Syllabus for LS 140
Property and Liberty
Fall 2014

Professor Ben Brown

Reading assignments are from Perspectives on Property Law (PPL) or my internet site: http://legalconstitutionalhistory.sharepoint.com/

Some assignments require logging onto other internet sites.

Thursday, August 28 – How Property Structures Personhood

Readings:

PPL – 1-5, Erving Goffman, “Asylums: Essays on the Social Situation of Mental Patients and Other Inmates.”
6-15, Margaret Jane Radin, “Property and Personhood.”
259-272, Carol Rose, “Crystals and Mud in Property Law.”

Class 1 – Introduction to the course, explain the written/oral assignment. The Importance of Property; Property and Personhood; Effective Property Regimes.

Week of September 1 – Origins of Property

Readings:

PPL – 83-90, Papanek, “To Each Less than She Needs”
36-41, John Locke, “Two Treatises of Government”
Website – Locke, expanded reading
Internet – www.pemberley.com/janeinfo/pridprej.html

Read Pride and Prejudice Vol. 1, chap. 13 – Arrival of Mr. Collins and follow the hyperlink entailed away from your own children and read about entail; chap. 19 – Where Elizabeth rejects Mr. Collins’s proposal; chap. 22 – Charlotte Lucas accepts Mr. Collins’s proposal and follow the hyperlink honourable provision for well-educated young women of small fortune for a discussion of why Miss Lucas accepted the proposal.

Class 2 – Feminism and Property in Pride and Prejudice

Class 3 – Locke and the labor theory of property; Blackstone and the Common Law of Property.
**Week of September 8** – Property and Inequality

Readings:

16-28, Carol M. Rose, “Property As Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory.”

**Website** – Rousseau

**Internet** – Property in Eve Online:
http://www.polygon.com/features/2014/2/24/5419788/eve-online-thrilling-boring

Class 4 – Hume and Rose on who owns Property in an MMO-RPG?

Class 5 – Rousseau’s critiques of individual property rights – Establishing the ongoing dispute.

**Week of September 15** – Property and Capitalism

Readings:

**PPL – none**

**Website** – Karl Marx, “Communist Manifesto;” John Stuart Mill, excerpt from *Principles of Political Economy*; Henry George, excerpt from “Progress and Poverty,” “Ode to Liberty”

Class 6 – Property and Markets – Smith and the Classical Economics, Karl Marx rejects Property.

Class 7 – 19th Century Critiques of Markets – John Stuart Mill and Henry George

**Week of September 22** – Colonialism

Readings:

**PPL** – 180-189, Carol M. Rose, “Possession As the Origin of Property.”
321-335, Stuart Banner, “Two Properties, One Land: Law and Space in 19th-Century New Zealand.”

**Website** – Paul Finkelman, “Batter Up;” *Johnson v. McIntosh.*

Class 8 – Possession as the basis of property. Colonialism and Real Property in New Zealand.

Class 9 – How the Indians lost their land – European versus Native property systems.
**Week of September 29** – Slavery and Property

Readings:

**PPL** – none

**Website** – John Belton ONeall “Negro Law of South Carolina” chapter 2 pp. 17-28 found at: [https://archive.org/details/negrolawofsouthc00onea](https://archive.org/details/negrolawofsouthc00onea)

*Somerset v. Stewart; Bryan v. Walton; State v. Mann; State v. Boyce.*

Class 10 – American Law of Slavery.

Class 11 – **Group 1** – Valerie Martin, Property.

**Week of October 6** – The Critique of Property in the United States

Readings:

**PPL** – 52-63, Milton Friedman, *Capitalism and Freedom*

243-250, Penalver and Katyal, *Property Outlaws*

**Website** – Thorstein Veblen, *Theory of the Leisure Class*

Carol Rose, “*Property Law and the Rise, Life, and Demise of Racially Restrictive Covenants;*” *Bell v. Maryland.*

Class 12 – Race and inequality in the 20th Century


**Week of October 13** – Income Equality in the 20th Century

Readings:

**PPL** – 83-90, John Rawls, “*A Theory of Justice*”

**Website** – Mark Roe, “*Backlash*”

**Internet** – John Cassady review of Thomas Piketty Capital in the Twenty-first Century: http://www.newyorker.com/magazine/2014/03/31/forces-of-divergence?printable=true&currentPage=all#ixzz2wuzLPF2d

Class 14 – Economic Inequality in the 20th Century – Roe, Rawls and Piketty

**Class 15 – Midterm on October 16**
Week of October 20 – The Tragedy of the Commons –
Do communal use systems always lead to inefficiencies?

Readings:

**PPL** – 99-106, Garret Hardin, “*The Tragedy of the Commons.*”
112-120, Demsetz, “*Toward a Theory of Property Rights.*”
139-148, Smith, “*Semi-Common Property Rights and Scattering in the Open Fields.*”
107-112, James M. Acheson, “*The Lobster Gangs of Maine.*”
131-139, Michael A. Heller and Rebecca S. Eisenberg, “*Can Patents Deter Innovation? The Anticommons in Biomedical Research.*”
419-428, Robert P. Merges, “*Property Rights Theory and the Commons: the Case of Scientific Research.*”
225-234, Robert Axelrod, “*The Evolution of Cooperation.*”
**Internet** – Elinor Ostrom youtube clip: www.youtube.com/watch?v=ByXM47Ri1Kc

Class 16 – The Tragedy of the Commons; The Tragedy of the Commons Critiqued

Class 17 – Science, the Commons and Patent Trolls

Week of October 27 – Law and Economics Analysis and Property; Are Markets Rational?

Readings:

**PPL** – 173-80, Ronald H. Coase, “*The Problem of Social Cost.*”
322-328, Richard A. Posner, “*Economic Analysis of Law*”
181-90, Robert C. Ellickson, “*Order without Law: How Neighbors Settle Disputes.*”
**Internet** – Dan Ariely Ted Talk:
http://www.ted.com/talks/dan_ariely_asks_are_we_in_control_of_our_own_decisions.html
Dan Pink:  http://www.ted.com/talks/dan_pink_on_motivation.html

Class 18 – Ronald Coase and Efficiency Analysis. Critiques of Coase Theorem.

Class 19 – **Group 2** – Dan Ariely, Predictably Irrational.

Week of November 3 – The Internet and Public Goods –
Should the Internet be a commons?

Readings:
Class 20 – An Introduction to Public Goods; Patents, Copyright and Intellectual Property.

Class 21 – **Group 3** – Lawrence Lessig, *Remix*

**Week of November 10** – Government Regulation and Property Rights

Readings:

- **Website** – Pennsylvania Coal Co. v. Mahon, Just v. Marinette County.

Class 22 – How severely can the government regulate the use of property before it must pay compensation to the owner? Government Regulation and the Environment.

Class 23 – **Group 4** – Environmental Conflict – Book – *A Good Forest for Dying*

**Week of November 17** – Environmentalism and Eminent Domain

Readings:


**Week of November 24** – Homelessness

Readings:

- **Internet** – Denver’s Road Home program: [www.denversroadhome.org](http://www.denversroadhome.org)

Class 26 – Homelessness and Community

**Thursday, November 27** – Happy Thanksgiving
Week of December 1 – Organizing the Internet and Internet Piracy

Readings:

Internet – http://www.authorama.com/free-culture-1.html
Lawrence Lessig, Free Culture, Read chapter 5 on piracy and property

Class 27 – Organizing the Internet – Cooperation versus Competition. Is Internet Piracy a social good or a social evil?

Class 28 – Net Neutrality; Review for Final

Final – Friday, December 20 – 7:00 – 10:00 p.m.