LEXIS Publishing

UNDERSTANDING PROPERTY LAW

John G. Sprankling

UNDERSTANDING PROPERTY LAW

 $\mathbf{B}\mathbf{y}$

John G. Sprankling

Professor of Law McGeorge School of Law University of the Pacific



LEXIS NEXIS MARTINDALE-HUBBELL MATTHEW BENDER MICHIE SHEPARD'S

Library of Congress Cataloging-in-Publication Data

Sprankling, John G., 1950-

Understanding property law / by John G. Sprankling.

p. cm. Includes index.

ISBN 0-8205-4058-7 (softcover)

1. Property-United States. I. Title.

KF561 .S67 2000 346.7304—dc21

00-031333

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LEXIS, NEXIS, and Martindale-Hubbell are registered trademarks and LEXIS
Publishing and MICHIE are trademarks of Reed Elsevier Properties, Inc. used under
license. SHEPARD'S is a registered trademark of SHEPARD'S Company. Matthew
Bender is a registered trademark of Matthew Bender Properties Inc.

Copyright © 2000 Matthew Bender & Company, Inc., one of the LEXIS Publishing companies.

All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-

Editorial Offices

2 Park Avenue, New York, NY 10016-5675 (212) 448-2000 201 Mission Street, San Francisco, CA 94105-1831 (415) 908-3200 701 East Water Street, Charlottesville, VA 22902-7587 (804) 972-7600 www.lexis.com

UNDERSTANDING SERIES

Understanding Administrative Law

Understanding Antitrust

Understanding Bankruptcy

Understanding Civil Procedure

Understanding Conflict of Laws

Understanding Constitutional Law

Understanding Copyright Law

Understanding Corporate Law

Understanding Criminal Law

Understanding Criminal Procedure

Understanding Environmental Law

Understanding Family Law

Understanding Federal Courts and Jurisdiction

Understanding Insurance Law

Understanding Intellectual Property

Understanding Juvenile Law

Understanding Labor Law

Understanding Lawyers' Ethics

Understanding NAFTA

Understanding Property Law

Understanding Remedies

Understanding Sales and Leases of Goods

Understanding Secured Transactions

Understanding Securities Law

Understanding Torts

Understanding Trusts and Estates

Also: Weinstein's Evidence Manual, Student Edition

If any of these titles are not available at your bookstore, you may order by calling 1-800-533-1646. Or visit us at www.bender.com.

Through the use of clear explanations enhanced by diagrams, examples and problems, the titles in this series are excellent self-instructional study aids.

- A Student's Guide to Accounting for Lawyers
- A Student's Guide to Basic Constitutional Analysis
- A Student's Guide to Easements, Real Covenants and Equitable Servitudes
- A Student's Guide to Estates in Land and Future Interests
- A Student's Guide to Hearsay
- A Student's Guide to the Internal Revenue Code
- A Student's Guide to the Rule Against Perpetuities
- A Student's Guide to the Study of Law: An Introduction
- **Guide to Statutory Interpretation**

If any of these titles are not available at your bookstore, you may order by calling 1-800-533-1646. Or visit us at www.bender.com.

For Gail, Tom, and Doug.

PREFACE

This book is designed to help the reader in understanding property law. It is primarily oriented toward law students enrolled in the introductory "Property" course who need a concise and readable treatise. Thus, the book (a) explains the basic principles of property law and (b) discusses the policy concerns and historical currents that have shaped this law. At the same time, I hope that the book will be useful to attorneys and scholars as a general survey of property law doctrine, history, and theory.

I welcome your comments, criticisms, and suggestions about the book. Please write to me at McGeorge School of Law, University of the Pacific, 3200 Fifth Avenue, Sacramento, CA 95817 or e-mail me at jsprankling@uop.edu.

John G. Sprankling June, 2000

ACKNOWLEDGMENTS

I owe thanks to many people who assisted in preparing this book. Dean Gerald Caplan of McGeorge School of Law, University of the Pacific, provided constant support. My colleagues Ira Bloom, Ray Coletta, George Gould, and Brian Landsberg reviewed portions of the draft manuscript and offered valuable suggestions. Pat Cannon, Anne Heindel, and the entire Matthew Bender team were a pleasure to work with throughout the editorial and publication process. Finally, I thank my wife Gail Heckemeyer for her loving encouragement and careful proofreading.

TABLE OF CONTENTS

		Page
F	Preface	v
A	Acknowledgments	vii
	PART I: INTRODUCTION	
(CHAPTER 1 What Is "Property"?	
§	1.01 An "Unanswerable" Question?	1
§	1.02 Property and Law	2
§	1.03 Defining Property: What Types of "Rights" Among	
	People?	4
§	1.04 Defining Property: Rights in What "Things"?	7
C	CHAPTER 2 Jurisprudential Foundations of Property Law	
§	2.01 Why Recognize Private Property?	11
§	2.02 First Occupancy (aka First Possession)	12
§	2.03 Labor-Desert Theory	14
§	2.04 Utilitarianism: Traditional Theory	16
§	2.05 Utilitarianism: Law and Economics Approach	17
§	2.06 Liberty or Civic Republican Theory	19
§	2.07 Personhood Theory	20
	PART II: RIGHTS IN PERSONAL PROPERTY	
C	HAPTER 3 Property Rights in Wild Animals	
§	3.01 The Origin of Property Rights	23
§	3.02 The Capture Rule in General	24
§	3.03 Evaluation of the Capture Rule	28
§	3.04 Rights of Landowners	29

			Page
§	§ 3.05 Regulation by Gov	vernment	30
(CHAPTER 4 Finders	of Personal Property	
§	§ 4.01 Finders As Owner	rs	33
§	§ 4.02 Who Is a "Finder":	?	34
§	§ 4.03 Categories of "Fou	ınd" Property	35
§	§ 4.04 Rights of Finder A	Against Original Owner	37
§	§ 4.05 Rights of Finder A	Against Third Persons Generally	38
§	§ 4.06 Rights of Finder A	Against Landowner	39
§	§ 4.07 Statutes Defining	Rights of Finders	42
§	§ 4.08 Special Issue: Nati	cive American Artifacts	43
C	CHAPTER 5 Gifts of	Personal Property	
§	§ 5.01 Gifts in Context		45
§	§ 5.02 What Is a Gift?		46
§	§ 5.03 Gifts Inter Vivos	,	46
§	§ 5.04 Gifts Causa Mortis	s	52
§	§ 5.05 Restrictions on Do	onor's Autonomy	53
C	CHAPTER 6 Property	y Rights in Human Bodies	
§	§ 6.01 The Controversy .		55
§	§ 6.02 Rights in Body Par	rts Generally	56
§	§ 6.03 Rights in Human l	Eggs, Sperm, and Embryos	60
§	§ 6.04 Surrogate Parentin	ng: The Sale of Babies?	62
C	CHAPTER 7 Other Pe	ersonal Property Rules	
§	§ 7.01 Accession		66
§	§ 7.02 Adverse Possession	n of Personal Property	67
§	§ 7.03 Bailments		69
§	§ 7.04 Bona Fide Purchas	sers	72
§	§ 7.05 Intellectual Proper	ty	73

	Page
PART III: ESTATES AND FUTURE INTERESTS	
CHAPTER 8 History of the Estates in Land System	
§ 8.01 The Estates System	79
§ 8.02 Defining "Estate" and "Future Interest"	80
§ 8.03 Property Law in Feudal England	80
§ 8.04 Property Law in Post-Feudal England	85
§ 8.05 Estates in Land in the Early United States	88
§ 8.06 Trends in Modern Law Governing Estates in Land	90
CHAPTER 9 Present Estates	
§ 9.01 A Byzantine System	92
§ 9.02 Creation of Estates	92
§ 9.03 Classifying Estates	93
§ 9.04 Estates: Freehold or Nonfreehold?	93
§ 9.05 Basic Categories of Freehold Estates	94
§ 9.06 Freehold Estates: Absolute or Defeasible?	103
§ 9.07 Freehold Estates: Legal or Equitable?	110
§ 9.08 Restrictions on Transfer: Rule Against Restraints on Alienation	111
§ 9.09 Restriction on Use: Waste	112
CHAPTER 10 Concurrent Ownership	
§ 10.01 The Nature of Concurrent Ownership	116
§ 10.02 Types of Concurrent Estates	116
§ 10.03 Rights and Duties of Cotenants	125
§ 10.04 Termination of Concurrent Estates	129
CHAPTER 11 Marital Property	
§ 11.01 Gender and Marital Property	134
§ 11.02 Traditional Common Law System	134
§ 11.03 Modern Common Law System	136
§ 11.04 Community Property System	143
此为试读,需要完整PDF请访问: www.ertongbook.com	

			Page
§	11.05	Conflict Between the Systems: The Problem of Migrating Couples	146
§	11.06	Attempts to Avoid the Systems: Premarital Agreements	147
§	11.07	The Future of Marital Property Law?: Uniform Marital Property Act	147
§	11.08	Property Rights of Unmarried Couples	148
C	HAP	TER 12 Introduction to Future Interests	
§	12.01	Future Interests in Context	151
§	12.02	What Is a Future Interest?	152
§	12.03	Why Create a Future Interest?	152
§	12.04	Types of Future Interests	153
§	12.05	Classifying Future Interests: An Overview	155
§	12.06	Common Law Approach to Future Interests	156
§	12.07	Modern Future Interest Legislation	157
§	12.08	Contemporary Relevance of Future Interests	157
C	HAP	TER 13 Future Interests Held by the Transferor	
§	13.01	Three Future Interests	159
§	13.02	Types of Future Interests	160
		Transfer of Interest	161
§	13.04	Other Rights of Interest Holder	162
		Modern Reforms	163
C	HAP1	ER 14 Future Interests Held by the Transferee	
§	14.01	An Intricate Common Law Maze	166
		Classifying Future Interests Held by the Transferee	167
§	14.03	Remainders	168
§	14.04	Executory Interests	176
		Consequences of the Distinction Between Remainders and Executory Interests	178
§	14.06	Creation of Interests	179
		Transfer of Interests	179
		Other Rights of Interest Holders	181

Held by Tra § 14.10 The Rule A § 14.11 The Rule A § 14.12 The Doctrin § 14.13 The Rule in	Restrictions on Contingent Future Interests Insferees
 § 14.10 The Rule A § 14.11 The Rule A § 14.12 The Doctrin § 14.13 The Rule in 	gainst Perpetuities: At Common Law
\$ 14.11 The Rule A\$ 14.12 The Doctrin\$ 14.13 The Rule in	gainst Perpetuities: Modern Reforms
§ 14.12 The Doctrin§ 14.13 The Rule in	Shelley's Case
§ 14.13 The Rule in	Shelley's Case
	tibility of Contingent Remainders 199 IV: LANDLORD AND TENANT troduction to Landlord-Tenant Law
3 11.11 1110 200010	troduction to Landlord-Tenant Law
PART	
CHAPTER 15 In	nant Law in Context 209
§ 15.01 Landlord-Te	
§ 15.02 What Is a I	easehold Estate? 202
_	state Distinguished from Nonpossessory
	volution of Landlord-Tenant Law 204
-	f Leasehold Estates 200
	olution in Landlord-Tenant Law 213
CHAPTER 16 Cr	eation of the Tenancy
§ 16.01 The Lease	
§ 16.02 Selection of	Tenants 220
§ 16.03 Tenant's Du	ty to Pay Rent
§ 16.04 Landlord's I	Outy to Deliver Possession 230
§ 16.05 Tenant's Du	ty to Occupy
CHAPTER 17 Co	ndition of Leased Premises
§ 17.01 "Let the Ter	ant Beware"? 236
§ 17.02 The Commo	Law Foundation 237
§ 17.03 The Problem	of Substandard Housing 240
§ 17.04 Constructive	Eviction
§ 17.05 Illegal Lease	Doctrine
_	Warranty of Habitability: New Common
	y Warranty of Habitability

Т	Δ	RI	Æ	\mathbf{OF}	CO	NT	יואי	רע	rs
	_	-	484	() I.	\mathbf{v}			ч.	

Δ	TIBEL OF CONTENTS	
		Page
§	17.08 Landlord Liability for Personal Injury	255
§	17.09 Fixtures	258
(CHAPTER 18 Transfer of Leasehold Interest	
§	18.01 Transfers in General	261
§	18.02 Distinguishing Between Assignment and Sublease	262
§	18.03 Assignment	264
§	18.04 Sublease	267
§	18.05 Should the Assignment-Sublease Distinction Be	
	Abolished?	268
	18.06 Tenant's Right to Assign or Sublease	269
§	18.07 Transfers by Landlord	275
C	CHAPTER 19 Termination of the Tenancy	
§	19.01 The Struggle for Possession	278
§	19.02 Surrender	278
§	19.03 Abandonment	279
§	19.04 Landlord's Right to Terminate Lease	287
§	19.05 Self-Help Eviction	292
§	19.06 Ejectment	295
§	19.07 Summary Eviction Proceedings	296
	PART V: THE SALE OF LAND	
C	CHAPTER 20 The Sales Contract	
8	20.01 Anatomy of a Sales Transaction	300
	20.02 Role of the Attorney	303
	20.03 Role of the Real Estate Broker	303
	20.04 Requirements for Valid Contract	306
	20.05 A Typical Sales Contract	312
	20.06 Contract Provisions on Title	312
8		318
·	20.08 Closing the Transaction	320
	20.09 Remedies for Breach of Contract	321
3	20.00 Remedies for Dieach of Collifact	041

			Page
(CHAP'	FER 21 Condition of the Property	
§	21.01	"Let the Buyer Beware"?	327
§	21.02	Seller's Duty to Disclose Defects	328
§	21.03	Broker's Duty to Disclose Defects	334
§	21.04	Builder's Implied Warranty of Quality	335
§	21.05	Risk of Loss Before Conveyance	337
•	CHAP	FER 22 The Mortgage	
§	22.01	The Role of Security for Debt	341
§	22.02	What Is a Mortgage?	342
§	22.03	Evolution of the Mortgage	343
§	22.04	Creation of a Mortgage	344
§	22.05	The Secured Obligation	346
§	22.06	Foreclosure of Mortgage	349
§	22.07	Special Mortgagor Protection Laws	352
§	22.08	An Alternative Financing Device: The Installment Land	
e	00.00	Contract	354
8	22.09	Other Financing Devices	357
C	НАРТ	TER 23 The Deed	
§	23.01	The Deed in Context	359
§	23.02	Evolution of the Deed	360
§	23.03	Types of Deeds	361
§	23.04	Requirements for Valid Deed	363
§	23.05	Interpretation of Deeds	373
§	23.06	Recordation of Deeds	374
§	23.07	Effect of Forgery	374
§	23.08	Effect of Fraud	375
§	23.09	Estoppel by Deed	376
C	НАРТ	ER 24 Fundamentals of Land Title	
§	24.01	The Problem of Conflicting Title Claims	378

			Page
§	24.02	General Rule: First in Time Prevails	379
§	24.03	First Exception to General Rule: Subsequent Bona Fide Purchaser Prevails	379
§	24.04	Who Is a Bona Fide Purchaser?: Notice Jurisdictions	380
§	24.05	Who Is a Bona Fide Purchaser?: Race-Notice Jurisdictions	384
§	24.06	What Constitutes Notice?	385
§	24.07	Second Exception to General Rule: The "Shelter Rule"	389
§	24.08	Special Rule for Race Jurisdictions: First Purchaser for	
		Value to Record Prevails	389
§	24.09	Why Protect the Bona Fide Purchaser?	390
C	НАРТ	TER 25 The Recording System	
§	25.01	The Recording System in Context	393
§	25.02	Purposes of the Recording System	394
§	25.03	Anatomy of the Recording System	395
§	25.04	Procedure for Recording Documents	396
§	25.05	Procedure for Searching Title	397
§	25.06	Recorded Documents That Provide Constructive	
		Notice	401
§	25.07	Recorded Documents That Do Not Provide Constructive	400
2	25.00	Notice	402
		Effect of Marketable Title Acts	409
8	20.09	Technology and the Future of the Recording System	410
C	НАРТ	ER 26 Methods of Title Assurance	
§	26.01	Title Assurance in Context	414
§	26.02	Covenants of Title	415
§	26.03	Title Opinions and Abstracts	423
§	26.04	Title Insurance Policies	424
Ş	26.05	Registration of Title	432

PART VI: OTHER TRANSFERS OF LAND TITLE	Page
CHAPTER 27 Adverse Possession	
§ 27.01 "Title by Theft"?	436
§ 27.02 Evolution of Adverse Possession	436
§ 27.03 Requirements for Adverse Possession	437
§ 27.04 Procedural Aspects of Adverse Possession	446
§ 27.05 Special Restrictions on Adverse Possession	447
§ 27.06 Policy Rationales for Adverse Possession	449
CHAPTER 28 Transfer of Property at Death	
§ 28.01 Death and Property	454
§ 28.02 The Will	454
§ 28.03 The Trust	457
§ 28.04 Intestate Succession	463
§ 28.05 Escheat	466
PART VII: OWNERS AND NEIGHBORS	
CHAPTER 29 Nuisance	
§ 29.01 "An Impenetrable Jungle"?	46 8
§ 29.02 What Is a Private Nuisance?	469
§ 29.03 Evolution of Nuisance Law	471
§ 29.04 Elements of Private Nuisance	472
§ 29.05 Defenses to Liability for Private Nuisance	477
§ 29.06 Remedies for Private Nuisance	478
§ 29.07 Public Nuisance	482
§ 29.08 Special Problem: Landowner Liability for Hazardous Substance Contamination	483
CHAPTER 30 Trespass	
§ 30.01 The Right to Exclude	485
§ 30.02 What Is a Trespass?	486
§ 30.03 Trespass and Rights of Migrant Farmworkers	488
此为试读,需要完整PDF请访问: www.ertongbook.com	