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?
o 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?
  o What is the Coase Theorem?
  - Cooter on Coase
    o The Coase Theorem is overly optimistic. Why?
    o The Hobbes Theorem (what's that?) is overly pessimistic. Why?
    o What is the Normative Coase Theorem?
    o What is the Normative Hobbes Theorem?

IV. How should property rights be protected?
  - Coase's RR example slightly altered.
    o which liability rule works without cooperation?
    o which liability rule works with cooperation (bargaining) possible?
    o when is bargaining possible?
      ▪ private bad (what's that?) - bargaining is possible
      ▪ public bad (what's that?) - bargaining not possible
    o 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
    o reasonable use theory
    o natural flow theory
    o why did the two different methods develop?
  - recording and transferring title
    o system used for real estate (what is included in the system?)
    o when should a system for recording and transferring titles exist?
  - can a thief give good title? Two alternatives:
    o the law says no.
    o the alternative - a good faith purchaser may presume the seller had a good title.
    o who bears the risk of bad titles under each system?
    o what does the law assume about the relationship of the cost of ensuring the possessor has good title under each system?
  - adverse possession
    o definition
    o 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

  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
  - definition (how can one receive a patent?)
  - what is the optimal life of a patent?
    - benefits of a patent?
    - costs of a patent?
  - anti-trust issues - fear that patents system may cause or bolster monopolies thru:
    - patent shelving
    - patent blitzing
    - is this likely?
  - 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
  - definition (how can one receive a copyright?)
  - justification?
  - what can be protected?
  - protection of artists - droit de suite laws - are they efficient?

- Trademarks and Servicemarks
  - definition
  - why allow protection?
  - how does the law work?
  - how are trademarks protected?
  - how can a company lose a trademark?

- Government takings of private property
  - right of government according to the constitution
  - what are the limits of the right?
  - potential inefficiencies of the right - loss of subjective value
    - incentives of individual property owners to lie to the government
    - holdout problem
  - potential efficiencies of the right
    - should only be allowed if the good is a public good
    - why fair market value?

- Regulatory takings
  - definition
  - should the government pay for regulatory takings?
  - 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?
  - 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?