

University of Washington School of Law
Winter 2021
Property I
(6 credits)
Class meets MTWTh, 1:30 PM-3:00 PM, remotely via Zoom

Instructor: Greg Hicks

SYLLABUS

Class Description

General introduction to our daily work. Our daily work will consist of studying the law of property in the United States. Each day we will take on a set of materials that present and analyze aspects of the law of property. We will work through those materials, including cases from American courts, examples of important statutes, and texts that describe or analyze the meaning of the law. Our goal always will be to show the content of the law, its rationales, its meaning, and its applications and results. You are responsible for all material assigned on the syllabus or posted to our course Canvas site. **You should be prepared to discuss the material in class every day.** There will also be in-class problems and exercises. Some problems and exercises will be assigned in advance of the class, and on a rotating basis, to “lead students” who will take the lead in presenting and analyzing the problems. Other problems and exercises we will do together, joining in freely. Close attention to and involvement in the daily round of discussions and exercises, whether as speaker or as active listener, will be an important part of your gaining mastery of property. It is not uncommon for discussions to carry on, and I will always let you know just where we are in relation to the assignments posted on the syllabus. Coverage of the assignments may be adjusted from time to time, depending on our progress.

A thought on studying and becoming good at Property. The material presented in class tends to come at you quickly. I think there is no better habit to develop than for you to write up daily summaries of our coverages for your own use, done as soon after class as you can manage. It's a great activity for the evening, or whenever your day has quieted a bit. Do your best to reconstruct the discussion in class and to understand the connection between the discussion and the legal doctrine we have studied on that day. Here are some questions to think about in connection to each day's class discussion: Can you state the legal questions that we were studying, and can you describe the "point" of our discussion? What seems to have been the relation between the legal doctrine we were studying and how the courts resolved particular cases? By thinking actively about those things, you will sharpen your understanding of everything we do. That kind of sharpness will make all the difference in the world for your understanding of Property.

As you will see from the assignment sheet, we will be turning regularly to the Singer *Property* treatise for a firm grounding in Property rules and doctrine. Make consultation and use of Singer *Property* a regular part of your study routine. The great

value of Singer is that it describes property law accurately and clearly and then goes on to offer specific applications of the doctrine and rules to concrete situations. We may not always discuss the Singer readings directly, but they will always be our frame of reference for understanding property rules and doctrine and the challenges of their application.

I am always eager to talk to you about property, and I love to see you getting better and stronger in your work. **You can e-mail me any time you wish to discuss the course**, or to set up an appointment outside of regular office hours.

Learning Objectives

Our broadest objective in Property is that students obtain an effective introduction to the subjects that lie within the law of property. As a subject, property law covers an exceptionally wide range of topics, including fundamental questions of how property rights come into existence; attributes of ownership and the nature of interests in property that the law recognizes; landlord-tenant law; transactions in real property (land); eminent domain; trespass and rights of access to property; and inter-generational transfers of property, to name but a few. This is an introductory and foundational course, and we will study a selection of the most important topics so that students are well grounded for the further study of property law and related subjects. Our goal always will be clear presentation of the range of property law doctrine that is important for understanding the functioning of property as an institution and as a source of rights under American law. We will present important, central property law doctrines, demonstrate their content, operation and limits, and we will build analytical skills and strong legal judgment in students as they learn to analyze, critique and apply the law of property. Through the course, students will come to understand the foundations and content of essential property rules, and they will learn essential doctrine and analysis that will carry them forward to advanced courses in the law school curriculum that either build on or depend on a thorough knowledge of property law fundamentals, among them advanced courses in intellectual property law, trusts and estates and transmission of wealth, public lands, water law, real property security interests, and land use planning.

Textbooks

Jeremy Sheff, *Open Source Property: A Free Casebook* (Aug. 2019)

Singer, *Property* (5th edition 2017)

Grading

The grades for the course are based on a mid-term examination (15%) and a final examination (85%). The **mid-term examination** will take place on **Thursday, February 4 at 1:30 PM**, during the class period. The **final examination** will take place on **Thursday, March 18 at 1:30 PM**, and you will have 4 hours to write your answers. This final examination will be administered using *ExamSoft*, and students are allowed access to their notes and casebooks and any materials posted to our course Canvas site but may not access the internet.

Because of the weight attached to the final exam, I think it is essential that you have the opportunity to receive meaningful feedback about your progress in learning property law over the course of the term and also that you have the opportunity to prepare strategically for the sorts of questions you will see on the final exam. That is the purpose of the mid-term examination, and I will grade and return those exams to you in time for them to be a valuable study aid, showing your raw points and accompanied by a comprehensive grading rubric that will allow you to evaluate your answers. In addition to the midterm examination (graded), I will distribute two optional practice writing exercises during the quarter to give you more experience in writing about property questions. I will distribute rubrics and sample answers for the practice writing questions so that you can compare your answers to those models. The practice exercises will not count in the computation of your grades.

As a second important tool to help you get ready for the final exam, I will post to the course website exam questions from recent past years, together with model answers for those questions. I encourage you strongly to use those questions as exam preparation tools. There is no better practice than “trying your hand” at working through the issues in a past exam question, then comparing your approach and results to those shown in the model answer. This really works and will reward your effort.

Final Exam

As stated above, the final exam is currently scheduled for Thursday, March 18 at 1:30 PM. You are responsible for reviewing the exam schedule to determine if there are any changes.

Class Participation/Expectations

For a description of class participation and daily expectations, see "Course Description", above. Zoom recordings will be made of all our class meetings (barring any technical obstacles), but a recording can never be a substitute for alert class attendance. Class attendance is crucial for your success, and it is required (see Law School Attendance Policy, below).

Course Evaluation

Course evaluations are open online during the last week of classes. Class time will be made available on during the last week of class for filling out your evaluation. Please bring a laptop or mobile device to class on this date to participate in the evaluation.

Review Session

There will be a full course review session shortly after the end of classes. Date and time will be announced towards the end of the quarter.

Cell Phones (Computers)

You may use computers in the classroom for class-related tasks, such as taking notes. Please refrain from checking social media sites and e-mail, or doing other course work as your active attendance and fully-engaged presence is essential for your success and

for our shared work. Please turn cell phones off in class. In addition, the Law School's policy on exams, paper and use of computers on exams is set out here: <https://www.law.washington.edu/students/academics/exams.aspx> ([Links to an external site.](#))

Guests and Visitors

Guests and visitors are welcome.

Research Services Librarians

The Research Services librarians are legal research experts who are dedicated to helping students with research questions, database training, locating academic resources, etc. Visit the library's [UW Law Students page \(Links to an external site.\)](#) for more information about their services generally. To get help, you can email the Research Services librarians directly at lawref@uw.edu. If you have a detailed research question or would prefer to meet privately with a librarian, contact them at lawref@uw.edu and ask about setting up an [individual appointment \(Links to an external site.\)](#).

Law School Attendance Policy

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance.

At any time after the fifth week of a course (halfway through a summer session course), a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor's so indicating to the Academic Services Office.

Access and Accommodation

To request academic accommodations due to a disability, please contact Disability Resources for Students (DRS), at 011 Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. If you have a letter from DRS, please present the letter to the Instructor so you can discuss the accommodations you might need in this class.

Religious Accommodations

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at Religious Accommodations Policy (<https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/> ([Links to an external site.](#))). Accommodations must be requested within the first two weeks of this course using the Religious Accommodations Request form (<https://registrar.washington.edu/students/religious-accommodations-request/> ([Links to an external site.](#)))

Class Meetings and Daily Assignments

An important note on the pagination of the Open Source Property casebook: All reading assignments in the Open Source Property ("OSP") casebook will be shown on this list of Daily Assignments with two sets of pagination. The first set corresponds to the page numbers shown in the upper left-hand corners of OSP itself. The second set corresponds to the page numbers within the reference bar that appears at the bottom of each page of OSP.

CLASS 1 – Monday, January 4

Topics: Introduction to Property; "The right to exclude" as an attribute of property

Readings/Assignments:

Open Source Property Casebook (hereafter, "OSP") 3-17 (17-33) (including *Jacque v. Steenberg Homes*; *State v. Schack*; Civil Rights Act of 1964; Americans with Disabilities Act

Singer (Property) (hereafter, "Singer") sections 1.1.1-1.1.4; 2.1 and 2.2.1

CLASS 2 – Tuesday, January 5

Topics: Attributes of property, continued; theories of the nature of property rights in relation to other legal interests

Readings/Assignments:

OSP 17-31 (32-47)

Singer, Section 1.1.5 ("Legal Relations")

CLASS 3 – Wednesday, January 6

Topic: Introduction to the "subjects of property": what kinds of things can become property; are there reasons to expand or narrow the range of things that can be owned?

Readings/Assignments:

OSP 38-47 (54-63); 69-84 (84-99)

CLASS 4 – Thursday, January 7

Topic: How property interests arise: what are the adequate and necessary steps for the creation of a property right where one has not previously existed?

Readings/Assignment:

OSP 85-95 (101-110); 101-109 (116-124); 114-120 (130-136)

CLASS 5 – Monday, January 11

Topic: Allocation and Extinction of Property Rights: the role of the state as source of property rights

Readings/Assignments:

OSP 120-138 (136-153); Singer section 15.2.1

CLASS 6 – Tuesday, January 12

Topic: Thinking about the relationship between legal rules for granting property rights and policy goals for property: water rights and rights in fugitive minerals as examples of policy-in-property

Readings/Assignment:

OSP 144-162 (159-177)

CLASS 7 – Wednesday, January 13

Topic: A fundamental tool for the road ahead: the concept of trespass

Readings/Assignments:

OSP 182-189 (198-204); Singer 2.1 and 2.2

Topic: Adverse possession doctrine as a limitation on protection against trespass

Readings/Assignment:

OSP 200-215 (216-230)

CLASS 8 – Thursday, January 14

Topic: Adverse possession, continued

Readings/Assignment:

OSP 215-228 (230-244)

NO CLASS – Monday, January 18 HOLIDAY

CLASS 9 - Tuesday January 19

Topic: Introduction to interests in land (We will study the basis and the current state of the law defining the types of legal interests that can exist in land. An important fact is that the types of interests that can be created are limited as a result of public policies, some of them from as far back in time and as far away as medieval England. We began today with an introduction to “estates in land”, the name given to the types of interests in land that the law recognizes)

Readings/Assignment:

OSP 294-303 (311-318); 302-311 (318-327)

CLASS 10 - Wednesday January 20

Topic: Interests in land, continued

Readings/Assignment:

Singer, sections 7.1 through 7.6.2

(Today’s readings cover much of the same ground as Tuesday’s assignment, but they offer us a useful second look at the rules of property conveyance, and, in the set of “Hard Cases” at pages 316, 318, and 320, they give us a chance to better understand some of the important practical impacts of different forms of language)

CLASS 11 - Thursday January 21

Topic: Interests in land, continued (policies restricting forms of interests)

Readings/Assignments:

OSP 356-369 (**omit** notes 4 and 5 at 362) (372-384); Singer, sections 7.7.2 and 7.7.3

(The issue in today’s readings is this: there is a very wide imaginable universe of interests in property that might be created, but the law has reasons of its own to restrict that universe. So, we will be looking at some of the legal policies for limiting the types of possible conveyances and how those policies are achieved through rules.)

CLASS 12 - Monday January 25

Topic: Non-possessory interests in land: easements and licenses

Readings/Assignment:

OSP 369-390 (384-405)

CLASS 13 - Tuesday January 26

Topic: Non-possessory interests in land: easements and licenses; public use rights

Readings/Assignment:

OSP 390-401 (*405-416*)

CLASS 14 - Wednesday January 27

Topics: Trusts and Property, an introduction

Forms of co-ownership of property

Readings/Assignments:

OSP 402-413 (*417-428*); Singer, section 7.6.3

OSP 419-435 (*434-450*)

CLASS 15 - Thursday January 28

Topic: Forms of co-ownership of property, continued

Readings/Assignment:

OSP 435-456, through note 1 on 456 (*450-471*)

CLASS 16 - Monday February 1

Topics: Forms of co-ownership of property, continued, including a brief introduction to the law of community property

Readings/Assignments:

OSP 456-463; 476-479 (*471-479*); (*492-494*)

Singer, "Hard Case" studies at pp. 354; 355; 356; 368; 369

(We will choose a few of Singer's "Hard Cases" to illustrate some of the difficulties that can arise with respect to co-owned property.)

CLASS 17 - Tuesday February 2

Topic: Leaseholds (the law of landlords and tenants) -- introduction

Readings/Assignment:

OSP 480-500 (496-516)

CLASS 18 - Wednesday February 3

Topic: Leaseholds (the law of landlords and tenants) -- introduction (continued)

Readings/Assignment:

OSP 480-500 (496-516)

CLASS 19 - Thursday February 4

Midterm Exam

CLASS 20 - Monday Feb, 8

Topic: Leaseholds (the law of landlords and tenants), continued

Readings/Assignment:

OSP 500-510 (516-525).

Note: the readings for today and Tuesday contain a number of problems and exercises that will introduce us to application of anti-discrimination laws in the setting of residential leases. We will have a look at the Problems on 502 (518) and the Exercise in Advertising on 504 (519).

CLASS 21 - Tuesday February 9

Topic: Leaseholds, continued (transferring the lease; eviction).

Readings/Assignment:

OSP 510-526 (including Problems beginning on 516 and 525) (525-541); 535-545 (550-560)

CLASS 22 - Wednesday February 10

Topic: Leaseholds, continued

Readings/Assignment:

OSP 510-526 (including Problems beginning on 516 and 525) (525-541); 535-545 (550-560)

CLASS 23 - Thursday February 11

Topic: Leaseholds, continued (the covenant of quiet enjoyment and the warranty of habitability)

Readings/Assignment:

OSP 547-566 (563-582)

NO CLASS – Monday, February 15 HOLIDAY

CLASS 24 - Tuesday February 16

Topic: Leaseholds, continued

Readings/Assignment:

Analysis of “Residential Rental Agreement and Contract” (We will analyze and comment on the “Residential Rental Agreement and Contract” on OSP 577-582 (593-597), going into breakout rooms to do the work.)

CLASS 25 - Wednesday February 17

Topic: We will have a look, beginning today, at rules governing the transfer of property, including transfers by gift, sale, and by will or intestacy. We will begin with transfers by gift.

Readings/Assignment:

OSP 583-609 (599-625).

[We will have a look at some of the Review Problems beginning at 624 (640).]

CLASS 26 - Thursday February 18

Topic: Land Transactions (transfer of interests in land): the requirements of the deed.

Readings/Assignment:

OSP 634-655 (649-671).

CLASS 27 - Monday February 22

Topics: Land Transactions, continued, and mortgages

Readings/Assignment:

OSP 665-669 (680-684); 670-690 (686-706)

CLASS 28 - Tuesday February 23

Topic: mortgages and their regulation

Readings/Assignment:

OSP 690-702; 720-735 (706-718); (736-750)

CLASS 29 - Wednesday February 24

Topic: Recording acts, their purpose and operation

Readings/Assignment:

OSP 765-788 (781-804), including Problems at 792-793.

CLASS 30- Thursday February 25

Topic: Eminent domain (794-816)

Readings/Assignment:

OSP 794-815 (809-831)

CLASS 31- Monday March 1

Topic: Nuisance

Readings/Assignment:

OSP 817- 837 (833-852)

CLASS 32 - Tuesday March 2

Topic: Nuisance, continued (remedies)

Readings/Assignment:

OSP 837-857 (852-872)

CLASS 33 - Wednesday March 3

Topic: Regulatory takings

An introductory note on regulatory takings, our last topic:

Thoughts to get us started on regulatory takings. Regulatory takings will be our last new topic in Property. We will be studying how the courts analyze whether the burdens of government regulation on property are so heavy that the property owner must be compensated for the value that is lost because of the regulation. We will see the courts giving voice to two strikingly different understandings of the meaning and the prerogatives of property in its relation to the state. Oversimplifying somewhat, one view sees property as so nested in the legal order and so dependent for its value on the presence and activity of the state that significant regulatory burdens are necessary, expected, and ultimately a source of value and security. The other view, again oversimplifying somewhat, sees property and its rights as a necessary bulwark of individual autonomy. In this latter view, an essential function of the law, and especially of constitutions state and federal, is the protection of private property against the potential for overreaching regulation that always lies in state power.

The two views have in common a commitment to the legal requirement that if a regulation produces a taking, compensation must be paid. Their differences lie in their understandings of when a regulation will have crossed the threshold requiring payment. Emphasis and orientation play important roles in this area of the law. Sharply divided courts are not uncommon. Also, case opinions tend to be very long, as judges struggle with precedents, striving for consistency and attempting to spell out just why a given regulatory impact has or has not produced a “taking” requiring that compensation be paid. Prepare to settle in with our cases.

Readings/Assignment:

OSP 858-891 (874-907)

A note on today’s readings: The assignment today is long and will carry over to CLASS 33 on Thursday. The reason for the carry-over is the great length of the *Penn Central* case.

CLASS 34 - Thursday March 4

Topic: Regulatory takings, continued

Readings/Assignment:

OSP 891-896; 922 (“Exactions”)-933 (907-912; 938-949)

+ carry-over discussion from CLASS 33

CLASS 35 - Monday March 8

Topic: Regulatory takings, continued

Readings/Assignment:

OSP 933-950 (*949-965*)

CLASS 36 - Tuesday March 9

Overflow day; course review

CLASS 37 - Wednesday March 10 (Last Day)

Course review; exam review.