

PROPERTY

Fifth Edition

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ASPEN
PUBLISHERS

1185 Avenue of the Americas, New York, NY 10036
www.aspenpublishers.com

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Aspen Publishers
1185 Avenue of the Americas
New York, NY 10036

Printed in the United States of America

ISBN 0-7355-2437-8

2 3 4 5 6 7 8 9 0

Library of Congress Cataloging-in-Publication Data

Dukeminier, Jesse.

Property / Jesse Dukeminier, James E. Krier. — 5th ed.

p. cm.

Includes bibliographical references and index.

ISBN 0-7355-2437-8

1. Property — United States — Cases. I. Krier, James E. II. Title.

KF560 .D8 2002

346.7304 — dc21

2001053413

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For David and for August
and
To the memory of Gary Schwartz

Preface to the Fifth Edition

This book first appeared in 1981. Despite periodic revisions since that time to take account of significant developments in the law and literature, the aims and methods of the book have held steady throughout. They are set out in the Preface to the First Edition, a part of which is reprinted on the following page.

As in the past, our work on this edition has been aided immeasurably by the ideas and labor of many friends and colleagues, students at our home schools and elsewhere, and a handful of gifted helpers. Among the latter, Margaret Kiever prepared yet another manuscript with skill and dedication, Jim Mangiafico and Caitlin O'Connell did excellent and creative research, Anna Tuttle became an instant expert on tables and indexes, and Lauren Kay Collen and Curt Berkowitz proved that editors can be effective and nice at the same time.

And a closing word of thanks to Aamra Sultana Ahmad, Vamsi Bonthala, and Shwe-Hwa Tsao for generous contributions of another sort to another cause.

*Jesse Dukeminier
James E. Krier*

January 2002

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 course-book 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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