

**PROPERTY SYLLABUS**  
**Fall 2023**

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**Course overview**

What does it mean to own something? Laypeople often use terms like “ownership” or “property” in casual discourse. This course seeks to explore these terms as legal, rather than popular, ideas. We will do that to a large extent by examining the blackletter law of property, which derives from several different sources of law (cases, statutes, scholarship), spans numerous bodies of doctrine (adverse possession, landlord/tenant, eminent domain), and deals with a wide variety of things that these sources and authorities govern (foxes, wedding rings, and squares of dirt). This discussion about what the law *is* will be guided by normative frameworks, both consequentialist and deontic, that tell us what the law *should be*.

The goals of this course are methodological as well as substantive. Property's long history and sprawling present will help you learn to parse different legal sources, including both cases and statutes, from a variety of different jurisdictions and eras. Applying complex regulatory schemes like estates in land and title recording will build rigorous logical and analytical skills. And the various policy issues engaged by the topics we explore will require you to think about, and to talk about, property like a lawyer. What that means to me is that lawyers think about property in a way disciplined both by a sense of what the law actually is, and in a way that is reflective about, rather than controlled primarily by, our moral intuitions.

**Class meetings**

We will meet Mondays from 6-7.20pm, and Wednesdays from 6-8pm in room 102B of the O'Quinn Law Building. Class meetings will take place in person unless I tell you otherwise. All class sessions will be recorded and posted to TWEN within 48 hours of the end of the previous class.

**There will likely be times when I need to conduct class via Zoom.** I will share the access info for the class Zoom link by separate email.

## **Required text**

The text for this course is Sprankling & Coletta, *Property: A Contemporary Approach* (5th edition). This edition of the book will be available new for sale in the campus bookstore. Copies may be available used on secondary markets as well. The text's publisher, West Academic, may also have less expensive options available such as online or loose-leaf editions. You are welcome to buy any of these as well.

All page numbers in the syllabus refer to this text. Other readings to be made available on TWEN will be so indicated.

*Another casebook option:* The new edition of the Sprankling text is expensive and not that different than the previous one. So if you understandably want to save some money by getting a used version of the previous (4th) edition, here's how you can do that: I will make the syllabus available from a previous property class when I used that edition. This will indicate the correct page numbers for the assigned cases appear in the earlier edition. I will also post to TWEN any cases that are in the new book but not the previous one. This method will be imperfect (e.g., some of the notes may have changed between editions) but should basically suffice.

## **Expectations and attendance**

Lawyers are expected as a minimum professional baseline to be on time, be prepared, and to stay mentally and physically present during work hours. Accordingly, I expect that you will be on time for class meetings; be prepared for the class sessions when you are on panel; and stay mentally and physically present during class.

Attendance in each class session is both required and encouraged. Per UHLC and ABA rules, you must attend a minimum of 80% of class meetings to receive credit. Attendance is mandatory and will be taken every class via a Google Form link that I will distribute during the first class. I will share a unique passcode for each class that you will enter along with your name into the Google Form to that your attendance is verified. UHLC's Honor Code applies to this sign-in process. Sign in only your own name.

You are responsible for keeping track of the attendance passcode during class. You are free to input it any time during class, or even afterward, but if you fail to do so by the time my assistant enters the class attendance information, you will be charged with an absence.

## **Class discussion and panels**

The structure of class sessions will be dialogic (though not strictly Socratic), and your participation in the discussion is both required and encouraged. I expect students to carefully prepare the assigned reading and the relevant problems.

I will use a panel system rather than calling on students randomly. I will distribute panel info about a week before classes start when the class roster is more stable. There is a document on TWEN titled “Panel List” that lists what panels you are on and which panels are assigned to which days.

When you are on panel, I expect you to have prepared all the materials and to be able to converse about all of it, including cases, case notes statutory sections, and hypotheticals. Failing to attend or to be fully prepared during your panel days may result in a grade reduction.

If for any reason you absolutely cannot be present on your assigned panel day, due to some unforeseen emergency, please let me know as far in advance as possible so I can make accommodations. This is important too for your fellow co-panelists because absence from a panel increases the workload for them.

You are responsible for any and all material covered on the day when you are on panel. So if, for example, we begin a given class day by finishing a case or some hypotheticals from the previous day, you are responsible for that material, even though it was not the material originally planned for your assigned panel day.

Finally, everyone is most welcome to participate in every class. If you are not on panel and you have something to add or a question to ask, please don't hesitate to do so.

### **Assigned hypotheticals**

Our class discussions will focus largely, sometimes predominantly, on hypotheticals that are contained in files that are posted to TWEN. You are expected to prepare the hypotheticals associated with the material for which you are on panel just as carefully as you prepare the reading. *If you don't prepare the hypotheticals, you are not prepared for class.*

### **Examination and grading**

The grade for this course will be primarily determined by a four-hour final examination. The examination will consist of both an essay and a multiple-choice portion, each of which will be equally weighted in determining your examination grade. The exam will be given in person at the O'Quinn Law Building. You will be permitted to bring any materials you want to the exam. You will not be able to access the internet or any material on your computer.

I reserve the right to raise or lower a student's letter grade by one-third (e.g., from a B to a B+, or from a B to a B-) based on the student's preparedness for and engagement in class discussions. I expect that you will be well prepared for class meetings when you are on panel. Quality participation on such occasions merely represents meeting expectations; failing to be sufficiently prepared will presumptively result in lowering of your final grade. Raising your final grade would require consistent, quality participation beyond days when you are on panel.

### **Office hours & open door policy**

I hold office hours by appointment. Because office hours almost certainly not be a convenient time for all students, I use this policy of arranging office meetings at your preference. To set one up simply email me and we'll work out a mutually agreeable time. In order to accommodate your schedules, I can also schedule Zoom meetings. Email me if you want to set up one of the latter types of meetings.

Finally, I also have an open door policy, so that if my door is open, you should feel free to come on in to discuss issues related to class. And as a general rule, I tend to be unavailable in the several hours before any class I teach in order to do final preparation. You are also most welcome ask me questions via email or post questions to the TWEN discussion boards.

### **TWEN**

I will maintain a course TWEN page. It will host course documents (syllabus, PowerPoint slides from class, problem sets) and provide discussion forums to which you are all invited to post topics related to course organization, scheduling, and other administrative matters as well as questions about material covered in class, recent developments in the law, and any other aspects of property itself. I will also often post information about class to the TWEN discussion boards. You are responsible for remaining up to date on any information posted to TWEN, so be sure to check it frequently, and consider setting up email alerts for new postings to the site.

### **Illness policy**

**DO NOT COME TO CLASS IF YOU ARE SICK.** In fact, do not come to class if you think you may be becoming sick. This includes but is not limited to illness due to COVID-19. I trust you all to adhere to this rule to safeguard the health of your classmates.

If you are sick, and you tell me before class, you can attend class via Zoom. Simply email me as far in advance of the start of class as possible and tell me that you are sick (no details necessary) and I will admit you to the class Zoom session via the waiting room. If you are not sick, you cannot attend class via Zoom. I trust you all to use this policy in good faith; it is also subject to the UHLC Honor Code.

I will also adhere to this rule and will not hold class in person if I am sick or feel that I may be becoming sick. If that should happen, I will instead conduct class via Zoom.

### **Class recordings**

Class will be recorded via Zoom. The resulting recordings will be posted to the course TWEN page within 48 hours of the end of class.

Because class recordings are freely available at this location, I ask that you not audio or video record any portion of the class for your personal use unless necessary for disability accommodation.

## **Nomenclature**

If you want me to refer to you in any particular way—including name pronunciation, nickname, gender pronoun, etc.—just tell me and I’ll respect any such preference.

## **Artificial intelligence**

We are still at the early dawn of artificial intelligence (AI) and it remains to be seen how AI will affect legal practice and education. That said, at least for this academic year the aim of this course is to encourage you all to develop the core skills of understanding and analyzing cases, rules, and hypotheticals. I strongly encourage you all to undertake all these tasks yourself without using AI as a shortcut.

There may be ways to use AI to enhance your understanding when preparing for class. For example, you may wish to ask a large language model (LLM) what its answer is to a hypothetical after you have given your own answer as a way of checking your work. But simply asking an LLM to read and summarize cases or answer hypotheticals instead of primarily doing these tasks yourselves would defeat the purpose of legal education.

The examination will be given in an in-person format and use of the internet, including accessing any LLMs or other AI, is prohibited and will be considered a violation of the honor code subject to sanctions including assigning a failing grade in the course.

## **Honor code**

The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code’s provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus

## **Mandatory syllabus language required by UH**

### *A. Mental Health and Wellness Resources*

The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit [uh.edu/caps](http://uh.edu/caps), call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat [988lifeline.org](http://988lifeline.org).

### *B. Title IX/Sexual Misconduct*

Per the UHS Sexual Misconduct Policy, your instructor is a "responsible employee" for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

### *C. Reasonable Academic Adjustments/Auxiliary Aids*

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing [jdcenter@Central.UH.EDU](mailto:jdcenter@Central.UH.EDU).

### *D. Recording of Class*

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

COURSE TOPICS AND READING

**I. Ownership and trespass**

Date	Topic	Reading
8.21	Owners' rights and trespass: <i>Jacque v. Steenberg Homes</i>	45-54 & a-f

**II. The variations of acquisition: first, subsequent, and adverse**

Date	Topic	Reading
8.23	First possession: <i>Pierson v. Post</i> ; Capture hypotheticals; note on fugitive resources; <i>Sipriano</i>	8-13 & a-e; TWEN
8.28	Acquisition by find: <i>Armory v. Delamirie</i> ; Find hypotheticals #1-4; <i>Hannah v. Peel</i>	163-66 & a-f; 166-73 & a-g; TWEN
8.30	Find hypotheticals #5-7. Acquisition by gift: <i>Gruen v. Gruen</i> ; note on gifts causa mortis; Gift hypotheticals	195-205 & all notes; TWEN
9.6	Adverse possession overview & <i>Gurwit v. Kannatzer</i> ; Adverse possession hypotheticals #1-8; <i>Fulkerson v. Van Buren</i> ; <i>Howard v. Kunto</i>	89-97 & a-e; 107-13 & a-e; 117-23 & a-c, e; TWEN
9.11	Adverse possession hypotheticals #9-10; Note on disabilities & state actors; note on color of title & constructive adverse possession; Adverse possession hypotheticals #11-13; popular articles about AP	124-25 (notes a-b); TWEN

**III. Temporally subdividing private possession: present possessory estates & future interests**

Date	Topic	Reading
9.13	Present possessory estates overview; Estates in land hypotheticals #1-15; <i>Woodrick v. Wood</i> ; Estates in land hypothetical #16	287; 290-93; 296-98; 305-31 & a-b; 308-09; 310-14; 325 (chart); TWEN
9.18	Future interests in grantors and grantees; future interests hypotheticals	326-31; 334; 336 (chart); TWEN
9.20	Rule against perpetuities overview	342-45; 347-51 a-c, e-i
9.25	Rule against perpetuities hypotheticals	TWEN

**IV. Individually subdividing private possession: co-ownership**

Date	Topic	Reading
9.27	Co-ownership overview; Co-ownership hypotheticals #1-10; <i>Ark Land Co. v. Harper</i> ; Co-ownership hypothetical #11; <i>Esteves v. Esteves</i> ; Co-ownership hypotheticals #12-16	355-56; 367-74 & a, c-f; 375-78 & a-d TWEN
10.2	Marital property overview; <i>Sawada v. Endo</i> ; <i>Guy v. Guy</i>	379-89 & a-e; 390-19 & a-f; TWEN

**IV. Individually subdividing private possession: co-ownership (cont'd)**

Date	Topic	Reading
10.4	Overview & typology of leases; Landlord-tenant hypothetical #1; <i>Ernst v. Conditt</i> ; Landlord-tenant hypotheticals #2-3; transfer-limiting lease clauses; Landlord-tenant hypothetical #4; <i>Elk Creek Management v. Gilbert</i> ; <i>Sommer v. Kridel</i>	460-69 & a-f; 469-70; 477-84 & a-e; 486-91 & a-e
10.9	Landlord-tenant hypotheticals #5-8; <i>Fidelity Mut. Life Ins. Co. v. Kaminsky</i> ; <i>JMB Properties v. Paolucci</i> ; Landlord tenant hypotheticals #9-10; <i>Wade v. Jobe</i> ; <i>Teller v. McCoy</i>	441-51 & a-e; 451-58 & a-f
10.11	Landlord-tenant hypotheticals #11-14; Housing antidiscrimination (Fair Housing Act of 1968); <i>Fair Housing Council of San Fernando Valley v. Roommate.com, LLC</i> ; Housing discrimination hypotheticals	422-26 & a-c; TWEN
10.16	Mid-semester review exercise	TWEN

**V. Transfers of Real Property**

Date	Topic	Reading
10.18	<i>Hickey v. Green</i> & notes e-f; Real estate transactions hypotheticals #1-2; <i>Lohmeyer v. Bower</i> & notes c-d; Real estate transactions hypothetical #3; note on equitable conversion	501-09 & a-e; 510-15 & a-d; 517; TWEN

**V. Transfers of Real Property (cont'd)**

Date	Topic	Reading
10.23	<i>Stambovsky v. Ackley</i> ; Real estate transactions hypotheticals #4-5; The deed & title covenants; Real estate transactions hypotheticals #6-8; mortgages overview; Real estate transactions hypotheticals #9-10	521-28 & b, d-f; 549-52; 601-09; TWEN
10.25	Title recording overview; Title recording problem set #1-5; Shelter rule; Title recording problems #6-13; <i>Raub v. General Income Sponsors of Iowa, Inc.</i>	558-62; 569-70; 586-91 & a-c

**VI. Private Land Use Controls**

Date	Topic	Reading
10.30	Easements overview; Easements hypothetical #1; <i>Emanuel v. Hernandez</i> ; <i>Berge v. State of Vermont</i> ; <i>O'Dell v. Stegall</i> ;	637-41 & a-c; 642-47 & b-d; 648-653 & a-d; 654-61 & a-c; TWEN
11.1	<i>Kienzle v. Myers</i> ; Easements hypotheticals #2-5; <i>Marcus Cable Assocs., L.P. v. Krohn</i> ; <i>Preseault v. United States</i> ; Easements hypotheticals #6-7	662-67 & a-e; 668-75 & b, d-f; 675-81 & a-e; TWEN
11.6	Covenants overview; <i>Deep Water Brewing, LLC v. Fairway Resources, Ltd.</i> ; <i>Gambrell v. Nivens</i> ; covenants hypotheticals	684-92 & a-c; 693-97 & c, e

**VI. Private Land Use Controls (cont'd)**

Date	Topic	Reading
11.8	Common plans; Restatement approach; <i>Nahrstedt v. Lakeside Village Condominium Association, Inc.</i> & note e; <i>Vernon Township Volunteer Fire Dep't, Inc. v. Connor</i> ; <i>Schaefer v. Eastman Community Ass'n</i> ; Covenants hypothetical #5	697 note b; 699; 707-16 & a-b, d; 721-27 & a-d; 727-33 & a-c
11.13	<i>Fink v. Miller</i> ; [Intro to eminent domain and takings]	717-21 & a-d

**VII. Eminent Domain & Takings**

Date	Topic	Reading
11.15	<i>Penn Central Transp. Co. v. City of New York</i> ; Takings hypotheticals #1-8; <i>Kelo v. City of New London</i> ;	885-97 & b-e; 859-71 & a-d, f-g; TWEN
11.20	Takings hypotheticals #9-12; Overview of just compensation; <i>Sioux Nation v. U.S.</i>	858-59 note f; TWEN

11.27-11.29 Review sessions, Q&A