

## 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?