

# FUNDAMENTALS OF MODERN REAL PROPERTY LAW

THIRD EDITION

EDWARD H. RABIN

ROBERTA ROSENTHAL KWALL

*University Casebook Series*

FUNDAMENTALS  
OF  
MODERN  
REAL PROPERTY LAW

THIRD EDITION

By

EDWARD H. RABIN

Associate Dean and Professor of Law  
University of California at Davis  
Davis, California

ROBERTA ROSENTHAL KWALL

Professor of Law  
DePaul University College of Law  
Chicago, Illinois

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*To Jane, Daniel and Rebecca Rabin  
and  
Abe and Mildred Rosenthal*

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## PREFACE

No lawyer reads cases for the fun of it. She (or he) is always faced with a specific problem that she hopes to solve with 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. After all, the law is not merely a body of general principles: rather, it consists of applications of general principles to specific facts. We have attempted to put these theories into practice by using a problem approach in this book.

We have dispensed with much of the impedimenta of scholarship. Most of the cases and other material have been liberally abridged. Our footnotes use letters rather than numbers, and we have retained the original footnote numbers in cases and articles. But we have not befreckled the pages with \* \* \*, or with . . . . Let us give fair warning now that not only have we deleted material without indication, we have occasionally changed “[T]he, to “The” and committed other high crimes and misdemeanors against scholarship. This is, after all, a *teaching and learning* tool, not a monument to minutiae. Therefore, most of the customary citations to authorities that students are supposed to look up and almost never do are omitted. This book is meant to be used in the classroom under the guidance of a kindly, perhaps even knowledgeable, instructor. If it is not to be supplemented by the classroom the student should try an alternative learning tool.

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. Thus the esoteric delights of studying property rights in meteors, lost jewels and wounded foxes have been foregone. Moreover, there has been an attempt 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, so that they can make more intelligent choices of electives. Subjects of mainly historical interest have been de-emphasized. We also confess to a bias in favor of recent cases.

Over the years we have been enormously helped, albeit perhaps unwittingly, by our students, most of whom have now gone on to less arduous efforts. Professor Rabin gratefully acknowledges the very able student research assistance of Craig Allison, John Cardinalli, Carolyn Broesamle, Aaron Gary, Mary Ellen Gormley, Deborah Hulse and Richard Loew. He also expresses his gratitude to Saralee Buck who cheerfully and competently performed essential secretarial work on this and previous editions. Professor Kwall expresses her appreciation to the following student research assistants for all of their hard work: Lynn

## *PREFACE*

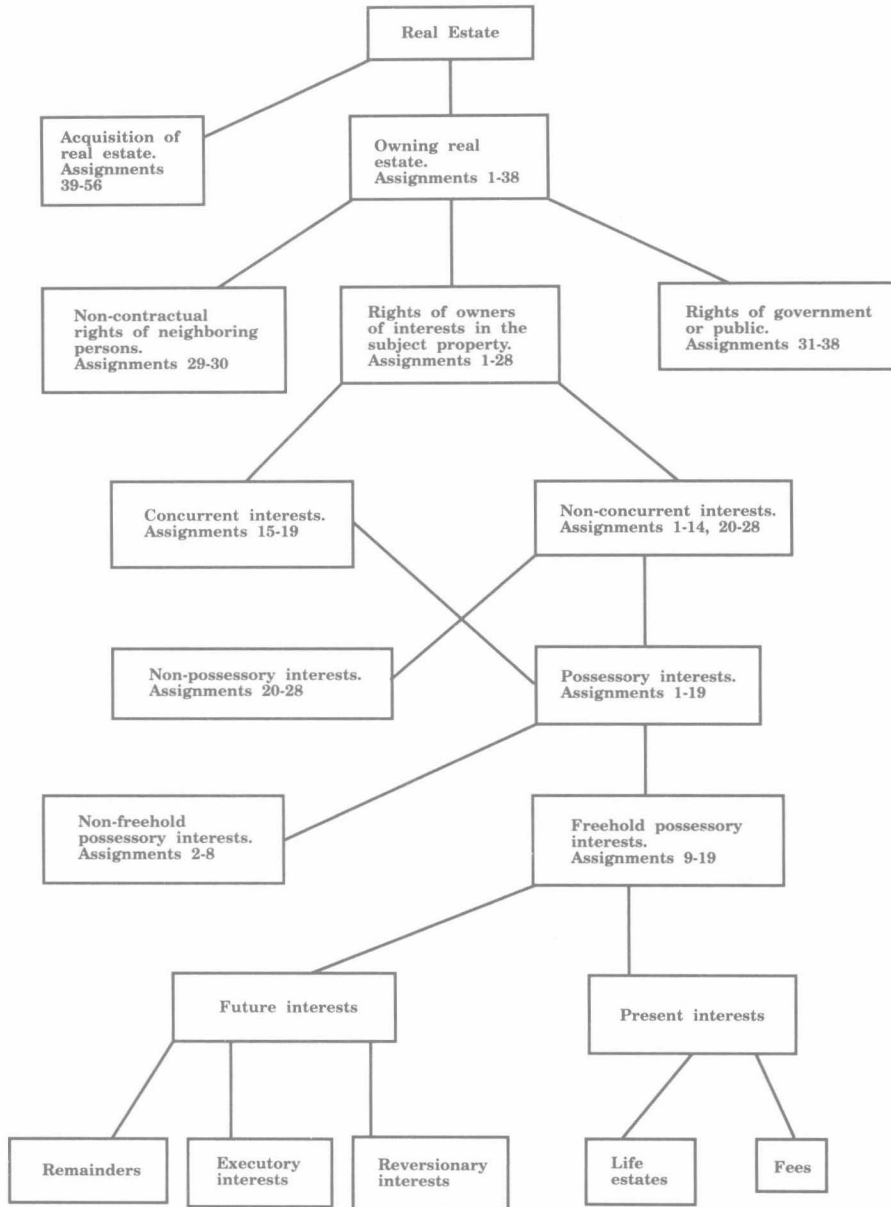
Tannehill, David Zimmerman, Charmia Ylagan, Margaret Hickey, Amy Hershinow, Mary Hopp, Sara Kate Rose-Elash, Paul Hansra, Kathryn Kelly, and William Eipert. She also thanks her colleagues Professors Steven Siegel and Patty Gerstenblith for their helpful comments, Dean John Roberts of DePaul University College of Law for his support and encouragement, and the DePaul University Research Council for its sponsorship of this project.

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. Let us begin our study.

EDWARD H. RABIN  
ROBERTA ROSENTHAL KWALL

September, 1991

STUDY OUTLINE: OVERVIEW



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