in the class discussion when called upon. To be prepared for class means that you have read the assignment and have made an effort to think through the materials and any problems or questions in the notes (though no outside research is necessary or encouraged).

I will call on students based on a random list. The purpose of randomized cold-calling is to make sure that everyone has the opportunity to practice speaking and reasoning about the materials. Participation in class is not just important for meeting the learning outcomes of this course and understanding the materials; it is essential practice for the lawyering skills of thinking on the fly, organizing thoughts, and communicating effectively. My goal is always to engage your minds and ensure that the classroom is a welcoming space for thoughtful discussion. To the extent that there are things I can do to improve along these lines, I'd certainly welcome your feedback.

You may miss up to four class sessions for any reason and without penalty (no need to email me in advance). Any additional absences must be excused for good cause in advance of the class meeting. Further unexcused absences will have a negative impact on your grade, at my discretion. If you face particular challenges that make attendance difficult, contact the Office of Student Affairs.

Classes will be recorded to the extent possible, but the recordings will only be made available to individual students with excused absences. Please let me know in advance if you will be absent, so that I am aware and can send you the recording. If I do, keep in mind that the recordings are for personal use and should not be retained or shared with others.

Reporting Attendance Please record your attendance and absences on the following website:

<http://www.cduan.com/attend/?course=LAW-518-003> [↗](#)

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

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

Grading and Evaluation

Your grade will primarily be based on the results of a final examination. It will be a scheduled, four-hour final examination at the end of the semester. The examination will consist of a combination of essay questions and written short-answer questions.

The examination will be “open materials/closed Internet,” meaning that students may use any materials they bring with them (including digital materials) but access to the Internet during the examination is prohibited. For purposes of fairness, I will cease responding to questions about material or the exam three days prior to the date of the final exam.

I may adjust grades up or down by one step (e.g., B+ to A– or B) based on your preparation for and participation in class. Good participation demonstrates engagement with the subject matter of the course and contributes to your fellow students’ learning. Discussions via email, participation in group in-class exercises, and conversations during office hours will all be considered part of class participation.

If you would like sample exams, see my personal website listed above. Several more are on the website of Professor James Grimmelmänn [↗](#), one of the casebook authors.

Schedule

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

Although I hope to keep to this schedule as much as possible, it is subject to change depending on the pace of the class and external events such as important judicial decisions or guest speakers. If there are any updates, a revised syllabus will be posted on my website and announced on Canvas.

Beginnings

January 13—Theory of Property

Read: Open Source Property, pages 3–31, Ch. I.1.

January 15—Intellectual Property

Read: OSP, pages 31–63, Ch. I.2.

January 20—**NO CLASS:** MLK Day

Exclusion

January 22—The Right to Exclude

Read: OSP, pages 65–95, Ch. II.3.

January 27—Property Boundaries

Read: OSP, pages 95–131, Ch. II.4.

Possession

January 29—Possession of Personal Property

Read: OSP, pages 133–163, Ch. III.5.

February 3—Adverse Possession

Read: OSP, pages 163–193, Ch. III.6.

Transfers

February 5—Formalities

Read: OSP, pages 195–223, Ch. IV.7.

February 10—Protecting Buyers

Read: OSP, pages 223–253, Ch. IV.8.

Operation of Law

February 12—Estates and Future Interests

Read: OSP, pages 255–269, Ch. V.9.

February 17—Issues with Estates

Read: OSP, pages 269–293, Ch. V.10.

February 19—Security Interests

Read: OSP, pages 293–327, Ch. V.11.

Leases

February 24—Leases: Types and Lifecycle

Read: OSP, pages 329–361, Ch. VI.12.

February 26—**NO CLASS:** Con Law will be held at this day/time in the Property Law classroom.

February 27—**ADDED DAY:** Leases: Landlord Duties. Class will be from 1:30 to 3:20 PM in the Con Law classroom.

Read: OSP, pages 361–393, Ch. VI.13.

Simultaneous Owners

March 3—Concurrent Ownership

Read: OSP, pages 395–429, Ch. VII.14.

March 5—Institutional Ownership

Read: OSP, pages 429–463, Ch. VII.15.

March 9–16—**NO CLASS:** Spring Break

March 17—Easements

Read: OSP, pages 463–499, Ch. VII.16.

Conflicts

March 19—Allocation

Read: OSP, pages 501–533, Ch. VIII.17.

March 24—Conflicts Across Property Types

Read: OSP, pages 533–567, Ch. VIII.18.

March 26—Nuisance

Read: OSP, pages 567–597, Ch. VIII.19.

Covenants

March 31—Restrictive Covenants

Read: OSP, pages 599–625, Ch. IX.20.

April 2—Common-Interest Communities

Read: OSP, pages 625–653, Ch. IX.21.

Property and Society

April 7—Zoning

Read: OSP, pages 655–687, Ch. X.22.

April 9—Fundamental Rights

Read: OSP, pages 687–719, Ch. X.23.

April 14—Takings

Read: OSP, pages 719–753, Ch. X.24.

April 16—Regulatory Takings

Read: OSP, pages 753–786, Ch. X.25.

April 21—Catch-up and Review