Property

Spring 2022

Professor Blake Hudson

M/Tu/We 10:45 am-NOON

HH 180

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Office Hours: M/Tu 1:00-2:00 (otherwise available by appointment)

Overview and Goals of the Course

What constitutes property? Why do we have a property rights system? What should the goals of that system be? What are the rules by which property laws facilitate the goals of the system? How do those goals change over time in response to societal changes, and how does property law facilitate those changes? These are a few of the questions we will explore this semester. Our goal is to balance the study of technical details of property law with an assessment of the theory and broader context within which these laws are derived and implemented.

Property is everywhere. Daily news reports highlight controversies over local land use decisions, state and federal regulation of private lands, probate and disposition of property under wills, landlord/tenant disputes, real estate transactions, environmental and natural resource conflicts, and related property issues. In this course we will explore the common law rules governing the acquisition, transfer, use and management of real and personal property.

In addition to the details of property law, you should take away from this course the notion that property (and law in general) is rarely black and white. Grasping the nuances of this plasticity in the law can make you better litigators, regulators, public servants or any other type of lawyer you plan to become. Not only will this enable you to better develop arguments for your clients, but also to grow confident in your ability to shape the development of the law over time as the needs of society change. As such, a crucial part of this course is learning how to undertake legal analysis and how to apply the principles derived from the material in a variety of ways.

Finally, I should note that property law is a hybrid subject, with its own unique set of principles mixed with contract, tort, constitutional, environmental, along with other law subjects. Thus, it is crucial that you not view each of your courses in a vacuum, but rather as interwoven parts of a holistic body of coursework aimed at making you complete lawyers.

**Required Text**

***NONE: Course Materials Provided*** *(under “Modules” on Canvas)*

I may assign supplemental readings from time to time. These may be found under “Assigments” on Canvas. I hope these readings will be informative and interesting, and sometimes they will explore more theoretical aspects of property law.

**Class Policies**

Attendance

Attendance is expected and required. Students missing ***five*** or more classes may be penalized up to one full point grade. In accord with ABA rules, students missing ***nine*** or more classes may not be permitted to take the final exam.

Seating

I will pass around a seating chart during our second class―please sit where you would like to remain for the rest of the semester. This will help me remember your name. You should legibly write your name on the part of the seating chart that identifies where you are sitting.

Participation and Preparation

Class participation and preparation are required. To facilitate discussion of the readings during class, I plan to call on students, though I may periodically ask for volunteers. All students are encouraged to volunteer comments and questions. I expect you to complete the assigned readings and that you are prepared to participate. Participation and preparation are not based upon *quantity* of comments, but rather *quality*. I will note in my records each time your answer indicates a lack of preparedness. Your final grade may be adjusted (up or down) a +/- letter grade depending upon your level of participation and preparation. I want to emphasize that you will not be penalized for wrong answers, only for lack of preparation.

Laptop/Mobile Device Policy – ***\*PLEASE NOTE\****

I do not allow laptop or mobile device (iPhone, iPad, etc.) use in the classroom. While I appreciate that this is an inconvenience to those who prefer typing their notes during class, after having taught both ways I have found that a classroom setting without the distractions created by laptops and mobile devices results in a much better learning environment. Recent scientific research supports this conclusion, and upon request I am happy to point you to the numerous studies demonstrating the negative effects of laptops on learning and retention of material/concepts.

**Grading and Assessment**

The grade in the course will be based on participation and a final exam. The exam will be a closed-book, timed final examination, and it will consist of several fact patterns for which you will write short essays. I will give you additional details later in the semester. The examination will be based on the assigned readings, class discussions and other relevant materials discussed in class. Participation includes attendance at out of class presentations, workshops, or field trips that may be assigned later in the semester (with exceptions granted for approved schedule conflicts, such as class or work conflicts). More details regarding the final exam will be forthcoming later in the semester. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.

This course follows the Levin College of Law’s grading policies found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies). The below chart describes the specific letter grade/grade point equivalent in place:

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| --- | --- |
| Letter Grade | Point Equivalent |
| A | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D | 1.0 |
| D- | 0.67 |
| E (Failure) |  |

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluera.com/ufl/](file:///C:\Users\nance\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\70WP0DTB\ufl.bluera.com\ufl\). Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

Academic honesty and integrity are fundamental values of the University community. Students should understand the UF Student Honor Code located [here](https://sccr.dso.ufl.edu/process/student-conduct-code/).

**Class Rescheduling**

I may need to cancel a few classes throughout the semester for personal or professional reasons. If I anticipate the need to cancel classes, we will either have class via zoom, I will arrange a guest speaker, or will arrange make-up classes to cover the affected dates. I will do my best to ensure that make-up classes do not conflict with any of your other classes. For anyone unable to attend a make-up class and with an unusual situation preventing attendance, please let me know and we will address it.

**Required Readings**

Rather than attempt to plan the day-to-day discussions months in advance, I will hand out assignment sheets in two-week periods in order to maintain flexibility in our approach. Our goal is to go at a pace that optimizes your understanding of property principles―cramming substantive information into long-term memory is not the primary goal.

You should receive each new assignment sheet by the Friday prior to that assignment. This will allow you plenty of time to read the Monday assignment before class on that day.

We will cover topics that will provide you both a strong overview of property principles and assist in developing your legal analysis skills. The chart below represents what we will attempt to cover, but this is only meant as a general guideline for what we will attempt to accomplish this semester. We may not cover every topic listed below, and I may change the assignments or even dispense with entire topics if necessary. Also, I may add reading materials, although you will be given plenty of time to read these in advance.

Your thorough understanding of the topics we do cover is more important than finishing every topic on the syllabus. Regardless of any changes, you will always receive reading assignments in advance, and you will only be tested on what we cover in class. In the event that we discuss a case in class that is not in the book (but that adds to or clarifies our discussion), I will give you the facts, holding, and legal rule in class, as well as provide the citation if you wish to look the case up later.

**Miscellaneous**

To the extent it is possible we should address problems/questions ahead of time, rather than waiting until the end of the semester to review materials from scratch. So please consider the entire semester a rolling review, rather than waiting until the end of the semester to raise questions or concerns for the first time (though obviously some new questions on older topics will come to mind later in the semester).

Similarly, please keep in mind that as we near the exam I may become increasingly less available. As a result, try as best as you can to arrange a visit to ask any questions that you may have on a rolling basis throughout the semester.

**Health and Wellness Resources**

Law school can be a stressful time. Do not be afraid to get help when needed. We all go through difficulties, and here are some resources that can help:

* *U Matter, We Care*: If you or someone you know is in distress, please contact [umatter@ufl.edu,](mailto:umatter@ufl.edu,%20) 352-392-1575, or visit [U Matter, We Care website](https://umatter.ufl.edu/) to refer or report a concern and a team member will reach out to the student in distress.
* *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](https://counseling.ufl.edu/) or call 352-392-1575 for information on crisis services as well as non-crisis services.
* *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](https://shcc.ufl.edu/).
* *University Police Department*: [Visit UF Police Department website](https://police.ufl.edu/) or call 352-392-1111 (or 9-1-1 for emergencies).
* *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](https://ufhealth.org/emergency-room-trauma-center).

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| **A Brief History of Real Property in the United States**  Native American Claims and Theories of Property Law  Brief History of Land Allocation and Protection in the US, Tragedy of the Commons |
| **Some Basic Rights and Responsibilities of the Landowner**  Trespass, Encroachments, Limits on the Right to Exclude  Private Nuisances  Public Nuisances, Remedies  Public Use Limitation |
| **Property other Than Land**  Fish and Wildlife, the Rule of Capture, Oil and Gas  Water |
| **Land Sales**  Duty to Disclose, Warranty of Fitness |
| **Title Assurance**  Types of Recording Acts, Statutory Conditions of Protection  **Dividing Ownership Across Time**  Protection of future interests – avoiding waste |
| **Landlord Tenant Law**  Types of estates, Rights of Possession & Quiet enjoyment, Warranty of Habitability  Tort rights, Right to Assign and Sublet, Landlord’s Rights and Remedies |
| **Nonpossessory Interests in Land: Easements**  Nonpossessory Interests generally, Express Easements, Easements by Estoppel  Easements by Implication and Necessity, Easements by Prescription |
| **Local Land Use Control**  Zoning  Variances, Special exceptions, Legislative Decisions, Community Decisions  Aesthetic and Architectural Regulation, Historical Preservation, Growth Control  Protecting against Discrimination |
| **Regulatory Takings**  Regulatory Takings Intro, Penn Central Balancing Test  Bright Line Rules and Per se Takings  Takings and Time, Coming to the Regulation  Exactions |