

REVIEW NOTES - THE ECONOMICS OF PROPERTY LAW

I. What is Property and Property Rights?

- Definition
- Interesting Questions about Property
 - o What objects will the law recognize as private property?
 - o What rights does ownership convey?
 - o To whom and for how long are property rights assigned?
 - o How and to what extent should property rights be protected?
- Examples

II. Why have property rights?

- Examine the alternative - no legally enforceable property rights
 - o either you enforce your rights by force of arms or take the chance of losing your property.
- class example - subsisting w/ no property rights
 - o under what conditions do you choose to enforce your rights privately?
- When is it efficient to use social enforcement (i.e., private property rights)
 - o social enforcement costs are less than private enforcement costs (i.e., economies of scale exist in enforcement).
- Examples where private property rights are not cost effective.
- Fugitive Property
 - o Definition
 - o Example: the Hammonds Case
 - o Potential Rules establishing property rights for Fugitive Property
 - Rule of first possession. What is the problem with the rule?
 - Ownership of the fugitive property is tied to ownership of a more tangible property. What is the problem with the rule?
 - Tradeoff between the rules.
 - o Homesteading as an example of Fugitive Property.
 - What rule is homesteading an example of?
 - Assuming the law is efficient; under what conditions would we expect to see homesteading used (as opposed to direct land sales by the government)? Hint: focus on the impact that population density has on the cost of enforcing private property.

III. Coase and Cooter (combined)

- Coase's railroad example
 - o Game Theory.
 - What is the efficient solution (joint profit maximization)?
 - What is the equilibrium for the particular game? (Each party, given what the other party does, maximizes their private profit.)
 - Make sure you know how to change the game when the liability rule changes.
 - o assuming non-cooperation between the parties, what is the optimal rule of law?
 - What did Pigou say?
 - Equilibrium if the rule is no liability?
 - Equilibrium if the rule is liability for damages?
 - Equilibrium if the rule is tax = damages but paid to government?
 - Which rule is best (assuming non-cooperation)? Why?

- Assuming cooperation is possible, what is the optimal liability rule?
 - What are the obstacles to cooperation?
 - How does bargaining occur?
 - What are the obstacles to bargaining?
 - What are the components of transaction or bargaining costs?
- What is the Coase Theorem?
- Cooter on Coase
 - The Coase Theorem is overly optimistic. Why?
 - The Hobbes Theorem (what's that?) is overly pessimistic. Why?
 - What is the Normative Coase Theorem?
 - What is the Normative Hobbes Theorem?

IV. How should property rights be protected?

- Coase's RR example slightly altered.
 - which liability rule works without cooperation?
 - which liability rule works with cooperation (bargaining) possible?
 - when is bargaining possible?
 - private bad (what's that?) - bargaining is possible
 - public bad (what's that?) - bargaining not possible
 - Cooter & Ulen rules
 - private bad => use an injunction (why?)
 - public bad => use damages (why?)
 - Why not use damages all the time?

V. How are property rights established?

- branding cattle (enforcement?)
- middle ages (beating children)
- right of 1st possession
- water rights
 - reasonable use theory
 - natural flow theory
 - why did the two different methods develop?
- recording and transferring title
 - system used for real estate (what is included in the system?)
 - when should a system for recording and transferring titles exist?
- can a thief give good title? Two alternatives:
 - the law says no.
 - the alternative - a good faith purchaser may presume the seller had a good title.
 - who bears the risk of bad titles under each system?
 - what does the law assume about the relationship of the cost of ensuring the possessor has good title under each system?
- adverse possession
 - definition
 - why is having the rule efficient?
 - benefits of the rule?
 - costs of the rule?

- lost property (Estray Statutes)
 - o example
 - o what is the efficiency justification for the law?
- Bequests and inheritances
 - o Individuals that die intestate (without a will)
 - why have such a rule?
 - what is the most common form of the rule?
 - what is the efficiency justification for this form of the rule?
 - o should we allow individuals to do anything with their property in a will?
 - 100 percent inheritance taxes (how will individuals respond? Problems?)
 - stipulations on inheritances
 - no stipulations allowed => problems?
 - all stipulations allowed => problems?
 - the rule against perpetuities (what is the justification for this rule?)

VI. Conflicting property rights

- Boomer v. Atlantic Cement Co (discussed in book).
 - o what are the facts of the case?
 - o what is the court's decision?
 - o did the court make the right decision (is the harm a private or a public bad?)
 - o temporary vs. permanent damages
 - definition of both
 - advantages and disadvantages of both
 - when should we use both?
- Spur v. Dell Webb (not discussed in book)
 - o what are the facts of the case?
 - o what is the correct resolution of the case according to the Coase Theorem (private or public bad?)
 - o what impact does the decision have upon future behavior (coming to the nuisance.)

VII. What can or should be privately owned?

- private vs. public ownership
 - o definition of "rivalrous" and "exclusive" as the terms pertain to property
 - o what is a public good?
 - o what is a private good?
 - o problems with private ownership of public goods
 - what is free-riding?
 - solutions to the problem of free-riding
 - tragedy of the commons
 - solutions to the tragedy of the commons
- information
 - o the traditional economic view of information, information as a public good
 - policy prescription
 - o non-traditional views of information
 - indirect incentives to produce information
 - racing towards the production of information
 - policy prescriptions

- patents
 - o definition (how can one receive a patent?)
 - o what is the optimal life of a patent?
 - benefits of a patent?
 - costs of a patent?
 - o anti-trust issues - fear that patents system may cause or bolster monopolies thru:
 - patent shelving
 - patent blitzing
 - is this likely?
 - o reforms to the patent system?
 - annual tax or renewal fee. (how does it work? is it efficient?)
 - compulsory licensing. (how does it work? is it efficient?)
- copyrights
 - o definition (how can one receive a copyright?)
 - o justification?
 - o what can be protected?
 - o protection of artists - droit de suite laws - are they efficient?
- Trademarks and Servicemarks
 - o definition
 - o why allow protection?
 - o how does the law work?
 - o how are trademarks protected?
 - o how can a company lose a trademark?
- Government takings of private property
 - o right of government according to the constitution
 - o what are the limits of the right?
 - o potential inefficiencies of the right - loss of subjective value
 - incentives of individual property owners to lie to the government
 - holdout problem
 - o potential efficiencies of the right
 - should only be allowed if the good is a public good
 - why fair market value?
- Regulatory takings
 - o definition
 - o should the government pay for regulatory takings?
 - o Justice Holmes in Pennsylvania Coal Co. v. Mahon. What is the justification for the rule determining when the government must pay for the regulatory taking?
 - o the paradox of compensation
 - what is the paradox?
 - if give full compensation => what is the incentive to the property owner?
 - if give no compensation => what is the incentive to the government?
 - what is the solution to the paradox? Problems with the solution?