

PROPERTY

Fourth Edition

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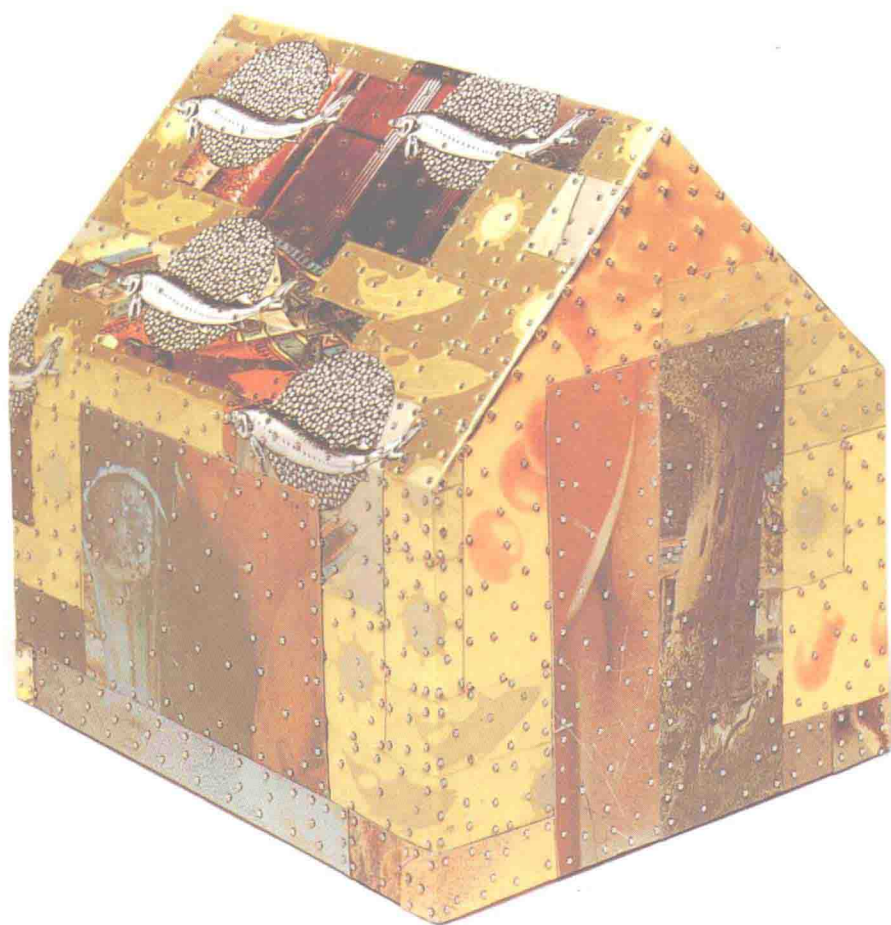
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A Local Paradise, No. 4
by Tony Berlant, 1992
House: Collage of found metal on plywood
with steel brads $8\frac{1}{4} \times 8\frac{1}{4} \times 7''$

[A]t the very roots of the symbol of the American house lies the fact of property. —

Jan Cohn,
The Palace or the Poorhouse: The
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For David,
and for
Abigayle and Willa

Preface to the Fourth Edition

This book was initially published in 1981. Though thoroughly revised on several occasions since that time, it has nevertheless held steady in the aims and methods set forth in the Preface to the First Edition, reprinted on the following page.

Our continuing enterprise has been supported substantially over the years by the help of a very large number of friends, colleagues, and students. We are grateful to them, and in particular to Margaret Kiever for preparing the manuscript with her usual excellence, Andrea Freudenberger for doing research beyond the call of duty, Peggy Rehberger for being a skillful and agreeable editor, and Barbara Summers for last-minute technical assistance.

Our thanks to all.

Jesse Dukeminier
James E. Krier

September 1997

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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