

**Syllabus for LS 140
Property and Liberty
Spring 2009**

Professor Ben Brown

Reading assignments are from *Perspectives on Property Law* (PPL) or the Reader. Some assignments require logging onto the noted Internet sites.

Week of January 19 - 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 26 - Origins of Property.

PPL – 45-75, William Blackstone, "Commentaries on the laws of England."

Richard A. Posner, "Economic analysis of law."

Duncan Kennedy and Frank Michelman, "Are Property and Contract Efficient?"

Reader - Locke, Rousseau.

Class 3 - Locke and the labor theory of property; Blackstone and the Common Law of Property.

Class 4 - Rousseau's critiques of individual property rights - Establishing the ongoing dispute.

Week of February 2 - Property and the Founding of the United States.

PPL - 94-102 - John Rawls, "A Theory of Justice."

Reader - Pennsylvania Constitution, Karl Marx, John Stuart Mill.

Class 5 - Republican Theory of Property and the American Revolution; Classical Liberalism and the Framing of the Constitution.

Class 6 - Marx and the Critique of Property; Mill and the Critique of Communism.

Week of February 9 - Colonialism and Property - How European prejudices about the appropriate use of property rationalized colonialism.

PPL - 170-199 - Robert's Sugden "The Economics of Rights, Cooperation and Welfare."

Carol M. Rose, "Possession As the Origin of Property."

Thomas W. Merrill "Property Rules, Liability Rules, and Adverse Possession."

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."

Reader - Paul Finkelman, "Batter Up;" Johnson v. McIntosh; William Cronon, *Changes in the Land*.

Class 7- Possession as the basis of property; Colonialism in New Zealand.

Class 8 - How the Indians lost their land - European versus Native property systems.

Week of February 16 - Slavery and Property - What does being owned do to slaves? What does owning people do to owners?

PPL - none

Reader - "Negro Law of South Carolina;" Somerset v. Stewart, Bryan v. Walton, State v. Mann, State v. Boyce, Worley v. State, Dred Scott v. Sanford.

Class 9 - Classical Slavery; Mercantilist and Capitalist Slavery in the United States.

Class 10 - Group 1 - Valerie Martin, *Property*.

Week of February 23 - Late 19th and early 20th century Property Theorists and the Critique of Property in the United States.

Reader - Henry George; Thorstein Veblen.

Class 11 - Henry George and the logic of the single tax.

Class 12 - Thorstein Veblen and the Anthropological Analysis of Property.

Week of March 2 - Property and Economic Development; Common ownership and property - Do communal use systems always lead to inefficiencies?

PPL - 103-118 - Mark J. Roe, "Backlash."

119-135 - Garret Hardin, "The Tragedy of the Commons."

James M. Acheson, "The Lobster Gangs of Maine."
146-159 - Robert Ellickson, "Property in Land."
261-272 - Robert Axelrod, "The Evolution of Cooperation."
Internet - <http://ild.org.pe/en/books/mystery> read chapter 1 of *The Mystery of Capital* by Hernando de Soto available at this site.

Class 13 - Hernando de Soto - *The Mystery of Capital*; American History and the creation of strong property rights; Women and Capitalism in the developing world as a critique of de Soto.

Class 14 - The tragedy of the commons - The tragedy of the commons critiqued.

Week of March 9 - Property and Capitalism.

PPL – 75-91 - Milton Friedman, "Capitalism and freedom."
200-232 - Ronald H. Coase, "The Problem of Social Cost."
Robert C. Ellickson, "Order without Law: How Neighbors Settle Disputes."

Class 15 - Group 2 - Closing the commons in the Post-Bellum South.

Class 16 - Milton Friedman and the Liberty of Capitalism; Ronald Coase and Efficiency Analysis.

Week of March 16 - Enforcing Property Rights; Midterm Examination.

PPL - 221-232 - Christine Jolls, Cass R. Sunstein & Richard Thaler, "A Behavioral Approach to Law and Economics."

Class 17 - Critiques of Coase Theorem; Midterm Review.

Class 18 - Midterm Exam

Week of March 23 - Have a great Spring Break!!!

Week of March 30 - Property Rules versus Liability Rules; Racism and Property Law.

PPL - 233-260 - Guido Calabresi and A. Douglas Melamed, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral."
James E. Krier and Stuart J. Schwab, "Property Rules and Liability Rules: The Cathedral in Another Light."
470-479 - Thomas C. Schelling, "Micro Motives and Macro Behavior."
423-437 - Richard A. Epstein, "Covenants and Constitutions."
Reader – Shelley v. Kraemer.

Class 19 - Property Rules and Liability Rules; Racism and restrictive covenants.

Class 20 - "We reserve the right to refuse service!" Civil rights sit-ins and trespass law.

Week of April 6 - Property and Poverty.

PPL –374-422 - Richard A. Posner, "Economic Analysis of Law."

Douglas W. Allen and Dean Lueck, "The Back 40 on a Handshake: Specific Assets, Reputation, and the Structure of Farmland Contracts."

Irving Welfeld, "Poor Tenants, Poor Landlords, Poor Policy."

John C. Weicher, "Private Production: Has the Rising Tide Lifted All Boats?"

Richard A. Posner, "Economic Analysis of Law"

Bruce A. Ackerman, "Regulating Slum Housing Markets on Behalf of the Poor."

Richard Arnott, "Rent Control: the International Experience."

Internet – www.sfgate.com/homeless/, Browse articles in the S.F. Chronicle series on homelessness in the city.

Reader - Charles Reich, excerpt from "The New Property," Goldberg v. Kelly.

Class 21 - Homelessness in San Francisco.

Class 22 - Group 3 - Should Property Rules apply to Government benefits? - Charles Reich, "The New Property."

Week of April 13 - Government Regulation and property - How severely can the government regulate the use of property before it must pay compensation to the owner?

PPL – 480-537 - Frank I. Michelman, "Property, Utility, and Fairness: Comments on the Ethical Foundations of 'Just Compensation' Law."

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."

Reader - Lucas v. South Carolina Coastal Council; Charles River Bridge v. Warren Bridge; Pennsylvania Coal Co. v. Mahon, Just v. Marinette County.

Class 23 - Economic Analysis of Takings; Local control of Land Use Development.

Class 24 - Takings in historical perspective; Takings as a Constitutional Right: Charles River Bridge contrasted with Lucas.

Week of April 20 - Environmentalism and Eminent Domain

Reader – *Kelo v. New London, Conn.*

Class 25 - Group 4 - Environmental Conflict - Book - *A Good Forest for Dying* and documentary at http://www.lime.com/tv/julia_butterfly_hill/video/10577/julia_butterfly_hill .

Class 26 - Eminent domain and local control of environmental measures. Kelo v. New London, Conn., Oregon Prop 37 and Prop 49, Post-Kelo propositions.

Week of April, 27 - The Internet and Public Goods - Should the Internet be a commons?

PPL – 537-547 - Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention."

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

560-572 - Robert P. Merges, "Property Rights Theory and the Commons: the Case of Scientific Research."

Internet – <http://www.authorama.com/free-culture-1.html>

Lawrence Lessig, *Free Culture*, Read chapter 5 on piracy and property

Class 27 - An Introduction to Public Goods; The Internet as a commons; Patents, Copyright and Intellectual Property.

Class 28 - Group 5 - Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*

Week of May 4 - Organizing the Internet and Internet Piracy.

PPL 273-285 - Richard O. Zerbe, Jr. & C. Leigh Anderson, "Culture and Fairness in the Development of Institutions in the California Gold Fields."

Class 30 - Organizing the Internet - Cooperation versus Competition.

Class 31 - Is Internet Piracy a social good or a social evil?

Final - Tuesday, May 19 - 8:00 a.m.