

TOPIC 8: THE PROPERTY SYSTEM

Overview

This chapter explores the legal concept of property, property interests, and ownership. It explains the role of government in the recognition of property rights and the justification for doing so. It introduces several types or classifications of property and rights of possession. It explains the legal system for recording ownership interests in real and personal property. It also explains the relationship between individuals holding or claiming an interest in property. Lastly, it identifies the government's authority to affect an individual's property rights.

VIDEO LESSON - INTRODUCTION



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TOPIC 8: THE PROPERTY SYSTEM - QUESTIONS & ANSWERS

1. What is “Property”?

Property is any tangible or intangible physical item, design, creative work, or concept that is owned.

- *Tangible and Intangible Property* - Tangible refers to physical property. That is, tangible property is anything that can be physically touched. Intangible property refers to non-physical property. That is, intangible property is any property that cannot be physically touched.

- *Example:* Intangible property includes patents, trademarks, trade secrets, copyrights, debts, and company good will.

- **Discussion:** Do you think that there should be a distinction between tangible and intangible property? Why or why not? Should they be afforded the exact same protections? For example, is theft of a copyrighted song the same as stealing someone’s wallet? Why or why not?

- **Practice Question:** Austin purchases a book of photography. Has he purchased tangible or intangible property?

- **Resource Video:** <http://thebusinessprofessor.com/tangible-vs-intangible-property/>

- *Real and Personal Property* - Property is further broken down into personal property and real property. Real property is land and anything permanently attached to it. Personal property is anything other than real property.

- **Discussion:** Can you think of any reason why the law would differentiate real from personal property? What characteristics make real property unique from personal property?

- **Resource Video:** <http://thebusinessprofessor.com/real-vs-personal-property/>

- *Fixtures* - A fixture is personal property that is converted into real property by physical annexation to (attachment to or close association with) the land or its buildings.

- *Example:* A piece of equipment that is physically installed into the floor of a factory building would become a fixture and is one with the property. It is no longer personal property and cannot be removed from the real property without the consent of the real property’s owner.

- **Discussion:** Should personal property that is permanently attached to real property become part of the real property? Would this have any effect on businesses that sell or rent personal property?

- **Practice Question:** Megan owns a warehousing business. She purchased a \$1 million storage facility and financed it with a bank mortgage. She purchased heavy steel shelves to stack heavy pallets of goods and installed them in the factory. The shelves cost approximately \$200,000 and are financed by the seller. The steel shelves are anchored to the floor of the building with a heavy steel bolts that are driven into the concrete floor. Has the steel shelving become a fixture of the warehouse building?
- **Resource Video:** <http://thebusinessprofessor.com/fixtures-and-real-property/>

Ownership of property refers to the legal right to exclude others from the specific thing owned. So property is a bundle of rights associated with all physical and non-physical things. Aside from the right to exclude others from using property, ownership rights often include the right to possess, to use, to transfer, and to commercialize the property. Any of these rights, however, are subject to modification by the owner of the property.

- **Discussion:** Do you associate property with physical possession or with the rights in something? Do you think the right to exclude others should be the defining characteristic of property?
- **Practice Question:** Suzie develops a new method for synthesizing radioactive material from common elements. She patents the process and develops a machine to extract the radioactive particles. The Federal Government notifies Suzie that the production of radioactive material is illegal and prohibited. In this situation, what are Suzie's recognizable rights of ownership? Are those rights tangible or intangible? How are those rights limited?
- **Resource Video:** <http://thebusinessprofessor.com/ownership-in-the-context-of-property-rights/>

2. What is the role of government with regard to individual ownership of property?

The government establishes laws concerning property. More specifically, ownership of property depends upon legal recognition of ownership rights. The government establishes and enforces property ownership rights through a formalized system for recording and disclosure that puts others on notice of those rights. Without government recognition and enforcement of property rights, ownership rights would be synonymous with possession or control of the property. Those capable of obtaining and maintaining possession or control through any means (such as force or coercion) would own all available property.

- **Discussion:** Do you agree that an individual only has ownership in something to the extent that the government (the law) recognizes that individual's rights? Are you concerned by any requirements that the government puts in place to establish ownership?
- **Practice Question:** Gordon enters into a verbal agreement to purchase land from Wynona. He pays for the land and takes possession of it. Gordon and Wynona never execute a deed or otherwise title the land with Gordon. When Wynona passes away, her children claim ownership of the land. Who likely has legal ownership of the land and what is the role of government in establishing and recognizing ownership?
- **Resource Video:** <http://thebusinessprofessor.com/role-of-government-in-property/>

3. How are property rights linked to economic activity?

Property as an Incentive

The ability to possess property for one's benefit and to exclude others is understood as a desire or want of many individuals. Research has shown that individuals will expend effort to acquire resources that meet a need or want. Providing a system whereby individuals may acquire property incentivizes those individuals to work toward that end. That is, people will expend effort to acquire property if they have the knowledge that they will be able to retain the property for their personal use and without the threat of forfeiting the property to others. They will undertake work that they were not otherwise willing to undertake in the absence of acquiring new property. Some individuals are willing to work longer and harder incentivized by the amount of property they are able to acquire as a result of their efforts. This tendency often results in greater efficiency in effort and overall economic productivity. Increased productivity of individuals is linked to increases in total economic output in an economy.

- **Discussion:** Do you believe that ownership rights in property have a positive or negative effect on individual productivity? Why or why not? If yes, are there any negative effects of the incentives created by property rights? Are there any disincentives associated with property rights?
- **Practice Question:** Jonathan works in a 9 to 5 job. His performance objectives and career path is very clear. He is promoted based upon meeting minimum performance standards over a specified period of time. If he meets these standards each year, he will gradually receive higher benefits and increasing responsibility. If he fails to meet those standards, he will likely remain in his current position. While superior performance may bring praise from his colleagues and superiors, it will not increase the rate at which he is promoted or bring any additional, tangible reward. In this system, how is property used (or not used) as an incentive to induce greater economic output?

Capital Formation

Property ownership rights allow individuals to possess and demonstrate the results of their own efforts. Individuals are then able to employ that property toward creating additional property. That is, individuals can use their acquired property (or provide it to others) with the intention of generating or acquiring ownership rights in more property. In furtherance of capital formation, the nature of property allows ownership rights in any resource to be divided among individuals. As such, individuals can employ their resources collectively in the creation or acquisition of new property.

- **Example:** Abe's ownership of property allows him employ the services of Bob in exchange for providing Bob with a form of property. Bob's effort generates additional property for Abe, which Abe can use for the creation of additional property.
- **Discussion:** Can you think of any other examples of how ownership rights allow individuals to accumulate or grow economic value or wealth?
- **Practice Question:** Jane is renting an apartment in New York for \$2,000 per month. She decides to purchase a home because it will be financially advantageous. She buys a very small apartment for \$350,000. Her mortgage

each month is \$1,650 and her property taxes are \$600. Of her mortgage payment, \$1000 goes to principal, while \$650 goes to interest. In this scenario, how does owning property allow for capital formation where renting an apartment does not?

- **Resource Video:** <http://thebusinessprofessor.com/property-and-economic-prosperity/>

4. How do individuals acquire an “ownership” interest in property?

Accession - Accession refers to additions to existing property to modify it in a way that results in new property. Accession is very similar to creation of something new. That is, if you add something to raw materials, you own the product that you make from the raw material.

- **Example:** I build a tree house with lumber that is not mine. I used property that was not mine, so I am liable for the value of the lumber. But, I own the product of my labor (the tree house). Of course, in my situation, the person may be able to file a legal claim against you if you do not pay for the lumber.

- **Discussion:** Do you believe that something created from raw materials should be considered new property? In the business context, should ownership rights in newly created property vest in the owner of the raw materials?

- **Practice Question:** Tom needs a place to live. He owns land, but he does not have the money to build a house. One day, he is riding by a construction site. Out front is a large stack of lumber that belongs to Angie, the general contractor. Tom comes back that evening and steals all of the lumber to build himself a house. Tom is a skilled carpenter and using the lumber it only takes him a week to frame in his house. If Angie learns that Tom stole his lumber, does she effectively own Tom’s house? Why or why not?

- **Resource Video:** <http://thebusinessprofessor.com/acquiring-property-through-accession/>

Acquiring Resources Through Possession

- **Rule of First Possession** - The first person to reduce previously un-owned things to her possession becomes its owner. In reality, there are few things that have never been previously possessed or owned.

- **Example:** An individual may obtain ownership of real property through “original entry” or “title by occupancy”. This is where the government grants ownership rights in land to individuals willing to settle or claim a stake in the land. This rule was important during the founding and colonizing of the United States.

- **Discussion:** How do you feel about the principle that the first possessor of property owns it? What are the benefits of this principle? What are the negative aspects of the principle?

- **Practice Question:** Ernest is walking down the street when he sees a flash of light and a large object fall from the sky. Ernest immediately recognizes that a meteor has hit the earth. He runs over to where the

meteor landed and finds that the meteor contains a large chunk of precious metal. He picks up the precious metal and takes it home. Does Ernest own the metal?

- **Resource Video:** <http://thebusinessprofessor.com/acquiring-property-the-rule-of-first-possession/>

- *Lost, Mislaid & Abandoned Items* - These include situations in which an individual loses ownership rights to another person.

- *Lost Items* - Things that are lost may also acquire a new owner through possession. Most states have a statutory procedure in place for establishing ownership rights in lost property. These statutes generally require that the lost property be advertised for a period of time in an effort to notify the original owner. If, however, the original owner fails to claim the lost item, ownership rights vest in the individual who found the item. The purpose of such statutes is to avoid the situation where no one owns or makes beneficial use of lost items. Without following this procedure, the finder of the lost property obtains limited ownership rights through possession, which may always be subject to challenge by the original owner.
- *Mislaid Items* - These are items that are lost or left behind by an individual. It commonly arises when someone leaves clothing or accessories behind in a store or restaurant. The owner of the location where the item was left becomes the guardian of the property until retrieved. After a reasonable amount of time without the owner coming to claim the item, the guardian of the property may follow the statutory procedure to establish ownership rights. In the absence of following a procedure to establish ownership, the holder has limited ownership rights simply by possession.
- *Abandonment* - Mislaid or lost property may be deemed “abandoned”. If a mislaid or lost item is abandoned, the finder may retain the item and claim ownership. The key attribute is that the original owner must demonstrate “an unequivocal intent to abandon the property”. Intent can be inferred from conduct, such as stopping looking for it, permanently leaving the geographic area, etc.

- **Discussion:** Do you agree with this treatment of lost or mislaid items? Why or why not? What would be an alternative approach to dealing with ownership rights in lost or mislaid property?

- **Practice Question:** Tamara finds a valuable diamond ring laying on the sidewalk. She takes it home and puts it in her jewelry box. Years later, she gives it to her daughter as a present. One day, her daughter is approached by a stranger who claims that she was the original owner of the ring when it was lost. If the stranger’s claims are true, who has ownership of the ring?

- **Resource Video:** <http://thebusinessprofessor.com/laws-for-lost-mislaid-and-abandoned-items/>

- *Adverse Possession* - This is a situation where someone legally gains ownership or title to someone else’s property by wrongfully claiming rights of use or possession of that person’s land. There are several elements that must be present to claim an ownership interest in property through adverse possession:

- *Open* - The individual(s) claiming possession must be open about their claim of ownership. Openness is

generally characterized as living upon or using the land as an owner would.

- *Example*: Hiding or squatting on land intentionally out of site of others will not qualify as an open claim of ownership.
- *Notorious* - The individual's presence on the land must be known by others. This is closely related to openness. If others are aware that a person is claiming ownership of the land, it serves to substantiate all other elements of adverse possession statutes or common laws.
 - *Example*: Setting up a mailbox to receive mail would demonstrate that the claim of ownership is known or notorious.
- *Actual* - The claim of ownership of the land must be actual, rather than nominal. Simply claiming or voicing an ownership interest without physical possession or control of the land is not sufficient. It requires the person to assert her ownership rights through actual possession or control.
- *Exclusive* - The claim of ownership must be to the exclusion of others. As previously defined, property is something held or possessed to the exclusion of others. The individuals claiming ownership must seek to exclude others from claiming those same ownership rights. This can thwart a claim of adverse possession through group squatting (vagrant community) efforts if not done or undertaken by all squatters as an exercise of group ownership.
- *Continuous* - The claim of ownership must be continuous throughout the entire period of adverse possession. Breaks in periods of claimed ownership stop the statutory period from running and starts it over when ownership rights are claimed again.
- *Wrongful* - The individual claiming ownership cannot have the permission or legal right to use the land. If an individual has the legal right (such as through a rental contract) to be on the land, it is not wrongful.
- *Statutory Period* - Each jurisdiction with an adverse possession statute requires that the possession take place for a prescribed period. The statutory period typically ranges from 7 - 20 years depending upon the jurisdiction and the nature of the property interest. The time period may also vary depending upon the nature of the ownership interest claimed in the land. For example, claiming an easement interest in land may require use for a shorter or longer period than claiming fee simple ownership of the property.

The recognition of ownership through adverse possession seeks to promote beneficial use and ownership of property. If property lays dormant for a period that is sufficient to allow for adverse possession, it is not being beneficially used. This harms economic productivity and is contrary to the public good.

- **Discussion**: What do you think about this law? Is it fair? Should someone be able to acquire legal ownership of someone else's property without her consent? Are you convinced by the government's justification for this law? Is there any way you would alter the law to make it more fair?
- **Practice Question**: Trina has owned a small parcel of land in town for about 15 years. When she decides to sell the house, she pays a surveyor to draw up a plat of the land. To her surprise, her plot is slightly

bigger than she originally suspected. Further, it appears that the neighbors built part of their garage on her land about 12 years ago. What are Trina's rights with regard to the land encroached upon by her neighbor's garage?

- **Resource Videos:** <http://thebusinessprofessor.com/adverse-possession-explained/>

5. How is an ownership interest transferred between individuals?

- **Contracts** - Contract law provides rules under which people agree to exchange value. Contracts, express and implied, are the dominant manner by which individuals exchange real and personal property. Contract law is a staple of a developed rule of law system. Enforceable contract rights provide confidence in undertaking economic activity with others. Increased confidence drives economic productivity.

- **Discussion:** Do you believe that contract law has an effect on economic activity? Why or why not? If so, what is the effect and why?
- **Practice Question:** Abby and Frank are sitting in the cafeteria eating their lunch. Abby notices that Frank has a delicious chocolate bar. Frank notices that Abby has a bag of his favorite potato chips. Abby agrees to trade her potato chips for Frank's chocolate bar. Who owned the chocolate bar and potato chips before and after the trade?
- **Resource Video:** <http://thebusinessprofessor.com/acquiring-property-through-contract/>

- **Acquiring Resources through Gift** - A gift is a transfer of ownership from one party to another without the consideration (mutual exchange of value) necessary to establish an enforceable contract. A gift may, however, transfer ownership of property. A gift normally transfers ownership at the time that the owner expresses intent to transfer the property and physically surrenders the property to someone else who accepts it. The individual receiving the gift must act to accept the gift to make the transfer final.

- **Note:** The gift made during a person's life is known as an "*inter vivos*" gift. A "testamentary gift" is one that is made through a will or other testamentary document.
- **Example:** The last will and testament expresses the donative intent necessary for a transfer of property. An executor or personal representative may be charged with delivering the property in accordance with the deceased's intent. Lastly, the recipient of the inheritance must accept the inheritance. If the intended recipient rejects the inheritance, there is no enforceable transfer of property.

- **Discussion:** What is your opinion regarding the transfer for property by gift? Should a gift be enforceable under the law? If so, at what point should the gift or intended gift be enforceable?
- **Practice Question:** Elsa has a beautiful dress made of satin that she rarely wears. She decides to give the dress to Ingrid. Ingrid is extremely excited to receive such a lavish gift. Before Elsa surrenders the dress,

however, she changes her mind. She informs Ingrid of her change of heart without any ounce of remorse. Who is the owner of the dress before and after Elsa reneges on the promise?

- **Resource Video:** <http://thebusinessprofessor.com/acquiring-ownership-rights-through-gift/>

- **Confusion** – In some cases, individuals will combine their property in ways that makes it indistinguishable. In this situation, there is an amalgam of property to which the contributors have a claim. If a contributor seeks to withdraw her property, she will not receive the exact same property contributed.

- **Example:** Think of farmers placing their grain collectively in storage silos. In such a case, the individuals contributing property retain ownership of an amount of property equal to their original contribution. In a way, this is a transfer of property between individuals.

- **Discussion:** Can you think of other situations where combined property of multiple individuals can become indistinguishable? Are there any situations in which confusion of combined property could detriment one or more of the property owners?

- **Practice Question:** Bert is a cattle rancher in Texas. Every year, he drives his cattle from his West Texas ranch to a more northern location where there is more water and better grazing. At the end of the year, he drives the cattle back down to his southern ranch. Bert has never felt the need to brand or tag his cattle until time to send them to the market. Unfortunately, during one of his annual cattle drives, many of his cows become mixed in with a neighbor rancher's cattle. Neither Bert nor his neighbor can identify their actual cows, so they agree to divide the cows based upon size and total number. In this scenario, has any change of ownership taken place?

- **Resource Video:** <http://thebusinessprofessor.com/acquiring-property-rights-through-confusion/>

OWNERSHIP INTERESTS IN REAL PROPERTY

6. How do individuals establish and document an ownership interest in real property?

Interests in real property are subject to an instrument of title. A deed is the primary manner of establishing ownership and transferring an interest in land. The deed contains a precise legal description of the land and specifies the exact location and boundaries according to a mapping or surveying system. Some types of property interest, such as an easement, can be created through a legal document other than a deed; however, a deed is still required to subsequently transfer an established ownership interest in the property. There are several types of property deeds:

- **Warranty Deed** - This is a deed that purports to transfer any ownership that an individual has in the real property. The seller warrants that she holds title to the property free and clear of any liens or encumbrances and that she is legally entitled to transfer the property. A warranty deed may be divided into “general warranty” and “special warranty” deeds.

- **Note:** Individuals providing warranty deeds often purchase title insurance to protect themselves

against warranty liability in the event of a defect in title.

- *General Warranty* - The general warranty deed warrants the title against any defects that have ever existed in the title.
- *Special Warranty* - A special warranty deed warrants the title against any defects caused by or relating to actions or omissions of the seller.
- *Grant Deed* - A grant deed is a deed in which the seller guarantees to the purchaser that the property has not been previously sold and that there are no liens, encumbrances, or restrictions that are not disclosed. She also guarantees that there are no current ownership claims by third parties. Unlike the warranty deed, the grant deed does not warrant title against all claims by third parties. That is, the seller will not defend the title if anyone else claims an interest in the property. The recipient is left to rely upon her own search of title to the property to identify potential claims.
- *Quitclaim Deed* - A deed that purports to transfer the ownership that an individual has in the real property without warranty. That is, the seller or transferor does not warrant that she has any particular ownership interest in the subject property. These types of deeds are commonly used in disputes over real property and in situations where title history is very uncertain.
 - *Note:* This type of deed is commonly used in complicated divorce or inheritance situations.

- **Discussion:** Why do you think that the law requires a special legal document to transfer an ownership interest in land? Why do you think a simple contract to transfer land insufficient to transfer ownership?
- **Practice Question:** Hannah, along with her five sisters, inherits land from her grandfather. There is a bit of uncertainty as to each daughter's inheritance rights, so Hannah is not certain of her ownership percentage in the land. Ted is a developer who wants to build condos on the land. He works out a deal with Hannah and her five sisters to purchase all of their interests in the land. As part of this transaction, what type of deed would you recommend that Hannah use in transferring her interest to Ted? Why?
- **Resource Video:** <http://thebusinessprofessor.com/deeds-and-transfer-of-interest-in-real-property/>

7. What is a “fee simple” interest in real property?

Fee simple is the term used to represent the maximum ownership interest in real property that is allowed under law. It can be referred to as complete ownership. A fee simple owner has full legal rights and powers to possess, use, and transfer the land. There are, however, certain limitations that can be placed on fee simple ownership, including:

- *Fee Simple Absolute* – Fee simple absolute ownership means that all interests in the property are transferred. There is no limitation or conditions attached to the transfer.
- *Fee Simple Defeasible* – Fee simple defeasible ownership means that a condition (or multiple conditions) are attached to a transfer of the property. This means that if a certain event occurs, the transfer is undone and the

property either reverts back to the original owner or to a third party.

- *Example:* Tom transfers property to Ann under the condition that it always be used for residential purposes. If the land is ever used for anything other than residential purposes, it reverts back to Tom (or his heirs).
- *Note:* The rights retained by the transferor of a fee simple defeasible or a designated third party is discussed below in the context of a life estate.

These characteristics of a fee simple interest are important tools for individuals when determining the extent of property interest to transfer.

- **Discussion:** How do you feel about the ability of an owner of land to transfer and interest in that land subject to conditions? Can you see any advantages or disadvantages to limiting the owner of land's use of her property? Does this ability in any way run afoul of the goals or objectives of government in recognizing ownership interest in land?
- **Practice Question:** Veronica wishes to transfer land she inherited from her grandfather to her alma mater, Great College. She drafts a deed that states that all interest in the property is transferred to Great College, so long as it is used for academic purposes. If it is ever not used for academic purposes, it reverts back to her estate. Years later, Great College decides to rent the land to a group of fast-food restaurants seeking to serve the student body. If Veronica has passed away, what are the rights of Veronica's estate to demand return of the property?
- **Resource Video:** <http://thebusinessprofessor.com/fee-simple-defined/>

8. What is a "life estate" interest in real property?

A life estate is a temporary transfer of an ownership interest in real property. The transfer is good for the life of the transferee or some other third-party identified in the deed of transfer.

- *Reversion* – At the end of the life estate, the land reverts back to the original owner who has a reversion interest.
- *Remainder* – At the end of the life estate, the person to whom the property returns has a remainder interest.

The holder of a life estate has the ability to fully use and enjoy the property. The holder cannot, however, cause extraordinary changes to the property or knowingly deplete the property of non-renewable resources (such as digging up minerals). The holder may, however, build new structures or cut timber from the land. Any improvements to the land revert or transfer along with the property at the end of the life estate.

- *Example:* Beth transfers property to Carl for the rest of his life. At the end of his life, the property reverts back to Beth or her heirs. If Beth has no heirs, it goes to Fran or her heirs. Beth has a reversion interest and Fran has a remainder interest.

- **Discussion:** How do you feel about the ability to transfer a temporary ownership in land for an individual's life? Should that right be limited by requiring that the life estate be measured by the life of the holder of the interest? Are there any economic utility arguments for or against the government recognizing life estates?
- **Practice Question:** Linda works as a tenant on the farm of Eric, a local aristocrat. Upon Eric's death, he grants Linda the right to live and farm the land for the rest of her life. At the end of her life, however, the land will transfer back to Eric or his children. If Eric is not alive and he does not have any children, the land will transfer to Gladys, Eric's cousin. What interests do Linda, Eric, and Gladys have in the land?
- **Resource Video:** <http://thebusinessprofessor.com/life-estate-defined/>

9. What is a "leasehold estate" in real property?

A leasehold estate, commonly called a lease, is the property right granted to a tenant by a landlord. The lessor has limited rights similar to that of an owner, but for a limited term. The renter cannot materially change the property without the landlord's consent. Any material changes to the property (such as installation of fixtures) become the property of the landlord upon termination of the lease.

- **Note:** The provisions of the Uniform Commercial Code, Article 2A govern leases of personal property.

- **Discussion:** Should a lease be considered a form of ownership interest in property? At what point do you think the right of use turns into rights of ownership?
- **Practice Question:** Gayle has a house that she generally rents to tenants. Juliet comes into town and asks Gayle if she can stay with her for a few days. Gayle agrees to allow Juliet to stay in her rental house. After a couple of days, Juliet offers to clean up the house as a thank you for letting her stay in the house. Gayle agrees without any talk of compensation or rent. Juliet proceeds to paint the walls, install curtains, and replace some of the faucets. What is the relationship between Gayle and Juliet? Did Juliet have the right to undertake the aforementioned changes to Gayle's house?
- **Resource Video:** <http://thebusinessprofessor.com/leasehold-interest-in-real-property/>

10. What types of co-ownership interests exist in property?

It is very common for individuals (particularly family members) and businesses to own property collectively. The most common forms of co-ownership of property are as follows:

- **Joint Tenancy** – All owners of the real property are indicated on the title and each owns an equal undivided interest in the property. There is a "right of survivorship" among owners. The interests of all owners are unified, so that when one owner passes away the other owners acquire the deceased owner's interest. If any owner seeks to sell or transfer her interest in the property, the joint tenancy is broken and the ownership becomes a tenancy in common.
- **Tenancy in Common** – Each owner owns a specific percentage of the property. This percentage of ownership is

separate from other owners' interest. The ownership interest is not unified; rather, it is "divisible". Any owner can sell her ownership interest and there is no right of survivorship. If the owner passes away, her ownership interest passes to her heirs and assigns. The remaining owners do not acquire the deceased owner's interest.

- *Tenants by the Entirety* - This is a method of joint ownership in property by married spouses. Each spouse owns an equal and undivided interest in the real property. There is a right of survivorship, so either spouse will inherit complete ownership of the property when the other spouse passes. The land passes automatically without having to go through probate. Neither spouse may transfer the property without the other spouse's consent. There is a presumption of tenancy by the entirety in most states, unless the deed or title indicates that only one spouse is the owner of the property.

- **Practice Question:** Elaine and Jerry are co-owners of property that they use in their business venture. They own the property as joint tenants. What happens to the property if either Jerry or Elaine pass away?
- **Resource Video:** <http://thebusinessprofessor.com/joint-tenancy-tenancy-in-common-explained/>

- *Community Property vs. Separate Property* – This property designation further concerns the ownership of real property by legally married couples. It applies to real and personal property. As explained above, ownership of property as tenants by the entirety would control with regard to real property. Generally, property held by a married couple is either classified as "marital property" or "separate property".
 - *Marital Property* - Is owned equally by both spouses and each spouse's consent must be present to legally sell the property.
 - *Separate Property* - Belongs to one spouse or the other. It does not require the consent of both spouses to sell or transfer.

There are two systems in the United States for determining whether property is marital or separate. One system follows the "common law" rule and the other follows the "community property" rule.

- *Common Law Rules* - Common law states that marital or separate property is determined by whose name is on the title, who purchases the property, or who receives it as a gift.
- *Community Property Rules* - In states observing community property rules, all property acquired during the marriage is considered marital property, with the exception of property acquired before marriage, property inherited, or received as a gift. This rule is analogous to the concept of property owned as tenants by the entirety. This rule becomes important in the event of divorce between the parties. The court will be forced to determine who owns property.
- *Example:* Tom and Jane are married. Their primary possessions are a home and a car. Determining who owns the property will depend on whether it is marital property or separate property. If the state is a common law state, whoever's name is on the title to the home and car own it. If it is a community property state, ownership depends on whether the home or vehicle was acquired by an individual prior to marriage or pursuant to a gift or inheritance. If it was purchased during the marriage, it will be considered

community property.

- **Discussion:** Which do you believe is most fair to spouses, community property laws or equitable distribution laws? Why? What is an argument for or against following equitable distribution principles? Community property principles?
- **Practice Question:** Ervin and Betty are husband and wife. Over the years they have acquired several parcels of real estate. The real estate is always registered in Betty's name. Terry, a general contractor, approaches Betty about purchasing one of the properties. Who has the right to sell the property? What do we need to know about the law of the jurisdiction to answer this question? Why?
- **Resource Video:** <http://thebusinessprofessor.com/community-property-vs-separate-property/>

11. What is an “easement interest” in real property?

An easement is a limited interest in real property. It involves a particular right to use the subject property in a particular manner, but does not necessarily create a right to possess the property. Generally, the easement rights exist at the same time as the rights of other property interest holders.

- *Example:* An easement commonly grants the right to cross or use someone else's land for ingress and egress. This is known as a “right of way”.

An easement may arise by a number of methods, as follows:

- *Express Easement* - An express easement is an easement intentionally granted to another person in writing. It generally arises pursuant to a deed, contract, or testamentary document.
 - *Example:* Emma sells property to Dianne. Emma reserves an easement across Dianne's property. As part of the transaction, Dianne signs a deed granting an easement to Emma.
- *Affirmative & Negative easements* – An affirmative easement grants an individual the right to do something on the subject property. A negative easement, on the other hand, restricts an individual from using her land in a certain way. Generally, it arises pursuant to a transfer of land whereby the original owner does not want the land used in a specific manner.
 - *Example:* Brad owns two pieces of land that are side by side. He sells one of the pieces of land to Teri. He establishes a negative easement in the land at the time of transfer that states that the land cannot be used in a certain manner.
- *Appurtenant & In-Gross Easement* - The easement may attach to the land or it may belong specifically to the person. An “easement in gross” is an easement that allows an individual to use the subject land. The easement does not attach to the land, rather it is a right held by the individual. In this way the easement in gross is similar to a license. An “easement appurtenant” is an easement that attaches to or is a part of the land, rather than owned by an individual. The easement will remain with the property, no matter who owns the property.

- *Example:* Sally may grant an easement to Victor that allows him to cross her land at a specific location. The easement states the right belongs to Victor and does not attach to the property. Sally can determine whether Victor can transfer the easement to another person, but it is personally owned. This is an easement in gross.
- *Natural Easement (Easement by Necessity)* – A natural easement arises when it is necessary for an individual or the public to make use of land located near the property subject to the easement.
 - *Example:* Will owns land located behind Gloria’s land. The only way that Will can access his land from the public highway is to cross Gloria’s land. Will may be able to bring a court action establishing a natural easement allowing him to cross Gloria’s land at a specific point. The justification for the grant of easement is that without it, Will cannot use or enjoy his property.
- *Easement by Prescription (Adverse possession)* – An easement by prescription is obtained by adverse possession (see the discussion of adverse possession). An individual who wrongfully uses someone else’s land under the conditions required for adverse possession may pursue a court action to establish ownership rights in the property.
 - *Example:* Winston drives cattle across Mary’s property every year for 20 years (the applicable state’s statutory period). He did so openly; claiming the right to do so; it was known to others; it was done every year; and it was done without the permission and against the Mary’s wishes. When Mary finally tries to put up a fence to stop Winston from driving cattle, he brings a court action to establish an easement by prescription.

- **Discussion:** How do you feel about an individual acquiring easement rights that are not express? Why should an easement ever belong to an individual rather than attaching to the land or burdened property? How strong should the need be for an individual to acquire an easement by necessity? How frequent must the use of someone else’s property be to give rise to an easement by prescription?
- **Practice Question:** Steven owns a tract of land that adjoins the river. He decides to divide his land into two parcels. He maintains ownership of the parcel that adjoins the river. The other piece of property sits directly in front of his property and borders the road. Steven agrees to sell the property adjoining the road to Amy, but he puts in the deed a specific limitation stating that Amy cannot build a building on the far right side of the property. Steven and Amy later get into an argument and Amy seeks to stop Steven from crossing her land to access his property. What legal issues are at play in this situation?
- **Resource Videos:** <http://thebusinessprofessor.com/easement-or-right-of-way-in-real-property/>

PERSONAL PROPERTY

12. What is a “license” of real or personal property?

A license is a grant of the right to use real or personal property. It is not a true property interest. A license of real property will be limited to a particular holder and it will have a definite (limited) term. Because it allows for use (without

possession) of the real property, it is similar to an easement in gross. An easement, however, must be in writing. An oral grant of permission to use real or personal property would be considered a license.

- **Discussion:** Do you think a license to use property should be considered a property interest? Why or why not? If so, what type of uses should be considered a property interest?
- **Resource Video:** <http://thebusinessprofessor.com/what-is-a-license-of-real-property/>

13. What is a “bailment”?

A bailment is a situation where the owner of personal property gives the property to another person to hold or to use in a specific manner. The owner of the property is called the “bailor” and the person receiving the property is called the “bailee”. A bailment can be express (pursuant to agreement by the bailor and bailee) or implied (simply a result of the parties’ conduct).

- **Example:** To illustrate an express bailment, Alex gives his car to Brandi to sell. Brandi will receive a commission for selling the car. Until the car is sold, the situation is a bailment. Brandi is the bailee holding the property with the specific purpose of selling it for Alex. Another common form of express bailment is shipping a package through the public or private delivery service. The package is held by the common carrier is a bailment.
- **Example:** To illustrate an implied bailment, Gary accidentally leaves his computer at Dina’s house. Dina leaves Gary a message to let him know he left it and that she will hold on to it until he can pick it up. In this situation, an implied bailment is created. Dina is holding the computer for Gary with the expectation that she return it whenever he comes to get it.

- **Discussion:** What do you think about the prospect of creating a bailment by accident? Does it matter whether the parties realize that they are part of a legal relationship? Should the bailor and bailee know that the other exists?
- **Practice Question:** Rhonda is leaving a restaurant and picks up her coat from the rack at the door. When she reaches her home, she realizes that she has picked up someone else’s coat. Rhonda decides to return the coat to the restaurant, but she cannot do so until the following day. What is Rhonda’s legal status while in possession of someone else’s coat?
- **Resource Video:** <http://thebusinessprofessor.com/bailment-defined/>

14. What is a “unilateral benefit bailment” and “mutual benefit bailment”?

A bailment can be made to benefit either party or both parties.

- **Unilateral Benefit Bailment** - A unilateral benefit bailment is a situation where either the bailor or the bailee receives a benefit from the bailment, while the other party does not. This situation may arise as a gift or favor by one party to the other.

- *Example:* Sam agrees to look after Judy's car while she is on vacation. This is a unilateral benefit bailment in favor of Judy (the bailor). If Judy later loans her car to Sam for him to drive while his car is being repaired, this is a unilateral benefit bailment in favor of Sam (the bailee).
- *Mutual Benefit Bailment* - A mutual-benefit bailment provides a benefit to the bailor and bailee. Generally, a mutual benefit bailment is pursuant to an enforceable contract, as there is an exchange of value that is the impetus of the relationship.
 - *Example:* Ralph agrees to fix Laura's chainsaw if he can use it to cut up some trees that fell on his property. This is an enforceable contract. Since the contract involves Ralph holding Sandra's property and returning it at some point in the future, the relationship constitutes a mutual-benefit bailment. Any situation where the bailee is paid to hold or dispose of the property is a mutual-benefit bailment. In business, most bailments are mutual benefit.

Rights - The bailor and bailee have specific rights in the bailment relationship.

- *Bailor Rights* - The bailor generally has the right to receive return of the property (or any proceeds derived from disposing of the property).
- *Bailee Rights* - The bailee generally has the right to possess the bailed item, the right to use it (unless otherwise limited in the bailment agreement), the right of compensation (if provided for in the bailment agreement), and may have the right to limited personal liability or indemnification by the bailor for potential liability arising from the bailee carrying out her duties.

Duties - The bailor and bailee owe specific duties to each other in the bailment relationship.

- *Bailor Duties* - In a unilateral-benefit bailment, the bailor must reveal any defects in the bailed item. She warrants that there are no defects in the bailed object that could have been discovered through reasonable inspection.
- *Bailee Duties* - Bailee has an absolute duty to return the object to the bailor or to dispose of it as the bailor directs. The bailee is potentially liable to the bailor for failing to do so.

Standard of Care in Duties - The bailor and bailee owe duties of care to each other in the bailment relationship.

- *Bailor* - The bailor must take reasonable care to protect the bailee from known risks in the bailment relationship.
- *Bailee* - The bailee's duty of care in the bailment relationship depends upon the nature of the bailment. In a mutual benefit bailment, the bailee generally must exercise reasonable care in taking care of the bailed property. If the bailment is a unilateral benefit for the bailee, the bailee owes a higher standard of care in carrying out her bailment duties. The standard of care is lower if the bailment relationship is a unilateral benefit for the bailor. This could mean that the bailee avoid recklessness in carrying out her duties.

Numerous special bailment relationships exist that may entail higher levels of care for the bailee. For example, some jurisdiction make common carriers strictly liable for any damages to the bailed property (such as a package shipped with a common carrier). The bailee may have limited rights to disclaim some level of liability. Further, some jurisdictions make hotels and motels strictly liable for losses to property held as part of the business-client relationship (such as goods stolen

from the hotel room).

- **Discussion:** Do you believe that there should be a difference in duties between unilateral and mutual benefit bailments? Should the duties be stronger for the bailor or bailee in either situation? Why or why not?
- **Practice Question:** Ralph asks Arnold to watch his car while he is on vacation. Arnold agrees under the condition that he get to drive it whenever he wants. Ralph agrees and hands over the keys before heading on vacation. Arnold drives Ralph's car to a bar. He drinks too much and has to take a taxi home. The next day he returns and someone has vandalized Ralph's car. Is Arnold potentially liable in this situation?
- **Resource Video:** <http://thebusinessprofessor.com/unilateral-and-mutual-benefit-bailments/>

LIMITATIONS ON PROPERTY RIGHTS

15. How are property ownership rights limited?

The US Constitution protects individual ownership rights in property. The concept of property allows the owner to exclude others from possessing or using that property. Nonetheless, laws may limit property by regulating when and how a person can use her property. In general, owners are prohibited from using their resources in ways that harm or injure others. The Federal Government limits the use of property through its power to regulate interstate commerce. State and local governments regulate the use of property pursuant to their police power to protect the health, safety, morals, and general welfare of its citizens.

- **Discussion:** How do you feel about the ability of the federal, state, and local governments to infringe upon a property owner's rights? Does it matter to you that the ability to infringe upon property rights is derivative power, where the constitutional protections of property rights are express? Why or why not?
- **Resource Video:** <http://thebusinessprofessor.com/how-are-property-and-ownership-rights-limited/>

16. What is "Nuisance"?

Nuisance is the use of one's property in a manner that creates a substantial, unreasonable interference with the use or enjoyment of another person's property.

- **Public Nuisance** - Public nuisance arises from use of land that causes a substantial interference with the use and enjoyment of the property by the public at large.
 - **Example:** Pollution from a factory that affects an entire neighborhood or town may constitute a public nuisance.
- **Private Nuisance** - Private nuisance arises when a person uses her property to substantially interfere with the use and enjoyment of another person's property.

- *Example:* Allowing your dog to bark and disturb your neighbor could constitute a private nuisance.

- **Discussion:** How do you feel about a nuisance action as a method of enforcing one's property rights? How should the court balance the rights of one landowner versus those of another? Should there be public laws broadly targeting nuisance, such as criminal actions for general nuisance? Why or why not?
- **Practice Question:** Evelyn buys a home in a small neighborhood. Since moving in, her neighbor Derek has been extremely rude to her. Specifically, Derek sent her an email asking that she avoid allowing her home to become a gaudy, eye sore in the neighborhood. Evelyn, ever the feisty one, is very angry about the email. She decides to paint a largely smiley face sticking out its tongue on the side of her house facing Derek's house. Derek is outraged by Evelyn's actions. What are Derek's options in this situation?
- **Resource Video:** <http://thebusinessprofessor.com/nuisance-explained/>

17. What is "Zoning"?

Zoning refers to local (city or county) ordinances controlling how property within specific areas can be used. Zoning ordinances generally divide areas of counties or municipalities into districts designated for residential, commercial, or industrial use. The local government will charge anyone using her property in violation of the ordinance with an infraction.

- *Note:* If the land is being used in a certain manner prior to the passage of an ordinance, the user may receive a "non-conforming use" exemption from the ordinance. Landowners who desire to use their land in a manner disallowed by the ordinance may seek an exemption or "variance". This generally requires petitioning the local zoning board or council and submitting the proposal for public comment.

- **Discussion:** How do you feel about allowing local governments to choose the manner in which land can be used? How should this power be weighed against the rights of the landowner?
- **Practice Question:** Beth owns a home in a small neighborhood. She has the idea to begin printing t-shirts and selling them over the Internet. She researches all of the applicable requirements for starting a business. One of the requirements is to register for a business license. What will she have to know about zoning in order to apply for a license?
- **Resource Video:** <http://thebusinessprofessor.com/zoning-ordinances-explained/>

18. What is "Eminent Domain"?

Eminent domain is the power granted local, state, and federal governments under the Takings Clause of the 5th Amendment. This clause allows the various levels of government to take away property from private owners under certain conditions. Generally, the taking must be for a "public purpose" and the government must provide "just compensation" to

the landowner for the taking. A taking refers to a physical seizure of the land as well as unduly burdening an individual's use and enjoyment of her property.

- *Note:* An owner whose land is being taken may challenge the action in civil court. Generally, the landowner must show that the taking is not for a public purpose or that she was not given just compensation.
- *Example:* If the state builds a highway that brings traffic into someone's front yard, this would likely be a taking. The individual's ability to use and enjoy her property is diminished by proximity of the traffic.
- **Discussion:** How do you feel about the ability of the government to take a person's land? Does it affect your opinion that this right is expressly included in the Constitution? Why or why not? Does your opinion about this authority vary depending on whether the governmental authority is the federal, state, or local government? What standard should apply when determining what constitutes a public purpose?
- **Practice Question:** Melinda owns a small farm on the edge of town. The local township is in negotiations with Save-Mart, Inc., to build a new store in the town. Save-Mart has identified Melinda's farm as the perfect location. Melinda is unwilling to sell the land. What are the options for the township with regard to Melinda's property?
- **Resource Video:** <http://thebusinessprofessor.com/eminant-domain-explained/>

19. What is "taxation" of personal and real property?

Property taxes are a form of direct tax on the real and personal property owned by individuals or businesses. Property taxes (primarily on real estate) often fund local schools, police, and county administration. A common tax on personal property is a tax on the value of one's personal vehicle, commonly known as "ad valorem" taxes or business equipment and inventory.

- **Discussion:** The US Constitution includes the ability of the government to tax individuals. Do you feel that this power is overly broad? Why or why not? Should this power extend equally to the state and local governments? Why or why not? Should there be any specific limits on this power? Local property taxes are often linked to funding for schools, police, and fire departments. How does income level and property values relate to quality of public services? How do you feel about this method of funding for these public services?
- **Practice Question:** The town of Pleasantville is considering building a new high school building. To raise funds for the project, what are some of the town's options?
- **Resource Video:** <http://thebusinessprofessor.com/taxation-of-real-and-personal-property/>