Chapter 7

The Property-Based Legal System
Learning Objectives

- To critique property as an exclusive legal fence and to identify applications of property even when they are not traditionally called “property”.
- To recognize the connection between a property-based legal system and prosperity.
- To organize and apply the rules of security interests.
- To analyze the statement that private property promotes the common good and be able to furnish examples.

Is it likely for a nation to be prosperous and maintain a vibrant market without having a strong concept of private property?

a. Yes
b. No
“The legal concept of *property* is vital to understanding how law provides a foundation for the *private market*.”

**Property**

- **Property** means **Ownership**
- The legal right to *exclude* or keep others from interfering.
- Private, exclusive rights in resources.
Arguably the most significant issue for any society is how it orders the relationships among people concerning limited and valued resources.

State comes into being to address problem of limited resources

State vs. private property

Legal frameworks to address problem
Property System

Property is central to societal prosperity

- Promotes Incentives
- Establishes conditions for capital formation
- Makes resources easily divisible

Basic Divisions of Property

Real Property
- Land and interests in land

Personal Property
- All other resources – that are movable
Private property influences the marketplace in what ways?

a. promoting incentives for risk and development.
b. recognizing divisibility of resources.
c. creating conditions for capital formation.
d. all of the above.

Acquisition of Resources

Methods by which resources can be acquired

- Gift
- Exchange
- Accession
- Confusion
- Adverse Possession
- 1st Possession
- Original Possession
Acquisition of Resources

Finding Property

Methods by which resources can be acquired

Lost
Misplaced

Abandoned

Types of Ownership

- Fee simple – maximum
- Life estate – for lifetime
- Leasehold – rights of tenant
- Concurrent – multiple owners
  - Joint – all together (survivorship)
  - In common – different shares (no survivorship)
Ownership/Title

Title and Registration

Deed (transfer of title)

Registration (notice)

Specialty Property Applications

Easements
Legal right of passage across land

Bailments
Goods placed into another's possession to be returned in future
Security Interests

- In land
  - Mortgages
  - Deeds of trust
  - Land sales contracts
- Recording statutes – notice
- Exercising property Interests
  - Foreclosure
  - Deficiency
  - Right of Redemption

Secured Transactions

- Applies to personal property
- Security interest in personal property given as collateral
- Attachment
- Perfection
  - Financing statement
  - PMSI
- Priority problems
**Limitations on Property and the Common Good**

- Private property has limits
- Private property right is always subject to the right of others
- Private property gives way to the common good of society
  - Eminent domain
  - Taxation

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**Quiz**

Do secured interests that are recorded “first in time” always take priority over competing interests recorded later?

a. Yes
b. No
Nuisance

**Public**

Use of land that causes inconvenience or damage to the public

**Private**

Unreasonable use of one's property so as to cause interference with enjoyment or use of another's land

Zoning

- Exercise of police powers
- Regulation of land use through zoning ordinance
- Limits to:
  - Use
  - Aesthetics
- Variances
Duration Limitations on Property

- Patents and Copyrights
- Rule against perpetuities
  - Lives in being plus 21 years
  - Prevents multi-generation control of one’s property interests

Eminent Domain

- 5th Amendment
- Government taking private property for public use
- Just compensation
  - Market value
  - May have jury determine
Taxation

- To fund public services
  - roads
  - education
  - law enforcement
  - courts
  - National defense

- Article I, Section 8 of U.S. Constitution – Federal taxation

- Income tax – 16th Amendment

Food for thought...

Imagine living in a society where you, as an individual, had little or no right to own real and personal property and had no rights to exclude others from the real and personal property in your possession.

Without our system’s legal fence, what incentive would you have to do well in school or even attend school?