

**WESTERN STATE UNIVERSITY
COLLEGE OF LAW**

**SYLLABUS, POLICIES, AND ASSIGNMENTS
2012 SPRING SEMESTER
PROPERTY II, SECTIONS 152B and 152C**

PROFESSOR C. SHEPPARD

CLASS MATERIALS:

REQUIRED TEXT: John G. Sprankling and Raymond R. Coletta, **Property, A Contemporary Approach** (2009 Thomson Reuters West Interactive Casebook Series)

REQUIRED SUPPLEMENTS: Professor's Course Supplements

COURSE COVERAGE AND OPPORTUNITIES:

Property II is the second semester of the course on the law of Property. We will study aspects of the following topics in Property II:

- Selling Real Property
 - The Purchase Contract
 - Statute of Frauds
 - Seller's Covenant to deliver Marketable Title
 - Risk of Loss/Equitable Conversion Doctrine
 - Condition of the Property
 - Caveat Emptor
 - Misrepresentation
 - Duty to Disclose/Concealment
 - The Closing
 - Deeds
 - Mortgages, Deeds of Trust, Land Sale Contracts
 - Title Assurance
 - Deed Covenants of Title
 - The Recording System vs. The Torrens System
 - Recording Statutes
 - Chain of Title Problems
 - Title Insurance
- Private Land Use Planning.
 - Easements.
 - Land Use Restrictions (land use covenants)
- Nuisance

- Land Use Regulation
 - Basics of Zoning
 - Rigid Zoning or Flexible Zoning?
 - Zoning Amendments
 - Variances
 - Special Exceptions
 - New approaches to land use regulation
 - How Far Can Land Use Regulation Go?
 - Aesthetic Regulations
 - “Family” Zoning
 - Growth Controls and Exclusionary Zoning
- An Introduction to Environmental Law
 - Property and Ecology
 - Water and Wetlands
 - Land Surface
 - Atmosphere
- Eminent Domain
 - Defining and Scope of Public Use Limitation
- Regulatory Takings
 - Categorical Tests
 - Balancing Tests
 - Exactions

Please note that the topics regarding transfers of interests in real property and the course material concerning mortgages and deeds of trust are examined in greater detail in the elective course offering of Real Estate Transactions and the elective course offering of Secured Land Transactions (a.k.a. Secured Transactions in Real Property). Please also note that one or more of the following one-unit courses is or are offered from time to time during either Summer Session A or Summer Session B: Future Interests, Mortgage Law, Title Insurance, and Drafting Real Estate Documents.

In this course, you will be provided with opportunities to:

- Enhance your analytical, problem solving, and related skills that you will use as an attorney either in transactional settings, or in dispute resolution settings, or both.
- Develop a working knowledge of various principles of property law.
- Enhance your oral communication skills and legal research and writing skills.

COURSE METHODOLOGY:

I utilize a combination of classroom methods of instruction to assist you in your efforts to achieve the objectives of this course. Those methods of instruction include: use of the “case method” of exploring and examining legal principles; use of the “Socratic method” of interaction to enable you to engage in self-assessment of your understanding of course

material; the “problem solving” method to enable you to develop or enhance your understanding of the manner in which various principles of law might be applied in certain types of factual circumstances; role playing; and student collaboration. Those methods of classroom interaction are an integral part of the active learning process in which it is important for you to engage. Please understand that a passive learning approach is not the best method by which to acquire the knowledge and skills necessary to successfully complete law school. As a consequence, I use the lecture method sparingly. I usually limit use of the lecture method to introduce topics of study to the class, to emphasize various aspects of certain topics, and to recap aspects of prior class discussions.

EXAMINATIONS AND GRADING:

There will not be a midterm exam in this course.

There will be one on-campus, graded, closed book/closed notes examination. That exam will be the course final exam. You will not be allowed to use books, notes, or other reference material during the final exam.

General examination procedures are noted in the current edition of the *Student Handbook*. Additional procedures and instructions that pertain to the exams to be administered in this course will be included in each exam packet. Some of my prior Property II final exams are posted to the course website for your edification. You **must** comply with all written and oral instructions and procedures regarding the course final exam. I am in the habit of posting the exam instructions that will be included in the final exam packet about three to four weeks prior to the conclusion of the semester. That will allow you ample time to become familiar with those instructions and procedures prior to the date upon which the final exam will be administered. If you fail to comply with any of those instructions or procedures, you will be subject to academic penalties, or administrative penalties, or both.

Final Exam

A three-hour final exam will be administered to you. The final exam will be comprised of a set of thirty objective questions, either a statutory analysis problem, or a case analysis problem, or both, and an essay problem; or a set of thirty objective questions and two essay problems. You will be expected to properly analyze and answer the entire set of objective questions in one hour (an average of two minutes per question). You will be expected to properly analyze and answer the essay problems using the allotted time for a complete analysis of each of those problems.

The final exam will be comprehensive in scope. If I do not advise you differently, the final exam will be comprised of questions and problems that collectively pertain to **every** major topic covered by the course reading and study assignments and classroom discussions.

The maximum number of points that you can earn on the final exam is 100. You will earn one point for each correct answer to the objective questions. Thus, you can earn a total of 30 points by correctly answering each of the objective questions. The maximum number of points that you can earn collectively regarding the essay problems that will be part of the final exam is 70 points.

The score that you earn on the final exam will be used to determine your final grade in this class.

Grading

Your academic performance in this course will be measured and recorded using a numeric grade system on a scale of 0.0 to 4.0. Please also read that portion of the current edition of the *Student Handbook* regarding the “Grading System and Student Honors.”

To earn a numeric grade of 4.0, your course grade points must equal 90 or better. The total of 89 course grade points results in a 3.9 course grade; 88 course grade points results in a 3.8 course grade and so forth. Note that although course grade points of 59, 58, 57 and so forth would result in my submission of a course grade of 0.9 or 0.8 or 0.7, etcetera, a course grade below a 1.0 is recorded as a grade of 0.0 on the student’s official WSU transcript.

The foregoing illustrates that the highest accumulation of raw points earned by a student enrolled in this course is **not** automatically regarded as an “A.” For example, if the best aggregate, graded student work product in this class results in a total of 85 course grade points, then the highest grade in the class will be a 3.5. On the other hand, if the exam work product of **every** student in the class results in total course grade points for each student that is 90 or better, then the course grade of each student will be a 4.0.

If you are interested in reading an article that I have authored regarding the grading process, please see *The Grading Process: Taking a Multidimensional “Non-Curved” Approach to the Measurement of a First-Year Law Student’s Level of Proficiency*, 30 Western State L. Rev. 177 (2002-2003). When I wrote that article, the basic course in property law was part of the first-year curriculum offered at Western State. I supported, and I continue to support, the change in the Western State curriculum regarding first-year course offerings that went into effect in the fall of 2003 and pursuant to which the basic property course (Property I and Property II) became part of the second-year offerings. The purposes for which I included “For Credit” writing assignments in this course in the past are not as pertinent to continuing law students as they are to first-year law students. As a consequence, I have decided not to include those types of graded exercises as part of this course. The above-cited article augments the basic grading philosophy that I have shared with you in the prior passages of this segment of this course syllabus.

“Extra Credit” Course Quizzes

I will administer at least three “pop” quizzes during the course. Each pop quiz will be worth 100 points. If your average score on each of the course quizzes is 70 to 79, you will have earned one extra-credit course grade point. If your average score on the course quizzes is 80 to 89, you will have earned two extra-credit grade points. If your average score on each of the course quizzes is 90 to 100, you will have earned three extra-credit grade points. If you have earned one, two, or three extra-credit course grade points, that point or those points will be added to your final exam score to determine your grade in the course.

You will be required to use your semester student exam number as the only “mark of identification” on your quiz packet, and on your quiz answer sheet or quiz scantron card. Consequently, you must obtain your student exam number from records or from a faculty secretary at the earliest possible moment.

Practice Exams, Issue Spotting Exercises, Etc.

I admonish you to include exam writing, or exam taking, exercises **as part of your daily study habits beginning in the second week of the semester and continuing throughout the semester and during the interim between the conclusion of the semester and the administration of the final exam.** The time devoted to any such exercise can range from about ten minutes to an hour or more.

I am amenable to reviewing copies of your answers to practice writing exercises, or reviewing practice issue spotting exercises, or reviewing your outlining of answers to practice questions during the semester. However, if you wait until close to the end of the semester, you will run the risk that I will not have sufficient time to provide feedback to you before the final exam is administered to the class.

COURSE WEBSITE:

Additional course material, information, and practice exercises are and will be posted to the course website. To enroll in the course website **on or after Monday, December 19, 2011:**

1. Go to <http://webcourses.lexisnexis.com>.
2. Enter your lexis identification number where indicated.
3. Click the Browse Course Catalog link.
4. Click the link for Western State.
5. Click the “Enroll” button to the right of the course name: Property Law 1052: Property II.
6. Enter the access code where indicated. The access code is SHEPPARDIISP12
7. Click the submit button.

OFFICE HOURS, OFFICE EXTENSION, E-MAIL, FAXES:

I encourage you to communicate with me **on a regular basis**. If you are not able to meet with me during my office hours during a particular week for any reason whatsoever, please do not hesitate to communicate with me via e-mail, telephone, or fax.

I am available for office consultations by appointment. Reserve office time by using the *Faculty Appointments Notebook* maintained by the faculty staff. The *Faculty Appointments Notebook* is usually located on the counter in front of the faculty secretary/reception work space near the entrance to the third-floor faculty suite. You may reserve a maximum of two consecutive blocks of time (i.e., one-half hour) per office appointment. **Appointments for two or more students at a time are encouraged.**

Evening students who are not able to meet with me during my regularly scheduled office hours due to the student’s employment schedule may request to meet with me after the conclusion of any of our evening class sessions.

I expect to maintain the office hours noted below **beginning** Wednesday, January 18, and **ending** Monday, April 30. **I will not maintain regular office hours during the span of time between Tuesday, May 1 and the final exam.** Regardless, please do not hesitate to transmit a communication to me via email, telephone, or fax during that period of time if the need arises.

Office Hours: Unless you are advised to the contrary, my **office hours** during the 2012 Spring Semester will be:

Mondays and Wednesdays: 12:30 PM – 2:30 PM and 4:30 PM – 6:00 PM

You may contact me via email by addressing your communication to me at csheppard@wsulaw.edu; and you may contact me via telephone: 714-459-1152.

The faculty fax number is (714) 525-2786. Please be sure that your transmission includes a cover sheet that makes it clear that the transmission is intended for me.

ATTENDANCE, CLASS PARTICIPATION, DECORUM, AND SEATING:

Attendance in class is mandatory. If you miss more than six hours of class sessions, you will be subject to being administratively withdrawn from the course. If you have not already done so, you should study the appropriate portions of the current edition of the *Student Handbook* regarding attendance requirements.

Due to possible differences in the manner in which course materials are covered in class, you are **not** permitted to “make-up” a missed class by attending another section of this course regardless of whether the other section is taught by me or another Professor.

To be successful in law school, you must be an active learner. You will gain maximum benefit from class attendance only if you have engaged in a proper preparation for class. Proper preparation for class by you will include, but not be limited to: proper time management; engaging in a critical reading and re-reading of text assignments; briefing case opinions included in the assigned reading; critically reading and re-reading text notes and footnotes; analyzing problems included in the assigned reading; critically reading court opinions of the cases cited in the text notes or text problems; reviewing and editing your class notes from prior class sessions; personally preparing and reviewing study aids (e.g., sections of your personally prepared course outline, flash cards, and/or flow charts); reading and re-reading appropriate segments of hornbooks, treatises, or commercial study aids; and including some form of exam taking exercise as part of your daily study habits.

I call your attention to the following law review article: Laurel Currie Oates, *Beating The Odds: Reading Strategies of Law Students Admitted through Alternative Admissions Program*, 83 IOWA L. REV. 139 (1997). Although you were admitted to WSU through the regular law school admission process, portions of that law review article illustrate how a student might “outperform” his or her “predictors” by being an active learner.

I also call your attention to the latest edition of: Dennis J. Tonsing, *1000 Days to the Bar, But the Practice of Law Begins Now – How to Achieve Your Personal Best in Law School*, (William S. Hein & Co., Inc.). As I did during the Property I course, I encourage you to read and re-read that text. Prof. Tonsing provides excellent examples of how a law student should go about being a proficient student of the law and how engaging in proper study techniques in law school prepare you to pass a state’s bar exam and as well as how and why various lessons in law school and various study habits by a law student prepares her or him to be an attorney.

You should be prepared to participate in class on a regular basis. You should **be an active listener** in class at all times when you are not speaking in class. Being an active listener includes assessing whether you understand, or you do not understand, comments being made by me, or by one of your classmates. If you conclude that you do not

understand the comments, you should raise your hand to be recognized, and when recognized by me, you should voice your questions. If you understand the comments, you should then assess whether you agree or disagree with those comments. More importantly, you should assess the reason or reasons for your agreement or disagreement. Please do not hesitate to seek recognition to voice your questions or comments along those lines as well.

If you are not prepared for a particular class session, please so notify me prior to the start of that class session. You will not be penalized for being unprepared for a class session **unless** you have been unprepared for two prior class sessions. If you have not been prepared for two prior class sessions, I may regard you as being absent from the third class session for which you are also unprepared. Furthermore, I may regard you as being absent from any subsequent class session for which you are not prepared. Of course, you will not be regarded as being unprepared for class if you make a bona fide, but erroneous, attempt at analyzing a particular question or point that is a subject matter of discussion during a class session.

You are expected to maintain proper decorum when entering the classroom, while attending and participating in each class session, and when departing the classroom.

A seating chart will be circulated during the first day the class is in session.

STUDENT SELF-ASSESSMENT PACKET:

I strongly urge you to routinely study and use the contents of the “Student Self-Assessment Packet” that I have authored for your benefit throughout the semester.

READING ASSIGNMENTS:

To be properly prepared for class sessions, you must complete an appropriate, critical reading and study of the assignments that are listed in the following “Table of Reading and Study Assignments” that pertains to the section in which you are enrolled (Sec. 152B, day class; Sec. 152C, evening class).

TABLE OF READING AND STUDY ASSIGNMENTS – SEC. 152B

Week	Wed.	Mon.	Text Pages	Supp	Topics
1	1-18	1-23	645 – 694	1 – 3, 4, 5, 5A, 5B, 5C	Easements
2	1-25	1-30	694 – 738	6, 6A, 7, Summary re Covenants, Table re CID's	Land Use Covenants*
3	2-01	2-06	739 – 777	12, Rt. to Lateral and Subjacent Support 11.1 and 13	Nuisance Zoning**
4	2-08	2-13	777 – 812	11.1, 13, Outline re Judicial Deference	Zoning
5	2-15	2-20	813 – 835	Memo re Exclusionary Zoning	Zoning
6	2-22	2-27	837 – 881	13A	Environmental Law
7	2-29	3-05	883 – 906	11.1 and 14	Eminent Domain
8A	3-07		907 – 919	15, Table re Regulatory Takings, Definitions re Physical Occupation, etc.	Regulatory Takings
8B 9A	3-14	3-12			NO CLASSES – SEMESTER BREAK
9B		3-19	919 – 934	Same as above	Regulatory Takings
10	3-21	3-26	934 – 961	Same as above	Regulatory Takings
11	3-28	4-02	533 – 564		Purchase Contracts
12	4-04	4-09	564 – 584	8, 9, 10, and 11; Sample deeds, note, mortgage, deed of trust, land sale contract	Deeds Mortgages, etc.
13	4-11	4-16	584 – 599		Remedies re breach of a purchase contract; and Deed covenants***
14	4-18	4-23	599 – 621		The Recording System, Recording Statutes
15	4-25	4-30	621 – 643		Chain of title problems; Title Insurance
					Final Exam Saturday, May 12 10:00am-1:00pm

* See my law review article re land use covenants at 37 Western State University Law Review 27 (Summer 2009).

** A collection of articles that reflect upon the 75th anniversary of the decision of the U. S. Supreme Court in the case of *Village of Euclid v. Ambler Realty Co.* (see pages 758 – 766 of the course text), and related topics, appear in 51 Case Western L. Rev. (Summer 2001).

*** See my law review article re title assurances at 79 North Dakota Law Rev. 311 (2003, No. 2); reprinted in two parts in 17 Minn. Real Estate Law Journal, No. 6 (Nov/Dec 2004) and 18 Minn. Real Estate Law Journal, No. 1 (Jan/Feb 2005).

TABLE OF READING AND STUDY ASSIGNMENTS – SEC. 152C

Week	Mon	Text Pages	Supp	Topics
1	1-23	645 – 694	1-3, 4, 5, 5A, 5B, 5C	Easements
2	1-30	694 – 738	6, 6A, 7, Summary re Covenants, Table re CID's	Land Use Covenants*
3	2-06	739 – 777	12, Rt. to Lateral and Subjacent Support 11.1 and 13	Nuisance Zoning**
4	2-13	777 – 812	11.1, 13, Outline re Judicial Deference	Zoning
5	2-20	813 – 835	Memo re Exclusionary Zoning	Zoning
6	2-27	837 – 881	13A	Environmental Law
7	3-05	883 – 906	11.1 and 14	Eminent Domain
8	3-12			SEMESTER BREAK
9	3-19	907 – 934	15, Table re Regulatory Takings, Definitions re Physical Occupation, etc.	Regulatory Takings
10	3-26	934 – 961	Same as above	Regulatory Takings
11	4-02	533 – 564		Purchase Contracts
12	4-09	564 – 584	8, 9, 10, and 11; Sample deeds, note, mortgage, deed of trust, land sale contract	Deeds Mortgages, etc.
13	4-16	584 – 599		Remedies re breach of a purchase contract; and Deed covenants***
14	4-23	599 – 621		The Recording System, Recording Statutes
15	4-30	621 – 643		Chain of title problems; Title Insurance
				Final Exam Saturday, May 12 10:00am-1:00pm

* See my law review article re land use covenants at 37 Western State University Law Review 27 (Summer 2009).

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