

# Distinguished Professor Joan C. Williams

## Property – spring semester 2012

### Reading assignments

**Note that we have class on three Fridays: please put them on your schedule.**

#### **I. Introduction to Property: Visions of Property**

##### **Class 1 – January 9**

Intuitive image of property and republican visions

1-31

State the basics of the republican vision of property in 3-4 sentences.

How does the intuitive image of property clash with Grey's metaphor of property as a bundle of rights?

Is the *Andrus v. Allard* court's approach to property more like Grey's or Blackstone's?

Does *Andrus v. Allard* fit with *Hodel v. Irving*?

How does the Occupy movement tap themes from the republican vision?

##### **Class 2 – January 11**

Liberal visions of property

32-36; 43-63 (ignore p. 52; it's a repeat)

State the basics of the liberal vision of property in 3-4 sentences.

Compare the basic tenets of the republican and liberal visions.

How does PRC property law confirm, or contradict, the basic tenets of Locke's approach?

State the facts of *Pennsylvania Coal v. Mahon*, first for the plaintiff, then for the defendant.

What vision(s) and images of property inform the *Penn Coal* majority opinion? The dissent?

Follow the reasoning of the *Pierson v. Post* majority step by step. Then do the same thing for the dissent.

How do the styles of reasoning differ?

What vision(s) of property inform the *State v. Shack* opinion?

#### **January 16 – No class: Martin Luther King Day**

##### **Class 3 – January 18**

Liberal visions; property and personhood

64-84; 90-93 (skip the exam review question on page 90 for now)

State the facts of *Moore v. Regents* for the plaintiff, then for the defendants.

Trace the reasoning of each of the different opinions.

What vision(s) of property inform the various opinions?

How does the UCSF release address the issues raised in *Moore*?

Should genes be patentable? Does the answer depend on your vision of property?

Should there be a market for organs? Does the answer depend on your vision of property?

Give an example of personhood property and fungible property.

Describe each theories of adverse possession and discuss its relationship to the various liberal visions of property.

## **II. Estates in Land and Future Interest**

### **Class 4 – January 23**

Personal property; the feudal vision of property; fees simple

85-90; 94-116

How does one's view of "the ethics of winter dibs parking" reflect one's vision of property?

Write the answer to the exam short answer question

Trace of reasoning of the *Popov v. Hayashi* court, identifying the various rules concerning personal property. (The court's decision discusses virtually all of them.)

Do you think the court decided the case correctly?

Compare the basic tenets of the feudal vision with those of the liberal and republican visions.

Answer problems 2 – 5 on page 116.

### **Class 5 – January 25**

Defeasible fees

117-128; 137-38

Identify each important difference between the two deeds on page 120.

What alternative strategies would you recommend to the Arboretum Committee?

Was *Roberts v. Rhodes* correctly decided?

State the facts of *Mahrenholz v. School Trustees*.

Trace the plaintiffs' argument; then the defendants'.

Argue for the Boy Scouts; for the heirs of the donors. (pp. 137-8)

### **Class 6 – Friday, January 27**

#### **FRIDAY MAKE-UP CLASS 1:40 – 3:50 Room E**

Life estates, reversions, remainders, and executory interests; Rule against Restraints on Alienation

129-136; 138-143

Explain the grant Larry Hart gave to Yale, and how it benefitted both Larry and Yale.

Answers the problems on page 133-134.

Is *Mountain Brow v. Toscano* correctly decided?

### **Class 7 – January 30**

Rule Against Perpetuities

144-58; 161-166

Should we abolish the Rule Against Perpetuities, change it, or preserve it?

Answer the study questions on page 158

Is *Hensley-O'Neal v. Metropolitan National Bank* correctly decided?

Outline your answer to the problem on page 165.

Answer the exam review questions on page 166 in no more than 100 words.

## **III. Concurrent Estates**

### **Class 8 – February 1**

Types of concurrent estates

167-191 (omit problem 9 on page 171-2)

Answers the problems on pages 170-71 (except problem 9).

Why did TICs become popular in San Francisco? What are their risks and benefits?

Answer the problem on page 182-183.

Answer questions 1-3 on page 186.

## **Class 9 – February 6**

TICs, relations among cotenants

191-208

Answer questions 4-8 on page 186.

Trace the rationale given by the court in *Harris v. Crowder*. Do you find it convincing?

Answer the problem on page 207.

Answer the exam review question on page 208 in no more than 100 words.

## **Class 10 – February 8 (class ends at 11:30)**

Marital property

208-223

State the facts for *Borelli*, then for *Brusseau*.

Is this case correctly decided?

What advantages does marriage give to heterosexuals that are not available to homosexuals?

State the facts for Mr. Martinez, then for Mrs. Martinez.

What is the crux of the disagreement between the majority, Justice Zimmerman and Justice Durham?

Answer the exam review question on page 488.

Reading the statistics on pages 223-224, answer these questions:

Do male and female lawyers tend to work different schedules?

Do male and female lawyers tend to have different family forms?

## **IV. Landlord/Tenant Law**

### **Class 11 – February 13**

Landlord/tenant law: lease defaults; anti-waiver provisions; implied warranty of habitability; retaliation eviction

225-241; 293

Who are the landlord and who are the tenants, in general and in California?

As you read the landlord tenant cases, consider whether the landlord-as-slumlord and/or the landlord-as-honest-struggling-entrepreneur imagery has influenced American courts.

How do the statutory termination provisions change the common law? Which statute is better from a tenant's viewpoint, Maryland's or Virginia's?

Compare the termination provisions of Lease #1 and Lease #2.

Answer the problem on page 235, in Maryland, Virginia and California.

Re *Hilder v. St. Peter*:

State the facts, first for the landlord, then for the tenant.

What vision(s) of property inform the *Hilder* decision?

State *Hilder's* test for the implied warranty of habitability and apply it to the facts in the case.

What remedies does the case give to tenants? To Mrs. Hilder?

Answer to exam review question on page 293 in no more than 100 words.

### **February 15: Class cancelled**

### **Class 12: Thursday, February 16**

**Per Hastings' academic calendar, this Thursday will be treated as a Monday.**

Landlord-tenant law: retaliatory eviction; assignments and subleases; landlords' remedies; delivery of the premises

242-243; 248-263

What rights does Cal. Civ. Code §1942.5 give to tenants?

Answer problem #4 on page 250.

Re *Kendall v. Ernst*:

State the facts.

Does the court's logic stem from contract or property law, or both?

State the case's holding in the light of subsequent case law.

Is the case correctly decided?

How does Va. Code Ann. §55-248.7 change the common law?

Compare the excerpts from Lease #1 to Lease #2 on page 256: which is more pro-tenant?

Re *Sommer v. Kridel*:

State the facts for the tenant, then for the landlord. Why was this a good test case?

Was the case correctly decided?

State the holding and apply to the facts of the test cases.

How do the Maryland and Virginia delivery of possession statutes differ from each other, and from the common law?

## **February 20 – No class: President's Day**

### **Class 13 – February 22**

Landlord-tenant law: destruction of the premises; law and economics perspectives; public housing; lease analysis

263-84; 244-247

How do the two leases' provisions concerning destruction of the premises differ?

What assumptions does Posner make about the housing market? How does changing his assumptions change the graph on page 265?

Is Posner or Ackerman more convincing?

Why have so few tenants used the IWH?

Was *HUD v. Rucker* correctly decided?

*Walls v. Oxford Management* states the law relevant to landlords' liability for torts against tenants. State that law.

Is *Oxford Management* correctly decided?

Answer the questions on page 283 about Myriam's lease.

Answer the "Rent Watch" questions on page 284.

For review, answer the questions on page 247.

## **V. Servitudes**

### **Class 14 – Friday, February 24**

#### **FRIDAY MAKE-UP CLASS 1:40 – 3:50 Room E**

Lease v. license; introduction to servitudes; written easements, prescriptive easements

285-292; 294-304

Compare the "Dormitory License" with the Hastings Tower Lease. What protections does the lease offer that the license does not?

Answer questions about transmission line easement on page 301.

Answer problem 4 on page 301-02.

Take the time to read and understand the map on page 302.

Draw a sketch to depict the physical relationships in *Beebe v. Marco*.

What is the test for a prescriptive easement? Does the court correctly apply the test?

### **Class 15 – February 27**

Easements implied from prior use; easements by necessity; introduction to covenants at law  
305-325

Explain the facts of *Granite Properties v. Manns*, using the sketch provided.

What is the test for easements implied from prior use? Does the court correctly apply it?

Explain the facts of *Othen v. Rosier*, using the sketch provided.

What is the test for easements by necessity? Does the court correctly apply it?

Answer wiki questions on page 317.

Answer problems 1 – 5 on page 324-25.

### **Class 16 – February 29**

Covenants at law and in equity; homeowners' association covenants  
326-355

State the facts of *Gallagher v. Bell*, using a sketch to depict the physical relationships.

Does *Gallagher* correctly apply the relevant test? Is the case correctly decided?

State the facts of *Neponsit Property Owners Assoc. v. Emigrant Bank*.

Does *Neponsit* correctly apply the relevant test? Is the case correctly decided?

Is *Nahrstedt v. Lakeside Village Condo Assoc.* correctly decided?

Answer the questions on page 343.

Answer the questions on page 346, using the Homeowners' Assoc. Rules and Regulations.

### **March 5 and 7 – No class: Spring break**

## **VI. Housing discrimination**

### **Class 17 – March 12**

Exclusionary covenants and housing discrimination  
360-84

Identify the restrictive covenants in the Declaration of Restrictions on page 361. Which are enforceable today, and which are not?

Under Title VII:

Is the restrictive covenant contained in the Property Rental Lease on page 366 enforceable?

A property-owner who lives in one unit of a two-family house wants to rent only to a member of her church. Is that legal?

Is this advertisement legal?: "Two women seek a third to share sunny three bedroom apartment."

Your client is building an apartment building and had rejected a design that accommodates wheelchairs.

Is that okay?

A realtor has consulted you, upset because her boss instructed her to show African-Americans only apartments in Oakland, and to say that nothing suitable is available if they request to see units in other localities. Is that legal?

State the facts of *Hill v. Damien* for The Community, then for the neighbors.

Is the court's reasoning with respect to the relevant covenants correct?

Is the court's reasoning with respect to Title VII correct?

### **March 14 – Class cancelled**

## **VI. Nuisance; adverse possession (very different topics!)**

### **Class 18 – March 19**

Review; nuisance, adverse possession.

386-406

Answer the review questions on page 386.

State the common law test for private nuisance.

Did the *Kivalina* court correctly apply the test?

Is *Kivalina* correctly decided?

State the test for adverse possession.

State the facts in *Nome 2000 v. Fagerstrom* for Nome 2000, then for the Fagerstroms.

Did the *Nome 2000* court correctly apply the test for adverse possession? Be sure you go methodically through each element of the test when answering this question.

State the test for constructive adverse possession.

Did the *Nome 2000* court correctly apply that test?

Answer problems 8 and 9 on page 401.

State the adverse possession test in *Nielson v. Gibson*.

Did the court correctly apply the test?

### **Class 19 -- March 21**

Doctrine of agreed boundaries; art law

407-425

State the test for the doctrine of agreed boundaries.

State the facts of *Bunton v. Barber*.

Did the court correctly apply the test? Adverse possession? Prescriptive easement?

State the facts of *O'Keefe v. Snyder*, for O'Keefe; for the gallery owner.

Apply to the adverse possession of chattels law to the facts in *O'Keefe*; then the various provisions of the UCC reprinted at the bottom of page 551.

Answer the questions on page 423.

What is the holding of *O'Keefe*?

What is the court's motivation for adopting the rule it adopts?

How does the rule adopted in *O'Keefe* differ from that adopted in New York?

## **VIII. Eminent Domain**

### **Class 20 – March 26**

426-454

Re *Kelo v. New London*:

State the facts for Kelo; for New London.

Argue the case for Kelo; then for New London.

Why did Justice Kennedy write a concurrence rather than joining the majority?

Is *Kelo* correctly decided, in your view?

Re *99 Cents Only Stores v. Lancaster Redevelopment*:

How does California eminent domain law differ from federal eminent domain law?

Is this case correctly decided?

Was the exercise of eminent domain that created University Circle legal?

Answer the questions on page 453.

## **IX. Takings and zoning**

### **Class 21 – March 28**

455-470

Questions to be added later.

Reread Andrus v. Allard (p. 4) and Pennsylvania Coal v. Mahon (p. 33)

### **Class 22 –April 2**

Takings and environmental regulation

471-488

### **Class 23 – April 4**

Takings, exactions and dedications, and zoning

489-508

## **X. Real Estate**

### **Class 24 – April 9**

Purchase and Sale Contract

509-520

### **Class 25 -- April 11**

#### **Title Insurance**

Download readings from class website.

### **Class 26 – April 16**

Understanding the Great Recession: deeds of trust, mortgages, and notes

521-42

Study questions:

1. Compare the two notes
2. What different functions are served by the note and the deed of trust?
3. Study the deed of trust
  - a) What happens if the borrower defaults?
  - b) If the borrower then finds she can pay what she owes?
  - c) If the bank feels the property is not being properly maintained?
4. Make sure you understand the function of each deed of trust provision.
5. What does the deed of trust tell you about the power relationship between the borrower and the bank?

Answer the review questions on page 542.