

PROPERTY

PROFESSOR KRISTELIA GARCÍA | *University of Colorado Law School*

Spring 2022 | Mondays & Wednesdays 10:05 am – 11:50 am | Wolf Law 207 | [Course Website](#)

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OVERVIEW

Welcome! This course introduces property law as a series of legal entitlements to exclude others from certain resources and other discrete objects. We will approach these themes through the study of several specific topics, including: acquisition, ownership, sovereignty, personhood, entities, security interests, title records and transfers, neighbors, social policy, takings, and intellectual property, among others. When applicable, we will include and encourage discussion of the historical, cultural, political and racial contexts in which property law arose, and how lawmakers have (and haven't) accommodated evolving norms.

COURSE MATERIALS

The readings for this course will come primarily from the casebook: Thomas W. Merrill & Henry E. Smith, *PROPERTY: PRINCIPLES AND POLICIES* (2d or 3d ed., Foundation Press). While the “official” text for this class is the 3d edition, you should feel free to use either the 2d or the 3d edition of this casebook. Substance-wise, the 2d edition should cover you most of the way, but there are a few cases we'll study from the 3d edition that are not in the 2d edition. For this reason, if you decide to go with the 2d edition, you will be responsible for locating those cases, and you will need to figure out your own pagination since this syllabus is keyed to the 3d edition. Neither obstacle is insurmountable, and I encourage you to go with whichever version you can more cheaply and easily get your hands on. In addition, I've put one hard copy of each edition on reserve in the library.

Other materials are available on the [course website](#), and may be downloaded at the links below.

You should feel free to use whichever third-party supplements you find helpful. For particularly useful explanation and clarification of the concepts covered in class, I recommend Thomas W. Merrill & Henry E. Smith, *THE OXFORD INTRODUCTIONS TO U.S. LAW: PROPERTY* (Oxford University Press, 2010).

EVALUATION & GRADING POLICY

Your grade in this course will be based on your performance on (i) a self-graded midterm assessment (15%), (ii) a final examination (75%), and (iii) the quality of your class participation (10%) as detailed in the section below.

The midterm assessment will take place in-class during normal class time. An answer key will be provided following the exam, as well as a discussion session. The final exam will be an in-class, open-book, open-note, three-hour exam. More detail on the format and coverage of both the midterm and the final will be provided closer to the respective exam date. Please check the law school's final exam schedule for the latest date and time information.

CLASS PARTICIPATION

Please plan to attend, and come prepared for, all class meetings. Attendance, preparation, participation, and professionalism all count toward the class participation grade. For each class meeting, I use a computerized algorithm to generate a list of students to be on call that day, after which volunteers are welcome. The algorithm I use departs from pure randomness so as to give

everyone a fair opportunity to speak over the course of the semester. On any given day, someone who has never been on call has a greater chance of being called on than someone who has been on call once, and a much greater chance of being called on than someone who has been on call four times, and so on. This means that being on call one day makes you less likely to be on call the next, but please know that there's no guarantee, and your name could theoretically pop up multiple days in a row. I will announce the on-call list at the start of each class meeting.

I understand that life happens. You can always take a pass. If you know you will be unprepared for a particular class meeting, I encourage you to nonetheless come to class (so that you might absorb whatever you can from lecture and discussion), and to please notify me by email at least 2 hours prior to lecture so that I can remove you from the queue. The same goes for isolated absences. In the case of a foreseen absence, I ask that you email me to let me know you will not be in class so that I can remove you from the queue. You do not need to explain to me why you are taking a pass (and in some cases, it's probably better you don't ☺). I ask students to limit their passes to two per semester. Personal emergencies and/or illness are always excused. If either of these arise for you, please get in touch with me directly and you'll be excused without using up a pass. If a situation arises that will result in multiple absences or instances of unpreparedness, this should be brought to my attention. Otherwise, it will negatively affect your participation grade.

OFFICE HOURS

You can arrange an appointment with me for an office hour through my [online scheduling portal](#). If you do not see a time that works for you, please email me. I encourage students to sign up in groups, if helpful, and to feel free to invite classmates to join you during your appointment. At this time, all office hours will be conducted via Zoom.

AUDIO/VISUALS

This class will make extensive use of projected slides. If you have difficulty perceiving any of the materials, please see me, and/or [Disability Services](#) for assistance. I'm happy to work with you in making whatever accommodation may be helpful. All slides and other media will also be posted to the [course website](#) following each lecture.

LAPTOPS

Laptops are permitted in class for note-taking purposes only. Use of laptops or other electronic devices for any other purpose will be considered a violation of professional courtesy, will negatively affect your participation grade, and may result in loss of laptop privileges.

MAKE-UP CLASSES

If we are unable to meet for a regularly-scheduled class session, you will be notified in advance, and a make-up will be scheduled.

TOPICS & READINGS

The following reading schedule is aspirational, and subject to change as we go along and find ourselves spending more or less time on certain topics. Any changes will be announced in class for the next class meeting. I will also generally send out an email with any reading updates, so please make sure I have your correct email address.

Reading assignments below marked “CB” refer to pages in the 3rd edition of the *Merrill & Smith* casebook, and those marked “S” refer to pages in the optional Oxford supplement. Supplemental readings and cases are linked in-line below. Listed cases indicate those most likely to be focused on in class discussion. Additional optional readings are listed in gray below.

Class	Topics & Readings	Pages
1 Jan. 10 (M)	Introduction; Two Conceptions of Property <ul style="list-style-type: none"> ▪ <i>Jacque v. Steenberg Homes</i> ▪ <i>Hinman v. Pacific Air Transport</i> ▪ J.E. Penner, <i>The Idea of Property in Law</i> ▪ Tom Grey, <i>The Disintegration of Property</i> 	CB 1-24 S 1-16
2 Jan. 12 (W)	The Trespass/Nuisance Divide <ul style="list-style-type: none"> ▪ <i>Hendricks v. Stalaker</i> ▪ Ronald H. Coase, <i>The Problem of Social Cost</i> ▪ For a critique of Coase, at least as popularized, see Colorado Law’s very own Pierre Schlag, Coase Minus the Coase Theorem—Some Problems with Chicago Transaction Cost Analysis Property & Equity <ul style="list-style-type: none"> ▪ <i>Pile v. Pedrick</i> (note there are 2 short decisions) ▪ <i>Golden Press v. Rylands</i> ▪ <i>Producers Lumber & Supply Co. v. Olney Building Co.</i> 	CB 24-30, 32-39 CB 42-50, 432-443
3 Jan. 19 (W)	First Possession <ul style="list-style-type: none"> ▪ <i>Pierson v. Post</i> ▪ <i>Ghen v. Rich</i> ▪ Elinor Ostrom, <i>Governing the Commons: The Evolution of Institutions for Collective Action</i> “Discovery” <ul style="list-style-type: none"> ▪ <i>Johnson v. M’Intosh</i> ▪ Cheryl I. Harris, Whiteness as Property 	CB 57-69, 72-80 S 17-23 CB 90-101 S 23-30
4 Jan. 24 (M)	Creation <ul style="list-style-type: none"> ▪ <i>International News v. Associated Press</i> Accession <ul style="list-style-type: none"> ▪ <i>Wetherbee v. Green</i> ▪ <i>Edwards v. Sims</i> ▪ <i>Strain v. Green</i> 	CB 107-121 CB 133-150, 155-161 S 30-33
5	Adverse Possession	CB 175-193 & linked

Jan. 26 (W)	<ul style="list-style-type: none"> ▪ Marengo Cave Co. v. Ross ▪ <i>Carpenter v. Ruperto</i> ▪ <i>Howard v. Kunto</i> ▪ <i>Songbyrd v. Estate of Grossman</i> 	case S 34-38
6 Jan. 31 (M)	<p>Personhood:</p> <ul style="list-style-type: none"> ▪ <i>Moore v. Regents of the University of California</i> ▪ <i>Midler v. Ford</i> ▪ Personhood readings: <ul style="list-style-type: none"> ○ <i>The Amistad</i> ○ <i>White v. Samsung Electronics America, Inc.</i> 	CB 209-224, 231-238 & linked cases S 51-55
7 Feb. 2 (W)	<p>The Domain of Property</p> <ul style="list-style-type: none"> ▪ Harold Demsetz, <i>Toward a Theory of Property Rights</i> ▪ Margaret Jane Radin, <i>Property and Personhood</i> ▪ Margaret Jane Radin, <i>Market-Inalienability</i> <p>The Public Trust Doctrine</p> <ul style="list-style-type: none"> ▪ <i>Illinois Central Railroad Co. v. Illinois</i> ▪ <i>State of Oregon ex rel. Thornton v. Hay</i> ▪ Carol Rose, <i>The Comedy of the Commons: Custom, Commerce, and Inherently Public Property</i> 	CB 238-255 S 43-50 CB 259-268, 272-288 S 55-59
8 Feb. 7 (M)	<p>Water</p> <ul style="list-style-type: none"> ▪ <i>Evans v. Merriweather</i> ▪ <i>Coffin v. Left Hand Ditch Company</i> ▪ <i>Higday v. Nickolaus</i> ▪ Colorado Water Law 	CB 288-311 & linked reading S 59-63
9 Feb. 9 (W)	<p>Protecting the Right to Exclude – Criminal & Civil Remedies</p> <ul style="list-style-type: none"> ▪ <i>People v. Olivo</i> ▪ <i>Intel Corporation v. Hamidi</i> <p>Self-Help</p> <ul style="list-style-type: none"> ▪ <i>Berg v. Wiley</i> ▪ <i>Williams v. Ford Motor Credit Company</i> 	CB 327-354 S 65-71 CB 354-366 S 71-74
10 Feb. 14 (M)	<p>Exceptions to the Right to Exclude</p> <ul style="list-style-type: none"> ▪ <i>Ploof v. Putnam</i> ▪ <i>McConico v. Singleton</i> ▪ <i>State v. Shack</i> ▪ Richard Chused, Background to State of New Jersey v. Shack and Tejeras 	CB 366-373, 376-383 S 74-81
11 Feb. 16 (W)	<p>Antidiscrimination Laws</p> <ul style="list-style-type: none"> ▪ <i>Shelley v. Kraemer</i> ▪ The Fair Housing Act ▪ <i>Fair Housing Council v. Roommate.com</i> ▪ Sara Pratt, Fair Housing Act at Fifty 	CB 391-413 S 81-84

<p>12 Feb. 21 (M)</p>	<p>Licenses</p> <ul style="list-style-type: none"> ▪ <i>Wood v. Leadbitter</i> ▪ <i>ProCD v. Zeidenberg</i> <p>Bailments</p> <ul style="list-style-type: none"> ▪ <i>Allen v. Hyatt Regency-Nashville Hotel</i> ▪ <i>Cowen v. Pressprich</i> 	<p>CB 449-55, 458-464 S 85-87</p> <p>CB 464-81 S 87-89</p>
<p>13 Feb. 23 (W)</p>	<p>Abandonment and Destruction</p> <ul style="list-style-type: none"> ▪ <i>Pocono Springs Civic Association, Inc. v. MacKenzie</i> ▪ <i>Eyerman v. Mercantile Trust Co.</i> <p>Divisions by Time; Present Possessory Interests; Future Interests</p>	<p>CB 487-501 S 89-91</p> <p>CB 503-21 S 95-104</p>
<p>14 Feb. 28 (M)</p>	<p>In-class Midterm</p>	
<p>15 Mar. 2 (W)</p>	<p>Conservation of Estates</p> <ul style="list-style-type: none"> ▪ <i>Williams v. Estate of Williams</i> ▪ <i>City of Klamath v. Bell</i> <p><i>Numerus Clausus</i></p> <ul style="list-style-type: none"> ▪ Thomas W. Merrill & Henry E. Smith, <i>Optimal Standardization in the Law of Property: The Numerus Clausus Principle</i> ▪ <u>Johnson v. Whiton</u> ▪ <u>Garner v. Gerrish</u> 	<p>CB 522-528, 589-596 S 104-108</p> <p>CB 536-545 & linked cases S 108-110</p>
<p>16 Mar. 7 (M)</p>	<p>Restraints on Alienation & the Rule Against Perpetuities</p> <ul style="list-style-type: none"> ▪ <i>Symphony Space, Inc. v. Pergola Properties, Inc.</i> <p>Conflicts Between Co-Owners</p> <ul style="list-style-type: none"> ▪ <i>Delfino v. Vealencis</i> ▪ <i>Gillmor v. Gillmor</i> ▪ <i>Harms v. Sprague</i> 	<p>CB 560, 566-586 S 110-113</p> <p>CB 596-619 S 113-118</p>
<p>17 Mar. 9 (W)</p>	<p>Leases</p> <ul style="list-style-type: none"> ▪ <i>Paradine v. Jane</i> ▪ <i>Medico-Dental Building Company of LA v. Horton and Converse</i> <p>Cooperatives and Condominiums</p> <ul style="list-style-type: none"> ▪ <i>Nahrstedt v. Lakeside Village Condominium Association</i> ▪ Sabrina Malpeli, <u>Cracking down on Cooperative Board Decisions That Reject Applicants Based on Race: Broome v. Biondi</u> 	<p>CB 641-651, 673-680 S 129-146</p> <p>CB 733-736, 744-754 & linked reading S 146-153</p>
<p>18 Mar. 14 (M)</p>	<p>Trusts</p> <ul style="list-style-type: none"> ▪ <i>Broadway National Bank v. Adams</i> ▪ <i>Rothko v. Reis</i> 	<p>CB 769-795 S 153-158</p>

	<ul style="list-style-type: none"> ▪ <i>Wilber v. Owens</i> 	
19 Mar. 16 (W)	Liens & Mortgages <ul style="list-style-type: none"> ▪ Tappenden v. Artus ▪ <i>Murphy v. Financial Development Corp.</i> ▪ <i>Skendzel v. Marshall</i> ▪ Zainab A. Mehkeri, Predatory Lending: What's Race Got to Do With It 	CB 818-837 & linked readings S 176-181
	** SPRING BREAK MARCH 21-25 **	
20 Mar. 28 (M)	Transfer & Alienability <ul style="list-style-type: none"> ▪ <i>Irons v. Smallpiece</i> ▪ <i>Foster v. Reiss</i> 	CB 857-869
21 Mar. 30 (W)	<i>Nemo Dat</i> ; Good Faith Purchaser <ul style="list-style-type: none"> ▪ <i>Kunstsammlungen zu Weimer v. Elicofon</i> ▪ <i>Kotis v. Nowlin Jewelry</i> Recording Acts <ul style="list-style-type: none"> ▪ <i>Hood v. Webster</i> ▪ <i>Mugaas v. Smith</i> 	CB 882-894 S 159-166 CB 915-936 S 166-175
22 Apr. 4 (M)	Nuisance <ul style="list-style-type: none"> ▪ <i>Adams v. Cleveland-Cliffs Iron Company</i> ▪ <i>Campbell v. Seaman</i> ▪ Guido Calabresi & A. Douglas Melamed, <i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> ▪ <i>Boomer v. Atlantic Cement Company, Inc.</i> 	CB 937-974 S 183-200
23 Apr. 6 (W)	Easements <ul style="list-style-type: none"> ▪ <i>Baseball Publishing Co. v. Bruton</i> ▪ <i>Holbrook v. Taylor</i> ▪ <i>Penn Bowling Recreation Center, Inc. v. Hot Shoppes, Inc.</i> Covenants <ul style="list-style-type: none"> ▪ <i>Tulk v. Moxhay</i> ▪ <i>Neponsit Property Owners' Association v. Emigrant Industrial Savings Bank</i> 	CB 982-989,998-1003, 1023-1027 S 200-207 CB 1027-1041 S 207-215
24 Apr. 11 (M)	Zoning <ul style="list-style-type: none"> ▪ <i>Village of Euclid v. Ambler Realty Co.</i> ▪ Zoning readings: <ul style="list-style-type: none"> ○ Richard H. Chused, <i>Euclid's Historical Imagery</i> ○ Walter Johnson, <i>The Economics of Ferguson: Emerson Electric, Municipal Fines, Discriminatory Policing</i> ▪ <i>Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel</i> 	CB 1067-1079, 1094-1106 & linked readings S 215-221

25 Apr. 13 (W)	Intellectual Property readings: <ul style="list-style-type: none"> ▪ <i>Capitol Records, Inc. v. Thomas-Rasset</i> ▪ <i>Innovation Toys, LLC v. MGA Entertainment, Inc.</i> ▪ <i>Dixi-Cola Laboratories v. Coca-Cola Co.</i> 	Linked cases
26 Apr. 18 (M)	<p>Eminent Domain</p> <ul style="list-style-type: none"> ▪ <i>Kelo v. City of New London, Connecticut</i> ▪ <i>United States v. Miller</i> <p>Regulatory Takings</p> <ul style="list-style-type: none"> ▪ <i>Pennsylvania Coal Co. v. Mahon</i> ▪ <i>Penn Central Transportation Company v. City of New York</i> 	<p>CB 1170-1207 S 241-251</p> <p>CB 1219-1228, 1237-1254 S 251-258</p>
27 Apr. 20 (W)	In-Class Final Exam Review Session	