



# Property Law: Rules, Policies, and Practices

*Joseph William Singer, Bethany R Berger, Nestor M. Davidson, Eduardo M Peanalver (Contributor)*

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This hugely successful cases-and-problems book is acclaimed for its textual clarity, evenhanded perspective, and contemporary, up-to-date character. Easily distinguished from other property casebooks for its clear descriptions of legal doctrine and its variations; its explanations of the social ramifications of property law; its emphasis on both statutory and regulatory interpretation; its comprehensive treatment of public accommodations and fair housing law, current tribal property issues, and property in human bodies; and its use of

the problem method to teach legal reasoning andlawyeringskills. Thoroughly updated to reflect significant changes in the law of property, the Seventh Edition incorporates multiple new Supreme Court cases, including: *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, *Obergefell v. Hodges*, and*Reed v. Town of Gilbert*, and 3 decided or pending cases with implications for regulatory takings, *Horne v. Dep't of Agriculture*, *Marvin M. Brandt Revocable Trust v. United States*, and*Murrv. State*.

## Key Features:

Updated to reflect significant changes in the law of property to help professors keep current and be aware of emerging disputes. These include multiple new Supreme Court cases:

*Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015), upholding disparate impact claims under the Fair Housing Act; *Obergefell v. Hodges*, 123 S. Ct. 2584 (2015), finding a constitutional right to same-sex marriage; *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), broadly applying the First Amendment's free speech clause to sign regulations; and three decided or pending cases with implications for regulatory takings, *Horne v. Dep't of Agriculture*, 135 S. Ct. 2419 (2015), *Marvin M. Brandt Revocable Trust v. United States*, 134 S. Ct. 1257 (2014), and*Murrv. State*, 359Wis.2d675 (Wis. Ct. App. 2014), cert. granted sub nom.*Murrv. Wisconsin*, 136 S.Ct. 890 (2016).

New materials and problems have been included in several areas:

Collisions between the sharing economy and servitude, zoning, and landlord-tenant law; Questions of the inheritance rights of children born through assisted reproductive technology; Continuing litigation over the Rails-to-Trails Act conversion of abandoned railroad tracks into recreational trails Invalidation of the copyright on the Happy Birthday song;

*Commonwealth v. Magadini*, 52 N.E.3d 1041 (Mass. 2016), upholding a necessity defense to a trespass charge against a homeless man; and The Revised Uniform Residential Landlord and Tenant Act, adopted in 2015.

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## Property Law: Rules, Policies, and Practices Details

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## From Reader Review Property Law: Rules, Policies, and Practices for online ebook

### Mary says

Best law school textbook yet. Extremely clear, with lots of examples, and on occasion, humorous cases. Socially conscious, which I appreciated. I mean, I wouldn't read it for funsies, but as textbooks go, this is the best I've encountered.

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### Jace says

Thank god this class is done. Writing a four-hour final in only three hours? Not my idea of a good time. The book was fine, but the professor made this course a lot better. Her xeroxed reading supplement blew this casebook out of the water.

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### Marley Rydelek says

NOT HELPFUL

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### Charles McGonigal says

Solid cases and descriptions.

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### Meredith Holley says

Property is crazy. I have such mixed feelings about the entire topic. On the one hand, this was absolutely (and to my great surprise) my favorite class that I took all year. On the other hand, I don't think I really believe in property ownership the way we define it in the West. It seems like there is something basically suspicious about paying for the right to exclude other people from a certain place. Not, like, that it's greedy, necessarily. It just seems weird and contrived. I mean, it only works because we let it work, and when it doesn't work there's very little we can do to about it. Sorry, being a total pessimist over here.

Regardless, my newfound passion for the topic has absolutely nothing to do with this book, which is basically the driest, most boring thing with words on pages. Actually, the topic is really dry, so you're not in for a treat with this review. My professor for this class, Mary Wood was absolutely wonderful, though. She is just one of those special people who loves teaching and loves a topic and is just perfect. For me, at least. If you are a sadfaced law student who does not have the luck I had in professors, I *highly* recommend the Barbri video on Property. The professor who teaches that one is fantabulous as well. Plus, she sings and is from Brooklyn. She also has a bit about Frank Sinatra that's pretty good. The acronym is Frank Sinatra Doesn't Prefer Orville Redinbacher. Unfortunately, I don't remember what it stands for. I'm like that with

acronyms.

Now for your unreliable review of the law of Property\* as I learned it:

### **SOVEREIGN PROPERTY RIGHTS**

Owning property only exists because the government says so. So, it exists in any form that the government says it exists in, with whatever rules the government decides. That probably doesn't blow our mind like it blows my mind, but I think it's worth thinking about for a minute. I mean, that's true of the way we do most things. We do them because if we did them another way someone would use force to stop us. I mean, whoa, people, it's a Brave New World here.

Anyway, I really like Justice John Marshall, from what I know of him. There is this one case, *Johnson v. M'Intosh*, where I think his opinion is really neat, even though it's kind of horrifying. This was in 1823, and the issue was whether a tribe could convey property to a U.S. citizen (because two unfortunate people ended up "owning" the same property due to what I imagine was some kind of practical joke). Marshall basically says that, as far as the U.S. government is concerned, property rights were invented in North America when European nations discovered it. Before that, valid property rights didn't exist, so a tribe can't convey property. The thing I like about the opinion is that he goes on for a while about all the weird reasons that justify kicking the tribes off of the land (the "But we gave them Christianity!" justification is probably the sweetest), and then he's basically like, "But here's the thing. I can't just say that the tribes have power to convey land and the U.S. government doesn't because that would mean that the U.S. government doesn't exist." I'm really paraphrasing there, but the essence of what he says is that what the invading nations did in driving tribes off of the land was really crappy, but it's also a fact on which the government is based. The tribes are their own sovereign nations, and they can convey land under their own sovereign laws, but those are not recognized by the U.S. government.

The later cases we read on this topic are vomit inducing. Particularly, *Tee-Hit-Ton Indians v. U.S.*, where the judge says that we're doing the tribes a *favor* by not recognizing their property rights, since they don't understand what property is anyway. Nice. I'm not going to go all noble savage on you, but I think there's a safe middle-ground somewhere that's not so patronizing as either of those.

The point of this is that the federal and state governments say what property is, and then we all own it or can't own it according to those definitions.

### **PUBLIC TRUST DOCTRINE**

This is the duty that the government has to protect public lands (and in some cases all land) for public use. This topic was probably a bigger deal in my class than in most because Professor Wood is writing a book about it, but I think it's interesting, so I'm not complaining. Traditionally, the protection of the government relates only to water and protects the interests of fishing, navigation, and commerce (all related to water). This is why, unfortunately, the Bluths' idea for the ocean-top town of Bluthtown in *Arrested Development* is illegal). More recently, it has extended to recreation on dry sand beaches and unique ecology near water. The idea is that we have a duty to protect land for future generations, and the government is the trustee of the duty.

### **ADVERSE POSSESSION AND EASEMENTS**

**Adverse Possession** . This means that because you use land, after a really long time, even if it originally

belonged to someone else, it becomes yours. The requirements are that the use be open/notorious, hostile, actual, exclusive, continuous, and for a statutory period of time (usually 10-20 years). So, if the fence dividing your property from your neighbor's is in the wrong place, or if you mow your lawn into your neighbor's lawn for the statutory period of time, the land becomes yours. The "hostile" requirement just means that if your neighbor says, "Hey, that's fine that you want to mow the edge of my lawn, go ahead and keep doing it," you aren't adversely possessing. If someone gives you permission to go onto their land, you're just visiting their land, not possessing.

**Easements** . Easements are the right to use a certain part of land or use land in a certain way. It's a partial right to a piece of property. There are negative and positive easements. Negative easements are when one Landowner 1 wants to *prevent* Landowner 2 from doing something on the Landowner 2's land. Positive easements are when Landowner 1 wants to *do* something on Landowner 2's land.

Negative easements are rare in the U.S. You would usually use them to prevent people from building tall buildings around you and encroaching on light and air. But we don't really have a right to light and air in the U.S., so it's not a great claim. It worked as a claim for someone who had solar panels, though, so keep it in your back pocket.

Positive easements come either express or implied. Express would be listed in something like a deed and have to be in writing. Implied come in four kinds:

**Easement by Estoppel**. This happens where you let someone cross your land for important stuff for a while, and then you can't just make them not cross your land anymore.

**Prescriptive Easement**. This has the same requirements as Adverse Possession. If you just use and maintain property for long enough without their permission, the owner can't keep you from doing it in the future. This is an important topic because of this string of "yo momma goes to law school" jokes that got started on my friend's facebook page. My favorite one, from my friend Sean Salisbury was, "Yo momma so fat, she's got a prescriptive easement on yo daddy's side of the bed."

**Easement by Prior Use**. This usually happens when a landowner sells part of a property and keeps part of the property. But what he didn't tell you is that he actually has always used part of he sold to you as a driveway or something. So, suck for you, but you should have checked it out before you bought it.

**Easement by Necessity**. This only happens with land that is completely landlocked. Because you have to be able to get to property you bought, right? So, easement.

**Appurtenant or In-Gross** . Easements are all either appurtenant or in-gross.

Appurtenant easements are ones that are attached to two pieces of property (like the ones described above). The property that has the easement is called the "dominant" estate and the property that gives the easement is called the "servient" estate. Different than an "Impertinent Easement," which is when an LOLcat shows up on one of your reviews. No, sorry, that's not really a thing.

An Easement In-Gross is associated with a person (because people are gross) and a piece of property. Like, if you give your friend the right to cross your property to swim in your lake, that's an easement in-gross. The power lines that go across people's properties are commercial easements in-gross.

## **RIGHTS**

**To Exclude** . The basic property ownership right is the right to exclude other people. Someone who comes on property uninvited is a **trespasser**. This works for other people's stuff, too. Like, if people's garbage is going on your property, that's trespass.

**To Enjoy** . If someone substantially disturbs your right to enjoy property, that's **nuisance**.

## **FUTURE INTERESTS**

I really like future interests. I'm not going to impose them on you, though. This whole topic is about how you can deed property away, and then put it in the deed that you want it back at some point. You can say, "This property goes to Eh!, but if she reads another romance novel, then it goes to Moira, unless Moira discovers time travel." So, if Eh! reads a romance novel and Moira discovers time travel, the property goes back to you. This is actually a kind of complicated topic, and it's one of those law-sudoku areas. I think it's fun, though. I know, neeeerrrrd.

## **OWNING PROPERTY**

You can own property with another person so that when you die it goes to your heirs or so that when you die it goes to the other owner. Wow, it's really hitting me how boring this topic seems. Torts is so much more colorful, but you'll just have to trust me that property is the good brother.

## **LEASES**

It used to be, in feudal days, that people rented land for the land, not for the building, and everyone knew how to fix the building if there was a problem. So, traditionally, landlords didn't have to come over and fix stuff if it broke at your house (I'm talking now in the past century, not feudal anymore). Also, if the building burned down, you still had to pay rent because the assumption was that you wanted the actual land, not the house. But, post-industrial revolution, that doesn't really make sense because renters don't use the actual land, they use the building. So, now in ever lease the landlord implies that the building will be habitable and that you'll be able to quietly enjoy it.

## **COVENANTS AND EQUITABLE SERVITUDES**

Those are the same thing. The difference between them is only technical. These exist for homogeneous subdivisions. This woman saw Professor Wood speak once and decided to start drying her clothes on a clothesline because of the environmental effects of dryers. It was a violation of an covenant/servitude of her subdivision. The Colbert Report did a piece about it. Shows the basic idea. (Also . . . Really? Phillip Seymour Hoffman again?)

## **TAKINGS**

The Fifth Amendment says that the federal government can't take property without compensation, and the Fourteenth applies that to states. The government can always take property away if it is for a "public purpose," it just has to pay for it. Sometimes takings happen literally, like the government wants to build a highway.

Sometimes they happen through regulations, where a law makes property valueless. When that happens, the government has to pay also, but it's supposed to only have to pay if the property is **TOTALLY VALUELESS**. Like, if you can pitch a tent on it and roast some marshmallows, it's not valueless. Also, you

can't say property is valueless if you're just prevented from doing something that's illegal anyway, obviously. For example, if you wanted to make a cannibal colony and you're mad that there's a law preventing cannibalism on your property, that's not a taking. The Public Trust Doctrine comes in here, too. The Public Trust is underneath all property ownership, so theoretically if you are destroying property for future generations, the government can prevent you as Trustee of the Public Trust without having to pay for preventing you from doing it. That's not how it actually happens, though, because it's not always the government running things around here. There are other, um, interests.

Anyway, that's your lesson in property law. If you have a future interest problem, bring it on, otherwise I'll let you slide without that learnin'. Happy excluding!

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\*This only relates to real property, not personal property. Real property is land; personal property is stuff. The attorney I used to work for would yell that at me all the time, so it is eternally burned into my brain: "You can't just SAY PROPERTY! You have to say what KIND of property! Was it PERSONAL property? Or REAL property?!" He talked in all caps a lot.)

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### **Annie says**

My favourite law class so far. Actually really interesting, when you exclude the real estate & easements sections. Pretty good casebook, logically organized and doesn't patronize you like some of the others ("As you read, think about the repercussions of this. Do you think X? Do you think Y?" I'm not eleven, I generally do try to think about what I read, thanks.)

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### **Amy says**

Textbooks depend so much on the professor: if you hate the class, it doesn't matter how great the textbook is (and vice versa.) Loved this professor/class, so loved this textbook.

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