Introducing Myself

- Verónica, 2L, raised in Colorado, Ecuadorian-American
- B.A. in Spanish & Math at CU Boulder
- M.A. in Educational Equity and Cultural Diversity at CU Boulder
- Teacher for two years before law school
- I had Professor Carpenter for property law
- Property-related internships at Sheridan Ross (IP firm), Denver Water (Water law, property law)
- Dog person
- Hobbies: Running, exploring, playing hockey
- Fun fact: I skate on an ice crew for the Colorado Eagles (feeder for the Avs)
- Verónica.Gonzalez@Colorado.edu
- (720) 576-6146
Tips to Succeed in Property Law

- Property law is hard!
- Your course text is your best friend
  - Active reading, highlighting
- Exam Prep: Practice!
  - SBA Test Bank
  - Quimbee
  - BARBRI/Themis Practice Tests
  - Hypotheticals from Emanuel Law in a Flash: Real Property
- Supplement/Review your learning:
  - BARBRI/Themis/Quimbee lectures
  - Emanuel Law in a Flash: Real Property
Tutoring Generally

- Ask questions freely!
  - We'll do our best to answer in the moment, but if we can't, we'll find the answer and get back to you during the next session

- Feel free to stop us
  - I'm happy to pause on a slide because I realize that we don't all have time to review slides when we go home

- We give advice, but we recognize that everyone learns differently
  - Our suggestions for studying are suggestions, and you should hear us out, but ultimately choose what's best for you, based on your own experience

- We are here to help you!
1. Essentialism: A philosophical approach to the world (a belief that any thing can be defined in essential terms), defining property in its essential terms as the exclusive and sovereign control over an “external thing;” (The Blackstonian vision); Property as a right to exclude

- Prohibiting other people from using your personal or real property
- J.E. Penner: – A **right in rem** is a right in a thing (**a res**), which is good against virtually anyone in the world (Contrast with a right **in personam**, which is good against a particular person)
Two Conceptions of Property

2. Nominalism: A philosophy that is skeptical of essentialism; “property” means almost nothing (has nominal meaning) unless we spell it out in context

- Property as a bundle of rights
  - To use
  - To exclude
  - To transfer

- You can take or add to the bundle of sticks for different types of property without eliminating the concept of property

- Property isn’t necessarily a thing
Types of Property

- Real Property ("Realty")
- Personal Property ("Personalty")
- Intangible Property
  - Intellectual Property (copyrights, trademarks, trade secrets, patents)
  - Intangible Cultural Property (folklore, traditions, language)
The ad coelum rule

- **The rule in its original form:** Ownership of land includes ownership over everything above and below the area of land, up to the heavens.
  - “Coelum” means heaven in Latin
- **How it’s actually applied:** “The owner of land owns as much of the space above him as he uses, **but only so long as he uses it**. All that lies beyond belongs to the world.” *Hinman v. Pacific Air Transport* (9th Cir. 1936)
The Trespass/Nuisance Divide

- **Trespass**: A physical intrusion onto your property – someone enters your property without permission or remains there.
  - Strict liability offense (with exceptions, e.g., necessity, civil rights statutes)
  - Trespass protects an individual’s right to exclude others from the land

- **Nuisance**: An interference with the use and enjoyment of land that causes significant harm and is unreasonable; the gravity of the harms outweighs the utility of the actor’s conduct
  - Balancing test
  - Can occur without physically stepping onto the property
  - Nuisance protects an individual’s right to enjoy the land
The Trespass/Nuisance Divide

▶ Example of a Trespass Issue
  ▶ *Jacque v. Steenberg Homes* (Wis. 1997): Crossing an owner’s property to deliver a mobile home after the owner refused permission to cross was held to be intentional trespass entitling the owner to punitive damages.

▶ Example of a Nuisance Issue
  ▶ *Hendricks v. Stalnaker* (W. Va. 1989): The court held that Stalnaker’s water well was not a nuisance to Hendricks' right to construct septic tank (despite the town’s regulations prohibiting septic tanks from being within 100 feet of a water well) due to both owners' similar, reasonable interests in necessary services.
Property & Equity

- From Civil Procedure – Equity/Law distinction (English law)
- The Traditional Court of Equity: Non-monetary remedies
  - Injunctions
  - Specific performance
  - Writs/declarations
- The Traditional Court of Law (Common Law):
  - Monetary damages
- Traditionally, English property law only offered monetary damages for trespass
- Eventually, U.S. property law came to include both equitable and monetary remedies
Encroachment: When a property owner violates the rights of his neighbor by building on the neighbor’s land intentionally or otherwise

Equitable remedy: Removal of the encroachment

*Pile v. Pedrick*, 31 A. 646; 31 A. 647 (Penn. 1895)

- In the first opinion in this case, the court held that the court below was right in holding that the wall in controversy was not a party wall, and that the landowner (Pile) had the right to obtain an injunction for the neighbor (Pedrick) to remove a portion of his encroaching building (a remedy in equity), even if the encroachment was minor (1 and 3/8th inches in) and unintentional.

- In the second opinion in this case, the court held that Pedrick had no right to occupy land that did not belong to him; and the cost of the appeal (a remedy in law) had to be paid by both appellants (Pedrick and Pile).
Golden Press v. Rylands (Colo. 1951)

The Colorado Supreme Court reversed the trial court’s finding of defendant Golden Press, Inc.’s encroachment upon plaintiffs Ryland and Reid’s residential property because the encroachment was unintentional and slight (2 – 3 ½ inches on plaintiffs’ land), did not affect the plaintiffs’ use of the land, caused minimal damage, and had a high cost of removal causing grave hardship.
Comparing *Pile v. Pedrick* with *Golden Press v. Rylands*

- How is it that these two cases can coexist? Can we reconcile them?
- How do we use conflicting cases like these on an exam?
A mistaken improvement (e.g., a new building or a room added to a house) is a greater mistake than an encroachment. However, the mistake cannot be characterized as causing harm and probably benefits the true owner.


Holding: Olney improperly demolished a residential home that it had mistakenly built on Producers’ plot of land; this destruction was waste and imposed liability on Olney.

Rule: When a person mistakenly makes permanent improvements on another’s land without their knowledge and consent, the improvement then belongs to the true owner of the land.
Remedies for Mistaken Improvers

- If minor enough, removal of the improvement by the improver
- Unjust enrichment (when an improvement cannot be removed): The difference between the value of the property in its unimproved state and the value of the property with the improvement
  - True owner can pay the difference in value to the improver, or have the property subject to a lien in this amount, in which the improver is the lienholder until the amount of the lien is paid in full
- Forced sale (when the true owner cannot afford to pay unjust enrichment, or elects not to): the improver can acquire the land from the true owner by paying the price of the unimproved land
- Partition (when the parties cannot engage in a forced sale with the other): the court takes control of the property, sells it, and divides the proceeds according to the parties’ interests
First Possession

- *Pierson v. Post* (NY App. 1805): **First in Time Rule:** The law requires control over one’s possession. Mortally wounding an animal shows possession because it deprives an animal of its natural liberty.

- *Ghen v. Rich* (Mass. 1881): A person establishes a property right over whales when he takes possession of the carcass and takes practical steps to secure it, including killing the whale, especially when local custom requires that the finder of the whale returns it to the original whaler.
Johnson v. M’Intosh

Acquisition & Alienation: Conquest and Distribution by the Sovereign

Johnson claimed superior title to property claimed under grants by the chief of the Illinois and Piankeshaw nations because his title came directly from the Indian nations who owned the land; M’Intosh claimed superior title due to a direct conveyance from the U.S. Government.

Cause of Action: Johnson sought a declaration of who has better title in order to eject M’Intosh.

Holding: The U.S. has the exclusive right to acquire the right of occupancy, through treaty or conquest. Therefore, since they have the exclusive right, individuals like Johnson do not have that right. Thus, the title that descends from the US is the superior title (in this case, it was to M’Intosh) and the only one that will be recognized in the court of the conquer.

Rule: Land title transfers from Native tribes to private individuals prior to the American Revolution are not recognized in United States courts.
International News v. Associated Press (1918): International News was liable for unfair competition because it interfered with Associated Press’ quasi-property right in selling its news stories.

Rule: A quasi-property right exists in published news such that using the news gathered by someone else for commercial purposes constitutes unfair competition.

There exists a right to exclude others from time-sensitive information that you have produced with effort.

Lockean theory of property: You are entitled to ownership of the work you produce with the “sweat of your brow”
Accession

- Principle of accession: Acquiring a property because it is closely connected to something else that we own
  - E.g., fruits of our garden, offspring of cattle – David Hume
- Doctrine of accession: When someone mistakenly takes up a physical object that belongs to someone else and transforms it through her labor into a fundamentally different object, it becomes the improver’s property when:
  - The labor is prominent, and the original object is insignificant
  - The improver pays the original owner damages equal to the value of the original object
Doctrine of Accession

Three Doctrinal Elements/Factors in Determining Accession:

1. Mental state of the improver:
   - Intends to improve, in good faith

2. Degree of the transformation of the object
   - The more transformed, the more likely to be accession

3. Relative value contributed by the original owner and the improver
   - The more value contributed by the improver, the more likely to be accession
The Doctrine of Accession

- **Wetherbee v. Green (Mich. 1871):** Holding that a title over wrongfully harvested timber vested in Wetherbee because he took it in good faith and added value to it by transforming it into hoops.

- **Edwards v. Sims (Ky. App. 1929):** Holding that Edwards held exclusive property rights to the cave below his property because he held rights to the surface lands above the subterranean cave beneath it.

- **Strain v. Green (Wash. 1946):** Holding that the Greens’ hot water tank, blinds, light fixtures and mirrors were not removable chattels.
Adverse Possession

- **Elements:**
  1. Actual
  2. Exclusive
  3. Open and notorious
  4. Continuous
  5. Adverse (without permission)
  6. Good faith? (Depends on the jurisdiction)
Marengo Cave Co. v. Ross (Ind. 1997): Holding that Marengo did not acquire the portion of the cave below Ross’s land by quiet title because he did not know that the land was underneath Ross’s land, and Ross did not have reason to know of the trespass in the first place.

- Which element of AP wasn’t met?

Carpenter v. Ruperto (Iowa 1982): Holding that Carpenter was not entitled to the adjacent through adverse possession due to the fact that her use of the land was not in good faith

- No reward for dishonesty in Iowa
Adverse Possession

  - Elements of Adverse Possession
    - 1. Actual possession
    - 2. Visible possession
    - 3. Open and notorious
    - 4. Exclusive
  - Holding: Title was granted to Kunto through adverse possession. Occupying and using the land as a summer home was sufficient to establish continuity for adverse possession.
Songbyrd v. Estate of Grossman (N.D. N.Y. 1998): Holding that under New York law, the statute of limitations for conversion begins to run at the time of conversion, not when the owner’s demand for the property is refused.

Bearsville (owned by Grossman) converted the recordings in 1972, and the recordings were licensed to another record company in 1987, which released an album with the recording in 1991. Songbyrd sued Grossman’s estate in 1995, but NY had a 3-year SOL for recovery of chattel
Vero’s Personal Adverse Possession Story
Questions?

- Again, feel free to reach out to me at my cell, (720) 576-6146, or via email, Veronica.Gonzalez@edu