

WESTERN STATE UNIVERSITY
COLLEGE OF LAW

SYLLABUS, POLICIES, AND ASSIGNMENTS
2014 FALL SEMESTER
PROPERTY II, SECTIONS 152A AND 152C

DEAN SHEPPARD

CLASS MATERIALS:

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

John G. Sprankling, **Property Law Simulations** (2013 West Bridge to Practice 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.

If there is time to do so, I will present **brief introductory** material on the topics of zoning, eminent domain, and regulatory takings during the course.

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

- **Leasing Real Property**
 - Creation, transfer, and termination of leaseholds
 - Duties and Rights of landlords and of tenants

- **Acquisition of ownership of property by:**
 - Find
 - Gift
 - Adverse Possession of real property or of personal property
 - Purchase
 - Intro to Residential Real Estate Transactions
 - Purchase Contract
 - Statute of Frauds
 - Seller's Contractual 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 of the purchase contract
 - 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.

THE INTERACTIVE COURSE TEXT:

Features of the required course text include Internet access to visual information relevant to course coverage, audio files relevant to various course topics, and Westlaw search terms that enable you to find state law regarding certain course topics. You are also able to access online chapter quizzes and answers and explanations regarding the problems that comprise those quizzes.

Note with care that you are able to obtain a license to access the online information provided by or organized by the authors for your edification by using the “KeyCode” that appears on the face page of the text you acquired. **If you acquired a used text**, you will have to pay a separate fee to West publishing to obtain a license to access the eBook.

I have chosen the Sprankling and Coletta text of Property, A Contemporary Approach because in addition to, your use of a hardbound edition of that book, you will be able to access the eBook version of this text by following the instructions set forth on the first page of the hardbound text which immediately follows the front cover of the hardbound text to supplement information contained in the hardbound version of the text. To that end, read page vii of the text, “*Features of this Casebook*” with care.

I have also chosen the Sprankling workbook that includes various “Property Law Simulations.” The pages of that text that I have assigned as part of your course work are set forth in the table of reading assignments that appear on the last four pages of this document. Although Professor Sprankling has devised the simulations with the idea in mind of providing opportunities to students to develop and hone negotiation and advocacy skills, I have assigned various simulations for the purpose of using the same to assist you in developing and honing the core skills addressed in the 1992 MacCrate Report: problem solving, legal analysis and reasoning, factual investigation, communications, competency, self-development, and improvement of the Profession of Law.

SKILLS AND VALUES:

A task force report exists that is commonly referred to as “The MacCrate Report.” The authors of that report examined the legal skills and values listed above as well as other skills and values. [Section on Legal Education & Admissions to the Bar, American Bar Association Legal Education and Professional Development —An Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). A collection of law review articles that represent supporting and critical views of “The MacCrate Report” appear in Volume 69 of the *Washington Law Review* published in July of 1994.]

On page 1 of his “Property Law Simulations” text, Professor Sprankling notes: “The MacCrate Report had little impact on legal education. But the Carnegie report has been

more successful, prompting many law schools to make curricular changes that expand opportunities for experiential learning.” Actually, Western State was one of the few law schools that took special note of The MacCrate Report prior to the publication of the Carnegie Report as is evidenced by Western State’s “Mission Statement” and various aspects of the law school’s course offerings both in terms of courses offered and the manner in which the courses are taught.

COURSE METHODOLOGY:

I utilize a combination of classroom methods to assist you in your efforts to achieve the objectives of this course, including use of the Socratic method of interaction to enable you to properly gauge the current level of your working knowledge of course subject matter, use of the case method of exploring and examining legal principles and methods of application of those principles, use of the problem solving method, use of role playing, and use of collaborative learning exercises.

It will be incumbent upon you to engage in an appropriate study and review of each course assignment before we engage in classroom discussions about the course material that is part of that assignment. The primary focus of our classroom discussions will be the manner in which you should use the course material to raise and resolve issues that can arise in either a dispute resolution setting or a transactional or other non-dispute resolution setting. To engage in an appropriate study of course material, at a minimum, you must complete a critical reading of that material; and you must brief each principal case included in the course text, each case cited in a text note, and any case which I might assign as additional reading. You should also read additional reference material (e.g., a hornbook or treatise). Your study habits must also include you engaging in activities that will hone your skills of legal analysis and exam taking and writing. I will also expect you to have prepared appropriate work product regarding text problems that are part of the assigned reading as well as having engaged in the preparation of appropriate work product regarding the assigned simulations. I expect you to compare your work product with comments that I post to the web course regarding a text problem or an assigned simulation. Adhere to the IRAC method of legal analysis during classroom discussions, when engaged in problem solving exercises, during quizzes, and during the course final exam.

COURSE WEBSITE:

Additional course material, information, practice exercises, and prior course exams are and will be posted to the course website. You will be able to enroll in the course website on and after Friday, July 30, 2014. To enroll in the course website:

1. Go to <http://webcourses.lexisnexis.com>.
2. Enter your Lexis identification number where indicated.
3. Click on the Browse Course Catalog link.
4. Click on the link for Western State.
5. Click on the "Enroll" button next to the course name: Property I, Property Law 101649.
6. Enter the access code where indicated. The access code is SHEPPARDIIFA14.
7. Click the submit button.

If you encounter any problem enrolling in the course website, please let me know.

EXAMINATION AND GRADING:

There will not be a midterm exam in this course. Each class session will provide to you ample opportunity for you to engage in self-assessment of your level of understanding of course material which will enable you to plan weekly study regiments accordingly and to formulate questions that you will need to present to me either during a class session, or during an office consultation, or by e-mail, or a combination thereof.

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 exam to be administered in this course will be included as part of each exam packet. Some of my prior Property I and 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 as part of the final exam packet about four to two 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 as part of this course. Information about the format of the final exam will be provided to you prior to the last day of instruction.

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

“Extra Credit” Course Quizzes

I will administer at least three pop quizzes during the semester. Each pop quiz will be worth 100 points. If the average of your scores on each of the course quizzes is 70 to 74, you will have earned one extra-credit course grade point. If the average of your scores on each of the course quizzes is 75 – 79, you will have earned one and one-half grade point. If the average of your scores on each of the course quizzes is 80 to 84, you will have earned two grade points. If the average of your scores on each of the course quizzes is 85 – 89, you will have earned two and one-half extra-credit grade points. If the average of your scores on each of the course quizzes is 90 to 94, you will have earned three extra-credit grade points. If the average of your scores on each of the course quizzes is 95 to 100, you will have earned four extra-credit course grade points. If the average of your scores on each of the course quizzes is less than 70, you will not have earned any extra credit grade points. If you earn extra credit grade points, 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 answer sheet. Consequently, you must obtain your student exam number **at the earliest possible moment**. In the event that you are not able to access your student exam number for whatever reason at the time I administer an extra credit course quiz, you should set forth a “bogus number” on the quiz answer sheet. After the conclusion of the class session, you will then need to notify one of the Faculty Assistants that you used a bogus number on a course quiz and also disclose your exam number to the Faculty Assistant so that she will be able to communicate that information to me while preserving your anonymity.

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. .

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 4.0.

Practice Exam Exercises

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 last day of class and the administration of the final exam.** The time devoted to any such **exercise** can range from about ten minutes to twenty minutes.

I am amenable to reviewing your practice issue spotting exercises, or reviewing your outlines of answers to practice questions, or practice answers to essay problems during the semester **provided** you have first studied the exam preparation material posted to the web course. If you wait until close to the end of the semester to submit any such work product to me for review and comment, 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. I do **not** critique student course outlines.

OFFICE HOURS, OFFICE TELEPHONE, E-MAIL, FAX:

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. If it becomes necessary to do so, you may request for us to meet at a time other than my posted office hours.

I expect to maintain the following office hours **beginning** Tuesday, August 26, and **ending** Wednesday, November 26:

Tuesdays: 10 AM – Noon and 3:15 PM – 6:00 PM
Wednesdays: 3 PM – 6 PM
Thursdays: 10 AM – Noon

You are required to “sign-up” for office appointments using the appointment book maintained by the faculty assistants. Office appointments will be conducted in 15-minute blocks of time. 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.**

You may contact me via e-mail by addressing your communication to csheppard@wsulaw.edu

You may contact me via telephone by calling (714) 459-1152. The faculty fax number is (714) 525-2786.

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 by 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). Portions of that law review article illustrate how a student might “outperform” his or her “law school predictors” by being an active learner and not a passive learner. That is an important message regardless of whether a person has been admitted to law school through a regular admissions program, as you were, or an alternative admissions program (e.g., an admissions by performance program).

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 of others, you should raise your hand to be recognized, and when recognized by me, you should voice your question. 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 good faith, 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. You are also required to adhere to the College of Law’s “Principles of Community” and, of course, the College of Law’s “Honor Code.”

A seating chart will be circulated during the first class 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:

I encourage you to complete your initial study of each set of assignments prior to the week during which we are scheduled to address that material. The Sec. 152A assignments appear on this page and the next page. The Sec. 152C assignments are on pages 12 and 13.

TABLE OF READING AND STUDY ASSIGNMENTS – SEC. 152A

	Sec A Tue.	Topics	Text Pages	Web Course Docs and Simulations
01	08-26	Leasing Real Property – (A) Creating the tenancy: (1) Selecting the tenant; (2) Selecting the Estate	437 – 453	Leasing Real Property Supplement 1
02	09-02	Leasing Real Property – Creating the tenancy: (3) Negotiating the lease; (B) Condition of the Premises: (1) Sub-standard Housing; (2) Constructive Eviction	454 – 473	Leasing Real Property Supplement 2
03	09-09	Leasing Real Property – (B) Condition of the Premises: (3) Implied Warranty of Habitability (IWH); (C) Transferring Tenant's Interest	473 – 492	Leasing Real Property Supplements 3, 4, 5, and 6 Property Simulation pp. 71 – 90: IWH
04	09-16	Leasing Real Property – (C) Transferring Tenant's Interest; (D) Ending the Tenancy – (1) Surrender or Abandonment; (2) Security Deposits; (3) Eviction; (E) Landlord's Tort Liability (not included as part of the course text)	492 – 527	Leasing Real Property Supplement 7 (Retaliatory Eviction) and Supplement 8 (Landlord's Tort Liability)
05	09-23	Acquisition of Ownership of Real Property by Adverse Possession	95 – 124	Adverse Possession Supp. 1 and 2

06	09-30	Acquisition of Ownership of Real Property by Adverse Possession	125 – 148	Adverse Possession Supp. 2 Property Simulation pp. 5 – 15: Adverse Possession
07	10-07	Acquisition of Ownership of Personal Property by: (A) Capture; (B) Find	159 – 195	Owning Personal Property Supp. 1
08	10-14	Acquisition of Ownership of Personal Property by: (C) Adverse Possession; (D) Gift	195 – 231	Property Simulation pp. 17 – 34 : Gift of Personal Property
09	10-21	Selling Real Property: (A) Purchase K – (1) Statute of Frauds; (2) Marketable Title	529 – 545	Selling Real Property Supplement 1
10	10-28	Selling Real Property: (A) Purchase K – (3) Risk of Loss (Equitable Conversion Doctrine and Uniform Vendor and Purchaser Risk Act); (4) Condition of the Property (Caveat Emptor, Misrepresentation, Disclosure)	545 – 561	Property Simulation pp. 91 – 111: Duty to Disclose Condition of the Property
11	11-04	Selling Real Property: (B) The Closing – (1) The Deed; (2) The Mortgage	562 – 588	Selling Real Property Supp. 2, 3, 4, 5, 6 & 7
12	11-11	Selling Real Property: (B) The Closing – (3) Remedies for Breach of the Purchase Contract; (C) Title Assurance – (1) Deed Covenants of Title	588 – 603	Selling Real Property Supplement 2, 3, 4, & 8
13	11-18	Selling Real Property: (C) Title Assurance – (2) Title Opinion based on Search of Public Records	603 – 626	Selling Real Property Supp. 9 & 10
14	11-25	Selling Real Property: (C) Title Assurance – (2) Title Opinion based on Search of Public Records, etc.; (3) Title Insurance	626 – 649	Selling Real Property Supp. 11, 12, & 13 **
		FINAL EXAM		

** 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

	Sec C Wed.	Topics	Text Pages	Web Course Docs and Simulations
01	09-24	Leasing Real Property – (A) Creating the tenancy: (1) Selecting the tenant; (2) Selecting the Estate; (3) Negotiating the lease; (B) Condition of the Premises: (1) Substandard Housing; (2) Constructive Eviction	437 – 473	Leasing Real Property Supplements 1 and 2
02	10-01	Leasing Real Property – (B) Condition of the Premises: (3) Implied Warranty of Habitability (IWH); (C) Transferring Tenant’s Interest	473 – 500	Leasing Real Property Supplements 3, 4, 5, 6, and 7 Property Simulation pp. 71 – 90: IWH
03	10-08	Leasing Real Property – (D) Ending the Tenancy – (1) Surrender or Abandonment; (2) Security Deposits; (3) Eviction; (E) Landlord’s Tort Liability (not included as part of the course text)	500 – 527	Leasing Real Property Supplement 8 (Landlord’s Tort Liability)
04	10-15	Acquisition of Ownership of Real Property by Adverse Possession	95 – 124	Adverse Possession Supplements 1 and 2
05	10-22	Acquisition of Ownership of Real Property by Adverse Possession Acquisition of Ownership of Personal Property by: (A) Adverse Possession	125 – 148 159 – 172	Adverse Possession Supplement 2 Property Simulation pp. 5 – 15: Adverse Possession
06	10-29	Acquisition of Ownership of Personal Property by: (B) Find; (C) Adverse Possession	172 – 208	Owning Personal Property Supp. 1
07	11-05	Acquisition of Ownership of Personal Property by: (D) Gift Selling Real Property: (A) Purchase contract – (1) Statute of Frauds	208 – 231 529 – 538	Property Simulation pp. 17 – 34: Gift of Personal Property Selling Real Property Supplement 1
08	11-12	Selling Real Property: (A) Purchase Contract – (2) Marketable Title; (3) Risk of Loss (Equitable Conversion Doctrine and Uniform Vendor and Purchaser Risk Act); (4) Condition of the Property (Caveat Emptor, Misrepresentation, Disclosure); (B) The Closing – (1) The Deed	539 – 573	Property Simulation pp. 91 – 111: Duty to Disclose Condition of the Property Selling Real Property Supp. 2, 3, 4, 5, 6, & 7

09	11-19	Selling Real Property: (B) The Closing – (1) The Deed; (2) The Mortgage; (3) Remedies for Breach of the Purchase Contract; (C) Title Assurance – (1) Deed Covenants of Title	573 – 614	Selling Real Property Supp. 2, 3, 4, & 8
10	11-26	Selling Real Property: (C) Title Assurance – (2) Title Opinion based on Search of Public Records, etc.; (3) Title Insurance	615 – 649	Selling Real Property Supp. 9, 10, 11, 12, & 13 **
11		FINAL EXAM		

** 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).