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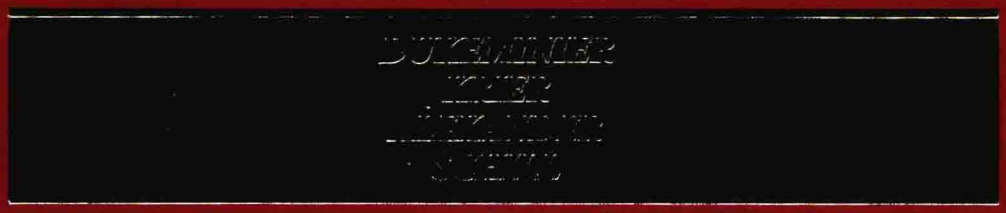

PROPERTY

Seventh Edition

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For my mother at 95

—J.E.K.

To the memory of my parents

—G.S.A.

To my parents

—M.H.S.

Summary of Contents

Preface to the Seventh Edition

The first edition of this book appeared in 1981. It has changed considerably over the years since, thanks to periodic revisions occasioned by developments in the law and literature, but the original aims and methods of the book have held steady. They are set forth in the Preface to the First Edition, reprinted in part on the following page.

As always, our work on the book has benefitted from the contributions of students, colleagues, and friends. We are grateful to them for their help, and hope the following list does justice to everyone: Sam Charlton, Lyndsey Clark, Gunnar Doetker-Martz, Stuart Edmiston, Danielle Gaier, Wesley Gorman, Francis Lewis, Scott Loresch, Caroline Staudt, Thomas Powell, and Alyssa Simon (for research assistance); Ann Carlson, Michael Carrier, Teresa Collett, Michael Doran, Stephen Dycus, Stephen Munzer, Craig Oren, and Eduardo Peñalver, teachers all (for ideas and materials sent our way); Dorothy Kryskowski (for managing manuscript preparation with care, skill, and good cheer); Renee Cote, Eric Holt, Meri Keithley, and Peter Skagestad (for graphics, layout, and editing); and, finally, David Cunningham and Wendy Wilkes (for help above and beyond).

James E. Krier
Gregory S. Alexander
Michael H. Schill

January 2010

From the Preface to the First Edition

Property is a thoroughly modern subject of thoroughly antiquated origins. Probably in no other area of law does one see more, or even as many, strains of the old in the new. As an institution for allocating resources and distributing wealth and power, property bears in fundamentally important ways on central issues in contemporary life; as a body of doctrine, it discharges these modern-day tasks with rules and concepts drawn from age-old ways of looking at social relations in an ordered society. Property law has, to be sure, undergone constant change, but — at least in Anglo-American experience — it has not been revolutionized. Its enduring mix of old and new, rife with uneasy tensions, reflects more than an institution that has evolved over centuries and across cultures; it reflects as well two often conflicting objectives — promoting stability and accommodating change — that property systems must serve. To study property is to study social history, social relations, and social reform.

It is also, of course, to study law. The primary objective of this coursebook is to help students learn the complicated structure and functions of property doctrine and something of legal method, legal reasoning, and legal analysis. We have, however, secondary objectives as well, suggested by our opening remarks. How, why, and with what implications does the property system order relations in present-day America? What sorts of incentives does it create in terms of constructive use of scarce, valuable resources? How fairly does it confer benefits and impose burdens? To what extent is today's system a valuable, or a useless, legacy of the past? What sorts of reforms are suggested, and what might they achieve?

To pursue such secondary questions as these, and especially to accomplish the primary end of learning law and legal method, we need large doses of doctrine, but also a sense of history and of methods of critiquing institutional performance. There is, then, lots of law in what follows — in cases, statutes, text, and problems. There is also a consistent effort to trace historical antecedents. Finally, there is a fairly systematic, but by no means dominating, attempt to critique — often through an economic lens. Economics, like property, is in large part about resources. The economics in the book can be managed easily, we think, even by the totally uninitiated; it can also be ignored or even scorned. So too for the history, if one likes.

Jesse Dukeminier
James E. Krier

February 1, 1981

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