
Property Law

CML 1108D

www.jeremydebeer.ca/teaching/property-law

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. What is a “cyber-trespass”? Who really “owns” the Stanley Cup? How does “property” law address problems of homeless and poverty? Are racist trust funds illegal? Is downloading music “stealing”? 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. Following the structure of Canada’s leading property law casebook, equal attention is given to conceptual and doctrinal aspects of the law. Emphasis is placed on the analytical skills required for legal practice, never losing sight of public policy issues and social justice concerns.

Instructors

This course is co-taught by team of subject-matter experts. Jeremy de Beer has taught property law at uOttawa since 2004. His teaching philosophy, jeremydebeer.ca/about-me/teaching/, research and writing, and active legal practice help to shape thinking about technology innovation, intellectual property, and global trade and development.

Tenille E. Brown is a Doctoral candidate in the Faculty of Law. She researches and teaches in the area of property, geography and Aboriginal law. She is passionate about property law from a rights based perspective and uses language and geography methodology in her research.

Fall 2014

Mondays* 16:00 - 17:50 FTX 302

Wednesdays 10:00 - 11:20 FTX 302

Fridays 11:30 - 12:50 FTX 302

*Monday: Sep 15, 29, Oct 20, Nov 3, 10, 17, 24, Dec 1

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#PropertyLaw

Phone: JdB on 613-562-5800 ext 3169

Office Hours: JdB in FTX 354, by appointment

TB in FTX 550, by appointment

Schedule

[Subscribe to the entire class calendar](#) for Apple iCal, Google Calendar, or other apps.

Wednesday, September 3 (JdB)

The Magical Mystery Tour: An introduction to Professors de Beer and Brown's introduction to the law of property. Read the syllabus and surf the course webpage.

Friday, September 5 (JdB)

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

Wednesday, September 10 (JdB)

Imagine No Possessions: Why is respect for private property so predominant in Western civilizations? Today's readings on pages 32-47 of our casebook deal with that question.

Friday, September 12 (JdB)

Second Hand News: How does the law deal with novel claims to ownership of things like the news or sports spectacles? Cases like *INS v AP* and *Victoria Park Racing* on pages 47-60 cover 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 an attitude 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. So we use various teaching methods to suit different students' styles.

Monday, September 15 (JdB)

This Monday's movie is “[Fire in the Blood](#),” screening **in FTX 147**. No advance readings.

Wednesday, September 17 (JdB)

Somebody Else's Body: Do you *own* your own body? Could somebody else own it? Read about the famous case of John Moore on pages 60-78 of the casebook.

Friday, September 19 (JdB)

The Politik of Property: When do public interests trump private rights? Can the government take your property away, and if so, how? Pages 140-170 address these questions.

Wednesday, September 24 (TB)

“Takings” Law in Practice: This is a very hands-on look at how and where regulatory takings cases have happened, and practical exercises to help you solve these kinds of legal problems. Read past exams to prepare.

Friday, September 26 (JdB)

Occupying Private Public Places: Not long ago, worldwide “occupy” movements triggered political debate and legal challenges. We'll talk about that based on pages 19-32 and 789-797.

Monday, September 29 (JdB)

No Place Called Home: This film, showing **in FTX 147**, is about poverty, homelessness and landlord-tenant law. To understand the legal issues, you should review the information at www.ltb.gov.on.ca before class.

Wednesday, October 1 (TB & JdB)

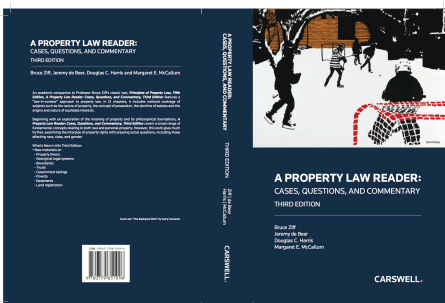
Poverty, the Opposite of Property: What impact does property have on people who have none? Read pages 119-140 for an introduction to this issue.

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 of 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 be movie days, featuring cinema classics, modern films and documentaries 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. In past years, I've used mindmaps, which are no longer updated but are still [archived](#) in case you find them useful. More recently, I've switched to [Prezis](#), which you can find at <http://prezi.com/user/r26hl971azv2/>. Because the Prezis are being updated as we go, I don't recommend downloading them until after class.

[Website updates](#), emails to the class, [an iCal subscription](#), and the Twitter hashtag [#PropertyLaw](#) from [@jdebeer](#) and [@TenilleEBrown](#) 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. An ["Echo"](#)—[a package of audio, video and presentation aids](#)—of each class is webcast and archived for later reference by students.



Our readings in this course come primarily from [A Property Law Reader: Cases, Questions and Commentary, 3rd ed.](#) (Toronto: Carswell, 2012), co-authored by Professor de Beer with Bruce Ziff, Doug Harris and Margaret McCallum.

Friday, October 3 (JdB)

Get Off My Cloud: How high up do a property owner's rights go? How low? The answers are in today's readings on pages 175-198.

Wednesday, October 8 (JdB)

Stuck in the Middle: What is the law governing disputes between neighbours over property boundaries? Read pages 201-224 of the casebook for today's class, and you'll find out.

Friday, October 10 (JdB)

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, covered on pages 224-233, answers that question.

Wednesday, October 15 (JdB)

Copyrighting Culture, Patenting Plants: How does the law distinguish ownership of things versus ideas, like paintings on canvass or genes in plants? Please read pages 252-271.

Friday, October 17 (JdB)

Trademarks & Cyber-trespass: How do trademarks compare to other kinds of IP, and do property concepts carry over into cyberspace? The readings for today's class are pages 272-291.

Monday, October 20 (JdB)

Up For Grabs: Advance reading for this Monday movie session [in FTX 147](#) is required: pages 293-306. Then we'll watch the film about *Popov v. Hayashi*, the case of Barry Bond's infamous home run ball.

Wednesday, October 22 (JdB)

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 329-346.

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](#). Several copies will be on reserve in the library.

A dedicated tutor helps students who are struggling, or just searching for an advantage. And old-fashioned meetings with us—anytime of the week, by appointment—deal with almost any issues that can't be sorted out during classes, tutorials or other support sessions available to you.

Students who require accommodations or academic support because of a physical or learning disability, or any condition that affects their ability to learn, are invited to contact the University's Access Services, or our own Faculty's Student Services. You can meet with an Access Service specialist to identify their individual needs and to discuss appropriate strategies. All information provided to Access Services and all accommodations received remain strictly confidential.

Office: UCU 339
Telephone: 613.562.5976
TTY: 613.562.5214
E-mail: adapt@uottawa.ca
Web: www.sass.uottawa.ca/access/

There are deadlines to request accommodations for final exams, which fall on the 15th of November for the fall term, and the 15th of March for winter. For additional information about Access Services you may contact Student Services.

Evaluation

There are 4 opportunities for evaluation and feedback in the property law course: (1) a responsive commentary, (2) midterm exam, (3) comprehensive final exam and (4) property dispute resolution quiz.

The first **10%** of your grade will be based on one short writing exercise that give you the chance to respond critically to the course content with a choice of answering one question out of four different question options. This is due by 23:59 EST, the first Monday of October (6th) to be uploaded via <http://uottawa.blackboard.com>.

Friday, October 24 (JdB)

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 346-366.

Wednesday, October 29 (TB)

Squatters' Rights: 9/10 of the Law 90% of the law, covered in 1 class! But is possession really nine tenths of the law? Read pages 306-329 to see how a squatter in possession of land might earn legal title.

Friday, October 31 (TB)

Exam Prep Strategies: Use the time wisely to catch up on missed readings, and begin prepping for your midterm exam, which takes place Monday.

Monday, November 3 (JdB & TB)

Today is the mid-term exam, in our usual classroom. Take it seriously, it is worth 20% of your grade.

Wednesday, November 5 (JdB)

Real estates: These are among the most difficult concepts to grasp in property law, mainly because of the jargon. Pages 367-392 contain the materials you need to read.

Friday, November 7 (JdB)

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 527-542.

Monday, November 10 (JdB & TB)

Midterm Recap & Study Session: This class will cover the answers to the midterm, and strategies to ace the final.

Wednesday, November 12 (JdB)

State Limits on Private Power: What kinds of limits and conditions are legally acceptable, and what kinds aren't? Please read pages 542-574.

Responses should be roughly 1500 words. They should be an intelligent, substantive, engagement with the course materials and classroom discussion. 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.

Because you have little time and space in which to convey your thoughts on important topics and complex issues, it is suggested that you focus your responses. The materials themselves are wide-ranging, so choose the question which you can thoughtfully and fully engage with.

This response piece will provide you with the opportunity to tackle property law questions early in the course. 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. Feedback will be given.

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

- 0 - 5: Incomplete or not passable (mistakenly descriptive, incoherent, unreadable)
- 5 - 6: Passable (purely descriptive, barely coherent, readable)
- 6 - 7: Good (somewhat descriptive, evidently rushed, adequately written)
- 7 - 8: Very Good (somewhat expressive, reasonably persuasive, well written)
- 8 - 9: Excellent (very expressive, evidently thoughtful, persuasive, very well written)
- 9 - 10: Exceptional (highly creative, brilliantly insightful, engaging, perfectly written)

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 we strongly encourage you to look through these recent documents at an early stage in the course.

Changes in the course content have occurred over time, especially between the 2007-08 and 2008-09 academic years, so you should bear this in mind. Download past exams, along with answers in memos to students from the "[Evaluation](#)" page of the course website.

Friday, November 14 (JdB)

The RAP Trap: True, the rule against perpetuities is a "technicality ridden legal nightmare." But if I don't teach it to you, you'll miss the point of a lot of legal jokes. Read pages 582-592 and 601-608.

Monday, November 17 (JdB)

Trusts: A Touch of Grey: Here we introduce principles of equity, looking at trusts for Jerry Garcia's guitars and Lord Stanley's cup. Light readings will be posted online.

Wednesday, November 19 (TB)

You Get What You Give: This class covers "resulting trusts." We'll also introduce fiduciary relationships and remedial trusts. Read pages 466-478 and 508-525.

Friday, November 21 (JdB)

Unjust Enrichment Remedies: An important remedy for unjust enrichments following familial relationship breakdown. We'll use the materials on pages 478-508 to cover this topic.

Monday, November 24 (JdB)

Guest Lecture by [Bob Rae](#): Insights on the property rights of Aboriginal Peoples of Canada, from a senior partner at Olthuis Kleer Townshend LLP, former Premier of Ontario, Liberal leader, and long-time Parliamentarian.

Wednesday, November 26 (TB)

Concepts of Common Law Aboriginal Title: We start to unpack this oxymoron via the *Delgamuukw* and *Tsilhqot'in* cases. Read pages 403-417, or through 446 if you can.

Friday, November 28 (TB)

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

Your exams 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?).

Before the final exam, you will write the mid-term exam. This mid-term exam is an open book exam worth **20%** of your grade. You won't write it unprepared, we will have a class exam strategy prep class before the mid-term. The exam will be written from 4:00-6:00pm on Monday, November 3rd.

The mid-term exam will be evaluated with the same considerations as the final exam. Your exam question responses should be thorough & responsive, accurate & insightful, clear & well organized and generally impressive. Feedback will be given.

The final **10%** will be determined by an examination of property-related subject matter, self-taught during the January term, integrated into your Dispute Resolution course. All details about that assignment should be directed to your Dispute Resolution instructors.

Finally, a note about grading guidelines and procedures: Grades will be distributed in accordance with the [Faculty of Common Law guidelines](#). 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.

In accordance with a Faculty-wide policy on accommodating special circumstances, late submission of assignments and requests for exam deferrals cannot be accepted unless prior express approval has been obtained from either [Academic Affairs](#) (for non-equity related reasons) or [Student Services](#) (for equity related reasons). Please be aware that in order to protect students' interests all Common Law Professors lack discretionary authority to make special accommodations in individual circumstances. Arrangements must be made directly with the relevant manager listed above.

extinguished. Read pages 417-446.

Monday, December 1 (Jdb & TB)

Exam Review & Prep Session: Our last session is a full recap of the course, and a briefing before the final exam.

Wednesday, December 17 (JdB & TB)

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 60% of your final grade.