

**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.

PPL – 45-53, William Blackstone, "Commentaries on the laws of England."

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.

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

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."
Website - Paul Finkelman, "Batter Up;" Johnson v. McIntosh.

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
Website - "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 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.

PPL - 75 – 118 - Milton Friedman, "Capitalism and Freedom;" John Rawls, "A Theory of Justice;" Mark J. Roe, "Backlash."
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."
261-272 - Robert Axelrod, "The Evolution of Cooperation."

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?

PPL – 200-220 - Ronald H. Coase, "The Problem of Social Cost."
Robert C. Ellickson, "Order without Law: How Neighbors Settle Disputes."
54-74 -Richard A. Posner, "Economic Analysis of Law;" Duncan Kennedy &
Frank Michelman, "Are Property and Contract Efficient."
374 – 381 - Richard A. Posner, "Economic Analysis of Law."

221-232 - Christine Jolls, Cass R. Sunstein & Richard Thaler, "A Behavioral 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

PPL - 470-479 - Thomas C. Schelling, "Micro Motives and Macro Behavior."
381- 387 - Douglas W. Allen and Dean Lueck, "The Back 40 on a Handshake:
Specific Assets, Reputation, and the Structure of Farmland Contracts."

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

PPL – 480-535 - 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."

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

Charles Reich, excerpt from “The New Property;” Goldberg v. Kelly.

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

Class 31 - Group 3 - Should Property Rules apply to Government benefits? - Charles
Reich, “The New Property.”

Class 32 – Government Regulation and the Environment.

Week of April 15 - Environmentalism and Eminent Domain

Website – Kelo v. New London, Conn.

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?

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

Class 37 - Group 5 - Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*.

Class 38 – Problems in Intellectual Property: Patent Trolls and Mickey Mouse Law.

Week of April 29 - 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 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.