PROPERTY II
Spring 2005
Professor Nestor Davidson

Course Background and Syllabus

Course Information

Class Meetings. Class meets Monday/Wednesday from 11:00 a.m. to 11:50 a.m. in Room 156.

Contact Information. In case you never found me last fall, a reminder: my office is Room 306, my office phone is (303) 735-5294, and my e-mail is nestor.davidson@colorado.edu.

Office Hours. My office hours this spring will be Thursdays from 3:00 p.m to 5:00 p.m. and, as always, by appointment.

Some University Policies. Please continue to note the following:

Religious Observances. If you need accommodation for religious observances, please let me know in advance.

Individuals with Disabilities. If you need accommodation for a disability, please contact Assistant Dean Lorenzo Trujillo (303-492-6682, lorenzo.trujillo@colorado.edu), or Director of Disability Services Cathy Donahue (303-492-5614, donahuec@colorado.edu, www.colorado.edu/disabilityservices).

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

Course Materials

Required Materials. We will continue to use Jesse Dukeminier and James Krier, Property (5th ed. 2002) (“CB”). Supplements will be posted on TWEN as they were last Fall.

Reserve Reading. The reserved reading will continue to be:

Joseph William Singer, Introduction to Property (2001);
Herbert Hovenkamp & Sheldon F. Kurtz, The Law of Property: An Introductory Survey (5th ed. 2001);
Robert C. Ellickson, Carol M. Rose & Bruce A. Ackerman, Perspectives on Property Law (3d ed. 2002);
The American Law Institute, A Concise Restatement of Property (L. Liebman ed. 2001);
Course Requirements

Final Examination. There will be a two-hour final exam for this course. As with last fall’s exam, the exam for Property II will be limited open-book, and will be based on the lectures, class discussions, and assigned materials (whether discussed in class or not).

Classroom Participation. Your participation in class is still required and I will continue to reserve the right to increase or decrease your final grade by one step (e.g., from a B+ to an A- or vice versa) based upon your class participation. If you are not prepared to participate in class on a given day, you know the drill: please notify me in advance by dropping me a note at the lectern before class begins.
Syllabus

I. An Introduction to Regulating Property and the Alternative of Bargaining Solutions
   A. Market Failure and Justifications for Regulation
      Excerpt from Stephen Breyer, Regulation and Its Reform [Supp.]
   B. The Alternative of Coasian Bargaining
      Excerpt from Ronald Coase, The Problem of Social Cost [Supp.]

II. Regulating Rental Housing
   A. The Market for Housing
      Excerpt from John I. Gilderbloom and Richard P. Applebaum, Rethinking Rental Housing (1988) [Supp.]
      Excerpt from Harvard University’s Joint Center for Housing Studies, The State of the Nation’s Housing 2004 [Supp.]
      Excerpt from National Low Income Housing Coalition, Out of Reach 2004 [Supp.]
   B. Regulating the Quality of Rental Housing
      CB 533 – 544
   C. Regulating the Price of Rental Housing
      CB 549 – 555
      Excerpt from Anthony Downs, A Re-Evaluation of Residential Rent Controls (1996) [Supp.]
   D. A Taxonomy of Other Governmental Approaches
      Excerpt from John C. Weicher, Privatizing Subsidized Housing (1997) [Supp.]
III. Regulating Land Use

A. Judicial Land Use Controls: Nuisance
   1. Introduction to the Substantive Law
      CB 747 – 755
   2. Remedies (and More on the Substantive Law)
      CB 755 – 779

B. Private Land Use Controls: Servitudes
   1. Easements
      CB 781 – 824, 833 – 858
   2. Covenants Running with the Land
      CB 858 – 893, 911 – 924

C. Legislative Land Use Controls: Zoning
   1. Introduction
      CB 951 - 974
   2. The Non-Conforming Use
      CB 974 – 984
   3. Flexibility in Zoning
      CB 984 – 1010
   4. Expanding and Cabining the Reach of Zoning
      CB 1010 – 1020, 1028 – 1032 (notes following Anderson), 1064 – 1091

D. Constraints on Governmental Power to Regulate Property
   1. Eminent Domain
      CB 1093 - 1097
2. Public Use

CB 1097 – 1108

Supplemental materials on *Kelo v. New London* to be posted.

CB 1113 – 1116

3. Regulatory Takings and Exceptions

a. Balancing Tests – Mahon and Penn Central

   CB 1140 – 1171

b. Categorical Exceptions to Penn Central

   CB 1117 – 1140; 1171 – 1199