Syllabus and First List of Assignments

Course Materials

The materials for this course are:


You are also required to purchase a “clicker” for this course. The exact model is available from our IT department.

Subject Matter and Objectives of This Course

Subject matter: This is a survey course of major issues in real property, personal property, and to a lesser extent, intellectual property.
Course objectives: This course has three main objectives. The first is to familiarize you with most of the major concepts that can be tested on the bar exam related to property law. For an outline of those subjects, see Appendix A to this syllabus, which provides the 2017-18 MBE Subject Matter Outline for Real Property (the latest available at this time). In addition to these real property issues, I will also discuss a number of other personal property and intellectual property issues. In addition to learning black letter law, the second goal of the course is to familiarize you with several important—and conflicting—theories of property that inform the kinds of choices we make about what property is and what rights it entails. Third, we will also evaluate property from a sociological lens, considering how societies decide what property can be owned, who gets to own property, and what individuals can do with property once they own it.

Learning Outcomes

The American Bar Association, which accredits law schools, requires every law school to establish learning outcomes and demonstrate how courses within the curriculum meet those learning outcomes. Below, I have reproduced the College’s learning outcomes relevant to this course and explained how the course meets those outcomes.

BY THE START OF THEIR LEGAL CAREERS, ALL GRADUATES OF THE UNIVERSITY OF IDAHO COLLEGE OF LAW WILL ACHIEVE THE FOLLOWING LEARNING OUTCOMES:

LEARNING OUTCOME 1 – KNOWLEDGE OF LAW AND LEGAL INSTITUTIONS
Graduates will demonstrate knowledge and understanding of substantive and procedural law and legal institutions. Graduates will be able to:

- Demonstrate competence in the substance of foundational common law subjects. This course provides foundational knowledge of common law approaches to both real and personal property.
- Demonstrate an understanding of the trajectory of a legal dispute or lawsuit from start to finish. This course introduces students to the nature of a legal dispute primarily through court opinions. In so doing, the course investigates how property disputes evolve, the effectiveness of litigation in resolving property disputes, and how common law rules serve as the foundation for the future use of property.

LEARNING OUTCOME 2 – LEGAL ANALYSIS AND REASONING
Graduates will demonstrate the capacity to engage in sophisticated legal reasoning and analysis. Graduates will be able to:

- Identify the legal rules and principles applicable to a given context.
- Identify legally relevant facts, both known and unknown, in a given legal context.
- Identify nature and consequence of ambiguities in the facts in a given context.
• Construct and support an argument grounded in appropriate legal authority and policy considerations, while recognizing and addressing weaknesses thereof.
• Understand role of legal research in identifying applicable law and developing analysis and argumentation relevant for a particular dispute.

This course introduces students to all of the above legal skills that apply in the context of real and personal property disputes.

LEARNING OUTCOME 3 – ORAL AND WRITTEN COMMUNICATION SKILLS

Graduates will be proficient at communicating complex legal arguments, reasoning, and analysis, both in writing and in oral communication. Graduates will be able to:

• Orally communicate legal arguments effectively and nimbly.

This course requires students to articulate legal arguments related to real and personal property both to the course’s professor, but also through oral dialogue and debate with other students in the course.

Credit Hours for Coursework

In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The Course requirements outlined above with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule.

Contacting Me Outside of Class

Feel free to stop by my office, Room 312, at any time. I am in my office most of the time during typical work hours. You can also contact me at millers@uidaho.edu, and we can either discuss matters over e-mail or arrange a time to meet in person.

I will also hold formal office hours on Thursdays from 11:45 to 1:00 and by appointment.

Class Attendance and Participation

You must do your best to show up (1) for every class, (2) on time, and (3) well prepared. You must keep track of your own attendance, including records of any absences and the reasons for them. In addition, I will take attendance through the assistance of clicker technology, so please bring your clicker to class every day. If you know that you are going to have to miss a class, I will appreciate it if you tell me beforehand (e.g., by email).

If you miss more than five classes, you must: (i) let me know as soon as possible; (ii) be prepared to explain and document the reasons for all your absences; and (iii) get my permission
to sit for the exam. I reserve the right, if you miss more than five classes, to lower your grade up to one letter grade for poor attendance.

Grades and Course Requirements

Overview: Your grade will be based upon the following factors.

First, 75% of your grade will be based upon a typical law school three-hour final exam. I will give you more details about the timing, format, and content of the exam during the semester.

Second, you will also be given two take-home assignments during the semester, each of which will constitute 10% of your grade.

Third, class participation will account for 5% of your grade.

Fourth, I anticipate giving you several “check / no check” mandatory assignments during the semester. You will not receive a grade on these assignments, but you must complete them. Otherwise, you will receive an “incomplete” in the class until these assignments are finished. These mandatory, non-graded assignments are used primarily either to extend abstract concepts into practical application or to drill complicated black-letter law.

For the exam, you will be permitted to bring into the exam room one 8.5” x 11” sheet of paper with notes on one side of that sheet of paper (the “Note Sheet”). The Note Sheet may be hand-written or type-written, and you can write or print the material on the Note Sheet in whatever size—big or infinitely small—that you choose. My purpose in permitting the Note Sheet is twofold: first, condensing the information onto the Note Sheet requires a synthesis of knowledge that simply permitting you to bring in all of your notes does not require; and second, the Note Sheet should calm nerves about remembering some of the black-letter law, and permit you to focus on the analysis, which is the heart of a well-written law school exam. I will provide you more details on the exam and its structure as the semester progresses. I also typically plan to use the final class period for exam review, though I may change this at my discretion, depending upon coverage of the material throughout the semester.

Use of Laptop and Other Electronics in Class

This year I am permitting laptops, though I do this with some reluctance; in previous years, I have not permitted laptops. I reserve the right to change this policy if it becomes evident that students are using their laptops for non-class-related activities, which research indicates, hinders both individual student learning and the learning of nearby students. See Susan M. Ravizza, et al., Logged In and Zoned Out: How Laptop Internet Use Relates to Classroom Learning, 28(2) PSYCHOLOGICAL SCIENCE 171 (2016), which notes:

Our results showed that nonacademic Internet use was common among students who brought laptops to class and was inversely related to class performance. This relationship was upheld after we accounted for motivation, interest, and intelligence. Class-related Internet use was not associated with a benefit to classroom performance.

The present research suggests that even when laptops are used solely to take notes, they may still be impairing learning because their use results in shallower processing. In three studies, we found that students who took notes on laptops performed worse on conceptual questions than students who took notes longhand. We show that whereas taking more notes can be beneficial, laptop note takers’ tendency to transcribe lectures verbatim rather than processing information and reframing it in their own words is detrimental to learning.

See also Steven Eisenstat, *A Game Changer: Assessing the Impact of the Princeton/UCLA Laptop Study on the Debate to Ban Law Student Use of Laptops during Class*, 92 *U. Det. Mercy L. Rev.* 83 (2015) (arguing (1) laptop use results in many of them using their laptops for unrelated and distractive purposes; (2) based upon the Mueller/Oppenheimer studies, students who use their laptops for the approved purpose of typing their notes have a poorer conceptual understanding of the course materials as compared to their counterparts who handwrite their notes; (3) consequently, laptop users tend to perform less successfully on their law exams than those students who handwrite their notes.)

You are also required to purchase a “clicker” for this course. The exact model is available from our IT department.

**Firearms**

The following is official language regarding firearms approved by The University of Idaho for inclusion in syllabi:

The University of Idaho bans firearms from its property with only limited exceptions. One exception applies to persons who hold a valid Idaho enhanced concealed carry license, provided those firearms remain concealed at all times. If an enhanced concealed carry license holder’s firearm is displayed, other than in necessary self-defense, it is a violation of University policy. Please contact local law enforcement (call 911) to report firearms on University property.

**Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement**

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the
authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at [http://www.uidaho.edu/current-students/cdar](http://www.uidaho.edu/current-students/cdar). Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

**Recording Class Sessions**

Students may not electronically record classes unless they have the express consent of the instructor, except where the Dean of Students has allowed recording as a disability accommodation pursuant to a recommendation by CDAR. Recording classes without the instructor’s express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by CDAR. Students who are unable to attend class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the Law Library for recording equipment and information on recording procedures.

**Civility**

In any environment in which people gather to learn, it is essential that all members feel as free and safe as possible in their participation. To this end, it is expected that everyone in this course will be treated with mutual respect and civility, with an understanding that all of us (students, instructors, professors, guests, and teaching assistants) will be respectful and civil to one another in discussion, in action, in teaching, and in learning.

Should you feel our classroom interactions do not reflect an environment of civility and respect, you are encouraged to meet with your instructor during office hours to discuss your concern. Additional resources for expression of concern or requesting support include the Dean of Students office and staff (885-6757), the UI Counseling & Testing Center’s confidential services (885-6716), or the UI Office of Human Rights, Access, & Inclusion (885-4285).

**Assignments**

Most assignments will come from the casebook or are available on the course’s bblearn site. The course materials are listed on Page 1 of this syllabus.

Anticipated assignments start on the next page. These assignments are tentative; they may be changed by prior announcement in class, by email, or on bblearn. In addition, I will send you
e-mail guides to your reading from time-to-time, which will tell you what cases and notes are of particular import for your review within the assigned pages.

Reading assignments may be supplemented by in-class handouts. Therefore, if you miss a class, you should find out whether I modified an assignment or handed out anything in that class. I will put all handouts on bblearn, as well.

The assignments in the Casebook include chapter problems and exercises. Please come to class prepared to discuss the problems and exercises as assigned to you in the previous class. You do not have to write out answers in advance, though you may find it helpful to make notes on them in preparation for class.
Class Reading Assignment Schedule

The schedule below indicates the material I intend to cover in this class. I will add additional supplemental and recommended reading as the semester evolves in response to class conversation and student interest. In addition, we will also need to re-assign some class readings because of known class cancellations and unanticipated class cancellations.

Two known class cancellations are as follows:

- Friday, October 19 (reason: there is a major wildfire law conference in town I am hosting)
- Tuesday, October 23 (reason: Michael Chertoff will be speaking for Bellwood; you should attend)

These classes will be re-scheduled. I will update the schedule below with actual class dates approximately every three or four weeks to reflect actual course coverage and re-scheduled classes.

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<tr>
<th>Chapter 1: The Concept of Property</th>
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<td>Class 3 (Aug 24): The Right to Transfer</td>
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<td>Class 4 (Aug 28): The Right to Exclude</td>
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<td>Class 5 (Aug 30): The Rights to Use and Destroy</td>
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<th>Chapter 2: Owning Real Property</th>
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<td>Class 6 (Aug 31): Adverse Possession: Basics</td>
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<td>Class 7 (Sept 4): Adverse Possession: Mechanics</td>
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<th>Chapter 3: Owning Personal Property</th>
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<td>Class 8 (Sept 6): Finders</td>
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<td>Class 9 (Sept 7): Gifts</td>
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<th>Chapter 4: An Introduction to Intellectual Property</th>
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<td>Class 10 (Sept 11): Common Law; Copyrights</td>
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<td>Class 11 (Sept 13): Patents; Trademarks</td>
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<th>Chapter 5: Estates and Future Interests</th>
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<td>Class 12 (Sept 14): Introduction; Fee Simple; Life Estate</td>
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<tr>
<td>Class 13 (Sept 18): Life Estate; Fee Tail; Defeasible Estates</td>
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<td>Class 14 (Sept 20): Future Interests in Transferor; Remainders</td>
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<td>Class 15 (Sept 21): Remainders; Executory Interests</td>
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<td>Class 16 (Sept 25): Rule Against Perpetuities</td>
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<td><strong>FIRST MID-TERM TAKE HOME</strong></td>
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<td><strong>Chapter 6: Concurrent Ownership and Marital Property</strong></td>
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<td>Class 17 (Sept 27): Concurrent Ownership Generally</td>
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<td>Class 18 (Sept 28): Partition; Rights and Duties of Cotenants</td>
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<td>Class 19 (Oct 2): Marital Property</td>
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<td><strong>Chapter 7: Leasing Real Property</strong></td>
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<td>Class 20 (Oct 4): Discrimination; Nonfreehold Estates</td>
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<td>Class 21 (Oct 5): Delivering Possession; Constructive Eviction</td>
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<td>Class 22: Implied Warranty of Habitability</td>
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<td>Class 23: Assignment and Sublease</td>
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<td>Class 24: Landlord Consent; Abandonment</td>
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<td>Class 25: Eviction</td>
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<td><strong>Chapter 8: Selling Real Property</strong></td>
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<td>Class 26: Statute of Frauds; Marketable Title</td>
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<td>Class 27: Duty to Disclose; Deeds</td>
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<td>Class 28: Remedies for Breach; Title Covenants</td>
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<td>Class 29: Searching Title; Recording Acts</td>
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<td>Class 30: Recording Acts; Notice</td>
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<td><strong>Chapter 9: Financing Real Property</strong></td>
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<td>Class 31: Obligation; Security</td>
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<td>Class 32: Foreclosure</td>
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<td><strong>Chapter 10: Private Land Use Planning</strong></td>
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<td>Class 33: Creating Easements</td>
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<td>Class 34: Creating Easements</td>
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<td>Class 35: Real Covenants; Equitable Servitudes</td>
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Appendix A

Real Property
MBE Subject Outline: http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F201

NOTE: Approximately one-fifth of the Real Property questions on the MBE will be based on each of the categories I through V.

I. Ownership of real property
   A. Present estates and future interests
      1. Present estates
         a. Fees simple
         b. Defeasible fees
         c. Life estates
      2. Future interests
         a. Reversions
         b. Remainders, vested and contingent
         c. Executory interests
         d. Possibilities of reverter, powers of termination
         e. Rules affecting these interests (including survivorship, class gifts, waste, and cy pres)
   B. Cotenancy
      1. Types: tenancy in common and joint tenancy
      2. Rights and obligations of cotenants
         a. Partition
         b. Severance
         c. Relations among cotenants
   C. Landlord-tenant law
      1. Types of tenancies
      2. Possession and rent
      3. Transfers by landlord or tenant
      4. Termination (including surrender, mitigation of damages, anticipatory breach, and security deposits)
      5. Habitability and suitability
   D. Special problems
      1. Rule against perpetuities: common law rule and statutory reforms
      2. Alienability, descendibility, and devisability of present and future interests
      3. Fair housing/discrimination
      4. Conflicts of law related to disputes involving real property

II. Rights in real property
   A. Restrictive covenants
      1. Nature and type
      2. Creation
      3. Scope
      4. Transfer
      5. Termination
      6. Property owners’ associations and common interest ownership communities
B. Easements, profits, and licenses
   1. Nature and type
   2. Methods of creation
      a. Express
      b. Implied
      c. Prescription
   3. Scope and apportionment
   4. Transfer
   5. Termination
C. Fixtures
D. Zoning (fundamentals other than regulatory taking)
   1. Zoning laws
   2. Protection of pre-existing property rights
   3. Rezoning and other zoning changes

III. Real estate contracts
A. Real estate brokerage
B. Creation and construction
   1. Statute of frauds and exceptions
   2. Essential terms
   3. Time for performance
   4. Remedies for breach
C. Marketability of title
D. Equitable conversion (including risk of loss)
E. Options and rights of first refusal
F. Fitness and suitability
G. Merger

IV. Mortgages/security devices
A. Types of security devices
   1. Mortgages (including deeds of trust)
      a. In general
      b. Purchase money mortgages
      c. Future advance mortgages
   2. Installment land contracts
   3. Absolute deeds as security
B. Security relationships
   1. Necessity and nature of obligation
   2. Mortgage theories: title, lien, and intermediate
   3. Rights and duties prior to foreclosure
   4. Right to redeem and clogging the equity of redemption
C. Transfers
   1. By mortgagor
      a. Assumption and transfer subject to
      b. Rights and obligations
      c. Application of subrogation and suretyship principles
      d. Restrictions on transfer (including due-on-sale clauses)
   2. By mortgagee
D. Discharge of the mortgage
   1. Payment (including prepayment)
   2. Deed in lieu of foreclosure
E. Foreclosure
   1. Types
   2. Acceleration
   3. Parties to the proceeding
   4. Deficiency and surplus
   5. Redemption after foreclosure

V. Titles
A. Adverse possession
B. Transfer by deed
   1. Requirements for deed
   2. Types of deeds (including covenants for title)
   3. Drafting, review, and negotiation of closing documents
   4. Persons authorized to execute documents
C. Transfer by operation of law and by will
   1. In general
   2. Ademption
   3. Exoneration
   4. Lapse
D. Title assurance systems
   1. Recording acts
      a. Types
      b. Indexes
      c. Chain of title
      d. Hidden risks (e.g., undelivered or forged deed)
   2. Title insurance
E. Special problems (including estoppel by deed and judgment and tax liens