

Table of Contents

PREFACE	Page xxi
TABLE OF CASES	xxxvii

PART ONE. THE NATURE AND DIVISION OF OWNERSHIP

Chapter 1. Property, Possession and Ownership	2
1. The Concept of Property	2
A. In General	2
B. Real and Personal Property	4
C. "Legal" and "Equitable" Property	6
D. The Modern Corporation and "Productive Property"	8
E. The Emerging "New Property": Jobs, Pension Rights, and Government Largess	13
2. Possession and Ownership	21
A. Judicial Remedies for Protection of Property	21
B. Property Rights Based on Possession	24
<i>Pierson v. Post</i>	24
<i>Ganter v. Kapiloff</i>	28
<i>Favorite v. Miller</i>	33
<i>Anderson v. Gouldberg</i>	39
C. Adverse Possession	44
<i>Monroe v. Rawlings</i>	51
<i>Peters v. Juneau-Douglas Girl Scout Council</i>	56
<i>Mannillo v. Gorski</i>	63
<i>Porter v. Posey</i>	71
<i>Taffinder v. Thomas</i>	79
<i>O'Keeffe v. Snyder</i>	84
3. The Duties of Possessors: A Look at Bailment	97
<i>Peet v. Roth Hotel Co.</i>	97
<i>Allen v. Hyatt Regency—Nashville Hotel</i>	105
Chapter 2. Some Further Dimensions of Property in Land	112
1. The Right of Reasonable Use: Nuisance	112
<i>Bove v. Donner-Hanna Coke Corp.</i>	112
<i>Boomer v. Atlantic Cement Co.</i>	120
<i>Spur Industries, Inc. v. Del E. Webb Development Co.</i>	127
2. Rights Above and Below the Surface	132
<i>Edwards v. Sims</i>	132
<i>United States v. Causby</i>	139

	Page
3. Water Rights	148
A. Common Law Rights as to Streams	148
<i>Borough of Westville v. Whitney Home Builders, Inc.</i>	148
B. Common Law Rights as to Surface Water	162
<i>Pendergrast v. Aiken</i>	162
C. Underground Water	178
<i>Finley v. Teeter Stone, Inc.</i>	178
4. Lateral Support	189
<i>Puckett v. Sullivan</i>	189
 Chapter 3. Estates	 202
1. Present and Future Estates	202
A. The Theory of Estates	202
B. The Present Estates	207
(1) Fee Simple Absolute	207
(2) Defeasible Fee Estates	209
<i>Wood v. Board of County Commissioners of Fremont Coun-</i> <i>ty</i>	213
(3) Fee Tail and (Its Predecessor) The Fee Simple Condi- tional	218
(4) Life Estate	222
(5) Leasehold Estates	223
C. The Future Estates	224
(1) Reversion	225
(2) Possibility of Reverter	225
(3) Right of Entry (Power of Termination)	226
(4) Remainders	227
(a) The Distinction Between Vested Remainders and Contingent Remainders	229
(b) Kinds of Vested Remainders	234
(5) Executory Interests	239
D. Two Rules Relating to Remainders: One Dead—One Re- vived	242
(1) The Rule in Shelley's Case	242
(2) The Doctrine of Worthier Title	244
E. Estates in Personal Property	245
F. The Rule Against Perpetuities	246
G. Direct Restraints on Alienation	249
H. Protection of Future Interests	253
<i>Brokaw v. Fairchild</i>	256
I. Unproductive Property	261
<i>Baker v. Weedon</i>	262
2. Marital Estates	266
A. Marital Life Estates at Common Law	267
B. Modern Modification of Marital Estates and Marital Prop- erty	270
C. Homestead Rights	277

	Page
3. Concurrent Estates	277
A. Common Law Concurrent Estates	277
<i>Miller v. Riegler</i>	283
<i>Holbrook v. Holbrook</i>	289
<i>Porter v. Porter</i>	291
<i>Brant v. Hargrove</i>	295
<i>Lerman v. Levine</i>	300
<i>Massey v. Prothero</i>	304
<i>Delfino v. Vealencis</i>	310
<i>Central National Bank of Cleveland v. Fitzwilliam</i>	314
<i>In re Estate of Brown</i>	319
B. Community Property	324
Chapter 4. Landlord and Tenant	328
1. Nature and Creation of Leaseholds	329
A. Leaseholds Distinguished From Other Relationships	329
<i>Sproul v. Gilbert</i>	330
B. The Several Tenancies	341
(1) The Term for Years	342
(2) The Periodic Tenancies	343
(3) The Tenancy at Will	343
(4) Tenancy at Sufferance	344
C. Statutory Modifications	344
(1) The Statute of Frauds	344
(2) Statutory Definitions of the Tenancy at Will and the Tenancy at Sufferance	345
(3) The Uniform Residential Landlord and Tenant Act ..	345
(4) A New Kind of Tenancy in New Jersey	346
<i>David Properties, Inc. v. Selk</i>	347
2. Assignment and Subletting	355
<i>Krasner v. Transcontinental Equities, Inc.</i>	355
<i>Kendall v. Ernest Pestana, Inc.</i>	359
3. Termination	370
A. Termination by Notice	370
<i>Arbenz v. Exley, Watkins & Co.</i>	370
B. Summary Eviction Statutes	374
(1) Forcible Repossession	374
<i>W. P. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and</i> <i>Keeton on the Law of Torts</i>	374
(2) Summary Actions for the Recovery of Possession	376
<i>Lindsey v. Normet</i>	379
C. Illegality and Frustration of Purpose	384
<i>Warshawsky v. American Automotive Products Co.</i>	384
D. Abandonment and Surrender	391
<i>The Liberty Plan Co. v. Adwan</i>	391
<i>Sommer v. Kridel</i>	394
4. Landlord's Duties Respecting Title and Possession	402
<i>Hannan v. Dusch</i>	402

	Page
5. Duties Respecting Fitness and Repair of Leased Premises	407
A. The Traditional Legal Doctrine.....	407
<i>Anderson Drive-In Theatre v. Kirkpatrick</i>	407
<i>Chambers v. The North River Line</i>	409
<i>Barash v. Pennsylvania Terminal Real Estate Corp.</i>	415
B. The New Duties of Residential Landlords	421
(1) The Housing Code Approach.....	422
<i>Pennsylvania Rent Withholding Act</i>	426
(2) Implied and Statutory Warranties of Habitability.....	426
<i>Hilder v. St. Peter</i>	426
<i>Jack Spring, Inc. v. Little</i>	434
C. The Retaliatory Eviction Doctrine.....	456
<i>Dickhut v. Norton</i>	456
D. Regulation of Security Deposits	463
6. Governmental Activities in the Housing Market	464
A. Rent Control.....	464
<i>Pennell v. City of San Jose</i>	464
B. Regulations Against Discrimination in Housing	473
C. Federal Housing Programs	474
7. Fitness of Leased Premises—Landlords' Tort Liability	478
<i>Borders v. Roseberry</i>	478
<i>Kline v. 1500 Massachusetts Ave. Apartment Corp.</i>	493
8. Protection of Tenants' Economic Benefits.....	503
<i>Kulawitz v. Pacific Woodenware & Paper Co.</i>	503
 Chapter 5. Easements	 514
1. Nature and Types.....	514
<i>Stanton v. T. L. Herbert & Sons</i>	517
<i>Martin v. Music</i>	521
<i>Loch Sheldrake Associates v. Evans</i>	524
<i>Henley v. Continental Cablevision</i>	528
2. Methods of Creation	537
A. Grant and the Effect of Informal Grant or License.....	537
<i>Ricenbaw v. Kraus</i>	538
B. Implication	542
<i>Campbell v. Great Miami Aerie No. 2309</i>	542
<i>Krzewinski v. Eaton Homes, Inc.</i>	552
C. Prescription	557
<i>Hester v. Sawyers</i>	557
<i>Shanks v. Floom</i>	562
3. Scope	568
<i>Kanefsky v. Dratch Construction Co.</i>	568
<i>Cameron v. Barton</i>	574
<i>Glenn v. Poole</i>	576
<i>Pasadena v. California-Michigan Land & Water Co.</i>	580
<i>Sakansky v. Wein</i>	585
4. Extinguishment.....	588
<i>Lindsey v. Clark</i>	589

	Page
4. Extinguishment—Continued	
<i>Carr v. Bartell</i>	592
Chapter 6. Promises Respecting the Use and Enjoyment of Land	596
1. Contracts Between Landlord and Tenant	597
<i>Abbott v. Bob's U-Drive</i>	599
<i>Thruston v. Minke</i>	605
<i>Burton v. Chesapeake Box & Lumber Corporation</i>	610
<i>Gerber v. Pecht</i>	615
<i>Neal v. Craig Brown, Inc.</i>	619
2. Contracts Between Owners in Fee	625
A. The English Law	625
<i>Keppell v. Bailey</i>	625
<i>Tulk v. Moxhay</i>	629
B. The American Law	631
<i>Wheeler v. Schad</i>	631
<i>Carlson v. Libby</i>	635
<i>Petersen v. Beekmere, Inc.</i>	645
<i>Eagle Enterprises, Inc. v. Gross</i>	654
<i>Oliver v. Hewitt</i>	658
<i>Rodgers v. Reimann</i>	664
<i>Sanborn v. McLean</i>	669
<i>Kell v. Bella Vista Village Property Owners Association</i>	675
<i>Osborne v. Hewitt</i>	683

PART TWO. THE TRANSFER OF OWNERSHIP- CONVEYANCING

Chapter 7. Devolution of Property Upon the Owner's Death	690
1. Intestate Succession	690
A. Descent of Land in England	690
B. Distribution of Personalty in England	691
C. Descent and Distribution of Real and Personal Property in the United States	692
2. Testamentary Disposition	696
A. The English Law of Wills	696
B. The American Law of Wills	697
C. Revocation of Wills	698
Chapter 8. Gifts of Personal Property	701
1. Gifts in General	701
<i>Hocks v. Jeremiah</i>	702
<i>Matter of Cohn</i>	707
<i>Miller v. Riegler</i>	714
<i>Newman v. Bost</i>	714
<i>McCarton v. Estate of Watson</i>	718
<i>In re Nols' Estate</i>	724

	Page
2. Special Problems Relating to Bank Accounts	727
<i>In re Estate of Michaels</i>	728
<i>In re Estate of Thompson</i>	737
Chapter 9. Conveyances of Land	749
1. The Modern Deed of Conveyance: Historical Development and Modern Forms	749
<i>Patton, Land Titles</i>	749
2. Preparation of the Deed for Delivery	757
3. Description and Boundaries	760
A. Methods of Land Description	763
B. Descriptions in Action	767
<i>Hoban v. Cable</i>	767
C. Way and Water Boundaries	769
(1) In General	769
(2) Accretion, Reliction, and Avulsion	771
D. Location of Boundaries Where Description is Inconsistent With the Purposes or Acts of the Parties	773
(1) Reformation for Mistake	773
(2) Adverse Possession	773
(3) The Practical Location of Boundaries	774
<i>Campbell v. Noel</i>	774
(4) Resolving Discrepancies	779
4. Delivery, Conditional Deeds, and Escrows	781
A. Noncommercial Transactions	781
<i>McMahon v. Dorsey</i>	781
<i>Martinez v. Martinez</i>	784
<i>Thomas v. Williams</i>	785
<i>Smith v. Fay</i>	789
<i>Raim v. Stancel</i>	793
<i>R. Cunningham, W. Stoebeck & D. Whitman, Property</i>	797
B. Commercial Escrows	798
<i>Merry v. County Board of Education of Jefferson County</i> ...	798
<i>Clevenger v. Moore</i>	803
Chapter 10. Priorities and Recording	810
<i>Messersmith v. Smith</i>	825
<i>Stegall v. Robinson</i>	841
Chapter 11. Land Title Assurance	848
1. Covenants for Title	848
A. Covenants of Seisin and Good Right to Convey	849
(1) In General	849
(2) Damages for Breach	850
B. Covenant Against Encumbrances	851
(1) In General	851
(2) Damages for Breach	852
C. Covenants of Warranty and for Quiet Enjoyment	852
(1) In General	852

	Page
1. Covenants for Title—Continued	
(2) These Covenants “Run With the Land”	853
(3) Damages for Breach	854
D. Covenant for Further Assurance	855
E. Concluding Observations	855
2. Title Assurance Based on the Public Land Records	856
A. In General	856
B. Abstracts of Title and Title Examination	858
C. Title Insurance and Title Guaranty	862
(1) Commercial Title Insurance	862
<i>Mayers v. Van Schaick</i>	876
<i>Shada v. Title & Trust Company of Florida</i>	881
(2) Lawyers’ Guaranty Funds	887
3. Improvement of the Existing System of Title Assurance by Legislation	891
A. The Uniform Simplification of Land Transfers Act (1977)	894
B. Marketable Title Legislation	895
<i>Minnich v. Guernsey Savings and Loan Company</i>	900
C. Land Title Registration	908
(1) The Torrens System	908
(2) Title Registration in England	914
Chapter 12. Vendor and Purchaser	915
1. The Land Sale Transaction: In General	915
A. Participants in the Land Sale Transaction	915
B. Principal Documents Used in Real Estate Sales	922
(1) The Earnest Money Contract	922
(a) <i>Minimum Requirements: The Written Memorandum</i>	923
(b) <i>Standardized Forms</i>	927
(2) Documents Required for Completion of Sale	933
(a) <i>The Deed of Conveyance</i>	933
(b) <i>The Mortgage</i>	933
(c) <i>The Mortgage Bond or Note</i>	935
(d) <i>The Title Retention Contract</i>	936
(e) <i>The Escrow Agreement</i>	939
(3) The Closing or Settlement	939
2. Obligations of the Vendor as to Title	947
<i>Hebb v. Severson</i>	947
<i>Regent International v. Lear</i>	963
3. Risk of Loss While the Contract Remains Executory	973
<i>Bryant v. Willison Real Estate Co.</i>	973
<i>Berlier v. George</i>	980
4. Obligations of Vendor as to Quality of Construction and Fitness for Intended Use	985
<i>Caceci v. Di Canio Construction Corporation</i>	985

PART THREE. GOVERNMENT CONTROL OF LAND USE

	Page
Chapter 13. Eminent Domain, Police Power, Substantive Due Process and "Regulatory Takings"	994
1. Eminent Domain	994
2. Police Power, Substantive Due Process, and the "Regulatory Taking" Problem	1000
<i>Pennsylvania Coal Co. v. Mahon</i>	1003
<i>Village of Euclid v. Ambler Realty Co.</i>	1010
<i>Penn Central Transportation Co. v. City of New York</i>	1021
<i>Keystone Bituminous Coal Association v. DeBenedictis</i>	1040
<i>Nollan v. California Coastal Commission</i>	1068
3. Compensation for <i>De Facto</i> Regulatory "Takings"	1081
<i>First English Evangelical Lutheran Church of Glendale v. County of Los Angeles</i>	1086
 Chapter 14. Control of Land Use by Zoning	 1109
1. Zoning Enabling Legislation	1109
2. Nonconforming Uses and Structures	1112
<i>Mayor & Council of New Castle v. Rollins Outdoor Advertising, Inc.</i>	1113
3. Residential Use Classifications	1123
<i>Krause v. City of Royal Oak</i>	1125
<i>Village of Belle Terre v. Boraas</i>	1132
4. Nonresidential Use Classifications	1148
<i>People ex rel. Skokie Town House Builders v. Morton Grove</i>	1148
<i>City of Renton v. Playtime Theatres, Inc.</i>	1152
5. Bulk and Density Regulations	1161
<i>Simon v. Needham</i>	1162
6. The Zoning Process: Flexibility and the Comprehensive Plan	1170
A. The Variance	1170
<i>Puritan-Greenfield Improvement Association v. Leo</i>	1170
B. The Special Exception, Special Use Permit, or Conditional Use Permit	1180
<i>Kotrich v. The County of Du Page</i>	1180
C. Rezoning by Amendment "in Accordance with a Comprehensive Plan"	1188
<i>Kuehne v. City of East Hartford</i>	1188
<i>Rodgers v. Village of Tarrytown</i>	1194
D. Planned Unit Development	1203
<i>Cheney v. Village 2 at New Hope, Inc.</i>	1203
E. "Conditional" or "Contract" Rezoning	1215
<i>Sylvania Electric Products, Inc. v. City of Newton</i>	1215
F. Legislation Mandating Adoption of Comprehensive Land-Use Plans and Requiring Consistency Between Plans and Regulations	1226

	Page
Chapter 15. "Exclusionary Zoning": Judicial and Legislative Responses	1232
1. Exclusion of Racial Minorities: Federal Cases and Statutes ..	1232
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i>	1233
<i>Metropolitan Housing Development Corp. v. Village of Arlington Heights</i>	1243
2. Exclusion of Low and Moderate Income Persons: State Cases and Statutes	1258
<i>Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel</i>	1259
<i>Southern Burlington County N.A.A.C.P. v. Mount Laurel Township</i> ..	1271
 Chapter 16. Control of Land Development by Means Other Than Zoning	 1303
1. Subdivision Control Legislation	1303
2. Subdivision Exactions and Impact Fees: Compelling Land Developers to Bear Infrastructure Costs	1308
<i>Jordan v. Village of Menomonee Falls</i>	1308
<i>Contractors & Builders Association v. City of Dunedin</i>	1322
3. Suburban Growth Management	1330
<i>Construction Industry Association of Sonoma County v. City of Petaluma</i>	1330
4. Environmental Protection	1348
<i>Claridge v. New Hampshire Wetlands Board</i>	1350
5. Protecting Aesthetic and Cultural Values	1361
A. Architectural Controls	1361
<i>State ex rel. Stoyanoff v. Berkeley</i>	1361
B. Preservation of Historic Districts and Buildings	1368
<i>Figarsky v. Historic District Commission</i>	1368
<i>Penn Central Transportation Corp. v. City of New York</i>	1373
INDEX	1377