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Tenth Edition

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To WLW, witness to every edition, and then some. –

J.E.K.

To my grandchildren. - G.S.A.

For Eli and Iris. - L.J.S.

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Preface to the Tenth Edition

This book first appeared in 1981 and now enters its fourth decade of publication. The manuscript has changed considerably over the years. Yet its commitment to a pluralistic approach to property law endures, grounded in the intricacies of black letter law yet attentive to insights from history, economics, psychology, sociology, and critical approaches. As the Preface to the First Edition, which is reprinted in part on the following page, makes clear, the law student's toolkit should include a good grasp of the interdisciplinary ideas that explain the development of property law. Understanding the connections and differences among the law of real property, personal property, and intellectual property also becomes increasingly essential with each passing year. So does an appreciation for the ways in which property law interacts with and affects societal challenges such as discrimination on the basis of race, class, sex, religion, and disability, climate change, and the COVID-19 pandemic. The tenth edition highlights those relationships and developments throughout this text.

As always, our work has been greatly aided by insights from our colleagues and students. Warm thanks to everyone who has suggested new materials, flagged typos, or identified ambiguities in earlier editions, including especially Professors Josh Blackman, Jorge Contreras, Lee Fennell, Nicole Garnett, Michael Heller, Michael Herz, Aziz Huq, Bruce Johnson, Thomas Mitchell, Brenda Simon, Jonathan Watson, Mary Sarah Bilder, Douglas Whaley, and our research assistants, Blake Altman, Jess Clay, Emily Hall, Robert Okada, Sahar Segal, and Morgan Tougas, as well as our students Charles Gibson, Simon Jacobs, Justin Taleisnik, Nico Thompson-Lleras, Nick Riley,

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December 2021

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

Acknowledgments

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Ch. 1 & 2: Acquisition	▼			
Ch. 3 & 4: Estates & Future Inter...	▼			
Ch. 5: Co-ownership	▼			
Ch. 6: Leaseholds	▼			
Ch. 7 & 8: Transfers of Land	▼			
Ch. 9: Nuisance	▲			
Boomer v. Atlantic Cement Co.		Boomer v. Atlantic Cement Co.		
Spur Industries, Inc. v. Del E. . . .				
Spite Fences				



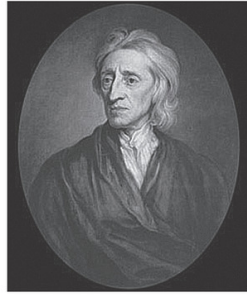
Aerial Photo of the Boomer Facility

Navigation

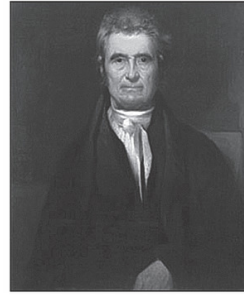
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Johnson v. M'Intosh

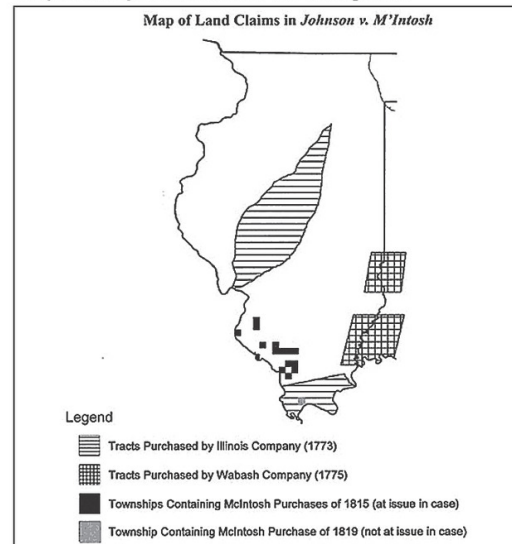


An aging John Locke
Source: Wikipedia.org



John Marshall as Chief Justice
Source: Wikipedia.org

Graphical representation of the land grants



Map of Land Claims in Johnson v. M'Intosh
Source: <http://www.historycooperative.org>

Acquisition, Chapters 1 & 2

The website is geared to the book chapter by chapter, and within each chapter by topic.

Delfino v. Vealencis



Photo of the parcel in the Delfino v. Vealencis case

Co-ownership, Chapter 65

We welcome any comments or suggestions you might have about improving the site and making it more useful and interesting to you.

Please email your feedback to Lior@Chicago.edu

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PROPERTY

An Introduction to Some Fundamentals

The first three chapters of this book pursue a common theme – how someone might acquire property other than by purchase – across a wide range of legal terrain. In these chapters you will learn the chief doctrinal foundations of property law. This material also introduces some key concepts, issues, and analytic methods of ongoing importance. After exploring how a person acquires property, the section concludes with an examination of what an owner can and cannot do with property and a comparison of how the law of intellectual property relates to the law governing real estate and personal property.

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