

REAL + IMAGINARY = COMPLEX: TOWARD A BETTER PROPERTY COURSE

JAMES GRIMMELMANN

PENN STATE DICKINSON LAW
MARCH 3, 2016

THE PROBLEM

FIRST-YEAR PROPERTY IS A CURRICULAR PARIAH

- "I must admit my disappointment to find Property on the class schedule for my first semester of law school."
- "montage of ill-fitting subjects, jarringly connected by arcane language and obfuscatory rules"
- "Our colleagues, it seems, are not convinced of the central importance of the topic we teach, perhaps because we have not succeeded in making clear to them, or to ourselves, just what it is."

AND YET PROPERTY IS A FOUNDATIONAL COURSE

- Landlord-Tenant
- Real Estate Transactions
- Land Use
- Local Government
- Business Associations
- Environmental Law
- Energy Law
- Family Law
- Trusts and Estates
- Payment Systems
- Secured Transactions
- Bankruptcy
- Intellectual Property
- Taxation

FIRST-YEAR PROPERTY IS MOSTLY *REAL* PROPERTY

- 1976 survey: more than half of professors surveyed devoted 90% or more of their course to real property
- 1997 survey: 7/8ths on real property, and 1/8th on a "miscellaneous category that included personal property, economic and ownership theory, body parts, intellectual property, and other non- traditional topics."
- 2004 survey: personal property topics considered "among the least important in the course "
- MBE tests exclusively on real property

THE REAL PROPERTY CANON IS AN ANACHRONISM

- Raise your hand if you have ever seen a shifting executory interest in real life
- Land is no longer the main form of wealth
- All lawyers have to deal with contracts; relatively few lawyers have to deal with real property

BAD DEFENSES OF THE COURSE

- "We've always done it this way."
- "It's on the bar exam."
- "Eat your spinach."

TOWARD A SOLUTION

A PROPERTY COURSE EXPERIMENT IN PROGRESS

- Equal treatment of other forms of property: stamp out the assumption that real property is the normal case and everything else is identical, a variation, or an aberration
- Organize course around basic conceptual building blocks of property law: compare and contrast forms
- Using open-source materials being developed with Stephen Clowney, Michael Grynberg, Jeremy Sheff, and Rebecca Tushnet (who aren't part of this experiment)

PART I: OWNING PROPERTY

- Equal class time to each of four bodies of law:
 - Real property
 - (Tangible) personal property
 - Intangible (personal) property: e.g., domain names, franchises, trusts, corporations
 - Intellectual property: copyrights, patents, trademarks, etc.

PART I: OWNING PROPERTY (CNTD.)

- For each type of property:
 - *Subject matter* (what is it?)
 - *Initial ownership* (e.g. first possession, conquest)
 - *Owners' rights* (e.g. trespass, infringement)
- Case studies: natural resources (water, oil, spectrum) & humans (slavery, publicity rights, body parts)

PART II: DIVIDING PROPERTY

- Start with co-ownership: conceptually simple but broadly applicable introduction to “interests”
- Radically truncated coverage of future interests
- Conventional unit on landlord-tenant
- Finish with non-possessionary present interests: licenses, easements, bailments, liens

PART III: TRANSFERRING PROPERTY

- Voluntary transfers: (sales), gifts, wills and intestacy
- Transfers by operation of law: good-faith purchase, adverse possession, accession, execution of judgment, bankruptcy, eminent domain
- Transactions
- Recording systems

PART IV: REGULATING PROPERTY

- Covenants
- Zoning
- Constitutional limits: of course regulatory takings, but also Equal Protection, Due Process, and the Contracts Clause

DISCUSSION