1. Announcements
   a. Q&A Session: Tuesday May 9, 2–4 p.m. in WCC B010
   b. Email questions sent to (rspang@law.harvard.edu). Question and answer will be posted on the course website under Assignments and Discussion.
   c. Sample objective questions with suggested answers and four essay questions given in recent years, with quite elaborate memos describing what I was looking for and what I got, posted on the website under Examinations. I have also posted the preliminary instructions for this year’s exam. What’s missing is exactly how you are to answer the objective questions. I am going to try to use a machine-graded system for the objective questions on this year’s exam, and I have not yet received from the Registrar’s Office instructions on just how this will work. It will involve your answering the question by clicking on a radio button or check box in exam.
   d. I have not yet made up this year’s essay question. I know, however, that it will involve a pair of real cases that we did not consider in class. You will need to work with those cases on the exam, although what you will do them will probably involve changing the facts of the case. The cases involve some federal statutes. They also involve, or can be made to involve, some state statutes. The ultimate result of the cases was a federal regulation. A preliminary pdf packet called ‘Primary Materials for this Year’s Exam’ is posted on the website under Examinations. (As in the case of the instructions, you might want to wait until next week before you download it. I may have to add one or more provisions once I’ve actually made up the exam.) I will not answer questions about this material. You may, of course, discuss it among yourselves until the day of the exam. I cannot stop you from doing more extensive research on this material, but I think it would be a waste of time. When you get the exam, I’ll give you a couple of websites to look at which will give you pictures of the place where it all happened, and brief accounts of the prior and subsequent history of the cases.

2. The exam
   a. The exam is about modern law, not about history. Where estates and future interests are involved that involves a series of assumptions as to the state of the law, which are given in the instructions for this year’s exam on the website under Examinations. The essay question, as already noted, has a series of standard state statutes that are available on the website.
   b. The one-hour in-class portion of the exam will be all multiple choice. That leads some people to think that it will all be about estates and future interests. It won’t; it will cover the whole course. I’ve posted some sample questions on the website.
   c. There will be a penalty for wrong answers. That means that if you haven’t a clue, you’re better off skipping the question. If, however, you can reduce the number of possible answers to two, you’re better off guessing. If you can reduce the number of possible answers to three, whether you guess depends on what kind of a poker player you are. The odds are slightly in your favor if you guess among three, but not much. Don’t guess if it’s one in four or one in five. The odds decidedly favor the house in those situations.
   d. The essay question will almost certainly be just one question with multiple issues. One of the things that I’m looking for is your sense of what Prof. Rosenberg calls the core issues are likely to be. I don’t impose a word limit, but the instructions will say that conciseness will be rewarded and verbosity penalized. If one writes non-stop for seven hours one can produce an impressive
amount of paper but what’s on that paper is likely to quite incoherent. Plan your
answer in advance, take a break for lunch, finish in time to edit your work. Well
reasoned answers, even if they make some mistakes in the law, are likely to do
better than scatter-gun answers even if all the random statements of the law are
correct. I’ve posted four former essay questions on the website with an analysis
of what I was looking for.

e. An exam is not a legal memo. You don’t have to cite authority for the
proposition that the sun rises in the east and sets in the west. You don’t have to
cite authority for anything. If what you say is right, it’s right; if what you say is
wrong it’s wrong. But that doesn’t mean that it’s a disaster. As I said before, a
coherent chain of reasoning that has a mistake in it is likely to do a lot better
than a bunch of perfectly correct propositions that don’t solve the problem or
are arranged in such way that I have to figure out how they might solve the
problem.

f. There’s another version of the citing cases question that’s harder to answer.
Should I study the cases or study the principles? The principles come out of the
cases. If you think that you’ve gotten a principle out of a case, then you ought to
think about what might qualify that principle because it was embedded in the
context of a case that had a non-legal background and in which other,
conflicting principles were almost certainly involved. I think you’re better off
knowing the cases than trying to memorize Gilbert’s Outlines. But everyone
works differently. I don’t want to try to tell you how to come to grips with the
fact that every common-law case is embedded in facts. Change the facts, and it
all might have been different.

g. One more thing about the exam that may be relevant. The practice exam that
you all looked at and some of you took was very much focused on solving a
particular problem in a context in which predicting the results of litigation was
the name of the game. The question did not ask you to think about the problem
in a broader context in which legislative change might be possible and in which
policy considerations are very much at the forefront. This year’s exam may have
such a component. There may be something like what I had on the exam in
2004, which is posted on the website.

3. ‘All courses are property courses’
Family (Trusts and Estates, Estate Planning, Family law) vs. Commercial (Real Estate
Planning, Land Use, Copyright, Commercial Law)
Conceptual (Jurisprudence, Legal History, Constitutional law) vs. Situational or
Practical (all those previously mentioned)
Private Resource Allocation (Estate Planning, Real Estate Planning) vs. Public
Resource Allocation (Land Use Control, Environmental Law, Administrative Law, etc)
Land (Real Estate Planning, Land Use Control, Resources Courses) vs. All Property
(Estate Planning, Commercial Law, Copyright)

What was this course all about? Some of the ideas which I will try to develop in the last lecture
are more fully explored in “The Future of the Concept of Property Predicted from Its Past,” in
Available here. For another overview, you might want to look at the article on ‘Property Law’
in the Encyclopaedia Britannica (Harvard ID required). Longer, but still manageable, is
THOMAS W. MERRILL & HENRY E. SMITH, THE OXFORD INTRODUCTIONS TO U.S. LAW: PROPERTY
(2010).