

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.

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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.

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