Property

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Introduction

Definition: Property consists of legally protected rights and interests a person has in anything with an ascertainable value that is subject to ownership.

Difference Between Real and Personal Property

Ownership rights available for each type of property
International Views Re: Property

- Not every culture has the same views of property as the Euroamerican culture.
- In some cultures (e.g., socialist or communist states, tribal communities), individuals cannot own property because property is owned collectively “for the people” with mere use or possessory interests permitted.
- We discuss a distinctly Western view.
Property Classification

- Property classified as *real* or *personal*
  - *Real property* includes land & everything permanently attached to or under it.
  - *Personal property* is tangible (things) or intangible (stocks, intellectual property).
Nature of Real Property

Real property is immovable and includes:
- Land
- Buildings
- Trees and vegetation
- Airspace
- Subsurface rights
- Fixtures
What are the different types of property?

Ammoco plant, Texas City, Texas, home to 40,000 people and 2 Superfund sites. Photo: Sam Kittner, Greenpeace, 1990.
Ownership Interests in Real Property

Ownership interests are Possessory or Non-Possessory

- A Possessory interest (fee simple, life or leasehold estate) gives the owner a right to possess the land.
- A Nonpossessory interest (easement, profit or license) does not give the owner a right to possess the land.
Limits on Real Property

- Rights in property constrained by federal & state laws (nuisance, tax, environmental)
- **Eminent Domain**: 5th amendment gives gov’t the right to “take” private land for public use with just compensation
- **Zoning** is State’s power to control land use without having to compensate owner
- **Restrictive covenants** limit how land owners may use property
- **Environmental and Contract Law** constrain use of land
Restrictive Covenants

Real estate owners may create agreements that restrict use of real property called *restrictive covenants*

- Covenants “run with the land” and bind subsequent owners of the property
- Enforceability of covenants depends on purpose, nature, scope of restrictions
The Fifth Amendment guarantees that private property shall not be taken for public use without “just compensation.”

The key is “just compensation.”

Rule implies the government has power of eminent domain to effect the taking.

Eminent domain is controversial.
Kelo v. City of New London

**Facts:**

- New London in serious economic decline
- City authorized private developer to “rejuvenate” an area that included 115 private properties
  - Most properties in good condition
- Interestingly, nearby Pfizer Pharmaceutical also wanted Fort Trumbull to become a more upscale accessory

↔ Typical Ft Trumbull house and map ➔
Kelo v. City of New London

**Facts:**

- Developer negotiated purchase of most properties, but some homeowners had been there many years, liked their homes with water views, and would not sell.
Kelo v. City of New London

Procedural History:

- City brought a “condemnation” action under the power of eminent domain and plaintiffs brought suit claiming the taking of their properties for private development was not a “public use”
- Trial court granted permanent restraining order prohibiting the taking of properties for one area but not another and both sides appealed to state supreme court which held all takings valid
- Case appealed to U.S. Supreme Court
**Issue & Reasoning:**

“Two polar propositions are perfectly clear” – general rule is that taking from private party for another private party is unconstitutional, but equally clear that transferring property from one private party to another is valid if future “use by the public” intended.
Kelo v. City of New London

Issue & Legal Reasoning:

“The disposition of this case therefore turns on the question whether the City’s development plan serves a ‘public purpose.’ ...defined broadly...“

Holding:

“The City has carefully formulated an economic development plan...To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development.....Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment.”
Kelo v. City of New London

*Holding*: Affirmed in favor of the City

Ft. Trumbull today
Implied Warranty of Habitability

Most states impose an implied warranty of habitability on a builder or seller of a residence. Essentially a guarantee that the home contains adequate materials and good workmanship. Warranty extends for reasonable time. Applies to a lease.

Residents of rat-infested apartment & Cal-Northridge apartment building after earthquake.
**Leasehold Estates**

- A real property owner (lessor/grantor) agrees to convey right to possess and use property to another (lessee/grantee) for a limited time
  - Lease, easement, license
  - Lease must be in writing to satisfy Statute of Frauds
- Lease Types: tenancy for years (periodic), tenancy at will, tenancy at sufferance
Tenant Rights & Obligations

- Tenant has the duty to pay rent in timely manner
  - Landlord may evict for failure to pay rent

- Tenant has duties: to use premises for proper purposes, not to damage premises, and not to disturb other tenants

- If landlord breaches a duty, in some states the tenant can withhold rent or repair and deduct cost from rent
  - In all states, tenant may sue for damages
  - Tenants generally have duty to mitigate damages
Assignments

- Tenant may or may not have contractual right to assign (sublease) the premises
  - Generally, even if the contract requires that tenant obtain landlord’s permission prior to assignment, landlord may not unreasonably withhold permission

- As with other assignments, original tenant (sublessor) has ultimate obligations under the lease for new tenant’s (sublessee) conduct (unless new lease created)
Duties of Lessor/Landlord

- Duty to deliver possession of the premises at the beginning of the lease term, duty to maintain premises in habitable condition, and duty to return security deposit at end of tenancy.

- Tenants have the implied right to quiet enjoyment, or right to use the property in accordance with the lease and without interference of the landlord.

  Sometimes this puts a burden on landlord to ensure that other tenants do not interfere with quiet enjoyment.
Eviction

- **Actual eviction:** if a landlord prevents the tenant from possession, landlord has evicted the tenant.

- **Constructive eviction:** if premises are not habitable or substantially interferes with tenant’s possession, landlord has constructively evicted the tenant.
  - Tenant may have right to claim for damages if landlord’s conduct is wrongful (e.g., breach of warranty of habitability).
  - If tenant claims constructive eviction, tenant must GET OUT!
  - Example: landlord has contractual duty to repair but if landlord fails to repair leaking roof and premises become uninhabitable, tenant must get out.
Home Rentals Corp. v. Curtis

- HRC leased single family house to students under written lease; in good condition at lease signing
- Later, when students arrived for tenancy, house in terrible condition; students refused to live in it
- HRC sued students; students counterclaimed
- Court held for students – Why?
- How could this problem have been avoided?
A tenant generally is liable for injuries occurring within the premises tenant is leasing.

Generally, a landlord is liable for:
- Injuries occurring within common areas
- Injuries resulting from landlord’s negligent repairs
- Injuries due to latent defects landlord knew about

In most states, a landlord must use reasonable care to maintain safe premises and is liable for foreseeable harm.

Beware: commercial leases may have exculpatory clauses protecting landlord from liability if harm occurs.
Non-Possessory Interest - Easement

- **Easement** is right of a person to make limited use of another person's real property without taking anything from the property
  - Generally stated in a written contract for sale of land

Example: Fred’s land has no access to roadway except to cross Robert’s land. Fred has an easement of necessity. If a road is constructed so Fred has direct access to the road from his land, he no longer has easement of necessity
  - Robert can restrict Fred’s access across his land
  - Fred & Robert could contract so Fred could continue to use the easement
Non-Possessory Interests

- **Profit** is right to go onto land in possession of another and take away some part of the land itself or some product of the land.
  - Often the agreement in agriculture

- **License** is revocable right of a person to come unto another’s land without removing anything from the land.
  - Everyday issue in business operations
Non-Possessory Interests

The tenant who planted cotton crop has a profit.
The combine crew has a license to pick cotton.
License Compared With Invitee

- Nguyen’s Fabrics sells fabric and invites customers to come into the store to shop, thus customers are invitees.
- UPS delivers fabric shipments to Nguyen’s, but UPS is a licensee rather than an invitee.
Licensee, Invitee, Trespasser

- Robert has an abandoned well on his land.
- Robert has *no duty to warn a trespasser* about the site, but cannot actively harm trespasser.
- Robert has *duty to warn a licensee*, but no duty to actively protect licensee.
- Robert has *duty to warn and protect invitees* (e.g., buyers) about danger.
Real Property Situation #1

- Bob sells land to Betty under written sales contract; Betty receives the deed.
- Land is sold with an easement (restrictive covenant) for telephone lines (utility easement) and is zoned for residential use.
- Betty’s will states that her estate, including land, transfers to Jim upon her death.
- Betty dies; Jim is now the owner.
- Can Jim build a gas station?
Real Property Situation #2

- Bob leases mall space to Betty for gift shop
  - Must both parties sign a written lease agreement?
- Betty ships merchandise via FedEx.
  - What are the FedEx employees?
  - If Bob doesn’t like FedEx, can he prevent the FedEx people from entering the property?
- Can Betty add a tea shop to her gift shop?
Personal Property is your “stuff”
Unique Aspects of Personal Property

- Fixtures
- Bailments
Fixtures

- Personal property that is permanently affixed to real property transforms into real property itself
- Intent that it become a fixture is necessary
- Intent is determined by:
  - Fact that the property cannot be removed without causing damage to the realty
  - Fact that the property is so adapted to the realty that it has become part of the realty
Example: *Droney v. Droney*

Mary and John Droney bought land and put mobile home on the property. They: (1) removed wheels & bolted it to concrete pilings, (2) hooked up water, electric, and septic, (3) attached gutters and downspouts, (4) attached new siding, and (5) attached a 2,000 lb. stone fireplace.

They registered mobile home with Motor Vehicle Admin., listing both parties as owners.
Example: *Droney v. Droney*

- They divorced. Mary gave John the land, but claimed the mobile home under theory it was personal property, not real property.
- Trial court ordered Mary to convey home to John
- Why was it real and not personal property?
Trade Fixtures

- Those fixtures installed for *commercial* purposes by a tenant
- They remain property of the tenant and can be removed when tenant leaves, repairing any damage caused by removal
- Example: walk-in cooler, deli cases

  e.g., display units at Blockbuster
Bailment

- Bailment: rightful possession of goods by one who is not the owner
- Formed by the delivery of personal property, without transfer of title, by one person (Bailor) to another (Bailee), usually under an express or implied agreement for a particular purpose
- Property must be returned by Bailee to Bailor, or a third party as directed by Bailor, in the same or better condition
Typical Bailments

- Valet Parking (driver is bailor, hotel is bailee)
- Rental cars (Hertz is bailor, driver is bailee)
- Auto Repair (owner is bailor, Ford is bailee)
- Friend who borrows car or book (owner-bailor, borrower-bailee)
- Airport security checkpoints
  - *Gin v. Wackenhut* case
Park ‘N Go v. U.S. Fidelity...

- Suit between insurer and insured
- Issue: were cars in Park ‘N Go lot bailed?
- Court: Park ‘N Go “exercised complete dominion over the vehicles,” thus bailment
  - Mere fact of disclaimer or owner taking keys not enough to overcome presumption
- Result: insurance coverage ltd to $250,000
- Should Park ‘N Go have purchased the $1M policy with the exclusion for bailments?
Detroit Inst. of Arts v. Rose and Smith

**Facts:**

- Rose had possession of Howdy-Doody puppet after show ended in 1960.
- Rose negotiated with NBC in 1965 for payment of storage fees in return for his agreement to deliver puppet “eventually” to Detroit Institute of Arts.
- 1970, Rose sent puppet to Buffalo Bob (show’s host) and told him about the agreement to deliver puppet to the DIA.
Detroit Inst. of Arts v. Rose and Smith

**Facts:**

- 1992, Buffalo Bob’s attorney contacted Rose’s widow, NBC, and DIA requesting they allow him to sell the puppet; NBC and DIA refused.
- 1998, Buffalo Bob and Rose’s son made agreement to sell the puppet and split proceeds 50/50.
- Buffalo Bob died and DIA brought suit to prevent Rose family from selling puppet and to regain possession.
Detroit Inst. of Arts v. Rose and Smith

**Issue and Holding:**

- **Issue:** Did 1970 letter create a bailment?
- **Language of Rufus Rose’s bailment letter is clear:** bailment was express, and Buffalo Bob, as bailee, was bound to deal with Howdy Doody according to instructions of Rufus Rose, the bailor.
- **Judgment for DIA**
Duty of Care Re: Bailments

- Bailment for sole benefit of Bailor is:
  - Gratuitous Bailment. Bailee must use only slight care; liable only for gross negligence

- Bailment for sole benefit of Bailee:
  - Bailee owes Bailor extraordinary care and is liable for even slight negligence

- Mutual Benefit Bailment: most common.
  - Each party owes the other a reasonable duty of care (ordinary care)
Special Bailments - Carriers

- *Common Carriers* are strictly liable for damages except if damages caused by:
  - Act of God, act of public enemy, order of public authority, act of shipper, inherent nature of goods
Special Types of Bailments

- Documents of Title (e.g., bill of lading)
  - Negotiable instrument particularly important to common carriers
    - Possessor of document entitled to receive, hold, and dispose of the document and goods it covers
    - Good faith purchaser of the document may acquire a greater right to the document and goods it covers than the transferor had
Special Bailments - Warehouses

- Owe duty of reasonable care
- Can’t exculpate completely, but can limit liability
Special Bailments - Innkeepers

- Duty of strict liability, modified by state laws that vary in scope & procedure
  - if innkeeper provides in-room safe and notifies guests to use safe, innkeepers reduce liability
- If parking area provided and innkeeper accepts bailment, innkeeper may be liable

←capsule hotel in Japan
Typical luxury hotel room→
Test Your Knowledge

- True=A, False = B

For his two dogs, Brett built a dog kennel and run of wood posts and wire fencing behind his house. When Brett sells his house, the kennel is a fixture that has become real property.

Carol opened a restaurant in an empty leased space in the food court of City Shopping Center. Carol equipped space with ovens, shelving, glass cases, and refrigerators. When Carol’s lease is over, Carol must leave the ovens and refrigerators.
Test Your Knowledge

\textbf{True} = A, \textbf{False} = B

- Sheila has a drainage ditch behind her house that is described in the written deed. Sheila is not permitted to alter the ditch in any way, the ditch is an easement.

- The \textit{implied warranty of habitability} guarantees that a house has no hidden defects rendering it unsafe or unsuitable for human habitation.
Chris slipped on a tomato that had fallen on the floor in the grocery store’s produce section. If Chris sues the store, what type of law will apply?

- (a) Tort law
- (b) Premises liability law
- (c) Breach of contract
- (d) Both A and B
- (e) All of the above
Newton owned 500 acres and leased 300 to Kevin for farming beans. When Kevin is working the 300 acres he leased, he is:

- (a) an invitee with the right to take the bean crop as a license
- (b) a lessor with the right to work the bean crop for the benefit of Newton
- (c) a licensee with the right to take the bean crop as a profit
- (e) none of the above
Next: Intellectual Property