I. Intro to property
   a. Acquisition by discovery and capture
   b. Alternative theories to property
   c. Property in one’s person
   d. Bundle of rights
   e. Acquisition by find
   f. Adverse Possession

II. Estates
   a. Possessory Estates
   b. Future Interests
   c. Concurrent Estates

III. Leaseholds: Landlord/Tenant law
   a. Leasehold estates
   b. Subleases and Assignments
   c. Tenant who defaults
   d. Landlord’s duties
   e. Tenants duties
   f. Rent control

IV. Nuisance
   a. Intro
   b. Remedies

V. Servitudes
   a. Intro
   b. Easements
   c. Covenants

VI. Zoning
   a. Intro

VII. Eminent Domain and Takings
   a. Eminent Domain
   b. Physical Occupations
   c. Regulatory Takings

I. Intro
   a. Acquisition by discovery and capture
      i. Benefits of a first come basis
         1. Generally very clear concept of who owns what
            a. Less incentive to challenge
         2. Only one person who could first possess
         3. Creates incentive to be productive and first
      ii. Locke: acquire property by putting labor into it
         1. More emphasis on laboring land than preservation
         2. Putting labor into the land puts yourself into the land
         3. Locke still believe in keeping some land in common with others
iii. Cases

1. Johnson v. McIntosh
   a. Being first not necessarily the most important. Must be first in the correct way
   b. Indians have limited right to occupy, and can only transfer to nations

2. Pierson v. Post: case for incentives
   a. Argument for initial hunter
      i. Investment of labor into hunt.
      ii. If interloper were allowed to intercede at last moment, would provide disincentive towards future hunters
   iii. Violence of disputes
   b. Arguments for interloper
      i. Difficult to establish if he would have caught
      ii. Initial hunter may have been poor, excluding other hunters
      iii. Allows maximum societal benefits (ie fewer foxes)
   c. Rule of capture: imminent capture will ensure simply spotting not enough, but will reward hunters who invest time

3. Ghen v. Rich
   a. Externality: is it easier for whalers to find finders or finders to find whalers?
   b. Pro whalers: no possible way to initially capture whale, and giving it to finder would disincentivize any whalers
   c. Pro finders: whalers abandon property. Additionally, should develop technology to capture whale

iv. Custom

1. Advantages of custom
   a. May be more efficient
   b. More narrowly tailored
   c. More flexible
   d.

2. Disadvantages of custom
   a. Unfairness
   b. Which custom rules? Uncertainty
   c. May only take own interest into account, not others
   d. Create externalities

v. Trespass (theft)

1. Why make trespass illegal?
   a. No incentive to buy property if others can steal
   b. No incentive to work if fruits of labor simply taken away
   c. Waste of resources defending property

vi. Externalities
1. Definition: effect of action that falls on a 3rd party that the actor doesn’t take into account
2. Negative externalities: associated with too much of certain activity, because individual does not bear full cost that society does
3. Positive externalities are generally associated with not enough activity, since actor does not internalize benefits
4. Example
   a. Factory produces pollution in neighborhood
      i. Solutions: Neighbors pay factory to not pollute. Will pay up to what clean air is worth collectively.
         1. Factory owner has to incur opportunity cost of not accepting money if it did not take money.
      ii. Neighbors have right to clean air
         1. Factory will buy the neighbors right to clean air
5. Coase Theorem—no transaction costs, so optimum societal level always achieved
   a. Transaction costs
      i. Bilateral monopoly
         1. Each has own interest to drive hard bargain
         2. No competition
         3. Hold outs
      ii. Free-riders
      iii. Information gathering
   vii. Commons
      1. Externalities: individuals get full benefit, but only portion of cost (e.g., logging in commons—cutter gets all benefit of gaining tree)
      2. Externality: Incentive to rush to acquire property
      3. Advantage of private property: benefit/costs fully realized by owner, so all externalities internalized
   b. Alternative theories of Property
      i. Radin
         1. Distinction between fungible and non-fungible
            a. Non-fungible: people value personal property stronger depending on circumstances
            b. Should we allow fungible and non-fungible to be valued at the market price?
      ii. Friedman/Sunstein
         1. Personal property rights allow autonomy and protection from gov’t
   c. Property in one’s person: Moore
      i. Scope of rights: should we be able to give, sell, prohibit use of own body?
         1. Current law: own’s person is not alienable
      ii. Contract
         1. Could simply contract that cells may not be used, or go to different doctor
d. Bundle of rights
   i. State v. Shack
      1. Right to exclude not strong enough to infringe on other’s rights
   ii. Mobile home case
      1. Do have right to exclude other’s for preference, economic reasons, etc.
         a. Just because it would be inconvenience to others, does not allow trespass

e. Acquisition by find
   i. Lost property: owner unintentionally parted with property (dropped wallet)
      1. Owner has title over finder, but finder has title over others
         a. Reason: if loser of property lost title of property, owners would spend more time watching over property and less time being productive
      2. Finder of property usually wins, not owner or occupier of premises
         a. Claims: Finder may claim owner would not have found it
         b. Premises owner: owner of premises has control of premises, and therefore should have control over found property
         c. When premises is public, generally goes to finder
         d. Private: sometimes goes to owner
   ii. Mislaid property: Intentionally left, but mistakenly left (wallet on counter)
      1. Owner of premises always wins over finder
         a. Greater chance of finding true owner
   iii. Abandon property: intentionally abandon property
      1. Intent: intent to abandon property shows abandonment
      2. Finder
         a. Must gain possession, and show intent of possession.

f. Adverse possession
   i. Acquiring title to property by using it
   ii. Statute of limitations: amount of time in which owner can sue for trespass and ejectment
   iii. Elements of adverse possession
      1. Actual entry onto property giving exclusive possession to adverse possessor
         a. Provides notice to original owner
         b. Informs extent of adverse possessor’s claim
      2. Open and notorious
         a. Cannot secretly take over property. Must be obvious to property owner
         b. Any reasonably diligent owner could notice
      3. Adverse and hostile to original owner
         a. Cannot be there by permission of owner
      4. Possession must be continuous
         a. Must be used a manner consistent with nature of property
b. Use with nature will allow true owner to know of the trespass

5. Statute of limitations must have run

iv. Constructive adverse possession
   1. Wrong title. Thinks he owns, but doesn’t.
      a. Once statute of limitations runs, then does get it
   2. Leasing does not qualify for adverse possession
   3. Co-tenant cannot gain adverse possession, unless excluded by other owner (Ouster)
   4. Tacking.
      a. Can tack periods of adverse possession from prior adverse possessor, as long as title passes directly.

v. Reasoning for adverse possession
   1. create incentives to use land productively. Either the adverse possessor will use land productively or original owner will find trespasser by using it productively
   2. Can clarify title of land. This can encourage future exchanges
   3. Expectation. Adverse possessor expects to keep land
   4. Allocates risk. There need not be complete and exhaustive title examinations of every exchange of property
   5. Adverse Possessor may be using the property and has personhood attached to it, whereas actual owner obviously doesn’t use

vi. To avoid: all owner must do is check from time to time.
   1. Also, whoever values the land more will simply buy it from the other, regardless of who the court gives it to. But then problem runs with efficiency of transactions.

II. Estates
   a. Intro
      i. Can divide up ownership rights over time
      ii. Alienability is a good right
          1. However, from an initial transfer right, there is an advantage to allowing transferor to use own terms to encourage the transfer of land
      iii. There are no new estates in land. However, through contracts and such, one can acquire land to make part of an estate
   b. Fee Simple
      i. Fee Simple absolute (O to A)
         1. Runs forever
         2. Fully alienable
         3. Any attempt to put a restraint on alienation is void
         4.
      ii. Defeasible Fees
         1. ***Fee Simple Determinable
            a. Possibility of reverter. Future interest is held by grantor
            b. Transfers automatically back to grantor upon condition
         2. Fee Simple Subject to condition subsequent
a. Future interest in form of right of entry by grantor
b. Grantor must exercise right of reentry upon condition

3. Fee Simple Subject to executory limitation
   a. Future interest held by a 3rd party
   b. Automatically give to 3rd upon condition
   c. No estate that gives right of entry to 3rd party

   iii. Can combine interests by acquiring both future interest and present interest, creating a fee simple.

c. Life Estates
   i. Estate in land someone has as long as they are alive
      1. Followed by a reversion (to the grantor) or Remainder (to 3rd party)
      2. Can impose restrictions on alienability of life estate.
   3. Remainders
      a. Vested remainder: belongs to an ascertainable person with no conditions (O to A for life, then to B)
      b. Vested remainder subject to open: Exists when the remainder is a class that can increase (O to A for life, then to B’s children)
      c. Vested remainder subject to divestment: remainderman could be divested upon the happening of an event (O to A for life, then to B, but if B drops out of law school, to C)
      d. Contingent Remainder-unascertained person takes possession (O to A for life, then to B if she graduated from law school)

4. Waste-life tenant cannot waste
   a. Voluntary waste: affirmative action that causes harm
   b. Permissive waste-inaction
      i. Tenant has duty to repair
      ii. Tenant has duty to pay taxes on property
         1. If tenant does not pay taxes, then remainderman may lose property
      iii. Ameliorative waste: makes the property more valuable
         1. Courts have found a relatively worthless property can be changed by life tenant

d. Co-tenancy
   i. Intro
      1. Time: all interests must be vested at same time
      2. Title: must be on same deed
      3. Interest: must all take the same kind
      4. Possession: all must have identical rights of possession
   ii. Tenancy in common
      1. Each tenant has a separate but undivided interest in the property
      2. Each has a right to possess entire property
      3. Ownership can have different fractions of ownership
4. Co-tenants may contract a different use of land (A for summer, B for winter)
5. Can sell, and is transferable by will

iii. Joint tenancy
1. Right of survivorship-not transferable by will
2. Each has right to possess property in its entirety
3. Not inheritable between joint tenants
4. Can contract around interests
5. Transfer to another extinguishes his right of survivorship (creates a tenant in common)
   a. O to A,B,C. A to D. B dies. A=1/3, C=2/3
6. Pros of joint tenancy
   a. Avoids probate

iv. Ouster
1. If A takes steps to keep B off of premises, then A is liable to pay B for rent

v. Destruction of joint tenancy
1. Partition
   a. Partition in kind: physical partition of land
   b. Partition in sale: selling of land and giving fractional interest of the sale to each party
2. Severance
   a. One of four unities disturbed

vi. Duties of cotenants
1. Possession: each must have right to possess all of property
2. Accounting: Profits need not be shared, but leases must be paid for
3. Contribution: Each must pay for necessary repairs, and taxes

III. Leaseholds
   a. Intro
      i. 4 leasehold interests
         1. Term of years
            a. Any lease for a specific period of time
            b. No notice required, lease simply ends at lapse of lease
            c. If tenant stays past date, landlord can sue for trespass
         2. Periodic Tenancy
            a. Period lasts for fixed duration, and will continue until landlord or tenant gives notice of termination
            b. Common law: Must give 6 months notice for anything longer than a year
            c. Common law: Anything short of a year requires the notice to be as long as the period, but not longer than a year
            d. Many statutes: can cancel with 1 month of notice
         3. Tenancy at will
            a. No fixed period
            b. Tenancy lasts as long as both parties desire
            c. Terminable by both parties
d. Waste by tenant can cancel tenancy
e. When tenant or landlord dies, or one transfers interest, lease ends
4. Tenancy at sufferance
   a. Holdovers
      i. Tenant wrongfully maintain possession of premises after lease is up
      ii. Remedies: issue a trespass order, and eject tenant
      iii. Alternative: find new tenancy. Generally, terms of old lease apply, with maximum extension of one year.
b. Subleases and assignment
   i. Privity of estate: between landlord and present tenant
   ii. Privity of contract: agreement between landlord and initial tenant (or assignee that expressly takes the obligations)
   iii. Assignment-tenant transfers entire interest for entire term to 3rd party
      1. Assignee and landlord in privity of estate
      2. Tenant and landlord in privity of contract
         a. To get out of privity of contract, tenant must expressly be released
   iv. Sublease-transfer of lesser interest to 3rd party
      1. T1 has some right of re-entry
      2. No privity of estate or contract between sublessee and landlord
      3. L can sue T1, but T1 can sue T2
   v. Landlord can reasonably withhold right to sublease or assign
   vi. Landlord that accepts rent of assignee accepts assignment
c. Tenant who defaults
   i. Common law rule: landlord can use self-help to retake premises
      1. Even with quick court action, could still be a while to let judicial system work→this could lead to more misuse of premises
      2. transaction costs of going through courts
      3. Can also lead to violence
      4. Residential v. Commercial
         a. More restrictions on self-help for residential (More emotional attachment to home, Radin view)
   ii. Vacation of premises
      1. Landlord must attempt to mitigate damages-find another tenant
         a. Can, however, lease for less, and then sue for damages
         b. Argument: mitigation good for society using property well. Also, landlord is no worse off.
         c. If mitigation required, landlord will simply raise rents, have more background checks, etc.
      2. Anticipatory breach: sue for termination and future rent
      3. Could have contractual remedy (fixed breach costs)
d. Duties of landlord
   i. Implied covenant of quiet enjoyment
1. Total eviction of tenant (Tenant physically removed, but L still wants rent)
2. Partial eviction (landlord keeps part of leased property). T can stay on the rest of the land w/o paying rent
3. Constructive eviction: landlord who fails to provide a service that makes leased property uninhabitable. You can leave, and be excused from rent
   a. Landlord must be responsible for condition
   b. Substantial interference with quiet enjoyment
   c. Must abandon premises within a reasonable time
      i. This evidences that eviction occurred
4. Idiosyncratic tenant
   a. Generally must be a reasonable person’s needs
ii. Implied warranty of habitability
   1. Cannot contract around it
   2. Found if premises are uninhabitable by a reasonable person
   3. Remedies
      a. Terminate lease, abandon premises
      b. Can take to court for abatement of rent, and recoup back rent
      c. May stay and withhold rent until conditions fixed
4. Why do we have this?
   a. Tenants have lower bargaining power than landlords
   b. Negative externalities hurt surrounding property
e. Duties of tenant
   i. Tenant cannot commit waste
   ii. If tenant covenants to repair, tenant is liable for every repair
      1. Exception: ordinary wear and tear
f. Rent control
   i. Price ceiling of rent
      1. Fewer services
      2. Fewer landlords in general (move towards ownership)
      3. Higher safety deposits
      4. Rich people, the ones that we are not trying to help, benefit
      5. Radin: people attach personhood to their community, and home
g. Nuisance
   i. Intro
      1. Nuisance: you use of the land interferes with another’s use of land
      2. Generally come up from negative externalites
      3. Must be substantial to be classified as nuisance
         a. Extent and character of nuisance (Loud music at 3pm v. 3am)
         b. Extent and character of the harm (eg oil refinery keeping from growing flowers vs. oil refinery making people sick).
         c. The social value of the plaintiff’s use of the land
4. Nuisance determines rights (eg right to pollute vs. right to clean air)
5. Coming to the nuisance
   a. Moving into the nuisance should assume risk
   b. First in time principles
   c. If you came to the nuisance, probably paid a lower price
   d. Considerations
      i. Is it coming to the nuisance by moving next to a factory?
      ii. What if the factory expands?
      iii. What if diligence would have found this information?

ii. Remedy
   1. Injunction
      a. Mandatory end of nuisance
         i. Post injunction bargaining: $\Delta$ could buy out $\Pi$.
            1. Still have traditional bilateral monopoly problems
            2. Spite
            3. Holdout
            4. Personal Value
      b. Damages
         i. Could steal lead to end of nuisance, by costing too much to continue
      c. Rights, liability rule, and property rule
         i. Right to clean air with property rule $\rightarrow$ activity must be abated by injunction
         ii. Right to clean air with liability rule $\rightarrow$ $\Delta$ must pay damages to continue pollution
         iii. Right to pollute w/ property rule $\rightarrow$ Let factory owner continue with no relief
         iv. Right to pollute w/ liability rule $\rightarrow$ Abate the activity if factory given damages

IV. Servitudes
   a. Intro
      i. Real covenants: covenants enforceable by law
      ii. Equitable servitudes: covenants enforceable at equity
      iii. Dominant tenement - land that is being benefited by the easement
      iv. Servient tenement - land that is being burdened by the easement
v. License: revocable (by permission)

b. Easements
   i. Right to possess land simultaneously
      1. Relationships in land, not just contract
      2. Common use: transportation to another portion of land
      3. Term of years
      4. Defeasible happening a certain event
      5. Easement appurtenant: easement directly benefits a specific piece of land
      6. Easement in gross: no specific benefited land (benefit person, not land)

   ii. Creation of easement
      1. Express grant to another
      2. Estoppel: reasonable expectations (building of house, should have had notice)
      3. By implication (prior existing use)
         a. 1st situation: previous use by a common owner. (Sells part of land to another, but he can still use the land for himself to get to his land.)
         b. Previous use continuous.
         c. Previous use must have been open and obvious.
         d. Reasonably necessary.
      4. By prescription
         a. Use must be adverse (a trespass).
         b. Must be continuous and uninterrupted for statutory period. (Can be seasonal if for the same purposes)
         c. Use must be visible and notorious or with owner’s knowledge.
         d. Use must be without the owner’s permission
         e. To prevent easement by prescription: give permission, block the pathway.
      5. By necessity
         a. Unity of ownership between servient and dominant tracts
         b. Necessity-use is strictly necessary (not just useful or convenient)
         c. Necessity had to exist at the time of the severance of the parcels

   iii. Termination
      1. Unity of ownership
      2. By abandonment (mere non-use not enough). Must show intent
      3. End of necessity.
      4. By agreement
      5. Passage of time
      6. Estoppel
         a. Representation of relinquishment by the owner of the estate.
b. Change of position in reliance on

c. Covenants
   i. Intro
      1. Damages: restrictive covenant at law
      2. Injunction: equitable servitude
      3. Can be a negative or positive promise
   ii. Requirements
      1. Intent: pledge must run for successors
      2. Notice: owner on which enforcement sought must have notice (either express or written)
      3. Covenant must touch and concern land
      4. Privity
         a. Horizontal Privity: relationship between original contracting parties
            i. Landlord tenant
            ii. Servient and dominant tenement
            iii. Concurrent owner (tenants in common)
            iv. NOT between neighbors
         b. Vertical privity
            i. Subsequent owners of property
   iii. Burden/Benefit
      1. Successor in interest is II: benefit
      2. Successor in interest is Δ: burden
      3. For benefit to run, only need show vertical privity
      4. For burden to run, need show both vertical and horizontal privity
      5. Modern courts allow burden/benefit to run with the passing of a lesser estate
      6. Example
         a. A and B (neighbors) make covenant. B sells to C.
            i. Can A sue C? No. there is no horizontal privity
            ii. Can C sue A? Yes. There is vertical privity.
   d. Equitable servitudes
      i. No privity necessary
      ii. Requirements
         1. Intent to bind successors
         2. Notice
         3. Touch and Concern
      iii. Subdivisions
         1. Equitable servitudes can be implied in a common scheme
         2. Intent: is it actually a common scheme?
         3. Default rule
            a. Should we adopt a rule that a few lots with restrictions creates that rule for all lots, and must give notice if otherwise?
         iv. Can still contract out of these, but could be costly (many people to contract with)
e. Terminations of covenants
   i. Common ownership
   ii. Release: benefited land(s) release burdened land
   iii. Limited duration
   iv. Abandonment
      1. Have let others breach the covenant
      2. If has allowed $\Delta$ to invest in improvements, but did not enforce early enough
   v. Change of conditions
      1. Restrictions must be all kept or all wiped out.

f. Distribution of rights
   i. Property rule→Injunction. Can opt to sell the injunction.
   ii. Property right protected by a Liability rule→damages. Breaching party is obligated to pay.
   iii. Deny all relief to beneficiary→allow breaching party to breach. Allocates right to breach which is protected by a property rule.
   iv. Enjoin the breach so long as breaching party pays damages

V. Zoning
a. Intro
   i. Government restriction on land use
   ii. Denotes that property can be zoned for certain purposes
      1. Residential
      2. Commercial
      3. Industrial
   iii. At what point do regulations become takings?
   iv. Regulatory takings: can reduce price of land

b. Amortization
   i. Period of phasing out, after which owners must be in compliance with zoning scheme
   ii. Problems:
      1. How much has owner invested
      2. Type of non-conforming use
      3. Harm to public for allowing non-conforming use
      4. Character
      5. Reasonable Amortization period?
   iii. Grandfathering allows non-conforming use to get a monopoly
   iv. Transfer
      1. If amortization period not run, transferee get remainder of period
      2. If you shut down, then try and reopen, may not non-conform
   v. Improvements
      1. At what point does a non-conforming use go too far (gas station increasing services)

c. Takings
   i. When re-zoning frustrate reasonably backed investment expectations, it could be considered a taking.

d. Other options
i. City could simply contract (e.g., buy out non-conforming use)
ii. Use eminent domain

e. Variances
i. Variance: right to vary from zoning scheme
ii. Run with the land
iii. Two types
   1. Use variance (light commercial use)
   2. Area variance (frontage requirements)

iv. Considerations
   1. Show that not allowing variance causes undue hardship
   2. Show that variance will not hurt other property owners

v. If variance found, other property owners could still simply buy out variance

VI. Eminent Domain and Takings
a. Eminent Domain
i. Gov’t has power to take land from its owners
   1. Requirements
      a. Just compensation—gov’t must pay for land
      b. Public use
         i. Narrow view—only allow for use that is specifically public
         ii. Broad view—allow for use that benefits public, even if land is given to private people
   2. Argument: gov’t can solve holdout/bilateral monopoly problems by forcing land to be sold
      a. This tends to follow a liability rule, since gov’t must pay, and owner must accept
      b. A property rule would entail the gov’t offering, and owner having choice of sale

ii. Public use
   1. Cases
      a. Hawaii housing
         i. Supreme court found it to be for public good
         ii. Public purpose within state’s police powers
      b. Poletown
         i. Transfer to private company public since it will create jobs and boost economy
         ii. Courts should not work against legislature, who has better information gathering resources

iii. Just compensation
   1. Reasoning
      a. Economic certainty: more incentive to invest or acquire property if known that it will not be divested
      b. Keeps gov’t from abusing eminent domain since it must pay

iv. Continuum
1. a---b---c---d---e
   a. Eminent domain (gov’t taking title)
   b. Physical occupation
   c. Total wipeout of interest
   d. Regulatory takings
   e. No regulation, no takings

b. Physical occupation
   i. Loretto
      1. Cable boxes permanent fixture on apartment buildings
         a. Court found a physical occupation to be a categorical per se taking
         b. Damages, however, can be quite nominal
   ii. Rent control hypothetical
      1. Gov’t keeping away right to exclude at a certain price
      2. Regime of low market tenants
      3. Would be difficult to show a taking given Penn Central

c. Regulations
   i. Choices
      1. Regulation ALWAYS constitutes a taking
         a. Problem: gov’t will always have to pay, and cost a lot of money, and lower amount of good for society regulations.
         b. Plus: will force gov’t to tax society to pay for the regulations it deems good. In addition, will make gov’t more deliberate to make a regulation.
      2. Regulation is NEVER a taking:
         a. Problem: imposing a cost on private citizens. Gov’t has no incentive to police itself since it will never have to pay.
         b. Plus: gov’t can easily work towards public good
      3. Regulation is SOMETIMES a taking
         a. Problem: difficult to administer
   ii. Pennsylvania Coal
      1. Diminution-in-value: If help to society is minimal, and cost to company is great, there is a taking (but exact measurement not described)
      2. Bottom line: property may be regulated to a certain extent, but when it goes too far it is a takings
   iii. General
      1. Average reciprocity of advantage
         a. If burdened party benefited, may not be a taking
      2. Reasonable investment backed expectations
         a. How to determine reasonable expectations?
            i. Informational cost
            ii. Should be included in any development?
      3. Lucas
         a. Total wipeout of value=takings
         b. Bundle of sticks example
i. Lose 3 out of 20 sticks from a regulation
ii. Look at distinct interest: lost 3/3 of those sticks.
iii. Argue for an entire wipeout
iv. Courts, however, are resistant to conceptually sever the sticks from each other

iv. Penn Central
   1. Courts reject that loss of air rights cannot be severed from rest of property in determined loss in value
   2. Economic impact: does the regulation effect reasonable investment backed expectations?
      a. Courts say no. Have both reciprocal benefit, and can still run as normal business
   3. Character of regulation-balancing effect
      a. Is it an invasion or regulation?
      b. What is the public purpose, and method of achieving purpose

v. Palazzolo
   1. Courts refused to deny relief because he was an owner subsequent to the enactment of the regulation
      a. Courts may be more worried about limiting gov’ts ability to regulate in this case
      b. Additionally, still worried about just compensation