

**WESTERN STATE COLLEGE OF LAW
AT WESTCLIFF UNIVERSITY**

**SYLLABUS, POLICIES, AND ASSIGNMENTS
2023 FALL SEMESTER
PROPERTY II, SECTIONS 152B**

PROFESSOR SHEPPARD

CLASS MATERIALS:

REQUIRED TEXTS: John G. Sprankling and Raymond R. Coletta, **Property, A Contemporary Approach FIFTH EDITION** (2021 Thomson Reuters West Interactive Casebook Series)
ISBN: 978-1-68467-717-7

John G. Sprankling, *Property Law Simulations*, (2013 LEG, Inc. d/b/a West Academics Publishing)
ISBN: 978-0-314-27788-6

RECOMMENDED TEXT: John G. Sprankling, *Understanding Property Law Fifth Edition* (2023 Carolina Academic Press)
ISBN 9781531021245 (paperback)
ISBN 9781531021252 (ebook)

REQUIRED

SUPPLEMENTS: Professor's Supplemental Information Posted to the LexisNexis Classroom Platform

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 years prior to 2013 due to the fourteen-hour reduction in classroom time resulting from Property II being converted from a three-unit course into a two-unit course.

Coverage of introductory aspects of environmental law as part of the basic property course has been omitted. Coverage of various aspects of nuisance law, zoning, eminent domain, and regulatory takings that were included as part of course coverage in Property II prior to 2013 is now included as part of the topics covered in Property I.

In this course, you will study principles of law regarding the following topics:

- **Leasing Real Property**
 - Creation, transfer, and termination of leaseholds
 - Duties and Rights of landlords and of tenants
 - The scope of a landlord's tort liability
- **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 Contracts
 - Statute of Frauds
 - Seller's Contractual Covenant to deliver Marketable Title
 - Risk of Loss
 - The Equitable Conversion Doctrine
 - The Uniform Vendor and Purchaser Risk Act
 - Condition of the Property
 - Caveat Emptor
 - Misrepresentation
 - Duty to Disclose/Concealment due to a failure to disclose
 - The Closing
 - Deeds
 - Remedies for Breach of a purchase contract
 - Title Assurances
 - Deed Covenants of Title
 - The Recording System vs. The Torrens System
 - Recording Statutes
 - Chain of Title Problems
 - Title Insurance
 - Financing Real Property
 - Creating the Obligation
 - Providing the Security
 - Mortgages
 - Deeds of Trust
 - Installment Land Sale Contracts
 - Equitable Mortgages
 - Foreclosing on the Security
 - Borrower's Rights Before the Foreclosure Sale
 - Judicial Foreclosure
 - Non-judicial Foreclosure

- Results of the Foreclosure Sale
- Special Mortgage Priority Rules
- Exercising Rights After Foreclosure
 - Protecting the Debtor
 - Protecting the Creditor

THE INTERACTIVE COURSE TEXT

Features of the required course text include Internet access to the eBook version of the course text which includes access to visual information regarding certain course topics, 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 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 follow the front cover of the hardbound text to supplement information contained in the hardbound version of the text. To that end, read pages vii and viii of the text with care labeled: “*Features of this Casebook.*”

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 below 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.

In this course, you will be provided opportunities to:

- Enhance your analytical, problem solving, and related skills that you will use as an attorney either in transactional or other non-dispute resolution settings, or in dispute resolution settings, or both by utilizing the IRAC, or a similar approach, to legal analysis, legal argument, and application of fact to law.
- Develop a working knowledge of various principles of property law.
- Enhance your oral communication skills and legal research and writing skills.

WESTERN STATE COLLEGE OF LAW – PROGRAMMATIC LEARNING OUTCOMES

Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Associations, Evidence, Civil Procedure, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternative dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied

ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities and differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author's or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to effectively convey the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' backgrounds and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate

focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

COURSE METHODOLOGY

I utilize a combination of classroom methods to assist you in your effort to achieve the objectives of this course. Those methods include: the Socratic method of interaction to enable you to properly gauge the current level of your working knowledge of course subject matter; the case method of exploring and examining legal principles and methods of application of those principles to stated and inferable facts (including, but not limited to, how to deconstruct case law, statutory law, and other sources of law); role playing; and problem solving.

It will be incumbent upon you to engage in an appropriate study and review of each course assignment before we address the assigned material during class. 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., relevant portions of a hornbook or treatise). Your study habits must also include you engaging in activities that will hone your legal analysis skills. I will also expect you to have prepared appropriate work product regarding text problems that are part of the assigned reading. Adhere to the IRAC method of legal analysis to the extent necessary during classroom discussions, when engaged in problem solving exercises, during quizzes, and during the course final exam.

EXPECTATION OF YOUR AMOUNT OF OUTSIDE PREPARATION TIME

I expect you to devote a MINIMUM of SIX HOURS to prepare for each two-hour class session.

LEXISNEXIS CLASSROOM

You are required to enroll in the course LexisNexis Classroom platform so that you will be able to access information that I have posted to that platform for your benefit; and so that you will be able to receive emails that I will send to members of the class using

the email function of the LexisNexis I urge you to take advantage of the Discussion feature of the LexisNexis Classroom platform.

You will be able to enroll in the course LexisNexis Classroom platform on and after 9:00 a.m., Monday, July 31, 2023. The last day and time that you will be able to access the web course material is 11:59 p.m., Sunday, December 31, 2023. To enroll in the web course:

1. Log into LexisNexis for Law School at <https://www.lexisnexis.com/lawschool/>.
2. In the **Student** view, click the **Add A Course** link found on the right-hand side of the page.
3. Locate my name (Sheppard); then click my name.
4. Locate **Select Course to Enroll**; locate Property II – property_law_101649 and click.
5. Follow the instructions to enroll in the Property II Lexis Classroom
6. If you are directed to enter a password, enter: TGX9AG

If you encounter a problem while attempting to enroll in the web course, please contact a LexisNexis representative, or Academic Support person Helen Terzis (714-459-1163), or Library Director John O'Donnell (714-459-1110).

EXAMINATION AND GRADING

There will not be a midterm exam in this course. Each class session will provide 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 either in person or via Zoom, or by email, or a combination thereof.

There will be one graded exam; to wit: the course final exam.

FINAL EXAM

A two-hour final exam will be administered as part of this course. The final exam will consist of twenty multiple-choice problems and one essay problem.

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 class lectures and discussions.

The maximum number of points that you will be able to earn on the final exam will be 100 points. I will use the score that you earn on the final exam and any extra-credit grade points that you might earn to determine your numeric course grade.

“EXTRA CREDIT” QUIZZES

I will administer four pop quizzes during the semester. Each pop quiz will be worth 100 points. I will calculate the average of your top three quizzes scores. I will disregard your lowest quiz score. If the average of your top three scores on the course quizzes is 70 to 74, you will have earned one extra-credit course grade point. If the average of your top three scores on the course quizzes is 75 – 79, you will have earned one and one-half grade points. If the average of your top three scores on the course quizzes is 80 to 84, you will have earned two grade points. If the average of your top three scores on the course quizzes is 85 – 89, you will have earned two and one-half grade points. If the average of your top three scores on the course quizzes is 90 to 94, you will have earned three extra-credit grade points. If the average of your top three scores on the course quizzes is 95 to 100, you will have earned four extra-credit course grade points. If the average of your top three scores on 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 numeric grade in the course.

I will provide information about the format and procedure regarding the administration of each extra-credit quiz during the semester.

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. You must amass at least 75 course grade points to earn a Foundation Law Point.

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, the highest grade in the class will be 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 earned by every member of the class will be 4.0.

PRACTICE EXERCISES

I encourage you to include exam preparation or writing *exercises* as part of your daily study habits beginning in the second week of the semester and continuing throughout the semester including the interim between the last day of class and the administration of the final exam. Examples of such exercises include drafting an interrogatory that is the product of issue spotting, drafting a rule statement, or drafting an analysis using the IRAC approach to legal analysis. You may submit your exercises to me for me to review and provide comments to you. Please note that 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; or that you will not have sufficient time to take advantage of feedback that I provide to you. I do **not** critique student course outlines.

OFFICE HOURS, ZOOM CONFERENCES, OFFICE TELEPHONE, E-MAIL, FAX

I encourage you to communicate with me on a regular basis. I plan to hold office hours as follows:

Mondays: 10:00 A.M. to NOON; 3:15 P.M. to 4:30 P.M. (Except Labor Day)
Tuesdays: 10:00 A.M. to 11:30 P.M.
Thursdays: 10:00 A.M. to NOON

If you are not able to meet with me in person, please let me know so that we may schedule a Zoom conference.

Conferences with me by two or more students at a time are encouraged.

My WSCL email address is csheppard@wsulaw.edu.

My WSCL office telephone number is (714) 459-1152. The faculty fax number is (714) 525-2786.

ATTENDANCE

Attendance in class is mandatory. If you miss more than four hours of class sessions, or other class activities where attendance will be mandatory, you will be subject to being administratively withdrawn from the course. If you have not already done so, you should review 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.

PARTICIPATION IN CLASS AS AN ACTIVE LEARNER

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 reading 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; critically reading and deconstructing pertinent statutory law; 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, flow charts, etc.); 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).

Regardless of whether a class session is conducted in person or via Zoom or some other distant learning platform, 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 notify me prior to the start of that class session. You will not be penalized for being unprepared for a class session **provided** you have not 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, although erroneous, attempt at analyzing a particular question or point that is a subject matter of discussion during a class session.

DECORUM

Regardless of whether a class session is conducted in person or via Zoom or some other distant learning platform, you are expected to maintain proper decorum when entering the classroom or zoom session, while attending and participating in each in-person or zoom class session, and when departing the classroom or zoom session. You are also required to adhere to the College of Law's "Principles of Community" and the College of Law's "Honor Code."

SEATING CHART

I plan to circulate a seating chart during the initial on campus 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 Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his 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 Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Marisa Cianciarulo at mcianciarulo@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

SECTION 152B READING ASSIGNMENTS:

Wk.	Tue.	Topics	Text Pages	LexisNexis Web Course Docs	Simulations
01	08-29	Leasing Real Property – (A) Creating the tenancy: (1) Selecting the tenant; (2) Selecting the Estate	411 - 433	Leasing Real Property Supplement 1	
02	09-05	Leasing Real Property – (A) Creating the tenancy: (3) Negotiating the lease; (4) Delivering Possession; (B) Condition of the Premises: (1) Sub-standard Housing; (2) Constructive Eviction	433 – 451	Leasing Real Property Supplement 2	
03	09-12	Leasing Real Property – (B) Condition of the Premises: (3) Implied Warranty of Habitability (IWH); (C) Transferring the Tenant’s Interest	451 – 477	Leasing Real Property Supplements 3, 4, 5, and 6	
04	09-19	Leasing Real Property – (D) Ending the Tenancy – (1) Abandonment; (2) Security Deposits; (3) Eviction; (E) Landlord’s Tort Liability (not included as part of the course text)	477 – 499 + <i>Boston LLC v. Juarez, 245 C.A.4th 75 (2016)</i>	Leasing Real Property Supplement 7 (Retaliatory Eviction) and Supplement 8 (Landlord’s Tort Liability)	01 – 03 71 – 90
05	09-26 QUIZ 1	Owning Real Property: (A) Acquisition of title by Adverse Possession	89 – 125	Adverse Possession Supp. 1 and 2	05 – 15
06	10-03	Owning Real Property: (B) The Vertical Dimension of Ownership; (C) Water Law Acquisition of Ownership of Personal Property: (A) By Capture	125 – 149 151 - 163	Water Law Supp. 1	
07	10-10	Acquisition of Ownership of Personal Property: (B) By Find; (C) By Adverse Possession; (D) By Gift	163 – 212	Owning Personal Property Supp. 1	17 – 34
08	10-17 QUIZ 2	Selling Real Property: (A) The Purchase Contract – (1) Statute of Frauds; (2) Marketable Title	501 – 516	Selling Real Property Supplement 1	
09	10-24	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); (B) The Closing – (1) The Deed, (2) Remedies for Breach	516 – 549		91 – 111
10	10-31	Selling Real Property: (C) Title Assurance – (1) Title Covenants; (2) Title Opinion Based on Search of Public Records	549 – 570	*** Selling Real Property Supp. 2, 3, 4, 5, 6, 7 & 8	
11	11-07 QUIZ 3	Selling Real Property: (C) Title Assurance:...(2) Title Opinions Based on Search of Public Records (continued); (3) Title Insurance	571 – 600	Selling Real Property Supplement 2, 3, 4, 5 & 9 – 13	

Wk.	Tue.	Topics	Text Pages	LexisNexis Web Course Docs	Simulations
12	11-14	Financing Real Property: (A) Creating the Obligation, (B) Providing the Security – (1) Mortgage, (2) Deed of Trust, (3) Installment Land Contract	601 – 615		
13	11-21 QUIZ 4	Financing Real Property: ...(B) Providing the Security...(4) Equitable Mortgage; (C) Foreclosing on the Security – (1) Rights Before the Foreclosure Sale, (2) Judicial Foreclosure, (3) Nonjudicial Foreclosure, (4) Results of the Foreclosure Sale, (5) Special Mortgage Priority Rules	615 – 622	Selling Real Property Supplement 13	
14	11-28	Financing Real Property: ...(C)...(4) Results of the Foreclosure Sale, (5) Special Mortgage Priority Rules; (D) Exercising Rights After Foreclosure – (1) Protecting the Borrower, (2) Protecting the Lender	623 – 635		

*** 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).