

PROPERTY
Prof. Sapna Kumar, Spring 2012
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Overview

This course covers the basics of property law. We will examine what makes property rights distinctive; how property rights are created, transferred, and destroyed; and what the powers and duties of property owners are. This course will serve as a foundation for a variety of upper-division courses, including land use, environmental law, intellectual property, and commercial law.

Class will meet on Mondays, Tuesdays, and Wednesdays from 2:30pm to 3:45pm. By virtue of extending class from 3:37pm to 3:45pm, we will gain four extra classes worth of lecture time. Consequently, if I am sick, we will not need to make up class. If we get through the semester with extra classes, we will end early.

Required Reading: DUKEMENIER, KRIER, ALEXANDER & SCHILL, PROPERTY (6th ed.)

Note that this is NOT the most recent edition of the book! You can obtain your book for as little as \$4 shipped online. In addition to the casebook, I will post supplemental materials as needed.

Attendance Policy

A. Overview

You should attend class sessions and arrive on time. If you arrive late, out of respect for the other students and the class environment, please try to minimize the disturbance. The Law Center attendance policy requires attendance of 80% of all scheduled (or makeup) classes or a student risks being dropped from the class.

I will take attendance by distributing a roll sheet at the beginning of each class. Each student should personally initial by his or her name for that class session. It is your responsibility to insure that you have initialed the roll sheet before you leave the classroom each day. Students who do not sign the role sheet are deemed to have been absent. You may not sign the role sheet if you miss more than 15 minutes of class!

Please note that you are responsible for managing your absences from class and ensuring that your total number of absences does not exceed the threshold for the class. Even if you have notified me that you will be absent, that absence still uses one of your available absences. An absence is an absence, regardless of the reason, except for absences covered by the University and Law Center religious holiday policy. Exceeding the absences threshold has consequences, as detailed below.

B. Penalties

Students who exceed eight absences will be reported to Dean Alderman. Furthermore, if a student exceeds eight absences, the will go down 1/3 of a letter grade for each additional absence above eight.

Participation

I will call on students, both to present cases and to comment on the issues we are discussing. You are expected to be prepared for every class! If exceptional circumstances make it impossible for you to prepare for a particular class, leave me a note on the podium before class and I will not call on you that day. You may do this three times during the semester without any impact to your class participation grade.

Students with poor class participation will have their final grade dropped by 1/3 of a letter grade. The decision to drop a grade for participation is at my discretion and is non-negotiable. A drop in class participation can result from a combination of unpreparedness, not paying attention in class, and absences (even if you have less than eight absences). Exceptional students may have their grade raised by 1/3 of a letter grade, at my discretion.

Audio Recordings of Lectures

I will endeavor to record all of the lectures and make them available to you. These recordings are for class preparation purposes only, and they are not to be reproduced or redistributed in any manner.

Grading

There will be an open-book in-class final exam. The exam will be discussed later in the semester.

Reading Assignments

Part I: Who Owns Property?

In this part of the course, we will discuss how property gets acquired other than by purchase. We will consider first possession and subsequent possession of property. This part of the course will also introduce themes that we will see throughout the semester.

- **Acquisition by Discovery. pp. 3-17**

In *Johnson v. M'Intosh*, we will look at who holds title the land when there are competing interests. This case gives us perspective on the roots of our current property rights, raises some of the underlying principles animating property law, and allows us to see how the law itself is not based on absolutes.

- **Acquisition by Capture. pp. 17-27, 29 note 2, 33-35 (oil, gas, and water), 46-48 (notes 2-5).**

When there are competing pursuers of resources, who should get the resource? Should it be the party one who did all the work or the one with the resource in hand? *Pierson v. Post* and *Ghen v. Rich* address this issue in the context of wild animals. We will then see how the rule of capture can be applied to natural resources such as water and oil.

- **Acquisition by Creation. Acquisition by Creation. pp. 51-62, 65-69**

When someone creates a good, how far does their possession extend? The cases we cover in this class will introduce the different areas of intellectual property and will serve as a foundation for trademark law, copyright law, and patent law.

- **Acquisition by Find. pp. 95-107 (through n.3)**

- **Acquisition by Adverse Possession. pp. 112-115, 124-130**

When does a person acquire title to personal property that he or she found? The answer depends on whether the land where the object was found of a public or private nature and further depends on the relationship between the finder and the owner of the land.

- **Adverse Possession (cont.) pp. 115-124; 130-136**

Adverse possession is a principle whereby somebody who possesses the land of another for an extended period of time may be able to claim legal title to that land. Acquisition by adverse possession is grounded in the idea that a property owner should not sleep on his or her rights.

Part II: Eminent Domain and Zoning

Federal and state governments often takes aggressive actions to control property use by private individuals. Takings and zoning regulations are the strongest weapons that the government has to control land use. The use of these tools is widely debated.

- **The Power of Eminent Domain. pp. 941-52, Justice O'Connor dissent in *Kelo* (Pull this from Lexis or Westlaw and read: 545 U.S. 469, 494-468 (2006))**
Kelo provides a dramatic example of a local government utilizing eminent domain power to advance its own goals. Did the city accomplish what it intended to by condemning Susette Kelo's property? If so, at what cost?
- **Physical Occupations and Regulatory Takings. pp. 956-88**
 Often times, the government won't condemn an entire property. Rather, it will occupy part of the land or will pass regulations drastically affecting a property owner's use of the land. We will first look at how categorical rules (also known as "per se" rules) are used to address these situations.
- **Rules Based on Measuring and Balancing. pp. 988-1006**
 There are many situations where no categorical rule applies to the physical occupation or regulatory taking at issue. In these cases, courts have traditionally applied a balancing test.
- **A Third Categorical Rule: Regulations Creating Total Economic Loss. pp. 1006-38**
 In the 1992 case *Lucas v. South Carolina Coastal Commission*, the Supreme Court changed how we look at harm-preventing legislation that leads to a total economic loss. It created a new categorical rule for cases where regulations create total economic loss and limited an existing categorical rule.
- **Exactions. pp. 1038-49**
 Exactions are the concessions local governments require of property owners as conditions for the issuance of the entitlements that enable the intensified use of real property. In *Nollan v. Cal. Coastal Comm.* and *Dolan v. City of Tigard*, we will look at when such a concession will be considered a taking.
- **Exactions continued. pp. 1049-59**
Zoning: The Structure of Authority Underlying Zoning. pp. 828-41 (completely optional: pp. 821-28)
 States can exercise their police power to regulate development through zoning laws. Zoning regulates the size and shape of lots; the size, shape, and placement of buildings; and the type of activities that can take place on the lot. Houston is the largest city in the United States that is not subject to zoning restrictions.
- **Variances and Special Exceptions to Zoning. pp. 841-62**
 The effects of zoning ordinances can be quite harsh, as it affects the rights of individuals who purchased land with expectations regarding how they could use it. Variances and special exceptions are two methods of adding flexibility to zoning requirements.
- **Expanding the Aims of Zoning. pp. 862-80**
 Municipalities are increasingly regulating building aesthetics in order to protect

property values. This gives rise to the question of how broad zoning ordinances can be. Does the reasoning the court gives in *Stoyanoff* extend to housing regulations that discriminate against minorities? Poor people? Gays and lesbians?

Part III: The System of Estates

This section focuses on the divisions of ownership that are built into the title of real property. From feudalistic times to present, the law has developed various forms of ownership that allow for property interests to be divided across time and among multiple parties. Chapters Three and Four will focus on present possessory estates and future interests, respectively. Chapter Five will look at the relationship among concurrent property owners, and will briefly touch on marital property.

Part IV: Leaseholds

In this section, we will learn about the various types of leasehold estates and the rights and responsibilities of landlords and tenants. This material will serve as a foundation for an advanced course in landlord-tenant law.

Part V. Land Transactions.

In this section, we will study the process for buying and selling real property. We will also look at the various promises that are explicit and implicit in land sales and learn how the recording system works.

Part VI. Land Use Controls

Land use controls have arisen as a way of dealing with the externalities associated with land use conflicts. We have already discussed two of these mechanisms—zoning and regulatory takings. In the final part of the course, we will focus on nuisance law and servitudes.