

PROPERTY LAW (Section A)

Spring 2009 Syllabus

Professor Wood

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346-3842

Class time:

Mon. & Wed. 2:30 – 4:20, Room 142

Reading materials:

Singer, Property Law: Rules, Policies, and Practices, Little, Brown and Company (4th Ed.).

Wood, Property Materials Supplemental Packet

Assignments:

Students are responsible for completing all reading assignments **prior to the class session**, and also for completing all problems contained in the reading assignments (or distributed in class).

Attendance:

Attendance is mandatory, and **unexcused absences will affect the final grade received in the course**. Students will be expected to maintain records of attendance and submit a final report at the end of the semester. Students are allowed two unexcused absences, but every unexcused absence beyond that **will** affect the student's grade by lowering the overall score in the class by 5% (for each absence). Excused absences will not affect the grade. Excused absences include absences due to illness, compelling family needs, work demands and job interviews. Attending conferences, doing outside extracurricular work and vacationing are **not** excused absences.

Grade:

The final grade will be based on an exam. As noted above, attendance can affect the final grade.

TOPICS/ASSIGNMENTS

PART I: SOVEREIGN PROPERTY RIGHTS IN LAND AND NATURAL BOUNTY

Class #1

Topic:

1. Overview of the course
2. Introduction to property law
3. Property rights between sovereigns

Readings:

Text: A Guide to the Book, xxxviii-1

Bill McKibben, "Remember This: 350 Parts Per Million,"

<http://www.washingtonpost.com/wpdyn/content/article/2007/12/27/AR2007122701942.html>

(posted on Blackboard).

Ross Gelbspan, "Beyond the point of no return,"

<http://gristmill.grist.org/story/2007/12/10/165845/92> (posted on Blackboard).

Class #2

Topic:

1. Sovereign property rights
 - a. Original Indian title
 - b. Indian treaty rights
2. Sovereign duty to protect resources

Readings:

Text, pp. 3-4, 8-20 (note: skip the facts of the *Johnson* case on pp. 4-8, as they are unduly dense and unnecessary to the discussion; begin the case with Justice Marshall's opinion on page 8)

Washington v. Washington State Commercial Passenger Fishing Vessel Assoc. (supp. materials)

Oposa v. Factoran (supp. materials)

Class #3

Topic:

1. Sovereign property rights, continued: public rights to crucial resources
 - a. public trust doctrine
 - b. beach access rights

Readings: (note: these readings will be discussed during class #4 as well)

Illinois Central Railroad (supp. materials)

Lake Michigan Federation v. United States (supp. materials)

Marks v. Whitney (supp. materials)

Matthews v. Bayhead Improvement Association, text, pp. 164-73

Stevens v. City of Cannon Beach (Oregon Supreme Court opinion, and U.S. Supreme Court denial of cert., dissenting opinion) (supp. materials)

Class #4

Continue discussion of readings from Class #3

Prepare problem #1 (distributed in prior session) for in-class exercise

(Short video clip for exercise)

PART II. PRIVATE PROPERTY RIGHTS IN LAND

Class #5

Topic:

1. Reliance, possession, use, and title, as basis for property rights in land
 - a. Relativity of title
 - b. Adverse possession

Readings:

Text, pp. 76-79, 179-184, 187-198, skim 202-207 (read to top of page; do not prepare problems in book)

Prepare problems on handout for discussion

Class #6

Topic:

1. Easements in property: implied
 - a. easements by estoppel
 - b. constructive trusts
 - c. prescriptive easements
 - d. easements by prior use
 - e. easements by necessity

Readings:

Text, pp. 320-323 (to middle of page) , 207-214 (do not do problems), 332-344 (end reading at top of page; do not do problems)

Class #7

Topic:

1. Easements in property: created
 - a. Express easements
 - b. Conservation easements

Readings:

Text, pp. 344-365

Video clip on conservation easements

PART III: COROLLARY RIGHTS AND RESPONSIBILITIES ATTENDING PUBLIC AND PRIVATE PROPERTY OWNERSHIP

Class #8

Topic:

1. Public policy limits on the right to exclude
2. Trespass

Readings:

Text, pp. 103-115

Prepare in-class problem

Class #9

Topic:

1. Diffused water
2. Nuisance

Readings:

Text, pp. 227, 232-237, 271-282, 284-285, 302-308 (through note 1)

Class #10

Practice exam on nuisance

No readings (you may find it helpful to skim pp. 309-316 for practice exam preparation)

PART IV: DIVIDED AND SHARED PROPERTY INTERESTS**Class #11**

Topic:

1. Intro to the estates system and future interests
2. Rules of construction

Readings:

Text, pp. 493-496, 505-511 (include 6.3.2.3)

Memorize pp. 514-515 (section 6.3.6 summary)

Class #12

Assignment:

1. Problem sets 1, 2, 3 (to be handed out in class)

Class #13

Topic:

1. Rules pertaining to future interests
 - a. Rule against creation of new estates
 - b. Presumption against forfeitures
 - c. Doctrine of Worthier Title
 - d. Rule in Shelly's Case
 - e. Rule against perpetuities (RAP)

Readings:

Text, pp. 511-513 (to top of page), 515 (section 6.4.1), 528 (section 6.5.1, but not the case), 529-541

Prepare problems for class (problem sheet distributed in class in advance of this session)

Class #14

Assignment:

1. Continue discussion of problems

Class #15

Assignment:

1. Continue discussion of problems

Class #16

Topic:

1. Rule against waste
2. Varieties of common ownership
3. Joint tenancy and tenancy in common

Readings:

Text, pp. 553-556 (skim only; no class discussion of case)

Text, pp. 569-84

Class #17 – open session – materials to be announced

Class #18

Topic:

1. Landlord-tenant relations

- a. Types of leaseholds
- b. Rent conflicts
- c. Occupancy conflicts
- d. Right to habitable premises

Readings:

Text, pp. 639-642 (top of page); 658 (section 8.2) -662; 667-669 (notes); 679-683; 701-718

PART V: PRIVATE AGREEMENTS PERTAINING TO PROPERTY

Class #19

Topic:

1. Covenants and equitable servitudes
 - a. basic elements
 - b. application to subdivisions

Readings: (note: this reading will be discussed in the next session as well)

Text, pp. 365-367; 376-393 (don't do problem); 394-404

Note: this reading is difficult; the summary of the Kotseas case on p. 376 provides the platform for the book's review of the elements of covenants and servitudes. Try to isolate and summarize the elements in preparation for class.

Class #20

Topic:

1. Covenants and equitable servitudes, continued
2. In-class exercise on problems distributed in last session

PART VI: PROTECTION OF PUBLIC RESOURCES AND THE TAKINGS INTERFACE OF SOVEREIGN AND PRIVATE PROPERTY RIGHTS

Class #21

As the Earth warms: changing conceptions of property rights

Video

Round table discussion; readings to be provided

Class #22

Topic:

1. Land use regulation: a brief overview (note: this session will have a lecture format)
 - a. Policy and planning
 - b. site specific applications
 - i. Prior nonconforming uses
 - ii. Variances
 - iii. Vested rights

Readings:

Text, pp. 911-15; 922-931

Class #23

Topic:

1. The power of the state and its limits: takings
 - a. introduction
 - b. public use requirement
 - c. physical invasion takings

Readings:

Text, pp. 953-958; 1051-1065

video segment on Kelo

Class #24

Topic:

1. The power of the state and its limits: takings continued
 - a. ad hoc test – Penn Central
 - b. per se test -- Lucas v. South Carolina Coastal Council

Readings:

Text, pp. 959-969 (through note 5 only); 991-1004

Discussion questions (handed out in class)

video segment on Lucas

Class #25

Topic:

1. The power of the state and its limits: Lucas applied

- a. Post enactment purchasers: Palazzolo
- b. nuisance and public trust exceptions

Readings:

Supp. Materials: Palazzolo, Just, and Esplanade cases

Discussion questions

Class #26

Topic:

1. The power of the state and its limits: takings continued
 - a. Hybrid Takings, Nollan/Dolan

Readings:

Nollan v. California Coastal Commission (supp. materials)

Text, pp. 1026- 1036 (Dolan, skim only)

Discussion questions

Class #27

Topic:

1. The power of the state and its limits: takings continued
 - a. partial takings: Tahoe Sierra
 - b. state takings measures; Oregon Measure 37
 - c. class exercise

Readings/Assignment:

Tahoe Sierra (supp materials)

Prepare class exercise

Class #28

Class review; no assignment