

Cover Sheet: Request 10095

LAW6XXX The Takings Clause and Property Rights

Info

Process	Course New Ugrad/Pro
Status	Pending
Submitter	Dampier,Tanya tdampier@law.ufl.edu
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Description	This course closely examines the property clauses of the Constitution and the hotly-contested issues of just compensation, takings, and due process. It examines the history and recent development of the Supreme Court's complex and convoluted doctrine in this area.

Actions

Step	Status	Group	User	Comment	Updated
Department	Approved	LAW - Juris Doctor	Inman, Rachel		3/3/2015
College	Approved	LAW - College of Law	Flournoy, Alyson Craig		3/3/2015
University Curriculum Committee	Pending	PV - University Curriculum Committee (UCC)			3/3/2015
Statewide Course Numbering System					
Office of the Registrar					
Student Academic Support System					
Catalog					
College Notified					

Department Name and Number			
<p>Recommended SCNS Course Identification</p> <p>Prefix ___ ___ ___ Level ___ Course Number ___ ___ ___ Lab Code ___</p> <p>Full Course Title _____</p> <p>Transcript Title (please limit to 21 characters) _____</p>			
Effective Term and Year		Rotating Topic <input type="checkbox"/> yes <input type="checkbox"/> no	
Amount of Credit ___	Contact Hour: Base ___ or Headcount ___		S/U Only <input type="checkbox"/> yes <input type="checkbox"/> no
Repeatable Credit <input type="checkbox"/> yes <input type="checkbox"/> no If yes, ___ total repeatable credit allowed			
Variable Credit <input type="checkbox"/> yes <input type="checkbox"/> no If yes, ___ minimum and ___ maximum credits per semester			
Course Description (50 words or less)			
Prerequisites		Co-requisites	
Degree Type (mark all that apply) <input type="checkbox"/> Baccalaureate <input type="checkbox"/> Graduate <input type="checkbox"/> Professional <input type="checkbox"/> Other _____			
Category of Instruction <input type="checkbox"/> Introductory <input type="checkbox"/> Intermediate <input type="checkbox"/> Advanced			

Rationale and place in curriculum

Department Contact	Name	Phone	Email
College Contact	Name	Phone	Email

All UCC1 forms and each UCC2 form that proposes a change in the course description or credit hours must include this checklist in addition to a complete syllabus. Check the box if the attached syllabus includes the indicated information.

Syllabus **MUST** contain the following information:

- ☐ Instructor contact information (and TA if applicable)
- ☐ Course objectives and/or goals
- ☐ A topical outline (at least tentative) of subjects to be covered
- ☐ Required and recommended textbooks
- ☐ Methods by which students will be evaluated and their grades determined
- ☐ Policy related to class attendance
- ☐ Policy related to make-up exams or other work
- ☐ Statement related to accommodations for students with disabilities
- ☐ Information on current UF grading policies for assigning grade points

It is recommended that syllabi contain the following information:

1. Critical dates for exams and other work
2. Class demeanor expected by the professor (e.g., tardiness, cell phone usage)
3. UF's honesty policy
4. Contact information for university counseling and mental health services

The University's complete Syllabus Policy can be found at:

<http://www.aa.ufl.edu/policy/SyllabiPolicy.pdf>

The Takings Clause and Property Rights

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Required and recommended textbooks and other course materials

Dana & Merrill, *Property: Takings* (Foundation Press, 2002).

Cases and other readings posted on Lexis Web Course.

Course Objectives

The Takings Clause and Property Rights closely examines the property clauses of the Constitution and the hotly-contested issues of just compensation, takings, and due process. In recent years, the takings clause of the 5th amendment has become a significant conduit for challenges to environmental and land use regulations. This course examines the history and recent development of the Supreme Court's complex and convoluted doctrine in this area.

Topical outline of subjects to be covered (Tentative)

Class 1:

Kelo v. City of New London, 545 U.S. 469 (2005)

Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005)

Dana & Merrill, 1-7

Class 2:

Dana & Merrill, 191-209

Kelo v. City of New London, 545 U.S. 469 (2005)

Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226 (1897): **Takings Clause applicable to states**

Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984): **disallowing purely private takings**

Missouri Pacific R. Co. v. Nebraska, 164 U.S. 403 (1896): **disallowing purely private takings**

Calder v. Bull, 3 U.S. 386 (1798): **taking from A and giving to B is against all reason and justice**

Midkiff: **statute did not benefit particular class of identifiable individuals, then rejecting literal requirement that condemned property be put to use for general public**

Class 3:

Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112 (1896): **embracing broader and more natural interpretation of public use as public purpose**

Strickley v. Highland Boy Gold Mining Co., 200 U.S. 527 (1906): **rejecting use by general public as the standard**

Clark v. Nash, 198 U.S. 361 (1905): **upholding statute authorizing owner to widen ditch on neighbor's property for irrigation**

Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U.S. 30 (1916): **inadequacy of use by the general public test**

Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984): **rejecting use by the general public standard**

Berman v. Parker, 348 U.S. 26 (1954): **deferring to legislative and agency judgment and affirming public use underlying the taking, broad understanding of public welfare**

Midkiff: **reaffirming deference and upholding elimination of evils of land oligopoly as valid public use, allowing transfer to private individuals, focus on purpose not mechanics of taking**

Monsanto: **allowing taking even though private parties were most direct beneficiaries**

Hairston v. Danville & Western R. Co., 208 U.S. 598 (1908): **strong theme of federalism considering peculiar conditions**

Clark: **strong theme of federalism considering peculiar conditions**

Strickley: **deferring to state legislature**

O'Neill v. Leamer, 239 U.S. 244 (1915): **strong theme of federalism considering peculiar conditions**

Class 4:

Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926): **exercise of urban planning and development**

Strickley: **promoting economic development and importance of industry to state's welfare**

Berman: **promoting economic development by endorsing purpose of transferring blighted area into well-balanced community through redevelopment, not just elimination of blight but also development of area**

Midkiff: **promoting economic development by upholding interest in breaking up land**

Monsanto: **promoting economic development by accepting Congress's purpose of eliminating significant barrier to entry into pesticide market**

Midkiff: **government pursuit of public purpose will often benefit individual parties such as those lessees who were previously unable to purchase their homes**

Monsanto: **government pursuit of public purpose will often benefit individual parties such as subsequent pesticide applicants**

National Railroad Passenger Corporation v. Boston & Maine Corp., 503 U.S. 407 (1992): **achievement of public good often coincides with immediate private benefit**

Brown v. Legal Foundation of Wash., 538 U.S. 216 (2003); **private benefit to poor needing legal services**

Berman: **government pursuit of public purpose will often benefit individual parties such as private developers**

Class 5:

Village of Willowbrook v. Olech, 528 U.S. 562 (2000) (per curiam): **equal protection would be violated by city that transferred property to more productive user who paid more taxes**

Eastern Enterprises v. Apfel, 524 U.S. 498 (1998) (Kennedy, J., concurring in judgment and dissenting in part): **Takings Clause allows government to do what it wants as long as it pays the charge**

Calder: **lawmakers can abuse any power**

Midkiff: **federal courts are not to debate the wisdom of socioeconomic legislation**

Boston & Maine: **no need for court to make specific factual determination whether taking will accomplish its objectives**

Monsanto: **judicial review limited to determining if congressional purpose is legitimate and that Congress rationally could have believed that its provisions would promote that objective**

Berman: **once public purpose question has been decided, it is up to the legislative branch to determine amount and character of land taken**

Class 6:

Dana & Merrill, 32- 35 (par. 1)

Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005)

Agins v. City of Tiburon, 447 U.S. 255 (1980): **2-part test**

Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999): **example of use of *Agins* test**

Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226 (1897): **Takings Clause applicable to states**

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987): **Takings Clause places condition on exercise of that power, designed to secure compensation for interference with property rights**

Armstrong v. United States, 364 U.S. 40 (1960): **justification for takings regime**

Monongahela Navigation Co. v. United States, 148 U.S. 312 (1897): **source of burdens principle (citing *Gardner v. Newburgh*, 7 Am. Dec. 526 (N.Y. Ch. 1816))**

Class 7:

United States v. Pewee Coal Co., 341 U.S. 114 (1951): **paradigmatic taking**

United States v. General Motors Corp., 323 U.S. 373 (1945): **paradigmatic taking**

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922): **watershed case**

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992): **history of pre-Mahon view of Takings Clause, too far test**

Andrus v. Allard, 444 U.S. 51 (1979): **keep in mind that government has to adjust rights for public good**

Penn Coal: **but government could hardly go on**

Class 8:

Dana & Merrill, 86-114

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982): **per se physical invasion**

Lucas: **per se total deprivation, background principles**

Class 9:

Dana & Merrill, 121-64

Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978): **default analysis if per se inapplicable**

Palazzolo v. Rhode Island, 533 U.S. 606 (2001): **example of use of Penn Central factors**

Loretto, *Lucas*, and *Penn Central*: **common touchstone of functional equivalence**

Class 10:

Dana & Merrill, 72-75

Dolan v. City of Tigard, 512 U.S. 374 (1994): **right to exclude**

Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987): **right to exclude**

Loretto: **right to exclude**

Kaiser Aetna v. United States, 444 U.S. 164 (1979): **right to exclude**

Lucas: **complete elimination of property value, which is equivalent of physical appropriation**

Penn Central: **magnitude of economic impact and degree of interference with property interests**

Class 11:

Agins: **2-part test for general zoning laws**

Nectow v. Cambridge, 277 U.S. 183 (1928): **substantially advance**

Penn Central: **economically viable use**

Nectow: **due process case**

Euclid: **substantial relation due process case**

Goldblatt v. Hempstead, 369 U.S. 590 (1962): **cited in *Penn Central* for combining due process with taking**

Rowan v. United States Post Office Dep't, 397 U.S. 728 (1970): **mixing up takings with due process**

Dana & Merrill, 254-65

Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985): **takings or due process?**

Class 12:

County of Sacramento v. Lewis, 523 U.S. 833 (1998): **purpose of Due Process Clause**

Armstrong: **burdens principle**

First English: **compensation for otherwise proper interference**

Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978): **eschewing heightened scrutiny for substantive due process challenges**

Ferguson v. Skrupa, 372 U.S. 726, 730-732, 10 L. Ed. 2d 93, 83 S. Ct. 1028 (1963): **eschewing heightened scrutiny for substantive due process challenges**

Dana & Merrill: 58-72, 268-73

Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470 (1987): **arguably applying substantially advances prong**

Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002): **substantially advances dicta**

Del Monte Dunes: **substantially advances dicta**

Yee v. Escondido, 503 U.S. 519 (1992): **substantially advances dicta**

United States v. Riverside Bayview Homes, Inc., 474 U.S. 121 (1985): **substantially advances dicta**

Class 13:

Dana & Merrill, 201-27

Nollan: **did not rely on substantially advances, physical taking, unconstitutional conditions**

Dolan: **did not rely on substantially advances, physical taking, unconstitutional conditions**

Justice Kennedy, concurring:

Eastern Enterprises v. Apfel, 524 U.S. 498, 539, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998): **could be due process violation**

Evaluation

There will be an open-book, unlimited-source final examination. You can choose the one day during the exam period in which you prefer to take the test. If you pick up your questions at the beginning of the business day in the dean's office, you will have roughly eight hours to complete the examination.

In a course of this nature, class participation is important. Therefore, I reserve the right to reward outstanding class participation by raising your final grade one "notch" (for example, from B to B+) and to reduce your final grade for poor class participation or for excessive (more than three), unexcused absences.

Class attendance policy

I reserve the right to reduce your final grade for poor class participation or for excessive (more than three), unexcused absences.

Policy related to Make-up exams or other work

The law school policy on delay in taking exams can be found at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#12>.

Statement related to accommodations for students with disabilities

Students requesting classroom accommodation must first register with the Office of Disability Resources. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

Information on UF Law grading policies

<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Point</u>	<u>Grade</u>	<u>Point</u>
A (Excellent)	4.0	C+	2.33	D-	0.67
A-	3.67	C (Satisfactory)	2.00	E (Failure)	0.0
B+	3.33	C-	1.67		
B (Good)	3.00	D+	1.33		
B-	2.67	D (Poor)	1.00		

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Student Course Evaluations

Students can provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will receive notice of the specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.