

Using AI in Property


A Cautious Professor's Guide

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Confidence boosters


- You are in control
- Law professors are great at learning systems
- Different options: ChatGPT/ Westlaw /Lexis/ Claude.ai
- “Just 10 hours”
- Teach students ethical AI uses
 - Learning aid, not a shortcut
 - Limitations
 - Biases
 - Protecting confidentiality

Starting points

- *Resource: Talkin' 'Bout AI Generation: Copyright and the Generative-AI Supply Chain*
 - Katherine Lee, A. Feder Cooper, James Grimmelman (forthcoming/draft available)
- AI thinks predictively
 - In the summer, I like to go to the _____.
 - Augments (identify trends, recommends, generates ideas)
 - Distinct from search engines and research tools
- Picture AI as a novice helper
 - It can be trained 
 - It *has* been trained on some law
 - Invites interaction

Starting Points

Profs and Students

- Low-stakes hypos (create and answer)
- Ask students to evaluate AI-generated docs/answers
- Develop alternative arguments/holdings
- Summarize material, create their outlines 
- Propose topics most likely to be tested
- Note:
 - Assume no confidentiality and everything you do is public
 - Assume the system has no current access to the Internet

Develop prompts

Feeding ChatGPT helps the system/ Tell the system who you are

- Create a mock exam based on this uploaded slide deck(s)
- Which subjects would best test student's analytic abilities?
- Provide an answer to your hypothetical.
- I'm uploading my final exam.
 - Please provide your answer
 - If this were in court, how would opposing counsel counter your analysis?
- What are the rules in the uploaded *Johnson v. M'Intosh*?
- How could the Court have decided *Johnson v. M'Intosh* differently?
 - How would that have changed U.S. property law?
 - What sources support your analysis?

Creating hyppos

Develop hypo based on my slides

Slides were about joint ownership

- **Andie, Bo, and Cassidy own Blackacre, a 300-acre farm. Andie occupies the farm and earns income by leasing a portion to a tenant. Cassidy files for a partition by sale, arguing the property cannot be equitably divided. Andie prefers a partition in kind to preserve her farming operation.**
 - Analyze the arguments each party would make.
 - Consider how courts should balance economic efficiency with Andie's personal use of the property.

Gave Andie 100 acres to farm
and the tenant 50 acres

Andie did not seek co-
tenants' permission to lease

Answer the hypothetical

Arguments for Partition by Sale (Cassidy)

- **Cassidy's Core Argument: Impracticability of Partition in Kind**
 - Cassidy would argue that dividing Blackacre into equitable parcels is impracticable.
 - **Legal Basis:** Under *Delfino v. Vealencis*, courts favor partition in kind but require that it be practical and equitable.
- **Economic Efficiency**
 - Cassidy could argue that selling the farm and dividing the proceeds ensures each co-tenant receives fair compensation without further disputes about unequal land use or rental income.
 - A sale prevents ongoing conflicts over how the property is used, such as Andie's unilateral decisions to lease portions of the land.

Answer the hypothetical

Arguments for Partition in Kind (Andie)

- **Andie could propose dividing Blackacre into parcels:**
 - Andie retains the 100 acres she farms.
 - The leased 50 acres are assigned to one co-tenant, or all three share rental proceeds.
 - Cassidy and Bo receive equivalent parcels of the remaining land or are compensated via **owelty** (a monetary payment to balance unequal division).
- Andie could argue that her livelihood depends on maintaining the 100 acres she actively farms.
- **Ark Land Co. v. Harper** emphasized non-economic factors, such as emotional and personal connections to the land, over purely financial considerations. Andie's farming operation represents a similarly significant interest.

Answer the hypothetical

- **Court's Likely Approach** The court would likely analyze the feasibility of partitioning the farm in kind:
 - If equitable division is possible, partition in kind may be ordered.
 - However, if the leased portion or farm cannot be divided without significantly reducing its value, the court might favor partition by sale.
- **I ask: how to overturn *Delfino*?**
 - *Delfino* results cutting parcels into increasingly small parcels
 - Sale enables a single buyer to maximize value through unified use
 - *Delfino* places too much emphasis on an owner's attachment to land and ignores economic efficiencies

Sources that support Chat GPT's answer

- Thomas W. Merrill & Henry E. Smith, *Property: Principles and Policies* (3rd ed. 2017)
- John G. Sprankling, *Understanding Property Law* (4th ed. 2017)
- Joseph William Singer, *Introduction to Property* (2nd ed. 2010)
- American Law Institute (ALI) Commentaries

Takings hypo

Uploaded *Penn Central*

- Jonas and Maria Diaz invested funds to create a restaurant called Diaz Bistro. The restaurant has an outdoor patio area for up to 100 customers. Located in a residential area, it complied with all local laws when it opened.
- Several months later, the city council passed a noise regulation ordinance. It prohibited any outdoor dining establishments from operating past 9 pm to reduce late-night noise for nearby residents.
- Diaz Bistro had to close its outdoor patio after 9 pm, resulting in a significant loss of revenue for the restaurant.
- The Diaz' filed a lawsuit against the city, arguing that the noise ordinance is an unconstitutional taking under the Fifth Amendment. Apply *Penn Central*.

Message ChatGPT

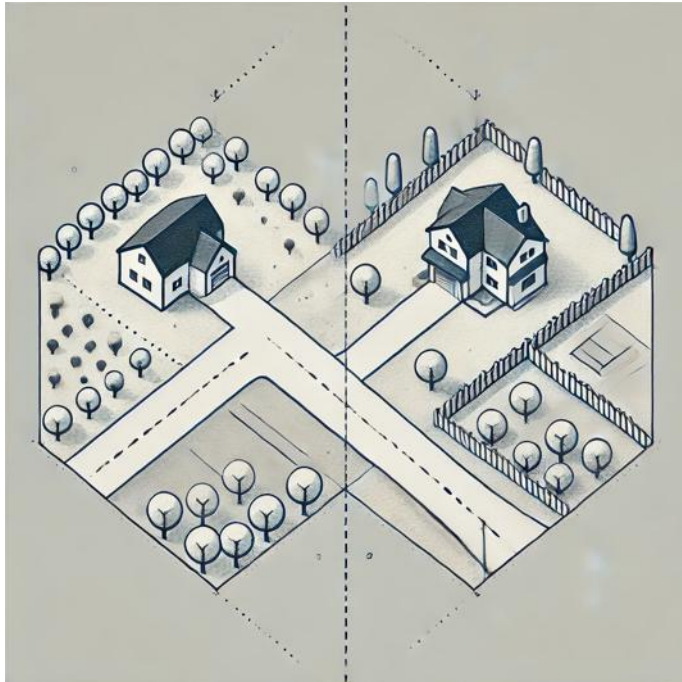


Upload

Image

Search the web

Draw a diagram that shows two land parcels side by side. On the left parcel, there are no buildings only a few trees. On the right, there is a large house along the back of the parcel and a road that leads across the left parcel. 🐶



Estates in Land and Future Interests

- Ocean conveys Blackacre to Andie for life, then to Bo provided that he reaches age 32, otherwise to Cassidy. What is the state of the title just after Ocean's conveyance to Andie?
- State of title
 - Andie holds a life estate.
 - Bo holds a contingent remainder because it is conditional on reaching age 32.
 - Cassidy holds a shifting executory interest that becomes possessory if Bo does not meet the condition.
 - Ocean retains a reversion in case neither condition is fulfilled.

Rule against Perpetuities

Common law

- Ocean conveys Blackacre to Andie for life, then to Bo provided that he reaches age 32, otherwise to Cassidy. What is the state of the title just after Ocean's conveyance to Andie? Assume all are alive at grant.
- **ANSWER:**
 - At the time of conveyance, Bo is alive, making him a life in being. His interest will either vest during his lifetime if he reaches age 32 or fail during his lifetime if he dies before age 32. This ensures that Bo's interest will either vest or fail within his lifetime, satisfying the RAP.
 - Cassidy's interest is dependent on Bo not reaching age 32. Since this determination (whether Bo reaches 32) will happen during Bo's lifetime (a life in being), Cassidy's interest will also either vest or fail within the RAP's timeframe and is valid.

Happy training!

