Course Description and Requirements

Welcome to the course in Property. These first few pages describe the objectives for the course and provide some other important information.

1. Assignments

The required materials are: (1) Ehrlich, Assignments & Supplement; & (2) Dukeminier, Property (8th ed).

There is a comprehensive web site for this course. The website contains up-to-date information about assignments for upcoming classes as well as other valuable resources and links. The direct URL is: http://faculty.cwsl.edu/ehrlich/prop.

At the beginning of each class session, I will announce the assignment for the next class. The assignment will also be posted on the class website. **Always check the website the day before class for the most up-to-date information about the assignment for the next class.**

The readings are carefully edited so that the assignments are not overwhelming. Nevertheless, if you are unprepared during the semester, you may submit, once, an "unprepared" note. Simply give me a written note immediately before class with your name and date clearly printed. No explanation is necessary.

2. Class Summaries

Starting with the second class, I will begin each class by asking a student to read his or her summary of the prior class. This means that at the end of the first class session (and all subsequent sessions) you should spend some time summarizing, in writing, the material covered in class. The summary must be in writing and you should be ready to recite it at the beginning of the following class. You cannot merely recite your class notes – there must be an organized summary.

I will be doing this assignment right beside you. Together, we can work to organize and integrate the prior class session into a conceptual model that makes sense. Over the years, many students have found this to be an extremely valuable exercise. If done on a regular basis, much of the task of outlining is completed by the end of the semester. It will take a few minutes after each class and will definitely assist you in the outlining and test preparation process. It is often helpful to refer to the table of contents and the Assignments and a treatise or study aid. **The best time to do the summary is immediately after class** or later that same day. More information will be provided in class.
3. **Timeliness & Attendance**

I will begin class at the scheduled time and I request that you be ready to participate at the moment class begins. *To do this, you will need to arrive in class a few minutes before the scheduled starting time.* If you have a recurring obligation (such as child care) that will result in your being late from time-to-time, see me at the beginning of the semester so that we can arrange a seat that will cause the least disruption.

You are allowed to miss up to six classes under the Academic Policies. However, missing even two or three classes can result in your missing out on essential information and guidance. An attendance sheet is circulated each class and serves as the official record of class attendance. *If you fail to sign the attendance sheet during class you will be considered absent for that class.*

4. **Examinations and Grading.**

There will be a final examination a mid-semester examination. I will inform you of the date of the mid-semester exam at least two weeks before the exam. Your grade will be based primarily on your exams. I also use the “push point” system I will award up to three positive "push points" for excellent brief recitations and classroom participation. I will assess up to three negative push points if: (i) a student is repetitively late; or, (ii) a student is unprepared when called on to recite a brief or comment on assigned material (without having given me an unprepared note at the outset of that class).

5. **Course Objectives**

I have several objectives in preparing the materials and in the classroom. One important objective is the selection and coverage of subject matter that is interesting, challenging (but attainable), of modern significance and pertinent to the practice of law. Property law is rapidly changing. We will strive to understand existing law and will pursue the social, economic, political and logical conditions that impel the changing of legal rules of property. I intend to make this an exciting semester. Another objective is the advancement of analytical skills, such as synthesis of material, organization of ideas, articulation of abstractions and persuasive interpretation of cases and statutes.

Finally, I seek to create an atmosphere of mutual respect, support and intellectual growth in the classroom. I intend to make a positive contribution to your studies and hope to gain some insights and inspirations from you.

6. **Contact Information & Office Hours**

You are highly encouraged to communicate with me in any of the following ways:

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1. Similarly, if you are late to class and miss the attendance sheet, you will be considered absent for that class. You cannot sign the attendance sheet after it passes your seat.

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Office hours are posted on the class website. I am often available during non-office hours. You can make a formal appointment or just stop by – or call.

Make an effort to stop in at least once during the semester so that we may get to know each other a little better. I encourage you to stop by if you have any questions or if you need advice.

8. Course Coverage & Expected Learning Outcomes

Property I covers the following substantive areas of law:

- What is “property"
- Limitations on property rights
- Acquisition of title to property
- Acquiring title to property by adverse possession
- Acquiring title to property by gift
- The traditional estates in land:
  - Present possessory v. future possessory estates
  - Attempts to limit alienability of future owners
- Introduction to leasehold estates
- Concurrent ownership of property by two or more persons
- Marital property interests
- Easements: creation, scope and termination

Expected Learning Outcomes: At the end of the course, you will be able to:

- Find, understand and organize legal rules, their elements & the policies behind the rules/elements.
- Use cases, textual materials and class to synthesize rule structures.
- Apply rules methodically to new facts, element-by-element
- Use legal rules to solve problems by identifying and articulating the legal issues involved in a factual scenario, reconciling conflicting authorities, evaluating the effectiveness of existing authority and arguing some legal doctrines should be extended, limited, enforced or rejected in approaching the problem.
- Clearly express your thoughts in oral and written form.
Background Readings for the First Class

1. What is Property?

Suppose that in a primitive culture the strongest man in the region, Strongo, possesses a valuable animal hide that can be used for bedding and warmth. There is no government or tribal authority. Strongo obtained the hide by hunting a large mammal and then curing the skin. Does Strongo have property rights in the hide? He certainly has possession of the hide but does his interest in the hide rise to the level of property? He can physically defend his rights to use the hide but is that what we mean by property?

If there is no government to enforce Strongo's rights to the hide, can he have a property interest in the hide, or is his use of the hide limited to his physical capacity to exclude others from obtaining possession of the hide? To answer the question, assume for a moment that Strongo suffers a debilitating illness and is no longer capable of physically defending his rights to the hide. Does he have property rights if the hide is taken by a stronger person?

Jeremy Bentham, a respected English legal philosopher stated: "Property and law are born together, and die together. Before laws were made there was no property, take away laws and property ceases."

What does this statement mean? Does property arise only because there is some mechanism of legal recognition of a continuing right to use, enjoy and possess the object? Can property exist in a culture without governmental authority? Consider the following famous statement from Professor Cohen:

That is property to which the following label can be attached.

To the world: Keep off unless you have my permission, which I may grant or withhold.

Signed: __________________________

Private Citizen

Endorsed: __________________________

The State

In the Strongo example, the hide exists as an object regardless of the fact that Strongo has no enforceable rights to exclusive use of the hide. In modern times, if Strongo had property rights in the hide, he would not have to constantly defend his rights to use, enjoyment and possession. Instead, the state would enforce these rights for him. If the object is taken by another, the state will assist Strongo in recovering it. If someone else damages the object, the state will assist Strongo in obtaining compensation. Strongo's need not secure his possession of the hide on the basis of his own physical vigilance.

Is the "property" owned by Strongo the object -- or is the property Strongo's rights to use, enjoy and possess that object, as granted by the state? Can more than one person have a property interest in an object?
Is a property interest in an object absolute? That is, can a person who "owns" an object use it for any purpose they desire? Can the "owner" exclude all other persons from using the object.

Can an individual have a property right in intangibles? An intangible is something that does not exist in tangible, physical reality. Patents are a good example. A patent holder is granted the exclusive rights to use a design for manufacture of a product and exclude others from using that design.

Other very good examples of intangibles are bank accounts, stocks, bonds, treasury bills, promissory notes, checks, copyrights and the like. Is property in tangible objects (such as land or an automobile) different in any significant way from property in intangible objects? Is a one-hundred dollar bill tangible or intangible property?

Of course, we are all aware that property interests can exist in intangibles. Indeed, it could be said that in the twenty-first century much of the wealth of the world is in the form of intangibles, rather than tangible objects (land and goods). During this cascading "Information Age" consider the amount of wealth in the form of corporate stock and bond ownership, commodities futures, copyrights, patents, trademarks, licenses, bank accounts and partnerships. The Beatles recordings? What about the rights to market the name and likeness of Michael Jordan or Tiger Woods? Mickey Mouse? Sony's trademark? Elvis Presley's name and likeness?

In the case of tangible objects we could say that "property" is the rights to use the object and exclude others from using it. In the case of intangibles, property is . . . Well, what exactly is property in the case of intangibles? Consider the case of a patent. To say that someone has a property interest in a patent means that he or she has exclusive rights to use the design, license the design and prevent others from using the design. So, how would you describe "property" in the context of intangibles? Is the description different than the description of property we would use for tangible property?

a. Why Have Property

Why have private property? Why give people and entities the rights to own property? What purposes does property serve?

b. Acquisition of Property

Look at the table of contents in the casebook for this course. In our first class After our discussion of "What is Property" and "Why Have Property," we will turn our attention to the question of how individuals and entities acquire property.

1. In most societies, individuals are not the only parties that may own property. There are non-individual entities, such as corporations and partnerships, that are legally recognized "persons" that may own, use and dispose of property interests.