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# Cases and Materials on American Property Law, 6th Edition

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**CASES AND MATERIALS ON  
AMERICAN  
PROPERTY LAW**

**Sixth Edition**

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By

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## PREFACE

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Property law is a product of scarcity and politics. Without scarcity, property law would be unnecessary. Without politics it would be impossible. Judges, legislators, administrators and constitutional conventions respond to scarcity by making political judgments that some individual or group should be granted or denied a "property right." The sum of these judgments is our American law of property.

Political judgments can be either good or bad. Thus to say that authoritative judgments creating property rights are political is not to impeach their authority, practicability, or even their virtue. Rather, it serves to underscore the fact that the creation of every property right is attended by controversy over scarce resources. Every outcome produces both winners and losers. A decision of a judge or legislator may be based on natural law, morality, economic efficiency, perceived utility, or even corruption; but invariably it gives someone wealth at the expense of someone else. No area of law is more exciting than the law allocating property rights.

This casebook combines a set of traditional legal materials drawn from state and federal court decisions and statutes, with historical, economic and social science materials designed to add important perspective to the law students' appreciation of property rights in the American legal system. These added materials—particularly the economic notes—are presented in such a way that the instructor can safely ignore them without substantial loss of integrity to the course. However, this book makes no presumptions about prior training. Even the materials on the economics of property rights can be read with confidence by the careful student untrained in economics.

This book is designed to satisfy the needs of property curricula containing from three to six semester units of property law. Chapters one through eight treat the traditional "private," or common law of property. Notable here are greater amounts of jurisprudential materials than many property casebooks contain, a variety of materials in chapters one and two to develop tools of legal methodology and analysis, additional materials on the interrelationship of laws relating to persons and property, a greater emphasis on both history and recent judicial decisions in chapter four on the law of estates and future interests, an emphasis in chapter six on nonmarital or "extramarital" alternatives to the law of marital estates, and an economically-oriented section on rent control in chapter seven, designed to give the students a brief exposure to the many conflicts between price regulation and private property rights.

Chapter eight examines the law of servitudes as a privately created and market driven set of land use control devices. Chapters nine through thirteen then examine more explicitly "regulatory" areas of property law—nuisance, eminent domain and regulatory takings, zoning and other forms of land-use

planning, the problem of housing discrimination, and regulation of cooperatives and condominiums. This edition features a revised and somewhat streamlined approach to the law of servitudes, a nuisance chapter more oriented toward the Second Restatement of Torts, and significant attention to the public law problems of regulatory takings and the expanded range of housing discrimination law.

Finally, chapters fourteen through sixteen are an overview of the law of conveyancing, focusing on the contracting process, deeds and delivery, and title assurance devices. We treat the market for real property for what it is: a market, although a rather complex one.

The authors are indebted to our many students and research assistants whose comments and suggestions have contributed to refinements of this book over the years. We salute the most recent crop of them, namely, Hassan Beydoun, Nicole Burgmeier, Christina Diane Cress, Bryce Dalton, Emily Ironside, Andrew Roff, and Jon Scott. We would also like to express our appreciation for the institutional support of the University of Iowa College of Law and the University of Iowa Law School Foundation.

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