

BASIC PROPERTY LAW

SECOND EDITION

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PREFACE

The revision of this course book reflects changes in emphasis which consist of the elimination of certain chapters, the insertion of new chapters, and a re-arrangement in the sequence of chapters. Substantial changes have also been made in the content of most chapters and drastic changes have been made in a few.

Every chapter in the book contains revisions of the usual sort, that is, the substitution of cases, the insertion of new cases, and the re-arrangement of materials. All this of course is designed to present new problems, to improve or facilitate the analysis of old problems, and reflects our responses to our experience with the original materials. More extensive changes in a number of chapters may deserve particular mention.

Instead of beginning with the chapter on Estates, two new introductory chapters have been inserted. The first of these is entirely new. Its objectives are sufficiently revealed in the table of contents. The second of these is a revision of a chapter in the first edition which we think best serves as part of an introductory inquiry into the nature and scope of property in land. The chapters on Bailment and Fixtures have been eliminated. Bailment problems now appear in the first chapter as part of the analysis of the law on possession. Most modern fixtures problems are best treated as part of courses on Commercial Transactions. A note on tenants' fixtures is retained here in the chapter on Landlord and Tenant.

The chapter on Estates is largely textual. The text has been entirely re-written and presents a new arrangement in the exposition of the hierarchy of estates.

For reasons which should be obvious, the chapter on Landlord and Tenant is also virtually a new chapter. It includes our effort to reveal the basic dimensions of the explosive new developments in the law on residential leases. Half of the cases included are new and more than half of the cases included in the first edition have been omitted.

In the chapter on Promises Respecting the Use of Land, the section on the relations between owners in fee simple has been substantially revised by the substitution of cases and a re-arrangement of materials which we hope will facilitate the analysis of this peculiarly difficult area of the law.

We have retained the chapter on Gifts of Chattels, despite some doubt about its inclusion in a basic survey of the law of property. Since it deals with a traditional will-substitute, it is properly a part

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of a course on Trusts and Estates or the equivalent. But often it is not included in such courses. To the extent that the delivery problem is involved, these materials can be effectively related to the comparable problem in respect to deeds. For those who wish to cover these materials at this level, the chapter has been compressed and substantially revised, especially the section on bank account problems.

Similarly, the doctrine and hierarchy of estates serves the purposes of the study of Trusts and Estates. It serves much less the areas of property law contained in this book. If one wishes to ignore the divisibility of ownership, a grasp of ownership in fee simple absolute or the equivalent is sufficient for most problems not involving trusts and wills. A study of the full array of possessory estates which does not include the correlative future estates may produce a distorted view of the nature and functions of divided ownership. But in any effort to grasp the future estates, it is difficult to avoid a survey of the whole intricate structure, including the refinements which turn on the concept of vesting. In any event, the exposition of the hierarchy of estates presented herein is now so arranged that, if one wishes to do so, he may deal with the possessory estates without more.

The chapter on Priorities and Recording has been substantially reduced by the substitution of text for a number of the old leading cases on priorities problems. This substitution reflects our belief that relatively few of our students are likely to be professionally engaged in title searching, and that most of the "chain of title" problems which used to loom so large in first-year Property course books rarely arise today because of the prevalent use of tract indexes by the abstract and title insurance companies which handle most of the title searching business.

The chapter on Land Title Assurance has been somewhat shortened by the substitution of *Marshall v. Hollywood, Inc.* for *Wichelman v. Messner* in the section on Marketable Title Legislation, but this change has been partly offset by the addition of text dealing with (a) some shortcomings of the Marketable Title Acts and (b) the recent successful expansion of the English system of Title Registration.

The chapter on Vendor and Purchaser has been placed after the materials on Conveyancing and Land Title Assurance. Since this limited introduction to the relations between vendor and purchaser largely deals with the problem of marketable title, such a study presupposes some knowledge of title and priority problems, including the devices for land title assurance.

Part 3 of this book, on Public Control of Land Use, has been extensively revised, and a number of important recent cases have been added. The original introductory chapters on Urban Planning and the Police Power have been omitted, but the substance of these chapters has been incorporated in the revised chapters on Zoning and Subdivision Control, which now include materials on "exclusionary" zoning

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and environmental protection. Overall, the contents of Part 3 have been somewhat reduced, but we believe the materials in this new edition are adequate to give the student a solid introduction to Public Control of Land Use.

Obviously we remain in that company of property teachers who believe in a comprehensive first-year survey of the law of property. For us this includes an introduction both to conveyancing and to the allocation and control of land use. Most property problems arise in one or the other of these fields. Attempts to discern the dimensions of the institution of property may be distorting or superficial if they ignore either of these major divisions. How much meaning can ownership have except in terms of transfer or use? But in respect to neither area do we make any pretense of offering adequate professional equipment. The exposure to all major areas included herein has objectives that are more institutional than professional. Our goal is to offer as complete a picture of a fundamental legal institution as is practicable in one year.

Our efforts to compress material have been counter-balanced by the introduction of new material. The dimensions of the total product do not result from any notion that all of it can be thoroughly covered in any single property course that we know of. The striking fact about current attitudes toward the teaching of property is the difficulty in finding two teachers who want to cover the same ground in the same way. Anyone who uses this book probably faces the necessity of making some selection of subject-matter, either by way of omission or emphasis. Our purpose of course is not to create that necessity, but to provide the opportunity for selection among reasonable alternatives.

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A.L.P.	American Law of Property (1952)
Powell	Powell on Real Property
Restatement	Restatement, Property (1936, 1940, 1944)
Tiffany	Tiffany, Real Property (3d ed. 1939)

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