CONTENTS

List of figures xi List of contributors xii	
Introduction 1	
YUN-CHIEN CHANG	
I Foundation 7Ownership and possession 9	
THOMAS W. MERRILL 1. Introduction 9	
2. How possession differs from ownership 11	
3. The law protects possession independently of ownership	18
4. Previous explanations for legal protection of possession5. Possession in the material world 24	20
6. Possession, ownership, and information costs 27	
7. The interaction of ownership and possession 34 Conclusion 37	1
The law is nine-tenths of possession: an adage turn on its head 40	ed
CAROL M. ROSE	
1. Introduction 40	
2. Theorists and jurists 41	
3. Possession as a legal concept 49	
4. The independent normative claims of acting like an owner	55
5. Adverse possession revisited: the claim of right Conclusion 60	
The elements of possession 65	
HENRY E. SMITH	
1. Introduction 65	

1

2

3

	 Possession and the basic conventions of property The generalization of possession The persistence of possession Conclusion 	
4	The economy of concept and possession 103	
	 YUN-CHIEN CHANG Introduction 103 The nature of possessory rights 108 Possession as a basis for acquiring or relinquishing titles Possession as a fact 117 Conclusion 124 	113
5	What behavioral studies can teach jurists about possession and vice versa 128 DAPHNA LEWINSOHN-ZAMIR 1. Introduction 128 2. Nonphysical possession 130 3. Possession versus ownership 136 Conclusion 142	
6	The possession heuristic 149 JAMES KRIER AND CHRISTOPHER SERKIN 1. Introduction 149 2. Evolution and the possession heuristic 150 3. Possession, priority, and ownership 152 4. Applications, problems, and fixes 154 5. Possession and property 168	
7	Dividing possessory rights 175 DANIEL B. KELLY 1. Introduction 175 2. Types of division 179 3. Private incentive to divide may be suboptimal 182 4. Private incentive to divide may be excessive 186 5. Theories justifying restrictions on division 191 6. Applications 198 Conclusion 201	

8	The titling role of possession 207
	 A general theory of impersonal exchange 207 Hypotheses on reliance on possession as evidence for titling 212 The informational value of physical possession in commercial exchange 216 The informational value of possession in real property exchange 220 The informational value of documentary possession 226
9	Possession and licenses: the FCC, weak spectrum rights, and the LightSquared debacle 237
	RICHARD A. EPSTEIN 1. Introduction: possession and ownership, then and now 237 2. Ownership and possession of land and chattels 238 3. Spectrum rights: property or license 246 4. The LightSquared debacle 254
10	Jurisdiction, choice of law, and property 266 DANIEL KLERMAN 1. Introduction 266 2. Choice of law 269 3. Jurisdiction 281 Conclusion 287
11	Small property, adverse possession, and optional law SHITONG QIAO 1. Introduction 290 2. Challenging property law through small property 291 3. Framing the question: adverse possession in Ayres' cathedral 296 4. Structuring legal entitlements for small property 302 Conclusion: an optional law approach to informal property rights 315
12	Title in the shadow of possession 320 ABRAHAM BELL 1. Introduction 320 2. Justifying the importance of possession 321 3. Possession as a valuable attribute 324 4. Different kinds of property rights 325 5. Lawful and unlawful possession 328

CONTENTS

6. Black markets 329

7. Preventing black markets in possessory assets 331

8. Custom as an analogue 332

9. Salvage as an alternative 333

Conclusion 334

Index 338