

**PROPERTY**

SPRING, 2007

MR. TARLOCK

TUE: 2:00- 3:15 P.M.

TH, FR: 12:20-1:35 P.M.

ROOM C20

**SYLLABUS AND COURSE INFORMATION**

**I. THE REAL RULES:** Law school is professional training. It requires each student to participate in the class with a professional attitude. To define that attitude, the following rules apply to the class:

A. *Attendance.* You are expected to attend all classes. You may, however, miss six (6) classes for any reason. Attendance is taken at each class. I do not need to know the reason for an absence unless it reflects a chronic problem. If you miss more than six classes without an excuse, your raw test score will be lowered one (1) point per absence. If you become ill or must miss a number of classes for similar reasons, please see me as soon as possible so that I can excuse your absences and work out a plan to compensate for the missed classes. A class roster will be circulated at the beginning of every class which you are to initial in the box next to your name. Failure to initial the class roster will be considered **prima facie evidence of non-attendance**. Causing another person to enter your initials will be a violation of Article II, Section 2-1(d) of Code of Conduct. A copy of the Code can be found in the on-line Student Handbook.

B. *Class Preparation.* You are expected to come to all classes having read the assigned material and being prepared to discuss the material. If I call on you and you are unprepared, one-half ( $\frac{1}{2}$ ) point may be deducted from your raw test score. *This rule will be in effect at all times, including the days of legal writing deadlines.*

C. *A Word on Laptops.* As a matter of school policy, laptop computers may, of course, be used at any time in the classroom. However, in recent years, a number of prominent law professors have expressed serious concerns about the negative aspects of the widespread use of lap tops. I share these concerns and so share them with you. The basic concern is that laptop use diverts student attention from the ebb and flow of class discussion and thus from basic learning. Unlike undergraduate education, law school classes are not a linear lecture format. The objective of a first year class is to introduce students to the process of legal analysis.

To understand the legal process, the student must be constantly engaged in the class discussion and in the language of the case being analyzed, even if he or she is not "on the spot." Law is not a series of simple rules but a way of applying general principles to concrete disputes to resolve them in a consistent, rational and fair manner. The important lessons are often in the colloquy between teacher and student than in any single sentence uttered by the teacher. The other concerns about laptop use are the use of laptops for non-educational purposes, e-mail, surfing the web, etc. Students have always read newspapers, written notes, daydreamed etc. so the introduction of the computer is a distraction different in degree rather than kind. Still, the availability of so much alternative entertainment material can be a major deterrent to learning. The choice is yours, but many students will tell you the key to success in law school is careful attention to class discussion, old-fashioned handwritten note taking, and the subsequent use of the computer to built an integrated course outline.

**II. GRADING AND EXAMINATION PROCEDURES AND RULES:** You will receive one grade for the entire course based on the final, closed book examination. Due to the size of th class, I do not not give (or take away) credit for class participation or the lack thereof. You will be evaluated on your ability to apply the rules, principles and policies that make up property to the fact situations set out in the examination. The grade will be SOLELY based on a CLOSED BOOK final examination scheduled for Friday, May 18, 2007 at 8:30 A.M. N.B: The examination must be taken at the regularly scheduled time with the exception of medical or similar illnesses that prevent you siting for the examination. A make-up will be arranged in the case of an emergency absence. Should you be unable to sit for the examination on May 18, 2007, please call either me and Assistant Dean Stephen Sowle (906-5282) as soon as possible, preferably before the scheduled examination. Absent an immediate medical or similar emergency, the only option for students who do not wish to sit for the examination on May 18th is a petition for an incomplete. If the petition is granted, the student can only take the examination at the next regularly scheduled time, May 2008. All first year courses must follow a required grade curve. The instructor has no discretion to vary the bans of required grades. The grade will be based on § 6 of the Academic and Administrative Regulations, printed in STUDENT HANDBOOK, and the grade distribution will conform to the schedule set out in § 6.8.

In addition to the examination, from time to time, I will e-mail the class short practice, non-graded essay questions. At your option, you may write and answer and compare it to a model answer that I will e-mail a few days after I e-mail the question.

**III. ACCESS:** My room is 831. My office telephone is 906-5217. I am available during the day, except immediately before

class, and no appointment is necessary. You may, of course, schedule one if you wish, but my door is generally open, and I prefer face to face contact. My E-Mail box is DTARLOCK or DTARLOCK@KENTLAW.EDU, There is also a course web site; information about it will be furnished to you by email. The syllabus, supplemental reading and other material will be posted on the site. Handout cases will also be emailed to you in PDF form.

#### **IV. CASEBOOK AND CLASS ASSIGNMENTS**

The casebook is Casner, Leach, French, Korngold and Vandervelde, PROPERTY (5<sup>th</sup> ed. 2004). These assignments are but daily but may be modified in class but we will basically follow the order of the syllabus. **N.B.** A case and page assignment means that the material will be covered in class, unless it is prefaced by READ. READ means that you are responsible for the material at the time of the assignment, but that either the material does not lend itself to in-depth class coverage or for other reasons the material will not be covered directly in class. A case assignment always includes the notes following the principal notes. Notes should be read carefully because they generally explain the case and elaborate upon it. Often class hypotheticals are drawn from the note cases. Thus, understanding the notes is a good way to test your understanding of the principles in the principal case.

#### **ORIGINAL ACQUISITION**

##### **INTRODUCTION: Original Acquisition Or Why Is It Yours and Not Some One Else's or No One's?**

JAN. 23 Read pp. 1- 4 *Pierson v. Post*, pp. 34-40; *Keeble v. Hickeringill*, pp. 40- 46.

JAN. 25 Jan 23<sup>d</sup> Continued; *Popov v. Hayashi*, pp. 46- 54; and *Anderson v. Beech Aircraft Corporation*, pp. 54- 62.

JAN. 26 *Cline v. American Aggregates*, pp. 62- 68; *Harris v. Brooks*, pp. 68- 76; and *Board of County Commissioners v. Park County* [HANDOUT].

JAN. 30 *Opinion of the Justices*, pp. 182- 190; *Yanner v. Eaton* [HANDOUT]; and *Bausch & Lomb v. Utica Mutual* [HANDOUT].

FEB. 1 *Armory v. Delamire*, pp. 76-80; *The Winkfield*, pp.80- 83 9  
*Hannah v. Peel*, pp. 83- 86, READ *McAvoy v. Medina*, pp. 87- 88,  
and *Benjamin v. Linder*, pp. pp. 88- 100; and READ pp. 100-114.

##### **THE RIGHT AND DUTY TO EXCLUDE: Adverse Possession and**

## **Prescription**

*Feb 2 Jacque v. Steenberg Homes, Inc.*, pp. 4-12; *State v. Shack*, pp. 12-20; and *Intel v. Hamdi*, pp. 20- 33.

*FEB. 6 Johnson v. M'Intosh*, pp. 115- 124; *Ewing v. Burnett*, pp. 125- 131; *Nome 2000 v. Fagerstrom*, pp. 131-138; and *Lawrence v. Town of Concord*, pp. 138- 148.

*FEB. 8 Feb. 6<sup>th</sup> Continued; Kiowa Creek Land & Cattle Co. v. Nazarian*, pp. 149- 152; *Dieterich International Truck Sales, Inc. v. Js & J Services, Inc.*, pp. 114- 149.

*FEB. 9 NO CLASS READ* Pp. 744- 750; and *Conklin v. Davi*, pp. 693- 699 plus HANDOUT.

*FEB. 13 Autocephaleous Greek-Orthodox Church of Cyrus v. Goldberg et al.*, pp. 157- 169; -171; *Solomon R. Guggenheim Foundation v. Lubell*, pp. 169-- 174; and *Rosner v. United States*, pp. 175- 182.

## **NEW FORMS OF "PROPERTY": Just What Can one "Own"**

*FEB. 15 Wendt v. Host International, Inc.*, pp. 193- 201; *Zacchini v. Scripps-Howard Broadcasting Co.*, pp. 201- 207; and *ETW Corp. V. Jireh Publishing, Inc.*, 332 F.3d 915 (6<sup>th</sup> Cir. 2003) HANDOUT.

*FEB. 16 Suntrust Bank v. Houghton Mifflin Co.*, pp. 207- 228; and *Oddzon Products, Inc. V. Oman*, pp. 228- 231. Read First Publications, Inc. V. Rural; Telephone Service, pp. 231-241.

*FEB. 20 Kremen v. Cohon*, pp. 241- 248; *Simmons v. Simmons*, pp. 597- 603; *Martinez v. Martinez*, pp. 603- 606; *Elkus v. Elkus*, pp. 606- 611; and *Davis v. Davis*, pp. 611- 621.

*FEB. 22 READ* *Diamond v. Chakabarty*, pp. 262-266; *Moore v. Regents of the University of California*, pp. 266-284

## **ESTATES: Interests in Land and Their Transfer**

### **A. Present Estates**

*FEB. 23 READ, RE-READ (THEN START READING IT AGAIN)*, Chapter 4, pp. 319- 324; *In the Matter of the Estate of His Majesty Kamehameha IV, Late Deceased* [HANDOUT]; *Kerley v. Nu-West, Inc.*, pp. 1009-1015; *Laguna Royal Homeowners Association v. Darger* [HANDOUT]

*FEB. 27 Station Associates Inc. v. Dare County*, pp. 326-332;

*Hill Outing Club v. Hammond*, pp. 332- 337. READ *City of Palm Springs v. Living Desert Reserve*, pp. 337- 345.

### **B. Concurrent Ownership**

MARCH 1 *Martin v. Martin*, pp. 554- 558; *Yakovonis v. Tilton*, pp. 558- 563; *Delfino v. Vealencis*, pp. 563- 568.

MARCH 2 *Downing v. Downing*, pp. 568- 574 *People v. Nogarr*, pp. 574- 578 ; *Smolen v. Smolen*, pp. 578- 581 ; *Harms v. Sprague* [HANDOUT]; *In the Matter of the Estate of Wilber Dean Thomann*, 649 NW2d 1 [HANDOUT].

### **C. Future Interests**

MARCH 6 *Nelson v. Parker*, pp. 345- 349; *In re Estate of Kinert v. Pennsylvania Department of Internal Revenue*. Pp.349- 353.

MARCH 8 *In Re Estate of Jackson*, pp. 353- 355 ; *Hausman v. Hausman*, pp. 355- 360; pp. 361- 365; *Long v. Long*, pp. 366- 371.

MARCH 9 Pp. 373- 380; *In Re Estate of Anderson*, pp. 380- 390; and *Symphony Space, Inc. v. Pergola Properties, Inc.* pp. 390- 401.

### **MARCH 12- 16 SPRING BREAK**

MARCH 20 *Sawada v. Endo*, pp. 583-589; *Keene v. Edie*, pp. 589- 594; and *Harris v. Crowder*, pp. 594- 596.

### **D. Landlord-Tenant Law: Splitting Possession From Ownership**

#### *1. What is a Landlord-Tenant Relationship?*

MARCH 22 Pp. 403- 407; *Albert M. Greenfield & Co. v. Kolea*, pp. 479- 483; *Teitelbaum Realty Co. v. Direct Realty Co.*, pp. 407- 412.

#### *2. Landlord Duties to Maintain the Premises*

MARCH 23 *Blackett v. Olanoff*, pp. 412- 414; *Todd v. Pin Oak Green*, 75 S.W.2d 658 (Tex.App. 2002) [HANDOUT]; *Wesson v. Leone Enterprises*, pp. 414- 426.

MARCH 27 *Javins v. First National Realty Co.*, pp. 426- 445; *Peterson v. Superior Court*, pp. 422- 438. READ pp. 445- 459.

### 3. Recovery of Possession

MARCH 29 *Jordan v. Talbott*, pp. 492- 502; *Murphy v. Smallridge*, pp. 502- 510; *Lefrank v. Lambert*, pp. 510- 519; *Aurora Business Park Associates v. Michael Albert, Inc.*, pp. 519- 527.

### 4. Transfer of Possession

MARCH 30 *Kelly v. Tri-Cities Broadcasting Co.*, pp. 527- 538; *American Community Stores v. Newman*, pp. 536- 543.

### 5. Tenant Selection

APRIL 3 Read pp. 796- 799; *Simovits v. Chanticleer Condominium Association*, pp.813- 822; *Smith v. Fair Employment & Housing Commission*, pp. 822- 835; Read pp. 835- 838; *Jullian v. Christopher*, pp. 543- 551.

## **SERVITUDES: USE VERSUS POSSESSION**

### **A. Nuisance: The Basis of the Protection of Use Rather than Possession**

APRIL 5 READ pp. 848- 851; *Prah v. Maretti*, pp. 867- 879; pp. 889-894 and the following three cases:

### **B. Easements: The Base Servitude**

APRIL 6 *Brown v. Penn Central Transportation Co*, pp. 894- 897; *Baseball Publishing Co. v. Bruton* [HANDOUT] and *Stratis v. Doyle*, pp. 897- 899.

APRIL 10 *Cooper v. Boise Church of Christ*, pp. 899- 903; *Miller v. Lutheran Conference and Camp Association* [HANDOUT] and pp. 947- 950; *Mund v. English*, pp. 963-966; and *Van Sandt v. Royster*, pp. 906- 910; READ pp. 917- 922.

APRIL 12 and 13 *Morrell v. Rice*, pp. 911- 917; *Brown v. Voss*, pp. 939- 943; *Estate of Thompson v. Wade*, pp. 925- 929; *City of*

*Pasadena v. California-Michigan Land & Water Co.*, pp. 944- 947  
*Davis v. Rusk*, pp. 929- 931; and *Lewis v. Young v.* 932- 938.

### **C. Real Covenants and Equitable Servitudes**

APRIL 17 *Runyon v. Paley*, pp.962- 976; *READ 1042- 1043; Sonoma Development Co. V. Miller*, pp. 976- 983.

APRIL 19 *READ* pp. 983- 986; *Sanborn v. McLean*, pp. 759- 763;  
*Shalimar Association v. D.O.C. Enterprises*, pp. 986- 993.

APRIL 20 *Neponsit Property Owners Association v. Emigrant Savings Bank*, pp. 993- 1001; *Eagle Enterprises v. Gross*, pp. 1001-1005  
*Whittinsville Plaza, Inc. v. Kotseas*, pp. 1015- -1020; and *Davidson v. Katz*, pp. 1021-1028.

APRIL 24 *Rhue v. Cheyenne Homes*, pp. 1028- 1032; *Nahrested v. Lakeside Village Condominium*, pp.1032- 1042- 1045; and *Hill v. Community of Damien of Molokai*, pp. 801-809

### **D. Termination of Servitudes**

APRIL 26 *Central Oregon Fabricators, Inc v. Hudspeth*, pp. 950- 954; and *Rick v. West*, pp. 1044- 1050.

APRIL 27 *Evergreen Highlands Ass'n v. West*, pp. 1050 1058;  
*Westwood Homeowners Ass'n v. Lane County*. pp. 1058-1063.

CATCH-UP

Board of County Commissioners v. Park County, 49 P.3d 693  
(Colo. 2002)

[Colorado water law follows the law of prior appropriation. The first person to put water to a beneficial (non-wasteful) use acquires a right to a given quantity that is superior to all subsequent users. In times of shortage, rights are curtailed by a priority schedule, the most recent use is shut off first. The practical result of prior appropriation is that surface stream users generally hold the most senior rights and later groundwater users, often urban users, hold junior rights. To promote groundwater use for continued urban development, Colorado law allows junior groundwater users to pump groundwater connected to a surface stream in cases where the pumping may increase the risk of future supply loss to senior surface users through a statutory plan of augmentation. The basic idea of Plan for Augmentation is that junior groundwater pumpers must provide surface users with a replacement supply for the increased risk. In the case, a groundwater pumper proposed to store water in an aquifer connected to a surface stream. Overlying landowners between the point of storage and the stream objected to the plan and alleged that the storage and passage of water beneath their land would be a trespass. A small portion of Justice Hobbs' opinion follows.]

PROPERTY

MR. TARLOCK

FIRST HANDOUT

1. The Structure of Property and Basic Relationships
2. Garner, Ownership and the Common Law
3. Smith, Life, Liberty & Whose Property: An Essay on Property Rights
4. *Yanner v. Eaton*
5. *Bausch & Lomb v. Utica Mutual*
6. *Board of County Commissioners v. Park County*