

**Syllabus for LS 140
Property and Liberty
Spring 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.

Week of January 20 - 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 *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 1 - Introduction to the course, explain the written/oral assignment. The Relationship of Property and Liberty; Property and Personhood.

Class 2 - Feminism and Property in *Pride and Prejudice*.

Week of January 27 - 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. Blackstone and the Common Law of Property.

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

Week of February 3 - 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 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 10 - 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 7 - Possession as the basis of property. Colonialism and Real Property in New Zealand.

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

Week of February 17 - Slavery and Property - What does being owned do to slaves? What does owning people do to owners?

PPL - none

Website - John Belton O'Neill "Negro Law of South Carolina" chapter 2 pp. 17 - 28 found at:

<https://archive.org/details/negrolawofsouthc00onea>

Somerset v. Stewart; Bryan v. Walton; State v. Mann; State v. Boyce; Dred Scott v. Sanford.

Class 9 – American Law of Slavery.

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

Week of February 24 - 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, excerpt from "Progress and Poverty," "Ode to Liberty;" Thorstein Veblen.

Class 11 - Henry George and the logic of the Single Tax.

Class 12 - Thorstein Veblen and the anthropological analysis of property. Property and Capitalism in the 20th Century.

Week of March 3 – 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."

Website – R. Ben Brown "Free Pigs and Free Men."

Internet: Elinor Ostrom youtube clip:

<http://www.youtube.com/watch?v=ByXM47Ri1Kc>

Class 13 – The tragedy of the commons.

Class 14 – The tragedy of the commons critiqued. Elinor Ostrom and sustainable common resources.

Week of March 10 – 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

Dan Pink:

http://www.ted.com/talks/dan_pink_on_motivation.html

Class 15 – Ronald Coase and Efficiency Analysis. Critiques of Coase Theorem.

Class 16 - **Group 2** - Dan Ariely, *Predictably Irrational*.

Week of March 17 – Law and Economics and History of Property; Midterm Examination.

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

Class 17 – Ellickson’s Meta-History of Property.

Class 18 - Midterm Exam

Week of March 24 – Have a great spring break!!

Week of March 31 – 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 19 - “We reserve the right to refuse service!” Civil rights sit-ins and trespass law.

Class 20 – Community and Homelessness. Addressing Homelessness.

Week of April 7 – 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 21 - Group 3 - Should Property Rules apply to Government benefits? - Charles
Reich, “The New Property.”

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.

Week of April 14 - Environmentalism and Eminent Domain

Website – Kelo v. New London, Conn.

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

Class 24 - Eminent domain and local control of environmental measures. Oregon Prop 37 and Prop 49, Post-Kelo propositions.

Week of April 21 - 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 25 - An Introduction to Public Goods; The Internet as a commons; Patents, Copyright and Intellectual Property.

Class 26 - Group 5 - Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*.

Week of April 28 - Organizing the Internet and Internet Piracy.

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

Class 27 - Problems in Intellectual Property: Patent Trolls and Mickey Mouse Law.

Class 28 - Organizing the Internet - Cooperation versus Competition. Is Internet Piracy a social good or a social evil?

Final – Friday, May 16 - 7:00 – 10:00 p.m.