

# Florida Property Law

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# Florida Property Law

**VOLUME 1**  
**POSSESSION, ESTATES,  
AND TENANCY**

**John Makdisi**

ST. THOMAS UNIVERSITY  
SCHOOL OF LAW

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

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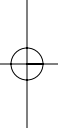
ISBN 1-59460-266-2  
LCCN 2006929441

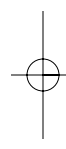
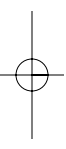
CAROLINA ACADEMIC PRESS  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America



*For Mom and Dad*





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# Preface

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Property law is traditionally taught in the United States to first or second year students as a basic required course for graduation and it is tested on the state bar exam. The goal of the course is (1) to impart fundamental rules and principles of property law that have been generally accepted throughout the states, (2) to develop analytical skills in reading cases, and (3) to encourage evaluation and reform through an understanding of the policy reasons behind the rules. The materials to teach the course are available in any one of over two dozen casebooks that pick and choose cases and materials from several different states to illustrate the legal reasoning process used to develop the rules of property law. Students learn by example. Each case provides one or more issues of law that are resolved by the court's decision in a well-reasoned (or not so well-reasoned) published opinion. Students develop their analytical skills by seeing how judges solve legal issues.

This learning-by-seeing approach has merit insofar as it is the first step for most learning. It becomes more effective, however, when combined with a learning-by-doing approach. A child can learn what it means to walk by seeing others walk, but she actually learns to walk by trying to walk herself. In a law school classroom this learning-by-doing approach is often put into effect through what is somewhat misleadingly called the socratic method. The teacher raises a legal issue through the presentation of a short hypothetical problem and asks the student to demonstrate how she would solve it based on the materials in the reading assignment. The student is expected to think quickly and to respond immediately with an articulate answer. The method works for the learning style of some students but not for that of others who learn more effectively through a slower process of deliberation.

In order to provide students with a more deliberative learning-by-doing approach, this book is designed to present a long hypothetical problem in advance of class so that each student can prepare an answer on his own for later discussion and evaluation in class. Each problem in the book is designed to be solved by reading, analyzing and applying the cases and materials that accompany it. Speed of analysis is no longer a primary factor for success. The problems are more complex than those presented ad hoc within the classroom, and emphasis is now placed on the student's proactive analytical abilities to solve issues on her own. A suggested approach to each chapter would be to read the problem thoroughly to understand what to look for in the materials, then read the materials and digest them, then outline an answer to the problem at the beginning of the chapter, and then turn to the multiple choice questions at the back of the chapter to take a short quiz on the materials.

While fourteen chapters in the book are designed with long hypothetical problems, five chapters on estates and future interests are devoted to problem sets since the problem sets have been found to work most effectively in this area. A suggested approach to

each of these five chapters would be to read the materials and digest them, and then turn to the problem set at the beginning of the chapter and work through the problems, checking the answers at the back of the chapter to ensure that the problems are answered correctly.

A second feature of this book, in addition to the problems and problem sets attached to each chapter, is the adoption of cases and materials primarily within one jurisdiction to expound the law. The traditional assignment of cases from several jurisdictions gives the impression that we have one common law jurisdiction when, in fact, each state has its own. Only by studying the law of one jurisdiction consistently can one start to appreciate law as a well-integrated whole, each of whose parts is dependent on the rest. Only within the context of a single jurisdiction does the law truly become a seamless web.

Florida is ideal as a jurisdiction to study because most of its law conforms to the rules and principles of property law that are generally accepted throughout the states. When a rule or principle differs radically from the rest of the states, that fact is indicated. When a rule or principle to govern a particular issue is undecided in Florida, cases from other jurisdictions are offered to provide an opportunity for students to argue policy reasons for or against adoption of the rule in Florida. This absence of law on a particular point of law in Florida makes the policy argument real in the sense that it will probably have to be made one day in the Florida courts or legislature.

Property law is a fascinating area to explore. It offers a complex jumble of history, social policy, economics, legislation, and overlap with other areas of the law, such as contract, tort, and constitutional law. The fun lies in figuring it all out.

Footnotes with some exceptions have been omitted from the cases and materials in this casebook without indication by ellipsis. Footnotes that have been added to cases as editorial comment are prefaced with "Editor's note." Case cites, as well as the words "[citations omitted]," within cases are generally omitted without indication by ellipsis, unless the case cite supports a quote in the text or is otherwise important for the student's understanding. When a case cite within a case is included, the information following the case name is sometimes omitted. An ellipsis is used to show the omission of text in a paragraph. If the text that is omitted starts within, or at the end of, a paragraph and extends to include another paragraph or paragraphs, the ellipsis appears only in, or at the end of, the paragraph where the omission begins. If the text that is omitted starts at the beginning of a paragraph and extends to include part of another paragraph, the ellipsis appears only in the paragraph where the omission ends.

I wish to thank my property students over the past 25 years whose contributions in the classroom helped me to develop a more sophisticated understanding of property law. I especially want to thank my §4 property students this past fall 2005 semester. They were the first class to work through these materials, and their devoted work effort helped me to work out some of the kinks.