

## So What Is Property? Some Opening Comments on the Study of Property Law

A long time ago – say, last week – if someone asked you a question about “property”, you might think of a piece of land, as in “she bought a nice piece of property”. If you thought about it further, you would probably quickly conclude that many things besides real estate are also property – like your car, or your computer. More thought might have led you to think that property can also be intangible – like your checking account or shares of stock. Now that you are in law school, however, your sense of what property means will expand still further. You will confront a very popular statement advanced by legal scholars and law teachers, i.e., that property is not a thing at all -- whether tangible or intangible. Instead, it is a bundle of legally recognized rights. Thus, the land mentioned in the first sentence is “property” only because the owner’s rights to it are recognized by the law. This sense of “property”, as a product of legal recognition of rights, may be particularly clear with currency, which has value only because we are all willing to treat it as though it as though it does. I mean really, would we carry those dirty pieces of paper around (in their own purchased carrier, no less!) because they are pretty, small, good or keep us thin?

Just what “rights” are included in this bundle called property? There is no uniform definition, but a commonly recognized set of rights might include: (1) the right to use: if I own a condo, I can sleep there, or I can decide not to. I can rent the condo, I can renovate it. Decisions about its use belong to me, even if you might have better taste or greater needs. (2) The right to exclude. I can deny you access to my condo. Indeed, I can deny everyone access to my condo (with a few limits). (3) The right to transfer: I can sell my condo, lease it, leave it by will. (4) The right to destroy? Can I destroy property that I own? That might depend on what it is – yesterday’s newspaper, or the condo.

From this description, perhaps you can see why it is often said that property rights are as much about relations among people as they are about the thing that is the subject matter of the rights. If I own a piece of real estate, I can put a fence around it and keep you out. My power to exclude stems from my ownership of the property. But the effect of my power to exclude is to create a duty that I impose on you and all others – a duty on all of you not to jump my fence and camp in my front yard. Thus comes the comment that *property rights are relational*. Property rights allow owners to control valuable things, but in controlling those things they also, in effect, control the conduct of others.

As we will learn in this course, though the American legal system lauds property rights and ownership, property rights are not and never have been absolute. This is pretty easy to see. If I own a piece of real estate and you own the property next door, how I use my property directly affects your ability to use your property – and the value of that property. If I decide to use my property for a landfill or a pig farm, you are unlikely to escape unscathed. So if my right to use my property were completely untrammelled, your right to use your property as you wished would, in fact, be diminished. To prevent this – or, at least, to try to achieve some rough balance -- the law imposes a number of limits on the right of owners to use their property. We will study and debate and ponder a number of these limits in the course.

Property rights can be subdivided. A landlord, for example, can convey the right to occupy an apartment to a tenant, while retaining ownership of the apartment for himself. Thus, a number of people may have different sets of rights in the same piece of property at the same time.

Property rights are defined by and arise from the culture and the economic system of which they form a part. While we will study American and English property laws almost (but not quite) exclusively, we will find that the rules and definitions of property change over time and, sometimes, from region to region. Property, as we will see, can be thought of as a legal *system*, a system in which many interests need to be balanced – interests in being able to transfer property quickly and efficiently, interests in expanding wealth and rewarding effort, interests in basic fairness, etc.

As we begin our study of property law, we will focus on two things, essentially simultaneously. These are (1) the constant challenges to the scope of the term “property” and (2) the source of property rights – that is, how does a thing become property? Our first case, *Moore v. Regents*, asks what may seem a bizarre question, but is, in fact, emblematic of the chronic tensions in property law. The question is are cells surgically extracted from an individual the property of the person from whose body they were extracted? To put this a bit more in the vernacular, do you own your spleen? And if you do, how and when does that ownership attach, and when does it end?