



NATIONAL PARALEGAL COLLEGE

6516 North 7th Street, Suite 103

Phoenix, AZ 85014-1263

Tel: 800 - 371 - 6105

Fax: 866-347-2744

e-mail: info@nationalparalegal.edu

Website: <http://nationalparalegal.edu>

PLG-104-1011

Real Property

Syllabus and Course Guide

The NPC Real Property course meets 15 times over the course of the 8-week term in the NPC Interactive classroom. Each 75-minute session consists of 45 to 60 minutes of online lecture by the course instructor. During the remainder of the time, students may ask questions and make comments on the material being studied. Unless otherwise noted, all lectures begin at 8:00 P.M., Eastern Time. Classes for this course are generally held on Mondays and Wednesdays. However, make sure to look over the course syllabus and/or lecture schedule on the “interactive classrooms” page for “off” days and other scheduling exceptions that may exist.

All class sessions are recorded and may be viewed by students at any time.

To successfully complete the course, each student must satisfactorily complete:

- 5 written assignments
- 3 examinations

Unless an extension has been granted by the instructor, all assignments and exams must be submitted within 30 days of the end of the course in order to receive credit.

INSTRUCTOR:

Stephen Haas (shaas@nationalparalegal.edu or 800-371-6105 x 104).

The grader/ teacher’s assistant will be posted to the message board.

COURSE DESCRIPTION:

Real estate is a field of law where paralegals are of the utmost importance to their employers. This course will provide our students with a fundamental understanding of the concepts and working terminology of real property law. The course reviews disclosure obligations and regulations affecting brokers, sales people and owners. The course provides an introduction to buying, selling, leasing and investing in real estate; A brief

look at the general laws of land ownership and transactions, including rights and interests in land, forms of ownership and methods of title transfer; title examinations and insurance; parties to a real estate transaction; the sales agreement and contract; real estate finance including appraisals and mortgages; the owner-broker relationship; deeds and indentures; real property descriptions; the closing and settlement process; and post-settlement activities. This course will further acquaint our students with the process of a real estate transaction and the documentation involved.

COURSE OBJECTIVES:

At the completion of this course, the student will be able to:

- Describe the “estate system” and explain ways the estate system is relevant to determining ownership of property.
- Describe and distinguish concepts of co-tenancy, joint tenancy, tenancy in common or by the entirety and community property.
- Describe the rights and responsibilities of a landlord and tenant.
- Describe the grounds for eviction of a tenant.
- Determine whether a wrongful eviction or other wrongs against a tenant has been committed.
- Describe key points in a real estate sales contract and a deed for real property.
- Describe the general procedures of a real estate closing.
- Apply rules of easements, i.e., rights of owners and non-owners as to property usage, to a particular fact pattern.
- Describe and apply the rules of eminent domain, water rights, etc.
- Apply the rules governing local zoning laws and determine whether a particular client’s situation is one in which he or she is likely to receive a sought variance, based on the general standards under which local zoning boards operate.
- Determine when zoning boards’ decisions can be appealed to state and federal courts.

READING ASSIGNMENTS:

All reading assignments refer to the NPC courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the “Documents and Slides” page on the NPC student website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

WRITTEN ASSIGNMENTS:

At the outset of the course, five assignments will be posted “assignments and documents” page. The 5 assignments will cumulatively count for 40% of the student’s grade for the course. Information will be posted to the message board that indicates when the material for each assignment is discussed in class.

Assignments are to be submitted via the section of the student menu entitled “Assignments & Exam Grades.” If a student wishes to attach a diagram or another document whose formatting does not allow it to be submitted easily through the website, the document may be e-mailed to the instructor.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (attached as an appendix to this syllabus) for more detailed information as to how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments.

Assignment Grading Rubric

Factor	4 (Excellent)	3(Good)	2(Satisfactory)	1 (Poor)	0 (no credit)
Thoroughness	Answered all questions in the exercise completely and in the appropriate order.	Answered all questions in the exercise but not completely and/or not on the appropriate order	Answered most of the questions in the exercise but not completely and/or not on the appropriate order	Did not answer many of the questions in the exercise but did make some reasonable effort to do so.	Made little or no reasonable effort to answer the questions posed in the assignment
Demonstrated Understanding Of the Assignment and has come to an appropriate conclusion	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the students comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported b the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
Organization	Essay is organized very well; the reader can clearly understand where the essay is going at all point and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
Critical Thinking and Analysis	Shows excellent critical thinking and analysis. The student was able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort critical thinking or analysis. The student's points make no sense.

EXAMINATIONS:

Examinations will be posted on the NPC website when indicated on the syllabus. The examinations consist entirely of “short essay” questions. The 3 examinations will cumulatively count for 60% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that has been covered since the previous examination. The instructor will provide specific information regarding the content of each examination as the examination time approaches.

Each student will be required to designate a single computer to be used for all examinations. NPC will then install a security certificate on the student’s designated computer. A student may only take the examinations on the computer that has the NPC security certificate installed.

All examinations are timed. A student may begin the examination any time after it is posted to the NPC website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

The following factors are generally NOT taken into account in grading examinations:

Legal research; Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer); Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not

necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on assignments and examinations, please see the *NPC Student Handbook*.

WEEKLY INTERACTION REQUIREMENT

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least one during each week, either:

1) Attend a live lecture

OR

2) Submit at least one assignment

OR

3) Take at least one examination

OR

4) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be simple and straightforward and will cover material covered in class that week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

This student response (which is necessary only if the student does not attend a live class or take an exam or submit an assignment in the given week) will be graded on a pass/fail basis. The interaction questions will be posted no later than Monday of each week and must be answered on or before the following Monday.

The weekly interaction questions will be posted alongside the assignments. Students who do not attend a live class or take an exam or submit an assignment in the given week will be required to answer the questions presented. Students who did attend a live class or take an exam or submit an assignment in the given week may ignore the question.

Any student who does not fulfill this requirement during a given week will receive a reduction in his or her over-all grade of 2 percentage points from his or her over-all average. Conversely, any student who demonstrates excellent participation either through message board participation or through relevant in class discussion may receive an increase in his or her over-all grade, in the discretion of the instructor.

All examinations and assignments are due no later than January 23, 2011.

Lecture and reading assignments schedule

Class 1

Monday, November 1, 2010

8:00 PM-Eastern Time

We will begin the course with a discussion of some of the background principles that apply to Property law in general. We will examine the common law contexts under which real property law developed and compare the development of Real Property law to that of other areas of civil law, including torts and contracts. We will begin the substantive section of the course with a survey of some of the most important rules involving personal property. We will discuss the rule of capture and the responsibilities that pertain to finders of lost property. Finally, we will discuss the rules regarding the acquisition of property by accession.

Lesson Objectives:

- Understand the background of the development of real property law under the common law and in the United States
- Know the rules regarding lost property, including the rights of the true owner and of the finder
- Understand the basics of the “rule of capture” and how it applies to animals and natural resources
- Know the “acquisition by accession” doctrine and how to apply it

Courseware Reading:

Chapter 1: Personal Property

- A. Acquisition of Personal Property- The Rule of Capture
- B. Acquisition by Accession

Cases:

Pierson v. Post

Although this case dates back to the early 19th century, it presents an interesting discussion as to the historical common law attitude toward the acquisition of personal property. In this case, the question was whether a hunter in hot pursuit of an animal gains any rights regarding that animal before actually taking possession of it. It’s discussion can and will be applied to other cases as well.

Ghen v. Rich

This case took the principles in Pierson one step further and applied the rule of capture to cases in which an identifying mark was made on an animal “in the wild,” while not being under the control of the “finder.” The most interesting facet of this case might have been the willingness of the court to “bend” the principles inherent in the rule of capture to societal realities that existed at the time. When reading this case, keep in mind that all laws and legal principles are subject to exceptions when those exceptions are necessary to maintain industry customs and other “de facto” rules that already exist.

Documents: None

In this class, we will turn our attention to personal property transfers. We will discuss the various elements that are required to make a gift valid. We will also discuss the various kinds of gifts, including inter-vivos gifts and gifts causa mortis, and examine the elements that are necessary to perfect each type of gift. We will also compare these two to the third major type of gift- that done through a Will. We will then turn to bailments, which deal with transfer of possession of personal property, as opposed to gifts, which are transfers of possession of personal property, rather than the transfer of title.

Lesson Objectives:

- Understand the requisites for completing a lifetime gift and be able to apply the elements inherent in any gift to a fact pattern
- Know the differences between an inter-vivos gift and a gift causa mortis
- Understand the elements of a bailment and know the rules that apply to them

Courseware Reading:

Chapter 1: Personal Property
 D. Gifts Causa Mortis
 E. Bailments

Cases and Statutes:

Gruen v. Gruen

This is a great case to read and discuss because it is a concise and yet illuminating discussion of all three elements required for the completion of inter-vivos gifts. The court systematically goes through the requirements of intent, delivery and acceptance and applies them to the facts of an interesting fact pattern. We will use Gruen as our case study when analyzing the inter vivos gift.

Gonzales v. Zerda

This case presents an analysis of the question of what is considered a gift *causa mortis*. Specifically, the issue discussed here is how a court can determine whether a gift was given in contemplation of death. In applying this common law concept to a modern context, the court repeated the key rule: “To establish gift causa mortis, plaintiff was required to prove he intended to make a gift to take effect if he died, but that should be returned to him if he lived.”

Documents: None

Class 3
Monday, November 8, 2010

8:00 PM-Eastern Time

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the manner in which an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The Instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a “4” assignment looks like and how to compose one.

Class 4
Wednesday, November 10, 2010

8:00 PM-Eastern Time

This class will begin our discussion of real property law and will focus on the estate system. We will start with the freehold estates, which include the fee simple estates and the life estate. We will examine the differences between the various fee simple estates, how they are created, and how they may be transferred. We will add to our discussion of life estates with a discussion of the various advantages inherent in transferring or retaining life estates as estate planning techniques that make this common law estate still very popular and important in today's World.

Lesson Objectives:

- Know the various "estates" that exist regarding the ownership of real property
- Be able to distinguish between a freehold estate and a non freehold estate and understand why the distinction is important
- Understand the significance of the life estate and some of its applications

Courseware Reading:

Chapter 2: The Estate System and Future Interests

- A. Introduction to the Estate System
- B. The Fee Simple and the Fee Tail
- C. The Life Estate

Cases:

Mahrenholz v. County Board of School Trustees

This case discusses the language that is necessary to create the various future interests. It also summarizes the differences between rights of re-entry and other future interests. It is an important read because it is one of few cases that applies these abstract common law legal concepts to practical results.

King v. Scoggin, 92 N.C. 99

This case discussed the concepts of reversion and remainder and how they apply to life estates. The court then applied those concepts to a messy case involving future interests, life estates and familial disharmony. So, take out a pen and paper and try to keep track of who transferred what to whom and what the court concluded. Oh, and try to wade through the 1880s English as best you can.

Documents: None

Class 5
Monday, November 15, 2010

8:00 PM-Eastern Time

In this class, we will go over the non-freehold estates and some of the unique rules that apply to each one. We will also discuss the requirements necessary to terminate the various non-freehold estates. Then, we will discuss future interests and some of the rules that have developed over time with respect to the vesting of future interests. Finally, we will discuss the Rule Against Perpetuities. Although this is an antiquated and somewhat complex rule, it does have relevant applications today, especially with regard to trusts, as we will discuss.

Lesson Objectives:

- Know the names and functions of the leasehold estates
- Understand the various future interests that exist under the estate system and when they are applicable
- Know the mechanics of the rule against perpetuities and its application to trusts

Courseware Reading:

Chapter 2: The Estate System and Future Interests

D. The Non-Freehold Estates

E. Future Interests

F. Rule Against Perpetuities

Cases:

Sutherland v. Drolet

In this case, the court dealt with an oral lease agreement that did not specify its term. The court determined that the oral lease created a periodic tenancy that could be terminated only by one month's notice in writing. The court here examined various issues that are relevant to forming non-freehold estates.

White v. Hayes, 2003 Tenn. App. LEXIS 683

This is a very modern application of the common law rule against perpetuities. The testator's will devised his estate to his children, then to his grandchildren, then to his great-grandchildren. The court voided the will provision based on the rule against perpetuities. See if you can follow the court's reasoning as to why the rule is violated by this provision.

Document:

- Week-to-Week Rental Agreement

This session will be devoted to discussing the types of concurrent ownerships of property. We will discuss the rules of the tenancy-in-common, the joint tenancy and the tenancy by the entirety. We will also discuss the community property rules, although they are only applicable in a few states. Finally, we will discuss the duties that co-tenants owe to each other.

Lesson Objectives:

- Learn the various forms of concurrent ownership that exist and how they each are formed
- Understand the significance of the joint tenancy and tenancy by the entirety
- Understand the community property rules and know, in general, where they are applied

Courseware Reading:

Chapter Three: Concurrent Ownership of Real Property

- A. Introduction to Concurrent Ownership
- B. Tenancy-in-Common
- C. Joint Tenancy
- D. Tenancy by the Entirety
- E. Community Property
- F. Rights and Duties of Co-Tenants

Cases:

Riddle v. Harmon

This court announced that it would no longer require people to set up a “straw man” to create a joint tenancy out of a tenancy in common. Instead, a person could simply transfer property to him or herself and a third person as joint tenants. This is true even though, technically, such a transfer does not retain the four “unities” and thus ought not to qualify as a conveyance that creates a joint tenancy.

Pico v. Columbet

This case contains an important discussion of the rights of co-tenants with regard to profits made by other co-tenants using the property shared by both. Here, the court considers a case where one tenant in a co-tenancy invests time and effort into using concurrently owned property for a profit. Does the other co-tenant have a right to share in the profits? We will use this case as a starting point to discuss the profit sharing rights of co-tenants.

Documents: None

EXAMINATION #1 will be administered at this point.

Class 7
Monday, November 22, 2010

8:00 PM-Eastern Time

This class and the next will be devoted to exploring the rules that govern the relationship between landlords and their tenants. We will start by discussing some of the aspects of the various leasehold estates. We will then discuss the duties owed by the landlord and tenant to each other.

Lesson Objectives:

- Understand the leasehold estates, when they are formed and how they are terminated
- Understand the basic responsibilities owed by landlords and tenants to each other in a leasehold relationship
- Be familiar with lease agreement contracts

Courseware Reading:

Chapter Four: Landlord-Tenant Law

- A. The Leaseholds
- B. Duties of the Landlord
- C. Duties of the Tenant

Cases and Statutes:

Charles E. Burt, Inc. v. Seven Grand Corp.

This Massachusetts Supreme Court case relates to the issue of constructive eviction. If a landlord fails to provide adequate heat and elevator service to a business tenant, is that enough to warrant that the tenant be considered to have been “constructively evicted”? The Massachusetts Supreme Court says “yes.” We will also use this case to apply its law to similar cases in which landlords fail to provide adequate resources and comforts to their tenants.

Ballard v. Alaska Theater Co.

This case addresses the important issue of “fixtures.” When a tenant leaves a leased property, the tenant must leave any “fixtures” that he or she brought onto the property. But, that begs the question: What is a “fixture”? How thoroughly does it have to be built into the premises to be considered such? As the court says here, the question largely turns on the states of mind of the parties involved. We will also apply this case to examples that occur in every day life.

Documents:

- Rental Application
- Residential Real Property Lease Agreement
- Commercial Lease Agreement
- Security Deposit Agreement
- Extension of Lease Agreement
- Notice to Vacate for Non-Payment of Rent
- Termination of Lease Obligation

Class 8
Monday, November 29, 2010

8:00 PM-Eastern Time

We will begin this class by looking at the potential liability of a landlord for injuries sustained by tenants or their guests. Included will be a discussion the responsibilities of a landlord to keep property safe for a tenant and foreseeable guests. Next, we will turn to the issue of assignments and subleases (i.e., the situations in which landlord and tenants may assign (transfer) their various rights under a rental agreement) and the rules that pertain to each.

Lesson Objectives:

- Know the situations in which a landlord is likely to be liable for injuries suffered by tenants or their guests
- Understand the differences between assignments and subleases, when each is allowed, and the rules that apply to each

Courseware Reading:

Chapter Four: Landlord-Tenant Law

D. Landlord's Tort Liability

E. Assignments and Sub-Leases

Cases:

Henrioulle v. Martin Ventures, Inc.

Here is an all important discussion of the effectiveness of "exculpatory clauses" in leases. This case involved a tenant signing a lease with a clause in it that prevented the landlord from being held liable for a tenant's injuries, even if they resulted from the landlord's negligence. The court evaluated when such a clause would be enforced by courts and when it would be considered void based on public policy considerations.

McClain Airlines, Inc. v. Republic Airlines, Inc.

The difference between an assignment and a sublease may seem trivial, but it certainly was important in this case. When a lease agreement that prohibited subleases was *assigned*, the court had to explain to the parties that there certainly is an important difference between the two.

Documents:

- Assignment of Rents by Lessor
- Assignment of Rents by Lessee with Consent of Lessor
- Agreement for Permission to Sublet

The first part of this class will be devoted to discussing acquisition by adverse possession; that is, when a property can be acquired without the consent of the erstwhile owner. We will discuss the elements that are necessary to acquire title to property via adverse possession and we will analyze the theory behind the doctrine of adverse possession. Next, we will discuss the procedure for the acquisition of real property by adverse possession. Next, we will begin our discussion of more “traditional” forms of property acquisition. We will discuss the Statute of Frauds and the writing requirement for real property contracts. Finally, we will cover issues pertaining to real estate brokers and brokers’ commission.

Lesson Objectives:

- Understand the rules of acquiring property by adverse possession
- Understand the role of the real estate broker in a real property sale and the rules regarding real estate commissions
- Be familiar with the negotiating steps involved in a real estate purchase

Courseware Reading:

Chapter Five: Acquisition of Real Property

A. Acquisition by Adverse Possession

B. Contracts for the Sale of Real Property (first two sections only)

Cases:

Preble v. Maine Central Railroad

This case dealt with the classic question of adverse possession by mistake, i.e., if a party builds a fence on another’s property but honestly thinks the fence is on her own property, does that qualify as an adverse possession of the land between the boundary line and the fence? The court held that it is not merely the existence of a mistake, but the “presence or absence of the requisite intention to claim title” that is relevant in an adverse possession inquiry.

Greenwald v. Veurink

This case dealt with the issue of when a real estate broker is entitled to his or her commission. Specifically, the court had to apply the “ready, willing and able” rule to a case in which only an “option” contract was offered. The court looked at the question of whether securing an option contract entitled the real estate broker to a commission.

Documents:

- Broker Agreement – Exclusive Right to Sell
- Agreement to Purchase

Class 10
Monday, December 6, 2010

8:00 PM-Eastern Time

In this class, we will continue with our discussion of real estate transfers. We will discuss the contract for the sale of real estate. We will examine the various issues that are important to keep in mind when drafting and executing contracts for the sale of real property. We will also examine a sample real estate contract. Then, we will turn our attention to the closing, where the deed is transferred to the buyer. We will look at samples of various types of real property deeds as well.

Lesson Objectives:

- Be able to read and understand common provisions in real estate contracts
- Be able to read, analyze and draft real property deeds
- Understand the various tasks commonly performed by paralegals prior to real estate closings

Courseware Reading:

Chapter Five: Acquisition of Real Property
 B. Contracts for the Sale of Real Property
 C. The Closing and Real Property Deeds

Cases and Statutes:

Lohmeyer v. Bower

One of the key requirements inherent in any real estate sales contract is the duty of the seller to convey “marketable” title to the buyer. This case, from the Kansas Supreme Court, had to decide whether the conveyance of property that was in violation of a zoning ordinance was considered conveying “marketable” title. Given the complexity of the zoning ordinances today, the ease with which housing improvements can be accomplished and the frequency with which houses are sold, this issue is of critical importance.

Documents:

- Purchase and Sale Agreement
- Sample Contract Provisions
- Bargain and Sale Deed
- General Warranty Deed
- Quitclaim Deed
- Sample HUD Closing Statement
- Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards

Class 11
Wednesday, December 8, 2010

8:00 PM-Eastern Time

This class will focus on easements and other partial interests involving land. We will discuss how easements work and the differences between easements and other interests in land, such as licenses, real covenants and equitable servitudes. We will also spend some time discussing the creation and termination of easements and other interests in land that fall short of ownership.

Lesson Objectives:

- Understand what an easement is and the various types of easements that exist
- Know how easement may be created and terminated
- Understand how real covenants and equitable servitudes may be used, especially with regard to condominiums and other cooperative real property ownerships or rentals

Courseware Reading:

Chapter Six: Easements

- A. Introduction to Easements
- B. License Distinguished
- C. The Creation of Easements
- D. The Scope of Easements
- E. Termination of Easements
- F. Real Covenants and Equitable Servitudes

Cases:

Martin v. Music

The critical difference between an easement appurtenant and an easement in gross is that an easement appurtenant passes with the sale of the dominant tenement to the buyer of that parcel. How to tell what easements are considered appurtenant is sometimes less than clear, especially when it allows rights that are primarily for the personal comfort of the owner of land neighboring the servient tenement. This case helps analyze this issue and discussing it will be helpful in determining how the policies involved are satisfied by the various rules in place with regard to easements.

Van Sandt v. Royster

This Kansas Supreme Court case contains a discussion of how easements can be created in ways other than outright agreement between the parties. Here, the Court deals with the creation of the “quasi” easement and the rules surrounding the creation of incomplete easements.

Documents:

- Grant of Easement Appurtenant
- Grant of Easement In Gross

EXAMINATION #2 will be administered at this point.

Class 12
Monday, December 13, 2010

8:00 PM-Eastern Time

In this class, we will start by discussing the recording system that is prevalent in the United States. We will discuss the way in which the recording system operates; including the method by which one can carry out a title search with regard to a parcel of real property. Next, we will discuss the importance of recording and the consequences of failure to record deeds. We will also look into the problem of multiple grants of the same parcel of real property to different grantees.

Lesson Objectives:

- Understand how the recording system works and know some of the various online resources that may be available to do quick title searches
- Understand the recording acts and the consequences of failing to record a transfer or lien in a timely fashion

Courseware Reading:

Chapter Seven: The Recording System and Mortgages

- A. The Recording System
- B. The Recording Acts

Cases:

Langroise v. Becker

This case is important for two reasons. First, it illustrates the application of a “race-notice” statute (this one in Idaho). In addition, it deals with the issue of the definition of a “good faith purchaser.” Specifically, the court had to determine whether someone was a good faith purchaser for purposes of a race-notice statute when the purchaser failed to uncover a claim against the property that would have been uncovered through a reasonable investigation.

Eastwood v. Shedd

Here, the Colorado Supreme Court confirmed the state’s status as one of the few pure “race” jurisdictions regarding its recording act. Although the court was a bit reluctant to apply this harsh rule, the court noted the clarity with which the Colorado legislature manifested its intent to completely remove the “good faith purchaser” element of its recording act.

Documents: None

Tonight's class will be devoted to discussing mortgages. We will start with the nature and purpose of mortgages and mortgage loans. We will then move into the various rights and duties held by the various parties to a mortgage relationship. We will also discuss the situations in which mortgages can be extinguished by transfers and when mortgage liens survive transfers of the land. Finally, we will discuss the process of mortgage foreclosures, including the priorities of mortgage loans when two or more mortgages are taken out on the same property.

Lesson Objectives:

- Understand the effect of a mortgage and how mortgages work in general
- Know the rights afforded to a mortgagee regarding the ability to foreclose, etc.
- Understand the basics of the complex rules regarding priority of foreclosure as between multiple mortgagees or mortgagees and other transferees

Courseware Reading:

Chapter Seven: The Recording System and Mortgages
C. Mortgages and Foreclosures

Cases:

Valentine v. Portland Timber & Land Holding Co

This case illustrated the ability of a mortgage foreclosure to extinguish all "inferior" rights to the property. Here, the grantee of certain rights to mine certain minerals from property lost those rights when the property was foreclosed on based on a prior mortgage. The court stressed the importance of recording any rights in property. The court held that the mortgagee in this case was a bona fide purchaser since it had no notice of the transfer of the mineral rights. In all, this is a great case with which to get a sense of how mortgage foreclosure actions can work and to get a sense of the extent to which mortgagees are protected under the law.

Documents:

- Uniform Residential Loan Application
- Mortgage Deed
- Assignment of Mortgage
- Satisfaction of Mortgage

Class 14
Monday, December 20, 2010

8:00 PM-Eastern Time

In this class, we will begin the final chapter of the courseware, which will tie up various loose ends that relate to the rights and duties of real property owners. A significant topic in this area is the concept that governments have the power of eminent domain to condemn real property. In the United States, this power is mitigated by the Constitutional guarantee of just compensation. We will also discuss zoning laws, although our discussion will be confined to general principals because most actual zoning laws are made on the local level.

Lesson Objectives:

- Understand the concept of eminent domain and the extent to which it applies
- Know what government actions will be considered “takings,” requiring the government to pay just compensation
- Understand that basic rules that apply to zoning rules, remembering that there are significant differences from jurisdiction to jurisdiction

Courseware Reading:

Chapter Eight: Rights and Duties Inherent in the Ownership of Real Property
A. Eminent Domain and Just Compensation
B. Zoning Laws

Cases:

Lucas v. South Carolina Coastal Council

This U.S. Supreme Court case weighs the interest of allowing the government to act to save the environment against the rights of property owners to be compensated for government takings. In this interesting case, a zoning law passed on South Carolina disallowing the developing of coastal areas, rendered virtually worthless large tracts of land that were bought by people with the intention of building on them. The Supreme Court had to decide whether the zoning laws were considered “takings,” thus requiring the government to compensate the owners for the land’s value. When reading the case, observe how other general policy considerations creep into seemingly black and white analysis as to whether the regulations constituted takings.

Aronson v. Board of Appeals of Stoneham

This case represents an example of court analysis of the discretion that zoning boards have with regard to granting or denying variances. While boards often have latitude to grant variances, this case shows an example of a court that refused to allow a zoning board to grant a variance even in a case where it was seemingly justified. This case in general shows the power that the court systems have to review the actions of local zoning boards.

Documents: None

Class 15
Wednesday, December 22, 2010

8:00 PM-Eastern Time

During our final class in the Real Property course, we will discuss the rights of real property owners with regard to resources and minerals that are beneath or adjacent to their property. We will also discuss responsibilities owed by adjacent property owners to each other to avoid taking actions that undermine the stability of the other party's land and/or structures. Finally, we will discuss the rights of real property owners to water resources that collect on or adjoin their property and some of the responsibilities that exist regarding water management.

Lesson Objectives:

- Understand the responsibilities that neighboring landowners owe to each other regarding support of structures and the land itself
- Be able to apply the rule of capture to oil and gas and other natural resources
- Understand the rights of real property owners regarding water adjoining their property

Courseware Reading:

Chapter Eight: Rights and Duties Inherent in the Ownership of Real Property

- C. Subterranean Caves and Lateral Support
- D. Oil and Gas and other Natural Resources
- E. Water Rights and Real Property Owners

Cases:

Banard v. Monongahelia Natural Gas Company

This case dealt with the all important "fugitive resource" rule's application to oil pools that lie beneath more than one person's properties. The court here strictly applied the fugitive recourse rule, thereby reinforcing the rule encouraging landowners to drill for oil on their own property as quickly as possible, lest that oil be appropriated by a neighbor with legal access to the pool.

Large v. Clinchfield Coal Co.

In this case, the court discussed the duty of "subjacent support." The defendant owned coal mines that lay under plaintiff's land. The court had to determine whether the defendant's "longwall mining procedures" should be stopped based on the duty of subjacent support.

Document:

- Independent Contractor Agreement

EXAMINATION #3 will be administered at this point.

All examinations and assignments are due no later than January 23, 2011.