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# Property Law

CML 1108B

[www.jeremydebeer.ca/teaching/property-law](http://www.jeremydebeer.ca/teaching/property-law)

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**A contemporary twist on this staple course in the law school curriculum, our introduction to property excites students with questions that connect foundational principles and real-world problems.**

Who may own human body parts? What's proprietary in the sports pages of newspapers? How do patents impact access to medicine? Does property law adequately address problems of homeless and poverty? What is a cyber-trespass? Are racist trust funds illegal? When did women win rights to a fair share of family property? Those topics are in addition to traditional core issues of real and personal property, like boundaries, possession, estates, future interests, trusts and Aboriginal perspectives on property. Using Canada's leading property law casebook, equal attention is paid to conceptual and doctrinal aspects of the law. Emphasis is placed on the analytical skills required for legal practice, without losing sight of public policy and social justice.

My philosophy of teaching can be summarized in one word: excitement. Everything that happens in and outside of my classroom is designed to excite students about the subject they are studying. Excitement inspires students to explore as many aspects of their chosen field as possible, individually as well as collectively with their peers, and to share their passion with others. Engaging excited students helps them to solve real-world issues, not recite facts. To harness creative skills, not set routines. Read more about my teaching philosophy at [jeremydebeer.ca/about-me/teaching/](http://jeremydebeer.ca/about-me/teaching/).

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FTX 302 Norton Rose Canada Classroom

Mondays\* 16:00 – 17:50

Wednesdays 08:30 – 9:50

Fridays 08:30 – 09:50

\*Monday: Sep 18, Oct 2, 23, Nov 6, 13, 20, 27, Dec 4

Professor

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Office Hours: FTX 354, by appointment

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## Friday, September 8

**The Magical Mystery Tour:** An introduction to Professor de Beer's introduction to the law of property. Read the full syllabus, and surf the [course webpage](#).

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## Wednesday, September 13

### **The Properties of Property:**

What is "property"? We'll ask this question while studying the Australian High Court's decision in *Yanner v Eaton*. Read pages 1-19 in the casebook.

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## \* Thursday, September 14

### **(FTX 147)**

**Imagine No Possessions:** Why is respect for private property so predominant in Western civilizations? Today's readings on pages 29-41 deal with that.

## Goals

The overarching objective of this course is to introduce you to the basics of property law in an exciting and engaging way, so that you'll want to learn more about it throughout law school and your professional career. So, we:

**1. Confront the meaning of and justifications for “property.”** The theoretical “what” and “why” questions may seem practically unimportant at first. They are not. We'll see many concrete examples of cases that turn on judges' views about such matters, or statutes that embody legislators' attitudes about property's philosophical purposes. Solid theoretical understanding also encourages critical evaluation and positive legal reforms.

**2. Introduce key legal rules and principles.** An introductory course can't exhaustively cover all the interesting and important property issues, but it can lay a foundation for future study and practice in wide variety of legal fields, in provinces across Canada or even other common law countries. That's what we're trying to accomplish through this course.

**3. Develop some property-based practice skills.** You will not learn the intricate logistics of closing real estate transactions or drafting wills. But you will get to dig into some documentary analysis and even legal drafting, as well as practical litigation strategy. We will stress a general approach to the practice of property law in everything that we do.

**4. Evaluate law's impacts on social justice.** This involves critical analysis of property-related issues of race, class, and gender (all defined broadly). We examine aboriginal, feminist and other critical perspectives on the law. Doing so requires exploration of linkages between property law and other disciplines. It also highlights linkages between property and other courses you'll study in first-year law school.

## Methods

Everyone learns differently. Some people are visual, or hands-on; others like lectures. Discussion works in certain cases, but sometimes reading is preferred. We use various teaching methods to suit different students' styles.

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**\* Friday, September 15**

**Class rescheduled.** (I'll be in Morocco for research on [www.OpenAIR.Africa](http://www.OpenAIR.Africa).)

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**Monday, September 18**

***Fire in the Blood*:** The collision of property and human rights: international patent law and access to medicines in sub-Saharan Africa.

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**Wednesday, September 20**

**Second Hand News:** How does the law deal with novel claims to ownership of things like the news or sports spectacles? *INS v AP* and *Victoria Park Racing* on pages 41-54 cover that topic.

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**Friday, September 22**

**Somebody Else's Body:** Do you *own* your own body? Could somebody else? Read about John Moore's famous case on pages 54-71.

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**Wednesday, September 27**

**The Politik of Property:** When do public interests trump private rights? Can the government take your property away, and if so, how? Pages 137-171 address these questions.

Classes cover distinct but interconnected topics, organized into thematic lessons that cover the basic principles of property law. To put everyone on the same page—those who are prepared, and even those who aren't—most classes begin with a brief introductory overview the day's topic. That's followed by in-depth analysis, small group conversations and plenary discussion of the cases and other materials we're tackling during that class. Some classes also involve exercises in legal drafting, moot debates and other activities.

Music playlists, film clips and other popular culture references routinely reinforce key points and learning objectives. Monday classes (when we do meet Mondays) will feature cinema classics, modern films, documentaries or guest speakers about the law of property.

Visual presentation aids guide students' paths through each part of the course, and are available online to refresh students' memory afterwards. I happen to use [Prezis, which are continuously being updated and are available online](#). Because the Prezis are being updated as we go, I don't recommend using them before class. In fact, they're only designed to guide our class discussions, and aren't intended for download at all.

[Website updates](#), emails to the class, [an iCal subscription](#), and the Twitter hashtag [#PropertyLaw](#) from [@jdebeer](#) convey important logistics updates, and connect students with real-world impacts of property law through media reports related to course topics, which often find their way onto exams. A package of audio, video and presentation aids from each class is webcast as "Echos" at [echo360.org.uk](#) and archived for later reference by students.



Our readings in this course come primarily from [A Property Law Reader: Cases, Questions and Commentary, 4th ed. \(Toronto: Carswell, 2016\)](#). This is Canada's leading property law casebook, and I don't just say that because I'm its co-author with Bruce Ziff, Doug Harris and Margaret McCallum. It's true: more 1L property students use this book than any other.

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## Friday, September 29

### Occupying Private Public

**Places:** The worldwide "occupy" movements that started in 2011 triggered political debate and legal challenges. The law is laid out on pages 19-29 and 783-791.

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## Monday, October 2

[No Place Called Home](#): This film about poverty, homelessness and landlord-tenant law tackles issues covered at [www.ltb.gov.on.ca](http://www.ltb.gov.on.ca). Study the legal info in preparation for class.

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## Wednesday, October 4

### Poverty, the Opposite of

**Property:** What impact does property have on people who have none? Read *Victoria (City) v Adams* and other materials on pages 115-137 for answers.

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## Friday, October 6

**Get Off My Cloud:** How high up do a property owner's rights go? How low? The answers are in readings on pages 173-201.

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## \* Monday, October 9

**Blog Commentary Due:** Submit responses via Brightspace before 16:00 sharp.

If you want to supplement your casebook readings, there's an excellent companion textbook written by Bruce Ziff, [Principles of Property Law, now in its 6th edition](#). I've put several copies on reserve in the library. We won't reference this often during class, but some students find it quite useful.

## Support

I'm available to respond to questions by email, direct message on twitter or, best of all, old-fashioned meetings—anytime of the week, by appointment—to deal with almost any issues that can't be sorted out during classes, tutorials or other support sessions available to you.

A dedicated tutor, Mariah Griffin-Angus, helps students who are struggling, or just searching for an advantage. Tutorials with her take place Fridays from 11:30 – 13:00 in FTX 361. Tutorials on September 22, October 13 and 27, and November 10 24 are open to all students. Extra sessions for students pre-approved for additional support for access/equity take place on September 29, October 6 and 20, and November 3 and 17 require advance registration.

To sign up for access/equity tutorials, request an exam deferral, assignment extension, or other accommodation, you must contact the Common Law Student Centre (FTX 237, [clawaccess@uottawa.ca](mailto:clawaccess@uottawa.ca)). Circumstances that may warrant accommodation include but are not restricted to:

- a permanent state of affairs (e.g., a disability, a permanent medical condition),
- an ongoing situation (e.g., a personal crisis, pregnancy),
- reasons related to equity concerns (e.g., religious obligations, sole parenthood),
- a one-time event or circumstance (e.g., a short illness, a temporary injury, a day surgery), or
- compassionate grounds (e.g., a death in the family, a sick child or dependant).

Students should consult the Equity and Academic Success portion of the Academic Affairs website for complete details regarding accommodation requests.

Students who require accommodation or academic support because of a physical or learning disability, or any ongoing

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### Wednesday, October 11

**Stuck in the Middle:** What is the law governing disputes between neighbours over property boundaries? Read pages 201-222 of the casebook for today's class, and you'll find out.

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### Friday, October 13

**One Piece at a Time:** When one person's thing gets attached to another's, who owns the new thing? The law of chattels and fixtures, on pages 222-231, answers that question.

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### \* Monday, October 16

**(10h00, FTX 147A)**

**Up For Grabs:** Advance reading for this special movie session is required: pages 283-295. We'll watch a film about *Popov v Hayashi*, the case of Barry Bond's infamous home run ball.

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### Wednesday, October 18

**Finders Keepers, Losers**

**Weepers:** This class covers the law underlying the old adage about finding lost, hidden or abandoned property. The readings are on pages 316-332.

condition which affects their ability to learn, are invited to contact ACCESS SERVICE:

Office: Desmarais Building, room 3172 (3<sup>rd</sup> floor)  
Telephone: 613.562.5976  
TTY: 613.562.5214  
E-mail: [adapt@uottawa.ca](mailto:adapt@uottawa.ca)  
Web: [www.sass.uottawa.ca/access/](http://www.sass.uottawa.ca/access/)

As part of the registration process, students will meet with a Learning Specialist to identify their individual needs, discuss appropriate strategies, and establish adaptive measures. Access Service assesses, establishes, and implements appropriate academic accommodations for students who have a disability, while adhering to the University of Ottawa's policies, procedures, and administrative regulations, as well as Human Rights legislation. Access Service works collaboratively with our faculty to facilitate the academic accommodation process. The deadline to request accommodation for final exams is November 15.

The University of Ottawa does not tolerate any form of sexual violence. Sexual violence refers to any act of a sexual nature committed without consent, such as rape, sexual harassment or online harassment. The University, as well as student and employee associations, offers a full range of resources and services allowing members of our community to receive information and confidential assistance and providing for a procedure to report an incident or make a complaint. For more information, visit [www.uOttawa.ca/sexual-violence-support-and-prevention](http://www.uOttawa.ca/sexual-violence-support-and-prevention).

## Evaluation

There are 4 opportunities for graded feedback: One blog commentary, an experiential site visit, a comprehensive final exam, and a property-related dispute resolution quiz.

Yes, this class requires the inevitable final exam. It is a three-hour, open-book exam, and is worth **60%** of your grade for the course. Past exams will certainly give you some indication of what to expect, and I strongly encourage you to look through these recent documents at an early stage in the course. You can download past exams, along with answers, from the course homepage at [www.JeremydeBeer.ca](http://www.JeremydeBeer.ca).

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### Friday, October 20

**Give it Away Now:** Giving isn't as easy as you think. What does it take to legally transfer ownership of property to someone else, for nothing in exchange? Read pages 332-351.

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### \* Monday, October 23

**Experiential learning activity.**

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### \* Wednesday, October 25

**Experiential learning activity.**

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### \* Friday, October 27

**Experiential learning activity.**

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### Wednesday, November 1

**You Get What You Give:** This class explains the origins of "equity", and introduces express and "resulting" trusts. Read pages 461-487.

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### Friday, November 3

**Constructing trust:** An important remedy for unjust enrichments following familial relationship breakdown, and a lesson in overcoming gender biases in law. We'll cover materials on pages 487-510.



Your exam will be evaluated on the extent to which responses to each question are thorough & responsive (do you analyze the key issues, and focus on relevant discussion?), accurate & insightful (do you apply the law correctly, and evaluate issues deeply?), clear & organized (is your answer well structured, articulate and properly referenced?) and generally impressive (do you demonstrate understanding of the subject, or show creativity?).

Because of the heavy weighting of the final exam, I won't let you write it unprepared. We do a dress rehearsal a few weeks before the final. This is for practice, not for marks. After I draft and share model answers for you, we use an interactive process of self-evaluation and strategic discussion during tutorials to provide feedback and prepare for the real thing.

Another **10%** of your grade will be based on one short writing exercise that give you the chance to respond critically to the course content, preparing you for the exam as we go along.

This is **due by 16:00 sharp, on Monday October 9, to be uploaded via our Brightspace page**. Late assignments will not be accepted.

Responses are short commentaries (~ 750 words) that capture your understanding of and personal reaction to the property topics that we're covering in the classroom and their connection to recent experiences or current events happening around the world. It should be an intelligent, substantive, engagement with the both the course materials and the experience or event.

A response can be: a well-argued opinion, a comparison with other materials in this course or another; a critique; a suggestion for social or legal reform. It can include: relevant references to current events, history, politics, art, media, or personal experience. A response cannot be: a description or a summary of the materials or event.

While your response must not merely describe the course materials and discussion, it should still engage with the course materials and discussion. It should not be a response to an issue in general or in contexts only tangentially related to course materials and discussion.

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## **Monday, November 6**

### **Experiential learning activity**

This is bonus class time allocated to site visits and group work.

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## **Wednesday, November 8**

### **Copyrighting Culture,**

**Patenting Plants:** How does the law distinguish ownership of things versus ideas, like paintings on canvass or genes in plants? Read pages 518-526 and then 246-262.

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## **Friday, November 10**

### **Trademarks & Cyber-trespass:**

How do trademarks compare to other kinds of IP, and do property concepts carry over into cyberspace? Readings for today's class are pages 262-281.

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## **Monday, November 13**

**Rehearsal Exam:** Today is a 90-minute warm-up for the 3-hour final, in our usual room. Make sure to prepare your summaries and outlines. Take the exercise seriously, and you'll be rewarded in December.

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## **Wednesday, November 15**

**Real estates:** These are among the most technical concepts to grasp in property law, mainly because of the jargon. Pages 359-389 contain the materials.

Because you have little time and space in which to convey your thoughts on important topics and complex issues, I suggest that you focus your responses. The materials themselves are wide-ranging. I strongly encourage you to choose one particular issue, rather than trying to cover everything that could be said in response. The more specific the issue you address, and the more precisely you address a particular aspect of that issue, the better.

The format of your response is less important than the substance. For example, you may use any style of referencing and citation that you wish. You should, however, take special care to edit and proofread your response as thoroughly as possible before submitting it. The care you take in completing the assignment reflects the seriousness of your effort.

Here's how you'll be graded on the response:

- 0 - Incomplete
- 2 - Very poor (purely descriptive, incoherent, unreadable)
- 4 - Poor (somewhat descriptive, evidently rushed, unpersuasive, poorly written)
- 6 - Good (somewhat expressive, reasonably persuasive, adequately written)
- 8 - Very good (very expressive, evidently thoughtful, persuasive, well written)
- 10 - Outstanding (highly creative, brilliantly insightful, engaging, perfectly written)

A further **20%** of your grade is determined by your performance on an group-based experiential learning activity, which will take place the **week of October 23-27**.

The assignments will be completed in **groups of FIVE**. All members of the 5-person team will be assigned the same mark for this assignment. You will rarely work on a legal project in solitude; most often you will work with other lawyers, or with other professionals and experts such as accountants, real estate agents, engineers, social workers, police, Indigenous governments or business people. Collaboratively developing an argument or project, and dividing the labour of research and writing, and advocacy is an important skillset.

There are two components to the experiential learning activity: (1) experiential learning activity and (2) the written component. One copy of each part of the two-part assignment must be handed in per group. Full details, including more detailed instructions will be on Brightspace in early October.

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## Friday, November 17

**No Strings Attached:** Today's lesson is about the strings someone might put on the future transfer of property. First, we cover the basics; we expand next class. Readings are on pages 527-539. Also, next week's workload is heavy, so if you can, get a head start on 539-572.

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## Monday, November 20

**Group Memo Due:** Via Brightspace before 16:00 sharp.

**Exam strategy tutorial.** Today's special Monday session with our course tutor will be a debrief on the rehearsal exam, and introduction to strategies for success on the final.

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## Wednesday, November 22

**State Limits on Private Power:** What kinds of limits and conditions are legally acceptable, and what kinds aren't? Please read pages 539-572.

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## \* Friday, November 24

**Cancelled: The RAP Trap:** We were going to study a "technicality ridden legal nightmare." Instead, if you insist on learning the (non-examinable!) topic yourself, read pages 579-591 and 600-604.

In the **experiential component**, you will visit one of three or four pre-selected sites in Ottawa. All of the sites have been chosen because they are easy to reach, and we hope accessible to everyone. Please inform your professor immediately if you face barriers to travelling to these venues. We will provide you with an accessible option based on your particular barriers. It is up to you to organize your group, and get yourselves to the site, with the equipment required to complete your project.

In the **written component**, you will prepare a memorandum of law answering the questions as they appear in the package of information provided for your selected site. You will find all packages with questions on Brightspace. The questions are intended to test your substantive knowledge, and to provoke thoughtful and critical analysis.

The memorandum must be approximately 1000-1500 words, and presented in a more formal tone and manner than your blog commentary. While your blog commentary is evaluated for reflectiveness and creativity, your memorandum is evaluated for accuracy and analysis.

Here's how you'll be graded on the memo:

- 0 - Incomplete
- 2 - Very poor (inaccurate, incoherent, unreadable)
- 4 - Poor (somewhat accurate, shallow, poorly written)
- 6 - Good (somewhat expressive, reasonably detailed, adequately written)
- 8 - Very good (very accurate, very detailed, well written)
- 10 - Outstanding (perfectly accurate, deeply insightful, perfectly written)

When conducting external or secondary research, please stay within the scope of the material covered in class and on your syllabus (including Brightspace). You may find supporting documentation as external or secondary research but as a group you are responsible to discern whether it is relevant. External or secondary research may include academic, legal or journalistic sources. The relevance, depth, and integrity of your research will impact your grade.

The remaining **10%** will be determined by a quiz on property-related subject matter, self-taught during the January term, integrated into your Dispute Resolution course. Direct questions to your Dispute Resolution instructors.

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## Monday, November 27

**Honour & Reconciliation:** Mr. Scott Robertson, one of the country's top indigenous law litigators, introduces students to the practical realities of winning recognition of Aboriginal rights in Canada. Read pages 75-96, 391-395, and 446-459.

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## \* Wednesday, November 29

**Class rescheduled.** (I'm in court today, acting for CIPPIC in a case on internet jurisdiction, [Goldhar v Haaretz.com.](#))

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## Friday, December 1

**Common Law Aboriginal Title:** We start to unpack this oxymoron via the *Delgamuukw* case. Read pages 396-446, which is a lot to cover, but will prepare you for both of the next two classes.

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## Monday, December 4

**Proving Title and Reconciling Rights:** Its one thing to claim Aboriginal title; it's another to prove it in court, and keep it from being infringed or extinguished. Readings from last class: 396-446.



Finally, a note about grading guidelines and procedures: Grades will be distributed in accordance with the Faculty of Common Law guidelines, online at:

<http://www.commonlaw.uottawa.ca/en/academics-affairs/full-page-content-academics/academic-regulations.html#rule17>.

This means that the average GPA will be between 5.6 and 6.4 (a "B" average). Note that regulations apply only to final grades.

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### **Wednesday, December 6**

#### **Exam Review & Prep Session:**

Our last class together is a full recap of the course, and a briefing on study strategy before the final exam.

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### **Monday, December 11 (16:00-whenver)**

**Drop-in Q&A Session:** This is a purely voluntary session. But who wouldn't want to pick the prof's brain about the exam?

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### **Wednesday, December 13 (09:00-12:00)**

**The Final Exam:** The three-hour, open-book final exam takes place from 9:00 to noon, at a location to be determined. It's worth 70% of your final grade.