



PRINCIPLES  
OF THE  
LAW OF PROPERTY

By

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Dean and Professor of Law, University of Illinois

SECOND EDITION

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"In civilized society men must be able to assume that they may control, for purposes beneficial to themselves, what they have discovered and appropriated to their own use, what they have created by their own labor and what they have acquired under the existing social and economic order. This is a jural postulate of civilized society as we know it. The law of property in the widest sense, including incorporeal property and the growing doctrines as to protection of economically advantageous relations, gives effect to the social want or demand formulated in this postulate."—**Pound, An Introduction to the Philosophy of Law 192 (1922).**

\*

## PREFACE TO THE SECOND EDITION

The first edition of *Principles of the Law of Property* was published more than a decade ago in 1962. I still agree with most of what I stated in the preface to that edition, especially about the importance of the "big picture" for the student of land law. There is a plethora of detail available in the multi-volumed treatises, the law review articles, and the reported cases, but the sheer bulk of this material is more likely to confuse than to enlighten the student. If our property law has a rational base, disclosed in the principles enunciated by the courts and legislatures (and I believe it does), then an overview of those principles will be helpful as a partial chart through the maze. This is particularly true in a period of unprecedented change and in the light of a developing fragmentation in the property curricula of the law schools.

Prior to World War II, property law was typically taught in a series of more or less related courses which left the student with a disjointed view of the common thread which united all property law. In the decades since 1945, the casebook editors have consolidated these courses into two principal packages—the "live" area (estates, landlord-tenant, titles, vendor-purchaser, and land use) and the "dead" area (trusts, wills, and future interests) plus related courses, such as land financing, natural resources, etc. By 1970, these packages had begun to unravel under the pressure of social change and a drive for a kind of limited "specialization", even in law school. I view this new fragmentation as unwise and believe that the integrity of the two basic packages should be maintained in the first two years of law school leaving the third year for specialized seminars, problem courses, and the more technical subject matter areas. Every student should be introduced to the basic principles and then encouraged to go further into those areas which appeal to him. This, incidentally, is the approach being followed by the multi-state bar examination and this textbook has the same scope as the outline for the subject of property on that examination, plus a treatment of the land-use area, without which an understanding of the modern law of land is impossible.

Much of the second edition parallels the first. Some principles have altered very little and the historical background, so important in our tradition-centered institution of private property, has been retained. Errors have been corrected, new cases and statutes have been cited, and the book has been updated to 1975.

## PREFACE TO THE SECOND EDITION

Large portions of the book are new, however, and it is these portions, reflecting the rapidly changing land law, which required a second edition, lest the student be misled in relying on the first. The landlord-tenant materials have been rewritten in light of the shift toward tenant's (consumer's) rights; similar changes have been made in the sale of land, disclosing the fall of *caveat emptor*; materials on condominium and environmental controls have been added; and the public control of land-use segments have been expanded appreciably to acquaint the student with developments in this most volatile of all property areas.

While it would be presumptuous to call this a book on the jurisprudence of property, I have tried to infiltrate some philosophy into the prosaic fodder and I hope it will be sufficient to help the student form his own judgments as to the relative roles of private volition and public interest. I am convinced that property law is not dull, grubby stuff and I have tried to enliven the text with enough humor to make even the Statute of Uses readable. If attempted levity reduces the level of scholarship, I am apologetic but not contrite.

Finally, I am indebted to the University of Illinois for granting me an administrative leave from my decanal duties so that I could complete this edition in London, while refreshing my knowledge of the English common law which supplied the consistent thread on which the American law of land is based. This edition is dedicated \* to my wife, Betty, who encouraged me to persevere despite the siren call of day-to-day administrative and teaching duties.

JOHN E. CRIBBET

Champaign, Illinois  
December, 1974

\* Not to be confused with a common-law or statutory dedication, carrying with it the profits à prendre, if any.



## PREFACE TO THE FIRST EDITION

Property, which once dominated the law school curriculum by occupying from one-fourth to one-third of the total class time, is now being reduced to a more modest role in most American colleges of law. The shrink in quantity does not necessarily mean a decline in quality; it does herald a less leisurely approach to this significant segment of the law. The modern first year property course now encompasses no less than six traditional favorites—personal property, estates in land, landlord and tenant, vendor and purchaser, titles (conveyancing), and rights in land (land use). Although property books are legion, ranging from excellent multi-volumed treatises to concise outlines of the subject, none of the textbooks are tailored to the “new look” in the law school curriculum. This volume has been prepared with that gap in mind.

*Principles of the Law of Property* has two primary objectives: (1) to give the reader the “big picture” of “basic” property law, both in depth (history) and in breadth (scope of the subject); (2) to make the student aware of the changing nature of property law and the need for critical, responsible reform in what is all too often conceived as a static field of jurisprudence.

A true episode will illustrate the first objective. During the closing days of World War II, the author was aide de camp to Lt. General Troy Middleton, senior corps commander in General George Patton's Third United States Army. Patton's headquarters was in Luxembourg City and, following his return from SHAEF in Paris and a conference with General Eisenhower's chief of staff, General Smith, the colorful Patton told his assembled staff of his frustrations. While arguing for a swift, rapier-like thrust into the heart of Germany to end the war, Patton had been rebuffed and General Smith, after explaining that supplies must be diverted to General Montgomery in the north, had patted him patronizingly on the back, saying, “The trouble with you is, Georgie, you just don't understand the big picture!” As Patton told the story, his English bulldog, Willie, lay at his feet. Now Willie, when bored, was apt to yawn and when yawning it looked suspiciously as if he were smiling. He chose this moment to yawn and Patton, launching a kick which nearly carried him off his feet, yelled, “Laugh you little S.O.B., laugh, you don't know the big picture either!” As events have turned out, I doubt if Willie did know the big picture, it seems likely

## PREFACE TO THE FIRST EDITION

that General Patton did not, and most days I wonder if anyone did. I am convinced, however, that it is necessary for lawyers to know the "big picture" of property and to discern how its complex principles interact to form a coherent institution.

Obviously, a mass of detail is necessary before the lawyer can handle concrete situations but there are excellent volumes available for that purpose. The real danger is that the student will bog down in the narrow technicalities of property law and fail to *understand* the role of property as an institution and the law as a mold of that institution. Viewing the various strands of property law in a rather brief compass should offset that danger and give new insight into our property system.

As to the second objective, it is ironic that just as curricular time is contracting the law of property is expanding. On top of the always-important traditional areas of property has been piled the exciting new subject of land use with its heady infusions of public policy. The subject has not even been carefully defined as yet but it clearly includes zoning, planning, subdivision controls, water problems, public development of land, etc. While these matters must be left principally to senior seminars or advanced courses of as specialized sort, their impact is felt in the basic course and some coverage is essential so that the student will early be aware of the social, as well as the private, side of property rights. Some elementary understanding of zoning, for example, will do more to show the changing nature of property law than any amount of abstract discussion about how "law must grow or it will die."

Basically, this is a book on the law of land and personal property is treated only incidentally to illuminate certain property principles, such as the nature of gifts and the importance of possession. This approach has been followed for two reasons: (1) the most important aspect of personal property—commercial transfer—is the subject matter of specialized courses in the curriculum (Sales or Commercial Law) and requires textual treatment of its own and (2) Professor Brown's one-volume text on Personal Property is so complete that any extended duplication of that subject matter is unwarranted. At appropriate points in the text citations have been made to the Brown volume and the serious student should incorporate the cited materials by reference in order to complete "the big picture" of the law of property.

Finally, any contemporary writer in so ancient and fundamental a field as that covered by this book owes virtually everything

*PREFACE TO THE FIRST EDITION*

but the organization and the sentence structure (and parts of those too!) to others more able than himself. To single out any specific group for special mention would be unfair and, in any case, appropriate documentation throughout the book discloses this debt to the past.

JOHN E. CRIBBET

Urbana, Illinois  
June, 1962

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## SUMMARY OF CONTENTS

PREFACE TO SECOND EDITION .....	Page vii
PREFACE TO FIRST EDITION .....	ix

### PART ONE. INTRODUCTION TO THE CONCEPT OF PROPERTY

Chapter	
1. Who Owns Blackacre? .....	1
2. The Institution of Property .....	4

### PART TWO. THE SCHEME OF OWNERSHIP IN ANGLO-AMERICAN LAW

1. Some Basic Considerations .....	9
2. The Concept of Estates in Property .....	20
3. The Historical Background of Anglo-American Property Law .....	27
4. Permissible Estates at Common Law .....	39
5. The Role of Equity .....	66
6. Multiple Ownership .....	83

### PART THREE. TRANSFER OF OWNERSHIP

1. Involuntary Transfer .....	109
2. Voluntary Transfer by Gift .....	119
3. Voluntary Transfer by Sale .....	126
4. Voluntary Transfer by Lease .....	189
5. Voluntary Transfer—Condominium .....	239
6. Methods of Title Assurance .....	263

### PART FOUR. THE USE OF PROPERTY

1. Rights in the Land of Another .....	335
2. Natural Rights .....	362
3. Public Regulation of Land Use .....	397

### PART FIVE. CONCLUSION (p. 473)

Table of Cases .....	475
Index .....	487

## TABLE OF CONTENTS

PREFACE TO SECOND EDITION .....	Page vii
PREFACE TO FIRST EDITION .....	ix

### PART ONE. INTRODUCTION TO THE CONCEPT OF PROPERTY

CHAPTER 1. WHO OWNS BLACKACRE? .....	1
CHAPTER 2. THE INSTITUTION OF PROPERTY .....	4

### PART TWO. THE SCHEME OF OWNERSHIP IN ANGLO-AMERICAN LAW

CHAPTER 1. SOME BASIC CONSIDERATIONS .....	9
Section	
1. Real and Personal Property .....	9
2. Acquisition of Property .....	10
3. Possession, Seisin, Title, and Ownership .....	12
4. Law and Equity .....	17
CHAPTER 2. THE CONCEPT OF ESTATES IN PROPERTY .....	20
CHAPTER 3. THE HISTORICAL BACKGROUND OF ANGLO- AMERICAN PROPERTY LAW .....	27
Section	
1. The Rise of Feudalism .....	27
2. Free Tenures .....	29
3. Unfree Tenures .....	33
4. Courts, Legislation, and the Decline of Feudalism .....	34
5. Tenure in the United States .....	37
CHAPTER 4. PERMISSIBLE ESTATES AT COMMON LAW .....	39
Section	
1. The Freehold Estates .....	40
A. The Fees Simple .....	40
(1) The Fee Simple Absolute .....	40
(2) The Defeasible or Determinable Fees .....	42
B. The Fee Simple Conditional and the Fee Tail .....	45
C. The Life Estate .....	50
2. The Non-Freehold Estates .....	52
A. The Estate for Years .....	53
B. The Estate From Period to Period .....	54
C. The Estate at Will .....	55
D. The Estate at Sufferance .....	56

## TABLE OF CONTENTS

### CHAPTER 4. PERMISSIBLE ESTATES AT COMMON LAW— Continued

Section		Page
3.	The Survival of Some Anachronistic Rules .....	57
A.	The Rule in Shelley's Case .....	57
B.	The Doctrine of Worthier Title .....	61
C.	The Destructibility of Contingent Remainders .....	62

### CHAPTER 5. THE ROLE OF EQUITY .....

Section		Page
1.	The Rise of the Use .....	66
2.	The Statute of Uses .....	69
3.	The Modern Significance of the Statute of Uses .....	70
A.	The Modern Trust .....	70
(1)	Use on a Use .....	71
(2)	Uses of Personal Property .....	72
(3)	Active Uses .....	72
B.	New Methods of Conveyancing .....	73
C.	The Creation of New Estates in Land .....	75
4.	The Rule Against Perpetuities and Restraints on Alienation .....	79
5.	Other Aspects of Equity .....	82

### CHAPTER 6. MULTIPLE OWNERSHIP .....

Section		Page
1.	Marital Interests .....	85
A.	Jure Uxoris, Curtesy, and Dower .....	86
B.	Homestead .....	89
C.	Community Property .....	91
2.	Concurrent Estates .....	94
A.	Coparcenary .....	94
B.	Tenancy by the Entirety .....	95
C.	Joint Tenancy .....	98
D.	Tenancy in Common .....	103
E.	Concurrent Estates in Personalty .....	106

## PART THREE. TRANSFER OF OWNERSHIP

### CHAPTER 1. INVOLUNTARY TRANSFER .....

Section		Page
1.	Intestate Succession .....	110
2.	Testate Succession .....	117

### CHAPTER 2. VOLUNTARY TRANSFER BY GIFT .....

Section		Page
1.	Gifts of Personalty .....	119
2.	Gifts of Realty .....	123

# TABLE OF CONTENTS

	Page
CHAPTER 3. VOLUNTARY TRANSFER BY SALE	126
Section	
1. The Contract	127
A. The Statute of Frauds	127
B. Time Stipulations	132
C. Financing Arrangements—Mortgages and Installment Land Contracts	134
D. Merchantable Title	138
E. Tender	141
F. Assignment	142
G. Remedies	143
2. The Contract and Equitable Conversion	146
A. Who Has the Risk of Loss?	149
B. Fixing the Risk by Contract	154
C. Who Receives the Insurance Proceeds?	156
D. A Typical Problem	161
3. The Deed	162
A. Types and Elements of the Modern Deed	165
B. Execution of the Deed	167
C. Description of the Land	168
4. The Escrow Agreement	172
A. Terminology	175
B. Why Escrows Are Used	176
C. Selection of the Depositary	179
D. Requirements as to Writings	180
E. Specific Directions to Escrowee	183
F. When Deed Takes Effect	184
G. Instances of "Relation Back"	185
H. Unauthorized Delivery and Bona Fide Purchasers	187
CHAPTER 4. VOLUNTARY TRANSFER BY LEASE	189
Section	
1. The Survival of Three Peculiar Doctrines	190
A. Mitigation of Damages	190
B. Spencer's Case	192
C. Dumpor's Case	193
2. Origin of the Landlord and Tenant Relationship	195
3. Creation of the Modern Landlord and Tenant Relationship	196
A. Contractual Basis of the Lease	196
B. Implied Leases	199
4. Statute of Frauds	201
5. Covenant for Quiet Enjoyment	202
6. Covenant to Deliver Possession	204
7. Fitness of the Premises	205
8. Waste	209

## TABLE OF CONTENTS

### CHAPTER 4. VOLUNTARY TRANSFER BY LEASE—Continued

Section	Page
9. Covenant Limiting Use of Premises .....	211
10. Illegality .....	212
11. Estoppel to Deny Landlord's Title .....	213
12. Covenants and Conditions .....	215
13. Tort Liability in Landlord-Tenant Law .....	216
14. Assignment and Subletting by Lessee .....	219
15. Covenants Against Transfer .....	223
16. Assignment by Lessor .....	224
17. Termination of the Non-Freehold Estate .....	226
18. Damages in Event of Breach .....	228
19. Typical Provisions of a Lease .....	230
A. Essential Terms .....	230
B. Additional Terms .....	231
C. Repairs .....	232
D. Taxes .....	233
E. Insurance .....	233
F. Fixtures .....	234
20. Continuing Developments in Landlord-Tenant Law .....	235

### CHAPTER 5. VOLUNTARY TRANSFER—CONDOMINIUM

Section	Page
1. The History of Condominium .....	242
2. The Concept of Condominium .....	247
3. The Common-Law Approach to Condominium .....	248
4. The Legislative Approach to Condominium .....	250
5. Advantages of Condominium .....	252
A. Advantages to the Purchaser .....	252
B. Advantages to the Developers, Lenders, and Brokers .....	255
6. Disadvantages of Condominium .....	256
A. Disadvantages to the Purchaser .....	257
B. Disadvantages to the Developers, Lenders, and Brokers .....	260
7. The Future of Condominium .....	261

### CHAPTER 6. METHODS OF TITLE ASSURANCE

Section	Page
1. Implied Covenants of Habitability .....	263
2. Covenants for Title .....	268
A. Running of Covenants with the Land .....	272
B. Breach of Covenant .....	274
C. Damages .....	276
D. Estoppel by Deed (After-acquired Title) .....	278



## TABLE OF CONTENTS

CHAPTER 6. METHODS OF TITLE ASSURANCE—Continued	
Section	Page
3. The Recording System (Herein of Title Examination and Title Insurance) .....	279
A. General Operation of the System .....	282
B. Persons Protected by the System .....	286
C. The Chain of Title .....	290
D. Examination of the Records or of an Abstract of Title .....	293
E. Title Insurance .....	297
4. Title Registration—The Torrens System .....	298
5. Statutes of Limitation .....	300
6. Critique of Modern Methods of Title Assurance—Suggestions for Conveyancing Reform .....	306
A. Changing Nature of the Law of Land .....	307
B. Changing Nature of Land Use .....	311
C. Basic Principles of Conveyancing Reform .....	312
D. Modern Methods of Title Assurance—A Critique .....	314
(1) Personal Covenants for Title .....	314
(2) Lawyer's Title Opinion .....	315
(3) Title Registration (Torrens System) .....	316
(4) Title Insurance .....	318
E. Suggested Reforms .....	322
(1) General Suggestions .....	322
(2) Specific Suggestions .....	323
(a) Merchantability of Title Acts .....	324
(b) Curative Legislation .....	328
(c) Changes in Mechanical Operation of the Recording Acts .....	328
(d) Changes in Substantive Law of Property .....	330
(e) Adoption of Title Standards .....	330
F. The Lawyers' Role .....	332

## PART FOUR. THE USE OF PROPERTY

CHAPTER 1. RIGHTS IN THE LAND OF ANOTHER .....		335
Section		
1. Easements and Profits .....		335
A. Creation .....		336
B. Transfer .....		341
C. Scope .....		343
D. Termination .....		345
2. Licenses .....		346
3. Covenants and Conditions .....		347
A. Creation .....		349
B. Transfer .....		352
C. Scope .....		356
D. Termination .....		358