

# PROPERTY

## CLASS INFORMATION & SYLLABUS

Spring 2022

*Dr. Gerry W. Beyer*

*Governor Preston E. Smith Regents Professor of Law*

*Texas Tech University School of Law*

### Course Materials:

JOHN E. CRIBBET, ET AL., PROPERTY: CASES AND MATERIALS (9<sup>th</sup> ed. 2008).

### Contact Information:

Office: Law 310

Telephone (office): (806) 834-4270 (If I am not in my office when you call, please leave a message on the voice mail system and I will return your call.)

Fax: (978) 285-7941

Cell/Text: (806) 392-6998

E-mail: [gwb@ProfessorBeyer.com](mailto:gwb@ProfessorBeyer.com)

Website: <http://www.ProfessorBeyer.com>

Blog: <http://www.BeyerBlog.com>

Twitter: Gerry\_Beyer

Instagram: Prof\_Gerry

### Office Hours (in-person or Zoom):

Whenever I am in my office — below are typical times (but subject to change):

#### **Monday through Thursday:**

10:00 a.m. to 11:00 a.m. and 2:00 p.m. to 5:00 p.m.

#### **Friday:**

No set times.

### **E-mail List:**

It is *essential* that you register for e-mail updates as these updates serve as the official source of all class announcements. Please submit your name and preferred e-mail address to me directly or via e-mail if you are not already receiving class announcements.

### **Attendance:**

Your grade will be affected by class participation (details below) and attendance (in-person or virtual). I reserve the right to raise or lower your grade based on class participation and/or absences. I also reserve the right to lower grades for students whose absences exceed my policy. This includes the possibility of being removed from the class prior to the final exam and not receiving credit for the course.

- You are expected to attend **every** class meeting.
- **Prompt Arrival:** You are expected to be in your seat or on-line and ready to begin when class is scheduled to start. It is unprofessional and impolite to arrive or log-in at or after the start of class. Attendance will be taken via TopHat immediately *before* class starts.
- **Tardy:** You are tardy if you (1) arrive late, (2) leave early, or (3) leave in the middle of class and return. Three tardies equates to one absence. (If you are really creative, you could come late, leave and return during class, and then leave early and get one absence in one day even though you are in class for awhile!)
- **Excessive Absences:** Other than in exceptional circumstances, if you accrue eight (8) or more absences, you will be automatically dropped from this course. Notice will be provided after the seventh absence. You may petition for relief from this rule by submitting a sworn affidavit along with supporting materials to document the reason for your absences. Note that your petition must show a justifiable reason for *all* your absences, not just the eighth and subsequent absences.
- **Student Absence for Observance of Religious Holy Day:** Section 51.911(b) of the Texas Education Code, which is reflected in TTU OP 34.19, provides excused absences for religious holy days. A student who intends to observe a religious holy day should make that intention known in writing to the professor prior to the absence. A student who is absent from class for the observation of a religious holy day shall be allowed to take an examination or complete an assignment scheduled for that day within a reasonable time after the absence. A student who is excused from class under this policy may not be penalized for the absence; however, the

professor may respond appropriately if the student fails to complete the assignment satisfactorily.

- **Student Absence for Official University Business:** [TTU OP 34.04\(4\)](#) provides for excused absences for students conducting official university business, with proper notice to the faculty member. More specifically, the faculty or staff member sponsoring the student's absence for officially approved trips or activities must notify the student's professors of the departure and return schedules. TTU OP 34.04 further explains the following:

Department chairpersons, directors, or others responsible for a student representing the university on officially approved trips must notify the student's instructors of the departure and return schedules. The instructor so notified must not penalize the student, although the student is responsible for material missed. Any student absent because of university business must be allowed to make up missed work within a reasonable span of time or have alternate grades substituted for work due to an excused absence. Students absent because of university business must be given the same privileges as other students.

### **Class Preparation:**

- You must be prepared for every class.
- You must be prepared to discuss the assigned material.
- Twenty percent of your grade is based on short in-class quizzes.

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), a “credit hour” is “an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time . . . .” This is a four-credit class, meaning that we will spend four 50-minute blocks of time together in the classroom each week and you will spend at least two hours working outside of the classroom for each class. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a minimum of 12 hours per week (4 in class and at least 8 preparing for class) on course-related work.

### **Technology Etiquette:**

- Turn off all mobile communication devices including cell phones prior to the beginning of class unless you are using them for TopHat.

- Boot up computers before class starts.
- Turn off computer audio.
- Disable distracting screen savers.
- Use an adequately charged battery or a power cord to avoid running out of power and the associated low battery warning noises.
- Do not use your computer for purposes that are not related to class. For example, do not write or reply to e-mail or instant messages, surf the Internet, post on Instagram, tweet, work on your Facebook or LinkedIn page, etc.

**Syllabus:**

Assignments are subject to change. Updates will be sent to all students via e-mail.

<u>Date</u>	<u>Topic</u>	<u>Text</u>
	<b>INTRODUCTION</b>	
January 11, 2022	Introduction & Class Procedure Property Defined – Generally	1-18
January 12, 2022	Property Defined – Generally (continued)	18-34
January 13, 2022	Attributes of Property – Exclusion Attributes of Property – Disposition	35-56 57-62
January 17, 2022	MLK Day – No Class	
January 18, 2022	Classification of Property Role of Property in Society	63-78 79-99
	<b>PERSONAL PROPERTY</b>	
January 19, 2022	Personal Property – Introduction Finding	101-102 103-124
January 20, 2022	Finding (continued)	124-140
January 24, 2022	Bailments	141-148
January 25, 2022	Unauthorized Possession	149-168
January 26, 2022	Improving Another’s Property by Mistake	193-202
January 27, 2022	Bona Fide Purchase	203-212
January 31, 2022	Donative Transfers – Overview	213-219

<b><u>Date</u></b>	<b><u>Topic</u></b>	<b><u>Text</u></b>
February 1, 2022	Engagement Gifts Gifts Causa Mortis	219-222 222-235
February 2, 2022	Transfers Upon Death	258-267
February 3, 2022	<b>Review Session &amp; Practice Examination</b>	
	<b>PRIVATE INTERESTS IN LAND – INTRODUCTION</b>	
February 7, 2022	Overview Historical Background	237 238-250
	<b>FREEHOLD ESTATES &amp; FUTURE INTERESTS</b>	
February 8, 2022	Classification of Interests Fee Simple Absolute Life Estates	251-254 254-258 267-281
February 9, 2022	Defeasible Estates	281-300
February 10, 2022	Fee Simple Conditional and the Fee Tail Introduction to Future Interests Future Interests in the Grantor	300-305 307-308 308-312
February 14, 2022	Remainders	312-323
February 15, 2022	Remainders (continued)	312-323
February 16, 2022	Rule in Shelley’s Case Doctrine of Worthier Title	323-328 332-334
February 17, 2022 Class starts at 1:15 p.m.	Executory Interests	334-346
February 21, 2022	Executory Interests (continued)	Reread 334-346
February 22, 2022	Rule Against Perpetuities	355-370
February 23, 2022	Rule Against Perpetuities (continued)	
	<b>CONCURRENT OWNERSHIP</b>	
February 24, 2022	Introduction Marital Estates	371-379 379-385
February 28, 2022	Creation and Attributes of Concurrent Ownership	385-395

<u>Date</u>	<u>Topic</u>	<u>Text</u>
March 1, 2022	Creation and Attributes of Concurrent Ownership (continued) Rights and Duties of Concurrent Ownership Condominiums and Time-Shares  [end of material covered on mid-term exam]	415-420 420-428 432-434
TBD	<b>Review Session for Mid-Term Examination</b>	
	<b>LANDLORD-TENANT</b>	
March 2, 2022	Introduction Creation of Leasehold Estates Access to Rental Market	449 449-458 458-468
March 3, 2022	Tenant's Right to Possession Duration	468-474 474-488
March 7, 2022	Condition of Premises Rent	488-501 501-507
March 8, 2022	Question & Answer Session for Mid-Term Examination (optional attendance)	
March 9, 2022	<b>Mid-Term Examination – 1:00 –3:00 p.m.</b>	
March 10, 2022 [no in-person class; recorded lecture]	Use of Premises Injuries to Persons and Property Lessor's Remedies Against Defaulting Tenant Transfers	507; 512; 516-517 517-525 525; 531-537; 543-546 546-547; 551-552; 557-58
March 14-18, 2022	Spring Break – No Classes	
	<b>EASEMENTS, PROFITS, AND LICENSES</b>	
March 21, 2022	Introduction Express Creation	559-561 561-571
March 22, 2022	Express Creation (continued) Creation by Implication	575-576 576-589
March 23, 2022	Creation by Prescription	589-603
March 24, 2022	Scope and Transferability Termination	603-612 612=617
	<b>REAL COVENANTS &amp; EQUITABLE SERVITUDES</b>	
March 28, 2022	Introduction Elements of Real Covenants	617-618 618-634

<u>Date</u>	<u>Topic</u>	<u>Text</u>
March 29, 2022	Equitable Servitudes	634-642
March 30, 2022	Equitable Servitudes (continued) Limitations on Covenants and Servitudes	642-646 652-661
March 31, 2022	Construction, Administration, and Termination	662-672
	<b>NON-VOLITIONAL (NATURAL) INTERESTS</b>	
April 4, 2022	Nuisance Support of Land	673-679 691-698
April 5, 2022	Interests in Water – Introduction Drainage	698-706 706
April 6, 2022	Water in Watercourses	706-713
April 7, 2022	Groundwater Oil & Gas	714-716 724-725
April 11, 2022.	Airspace & Sunlight	730-750
	<b>PUBLIC INTERESTS IN LAND</b> [Eminent domain and related issues are covered in your Constitutional Law course]	
	<b>THE REAL ESTATE CONTRACT &amp; RELATED MATTERS</b>	
April 12, 2022	Introduction Statute of Frauds “Standard” Written Contract	915-918 918-27 956-964
April 13, 2022	Time for Performance Financing Arrangements	964-973 979-986
April 14, 2022 [no in-person class; recorded lecture]	Financing Arrangements (continued) Merchantable Title.	1002-1007
April 18, 2022	Day of No Classes	
April 19, 2022	Tender Assignment Remedies	1016-1019 1019-1026 1029-1036

<u>Date</u>	<u>Topic</u>	<u>Text</u>
April 20, 2022	Equitable Conversion Risk of Loss Role of the Real Estate Broker	1036; 1042 1055-1057
April 21, 2022	The Deed	1069-1071; 1076-1080; 1089-1096; 1103-1109
April 25, 2022	The Recording System	1129-37; 1180-84
April 26, 2022 [no in-person class; recorded lecture]	The Recording System (continued)	
April 27, 2022	Methods of Title Assurance (including adverse possession)	1189; 1206-1208; 1213-15; 1230-40; 1246-48; 1254- 63; 1280-82
April 28, 2022	Methods of Title Assurance (including adverse possession (continued) Conclusion Examination Information	
	<b>Review Session for Final Examination – Time TBD</b>	
May 10, 2022	<b>Final Examination – 1:00 – 3:00 p.m.</b>	

**Course Purpose:**

The purpose of this course is to provide students with an introduction to the basic law governing real and personal property in the United States.

**Expected Learning Outcomes:**

Upon completion of this course, a student will have acquired knowledge of how to handle a variety of matters concerning real and personal property. The specific tasks the student will be able to complete include the following:

- Determine the attributes of property.
- Critique the role of property in society.
- Determine the ownership of found personal property.
- Ascertain liability in bailment situations.

- Prioritize the rights of parties when personal property is purchased, possessed by someone without the owner’s authority, or improved by mistake.
- Recognize whether a person has made a donative transfer either while alive or at death.
- Classify freehold estates and determine rights of the parties.
- Classify future interests and determine rights of the parties.
- Determine rights of parties when property is concurrently owned.
- Explain the basic operation of landlord-tenant law.
- Summarize how to create, classify, interpret, and enforce easements, profits, and licenses.
- Identify, distinguish, interpret, and enforce real covenants and equitable servitudes.
- Discuss non-volitional interests in land including the right to be free from nuisance, support of land, drainage of surface water, water in watercourses, groundwater, minerals, and airspace.
- Describe how to buy, sell, and transfer real property.
- Resolve conflicts that may arise in the transfer of real property.
- Identify the elements of a valid deed.
- Prioritize the rights of conflicting claimants to the same parcel of real property.
- Explain the methods of assuring title to real property.

**Method of Assessing Learning Outcomes:**

**Examinations:**

Three exams will be given:

- a one-hour practice exam on February 3, 2022 [0% of grade]
- a two-hour mid-term exam on March 9, 2022 [40% of grade]
- a two-hour final examination on May 10, 2022 [40% of grade].

The exams will include essay and objective questions.

**Class Preparation:**

- Brief in-class quizzes (not announced ahead of time) [20% of grade].

### **Criteria for Grade Determination:**

The following factors will be considered in grading the examinations and quizzes: accuracy (e.g., legally correct), completeness (e.g., number of issues spotted), and analysis (including organization, clarity, quality, and presentation).

### **Academic Integrity**

Texas Tech University Operating Policy/Procedure 34.12 addresses academic integrity and explains that “academic integrity is taking responsibility for one’s own class and/or course work, being individually accountable, and demonstrating intellectual honesty and ethical behavior.” Students must understand the principles of academic integrity and abide by them in all course work at the University; therefore, please review OP 34.12 for definitions of “cheating,” “plagiarism,” “collusion,” “falsifying academic records,” and “misrepresenting facts.” Like the legal profession, the School of Law is governed by ethical principles, which are set forth in the School of Law’s Honor Code and the University’s Student Handbook, which includes the Code of Conduct. Please refer to these Codes so that you are familiar with the policies governing academic integrity. Attempts by students to present as their own work any work that they have not honestly performed is regarded by the faculty and administration as a serious offense and renders offenders liable to serious consequences, including even suspension or expulsion from the School of Law.

Academic integrity is a personal choice to abide by the standards of intellectual honesty and responsibility. Because education is a shared effort to achieve learning through the exchange of ideas, students, faculty, and staff have the collective responsibility to build mutual trust and respect. Ethical behavior and independent thought are essential for the highest level of academic achievement, which then must be measured. Academic achievement includes scholarship, teaching, and learning, all of which are shared endeavors. Grades are a device used to quantify the successful accumulation of knowledge through learning. Adhering to the standards of academic integrity ensures grades are earned honestly. Academic integrity is the foundation upon which students, faculty, and staff build their educational and professional careers.

### **Reasonable Accommodations for Students with Disabilities**

Any student who, because of disability, may require special arrangements in order to meet the course requirements should contact Sofia Chapman, the Associate Dean for Student Life, as soon as possible to make any necessary arrangements. Students should present appropriate verification from Student Disability Services to Associate Dean Chapman. Please note that classroom accommodations cannot be provided to a student

until appropriate verification from Student Disability Services has been submitted. For additional information, you may contact the Student Disability Services Office at 335 West Hall or 806-742-2405.

### **Discrimination, Harassment, and Sexual Violence**

Texas Tech University is committed to providing and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from gender and/or sex discrimination of any kind. Sexual assault, discrimination, harassment, and other Title IX violations are not tolerated by the university. Report any incidents to (806)-742-SAFE (7233) or file a report online at <https://www.depts.ttu.edu/titleix/students/>. Faculty and staff members at TTU are committed to connecting you to resources on campus. Some of these available resources are:

- TTU Student Counseling Center, 806-742-3674, <https://www.depts.ttu.edu/scc/> (provides confidential support on campus.)
- TTU 24-hour Crisis Helpline, 806-742-5555, (assists students who are experiencing a mental health or interpersonal violence crisis). If you call the helpline, you will speak with a mental health counselor.
- Voice of Hope Lubbock Rape Crisis Center, 806-763-7273, [voiceofhopelubbock.org](http://voiceofhopelubbock.org) (24-hour hotline that provides support for survivors of sexual violence)
- The Risk, Intervention, Safety and Education (RISE) Office, 806-742-2110, <https://www.depts.ttu.edu/rise/> (provides a range of resources and support options focused on prevention education and student wellness)
- Texas Tech Police Department, 806-742-3931, <http://www.depts.ttu.edu/ttppd/> (to report criminal activity that occurs on or near Texas Tech campus)

### **Civility Statement**

Texas Tech University is a community of faculty, students, and staff that enjoys an expectation of cooperation, professionalism, and civility during the conduct of all forms of university business, including the conduct of student–student and student–faculty interactions in and out of the classroom. Further, the classroom is a setting in which an exchange of ideas and creative thinking should be encouraged and where intellectual growth and development are fostered. Students who disrupt this classroom mission by rude, sarcastic, threatening, abusive or obscene language and/or behavior will be subject

to appropriate sanctions according to university policy. Likewise, faculty members are expected to maintain the highest standards of professionalism in all interactions with all constituents of the university.

### **Diversity Statement**

By its very design, some courses may engage topics that some students might find difficult and/or controversial. It is important that the instructor and students create an environment that values and nurtures individual and group differences and encourages engagement and interaction. Understanding and respecting multiple experiences and perspectives will serve to challenge and stimulate all participants to learn about others, about the larger world, and about themselves. By promoting diversity and intellectual exchange not only mirrors society as it is but also model society as it should and can be.

### **LGBTQIA Statement**

The Office of LGBTQIA Education & Engagement serves the Texas Tech community through facilitation and leadership of programming and advocacy efforts. This work is aimed at strengthening the lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA) community and sustaining an inclusive campus that welcomes people of all sexual orientations, gender identities, and gender expressions. I identify as an ally to the LGBTQIA community, and I am available to listen and support you in an affirming manner. LGBTQIA services and resources are available through the Office of LGBTQIA Education & Engagement, Student Union Building Room 201, 806.742.5433, <https://www.depts.ttu.edu/lgbtqia/>.

### **COVID-19 University Mandated Syllabus Statements**

**Potential Changes:** The University will continue to monitor CDC, State, and TTU System guidelines in continuing to manage the campus implications of COVID-19. Any changes affecting class policies or delivery modality will be in accordance with those guidelines and announced as soon as possible. If Texas Tech University campus operations are required to change because of health concerns related to the COVID-19 pandemic, it is possible that this course will move to a fully online delivery format. Should that be necessary, students will be advised of technical and equipment requirements, such as web cam, microphone, and remote proctoring software.

**Vaccinations:** Texas Tech University strongly recommends students adhere to CDC guidelines on COVID-19, including obtaining COVID-19 vaccinations. If you were unable to obtain a vaccination prior to your arrival on campus, the COVID-19 vaccine is

available at Student Health Services by appointment. You can find additional information about the vaccine and campus vaccine clinics [here](#).

**Face Covering Policy:** As of May 19, 2021, face coverings are optional in TTU facilities and classrooms but, based on CDC guidelines, are recommended and welcome, especially for those who have not been vaccinated for COVID-19 or who may have susceptibilities to the virus. Face coverings are required in public transportation (e.g., Citibus) and in the Student Health Clinic.

**Seating Charts and Social Distancing:** There is not a mandated social distancing protocol for classroom seating, but using a seating chart and taking attendance are recommended in support of campus contact tracers if needed. Social distancing is recommended in rooms that will enable it.

**Personal Hygiene:** We all should continue to practice frequent hand washing, use hand sanitizers after touching high-touch points (e.g., door handles, shared keyboards, etc.), and cover faces when coughing or sneezing.

**Illness-related Absences:** Student absences due to illness are to be considered as they were prior to the pandemic, with consideration given to the fact that students who are isolating with COVID-19 and students who are quarantining for symptoms or direct exposure may have extended days of absence. Makeup opportunities should be provided in a reasonable timeframe. Direct students to the guidance for students at <https://ttucovid19.ttu.edu/User/Consent>.]

**In-Person Office Hours:** For in-person office hours, masks are optional and welcome. Virtual office hours are also available.