

Property Law

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Week 1

Definition

- No universal definition
- Property is about the distribution, allocation and control (stop someone entering your house, taking something, etc.) of scarce resources.

'A key point to underline is that property is intimately related to scarce resources i.e. where there is not enough of something to satisfy demand. If there is an abundance of an item and no competition for its use then there is no need to establish a process for the distribution, allocation and control of the thing.' - p 8 textbook.

The content of property includes three critical aspects:

- Things;
- Legal Rights;
- Social Relationships;

As well as the spatial dimensions of property.

'Property is how people envision it - that is, what concept they have of it and also a social, political and legal institution, implemented to resolve particular conflicts in society.' (Laura s Underkuffler, *The Idea of Property: Its Meaning and Power*) p 7 textbook.

Things

'The intuitive appeal of making things the mediator of the relationship is evidenced by the pervasiveness of 'thingness' in the layperson's understanding of property.' (David Lametti, 'The Concept of Property: Relations Through Objects of Social Wealth' (2003) 53 *University of Toronto Law Journal* 325: 354.)

Property concerns tangible things. (p 8)

Alongside tangible objects we might also recognise intangible items as property.

There is an important role of legal rights (below) as mediator for property claims, to stop people taking your 'things'. 'A focus on 'things' captures the idea that property is about resources or scarce resources but legal rights help explain how people control or have power over objects.

- intellectual property
- shares

Property Rights

Property rights are **created, conferred and protected** by law.

Property is more accurately conceived of as being a bundle of rights, liabilities, powers and duties. Could include any of the following (p 10):

- the right to possess
- use
- manage and receive income
- powers to transfer
- waive
- exclude and abandon
- consume or destroy
- immunity from expropriation

- not to use harmfully
- liability for execution to satisfy a court judgement
- etc.

A property right at law (or a legal property right) is a relationship between a person(s) and a thing recognised by the jurisdiction of the common law. In our context, it is a relationship between a person and land.

LIBERAL TRIAD

Three dominant property rights that everyone agrees on (p 10-11)

- **Right to use (use)**
 - The right to use and control the thing. This gives owners power and control over their property.
- **Right to exclude (exclusivity)**
 - Property rights provide owners with the exclusive right to determine how the thing is used. Exclusivity also allows owners to stop others from using or accessing their property.
- **Right to abandon (abandonment)/Alienability:**
 - Provides owners with right to sell, give away, abandon or even destroy their property. Alienability is the exclusive right of the owner and so long as there is no government regulation limiting use, the owner can alienate the thing as they see fit.

These rights give owners **choice**.

Whoever possesses these three sticks has ownership over the property and it should also be noted that an owner can **fragment their bundle** and transfer individual sticks to others.

- For example: get someone to rent your house, you would give them the 'use' right.

So as long as you are not harming others, you can do what you want with your property.

Social Relationship

Property is about relations between people in respect of control over goods and resources i.e. things. It is about the relationships people have with each other in society and in the global community.

'Property rights are, by nature, social rights; they embody how we, as a society, have chosen to reward the claims of some people to finite and critical goods, and to deny the claims to the same goods by others. Try as we might to separate this right from choice, conflict and vexing social questions, it cannot be done.' (Laura Underkuffler-Freund, 'Property: a Special Right') (p 11 textbook).

The **source and internal constitution of private property arises from social relationships:**

'Property is something we must collectively define and construct. It is not given to us whole; it does not emerge fully formed like Athena from Zeus's head. It is closer to a piece of music that unfolds over time. Like music, property gets its sense of stability from the ongoing creation and resolution of various forms of tension.' (Joseph William Singer, *Entitlement: The Paradoxes of Property* (2000) 13.)

Justifying Private Property

Labour

- Private property comes into existence only as individuals, who have ownership over their bodies, mix their labour with the Earth (p 16).

Personality and human flourishing

- private property is necessary for the development and flourishing of human beings.
- 'to achieve proper self-development - to be a *person* - an individual needs some control over resources in the external environment.' (Radin) (p 17)