

FUNDAMENTALS OF MODERN PROPERTY LAW

FOURTH EDITION

EDWARD H. RABIN

ROBERTA ROSENTHAL KWALL

JEFFREY L. KWALL

UNIVERSITY CASEBOOK SERIES

FUNDAMENTALS OF MODERN PROPERTY LAW

FOURTH EDITION

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To Shanna, Rachel & Nisa

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*

PREFACE

Property law has something for everyone. For the traditionalist it oozes with tradition. For the reformer, it cries out for reform. For all of us, it embodies the often unexpressed assumptions on which our society rests.

Continuing in the tradition of the three prior editions, this fourth edition uses a problem approach to learning. The law is not merely a body of general principles; rather, general principles must be applied to specific facts. The lawyer is always faced with a specific problem that she or he hopes to solve through the use of cases, statutes, and other legal materials. The law student, like the lawyer, should learn as soon as possible to operate in a similar context. We use the problem method to achieve this goal.

While continuing the tradition of using the problem method, this fourth edition emphasizes two other dimensions of property law. First, this edition provides a comprehensive introduction to Intellectual Property law. The novel legal problems raised by advances in technology and the growth of the Internet demand that students receive early exposure to the burgeoning law of intangible property. Therefore, we have added three Assignments dealing with Intellectual Property at the end of the casebook. Instructors may choose to assign them at any point in the course.

This edition also emphasizes a planning perspective. The first-year law curriculum tends to focus on controversies and may mislead students into thinking that lawyers spend all of their time resolving controversies. In fact, the majority of lawyers concentrate on planning to avoid controversies. Thus, law students should be sensitized to that perspective from the beginning of law school. For example, rather than focusing only on how a dispute between a landlord and a tenant will be resolved, it is important to consider how the underlying lease might have been drafted to avoid the dispute. This planning perspective is explored in many contexts.

Like the prior three editions, this fourth edition is divided into Assignments. An average Assignment should take between one and three hours of class time, depending on the desired depth of treatment. The subjects covered are fundamental to the work of the modern practicing attorney. We have attempted to cover the material now covered by the real property portion of the multi-state bar examination, and to introduce students to subject areas covered by more advanced courses (such as Intellectual Property Law, Tax Law and Environmental Law). Subjects of mainly historical interest have been de-emphasized.

Most of the cases and other material have been liberally abridged. Major deletions are indicated by an ellipsis. Many of the original footnotes in the cases have been deleted and those that remain are numbered consec-

utively, rather than preserving the original numbering from the case. Editorial additions are designated as such.

We owe gratitude to many individuals. Professor Rabin gratefully acknowledges the encouragement of Deans Bruce Wolk and Rex R. Perschbacher, the financial support of the School of Law of the University of California at Davis, and the valuable research assistance provided by the following law students: Lianna Epperson, Josefina Gomez, Anita Holden, Thomas Hrouda, Angela Mikels, Mathew Tuttle and Mark Waterman. Professor R. Kwall expresses her appreciation to her student research assistants Mark Chavin, Mathew Kidder, Mary Middleton and Stephanie Tower. She also thanks her colleague Professor Steven Siegel for his helpful comments, Dean Teree Foster of DePaul University College of Law for her support and encouragement, and the DePaul University Research Council for its sponsorship of this project. Professor J. Kwall thanks his student research assistants Marla Anderson, Dina Anastasopoulos and Tatjana Dragovic for their enthusiasm, diligence and outstanding work. He also thanks Dean Nina Appel and Associate Dean Thomas Haney for their encouragement and Loyola University Chicago School of Law for research support. We also thank Colleen Cataldo and Alan Fry for proofreading assistance.

Let us now begin our study.

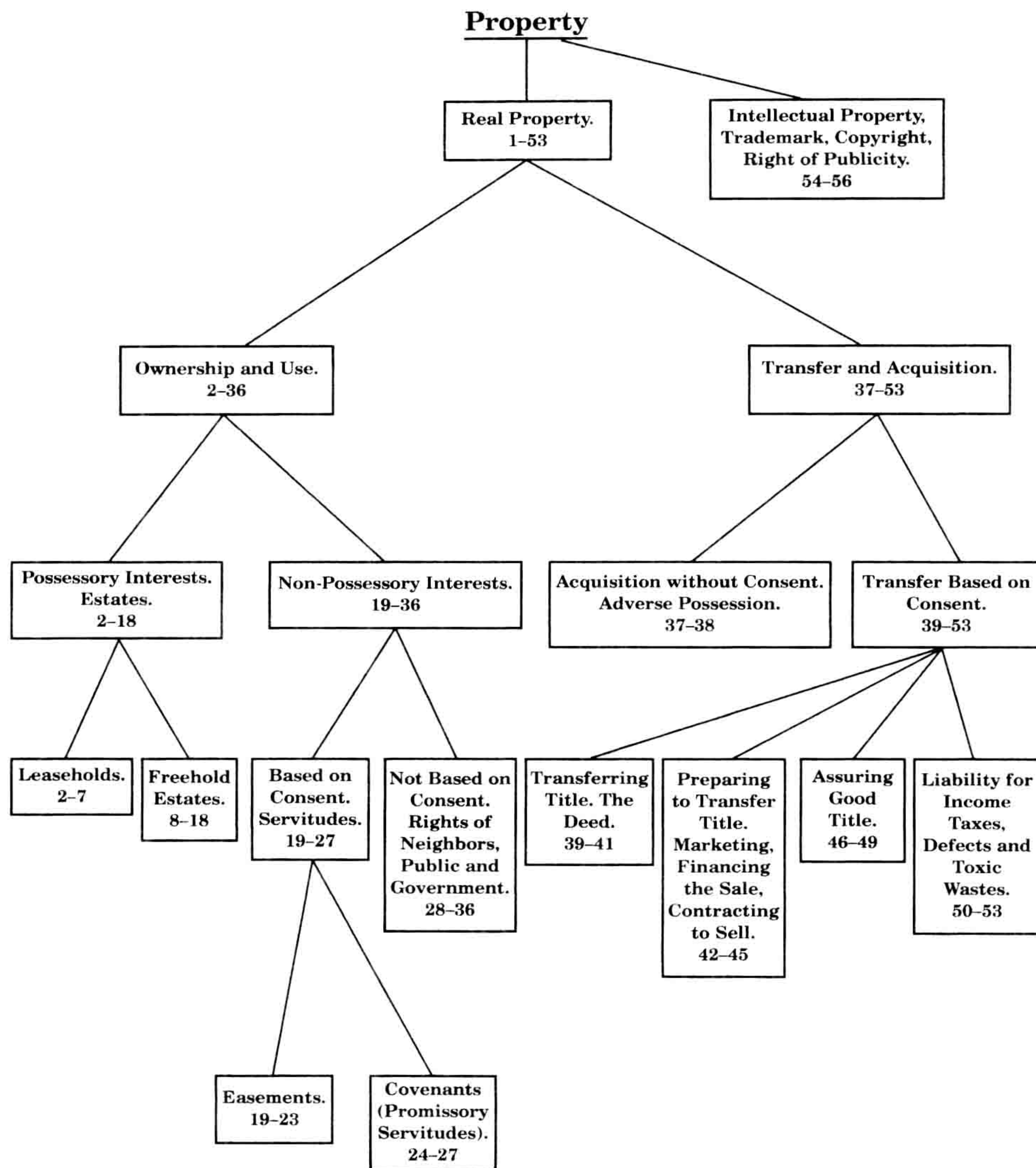
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June, 2000

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