PROPERTY I  
Fall 2004  
Professor Nestor Davidson  

Course Background and First Installment of Syllabus  

Course Information  

Class Meetings. This class meets Mondays, Tuesdays, and Thursdays, from 1:00 p.m. to 1:50 p.m. in Room 156.  

Contact Information. 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 are Tuesdays from 3:00 p.m to 5:00 p.m. and by appointment.  

Brown Bag Lunches. Starting September 16, I will be hosting an optional brown bag lunch every Thursday. We’ll meet at noon in the Kelly Room (Room 294), and the only rule is that no discussion of the course (in-class discussions or reading material) is allowed. I’ve posted a sign-up sheet on TWEN for those interested.  

Technology.  

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

MT-Room. I have created an account for this class with the University’s web-based learning system, MT Room, a platform for in-class dialogue. For those of you not bringing a laptop with wireless capabilities to class, we will be using the system primarily in group exercises and I will make sure that a member of each group has access.  

Some University Policies. Please 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. The primary text for the course is Jesse Dukeminier and James Krier, Property (5th ed. 2002) (“CB”). From time to time throughout the course, beginning with the first session, I will also distribute supplemental materials on TWEN.

Reserve Reading. If you would like more background on a particular topic than is provided in the required reading, you may wish to consult the following materials on reserve:

1. Joseph William Singer, Introduction to Property (2001);
3. Robert C. Ellickson, Carol M. Rose & Bruce A. Ackerman, Perspectives on Property Law (3d ed. 2002);
4. The American Law Institute, A Concise Restatement of Property (L. Liebman ed. 2001);

Course Requirements

Final Examination. There will be a three-hour final exam for this course. The exam will be 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 required and I 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, please notify me in advance by dropping me a note at the lectern before class begins.

I will pass around a seating chart on the second day of class (Tuesday, August 24). Please sit where you would like to remain for the rest of the semester on that day.

Other Assignments. From time to time, I will assign short drafting and document-review assignments. These will be ungraded, but their completion is required, and, as with class participation, I reserve the right to decrease your final grade by one step in the event you fail to complete the assignments.
Syllabus

I. Introduction: Conceptions of Property

For class on Monday, August 23, please read the posted excerpts 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 19-37

   *Popov v. Hayashi* [Supp.]

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

   CB 37-59

   Garrett Hardin, *The Tragedy of the Commons* [Supp.]

3. *A Counterpoint to Demsetz – Native Americans and Property Rights*


4. *Comparative Notes: Some Other Common Justifications for Property Rules*

   Excerpt from John Locke, *Second Treatise of Government* (1690) [Supp.]

   Excerpt from Jeremy Bentham, *The Theory of Legislation* (1802) [Supp.]


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1 As noted, supplemental readings, like the Goffman and Ackerman pieces, will be posted on TWEN.
B. Creation

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

   CB 59-105

   Excerpt from Margaret Jane Radin, Market-Inalienability, 100 Harv. L. Rev. 1849 (1987) [Supp.]

2. Cultural Property and a Note on Collective Creation


   CB 176-178

   United States v. Corrow [Supp.]

C. Adverse Possession

   CB 125-176

III. Dividing Property Rights

A. Background: The Estates System

1. History

   CB 195-209

2. “Complete” Ownership - Fee Simple Absolute

   CB 209-215

B. Dividing Property Rights In Time
1. **Introduction to “Lesser” Estates: The Life Estate, The Rule Against Restraints On Alienation, and Defeasible Estates**

   CB 221 (introductory note), 227-228 (note 1) 240-242 (on Defeasible Estates, but not Marhernholz), 249-257

2. **Future Interests**

   CB 269-270

   a. **In the Transferor**

   CB 270-272

   b. **In the Transferee**

   CB 272-286

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

   CB 293-294 (introductory note), 302-338

3. **Relations Between Present and Future Owners**

   CB 234-238

   C. **Dividing Property Rights Concurrently**

   1. **Common-Law Concurrent Interests**

   CB 339-381

   2. **Marital Interests**

      a. **The Common-Law Marital Property System**

      CB 382-399

      b. **Termination of Marriage by Divorce or Death**

      CB 399-419

      c. **The Community Property System**
CB 419-426

d. Rights of Domestic Partners

CB 426-441

3. Dividing Ownership and Control

a. Corporate Ownership

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

c. Other Entity Forms – Partnerships and Limited Liability Companies


d. Trusts

CB 287-288

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

CB 925-949

5. Timeshares

*Excelsior Springs v. Elms Redevelopment Corporation* [Supp.]

IV. The Uses of Property

D. Income and the Provision of Shelter/Commercially Usable Space – Leases

1. Leasehold Estates and the Lease

CB 445-460, 477-482

3. Selection of Tenants and Fair Housing

CB 460-477
4. **Subleases and Assignments**

CB 482-500

4. **Landlord Remedies**

CB 500-521, 546-549

5. **Landlord Duties**

CB 521-533, 544-546

**E. Equity and Acquisition By Voluntary Transfer – The Purchase and Sale of Property**

1. **The Mechanics of the Contract of Sale**

CB 559-590; 599-601 (notes 5 and 6)

4. **Deeds**

CB 601 (note on merger), 611-626, 632-633 (note on estoppel by deed and introductory note to Section 2), 637 (note on delivery without handing over)

**F. Security – Mortgaging Property**

1. **The Uses of Security and Collateral**

Excerpt from Hernando de Soto, *The Mystery of Capital* [Supp.]

4. **The Mechanics of Mortgaging Property**

CB 643-660

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

1. **The Recording System**

CB 661-678, 683-695, 705-706 (note on persons protected by the recording system), 712-717
2. Marketable Title Acts
   CB 722-725

5. Registration of Title
   CB 725-729

6. Title Insurance
   CB 729-743