

THE LAW OF PROPERTY

A SURVEY OF PRINCIPLES, CASES AND EXPLANATIONS

First Edition

Robert T. Farley

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Introduction

Property is among the oldest and most fundamental of all legal

concepts.

Born from necessity, it has, throughout recorded history,

influenced relations among both people and societies.

Representing so much of what is necessary for the preservation and quality of life, property has long been viewed as a critical element of every person's existence. As a result, the right to exercise control over a person's own property, has long been seen as one of the most important factors of human existence.

It is this right of control, and not just the item itself, that gives property its value. As such, legal scholars have developed a paradigm that thinks of property in terms of rights.

The recognition of these property rights, and the need for people to protect them, helped lead to the development of the law itself. Reciprocally, the recognition of property rights by the law, solidified the acceptance of such concepts in society. Consequently, the law can be seen to have evolved from the need to protect property rights, and property rights can be seen to have evolved from this legal recognition. As a result, the law and property are inherently intertwined.

The critical importance of property rights to both individuals and society has also resulted in their recognition under natural law. Flowing from this concept, society now views property rights, not as mere privileges granted by the state, but as fundamental rights that are intrinsic to our very status as human beings.

These property rights, and their recognition under law, have helped modern society grow and prosper. As such, having the right to control property, by exclusion, possession, use and transfer, has become a fundamental pillar of modern society.

What is Property?

Just what is property? What does it mean? How is it defined?

When a person thinks of property, the common view is one of "items" or "things". A legal understanding of property, however, demands that it be seen in terms of "rights". For the right to control property is far more valuable than the property itself. Modern law, therefore, looks at property, not in terms of items or things, but in terms of rights.

Under such view, "property" has been often described as "rights among people that concern things".¹ Virtually every item, that can have rights attached to it, can constitute property. Such items can include:

- The tools made by our cave dwelling ancestors;
- The farmer's land upon which crops are grown;
- The crops grown on the farmer's land;
- The horse which carried the gallant knight;
- The sword used by the knight;
- The paper on which was scribed our constitutional rights; and
- The spaceship which carries astronauts to the stars.

In short, property includes nearly every material thing, over which people can legally exercise rights of control.

The Legal Recognition of Property Rights

Property is among the most ancient of legal concepts. It is, however, a dynamic concept, that can change over time. Since property is the expression of the rights conferred by law, and since the law and society can change over time, so can the

concept of what constitutes property, and what rights of control over it, are protected by law.²

It is for this reason that "property" in the strict legal sense, has been held to constitute an aggregate of rights which are guaranteed and protected by government.³

But these dynamic changes have their limits. Because of their importance to both individual people, as well as society as a whole, property rights have long been held to be among the most sacred in all the law. They are embodied and protected by constitutions, statutes and case law. Under these legal embodiments and protections, the law recognizes that property rights are inherent to our humanity, and can not be easily modified.

In America today, under our federal system, most of the law of property is based in, and pronounced by, state law. Certain property rights are, however, also fundamentally recognized in the United States Constitution, as well as, in our nation's founding documents.

The Bundle of Property Rights

The legal rights through which people can control property can be summarized by the term E-PUT. They include the Right to Exclude, the Right to Possess, the Right to Use, and the Right to Transfer. Separately and together, these property rights allow people to legally exercise the aggregate of rights which are guaranteed and protected by government.

1. The Right to Exclude:

To truly understand what property is, and what it means, however, it is essential to view it in terms of four fundamental postulates. These postulates include:

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The term “property” when used in its broadest context, includes Real Property (rights in land), Personal Property (rights in items) and Intellectual Property (rights in ideas).

The Four Postulates of Property Law

- **Property needs to be viewed as a collection of “rights” not a collection of “things”.**
- **Property and the law evolved together and are intertwined.**
- **Property rights are intrinsic to our humanity.**
- **Property rights can be summarized by E-PUT: The Right to Exclude, the Right to Possess, the Right to Use, and the Right to Transfer.**