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| ***REAL***  ***PROPERTY* *SYLLABUS***  **Spring 2022** | C:\Users\Peter\Dropbox\Law School\Property\Captivate Project\From Mick's Thumbdrive\mslaw new logo IVY 1715.png | **Instructor:**  **Professor Malaguti**  [**malaguti@mslaw.edu**](mailto:malaguti@mslaw.edu)  **978.681.0800 ext. 116** |

This syllabus sets the policies, goals, rules and expectations for the course. ***Please read this syllabus carefully******prior to the first class****.* I expect you to understand the class rules and class expectations when you arrive for the first class; I will not restate the contents of this syllabus in the first class. I will not answer questions about class rules and policies that are already stated in this syllabus.

Your one credo to live by as a *Real Property* student – indeed, as a law student in any course – is: “My work is not done until I have mastered every rule of law.” The study of law is one of the most difficult disciplines you can pursue, and most students believe *Real Property* is one of the most difficult courses in law school. You will not succeed in this course, will not succeed in law school, and will not pass the bar exam, unless you make the commitment to dedicate yourself to mastery of the law. I will take attendance and expect you to attend nearly every class. And I expect you to be prepared for every class you attend.

**REQUIRED READING**

*Casebook:* D. Benjamin Barros & Anna P. Hemingway, *Property Law* (Wolters Kluwer Publishers, 2nd Ed. 2020), ISBN 9781454897910. This casebook will serve as the main reference for the course.

*Supplement:* Peter M. Malaguti, Class Primers (will be made available through links on the *Real Property* TWEN website).

***NON-REQUIRED* SUPPLEMENTAL RESOURCES**

Although the following supplements are *not required*, they are good resources to further elucidate the rules of law. Since your credo is “mastery of the law,” it makes sense to consult these supplemental resources. Each of these books is available at the reserve desk in the library.

Here are the books:

Ralph E. Boyer, Herbert Hovenkamp & Sheldon F. Kurtz, The Law of Property: An Introductory Survey (West Publishing Co., 4th Ed. 1991)(ISBN 0-314-82936-9). This text is a “down and dirty,” elements-based supplement. Hereafter, I will refer to this book as “Boyer.”

William B. Stoebuck & Dale A. Whitman, The Law of Property (West Publishing Co., 3rd Ed. 2000)(ISBN 0-314-22870-5). This presents a more in-depth review of property law than Boyer. Hereafter, I will refer to this book as “Stoebuck.”

Barlow Burke & Joseph Snow, Property: Examples & Explanations (Aspen Publishers, 2nd Ed. 2004)(ISBN 0-7355-3979-0). All versions of the “Examples & Explanations” series are fairly popular among law students. They provide the elements of each rule of law, followed by short problems with answers. Hereafter, I will refer to this book as “E & E.”

Sheldon F. Kurtz, Moynihan’s Introduction to the Law of Real Property (Thompson/West Publishers, 4th Ed. 2005)(ISBN 0-314-16048-5). This text is extremely helpful in helping students understand the difficult topic of “estates in land” and “concurrent estates.” Hereafter, I will refer to this book as “Moynihan.”

**GOALS AND OBJECTIVES (“LEARNING OUTCOMES”) OF THE COURSE**

This is an introductory survey course in real property law. Successful students will master the complicated structure and functions of the doctrines, legal methods, legal reasoning and legal analysis employed by lawyers when practicing “real property law,” the process by which our American legal system protects individual real property rights. It is expected that students achieving a grade of “C” or better will have mastered the law and legal processes sufficiently to pass the real property section of the bar examination. It is also expected that successful students will achieve an understanding of the fundaments of real property law that is sufficient to enable them to take the first steps to practice real estate law upon graduation from the Massachusetts School of Law. Students who fail to master Real Property law will receive a grade below that of “C.”

Merely learning the material to “get by” is unacceptable in this, or any other, law school class. Competent attorneys do not merely “get by;” they conscientiously and ethically root out ways to provide the highest possible level of client representation. Unsophisticated clients deserve to expect that their attorneys are knowledgeable, sophisticated, and diligent; indeed, that is why they hire them. If you want to become a lawyer, you must commit yourself to learning *all* the applicable rules of law, inside and out, and to learn how to apply those rules of law to a variety of fact patterns (this is called analysis). Because society demands much of lawyers, I will demand much of you.

**LIVE CLASSES**

Unless and until we hear otherwise, all classes this semester will be live. I expect students to attend class unless they are sick or have another valid excuse for absence. I take attendance. Because no one can predict the course of the pandemic, however, it remains possible that the structure and rules of the course will have to be modified once again on short notice. I will communicate any changes via TWEN email blasts, but you will need to routinely check the TWEN site for changes in case you miss any of the notifications.

**COVID PROTOCOL**

We will follow the COVID protocol set by the administration regarding vaccination, the wearing of masks, social distancing, etc.

If you become ill, even if you do not believe your illness to be caused by COVID, you are required to stop attending classes and to notify both the Registrar and me of your illness. In such case, you will need to supply the Registrar with a negative COVID test as she reasonably requires to be allowed to return to class. I will work with you to give you a reasonable opportunity to make up your work and ensure that you are not penalized for being forthright about your illness. I know it will not happen, but any student who knows s/he is ill, but continues to attend classes and/or exams, will be referred to the deans for potential discipline on the ground of conduct unbecoming of a law student, i.e., purposely risking the health and welfare of MSL students, staff, and faculty.

**GRADING**

Your final grade shall be composed of two (2) components:

1. With the exception of the first two weeks of class, you will receive one (1) five-question multiple choice quiz at the end of each week. I will drop the lowest 3 quiz scores and add up the remaining scores for your quiz total. There will be no makeups for missed quizzes; you would therefore be well served to take them all.
2. Your final exam given during exam week.

Each component of your grade will count as follows:

12 Weekly Quizzes: 25%

Comprehensive Final Exam: 75%

Except for the first two week of class and last week of class, you will receive one (1) five-question multiple choice quiz at the end of each week for a total of 12 quizzes. I will post each quiz for taking on Examsoft on Friday of each week, and you will have until 11:59 p.m. on Monday evening to take and submit it. You should spend Friday to Monday updating your notes and making sure you know the law before you take the quiz. This will reinforce the law you learned the previous week and establish a foundation of knowledge that will be of valuable assistance when it comes time to study for the final exam.

I will drop the lowest 3 quiz scores and add up the remaining 9 scores for your total quiz score. Although I understand that things come up and that you sometimes may forget to take a quiz, there will be no makeups for missed quizzes; I do drop your lowest three quiz scores.

Your final exam given during exam week.

**CLASS ASSIGNMENTS**

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| --- | --- | --- | --- | --- |
| **Week** | **Class No.** | **Day/Date** | **Topic** | **Preparation**  **Expected** |
| **One** | **1**  **-----**  **2** | Jan. 18  -----  Jan. 20 | Introduction to Class  -----  Bailments, Relativity of Title & Finders | No Assignment  -----  Barros Casebook: 10-43  Class Primers:  Bailments, Relativity of Title & Finders  Study PowerPoint for Class Two |
| **Two** | **3**  **-----**  **4** | Jan. 25  -----  Jan. 27 | The Right to Exclude from Real Property  Adverse Possession  -----  Adverse Possession (Cont.) | Barros Casebook: 116-130  Class Primers: The Right to Exclude  Study Class PowerPoint for Class 3: Slides Pertaining to Right to Exclude  Barros Casebook: 80-100  Class Primers: Adverse Possession  Study Class PowerPoints for Class 3: Slides Pertaining to Adverse Possession  Barros Casebook: 100-115  Class Primers: Adverse Possession  Study Class PowerPoints for Class 4 |
| **Three** | **5**  **-----**  **6** | Feb. 1  -----  Feb. 3 | Adverse Possession (One More Time)  -----  Estates in Land – Introduction; Present Estates Generally; and Introduction to Fees Simple | Barros Casebook: 100-115  Class Primers: Adverse Possession  Study Class PowerPoints for Class 5  -----  Barros Casebook: 131-135; 191-196 (Waste)  Class Primers: Estates in Land: 1-12  Study Class PowerPoints for Class 6 |
| **Four** | **7**  **-----**  **8** | Feb. 8  -----  Feb. 10 | Estates in Land – Present Estates – Fees Simple: How to Create a Fee Simple; The Four Types of Fees Simple  -----  Estates in Land – Present Estates – Fees Tail and Life Estates | Barros Casebook: 138-143  Class Primers: Estates in Land: 12-16  Study Class PowerPoints for Class 7  -----  Barros Casebook: 135-138  Class Primers: Estates in Land: 16-18  Study Class PowerPoints for Class 8 |
| **Five** | **9**  **-----**  **10** | Feb. 15  -----  Feb. 17 | Estates in Land – Future Interests – introduction; Reversions; Possibilities of Reverter; and Rights of Entry for Condition Broken  -----  Estates in Land – Future Interests – Remainders and Executory Interests; Classifying the Future Interests | Barros Casebook: 143-145  Class Primers: Estates in Land: 18-21  Study Class PowerPoints for Class 9  -----  Barros Casebook: 145-156  Class Primers: Estates in Land: 21-24  Study Class PowerPoints for Class 10 |
| **Six** | **11**  **-----**  **12** | Feb. 22  -----  Feb. 24 | The Prohibition on Restraints on Alienability & Rules of Construction; The Rule Against Perpetuities – Introduction  -----  Rule Against Perpetuities – the Methodology | Barros Casebook: 159-163; 175-177  Class Primers: Estates in Land: 26  Study Class PowerPoints for Class 11  -----  Barros Casebook: 177-188  Class Primers: Estates in Land: 26-28  Study Class PowerPoints for Class 12 |
| **Seven** | **13**  **14** | March 1  -----  March 3 | Concurrent Estates – Introduction; Tenancy in Common; Joint Tenancy; and Tenancy by the Entirety  -----  Concurrent Estates – Rights & Obligations of Cotenants; The Unities/Severance; Rules of Construction; Partition of Cotenancies | Barros Casebook: 197-199; 219-223; 233-241  Class Primers: Estates in Land: 28-30  Study Class PowerPoints for Class 13  -----  Barros Casebook: 211-219; 223-232; 199-211  Class Primers: Estates in Land: 31  Study Class PowerPoints for Class 14 |
| **Eight** | **15**  **-----**  **16** | March 8  -----  March 10 | Landlord-Tenant – Types of Tenancies; Possession & Rent; Assignments & Subleases  -----  More Assignments & Subleases; Termination of Tenancies; Condition of the Premises | Barros Casebook: 270-277; 329-331; 331-348  Class Primers: Landlord-Tenant: 1-3  Study Class PowerPoints for Class 15  -----  Barros Casebook: 331-348; 348-355; 301-329; 373-377  Class Primers: Landlord-Tenant: 3-7  Study Class PowerPoints for Class 16 |
| **Spring Break** |  | March 15  -----  March 17 | **No Class**  -----  **No Class** |  |
| **Nine** | **17**  **-----**  **18** | March 22  -----  March 24 | Real Estate Transactions – Introduction; Brokers, Agents, and Real Estate Professionals; Major Risks in a Real Estate Transaction; Statute of Frauds  -----  Real Estate Transactions – Marketable Title | Barros Casebook: 381-406; 479-492  Class Primer: Statute of Frauds  Study Class PowerPoints for Class 17  -----  Barros Casebook: 437-444  Class Primers: Marketable Title  Study Class PowerPoints for Class 18 |
| **Ten** | **19**  **-----**  **20** | March 29  -----  March 31 | Real Estate Transactions – Equitable Conversion; Duty to Disclose Physical Defects; Inspection Contingencies; The Implied Warranty of Quality; Fixtures; Remedies for Breach of Real Estate Contract  -----  Real Estate Finance – Mortgages: Introduction; Foreclosures; | Barros Casebook: 437-444; 459-479; 492-496  Class Primers: Equitable Conversion  Study Class PowerPoints for Class 19  -----  Barros Casebook: 508-519; 521-532  Class Primers: Mortgages  Study Class PowerPoints for Class 20 |
| **Eleven** | **21**  **-----**  **22** | April 5  -----  April 7 | Real Estate Finance – Mortgages (Cont.): Title Theory vs. Lien Theory; Transfer of Mortgages; Transfer of Mortgages; “Assumes” vs. “Subject To”; Equitable Mortgages & Installment Land Contracts  -----  The Closing & Deed Delivery – Introduction; Time is of the Essence Clauses; Deed Requirements; Deed Delivery/Transfer of Title; Estoppel by Deed; Deed Descriptions | Barros Casebook: 519-521; 532-534  Class Primers: Mortgages  Study Class PowerPoints for Class 21  -----  Barros Casebook: 496-508;  Class Primers: Deeds  Study Class PowerPoints for Class 22 |
| **Twelve** | **23**  **-----**  **24** | April 12  -----  April 14 | The Closing & Deed Delivery – Types of Deeds & Deed  Covenants of Title; Title Insurance; Surveys & Inspections  -----  Title Issues – Recording: Introduction and the Structure of Recording Systems; The Three Types of Recording Statutes | Barros Casebook: 444-458  Class Primers: Deeds  Study Class PowerPoints for Class 23  -----  Barros Casebook: 407-428  Class Primers: Recording  Study Class PowerPoints for Class 24 |
| **Thirteen** | **25**  **-----**  **26** | April 16  -----  April 21 | Title Issues – Recording: How to Do a Title Exam; Recording Outside the Chain of Title; Miscellaneous Issues in Recording  -----  Servitudes – Easements: Introduction & Fundamental Concepts; Express Easements; Implied Easements; Scope of Easements; Misuse of Easements; Termination of Easements; Changed Circumstances; Scope of Easements; Duty/Right to Maintain Easements | Barros Casebook: 428-437  Class Primers: Recording  Study Class PowerPoints for Class 25  -----  Barros Casebook: 539-590; 590-613; 627-628  Class Primers: Easements  Study Class PowerPoints for Class 26 |
| **Fourteen** | **27**  **-----**  **28** | April 26  -----  April 28 | Servitudes – Covenants Running with the Land: Covenants Running at Law; Covenants Running in Equity; Common Schemes; Common Interest Communities; Remedies for Breach  -----  Land Use Regulation – Zoning: Introduction & Fundamentals of Zoning; Pre-existing Rights/Grandfathering; Variances & Special Permits; Rezoning | Barros Casebook: 613-664  Class Primers: Covenants Running with the Land  Study Class PowerPoints for Class 27  -----  Barros Casebook: 737-780  Class Primers: Zoning  Study Class PowerPoints for Class 28 |

**CLASS EXPECTATIONS**

**Anticipated Due Dates**

**I CALL ON STUDENTS RANDOMLY, AND YOU ARE EXPECTED TO BE PREPARED FOR EVERY CLASS. The Constitutional Law section of the bar exam is largely based on the most important Constitutional Law cases that we will read in class. It is essential that you read these cases closely and understand them.**

**Because the classes are intended to be highly interactive, the listed anticipated due dates are to be considered aspirational. At times, especially at the beginning of the semester, we may fall behind of the anticipated due dates; it is also possible that we will move more quickly at times than anticipated. You therefore should continuously match those dates to what we have actually completed in class. Please be prepared for every class by staying slightly ahead of the anticipated due dates and by adjusting and readjusting as the semester progresses.**

**If you have read ahead substantially, we expect you to review what you have already ready just before class. It is no excuse to state, “I read the case too long ago to remember it.” Lawyers often write briefs months before they argue in court and, like you, are expected to know the material when they are called on to discuss the legal issues.**

**Notes and Tape Recorders in Class**

**We test what we teach, and we teach by the syllabus. This means that, if you do all the reading and come to all the classes, you will see no surprises on the final exam. We am told by former students that those who fail to come to class tend not to do very well on the final exam. You therefore should come to class and develop an effective method of recording what goes on. Since the classes are interactive and it is not always possible to take copious notes on every point, we recommend the use of tape/digital recorders in class. A recorder should assist in rounding out, or filling gaps in, notes. It also can serve as a “safety net” in a fast-paced class.**

**Some students take notes on a laptops or netbook, and this is fine. One caveat, however: we sometimes notice that students are more consumed with typing out what is said in class word-for-word than with listening and participating. The purpose of class is not for you to be a scribe; it is for you to develop analytical skills, and this cannot be achieved if you are single-mindedly typing. You will always be able to supplement the law we discuss in class with outside reading.**

**Frequent Absences**

**I call on students randomly and will have the pleasure of speaking with each of you several times this semester. Obviously, you must be present in class to participate. Professors at MSL are authorized to lower the grades of frequently absent or frequently unprepared students by one-third of a grade. By way of illustration, this means that a final grade of C will be lowered to a C- if the student is absent from class an inordinate number of times; a B- will be lowered to a C+, and so on. If you are absent or unprepared three (3) or more times, your grade will be lowered as described above.**

**Being Prepared**

**I expect you to be prepared for every class and treat an unprepared student as an absent student. This is not college, and old college tricks like skimming, cramming and pretending to be prepared simply will not work. Here is what I expect of you before, during and after class:**

**Before Class**

1. **Read, reread, study and THINK thoroughly about the assigned cases and materials;**
2. **Do not leave a case or other reading until you are confident that you thoroughly understand the facts sufficiently to restate them if asked to do so in class;**
3. **Do not leave a case or other reading until you are confident that you understand why the case book author placed the case in the book;**
4. **Do not leave a case or other reading until you are confident that you can recite the legal issue(s) presented in the case;**
5. **Do not leave a case or other reading until you are confident that you know and UNDERSTAND each rule of law, and its elements, presented in the case;**
6. **Do not leave a case or other reading until you are confident that you understand the policy reasons for the adoption of each rule of law implicated in the case;**
7. **Read, reread, study and THINK thoroughly about the relevant “hypotheticals” or problems pertaining to the subject matter being studied in each class;**
8. **Do not leave a hypothetical or problem until you are confident that you understand why the professor assigned it;**
9. **Do not leave a hypothetical or problem until you are confident that you can recite the legal issue(s) presented in it;**
10. **Do not leave a hypothetical or problem until you are confident that you know and UNDERSTAND each rule of law, and its elements, implicated in the hypothetical or problem.**
11. **Do not leave a hypothetical or problem until you are confident that you understand the policy reasons for the adoption of each rule of law implicated by the hypothetical or problem.**

**During Class**

1. **Be prepared well enough to be able to provide an accurate recitation of the facts and holding of each assigned case, hypothetical or problem.**
2. **Be prepared well enough to be able to provide a concise recitation of the issue(s) presented in each case, hypothetical or problem.**
3. **Be prepared well enough to be able intelligently discuss the legal issues and rules of law presented or implicated by the assigned reading.**
4. **Be prepared enough to be able to intelligently discuss any factual variations the professor and/or other students propose during class.**
5. **Be prepared enough to be able to intelligently discuss flaws and strengths in the court’s reasoning or in the applicable rule of law;**
6. **Be prepared enough to be able to intelligently discuss alternative arguments that might have better resolved the dispute at issue in each case;**
7. **Be prepared enough to be able to intelligently discuss the policy issues relevant to the each case, hypothetical or problem.**

**After Class**

1. **Identify and clarify anything confusing about the law or application or law covered in class. If necessary, work with classmates collaboratively to achieve mastery of the law;**
2. **Rework your class notes and case briefs to reflect a more accurate picture of the cases, issues and rules of law.**
3. **Think about how the lesson covered in the particular class fits into the overarching body of property law.**

**You will be expected to read each assignment in its entirety. Reading “case notes,” “canned briefs,” Westlaw briefs and other shortcut aids, at the expense of the actual cases, will fail to prepare you adequately and will result in you being marked as unprepared.**

# RULES ON CLASSROOM DECORUM

**I expect you to observe the following rules in class. I do not believe any of these rules are unreasonable:**

**1. Please Stay Put. Our day class schedule will be 12:30 p.m. to 2:10 p.m. The evening schedule will be 9:00 p.m. to 10:45 p.m. These are long classes. To the extent possible, please stay in your seat. A parade of students in and out of the class tends to be disruptive to the conduct of the class.**

**2. Timeliness. Please arrive on time. Late arrivals are disruptive to the class. Tardiness should still be the exception rather than the rule. I often take attendance at the beginning of the class. Late students will be marked absent, and I will not change this designation if you come in later.**

**If tardiness becomes an issue, i.e., if it starts to cause disruptions, I will impose a hard-and-fast rule that those arriving late will not be allowed into the classroom.**

**3. Stand, Name, Project. When you speak in class, whether it’s while volunteering or after being called on, please stand, state your first name, face the rest of the class (not me), and project your voice so as to be heard. Please do this for the entire semester. Speaking in public is uncomfortable at first, but even those of you who intend to practice transactional law as opposed to litigation must realize that the practice of law is a performance art as well as an intellectual endeavor.**

1. **Cell Phones and Messaging. *Except for class purposes*, there will be *no cell phone use in class.* I reserve the right to instruct students to leave the class immediately if they engage in text messaging, instant messaging, social media, or other forms of electronic communication during class, and will do so if this issue becomes a problem. If you refuse an instruction to leave, I will report you to the administration for discipline.**

**4. Laptop Computers. While I believe that laptop computers are an invaluable classroom tool, lately their use sometimes has become troublesome in several ways. Like cell phones, they beep and make noises when starting up. Please arrive early enough to start your laptop prior to class so the start-up noises will not be disruptive. If you cannot set up your laptop prior to class, please ensure that it is on mute and will not be disruptive.**

**It is never appropriate to use computers to play computer games, send and receive instant messages, surf the net, or perform other computer functions not related to the task at hand. I wander around the room a bit while teaching and will probably catch at least some of such off-focus activity if it occurs.**

**With limited exceptions, attorneys are not permitted to use their laptops, tabs, or other electronic devices while arguing or trying cases in court. The same will be true in my class. When you end up standing to present a case or answer questions framed by the professor, *you are to close your laptops and put down other devices*. Your focus will be on the professor and other students. If you feel that you are unable to remember all you have gleaned from your reading, you may refer to paper notes.**

**5. Talking in Class. This will be an interactive class, and it is normal for there to be a bit of a “buzz” while we are discussing a case or “hypothetical.” I do not usually get upset if the class is analyzing a hypothetical, and some students do a little “kibitzing” in the process. However, I still expect you to listen while others are talking so you can respond if called upon, and, most importantly, to respect others by not talking over them. I will not tolerate talking that doesn’t involve the subject matter at hand.**

**6. Eating/Drinking in Class. I generally do not approve of anything that might divert your focus from the class discussion, and eating and drinking in class certainly falls into that category. On the other hand, I do understand that stressed-for-time students, especially evening students, often are unable to take meals at normal hours, and therefore need some sustenance to get them through. Generally, therefore, I tolerate small snacks and drinks during class. I will not tolerate full meals, full “submarine” sandwiches, or anything of the like. I also will not tolerate undue noise while eating, e.g. stubborn plastic wrappers, crunchy foods, etc. I will ban all foods and drinks in class if I think they are becoming a distraction.**

**9. Civility above All Else. There is often intellectual tension is a law school classroom especially with subjects like Constitutional Law, on which reasonable minds can differ. Students and professors can differ -- sometimes widely – in their views on morals, ethics, society, politics and ways of life. It is my intention to treat each of you with the utmost courtesy and respect, even when we disagree. In turn, I expect that each of you will also treat each other with respect and courtesy. Passionate argument is terrific if kept civil and respectful. Remember: argue the issues, not the personalities!**