

HENRY G. MANNE PROGRAM IN LAW & ECONOMICS STUDIES
LAW & ECONOMICS CENTER, GEORGE MASON UNIVERSITY SCHOOL OF LAW
Sixteenth Law Institute for Economics Professors
Sunday, July 15 through Friday, July 27, 2012

Classes & Hotel: The Stanley Hotel 333 Wonderview Avenue Estes Park, CO 80517

Agenda

Sunday, July 15

Classes held in the Music Room

Welcome

3:00 – 4:00 pm

Arrival, Check-in, Registration, Lobby (*outside Music Room*)

4:00 – 6:30 pm

Icebreaker, *Music Room*

Facilitator: **Barry D. Baysinger**, Professor of Management, University of Kansas, ret.

6:30 – 8:30 pm

Reception and Dinner, *MacGregor Ballroom*

Welcome

Daniel D. Polsby, Dean, George Mason University School of Law

History of the LEC

Henry N. Butler, George Mason University Foundation Professor of Law, George Mason University School of Law, and Executive Director, Law & Economics Center

Monday, July 16

Classes held in the Pinion Room

7:00 – 7:50 am

Breakfast, *Music Room*

Morning Sessions: Law and the Legal System

Neomi Rao, Assistant Professor of Law, George Mason University School of Law

Nelson Lund, Patrick Henry Professor of Constitutional Law and the Second Amendment, George Mason University School of Law

8:00 – 9:15 am

Session 1: English Common Law and Stare Decisis | Lund

Reading Assignment: Blackstone, *Commentaries on the Laws of England*, vol. 1, pp. [63-92](#), [117-141](#), [156-161](#)

9:30 – 10:45 am

Session 2: Statutes and the Common Law | Rao

Reading Assignment: Holmes, Jr., *The Path of the Law*, 10 HARVARD LAW REVIEW 457 (1897)

Scalia, *Common-Law Courts in a Civil-Law System: The Role of the United States Federal courts in Interpreting the Constitution and Laws*, in A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW (1998)

[Li v. Yellow Cab](#), 13 Cal.3d 804 (Cal. 1975)

11:00 am – 12:15 pm

Session 3: Separation of Power and the Formation of the Constitution | Lund

Reading Assignment: United States Constitution (Copy mailed)

[Federalist Papers, Nos. 10, 51](#)

12:15 – 1:00 pm

Lunch, *Music Room*

Afternoon Sessions: The Constitution | Rao and Lund

1:15 – 2:30 pm

Session 4: Judicial Review | Lund

Reading Assignment: [Marbury v. Madison](#), 5 U.S. 137 (1803)

2:45 – 4:00 pm

Session 5: Commerce Clause | Rao

Reading Assignment: [Wickard v. Filburn](#), 317 U.S. 111 (1942)

[United States v. Lopez](#), 514 U.S. 549 (1995)

4:15 – 5:30 pm

Session 6: Dormant Commerce Power | Lund

Reading Assignment: [United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Auth.](#), 550 U.S. 330 (2007)

5:30 – 6:30 pm

Reception, Music Room

Tuesday, July 17

Classes held in the Pinion Room

7:00 – 7:50 am

Breakfast, Music Room

Morning Sessions: Legislation and Statutory Interpretation | Rao and Lund

8:00 – 9:15 am

Session 7: Substantive Due Process | Lund

Reading Assignment: [Lochner v. New York](#), 198 U.S. 45 (1905)

[United States v. Carolene Products Co.](#), 304 U.S. 144 (1938)

[Roe v. Wade](#), 410 U.S. 113 (1973)

9:30 – 10:45 am

Session 8: Theories of Legislative Process and Interpretation | Rao

Reading Assignment: Easterbrook, [Text, History, and Structure in Statutory Interpretation](#), 17 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 61 (1994)

[United States v. Marshall](#), 908 F.2d 1312 (7th Cir. 1990) (en banc)

11:00 am – 12:15 pm

Session 9: Interpretation in Practice | Rao

Reading Assignment: [Case Studies: \(1\) Clean Water Act and Wetlands; \(2\) Immigration and Nationality Act of 1952 and Homosexuality; \(3\) Civil Rights Act of 1969 and Affirmative Action](#)

12:15 pm

Adjourn

Wednesday, July 18

Classes held in the Pinion Room

7:00 – 7:50 am

Breakfast, Music Room

Morning Sessions: Administrative Law | Rao and Lund

8:00 – 9:15 am

Session 10: Administrative Interpretation of Statutes | Rao

Reading Assignment: [Chevron USA Inc v Natural Resources Defense Council](#), 467 U.S. 837 (1984)

[FDA v. Brown and Williamson Tobacco Corp.](#), 529 U.S. 120 (2000)

9:30 – 10:45 am

Session 11: Constitutional Problems in the Administrative State | Lund

Reading Assignment: [United States v. Butler](#), 297 U.S. 1 (1936)

[Chas. C. Steward Mach. Co v Davis](#), 301 U.S. 548 (1937)

[South Dakota v. Dole](#), 483 U.S. 203 (1987)

11:00 am – 12:15 pm

Session 12: Limited Government and the Administrative State | Rao

Reading Assignment: [Affordable Care Act Case](#) (original)

[Affordable Care Act Case](#) (new version w/background & summary)

12:15 pm

Adjourn

Thursday, July 19

Classes held in the Pinion Room

7:00 – 7:50 am

Breakfast, Music Room

Morning Sessions: Contracts

Todd J. Zywicki, Foundation Professor of Law, George Mason University School of Law

8:00 – 9:15 am

Session 13: Contracts I | Zywicki

Reading Assignment: Barnett, *The Oxford Introductions to U.S. Law: Contracts*, Oxford University Press (2010):

Introduction, pp 12-36, pp 67-102, and pp 127-188. (Copy mailed)

9:30 – 10:45 am

Session 14: Contracts II | Zywicki

11:00 am – 12:15 pm

Session 15: Contracts III | Zywicki

12:15 – 1:00 pm

Lunch, Music Room

Afternoon Sessions: Property

Eric R. Claeys, Professor of Law, George Mason University School of Law

Adam Mossoff, Professor of Law, George Mason University School of Law

1:15 – 2:30 pm

Session 16: Property's Conceptual Structure; Acquisition of Private Property; Real Property's Term; Co-Ownership Interests | Claeys

Reading Assignment: Merrill & Smith, *The Oxford Introductions to U.S. Law: Property* (Oxford: Oxford University Press, 2010) and supplemental readings as indicated:
Merrill & Smith, CH 1, pp. 11-16

Merrill & Smith, CH 2, pp. 17-41

Merrill & Smith, CH 3, pp. 43-50, 55-64 (copy mailed)

Epstein, *Principles for a Free Society* (Perseus Publishing, 1998), pp. 279-86 and corresponding endnotes pp. 343-44 (Supp. pp. [6-15](#), [37-38](#))

Merrill & Smith, CH 5, pp. 95-122

Merrill & Smith, CH 6, pp. 153-57

Alchian, *Property Rights*, in *The Concise Encyclopedia of Economics*, Liberty Fund (2008) ([Supp. pp. 1-5](#))

2:45 – 4:00 pm

Session 17: Possessory Interests in Using and Controlling Land and Chattels; Law and Economic Analysis of Disputes over Use and Control | Claey

Reading Assignment: Merrill & Smith, CH 1, pp. 1-8

Merrill & Smith, CH 4, pp. 65-84, 89-94

Merrill & Smith, CH 8, pp. 183-215

4:15 – 5:30 pm

Session 18: The Relation Between Property and Contract; An Overview of the Public Law of Property | Claey

Reading Assignment: Merrill & Smith, CH 1, pp. 8-11

Merrill & Smith, CH 4, pp. 84-89

Merrill & Smith, CH 7, pp. 159-81

Merrill & Smith, CH 8, pp. 215-221

The 1926 Standard Zoning Enabling Act. Skip all the materials below the footnote margin. Read carefully sections 1, 2, 6 and 7; skim sections 3, 4, 5, 8 and 9 ([Supp. pp. 43-50](#))

Juergensmeyer & Roberts, *Land Use Planning and Development Regulation Law* (2d ed., 2007), § 5.37 ([Supp. pp. 50-56](#))

Merrill & Smith, CH 9, pp. 241-58

Epstein, *Principles for a Free Society*, CH 10, pp. 286-307 and corresponding endnotes pp. 344-48 (Supp. pp. 15-35, [38-42](#))

Conn. Gen. Stat. Ann. §§ 8-189 to -193 ([Supp. pp. 57-60](#))

Excerpts from *Kelo v. City of New London*, 843 A.2d 500 (Conn. 2004), *affirmed*, 545 U.S. 469 (2005) ([Supp. pp. 61-63](#))

7:00 – 9:30 pm

Reception and Dinner, MacGregor Ballroom

Friday, July 20

Classes held in the Pinion Room

7:00 – 7:50 am

Breakfast, Music Room

Morning Sessions: Intellectual Property | Claey & Mossoff

8:00 – 9:15 am

Session 19: Introduction to Intellectual Property; Trade Secrets | Mossoff

Reading Assignment: Hunter, *Intellectual Property*, Oxford University Press (2012):

Hunter, CH 1

Hunter, CH 5 (copy mailed)

[Cheney Brothers v. Doris Silk Corporation](#), 35 F.2d 279 (2d Cir. 1929) (abridged)

9:30 – 10:45 am

Session 20: Patent Law | Mossoff

Reading Assignment: Hunter, CH 3

11:00 am – 12:15 pm **Session 21: Copyright Law | Mossoff**

Reading Assignment: Hunter, CH 2

12:15 pm **Adjourn**

Saturday, July 21
Classes held in the Pinion Room

7:00 – 7:50 am **Breakfast, Music Room**

Morning Sessions: Civil Procedure

Amy Wax, Robert Mundheim Professor of Law, University of Pennsylvania Law School

8:00 – 9:15 am **Session 22: Civil Procedure I | Wax**

Reading Assignment: Meador and Mitchell, [American Courts](#) (3rd ed), West (2009): CH 1-3

Neuborne, [The Myth of Parity](#), 96 Harv L. Rev. 1105 (1977)

Instructions to the Jury: Alexander v. Kramer Bros Freight Lines, 273 F.2d 373 (1959)
Fed. R. Civ. P. 51

New Trial: Texas Employers Insurance Association v. Price, 336 S.W. 2d 304 (1960)
Fed. R. Civ. P. 59

Federal Question and Diversity: Capron v. Van Noorden, 6 U.S. (2 Cranch) 126 (1804)
Mas v. Perry, 489 F.2d 1396 (1974)
28 U.S.C. §§ 1331 and 1332

Summary Judgment: International Shoe Co. v. Washington, 326 U.S. 310 (1945)
Burnham v. Superior Court, 495 U.S. 604 (1990)
Alderman v. Baltimore & Ohio R. Co., 113 F. Supp. 881 (1953)
Fed. R. Civ.P. 56

Pleadings and Motions: Fed. R. Civ. P. 7, 8, and 12

Full Faith and Credit: 28 U.S.C. § 1738
United States Constitution, Articles IV and VI, and Amendment VII

9:30 – 10:45 am **Session 23: Civil Procedure II | Wax**

11:00 am – 12:15 pm **Session 24: Civil Procedure III | Wax**

12:15 pm **Adjourn**

Sunday, July 22 ***No Scheduled Events***

Monday, July 23
Classes held in the Pinion Room

7:00 – 7:50 am **Breakfast, Music Room**

Morning Sessions: Criminal Law and Procedure

Elina Treyger, Assistant Professor of Law, George Mason University School of Law

8:00 – 9:15 am

Session 25: Criminal Law | Treyger

Reading Assignment: [Sources of Criminal Law](#): Dressler, *Criminal Law* (5th ed.), pp 27-31, 70

[Actus Reus](#): Dressler, pp 85, 87-89, 105-109

Mens Rea: [Robinson & Cahill](#), *Criminal Law* (2nd ed.), pp 152-156

[Singer & La Fond](#), *Criminal Law* (5th ed.), pp 75, 80-87

[Causation](#): Robinson & Cahill, pp 123-133

[Defenses](#): Dressler, pp 203-205

*[Mistake](#): LaFave, *Substantive Criminal Law* (2nd ed.), selection

*[Justification, Self-Defense](#): Dressler, pp 223-234

*[Excuse, Insanity](#): Singer & La Fond, pp 512-513, 516-520

[Accomplice Liability](#): LaFave, selection

9:30 – 10:45 am

Session 26: Criminal Procedure (The Fourth Amendment) | Treyger

Reading Assignment: [Sources of Criminal Procedure Rules](#): Israel & LaFave, *Criminal Procedure: Constitutional Limitations*, 6th ed., pp 3-9

[Exclusionary Rules](#): Israel & LaFave, pp 261-262

[Fourth Amendment Overview](#): Dressler & Michaels, *Understanding Criminal Procedure* (5th ed.), pp 50-51

What are Searches & Seizures:

*[Searches](#): Dressler & Michaels, *Understanding Criminal Procedure* (4th ed.), pp 69-75

Dressler & Michaels (5th ed.), pp 77-81, 98-100

*[Seizures](#): Dressler & Michaels (4th ed.), pp 107, 109-111

11:00 am – 12:15 pm

Session 27: Criminal Procedure II | Treyger

Reading Assignment: [Probable Cause](#): Dressler & Michaels (4th ed.), pp 121-123; Israel & LaFave, pp 69-72

[Arrest Warrants](#): Dressler & Michaels (4th ed.), pp 154-155, 157-158

[Search Warrants & Exceptions](#): Dressler & Michaels (4th ed.), pp 167-168, 173-175; LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, selection

*[Search Incident to Arrest](#): LaFave, selection

*[Consent](#): Cook, *Constitutional Rights of the Accused*, selection

*[Vehicles](#): Dressler & Michaels (4th ed.), pp 217-220

[Terry v. Ohio](#): Dressler & Michaels (4th ed.), pp 277-286

12:15 – 1:00 pm

Lunch, Music Room

Afternoon Sessions: Torts and Products Liability

George L. Priest, Edward J. Phelps Professor of Law and Economics and Kauffman Distinguished Research Scholar in Law, Economics, and Entrepreneurship, Yale Law School

1:15 – 2:30 pm

Session 28: Trespass, Negligence and the Emergence of the Economic Approach | Priest

Reading Assignment: [Scott v. Shepherd](#) 96 Eng. Rep. 525 (K.B. 1773)

[Brown v. Kendall](#) 60 Mass. 292(1850)

[Eckert v. Long Island R.R.](#) 43 N.Y. 502 (1871)

[U.S. v. Carroll Towing Co.](#) 159 F. 2d 169 (2nd Cir. 1947)

2:45 – 4:00 pm

Session 29: Trespass, Causation, Compensatory Damages, Punitive Damages | Priest

Reading Assignment: [Fletcher v. Rylands](#) 159 Eng. Rep. 737 (Ex. 1865); [Rylands v. Fletcher](#) L.R. 3 H.L. 330(1868)

[Palsgraf v. Long Island R.R.](#) 162 N.E. 99 (N.Y. 1928)

[Summers v. Tice](#) 199 P. 2d 1 (Cal. 1948)

[Vosburg v. Putney](#) 50 N.W. 403 (Wisc. 1891)

[McDougald v. Garber](#) 536 N.E. 2d 372 (N.Y. 1989)

[State Farm Mutual Automobile Insurance Co. v. Campbell](#) 538 US 408(2003)

4:15 – 5:30 pm

Session 30: Products Liability | Priest

Reading Assignment: [Escola v. Coca Cola Bottling Co. of Fresno](#) 150 P.2d 436 (Cal. 1944)

[Greenman v. Yuba Power Products, Inc.](#) 99 Cal 2d 57(1962) and [Restatement of Torts \(Second\) 402A \(1964\)](#)

[Barker v. Lull Engineering Co.](#) 573 P.2d 443 (Cal. 1978)

[Borel v. Fibreboard Paper Products Corp.](#) 493 F.2d 1076 (1973)

[Daly v. General Motors Corp.](#) 575 P.2d 1162 (Cal. 1978)

7:00 – 9:30 pm

Reception and Dinner, MacGregor Ballroom

Tuesday, July 24

Classes held in the Pinion Room

7:00 – 7:50 am

Breakfast, Music Room

Morning Sessions: Antitrust | Priest

8:00 – 9:15 am

Session 31: The Origins and the Development of the Rule of Reason | Priest

Reading Assignment: [The Sherman Act](#), 26 Stat 209 (1890)

[U.S. v. Trans-Missouri Freight Association](#) 166 US 299 (1897)

[Standard Oil Co. of New Jersey v. U.S.](#) 221 US 1 (1911)

[Clayton Antitrust Act 38 Stat 730 \(1914\) and Federal Trade Commission Act 38 Stat 717 \(1914\)](#)

[Board of Trade of City of Chicago v. U.S.](#) 246 US 231 (1918)

9:30 – 10:45 am

Session 32: Antitrust during the Depression and the Rise of the Per Se Prohibition | Priest

Reading Assignment: [Appalachian Coals, Inc. v. U.S.](#) 288 US 344 (1933)

[U.S. v. Socony-Vacuum Oil Co.](#) 310 US 150 (1940)

[Parker v. Brown](#) 317 US 341 (1943)

[Northern Pacific Railway Co. v. U.S.](#) 356 US 1 (1958)

[Klor's, Inc. v. Broadway-Hale Stores](#) 359 US 207 (1959)

11:00 am – 12:15 pm

Session 33: The Modern Approach | Priest

Reading Assignment: [Continental T.V., Inc. v. GTE Sylvania, Inc.](#) 433 US 36 (1977)

[Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.](#) 429 US 477 (1977)

[Matsushita Electric Industrial Co. v. Zenith Radio Corp.](#) 475 US 574 (1986)

[Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP](#) 540 US 398 (2004)

[Leeqin Creative Leather Products, Inc. v. PSKS, Inc.](#) 127 S.Ct. 2705 (2007)

12:15 pm

Adjourn

Wednesday, July 25

Classes held in the Pinion Room

7:00 – 7:50 am

Breakfast, Music Room

Morning Sessions: Business Associations

Kelli A. Alces, Loula Fuller and Dan Myers Professor of Law, Florida State University College of Law

8:00 – 9:15 am

Session 34: Agency & Limited Liability | Alces

Reading Assignment: Bainbridge, *Agency, Partnerships & LLCs*, Foundation Press (2004)

Bainbridge, *Corporate Law*, Foundation Press, Second Edition (2009)

Ribstein, *The Rise of the Uncorporation*, Oxford University Press (2010):

Bainbridge, *Agency, Partnerships & LLCs*: pp 17-46, 53-62, 89-99

Bainbridge, *Corporate Law*: pp 48-71

9:30 – 10:45 am

Session 35: Choice of Form | Alces

Reading Assignment: Corporate Attributes – Bainbridge, *Corporate Law*: pp 1-7, 72-95

Uncorporations - Ribstein: [pp 125-132, 137-184](#)

11:00 am – 12:15 pm

Session 36: Fiduciary Duties | Alces

Reading Assignment: Corporate – Bainbridge, *Corporate Law*: pp 96-186

Uncorporations (in Uncorporations reading above)

12:15 pm

Adjourn

Thursday, July 26

Classes held in the Pinion Room

7:00 – 7:50 am

Breakfast, Music Room

Morning Session: Business Associations | Alces

8:00 – 9:15 am

Session 37: Takeovers, Mergers, and Acquisitions | Alces

Reading Assignment: Bainbridge, *Corporate Law*: pp 337-418

Morning Sessions: Securities Regulation | Alces

9:30 – 10:45 am

Session 38: Introduction; Decision to Go Public, 1934 Act Registration and Reporting | Alces

Reading Assignment: Hazen, *Principles of Securities Regulation*, Foundation Press (2005): pp 1-40, 61-65, 174-196 (copy mailed)

11:00 am – 12:15 pm

Session 39: Manipulation and Fraud; Insider Trading; Short Swing Trades | Alces

Reading Assignment: Hazen, pp 240-314 (copy mailed)

12:15 – 1:00 pm

Lunch, Music Room

Afternoon Sessions: Bankruptcy | Zywicki

1:15 – 2:30 pm

Session 40: Bankruptcy I | Zywicki

Reading Assignment: Baird, *Elements of Bankruptcy (5th Ed)*, Foundation press (2010): pp 4-6, 191-206, 95-102, 102-108, 30-57, 58-61, 72-77, 115-118, 167-175, 178-186, 139-146, 78-88, and 90-94 (copy mailed)

2:45 – 4:00 pm

Session 41: Bankruptcy II | Zywicki

4:15 – 5:30 pm

Session 42: Bankruptcy III | Zywicki

7:00 – 9:30 pm

Reception and Dinner, MacGregor Ballroom

Friday, July 27

Classes held in the Pinion/Billiard Room

7:00 – 7:50 am

Breakfast, Music Room

Morning Sessions: Economics of Innovation; Growth Economics

Robert D. Cooter, Herman F. Selvin Professor of Law and Co-Director, Law and Economics Program, University of California, Berkeley School of Law

7:00 – 7:50 am

Breakfast, Music Room

8:00 – 9:15 am

Session 43: Leagalize Freedom | Cooter

Reading Assignment: Cooter & Schäfer, *Solomon's Knot: How Law Can End the Poverty of Nations*, Princeton University Press (2012) (copy mailed): CH 1, 2, 13, 15

9:30 – 10:45 am

Session 44: Taking, Making, and Creating | Cooter

Solomon's Knot: CH 3-5;

Cooter & Edlin, [*The Falcon's Gyre: Introduction to Law & Growth Economics*](#) (forthcoming): CH 2-3

11:00 am – 12:15 pm

Session 45: Growth and Innovation | Cooter

The Falcon's Gyre: CH 1, 4-5

12:15 pm

Closing Remarks | Butler