

WESTERN STATE UNIVERSITY
COLLEGE OF LAW

SYLLABUS, POLICIES, AND ASSIGNMENTS
2013 Fall SEMESTER
PROPERTY II, SECTIONS 152A and 152B

DEAN/PROFESSOR C. SHEPPARD

CLASS MATERIALS:

REQUIRED TEXT: John G. Sprankling and Raymond R. Coletta, **Property, A Contemporary Approach SECOND EDITION** (2012 Thomson Reuters West Interactive Casebook Series)

REQUIRED SUPPLEMENTS: Professor's Course Supplements

COURSE COVERAGE AND OPPORTUNITIES:

Property II is the second semester of the basic course on the law of Property. Beginning in the 2013 Spring Semester, Property II became a two-unit course. Prior to that change, Property II was conducted as a three-unit course. Consequently, the course coverage for Property II has been changed from the coverage offered in prior years due to the fifteen-hour reduction in classroom time resulting from Property II being converted from a three-unit course to a two-unit course.

The topics of nuisance law, introduction to environmental law, zoning, eminent domain, and regulatory takings that were included as part of course coverage in Property II when conducted as a three-unit course will not be able to be covered to that extent during this two-unit version of Property II.

I will present ***brief introductory*** material on the topics of zoning, eminent domain, and regulatory takings during the course as is necessary for you to gain a proficient understanding of principles of law regarding servitudes or real estate transactions.

We will study aspects of the following topics in this two-unit Property II course:

- Private Land Use Planning (Servitudes)
 - Easements
 - Brief comparisons with licenses and profits
 - Land Use Restrictions (land use covenants)

- Selling Real Property
 - The Purchase Contract
 - Statute of Frauds
 - Seller’s Covenant to deliver Marketable Title
 - Risk of Loss
 - Equitable Conversion Doctrine
 - Uniform Vendor and Purchaser Risk Act
 - Condition of the Property
 - Caveat Emptor
 - Misrepresentation
 - Duty to Disclose/Concealment
- The Closing
 - Deeds
 - Mortgages, Deeds of Trust, Land Sale Contracts
 - Remedies for Breach
- Title Assurance
 - Deed Covenants of Title
 - The Recording System vs. The Torrens System
 - Recording Statutes
 - Chain of Title Problems

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 have been offered from time to time: 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 final exam 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 and are on file in the Law Library 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 as part of 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 two-hour final exam will be administered to you. The final exam will be comprised of a set of thirty objective questions and a one-hour essay problem. 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 problem using the IRAC method of legal analysis.

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. The final exam will be comprised of a set of multiple-choice problems and one essay problem. You will be able to earn a total of 30 points by correctly answering each of the objective questions. Thus, the maximum number of points that you will be able to earn regarding the essay problem that will be part of the final exam will be 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.

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.

“Extra Credit” Course Quizzes

I will administer at least two “pop” quizzes during the course. Each pop quiz will be worth 100 points. You can earn a maximum of three course grade points based on your average scores on the course quizzes.

If your average score on the course quizzes is 70 to 75, you will have earned one extra-credit course grade point. If your average score on the course quizzes is 76 to 79, you will have earned 1.5 extra-credit course grade points. If your average score on the course quizzes is 80 to 85, you will have earned two extra-credit course grade points. If your average score on each of the course quizzes is 86 to 89, you will have earned 2.5 extra-credit course grade points. If your average score on the course quizzes is 90 to 100, you will have earned three extra-credit course grade points. If your average score on the course quizzes is 69 or less, you will not have earned any extra-credit course grade points.

I will add the extra-credit course grade points you have earned to your final exam score to calculate the total course grade points by which I will calculate your course grade.

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.

If you do not have access to your student exam number for use during a course quiz, you must enter a “bogus number.” You must notify a faculty secretary after the conclusion of the class session during which the quiz was administered about your use of a bogus number on your quiz and provide your correct number to the secretary. The secretary will then communicate to the correct student exam to me in a manner that will preserve your anonymity.

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 classes 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 Thursday, August 1, 2013:**

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 SHEPPARDIIFA13
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.**

I expect to maintain the office hours noted below **beginning** on Thursday, August 22, and **ending** on Wednesday, November 27. **I will not maintain regular office hours during the span of time between Friday, November 29 and the final exam scheduled for Monday, December 16, 2013.** Regardless, please do not hesitate to transmit a communication to me via email or stop by my office to see if I am there during that period of time.

Office Hours: Unless you are advised to the contrary, my **office hours** during the 2013 Fall Semester will be:

Tuesdays: 10:00 AM – 12:00 PM and 3:15 PM – 5:00 PM
Wednesdays: 10:00 AM – 1:00 PM
Thursdays: 1:30 PM – 1:30 PM – 5:00 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 regularly scheduled 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 or outlines, 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 Western State through the regular law school admission process, portions of that law review article illustrate how a student is likely to “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.). 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 a competent 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.

If you use a laptop during class sessions, **use it properly!** Take care to give yourself time to absorb my comments or those of a classmate, and of information set forth on the computer screen or on a whiteboard **before** you use your laptop to draft your class notes. You should read or review portions of the Tonsing or other “how to be a proficient law student” reference book regarding effective note taking in class. Remember, you are not attending the College of Law to become a transcriber.

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.

DISABILITY SERVICES STATEMENT

Western State College of Law provides accommodations to qualified students with disabilities. The Disability Services office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Kelley Jones-Horwood, Disabilities Services Coordinator whose office is in the Third Floor Faculty Suite. Mrs. Jones-Horwood's phone number and email address are: (714) 459-1159; khorwood@wsulaw.edu. When seeking accommodations, a student should notify Mrs. Jones-Horwood of their specific limitations and, if known, their specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with the Disability Services Coordinator Kelley Jones-Horwood to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Mrs. Jones-Horwood or please so notify me in my capacity as Associate Dean of Students. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

READING ASSIGNMENTS AND CLASS SESSIONS:

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."

TABLE OF READING AND STUDY ASSIGNMENTS

	Sec A Tue.	Sec B Thu.	Topics	Text Pages	Web Course Docs
01	08-27	08-22	Easements	651 – 671	1 – 5A Easements Diagram Sample Deeds 3 - 5
02	09-03	08-29	Easements	671 – 685	5A
03	09-10	09-05	Easements	685 – 701	5B and 5C Scope of Easement Problem Uniform Conservation Easement Act
04	09-17	09-12	Land Use Restrictions*	701 – 715	6 Summary of Course Materials re Land Use Covenants
05	09-24	09-19	Land Use Restrictions	715 – 739	6, 6A, 7, 8
06	10-01	09-26	Land Use Restrictions	739 – 751	7 and 8
07	10-08	10-03	Selling Real Property: Purchase Contracts; Statute of Frauds	529 – 538	8A Schematic re Real Estate Sale Transactions
08	10-15	10-10	Selling Real Property: Statute of Frauds; Marketable Title; Risk of Loss	539 – 550	
09	10-22	10-17	Selling Real Property: Condition of the Property	550 – 561	
10	10-29	10-24	Selling Real Property: Deeds and Mortgages	562 – 578	9, 10, and 11 CA Documentary Transfer Tax
11	11-05	10-31	Selling Real Property: Mortgages and Remedies for Breach	578 – 594	Remedies for Breach of a Marketing Contract
12	11-12	11-07	Selling Real Property: Deed Covenants**, Record Title	594 – 614	Title Search Methods <i>Rockafellor</i> Schematic Recording Laws – Value <i>Mother Hubbard</i> Nursery Rhyme
13	11-19	11-14	Selling Real Property: Recording Acts and Chain of Title Problems	615 – 626	Samplings: Recording Acts and Doc re Value
14	11-26	11-21	Selling Real Property: Recording Acts, Chain of Title Problems, and Title Insurance	626 - 649	
	12-16	12-16	FINAL EXAM		

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

** 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).