

PROPERTY

(SECTIONS 2 &3)

Hamline University School of Law
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Professor Tom I. Romero, II
tromero01@hamline.edu

Office: 211E
Office Hours: TBA

I. COURSE DESCRIPTION

What is property? Why do people care about property rights? At first glance, these two questions might seem simple to answer. Yet the term “property” and its importance are extremely hard to define and in many cases, definitions vary from person to person, region to region, country to country, and culture to culture. Despite the imprecision and contentiousness of the term “property” and associated rights, property is central to the development, maintenance, and growth of modern law and jurisprudence. As one scholar has observed, “Property and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases.”¹ For this very reason, property implicates the foundational nature of the rule of law in the United States and asks us—as students, lawyers, and citizens—to consider inter-related questions of “liberty,” “fairness,” “justice,” and “equality” in our evaluation of the issues. Though the law of property is deeply rooted in history and precedent, its very elusiveness allows many of its principles and methodologies to be adaptable to the contingencies of a modern and rapidly changing world.

During this semester, we will examine the meaning, value, and utility of property law through a close reading of cases as well as all assigned secondary readings. The course begins by examining how tangible and intangible items become vested with property rights; yet the majority of the course will focus on those issues impacting “real property” from eminent domain to real covenants. This course should be supplemented, at a minimum, with Modern Real Estate Transactions, for bar preparation; and Land Use Planning is also recommended for those who intend to practice in the area.

II. LEARNING OUTCOMES

The larger goal of the first year Property course is to expose each of you to many of the issues that confront the everyday practice of property lawyers while providing an analytical framework from which you—as legal professionals—can strengthen and or transform the meaning and value of “property” rights in contemporary culture and life.

At the conclusion of this course, you will be able to:

1. Identify the basic legal principles, substantive rules and essential elements under girding such rules of real and personal property in the U.S. regarding possession, land use and takings, modern real estate transactions, present and future interests, servitudes, and landlord-tenant law.

¹ JEREMY BENTHAM, THE THEORY OF LEGISLATION 69 (1975).

2. Apply such principles and rules to basic factual scenarios.
3. Describe, explore, distinguish and compare in a scholarly and critical manner the concept and fundamental methodologies used to define and defend “property rights” in its historical, philosophical, political, international and social context.

Items 1 and 2 will be measured in two in-semester multiple choice exams.
Item 3 will be measured by the final examination.

III. COURSE MATERIALS

a. Required Texts

1. J. Gordon Hylton, et al. PROPERTY LAW AND THE PUBLIC INTEREST: CASES AND MATERIALS, 3rd Edition (2007).
 2. Gerald Korngold and Andrew P. Morris, eds. PROPERTY STORIES 2ND ED. (2009).
 3. Robert Neuwirth, SHADOW CITIES: A BILLION SQUATTERS, A NEW URBAN WORLD (2006).
 4. Materials available on TWEN
- The reading assignments are an essential part of this course. Although the reading assignments were chosen for their readability, there is a wide variety of complex material that you will need to master. If you do not read the assignment for a particular week, you will find it difficult to follow the lecture material or to engage in discussions. Failure to keep up with the readings will make it very difficult for you to perform well in this course.

- b. **A TurningPoint clicker is required for this course.** The clicker will be used to take attendance AND to make the class discussion more interactive while increasing your substantive knowledge and retention of the material. New or used clickers may be obtained at the SBA Bookstore or online. Please register your clicker at <http://student.turningtechnologies.com/>. **Attendance and other clicking begins the very first class. Please be ready!**

IV. REQUIREMENTS, GRADE DISTRIBUTION AND EXPECTATIONS

- a. Students will be evaluated on the basis of two in-semester quizzes and a final exam (see section V). No rescheduling or make-ups will be allowed outside of documented extraordinary circumstances.
- b. Your final grade will be based on the following:
 1. Quizzes I and II 30%/each
 2. Final Exam: 40%
- c. Given the size and nature of this class, you will not be graded on participation. However, the law school’s academic rules (1-110) stipulate that students are required to attend class “regularly in a punctual and prepared manner.” Accordingly, I expect you to attend and be

prepared to participate in all sessions unless you are ill or otherwise cannot attend to a personal crisis or emergency. It is your responsibility to inform me via e-mail immediately if such a situation should arise that would prevent you from attending.

- **Please note Section III.b. Your attendance for every class will be recorded using the clickers. If you fail to register your clicker and or forget your clicker for the day's class, you will be counted as absent. NO EXCEPTIONS.**
 - **Failure to attend more than two regularly schedule class sessions will be considered “excessive” under the academic rules. As a result, the third absence will result in a 25% reduction of your final grade and the fourth absence will fail you from the course.**
 - Please note that attendance does not just include your physical presence; attendance requires critical thinking, listening attentively, and constructive speaking. To ensure that everyone will feel comfortable sharing their ideas, we will all listen and respond respectfully.
 - I expect all students to be prepared for any questions that may arise during class. If there is any reason why you will not be prepared, please inform me via email no later than 8 p.m. the evening prior to class AND designate one of your classmates to be prepared in your place.
 - If you are not prepared for a question during class, you may not pass on the question. Instead, you have the option of identifying one of your classmates to answer for you.
- d. Class will begin promptly at the scheduled time.
- e. Below is an approximate guide to the final letter grade you will receive in the course:
- A: Signifies outstanding work. You not only completed the required coursework, but did so exceptionally well. Your writing and argumentation were clear and concise, and you showed on all course evaluation tools excellent mastery of the material.
 - B: Signifies good work. You completed the coursework well. Your writing and argumentation were up to standard and you showed good understanding of the material in the quizzes and final exam.
 - C: Signifies acceptable work. You completed the coursework, but just adequately. Your writing and argumentation could use improvement, and/or you did not demonstrate a sufficient mastery or effective understanding of the material throughout most aspects of the course.

V. Final Exam

a. General Guidelines

1. During the course of the semester, you should closely read Robert Neuwirth's *SHADOW CITIES: A BILLION SQUATTERS, A NEW URBAN WORLD* which is available at the law school bookstore.
2. The final exam will ask you to critically and thoughtfully respond to a series of questions posed by the Neuwirth book. As a result, you will be expected to deploy all relevant course materials (e.g.: casebook, TWEN materials, and lectures) to address the question(s) at hand.

VI. OFFICE HOURS AND CONTACT INFORMATION

- a. Please come by during office hours any time to talk about the readings, lectures, assignments or anything else that may happen to be on your mind. If you cannot make my office hours, do not hesitate to schedule an appointment.
- b. Please contact me via email if there is an emergent matter. Although I do have an office phone and voice mail, email is the most efficient way to contact me. Indeed, please do not leave voicemail messages, as I am unlikely to receive them in a timely manner.

VII. OTHER MATTERS

- a. If you qualify for an accommodation because of a documented disability, please consult with the Law School's Assistant Dean of Students to determine an appropriate accommodation based on documented disabilities.
- b. I will make every effort to reasonably accommodate all students who, because of religious and other obligations, have conflicts with scheduled exams, assignments, or required attendance.
 - **In order to receive the accommodation, you need to notify me at least two weeks in advance of the scheduled conflict.**
- c. The course will be utilizing Westlaw's *TWEN* server. We will use *TWEN* for discussion of issues outside of the classroom, posting of assignments, announcements, supplementary material, and up to date information on the course. I will also post an outline no later than midnight the day before each day's class that you can download and bring to class. *TWEN* will also contain a syllabus that will be updated should revisions become necessary.
 - **Information contained on *TWEN*—including but not limited to the syllabus, readings, examination dates, and course policy—should be considered the definitive version.**

d. Classroom Etiquette and Technology Policy

The classroom environment must be conducive to learning for all students. Proper conduct in the classroom is intended to encourage everyone to participate in, to derive benefit from, and ultimately to enjoy the class. It is perfectly acceptable and indeed professionally required, that you demand professional behavior of your classmates in and out of class.

Certain technological devices, in particular, can be distracting to your classmates and me and thus undermine that goal.

- In order to facilitate focused interactive class discussion, there will be occasions when the class will be asked to close their notebook computers and/or turn off technology they have been using. If a student uses classroom time to read or send e-mail messages, visits web sites that the class has not been instructed to visit at that particular time, or engages in any other online or technology based activities (including cellular telephones, text-messaging, etc. .) not directly related to the current classroom discussion, **then that student will be asked to leave and will not be permitted to bring their laptops to class for the duration of the course.**
- **Behavior which interferes with the learning ability of your classmates will be sanctioned accordingly.**

Class Schedule

Week One: What is "property"? The Importance of Possession, the Primacy of the Sovereign.

- Day One:
1. TWEN: Gregory S. Alexander, *The Ambiguous Work of "Natural Property Rights,"* Cornell Law School Legal Studies Research Paper Series.
 2. Hylton, et al, Property Law and the Public Interest (hereafter "Casebook"): Pages 3-15.
 3. Back to TWEN: Carol M. Rose, *Possession as the Origin of Property*, 52 U. Chi. L. Rev. 73 (1985).
- Day Two:
1. Casebook: Pages 24-32.
 2. Robert Neuwirth, *Shadow Cities*, Preface and Prologue, and Chapter 9.
 3. TWEN:
 - Johnson's & Graham's Lessee v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823) **Edited version located in TWEN homepage.
 - **Read this case in relation to the issues presented in pages 24-32 in the casebook.
 - Joseph William Singer, *Nine-Tenths of the Law*, Harvard Law School, Research Paper #122.
 - Bernadette Atuahene, *Land Titling: A Mode of Privatization with the Potential to Deepen Democracy*, 50 ST. L. U. L. J. 761 (2006).

Week Two: What is Property beyond land and tangible goods?

- Day One:
1. Casebook: Pages 32-35.
 2. TWEN:
 - Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).
 - Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849 (1987).
- Day Two:
1. Casebook: Pages 36-60.
 2. TWEN:
 - Kenneth J. Vandavelde, *The New Property of the Nineteenth Century: The Development of the Modern Concept of Property*, 29 BUFF. L. REV. 325 (1980).
 - Read especially closely pages 325-335, 340-348; 357-367.

Week Three: This land is my land, this land is your land.

- Readings:
1. Casebook: Pages 102-109, 114-117, 123-131.
 2. Property Stories: Chapters 1 and 13. ** Read these chapters generally in relation too ALL of the casebook readings for the week.

Week Four: Can that bureaucrat really "take" my property.

- Readings:
1. Casebook: Pages 75-83, 91-98, 262-270 and 244-257.
 2. TWEN: Marcilynn Burke, *Kelo v. City of New London, Babbitt v. Sweet Home, and Other Tales from the Supreme Court*, 75 U. CIN. L. REV.663 (2006).

Week Five: Can that bureaucrat tell me how to use my property?

- Readings:
1. Casebook: Pages 133-176, 189-208.
 2. Property Stories: Chapters 15 & 12.

Week Six: "Finders Keepers, Losers Weepers!"

- Readings:
1. Casebook: 211-233.
 2. TWEN: Van Valkenburgh v. Lutz, 106 N.E.2d 28 (1952)
 3. Property Stories: Chapter 3

Week Seven: Catch Up & Quiz #1.**Week Eight: Oh my goodness!! . . . This is what I signed?**

1. Casebook: Pages 305-336; 344-351.
2. TWEN: Real Estate Documents.
3. Property Stories: Chapter 9.

Week Nine: The "Lord" and the "Serf" in modern America.

- Readings:
1. Casebook: Pages 445-490, 675-686.
 2. Property Stories: Chapter 6.

Week Ten: What's mine is mine and what's yours is mine.

- Readings:
1. Casebook: Pages 381-392, 396-407.
 2. Property Stories: Chapter 5.

Week Eleven: Dead Reckoning.

Readings: 1. Casebook: Pages 407-409, 551-559, 410-434, & 559-566.

Week Twelve: The Cable Guy Cometh!

Readings: 1. Casebook: Pages 501-526, 536-547.

Week Thirteen: Do I really have to water my lawn in a drought?

Readings: 1. Casebook: Pages 578-610; 648-656.
2. Property Stories: Chapters 7 & 8.

Week Fourteen: Final Concluding Thoughts & Quiz #2.

Final Exam Information TBA