

JURISPRUDENCE: THE CONCEPT OF PROPERTY

J. Jones/Spring 2008 v.4

Class Hours: T/Th 6:00-7:30 Seminar Room A

Office: 236 LRC

Telephone: (503) 768-6921

E-mail: jdj@clark.edu

Texts: Chused, A Property Anthology, 2nd ed. (Cincinnati: Anderson Publishing Co., 1997) [*TB*]
Course Packet [*CP*] Handouts [*H*] Reserves [*R*] Weblink [*WL*]

Grading: Attendance and class participation are mandatory. While there is no grade for attendance or participation, I reserve the right to lower final grades or require withdrawal from the course for poor attendance or the lack of preparation for or engagement in the course. There will be two short writing assignments in parts I and II of the course to get students in the habit of thinking and writing jurisprudentially concerning property. Together, the short writing assignments are worth 30% of the final grade. There will also be a longer, doctrinal analysis-type paper or take-home examination worth 70% of the final grade. The final will be distributed by e-mail on Monday April 21. 2 hard copies of final will be due in my office (236 LRC) by Noon on Monday May 5.

I. A FRAMEWORK FOR PROPERTY JURISPRUDENCE

Jan 15: Introduction to Jurisprudence

- Fuller, The Case of the Speluncean Explorers [WL]

Jan. 17: Property as Storytelling

- Rose, Property as Storytelling [CP]

Jan. 22: Property Stories: Conservatism

- Burke, Reflections on the Revolution in France [CP]
- Hume, A Treatise on Human Nature [CP]

Jan. 24: Property Stories: Libertarianism

- Locke, Two Treatises of Government [CP]
- Nozick, Anarchy, State and Utopia [TB 542-46]

Jan. 29: Property Stories: Liberalism

- Rawls, A Theory of Justice [TB 565-68]
- Reich, The New Property [TB 136-45]

Jan. 31: Property Stories: Critiques of Private Property

- Marx, Economic and Philosophic Manuscripts of 1844 [CP]

II. THE CONCEPT OF PROPERTY: FROM PHYSICAL POSSESSION TO “BUNDLES OF STICKS”

Feb. 5: Property as Absolute Dominion Over Things

- Justinian, The Institutes, Book II, Ch. I, v. 1-16 [skim rest] [CP]
- Blackstone, Commentaries on the Laws of England, Book II, Ch. I [CP]
- Pierson v. Post [H]

Feb. 7: Property as an Effective Declaration of Intent to appropriate

- Rose, Possession as the Origin of Property [TB 9-15]
- Melville, Fast-Fish and Loose-Fish [CP]
- Brumagin v. Bradshaw [H]
- Swift v. Gifford [H]

-----No Class Feb. 12/14-----

Feb. 19: Property as a Set of Legal Relations

- Wesley Hohfeld, Fundamental Legal Conceptions Applied to Judicial Reasoning [CP]
- National Telegraph News Co. v. Western Union Telegraph Co. [H]
- International News Service v. Associated Press, 248 U.S. 215 [H]

Feb. 21: Property as About Value Rather than Physicality

- Honore, Ownership [H]
- Popov v. Hayashi [H]

Feb. 26: Critiques of the “Bundle of Sticks” Notion of Property

- Vandavelde, The New Property of the Nineteenth Century [TB 84-88]
- Grey, The Disintegration of Property [TB 534-542]
- Hoppe & Block, On Property and Exploitation [WL]

III. PROPERTY AND INDIVIDUAL RIGHTS

A. PROPERTY, CONTRACT AND LABOR

Feb. 28: Contract Labor as a Property Interest

- Taft, The Right of Private Property [TB 68-72]
- Lochner v. New York [H]
- Muller v. Oregon [H]

Mar. 4: Access to Wage Labor Markets

- Adkins v. Children's Hospital [H]
- West Coast Hotel v. Parrish [H]
- Upton v. JWP Businessland [H]

Mar. 6: Labor as an Extra-Contractual Source of Property

- Singer, The Reliance Interest in Property [TB 568-577]
- Local 1330 v. US Steel [H]

B. PROPERTY, SHELTER AND THE RIGHT TO EXCLUDE

Friday Mar. 7: Make-Up Class 3-5PM (Smith)

The Problem of Homelessness

- Waldron, Homelessness and the Issue of Freedom [CP]
- Pottinger v. Miami [H]

Where May Criminals Live?

- Doe v. Miller [H]
- Mulligan v. Panther Valley Property Owners [H]

Mar. 11: Illegal Immigrants and Housing

- Lozano v. City of Hazelton [H]
- Illegal Immigration and Relief Act [H]

C. PROPERTY IN BODIES

Mar. 13: Alienability of Body Parts

- Radin, Market-Inalienability [TB 584-599]
- Moore v. Regents [H]
- Who Owns Your Body Parts? [H]

Mar. 18: Rights to Use Others' Bodies: Humans

- Thompson, In Defense of Abortion [WL]
- McFall v. Shimp [H]
- Curran v. Bosze [H]
- Creating a Child to Save Another [H]
- Save a Dying Child: Have Another One [H]

Mar. 20: Rights to Use Others' Bodies: Animals

- CRAP!

Apr. 1: Rights to Use Others' Bodies: Animals

- Decoux, Pretenders to the Throne [H]

IV. PROPERTY, SOVEREIGNTY AND LAND USE REGULATION

A. STATE ALLOCATION OF PROPERTY

Apr. 3: Formal Acquisition of Property

- Cohen, Dialogue on Private Property [TB 97-104]
- Johnson v. M'Intosh [H]
- The Antelope [H]

Apr. 8: Informal Acquisition of Property

- Kettles, Formal vs. Informal Allocation of Land in a Commons [CP]

Apr. 10: Role of Property Allocation in Developing Nations

- Hernando de Soto, The Mystery of Capital (excerpt)
- Hernando de Soto, The Other Path (excerpt)
- Hernando de Soto, Video: Breathing New Life Into Dead Capital

B. TAKINGS AND LAND REDISTRIBUTION

Apr. 15: Taking from A to give to B? U.S. Takings Doctrine

- Paul, The Hidden Structure of Takings Law [TB 519-532]
- Hawaii Housing Authority v. Midkiff [H]
- Kelo v. New London [H]

Apr. 17: Taking from "Class A" to give to "Class B?" Mass Land Reforms and Restitution

- Shaw, Nozick in Zimbabwe [CP]
- Cowen, How Far Back Should We Go? Why Restitution Should Be Small [CP]

V. PROPERTY AND TORT: NUISANCE LAW

Apr. 22:

- Calabresi and Malamed, Property Rules, Liability Rules and Inalienability [TB 379-386]
- Baker v. Weedon [H]
- Melms v. Pabst Brewing Co. [H]

Apr. 24:

- Boomer v. Atlantic Cement Co. [H]
- Farber, Reassessing Boomer: Justice, Efficiency and Nuisance Law [CP]