

**Syllabus for LS 140**  
**Property and Liberty**  
**Spring, 2007**  
**Professor Brown**

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

**Week of January 15** - 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](http://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 22** - 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?" 360-374.

**Reader** - Locke, Rousseau

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

Class 4 - Property as a public good - Rousseau's critiques of individual property rights - establishing the ongoing dispute.

**Week of January 29** - 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 5** - 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."

**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 Expansion across the North American Continent

**Week of February 12** - Property law and Third World development; 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.

**Internet** - [www.ild.org.pe/eng/mystery\\_english.htm](http://www.ild.org.pe/eng/mystery_english.htm)

Read chapter 1 of *The Mystery of Capital* by Hernando de Soto.

Class 9 - Hernando de Soto - *The Mystery of Capital*; American History and the critique of *The Mystery of Capital*.

Class 10 - Classical Slavery; Mercantilist and Capitalist Slavery in the United States.

**Week of February 19**- Slavery, continued; Late 19th and early 20th century Property Theorists and the Critique of Liberalism.

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

**Reader** - Henry George

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

Class 12 - Henry George and the logic of the single tax.

**Week of February 26** - Common ownership and property - Do communal use systems always lead to inefficiencies?

**PPL** – 119-169 - Garret Hardin, "The Tragedy of the Commons."  
James M. Acheson, "The Lobster Gangs of Maine."  
Harold Demsetz, "Toward a Theory of Property Rights."  
Robert Ellickson, "Property in Land."  
261-272 - Robert Axelrod, "The Evolution of Cooperation."  
**Reader** - Thorstein Veblen

Class 13 - Thorstein Veblen and the Anthropological Analysis of Property.

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

**Week of March 5** - 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."  
Christine Jolls, Cass R. Sunstein & Richard Thaler, "A Behavioral Approach to Law and Economics."

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 12** - Enforcing Property Rights; Midterm Examination

**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."

Class 17 - Critiques of Coase Theorem.

**Class 18 - March 15 - Take home midterm exam handed out in class.**

Property Rules v. Liability Rules.

**Week of March 20** - Racism and Property Law

**PPL** – 470-479 - Thomas C. Schelling, "Micro Motives and Macro Behavior."  
423-437 - Richard A. Epstein, "Covenants and Constitutions."  
**Reader** – Shelley v. Kraemer.

Class 19 - **March 21 - Take home exam due at beginning of class.**

Racism and restrictive covenants.

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

**Week of March 26** - Have a great Spring Break!!!

**Week of April 2** - 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/](http://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 9** - 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 16** - Environmentalism - The crucial test of takings; An introduction to public goods.

**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."

Class 25 - Group 4 - Environmental Conflict - Book - *A Good Forest for Dying* and movie Butterfly.

Class 26 - An introduction to Public Goods

**Week of April, 23** - The Internet and Public Goods - Should the Internet be a commons?

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

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

Class 27 - The Internet as a commons; The theory of Copyright and Intellectual Property.

Class 28 - Group 5 - Lawrence Lessig, *The Future of Ideas: The Fate of the Commons in a Connected World*.

**Week of April 30** - 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 v. Competition.

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

**Week of May 8** - Class 32 - What is the relation between Property and Liberty?