



## **CRESTPOINT UNIVERSITY**

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### **Real Property**

### **PLG-104-2411**

### **Syllabus and Course Guide**

The Crestpoint University Real Property course meets 15 times over the course of the 8-week term in the Crestpoint interactive classroom. Each session consists of about 60 minutes of online lecture by the course instructor. After the lecture, students may ask questions and make comments on the material being studied.

The class will meet on Mondays and Wednesdays, beginning on October 28, 2024, as indicated on this syllabus. Unless otherwise noted, all lectures begin at 8:00 PM Eastern time. All class sessions are recorded and may be viewed by students at any time.

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

- 2 assignments
- 6 weekly discussions
- 2 examinations

Unless an extension has been taken pursuant to the Crestpoint Extensions Policy (see the end of this syllabus), all assignments and exams must be submitted by the course deadline which appears later in this syllabus. No extensions may be taken for granted unless the student has submitted one or more assignments or exams in advance of the original deadline. In addition, extensions are subject to grade penalties and are limited to no more than 15 days from the date of the original deadline.

Please note that students are strongly encouraged to do their work as the course progresses rather than waiting for the days or weeks before the deadline to do all of their work. It is also critically important that students realize that:

1. A grade of “Incomplete” is the same as an “F” and is a failing grade.
2. A grade of “Incomplete” will result in a reduction in the student’s grade point average.
3. Student may have to pay to re-take or replace a course for which a grade of Incomplete is assigned.

4. Two consecutive Incompletes may subject the student to dismissal from the college under Crestpoint's chronic incomplete policy.
5. Students with a GPA of under 2.0 are not eligible to receive federal financial aid and cannot graduate until their GPA is at or above 2.0.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her student mentor or teacher as early as possible.

Please note also that:

- A student who receives an incomplete on his or her first course may be dismissed from Crestpoint
- A student who fails to complete at least one weekly interaction during the first 14 days of the course will automatically be withdrawn from the course per Crestpoint policy. The student may re-join the class by prompt notification to Crestpoint and by prompt completion of an interaction shortly thereafter.

## **INSTRUCTORS:**

The instructor for this course is:

**Lecturer and grader: Deanna (DeDe) Sandler ([dede@crestpoint.edu](mailto:dede@crestpoint.edu))**

## **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.
- Determine whether a wrongful eviction or other wrongs against a tenant has been committed.
- Discuss the preparation of a real property deed and prepare a real property.
- 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 and just compensation.
- Determine when the decisions of zoning boards can be appealed to state and federal courts.

### **READING ASSIGNMENTS:**

All reading assignments refer to the Crestpoint 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 Crestpoint 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.

**In addition to the courseware’s electronic form, you may also view/print out a PDF version of the courseware that includes:**

- 1) **The courseware**
- 2) **All lectures slides**
- 3) **Selected Provisions from the Uniform Commercial Code**

**See the course materials page for the link.**

### **School Virtual Library**

All Crestpoint students are encouraged to take advantage of the Crestpoint virtual library, which can be accessed from the “course materials” page on the student menu or directly through this link: <http://nationalparalegal.edu/Students/VirtualLibrary.aspx>.

The Crestpoint virtual library gives students access to Lexis Advance, which is one of the premier online legal databases in the world. It is expected that most legal research can and should be done through Lexis Advance. Online tutorials in the use of Lexis Advance are available on the lower right portion of the default login screen for Lexis Advance.

Crestpoint students also have access to Computer Assisted Legal Instruction (CALI) lessons. Unless assigned in the course syllabus, these are optional, but can be very helpful.

## **WRITTEN ASSIGNMENTS:**

At the outset of the course, two assignments will be posted on the “Assignments and Exams” page. The 2 assignments will cumulatively count for 30% of the student’s grade for the course.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the Crestpoint student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

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” (the next page of this syllabus) for more detailed information about 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, where appropriate.

For more information on assignments, please see the *Crestpoint Student Handbook*.

***To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.***

## Assignment Grading Rubric

| Factor   | 4 (Excellent)  | 3 (Good)  | 2 (Satisfactory)  | 1 (Poor)  | 0 (no credit)  |
|--|--|---|---|---|--|
| <b>Thoroughness</b>  | Answers all questions in the exercise completely and in the appropriate order.   | Answers all questions in the exercise but not completely and/or not in the appropriate order.   | Answers most of the questions in the exercise but not completely and/or not in the appropriate order.   | Does not answer many of the questions in the exercise but does make some reasonable effort to do so.  | Makes little or no reasonable effort to answer the questions posed in the assignment.              |
| <b>Demonstrates Understanding of the Assignment and has come to an appropriate conclusion</b>  | 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 student 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 by the rest of the essay. | Response demonstrates a very poor understanding of the subject matter presented by the assignment. |
| <b>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.)</b> | 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.          |
| <b>Organization</b>  | Essay is organized very well; the reader can clearly understand where the essay is going at all points 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.      |
| <b>Critical Thinking and Analysis</b>  | Shows excellent critical thinking and analysis. The student is 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 at critical thinking or analysis. The student's points make no sense.              |

Credit may also be taken off for poor spelling or grammar.

## **Weekly Discussion Assignments**

At the outset of the course, a weekly discussion question will be posted on the “Assignments and Exams” page. The 6 discussions will cumulatively count for 30% of the student’s grade for the course. These assignments have a due date specified in the assignment and in the assignment title. Answers submitted after the due date will incur a grade penalty.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the Crestpoint student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Weekly discussions will be graded on the same 0-4 scale as the research assignments.

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

*To the extent possible, it is highly recommended and encouraged that students stay as current as possible with the weekly discussions and submit them in a manner that allows you to practice as you learn the material. Submitting the weekly discussion beyond the given deadlines will result in a grade penalty.*

### **EXAMINATIONS:**

Examinations will be posted on the Crestpoint website when indicated on the syllabus of the course. The examinations consist of “short essay” questions. The 2 examinations will cumulatively count for 40% 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.

All examinations are timed. A student may begin the examination any time after it is posted to the Crestpoint 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.

***Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as “yes” or “no” or answers that merely restate the question without explaining the answer given will not be credited.***

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 grader 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 examinations, please see the *Crestpoint Student Handbook*.

***To the extent possible, it is recommended that students complete the exams as the course proceeds rather than waiting until after the course ends.***

## **CRESTPOINT ACADEMIC ADVISOR**

Each Crestpoint student is assigned an academic advisor upon enrollment. Your academic advisor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your academic advisor upon enrollment. If you have not received such an email or do not know who your academic advisor is, please contact Anne Lewis at [anne@crestpoint.edu](mailto:anne@crestpoint.edu).

## **CRESTPOINT PLAGIARISM POLICY**

All work done by Crestpoint students on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to paraphrasing other sources or using ideas obtained from other sources even if the exact text is not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offense.

Under the Crestpoint plagiarism policy, a student may not, as part of any assignment or exam submission:

- 1) Quote any text from any other source without:
  - a) putting quotation marks around the quoted material;
  - AND
  - b) appropriately citing the source of the quote.
- 2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the Crestpoint plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any source *without attribution* is plagiarism.

In addition, Crestpoint students may not share their completed work, answer keys, or sample answers which they have obtained by any method with any other student. Students may NOT upload any sample answer (whether written by themselves or any other person) to any publicly available website or database. **Any student who uploads a sample assignment or exam answer to a publicly available website or database shall be disciplined in a manner to be determined by the school Dean, up to and including expulsion from the college.**

### **Policy on the use of Artificial Intelligence in the completion of academic assessments**

AI (artificial intelligence) resources such as ChatGPT and Bard can be useful in a number of ways. However, it can also be abused, as students may be tempted to use AI-generated content in place of the work needed to build the skills necessary to complete their academic programs.

Students are expected to submit substantially their own work product. To the extent student assessments are copied and pasted from AI platforms, they must be framed by quotation marks or block quotes with appropriate citations, just as though they were citing any other Internet source. Submitting work copied from AI sources without attribution is plagiarism and will be dealt with accordingly.

Submitting content generated by AI with proper quoting and attribution is not plagiarism. However, heavy use of AI-generated content in an assessment may show lack of original work and grading will reflect that. At the grader's discretion, assignments composed substantially of AI-generated content will be awarded little or no academic credit.

For more information regarding the Crestpoint Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the Crestpoint Plagiarism Policy at:

<http://nationalparalegal.edu/pages/PlagiarismPolicy.pdf>



## 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 once during each week, either:

- 1) Attend a live lecture and take and pass a short quiz given during class (where applicable)  
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 straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

The student’s response (which is necessary only if the student does not attend a live lecture 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 Sunday.

Any student who does not fulfill this requirement during a given week may receive a reduction in his or her over-all grade of 2 percentage points (10 raw points).

Please also note that a student who does not fulfill an interaction during the first two weeks of a course will be automatically withdrawn from that course, as it will be assumed that the student who does not interact during the first two weeks has no intention of attending the course. The student may re-join the class by prompt notification to Crestpoint and by prompt completion of an interaction shortly thereafter.

If an emergency prevents attendance in this period, please email Academic Support ([academicsupport@crestpoint.edu](mailto:academicsupport@crestpoint.edu)) as soon as possible.

***Fulfilling the weekly interaction requirement is particularly important for students receiving financial aid. Federal regulations require the school to withdraw students from financial aid who go 14 consecutive days without fulfilling an interaction requirement and to return any outstanding financial aid money to the government unless the student interacts with the school prior to the time that the withdrawal is completed. If you are unable to fulfill a weekly interaction requirement, it is critical that you stay in contact with the school so that other arrangements can be made.***

## COURSE GRADES

The following formula will be used to calculate final grades

$$\text{Cumulative exam scores} + (\text{cumulative weekly discussion} \times 6.25) + (\text{assignment points} \times 18.75) = \text{raw score}$$

Because exams are worth up to 100 points and assignments up to 4 points each, the maximum raw score is 500. 10 raw points (2% of the raw point total) may be deducted for each missed weekly interaction. 3 raw points (0.6% of the raw point total) are deducted for each day of an extension beyond the course deadline.

Extra credit may be available for certain in class activities, high class participation and high message board participation, as may be announced by the instructor. Penalties for missed weekly interactions and/or for extensions are applied at the discretion of the instructor and/or the administration of Crestpoint.

The following conversion chart is then applied based on the total raw points you have earned:

|          |   |    |
|----------|---|----|
| >470     | = | A+ |
| 440-469  | = | A  |
| 415-439  | = | A- |
| 390-414  | = | B+ |
| 360-389  | = | B  |
| 335-459  | = | B- |
| 310-334  | = | C+ |
| 280- 309 | = | C  |
| 255-279  | = | C- |
| 225-254  | = | D  |
| <225     | = | F  |

## OPTIONAL STUDY SESSIONS

In addition to the 15 classes listed below, instructors and/or graders will run 1 or 2 additional study sessions to discuss assignments and/or the course materials. Attendance at and participation in these sessions is optional and they will be recorded for those who cannot make it to the live sessions.

**All examinations and assignments are due no later than MONDAY, January 20, 2025 at 11:59 PM EASTERN TIME; that's EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

**Please see the end of this syllabus for a note on Crestpoint course extensions policy!**

## **Lecture and reading assignments schedule**

### **Class 1**

**Monday, October 28, 2024**

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 19<sup>th</sup> 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.

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

- C. Inter-vivos Gifts
- 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 4, 2024**

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 6, 2024**

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

Suggested videos:

<https://lawshelf.com/videos/entry/the-estate-system>

<https://lawshelf.com/videos/entry/restraints-on-the-transfer-of-real-property>

**Class 5**

**Monday, November 11, 2024**

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

**Class 6**

**Wednesday, November 13, 2024**

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

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

Suggested videos:

<https://lawshelf.com/videos/entry/tort-law-the-rules-of-private-nuisance>

<https://lawshelf.com/videos/entry/landlords-liability-for-injuries-to-tenants-and-guests>



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 midterm exam will be posted at this point.**

## Class 9

Monday, November 25, 2024

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

**NOTE: THERE WILL BE NO LECTURE WEDNESDAY, NOVEMBER 27**

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

Suggested videos:

<https://lawshelf.com/videos/entry/contracts-for-the-sale-of--real-estate>

<https://lawshelf.com/videos/entry/common-real-estate-contract-provisions-part-1>

<https://lawshelf.com/videos/entry/common-real-estate-contract-provisions-part-2>

**Assignment #1 can be completed at this point.**

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

Suggested videos:

<https://lawshelf.com/videos/entry/easements-creation-scope-and-termination>

## Class 12

Monday, December 9, 2024

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

## Class 13

**PRE-RECORDED**

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 important 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

**NOTE: There will not be class on Wednesday, December 11**

**Class 14****Monday, December 16, 2024**

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

Suggested videos:

<https://lawshelf.com/videos/entry/the-governments-power-of-eminent-domain-to-condemn-private-property>

**Assignment #2 can be completed at this point.**

**Class 15**

**Wednesday, December 18, 2024**

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

**The final exam will be posted at this point.**

**All examinations and assignments are due no later than MONDAY, January 20, 2025 at 11:59 PM EASTERN TIME; That’s EASTERN time. That means 8:59 PM Pacific time, 9:59 PM Mountain time, 10:59 PM Central time, etc.**

### **CRESTPOINT EXTENSIONS POLICY**

**1) Extensions that conform to the rules below may be requested from the “Assignments and Exams” page on the Crestpoint student website.**

**2) No extensions are possible unless the student has first submitted at least one assignment or examination by the course deadline.**

- **Students must submit a legitimate assignment or exam to qualify for an extension. Submitting any assignment for another course or a blank document as a placeholder does not qualify you for an extension.**
- **Extensions taken based on placeholder assignments or blank exams may be removed.**



**3) The maximum possible extension allowed under the Crestpoint system are as follows:**

- **A student who has submitted one assignment or exam may take an extension of up to seven (7) days.**
- **A student who has submitted two assignments or exams (or any combination) may take an extension of up to seven (7) additional days (14 days total).**
- **A student who has submitted three assignments or exams (or any combination) may take an extension of one (1) additional day (15 days total).**
- **No extensions of more than fifteen (15) days beyond the deadline are possible for any reason at all.**

**4) Requested extensions are granted automatically. It is not necessary to give any reason for the request. However, for each day of extension you request, you may be penalized 3 raw points (of 500 that determine your final grade). This accounts for 0.6% of your course grade, per day of extension. This is necessary to compensate for the advantage that students who take more time to do their work enjoy over those who complete their work on time. This also means that a short extension (e.g., a day or two) is unlikely to affect your grade, but a long extension (e.g., two weeks) is guaranteed to affect your grade.**

**5) The penalty referenced in Paragraph 4 may be waived by the dean in extreme cases only. Extreme cases include circumstances beyond the control of the student that caused the student to be unable to complete work for *a significant period of time*. Circumstances such as being busy at work or at home, vacations, family occasions or power or internet outages lasting a few days, are foreseeable life circumstances. Extensions may be taken for these reasons (or, for that matter, for any reason at all), but the grade penalty discussed above applies. However, please note that the course deadline cannot be extended more than 30 days for any reason at all.**