

2011

Property, 5th Edition

Carol N. Brown

University of Richmond, cbrown5@richmond.edu

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Carol N. Brown & Julian Conrad Juergensmeyer, *Property* (5th ed. 2011).

This Book is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

PROPERTY

Fifth Edition

By

Julian Conrad Juergensmeyer

Professor and Ben F. Johnson Jr. Chair in Law
Georgia State University

Carol Necole Brown

Professor of Law
The University of North Carolina at Chapel Hill

WEST®

A Thomson Reuters business

UNIVERSITY OF RICHMOND

AUG 16 2012

LAW LIBRARY

Mat #40603824

CHAPTER I

INTRODUCTION

About the Authors—

Professor Julian Conrad Juergensmeyer holds the Ben F. Johnson, Jr. Chair in Law at Georgia State University and is an adjunct professor of planning at the Georgia Institute of Technology. He is also Professor of Law Emeritus at the University of Florida, where he taught property law for 30 years. Professor Juergensmeyer earned his undergraduate (summa cum laude) and J.D. (with honors and Order of the Coif) from Duke University. Professor Juergensmeyer is the author of nearly 100 books and articles on Property Law, Land Use Planning and Control Law, Environmental Law, Growth Management Law and Agricultural Law. He has also taught law at Duke, Tulane, Hastings, Indiana, and Louisiana State.

Carol Necole Brown is a professor of law at the University of North Carolina at Chapel Hill, where she teaches Property Law, Land Use Planning and Control Law, Mortgage Law, Real Estate Finance, and Real Estate Transactions. Professor Brown earned her undergraduate (cum laude), J.D., and LL.M from Duke University. Professor Brown is the author of many articles and lectures on the Sum & Substance audio tapes on Property. She is a past chair of the Property Section of the American Association of Law Schools, chair of the Real Estate Transactions Section of the American Association of Law Schools, and is a member of the American College of Real Estate Lawyers. Professor Brown would like to thank her research assistant, Katherine Blass Asaro, for her invaluable assistance.

From the Authors—

CAVEATS ABOUT THE STUDY OF PROPERTY LAW

1. THINK MEDIEVAL:

Our common law system began in 1066 with the development of property law concepts following William the Conqueror's victory at the Battle of Hastings. [Remember from your art history course seeing it depicted in the Bayeux Tapestries?] Not only did property law begin that long ago but many of the concepts you will study in this course have changed little since then. One of our more recent changes dates back to 1536, the Statute of Uses! See Chapter VI (Future Interests).

CHAPTER I

The moral of all of this is that a page of history often gives more understanding than a volume of logic, so if you have trouble grasping the reason for or logic of some of the rules, it may be that it isn't something wrong with you—it is that the rule is illogical and a result not of reasoning that escapes you, but the product of an historical accident. Caveat: The idea just expressed reveals the authors' adherence to the "Accidental School" of Jurisprudence which receives very little respect in Jurisprudence courses.

2. DO NOT EXPECT TO FIND REAL PROPERTY PRINCIPLES EXPRESSED IN PLAIN, SIMPLE, MODERN ENGLISH.

Old Norman French was the original language of property law. One of the early "reforms" was to throw in some Latin. Some of the key terms we continue to use in the twenty-first century are still corruptions (misspellings and mispronunciations) of the old French. Instead of being intimidated by those weird words, make a game out of identifying and "understanding" the old terminology. It makes great cocktail party conversation. Also, don't be surprised by what today seems like the constant use of two synonyms for each idea. For a long time there was an attempt (commendable, don't you think?) to use a Norman and a Saxon word for each important item so as to be understandable by both groups of the King's subjects.

3. PREPARE TO FIND BOTH OVERLAP AND CONFLICT WITH CONTRACTS PRINCIPLES IN SOME AREAS OF PROPERTY LAW.

Most students study real property law and contracts law during the same semester(s). The relationship between these two key areas of our common law system has always been close and controversial. Today, the conflict is "heating up" and the landlord-tenant and land sales contracts areas of property law are undergoing a revolution aimed at replacing many of the traditional property rules applicable in those areas with modern contracts rules and principles. Do not be surprised to discover the law in these two areas of the course in a great state of flux.

4. DO NOT BE AFRAID TO MEMORIZE SOME RULES AND GIVE SOME YES OR NO ANSWERS.

Some first year law students get the idea that law can be memorized and that there is always a right and wrong answer. They are wrong. Other first year law students get the idea that in law school there is never a right or wrong answer and that no material can/should be memorized. They also are wrong at least about property law. Many of the estates and future interests' rules can and should be memorized and there are right and wrong answers to questions about them.

5. PROPERTY LAW IS NOT JUST A COLLECTION OF OUTDATED AND IRRELEVANT RULES.

Yes, there are some silly and tedious parts of the property course. But there are also some fascinating examples of intense human conflict behind some seemingly

INTRODUCTION

mundane rules and principles. Do not miss the opportunity that the study of real property law offers to see how our common law system developed and how the ever changing concepts of the proper role of private ownership have been dealt with by many generations of lawyers before you.