Contents

Preface

Acknowledgments

**PART ONE**

PROPERTY, POSSESSION, AND TRANSFERABILITY

CHAPTER 1

Introduction to Property

A. What Can Be Owned?

1. Real Property

Edwards v. Sims

2. Personal Property — Tangible

Popov v. Hayashi

3. Personal Property — Intangible

Bowman v. Monsanto Co.

4. Personal Property in Humans

The Antelope

5. Beyond Private Property

B. What Does Ownership Mean?

1. The Right to Possession

Johnson v. M’Intosh

McGirt v. Oklahoma

2. The Right to Use

Perry v. Saint Francis Hospital and Medical Center, Inc.

3. The Right to Transfer

National Organ Transplant Act of 1984

4. The Right to Exclude

State v. Shack

5. The Right to Destroy

Eyerman v. Mercantile Trust Co.

C. Why Property Rights?

D. Beyond the Black Letter: The Rise of the Sharing Economy

E. Skills Practice

1. Common Law Analysis

2. Outlining

F. Chapter Review

1. Practice Question

2. Bringing It Home

CHAPTER 2

Gifts, Finders, and Adverse Possession

A. Gifts

Scherer v. Hyland

Heiman v. Parrish

Gruen v. Gruen

B. Finders

Armory v. Delamirie

Benjamin v. Lindner Aviation, Inc.

C. Adverse Possession

Porter v. Posey

Chaplin v. Sanders

O’Keeffe v. Snyder

D. Beyond the Black Letter: Cybersquatting

E. Skills Practice: Common Law and Statutory Analysis

1. Common Law Analysis — Policy-Based Arguments

2. Statutory Analysis — Canons of Construction

F. Chapter Review

1. Practice Questions

2. Bringing It Home

**PART TWO**

SHARED PROPERTY — CONSECUTIVE AND   
CONCURRENT POSSESSION

CHAPTER 3

Estates and Future Interests

A. Overview of Estates and Future Interests

1. Historical Overview

2. Basic Terminology and Themes

B. Present Estates

1. The Basic Categories of Present Estates

White v. Brown

2. Defeasible Present Estates

3. A System for Labeling Estates and Future Interests

Mahrenholz v. County Board of School Trustees

C. Future Interests

1. The Basic Categories of Future Interests

2. Remainders — A Closer Look

3. Pulling It All Together

D. Class Gifts and Class Closing Rules

E. Enhancing Marketability: The Rule Against Perpetuities

1. The Rule Against Perpetuities—The Basics

Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc.

2. The Rule Against Perpetuities—A Closer Look

3. The Rule Against Perpetuities Today

F. Beyond the Black Letter: Dead Hand Control and Dynastic Wealth

G. Skills Practice: Drafting Savings Clauses

H. Chapter Review

1. Practice Questions

2. Bringing It Home

CHAPTER 4

Landlord-Tenant Law

A. The Lease as Conveyance

Thompson v. Baxter

B. The Lease as Contract

C. The Rights and Duties of the Parties

1. Possession

Ernst v. Conditt

Slavin v. Rent Control Bd. of Brookline

Sommer v. Kridel

2. Maintaining the Premises

Adams v. Woodlands of Nashua

Teller v. McCoy

D. The Fair Housing Act of 1968

1. The Statutory Framework

The Fair Housing Act of 1968

2. Proving Discrimination

E. Beyond the Black Letter: The Eviction Crisis in the United States

Desmond, Evicted: Poverty and Profit in the American City

*Schindler & Zale, The Anti-Tenancy Doctrine*

F. Skills Practice: Client Counseling and Drafting a Residential   
Lease

G. Chapter Review

1. Practice Question

2. Bringing It Home

CHAPTER 5

Concurrent Ownership and Marital Systems

A. Concurrent Ownership

1. Classifying the Estate

2. The Right of Survivorship: A Closer Look

Sathoff v. Sutterer

In re Estate of Johnson

Sawada v. Endo

3. The Challenges of Shared Ownership

Parker v. Shecut

Ark Land Co. v. Harper

Uniform Partition of Heirs Property Act

4. Modern Applications: Condominiums, Cooperatives,   
and Time-Share Properties

Dutcher v. Owens

B. Marital Property Systems

1. The Separate Property System (“Common Law System”)

In re Marriage of Graham

2. The Community Property System

In re Estate of Hanau

3. Marriage

Obergefell v. Hodges

C. Beyond the Black Letter: New Forms of Concurrent Ownership

D. Skills Practice: Client Counseling and Negotiating a   
Tenants in Common Agreement

E. Chapter Review

1. Practice Questions

2. Bringing It Home

CHAPTER 6

From Private Property to the Commons

A. Private Property

B. Public Property

Light v. United States

Illinois Central Railroad Co. v. Illinois

Colorado v. Hill

C. Commons Property

Hardin, The Tragedy of the Commons

Ghen v. Rich

Wisconsin v. Michels Pipeline Construction, Inc.

Juliana v. *United States*

D. Beyond the Black Letter: Mining Asteroids in Outer Space

E. Skills Practice: Statutory Law and Implementing Regulations

F. Chapter Review

1. Practice Questions

2. Bringing It Home

**PART THREE**

TRANSFERRING PROPERTY

CHAPTER 7

Real Estate Transactions

A. Overview of the Real Estate Transaction

1. The Timeline

2. The Real Estate Broker

3. Discrimination in the Sale of Real Property

Texas Dep’t of Housing & Community Affairs v.   
The Inclusive Communities Project, Inc.

B. The Real Estate Contract

1. The Statute of Frauds

Hickey v. Green

2. Equitable Conversion

Brush Grocery Kart, Inc. v. Sure Fine Market, Inc.

3. Remedies for Breach of Contract

C. The Physical Condition of the Property

1. The Seller’s Duty of Disclosure

Stambovsky v. Ackley

2. Flood Risk and Federal Insurance

D. Financing and Foreclosure

1. Financing

Proctor v. Holden

2. Foreclosure

Greater Southwest Office Park, Ltd. v. Texas Commerce   
Bank Nat’l Ass’n

Horne v. Harbour Portfolio

E. Title Security

1. The Contract — The Promise of Marketable Title

Lohmeyer v. Bower

2. The Deed — Title Warranties

Brown v. Lober

3. Title Insurance

Riordan v. Lawyers Title Insurance Corp.

F. Beyond the Black Letter: Climate — The Next Real Estate Bubble?

Applegate, Norfolk Sea Level Rise Takes Shine Off Waterfront Homes

G. Skills Practice: Reviewing Purchase Offers

H. Chapter Review

1. Practice Questions

2. Bringing It Home

CHAPTER 8

The Recording System

A. The Chain of Title

1. Searching the Chain of Title

2. Matters Potentially “Outside” the Chain of Title

First Properties, L.L.C. v. JPMorgan Chase Bank

Witter v. Taggart

B. The Recording Acts

1. Overview of the Recording Acts

2. Protecting the Bona Fide Purchaser

Waldorff Insurance & Bonding, Inc. v. Eglin National Bank

Daniels v. Anderson

C. Beyond the Black Letter: Evaluating the Recording System

D. Skills Practice: Drafting Tenant Estoppel Statements

E. Chapter Review

1. Practice Questions

2. Bringing It Home

**PART FOUR**

THE SCOPE OF PROPERTY — RIGHTS   
AND RESTRICTIONS

CHAPTER 9

Contractual Limits and Beyond: Easements

A. Overview

B. Creation

1. Express Easements

Estate of Thomson v. Wade

2. Implied Easements

Traders, Inc. v. Bartholomew

3. Easements by Prescription

Daytona Beach v. Tona-Rama, Inc.

4. Easements by Estoppel

C. Scope, Transferability, and Termination

1. The Scope of Easements

Brown v. Voss

2. The Transferability of Easements

3. The Termination of Easements

Guy v. State of Delaware

D. Conservation Easements

United States v. Blackman

E. Beyond the Black Letter: Conservation Easements — What’s   
in a Name?

F. Skills Practice: Drafting an Easement

G. Chapter Review

1. Practice Questions

2. Bringing It Home

CHAPTER 10

Contractual Limits and Beyond: Running   
Covenants

A. Traditional Doctrine: Real Covenants and Equitable Servitudes

1. Real Covenants

2. Equitable Servitudes

Tulk v. Moxhay

Neponsit Property Owners’ Ass’n, Inc. v. Emigrant Industrial   
Sav. Bank

B. Termination and Nonenforcement of Covenants

Shelley v. Kraemer

Vernon Township Volunteer Fire Dep’t, Inc. v. Connor

C. Modern Applications: Common Interest Communities   
and Conservation Easements

1. Common Interest Communities

Nahrstedt v. Lakeside Village Condominium Association

2. Conservation Easements Revisited

D. The Restatement (Third) of Property, Servitudes

The Restatement (Third) of Property, Servitudes

E. Beyond the Black Letter: Forever Is a Long Time

F. Skills Practice: Policy-Based Arguments

G. Chapter Review

1. Practice Questions

2. Bringing It Home

CHAPTER 11

Common Law Limits: Trespass and Nuisance

A. Trespass

Paynesville Farmers Union Coop. Oil Co. v. Johnson

B. Nuisance

1. Entitlements and Liability

The Restatement (Second) of Torts, Nuisance

The Restatement (Fourth) of Property, Nuisance

Prah v. Maretti

2. The Remedy for Nuisance

Boomer v. Atlantic Cement Co.

Spur Industries, Inc. v. Del E. Webb Development Co.

C. Beyond the Black Letter: Drones

D. Skills Practice: Client Counseling — The Smoking Neighbor

E. Chapter Review

1. Practice Questions

2. Bringing It Home

CHAPTER 12

Statutory Limits: Zoning

A. Introduction to Zoning

1. The Constitutionality of Zoning

Euclid v. Ambler Realty Co.

2. The Nonconforming Use

Board of Supervisors of Cerro Gordo Cnty. v. Miller

3. Flexibility Mechanisms

B. What Can Be Regulated?

1. Single-Family Zoning

a. Restrictions Based on the Definition of   
“Family”

Village of Belle Terre v. Boraas

b. Restrictions on Short-Term Rentals

Styller v. Aylward

c. Restrictions Based on Race and Socioeconomic Class

United States v. City of Black Jack, Missouri

2. Zoning to Protect Aesthetics

State ex rel. Stoyanoff v. Berkeley

Zimmerman v. Board of County Commissioners of Wabaunsee County

3. Zoning to Further Affordable Housing

2910 Georgia Avenue LLC v. District of Columbia

C. Beyond the Black Letter: Urban Agriculture

D. Skills Practice: Drafting Zoning Regulations

E. Chapter Review

1. Practice Questions

2. Bringing It Home

CHAPTER 13

Constitutional Limits: Eminent Domain   
and the Takings Clause

A. Eminent Domain

1. Public Use

Kelo v. City of New London

2. Just Compensation

N.J. Comm’r of Transp. V. 200 Route 17, L.L.C.

B. Regulatory Takings

1. The Multi-Factor Approach

Pennsylvania Coal Co. v. Mahon

Penn Central Transportation Co. v. City of New York

2. The Categorical Approach: All Economically Beneficial Use

Lucas v. S.C. Coastal Council

3. Exactions and Impact Fees

C. Physical Takings

Loretto v. Teleprompter Manhattan CATV Corp.

Cedar Point Nursery v. Hassid

D. Beyond the Black Letter: Eminent Domain Legislation

E. Skills Practice: Formulating a Discovery Plan

F. Chapter Review

1. Practice Questions

2. Bringing It Home

Appendix

Table of Cases

Index