Advanced Property Law:
Theoretical and Comparative Aspects

Prof. Daphna Lewinsohn-Zamir

We & Fr 11:05-12:20, FH 110
Fall 2005, Tentative Syllabus and Early Reading Assignment

* For the first class (on August the 31st), please read the first three items listed below: Parfit, Bentham & Posner. Parfit's book is held at the library on special reserve. A coursepack containing the course's reading materials can be bought at the NYU Professional bookstore.

A. Introduction to theories of well-being: Mental State theories, Preference Satisfaction theories, and Objective List theories


B. Mental State and Preference Satisfaction theories of property law: Utilitarianism and Economic Efficiency

1. Justifications for private property
   Readings:
   * Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, chapter 1 (1823);
   * Duncan Kennedy & Frank Michelman, “Are Property and Contract Efficient?” 8 Hofstra L. Rev. 711, 715-739 (1980);

2. Compensation for injuries to property
   Readings:
   * Frank I. Michelman “Property, Utility, and Fairness: Comments on the Ethical Foundations of “Just Compensation” Law”, 80 Harv. L. Rev. 1165, 1214-1218 (1967);
3. Market overt and good faith purchase of real property and personal property

Readings:
* Joseph W. Singer, Introduction to Property, sections 11.4.6-11.4.7, pp. 528-530 (2001);
* Sections 2-403(2) & 1-201(9) of the UCC;
* Section 34 of the Israeli Sales Law, 1968;
* Section 10 of the Israeli Land Law, 1969;
* Section 932 of the German BGB.

C. Objective List theories and property law

1. General overview
Readings:
* Louis Kaplow & Steven Shavell, “Fairness Versus Welfare”, 114 Harv. L. Rev. 961, 980 n. 35, 984, 1330-1354 (2001);

2. The Numerus Clausus principle
Readings:
3. Dead-hand control of property
Readings:
* Uniform Statutory Rule Against Perpetuities, 8B U.L.A. 223 (2001), section 1(a);
* Sections 3 & 42 of the Israeli Succession Law, 1965;

D. The Personhood theory

1. Introduction
Readings:
* Margaret J. Radin, “Property and Personhood”, 34 Stan. L. Rev. 957, 959-960, 986-988, 991-996, 1013-1015 (1982);

2. Property exempted in bankruptcy
Readings:

E. Libertarian approaches to property

Readings:

F. Game Theory analysis of property

1. An Introduction to three types of games: Prisoner’s Dilemma, Chicken, and Assurance
Reading:

2. The provision of public goods
Reading:
G. Behavioral Law and Economics and property

1. A General overview

2. The choice between property rules and liability rules in various property conflicts
   Readings:
   * Guido Calabresi & Douglas A. Melamed, “Property Rules, Liability Rules and Inalienability: One View of the Cathedral”, 85 Harv. L. Rev. 1089, 1105-1110, 1118-1119, 1125-1127 (1972);
   * Daphna Lewinsohn-Zamir, “The Impact of Economic Theory on the Israeli Case Law on Property” (pp. 16-20, forthcoming in Israel Law Review, 2006);
   * Somerville v. Jacobs, 170 S.E.2d 805 (1969);
   * Section 2280 of the French Civil Code;
   * Section 934 of the Swiss Civil Code;

H. Distributive Justice and Property Law

1. The debate regarding redistributive legal rules
   Readings:

2. Issues in landlord and tenant law
   Readings:
* Bruce Ackerman, “Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy”, 80 Yale L. J. 1093, 1102-1119, 1186-1188 (1971);
* Joseph W. Singer, Introduction to Property, section 10.7.2, pp. 468-470 (2001);
* Section 22 of the Israeli Hire and Loan Law, 1971.