Property
Fall 2016

Course Time and Location

Monday and Wednesday, 2:00-3:50 PM
Room

Reading Materials


Cases marked as being on TWEN can be accessed from the class TWEN site, directly from the syllabus there. These cases can also be accessed on Westlaw and Lexis, if you prefer. Several other items on the reading list are available on TWEN, under the “Course Materials” heading.

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 as much as about one half of a letter grade on your final grade for the semester.

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 and final exam grading will be provided during the course of 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. The same procedure applies if we have a class cancellation due to inclement weather.

**Recording**

I hereby authorize students to record sessions of this class, so long as the recordings are not used for any commercial purpose.

**August 22: Introduction to Property**

Margaret Jane Radin, “Property and Personhood,” ERS 6-15
Harold Demsetz, “Toward a Theory of Property Rights” DK 40-46

**August 24: Acquisition by Conquest and Capture**

*Johnson v. M’Intosh* DK 4-18
*Pierson v. Post* DK 18-24
*Ghen v. Rich* DK 26-29
*Keeble v. Hickeringill* DK 30-33

**August 29: Acquisition by Creation/Tragedy of the Commons**

*International News Service v. AP* DK 57-64
*Feist Publications, Inc. v. Rural Telephone Service Co.* DK 65-71
Garrett Hardin, “The Tragedy of the Commons,” ERS 99-107
Michael Heller & Rebecca Eisenberg, “Can Patents Deter Innovation? The Anticommons in Biomedical Research,” ERS 131-39

**August 31: Acquisition by Find**

*Armory v. Delamirie* DK 126-29
*Hannah v. Peel* DK 129-34
*McAvoy v. Medina* DK 135-36
Notes: DK 136-144


**September 7: Acquisition by Adverse Possession/Acquisition by Gift**

Background on Adverse Possession DK 144-50
*Mannillo v. Gorski* DK 164-69
*Howard v. Kunto* DK 170-75
*Newman v. Bost* DK 192-98
*Gruen v. Gruen* DK 199-206
September 12: The Right to Exclude/Theory of Property Rules

Jacque v. Steenberg Homes DK 104-106
State v. Shack DK 106-110

September 14: Property Rights in the Body and Inalienability Rules

Moore v. Regents of the Univ. of California DK 91-104
Richard Epstein, “Altruism and Valuable Consideration in Organ Transplantation,” (Handout/TWEN).

September 19: Estates and Fee Simple/Coase Theorem

History and origins of estates DK 209-226
White v. Brown DK 226-233

September 21: Life Estates and Defeasible Estates

Baker v. Weedon DK 235-43
Defeasible Estates DK 244-47
Mahrenholtz v. Cty. Bd. of School Trustees DK 248-56

September 26: Future Interests and Trusts/ Concurrent Interests I

Future Interests DK 276-95
Rule Against Perpetuities and its Reform DK 307-12, 328-35
Trusts DK 295-97
Jesse Dukeminier & James Krier, “The Rise of the Perpetual Trust” DK 335-39
NOTE: The traditional rule against perpetuities will NOT be on the final exam.
Background to concurrent interests DK 343-48

September 28: Concurrent Interests II

Riddle v. Harmon DK 348-53
Delfino v. Vealencis DK 362-68
Spiller v. Mackereth DK 372-74
Swartzbaugh v. Sampson DK 375-379

October 3: Landlord-Tenant Law I - Estates and Delivery of Possession
October 5: Landlord-Tenant Law II - Discrimination and sublet/assignment

Fair Housing legislation DK 453-55
Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, 135 S.Ct. 2507 (2015) TWEN
Ernst v. Conditt DK 465-72
Kendall v. Ernest Pestana, Inc. DK 473-78

October 11 (Tuesday observing Monday schedule): Landlord-Tenant Law III - Landlord Remedies and Tenants’ Rights

Berg v. Wiley DK 482-90
Sommer v. Kridel DK 492-502
Landlord Remedies DK 502-504

October 12: Tenant Rights/Statute of Frauds

Hilder v. St. Peter DK 515-25
Land Transactions DK 543-44 (briefly skim 544-58)
The Statute of Frauds DK 570-71

October 17: The Contract of Sale

Hickey v. Green DK 571-75
Lohmeyer v. Bower DK 577-81
Stambovsky v. Ackley DK 582-86
Lempke v. Dagenais DK 594-602

October 19: The Deed

The Deed DK 614-19
Brown v. Lober DK 620-623
Frimberger v. Anzelloi DK 623-27
Sweeney, Admin. v. Sweeney DK 635-38

October 24: Mortgages

Introduction to Mortgages DK 645-50
Murphy v. Financial Development Corp. DK 651-56
Bean v. Walker DK 687-92
The Mortgage Crisis and the Great Recession DK 659-61

October 26: Recording Systems/Easements I

Introduction to Recording DK 693-98
Types of Recording Acts DK 715-17
Guillette v. Daly Dry Wall DK 728-730
Historical Background of Easements DK 811-14
Willard v. First Church of Christ, Scientist DK 814-818

October 31: Easements II

Licenses DK 820
Holbrook v. Taylor DK 820-23
Van Sandt v. Royster DK 825-31
Othen v. Rosier DK 833-40
Brown v. Voss DK 865-70

November 2: Real Covenants and Servitudes

Covenants Running with the Land DK 892-98
Tulk v. Moxhay DK 898-902
Sanborn v. McLean DK 903-908
Neponsit Property Owners Association v. Emigrant Industrial Savings Bank DK 909-16
Shelley v. Kraemer DK 922-26

November 7: Common Interest Communities

Common Interest Communities DK 937-40
Richard Epstein, “Of Covenants and Constitutions,” ERS 361-72
Nahrstedt v. Lakeside Village Condominium DK 940-51
Mulligan v. Panther Valley Property Owners Assn. DK 961-64

November 9: Land Use Controls

History of zoning DK 967-71
Euclid v. Amber Realty DK 971-82
Structure of zoning laws DK 982-87
_Northwestern Distributors, Inc. v. Zoning Hearing Bd._ DK 987-95

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

Variances and Special Exceptions DK 996-97
_Commonwealth v. Westwood Zoning Bd._ DK 997-1001
_Cope v. Town of Brunswick_ DK 1001-1003
William Fischel, “Homeowners, Municipal, Corporate Governance, and the Benefit View of the Property Tax” ERS 380-388

**November 16: Takings I - Public Use**

The Power of Eminent Domain DK 1107-08
_City of Oakland v. Oakland Raiders_, 646 P.2d 835 (Cal. 1982) (TWEN)

**November 21: Takings I - Public Use (Continued)**

_Kelo v. City of New London_ DK 1111-27

**November 28: Takings II: What is a Taking?/Discussion of Final Exam**

Physical Occupations and Regulatory Takings DK 1131-32
_Loretto v. Teleprompter_ DK 1132-44
_Pennsylvania Coal v. Mahon_ DK 1153-61

**November 30: Takings II/Conclusion – End of Class**

_Penn Central Transp. Co. v. City of New York_ DK 1162-78
_Lucas v. South Carolina Coastal Council_ DK 1179-95
_Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency_ DK 1207-16
Remedies for Takings Violations DK 1218-21