

A MODERN APPROACH TO PROPERTY

CASES — NOTES — MATERIALS

Richard H. Chused

American Casebook Series



A MODERN APPROACH TO PROPERTY

Cases — Notes — Materials

By

RICHARD H. CHUSED

Associate Professor of Law
Georgetown University Law Center

AMERICAN CASEBOOK SERIES

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- Kragen and McNulty's Cases and Materials on Federal Income Taxation, 2nd Ed., 1107 pages, 1974, with 1977 Supplement (Casebook)
- Kramer and McCord's Problems for Federal Estate and Gift Taxes, 206 pages, 1976 (Problem book)
- Lowndes, Kramer and McCord's Hornbook on Federal Estate and Gift Taxes, 3rd Ed., 1099 pages, 1974 (Text)

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Many members of the Georgetown family deserve thanks. Special mention must be made of a few. From 1973 to 1976 Judith C. Areen, a colleague on the Georgetown faculty, and I co-authored sets of duplicated materials for use in our Property classes. When she went on to write her own Family Law case book, I took over the task of turning our primitive xerox pages into a complete text on Property. I am grateful for the early contributions and later critiques she provided. Over the last two years, three research assistants have given me invaluable assistance. Stephen Fennell did much of the work finding interesting material for Chapters II and III. He made significant contributions to the section of Chapter II on the Harmony Society. Elizabeth Knoblock and Tony Taylor have, in the past year, contributed much to Chapters IV and V, and put in endless hours on the final tasks of preparing a manuscript for the printer. Finally, the secretarial staff of Georgetown typed their fingers off and then pasted them back together preparing various drafts of this book for experimental class use and publication. Mrs. Janice Fones, Mrs. Leslie Allred and Mrs. Cathy Allred deserve particularly large accolades.

Then there is my wife, Elizabeth Langer, whose real world legal talent has kept my Ivory Tower firmly attached to the ground, and our two year old son, Ben, whose infectious good humor constantly reminds me that learning is fun and teaching a joy. Thanks.

RICHARD H. CHUSED

Washington, D.C.
April, 1978

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STUDENTS' PREFACE

This book is designed to serve at least two purposes. First, the materials should be provocative. Cases have been selected which are interesting, on the "fringes" of developing law, and difficult. The notes following the cases fill in the legal principles which are fairly well settled. They are not peppered heavily with case citations, but they are informative. In addition, the notes are full of questions. Despite the large number of queries, the book is not written in the traditional "hide the ball" manner. Questions which are not answered appear that way for the very simple reason that the legal world has not yet reached any uniform conclusion on the issue. Hopefully, you will learn to be comfortable with this mixture of the settled and the unsettled.

Second, you should learn some old and some new property law. The book covers areas usually included in "traditional" first year courses, as well as areas not heretofore dealt with so early in law school. A studied effort has been made to place traditional areas of property law in a modern setting. That should make the study of property less mechanical than you might expect.

The book is organized in six parts. The opening chapter deals broadly with the creation, distribution, and use of property. If there is a single most important theme in the chapter, it is the constant tension in American culture between the freedom to use property for personal ends, and the inability to use property in a way harmful to others. The materials develop this theme while touching upon most of the topics contained in the remaining chapters of the text. Much of the vocabulary of property law is exposed in the first chapter. This "quicky-course" characteristic of Chapter I may present difficulties for some students. I can only recommend that you keep the dual nature of the material in mind as you read it. Absorb the basic policies underlying the creation, distribution, and use of property, and put the rest of the material on a simmering back burner. Succeeding in this schizophrenic task will make the rest of the course easier.

Chapters II and III cover the legally recognized ways in which land may be owned and possessed. Chapter II focuses on devices used by individuals, groups, married couples, and business entities to hold property. In addition, a policy theme runs through the materials—the degree of flexibility which should be available to alter private property relationships. For example, if you find yourself in a bad deal two years after signing on the dotted line, should the law ever provide you

STUDENTS' PREFACE

relief? Deciding upon the proper mix of enforcement and avoidance of old transactions can be quite difficult. Chapter III reviews in detail one of the devices mentioned in Chapter II—the landlord and tenant relationship. In an effort to demonstrate how cases relate to each other and to legislative action, only cases and statutes from New Jersey are used as primary study tools. The chapter should reveal the historical development of landlord and tenant law, an area which has undergone enormous change in the last twenty years. Good reasons exist for selecting New Jersey as a subject for study; its law has moved further towards protecting tenants than that of any other state. By absorbing the New Jersey materials, you will also be familiarizing yourself with the formulations of landlord and tenant law in use in other jurisdictions.

Chapter IV focuses on a variety of problems relating to the sale and transfer of land. In addition to describing the basic characteristics of deeds and contracts for the sale of land, the materials cover problems in mortgages, housing construction quality, seller fraud in large developments, and racial discrimination. The chapter also performs a transition function by beginning to raise problems about the legitimacy of private and public restrictions on the use of the property concepts studied in Chapters II and III. The study of land use control devices becomes the focus for the last two chapters.

Chapter V investigates private land use controls—future interests, easements, and covenants. As a group these three devices create a wide range of choices for use by private parties to control the present and future occupancy and use of land. The materials should encourage you to contrast the purposes of each of the devices, and the degree to which the law surrounding use of each control is rational. Finally, in Chapter VI, public land use controls—zoning, environmental controls, and preservation regulations—are reviewed. The materials are wide ranging in scope; the emphasis is on policy questions. Your study should provoke many more questions than answers.

One final note on editing practices used in the book is necessary. Most of the cases in the volume have been edited. Many footnotes have been deleted, although those retained are usually numbered as the court wrote the opinion. In addition, many citations have been omitted from the bodies of the opinions, without marks of ellision. Simply put, liberties have been taken with the cases to make your reading less tedious. Footnotes to the cases (but not elsewhere) written by the author are followed by the signal [Ed.].

A NOTE TO TEACHERS

I have used a landlord-tenant negotiation problem with these materials for the last five years. It works for large classes. Each team of three students is given a packet of materials which includes a background statement on the building to be leased and a set of special constraints applicable to the team's side. The background statement is the same for both landlord and tenant teams. The constraints are different for each side. The assignment is to negotiate a lease, and to turn in a copy of the final written product. I also ask for volunteers willing to have their negotiation sessions video taped. Our AV department tapes the sessions, and, after I review the product, edits the tapes in accordance with my instructions. I show the highly edited tape to the class as an aid for talking about negotiation skills and techniques. A copy of the negotiation problem is available at no cost. Simply write me at Georgetown University Law Center, 600 New Jersey Ave., N.W., Washington, D. C. 20001. I am also developing a residential land sale negotiation problem. Hopefully it will be ready by the fall of 1978. If you are interested in seeing it, write. Finally, I am interested in receiving any comments you have about the book—good, bad, or indifferent. The more I receive, the easier it will be to prepare another edition.

RICHARD H. CHUSED

Washington, D.C.
April, 1978

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