

PROPERTY

AN INTRODUCTION TO THE CONCEPT AND THE INSTITUTION

CASES AND MATERIALS

Charles Donahue, Jr.
Thomas E. Kauper
Peter W. Martin

American Casebook Series



CASES AND MATERIALS
ON
PROPERTY
AN INTRODUCTION
TO THE
CONCEPT AND THE INSTITUTION

By

CHARLES DONAHUE, JR.

Professor of Law, University of Michigan

THOMAS E. KAUPER

Professor of Law, University of Michigan

and

PETER W. MARTIN

Professor of Law, Cornell Law School

AMERICAN CASEBOOK SERIES

ST. PAUL, MINN.
WEST PUBLISHING CO.
1974

COPYRIGHT © 1974

By

WEST PUBLISHING CO.

Library of Congress Catalog Card Number: 74-11672

American Casebook Series
Hornbook Series and Basic Legal Texts
Nutshell Series
of

WEST PUBLISHING COMPANY

St. Paul, Minnesota 55102

ACCOUNTING

Fiflis and Kripke's Cases on Accounting for Business Lawyers, 687 pages, 1971.

ADMINISTRATIVE LAW

Davis' Basic Text on Administrative Law 3rd Ed., 617 pages, 1972.

Davis' Cases, Text and Problems on Administrative Law, 5th Ed., 650 pages, 1973.

Gellhorn's Administrative Law in a Nutshell, 336 pages, 1972.

Robinson and Gellhorn's Teaching Materials on The Administrative Process, 928 pages, 1974.

ADMIRALTY

Healy and Sharpe's Cases on Admiralty, 2nd Ed., about 850 pages, 1974.

AGENCY

Seavey and Hall's Cases on Agency, 431 pages, 1956.

Seavey's Text on Agency, 329 pages, 1964.

See Agency-Partnership.

AGENCY-PARTNERSHIP

Henn's Cases on Agency, Partnership and Other Unincorporated Business Enterprises, 396 pages, 1972.

Seavey, Reuschlein & Hall's Cases on Agency and Partnership, 599 pages, 1962.

Steffen's Cases on Agency and Partnership, 3rd Ed., 733 pages, 1969.

ANTITRUST LAW

Oppenheim's Cases on Robinson-Patman Act, Pamphlet, 295 pages, 1967.

ANTITRUST LAW—Cont'd

Oppenheim and Weston's Cases on Antitrust, 3rd Ed., 952 pages, 1968.

Oppenheim and Weston's Supplement, 1972.

Posner's Cases on Antitrust, about 900 pages, 1974.

BANKRUPTCY

MacLachlan's Text on Bankruptcy, 500 pages, 1956.

Selected Bankruptcy Statutes, 486 pages, 1974.

Selected Commercial Statutes, 1016 pages, 1973.

See Creditors' Rights.

BUSINESS ORGANIZATIONS

See Agency-Partnership.

See Corporations.

CIVIL PROCEDURE

See Pleading and Procedure.

CLINICAL TEACHING

Freeman and Weihofen's Cases on Clinical Law Training—Interviewing and Counseling, 506 pages, 1972.

See Office Practice.

COMMERCIAL PAPER

See Commercial Transactions.

See Negotiable Instruments.

COMMERCIAL TRANSACTIONS

Speidel, Summers and White's Teaching Materials on Commercial and Consumer Law, 2nd Ed., 1475 pages, 1974.

Murray and White's Problem Teaching Materials on Commercial Transactions, 292 pages, 1973.

White and Summers Text on the Uniform Commercial Code, 1054 pages, 1972.

COMMERCIAL TRANSACTIONS—Cont'd

- Selected Commercial Statutes, 1016 pages, 1973.
- See Negotiable Instruments.
- See Sales.

COMMON LAW PLEADING

- Koffler and Reppy's Text on Common Law Pleading, 663 pages, 1969.
- McBaine's Cases, Introduction to Civil Procedure, 399 pages, 1950.
- Shipman's Text on Common Law Pleading, 3rd Ed., 644 pages, 1923.

COMMUNITY PROPERTY

- Burby's Cases on Community Property, 4th Ed., 342 pages, 1955.
- Huie's Texas Cases on Marital Property Rights, 681 pages, 1966.
- Verrall and Sammis' Cases on California Community Property, 2nd Ed., 398 pages, 1971.

CONFLICT OF LAWS

- Cramton and Currie's Cases—Comments—Questions on Conflicts, 915 pages, 1968.
- Ehrenzweig's Text on Conflicts, 824 pages, 1962.
- Ehrenzweig's Conflicts in a Nutshell, 3rd Ed., 432 pages, 1973.
- Ehrenzweig and Louisell's Jurisdiction in a Nutshell, 3rd Ed., 291 pages, 1973.
- Goodrich's Text on Conflict of Laws, 4th Ed., 483 pages, 1964.
- Scoles and Weintraub's Cases on Conflict of Laws, 2nd Ed., 966 pages, 1972.

CONSTITUTIONAL LAW

- Engdahl's Constitutional Power in a Nutshell, 411 pages, 1974.
- Ginsburg's Cases on Constitutional Aspects of Sex Based Discrimination, 129 pages, 1974.
- Lockhart, Kamisar and Choper's Cases — Comments — Questions on Constitutional Law, 3rd Ed., 1,487 pages, 1970.
- Lockhart, Kamisar and Choper's Cases on The American Constitution, 3rd Ed., 1099 pages, 1970.
- Lockhart, Kamisar and Choper's Annual Supplement.
- See Constitutional Rights and Liberties.

CONSTITUTIONAL RIGHTS & LIBERTIES

- Lockhart, Kamisar and Choper's Cases on Constitutional Rights and Liberties, 3rd Ed., 1118 pages, 1970.
- Lockhart, Kamisar and Choper's Annual Supplement.

CONSUMER CREDIT

- Kripke's Cases on Consumer Credit, 454 pages, 1970.
- Schrag's Cases on Consumer Credit, 2nd Ed., Pamphlet reprint from Cooper, et al. Law and Poverty, 2nd Ed., 197 pages, 1973.

CONTRACTS

- Calamari & Perillo's Text on Contracts, 621 pages, 1970.
- Corbin's Cases on Contracts, 3rd Ed., 1381 pages, 1947. 1953 Supplement, 36 pages.
- Corbin's Text on Contracts, Student Edition, 1224 pages, 1952.
- Freedman's Cases on Contracts, 658 pages, 1973.
- Fuller and Eisenberg's Cases on Contracts, 1043 pages, 1972.
- Jackson's Cases on Contract Law in a Modern Society, 1404 pages, 1973.
- Selected Commercial Statutes, 1016 pages, 1973.
- Simpson's Cases on Contracts, 592 pages, 1956.
- Simpson's Text on Contracts, 2nd Ed., 510 pages, 1965.
- White and Summer's Text on the Uniform Commercial Code, 1054 pages, 1972.

COPYRIGHT

- Nimmer's Cases on Copyright and Other Aspects of Law Pertaining to Literary, Musical and Artistic Works, 828 pages, 1971.
- Nimmer's 1974 Supplement.

CORPORATIONS

- Henn's Text on Corporations, 2nd Ed., 956 pages, 1970.
- Henn's Cases on Corporations and Other Business Enterprises, 1279 pages, 1974.
- Henn's Statutory Supplement to Cases on Corporations, 1974.

CORRECTIONS

- Krantz' Cases on the Law of Corrections and Prisoners' Rights, 1130 pages, 1973.
- Krantz' 1974 Supplement.
- Model Rules and Regulations on Prisoners Rights and Responsibilities, 212 pages, 1973.

CREDIT TRANSACTIONS

- Maxwell & Riesenfeld's California Cases on Security Transactions, 371 pages, 1957.
- Maxwell & Riesenfeld's Supplement, 68 pages, 1963.

LAW SCHOOL PUBLICATIONS — Continued

CREDITORS' RIGHTS

- Epstein's Teaching Materials on Debtor-Creditor Relations, 525 pages, 1973.
Epstein's Debtor-Creditor Relations in a Nutshell, 309 pages, 1973.
Riesenfeld's Cases on Creditors' Remedies and Debtors' Protection, 669 pages, 1967.
Riesenfeld's Case and Statutory Supplement, 1974.
Selected Bankruptcy Statutes, 486 pages, 1974.

CRIMINAL JUSTICE

- Uviller's Cases on The Processes of Criminal Justice-Investigation, 744 pages, 1974.

CRIMINAL LAW

- Dix and Sharlot's Cases on Criminal Law, 1360 pages, 1973.
LaFave and Scott's Text on Criminal Law, 763 pages, 1972.
Miller's Text on Criminal Law, 649 pages, 1934.
Stumberg's Texas Cases on Criminal Law, 505 pages, 1954.
Stumberg and Maloney's Texas Cases Supplement, 117 pages, 1965.

CRIMINAL PROCEDURE

- Federal Rules of Civil-Appellate-Criminal Procedure, Law School Edition, 296 pages, 1974.
Grano's Problems in Criminal Procedure, 171 pages, 1973.
Kamisar, LaFave and Israel's Cases on Modern Criminal Procedure, 4th Ed., about 1450 pages, 1974.
Kamisar, LaFave and Israel's Cases on Basic Criminal Procedure, 4th Ed., 767 pages, 1974.
Hall, Kamisar, LaFave, and Israel's Annual Criminal Procedure Supplement.
Israel's and LaFave's Constitutional Criminal Procedure in a Nutshell, 423 pages, 1971.

DAMAGES

- Crane's Cases on Damages, 3rd Ed., 337 pages, 1955.
McCormick's Text on Damages, 811 pages, 1935.
See Remedies.

DECEDENTS ESTATES

- See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

DICTIONARIES

- Black's, one volume.
Bouvier's, two volumes.

DOMESTIC RELATIONS

- Clark's Cases on Domestic Relations, 2nd Ed., 918 pages, 1974.
Clark's Text on Domestic Relations, 754 pages, 1968.
Kay's Cases on Sex Based Discrimination in Family Law, 305 pages, 1974.
Paulsen's Cases on Family Law and Poverty, 2nd Ed., Pamphlet reprint from Cooper, et al. Law and Poverty, 2nd Ed., 200 pages, 1973.
See Juvenile Courts.

DRUG ABUSE

- Uelman and Haddox Cases on Drug Abuse Law, 564 pages, 1974.

EDUCATION LAW

- Morris' Cases on the Constitution and American Education, 833 pages, 1974.

ENVIRONMENTAL LAW

- Hanks, Tarlock and Hanks Cases on Environmental Law and Policy, about 1300 pages, 1974.

EQUITY

- Cook's Cases on Equity, 4th Ed., 1192 pp., 1948.
Dobbyn's Injunctions in a Nutshell, 264 pages, 1974.
McClintock's Text on Equity, 2nd Ed., 643 pages, 1948.
Van Hecke, Leavell and Nelson's Cases on Equitable Remedies and Restitution, 2nd Ed., 717 pages, 1973.
See Remedies.

EVIDENCE

- Broun and Meisenholder's Problems in Evidence, 130 pages, 1973.
Cleary and Strong's Cases on Evidence, 967 pages, 1969.
McCormick, Elliott & Sutton's Cases on Evidence, 4th Ed., 1088 pages, 1971.
McCormick, Cleary, et al., Text on Evidence, 2nd Ed., 938 pages, 1972.
Rothstein's Evidence in a Nutshell, 406 pages, 1970.

FEDERAL ESTATE AND GIFT TAXATION

- See Taxation.

FEDERAL INCOME TAXATION

- See Taxation.

FEDERAL JURISDICTION AND PROCEDURE

- Currie's Cases on Federal Courts, 823 pages, 1968.
 Currie's Supplement, 1973.
 Ehrenzweig and Louisell's Jurisdiction in a Nutshell, 3rd Ed., 291 pages, 1973.
 Forrester, Currier and Moye's Cases on Federal Jurisdiction and Procedure, 2nd Ed., 933 pages, 1970.
 Forrester, Currier and Moye's Supplement, 1973.
 Merrill and Vetri's Problems in Federal Courts and Procedure, 460 pages, 1974.
 Wright's Text on Federal Courts, 2nd Ed., 745 pages, 1970.
 Wright's Supplement, 1972.

FUTURE INTERESTS

- Gulliver's Cases on Future Interests, 624 pages, 1959.
 Gulliver's Introduction to the Law of Future Interests, Pamphlet reprint from Gulliver's Cases, 87 pages, 1959.
 Powell's Cases on Future Interests, 3rd Ed., 621 pages, 1961.
 Simes Text on Future Interests, 2nd Ed., 355 pages, 1966.
 See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

GRATUITOUS TRANSFERS

- See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

HOUSING AND URBAN DEVELOPMENT

- Berger's Cases on Housing, 2nd Ed., Pamphlet reprint from Cooper, et al. Law and Poverty, 2nd Ed., 254 pages, 1973.
 Krasnowiecki's Cases on Housing and Urban Development, 697 pages, 1969.
 Krasnowiecki's Statutory Supplement 1969.
 See Land Use.

INSURANCE

- Keeton's Cases on Basic Insurance Law, 655 pages, 1960.
 Keeton's Basic Text on Insurance Law, 712 pages, 1971.
 Keeton's Case Supplement to Keeton's Basic Text, 398 pages, 1971.
 Keeton's Programmed Problems in Insurance Law, 243 pages, 1972.
 Keeton & Keeton's Compensation Systems, Pamphlet reprint from Keeton & Keeton's Cases on Torts, 85 pages, 1971.
 Vance's Text on Insurance, 3rd Ed., 1290 pages, 1951.

INTERNATIONAL LAW

- Friedmann, Lissitzyn and Pugh's Cases on International Law, 1,205 pages, 1969.
 Friedmann, Lissitzyn and Pugh's Supplement, 1972.

INTRODUCTION TO LAW

- Fryer and Orentlicher's Cases on Legal Method and Legal System, 1,043 pages, 1967.
 Kempin's Historical Introduction to Anglo-American Law in a Nutshell, 2nd Ed., 280 pages, 1973.
 Kimball's Historical Introduction to Legal System, 610 pages, 1966.
 Kinyon's Introduction to Law Study and Law Examinations in a Nutshell, 389 pages, 1971.
 Rombauer's Legal Problem Solving, 2nd Ed., 212 pages, 1973.
 Smith's Cases on Development of Legal Institutions, 757 pages, 1965.
 See Legal Method.

JUDICIAL ADMINISTRATION

- Nelson's Cases on Judicial Administration and the Administration of Justice 1032 pages, 1974.

JURISPRUDENCE

- Christie's Text and Readings on Jurisprudence—The Philosophy of Law, 1056 pages, 1973.

JUVENILE JUSTICE

- Fox's Cases on Modern Juvenile Justice, 1012 pages, 1972.
 Fox's The Law of Juvenile Courts in a Nutshell, 286 pages, 1971.

LABOR LAW

- Oberer and Hanslowe's Cases on Labor Law, 1091 pages, 1972.
 Oberer and Hanslowe's Statutory Supplement, 1972.
 Sovern's Cases on Racial Discrimination in Employment, 2nd Ed., Pamphlet reprint from Cooper et al. Law and Poverty, 2nd Ed., 167 pages, 1973.

LAND USE

- Beuscher and Wright's Cases on Land Use, 788 pages, 1969.
 Hagman's Cases on Public Planning and Control of Urban and Land Development, 1208 pages, 1973.
 Hagman's Text on Urban Planning and Land Development Control Law, 559 pages, 1971.

LAW SCHOOL PUBLICATIONS—Continued

LEGAL BIBLIOGRAPHY

- Cohen's Legal Research in a Nutshell, 2nd Ed., 259 pages, 1971.
How To Find The Law, with Special Chapters on Legal Writing, 6th Ed., 313 pages, 1965.
How To Find The Law Student Problem Book.
Rombauer's Legal Problem Solving, 2nd Ed., 212 pages, 1973.
Rombauer's Problem Supplement.

LEGAL ETHICS

- Mellinkoff's Text on The Conscience of a Lawyer, 304 pages, 1973.
Pirsig's Cases on Professional Responsibility, 2nd Ed., 447 pages, 1970.
Pirsig's 1974 Supplement.

LEGAL HISTORY

- Kempin's Historical Introduction to Anglo-American Law in a Nutshell, 2nd Ed., 280 pages, 1973.
Kimball's Historical Introduction to Legal System, 610 pages, 1966.
Smith's Cases on Development of Legal Institutions, 757 pages, 1965.

LEGAL INTERVIEWING AND COUNSELING

- See Clinical Teaching.

LEGAL METHOD—LEGAL SYSTEM

- Fryer and Orentlicher's Cases on Legal Method and Legal System, 1043 pages, 1966.
See Introduction to Law.

LEGAL PROCESS

- See Legal Method.

LEGAL PROFESSION

- See Legal Ethics.

LEGAL WRITING STYLE

- Weihofen's Text on Legal Writing Style, 323 pages, 1961.
See Legal Bibliography.

LEGISLATION

- Nutting, Elliott and Dickerson's Cases on Legislation, 4th Ed., 631 pages, 1969.

LOCAL GOVERNMENT LAW

- Michelman and Sandalow's Cases on Government in Urban Areas, 1216 pages, 1970.
Michelman and Sandalow's 1972 Supplement.
Stason and Kauper's Cases on Municipal Corporations, 3rd Ed., 692 pages, 1959.
See Land Use.

MASS COMMUNICATION LAW

- Gillmor and Barron's Cases on Mass Communication Law, 2nd Ed., about 975 pages, 1974.

MORTGAGES

- Osborne's Cases on Secured Transactions, 559 pages, 1967.
Osborne's Text on Mortgages, 2nd Ed., 805 pages, 1970.
See Sales.
See Secured Transactions.

MUNICIPAL CORPORATIONS

- See Local Government Law.

NATURAL RESOURCES

- Trelease, Bloomenthal and Geraud's Cases on Natural Resources, 1131 pages, 1965.

NEGOTIABLE INSTRUMENTS

- Nordstrom and Clovis' Problems on Commercial Paper, 458 pages, 1972.
Selected Commercial Statutes, 1016 pages, 1973.
See Commercial Transactions.

OFFICE PRACTICE

- A.B.A. Lawyer's Handbook, 557 pages, 1962.
Strong and Clark's Law Office Management, 424 pages, 1974.
See Clinical Teaching.

OIL AND GAS

- Hemingway's Text on Oil and Gas, 486 pages, 1971.
Huie, Woodward and Smith's Cases on Oil and Gas, 2nd Ed., 955 pages, 1972.
See Natural Resources.

PARTNERSHIP

- Crane and Bromberg's Text on Partnership, 695 pages, 1968.
See Agency-Partnership.

PATENTS

- Choate's Cases on Patents, 1060 pages, 1973.

PERSONAL PROPERTY

- Aigler, Smith and Tefft's Cases on Property, 2 Vols., 1339 pages, 1960.
Bigelow's Cases on Personal Property, 3rd Ed., 507 pages, 1942.
Fryer's Readings on Personal Property, 3rd Ed., 1184 pages, 1938.

PLEADING AND PROCEDURE

- Brown, Karlen, Meisenholder, Stevens, and Vestal's Cases on Procedure Before Trial, 784 pages, 1968.
 Cleary's Cases on Pleading, 2d Ed., 434 pages, 1958.
 Cound, Friedenthal and Miller's Cases on Civil Procedure, 2nd Ed., 1186 pages, 1974.
 Cound, Friedenthal and Miller's Cases on Pleading, Discovery and Joinder, 643 pages, 1968.
 Cound, Friedenthal and Miller's Civil Procedure Supplement, 1974.
 Ehrenzweig and Louisell's Jurisdiction in a Nutshell, 3rd Ed., 291 pages, 1973.
 Elliott & Karlen's Cases on Pleading, 441 pages, 1961.
 Federal Rules of Civil-Appellate-Criminal Procedure, Law School Edition, 296 pages, 1974.
 Hodges, Jones and Elliott's Cases on Texas Trial and Appellate Procedure, 2d Ed., 623 pages, 1974.
 Hodges, Jones, Elliott and Thode's Cases on Texas Judicial Process Prior to Trial, 935 pages, 1966.
 Karlen and Joiner's Cases on Trials and Appeals, 536 pages, 1971.
 Karlen's Procedure Before Trial in a Nutshell, 258 pages, 1972.
 McBaine's Cases on Introduction to Civil Procedure, 399 pages, 1950.
 McCoid's Cases on Civil Procedure, 823 pages, 1974.
 McElhaney's Trials, Problems and Materials on Effective Litigation, 457 pages, 1974.

POVERTY LAW

- Cooper, Dodyk, Berger, Paulsen, Schrag and Sovern's Cases on Law and Poverty, 2nd Ed., 1208 pages, 1973.
 Cooper and Dodyk's Cases on Income Maintenance, 2nd Ed., Pamphlet reprint from Cooper, et al. Law and Poverty, 2nd Ed., 449 pages, 1973.
 LaFrance, Schroeder, Bennett and Boyd's Text on Law and the Poor, 558 pages, 1973.

REAL PROPERTY

- Aigler, Smith & Tefft's Cases on Property, 2 Vols., 1339 pages, 1960.
 Browder, Cunningham & Julin's Cases on Basic Property Law, 2d Ed., 1397 pages, 1973.
 Burby's Text on Real Property, 3rd Ed., 490 pages, 1965.
 Donahue, Kauper and Martin's Cases on property, about 1565 pages, 1974.

REAL PROPERTY—Continued

- Moynihan's Introduction to Real Property, 254 pages, 1962.
 Phipps' Titles in a Nutshell—The Calculus of Interests, 277 pages, 1968.
 Smith and Boyer's Survey of the Law of Property, 2nd Ed., 510 pages, 1971.
 See Housing and Urban Development.

REMEDIES

- Cribbet's Cases on Judicial Remedies, 762 pages, 1954.
 Dobbs' Text, on Remedies, 1067 pages, 1973.
 Dobbs' Problems in Remedies, 137 pages, 1974.
 Dobbys' Injunctions in a Nutshell, 264 pages, 1974.
 Van Hecke, Leavell and Nelson's Cases on Equitable Remedies and Restitution, 2nd Ed., 717 pages, 1973.
 Wright's Cases on Remedies, 498 pages, 1955.
 York and Bauman's Cases on Remedies, 2nd Ed., 1381 pages, 1973.
 See Equity.

RESTITUTION

- See Equity.
 See Remedies.

REVIEW MATERIALS

- Ballantine's Problems.
 Burby's Law Refreshers.
 Smith Reviews.

SALES

- Nordstrom's Text on Sales, 600 pages, 1970.
 Nordstrom and Lattin's Problems on Sales and Secured Transactions, 809 pages, 1968.
 Selected Commercial Statutes, 1016 pages, 1973.
 See Commercial Transactions.

SECURED TRANSACTIONS

- Henson's Text on Secured Transactions, 364 pages, 1973.
 See Commercial Transactions.
 See Sales.

SEX BASED DISCRIMINATION

- See Women and the Law.

SURETYSHIP AND GUARANTY

- Osborne's Cases on Suretyship, 221 pages, 1966.
 Simpson's Cases on Suretyship, 538 pages, 1942.

LAW SCHOOL PUBLICATIONS — Continued

TAXATION

- Chommie's Text on Federal Income Taxation, 2nd Ed., 1051 pages, 1973.
Chommie's Review of Federal Income Taxation, 90 pages, 1973.
Hellerstein's Cases on State and Local Taxation, 3rd Ed., 741 pages, 1969.
Kragen & McNulty's Cases on Federal Income Taxation, 2nd Ed., 1107 pages, 1974.
Lowndes, Kramer and McCord's Text on Federal Estate and Gift Taxes, 3rd Ed., 1099 pages, 1974.
McNulty's Federal Estate and Gift Taxation in a Nutshell, 343 pages, 1973.
McNulty's Federal Income Taxation in a Nutshell, 322 pages, 1972.
Rice's Problems in Federal Estate & Gift Taxation, 2nd Ed., 496 pages, 1972.
Rice's Problems in Federal Income Taxation, 2nd Ed., 589 pages, 1971.
Selected Federal Taxation Statutes and Regulations, 1130 pages, 1973.

TORTS

- Green, Pedrick, Rahl, Thode, Hawkins and Smith's Cases on Torts, 1311 pages, 1968.
Green, Pedrick, Rahl, Thode, Hawkins and Smith's Cases on Injuries to Relations, 466 pages, 1968.
Keeton and Keeton's Cases on Torts, 1193 pages, 1971.
Noel and Phillips' Products Liability in a Nutshell, 365 pages, 1974.
Prosser's Text on Torts, 4th Ed., 1208 pages, 1971.

TRADE REGULATION

- See Anti-Trust Law.
See Unfair Trade Practices.

TRIAL AND APPELLATE PRACTICE

- See Pleading and Procedure.

TRUSTS

- Bogert's Text on Trusts, 5th Ed., 726 pages, 1973.
Powell's Cases on Trusts and Wills, 639 pages, 1960.
See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

UNFAIR TRADE PRACTICES

- Oppenheim's Cases on Unfair Trade Practices, 3rd Ed., 1071 pages, 1974.
Oppenheim's Robinson-Patman Act Pamphlet, 295 pages, 1967.

WATER LAW

- Trelease's Cases on Water Law, 2nd Ed., 863 pages, 1974.

WILLS

- Atkinson's Text on Wills, 2nd Ed., 975 pages, 1953.
Mennell's Cases on California Decedents' Estates, 566 pages, 1973.
Turrentine's Cases on Wills, 2nd Ed., 483 pages, 1962.
See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

WILLS, INTESTATE SUCCESSION, TRUSTS, GIFTS AND FUTURE INTERESTS

- Gulliver, Clark, Lusky and Murphy's Cases on Gratuitous Transfers: Wills, Intestate Succession, Trusts, Gifts and Future Interests, 1017 pages, 1967.

WOMEN AND THE LAW

- Davidson, Ginsburg and Kay's Cases on Sex Based Discrimination, 1031 pages, 1974.

WORKMEN'S COMPENSATION

- Malone, Plant and Little's Cases on the Employment Relation, 1055 pages, 1974.

Editorial and Advisory Board

AMERICAN CASEBOOK SERIES

HORNBOOK SERIES

JESSE H. CHOPER

Professor of Law
University of California, Berkeley

DAVID P. CURRIE

Professor of Law
University of Chicago

YALE KAMISAR

Professor of Law
University of Michigan

ROBERT E. KEETON

Professor of Law
Harvard University

RICHARD C. MAXWELL

Professor of Law
University of California, Los Angeles

MICHAEL I. SOVERN

Dean and Professor of Law
Columbia University

CHARLES ALAN WRIGHT

Professor of Law
University of Texas

Quibus hoc libellum modo expositum demus et dedicamus?

SHEILA, SHIRLEY AND ANN

*

PREFACE FOR THE STUDENT

Many students find their first course in property both difficult and mystifying. There are good reasons for this feeling: (1) Property more than any other branch of law has its roots deep in the past. Doctrines, the original reasons for which are all but lost in the passage of time, have been molded, sometimes imperfectly, to fit modern needs. (2) Property more than any other first-year law course is a survey course. It lays the foundation for courses in the devolution of wealth (wills, trusts, future interests, estates, and estate planning), for courses in modern real estate transactions (conveyancing, land finance, and land planning), four courses dealing with natural resources (water, oil and gas, and environmental law) and, less obviously, for courses in constitutional law, tax, business organizations (corporations, partnership etc.), patents and copyrights, economic regulation (anti-trust, regulated industries) and commercial transactions. (3) Much of the factual stuff of property is new to many students. Most of us know something about auto accidents; few of us know much about drilling for oil, or even, the mechanics of a sale of suburban real estate. (4) The concept of property in the abstract is probably a more difficult one to deal with than that of a contract or even a tort or a crime.

Much of what makes property difficult, however, also gives it what at least for us (the editorial "we") its unique fascination. Study of the history of property law not only imparts insights into the past but also permits the student to observe the complicated process of man coming to grips with his traditions—trying to determine which values of the past he wishes to preserve and which to modify, trying to sort out which pieces of society's ancient machinery he can put to modern use and which he must discard. The survey nature of the course permits the student to range over a wide variety of topics and to observe some of the basic characteristics of the workings of the law. Similarly, the variety and complexity of the factual situations in which property cases arise permit the student to observe the law's attempts to fit its notions and values to the enormous variety and complexity of human experience. Finally, the slipperiness of the concept of property permits the student to begin to ask if not to answer some of the fundamental, jurisprudential questions which have puzzled philosophers since the beginnings of speculative thought.

This last point may serve to explain why it is that we did not begin this preface in the normal fashion by saying what this book is about. It is about property, and property is very hard to define. Much of Chapter II is devoted to a search for a definition of property. Nonetheless, we really ought to make an initial stab at it here:

It is sometimes said that the law of property is the law of the relation of persons to things. Like many sweeping definitions, this one falls short of being satisfactory. Clearly it suggests that the relationship of me to my watch, commonly called "ownership," is defined and explored in the law of property. But it is

PREFACE FOR THE STUDENT

not likely to suggest to the uninitiated that the West Publishing Company's relationship to the arrangement of words in this introduction, less commonly called "copyright," is also defined and explored in a branch of the law of property. Further, the habit of speaking of the law of property in terms of labels regarding a person and a thing, "ownership," "copyright," may lead to the confusion that property law deals with one person and one thing in a vacuum. Such is not the case. There is no property on the philosopher's desert island. Robinson Crusoe did not need property until Friday arrived. Property, then, like any other branch of law, deals with the legal relations between persons. Physical things are frequently involved, although sometimes nonphysical things like the arrangement of words on this page are involved, in addition to or in lieu of physical things. Thus, we may recast our original definition and say that property is the law concerned with the relationship between persons with respect to things—"things" being very broadly conceived.

Because property law is a law of the relationship of persons, the terminology and doctrines of other branches of law frequently are relevant, if not decisive. If you take my watch without my permission, that is a tort, perhaps also a crime. Similarly, I can agree to sell you my watch, and that agreement is governed, at least in part, by the law of contract. Thus, property is a peculiar hybrid constantly borrowing from other fields, and we will continually have to make reference to those other fields in order to elucidate the law of property.

While the definition which we have given above probably encompasses all of the law of property, it does little to explain where property ends and other subjects, such as tort and contract begin. More practically, it probably does not explain why this book deals with the topics it does. A partial answer to both questions may be found in another slippery word—real—which is derived from the Latin *res* meaning "thing." "Real" is used by the law in many ways. It can be used in its normal sense as the opposite of "fictional," but this meaning is not helpful for our present purpose. It can also be used to describe a type of legal proceeding in which the plaintiff seeks to recover from the defendant a specific thing rather than just money damages. The fact that historically in the Anglo-American legal system (with a few exceptions discussed *infra* pp. 47, 50–53) land was the only thing which could be recovered specifically has led to our distinction between *real* and *personal* property. Both types of property are dealt with in this book, but the emphasis is on real property, largely because of the greater complexity of land law.

A related meaning of "real" refers to those rights which I have not just against a specific individual or groups of individuals but against the whole world or against a great many people. These rights are known as *in rem* rights as opposed to *in personam* rights.¹ It would be nice if we could say that this book deals with *in rem* rights and duties while contracts and torts courses deal with *in personam* rights and duties. Unfortunately, such a division, however logical it might be, would do great violence to the somewhat illogical way in which our law has

1. In civil procedure the *in rem*—*in personam* distinction is used to describe the way an action is begun: *in personam* by personal service of process on the defendant, *in rem* by seizing or attaching a piece of property. The civil procedure use of these terms is related to, but should not be confused with, the use being made in the text.

PREFACE FOR THE STUDENT

developed and also would leave such topics as the purchase and sale of land scattered over a number of courses. Thus, we are forced back to our original definition: this is a book about the law which deals with the relationship between persons with respect to things. The "thing" which we will be most concerned with is land, although we will also spend some time, particularly in the initial chapters of the book, with tangible things which are not land, like wild animals, watches, and railroad cars, and to a lesser extent with intangible things, such as copyrights and bank accounts.

There are numerous ways of dividing the law of property. We will explore some of them at length in Chapter II. One traditional way of dividing the topic is according to the nature of the right or power you wish to talk about. Such a division might begin with the classification of types of interests in property (what have you got), continue with a discussion of how those interests are transferred (how do you convey it) and close with a discussion of limitations which the law imposes on the use of a thing (how can you use it). Another approach might divide the topics functionally, using perhaps as a paradigm the development of a piece of real estate proceeding from the original title in the state to its acquisition by a developer to its transfer to a homeowner examining at each stage the types of interests involved, the way they are transferred and the limitations on their use.

We have adopted neither form of organization completely in this book. We have chosen the organization we have because we think that it is more interesting and that it teaches better than a strictly logical form of organization:

Chapter I revolves around the question: what do we mean when we say this thing is *mine* and that thing is *yours*? This question raises the further question of how *title* to something is established. We deal with various modes of acquiring title, original capture of wild animals, finding lost goods, "squatting" on land; with the relative rights of one who *possesses* a thing as against both the "true owner" and the whole world, and with a relatively simple form of conveyance, the *bailment*, a borrowing or hire of a piece of personal property.

Chapter II deals with property in a more abstract form. We seek a definition of what is property by examining a number of constitutional cases in which the right of property is opposed to "civil rights" and by examining some cases which illustrate or seem to illustrate various philosophical theories of property.

Chapter III takes a functional approach; it examines a piece of land from the point of view of the natural resources to which it may relate, caves, minerals, oil and gas, air space, and water, and asks how the law has used the concepts we have developed in the first two chapters to allocate those resources. Section 6 of Chapter III asks to what extent this law has or should change in the light of today's concern with environmental protection.

Chapter IV examines the transfer of interests in property and some of the types of interests which may be created by transfers. The emphasis of the chapter is on transactions within the family, although there is a basic introduction to commercial conveyances of land in section 2. Chapter VII rounds out the picture of commercial conveyances of land.

PREFACE FOR THE STUDENT

Chapter V deals with the law of housing, principally in the context of the private landlord-tenant relationship. Section 6 contains an introduction to the law of public housing.

Chapter VI returns again to the topic of land use, with which we have begun to treat in Chapter III. The focus of Chapter VI is on the land itself rather than the natural resources which it may contain, and the organization of the chapter proceeds from private restrictions on land use, nuisance, easements, covenants, and servitudes, to public ones, zoning and eminent domain.

Even this brief outline should make it apparent that we believe that property contains large doses of both private and public law. Most of the chapters and many of the sections deal first with the way in which the law resolves disputes between private individuals regarding a given thing and then outlines the various ways by which the state intervenes in its own name in the same question. Thus, section 1 of Chapter I treats first with disputes between individuals concerning the right to wild animals, then deals with the involvement of the state in its own name through various types of conservation laws.

Every teacher has certain themes which he likes to develop throughout the course. Your teacher's themes will undoubtedly become apparent as the course progresses. Since the editors are all property teachers, we have unavoidably put some of our favorite themes into the organization of the material and the notes and questions. The following list of questions indicates some of the salient themes of this book:

(1) What is property? Why should this particular interest be afforded the peculiar constitutional protections granted "property" rights?

(2) A right is only as good as the means by which a court will enforce it. What alternative remedies are available to vindicate this right and what effect will the existence of these remedies have on the behavior of the possessor of the right?

(3) Property law is the law of wealth or lack of it. What economic forces is the law protecting or thwarting?

(4) To what extent does the personal situation of the parties (bad guys vs. good guys) control the result in a given case? To what extent should it?

Some hints on using this book:

1. There are a lot of questions in this book, and hard as it may seem for you to believe, they are designed not to harass you but to help you to understand the materials. Many of the questions are straight-forward ones placed there to call your attention to a particular point in the materials. Such questions usually come at the beginning of a list of questions. Other questions are less straight-forward: they ask you to apply a rule of law to a fact situation not posed by the cases theretofore covered, or they ask for a policy argument. You should not be surprised if you cannot devise a simple answer to such questions. You should, however, be able to devise an intelligent answer to them and to give the arguments for and against your conclusion. Such questions are usually accompanied by citations of further authority. The questions are designed, however, so that you can arrive at an intelligent answer without consulting these authorities. You

PREFACE FOR THE STUDENT

should try your hand at the question *before* you look at the authorities. In most instances the answers which the authorities provide are suggestive, not definitive, and the purpose of the questions is to stimulate your thinking, not to give you exercise in the use of the library.

2. Throughout the materials you will find recommendations of secondary sources you may wish to consult. Although your teacher may have different views on this, we do not recommend the use of treatises and law review articles until after a topic has been covered in class and you have had an opportunity to re-read and outline the material. The reading of secondary material should *never* substitute for the reading of primary material, constitutions, cases and statutes. Secondary material is frequently erroneous or misleading. It can give you the impression that "black letter" law exists; whereas in fact all that exists is primary material to be molded to successive fact situations in the light of what legal arguments counsel can bring to bear.

3. As we have noted above, the property course consists of a series of closely interrelated questions. This characteristic frequently means that any given section or chapter must be seen as a whole before all its various elements become clear. The Tables of Contents and the Index are designed to give you road maps into the material as are many of the textual introductions and the catch-phrases found at the beginnings of the sub-headings. A different kind of organizational framework for the course is to be found in the note at the end of Chapter II, section 1, *infra* pp. 223-34. We recommend that you skim through any assigned section or subsection to get an overview before undertaking to analyze the material in depth. We have also included an unusually large number of cross-references in this book, and we hope that these will aid you in putting the materials together.

* * *

We have benefited enormously from our own students' suggestions in preparing this book. Please don't hesitate to drop one of us a note if you have any suggestion, large or small, which might help us in preparing possible future editions of this book.

*