

**Thompson Rivers University
Faculty of Law
Course Syllabus and Outline**

LAWF 3050: Property Law (5,0,0) 2017-2018

Part I, Fall Semester

Section 91 - Professor Katie Sykes

Even the poorest of them may, in his own cottage, bid defiance to all the forces of the Crown. That cottage may be frail; its roof may shake; the wind may blow through the seams of the walls. The storms may enter it. The rain may enter it. But the King of England cannot enter and all of the King's forces dare not cross the threshold of the shrined tenement of a free man.

- William Pitt

If I were asked to answer the following question: What is slavery? and I should answer in one word, It is murder!, my meaning would be understood at once. No extended argument would be required. Why, then, to this other question: What is property? may I not likewise answer, It is robbery!

- Pierre-Joseph Proudhon



Where and when

Tuesday and Thursday 8:30-10:00 am
OM 3632

Contact information

csykes@tru.ca 778 471 8430

Office hours

Tuesdays and Thursdays 10-12 (or by appointment)
OM 4775

Casebook

Mary Jane Mossman & Philip Girard, *Property Law: Cases and Commentary*, 3d ed (2014)

Description of the course

Students learn the fundamental concepts of property law and the types of property interest recognized by Anglo-Canadian law. Students develop core skills in interpreting and analyzing case law, statutes and secondary sources concerning property law, and in constructing legal arguments based on those authorities. Students study basic property law concepts, including: the legal conception of property as a relationship; how property interests are acquired, transferred and lost; and estates in land; and (in the second semester) incorporeal rights over land such as easements and covenants; and the Torrens system of land title registration. They also explore broader social and political questions that intersect with property, including novel claims of property and Aboriginal land rights.

Methodology and “on call”

This is a lecture course.

In this course, as in all law courses, a critical part of your learning process is engaging with the concepts you will learn and testing their application. This happens through discussion and working through questions in class. *All* students should be prepared to engage in discussion in every class.

In each class starting the week of September 18, **specific students will be assigned to be on call**. If you are on call, you have enhanced responsibility for knowing and discussing the materials covered in that class.

You are responsible for keeping track of when you are on call and for being appropriately prepared.

If you are assigned to be on call for a class and you cannot meet your responsibilities that day, please let me know in advance and I will assign you to be on call on a different day instead.

Learning objectives

The course will teach students to:

- Understand the property law principles and doctrines covered in the course and explain them accurately, clearly and concisely;
- Apply property law principles and doctrine to analyze problems and fact patterns;
- Carry out a basic legal writing assignment;
- Synthesize legal principles from different cases and reach reasoned conclusions about how they work together;
- Appreciate the policy considerations and justifications underlying property law and how they affect the interpretation and application of the law;
- Identify and explain apparent ambiguities, contradictions or shortcomings in property law and argue for how they can be resolved or reformed; and
- Critically evaluate the law of property and the justifications advanced for it.

Evaluation

In the Fall semester, you will (1) complete a short writing assignment on a pass-fail basis (2% of your final grade) and (2) write an exam during the December exam period.

Fall Writing Assignment: This assignment is due on Friday, November 9, by 5pm. It is a pass-fail assignment, so if you pass (that is, if you complete the assignment on time) you receive the full 2% (and if you don't you receive 0%). More details and instructions will be provided in class.

December Exam: The December exam is "fail safe," so **your grade only counts if it improves your final grade**. Weight: 30% or 0%.

- Friday December 15 at 9 am
- Barber Centre
- 2 hours total (1.5 hours exam time plus 30 minutes reading time)
- Open book

The other evaluation components will be in the winter semester: a short graded writing assignment worth 8%, and your final exam, worth either 90% or 60%.

PLEASE NOTE: The final exam in April will cover the full year.

If you need accommodation for examinations or assignments, please discuss the situation with the Faculty of Law administration as soon as possible. See "Course Policies" below.

COURSE OUTLINE AND ASSIGNED READINGS

The page numbers refer to the casebook (Mossman & Girard). Other materials are posted on TWEN.

This outline is subject to adjustment as I deem appropriate. You will be informed of any adjustments in class and/or by e-mail.

Date	Topic	Readings
Tues Sept 12	Property as a relationship; property as a “bundle of rights”	1-6 Joseph Singer, “How to Brief a Case and Prepare for Class,” from <i>Property Law: Rules, Policies, and Practices</i>
Thurs Sept 14	The nature of property; theories and justification	6-13 <i>Victoria Park v. Taylor</i>
Tues Sept 19	Analyzing cases: <i>Victoria Park v. Taylor</i>	<i>Victoria Park v. Taylor</i> (again)
Thurs Sept 21	Property and the Constitution: federal, provincial, Aboriginal	77-83 <i>Constitution Act, 1867</i> ss. 91 and 92 <i>Charter of Rights and Freedoms</i> s. 7 <i>Constitution Act, 1982</i> s. 35 Tk'emlúps te Secwépemc, “Our Land”
Tues Sept 26	Property, poverty and homelessness	83-87 Jeremy Waldron, “Homelessness and the Issue of Freedom” (excerpts) <i>Victoria (City) v. Adams</i> (BCCA) (focus on paras 98-101 but skim the rest)
Thurs Sept 28	Property, human rights and homelessness: special guest lecture by DJ Larkin of Pivot Legal Services	<i>Vancouver (City) v. Wallstam</i> Kothari Affidavit (this one is long so it's ok to skim) There may be additional materials provided by DJ Also, review the readings from Sept 26

Date	Topic	Readings
Tues Oct 3	The limits of the right to exclude: private property and public(ish) places	30-62
Thurs Oct 5	Analyzing cases: <i>Harrison v. Carswell</i>	30-41(again)
Tues Oct 10	The concept of possession: first possession	99-111; 128-134 <i>Pierson v. Post</i>
Thurs Oct 12	Gifts: testamentary, <i>inter vivos</i> and <i>mortis causa</i>	428-447; 459-468
NO CLASSES WEEK OF OCT 16 (NO CLASS Oct 17 or 19)		
Make up class Mon Oct 23 8:30 am OM 3612	A special kind of <i>inter vivos</i> gift: engagement rings	Anna Wong, “With This Ring, I Take Thee to Court” <i>McArthur v. Zaduk</i> , 2001 CanLII 28143 (ON SC), paras 1-3, 26-29, 34-39, 47, 58-61 <i>Newell v. Allen</i> , 2012 ONSC 6681 (CanLII), paras 1-8, 14-22. <i>Zimmerman v. Lazare</i> , 2007 BCSC 626 (CanLII) <i>PS v. HR</i> , 2016 BCSC 2071
Tues Oct 24	Legal writing skills	Justice Marvin Catzman and Justice Stephen Goudge, “The Wrong Stuff – How to Write a Truly Bad Factum” Writing Tips Handout Daniela Murynka, “The Rise of Lucid Writing in Canadian Law: Why Judges are Junking Legal Jargon” (The Walrus, January 12, 2017) Instructions for writing assignment
Makeup class Weds Oct 25 8:30 am OM 3612	Finders of lost objects	111-128, 135-149 Karoline Kan and Mike Ives, “Meteorite Finder Fights China’s (Mostly Terrestrial) Property Law” (The New York Times, April 8, 2017)

Date	Topic	Readings
Thurs Oct 26	Exam writing skills: <i>Parker v. British Airways Board</i>	113-122 (again)
Tues Oct 31	Bailment	353-366
Thurs Nov 2	Fundamental land law concepts: tenure, fee simple and life estates	227-251; 255-267
Tues Nov 7	Conditions, equitable estates, modern trusts, perpetuities	268-270; 324-327; 337-346
Thurs Nov 9	BRING DRAFT OF YOUR WRITING ASSIGNMENT TO CLASS Writing assignment in-class review	Writing assignment marking key
Fri Nov 10	WRITING ASSIGNMENT DUE by 5 pm – submit hard copy to my office	
Tues Nov 14	Possession and title to land (adverse possession)	156-159 <i>Nelson (City) v. Mowatt</i> , 2017 SCC 8
Thurs Nov 16	Canada's Indigenous peoples and land; the law of Aboriginal title	753-783 Memorial from the Chiefs of the Shuswap, Okanagan and Couteau Tribes of British Columbia to Sir Wilfrid Laurier Joseph Singer, "Indian Title: Unraveling the Racial Context of Property Rights, or How to Stop Engaging in Conquest" pp. 1-15, 20-23.
Tues Nov 21	Canada's Indigenous peoples and land: special class	Materials will be provided
Thurs Nov 23	The law of Aboriginal title	783-809
Tues Nov 28	The law of Aboriginal title	<i>Tsilhqot'in Nation v. British Columbia</i> , 2014 SCC 44
Thurs Nov 30	Review and exam preparation	Practice questions will be distributed on TWEN

SUPPLEMENTAL READING

These texts are available in the library for supplemental reading, in case you would like to learn more and enhance your understanding of the material. This is optional, NOT required.

- Bruce Ziff, *Principles of Property Law*, 6th ed (Carswell, 2014) – KE 618 .Z54 2014LAW – three copies on reserve.
- Marjorie L Benson & Marie-Ann Bowden, *Understanding Property: A Guide to Canada's Property Law* (Thomson Carswell, 1997), call number KE 625 .B46 2008 LAW.
- Bruce Ziff *et al.*, *A Property Law Reader: Cases, Questions and Commentary*, 3rd edition (Toronto: Thomson Carswell, 2012), call number KE 618 .A7 Z54 2008 LAW.
- E. H. Burn & John Cartwright, *Cheshire and Burn's Modern Law of Real Property*, 18th ed (Oxford: Oxford University Press, 2011), call number KD 829 .C45 2011 LAW.
- Alan M. Sinclair & Margaret E. McCallum, *An Introduction to Real Property Law*, 6th ed (LexisNexis Canada, 2012), call number KE 625 .S56 2012 LAW.

The following Internet resources are useful for keeping up with developments in property law in Canada and beyond:

- PropertyProf Blog (mainly US): <http://lawprofessors.typepad.com/property/>
- University of Alberta Faculty of Law Blog, under Property heading: http://ualbertalaw.typepad.com/faculty/property_law/
- The Lay of the Land: Developments in Canadian Real Property Law: <http://www.canadianrealpropertylawblog.com/>
- Property Law Developments (written by Harvard property law professor and rock star Joseph William Singer, therefore mainly US): <https://blogs.law.harvard.edu/jsinger/>

Course Policies

Regulations. Please read and be familiar with the Faculty of Law Regulations, available at http://www.tru.ca/__shared/assets/TRU_Law_Regulations24309.pdf.

Grade adjustment. Grading is in accordance with the Faculty of Law grading policy, available at: http://www.tru.ca/__shared/assets/TRU_Law_Grading_and_Ranking_Policy24310.pdf.

E-mail. E-mail sent to students about this course will be sent through TWEN and will go to the e-mail address you used to register on TWEN. Please ensure that you check your e-mail regularly and read these messages. Students will be deemed to have received course information sent by e-mail.

Academic Dishonesty. Please carefully read Article 15 of the Faculty of Law Regulations (http://www.tru.ca/_shared/assets/TRU_Law_Regulations24309.pdf) on “Plagiarism/Cheating/Other Academic Misconduct.” Please also read the University’s Academic Integrity Policy (http://www.tru.ca/_shared/assets/ED_5-035456.pdf), in particular Article VI, “Forms of Academic Dishonesty.” You are responsible for ensuring that you understand and honour these policies. The penalties for academic dishonesty, including plagiarism, are serious, and can include being assigned an “F” for the course.

Respect and Courtesy. Please be courteous to all members of the class and have respect and consideration for the time, work and energy that everyone is investing in this enterprise. This goes for online discussions and e-mail as well as in the classroom. Avoid coming late to class, as it disrupts the process for everyone else, and that is unfair. Listen attentively to your colleagues’ questions and comments; you can learn a lot from them. You are at the beginning of a professional career, with a community of people who will be your colleagues for decades to come. Your choices now will start building your professional reputation for the future.

Laptops. You may bring laptops to class to take notes. Please do not use them in a way that interferes with your learning or the learning of others. Cell phones and other electronic devices should be turned off except in genuine emergencies.

Accommodation. Please read the Faculty of Law Academic Accommodation Policy (http://www.tru.ca/_shared/assets/Law_Academic_Accommodation_Policy25672.pdf). If you have a question about or a request for accommodation you should discuss it with the Faculty of Law administration as soon as possible.

Attendance. It is your responsibility to attend all lectures. There are no grades given for attendance, but if you have to miss class it is your responsibility to make arrangements with your classmates to catch up on material that you miss.

Recording. Students who wish to record or lectures or course materials **must ask for consent before doing so.**