



Weekly Information Sheet 04

The Founders' View on Property

Property as a Fundamental Right

- **Property Rights = Freedom:** The Founders understood that the lynchpin of liberty was the proper management of power.
- **Founders Understood – Government's Purpose is to Protect Rights:** From the very beginning it was all about rights and building a legal system to protect those rights.
- **Property Rights are Key to Freedom:** The first of all those rights in the minds of our founders, was always property.
- **The Meaning of Property:** For as we know by now, property is a collection of rights, not a collection of things.
- **Government of Law Not Men:** The building of freedom and liberty, and allowing the free exercise of those property rights, meant a need for a government of law, not men, that would respect and protect rights, and was limited with true checks and balances and separation of powers.
- **The Declaration of Independence** created a *NATION OF IDEALS*:
 - A nation of laws and not men.
 - A nation evolved from the principles of the enlightenment.
- The Declaration outlined a concept of principles, not finalized government.
- Among its foremost declared rights were **Property Rights**
- **The Key to Understanding Property:** To understand property, it must be seen through a prism of rights. Such requires an understanding of:
 - what a right is,
 - what the law is that protects property rights, and
 - how protecting property rights an essential element to freedom.
- **Freedom + Protection of Property Rights:** The founders understood, that if you want freedom, set up a system to protect property rights.
- The Founders held that such a system requires the power of government to be limited, and that its express purpose must be to protect, and not infringe on, people's individual rights.

The Four Postulates

The most important concept in our class is the collection of ideas known as the four postulates of property law.

These postulates outline all the nature that is property law, and collectively illustrate its meaning.

The Four Postulates of Property Law:

- 1. Property needs to be seen as a collection of “Rights” not a collection of “Things”;*
- 2. Property Rights are those recognized by Law and the Law evolved from Property Rights;*
- 3. Our Foundations of Law recognized that we are endowed with Property Rights; and*
- 4. Property Rights can be summarized by E-PUT*

Exercising Property Rights

E-PUT – Just what are your property rights?

They can be summarized by the initials EPUT.

These initials stand for:

E-PUT

- 1. The Right to Exclude;*
- 2. The Right to Possess;*
- 3. The Right to Use; and*
- 4. The Right to Transfer.*

Types of Property

Property can be seen through the prism of three **types**.

These **types** of property allow one to exercise their property rights according to the use and function of the property.

These **types** include:

Types of Property

1. Real (Rights in Land);

Real Estate – Ownership/Leaseholds/Easements/Life Estates

2. Personal (Rights in Objects); and/or

Chattels – Tangible, visible “things”

3. Intellectual (Rights in Ideas).

Patents – Idea for Product or Process

Trademarks – Logo, Identification or Distinction

Copyrights – Written or Performed Works

Locke, Jefferson and Bentham

- **John Locke**, author of the famous **Two Treatises on Government**, declared that natural law provides men with three rights. Such are:

Life, Liberty and the Pursuit of Property.

- **Thomas Jefferson**, author of the **Declaration of Independence** paraphrased Locke, when he declared three inalienable rights of:

Life, Liberty and the Pursuit of Happiness.

- **Jeremy Bentham**, the famous positivist legal commentator, linked property rights and the law when he wrote:

*Property and the Law are born together and die together.
Before laws were made there was no property,
take away laws and property ceases.*