

**Syllabus for LS 140  
Property and Liberty  
Fall 2018**

Professor Ben Brown

Reading assignments are from **Perspectives on Property Law** (PPL) or my Internet website:  
<http://www.benbrownshistoryandlaw.com/>

Some assignments require visiting other Internet sites.

**Thursday, August 23 – How Property Structures Personhood**

Readings:

**PPL** – 1-5, Erving Goffman, “*Asylums: Essays on the Social Situation of Mental Patients and Other Inmates.*”

6-15, Margaret Jane Radin, “*Property and Personhood.*”

Class 1 – Introduction to the course, explain the written/oral assignment. The Importance of Property; Property and Personhood; Effective v. Efficient Property Regimes.

**August 28 – August 30 – Origins of Property**

Readings:

**PPL** – 90-97, Papanek, “*To Each Less than She Needs*”

235 – 242, Ellickson, “*Unpacking the Household: Informal Property Rights Around the Hearth.*”

36-41, John Locke, “**Two Treatises of Government**”

29-35, William Blackstone, “**Commentaries on the laws of England.**”

**Website** – Locke, expanded reading

**Internet** – [www.pemberley.com/janeinfo/bridprej.html](http://www.pemberley.com/janeinfo/bridprej.html)

Read *Pride and Prejudice* Vol. 1, chap. 13 – Arrival of Mr. Collins, by following the hyperlink above;

In Vol. 1, chap. 13, find the hyperlink “**entailed away from your own children**” and read about entail;

Read Vol. 1, chap. 19 –Elizabeth rejects Mr. Collins’s proposal;

Read Vol. 1, chap. 22 – Charlotte Lucas accepts Mr. Collins’s proposal;

In Vol. 1, chap 22, find the hyperlink “**honourable provision for well-educated young women of small fortune**” for a discussion of why Miss Lucas accepted the proposal.

Class 2 – Feminism and Property in *Pride and Prejudice*; Property and family relations.

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

### September 4 - 6 – Property and Inequality

Readings:

**PPL** – 42-51, Hume, *A Treatise on Human Nature*.  
16-28, Carol M. Rose, “*Property as Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory.*”  
**Website** – Rousseau  
**Internet** – Property in Eve Online:  
<http://www.polygon.com/features/2014/2/24/5419788/eve-online-thrilling-boring>

Class 4 – Hume and Rose on who owns Property in an MMO-RPG?

Class 5 – Rousseau’s critiques of individual property rights – Establishing the ongoing dispute.

### September 11 - 13 – Property and Capitalism

Readings:

**Website** – Karl Marx, “*Communist Manifesto*;” John Stuart Mill, excerpt from *Principles of Political Economy*; Henry George, excerpt from “*Progress and Poverty*,” “*Ode to Liberty*”

Class 6 – Property and Markets – Smith and the Classical Economics, Karl Marx rejects Property.

Class 7 – 19<sup>th</sup> Century Critiques of Markets – John Stuart Mill and Henry George.

### September 18 - 20 – Colonialism

Readings:

**PPL** – 180-189, Carol M. Rose, “*Possession as the Origin of Property.*”  
321-335, Stuart Banner, “*Two Properties, One Land: Law and Space in 19th-Century New Zealand.*”

**Website** – Paul Finkelman, “*Batter Up*;” Trial court decision in Popov v. Hayashi; Treaty of Waitangi; Johnson v. McIntosh.

Class 8 – Possession as the basis of property. Colonialism and Real Property in New Zealand.

Class 9 – How the Indians Lost their land.

**September 25 – 27** – Colonialism, continued; Slavery and Property

Readings:

**PPL** – none

**Website** – Dawes Act; Somerset v. Stewart; Bryan v. Walton; State v. Mann; State v. Boyce.

**Internet** – John Belton O'Neill “Negro Law of South Carolina” chapter 2 pp. 17 -28 found at: <https://archive.org/details/negrolawofsouthc00onea>.

Class 10 – Using Property to destroy culture: Dawes Act.

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

**October 2 - 4** – Race and Property after Slavery

Readings:

**PPL** – 243-250, *Penalver and Katyal, Property Outlaws*.

Carol Rose, “*Property Law and the Rise, Life, and Demise of Racially Restrictive Covenants*,” Bell v. Maryland.

Class 12 – American Law of Slavery.

Class 13 – Group 2 – Christopher Schmidt, **The Sit-ins: Protests and Legal Change in the Civil Rights Era**.

**October 9 - 11** – Income Equality in the 20<sup>th</sup> Century

Readings:

**PPL** – 52-63, Milton Friedman, **Capitalism and Freedom**

83-90, John Rawls, **A Theory of Justice**

292-303, Albert O Hirschman, “Rival Interpretations of Market Society: Civilizing, Destructive, or Feeble.”

**Website** – William Graham Sumner, **What Social Classes Owe to Each Other**; Mark Roe, “*Backlash*.”

Thorstein Veblen, **Theory of the Leisure Class**.

**Internet** – John Cassady review of Thomas Piketty Capital in the Twenty-first Century:  
<http://www.newyorker.com/magazine/2014/03/31/forces-of-divergence?printable=true&currentPage=all#ixzz2wuzLPF2d>

Class 13 – Property and Status

Class 14 -Economic Inequality in the 20<sup>th</sup> Century – Roe, Rawls and Piketty

**October 16 - 18** – The Tragedy of the Commons –  
Do communal use systems always lead to inefficiencies?

Readings:

**PPL** – 99-106, Garret Hardin, “*The Tragedy of the Commons.*”  
112-120, Demsetz, “*Toward a Theory of Property Rights.*”  
139-148, Smith, “*Semi-Common Property Rights and Scattering in the Open Fields.*”  
107-112, James M. Acheson, “*The Lobster Gangs of Maine.*”  
225-234, Robert Axelrod, “*The Evolution of Cooperation.*”  
**Internet** – Elinor Ostrom youtube clip: [www.youtube.com/watch?v=ByXM47Ri1Kc](http://www.youtube.com/watch?v=ByXM47Ri1Kc)

**Class 15 – Midterm on October 16**

Class 16 –The Tragedy of the Commons; The Tragedy of the Commons Critiqued

**October 24 - 26** –Law and Economics Analysis and Property;  
Are Markets Rational?

Readings:

**PPL** – 173-80, Ronald H. Coase, “*The Problem of Social Cost.*”  
322-328, Richard A. Posner, **Economic Analysis of Law**  
181-90, Robert C. Ellickson, **Order without Law: How Neighbors Settle Disputes**  
190-200, Joseph Henrich, et al., “*Behavioral Experiments in 15 Small-Scale Societies*”  
**Internet** – Dan Ariely Ted Talk:  
[http://www.ted.com/talks/dan\\_ariely\\_asks\\_are\\_we\\_in\\_control\\_of\\_our\\_own\\_decisions.html](http://www.ted.com/talks/dan_ariely_asks_are_we_in_control_of_our_own_decisions.html)  
Dan Pink: [http://www.ted.com/talks/dan\\_pink\\_on\\_motivation.html](http://www.ted.com/talks/dan_pink_on_motivation.html)

Class 17 – Ronald Coase and Efficiency Analysis. Critiques of Coase Theorem.

Class 18 – **Group 3** – George Akerlof, Robert Shiller, **Phishing for Phools.**

**October 30 – November 1 – Government Regulation and Property Rights**

Readings:

**PPL** – 410-418, Joseph L. Sax, “*The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention.*”

**Website** – Pennsylvania Coal Co. v. Mahon, Just v. Marinette County.

Class 19 – How severely can the government regulate the use of property before it must pay compensation to the owner? Government Regulation and the Environment.

Class 20 – **Group 4** – Patrick Beach – **A Good Forest for Dying.**

**November 6 - 8 – Environmentalism and Eminent Domain**

Readings:

**Website** – Kelo v. New London, Conn.; Charles Reich, excerpt from “*The New Property;*” Goldberg v. Kelly.

Class 21 – Eminent domain and local control of environmental measures. Oregon Prop 37 and Prop 49, Post-Kelo propositions.

Class 22 – Charles Reich, “*The New Property.*” Government entitlements as Property

**November 13 - 15 – The Internet and Public Goods –  
Should the Internet be an open-access commons?**

Readings:

**PPL** - 131-139, Michael A. Heller and Rebecca S. Eisenberg, “Can Patents Deter Innovation? The Anticommons in Biomedical Research.”

419-428, Robert P. Merges, “Property Rights Theory and the Commons: The Case of Scientific Research.”

Class 23 – An Introduction to Public Goods; Patents, Copyright and Intellectual Property.

Class 24 – **Group 5** – Lawrence Lessig, **Remix.**

**November 20 – Homelessness**

Readings:

**Internet** – Denver’s Road Home program: [www.denversroadhome.org](http://www.denversroadhome.org)

Class 25 – Homelessness and Community

**Thursday, November 22 – Happy Thanksgiving**

**November 27 – November 29** – Organizing the Internet and Internet Piracy

Readings:

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

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

Class 26 – Organizing the Internet – Cooperation versus Competition. Is Internet piracy a social good or a social evil?

Class 27 – Net Neutrality; Review for Final

**Final Exam – Wednesday, DECEMBER 12, 2018, 8-11 a.m.**