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Inside Property Law: What Matters and Why, 2nd Edition

Carol N. Brown

University of Richmond, cbrown5@richmond.edu

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Inside Property Law

What Matters and Why

Second Edition

Daniel B. Bogart

*Donley and Marjorie Bollinger Chair in Real Estate Law
Chapman University School of Law*

Carol Necole Brown

*Professor of Law
University of North Carolina School of Law*

UNIVERSITY OF RICHMOND

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Preface

Property law touches on something very basic and emotional: our rights to own, enjoy, use, and dispose of real and personal property. We spend our lives accumulating property of all kinds, and we want to know the extent of our rights.

Property comes in all forms: It can be “real” (involving land) or personal, it can be tangible or purely conceptual, and it can be defined by a relationship (as in landlord-tenant law or mortgage law). Property law allows us to resolve disputes between two or more people claiming some right in a valuable interest.

For many years, anyone discussing “Property Law” in a traditional American law school would be concerned chiefly with relationships and rules derived from English common law. Today, however, property law includes generous portions of constitutional law, land use, tort law, contract and land conveyancing law, and laws forbidding illegal discrimination, among other areas of inquiry.

Property law historically changed at a glacial pace. Yet in recent years it has been altered by aggressive attempts of courts and scholars to reflect modern markets and expectations. Property law is therefore a wide umbrella covering a vast and dynamic array of rules and relationships.

The authors have taught property law for many years. We teach the course because, to be quite blunt, we love doing so. This is a challenging course: It requires us to tie history to modernity, social welfare to individual expectations, and old legal rules to the crucible of change. The personalities and characters populating property law cases are inevitably colorful. Their stories will stay with you long after you leave law school.

Professor Bogart comes to property law with a distinct interest in real estate transactions; this is his background. He is an expert in the area of commercial leasing. He speaks often on various subjects in real estate transactions and is a member of both the American Law Institute and the American College of Real Estate Lawyers. Professor Brown is a nationally recognized scholar in property law and brings to this endeavor boundless energy and a love for the subject. She is a member of the American College of Real Estate Lawyers and has a special interest in the area of land use planning and control.

We want to make the material covered in your first-year Property course accessible. This book contains a number of features with this purpose in mind; these features are common to the Inside series. You will find a short overview at the beginning of each chapter. The overview will help place that chapter’s material in the larger picture of the Property Law course. Over the years, students have tended to ask certain questions on a relatively regular basis. We provide and answer these frequently asked questions (FAQs). But there are also questions and issues that are a bit off the beaten path or just deserve special treatment. We deal with these in sidebars.

This book is the result of the collaboration of two friends and colleagues who teach at different schools but do so with a similar hope: that we can spark in our students a lifelong interest in a great area of the law.

This is the second edition of *Inside Property Law*. This revised book introduces a number of significant new elements. Among other things, the book provides an enhanced discussion of the Restatement (Third) of Property, Servitudes, expanded and up-to-date coverage of the massive U.S. mortgage crisis (and its implications for mortgage law), and a discussion of state legislation intended to limit the effect of *Kelo v. City of New London*.

Acknowledgments

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Finally, we acknowledge and deeply thank Professor John Makdisi of St. Thomas University School of Law. John was a coauthor with Professor Bogart of the first edition of this book. His keen intelligence and wonderful knowledge of property law run throughout *Inside Property Law*. We hope he is pleased with this new edition.

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Daniel B. Bogart
Carol Necole Brown