

Property

- Module 1
- Ownership

Introduction

- Preliminary matters
- Review of course web pages
- Other class mechanics

Especially true in Property:

“a page of history is worth a volume of logic.” New York Trust Co. v. Eisner, 256 U.S. 345 (1921) (Holmes, Justice)

Introduction

An allegory for
the historical
nature of
Property:

The QWERTY
Keyboard

&

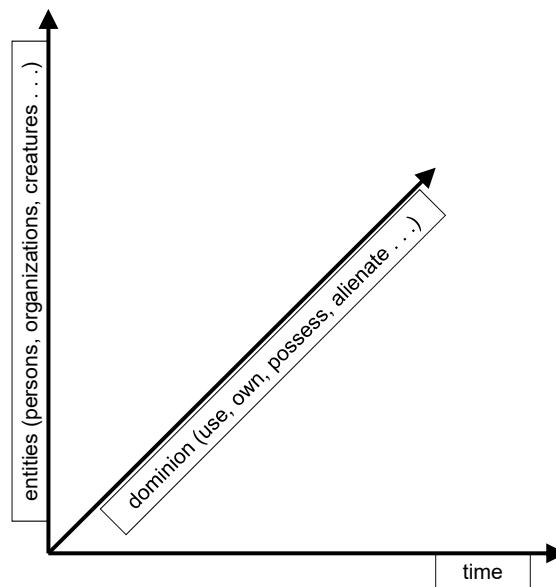
The Dvorak
Keyboard



Introduction

- Competition for resources
- Effects of scarcity and the need to coordinate dominion
- Other values and effects of property rights

Resources (land, goods, intangibles . . .)



Values of Property

- Protect First Possession
- Encourage Labor
- Maximize Societal Happiness
- Ensure Democracy
- Facilitate Personal Development
-

Jacque v. Steenberg (Wisc 1997)

- Dispute
- Damages?
- Reasons for upholding the award?
 - Essential right
 - Hollow without enforcement
 - Owners interest in enforcement
 - Deemphasize self-help



Marsh v. Alabama (1971)



- Dispute
- Whether “corporation’s right to control inhabitants of Chickasaw is coextensive with the right of a homeowner to regulate the conduct of his guests.”
- Effect when facilities built to benefit the public and operate as a public function
- Why?
- Dissent

State v. Shack (NJ 1971)



- Dispute
- Purpose of entry onto the farm
- Exceptions to the right to exclude
 - Public or private necessity
 - . . .
- Exception for government services or recognized charities?

Antidiscrimination statutes; other rights of property

- Civil Rights Act of 1964, Title II, Section 201
- Americans with Disabilities Act of 1990, Section 302-03
- Influences on the rights . . .
 - to exclude
 - possess
 - use, or
 - alienate (gift, sell, devise)?

Eyerman v. Mercantile Trust Co. (Mo. Ct. App. 1975)

- Will directions to raze house and sell land
- Interlocking covenants among properties at Kingsbury Place
- “No reason, good or bad, is suggested by the will or record for the eccentric condition [to raze and sell land]”
- Waste arising from destruction of the resource, the house, and the public policy concerns flowing from this
- Perspective of dissent



Property - Hohfeld

<u>jural</u> opposites	}	rights	privilege	power	immunity
		no-rights	duty	disability	liability
<u>jural</u> correlatives	}	right	privilege	power	immunity
		duty	no-right	liability	disability

- A resource and a right *in rem*
- *Jural relations*
- Decompose *in rem* rights into many *in personam* rights?

Merrill and Smith

- “property is a distinctive type of right to a thing, good against the world”
- Thus, property rights “have an impersonality and generality that is absent from rights and privileges that attach to persons directly.”
 - The thing, that is, the resource, establishes a “base of security” of non-interference by others
- Critique of Hohfeld approach in terms of its de-emphasis on the right in relation to the thing/resource

Smith



- Critique of “bundle” theory
 - “In this version of the bundle picture, Hohfeldian sticks and potentially others are posited to describe the relations holding between persons; the fact that the relations hold with respect to a thing is relatively unimportant or, in some versions, of no importance.”
- Modular theory – exclusion strategy and governance strategy
- Idiosyncratic “property rights” versus standardized forms of property
- Exclusion is a shortcut over direct delineation of a set of many legal relations