

GORGE MASON LAW SCHOOL

Professor Ben Depoorter

August –October, 2005

Economics of Property

CLASS MEETINGS

1. Monday, August 22
10.00-11.50
Room 348

2. Tuesday, August 23
10.00-11.50
Room 348

3. Monday, August 29
10.00-11.50
Room 348

4. Tuesday, August 30
10.00-11.50
Room 348

5. Monday, September 5
class cancelled
Labor Day

6. Tuesday, September 6
10.00-11.50
Room 348

7. Monday, September 12
10.00-11.50
Room 348

8. Tuesday, September 13
10.00-11.50
Room 348

9. Monday, September 26
10.00-11.50
Room 348

10. Tuesday, September 27
10.00-11.50
Room 348

11. Monday, October 3
10.00-11.50
Room 348

12. Tuesday, October 4
10.00-11.50
Room 348

13. Tuesday, October 11
10.00-11.50
Room 348

Two extra sessions will be scheduled near the end of the mid-semester.

READING LIST AND COURSE SYLLABUS

The course will be based in part on *excerpts* from the following texts. Some of these readings, not all of them, will be assigned.

1. Introduction to the Economic Analysis of Property Rights

- Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849-1851, 1855-1858, 1870-1873, 1877-1881, 1885 (1987)
- Albert O. Hirschman, *Rival Interpretations of Market Society: Civilizing, Destructive, or Feeble*, 20 J. ECON. LIT. 1463-1474 (1982).
- Carol. M. Rose, *Property as Story Telling: Perspectives from Game Theory, Narrative Theory, Feminist Theory*, 2 Yale J.L. & Humanities 37-57 (1990).

2. Why Grant Property Rights in Natural Resources?

- Harold Demsetz, *Towards a Theory of Property Rights*
- Richard Posner, *Efficiency of Property Rights*, in *Economic Analysis of Law*, 32-40 (4th ed. 1992).
- Duncan Kennedy & Frank Michelman, *Are Property and Contract Efficient?*, 8 HOFSTRA L. REV. 711-737 (1980).

3. The Trade off between Public and Private Property

- Garrett Hardin, *The Tragedy of the Commons*, 162 Science 1243-1248 (1968)
- Barry Field, *The Evolution of Property Rights*, 42 KYKLOS, pp. 319-345 (1989).
- James M. Acheson, *The Lobster Gangs of Maine*, in *The Lobster Gangs of Maine*, pp. 48-49, 73-76, 142-144 (1988).
- Saul Levmore, *Two Stories on the Evolution of Property Rights*, 31 J. LEGAL STUD. 421-451 (2002).

4. Division of Private Property Rights

- Michael Heller & Rebecca Eisenberg, *Can Patents Deter Innovation? The Anticommons in Biomedical Research*, 280 SCIENCE, 698-701 (1998).
- Ben Depoorter & Sven Vanneste, *Putting Humpty Dumpty Back Together*, *George Mason Law & Economics Research Paper No. 04-53*
- Francesco Parisi, *Entropy in Property*, 50 (3) AMERICAN JOURNAL OF COMPARATIVE LAW 595-612 (2002).

5. Possession & The Establishment of Private Property Rights

- Robert Sugden, *The Economics of Rights, Cooperation and Welfare*, in THE ECONOMICS OF RIGHTS, COOPERATION AND WELFARE, Ch. 5 Possession, pp. 87-97.
- Carol M. Rose, *Possession as the Origin of Property*, 52 U. CHI. L. REV. 73-88 (1985).
- Bouckaert, *Original Assignment of Property Rights*, in ENCYCLOPEDIA OF LAW & ECONOMICS (B. Bouckaert & G. De Geest, eds), pp. 1-13 (2000).
- Zerbe & Anderson, *Culture and Fairness in the California Gold Fields*, 61 (1) THE JOURNAL OF ECONOMIC HISTORY 114-139 (2001).
- *Pierson v. Post*, Supreme Court of New York, 1805. 3 Cai. R. 175, 2 Am. Dec. 264 (available at www.sfu.ca/~allen/Pierson%20v.%20Post.doc).
- *Popov v. Hayashi*, Superior Court of California, City and County of San Francisco, December 18, 2002 (available at news.findlaw.com/hdocs/docs/bonds/popovhayashi121802dec.pdf).

6. Conflicts of Property Rights and Externalities

- Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1-3, 6-9, 13-19 (1960).
- Robert D. Cooter, *The Cost of Coase*, 11 J. L. STUD. 1, 14-20 (1982).
- Calabresi & Melamed, *Property Rules, Liability Rules and Inalienability*, 85 Harv. L. Rev. 1089-1099, 1105-1127 (1972).
- Thomas W. Merrill, *Trespass, Nuisance and the Costs of Determining Property Rights*, 14 J. LEGAL STUD. 13-26, 35-48 (1985).
- Henry Smith, *Exclusion and Property Rules in the Law of Nuisance*, 90 Va. L. Rev. 965-990, 1045-1049 (2004).

8. Possession, Limitation and Adverse Possession

- Thomas W. Merrill, *Property Rules, Liability Rules and Adverse Possession*, 79 Nw. L. Rev. 1122-1128, 1133-1135, 1152-1153 (1984-1985).

9. Involuntary Transfers of Property Rights

- Frank I. Michelman, *Property, Utility and Fairness*, 80 HARV. L. REV. 1165-1169, 1214-1238, 1245, 1253-1258 (1967).
- Abraham Bell & Gideon Parchomovsky, *Givings*, 111 YALE L. J. 547, 549-568, 575-590 (2001).

10. Why Property Rights In Intellectual Creations?

- Peter Menell, *General Theories of Property Rights*, in *ENCYCLOPEDIA OF LAW & ECONOMICS* (B. Bouckaert & G. De Geest, eds), pp. 1-13 (2000). pp. 129-151, 155-161, 163-164.
- Robert Merges, *Property Rights and the Commons: The Case of Scientific Research*, in *Scientific Innovation, Philosophy, and Public Policy* (Frankel Paul, Miller and Paul, eds), pp.145-167 (1996).

11. Issues in Intellectual Property Rights: Digital Copyright

- William W. Fisher, *PROMISES TO KEEP*, pp. 1-10.
- Raymond Ku, *The Creative Destruction of Copyright: Napster and the New Economics of Digital Technology*, *U. Chi. L. Rev.* 263–275, 293-324.
- Depoorter, Ben, Vanneste, Sven and Van Hiel, Alain, "Gentle Nudges v. Hard Shoves in Copyright Law: An Empirical Study on the Conflict Between Norms and Enforcement" (June 2005). <http://ssrn.com/abstract=740184>

12. Examination

*Exact date will be announced next week

COURSE REQUIREMENTS & EVALUATION

The evaluation of this course consists of three parts: class discussions, a case presentation and a final examination. The emphasis will be on the final exam but students will be able to increase the final grade for the course by participating in class discussion and presenting a case analysis.

1. Class discussion

For each class there are a number of required readings. The readings will be covered in class and discussed. I will call upon students to answer questions and to provide summaries of the articles. For the purpose of class discussion and case presentations, the class is divided in two groups: group I consists of all students with a second name that starts with A-I. Group II is K-Z. Students will be "on call" every session for the paper that has been assigned to their group. Although everyone is encouraged to do as many readings and voluntarily participate in the class discussion, each group will be expected to come to class fully prepared with regard to the assigned paper.

2. Case Presentation

Each student is requested to present an economic analysis of a legal case involving a property rights dispute.

For the case presentation students are expected to:

1. Write and distribute a summary of the facts of the case to their fellow students on the case session. This will allow students to follow the factual structure of the case. The summary should be as clear and concise as possible.
2. Students should write and present an economic analysis of the case. This involves:
 - a. a qualification of the problem discussed in economic terms (e.g. problems of internalization, risk allocation, incentive problems, information problems, etc.)
 - b. an economic evaluation of the solution of the court, taking into account the future effects of the ruling
3. The text of the economic analysis (maximum 5 pages) must be handed to me before the presentation.
4. Each student has 10 minutes for his or her oral presentation which leaves 10 minutes to discuss it
5. Humorous remarks are not forbidden

3. Final Exam

Your final will be determined by your performance on the final examination. This examination will be based on the material presented in this reader and the contents of the class lectures and discussions. The exam will test your familiarity with the concepts and theories of economic analysis of property law. There will be a few theoretical questions but the main focus of the final will be the application of those theories to practical circumstances, mainly involving property right disputes and conflicts. The exam is closed book.

CASE ASSIGNMENTS

* WILL BE HANDED OUT NEXT WEEK