PROPERTY I  
Fall 2008  
Professor Nestor Davidson

Course Information

Class Meetings. This class meets Tuesdays, Thursdays, and Fridays from 10:45 a.m. to 11:40 a.m. in Room 206.

Contact Information. My office is Room 443, my office phone is (303) 735-5294, and my e-mail is nestor.davidson@colorado.edu.

Office Hours. My office hours are Thursdays from 1:00 p.m. to 3:00 p.m. and by appointment.

TWEN. I have set up a TWEN site for this class. I will use the site to distribute announcements, make changes in the assigned reading, and post materials. You are also able to post messages to the site. Please check the site regularly – you are responsible for materials and announcements posted there.

Some University Policies. Please note the following:

Religious Observances. Campus policy regarding religious observances requires that faculty make every effort to reasonably and fairly deal with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. See full details at http://www.colorado.edu/policies/fac_relig.html. If you need accommodation for religious observances, please let me know in advance.

Individuals with Disabilities. If you qualify for accommodation because of disability please submit a letter to me from Disability Services so that your needs may be addressed. If you have any questions about accommodations for a disability, please contact Assistant Dean Lorenzo Trujillo (303-492-6682, lorenzo.trujillo@colorado.edu).

The Honor Code. Read it, understand it, and follow it. See http://www.colorado.edu/Law/about/honorcode/index.htm.

Course Materials

Required Materials. The primary text for the course is Jesse Dukeminier et al., Property (6th ed. 2006) (“CB”). From time to time, I will distribute supplemental materials on TWEN.

Reserve Reading. If you would like more background on a particular topic, you may wish to consult the following materials on reserve:


**Course Requirements**

*Final Examination.* There will be a three-hour final exam for this course. The exam will be limited open-book, which means that you may bring only assigned materials and any material you have created. The exam will be based on the lectures, class discussions, and assigned materials (whether discussed in class or not).

*Assignments.* From time to time, I will assign short document-review exercises. These will be ungraded, but their completion is required (I reserve the right to decrease your final grade in the event you fail to complete an assignment). A document-review exercise will be a part of the final.

*Classroom Participation.* In-class participation is a vital aspect of this course.

I will pass around a seating chart on Thursday, August 28th. Please sit where you would like to remain for the rest of the semester on that day.

To encourage your participation in our discussions, I will be following a variation of the “present and prepared” policy. Starting on Friday, August 29th, I will bring a copy of the seating chart to each class, dated for that day. If you are present and prepared to be called on, circle your name on the chart when you arrive—you will then be counted as “present and prepared” for that day and I may call on you.

If you **not** are “present and prepared” for 80% or more of our regularly scheduled classes, your grade for the semester will be lowered by three points (or more in egregious cases). Conversely, I reserve the right to increase your final grade for superior classroom participation, both when I call on you and for voluntary participation.

To be “prepared” you must have read the assignment and have made a good faith effort to think through the materials. You do not have to have perfect answers to my questions, but you must be willing to discuss the assigned reading (and prior readings) and work through the questions with the class. If you do sign up as prepared, I call on you, and in my opinion you are not prepared, I reserve the right to lower your final grade. (Not that any of you would do so, but if you have someone else sign you in and you are not present, I will dock your grade as well.)

Please sign up before class begins. If you arrive late—but not more than 10 minutes after class begins—you may still sign up but that will require you to interrupt the class, so please be punctual.
Faculty assistant Kristen Vannoy, who works in Room 435, will keep a running tally of present and prepared sign-ups. If you want to check on the number of classes you have signed up for as “present and prepared,” please see Ms. Vannoy.

Let me know if you have any questions about this policy.
Syllabus

Note that I will post the readings for each week on TWEN.

I. Introduction: Conceptions of Property

For class on Tuesday, August 26th, please read the excerpts posted on TWEN from Erving Goffman, Asylums: Essays on the Social Situation of Mental Patients and Other Inmates (1961) and from Bruce A. Ackerman, Private Property and the Constitution (1977) [both Supplemental Reading (“Supp.”)].

II. Acquiring Legal Rights to Property by Other Than Voluntary Transfer

A. Capture

1. The Rule of First Possession

   CB 11-15 (notes 3 and 4)

   CB 17-32 (to prior to the Notes, Questions and Problems)

2. Consequences of the Rule of First Possession – The Tragedy of the Commons and Utilitarian Theories of Property Rights

   CB 32-50

3. The Right to Include, the Right to Exclude

   CB 86-93

B. Creation

1. Property in Information, Creative Works, Cyberspace, and Personas

   CB 51-69

2. Property in One’s Person

   CB 69-86

3. Cultural Property and a Note on Collective Creation

CB 156-157

C. Finding and Gifts
CB 95-99, 105-112; 157-159

D. Adverse Possession
CB 112-144

III. Dividing Property Rights

A. Introduction: The Estates System

Note that I will be distributing a Study Aid to accompany the Estates and Future Interests materials.

1. History and Background

Skim \(^1\) CB 173-182

2. “Complete” Ownership - Fee Simple Absolute

CB 182-186

B. Dividing Property Rights In Time

1. Introduction to “Lesser” Estates: The Fee Tail, The Life Estate, Leasehold Estates, and The Rule Against Restraints On Alienation

CB 186-190 (through the introductory note), 195-196 (note 1); 196-197 (note on Valuation); 203-206

2. Defeasible Estates

CB 206-208; 213-215; 220-224

3. Future Interests

CB 225-226

a. In the Transferor

\(^1\) Where I indicate you should skim material, you should read the material, but we will not work through it substantively in class nor will it be tested on the final.
b. *In Transferees*

CB 227-239

c. *Rules Furthering Marketability – the Example of the Rule Against Perpetuities*

Skim CB 240-244

CB 244-262

Skim CB 262 (starting at b. The Perpetuity Reform Movement) - 274

d. *Relations Between Present and Future Owners*

CB 201-203

C. *Dividing Property Rights Concurrently*

1. *Common-Law Concurrent Interests*

CB 275-289, 291, 298-303

2. *Marital Interests*

a. *The Common-Law Marital Property System*

CB 310-320

b. *Termination of Marriage by Divorce or Death*

CB 321-338

c. *The Community Property System*

CB 338-344

d. *Rights of Domestic Partners*

CB 344-359
D. Dividing Ownership and Control

1. Corporate Ownership

Excerpt from Adolf A. Berle, Jr. & Gardiner C. Means, The Modern Corporation and Private Property (1932) [Supp.]

2. Other Entity Forms – Partnerships and Limited Liability Companies


3. Trusts

CB 239-240

4. Ownership and Administration: Common-Interest Communities, Condominiums and Cooperatives

CB 798-819

5. Timeshares

Excelsior Springs v. Elms Redevelopment Corporation [Supp.]

IV. The Uses of Property

A. Income and the Provision of Shelter and Other Space – Leases

1. Leasehold Estates, Leases, and Delivery of Possession

CB 363-376, 384-388

2. Selection of Tenants and Fair Housing

CB 376-384


3. Subleases and Assignments

CB 388-402
4.  *Landlord Remedies*
   CB 403-421, 441-444

5.  *Landlord Duties*
   CB 421-431, 440-441

B.  *Equity and Acquisition By Voluntary Transfer – Purchase and Sale*

1.  *The Mechanics of the Contract of Sale*
   CB 451-454
   Skim CB 463, 466-472
   CB 472-484
   Skim CB 484-493
   CB 494-513
   Model Contract to Buy and Sell Real Estate [Supp.]

2.  *Deeds*
   513-532

C.  *Security – Mortgaging Property*

1.  *The Uses of Security and Collateral*
   Excerpt from Hernando de Soto, *The Mystery of Capital* [Supp.]

2.  *The Mechanics of Mortgaging Property*
   CB 541-554

D.  *The Underpinnings of Sales and Mortgaging of Real Property – Title Assurance*

1.  *The Recording System*
   CB 559-565
   Skim CB 574-580
2. *Recording Acts, Chain of Title, and Notice*
   
   CB 580-614

3. *Registration of Title*
   
   Skim CB 615-623

4. *Title Insurance*
   
   CB 623-635