

## Topic 8: The Property System

### Overview

- *Introductory Video:*
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### QUESTIONS & ANSWERS

#### 1. What is Property?

Property is any tangible or intangible physical item, design, creative work, or concept that is owned.

- *Tangible and Intangible Property* - Tangible refers to physical property. That is, tangible property is anything that had be physically touched. Intangible property refers to non-physical property. That is, intangible property is any property that cannot be physically toughed, such as patents, trademarks, trade secrets, or copyrights.

- **Discussion:** Do you think that there should be a distinction between tangible and intangible property? Why or why not? Should they be afforded the exact same protections? For example, is theft of a copyrighted song the same as stealing someone's wallet? Why or why not?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/tangible-vs-intangible-property/>

- *Real and Personal Property* - Property is further broken down into personal property and real property. Real property means land and anything permanently attached to it. Personal property is anything other than real property.

- **Discussion:** Can you think of any reason why the law would differentiate real from personal property? What characteristics make real property unique from personal property?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/real-vs-personal-property/>

- *Fixtures* - A fixture is personal property that has converted into real property by physical annexation (attachment to or close association with) to the land or its buildings. For example, a piece of equipment that is physically installed into the floor of a factor building would become a fixture and is one with the property. It is no longer personal property and cannot be removed from the real property without consent of the real property's owner.

- **Discussion:** Should personal property that is permanently attached to real property become part of the real property? Would this have any effect on businesses that sell or rent personal property?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/fixtures-and-real-property/>

Ownership or property refers to the the legal right to exclude others from the specific thing owned. So property includes all physical and non-physical things that are subject to ownership rights. Aside from the right to exclude others from using property, ownership rights often include the right to possess, to use, to transfer, and to commercialize the property. Any of these rights, however, are subject to modification by the owner of the property.

- **Discussion:** Do you associate property with physical possession or with the rights in something? Do you think the right to exclude others should be the defining characteristic of property?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/ownership-in-the-context-of-property-rights/>

### 2. What is the role of government with regard to individual ownership of property?

The government establishes laws concerning property. More specifically, ownership of property depends upon legal recognition of ownership rights. The government establishes and enforces property ownership through a formalized system for recording and put others on notice of those rights. Without government recognition and enforcement of property rights, ownership would be synonymous with possession or control of the property.

- **Discussion:** Do you agree that an individual only has ownership in something to the extent that the government (the law) recognizes that individual's rights? Are you concerned by any requirements that the government puts in place to establish ownership?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/role-of-government-in-property/>

### 3. How are property rights linked to economic activity?

#### *Property as an Incentive*

The ability to possess property for one's benefit and to the exclusion of others has long been understood as a desire or want of individuals. Research has shown that individuals will expend effort to acquire resources that meets a need or want. Providing a system whereby individuals may acquire property incentivizes individuals to work toward that end. That is, people will expend effort to acquire property if they have the knowledge that they will be able to retain that property for their personal use, without the threat of forfeiting the property to others. Individuals will undertake work that they were not otherwise

willing to undertake in the absence of acquiring new property. Some individuals are willing to work longer and harder as a result of the amount of property they are able to acquire as a result of their efforts. This tendency often results in greater efficiency in effort and overall economic productivity.

- **Discussion:** Do you believe that ownership rights in property have a positive or negative effect on individual productivity? Why or why not? If yes, are there any negative effects of the incentives created by property rights? Are there any disincentives associated with property rights?
- **Practice Question:**

### Capital Formation

Property rights allows individuals to possess and demonstrate the result of their efforts. Individuals are then able to employ that property toward creating additional property. That is, individuals can use their acquired property (or provide it for others) with the intention of generating more property. For example, Abe's ownership of property allows him employ the services of Bob in exchange for providing Bob with a form of property. Bob's effort generates additional property for Abe, which Abe can use for the creation of additional property. In furtherance of capital formation, the nature of property allows ownership of any resource to be divided among individuals. As such, individuals can employ their resources collectively in the creation of new property.

- **Discussion:** Can you think of any other examples of how ownership rights allow individuals to accumulate or grow economic value or wealth?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/property-and-economic-prosperity/>

## 4. How do individuals acquire an ownership interest in property?

### Accession

Accession refers to additions to existing property to modify it. Accession is very similar to creation of something new. That is, if you add something to raw materials, you own the product that make from the raw material. For example, I build something with lumber that is not mine. I used property that was not mine, so I am liable for the value of the lumber. But, I own the product of my labor (the tree house). Of course, in my situation, the person may be able to file a legal claim against you if you don't pay.

- **Discussion:** Do you believe that something created from raw materials should be considered new property? In the business context, should ownership rights in newly created property vest in the owner of the raw materials?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/acquiring-property-through-accession/>

### Acquiring Resources Through Possession

- **Rule of First Possession** - The first person to reduce previously un-owned things to her possession becomes its owner. In reality, there are few things that have never been possessed or owned by someone else. This rule, however, continues to exist from the time period of countries exploring and colonizing new territories. Ownership resulted from individuals staking a claim in land.

- **Discussion:** How do you feel about the principle that the first possessor of property owns it? What are the benefits of this principle? What are the negative aspects of the principle?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/acquiring-property-the-rule-of-first-possession/>

- **Lost, Mislaid & Abandoned Items** - Things that are “lost” may also acquire a new owner through possession. Most states have a statutory procedure in place for establishing ownership rights in lost property. These statutes generally require that the lost property be advertised for a period of time in an effort to notify the original owner. If, however, the original owner fails to claim the lost item, ownership rights vest in the individual who found the item. The purpose of such statutes is to avoid the situation where no one owns or makes beneficial use of lost items. Without following this procedure, the finder of the lost property obtains limited ownership rights through possession, which are always subject to challenge by the original owner. “Mislaid” items are items left behind by an individual. It commonly arises when someone leave clothing or accessories behind in a store or restaurant. The owner of the location where the items were left becomes the guardian of the property until it is retrieved. After a reasonable amount of time without the owner coming to claim the item, the guardian of the property may follow the statutory procedure to establish ownership rights. In the absence of following a procedure to establish ownership, the holder has limited ownership rights simply by possession. Mislaid or lost property may be deemed “abandoned”. If the finder of a mislaid or lost item determines that it is abandoned, she may retain the item and claim ownership. The key attribute is that the original owner must demonstrate “an unequivocal intent to abandon the property”. Intent can be inferred from conduct, such as stopping looking for it, permanently leaving the geographic area, etc.

- **Discussion:** Do you agree with this treatment of lost or mislaid items? Why or why not? What would be an alternative approach to dealing with ownership rights in lost or mislaid property?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/laws-for-lost-mislaid-and-abandoned-items/>

- **Adverse Possession** - This is a situation where someone legally gains ownership or title to someone else’s property by wrongfully using that person’s land. There are several elements for adverse possession:
  - **Open** - The individual(s) claiming possession must be open about their claim of ownership. Hiding or squatting on land intentionally out of site of others will not qualify

as an open claim of ownership. Openness is generally characterizing as living upon or using the land as an owner would.

- **Notorious** - The individual's presence on the land must be known by others. This is closely related to openness. If others are aware that a person is claiming ownership of the land, it serves to substantiate all other elements of adverse possession statutes or common laws.
- **Actual** - The claim of ownership of the land must be actual, rather than nominal. Simply claiming or voicing an ownership without physically possession or controlling the land is not sufficient. It requires the person to assert their ownership rights through use.
- **Exclusive** - The claim of ownership must be to the exclusion of others. As previously defined, property is something held or possessed to the exclusion of others. The individuals claiming ownership must seek to exclude others from claiming those same ownership rights. This can thwart community squatting efforts if not done or undertaken in uniformity by all squatters.
- **Continuous** - The claim of ownership must be continuous throughout the entire period of adverse possession. Breaks in periods of claimed ownership stop the statutory period from running and starts it over when ownership rights are claimed again.
- **Wrongful** - The individual claiming ownership cannot have the permission or legal right to use the land. If an individual has the legal right (such as through a rental contract) to be on the land, then it is not wrongful.
- **Statutory Period** - Each jurisdiction with an adverse possession statute requires that adverse possession take place for a prescribed, statutory period. The statutory period may range from 7 - 20 years in a jurisdiction. The time period may also vary depending upon the nature of the ownership interest claimed in the land. For example, claiming an easement interest in land may require use for a shorter or longer period than claiming fee simple ownership of the property.

This law seeks to promote beneficial use and ownership of property. If property lays dormant for a period that is sufficient to allow for adverse possession, it is not being beneficially used. This harms economic productivity and is contrary to the public good.

- **Discussion:** What do you think about this law? Is it fair? Should someone be able to acquire legal ownership of someone else's property without their consent? Are you convinced by the government's justification for this law? Is there any way you would alter the law to make it more fair?
- **Practice Question:**
- **Resource Videos:** <http://thebusinessprofessor.com/adverse-possession-explained/>

### 5. How is an ownership interest transferred between individuals?

- **Contracts** - Contract law provides rules under which people agree to exchange value. Contracts, express and implied, are the dominant manner by which individuals exchange real and personal property. Contract law is a staple of a developed rule of law system. Enforceable contract rights

provide confidence in undertaking economic activity with others. Increased confidence drives economic productivity.

- **Discussion:** Do you believe that contract law has an effect on economic activity? Why or why not? If so, what is the effect and why?
  - **Practice Question:**
  - **Resource Video:** <http://thebusinessprofessor.com/acquiring-property-through-contract/>
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- **Acquiring Resources through Gift** - A gift is a transfer of ownership from one party to another without the elements to establish an enforceable contract. A gift may, however, transfer ownership of property. The gift normally transfers ownership at the time that the owner expresses intent to transfer the property and physically surrenders the property to someone else. Note, the individual receiving the gift must act to accept the gift to make the transfer final. Take the example of a testamentary gift (one that is made through a will or other testamentary document). The will expresses the donative Intent necessary for a gift. An executor or personal representative may be charged with delivering the property in accordance with the deceased's intent. Lastly, the recipient of the inheritance must accept the inheritance. If the intended recipient rejects the inheritance, there is no enforceable transfer of property.
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- **Discussion:** What is your opinion regarding the transfer for property by gift? Should a gift be enforceable under the law? If so, at what point should the gift or intended gift be enforceable?
  - **Practice Question:**
  - **Resource Video:** <http://thebusinessprofessor.com/acquiring-ownership-rights-through-gift/>
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- **Confusion** – In some cases, individuals will combine their property in ways that makes their original property indistinguishable from others. For example, think of farmers placing their grain collectively in storage silos. In such a case, the individuals contributing property retain ownership of an amount of property equal to their original contribution. In a way, this is a transfer of property between individuals.

- **Discussion:** Can you think of other situations where combined property of multiple individuals can become indistinguishable? Are there any situations in which confusion of combined property could detriment one or more of the property owners?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/acquiring-property-rights-through-confusion/>

### OWNERSHIP INTERESTS IN REAL PROPERTY

## 11. How do individuals establish and document an ownership interest in real property?

Interests in real property are subject to an instrument of title. That is, interests in real property are established in a deed. A deed is the primary manner of establishing ownership and transferring an interest in land. The deed contains a precise legal description of the land, specifying the exact location and boundaries according to a mapping or surveying system. Some types of property interest, such as an easement, can be created through a legal document other than a deed; but, a deed is required to transfer ownership of the property. There are two major types of property deeds:

- **Quitclaim Deed** - A deed that purports to transfer any ownership that an individual has in property.
- **Warranty Deed** - A deed that purports to transfer any ownership that an individual has in property and also warrants that an individual has a given level of ownership.

The quitclaim is commonly used when the seller of an ownership interest is not completely certain about the extent of her rights in the property. A warranty deed is used when the seller is certain about her ownership interest and wants to convey that certainty to the purchaser.

- **Discussion:** Why do you think that the law requires a special legal document to transfer an ownership interest in land? Why do you think a simple contract to transfer land insufficient to transfer ownership?
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/deeds-and-transfer-of-interest-in-real-property/>

## 6. What is a fee simple interest in real property?

Fee simple is the term used to represent the maximum ownership interest in real property that is allowed under law. It can be referred to as complete ownership. A fee simple owner has full legal rights and powers to possess, use, and transfer the land. There are, however, certain limitations that can be placed on fee simple ownership, including:

- **Fee Simple Absolute** – A fee simple absolute means that all interests in the property are transferred. There is no limitation or conditions attached to the transfer.
- **Fee Simple Defeasible** – A fee simple defeasible means that a condition (or multiple conditions) is attached to a transfer of the property. This means that if a certain event occurs then the transfer is undone and the property either reverts back to the original owner or to a third party. For example, Tom transfers property to Ann under the condition that it always be used for residential purposes. If the land is ever used for anything other than residential purposes, it reverts back to Tom (or his heirs).
  - Note: The rights retained by the transferor of a fee simple defeasible or a designated third party is discussed below in the context of a life estate.

The fee simple absolute divests any interest in the owner of the property at the time of transfer to another. A fee simple defeasible either reserves rights in the transferor or some third party in the event the property is forfeited. These characteristics of a fee simple interest are important tools for individuals when

determining the extent of property interest to transfer.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/fee-simple-defined/>

### 7. What is a life estate interest in real property?

A **life estate** is a temporary transfer of ownership interest. The transfer is good for the life of the transferee or some other third-party identified in the deed of transfer. For example, Beth transfers property to Carl for the rest of his life. At the end of his life, the property reverts back to Beth or her heirs.

- **Reversion** – Land reverts back to the original owner who has a reversion interest.
- **Remainder** – The person to who the property returns has a remainder interest.

The holder of a life estate in real estate has the ability to fully use and enjoy the property. The holder cannot, however, cause extraordinary changes to the property or knowingly deplete the property of non-renewable resources (such as digging up minerals). The holder may build new structures or cut timber from the land. Any improvements to the land revert along with the property at the end of the life estate.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/life-estate-defined/>

### 8. What is a **leasehold estate interest** in real property?

A leasehold estate, commonly called a lease, is the property rights granted to a tenant by a landlord. The lessor has limited rights similar to that of an owner, but for a limited term. The renter cannot materially change the property without the landlord's consent. Any material changes to the property (such as installation of fixtures) becomes the property of the landlord upon termination of the lease.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/leasehold-interest-in-real-property/>

### 9. What types of co-ownership interests exist in property?

It is very common for individuals to own property together. This can be the case between individuals (such as within family members) or between businesses. The most common forms of co-ownership of property are as follows:



- **Joint Tenancy** – Means the people own an undivided interest equally. Generally, when one tenant passes away the other acquires his/her ownership interest.
- **Tenancy in Common** – Can on different shares and it is generally divisible.

- **Practice Question:**

- **Resource Video:** <http://thebusinessprofessor.com/joint-tenancy-tenancy-in-common-explained/>

- **Community Property vs. Separate Property** – Community property jurisdiction vs Equitable Distribution Jurisdiction

- **Discussion:**

- **Practice Question:**

- **Resource Video:**

## 10. What is an easement interest in real property?

An easement is a limited interest in property. It involves a particular right to use the subject property in a particular manner, but does not create a right to possess the property. Generally, the easement rights exists at the same time as the rights of other property interest holders. For example, an easement commonly grants the right to cross or use someone else's land for ingress and egress. This is known as a "right of way". An easement may arise by a number of methods, as follows:

- **Express Easement** - An express easement is an easement intentionally granted to another person. It generally arises pursuant to a deed, contract, or testamentary document.
- **Affirmative & Negative easements** – An affirmative easement grants an individual the right to do something on the subject property. A negative easement, on the other hand, restricts an individual from using their land in a certain way. Generally, it arises pursuant to a transfer of land whereby the original owner does not want the land used in a specific manner. For example, Brad owns two pieces of land that are side by side. He sells one of the pieces of land to Teri. He establishes a negative easement in the land at the time of transfer that states that the land cannot be used in a certain manner.
- **Appurtenant & In-Gross Easement** - The easement may attach to the land or it may belong specifically to the person. An "**easement in gross**" is an easement that allows an individual to use the subject land. The easement does not attach to the land, rather it is a right held by an individual. In this way the easement in gross is similar to a license. For example, Sally may grant an easement to Victor that allows him to cross her land at a specific location. The easement states the the right belongs to Victor and does not attach to the property. Sally can determine whether Victor can transfer the easement to another person, but it is personally owned. An "**easement appurtenant**" is an easement that attaches to or is a part of the land, rather than owned by an individual. The easement will remain with the property, no matter who owns the property. For example, Sally may establish the easement in the land allowing Victor or the public to travel over

the land.”

- *Natural Easement* (Easement by Necessity) – A natural easement arises when it is necessary for an individual or the public to make use of land located near the property subject to the Easement. For example, Will owns land located behind Gloria’s land. The only way that Will can access his land from the public highway is to cross Gloria’s land. Will may be able to bring a court action establishing a natural easement allowing him to cross Gloria’s land at a specific point. The justification for the grant of easement is that without it, Will cannot use or enjoy his property.
- *Easement by Prescription (Adverse possession)* – An easement by prescription is obtained by adverse possession (described above). An individual who wrongfully uses someone else’s land under the conditions required for adverse possession may pursue a court action to establish ownership in the property. For example, Winston drives cattle across Mary’s property every year for 20 years (the applicable state’s statutory period). He did so openly claiming the right to do so; it was known to others; it was done every year; and it was done without the permission and against the Mary’s wishes. When Mary finally tries to put up a fence to stop Winston from driving cattle, he brings a court action to establish an easement by prescription.

- *Discussion:*

- *Practice Question:*

- *Resource Video:* <http://thebusinessprofessor.com/easements-explained/>

- *Resource Video:* <http://thebusinessprofessor.com/easement-or-right-of-way-in-real-property/>

### 13. What is a license of real or personal property?

A license is a grant of the right to use real or personal property. It is not a true property interest. A license on real property will be limited to a particular holder and it will have a definite (limited) term. Because it allows for use (without possession) of real property, it is similar to an easement in gross.

- *Discussion:*

- *Practice Question:*

- *Resource Video:* <http://thebusinessprofessor.com/what-is-a-license-of-real-property/>

### 14. What is a bailment?

A bailment is a situation where the owner of personal property gives the property to another person to hold or do something specific with it. The owner of the property is called the “**bailor**” and the person receiving the property is called the “**bailee**”. A bailment can be express (pursuant to agreement by the bailor and bailee) or implied (simply a result of the parties’ conduct). To illustrate an express bailment, Alex gives his car to Brandi to sell. Brandi will receive a commission for selling the car. Until the car is sold, the situation is a bailment. Brandi is the bailee holding the property with the specific purpose of selling it for Alex. Another common form of express bailment is shipping a package through the public or private delivery service. The package is held by the common carrier is a bailment. To illustrate an implied bailment, Gary accidentally leaves his computer at Dina’s house. Dina leaves Gary a message to let him

know he left it and that she will hold on to it until he can pick it up. In this situation, an implied bailment is created. Dina is holding the computer for Gary with the expectation that she return it whenever he comes to get it.

- **Discussion:**
- **Practice Question:**
- **Resource Video:** <http://thebusinessprofessor.com/bailment-defined/>

### 16. What is a unilateral benefit and mutual benefit bailment?

A bailment can be made to benefit either party or both parties.

- **Unilateral Benefit Bailment** - A unilateral benefit bailment is a situation where either the bailor or the bailee receives a benefit from the bailment, while the other party does not. This situation may arise as a gift or favor by one party to the other. For example, Sam agrees to look after Judy's car while she is on vacation. This is a unilateral benefit bailment in favor of Judy (the bailor). If Judy later loans her car to Sam for him to drive while his car is being repaired, this is a unilateral benefit bailment in favor of Sam (the bailee).
- **Mutual Benefit Bailment** - A mutual-benefit bailment provides a benefit to the bailor and bailee. Generally, a mutual benefit bailment is pursuant to an enforceable contract, as there is an exchange of value that is the impetus of the relationship. For example, Ralph agrees to fix Laura's chainsaw if he can use it to cut up some trees that fell on his property. This is an enforceable contract. Since the contract involves Ralph holding Sandra's property and returning it at some point in the future, the relationship constitutes a mutual-benefit bailment. Any situation where the bailee is paid to hold or dispose of the property is a mutual-benefit bailment. In business, most bailments are mutual benefit.

**Rights** - The bailor and bailee have specific rights in the bailment relationship.

- **Bailor Rights** - The bailor generally has the right to receive return of the property (or any proceeds derived from disposing of the property).
- **Bailee Rights** - The bailee generally has the right to possess the bailed item, the right to use bailed property (unless otherwise limited in the bailment agreement), the right of compensation (if provided for in the bailment agreement), and may have the right to limited liability arising from the bailee carrying out her duties.

**Duties** - The bailor and bailee owe specific duties to each other in the bailment relationship.

- **Bailor Duties** - In a unilateral-benefit bailment, the bailor must reveal any defects in the bailed item and warrants that there are no defects in the bailed object that could have been discovered through reasonable inspection.
- **Bailee Duties** - Bailee has an absolute duty to return the object to the bailor or to dispose of it as the bailor directs. The Bailee is potentially liable to the bailor for failing to do so.

**Standard of Care in Duties** - The bailor and bailee owe duties of care to each other in the bailment relationship.

- *Bailor* - The bailor must take reasonable care to protect the bailee from known risk in the bailment.
- *Bailee* - The bailee's duty of care in the bailment relationship depends upon the nature of the bailment. In a mutual benefit bailment, the bailee generally must exercise reasonable care in taking care of the object. If the bailment is a unilateral benefit for the bailee, then the bailee owes a higher standard of care in carrying out her bailment duties. This could mean exercising exception care in carrying out one's duties. The standard of care is lower if the bailment is a unilateral benefit for the bailor. This could mean that the bailee avoid recklessness in carrying out her duties.

Numerous special bailment relationships exist that may entail higher levels of care for the bailee. For example, some jurisdiction make common carriers strictly liable for any damages to the bailed property. The bailee may have limited rights to disclaim some level of liability. Further, some jurisdictions hold hotels and motels to strict liability for losses to property held as part of the business-client relationship (such as goods stolen from the hotel room).

- *Discussion:*
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/unilateral-and-mutual-benefit-bailments/>

### LIMITATIONS ON PROPERTY RIGHTS

#### 17. How are property ownership rights limited?

The US and State Constitutions protect individual's ownership rights in property. The concept of property allows the owner to exclude others from possessing or using that property. Nonetheless, laws may prohibit when and how a person can use her property. In general, owners are prohibited from using their resources in ways that harms or injures others. The federal government uses its power to regulate interstate commerce to those intrastate to make regulations to protect its citizens. State and locals government regulate the use of property under its police power to protect the health, safety, morals, and general welfare of its citizens.

- *Discussion:*
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/how-are-property-and-ownership-rights-limited/>

#### 18. What is Nuisance?

Nuisance is the use of one's property to create a substantial, unreasonable interference with the use or enjoyment of another person's property.

- *Public Nuisance* - Public nuisance arises from use of land that causes a substantial interference with the use and enjoyment of the property of the public at large. For example, pollution from a

factory that affects an entire neighborhood or town may constitute a public nuisance.

- *Private Nuisance* - Private nuisance arises when a person uses her property to substantially interfere with the use and enjoyment of another person's property. For example, allowing your dog to bark and disturb your neighbor could constitute a private nuisance.

- *Discussion:*
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/nuisance-explained/>

### 19. What is Zoning?

Zoning refers to local (city or county) ordinances controlling how property within specific areas can be used. Zoning ordinances generally divide areas of counties or municipalities into districts designated for residential, commercial, or industrial use. The local government will sanction anyone using their property in violation of the ordinance. If the land was being used in a certain manner prior to the passage of the ordinance, the user may receive a non-conforming use exemption from the ordinance. Land owners who desires to use their land in a manner disallows by the ordinance may seek an exemption or variance. This generally requires petitioning the local zoning board or council and submitting the proposal for public comment.

- *Discussion:*
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/zoning-ordinances-explained/>

### 20. What is Eminent Domain?

Eminent domain is the legal term for the power granted local, state, and federal governments under the Takings Clause of the 5<sup>th</sup> Amendment. This clause allows the government to take away property from private owners under certain conditions. Generally, the taking must be for a "public purpose" and the government must provide "just compensation" to the landowner for the taking. A taking refers to a physical seizure of the land as well as unduly burdening an individual's use and enjoyment of their property. For example, if the state builds a highway that bring traffic into someone's front yard, this would likely be a taking. The individual's ability to use and enjoy their property is diminished by proximity of the traffic. An owner whose land is being taken may challenge the action in civil court. Generally, the landowner must show that the taking is not for a public purpose or that she was not given just compensation.

- *Discussion:*
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/eminent-domain-explained/>

## 21. What is Taxation on personal and real property?

Property taxes are form of direct tax on the real and personal property individuals own. Property taxes (primarily on real estate) often fund local schools, police, and county administration. A common tax on personal property is a tax on the value of one's personal vehicle, commonly known as "ad valorem" taxes.

- *Discussion:*
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/taxation-of-real-and-personal-property/>