

University of Washington
School of Law
Winter Quarter 2021
Property A 503B (Andrews)

6 Credits

Class meets Monday-Thursday from 1:30-3:00 pm.

Class Days = 37 (Jan 1-Mar 10 minus two holidays (1/18 & 2/15))

Exam = Thursday, March 18 at 1:30

Instructor: Professor Tom Andrews

Office: Home

Office Hours: M-Th 3:15 to 4:30 (on-line on zoom from home)

Other times by appointment

ZOOM Class Link:

ZOOM Meeting ID:

Class Description:

Analysis of the legal relationship among persons as to the ownership, transfer, and use of property from both an historical and a contemporary perspective.

Subjects covered include personal property, gifts, bailments, intellectual property, trespass and nuisance, discrimination, estates and interests in land, landlord-tenant, real estate transactions, public control of land use and the law of eminent domain and the takings clause. This is a survey course and the level of treatment reflects that fact. In some cases, there are opportunities for a great deal more detail in courses offered in the second and third years (e.g. intellectual property; gifts; real estate transactions; land use). In other cases, there are no upper level courses currently available (e.g. landlord/tenant, housing discrimination).

Learning Objectives:

- You should acquire the ability to identify basic issues of property law and to analyze how they are likely to

be resolved in the United States. In the process of acquiring this ability, you should learn:

- How the concept of property serves as a building block of our legal system, and the relationship between property law and the law of contracts, torts, and constitutional law.
- The ways in which property rights are divided across spatial, temporal and functional lines.
- The historical legacy of discrimination in the recognition of property rights and duties in the United States and what we have done to remedy it.
- The ways in which persons acquire and preserve rights to and in property.
- The duties owed by property owners to their neighbors and society at large.
- The role that government plays in creating and limiting property rights at the federal, state, and local levels.

Textbooks

Joseph Singer, Property (5th ed. 2016). Note that this is not the Casebook authored by Joseph Singer, but a treatise on the law of property.

Course Supplement prepared by Professor together with Supplemental Materials to be provided on an ad

hoc basis found on the Canvas Website for the
Course: Required Course Materials page

Problem Sets for most assignments will be found on
the Required Course Materials page.

Additional Information:

As you know, classes will be conducted over zoom because of the pandemic. I plan to record all classes so you do not need to request this if you must miss a class. You will need to access the course Canvas website on the UW server to access those recordings on the Canvas Page/Panopto:

You will also find a copy of the Syllabus and the Course Supplement on the canvas website for this course.

Finally, I will be deploying a number of multiple choice quiz questions to the class throughout the class to help me and you to self-assess how you are doing with the doctrinal material assigned. Those quiz questions will be deployed on the Wolters-Kluwer “Casebook Connect” website and I will send you information about how to access those by December

Grading

One hundred percent (100%) of the course grade will be based on the final exam. A summary of my grading rubric for the final exam is posted on the Canvas Page on the “Exam Rubrics” page.

Mid-Term Exam

I plan to have you take an in-class exam after 15 classes, and plan to supply you with a model answer against which you can assess your own progress in mastering the subject matter.

Final Exam

I expect to give a 4 hour “closed book” exam. This means you will not be able to have the course text (Singer) or the Supplement open. I will require ExamSoft, closed to the internet. You will, however, be able to access any notes or outlines you have personally created or created as part of a study group, including any powerpoints I have distributed to the extent you have incorporated them into your notes.

In past years, I have generally asked two essay questions, so that is the most likely format of the final

this quarter. But I reserve the right to have more, shorter questions.

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. The exam schedule for this quarter is posted at

<https://www.law.washington.edu/students/exams/default.aspx?vw=2020/1&sw=2020/10#top>

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>

Class Participation/Expectations

I expect class participation and will call on students to assess their level of preparation and understanding. This not only helps me to get to know you individually—which can be particularly valuable if you want a reference from me later --- but it also gives me an idea of how the material is sinking in, and gives you an opportunity to participate in class. Given the logistics of interaction over zoom with so many students, I plan to assign “experts” for each class after the first week of class and those are the students

with whom I will primarily interact for a given class. But to the extent possible, I will call on others who volunteer by raising their hands.

As this time, I am still deliberating whether I will ask you to enable video on your home computers --- assuming I am allowed to do that.

Course Evaluation

Course evaluations are open online during the last week of classes.

Review Session

We have 37 classes and I have scheduled 36 units of new material. I plan to use the additional day for the in-class exam I described above. I would be happy to schedule a review session after classes end if students want it. One possible place for this would be the day after classes end (Thursday March 11) but in the past students have preferred a time closer to the exam, after other exams are done. E.g. Tuesday March 16 or Wednesday March 17. I am open to either. If we have to miss classes because of snow or some other problem, we will need to recalibrate.

Cell Phones (Computers)

I expect cell phones to be in airplane mode during class unless, of course, you need to be attending class on your cell phone on a particular day. I expect you will generally be using computers to attend class over zoom and I would suppose you will also be using them for taking notes and accessing course materials that are available in electronic format. There may be occasions when it is useful to check the current status of a statute or case on-line during class, so you are welcome to do that too. I recommend that you NOT use your computers for taking verbatim notes of what I or others say but instead try to take notes which integrate your understanding with what others are saying. Please do not carry on electronic conversations—including private chats-- with classmates or others during class. Please do not websurf for items or information that are unrelated to our class. These practices interfere with engagement during class and reflective learning.

Guests and Visitors

I am happy to have you allow guests and visitors to listen to and/or view class if they are present wherever you are attending class via zoom, including children for whom you need to care during class, provided they do not disrupt the learning environment. You do not need to ask in advance. But I will not be

able to admit guests separately into the zoom for class.

Law School Attendance Policy

Under ABA Accreditation Standard 304 a law school shall require regular and punctual class attendance. The UW policy is as follows:

At any time after the fifth week of a 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.

An instructor may also impose stricter attendance standards or other sanctions for nonattendance, including lowering of a grade, provided that students are informed at the start of the course of the instructor's attendance rules and possible sanctions.

I do not impose stricter attendance standards than those above.

Access and Accommodation

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions.

Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

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 Faculty Syllabus Guidelines and Resources.

Accommodations must be requested within the first two weeks of this course using the Religious Accommodations Request form available at <https://registrar.washington.edu/students/religious-accommodations-request/>.

Class	TOPIC	READING
1	I. INTRODUCTORY A. CONCEPT OF PROPERTY	<i>Singer</i> ¹ xxv-xxvii & Ch. 1 (22 pp.)
Monday	PLEASE READ THE FOOTNOTES ON THIS SYLLABUS.	Problem 1 ²
Jan. 4		<i>International News Service v. Associated Press</i> , 248 U.S. 215 (1918) ³ Cf. ⁴ <i>Agrarian Justice</i> (Thomas Paine 1797).

¹ **Singer = Joseph Singer, Property (5th ed. 2017).** The Singer text is dense but clear in laying out the rules of law and the uncertainties, which is why I am assigning it. I believe it will give you a much deeper and more thorough understanding of the law of property than will simply reading a series of cases. Worry about the footnotes only insofar as needed to understand the text. After doing a “timed” careful reading of many of the sections, I have adopted a rule of thumb that it takes me about an hour for every 18-20 pages assigned in Singer. I am expecting 2 hours of reading for each hour of class time. Since we have an 80 minute class, that is 2 2/3 hours of homework, which I round down to 2.5 hours, which translates to about 45-50 pages in Singer (if I am doing the reading) and if that is all that is assigned. You will see that all of the readings from Singer are much shorter than that. I have dialed back my careful reading speed to something that I think most students can do with time for reflection and notes. (If I assigned the whole book and divided by the number of our classes (37), it averages out at just over 23 pages/class.) Many assignments from Singer are less than 20 pages. Where the Singer material is particularly short, I have added cases or other materials. My objective is to assign you no more than 2.5 hours of homework per class. If you are taking less time than that, you are probably not reading carefully enough. If you are taking much more time than that, you are probably worrying too much about the detail. Remember this is a survey course. In thinking about the length of the reading from Singer, notice that at the beginning of each chapter he has an introductory section that summarizes the detail that follows in the chapter. Some of these intros are quite long. E.g. Ch. 10.1 (6 pp). You might skip reading the introductory section for class and use it to review at the end.

² Problems will be found on the Canvas page on the page for “Required Course Materials”.

³ You can read assigned cases on westlaw or lexis or any other source of your choice. For your convenience I have compiled all of them into a Course Supplement (CS) that I plan to circulate to you all electronically. A copy will also be uploaded to the Canvas site on the “Required Course Materials” Page. Some of the non-case materials assigned are also in the CS and I have shown this on the syllabus as “CS”).

⁴ **I have designated a number of items in the syllabus by the prefix “cf.” This means that they are not required, but they are relevant and useful if you have time to read them.** This particular essay by Thomas Paine can be found on the website under Supplemental Materials of Interest. For those interested, I have also posted there a collection of other theoretical materials on Property. Where cases, statutes, or regulations are designated by a “Cf.” and highlighted, and therefore not required, I have generally not included them in the Supplement or on the webpage, but presume you can find them if you want.

2	B. HISTORICAL ORIGINS OF PROPERTY IN AMERICA	<i>Cohen's Handbook of Federal Indian Law (Ch. 15)(excerpts)(CS)</i>
Tuesday	1. INDIGENOUS PROPERTY RIGHTS	<i>Johnson v. M'Intosh, 21 U.S. 543 (1823)</i>
Jan 5		<i>McGirt v. Oklahoma, 140 S.Ct. 2452 (2020)(ed)</i>
3	B. HISTORICAL ORIGINS OF PROPERTY IN AMERICA	<i>African Slavery in America (1775)(CS)</i>
Wednesday	2. SLAVERY & THE LAW OF PROPERTY	<i>Dred Scott v. Sanford, 60 U.S. 393 (1857) (Excerpts)(11 pp)⁵</i>
Jan 6		<i>U.S. Con. Amends 13&14</i>
		<i>Civil Rights Act of 1866 (Section 1)⁶</i>
		<i>Shelley v. Kraemer, 334 U.S. 1 (1948)</i>
		<i>The Color of Law (2017)(Preface)</i>
		<i>Berry Poem</i>
		Problem 3
		<i>Ta-Nehisi Coates: The Case for Reparations (2014)</i>

⁵ I am asking you only to read a massively edited portion of the Dred Scott decision, and of one of the dissenting Justices. The edited version can be found in Course Supplement. The full case is hotlinked on this syllabus and the table of contents if you want to explore more of it.

⁶ Required Course Materials. Where a required reading is not in the Course Supplement and is not a current statute or case or case easily found on Westlaw, I have tried to upload it to the Canvas page called Required Course Materials. If you don't find it there, check the section called "Supplemental Materials." If you can't find it either place, please contact me.

	Assignment 3 contin'd next page	<i>David Frum: The Impossibility of Reparations (2014)</i>
4	D. HISTORICAL ORIGINS OF PROPERTY IN AMERICA	<i>Singer Ch. 9.1-9.6 (29pp)</i>
Thursday		
Jan 7	3. GENDER, MARRIAGE AND PROPERTY	<i>RCW 26.16.010-.030, 26.16.200, .220-.230</i> <i>Connell v. Francisco, 127 Wn.2d 339 (1995)</i> Problem 4 Connected Quiz 4⁷
5	C. PERSONAL PROPERTY I:	<i>Singer Ch. 16.1-16.3 (10 pp)</i>
Monday		Problem 5
Jan. 11	1. BASIC DISTINCTIONS	<i>Brown on Personal Property (1955) Ch. 1, §7.⁸</i> <i>In re Oakley, 344 F.3d 709 (7th Cir. 2003)</i> <i>Popov v. Hayashi, 2002 WL 31833731 (CA Superior Ct)</i> <i>Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995)</i> <i>RCW 63.21.010-.080</i>
	2. CAPTURE	
	3. FINDERS	

⁷ Connected Quizzes are to taken after we finish the related class and before midnight of that class day.

⁸ Required Course Materials

*Treasure Hunting: A
Case Study⁹*

Connected Quiz 5

6 C. PERSONAL PROPERTY II: Singer Ch. 16.5- 16.9
(9 pp.)

Tuesday

Jan. 12

1. ACCESSION

Problem 6

*Meyers v. Gerhart, 54
Wash. 657 (1913)*

2. BAILMENTS

RCW 62A.2-403

3. GOOD FAITH PURCHASERS

*Heinrich v. Titus-Will
Sales, Inc., 73 Wash.
App. 147 (1994)*

4. BODIES

*Moore v. Regents of
Univ. of California,
51 Cal. 3d 120, 134-
48 & 153-60 (1990)*

7

C. PERSONAL PROPERTY III:
INTELLECTUAL PROPERTY

Connected Quiz 6

Singer 17.1-17.2,
17.6-17.9 (13 pp)

Wednesday

Jan 13

1. COPYRIGHT

Assign 7 cont'd next page

*Suntrust Bank v.
Houghton Mifflin Co.,
268 F.3d 1257 (11th
Cir. 2001)*

⁹ Course Supplement

2. PUBLICITY RIGHTS

Midler v. Ford, 849
F.2d 460 (9th Cir.
1988)

White v. Samsung
Elecs. Am., Inc., 989
F.2d 1512 (9th Cir.
1993) (Kozinski
dissent from court's
refusal to hear en
banc).

RCW 63.60.010-.080

3. MORAL RIGHTS

4. CULTURAL PROPERTY

*Cf. The Hebrew
University of
Jerusalem v. General
Motors LLC, 903
F.Supp.2d 932 (CD
Cal 2012).*

8

D. DONATIVE TRANSFERS

Singer Ch. 9.7 (6 pp)

Thursday

1. GIFTS AT DEATH

*RCW 11.02.005(13),
11.04.015*

Jan 14

RCW 11.12.010-.020,

*In re Estate of Kuralt,
303 Mont. 335 (2000)*

*Hecht v. Superior
Court, 50 Cal. App.
4th 1289, 59 Cal.
Rptr. 2d 222, 223-29
(1996)(ed.)¹⁰*

Problem 8

Connected Quiz 8

¹⁰ I have edited the 1996 Hecht decision shown by inserting an important piece from an earlier 1993 decision. The edited version is contained in Course Supplement.

9	2. GIFTS DURING LIFE	Singer Ch. 16.4 (4 pp),
Tuesday		Singer Ch. 11.4.1.2 (4 pp)
Jan. 19		<i>Gruen v. Gruen</i> , 496 NE2d 869 (NY 1986)
		<i>In re Estate of Lamplough</i> , 270 Neb. 941 (2006)
		<i>Walton v. Snow</i> , 2014 WL 820579 (Del. Com. Pl. 2014)
		<i>Scherer v. Hyland</i> , 75 N.J. 127 (1977)
		RCW 64.28.010; RCW 30A.22.050, .090, .100, .140; RCW 11.02.091

Problem 9

10	II. RIGHTS WITH RESPECT TO PROPERTY	
Wednesday	A. RIGHT TO EXCLUDE & TRESPASS	Singer Ch. 2.1-2.5, 2.9 (23 pp)
Jan. 20	1. HORIZONTAL PROPERTY RIGHTS	<i>Western Turf Assoc. v. Greenberg</i> , 204 U.S. 359 (1907)
	2. VERTICAL PROPERTY RIGHTS	<i>Proctor v. Huntington</i> , 169 Wn. 2d 491 (2010)
		<i>Chance v. BP Chemicals, Inc.</i> , 77 Ohio St.3d 17 (1996)

3. TRESPASS TO
CHATTELS

Problem 10

11
Thursday
Jan. 21

B. PUBLIC ACCOMMODATION
LAW

Connected Quiz 10

Singer Ch. 2.6
(omitting subsections
on “Pre-and
Postcontract
Discrimination” and
“Does section 1981
regulate private
clubs?” (pp. 59-
middle of page-
64)(23 pp)

*State v. Arlene’s
Flowers, Inc., 193
Wn.2d 469, 481-92
(2019)(11 pp only)*

RCW 49.60.215

Problem 11

12
Monday
Jan. 25

C. FREE SPEECH ACCESS

Singer Ch. 2.7-2.8 (15
pp)

*PruneYard Shopping
Ctr. v. Robins, 447
U.S. 74 (1980)*

D. PUBLIC TRUST DOCTRINE

*Matthews v. Bay
Head Imp. Ass’n, 95
N.J. 306 (1984)*

Problem 12

III. RELATIONSHIPS AMONG NEIGHBORS

13	A. NUISANCE	Singer 3.1-3.2 (25 pp)
Tuesday		<i>Boomer et al v. Atlantic Cement Co., Inc.</i> , 26 N.Y.2d 219 (1970)
Jan. 26		<i>Adams v. Cleveland-Cliffs Iron Co.</i> , 602 N.W.2d 215 (Mich.App. 1999).
		<i>Cf. Bradley v. Am. Smelting & Ref. Co.</i> , 104 Wn.2d 677 (1985); <i>Bradley v. Am. Smelting & Ref. Co.</i> , 635 F.Supp. 1154 (W.D.WA. 1986)
		Problem 13
		Connected Quiz 13
14	A. NUISANCE (CONT'D)	Singer 3.3-3.6 (15 pp)
Wednesday	1. WATER	<i>Sipriano v. Great Spring Waters of America</i> , 1 S.W.3d 75 (Tex. 1999)
Jan. 27	2. SUPPORT	<i>Klebs v. Yim</i> , 54 Wn. App. 41 (1989)
	3. LIGHT & AIR	<i>Prah v. Maretti</i> , 321 N.W.2d. 182 (Wis. 1982)

Problem 14

Connected Quiz 14

15
Thursday
Jan. 28

B. ADVERSE POSSESSION

Singer Ch. 4.1-4.3 (22 pp.)

Howard v. Kunto, 3 Wn. App. 393 (1970)

Mannillo v. Gorski,
54 N.J. 378 (1969)

RCW 4.16.020,
7.28.070

16
Monday
Feb. 1

B. ADVERSE POSSESSION
(CONT'D)

Problem 15

Singer Ch. 4.4-4.8 (12 pp.)

Malella v. Keist, 2011 WL 6916482, 165 Wn.App. 1020 (2011)

Devins v. Borough of Bogota, 124 N.J. 570 (1991)

RCW 4.16.160,
7.28.090

Songbyrd, Inc. v. Estate of Grossman, 206 F.3d 172 (2d Cir. 2000)(Facts & III only).

O'Keefe v. Snyder, 83 N.J. 478

(1980)(edited version
in Course Materials).

Problem 16

Connected Quiz 16

Review

17 **MIDTERM ASSESSMENT**

Tuesday

Feb. 2

18 C. LICENSES & EASEMENTS

Wed 1. IMPLIED EASEMENTS

Feb. 3

Singer Ch. 5.1-5.4 (31
pp)

Van Sandt v. Royster,
148 Kan. 495 (1938)

RCW 8.24.010, .030

Problem 18

Connected Quiz 18

Singer Ch. 5.5-5.6 (17
pp)

19 2. EXPRESS EASEMENTS

Thursday

Feb. 4

Brown v. Voss, 105
Wn. 2d 366 (1986)

*Willard v. First
Church of Christ,
Scientist*, 7 Cal. 3d
473 (1972)

*Marcus Cable
Associates, L.P. v.
Krohn*, 90 S.W.3d 697
(Tex. 2002)

Problem 19

Connected Quiz 19

20	D. COVENANTS	<i>Singer Ch. 6.1-6.2 (28pp)</i>
Monday		Problem 20
Feb. 8		Connected Quiz 20
21	D. COVENANTS (CONT'D)	<i>Singer Ch. 6.3-6.5 (17 pp.)</i>
Tuesday		<i>Forster v. Hall, 265 Va. 293 (2003)</i>
Feb. 9		Problem 21
		Connected Quiz 21
	D. COVENANTS (CONT'D)	<i>Singer Ch. 6.6-6.8 (28 pp)</i>
22		Problem 22
Wednesday		Connected Quiz 22
Feb. 10		
23	E. COMMON INTEREST COMMUNITIES	<i>Singer Ch. 8.5 (13pp)</i>
Thursday		<i>Wilkinson v. Chiwawa Communities Assoc., 180 Wn.2d 241 (2014)(majority opinion, thru section II only); skim dissents.</i>
Feb.11		Problem 23
		Connected Quiz 23

V. MARKET FOR SHELTER

27	A. LEASEHOLDS	Singer Ch. 10.1, 10.3-10.4 (30pp)
Monday		Cf. Singer Ch. 10.2
Feb. 22		Problem 27
		Connected Quiz 27
28	A. LEASEHOLDS (CONT'D)	Singer Ch. 10.5-10.7.2 (26pp)
Tuesday		<i>RCW 59.18.040,.060,.090, .100, .110, .115, .130, & .200.</i>
Feb. 23		Problem 28
		Connected Quiz 28
29	B. REAL ESTATE TRANSACTIONS	Singer Ch. 11.1-11.3.7 (omit pp. 522-25 on "Title by Adverse Possession" and section 11.3.6 (p. 531))(29pp)
Wednesday		Problem 29
Feb. 24	1. BROKERS	
	2. PURCHASE & SALES CONTRACTS	Connected Quiz 29
30	B. REAL ESTATE TRANSACTIONS (CONT'D)	Singer Ch. 11.4 (26pp.)
Thursday		
Feb. 25	3. DEEDS AND TITLE PROTECTION	How to Conduct a Title Search ¹¹
		Recording Act Problems

¹¹ This item and the Recording Act Problems (below) may be found in the Course Supplement.

Problem 30

4. REAL ESTATE FINANCE

Connected Quiz 30

Real Estate Finance
Overview (2
pp)(background only)

31 C. FAIR HOUSING LAW

REF Quiz

Singer Ch. 12.1-12.3
(31pp)

Monday

March 1

*Cf. Fair Housing
Council of San
Fernando Valley v.
Roommate.com, LLC,
666 F.3d 1216 (9th
Cir 2012)*

32 C. FAIR HOUSING LAW
(CONT'D)

Problem 31

Singer Ch. 12.4-
12.9.3 (29pp)

Tuesday

March 2

Problem 32

Connected Quiz 32

VI. LAND USE REGULATION

33

Singer Ch. 13.1-
13.3.2; 13.4-13.7 (29
pp)

Wednesday

March 3

Problem 33

Connected Quiz 33

**VII. EMINENT DOMAIN &
REGULATORY TAKING**

34
Thursday
March 4

Singer Ch. 14.7-14.10
& 15.4.1-15.4.2 (23
pp)

A. PUBLIC USE REQUIREMENT,
STATE LEGISLATION AND THE
UNIQUE LAW FOR NATIVE
AMERICANS

[Problem 34](#)

[Connected Quiz 34](#)

35
Monday
March 8

B. GENERAL BALANCING
TEST

Singer Ch. 14.2.3,
14.4-14.6 (25pp)

*Penn Cent. Transp.
Co. v. City of N.Y.,
438 U.S. 104 (1978)*

[Problem 35](#)

[Connected Quiz 35](#)

36-37
Tuesday &
Wednesday
March 9-
10

C. CATEGORICAL TAKINGS

Singer Ch. 14.3
(36pp)

*Cf. Pascoag Reservoir
& Dam, LLC v. Rhode
Island, 217 F. Supp.
2d 206 (D.R.I. 2002)
(Background and
Takings Analysis
only)*

[Problem 36](#)

[Connected Quiz 36](#)