

Louisiana Property Law

The Civil Code, Cases, and Commentary

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Preface

Property law addresses competing claims regarding access to, the use of, and the ability to transfer all kinds of resources. While it is true that the course in property law necessarily covers some dry and abstract technicalities—property titles, boundary markers, servitudes and the like, we believe that property law is one of the most interesting first year subjects in law school. Our initial goal in this casebook is to share with you our excitement about the subject. We want to show you what is at stake in a property dispute. We want you to identify the important societal and economic interests that property law seeks to regulate. Finally, we want you to appreciate that the universe of property rules, principles and practices reflects prevailing local conditions and cultures.

Because this casebook focuses on the property law specific to Louisiana, we face another daunting task. We must help you appreciate that Louisiana's system of property law is a core part of the state's civilian legal heritage inherited from its days as a French and Spanish colony and codified in its Civil Code. Property law, as many commentators have observed over the years, is one of the principal areas, if not the principal area, where Louisiana's civilian legal heritage has been most carefully preserved and where important substantive differences between Louisiana civil law and the common law of its sister states still prevail. To this end we provide an introduction to the history and nature of the civil law tradition in Chapter One. As we move through the rest of the materials, we also provide historical contexts for current Louisiana law and point out, where relevant, how Louisiana property law is different from or similar to property law in common law states and foreign jurisdictions.

A third goal of this casebook is to introduce students to some hotly contested areas of property law, including debates about how property law functions and how its fundamental purposes and core values affect principles and practice. Understanding these controversies within property law will enrich your understanding of the Civil Code articles, judicial opinions and statutes that form the substantive base of Louisiana property law today.

A final goal of this casebook is to demystify property law so that you can become a proficient property law practitioner. Lawyers who work on property law matters must become efficient problem solvers and must be able to develop arguments that are likely to persuade judges and assist clients. Acquiring a firm grasp of basic property law principles is an essential first step to becoming a proficient, practice-ready lawyer who can assist individuals, businesses, not-for-profit organizations and government institutions in a myriad of transactions and controversies.

Property involves actual persons and significant stakes. The contestants include people, corporations, towns, cities, and even the State of Louisiana itself. Property law decides who controls access to and the use of things, who can exclude or be excluded from things, and who can sell, lease or donate things and the terms and limits of those transfers. These vitally important matters embody significant economic and social values. In the pages that follow, we endeavor to help you sort Louisiana property law into its basic elements and understand its vocabulary, its codal structure and the modes of civilian legal thinking essential to helping actual people—your future clients and constituents—flourish as individuals, as families or in other kinds of associations.

Even if you do not intend to become a Louisiana lawyer, this casebook will still be enlightening. It explores how a mixed jurisdiction like Louisiana has taken its civilian legal heritage in one important area of private law, nurtured that heritage, modified it over the course of two centuries, and struggled to make it serviceable in the twenty-first century. We are proud of property law's unique contribution to Louisiana's legal culture. At the same time, we invite you to join us in questioning its values, challenging its assumptions and evaluating the ways it has adapted to fit the diverse needs of modern society.

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