Syllabus for LS 140
Property and Liberty
Spring 2013

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.

**Week of January 21** - How Property Structures Personhood.

  - **PPL** - 1-44 - Erving Goffman, "Asylums: Essays on the Social Situation of Mental Patients and Other Inmates."
  - Margaret Jane Radin, "Property and Personhood."
  - Richard Pipes, "Human Nature and the Fall of Communism."
  - Carol M. Rose, "Property As Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory."
  - **Internet** – www.pemberley.com/janeinfo/pridprej.html
  - Read Vol. 1, chaps. 13 & 14 of Pride and Prejudice. Follow the hyperlinks to read about entail.

  Class 1 - Introduction to the course, explain the written/oral assignment. Introduction to Property; Property and Personhood.

  Class 2 - Feminism and Property in Pride and Prejudice.

**Week of January 28** - Origins of Property.

  - **Website** - Locke, Rousseau.

  Class 3 - Locke and the labor theory of property.

  Class 4 - Blackstone and the Common Law of Property.

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

**Week of February 4** - Property and the Founding of the United States.

  - **Website** - Pennsylvania Constitution, Karl Marx, John Stuart Mill.
Class 6 - Republican Theory of Property and the American Revolution; Classical Liberalism and the Framing of the Constitution.

Class 7 - Marx and the Critique of Property.

Class 8 - Mill and the Critique of Communism.

**Week of February 11** - Colonialism and Property - How European prejudices about the appropriate use of property rationalized colonialism.

- **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."
- 135-146 - Harold Demsetz, "Toward a Theory of Property Rights."


Class 9 - Possession as the basis of property.

Class 10 - Colonialism in New Zealand.

Class 11 - How the Indians lost their land - European versus Native property systems.

**Week of February 18** - Slavery and Property - What does being owned do to slaves? What does owning people do to owners?

- **PPL** - none

Class 12 – American Law of Slavery.

Class 13 - **Group 1** - Valerie Martin, *Property.*

Class 14 – Slavery and the Civil War.

**Week of February 25** - Late 19th and 20th century Property Theorists and the Critique of Property in the United States.

- **Website** - Henry George; Thorstein Veblen.

Class 15 - Henry George and the logic of the Single Tax.

Class 16 - Thorstein Veblen and the anthropological analysis of property.
Class 17 – Property and Capitalism in the 20th Century.

**Week of March 4** – The Tragedy of the Commons - Do communal use systems always lead to inefficiencies?

**PPL** – 119-135 - Garret Hardin, "The Tragedy of the Commons."
James M. Acheson, "The Lobster Gangs of Maine."

**Internet:** Elinor Ostrom youtube clip:
http://www.youtube.com/watch?v=ByXM47Ri1Kc

Class 18 – The tragedy of the commons.

Class 19 - The tragedy of the commons critiqued.

Class 20 – Elinor Ostrom and sustainable common resources.

**Week of March 11** – Law and Economics Analysis and Property; Are Markets Rational?

54-74 -Richard A. Posner, "Economic Analysis of Law;" Duncan Kennedy &
Frank Michelman, “Are Property and Contract Efficient.”
Approach to Law and Economics."

**Internet** - Dan Ariely Ted Talk:
http://www.ted.com/talks/dan_ariely_asks_are_we_in_control_of_our_own_decisions.html

Class 21 – Ronald Coase and Efficiency Analysis.

Class 22 – Critiques of Coase Theorem.

Class 23 - **Group 2** - Dan Ariely, *Predictably Irrational.*

**Week of March 18** – Law and Economics and History of Property; Midterm Examination.

**PPL** - 146-159 - Robert Ellickson, "Property in Land."

Class 24 – Ellickson’s Meta-History of Property.

Class 25 – Review for Midterm

**Class 26 - Midterm Exam**
Week of March 25 – Have a great spring break!!

Week of April 1 – Race and Property in the 20th Century; Property and Poverty

Website – Bell v. Maryland.
Internet Denver’s Road Home program: http://www.denversroadhome.org/

Class 27 - “We reserve the right to refuse service!” Civil rights sit-ins and trespass law.

Class 28 – Community and Homelessness.

Class 29 – Addressing Homelessness.

Week of April 8 – Government Regulation and Property Rights

William A. Fischel and Perry Shapiro, "Takings, Insurance, and Michelman: Comments on Economic Interpretations of ‘Just Compensation’ Law."
Thomas W. Merrill, "Explaining Market Mechanisms."
548-559 - Robert C. Ellickson, Controlling Chronic Misconduct in City Spaces: of Panhandlers, Skid Rows, and Public-Space Zoning."
Website - Pennsylvania Coal Co. v. Mahon, Just v. Marinette County.

Class 30 - How severely can the government regulate the use of property before it must pay compensation to the owner?


Week of April 15 - Environmentalism and Eminent Domain


Class 33 - Group 4 - Environmental Conflict - Book - A Good Forest for Dying.

Class 34 - Eminent domain and local control of environmental measures.

Class 35 - Oregon Prop 37 and Prop 49, Post-Kelo propositions.
Week of April 22 - The Internet and Public Goods - Should the Internet be a commons?

159-169- Michael A. Heller and Rebecca S. Eisenberg, "Can Patents Deter Innovation? The Anticommons in Biomedical Research."

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

Class 36 - An Introduction to Public Goods; The Internet as a commons; Patents, Copyright and Intellectual Property.


Week of April 29 - Organizing the Internet and Internet Piracy.


Class 39 - Organizing the Internet - Cooperation versus Competition.

Class 40 - Is Internet Piracy a social good or a social evil?

Class 41 – Property in the 21st Century.

**Final** - Tuesday, May 14 - 8:00 – 11:00 a.m.