

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW
SPRING 2020**

Course: PROPERTY
LAW 607-319

Instructor: Prof. Audrey McFarlane
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OFFICE HOURS: right after class or email for an appointment
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Days/Time: Tues. & Thurs., 10:00am - 11:50pm

Location: Room assignments are available through [MyUB](#).

Course Description:

The course will provide an overview of property law, including the substantive law governing the nature of property, ownership, possessory present estates and future interests, concurrent interests, leasing real property, selling real property, public and private land use controls. The course will also provide an overview of the conceptual, theoretical and policy underpinnings of property law. The course materials draw on case law, statutes, theory and policy from a variety of jurisdictions, including Maryland law. Through this course, students will understand the key concepts of property law and learn how to conduct legal analysis to apply those concepts to a variety of factual situations. Students also will learn how to think critically about the law and legal systems, understand the role of lawyers and clients in creating and interpreting the law, and understand the law in action.

Required Course Materials:

- SINGER, BERGER, DAVIDSON, PEÑALVER, PROPERTY LAW: RULES, POLICIES, AND PRACTICES 7TH ED. (ASPEN LAW & BUSINESS 2018) (“MAIN TEXT”);
- TWEN WEBSITE MATERIALS [HTTP://LAWSCHOOL.WESTLAW.COM](http://LAWSCHOOL.WESTLAW.COM) (“WEB HANDOUTS”)
- PETER T. WENDEL, A POSSESSORY ESTATES AND FUTURE INTERESTS PRIMER 3RD ED. (2007) (“WORKBOOK”)

Recommended Hornbook: (optional):

- JOHN G. SPRANKLING, UNDERSTANDING PROPERTY (4TH ED. 2018) (treatise) (available on reserve in library)

Student Learning Outcomes:

1. Students will understand key concepts of property law.
2. Students will develop the ability to conduct legal analysis through application of property concepts, theoretical and policy considerations to a variety of factual situations.
3. Students also will develop critical thinking skills about the law and legal systems and an understanding of the role of legal advocates in creating and interpreting the law.

Grades:

Your grade will be based on a closed-book¹ final examination (consisting of a multiple-choice section and an essay section) (approx. 85%) and class participation (approx. 15%). Class participation is divided into 4 parts and defined as follows:

- 1) **Part I - DURING CLASS** - If you participate during class by volunteering or responding appropriately when called on, you will have met part I of the class participation requirement. Final grades may be lowered for habitual

¹ You will be permitted to have with you one sheet of paper 8½x11 containing your own, original (not photocopied or scanned) personally prepared, handwritten notes (front & back) during the essay portion of the final exam. You will be required to turn in this note page along with your exam answer & booklet.

unpreparedness, lateness and/or unprofessional classroom conduct (including surfing the internet, texting, using social media during class or engaging in other disruptive or unprofessional classroom behavior). In accordance with ABA rules and UB policy, if you miss more than 5 classes you will not be allowed to sit for the final exam;

2) **Part II - PROPERTY DISCUSSIONBLOG** - The DiscussionBlog allows you to 1) connect what we learn in class with current events in the outside world; 2) briefly share and discuss with your classmates your reactions to the cases, doctrine and policy goals. For each substantive comment, observation, idea, question for discussion you post in the discussion forum, your final exam score will be increased by one (1) point; up to a total of three (3) points. Caveat: i) While, you are strongly encouraged to participate in an ongoing dialogue with your fellow students, you will only receive credit for one (1) original comment/reply per week; and ii) Implicit in the posting requirement is the necessity for you to read the DiscussionBlog before class and keep up with the class' virtual dialogue. From time to time, online comments may be discussed during class;

3) **Part III – WRITTEN ASSIGNMENTS** – Easement drafting exercise, mid-semester practice problem, review session practice problems. Worth up to total of five (5) points.

4) **Part IV - OBSERVATION EXERCISE** - Attend a Landlord-Tenant (Rent/Escrow Court) session in any jurisdiction of your choice. You will have seven (7) points added to your final exam score if you follow ALL of the following REQUIRED steps: i) attend a Landlord/Tenant court session; ii) write a 2-3 page account of your experience and what you observed; and iii) the write-up specifically answers a set of REQUIRED questions that must be a) numbered and b) answered as set forth in the detailed instructions posted in Web Handouts. The write-up is due in the Assignment Drop Box on TWEN no later than 9:00am, Fri., April 5, 2019.

Course Website:

TWEN - <http://lawschool.westlaw.com> for Course syllabus, Assignment Changes, posting comments to the DiscussionBlog, obtaining Web Handouts and submitting assignments to the TWEN Drop Box. Please register for the TWEN website using an email address that you actually check.

Computers:

Students may use laptop computers for class related purposes.

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

Title IX Sexual Misconduct and Nondiscrimination Policy:

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Director, Ctr. of Educational Access, Office of Disability and Access Services, 410-837 4141; kschulz@ubalt.edu.

ASSIGNMENTS

Wed. Jan. 9, 2019

1. **Why Property? Justifications for Private Property Ownership** - Main Text pp. xxxiii-xlvi (A Guide to the Book); pp. xlix-liv (How to Brief a Case)
 - a. What is “property” and why do we recognize it?
 - b. Which theoretical justifications make the most sense?
2. **How Does One Acquire Property?**
 - a. **First Possession** -- Main Text pp. 87-109(top)
 - i. *Johnson v. M’Intosh* – carefully consider the “chain of title” in the case. What was the issue in the case? What were the arguments the litigants made to the Court? Did the Court adopt those arguments? What was the holding? What was the reasoning?
 - ii. Was the rule of “first possession” applied to determine the winner or did the Court apply another rule? What are Native American “property rights” after this decision? How do they work?

Fri. Jan. 11, 2019

3. **How Does One Acquire Property, cont’d**
 - a. **By Labor & Investment** Main Text pp.111-126 (Web Handout)
 - i. *INS v. AP* – Be prepared to discuss the distinctions between three approaches to the issue taken by the majority, concurring and dissenting opinions. Who wins under each approach and why?
 - ii. Commonly Owned Property - Tragedy or Comedy?
 - iii. Helena Pike, *The Copycat Economy - Do knockoffs harm the fashion business? Or does copying keep the wheels of the industry turning?*, THE BUSINESS OF FASHION, (Mar 14, 2016) (Web Handout)
 - a. **By Capture** -- Main Text pp. 136 – 146(top)
 - iv. *Pierson v. Post* – What are the policy concerns underlying the rules advocated by the majority and the dissent. Which rule is the most “just” and why?
 - v. *Popov v. Hayashi* -- who should win under *Pierson v. Post*’s rule of capture? Do the policy considerations in each case differ and should that change the rule that’s applied?

Wed. Jan. 16, 2019

- b. **By Creation?** Main Text pp. 268(bottom)-284; Web Handout
 - vi. *Moore v. Regents of the Univ. of Calif.* – Be prepared to discuss the distinctions between the approaches presented by the majority, concurring and dissenting opinions. Which approach do you favor?
 - vii. *Flynn v. Holder*

Fri. Jan. 18, 2019

- c. **By Find (the Concept of Relativity of Title)** -- Main Text pp. 155(bottom) – 165(top)
 - viii. *Armory v. Delamirie*
 - ix. *Charrier v. Bell* -- Please be prepared to discuss whether the personal items in *Armory & Charrier* were lost, mislaid or abandoned and why the distinction matters?
 - x. *Christy v. Scott* – How do the “relativity” principles in *Armory & Charrier* apply to land?
 - xi. Problem 1, p. 165. Please be prepared to discuss how this problem should be resolved according to the rule in *Christy v. Scott*

Wed. Jan. 23, 2019

4. **By Adverse Possession** -- Main Text pp. 287-315(top); 329-335

- i. *Nome 2000 v. Fagerstrom* – How does common law interact with statutory law in adverse possession analysis? What policies are furthered by each of the elements of adverse possession doctrine? How should lawyers handle “cultural” arguments, like the ones made in *Johnson v M’Intosh* – are they still relevant or justifiable in deciding competing claims to property?
- ii. *Brown v. Gobble* – Which of the adverse possession elements must a claimant meet when there’s only a strip of land involved?
- iii. *Romero v. Garcia* – what has *color* got to do with an adverse possessor’s title? How is it beneficial to claimants?
- iv. Notes & Questions re: Elements of Adverse Possession

Fri. Jan. 25, 2019

5. **Exploring The “Bundle of Rights” Conception of Property: The Right to Exclude** -- Main Text, p. xxxv; pp. 38(bottom)-42(top); pp. 3-9; pp.14(bottom)-19 (n.1-6); p.21-22 (n.9); p. 23-24(top) (prob. 1); pp.25-33(top)
 - i. *Jacques v. Steenberg Homes* – pay attention to the nature of the private property owned in each case. How should the nature of the property affect the application of trespass doctrine?
 - ii. *State v. Shack*
 - iii. *Uston v. Resorts Intl. Hotel, Inc.*

Wed. Jan. 30, 2019

6. **Another Stick in the Bundle: The Right to Use & Enjoy**
 - a. **Nuisance**– Main Text pp. 337-363; 369-370
 - i. *Dobbs v. Wiggins*
 - ii. *Page County Appliance Center v. Honeywell* – nuisance typically involves sights, smells, odors, sounds which affects humans. Should nuisance doctrine protect against the interference to TVs? Why or why not?
 - iii. *Boomer v. Atlantic Cement*

Fri. Feb. 1, 2019

- b. **Rights to Light & Air** -- Main Text pp. 370-380
 - i. *Fountainbleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.*
 - ii. ~~*Prah v. Maretti Rehearing*. We will conduct an in-class group exercise rearguing this case.~~

Wed. Feb. 6, 2019

Prah v. Maretti Rehearing. We will conduct an in-class group exercise rearguing this case.

Fri. Feb. 8, 2019

8. **How Long Do You Keep your Sticks?**
 - a. **Present Possessory Estates and Future Interests: Feudalism and the 21st Century** -- Main Text pp. 739-758;760-763; **MEMORIZE** Table on p. 755; p.780(bottom)-783(top)
 - i. **The Fee Simple Absolute & Defeasible (Fees)** -- Main Text pp. 756-758(top); WORKBOOK - Chapters 1-3
 1. *Wood v. Bd. of County Comm. of Fremont County*
 2. *Johnson v. Whiton*
 3. Problems

Wed. Feb. 13, 2019

- ii. **The Life Estate** –758-769; WORKBOOK - Chapters on the Life Estate; Vested and Contingent Remainders; Executory Interests; and Class Gifts; WORKBOOK - Chapters 4 (pp.42-44, 46 (skip fee tail), 47-57), Chapter 5 (pp. 58-70(top) only)(skip alternative contingent remainders); 82-83), Chapters 6, 7, 8, 11.

1. *McIntyre v. Scarbrough*
2. *Edwards v. Bradley*

Fri. Feb. 15, 2019

b. Rules Furthering Marketability

- i. **Rule Against Direct Restraints on Alienation** -- pp. 638-648(top); Web Handout
 1. *Northwest Real Estate Co. v. Serio*,
 2. *Riste v. Eastern Washington Bible Camp* (Web Handout)
 - ~~3. *Woodside Village Condo Assn. v. Jahren*~~
- ii. **Rule Against Perpetuities** -- Main Text pp. 783-796; 802-805(top); WORKBOOK – Chapter 12

Wed. Feb. 20, 2019

9. Sharing Ownership

- c. **Co-Ownership** -- Main Text pp. 665-697(top)
 - i. *Olivas v. Olivas*
 - ii. *Carr v. Deking*
 - iii. *Tenhet v. Boswell*
 - iv. *Sawada v. Endo*
 - v. *Ark Land Co. v. Harper*

Fri. Feb. 22, 2019

7. Rights to Use Some of Your Neighbor's Sticks – Private Land Use Controls

- a. **Express Easements** – Main Text pp. 515-536
 - i. Easement Drafting Exercise (Web Handout)
 - ii. *Green v. Lupo*,
 - iii. *Cox v. Glenbrook Company*
 - iv. *Henley v. Continental Cablevision of St. Louis County, In*

Wed. Feb. 27, 2019

- b. **Implied Easements** - Main Text pp. 315-322(top); 536(bottom)-559
 - i. *Community Feed Store, Inc. v. NE Culvert Corp.*
 - ii. *Lobato v. Taylor*
 - iii. *Granite Properties Ltd. Partnership v. Manns*
 - iv. *Finn v. Williams*

Fri. Mar. 1, 2019

Mid-Semester Review Problem

Wed. Mar. 6, 2019

8. Neighborly Agreements to Refrain from the Use of Some of Your Sticks on Your Own Land

- a. **Covenants/Equitable Servitudes** -- Main Text pp. 559(bottom)-579; 601-607; 613-615; 625; 645-648(top); Web Handout
 - i. *Deep Water Brewing, LLC v. Fairway Resources Ltd* (WEB HANDOUT)
 - ii. *Davidson Brothers, Inc. v. D. Katz & Sons, Inc.*
 - iii. You must read this Supplemental Explanation of Horizontal Privity (Web Handouts)
 - iv. *Covenant Problems* (Web Handout)

Fri. Mar. 8, 2019

- b. **Residential Subdivisions and Implied Reciprocal Negative Servitudes** -- Main Text pp. 579-601(top); Web Handout
 - i. Evans v. Pollock
 - ii. Sanborn v. McLean (Web Handout)
 - iii. Riley v. Bear Creek Planning Committee (Web Handout)
 - iv. Appel v. Presley Companies

Wed. Mar. 13, 2019

- c. **Enforcement of Discriminatory Covenants** - Main Text pp. 626-638 (top); Web Handout
 - i. Shelley v. Kraemer
 - ii. Restrictive Covenants Stubbornly Stay on the Books (Web Handout)
 - iii. How to Remove a Racially Restrictive Covenant (Web Handout)
- d. **Terminating Covenants & Equitable Servitudes** -- Main Text pp. 650-657
 - i. El Di, Inc. v. Town of Bethany Beach

Fri. Mar. 15, 2019

10. Renting out some of the Sticks in the Bundle: Leaseholds and the Market for Shelter

- a. **Leasehold Estates, Rights and Duties** -- Main Text pp. 813-817(top); 823(bottom)-829
- b. **Conflicts Over Transfer: Assignments & Subleases** - pp. 829-832; 835-844;846-848(top)(n.1-2)-851
 - i. Kendall v. Ernest Pestana, Inc.
- c. **Landlord's Remedies for Tenant's Breach** -- Main Text pp. 851-864; Web Handout
 - i. Wheeler v. Thompson (Web Handout)
 - ii. Sommer v. Kridel
 - iii. Elizabeth Gudrais, *Disrupted Lives: Eviction & the Lives of America's Poor* (Web Handout)

SPRING BREAK

Mon. Mar. 25, 2019

- d. **Tenant's Defenses to an Eviction or Unpaid Rent Proceeding** --Main Text pp. 865-873
 - i. Minjak Co. v. Randolph
 - ii. 3000 B.C. v. Bowman Properties, Ltd.
 - iii. Blackett v. Olanoff,
- a. **Tenant's Defenses to an Eviction or Unpaid Rent Proceeding cont'd** --Main Text pp. 873-891; 891-908
 - iv. Javins v. First National Realty Corp.
 - i. Hillview Associates v. Bloomquist
 - ii. Imperial Colliery Co. v. Fout

Wed. Mar. 27, 2019

- b. **Protections Against Housing Discrimination** – Main Text pp. 1017-1041; 1048-1050; 1086-1089 Web Handout
 - i. Asbury v. Brougham
 - ii. Fair Housing Council of San Fernando Valley v. Roomate.com, LLC
 - iii. United States v. Starrett City Assocs.(Web Handout)
 - iv. Fair Housing Protections in MD (Web Handout)
 - v. Notes & Questions

Fri. Mar. 29, 2019 (class cancelled)

Wed. Apr. 3, 2019

11. Transferring the Sticks in the Bundle: Purchase and Sale of Real Property

- a. **Structure of the Transaction** - Main Text pp. 911-927
- b. **Contract Formation and the Statute of Frauds** -- Main Text pp. 927-936
 - i. Burns v. McCormick
 - ii. Hickey v. Green
- c. **Misrepresentation and Fraudulent Nondisclosure** -- Main Text pp. 936(bottom) - 947
 - i. Johnson v. Davis
- d. **Marketable Title and Other Obligations** -- Main Text pp. 947-950; Web Handout
 - i. Lohmeyer v. Bower, (Web Handout)

Fri.. Apr. 5, 2019

12. The Deed and Title Protection -- Main Text pp. 950-954(top)

- a. **Recording Acts and Chain of Title Problems** -- Main Text pp. 995-1016
 - i. Sabo v. Horvath
 - ii. Problems p.1002-3 (take the time to do these carefully)
 - iii. Other Title Protection Approaches
 - iv. Brock v. Yale Mortgage Corporation
 - v. McCoy v. Love

Wed. Apr. 10, 2019

13. Real Estate Finance: Mortgages -- Main Text pp. 956-961(top); 971-973; 977-995(top)

- a. Baskurt v. Beal
- b. Sebastian v. Floyd
- c. Koenig v. Van Reken

Fri. Apr. 12, 2019

15. The Land Owner & The Police Power: Public Land Use Controls

- a. Zoning – Main Text pp. 421-431
 - i. Village of Euclid v. Ambler Realty Co.
 - ii. Typical Zoning Ordinance
 - iii. Trip Associates, Inc. v. Mayor & City Council of Baltimore (Web Handout)

Wed. Apr. 17, 2019

- b. Eminent Domain -- Main Text pp. 1149-1183
 - i. Kelo v. New London –What is the rule for valid or invalid exercises of eminent domain? Who should decide whether exercise of eminent domain is valid: the courts or the legislature?
- c. Regulatory Takings – Main Text pp. 1187-1190; 1192-1204
 - i. Penn Central Transportation Co. v. New York City
 1. Is the air above your parcel of land “property?” If your answer is no, what are the consequences of no rights to the air above your parcel of land? Or, if your answer is yes, what are the consequences of recognizing rights to the air above your parcel?

Fri. Apr. 19, 2019

REVIEW

