TABLE OF CONTENTS

reface cknowledgments	xxvii
ART I NTRODUCTION TO PROPERTY: BASIC IDEAS, LEGAL PROTECTIONS, AND ACQUISITION BY CAPTURE, CONQUEST, ADVERSE POSSESSION, AND CREATIVE ACTIVITY	. 1
HAPTER 1	
ntroduction to Property: Basic Ideas and Causes of Action	3
Terminology and Ideas 1. Terminology 2. Ideas	3 3 4
 Legal Protections for Property: Actions for Trespass, Conversion, and Nuisance Protecting the Landholder's Right to Exclude: Trespass Jacque v. Steenberg Homes, Inc. Functions of the Right to Exclude 	5 5 5 11
Limitations on the Right to Exclude State v. Shack	11 12
Special Limitations on Business Owners' Right to Exclude Civil Rights Act of 1964, Title II Iowa Code	16 17 17
Blackstone and the Right to Exclude Canons of Property Talk, or Blackstone's Anxiety Contemporary Debates Over the Right to Exclude The Reach of Land Ownership: Traditional Doctrine and New Challenges	20 21 21 22
2. Inherently Public Property, the Public Trust, Beaches, and Customary Rights Opinion of the Justices (Public Use of Coastal Beaches) Pub. Lands Access Ass'n v. Bd. of Cnty. Comm'rs of Madison Cnty. Blackstone or a Bundle of Rights?	24 25 28 32
3. Protecting Personal Property: Trespass and Conversion Plotnik v. Meihaus Intel Corporation v. Hamidi Restatement (Second) of Torts § 222A (1965)	33 33 36 41
Kremen v. Cohen Notes and Questions Moore v. Regents of the University of California	43 47 48

xiii

	Meaning of "Property" Varies with Context	59
	Human Organs as Property	60
CF	HAPTER 2	
Ac	equiring Property: Capture, Finds, Bailments, and Salvage	61
Α.	The Capture Doctrine	62
	1. Wild Animals	62
	Pierson v. Post	62
	Ghen v. Rich	68
	Keeble v. Hickeringill	70
	First in Time, Trespassers, and Ratione Soli	72
	More About Wild Animals	73
	Governmental Regulation of Wild Animals and Fisheries and the Public Trust	74
	Problem: Reasoning by Analogy	75
	Popov v. Hayashi	75
	Problem	81
	2. Oil and Gas	81
	Briggs v. Southwestern Energy Production Company	82
	3. Water	86
	a. Water in Lakes and Streams: Riparian and Prior Appropriation Systems	86
	b. Groundwater	87
	c. Diffuse Surface Waters (Runoff)	88
	d. Pressures for Change in Water Law	88
	Property Rules and Liability Rules	88
Β.	Finders and Bailees	88
	1. Finders versus Wrongdoers	89
	Armory v. de Lamirie	89
	2. Bailees versus Wrongdoers	91
	3. Finders versus Owners of the <i>Locus in Quo</i>	92
	Hannah v. Peel	92
	McAvoy v. Medina	95
	Benjamin v. Lindner Aviation, Inc.	96
	Problem	102
	Wrongful Possession of Chattels: Hornbook Law and Case Law	102
	Treasure Trove	104
C.	Sunken Treasure and Salvage Law	105
	The Abandoned Shipwreck Act of 1987	108
	Shipwrecks in International Waters and the UNESCO Convention on	
	Protection of the Underwater Cultural Heritage	108
CF	HAPTER 3	
	equiring Property by Conquest, Adverse Possession, and	
Pr	rescription	111
Α.	Conquest	111
	Johnson and Graham's Lessee v. M'Intosh	112
	Tee-Hit-Ton Indians v. U.S.	119
В.	Adverse Possession and Prescription of Interests in Land	124
	1. Adverse Possession	126
	Ewing v. Burnet	126

CTOP_FM_pi-xxviii_proof5.indd 14 5/3/2024 11:24:12 AM

Nome 2000 v. Fagerstrom	129
	134
, -	134
· ·	140
Color of Title	143
Adverse Possession/Prescription and Future Interests Dieterich International Truck Sales, Inc. v. J.S. & J. Services, Inc. Prescription Lyndes v. Green C. Justifications for Adverse Possession Who Needs Adverse Possession? D. Adverse Possession of Chattels and Preservation of Cultural Heritage Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc. Solomon R. Guggenheim Foundation v. Lubell Rosner v. United States Current Controversies Challenge the Capture, Conquest, and Prescription Doctrines PART II OWNERSHIP INTERESTS IN PROPERTY CHAPTER 4 Possessory Estates and Future Interests Language Used to Create Estates: Words of Limitation and Words of Purchase Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates Nelson v. Parker In Re Estate of Jackson Waste	143
	145
Dieterich International Truck Sales, Inc. v. J.S. & J. Services, Inc.	145
2. Prescription	148
Lyndes v. Green	148
C. Justifications for Adverse Possession	154
Who Needs Adverse Possession?	154
D. Adverse Possession of Chattels and Preservation of Cultural Heritage	158
Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg &	
Feldman Fine Arts, Inc.	158
Solomon R. Guggenheim Foundation v. Lubell	166
Rosner v. United States	170
Current Controversies Challenge the Capture, Conquest,	
and Prescription Doctrines	173
PART II	
OWNERSHIP INTERESTS IN PROPERTY	175
	177
•	
Language Used to Create Estates: Words of Limitation and Words of Purchase	170
	178
Problems	179
Problems Who Are the Heirs? Inheritance of Property	179 182
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat	179
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of	179 182 182
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture	179 182 182
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County	179 182 182 182 185
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond	179 182 182 182 185 189
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions	179 182 182 182 185 189 191
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem	179 182 182 182 185 189
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession,	179 182 182 182 185 189 191 192
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration	179 182 182 182 185 189 191 192
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders	179 182 182 182 185 189 191 192
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders 1. Life Estates	179 182 182 182 185 189 191 192 193 195 195
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders 1. Life Estates Nelson v. Parker	179 182 182 182 185 189 191 192 193 195 195
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders 1. Life Estates Nelson v. Parker In Re Estate of Jackson	179 182 182 185 189 191 192 193 195 195 195
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders 1. Life Estates Nelson v. Parker In Re Estate of Jackson Waste	179 182 182 185 189 191 192 193 195 195 198 199
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders 1. Life Estates Nelson v. Parker In Re Estate of Jackson Waste Alienability of Life Estates; Sale to Support Life Tenant	179 182 182 185 189 191 192 193 195 195 195
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders 1. Life Estates Nelson v. Parker In Re Estate of Jackson Waste Alienability of Life Estates; Sale to Support Life Tenant 2. Remainders, Reversions, and Executory Interests	179 182 182 185 189 191 192 193 195 195 198 199 201
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders 1. Life Estates Nelson v. Parker In Re Estate of Jackson Waste Alienability of Life Estates; Sale to Support Life Tenant	179 182 182 185 189 191 192 193 195 195 198 199 201
Problems Who Are the Heirs? Inheritance of Property What If There Are No Heirs? Escheat A. The Defeasible Fee Simple: Controlling Land Use and Behavior by Threat of Forfeiture Station Associates, Inc. v. Dare County Red Hill Outing Club v. Hammond Restraints on Alienation and Unenforceable Conditions Problem Differences Among the Defeasible Fees: Adverse Possession, Alienability, and Duration B. Life Estates and Remainders 1. Life Estates Nelson v. Parker In Re Estate of Jackson Waste Alienability of Life Estates; Sale to Support Life Tenant 2. Remainders, Reversions, and Executory Interests The Importance of Classifying Interests: The Rule Against Creation	179 182 182 182 185 189 191 192 193 195 195 195 198 199 201 202

CTOP_FM_pi-xxviii_proof5.indd 15 5/3/2024 11:24:12 AM

D. The Rule Against Perpetuities and Other Doctrines that Destroy Future Interest Exemptions from the Common-Law Rule Against Perpetuities Symphony Space, Inc. v. Pergola Properties, Inc.	206 211 212
CHAPTER 5 Landlord-Tenant	221
Landiord-Tenant	221
A. The Landlord-Tenant Relationship	222
1. The Leasehold Estates	222
2. Themes in Current Landlord-Tenant Law	223
B. Landlord's Obligations and Tenant's Remedies	227
1. Duty to Deliver Possession	227
Teitelbaum v. Direct Realty Co.	227
Problem	229
2. Duty to Protect the Tenant's Quiet Enjoyment: Constructive Eviction	229
Blackett v. Olanoff	229
Wesson v. Leone Enterprises, Inc.	231
Problems: Constructive Eviction	239
 Condition of the Premises: The Warranty of Habitability <i>Javins v. First National Realty Corp.</i> 	239 239
N.Y. Real Prop. Law § 235-b (Added 1975, as Amended 1976)	247
Problems: Warranty of Habitability	251
4. Landlord's Tort Liability	251
Recent Approaches to Landlord's Tort Liability	252
Landlord's Liability for Acts of Criminals	253
5. Duty Not to Discriminate in Leasing	253
C. Tenant Duties and Landlord Remedies	254
1. Tenant Duties	254
a. Duty to Preserve the Premises	254
Marbar, Inc. v. Katz	254
Problems: Waste	261
b. Duty to Operate	262
Oakwood Village LLC v. Albertsons, Inc.	262
Problems: Continuous Operation Clauses	270
c. Duty to Pay Rent	270
(i) Covid-19, Impossibility, and Force Majeure	270
55 Oak Street LLC v. RDR Enterprises	270
(ii) Rent Controls	275
Rent Control and the Theory of Efficient Regulation Residential Rent Control	276 277
2. Landlord's Remedies	277
a. Recovery of Possession	279
(i) Forfeiture	279
(ii) Self-Help	281
No Easy Way Out: Making the Summary Eviction Process a Fairer and	
More Efficient Alternative to Landlord Self-Help	281
Craig Wrecking Company v. S.G. Loewendick & Sons, Inc.	282
Problem	286
(iii) Summary Process	286
Housing Injustice and the Summary Eviction Process:	
Beyond Lindsey v. Normet	288

CTOP_FM_pi-xxviii_proof5.indd 16 5/3/2024 11:24:12 AM

	North Dakota Case Study: The Eviction Mill's Fast	
	Track to Homelessness	291
	Question	292
	(iv) Just Cause Eviction	292
	(v) Security in Tenure: Retaliatory Conduct	293
	Elk Creek Management Company v. Gilbert	293
	b. Monetary Damages	299
	(i) The Calculus of Remedies	299
	Problem	299
	(ii) Landlord's Duty to Mitigate	300
	Austin Hill Country Realty, Inc. v. Palisades Plaza	300
	Restatement (Second) of Property—Landlord and Tenant § 12.1(3)	304
	Uniform Residential Landlord and Tenant Act § 4.203(c) (1972)	304
	Problem	306
	(iii) Acceleration Clauses	306
	Aurora Business Park Associates v. Michael Albert, Inc.	306
	Problems: Acceleration Clauses	310
	(iv) Recovery Devices	311
D.	Succession to Rights and Obligations: Assignments and Subleases	312
٠.	Liability for Rent and Other Covenants	312
	a. Assignments	312
	Vallely Investments, L.P. v. BancAmerica Commercial Corporation	312
	Problem	316
	b. Subleases	316
	American Community Stores Corp. v. Newman	316
	2. Power to Assign or Sublet	322
	Julian v. Christopher	322
	Problems: Consent to Assignment	329
	Troblems. Consent to Table Innert	32)
CF	HAPTER 6	
C	oncurrent Estates and Marital Property	331
	An Overview of the Concurrent Estates: Alienability	331
В.	Problems with Sharing Possession	333
	Martin v. Martin	334
	Ferrill v. Ferrill	335
	What Constitutes an Ouster?	338
	Partition	339
	Delfino v. Vealencis	339
_	LEG Investments v. Boxler	343
C.	Joint Tenancy with Right of Survivorship: Creation and Severance	346
	Downing v. Downing	347
	People v. Nogarr	350
	Smolen v. Smolen	353
	Modern Role of the Four Unities	355
D.	Marital Property	356
	Sawada v. Endo	356
	Notes	361
	End of Marriage	362
	O'Brien v. O'Brien	362
	Death	368

CTOP_FM_pi-xxviii_proof5.indd 17 5/3/2024 11:24:12 AM

Unmarried Couples <i>Marvin v. Marvin</i>	369 369
PART III VOLUNTARY TRANSFERS OF PROPERTY	379
CHAPTER 7 The Modern Real Estate Transaction	381
A. Introduction to the Real Estate Transaction	381
1. Overview of a Transaction	381
	201
	381
· · · · · · · · · · · · · · · · · · ·	390 390
· · · · · · · · · · · · · · · · · · ·	394
	394
	394
	399
	400
	400
	400
	401
	401
	401
	401
	405
Problem	405
b. Equitable Conversion/Risk of Loss	406
b. Equitable Conversion/Risk of Loss Bryant v. Willison Real Estate Co. Problem c. Quality of the Property Stambovsky v. Ackley Problems: Caveat Emptor d. Contract Remedies C. The Deed 1. Overview Problem 2. Delivery	406
	409
c. Quality of the Property	410
	410
	415
d. Contract Remedies	415
C. The Deed	416
	416
Problem	417
2. Delivery	417
3. Description	418
4. Covenants for Title	419
Seymour v. Evans	420
Questions	426
Problems: Covenants for Title	426
D. The Mortgage	426
1. Glossary and Cast of Characters	427
2. Function of a Mortgage	428
3. Deeds of Trust	429
4. Security Interests Other Than Real Estate Mortgages and Deeds of Trust	429
5. The Real Estate Mortgage as It Was Developed in the Courts	430

CTOP_FM_pi-xxviii_proof5.indd 18 5/3/2024 11:24:12 AM

	6. The Mortgagee's Security Interest: Title Theory, Lien Theory	431	
	7. Foreclosure in Modern Practice	432	
	Coker v. JPMorgan Chase Bank, N.A.	432	
E.	The Recording System	439	
	1. Introduction	439	
	a. The Mechanics of Recording: The Grantor-Grantee Index		
	and the Tract System	440	
	b. Classification of Recording Acts	442	
	(i) Notice	442	
	Mass. Gen. Laws Ann. Ch. 183, § 4	442	
	(ii) Race-Notice	442	
	Mich. Comp. Laws § 565.29	442	
	(iii) Period of Grace	443	
	Del. Code Ann. Tit. 25, § 153	443	
	(iv) Race	443	
	N.C. Gen. Stat. § 47-18	443	
	c. Types of "Notice"	443	
	Problems: Recording	444	
	2. Record Notice	444	
	Ryczkowski v. Chelsea Title & Guaranty Co.	444	
	Morse v. Curtis	446	
	Genovese Drug Stores, Inc. v. Conn. Packing Co., Inc.	447	
	Problems: Chain of Title	450	
	3. Inquiry Notice	450	
	Sanborn v. McLean	450	
	Problem	453	
	4. Marketable Title Acts and Similar Solutions	453	
F.	Title Protection	454	
	1. The Torrens System	454	
	2. Title Insurance	455	
	Somerset Savings Bank v. Chicago Title Insurance Co.	455	
	Problems: Compare Title Insurance with General Warranty Covenant	461	
	,		
CH	IAPTER 8		
Pr	otection Against Discrimination in Housing	463	
A.	Protection Under the Federal Constitution	463	
	Fourteenth Amendment to the U.S. Constitution	464	
	Shelley v. Kraemer	464	
В.	Protection Under the Civil Rights Act of 1866 and the Federal		
	Fair Housing Act	470	
	The Civil Rights Act of 1866, 42 U.S.C. § 1982	471	
	Jones v. Alfred H. Mayer Co.	471	
	Civil Rights Act of 1968, Title VIII — Fair Housing & Title VIII	473	
	Disparate Treatment, Disparate Impact, and Standing to Sue	476	
	Greater New Orleans Fair Housing Action Center v. St. Bernard Parish	477	
	Have Fair Housing Laws Made a Difference?	479	
C.	Discrimination Against People with Disabilities	481	
	§ 3604. Discrimination in the Sale or Rental of Housing		
	and Other Prohibited Practices	481	
	Hill v. Community of Damien of Molokai	482	

CTOP_FM_pi-xxviii_proof5.indd 19 5/3/2024 11:24:12 AM

D. Discrimination on the Basis of Familial Status	488
§ 3602. Definitions	488
§ 3607. Exemption	488
Simovits v. Chanticleer Condominium Ass'n	489
E. Discrimination on the Basis of Marital Status and Sexual Orientation	494
Smith v. Fair Employment and Housing Commission	494
PART IV	
PROPERTY TORTS AND LAND USE REGULATION	503
CHAPTER 9	
Nuisance	505
Nuisance versus Trespass	505
Adams v. Cleveland-Cliffs Iron Co.	505
Nuisance Remedies	510
Boomer v. Atlantic Cement Company, Inc.	510
What Is a Nuisance?	514
James v. Witherington	514
The Role of Social Utility	517
Sensitive Uses	520
Restatement (Second) of Torts—§ 821F. Significant Harm	520
Coming to the Nuisance and Changing Neighborhoods	520
Aesthetic Harms and Spite	521
Rattigan v. Wile	521
Light and Air	527
Fontainebleau v. Forty-Five Twenty-Five, Inc.	527
Prah v. Maretti	529
Sowers v. Forest Hills Subdivision	534
The Displacement of Federal Public Nuisance Law	537
CHAPTER 10	
Servitudes and Common Interest Communities	539
A. Introduction	539
Types of Servitudes and Servitude Categories	540
Running with the Land and Running with Interests in the Land	541
Common Interest Communities	541
The Integration of Servitudes Law	542
B. Easements and Profits	542
1. Creation of Easements and Profits	543
a. Express Instrument	543
b. Creation by Estoppel	546
Martin v. Cockrell	546
c. Creation by Implication (i) Implied on the Regio of Prior Lie	550 551
(i) Implied on the Basis of Prior Use	551 551
Van Sandt v. Royster (ii) Implied on the Basis of Necessity	551 554
(ii) Implied on the Basis of Necessity Morrell v. Rice	554 554
d. Creation by Prescription	558
Paxson v. Glovitz	558

CTOP_FM_pi-xxviii_proof5.indd 20 5/3/2024 11:24:12 AM

	Comparing Easements by Implication from Prior Use, by Necessity,	
	and by Prescription	561
	e. Creation by Dedication, Condemnation, and Other Forced Sales	561
	Goulding v. Cook	562
	f. Creating Easements for Third Parties	564
	2. Scope of Easements and Profits	565
	a. Location, Relocation, and Use of Easements	565
	b. Use of Easement for Non-Dominant Land	566
	Brown v. Voss	566
	c. Succession, Exclusivity, Assignability, and Divisibility	569
	Problem	569
	City of Pasadena v. California-Michigan Land & Water Co.	569
	Fairbrother v. Adams	571
	Assignability and Divisibility of Easements and Profits in Gross	572
	Problem	573
	3. Modification and Termination of Easements and Profits	574
C.	Covenants	574
	1. The English Background	574
	Negative Easements in English Law	578
	2. Covenants and Negative Easements in America	578
	Runyon v. Paley	579 597
	Sonoma Development, Inc. v. Miller Succession to Covenants: Vertical Privity	587 590
	Differences Between Real Covenants and Equitable Servitudes	<i>J</i> 2 0
	in American Law	591
	Public Policy Limits on the Enforcement of Covenants	592
	Davidson Bros., Inc. v. D. Katz & Sons, Inc.	592
	Nahrstedt v. Lakeside Village Condominium Ass'n, Inc.	596
	1515-1519 Lake View Boulevard Condominium Ass'n v. Apartment))0
	Sales Corp.	603
	Conservation and Historic Preservation Servitudes	605
	3. Creation of Running Covenants	606
	a. Express Creation by Written Instrument	606
	Note: Relationship Between Covenants and Zoning	607
	Problem	607
	b. Creation by Estoppel	608
	Shalimar Association v. D.O.C. Enterprises, Ltd.	608
	c. Covenants Created by Implication	612
	d. Covenants Created by Prescription and Eminent Domain	612
	Covenants in Common Interest Communities	613
	Neponsit Property Owners' Ass'n, Inc. v. Emigrant Industrial	
	Savings Bank	613
	Direct and Indirect Restraints on Alienation	618
	Problems: Validity	619
	Design Controls	620
	Judicial Review of Association Decision Making	621
	Associations' Power to Amend Servitudes	623
	Evergreen Highlands Association v. West	623
	4. Modification, Amendment, and Termination of Covenants	627
	a. Changed Conditions	628

CTOP_FM_pi-xxviii_proof5.indd 21 5/3/2024 11:24:12 AM

Rick v. West	628
b. Termination	631
Westwood Homeowners Ass'n v. Lane County	631
CHAPTER 11	
The Takings Clause	637
A. Taking Property for Public Use	638
Taking Property for Redevelopment	639
Kelo v. City of New London	639
Kelo, Popularity, and Substantive Due Process	649
2. Inherently Public Property, the Public Trust, Beaches,	
and Customary Rights	650
Opinion of the Justices (Public Use of Coastal Beaches)	650
3. What Can Be Taken Using the Eminent Domain Power?	655
B. Regulatory Takings	656
Penn Central Transportation Company v. New York	657
The Modern Property Rights Movement	666
More Unfinished Stories: Lucas, Atlanta Coalition, and	
Palila/Sweet Home	666
Lucas v. South Carolina Coastal Council	667
Government Subsidies and Coastal Development	676
The Track Record on Takings Legislation: Lessons	
from Democracy's Laboratories	678
The Denominator Problem: Murr v. Wisconsin, 137 S. Ct. 1933 (2017)	680
C. Temporary Takings	682
Arkansas Game and Fish Commission v. United States	682
Arkansas Game and Fish Commission v. United States: Takings La Without a Theory	iw, 687
D. Judicial Takings	688
Judicial Takings	689
Stop the Beach Renourishment, Inc. v. Florida Dep't of	
Environmental Protection	689
Judicial Takings: A Medley of Misconceptions	694
E. Relation Between Due Process and Takings Clauses	695
Lingle v. Chevron U.S.A., Inc.	695
F. Exactions	699
Koontz v. St. Johns River Water Management District	699
G. Application of Takings to Personal Property: Horne v. Department of Agricult	ture,
135 S.Ct. 2419 (2015)	707
H. Takings Cases in Federal Court: The Ripeness Doctrine	708
Table of Cases	709
Table of Statutes	717
Index	723

CTOP_FM_pi-xxviii_proof5.indd 22 5/3/2024 11:24:12 AM