

The State of the Property Course: A Statistical Analysis

Peter Wendel and Robert Popovich

Introduction

During the summer of 2004, the Association of American Law Schools (AALS) hosted a conference entitled “Property Law for the 21st Century.” Peter Wendel was invited to participate on a panel entitled “What’s in the Course?” Wondering why anyone would care what *he* thought about the topic, he decided to avoid the issue by conducting a survey of all Property professors to get a sense of what the Property course looks like nationwide, and what we, as Property professors, look like. He drafted a survey,¹ entitled “Teaching Property,” and e-mailed it to all professors who were listed as Property teachers in the 2003-04 AALS Directory of Law Teachers.²

The survey was designed to investigate the institutional setting of the course, the contents of the course, who we are as Property professors, and

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The authors thank Jen Black and Jen Monk for undertaking the tedious but important task of inputting the data into the spreadsheet.

1. Because the survey constituted of research involving human subjects, it was subject to the U.S. Code of Federal Regulations, 45 C.F.R. § 46, *entitled* Protection of Human Subjects.
2. The co-authors acknowledge that the survey was not distributed in the most scientific manner. Mailing hard copies of the survey was not an option because there was no funding to support the research. The only economically viable option was to e-mail the survey. No attempt was made to determine whether the e-mail addresses were current. No attempt was made to distinguish those who teach the basic Property class from other Property related classes (Real Estate Transactions, Landlord-Tenant, etc.). A number of professors replied they either did not consider themselves, or no longer considered themselves, Property professors. In addition, during Wendel’s presentation at the 2004 AALS Property Conference, he asked for a show of hands of those professors who had not received the survey. A number of those in attendance raised their hands. So while the survey responses generate some interesting data, we acknowledge not all Property professors may have had a chance to participate.

how we teach and grade the course.³ One hundred and eighty-six professors responded, representing one hundred and twenty different schools.⁴ Preliminary, hand-calculated aggregate results from some of the questions were presented as part of the 2004 Property Conference. A more complete compilation and analysis of the data required creating a database, inputting the data, and running cross-variable tabulations.⁵ This article constitutes the culmination of that process, a process undertaken primarily by Robert Popovich. The article highlights some of the more interesting findings gleaned from cross-tabulating the data.

The Institutional Setting

Because the institutional setting surrounding the Property class is relevant for so many reasons,⁶ the logical starting point for assessing the data is to look at the breakdown of the institutional setting of those who responded to the survey.

Number of Credit Hours

The institutional variable that intuitively has the greatest potential impact on a professor's responses is the number of credit hours allocated to the basic Property class:

3. The survey, and the aggregate results from it, can be found through a link available to the homepage of either of the article's authors: Peter Wendel, available at <<http://law.pepperdine.edu/academics/faculty/wendel.html>> (last visited Sept. 20, 2006), or Robert Popovich at <<http://law.pepperdine.edu/academics/faculty/popovich.html>> (last visited Sept. 20, 2006).
4. Individual respondents were given three ways to respond depending on the level of confidentiality they wanted associated with their responses. The survey responses could be e-mailed directly to Wendel; the survey could be e-mailed to an intermediary who removed the respondent's name; or the survey could be printed out and mailed (anonymously or not) back to Wendel.
5. Not everyone answered every question. Statistics for a given question were generated as a percentage of the individuals (or schools, depending on the information being sought by the question) who responded to the question.
6. From a purely pedagogical perspective, the institutional setting of the Property class—including how many credit hours the school allocates to the basic Property class, how many students typically are in the class, and which semester (or semesters) the class is typically taught—is of great interest to Property professors and those interested in legal education. In addition, schools are increasingly undertaking curriculum review/reform. Knowing what other schools are doing is relevant to such undertakings. The institutional setting is also relevant because it may have affected a professor's response to other questions in the survey.

TABLE 1
BREAKDOWN OF RESPONSES BY CREDIT HOURS

<u>Credit Hours - Schools</u>			<u>Individual Responses</u>	
3 credits:	3 schools	2.50%	4 responses	2.16%
4 credits:	57 schools	47.50%	85 responses	45.95%
5 credits:	22 schools	18.33%	34 responses	18.38%
6 credits:	35 schools	29.17%	57 responses	30.81%
Other:	3 schools	2.50%	5 responses	2.70%
Total:	120 schools		Total: 186 responses	

The basic Property course is offered in a variety of credit hour formats, ranging from a one-semester, three-credit course to a two-semester, eight-credit course. Traditionally, the Property course was a six-credit, two-semester course.⁷ Increasingly, however, the trend is to reduce the number of credit hours allocated to the course.⁸ Of the 120 schools represented in the survey responses, less than one-third fit the traditional six-credit, two-semester model. Almost one-half of the represented schools offer Property as a one-semester, four-credit course. Similarly, almost one-half of the individual respondents teach a one-semester, four-credit Property course.⁹ A significant minority of the represented schools (just under 20 percent) have opted for a five-credit approach. Clearly there is disagreement within the academy over how best to structure the basic Property course.¹⁰

7. See Roberta Rosenthal Kwall and Jerome M. Organ, *The Contemporary Property Course: A Study of Syllabi*, 47 J. Legal Educ. 205, 206 (1997) (extrapolating data from a 1976 Property Survey conducted by Humbach and the AALS; see John A. Humbach, *What is Taught in the First Year Property Course? A Report of a Survey of Instructors Teaching the Basic Property Course*, 29 J. Legal Educ. 459 (1978)).
8. See Kwall and Organ, *The Contemporary Property Course*, *supra* note 7, at 206-07 (indicating that in 1976, most schools allocated six credit hours to the course, but that by 1997, only 37.83 percent of the schools that responded to their request for syllabi indicated that Property was a six-credit course, 37.83 percent indicated it was a four-credit course, and 24.32 percent indicated it was a five-credit course).
9. The data also indicate professors were not pleased with reducing the number of credit hours allocated to the basic Property class (or if so, many now regret it). If Property professors could change only one aspect of the course, 38 percent of those who teach the four-credit course and 38 percent of those who teach the five credit course indicated they would increase the number of credit hours.
10. There is anecdotal evidence that the pendulum may be beginning to swing back. A recent discussion on the Property professors' listserv asserted that a handful of law schools had switched back to five or six credit hours after trying the four credit approach. On the other hand, several other Property professors wrote that they were particularly interested in the discussion because their schools were in the process of considering reducing the number of hours.

Size of the Class

Another key component of the institutional setting of the Property class is how many students are in the class:

TABLE 2
NUMBER OF STUDENTS TYPICALLY IN THE PROPERTY CLASS

60-65 or below: 18.58%	81-85: 9.29%	101-105: 1.64%
66-70: 8.74%	86-90: 10.93%	106-110: 2.19%
71-75: 11.48%	91-95: 3.28%	111-115: 1.64%
76-80: 16.94%	96-100: 12.02%	116-120 or more: 3.28%

While the size of the typical property class runs the gamut, ranging from under 60 to over 120 students, the responses are bunched toward the lower end of the spectrum. The mode is sixty-five or fewer students.¹¹ Over 50 percent of the individual respondents indicated that the average size of their Property class is eighty or fewer students. Fewer than 10 percent indicated that their typical Property class has over one hundred students.¹²

The Property course appears to be shrinking not only in credit hours, but also in size. Whether the latter is to compensate for the former is unclear. What is clear, however, is that the reduction in credit hours has put pressure on Property professors to think long and hard about which topics should be covered in the ever shrinking course.

What We Teach

What *should* we teach in the basic Property class? That was an implicit, if not express, theme of the 2004 Property Conference. In contemplating what we *should* teach, however, it is helpful to know what we *are* teaching. The survey attempted to get a snapshot of the current content of the Property course by asking Property professors to indicate which topics they teach. Although the aggregate results are informative in and of themselves,¹³ the data are even more informative when cross-tabulated with the institutional variables that may affect what is in the course.

The first such institutional variable is the number of credit hours allocated to the course.

11. The mode is the most frequent selected response or value among the options.
12. Related to the size of the Property class is whether it is offered in small sections. Twenty-seven percent of the responding schools indicated that Property is offered in small sections at their school on a regular basis. Of those who offer Property in small sections, two-thirds do so *every* year (this statistic may help explain how 19 percent of the schools typically have Property classes with fewer than sixty students); 90 percent do so at least once every three years. What constitutes a small section? At almost one-third of the schools, small is thirty or fewer students; at 40 percent of the schools, small is between thirty and forty students.
13. See *supra* note 3, for instructions on how to find the aggregate results on the internet.

TABLE 3
TOPICS TAUGHT IN THE PROPERTY CLASS

Topic	4 Credits	5 Credits	6 Credits
What is Property?	75.29%	82.35%	89.47%
Wild Animals	76.47%	73.53%	80.70%
Intell. Prop	56.47%	44.12%	42.11%
Body Parts	51.76%	52.94%	59.65%
Law of Finders	64.71%	70.59%	87.72%
Inter Vivos Gifts	45.88%	58.82%	71.93%
Adverse Possession	95.29%	100.00%	92.98%
PE & FI	95.29%	94.12%	92.98%
RAP	81.18%	76.47%	71.93%
Concurrent Estates	95.29%	91.18%	96.49%
Marital Estates	62.35%	67.65%	64.91%
Landlord-Tenant	85.88%	97.06%	91.23%
Affordability	27.06%	26.47%	31.58%
Discrimination	50.59%	73.53%	52.63%
Real Estate Contract	52.94%	64.71%	82.46%
The Deed	51.76%	64.71%	85.96%
Warranties of Title	51.76%	55.88%	84.21%
Delivery	40.00%	41.18%	77.19%
Recording Acts	57.65%	61.76%	85.96%
Easements	96.47%	97.06%	89.47%
Covenants	96.47%	100.00%	89.47%
Nuisance	72.94%	76.47%	70.18%
Zoning	60.00%	52.94%	78.95%
Eminent Domain	52.94%	47.06%	64.91%
Regulatory Takings	67.06%	58.82%	68.42%

Comparing the topic coverage percentages across the different course credit allocations, a few statistics stand out.

The Core Topics

Viewed statistically, there is a surprisingly strong agreement on what constitutes the core topics of the Property course. Approximately 90 percent of all Property professors teach six topics regardless of the number of credit hours allocated to the course: Adverse Possession, Possessory Estates and Future Interests, Concurrent Estates, Landlord-Tenant, Easements, and Covenants.¹⁴

14. Technically, three of the course credit hour/topic statistics for the listed topics do not meet the 90 percent level. In the six-credit course, the percentage of professors who cover Easements and Covenants is 89.47 percent. In the four-credit course, the percentage of professors who cover the landlord-tenant material is 88.88 percent. These percentages have been rounded up for purposes of analyzing what constitutes the core Property topics.

The survey data suggest that these constitute the core of the basic Property course.¹⁵

Number of Credits—Effect on Topics Covered

As the number of credit hours allocated to the Property course is reduced, coverage of two parts of the course is affected the most.¹⁶ The first is the Real Estate Transaction material: the Real Estate Contract, the Deed, the Warranties of Title, Delivery, and the Recording Acts. When the basic Property course is six credit hours, well over 80 percent of the respondents indicated they teach the Real Estate Transaction material.¹⁷ When the course is reduced to only four credit hours, just over 50 percent of the respondents indicated they teach the Real Estate Transaction material. As the number of credits hours is reduced from six to four, the drop in the percentage of respondents who teach the Real Estate Transaction material is 30 points.¹⁸ Without six credit hours, many Property professors apparently opt to relegate the Real Estate Transaction material to the upper level Real Estate Transactions course.¹⁹

The second part of the course that suffers the greatest reduction in coverage when the course is cut from six to four credit hours is the personal property material. The percentage of respondents who teach the Law of Finders drops by over twenty percentage points. The percentage of respondents who teach Inter Vivos Gifts drops by over twenty-five percentage points. These reductions

15. This contradicts the view that the basic Property course is nothing more than a smorgasbord of topics from which professors are free to pick and choose as they see fit. It might be better to say there are certain staples that most Property professors think should be served up for their students' consumption, but there is disagreement over which "side dishes" should be served along side the main entrees. The data are also consistent with the data generated by the survey of syllabi conducted by Kwall and Organ before the 1997 Property Conference. Their data indicated that at least 90 percent of all the Property professors who participated in their survey covered Adverse Possession, Possessory Estates and Future Interests, Concurrent Estates, Landlord-Tenant Law, Easements, and Covenants. See Kwall and Organ, *The Contemporary Property Course*, *supra* note 7, at 207-09. The data from the current survey do not disclose, however, the extent to which different professors cover each topic.
16. The survey did not define what it means to "teach" a topic. Whether a given professor taught a topic was left to the professor's determination. In addition, the survey made no attempt to assess the scope or depth of coverage, or the extent to which cross-topic, systemic coverage occurs. There is anecdotal evidence that reducing the credit hours has not only reduced the number of topics taught, it has also reduced the scope and/or depth of coverage of those topics still taught and cross-topic systemic coverage; but the survey did not address those claims.
17. See Table 3. Delivery is not covered by as quite as many respondents as the other real estate transaction topics. Just under 80 percent (77.19 percent) indicate they cover the topic when the course is six credit hours.
18. The drop in percentage points constitutes approximately a 40 percent reduction in coverage.
19. Real Estate Transactions is not, however, a required course at the overwhelming majority of schools, and most professors estimated that fewer than 30 percent of their students take the course.

are consistent with the view that Property professors consider these topics to be among the least important in the course.²⁰

But not all personal property topics experience such a drastic reduction in coverage when the number of credit hours is reduced. Wild Animals, Intellectual Property, and Body Parts all suffer a much smaller reduction.²¹ There are two possible explanations for this difference. The first is these topics go to the theoretical issue of “What is Property?” Many Property professors consider this to be one of the most important topics in the course.²² The relatively minor reduction in the coverage of these topics is consistent with that ranking. The second possible explanation for why these personal property topics experience a much smaller reduction in coverage is that the Intellectual Property and Body Parts material constitutes “sexy,” cutting edge Property law that helps to stimulate student interest.

Nevertheless, overall the personal property topics suffer a significant reduction in coverage as the credit hours are reduced. The focus of the course shifts even more to *Real* Property topics—the Property topics that also are the focus of the bar exam.

Interestingly, when the Property course credits are reduced from six to four hours, there are two topics for which the percent of professors who teach the topic *increases*: Intellectual Property and the Rule against Perpetuities.²³ Apparently, when the course is reduced to four credit hours and the Real Estate Transaction material is taken out of the course, it frees up time to teach other topics. Intellectual Property and the Rule against Perpetuities appear to be the primary beneficiaries. Why these particular topics, and not others, are added to the basic Property course is not self-evident. There are, however, several plausible explanations.

The most logical explanation for why more professors teach Intellectual Property is that it is cutting edge Property law. Not only does it help stimulate student interest in the first year Property course, but it is the fastest growing area of Property law. The number of upper level Intellectual Property related classes has exploded at many schools in recent years. First year Property professors may want to expose their students to this area of law in the hope that increased exposure will lead to more students taking the upper level Intellectual Property classes.

20. Property professors were asked to list up to three topics they considered to be the *least* important topics in the course. The Law of Finders and Inter Vivos Gifts were the top two most frequently listed least important topics. See Table 4.

21. One of them, Intellectual Property, actually receives greater coverage when the credit hours are reduced. This phenomenon is discussed in greater detail below.

22. Property professors were asked to list up to three topics they considered to be the *most* important topics in the course. “What constitutes Property” was the second most frequently listed *most* important topic. See Table 4.

23. See Table 3.

Why more professors teach the Rule against Perpetuities when the number of course credit hours is reduced is more difficult to explain. The most plausible explanations are that: (1) it follows logically from the extensive Possessory Estates and Future Interests coverage;²⁴ (2) it can be covered rather quickly once the Possessory Estates and Future Interests material has been covered; (3) if not covered in the Property course, it is unlikely it will be covered elsewhere in the students' law school career;²⁵ and/or (4) Property professors actually enjoy teaching the topic.²⁶ Whatever the explanation, the percentage of Property professors who teach Intellectual Property and the Rule against Perpetuities in their course increases significantly when the class is reduced from six to four credit hours.

In light of the trend towards reducing the number of credit hours allocated to the Property course and its impact on the content of the course, the logical and interesting question is *why* are schools reducing the number of credit hours: is it for pedagogical reasons (the belief that Property does not warrant that much attention in the first year curriculum and other material is more important); is it for political reasons (other professors exerting more influence during the curriculum review process to get their class inserted into the first year curriculum and/or protected against credit hour reduction); or is it for pragmatic reasons (increasing the number of credit hours for legal research and writing or other first year offerings means that the hours allocated to some first year class(es) had to be reduced)? Unfortunately, the answers to those questions are beyond the scope of the survey data.

The Five-Credit Approach

The six- versus four-credit comparison/debate overlooks, to some degree, the five-credit approach to the Property course. An argument can be made that the five-credit approach is the perfect compromise. At a handful of schools,²⁷ the Property course is a five-credit, one-semester course, typically taught in

24. See Tables 3, 4, and 5. Table 3 shows how pervasively the topic is covered. Table 4 shows a substantial percentage of Property professors think it is important, and Table 5 shows that a substantial percentage of Property professors enjoy teaching the topic.
25. This assumes the Rule against Perpetuities is not covered in the basic Wills and Trusts class. That, of course, depends on the credit hours allocated to that course and the topics covered by professors who teach that class. But most Wills and Trusts classes do not include the comprehensive review of Possessory Estates and Future Interests necessary to teach the Rule against Perpetuities. This relegates the Rule against Perpetuities to the advanced Wills and Trusts course—a course which is not even taught at many law schools, and even when taught, is usually taken by relatively few students.
26. When asked to list up to three topics they enjoyed teaching the most, more respondents identified Possessory Estates and Future Interests than any other topic. See Table 5. Inasmuch as the Rule against Perpetuities is a natural extension of this material, some Property professors might cover it just because they like it and like the challenge of teaching it.
27. Eleven of the responding schools, or 5 percent, offer a one-semester, five-credit Property course.

the spring semester.²⁸ The assumption is that by the second semester, first year students should have sufficiently mastered the basic reading and analytical skills. Professors should have to spend less time, if any, on such methodological matters. The Property professor should be able to cover the same material covered in the six credit course as long as he or she moves through the material quickly enough. The argument can also be made, however, that the five credit approach to Property is the *worst* of all worlds. Moving through so much material so quickly leaves little time for full discussion, systematic coverage, and assimilation by the students.²⁹

The survey data offer some support for both views of the five-credit course. On the one hand, a majority of those who teach the five-credit course teach almost all of the same topics as are taught in the six-credit course, including the Real Estate Transaction material.³⁰ But this majority needs to be put in perspective. Just over 60 percent of those who teach the five-credit course teach the Real Estate Transaction material. In contrast, over 80 percent of those who teach the six-credit Property course teach the Real Estate Transaction material, while just over 50 percent of those who teach the four-credit Property course teach the Real Estate Transaction material. If one were to draw a spectrum with the four-credit approach to the Property course at one end, and the six-credit approach to the course at the other end, most of those who teach the five-credit course are closer to the four-credit approach. Although the difference between the six-credit course and the five-credit course is only one credit, that is enough of a difference to cause a substantial percentage of Property professors to drop the Real Estate Transaction material from the basic Property course.

Subjective Views of Topics Taught

In addition to asking Property professors to identify the topics they teach, the survey asked them to identify the topics that they think are the *most* and the *least important* for the students to learn in the basic Property

28. Nine of the eleven schools which offer a one-semester, five-credit Property course offer it in the spring semester.
29. The survey asked the professors to indicate the topics they teach, but no question assessed the depth or pace of coverage. It follows logically, however, that as credit hours are reduced, if there is no or little reduction in the number of topics, what suffers is the depth of coverage or the amount of time spent on certain topics. Most would agree that it is one thing to say that a course "covers" a certain topic, it is another thing to say that the students "understand" the topic. Implicitly that has to be an issue for those professors who try to keep course coverage the same in the face of reduced credit hours. There is anecdotal evidence that many professors feel the same way about the four-credit course. The more a professor strives to teach the same topics as he or she used to in the six-credit Property class, implicitly the scope or depth of coverage of many, if not all, of the topics must suffer, along with systemic, cross-topic discussion. The professor must address not only *which* topics to cover, but also *how* to cover the topics selected—how much depth, and how much cross-topic, systemic coverage.
30. The only exceptions are Delivery (which is covered by 41.18 percent of the respondents) and Zoning (which is covered by 47.06 percent of the respondents). See Table 3.

class; the topics that they *enjoy teaching* the *most* and the *least*; and the topics that *they think* the *students enjoy learning* the *most* and the *least*. The responses to these questions reveal some interesting correlations—and a “love-hate” relationship with Possessory Estates and Future Interests.

First, Possessory Estates and Future Interests is the only topic to be listed as both one of the top five *most important* topics and one of the top five *least important* topics.

TABLE 4
MOST IMPORTANT TOPICS

Possessory Estates & Future Interests	45.51%
What is Property?	44.91%
Landlord-Tenant	29.94%
Covenants	25.15%
Easements	21.56%

LEAST IMPORTANT TOPICS

Law of Finders	27.63%
Inter vivos gifts	20.39%
Warranties	17.76%
Possessory Estates & Future Interests	16.45%
Contract of Sale	14.47%

In addition, Possessory Estates and Future Interests is *the* most frequently listed topic that Property professors *enjoy teaching* both *the most* and *the least*.

TABLE 5
TOPICS ENJOY TEACHING MOST

Possessory Estates & Future Interests	41.32%
Regulatory Takings	35.33%
What is Property?	32.93%
Adverse Possession	23.35%
Landlord-Tenant	23.35%

TOPICS ENJOY TEACHING LEAST

Possessory Estates & Future Interests	34.44%
Landlord-Tenant	34.44%
Covenants	28.48%
Recording System	17.88%
Warranties	15.23%

The only subjective assessment question concerning Property topics where Possessory Estates and Future Interests did *not* make the top five is the list of topics Property professors think the students *enjoy learning* the *most*. There was, however, overwhelming consensus that it is *the* topic the *students enjoy learning* the *least*.

TABLE 6

TOPICS PROFESSORS THINK STUDENTS ENJOY THE MOST

Landlord-Tenant	69.66%
Adverse Possession	34.48%
What is Property?	26.21%
Regulatory Takings	24.14%
Nuisance	11.72%

TOPICS PROFESSORS THINK STUDENTS ENJOY THE LEAST

Possessory Estates & Future Interests	77.12%
Covenants	49.02%
Rule Against Perpetuities	30.07%
Recording System	24.84%
Easements	13.73%

The data suggest a connection between how much a professor enjoys teaching a topic and how much the professor thinks the students enjoy the topic. Four of the top five topics the professors enjoy teaching the most are also the topics they think the students enjoy learning the most;³¹ and three of the top five topics the professors enjoy teaching the least are also the topics they think the student enjoy learning the least.³² The data suggest that a professor's academic enthusiasm for a topic may affect the students' enthusiasm for the topic.³³ But one should not read too much into the impact a professor's academic enthusiasm may have on the students' interest in a topic.³⁴ The topic Property professors listed most often as one of the most important and one of the most enjoyable topics to teach, Possessory Estates and Future Interests, was also overwhelmingly identified as *the* topic students enjoy learning the *least*.³⁵

Quality of Student—Effect on Credit Hours/Topics Taught

The second institutional variable that may affect the Property course is the quality of the classroom student. Although no survey question goes directly to this variable, the survey generated data that arguably are related to that variable. First, the survey asked professors to indicate what they understood

31. The topics that overlap are: What is Property?, Adverse Possession, and Regulatory Takings.
32. The topics that overlap are: Possessory Estates and Future Interests, the Recording System, and Covenants.
33. Or at least the professor's perception of the students' interest—or it might be the reverse: that the students' interest in a topic affects the professor's enthusiasm for teaching the topic!
34. The professor's perception of the students' reaction to a topic may also be skewed by the professor's own feelings about the topic.
35. In addition, there is a strong connection between what Property professors think are the most important topics in the course and what they enjoy teaching the most (three of the top five topics overlap: Possessory Estates and Future Interests, What is Property?, and Landlord-Tenant).

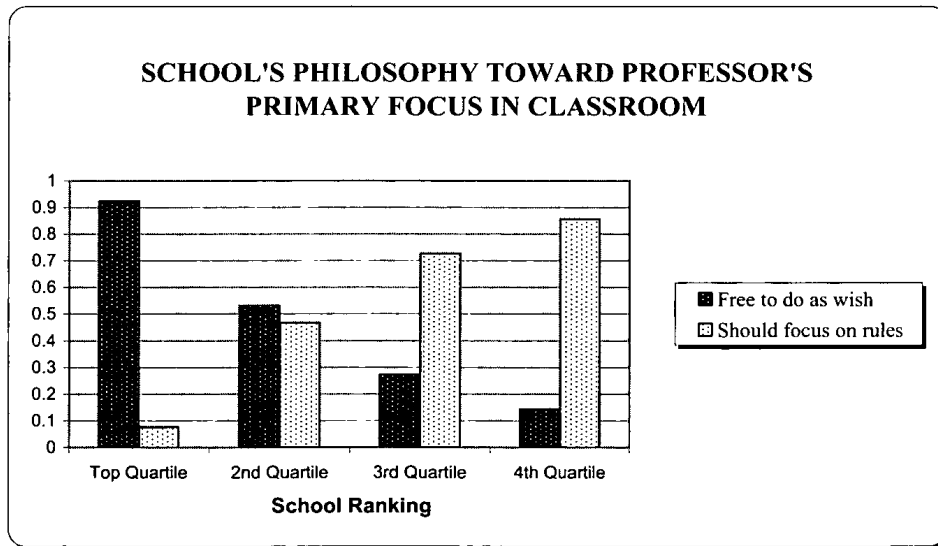
to be their school's philosophy with respect to their primary responsibility in the classroom: (1) does the school assume that a significant portion of their students are not able to learn the rules on their own, and so the professor's primary responsibility is teaching the students the rules of Property that they will need to know to pass the bar exam, or (2) does the school assume that their students are able to learn the rules on their own, so the professor is free to focus on whatever he or she wants in the classroom?

At the aggregate level, the responses to these questions were fairly even distributed between the two choices. But when the responses are cross-tabulated with the school's ranking,³⁶ an interesting inverse relation appears.

TABLE 7
SCHOOL'S PHILOSOPHY TOWARD
PROFESSOR'S PRIMARY FOCUS IN CLASSROOM

School's Philosophy	Aggregate results	School's Ranking by Quartile			
		Top	2nd	3rd	4th
Assume students can learn rules on own so free to do as wish.	53.37%	92.31%	53.19%	27.27%	14.29%
Assume students can not learn rules on own so focus on rules.	46.63%	7.69%	46.81%	72.73%	85.71%

The magnitude of the inverse relation is even more apparent in graphical form.



36. The school's quartile rank was derived from Best Graduate Schools, U.S. News & World Report, 2004 ed., at 28-31.

The strong relation between the school's rank and the school's philosophy about the professor's primary focus in the classroom suggests that the latter can serve as a proxy for the school's quality of student. The stronger the perceived quality of student, the freer the professor is to do as he or she wishes in the classroom.

To the extent a school's philosophy about the professor's primary focus in the classroom can serve as a proxy for the school's quality of student, one might expect to see a relation between topics covered and the school's philosophy about the primary focus in the classroom. The freer the professor is to assume that the students can learn the rules on their own, the freer the professor is to pick and choose the topics he or she covers. The more the school expects the professor to focus on the rules, the more likely the professor is to teach a traditional Property class, including the Real Estate Transactions material. The data support these assumptions.

TABLE 8
CORRELATION BETWEEN TOPICS TAUGHT AND SCHOOL'S
PHILOSOPHY ABOUT PROFESSOR'S PRIMARY ROLE IN CLASSROOM

<u>Topics</u>	<u>Free to do as wish</u>	<u>Focus on rules</u>
What is Property?	80.46%	85.33%
Wild Animals	83.91%	73.33%
Intellectual Prop	56.32%	49.33%
Body Parts	60.92%	52.00%
Law of Finders	70.11%	78.67%
Inter Vivos Gifts	52.87%	62.67%
Adverse Possession	96.55%	96.00%
PE & FI	96.55%	94.67%
RAP	78.16%	78.67%
Concurrent Estates	95.40%	94.67%
Marital Estates	70.11%	54.67%
Landlord-Tenant	88.51%	93.33%
Affordability	31.03%	24.00%
Discrimination	56.32%	56.00%
Real Estate Contract	55.17%	76.00%
The Deed	54.02%	78.67%
Warranties of Title	49.43%	78.67%
Delivery	44.83%	66.67%
Recording Acts	55.17%	81.33%
Easements	94.25%	94.67%
Covenants	94.25%	96.00%
Nuisance	79.31%	70.67%
Zoning	65.52%	64.00%
Eminent Domain	55.17%	58.67%
Regulatory Takings	68.97%	66.67%
Other—Mortgages	9.20%	9.33%

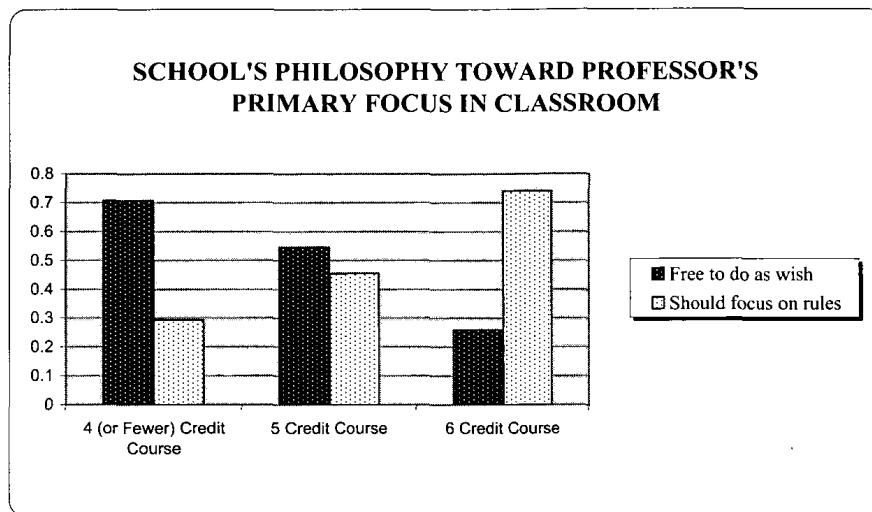
When the topics taught are cross-tabulated with the school's philosophy about the professor's primary role in the classroom, the data indicate that the core Property topics are not affected, only the secondary topics. The core Property topics, Adverse Possession, Possessory Estates and Future Interests, Concurrent Estates, Landlord-Tenant, Easements, and Covenants, are all covered in the 90 percent range in all tiers.³⁷ Among the secondary topics, as one might expect, professors who teach at schools where the perceived philosophy is that their primary role in the classroom is to focus on the rules are more likely to teach what one might consider the more "traditional" topics and the more Real Property oriented topics. They are less likely to teach Wild Animals, Intellectual Property, Body Parts, and Marital Property, and more likely to teach Inter Vivos Gifts and the Real Estate Transactions material. In addition, at schools where the perceived philosophy is that the professor's primary focus in the classroom should be on the rules, approximately 75 percent of the professors teach the Real Estate Transactions material. In contrast, where the professors believe the school's philosophy is that the professor is free to do as he or she wishes in the classroom, approximately 50 percent teach the Real Estate Transactions material.

To the extent the data show a strong relation between the school's perceived philosophy with respect to the professor's primary role in the classroom and the school's ranking, one might also expect there to be a relation between a school's perceived philosophy with respect to the professor's primary role in the classroom and the number of hours allocated to the Property course. The more a school believes its students are strong enough to learn the rules on their own, the easier it is for the school to rationalize, for whatever reason, reducing the number of credit hours allocated to the Property course. When the school's perceived philosophy towards the professor's primary focus in the classroom is cross-tabulated with the number of credit hours allocated to the Property course, the data support that hypothesis.

TABLE 9
SCHOOL'S PHILOSOPHY TOWARD
PROFESSOR'S PRIMARY FOCUS IN CLASSROOM

	<u>Aggregate results</u>	<u>4 (or fewer) credit course</u>	<u>5 credit course</u>	<u>6 credit course</u>
Assume students can learn rules on own so free to do as wish.	53.37%	70.67%	54.55%	26.00%
Assume students can not learn rules on own so focus on rules.	46.63%	29.33%	45.45%	74.00%

37. Technically, coverage of the Landlord-Tenant material falls just short of 90 percent among those respondents who feel free to do as they wish in the classroom. Coverage in both tiers is 88.51 percent. The percentage has been rounded up for purposes of analyzing what constitutes the core Property topics.

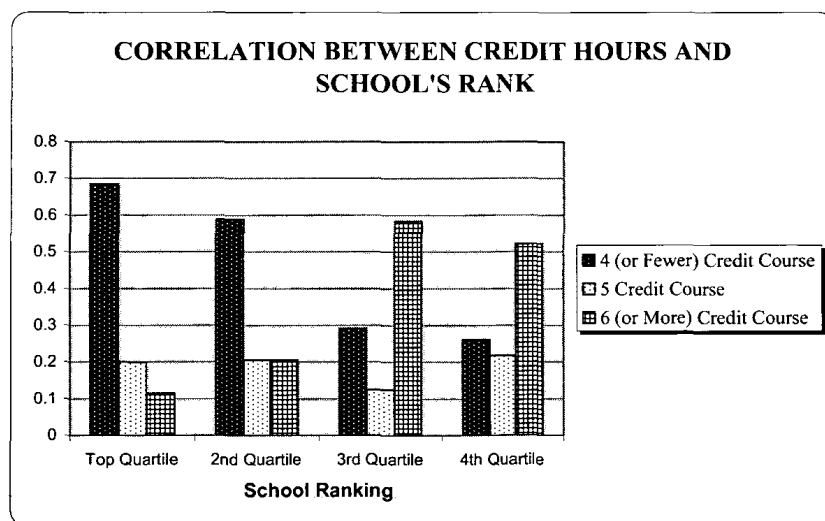


This relation is further supported, with slight variations, by cross-tabulating a school's rank and the number of credit hours allocated to the Property course.

**TABLE 10
CORRELATION BETWEEN CREDIT HOURS AND
SCHOOL'S RANK**

Number of Credit Hours:	School's Ranking by Quartile			
	Top	2nd	3rd	4th
4 (or Fewer) Credits	68.57%	58.82%	29.17%	26.09%
5 Credits	20.00%	20.58%	12.50%	21.74%
6 (or More) Credits	11.43%	20.59%	58.33%	52.17%

Again, the strength of the relationship can be depicted graphically.



The survey data support the hypothesis that there is an inverse relation between the quality of student (as measured by the school's ranking and the school's perceived philosophy with respect to the professor's primary role in the classroom) and the number of credit hours allocated to the basic Property class. The number of credit hours directly affects the content of the course by affecting the time a professor has to cover the material.

The risk of this inverse relation, however, is that schools seeking to improve their rankings may reduce the number of credit hours allocated to the Property course to support their belief that they warrant being ranked higher. Schools need to be careful that they do not put the cart before horse and reduce the number of credit hours allocated to the course before they have a student body that can handle the reduced treatment.

School's Rank and Topics Covered

A school's rank does not affect the contents of the basic Property course as much as one might assume. Cross-tabulating a school's rank by quartile with topics taught, how much the former affects the latter depends on whether one is talking about the core Property topics or the secondary Property topics.

TABLE II
CORRELATION BETWEEN TOPICS TAUGHT AND
SCHOOL RANKING

<u>Topics</u>	<u>School's Ranking by Quartile</u>			
	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
What is Property?	72.41%	80.00%	84.21%	96.77%
Wild Animals	77.59%	72.73%	84.21%	77.42%
Intell. Prop	58.62%	49.09%	50.00%	38.71%
Body Parts	62.07%	49.09%	57.89%	54.84%
Law of Finders	65.52%	65.45%	84.21%	90.32%
Inter Vivos Gifts	41.38%	56.36%	76.32%	64.52%
Adverse Possession	96.55%	98.18%	92.11%	96.77%
PE & FI	94.83%	94.55%	89.47%	100.00%
RAP	82.76%	76.36%	68.42%	87.10%
Concurrent Estates	91.38%	96.36%	94.74%	100.00%
Marital Estates	68.97%	58.18%	65.79%	64.52%
Landlord-Tenant	86.21%	87.27%	92.11%	100.00%
Affordability	43.10%	20.00%	21.05%	32.26%
Discrimination	63.79%	49.09%	42.11%	70.97%
Real Estate Con.	51.72%	60.00%	84.21%	70.97%
The Deed	51.72%	56.36%	81.58%	87.10%
Warr. of Title	46.55%	56.36%	81.58%	77.42%
Delivery	32.76%	47.27%	76.32%	70.97%
Recording Acts	53.45%	65.45%	89.47%	70.97%
Easements	96.55%	90.91%	94.74%	93.55%

<u>Topics</u>	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
Covenants	96.55%	92.73%	94.74%	90.32%
Nuisance	89.66%	61.82%	71.05%	64.52%
Zoning	67.24%	58.18%	68.42%	67.74%
Eminent Domain	62.07%	49.09%	57.89%	58.06%
Reg. Takings	77.59%	60.00%	60.53%	67.74%
Other—Mortgages	1.72%	9.09%	2.63%	16.33%

When topics taught is cross-tabulated with the school's rank, the secondary topics are affected, but not the core ones. The core Property topics, Adverse Possession, Possessory Estates and Future Interests, Concurrent Estates, Landlord-Tenant, Easements, and Covenants, are all taught in the 90 percent range in all ranking quartiles.³⁸ In addition, the data show that Property professors at the top tier schools are least likely to teach the Real Estate Transaction material. That, however, may be because there simply is not enough time—the overwhelming majority of top tier schools allocate only four credits to the basic Property course.³⁹

With respect to the secondary Property topics, however, several interesting relations between topics taught and school ranking stand out. First, the top tier schools are much more likely to cover Nuisance. This is particularly interesting because one could argue that Nuisance can be covered in either the Torts class or the Property class. In light of the fact that most top tier schools have reduced the Property course to four credit hours, one might have expected that the Property professors would leave Nuisance for the Torts class. The opposite, however, is the case. Property professors at top tier schools treat Nuisance as if were a core topic. Ninety percent teach the Nuisance material.

On the other hand, in the fourth quartile, many more schools cover Mortgages than in any other tier. One could speculate that this is because Mortgages is showing up with increasing frequency on the multi-state portion of the bar exam. Schools in the fourth quartile may want to ensure that their students are as well prepared as possible for the bar exam topics.

In addition to asking Property professors what they taught in the course, the survey asked them to list the three most important areas of Property law that are currently underrepresented and undertaught in the course. The most frequently given response by far was Intellectual Property. Just over 40 percent

38. Technically, coverage of the Landlord-Tenant material falls just short of 90 percent in the top and second tiers. Coverage in both tiers is 87 percent. These percentages have been rounded up for purposes of analyzing what constitutes the core Property topics.

39. See Table 10. The survey responses to "topics covered" were also cross-tabulated with the survey responses to "school's philosophy as to professor's primary focus in the classroom." The statistical distribution is similar to that reflected in Table 11. In particular, there is a strong relation between the school's philosophy that the professor should focus on rules and the likelihood that the professor teaches the Real Estate Transactions material, and a strong relation between the school's philosophy that the professor is free to do as he or she wishes and *not* teaching the Real Estate Transactions material.

of the respondents listed Intellectual Property as one of the most underrepresented and undertaught topics in the course, almost double the next nearest topic. That response, however, is a bit ambiguous in light of the fact that 51 percent of the respondents indicated that they teach Intellectual Property as part of the basic Property course. It is unclear whether it is the same 51 percent who already teach Intellectual Property who thinks more Property professors should teach and/or devote more time to the topic, or whether it was the 49 percent who do not currently teach it who wish they could.

Personal Traits and Topics Taught

In addition to the institutional variables, the contents of the Property course may be affected by who the professor is—by the professor’s gender, ethnicity, and/or experiences (in particular, how long he or she has been teaching).

If one’s gender does affect the topics one covers in a course, it has particular potential to do so in the Property course because males may be “overrepresented” as Property teachers, compared to the profession as a whole. The ratio for the Property professors who responded to the survey was 73.60 percent male, 26.40 percent female.⁴⁰ The overall ratio for AALS law professors is 65.8 percent male, 34.2 percent female.⁴¹ Yet, the data fail to disclose any widespread difference in the topics taught when analyzed by the professor’s gender.

TABLE 12
TOPICS TAUGHT CORRELATED TO PROFESSOR’S GENDER

Topic	Males	Females
What is Property?	79.23%	85.11%
Wild Animals	76.15%	72.34%
Intellectual Prop	48.46%	53.19%
Body Parts	48.46%	55.32%
Law of Finders	73.85%	74.47%
Inter Vivos Gifts	60.00%	57.45%
Adverse Possession	95.38%	91.49%
PE & FI	93.85%	95.74%
RAP	77.69%	76.60%
Concurrent Estates	94.62%	93.62%
Marital Estates	61.54%	65.96%
Landlord-Tenant	91.54%	89.36%
Affordability	28.46%	42.55%
Discrimination	51.54%	63.83%
Real Estate Contract	66.15%	70.21%
The Deed	67.69%	65.96%
Warranties of Title	64.62%	61.70%

40. The ratio is not constant, however, when cross-tabulated with the school’s rank. In the top tier, the ratio of male to female respondents is 77 percent to 22 percent. In the second tier, the ratio is 76 percent to 23 percent. In the third tier, the ratio is 72 percent to 27 percent. In the fourth tier, the ratio is 63 percent to 36 percent.

41. See AALS Statistical Table for All Faculty in the 2002-03 Directory of Law Teachers, available at <http://www.aals.org/statistics/2002-03/T1A_0203.html> (last visited September 20, 2006).

<u>Topic</u>	<u>Males</u>	<u>Females</u>
Delivery	53.85%	46.81%
Recording Acts	69.23%	65.96%
Easements	92.31%	93.62%
Covenants	93.08%	93.62%
Nuisance	72.31%	68.09%
Eminent Domain	57.69%	57.45%
Regulatory Takings	67.69%	65.96%
Environmental Law	10.77%	12.77%

When the topics covered are cross-tabulated with the professor's gender, the data indicate that the core Property topics are not affected, only the secondary topics are. The core Property topics, Adverse Possession, Possessory Estates and Future Interests, Concurrent Estates, Landlord-Tenant, Easements, and Covenants, are all covered in the 90 percent range.⁴² With respect to the six core Property topics, the greatest difference is only four percentage points, statistically an insignificant amount. There are only two topics for which the difference in the percentages is greater than ten percentage points: affordable housing and housing discrimination. Both issues affect a family's home environment, an issue which the data suggest is of greater interest to female Property professors. This is also consistent with the responses of female Property professors to the question asking respondents to identify the "most important" topics in the course. While the Landlord-Tenant material in general was the fourth most frequently cited topic by male professors, it was the third most frequently cited topic by female Professors.

Cross-tabulating the professor's gender with the professor's perception of the most important topics also reveals an interesting statistic with respect to Concurrent Estates. Concurrent Estates, which includes Marital Estates, ranked fourth among female Property professors' "most important" topics, with 27.91 percent of the female respondents including it among their top three. On the other hand, only 14.41 percent of the male Property professors included Concurrent Estates among their three "most important" topics, ranking it seventh on their list.⁴³ This would tend to suggest that although Table 12 shows very little discrepancy between the sexes with respect to who teaches Marital Estates, how much time is spent on the material and the depth to which it is covered, may vary with gender.⁴⁴

42. Technically, coverage of the Landlord-Tenant material by females, at 89.36 percent, falls just short of 90 percent. The percentage has been rounded up for purposes of analyzing what constitutes the core Property topics.

43. This rank excludes "other topics" (none of which individually amounted to 5 percent) as a topic.

44. On the flip side, when cross-tabulating gender and the topics the respondents perceived to be among the top three *least* important, the second and third most frequently cited *least* important topics by female Property professors were Nuisance and Zoning. Male Property professors did not include either of those topics in their top five most frequently cited *least* important topics.

The second personal trait that may affect the topics a professor selects to teach is ethnic identity. In cross-tabulating ethnicity with topics taught, however, the respective categories of diversity professors had so few respondents that the resulting percentages were not statistically reliable. Of the 186 professors who responded, only 11 identified themselves as African-American, 2 identified themselves as American Indian, 5 identified themselves as Asian, and 6 identified themselves as Hispanic.⁴⁵ The only chance of generating statistically reliable data was to aggregate the twenty-four respondents who identified themselves as non-Caucasian. Aggregating the responses of the non-Caucasian respondents, the overall ratio of Caucasian to non-Caucasian professors who responded to the survey is within one percentage point of the overall ratio for AALS professors.⁴⁶

TABLE 13
ETHNICITY DISTRIBUTIONS

	<u>Caucasian</u>	<u>Non-Caucasian</u>
AALS Professor Data (without regard to subject taught)	85.2%	14.8%
Property Professor Data (based on survey responses)	83.55%	15.79%

The issue is whether ethnicity affects the topics a professor selects to include in class.

As applied to Property professors, even when the categories of non-Caucasian professors are combined, the aggregate number (twenty-four) is still relatively small, making it dangerous to read too much into the data. Nevertheless, it is interesting to compare the survey responses.

TABLE 14
TOPICS TAUGHT CORRELATED TO PROFESSOR'S ETHNICITY

<u>Topic</u>	<u>Caucasian</u>	<u>Aggregate Non-Caucasian</u>
What is Property?	81.89%	91.30%
Wild Animals	77.17%	91.30%
Intellectual Prop	52.76%	52.17%
Body Parts	56.69%	65.22%
Law of Finders	76.38%	65.22%
Inter Vivos Gifts	60.63%	52.17%
Adverse Possession	95.28%	100.00%

45. Although six Hispanic professors responded to the survey, only five answered the questions relating to topics taught in the Property course.

46. AALS Statistical Table for All Faculty, *supra* note 41.

<u>Topic</u>	<u>Caucasian</u>	<u>Aggregate Non-Caucasian</u>
PE & FI	93.70%	100.00%
RAP	76.38%	78.26%
Concurrent Estates	95.28%	95.65%
Marital Estates	66.14%	73.91%
Landlord-Tenant	91.34%	95.65%
Affordability	33.07%	21.72%
Discrimination	51.97%	86.96%
Real Estate Contract	66.14%	69.57%
The Deed	64.57%	73.91%
Warranties of Title	62.99%	73.91%
Delivery	52.76%	56.52%
Recording Acts	66.93%	60.87%
Easements	93.70%	100.00%
Covenants	93.70%	100.00%
Nuisance	73.23%	73.91%
Zoning	63.78%	60.87%
Eminent Domain	59.06%	52.17%
Regulatory Takings	70.08%	56.52%
Environmental Law	8.66%	8.70%

When the topics covered are cross-tabulated with the professor's ethnicity, the data again indicate that the core Property topics are not affected, but the secondary topics are. The core Property topics, Adverse Possession, Possessory Estates and Future Interests, Concurrent Estates, Landlord-Tenant, Easements, and Covenants, are all covered by over 90 percent of the professors regardless of ethnicity.⁴⁷

Of all the Property topics where one might expect a significant difference in coverage based on ethnicity, the most logical is the Landlord-Tenant Discrimination material. The data support that assumption. There is a thirty-five percentage point increase in coverage of the material when the Property professor is a non-Caucasian.⁴⁸ The data suggest that the Landlord-Tenant Discrimination material is more important to non-Caucasian Property professors than it is to Caucasian Property professors.⁴⁹

47. Interestingly, non-Caucasian professors cover each of the core Property topics at a higher percentage than do Caucasian professors.
48. This increase constituted the largest single change in coverage in any topic when the topics covered responses were cross-tabulated with the different variables we selected.
49. There is also just over a ten point change in percentage point coverage in a number of other topics, but in light of the relatively small number of non-Caucasian respondents, it is difficult to tell if these changes are statistically reliable. These topics include Wild Animals (14 point increase in coverage if the professor is a non-Caucasian); Housing Affordability (11 point decrease in coverage if the professor is a non-Caucasian); Warranties of Title (11 point increase in coverage if the professor is a non-Caucasian); and Regulatory Takings (13 point decrease in coverage if the pro-

The third personal trait that may affect the topics a professor selects to teach is how long one has taught the Property course. Many believe that we are all products of our environments, to some degree. Those who have been teaching Property for two decades may have a different perspective on what should be in the course as compared to those who have been teaching the course for two years. When the survey responses to years teaching were cross-tabulated with topics taught, however, the pools were so small that there were questions as to the statistical reliability of the data. The survey asked the respondents to indicate, in five year increments, how long they had been teaching. Breaking the responses into six groups resulted in cells with relatively few respondents. So the data was rerun grouping the respondents into three categories: those who have been teaching Property for up to ten years; between ten and twenty years; and over twenty years.

TABLE 15
TOPICS TAUGHT CORRELATED WITH YEARS TEACHING

Topic	Years teaching the Property Course		
	0-10	10-20	20+
What is Property?	89.71%	82.26%	70.91%
Wild Animals	77.94%	83.87%	70.91%
Intellectual Prop	54.41%	52.23%	45.45%
Body Parts	63.24%	58.06%	47.27%
Law of Finders	70.59%	80.65%	70.91%
Inter Vivos Gifts	58.82%	59.68%	52.73%
Adverse Possession	97.06%	95.16%	94.55%
PE & FI	95.59%	96.77%	90.91%
RAP	79.41%	75.81%	78.18%
Concurrent Estates	94.12%	95.16%	96.36%
Marital Estates	60.29%	61.29%	70.91%
Landlord-Tenant	88.24%	90.32%	90.91%
Affordability	33.82%	30.65%	25.45%
Discrimination	55.88%	59.68%	52.73%
Real Estate Contract	63.24%	69.35%	60.00%
The Deed	69.12%	62.90%	61.82%
Warranties of Title	64.71%	62.90%	60.00%
Delivery	48.53%	54.84%	54.55%
Recording Acts	69.12%	59.68%	70.91%
Easements	97.06%	90.32%	94.55%
Covenants	98.53%	88.71%	94.55%
Nuisance	73.53%	74.19%	70.91%
Zoning	67.65%	61.29%	65.45%
Eminent Domain	58.82%	61.29%	49.09%
Regulatory Takings	70.59%	62.90%	65.45%

fessor is a non-Caucasian). Even assuming, *arguendo*, these changes are statistically reliable, none of them (with the possible exception of Affordable Housing) appears as intrinsically related to ethnicity as the change in coverage with respect to the Landlord-Tenant Discrimination topic.

When the topics taught are cross-tabulated with years teaching, the data indicate once again that the core Property topics are not affected by years teaching, but only the secondary topics. The core Property topics, Adverse Possession, Possessory Estates and Future Interests, Concurrent Estates, Landlord-Tenant, Easements, and Covenants, are all covered in the 90 percent range across all three categories of Property teaching experience.⁵⁰

Moreover, the coverage of the secondary topics is surprisingly consistent across the different years of teaching. There are only a few topics with more than a ten percentage point difference in coverage when compared across the different groupings of teaching experience. Interestingly, the longer one has been teaching Property, the less likely one is to teach some personal property topics (What is Property?; Wild Animals; and Body Parts), but the more likely one is to cover Marital Property. And the longer one has been teaching, the less likely one is to cover Housing Affordability and Eminent Domain, but the more likely one is to teach the Recording Acts. Overall, of all the personal variables which might affect a professor's selection of which topics to teach, the number of years one has been teaching Property appears to have the *least* impact on the topics taught in the course.

How We Teach

Socratic Dialogue vs. Lecture

How we teach—*how* we perform our calling in the classroom—is one of the most personal aspects of our professional life. Every professor must determine what works best for him or her—Socratic dialogue versus lecture, or some combination thereof—and then hope that approach works for the students. Despite the range of possible approaches, there is strong consensus that a mixture of the two is the best.

TABLE 16

PROFESSOR'S DESCRIPTION OF TEACHING STYLE

Almost exclusively Socratic	8.15%
Mostly Socratic but some lecturing	43.48%
About half Socratic, half lecturing	38.59%
Mostly lecturing but some Socratic	7.61%
Almost exclusively lecturing	1.63%
Other	.54%

50. Technically, the percentage of Property professors who teach the Landlord-Tenant material falls just short of 90 percent among those who have been teaching less than ten years. The percentage is 88.24 percent. In addition, the percentage of Property professors who teach Covenants falls just short of 90 percent among those who have been teaching between ten and twenty years. The percentage is 88.71 percent. These percentages have been rounded up for purposes of analyzing what constitutes the core Property topics.

Although the overwhelming majority favors a mixture of lecturing and Socratic dialogue, the mix favors the Socratic approach. But there are some interesting statistical correlations between *how* one teaches and the personal and institutional variables.

First, when the data are cross-tabulated by gender, the statistics change slightly.

TABLE 17
TEACHING STYLE AND GENDER

Professor's Description of Teaching Style	Female	Male
Almost exclusively Socratic	4.26%	8.46%
Mostly Socratic but some lecturing	38.30%	45.38%
About half Socratic, half lecturing	53.48%	34.62%
Mostly lecturing but some Socratic	4.26%	9.23%
Almost exclusively lecturing	0.00%	1.54%
Other	0.00%	0.00%

More male professors make greater use of the Socratic dialogue, while more female professors use a more balanced approach to how they teach the Property class. The mode for male professors is “mostly Socratic,” while the mode for female professors is half Socratic-half lecture—and the point differential is significant.

In contrast to gender, the second personal trait, ethnicity, has less effect upon one's teaching style:

TABLE 18
TEACHING STYLE AND ETHNICITY

Professor's Description of Teaching Style	Caucasian	Non-Caucasian
Almost exclusively Socratic	7.87%	0.00%
Mostly Socratic but some lecturing	44.94%	43.48%
About half Socratic, half lecturing	44.09%	43.48%
Mostly lecturing but some Socratic	6.36%	8.70%
Almost exclusively lecturing	0.79%	4.35%
Other	0.00%	4.35%

The final personal variable that might affect one's teaching style is how long one has been teaching the Property course.⁵¹

51. It should be noted that the question specifically asked how long the professor had been teaching Property, *not* how long he or she had been teaching. In retrospect, knowing both sets of data would have been more interesting than just the former. And while one can assume there may be a strong correlation between the former and the latter, no doubt there are exceptions to that correlation.

TABLE 19
TEACHING STYLE AND YEARS TEACHING

Professor's Description of Teaching Style	Years teaching the Property Course		
	<u>0-10</u>	<u>10-20</u>	<u>20+</u>
Almost exclusively Socratic	4.41%	14.75%	5.45%
Mostly Socratic but some lecturing	45.59%	39.34%	45.45%
About half Socratic, half lecturing	41.18%	36.07%	38.18%
Mostly lecturing but some Socratic	7.35%	4.92%	10.91%
Almost exclusively lecturing	0.00%	4.92%	0.00%
Other	1.47%	0.00%	0.00%

Although the data show that how long one has been teaching the course does affect one's teaching style, the effect is not as great as one might expect. The overwhelming majority of Property professors in all categories of teaching experience use some mix of Socratic dialogue and lecturing, with the majority using a heavier dosage of the Socratic approach.

The data show that one's personal traits (gender, ethnicity, years teaching) have relatively little effect upon one's teaching style. One might expect the institutional variables to have a greater effect. The weaker the students, the more one might expect a professor to use lecturing to ensure that the students understand his or her point. Based on that logic, there should be a fairly strong correlation between a school's rank and one's teaching style. The data, however, debunk that assumption.

TABLE 20
TEACHING STYLE AND SCHOOL'S RANK

Professor's Description of Teaching Style	School's ranking by Quartile			
	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
Almost exclusively Socratic	6.90%	9.26%	13.16%	3.33%
Mostly Socratic but some lecturing	43.10%	40.74%	44.74%	53.33%
About half Socratic, half lecturing	39.66%	38.89%	31.58%	36.67%
Mostly lecturing but some Socratic	8.62%	5.56%	10.53%	6.67%
Almost exclusively lecturing	1.72%	3.70%	0.00%	0.00%
Other	0.00%	1.85%	0.00%	0.00%

The predominant teaching style in all quartiles of schools is a mixture of the Socratic method and lecturing. If anything, the lower the school's quartile

ranking, the more likely a professor is to use the Socratic approach more and lecture less.

Correlated to a school's rank is the number of credit hours allocated to the Property class: the higher the rank, the greater the likelihood that the school allocates only four credit hours to the course; and conversely the lower the rank, the greater the likelihood that the school allocates six credit hours to the course.⁵² One might expect that allocating fewer credit hours to the course might increase the likelihood that a professor would use more lecturing to cover the material. Based on that logic, there should be a relation between teaching style and credit hours allocated to the course.

TABLE 21
TEACHING STYLE AND CREDIT HOURS

Professor's Description of Teaching Style	Credit Hours Allocated to the Course		
	4	5	6
Almost exclusively Socratic	5.95%	6.06%	10.53%
Mostly Socratic but some lecturing	45.24%	36.36%	47.37%
About half Socratic, half lecturing	40.48%	42.42%	31.58%
Mostly lecturing but some Socratic:	7.14%	12.12%	7.02%
Almost exclusively lecturing	1.19%	0.00%	3.51%
Other	0.00%	3.03%	0.00%

Close examination of the data indicates a subtle relation, but not the one intuitively expected.

The overwhelming majority of professors across all credit hour allocations use a mixture of the Socratic approach and lecturing. Consistent with the above hypothesis, when six credit hours are allocated to the Property class, the mixture includes the greatest use of the Socratic approach.⁵³ Fifty-eight percent of the professors who teach a six-credit Property class identify their teaching style as either "mostly Socratic" or "almost exclusively" Socratic. But interestingly, it is not the four-credit approach that entails the greatest use of lecturing, it is the five-credit approach.⁵⁴ This may be because those who teach the five-credit approach believe that if they just move through the material faster, they can still teach the same topics taught in the six-credit course. That may be true, but logically one can move through the material faster only with

52. See Table 10.

53. The assumption is that all things being equal, teaching from the Socratic approach typically requires more time to cover a topic than lecturing.

54. Only 42 percent of the professors who teach the five-credit Property class identify their teaching style as either "mostly Socratic" or "almost exclusively" Socratic. Fifty-one percent of the professors who teach the four-credit Property class identify their teaching style as either "mostly Socratic" or "almost exclusively" Socratic.

greater use of lecturing.⁵⁵ In contrast, in the four-credit course, it may be that most professors do not even try to teach the same topics that one would teach in a six-credit course. By reducing the coverage, they are able to use more of the Socratic approach to teach the remaining topics. The teaching mixture in the four-credit approach is closer to that of the six-credit approach than it is to the five-credit approach.

The final institutional variable that might affect one's teaching style is the professor's perception of the school's philosophy about his or her primary focus in the classroom. Where the professor believes the school's philosophy is that the professor's primary focus in the classroom should be on the rules, the professor might be more likely to use more lecturing to ensure that the students understand the rules. The data provide some support for this assumption, but not as much as one might have expected.

TABLE 22
TEACHING STYLE AND SCHOOL'S PHILOSOPHY

Professor's Description of Teaching Style	School's Philosophy—Professor's Primary Focus in Classroom	
	Free to do as wish	Should focus on rules
Almost exclusively Socratic	58.33%	41.67%
Mostly Socratic but some lecturing	50.00%	50.00%
About half Socratic, half lecturing	57.14%	42.86%
Mostly lecturing but some Socratic	46.15%	53.85%
Almost exclusively lecturing	100.00%	0.00%

Where the professor thinks the school's philosophy is that the professor is free to do as he or she wishes in the classroom, there is a greater likelihood the professor will use more Socratic dialogue than lecturing.⁵⁶ Where the professor thinks the school's philosophy is that the professor's primary focus in the classroom should be on teaching the rules, the more likely the professor is to use more lecturing than Socratic dialogue.⁵⁷

55. That is consistent with the discussion above that the five-credit approach may be the *worst* of all teaching approaches. See *supra* note 29 and accompanying text.
56. The only exception to this correlation is in the "mostly Socratic" category of teaching style, where the distribution of professors who describe their teaching style that way is 50-50 when cross-tabulated with how they perceive the school's philosophy about what their primary focus should be in the classroom. This exception, however, is a significant one because this teaching style is the mode—constituting almost 45 percent of all Property professors. See Table 16. On the other hand, the distribution is not inconsistent with the overall correlation, so it may go more to the strength of the correlation than to whether it exists.
57. The only exception to this correlation is in the final category, those professors who lecture almost exclusively. In that category, the suggested correlation would lead one to expect a higher percentage of those professors to think their school expected them to focus on the rules. In contrast, 100 percent of the professors who lecture almost exclusively indicated they

In conclusion, of all the personal and institutional variables, the two the data suggest have the greatest impact on one’s teaching style are gender and the school’s philosophy about the professor’s primary focus in the classroom. Neither has a *major* impact, however. There is a fairly strong consensus on how the Property course should be taught: a mixture of Socratic dialogue and lecturing, with more favoring greater use of the Socratic approach.

Educational Tools Used in the Classroom

An integral component of *how* the course is taught is what educational tools the professor uses in the classroom on a regular basis. In addition to the more traditional educational classroom tools—student role plays and exercises—there are more alternative technology-based, options: the Internet, PowerPoint, videos, and case studies. The data indicate that Property professors are making use of this array of educational tools. While student role plays and classroom exercises remain the most commonly used educational tools, the more technologically based educational tools are gaining ground:

TABLE 23
EDUCATIONAL TOOLS USED AND SCHOOL’S RANK

Educational Tools Used in Classroom	School’s ranking by Quartile			
	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
The Internet	13.73%	20.00%	25.71%	29.03%
Case Studies	17.24%	12.72%	8.57%	25.80%
Student role playing	31.03%	34.54%	45.71%	25.80%
PowerPoint	18.96%	29.09%	40.00%	29.03%
Videos	13.73%	14.54%	20.00%	12.90%
Exercises	22.41%	32.72%	42.85%	35.48%
Other	39.65%	20.00%	14.28%	32.25%

The data reveal some interesting patterns with respect to use of educational tools in the classroom, but most of the patterns hold only across the first three tiers of school rankings. Obviously the inconsistency in the fourth tier raises questions as to the validity of the patterns.⁵⁸

believed their school’s philosophy is that they are free to do as they wish in the classroom. There are two possible explanations for this anomaly. The first is that because the professors feel free to do as they wish, they feel free to reject the prevailing teaching philosophy of using primarily the Socratic approach and to do as they personally prefer—to lecture. That explanation, however, is admittedly speculative. The second possible explanation is that this cell is very small, too small to draw any statistically reliable conclusions. There were only three respondents who identified themselves as using almost exclusively the lecture approach.

58. First, Property professors who teach at schools ranked in the top quartile are most likely to use “other” educational tools and to use case studies. (There were a large number of “other” educational tools, many of which imposed a greater burden on the individual professor but also which individualized the class more to the professor’s personal approach. The most common “other” approaches were (1) handouts (identified by ten respondents); (2)

Interestingly, the more technologically based the educational tool (the Internet, PowerPoint, videos, etc.), the less likely it is used by professors who teach at schools ranked in the top tier. Instead, those professors prefer to use their own materials and teaching tools; hence the substantial percentage who state that they use “other”—i.e., their own—educational tools.

Mid-terms

Another possible teaching aid is use of a mid-term.⁵⁹ Of the 177 professors who responded to the question, 65.54 percent indicated they do *not* give a mid-term. Of the 34.46 percent who do give a mid-term, when that group is cross-tabulated across the different types of mid-terms, the percentages get even smaller.

TABLE 24
PERCENTAGE OF PROFESSORS WHO DO OR DO NOT GIVE
MID-TERMS AND TYPE OF MID-TERM EXAM (IF GIVEN)

Professor Does <i>Not</i> Give Mid-term Exam:	65.54%
Professor Gives Mid-term Exam:	
All Essay	9.60%
All Multiple Choice	5.65%
All Problem Set	1.69%
All Short Answer	1.69%
Mixture of	
Essay/Multiple Choice	12.99%
Other	2.82%

overhead projector (identified by five respondents); (3) own materials (identified by three respondents); (4) articles (identified by three respondents). With respect to both of those educational tools (case studies and “other” tools), the percentage of professors using them goes down as one moves down the quartile ranking of law schools—until the fourth quartile. In the fourth tier, the percentage of respondents using those education tools jumps back up either close to or greater than the percentage of users in the first tier. Second, with respect to the other educational tools—the Internet, student role plays, PowerPoint, videos, and even exercises—the percentage of professors using them is lowest in the top tier and the percentage increases as one moves down the quartile rankings, until, again, the fourth tier. In the fourth quartile, for all but one of these educational tools (the Internet), the pattern of increased usage ends and a smaller percentage of professors uses the tool.

59. A mid-term provides an opportunity to give feedback to students on how well they know the material and how well they understand how to use it—feedback that is particularly useful when Property is taught in the first semester. There are costs, however, associated with giving a mid-term. If administered during a regularly scheduled class, it costs a class. If the professor grades and/or critiques it, that can take many non-class hours. If the graded/critiqued mid-term is returned to the students, that often results in students wanting to review the mid-term individually with the professor. Such meetings, collectively, can total many hours. With increasing pressure on professors to publish, how many professors consider the pedagogical benefits of a mid-term worth the costs?

Just over 20 percent of all Property professors give a classic mid-term that requires students to write an essay.⁶⁰ Even within this group, it is unknown how many grade the mid-term; if graded, whether it is simply graded or critiqued; and if graded/critiqued, how many professors grade/critique it themselves versus having a teaching assistant do it.⁶¹ Although the picture generated by the survey data is blurry, all indications are that use of a mid-term as a pedagogical tool is not very common among Property professors.⁶²

As one might expect, there is a fairly strong relation between the data with respect to who gives a mid-term and the institutional variables. First, there is a strong relation between the school’s rank and whether the professor gives a mid-term.

TABLE 25
PROFESSORS GIVING MID-TERM EXAMS AND
SCHOOL’S RANK

	School’s ranking by Quartile			
	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
Percent of Professors who do NOT give mid-term exam	82.46%	70.59%	51.43%	46.67%
Percent of Professors who give mid-term of any type	17.54%	29.41%	48.57%	53.33%

The lower the school’s quartile rank, the more likely the professor is to give a mid-term of some type.⁶³ This relation is reenforced when the mid-term data are cross-tabulated with the professor’s perception of the school’s philosophy about the professor’s primary role in the classroom.

- 60. Just under 10 percent give a traditional all essay mid-term, just under 13 percent give a mixed essay/multiple choice mid-term. The classic essay format forces the students to explain every step of their analytical process, thereby giving the professor maximum opportunity to provide feedback on every step of the process.
- 61. A recent discussion on the Property professors’ listserv made it clear that at least some professors have student assistants grade/critique their mid-term.
- 62. When the data with respect to who gives a mid-term are cross-tabulated with the personal variables, some interesting statistics are generated. The number of respondents in the respective cells, however, is so small that it is questionable whether any of the correlations are statistically significant. The most interesting statistical observation overall is how *little* the personal trait variables appear to affect whether one gives a mid-term, and if so, the type.
- 63. The type of mid-term given also correlates with the quartile ranking of the school. The higher the law school’s quartile rank, the more likely any mid-term given will be an all essay mid-term. The lower the law school’s quartile ranking, the more likely any mid-term given will be a mixed essay/multiple choice mid-term.

TABLE 26
MID-TERM GIVEN AND SCHOOL'S PHILOSOPHY

	School's Philosophy—Professor's Primary Focus in Classroom	
	Free to do <u>as wish</u>	Should focus <u>on rules</u>
Percent of Professors who do NOT give mid-term exam	78.82%	50.00%
Percent of Professors who give mid-term of any type	21.18%	50.00%

This is consistent with what one might expect. The weaker the quality of student,⁶⁴ the greater the academic benefit of giving a mid-term. It gives the professor and the student a chance to assess how well the student comprehends the material, his or her analytical abilities, and his or her writing abilities; it also gives the professor a chance to identify those students who might need further academic assistance.⁶⁵ Professors who teach at law schools ranked in the lower quartiles, and/or who believe that their school's philosophy is that their primary role in the classroom is to focus on teaching the students the rules, are more likely to conclude that the pedagogical benefits of giving a mid-term outweigh the costs.

How We Grade

Grading Components

The final component of the Property class is how professors grade their students. As one would assume, the most important component of the final grade is the final exam. Almost two-thirds of those who responded, 63.27 percent, indicated that the final exam counts for 100 percent of the final grade. As one would expect, there is a strong relation between a school's rank and how much weight is accorded a student's final exam.

64. As measured by the law school's rank by quartile and the professor's perception of the school's philosophy about the professor's primary role in the classroom.

65. These statistics are also consistent with the cross-tabulations generated when the mid-term responses are cross-tabulated with the number of credit hours allocated to the Property course. At schools where Property is a four credit hour course, only 16.25 percent of the respondents give a mid-term; at schools where Property is a five-credit course, 46.87 percent of the respondents give a mid-term; and at schools where Property is a six-credit course, 52.73 percent of the respondents give a mid-term. This data, however, are a bit ambiguous because at some five- and six-credit schools, the test given at the end of the first semester is called a "mid-term." The survey failed to ask respondents to distinguish that type of "testing" mid-term from a "teaching" mid-term.

TABLE 27
FINAL EXAM'S WEIGHT AND SCHOOL'S RANK

Weight Accorded Final Exam	School's ranking by Quartile			
	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
100%	68.42%	66.04%	52.78%	46.67%
90-99%	10.53%	9.43%	16.67%	10.00%
80-89%	10.53%	3.77%	5.56%	16.67%
70-79%	5.26%	13.21%	16.67%	6.67%
60-69%	1.75%	3.77%	8.33%	10.00%
Less than 60%	3.50%	3.77%	0.00%	10.00%

The higher the quartile rank of the law school, the more weight the professor puts on the final exam.⁶⁶

For those professors for whom the final exam does not constitute 100% of the final grade, there are several possible additional factors that may be taken into consideration in calculating a student's final grade.

TABLE 28
**PROFESSORS WHO TAKE FACTORS OTHER THAN
 FINAL EXAM INTO ACCOUNT IN CALCULATING FINAL GRADE**

Factors Taken Into Account	School's ranking by Quartile			
	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
Class participation	44.82%	34.54%	37.14%	48.38%
Mid-term	15.51%	25.45%	40.00%	45.16%
Paper assignment	1.72%	3.63%	2.85%	12.90%

The two most common "other" factors are a mid-term grade and class participation. Most professors apparently take class participation into account only as "discretionary points" for exceptional classroom performance.⁶⁷ Thus, the

66. At the law schools in the top quartile, almost 80 percent of the respondents count the final exam for at least 90 percent of the final grade. The lower the quartile rank of the law school, the less weight the professor puts on the final exam—though this statement should be kept in context. In the fourth quartile, only 56 percent of the respondents count the final exam for at least 90 percent of the final grade, but for almost 75 percent of the professors it still counts for at least 80 percent of the final grade.
67. Of the Property professors who take class participation into account, the overwhelming majority, 78.08 percent, let it count for no more than one grade increment/up to three points—depending on whether the school grades on the letter system or a numerical system. This statistic suggests that class participation is taken into account only as "discretionary points" or to recognize exceptional class participation (at either end of the spectrum). Even assuming a Property professor takes class participation into consideration in calculating the final grade, the survey does not indicate how common it is for a professor to assign such points to a student's grade. To the extent class participation counts only for discretionary points, in the overall picture class participation is not as meaningful a component of the final grade as the statistics might imply. (Though from a pedagogical perspective, taking

higher ranked the law school, the more likely the final grade rests exclusively on the final exam for all practical purposes for almost all students. The lower ranked the law school, the more likely the student has other opportunities to affect the final grade. Again, the most common other opportunity to affect the final grade is through a mid-term. How much weight the professor gives the mid-term grade also varies by the quartile ranking of the law school, but overall the mid-term typically counts more often⁶⁸ and for more than class participation.

The Final Exam

The final exam is still the most important component of a student's final grade. The survey inquired as to two components of the final exam: how it is administered (in-class versus take home), and what is its format (essay versus short answer versus multiple choice).

At the aggregate level, almost 90 percent of the respondents give a traditional in-class final exam.⁶⁹ When the exam administration data is cross-tabulated with a school's quartile rank, the data support the anecdotal stories about in-class versus take home final exams at the top schools—but maybe not the extent some might have expected.

TABLE 29
FINAL EXAM FORMAT AND SCHOOL'S RANK

<u>Final Exam Format</u>	<u>School's ranking by Quartile</u>			
	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
Take home	10.34%	1.85%	2.70%	3.23%
In-class	79.31%	96.30%	94.59%	90.32%
Other	10.34%	1.85%	2.70%	6.45%

The data indicate that the "take home final" exception to the traditional, in-class final exam is more limited than rumors might lead one to believe. Take

class participation into account, even only as discretionary points, still constitutes a philosophical statement by the professor with respect to the importance of student participation in the classroom. It is assumed that most of the professors who take class participation into account are more likely to use more of the Socratic approach in their teaching.). Interestingly, while 85 percent of the professors at the second, third, and fourth quartile ranked law schools indicated that class participation counts for only one grade increment or up the three points, only 64 percent of the professors in the top tier take that approach, and 28 percent count it for up to 10 percent of the grade.

68. It should be acknowledged that the data with respect to how often the mid-term counts is a bit ambiguous. Some professors count a mid-term only if it helps the students, i.e., if the grade on the mid-term is higher than the student's grade on the final exam. The survey failed to ask, assuming the professor gives a mid-term, whether the professor always takes the mid-term grade into account or only if it helps the student.
69. The total is 89.67 percent to be precise; the other 10 percent are split rather equally between a take home final and "Other."

home finals outside of the top quartile of law schools are almost unheard of, and even within the top quartile, they are relatively rare.

While the data evidence relative uniformity with respect to how the final exam is administered, there is wide variety with respect to the structure of a Property final exam, and this variety varies depending on the school's quartile ranking.

TABLE 30
FINAL EXAM FORMAT (DETAIL) AND SCHOOL'S RANK

<u>Final Exam Format</u>	School's ranking by Quartile			
	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
All Essays	34.62%	26.42%	21.62%	20.69%
All Short Answers	0.00%	1.89%	2.70%	0.00%
All Multiple Choice	1.92%	3.77%	2.70%	3.45%
Mix Essay/MC	28.85%	43.40%	43.24%	44.83%
Mix Short Answer/MC	1.92%	0.00%	0.00%	6.90%
Mix Essay/MC and Short Answer	13.46%	13.21%	24.32%	17.24%
Mix Essay and Short Answer	17.31%	11.32%	5.41%	6.90%
Other	1.92%	0.00%	0.00%	0.00%

Interestingly, for professors who teach at schools ranked in the second, third, and fourth quartile, the mode is the bar exam format: a mixture of essays and multiple choice. For professors who teach at schools ranked in the top tier, the mode is still the traditional, all essays format, but the bar exam format is a close second. The overwhelming preference, however, is to give the students an opportunity to explain their analysis. Although the use of multiple choice questions and short answers is gaining acceptance at law schools in all ranking quartiles, it is only in conjunction with essay questions, not as a complete substitute for essay questions.

Final Thoughts

While the issue of *which* topics should be taught in the basic Property course generates great interest,⁷⁰ the issue should be kept in perspective. Just under two-thirds, 63.54 percent to be exact, of the Property professors who responded to the survey indicated that their most important goal in the course is to teach students how to think analytically. Although the survey did not define what it means to think analytically, one can argue it means teaching students how to “think like a lawyer.” While Property professors may disagree over what exactly it means to “think like a lawyer,” and how to achieve it, a strong majority agreed that it is the most important goal in the class.

70. See Humbach, What is Taught in the First Year Property Course, *supra* note 7, at 459; and Kwall and Organ, The Contemporary Course, *supra* note 7, at 205.

When the responses to “what is the most important goal in the class” are cross-tabulated with the respondents’ personal traits, the statistics remain fairly constant that teaching students to think analytically is the most important goal.⁷¹ The consensus, however, breaks down a bit when the most important goal in the course responses is cross-tabulated with the institutional variables.

TABLE 31
PROFESSOR’S PRIMARY GOAL AND CREDIT HOURS

<u>Primary Goal</u>	<u>4 credit course</u>	<u>5 credit course</u>	<u>6 credit course</u>
Teach students to think analytically	59.26%	63.64%	1.93%
Teach students the rules of Property	14.81%	15.15%	10.53%
Teach students the theoretical Perspectives of Property	13.58%	12.12%	5.26%
Other	12.35%	9.09%	12.28%

Interestingly, the fewer the credit hours allocated to the Property course, the lower the percentage of respondents who indicated that the most important goal in the course is to teach students to think analytically. At first blush, this relation seems counterintuitive.

There are, however, two possible explanations for it. The first is that with fewer credit hours allocated to the class, the professor has less time to devote to methodology: to teaching students how to read and analyze cases, to teaching students how to think critically and analytically. The second possible explanation for why fewer professors at top tier schools consider teaching students to think analytically to be the primary goal is because they believe their students already know how to think critically and analytically. There is a fairly strong correlation between the number of credit hours allocated to the Property class and the school’s ranking.⁷² If this latter explanation is the more plausible one, then a similar statistical distribution should reveal itself when the professor’s primary goal is cross-tabulated with the school’s ranking.

71. With respect to gender, 65.96 percent of the female respondents selected it as the most important goal in the class versus 62.20 percent of male respondents. With respect to ethnicity, 67.48 percent of the Caucasian respondents selected it as the most important goal in the class versus 58.33 percent of the non-Caucasian respondents. With respect to years teaching Property, 58.21 percent of those teaching ten years or less selected it as the most important goal; 68.85 percent of those teaching ten to twenty years selected it as the most important goal, and 64.15 percent of those teaching more than twenty years selected it as the most important goal.
72. See Table 10.

TABLE 32
PROFESSOR'S PRIMARY GOAL AND SCHOOL'S RANK
 School's ranking by Quartile

<u>Primary Goal</u>	<u>Top</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>
Teach students to think analytically	57.14%	71.70%	65.79%	60.00%
Teach students the rules of Property	12.50%	9.43%	13.16%	20.00%
Teach students the theoretical perspectives of Property	19.64%	9.43%	7.89%	6.67%
Other	10.72%	9.43%	13.16%	13.33%

Of all the professors, professors who teach Property at a top quartile school are the least likely to think that the most important goal of the Property class is to teach students how to think analytically. But the most plausible explanation for that is not that they think the goal is unimportant; rather, they think their students are smart enough that they already know how to think analytically or they can figure it out on their own. Accordingly, a significant percentage of professors who teach at a top tier law school shift their primary goal to teaching students the theoretical perspectives of Property.⁷³ The theoretical perspectives, however, are important only if the students understand the relationship between the theoretical perspectives and the relevant rules. The goal of teaching students the theoretical perspectives of Property implicitly assumes that the students either know, or are capable of learning on their own, how to think analytically. Accordingly, there is strong consensus across all law school ranking quartiles that teaching students to think analytically is the most important goal in the course.

But what does it mean to say that the most important goal in the Property class, if not all of law school, is to teach students how to “think like a lawyer”?⁷⁴ One approach asserts that learning how to “think like a lawyer” means teaching students how to think on three planes simultaneously: the factual plane, the rule plane, and the public policy plane.⁷⁵ Only when the students see and understand the relationship between and among the three planes do the students know how to “think like a lawyer.”

To the extent that teaching students how to “think like a lawyer” involves teaching them how to think on the three planes simultaneously, the issue of *which* topics should be taught might not be as important as some would argue.

73. This goal is ten percentage points higher among professors who teach at a law school ranked in the top tier as opposed to professors who teach at a law school ranked in any of the other three quartiles.

74. That is like asking “what is the meaning of life?”—at least *law school* life.

75. See Peter T. Wendel, *Using Property to Teach Students How to Think Like a Lawyer: Whetting Their Appetites and Aptitudes*, 46 St. Louis U. L. J. 733, 746-49 (2002).

The picture that emerges from the survey is that while almost all Property professors agree on what constitutes the core topics of the course,⁷⁶ there is a fair amount of disagreement over which secondary topics should be covered.⁷⁷ But if the most important goal of the course is to teach students how to think analytically, the means one chooses to achieve that end are secondary. While there are certain core Property topics which arguably should be covered in all Property courses, there should be enough time and flexibility in the course that one can, and should, also teach those “secondary” areas of Property that one finds interesting and enjoys teaching the most. The more we enjoy *what* we teach day in and day out, the more likely we will be to achieve the overarching goal of the course: to teach students how to think like a lawyer.

Moreover, teaching students how to think like a lawyer requires the professor to bring public policy and theoretical perspectives into the discussion of the Property topics that he or she selects to teach. It is at the public policy/theoretical plane that the professor has the greatest freedom to select the theoretical perspectives that he or she thinks are the most important or the most relevant to the issues being studied. The survey asked each respondent to identify up to three theoretical perspectives that he or she brings into the Property course the most, either expressly or implicitly, on a regular basis. Not surprisingly, this question elicited a greater variety of answers than any other question. Collectively, the respondents identified ninety-four different theoretical perspectives that they bring to the Property class on a regular basis.⁷⁸ Although there was widespread consensus that Law and Economics

76. See Tables 3, 8, 11, 12, 14, and 15.

77. The more traditional property topics like the law of finders, inter vivos gifts, and the rule against perpetuities versus more “cutting edge” property topics like intellectual property, environmental law, zoning, eminent domain, and regulatory takings.

78. While some of the following public policy approaches arguably could be combined, we were reluctant to combine too many for fear of mischaracterizing the responses. Moreover, the most impressive component of the responses was the diversity. Even where the responses might be combined, the different labeling of the approach may reflect differences in how it is brought into the classroom by the respective professors. The public policy approaches identified were: Law and Economics; Legal History; Legal Realism; Critical Legal Studies; Locke/Labor Theory; Utilitarianism; Critical Race Theory; Feminist Legal Theory; Political Theory; Problem Method; Kant/Radin; Moral Theory; Property as a judicial concept; Property as a relation among things; Law & Society; Legal Process; Interaction of Public & Private Law; Comparative law; Property as law; Argumentative use; Bundle of rights; Property as Freedom; Pragmatism; Analytical Skills; Equity; Distributive Justice; Linguistic Philosophy; Lawyering Problem Solving; Morris Cohen; Authority v. Policy; Public Interest; Public Choice; Social Responsibility; Relativity of Title; Property Policies; Libertarianism; Indigenous rights; Law & Literature; Narrative; Social Contract; Law & Biology; Property between people; Adverse Possession; Consumer Protection; Christian Jurisprudence; Biblical Concept of Rights; Role of Lawyer in transactions; Socialism; Ownership as personal rights; Expectations; Evolutionary; Consequentialism; Marxist; two sides to every story; Law as indeterminate; Expression of Personhood; Conceptual Segmentation; Transactional perspectives; Positivists; Liberal Law; Property as Power; Humanism; Free alienability; Right vs. Access; Philosophical approaches; Social History; Biblical Philosophy; Negotiation; Distributional Effects; Natural Resource Policy; Price Theory; Property & Social Relations;

is the most commonly invoked theoretical perspective,⁷⁹ the data are more striking for the variety of theoretical perspectives brought into the Property class. After Law and Economics, no other theoretical perspective was mentioned by more than 20 percent of the respondents. Only four theoretical perspectives, Law and Economics, Legal History, Legal Realism, and Critical Legal Studies, were listed by more than 10 percent of the respondents.⁸⁰ After that, the data on the theoretical perspectives are noteworthy for their diversity and richness.

The theoretical perspective that the professor brings to a particular topic gives depth and richness to the topic, and collectively, to the course. The different responses to the question of what theoretical perspectives the Property professor brings to the classroom on a regular basis show that Property is awash in riches. While there may be consensus as to the core topics of the course, there clearly is not as to the core theoretical perspectives. But this disagreement is cause for celebration, not concern; it shows the richness and diversity that exists within the course. And it is that richness and diversity that we as Property professors can draw on to keep our teaching fresh and our students stimulated and challenged.

In the end, at the doctrinal level, what is in the basic Property course, and why, appears to be a function of (1) the number of credits assigned the course, (2) the quality of the students, and (3) the particular interests of each professor. But to the extent the primary goal of the course is to teach our students how “to think like lawyers”—to think analytically and critically about the relationship between and among the factual, legal, and public policy/theoretical planes—*what* is in the course arguably is of secondary importance. The doctrinal topics are merely the tools we use to teach our students how to think like a lawyer. And it is that abstract, theoretical process that brings out the full richness of the Property class.

Social Welfare; Role of Capitalism; Duties to Client; Civic Republican; Sociology; Social Ontology; Traditional Law; Cognitive Psychology; Catholic Social Theory; Property as math; Public Policy; Jurisprudence; Lawyering; Critique of Law and Economics; Individual Autonomy; Role of Precedent; Social context of Common Law; Social Agreement; Market vs. Social institutions; Professional Responsibility; Social norms; and, Moral Perspectives.

79. Over three-quarters of the respondents indicated that they bring Law & Economics into their classroom discussions on a regular basis.
80. Law and Economics was identified by 76.51 percent of the respondents as one of the three theoretical perspectives the professor brought into the classroom on a regular basis; Legal History was identified by 18.12 percent of the respondents; Legal Realism by 12.75 percent; and Critical Legal Studies by 11.41 percent.