

**PROPERTY**  
**UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW**  
**SPRING 2025 SYLLABUS – LAW 5400– 4 CREDITS**

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Office Hours: In the office for sure Mon/Tues/Wed 10:00-12:00 and 1:00-2:30 and probably most of the day Thursdays as well. I teach Evidence Mon/Tues/Wed from 3:00-4:15, so those times are out. If you need to see me on some other day or time besides those listed here, just let me know and I will make something happen. The electronic office (meaning access by email) is always open, including weekends, though I will not always respond in real time.

**CLASS MEETING TIME:** Mon/Tues/Wed 8:30-9:45

**CLASSROOM:** HH 285-B

**COURSE DESCRIPTION AND OBJECTIVES:**

This course is a whirlwind tour through a wide range of topics, including the nature and forms of legal ownership of real and personal property; methods of acquisition of property; legal protections for ownership; the division of ownership across time and across persons; landlord-tenant law; limitations on ownership rights, including non-discrimination law and the law of nuisance; servitudes; and various detours into, inter alia, real estate transactions, remedies, restitution, legal history, and some applications of torts, contracts, and civil procedure to property law. All in one course? That's the plan. The idea is to provide the basics of property law while also showing how those property law doctrines overlap with other subjects artificially separated by the law school curriculum.

**STUDENT LEARNING OUTCOMES:**

At the end of this course, students should be able to:

- identify relevant legal questions arising in a range of property law contexts,
- apply judicial doctrine, statutory texts, and settled principles to those questions,
- recognize the likely range of legal outcomes in such proceedings,
- see how property law doctrines relate to doctrines in other subject areas, and
- be able to adapt knowledge of current doctrine to changed conditions, at least within a narrow range of plausible future changes in legal frameworks.

**REQUIRED READING MATERIALS:**

The casebook for this course is *either* THOMAS W. MERRILL, HENRY E. SMITH & MAUREEN E. BRADY, PROPERTY: PRINCIPLES AND POLICIES (4th ed., 2022) (“Fourth Edition MSB”) *or* THOMAS W. MERRILL & HENRY E. SMITH, PROPERTY: PRINCIPLES AND POLICIES (3d ed., 2017) (“Third Edition MS”). That is correct: You may use *either* the Third or Fourth Edition of the casebook. For purposes of this class, the differences between the two editions do not matter. The course assignments are all keyed to *both* editions. There is no pedagogical advantage to one over the other. It just comes down to whether you prefer cheap and used or shiny and new.

There is also a substantial supplement (more than 200 pages long) on Canvas. Much of the required course material is in that supplement rather than in the casebook.

No other readings are required, though there is a lot of material that is available and recommended, as is explained later in this syllabus.

### **COURSE EXPECTATIONS AND GRADING EVALUATION:**

There will be a four-hour, in-class, open-book exam at the end of the semester. That is the sole grading criterion, though I provide an optional, non-graded mid-term for those who want to take it as practice. There is no class participation component because I do not cold-call students. In the tradition of such luminaries as Oliver Wendell Holmes, Richard Feynman, and Twilight Sparkle, I *lecture* (emphasis in Pony-riginal). As I will explain on Day One, questions and comments are always welcome at any time during my perorations, but if you rely on the terror of cold-calling to stay attentive – well, may I suggest strong tea or coffee as a next best alternative?

Given that choice to base everything on one event, I will disclose in advance as much as I possibly can about my exam and grading philosophy. I will make numerous past exams, and my analysis of and answers to those past exams, available on Canvas. I am starting with the past five exams that I have given in this course. I am willing in principle to make available *all* my past exams, going back thirty-five years, but looking at more than a few past exams is simply not a productive use of your time, so I will initially put up five and hope that everyone has the good sense to stop there (or sooner). Indeed, once you see one or two, you will get the idea. I repeat: Five is already way more than anyone should reasonably think it helpful to look over. In addition to those old exams, at some point in the semester I will spend about half a class period telling you exactly how I go about writing, reading, and evaluating exams. Because I am new here, I may do that earlier in the semester than I have typically done.

### **OTHER RESOURCES**

In addition to the textbook supplement and the ridiculous volume of old exams and exam answers that you will find on Canvas, I will also post my class powerpoint slides on Canvas, though sometimes that will happen just minutes before class if I make last-second revisions (which I often do). You *are not* required to read those slides; they are simply there for your convenience, edification, and amusement. I will also put on Canvas a document that I call “FAQs,” which consists of some questions and answers that have arisen over past classes. You *are not* required to read the FAQ document, though I strongly recommend it at some point during the year (maybe reading period?), as it is not a bad study aid. If you tend to panic without a commercial study aid in your hands, there are lots of good ones out there, but none really track the material that I cover, so I don’t have any strong recommendations. I honestly doubt whether a commercial study aid will be all that helpful in this course, so I am *not* recommending that you get one, but that is naturally your call. In my humble opinion, class attendance, careful reading, class notes, and my FAQs are going to be *much* more useful in this course than any commercial study aid. Which leads to . . .

### **CLASS ATTENDANCE AND MAKEUP POLICY:**

Class attendance is required by both the ABA and the Law School. As a result of that requirement, students are allowed two absences during the course of the semester, absent special circumstances. A student who fails to meet the attendance requirement will be dropped from the course. The law school’s policy on attendance can be found [here](#).

## **UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:**

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

## **ABA OUT-OF-CLASS HOURS REQUIREMENTS:**

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. For this course, that amounts to about eight hours per week, corresponding to the slightly less than four hours per week of class time. My sense is that the volume of reading in this course is relatively modest. But much of the reading is pretty dense, so if you are doing it as I will suggest you do it on the first day of class (which will involve integrating the reading with class notes – and trust me that class notes will be crucial in this course), we will all easily meet and beat this requirement, even if you are all fast readers.

## **TECHNOLOGY:**

I do not limit the use of technology during class. If you are playing video games and it is distracting other students, I might well ask you to stop (yes, even if you are winning), but I have no *general* antipathy to computers in the classroom. Once the exam comes along, it will be open-book, including open-computer, *except* that you will not be allowed access to the internet or any AI technology. You *will* be able to use your computers as data storage tools, so you will just need to make sure that any materials, including materials from the Canvas site that you wish to have available, are downloaded onto your computer before the exam. Will it help you to download tons of material onto your computer for the exam? I honestly cannot imagine how that will be helpful, but if it makes you feel better to do it, by all means go ahead.

I am requesting that all the classes be videotaped. If you are going to miss a class for some (exceptionally good) reason, you do not need to ask me to tape the class, because that will happen automatically. The videos usually show up on Canvas pretty quickly, but I have no control over that process.

## **COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:**

The topic listing that follows is offered merely as a guide – though a detailed one -- to the direction and pacing of the course. Actual coverage and pacing depend on a variety of things, including your reactions and my sense at any given moment of which topics are most salient.

As I said earlier, the casebook for this course is *either* THOMAS W. MERRILL, HENRY E. SMITH & MAUREEN E. BRADY, PROPERTY: PRINCIPLES AND POLICIES (4th ed., 2022) (“Fourth Edition MSB”) *or* THOMAS W. MERRILL & HENRY E. SMITH, PROPERTY: PRINCIPLES AND POLICIES (3d ed., 2017) (“Third Edition MS”), plus the supplement on Canvas. Using either edition of the casebook is fine. All assignments are keyed to both editions.

We will be jumping around in the casebook (either edition) quite a bit, and I apologize in advance for that. No casebook on the market really structures the course to my liking. This book, for example, emphasizes the “policies” of property law over the “principles,” meaning the doctrine, much more than I do, so many of the book’s notes and questions delve into policy matters that I do not plan to pursue -- and, indeed, that I will fairly routinely invite you to skip over in order to concentrate on the actual legal doctrine. But the authors have a really good eye for interesting cases, so I use the book anyway. (And if you happen

to have a long-standing interest in transaction-cost economics, you will find many of the notes that I am skipping fascinating and enlightening, and you are certainly welcome to read them if you find that sort of thing helpful. I don't, but that is just me.)

The entries on this syllabus are arranged topically rather than on a class-by-class basis. We will sometimes cover multiple topics in a single class. Other times, we will linger on single topics for multiple classes. The week-by-week notations on the syllabus are a rough guess that I am evidently required to make under state law. You should treat them as guesses rather than as strict boundaries. I will try to provide reading assignments at least a week in advance, both by announcement and by posting on Canvas, but to some extent the timing of the course, and therefore the extent of the assignments at any given time, depends on what happens in class, as well as on my own unpredictable whims about what to emphasize this year. I am *not* going to be able to cover every topic on this syllabus, so I am going to make some decisions on the fly about what to skip this time around. There are also a few additional topics that I would very much like to cover that I have not put on the syllabus, such as zoning (which I finally dropped from the end of the syllabus after failing to get to it for about twenty years running). If there is time at the end of the year, I will add those topics. History suggests that this is very unlikely (see the previous parenthetical two sentences back and the sentence prior to that one about not being able to cover everything listed on the syllabus).

You will surely notice that the syllabus contains a lot of lyrics, drawn mostly from classic rock and contemporary country. You are not responsible for knowing the lyrics (do I really need to say this sort of thing in a graduate school syllabus?), but I think that you will find them useful. Yes, useful. Each of the lyrics represents -- sometimes quite subtly and, I daresay, cleverly -- a substantive point about the law, so collectively they serve as a fairly comprehensive study aid for the course. I will explain the significance of each lyric as we go.

## [WEEK ONE]

### I. WHAT IS PROPERTY?

*Where's Property?* (Supp. 1-2)

“Ch-ch-ch-ch-changes,

“Turn and face the strain,

“Ch-ch-changes,

“Where's your shame?

“You've left us up to our necks in it.”

David Bowie, *Changes*, **Hunky Dory** (RCA Records 1971)

“That's the way it is,

“You gotta roll with the punches.

“That's the way it goes,

“You gotta bend when the wind blows.”

Jo Dee Messina, *That's the Way*, **Burn** (Curb Records 2000)

A. *The Meaning of “Property”*

*Random Thoughts on Property* (Supp. 3)

B. *The “Meaning” of Property*

Third Edition MS 16-23  
Fourth Edition MSB 17-25

NOTE: This reading is very close to “recommended” rather than “required.” You can therefore blaze through this reading quickly, without trying to take notes or anything of the sort.

II. (OFF-BEAT) METHODS FOR THE ACQUISITION OF PROPERTY

A. *Capture, Find, and Conquest*

1. *Wild Animals*

a. *After the Fox*

“Fox on the run,  
“You scream and everybody comes a’running.”  
The Sweet, Fox on the Run, **Desolation Boulevard** (Capitol Records 1974)

Third Edition MS 57-65  
Fourth Edition MSB 53-61

b. *The Consequences of Land Ownership: Trespass as a Super-Tort*

“You know we belong to the land,  
“And the land we belong to is grand.”  
Cast, Oklahoma, **Oklahoma** (EMI Angel Records 1955)

“But mister, take one step across that line,  
“And that’s a good way, that’s a real good way,  
“That’s a good way to get on my bad side.”  
Tracy Byrd (with Mark Chessnutt), A Good Way to Get on My Bad Side, **Ten Rounds** (Arista Nashville Records 2001)

Third Edition MS 1-7, Supp. 4, Third Edition MS 417-23  
Fourth Edition MSB 1-7, Supp. 4, Fourth Edition MSB 417-23

c. *The Extent of Land Ownership: What Is this “Land” that Is So Grand?*

“So, so you think you can tell  
“Heaven from hell.”  
Pink Floyd, Wish You Were Here, **Wish You Were Here** (Columbia Records 1975)

Third Edition MS 193-99, 10-15, 142-50  
Fourth Edition MSB 373-76, 196-200, 10-15, 129-38

d. *The Relativity of Title (a.k.a. "The Irving Principle")*

"141 could draw faster than he,  
"But Irving was looking for 143."

Frank Gallop, The Ballad of Irving, **When You're in Love the Whole World Is Jewish** (MCA Records 1966)

*Why Foxes?* (Supp. 5-6)

[WEEK TWO]

2. *Wild Minerals*

a. *Losing (and Regaining) Foxes*

"The bitch is back."

Elton John, The Bitch Is Back, **Caribou** (MCA Records 1974)

*Reese v. Hughes*, 144 Miss. 304, 109 So. 731 (1926) (Supp. 7-9)

*Stephens v. Albers*, 81 Colo. 488, 256 P. 15 (1927) (Supp. 10-14)

b. *Passing (and Regaining) Gas*

"Why don't you turn me loose, turn me loose, turn me loose."

Loverboy, Turn Me Loose, **Loverboy** (Columbia 1980)

*Hammonds v. Central Ky. Natural Gas Co.*, 255 Ky. 685, 75 S.W.2d 204 (1934)  
(Supp. 15-17)

*Lone Star Gas Co. v. Murchison*, 353 S.W.2d 870 (Civ. App. Tx. 1962 (Supp. 18-25) (NOTE: You can skim this case very quickly.)

*Texas American Energy Corp. v. Citizens Fidelity Bank & Trust Co.*, 736 S.W.2d 25 (Ky. 1987) (Supp. 26-28) (NOTE: You can skim this case very quickly.)

[WEEK THREE]

3. *Wild Wallets*

a. *Prior Possessors*

"You've got to give it to me."

J. Geils Band, Give It to Me, **Bloodshot** (Atlantic Records 1973)

"I'm a loser, I'm a winner."

Jessica Andrews, Who I Am, **Who I Am** (Dreamworks Records 2001)

"Baby, even the losers get lucky sometimes."

Tom Petty and the Heartbreakers, Even the Losers, **Damn the Torpedoes** (MCA

Records 1979)

Third Edition MS 121-25  
Fourth Edition MSB 113-17

*Ganter v. Kapiloff*, 516 A.2d 611 (Md. App. 1986) (Supp. 29-31)

Third Edition MS 882-83, 888-89, 895-99  
Fourth Edition MSB 873-74, 880-81, 887-91

b. *Who's Next*

Third Edition MS 125-32  
Fourth Edition MSB 117-24

*Benjamin v. Lindner Aviation, Inc.*, 534 N.W.2d 400 (Iowa 1995) (Supp. 32-39)

RCW §§ 63.21.010-63.21.090 (Supp. 40-43)

c. *Who Are You?*

Third Edition MS 82-87  
Fourth Edition MSB 73-78

d. *A Brief Note on Bailments*

“Handle me with care.”  
The Traveling Wilburys, Handle with Care, **Traveling Wilburys Vol. I**  
(Wilbury/Warner Bros. 1988)

*Peet v. Roth Hotel Co.*, 191 Minn. 151, 253 N.W. 546 (1934) (Supp. 44-46)

Third Edition MS 464-74  
Fourth Edition MSB 465-75

[WEEK FOUR]

e. *A Somewhat Less Brief Note on Accessions (including Fixtures)*

“ ‘Cause you’re still the same, you're still the same,  
“Moving game to game, some things never change.”  
Bob Seger and the Silver Bullet Band, Still the Same, **Stranger in Town**  
(Capitol 1978)

Third Edition MS 133-39, 42-50, 155-61  
Fourth Edition MSB 138-44, 432-40, 144-51

f. *A Comparably Less Brief (but, for This Class, Less Important) Note on Restitution*

Third Edition MS 425-43

Fourth Edition MSB 425-32, 442-44

*Bad Cases Make Hard Classes* (Supp. 47-51)

NOTE You are not formally responsible for this material on restitution, but it is good stuff to know, and the essay in the supplement contains some really cool things.

4. *Wild Land*

a. *Originating Land Titles*

“Cherokee people, Cherokee tribe –  
“So proud to live, so proud to die.”

Paul Revere and the Raiders, Indian Reservation, **Indian Reservation** (Columbia Records 1971)

Third Edition MS 90-101  
Fourth Edition MSB 82-93

*Notes on “Discovery” of Land* (Supp. 52)

b. *Proving Land Titles*

*A Long-Standing Joke about Land Title Searches in Louisiana (This Version Circa 1997)* (Supp. 53)

Third Edition MS 878-82, 915-27, 931-32  
Fourth Edition MSB 869-73, 908-21, 925-27

[WEEK FIVE]

B. *Time*

“Yes, you’re left out, yes, you are.

“I said you’re left out of there without a doubt,

“‘Cause baby, baby, baby, you’re out of time.”

The Rolling Stones, Out of Time, **Flowers** (ABKCO 1967)

*Jarvis v. Gillespie*, 155 Vt. 633, 587 A.2d 981 (1991) (Supp. 54-59)

Third Edition MS 161-87  
Fourth Edition MSB 154-82

C. *Purchase*

Take a course in Contracts

D. *Inheritance*



Take a course in Trusts and Estates

E. *Creation*

Take a course in Intellectual Property

F. *Gift*

Third Edition MS 861-69

Fourth Edition MSB 851-59

[WEEK SIX]

III. THE SYSTEM OF ESTATES IN LAND

A. *Introduction to Estates*

Third Edition MS 503-14, 529-32

Fourth Edition MSB 503-14, 529-32

NOTE: Gaze at this material wonderingly, but do not actually try to “read” it carefully or expect to understand a word of it – at least not yet. All in good time.

*Key Points about Feudal/Medieval Law* (Supp. 60-62)

B. *Life Estates, Reversions, and Waste*

Third Edition MS 548-58

Fourth Edition MSB 547-58

C. *Fee Simple (and Not-So-Simples)*

*Restatement of Property* § 14 (1936) (Supp. 63)

*Top Ten (Okay, Eleven) Things about Present and Future Interests* (Supp. 64-65)

*Timeline in Mahrenholz* (Supp. 66-67)

*Mahrenholz v. County Board of School Trustees of Lawrence County*, 93 Ill. App.3d 366, 417 N.E.2d 138 (Ill. Ct. App. 1981) (“*Mahrenholz I*”) (Supp. 68-75)

*Mahrenholz v. County Board of School Trustees of Lawrence County*, 125 Ill. App.3d 619, 466 N.E.2d 322 (Ill. Ct. App. 1984) (“*Mahrenholz II*”) (Supp. 76-81)

*Mahrenholz v. County Board of School Trustees of Lawrence County*, 188 Ill. App.3d 260, 544 N.E.2d 128 (Ill. Ct. App. 1989) (“*Mahrenholz III*”) (Supp. 82-83)

*Fee Simples Determinable v. Fee Simples Subject to Condition Subsequent: Why Mahrenholz Matters* (Supp. 84-90)

[WEEK SEVEN]

D. *Remainders and Executory Interests*

Third Edition MS 514-21, 545-47  
Fourth Edition MSB 515-22, 545-47

*Restatement of Property* §§ 156, 158 (1936) (Supp.91)

*Fun and Games with Present and Future Interests* (Supp. 92-97)

*Miley/Demi/Billy Ray Grants* (Supp. 98-101)

*Everything that You Need to Know (Well, Mostly) About Present and Future Interests* (Supp. 102-08)

[WEEK EIGHT]

E. *The Rule Against Perpetuities*

Third Edition MS 566-86  
Fourth Edition MSB 566-87

*Rule against Perpetuities Problems and Examples* (Supp. 109-10)

*More Fun with Perpetuities* (Supp. 111-12)

*Everything That You Need to Know (Well, Mostly) About the Rule against Perpetuities* (Supp. 113-21)

*Sample Exam Problem* (Supp. 122-26)

IV. CO-OWNERSHIP

A. *Joint Tenancies and Tenancies in Common*

“I am he as you are he as you are me and we are all together.”  
The Beatles, I Am the Walrus, **Magical Mystery Tour** (Capitol Records 1967)

Third Edition MS 596-600  
Fourth Edition MSB 597-601

B. *Creating Joint Tenancies*

“You can go your own way (go your own way).”

Fleetwood Mac, Go Your Own Way, **Rumours** (Warner Bros. 1977)

Various Notes on Joint Tenancies (Supp. 127-36)

[WEEK NINE]

C. *The Rights of Cotenants*

“Come on people now, smile on your brother,  
“Everybody get together, try to love one another right now.”  
The Youngbloods, Get Together, **Get Together** (RCA Victor 1967)

“There's no way that we can agree.  
“The world can't make us alter this position.  
“At least you and I know where we stand,  
“We can't be friends, walk hand in hand.  
“My hostility for you defies description.  
“Hatred, hatred, is the only thing that keeps us together.”  
The Kinks, Hatred (a Duet), **Phobia** (Columbia 1993)

Third Edition MS 601-20  
Fourth Edition MSB 601-20

*Remedies among Co-Owners* (Supp. 137)

V. LANDLORD-TENANT LAW

A. *Introduction*

1. *The Nature of the Leasehold Estate*

Third Edition MS 641-48  
Fourth Edition MSB 635-42

[WEEK TEN]

2. *Transfer of Leasehold Estates*

“Follow me where I go,  
“What I do and who I know.  
“Make it part of you to be a part of me.”  
Olivia Newton-John, Follow Me, **Have You Never Been Mellow** (MCA 1975)

Third Edition MS 705-12  
Fourth Edition MSB 693-700

*First American National Bank of Nashville v. Chicken System of America, Inc.*, 616 S.W.2d 156 (Tenn. Ct. App. 1980) (“*Chicken System III*”) (Supp. 138-43)

*First American Bank of Nashville v. Woods*, 734 S.W.2d 622 (Tenn. Ct. App. 1987)  
 (“*Chicken System IV*”) (Supp. 144-53) (NOTE: You are not formally responsible for this case – it is explained in “A Girl Named Merle?” below)

*First American Bank of Nashville v. Woods*, 781 S.W.2d 588 (Tenn. Ct. App. 1989)  
 (“*Chicken System V*”) (Supp. 154-58) (NOTE: You are not formally responsible for this case – it is explained in “A Girl Named Merle?” below)

*A Girl Named Merle?* (Supp. 159-62)

Third Edition MS 712-18  
Fourth Edition MSB 601-706

*What Was Really Happening in Jaber v. Miller?* (Supp. 163-67)

Third Edition MS 718-25  
Fourth Edition MSB 707-13]

## B. *Dirtbag Landlords*

### 1. *The Common-Law Background and Constructive Eviction*

“I beg your pardon,  
“I never promised you a rose garden.”  
Lynn Anderson, Rose Garden, **Rose Garden** (Columbia Records 1970)

“We gotta get out of this place  
“If it’s the last thing we ever do.”  
The Animals, We Gotta Get Out of This Place, **Animal Tracks** (MGM Records 1965)

Third Edition MS 648-65  
Fourth Edition MSB 643-53

[WEEK ELEVEN]

### 2. *The(?) Implied(?) Warranty(?) of Habitability(?)*

“Dear landlord, please don’t put a price on my soul.”  
Bob Dylan, Dear Landlord, **John Wesley Harding** (Columbia Records 1967)

Third Edition MS 680-93  
Fourth Edition MSB 668-81

*Pugh v. Holmes*, 486 Pa. 272, 405 A.2d 897 (1979) (Supp. 168-78)

RCW §§ 59.18.060, 59.18.130 (Supp. 179-82)

*Implied Warranties and the “Cherokee Problem”*: Part I (Supp. 183-87)

## C. *Deadbeat Tenants*

“Now I only want you gone.”

1. *Abandonment versus Surrender*

Third Edition MS 665-72, 698-705  
Fourth Edition MSB 663-70, 686-93

2. *Summary Remedies (a.k.a. the “Cherokee Problem”): Part II*

“Can’t help myself,  
“No, I can’t help myself.”  
The Four Tops, I Can’t Help Myself (Sugar Pie, Honey Bunch), **Four Tops Second Album** (Motown 1965)

Third Edition MS 354-61  
Fourth Edition MSB 356-64

D. *Housing Discrimination*

Third Edition MS 373-76  
Fourth Edition MSB 376-79

*Background Outline on Housing Discrimination Law* (Supp. 188-92)

Third Edition MS 403-13  
Fourth Edition MSB 405-15

*Definitions from the Fair Housing Act of 1968* (Supp. 193)

*The Prima Facie Case in Disparate Treatment Claims in Anti-Discrimination Law* (Supp. 194)

*The Prima Facie Case in Disparate Impact Claims under the FHA: Texas Dep’t of Housing & Community Affairs v. The Inclusive Communities Project, Inc.* (Supp. 195-96)

*Discriminatory Advertising Regulations* (Supp. 197)

*State and Local Housing Discrimination Laws* (Supp. 198)

[WEEK TWELVE]

VI. PROTECTING OWNERSHIP

A. *Nuisance and Trespass*

1. *Defining Nuisance*

“See me, feel me, touch me . . . .”  
The Who, See Me, Feel Me, **Tommy** (MCA Records 1969)

*“Welcome to the Jungle, We’ve Got Fun and Games”* (Supp. 199)

*The Framework for Private Nuisance: The Restatement (Second) of Torts* (Supp. 200-01)

Third Edition MS 937-50

Fourth Edition MSB 950-63

## B. *Applying Nuisance*

### 1. *Harm and Utility*

“There ain’t no good guy, there ain’t no bad guy.

“There’s only you and me, and we just disagree.”

Dave Mason, We Just Disagree, **Let It Flow** (CBS/Sony Records 1977)

*Morgan v. High Penn Oil Co.*, 77 S.E.2d 682 (N.C. 1953) (Supp. 202-05)

Third Edition MS 24-30

Fourth Edition MSB 25-32

### 2. *Avoiding Harm/Utility Analysis*

Third Edition MS 965-74

Fourth Edition MSB 933-41

## C. *Remedying Nuisance*

Third Edition MS 975-82

Fourth Edition MSB 970-77

## D. *Invasions and “Noninvasive” Nuisances*

“Oh darling, please believe me, I’ll never do you no harm.

“Believe me when I tell you I’ll never do you no harm.”

The Beatles, Oh! Darling, **Abbey Road** (EMI 1969)

*Nicholson v. Connecticut Half-Way House, Inc.*, 218 A.2d 383 (Conn. 1966) (Supp. 206-08)

*Jack v. Torrant*, 136 Conn. 414, 71 A.2d 705 (1950) (Supp. 209-10)

*Arkansas Release Guidance Foundation v. Needler*, 477 S.W.2d 821 (Ark. 1972) (Supp. 211-12)

# VII. PRIVATE LAND USE CONTROLS

## A. *Introduction (with a Focus on Licenses)*

*Welcome to Servitudes* (Supp. 213-14)

*Restatement of Property* §§ 450, 512 (Supp. 215)

Third Edition MS 449-57, 982-89

Fourth Edition MSB 450-59, 979-86

[WEEK THIRTEEN]

B. *Easements*

1. *By Grant*

*Willard v. First Church of Christ, Scientist*, 7 Cal.3d 473, 498 P.2d 987, 102 Cal. Rptr. 739 (1972) (Supp. 216-18)

*Martin v. Music*, 254 S.W.2d 701 (Ky. 1953) (Supp. 219-21)

2. *By Implication, Necessity, Prescription, and Otherwise*

“It’s now or never.”

Elvis Presley, *It’s Now or Never* (RCA Records 1960)

Third Edition MS 990-1015

Fourth Edition MSB 987-1012

C. *Running Covenants*

Third Edition MS 1027-28, 1033-43

Fourth Edition MSB 1025-25, 1031-40

D. *Equitable Servitudes and Subdivision Restrictions*

“There’s nothing left to talk about

“Less it’s horizontally.”

Olivia Newton-John, *Physical, Physical* (MCA Records 1982)

Third Edition MS 1028-33, 1043-55

Fourth Edition MSB 1026-31, 1040-52

F. *Summary*

*Not Nearly Everything You Need to Know about Servitudes, But It’s a Start* (Supp. 222-28)