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Office Hours: Monday 4-6 PM, or by  
appointment.

## **Property Fall 2007**

### **Course Time and Location**

Monday and Wednesday, 6:00-7:50 PM;

### **Reading Materials**

**Textbooks:** Jesse Dukeminier, Mark Krier, Gregory Alexander, & Michael Schill, *Property*, (Aspen, 2006), 6 ed. (listed as “DK” in syllabus); Robert Ellickson, Carol Rose, and Bruce Ackerman, *Perspectives on Property Law*, (Aspen 2002), 3d ed. (listed as “ERA”). Available at GMU Book Store.

Several cases on the reading list are available on TWEN or you may download them from Westlaw or Lexis, if you prefer. There are two readings marked “Handout.” I will give these out to the students in class.

### **Grading**

Grades will be based on a combination of the final exam and class participation. Specifically, the course grade will be the final exam grade plus a bonus for good class participation worth up to 4 points on the final exam (which will be graded on a 100 point scale). The final exam will consist of essay questions and short identification questions. Further details of the final exam will be announced later in the semester. Class participation will be assessed on a combination of quantity and quality. Further details on class participation grading will be provided early in the semester.

### **Assignments**

Although I will try to stick to the schedule, we may occasionally fall behind. In such an unfortunate event, we will begin the next class with the next case or other reading on the syllabus, unless I say otherwise.

## **August 22: Introduction to Property**

Richard Posner, "The Economic Theory of Property Rights," ERA 54-63

Margaret Jane Radin, "Property and Personhood," ERA 8-20

## **August 27: Acquisition by Conquest and Capture**

*Johnson v. M'Intosh* DK 3-9

*Pierson v. Post* DK 17-21

*Ghen v. Rich* DK 23-27

*Keeble v. Hickeringill* DK 27-29

Garrett Hardin, "The Tragedy of the Commons," ERA 119-29

## **August 29: Creation of Property Rights and Acquisition by Creation**

Harold Demsetz, "Toward a Theory of Property Rights" DK 35-40

*International News Service v. AP* DK 51-55

*Cheney Bros. v. Doris Silk Corp.* DK 55-56

Michael Heller & Rebecca Eisenberg, "Can Patents Deter Innovation? The Anticommons in Biomedical Research," ERA 159-69

## **September 5: Acquisition by Find/The Right to Exclude**

*Armory v. Delamirie* DK 95-99

*Hannah v. Peel* DK 99-104

*McAvoy v. Medina* DK 105-106

*Jacque v. Steenberg Homes* DK 87-88

*State v. Shack* DK 88-90

## **September 10: Acquisition by Adverse Possession**

Background on Adverse Possession DK 112-14

*Van Valkenburg v. Lutz* DK 114-29

*Mannillo v. Gorski* DK 130-35

*Howard v. Kunto* DK 136-41

## **September 12: Acquisition by Gift/Theory of Property Rules**

*Newman v. Bost* DK 159-65

*Gruen v. Gruen* DK 166-72

Guido Calabresi & A. Douglas Melamed, "Property Rules, Liability Rules, and Inalienability Rules: One View of the Cathedral," ERA 233-240

## **September 17: Property Rights in the Body and Inalienability Rules**

*Moore v. Regents of the Univ. of California* DK 69-82

Richard Epstein, "Altruism and Valuable Consideration in Organ Transplantation," (Handout)

Leon Kass, "Organs for Sale? – Propriety, Property, and the Price of Progress." (Handout)

## **September 19: Estates and Fee Simple/Coase Theorem**

R.H. Coase, "The Problem of Social Cost," ERA 200-209

History and origins of estates DK 175-89

*White v. Brown* DK 190-96

## **September 24: Life Estates**

*Baker v. Weedon* DK 197-204

Defeasible Estates DK 206-208

*Mahrenholtz v. Cty. Bd. of School Trustees* DK 208-214

## **September 26: Future Interests and Trusts/ Concurrent Interests I**

Future Interests DK 225-38

Trusts DK 239-48, 262-66, 271-73

NOTE: The traditional rule against perpetuities will NOT be on the final exam.

Background to concurrent interests DK 275-79

## **October 1: Concurrent Interests II**

*Riddle v. Harmon* DK 280-84

*Delfino v. Vealencis* DK 292-99

*Spiller v. Mackereth* DK 300-303

*Swartzbaugh v. Sampson* DK 303-308

### **October 3: Landlord-Tenant Law I - Estates and Delivery of Possession**

Types of Leasehold Estates DK 361-64  
The Lease DK 373-77  
*Garner v. Gerrish* DK 365-67  
*Crechale & Polles, Inc. v. Smith* DK 369-72  
*Hannan v. Dush* DK 384-88

### **October 9 (Tuesday following Monday schedule): Landlord-Tenant Law II - Discrimination and sublet/assignment**

Fair Housing legislation DK 376-84  
*Ernst v. Conditt* DK 388-394  
*Kendall v. Ernest Pestana, Inc.* DK 395-401

### **October 10: Landlord-Tenant Law III - Landlord Remedies and Tenants' Rights**

*Berg v. Wiley* DK 403-409  
*Sommer v. Kridel* DK 410-418  
Landlord Remedies DK 419-22

### **October 15: Tenant Rights**

*Hilder v. St. Peter* DK 431-38  
Richard Posner, "Minimum Housing Standards," ERA 404-409  
*Chicago Bd. of Realtors, Inc. v. City of Chicago* DK 444-450  
Bruce Ackerman, "Regulating Slum Housing Markets on Behalf of the Poor" ERA 409-15.

### **October 17: The Contract of Sale**

The Statute of Frauds DK 472-74  
*Hickey v. Green* DK 474-78  
*Lohmeyer v. Bower* DK 479-84  
*Stambovsky v. Ackley* DK 484-88  
*Lembke v. Dagenais* DK 494-502

## **October 22: The Deed**

The Deed DK 513-18

*Brown v. Lober* DK 518-21

*Frimberger v. Anzelloti* DK 521-27

*Rockafellor v. Gray* DK 527-32

*Sweeney, Admin. v. Sweeney* DK 533-36

## **October 24: Mortgages and Recording**

Intro to Mortgages DK 541-46

*Murphy v. Financial Development Corp.* DK 546-53

*Bean v. Walker* DK 554-58

Recording DK 559-65

## **October 29: Recording Systems (continued)/Easements I**

Types of Recording Acts DK 580-82

*Bd. of Education v. Hughes* DK 589-93

*Guillette v. Daly Dry Wall* DK 592-96

Historical Background of Easements DK 668-72

## **October 31: Easements II**

*Willard v. First Church of Christ, Scientist* DK 672-77

*Holbrook v. Taylor* DK 677-80

*Van Sandt v. Royster* DK 682-89

*Othen v. Rosier* DK 689-95

*Brown v. Voss* DK 716-22

## **November 5: Real Covenants and Servitudes**

Covenants Running with the Land DK 740-46

*Tulk v. Moxhay* DK 746-50

*Sanborn v. McLean* DK 751-55

*Neponsit Property Owners Assoc. v. Emigrant Industrial Savings Bank* DK 755-66

## **November 7: Common Interest Communities**

Common Interest Communities DK 798-800

Richard Epstein, "Of Covenants and Constitutions," ERA 423-36

*Nahrstedt v. Lakeside Village Condominium* DK 800-809

*Mulligan v. Panther Valley Property Owners Assn.* DK 815-817

## **November 12: Land Use Controls**

History of zoning DK 821-28

*Euclid v. Amber Realty* DK 828-37

Structure of zoning laws DK 838-41

*Northwestern Distributors, Inc. v. Zoning Hearing Bd.* DK 841-49

## **November 14: Flexibility in Zoning/Exclusionary Zoning**

Variances DK 849-50

*Commons v. Westwood Zoning Bd.* DK 850-57

*Cope v. Town of Brunswick* DK 858-62

*Southern Burlington County NAACP v. Township of Mt. Laurel* DK 918-34

## **November 19: Takings I - Public Use (will have to be rescheduled because of conflict).**

Intro to Takings DK 941-44

*City of Oakland v. Oakland Raiders* DK 1112-13

*Berman v. Parker*, 348 U.S. 26 (1954) (TWEN)

*Hawaii Housing Authority v. Midkiff* 467 U.S. 229 (1984) (TWEN)

## **November 26: Takings I - Public Use (Continued)**

*Poletown Neighborhood Council v. City of Detroit*, 304 N.W. 2d 455 (Mich. 1981) (TWEN)

*County of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004) read pp. 769-72, 779-87 (N.W.2d pagination) (TWEN)

*Kelo v. City of New London*, 545 U.S. 469 (2005) (TWEN) (NOTE: Do not read the version in DK instead, which omits some important opinions)

**November 28: Takings II: Just Compensation and Regulatory Takings & Discussion of Final Exam.**

Physical Occupations and Regulatory Takings DK 959-60

*Loretto v. Teleprompter* DK 960-73

*Pennsylvania Coal v. Mahon* DK 980-990

Frank Michelman, "Property, Utility, and Fairness: Comments on the Ethical Foundations of Just Compensation Law," ERA 480-501

**December 3: Takings II/Conclusion – End of Class.**

*Penn Central Transp. Co. v. City of New York* DK 990-1005

*Lucas v. South Carolina Coastal Council* DK 1006-24

*Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* DK 1031-38

Remedies for takings violations DK 1038-41