
PREFACE

This eighth edition of *Cases and Text on Property* marks both change and continuity. Susan F. French, Professor of Law Emerita, University of California at Los Angeles, has determined that this edition will be her last as an active author of the book. We—her coauthors—are grateful to Professor French for her superb intellectual and organizational leadership on the casebook, her openness and kindness, and her rigor. Professor French provided leadership and learning to the property law community through her insightful published work and her exemplary service as Reporter for the *Restatement (Third) of Property—Servitudes*. Her approach as Reporter reflected the attitude that she instilled in this casebook: a respect for traditional rules of property law that still serve society well, combined with finding new directions when current legal, social, and economic conditions so demand.

We are pleased to welcome two new authors to the team: Nadav Shoked, Professor of Law at the Pritzker School of Law, Northwestern University, and Hannah Wiseman, Professor of Law and Professor in the College of Earth and Mineral Sciences, Pennsylvania State University. Their dynamism, intellectual vigor, commitment to students, and interest in recent iterations of property law are reflected in this latest edition. Gerald Korngold, Trustee Professor of Law at New York Law School, remains a member of the author team. This team of authors as reconstituted is committed to the blend of tradition and emerging trends that Professor French has made a hallmark of this book.

First published in 1951 by Harvard Professors A. James Casner and W. Barton Leach, *Cases and Text on Property* established the contours of the modern Property course, integrating into one casebook material previously taught in separate courses, including personal property, estates in land, future interests, conveyancing, and landlord and tenant. Through subsequent editions, the book has evolved to reflect continuing changes in property law and the society it serves.

This eighth edition reflects new developments as well as a re-examination of existing doctrine in light of recent changes in the world. Thus, there is increased attention to the treatment of Native American title to land; core tensions in family property law; recent trends in public trust litigation; climate change and its relation to energy law; discrimination in public accommodations, housing law, and land policy; the effects of COVID-19 on landlord and tenant law and land contracts in general; and the intersection of torts and property. To accommodate these changes and to render the book easier to use for both professors and students, sections of the book have been reorganized.

The eighth edition continues to reflect changes in the first-year curriculum that cut the number of hours devoted to Property. We endeavored to provide a comprehensive yet compact book that meets the needs of faculty and students in the present environment. So, this edition follows the direction of recent editions by cutting chapters that are not within the core of Property courses as currently taught. After much consideration, chapters on property rights in creative works and lifetime gifts not in trust were removed. The rest of the book was rendered even more modular than before, enabling professors to pick and choose topics to cover while skipping chapters they would rather not address. Thus, for example, professors can easily opt to pursue, or opt out of, teaching land transactions, zoning, natural resources, and trusts and

wills. We also continued the pruning of the book from 1,370 pages in the fifth edition to 776 pages in this edition.

Major changes in this edition include the addition to Chapter 1 of *Pub. Lands Access Ass'n v. Bd. of Cnty. Comm'rs of Madison Cnty.*, and *Opinion of the Justices (Public Use of Coastal Beaches)* (Supreme Court of New Hampshire), both dealing with public rights to waterways and introducing a full discussion of the public trust doctrine. A more comprehensive discussion of public accommodation laws, with the relevant statutes excerpted, has similarly been added. In Chapter 2, *Briggs v. Southwestern Energy Production Company* replaced *Anderson v. Beech Aircraft Corporation* to explore the rule of capture under the now-common practice of hydraulic fracturing for oil and gas. *Tee-Hit-Ton Indians v. U.S.*, added to Chapter 3, illustrates the limited recognition of Native American land claims. Coverage of landlord-tenant law in Chapter 5 (Chapter 6 in the seventh edition) substituted *Oakwood Village v. Albertsons* for *Piggly Wiggly Southern v. Heard* and added *55 Oak Street LLC v. RDR Enterprises*, addressing defenses to rent payment in the face of the COVID-19 pandemic. Chapter 6 (Concurrent Estates) was expanded to include materials on family property. *Ferrill v. Ferrill* (dealing with mortgage expenses for marital property), *Sawada v. Endo* (covering exposure of marital property to creditors of one spouse), *O'Brien v. O'Brien* (recognizing a medical license as marital property), and *Marvin v. Marvin* (recognizing rights in shared property held by a married couple). Chapter 7 substituted *Coker v. JPMorgan Chase Bank* (examining the extent of anti-deficiency judgment statutes) for *Williams v. Kimes* (Chapter 9 in the seventh edition). Chapter 8 was slightly expanded to include the Fair Housing Act case *Greater New Orleans Fair Action Center v. St. Bernard Parish*. Nuisance coverage was consolidated into Chapter 9, which was further enhanced with the inclusions of *James v. Witherington*, *Fontainebleau Hotel v. Forty-Five Twenty-Five*, *Prah v. Maretti*, and *Sowers v. Forest Hills Subdivision*. Chapter 10 (Servitudes and Common Interest Communities) substituted *Martin v. Cockrell* for *Mund v. English* (Chapter 12 in the seventh edition). Throughout the book, we added readings, made significant reorganization of materials, and added numerous, in-depth notes.

Professors Casner and Leach ended their Preface to the second edition of this book, in 1969, by saying: “*We wonder why all of our colleagues are not fighting to get a chance to teach the first-year property course. We can only surmise that they want to live more sheltered lives. We do not envy them.*” We, too, would not trade places with our colleagues. Property is a fascinating and ever-evolving subject.

- Property law engages some of the most important and contentious topics of our time, including allocation, use, and conservation of natural resources; land use regulation; condemning land for private industry; privatizing local government through common-interest communities; improving substandard housing; and eliminating discrimination in housing.
- Property law involves some of the most immediate and personal of human interactions such as buying a house or renting an apartment; fighting with neighbors over noise, smells, pets, water, and boundaries; protecting property against trespassers; providing for the family on death; and dividing property on divorce.
- Property law revolves around the delineation of rights of individual owners, sets ground rules regarding conflicting interests between private parties, and determines the boundaries of public control over individuals' ownership rights. Moreover, because land lasts forever, the interests and agreements created in property usually last into the future, binding future owners and governments; this presents an opportunity for students to explore issues of cross-generational justice and duties toward others.
- Property law presents a unique opportunity for students to think about drafting healthy transactions, based on the agreement of the parties, arrived at in the shadow of gap filler rules. Students can see how lawyers serve client interests and society by creating agreements

that effectively allocate property rights up front, rather than only battling after the fact over failed transactions.

- Property law is now drawing the attention of some of the most interesting thinkers of our time, as it has in prior generations. The literature is rich, and extends across the world.

The materials in this book are designed to expose students to the broad sweep of property law and to allow them to gain the basic knowledge critical to understanding property issues and relationships. They engage students in searching analysis of the policy choices that face judges and legislatures and help them move along the road to becoming lawyers and scholars. The materials have been selected not only for their ability to teach law, lawyering, and legal analysis, and to highlight significant policy issues, but also with an eye to the human dramas and real-life consequences that make studying Property so interesting, as well as so important. The style and presentation are designed to be user-friendly, with informative notes, examples, and charts. Questions and problems throughout the book focus attention in the soundness of rulings, examine the underlying policy issues, and encourage students to think beyond the decided cases.

To improve readability of the materials, we have sometimes omitted text, citations, corrected apparent typographical and spelling errors, and broken up or combined paragraphs in opinions without noting the intervention. Footnotes by the court or a quoted author retain their original numbers; footnotes we have added are numbered consecutively throughout a chapter. Some, but not all, textual omissions are indicated by ellipses.

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