



ORIENTATION READING ASSIGNMENT

Welcome to Santa Clara Law! This packet of materials introduces you to some of the basic ideas behind legal education and includes your assignments for the sessions that will meet during Orientation. Our goal for Orientation is to help you get your bearings so that the first few weeks of the semester are a bit less overwhelming. Law school is an incredibly challenging undertaking that will require you to work harder and think more deeply than you probably ever have before. We hope to ease your transition into this new academic environment, and look forward to supporting and advising you along the way.

Lawyers and the Legal System

If you went to high school and/or college in the United States¹, you probably have some background knowledge of the structure of our government, how our laws are made, and what the court system does. These are foundational concepts to the study of law, so we provide here links to some general articles that introduce (or reintroduce) this material. Please review each prior to Orientation.

- *U.S. Federal Government*
<https://www.usa.gov/branches-of-government>
- *Introduction to the American Legal System*
<http://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page>
A LexisNexis account is not required to access this page.

As Santa Clara is located in California and most of our graduates go on to practice in this state, some portion of our curriculum focuses on the specifics of California law and legal practice.

- Fact Sheet: California Judicial Branch
http://www.courts.ca.gov/documents/Calif_Judicial_Branch.pdf
- State Bar of California: Admissions Requirements
<http://admissions.calbar.ca.gov/Requirements.aspx>

¹ If you weren't educated in the United States, it may be helpful to do some additional reading in this area. A book we recommend is *Constitutional Law: Principles and Practice* by Joanne Banker Hames and Yvonne Ekern. Professors Hames and Ekern are on the Santa Clara Law faculty.

Finally, you are entering into one of the world's most respected professions. Lawyers serve a unique role in our society, and have important professional obligations that come along with that position. Lawyers are "officers of the court," serving not only the interests of our clients, but also those of the entire legal system. As law students, beginning to understand and develop that professional identity is essential.

- Santa Clara County Bar Association Code of Professionalism
<http://www.sccba.com/associations/12315/files/SCCBACode%2007.final.pdf>
Read Sections 1, 2, 6, 14, and 16 through 19.
- A Primer to Law School Etiquette
<http://tippingthescales.com/2013/11/a-primer-to-law-school-etiquette/>

LEARNING IN THE LAW SCHOOL CLASSROOM **PROFESSOR BRADLEY JOONDEPH²**

Not only do different professors choose different reading materials and cases for their classes, but they all teach a bit differently based on their own background and goals for your learning. Some professors lecture, some engage you in discussion, many ask you to resolve specific hypothetical problems, and others utilize simulations and role-play. This diversity of approaches mirrors the legal profession into which you will graduate.

Probably the most widely known law school teaching approach is the Socratic method, which will be used in some form or another in most of your first-year classes. The traditional Socratic dialogue begins with your professor assigning you a group of cases. Before coming to class, your task is to read and make sense of those cases individually and as a whole by briefing them. You'll bring your briefs and casebook to class and your professor will begin asking questions. She may ask for some basic information, such as a summary of the facts or the procedural history. She will likely ask a student to explain the legal reasoning the court applied (what law the court decided to use and why, and how it was applied to the facts.) And sometimes, she will ask how that law would apply to a different, hypothetical situation. This approach not only helps you make sense of the law; it is the way that courts, judges, and lawyers do their jobs every day.

Sometimes students are nervous about being called-on by their professors and worry about being able to think on their feet. This is a perfectly normal reaction. The best way to manage your nerves and to get the most out of the experience is to be fully prepared for class. Preparation for class, homework assignments, and exam study in

² Professor Joondeph teaches *Constitutional Law* and *Federal Income Tax*, and serves as the Associate Dean for Academic Affairs.

law school is very different from undergraduate education, so the tactics and approaches you used in college will have to be adapted once you reach law school. From the sessions during Orientation week, we hope you're already thinking about how you'll adapt to this new environment. If you're not sure, make an appointment to see a faculty advisor in the Office of Academic & Bar Success.

For this session, Professor Joondeph will lead you through a traditional classroom discussion of the case below. He will assume that you have attempted to read and understand the various parts of the case, and will dive right into a blended lecture/discussion/Socratic conversation. Before this class, please read and make notes about the case so that you are prepared to participate.

Supreme Court of the United States
PruneYard Shopping Ctr. v. Robins
447 U.S. 74 (1980)
Decided June 9, 1980

APPEAL FROM THE SUPREME COURT OF CALIFORNIA

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

[We accepted this] appeal from the Supreme Court of California to decide the important federal constitutional questions it presented. Those are whether state constitutional provisions, which permit individuals to exercise free speech and petition rights on the property of a privately owned shopping center to which the public is invited, violate the shopping center owner's property rights under the Fifth and Fourteenth Amendments....

I

Appellant PruneYard is a privately owned shopping center in the City of Campbell, Cal. It covers approximately 21 acres – 5 devoted to parking and 16 occupied by walkways, plazas, sidewalks, and buildings that contain more than 65 specialty shops, 10 restaurants, and a movie theater. The PruneYard is open to the public for the purpose of encouraging the patronizing of its commercial establishments. It has a policy not to permit any visitor or tenant to engage in any publicly expressive activity, including the circulation of petitions, that is not directly related to its commercial purposes. This policy has been strictly enforced in a nondiscriminatory fashion. The PruneYard is owned by appellant Fred Sahadi.

Appellees are high school students who sought to solicit support for their opposition to a United Nations resolution against "Zionism." On a Saturday afternoon they set up a card table in a corner of PruneYard's central courtyard. They distributed pamphlets and asked passersby to sign petitions, which were to be sent to the President and Members of Congress. Their activity was peaceful and orderly, and, so far as the record indicates, was not objected to by PruneYard's patrons.

Soon after appellees had begun soliciting signatures, a security guard informed them that they would have to leave because their activity violated PruneYard regulations. The guard suggested that they move to the public sidewalk at the PruneYard's perimeter. Appellees immediately left the premises and later filed this lawsuit in the California Superior Court of Santa Clara County. They sought to enjoin appellants from denying them access to the PruneYard for the purpose of circulating their petitions.

The Superior Court held that appellees were not entitled under either the Federal or California Constitution to exercise their asserted rights on the shopping center property. App. to Juris. Statement A-2. It concluded that there were "adequate, effective channels of communication for [appellees] other than soliciting on the private property of the [PruneYard]." Id. at A-3. The California Court of Appeal affirmed.

The California Supreme Court reversed, holding that the California Constitution protects "speech and petitioning, reasonably exercised, in shopping centers even when the centers are privately owned." 23 Cal.3d 899, 910, 592 P.2d 341, 347 (1979). It concluded that appellees were entitled to conduct their activity on PruneYard property. In rejecting appellants' contention that such a result infringed property rights protected by the Federal Constitution, the California Supreme Court observed:

"It bears repeated emphasis that we do not have under consideration the property or privacy rights of an individual homeowner or the proprietor of a modest retail establishment. As a result of advertising and the lure of a congenial environment, 25,000 persons are induced to congregate daily to take advantage of the numerous amenities offered by the [shopping center there]. A handful of additional orderly persons soliciting signatures and distributing handbills in connection therewith, under reasonable regulations adopted by defendant to assure that these activities do not interfere with normal business operations (see *Diamond [v. Bland]*, 3 Cal.3d 653, 665, 477 P.2d 733, 741 (1970)) would not markedly dilute defendant's property rights.' ([*Diamond v. Bland*, 11 Cal.3d 331, 345, 521 P.2d 460, 470 (1974)] (dis. opn. of Mosk, J.).)"

Id. at 910-911, 592 P.2d at 347-348.... Before this Court, appellants contend that their constitutionally established rights under the Fourteenth Amendment to exclude appellees from adverse use of appellants' private property cannot be denied by invocation of a state constitutional provision or by judicial reconstruction of a State's laws of private property. We postponed consideration of the question of jurisdiction until the hearing of the case on the merits. 444 U.S. 949. We now affirm.

* * *

III

Appellants first contend that *Lloyd Corp. v. Tanner*, 407 U. S. 551 (1972), prevents the State from requiring a private shopping center owner to provide access to persons exercising their state constitutional rights of free speech and petition when adequate alternative avenues of communication are available. Lloyd dealt with the question whether, under the Federal Constitution, a privately owned shopping center may prohibit the distribution of handbills on its property when the handbilling is unrelated to the shopping center's operations. *Id.* at 552. The shopping center had adopted a strict policy against the distribution of handbills within the building complex and its malls, and it made no exceptions to this rule. *Id.* at 407 U. S. 555. Respondents in Lloyd argued that, because the shopping center was open to the public, the First Amendment prevents the private owner from enforcing the handbilling restriction on shopping center premises. *Id.* at 564.

In rejecting this claim, we substantially repudiated the rationale of *Food Employees v. Logan Valley Plaza*, 391 U. S. 308 (1968), which was later overruled in *Hudgens v. NLRB*, 424 U. S. 507 (1976). We stated that property does not “lose its private character merely because the public is generally invite to use it for designated purposes,” and that “[t]he essentially private character of a store and its privately owned abutting property does not change by virtue of being large or clustered with other stores in a modern shopping center.” 407 U.S. at 569.

Our reasoning in *Lloyd*, however, does not, *ex proprio vigore*, limit the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution. *Cooper v. California*, 386 U. S. 58, 62 (1967). In *Lloyd*, *supra*, there was no state constitutional or statutory provision that had been construed to create rights to the use of private property by strangers, comparable to those found to exist by the California Supreme Court here. It is, of course, well established that a State, in the exercise of its police power, may adopt reasonable restrictions on private property so long as the restrictions do not amount to a taking without just compensation or contravene any other federal constitutional provision. *See, e.g., Euclid v. Ambler Realty Co.*, 272 U. S. 365 (1926); *Young v. American Mini Theatres, Inc.*, 427 U. S. 50 (1976). *Lloyd* held that, when a shopping center owner opens his private property to the public for the purpose of shopping, the First Amendment to the United States Constitution does not thereby create individual rights in expression beyond those already existing under applicable law. *See also Hudgens v. NLRB, supra* at 424 U. S. 517-521.

IV

Appellants next contend that a right to exclude others underlies the Fifth Amendment guarantee against the taking of property without just compensation and the Fourteenth Amendment guarantee against the deprivation of property without due process of law.

It is true that one of the essential sticks in the bundle of property rights is the right to exclude others. *Kaiser Aetna v. United States*, 444 U. S. 164, 444 U. S. 179-10 (1979). And here there has literally been a “taking” of that right to the extent that the California Supreme Court has interpreted the State constitution to entitle its citizens to exercise free expression and petition rights on shopping center property. But it is well established that “not every destruction or injury to property by governmental action has been held to be a ‘taking’ in the constitutional sense.” *Armstrong v. United States*, 364 U. S. 40, 48 (1960). Rather, the determination whether a state law unlawfully infringes a landowner’s property in violation of the Taking Clause requires an examination of whether the restriction on private property “forc[es] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Id.* at 364 U. S. 49. [Footnote 7] This examination entails inquiry into such factors as the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations. *Kaiser Aetna v. United States*, *supra*, at 444 U. S. 175. When “regulation goes too far, it will be recognized as a taking.” *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393, 415 (1922).

Here the requirement that appellants permit appellees to exercise state-protected rights of free expression and petition on shopping center property clearly does not amount to an unconstitutional infringement of appellants’ property right under the Taking Clause. There is nothing to suggest that preventing appellants from prohibiting this sort of activity will unreasonably impair the value or use of their property as a shopping center. The PruneYard is a large commercial complex that covers several city blocks, contains numerous separate business establishments, and is open to the public at large. The decision of the California Supreme Court makes it clear that the PruneYard may restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions. Appellees were orderly, and they limited their activity to the common areas of the shopping center. In these circumstances, the fact that they may have “physically invaded” appellants’ property cannot be viewed as determinative.

This case is quite different from *Kaiser Aetna v. United States*, *supra*. *Kaiser Aetna* was a case in which the owners of a private pond had invested substantial amounts of money in dredging the pond, developing it into an exclusive marina, and building a surrounding marina community. The marina was open only to fee-paying members, and the fees were paid in part to “maintain the privacy and security of the pond.” *Id.* at 168. The Federal Government sought to compel free public use of the private marina on the ground that the marina became subject to the federal navigational servitude because the owners had dredged a channel connecting it to “navigable water.”

The Government’s attempt to create a public right of access to the improved pond interfered with Kaiser Aetna’s “reasonable investment backed expectations.” We held that it went “so far beyond ordinary regulation or improvement for navigation as to amount to a taking....” *Id.* at 178. Nor, as a general proposition, is the United States, as opposed to the several States, possessed of residual authority

that enables it to define “property” in the first instance. A State is, of course, bound by the Just Compensation Clause of the Fifth Amendment, *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 233, 236-237 (1897), but here appellants have failed to demonstrate that the “right to exclude others” is so essential to the use or economic value of their property that the state-authorized limitation of it amounted to a “taking.”

There is also little merit to appellants’ argument that they have been denied their property without due process of law. In *Nebbia v. New York*, 291 U. S. 502 (1934), this Court stated:

“[N]either property rights nor contract rights are absolute.... Equally fundamental with the private right is that of the public to regulate it in the common interest....”

“...[T]he guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the objective sought to be attained.”

Id. at 523, 525. Appellants have failed to provide sufficient justification for concluding that this test is not satisfied by the State’s asserted interest in promoting more expansive rights of free speech and petition than conferred by the Federal Constitution.

* * *

We conclude that... appellants’ federally recognized property rights... have [not] been infringed by the California Supreme Court’s decision recognizing a right of appellees to exercise state-protected rights of expression and petition on appellants’ property. The judgment of the Supreme Court of California is therefore

Affirmed.

TOOLS FOR ACADEMIC SUCCESS PROFESSOR DEVIN KINYON³

As you saw in Professor Joondeph's presentation, understanding and studying cases can be very challenging. One very important idea that we hope you took away from that session is that you need to develop a new approach to learning in law school if you hope to be successful. Simply put, law school isn't like anything else you've experienced, so the strategies you've used in the past for college will have to change for you to succeed.

Professor Kinyon will begin your exposure to the various tools, techniques, and strategies that successful law students employ at your next academic session. Our goal is to show you a variety of ideas, and empower you to do those things that align with your learning preferences, background, and needs.

In preparation for Professor Kinyon's session, please complete the following learning styles assessment:

- VARK: A Guide to Learning Styles
<http://vark-learn.com/the-vark-questionnaire/?p=questionnaire>
Note your learning style for discussion at Professor Kinyon's session.

We also will be discussing a concept called Self-Regulated Learning, an idea employed by the very best students in all disciplines to get the most out of their learning experience. Please watch the following video presentation in preparation for our discussion:

- Expert Learning for Law Students: Part III
http://lawschoolasp.org/eLearning/expert_learning_part3/viewer.swf
There are two additional presentation (parts I and II), that are not required for our discussion, but may be useful to view. They are available at:
http://lawschoolasp.org/students/learning_opps.php

³ Professor Kinyon teaches *Advanced Legal Writing: the Bar Exam, Legal Analysis, and Property*; oversees academic support; and as a part of the faculty in the Office of Academic & Bar Success, helps prepare students for the California Bar Exam.

PREPARING FOR CLASS PROFESSORS LIZA-JANE CAPATOS⁴ AND DEVIN KINYON

As you saw in Professor Joondeph's presentation, understanding and studying cases can be very challenging. The work you do before class to make sense of and prepare to discuss the assigned cases will make-up the bulk of your homework as a law student.

In this session, Professors Capatos and Kinyon will lead you through the typical ways that students prepare for class, including briefing cases. In preparation, please prepare a case brief for *PruneYard v. Robins*, the case you discussed with Professor Joondeph. You may have already briefed the case; if so, please edit your brief based on what you've learned so far this week.

In advance of the session, we're not going to provide extensive guidance on how to prepare a case brief. One reason for that is that every student briefs cases in a slightly different way. More importantly, we want to be able to lead you through a more directed conversation about briefing during this session. For now, there are few keys items you should be identifying in every case brief. They may sound familiar if you've done any reading (or Google-ing) about law school.

1. Your brief should identify the key **issue or issues** presented by the case. Issues are the legal questions the Court is addressing in the case opinion you're reading. When you take a law school exam, your first task is to identify the issues presented. To help you out, one of the issues presented in *PruneYard* is if the California Supreme Court's decision constitutes a taking under the Due Process Clause.
2. For each of the issues identified in your brief, you should find the applicable **rule**. Rules are the statement of law that the court cites to answer the question raised by the issue. The rule should be a statement – a sentence. That sentence is very important because it's likely to be one you'll include in your course outline, and memorize to use on a law school exam (and the Bar Exam).
3. Under your issue and rule, you'll have a brief summary of the **application** of that law to the facts of the case. This requires you to identify the facts the court thought were important, and make sense of how those facts interact with the rule to reach a conclusion.

⁴ Professor Capatos teaches *Advanced Legal Writing: the Bar Exam* and *Legal Analysis*; supervises the Academic Success Program and advises Directed Study students; and as a part of the faculty in the Office of Academic & Bar Success, helps prepare students for the California Bar Exam.

4. And finally, you should identify that **conclusion**. State what result the court reached, and most importantly, why it reached that conclusion. Usually your conclusion, which some professors and judges call a *holding*, is the answer to the question presented in your issue statement. Like the rule statement, it should be a full sentence. And it should include a “because.”

It's ok if this doesn't make a lot of sense to you right now. Try it out and bring your work to this session. Professors Capatos and Kinyon will lead you through some briefing exercises in class, and talk more broadly about how to prepare for your classes next week.

HOMEWORK FOR NEXT WEEK

In law school, students typically have a reading assignment due on the first day of class. Our professors will begin posting those first assignments during the Orientation week. To find those assignments:

- Log onto Camino, Santa Clara's course management system: <https://www.scu.edu/login/>
- Look at the bulletin board in the Bannan Student Lounge.
- Check your @scu.edu email for a message from your professor or his/her faculty assistant.

Professors post assignments up to the day of your first class, so check back frequently.