

Contents

<i>Acknowledgments</i>	<i>page</i> xi
<i>Note on Cover</i>	xiii
<i>Table of Cases</i>	xv
<i>Table of Legislative Materials</i>	xxiii
<i>Table of Multiple Edition Works</i>	xxv
 PART I FOUNDATIONS	
1 Introduction	3
1.1 Natural Property Rights	3
1.2 Two Test Cases	4
1.3 Argument	10
1.4 Topics	15
1.5 Contributions	17
1.6 Contemporary Theories	20
References	25
 2 Natural Law and Rights	 33
2.1 Four Test Cases	36
2.2 Interest-Based Rights	38
2.3 Natural Law and Rights: An Overview	42
2.4 Natural Law	44
2.5 The Foundations for Natural Law	45
2.6 Natural Law, Individuals, and Communities	48
2.7 Natural Rights	50
2.8 The Priority of Rights and Duties	50
2.9 Implications	53
References	53

3	Practical Reason	58
3.1	Practical Reason as a Distinct Field of Reasoning	60
3.2	Specification	60
3.3	Determination	61
3.4	Reasoning with Core Cases	62
3.5	The Scope of Practical Reasoning	63
3.6	Reasoning about Parking Spaces	63
3.7	Practical Reasoning and Consequences	66
3.8	Determinacy in Practical Reasoning	68
	References	69
	PART II THE NATURAL RIGHT TO PROPERTY	
4	Property's Subject Matter and Interest	75
4.1	Separability and the Field of Property	76
4.2	Property as a Law of Things	77
4.3	Separability's Limits	78
4.4	The Interest in Using Things	78
4.5	Property and Slavery	79
	References	80
5	Property's Elements and Scope	82
5.1	The Community Baseline	83
5.2	From the Community Baseline to Individual Rights	84
5.3	The Productive Use Requirement	84
5.4	The Claim Communication Requirement	89
5.5	Consent	90
5.6	The Necessity Proviso	91
5.7	The Sufficiency Proviso	92
5.8	Acquisition Law and Policy	94
5.9	Skepticism about Natural Property Rights	98
5.10	The Skepticism Addressed	99
	References	102
6	Property's Conceptual Structure	105
6.1	Institutional Artifacts	108
6.2	The Features of Institutional Artifacts	110
6.3	Usufructs	112
6.4	Property Rights' Features	116
6.5	The In Rem, Immunized Claim-Right	117
6.6	Facilitating Use	119

Contents

vii

6.7 Property and Exclusion	121
6.8 Property and Bundles of Rights	123
References	124
7 Property, Natural Law, and Nozick	128
7.1 Nozickean Rights	129
7.2 The Features of Nozickean Rights	131
7.3 Will- and Interest-Based Rights	133
7.4 Autonomy- and Use-Based Property Rights	134
7.5 The Effects of Recognizing Property Rights	135
7.6 Natural Rights and Universalizability	136
References	139
PART III PROPERTY LAW	
8 Justifying Ownership	145
8.1 Two Introductions to Ownership	147
8.2 The Challenge for Ownership	150
8.3 Justifying Ownership	150
8.4 Clear Property Rights	151
8.5 Resource Stewardship	152
8.6 Productivity and Labor	153
8.7 Individual Autonomy	154
8.8 Lingering Questions	155
References	156
9 Limiting Ownership	159
9.1 Aerial Trespass	159
9.2 Adverse Possession and Claim Communication	161
9.3 Nonowners' Interests in Productive Use	162
9.4 The Necessity Proviso and Doctrine	165
9.5 The Sufficiency Proviso	166
9.6 Ownership Reconsidered	168
References	171
10 Designing Property Rights	174
10.1 Resources and <i>Res</i>	176
10.2 Thing Design as a Property Topic	179
10.3 Justifying Thing Design	182
10.4 An Overview of Thing Design Policy	184
10.5 Rights in Real Estate, in Relation to Minerals, Animals, and Plants	186

10.6	Rights in Real Estate, in Relation to Artifacts	189
10.7	Real Estate and Water Rights	191
10.8	Fruits and Newborn Animals	192
10.9	Accession, Specification, and Confusion	193
10.10	Real Estate and Shale Oil and Gas	194
	References	198
11	Subdividing Ownership Rights	201
11.1	Component Rights	203
11.2	Justifying Component Rights	204
11.3	The Cases for and against Component Rights	206
11.4	Facilitating Use with Component Rights	207
11.5	Limits for Claim Communication	208
11.6	Limits Protecting Third-Party Sufficiency Interests	210
11.7	Correlative Rights in the Same Resource	211
	References	216
	PART IV PROPERTY IN COMMON LAW AND PUBLIC LAW	
12	Common Law, Duties, and Harms	221
12.1	Tort and the Use of Land	223
12.2	The Primacy of Duties and Harms	225
12.3	The Right to Use Land	227
12.4	Use Rights in Nuisance	232
12.5	Use Rights in the Train Sparks Doctrine	235
12.6	Skepticism about Common Law Reasoning	236
12.7	The Skepticism Addressed	238
	References	242
13	Police Regulation	245
13.1	Regulation and Legitimate Authority	247
13.2	The Police Power	248
13.3	Supplying Determinacy	250
13.4	Harm Prevention	251
13.5	Securing an Average Reciprocity of Advantage	253
13.6	Pennsylvania Coal Co. v. Mahon	255
13.7	Regulation and Certainty	256
13.8	Police Power Skepticism	256
13.9	The Skepticism Addressed	257
13.10	Police Regulation Today	262
13.11	The Policy Case for Focusing Police Regulation	266
	References	270

	<i>Contents</i>	<i>ix</i>
14	Eminent Domain	274
14.1	Four Test Cases	277
14.2	Condemnations with Police Regulation	278
14.3	Condemnations with Eminent Domain	280
14.4	Public Use	282
14.5	Eminent Domain Justly Applied	286
14.6	Skepticism about Eminent Domain	287
14.7	The Skepticism Addressed	288
14.8	The Policy Case for Focusing Eminent Domain	292
	References	295
15	Conclusion	297
15.1	Normative Lessons	297
15.2	Conceptual Lessons	297
15.3	Policy and Doctrinal Lessons	298
15.4	Practical Reason	300
15.5	Skepticism	301
15.6	Legitimacy	301
15.7	Contemporary Perspectives	303
15.8	First Principles and Questions of First Impression	304
	References	305
	<i>Index</i>	307