Saint Louis University Law Journal

Volume 46
Number 3 *Teaching Property (Summer 2002)*

Article 5

5-1-2002

Teaching Property Law: Some Lessons Learned

Steven Friedland
Nova Southeastern University Law Center

TEACHING PROPERTY LAW: SOME LESSONS LEARNED

STEVEN FRIEDLAND*

When I was first asked to teach Property after more than a decade as a teacher of Criminal Law, Constitutional Law and Evidence, I wondered if there might have been some hidden value to my practice experience as a prosecutor. Despite my vague recollection of Property as an inscrutable and anomic experience, I set about to make my turn with Property as interesting as Criminal Law, as important as Constitutional Law and as useful as Evidence. After failing miserably on all accounts, I reduced my expectations and revised my practices. What follows are some lessons I have learned about property law,[1] a subject which I now appreciate as a richly textured and versatile educational vehicle, offering bridges into history, sociology, psychology and our economic system.

My recollections of property law as a student were strikingly consistent. The contents of property law emerged as a montage of ill-fitting subjects, jarringly connected by arcane language and obfuscatory rules. No matter how hard I tried, and sometimes my motivation lagged, I could not relate. Having never owned any real property, and not much personal property (not even a car at the time), I could not connect experientially. The language of property law was equally inscrutable, reminding me of my unsuccessful effort to learn Danish while living in Denmark for a semester as a college student.[2] I had no interest in the peculiar words and phrases left over from medieval property transactions, which held no real relevance for me. The lack of topical relevance was only outweighed by its apparent lack of unity. The result was cognitive dissonance—a disjointed grouping of unrelated topics.

During my first year as a property law teacher, this cognitive dissonance slowly melted away into a more comprehensible and related parade of topics. I remembered thinking, "if only my students would have a similar epiphany—or

* Professor of Law, Nova Southeastern University Shepard Broad Law Center, Fort Lauderdale, Florida. I would like to acknowledge the assistance of Rachael Kobin, Carol Yecies and Olympia Duhart in preparing this Article.

1. These lessons are aimed at both the newer property law teacher and the veteran teacher interested in a different perspective about the subject matter.

2. I was lucky, insofar as the classes in Copenhagen were taken by American students and taught in English. Furthermore, almost all of the Danes, young and old, spoke English fairly fluently.

at least an epiphany less glacial and more river-like." Only after teaching property law for several years did my first impressions and understandings of the subject dramatically change.[3] The transformation in perspective ranged from the broad to the narrow. Some of the general lessons I have learned about teaching this first-year, cornerstone course follow.

I. LESSON #1: PROPERTY LAW THROUGH THE PRISM OF ACQUISITIVENESS AND ANTAGONISM

Among the most useful general observations for teaching the material is that property law offers a coalescence of dual tenets underlying sociology, psychology and the law—acquisitiveness and antagonism. Acquisitiveness describes both the intentionality and behavior associated with acquiring. It is reflected in the various ways property is obtained through labor and possession. Antagonism is the behavior of hostility or opposition. It is reflected in disputes over possession and ownership, through lawsuits and physicality, such as ouster.

Acquisitiveness and antagonism are social phenomena that exist independently of the law, but which course throughout it, particularly the law of private property. The urge to acquire, especially things of value, motivates the creation of order-promoting legal rules. Acquisitiveness and antagonism intersect; the acquisitive corollaries of competition and comparison often give life to antagonism and to antagonism's legal face, lawsuits.

In the context of private property law, the social, psychological and legal tenets of acquisitiveness and antagonism are reducible even further, coalescing into a single notion, "mine!," that plumbs the depths of human behavior, motivation and relationships. Students readily understand the concept of "mine!" and how property law is essentially an attempt to untangle the complex and often sordid web of neighbors, partners and claimants the concept of "mine!" creates.

What this understanding about the central tenets means to the property law teacher is that the law is an effort to shape and corral both acquisitiveness and antagonism, from prioritizing multiple claimants in recording statutes, to distinguishing adverse possessors from trespassers, to creating limits on the scope of easements and nuisances. The law of property does not rest solely on legal policy and precedent, cabined only by abstract rules and principles, but rather is forged from principles of acquisitiveness and competitive antagonism as well.

3. Many teachers refer to this transformation as the "rule of three"—it takes three years for a teacher to become comfortable enough with the subject matter to have a comprehensive vision and understanding of it.

III. LESSON #2: DEEP STRUCTURES: UNDERLYING ASSUMPTIONS

For many students, an exploration of the deeper values underlying the concept of private property helps to explicate the nature and understanding of the rules. These underlying assumptions reflect the values supporting American property rules and principles and extend across boundaries of economics, psychology, science and sociology, among other disciplines. In exploring these assumptions, students often see more clearly that property law, as complex and as historical as it is, is really a choice of rules and principles that can be modified, disassembled and reconfigured. Some of the bedrock themes briefly follow.

A. Private Property Law is a Means of Promoting Order and Stability

Why have private property? One answer is that it arguably promotes order, stability and predictability in society, facilitating economic efficiency in both business and personal relationships.[4] In essence, private property offers its own system of dispute resolution and defines the boundaries of property rights so neighbors and others can live together peacefully. Even adverse

4. Order and stability often compete with fairness, however. Sometimes, courts look beyond the fairness of the marketplace to observe the substantive results of property rules and principles. An example is the change in landlord-tenant law in the 1960s as the United States became an urbanized country with many apartment dwellers. One of the leading architects of the changes was Judge J. Skelly Wright of the District of Columbia United States Court of Appeals. In a particularly revealing letter, Judge Wright once wrote:

> Dear Professor Rabin:
>
> Why the revolution in landlord-tenant law is largely traceable to the 1960s rather than decades before I really cannot say. . . . Unquestionably the Vietnam War and the civil rights movement of the 1960s did cause people to question existing institutions and authorities. And perhaps this inquisition reached the judiciary itself. Obviously, judges cannot be unaware of what all people know and feel. . . .
>
> [When I came to Washington, D.C. as a U.S. Court of Appeals Judge after a career as a prosecutor and district court judge in New Orleans,] [i]t was my first exposure to landlord and tenant cases. . . . I didn't like what I saw, and I did what I could to ameliorate, if not eliminate, the injustice involved in the way many of the poor were required to live in the nation's capital. I offer no apology for not following more closely the legal precedents which had cooperated in creating the conditions that I found unjust.
>
> Sincerely,
>
> J. Skelly Wright

See Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 549 (1984) (reprinting letter).

possession can be viewed as a set of understandings of how ownership can pass from one to another by implied forfeiture. The default rules in property ensure that even in questionable situations, the legal system will be a preferable alternative to dueling and other uses of physical force to settle property disputes.

B. Private Property Law as a Set of Rules Promoting Commerce and Economic Well-Being

> "It is generally understood that a system of private property helps to bring about economic prosperity."[5]

The idea of private property, not shared by every society, is at the base of our capitalist economic system and the theory of free enterprise. Because property can be transferred, it is one of the building blocks of commerce. A corollary to its role in commerce is the understanding that ownership may not be equal among people—some may own more than others. That is, property law accepts a dividing line between the "haves" and "have nots" and that while there ought to be equal access to property, that will not always mean equitable shares of ownership.[6]

C. Property Ownership Has Numerous Status Implications

> "Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous."[7]

> "Power always follows property."[8]

> "[Those without property should not vote because] they are esteemed to have no will of their own."[9]

Ownership of property in America has significant status and power implications beyond access to an immediate bundle of legal rights. Both personal and real property can serve as a signature of wealth and rank. Ownership of property is not just a signature but is even perceived as a character trait that signifies intelligence, business acumen and even wisdom. In this regard, the status-orientation of real property is far greater than the hierarchical significance of the location and opulence of one's home. These

5. CASS R. SUNSTEIN, FREE MARKETS AND SOCIAL JUSTICE 206 (1997).

6. Yet, it does rest on fairness principles—equal access to ownership.

7. Thomas Jefferson, *Monticello Resources: Agriculture (Jefferson Quotations)*, *available at* http://www.monticello.org/resources/interests/agriculture.html.

8. John Adams, *Representation: John Adams to James Sullivan*, The Founders' Constitution: 13 Representation, *available at* http://press-pubs.uchicago.edu/founders/documents/v1ch13s10.html.

9. William Blackstone, *Commentaries 1:165-66*, The Founders' Constitution, *available at* http://press-pubs.uchicago.edu/founders/documents/a1_2_1s3.html.

implications existed at the origins of America, where land ownership was considered a gatekeeper to accessing power. The understanding of "property as power" has arguably persisted and become even more entrenched, from examples such as Michael Bloomberg, the billionaire New York City Mayor with no prior political experience, to Donald Trump, rumored at one time to be considering a run for the presidency.

IV. LESSON #3: ORGANIZING THE COURSE: PROPERTY AS . . .

Property law, unlike other basic law school courses, often defies an easy organizational framework. There are few reference points from which students can get their bearings. Like Bloom's learning pyramid,[10] which posits different orders of learning (from knowledge to understanding to problem-solving to synthesis), the experienced property law teacher realizes there are different levels of organizational schema for property law. Significantly, these schemas do not revolve around a chronological or linear structure, such as old conceptions of property (such as fee tails) to newer conceptions (such as intellectual property). Instead, the organization is a mapping of the subject predicated on anchors, which are touchstones that help students maintain their direction in the course from beginning to end. One organizational schema for an introductory property course is to focus on legally enforceable property rights, tempered by legally recognized limits.[11] Another schema explores the perimeter of property recognition, in which property law provides legal recognition to most, but not all, things of value. Still another organizational structure orders property law based on the relationships it considers—from neighbors, including the law of nuisance and easements, to partners, such as co-ownership issues, to multiple claims of ownership, as reflected in found property, adverse possession and recording statutes.

A. Property as Relationship

On a foundational level, property law is about relationships—those between private individuals[12] and those between the individual and the government.[13] When property law is conceived of as defining relationships between private individuals, it becomes a set of rules promoting orderly relations. When that order breaks down, property rules serve as a means of

10. In the 1950s, Bloom and other social scientists offered a learning taxonomy indicating that different orders of learning existed. *See* TAXONOMY OF EDUCATIONAL OBJECTIVES (Benjamin S. Bloom ed., 1956).

11. The four salient property rights are possession, transfer, use and exclusion. Each of these has legally enforceable limits, such as zoning, the Rule Against Perpetuities and environmental regulations.

12. Consider, for instance, restrictive covenants and nuisance law.

13. *See, e.g.*, Shelley v. Kraemer, 334 U.S. 1 (1948) (zoning and takings law).

dispute resolution. When property law is conceived of as defining relationships between private individuals and the government, the analysis is transformed into a matter of public interest, one of concern to the entire community. As one commentator noted regarding landlord-tenant law:

> legislative and judicial treatment of leases of dwellings now make it plain that the movement in residential lease law has been not from one area of private law to another, but from private ordering to public regulation. . . . Underlying these . . . changes is the idea that shelter is a basic human necessity, and that public regulation of the terms and conditions on which it is offered and held is therefore appropriate.[14]

The remedies afforded in public or private disputes are generally obtained through the court system, further reducing property law questions to the relationship of claimants in a lawsuit. The important question in this context becomes which of the parties has the better claim, not who in the world owns the property or has the absolute best claim.

Hohfeldian analysis[15] provides a similar understanding of rights and duties as concepts embedded in a larger construct of relationships.[16] Thinking in terms of relationships helps to identify the property law problems that may arise. Thus, in property law, relationships between individuals and the government can be divided into two forms—the government regulating individual behavior under its police powers (landlord-tenant, zoning, environmental regulations) and the government being asked to enforce or resolve disputes about private relationships (implied easements, nuisance, real covenants, *Shelley*). How these relationships are conceived, and the lines that are drawn by courts and legislatures, have profound impact on our economic system, political system, and generally, how we live with each other.[17]

14. Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 505 (1982).

15. *See* Arthur L. Corbin, *Jural Relations and Their Classification*, 30 YALE L.J. 226, 226-29 (1921) (describing Wesley Hohfeld's analysis).

16. Professor Joseph Singer's book on Property Law, PROPERTY LAW: RULES, POLICIES AND PRACTICES (2d ed. 1997), does an excellent job of working into the flow of the material a brief introduction to Hohfeldian analysis.

17. In particular, property law mediates understandings not just between buyers and sellers or neighbors, but also the accepted limits circumscribing equality and discrimination. Public accommodation laws and civil rights legislation such as the Americans with Disabilities Act explore the accepted times and places persons who say "mine!" can wield the power to discriminate.

B. Property as the Recognition of Value

In exploring the boundaries of property law, it is useful to describe the law as "fortress walls" protecting things of value.[18] This conception of property law includes the tangible, both real and personal property, and the intangible, such as intellectual property. The valuation approach sometimes provides a better way to understand what property law does, and explains that while value is essentially an intrinsic and subjective term, it also is a process that can be extrinsically derived from the capitalist marketplace.[19]

1. Value and Administrability

While property law protects things of value, some things are beyond the ken of property protection. A sunset or friendship, for example, while extremely valuable, cannot with sufficient stability be quantified and commodified. To attempt to give these things values enforceable by law would create unacceptable administrability problems. Judging the value of friendship or sincerity would be insuperable, at best. Ralph Waldo Emerson aptly illustrated the fact that property is not representative of all things of value when he wrote in his essay, *Nature*,

> The charming landscape which I saw this morning, is indubitably made up of some twenty or thirty farms. Miller owns this field, Locke that, and Manning the woodland beyond. But none of them owns the landscape. There is a property in the horizon which no man has but he whose eye can integrate all the parts, that is, the poet. This is the best part of these men's farms, yet to this their land-deeds give them no title.[20]

18. The decision to provide legal protection to things of value is a societal choice. As one observer noted, "Strive to have access *to* things, not ownership *of* them. Possess something and it possesses you." LINUS MUNDY, KEEP-LIFE-SIMPLE THERAPY (1993).

19. By comparison, the traditional Native American conceptualization of property diverges greatly with the United States' approach. *See, e.g.*, Joseph William Singer, *Traditional American Indian Conceptions of Property*, *in* PROPERTY LAW: RULES, POLICIES AND PRACTICES 11 (2d ed. 1997).

20. RALPH WALDO EMERSON, NATURE 11 (Chandler Publishing Co. 1968) (1836). Emerson added:

> Nature satisfies . . . by its loveliness, and without any mixture of corporeal benefit. I have seen the spectacle of morning from the hill-top over against my house, from day-break to sun-rise, with emotions which an angel might share. The long slender bars of cloud float like fishes in the sea of crimson light. . . . How does Nature deify us with a few and cheap elements! Give me health and a day, and I will make the pomp of emperors ridiculous.

Id. at 21-22.

2. Value and Public Policy Limits

A second reason for excluding things of value from legal property protection is public policy. Public policy opposes the commodification of all things of value because of potential detrimental consequences. Biotechnology, for example, has facilitated an upheaval in property law because of significant scientific advancements and pressures to use the human body in scientific research. Concerns include whether body parts are commodities that may be bought, sold and bartered like any other good in commerce, and how the law ought to treat scientifically frozen pre-embryos.[21] The case of *Moore v. Regents of the University of California*[22] provides an apt introduction to whether the law permits the commodification of body parts, to be bought and sold like other kinds of goods in the marketplace.[23] Another significant and recurring issue involves the property status of professional degrees.[24]

C. Thematic Convergence: Property as a Bundle of Legal Rights

Describing private property[25] as a bundle of legal rights and associated limits[26] provides students with a basic strategic framework, much like offering a map of landmarks to accompany directions. Pedagogically, this description is intended to provide a referencing "scoreboard" that assists students in understanding and pursuing course goals,[27] while simultaneously disabusing students of the notion that property is a "thing."

21. One of the difficulties created by scientific advances is in attempts to design suitable laws in response to those advances. The area of reproduction, from abortion to *in vitro* fertilization to frozen embryos, has proven to be particularly perplexing. *See generally* Davis v. Davis, 842 S.W.2d 588 (Tenn. 1992).

22. 793 P.2d 479 (Cal. 1990).

23. Of course, the law finds the commodification of the body anathema to public policy principles, but reaches an accommodation in *Moore* that permits extracted cells to be used by others for commercial purposes. *See id.* But is the day far off where the commodification of body parts is permitted, and we will see sales on E-Bay and a thriving new sector of commerce?

24. Why consider the scope of marital property in a course that focuses on land? The "labor" theory of property—that labor creates property rights—is an especially nettlesome issue when, for instance, one spouse sacrifices so the other can obtain a valuable degree, such as a law or medical school diploma. *See* O'Brien v. O'Brien, 489 N.E.2d 712 (N.Y. 1985).

25. While the law of property is divided into categories, such as tangible and intangible or real and personal, most property law courses focus almost exclusively on real property. Real property refers generally to the immovable, permanent property known as land, with personal property comprising all of the property that remains, such as cars, jewelry and intangibles such as shares of stock.

26. The core understanding of property as a bundle of legal rights, which can be unbundled and considered separately, further distinguishes legal rights from the popular understanding of real property as a holistic and singular notion of ownership. Through the unbundling of rights, students can observe how the rights fit together and, alternatively, have individuated value.

27. The "scoreboard" involves terms within common experience, a vernacular such as possession, use and exclude that students experienced and used even as children.

To dissect the "bundle of legal rights"[28] reference, it is helpful to begin with and to emphasize the law's role in defining and enforcing the rights. That private property is a legal conception creating ownership interests in tangible and intangible things distinguishes it from inalienable or natural law conceptions of rights. Legal rights are recognized by courts and legislatures and enforced in the courts. Private property thus becomes a choice by society about which interests it is willing to recognize and enforce through legal remedies.

The notion of legal rights as enforceable claims in a court of law helps students to understand the legal nature of the American conceptualization, and adds a court context to property disputes. This description presents the question of remedies, not just "ownership," and introduces students to a subject—remedies—that is a course in and of itself.[29]

The idea of separate rights also helps to explain the existence of intangible property such as "intellectual property." With the expansion of the Internet and evolving attitudes in society, the formerly bright lines of what constitutes property have tended to blur. Using the right to exclusion as an illustration, students are able to compare a hunter's possessory interests in a captured fox with a songwriter's possessory interests in a song.

By individuating the specific legal rights, it is easier to describe the limits on those rights both horizontally and vertically. The horizontal limits are those that exist over time. For example, the right to possession is divided into two time periods—now[30] and in the future.[31] The vertical limits, those limits built in at any point in time, include the concept that rights are not absolute. The right to use one's own property, for example, is tempered by nuisance laws, just as the right to exclude others is limited by public accommodation laws and other rights of access.[32] Another way of describing these limits is to say that property ownership often has duties or obligations associated with it.[33]

II. LESSON #4: REFERENCING PROPERTY LAW: ADDING CONTEXT TO THE PROPERTY TEXT

Perhaps one of the biggest obstacles for teachers of property law is the lack of relevant context for students. Entering law students often have difficulty in

28. As mentioned earlier, the four salient property rights of possession, transfer, use and exclusion are tempered by legally enforceable limits, such as zoning, the Rule Against Perpetuities, nuisance and environmental regulations.

29. In many law schools, Remedies is a distinct upper-level elective course, often two or three credits.

30. This describes the interest in current estates in land.

31. This describes what are aptly called future interests.

32. *See, e.g.*, State v. Shack, 277 A.2d 369 (N.J. 1971).

33. *See* Acme Laundry Co. v. Sec'y of Envtl. Affairs, 575 N.E. 2d 1086 (Mass. 1991), (duty to clean up hazardous waste).

relating to the conception of owning real property, to the archaic language of estates in land and future interests and to the lack of apparent coherence of the principles addressed in the course. Most of property law is delivered through seminal cases, such as *International News Service v. Associated Press*,[34] *Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.*,[35] and *Shelley v. Kraemer*.[36] These cases advance the substantive knowledge of the class but generally do not enhance the relevancy of the subject matter.

The lack of relevancy of property law, especially in light of its obscure vocabulary and medieval historical sources,[37] is in direct contrast to that of criminal law or torts. In criminal law, for example, students immediately grasp the idea of crimes and defenses. Criminal law and torts students have a familiarity with the subject matter due to a large presence of the subject in everyday life. The media routinely describe and display the occurrence of crimes and accidents. In popular culture, references to criminal and tort law are littered across the landscape, from television, to movies, to books.[38] This referencing allows students to anchor their learning of the criminal and tort law subject matter to their real world experience. No similar referencing occurs in property law for most of the students. Thus, it is essential that teachers address, create and enhance the relevancy of the property law class.

Relevancy indicates the existence of a relationship, and relevancy in the educational context ought to be a bridge to the students' world, not the teacher's. The teacher must remember that for most of the students, the Vietnam War is ancient history, that the students were not yet alive when President Kennedy was shot, and their musical vocabulary includes music by Pink, Garbage and P. Diddy. It is often a vastly different world teachers and students inhabit, even though they share the same classroom.

To properly contextualize a property law class, a professor has numerous options. One option involves the use of popular culture, another option is the employment of visual and commonly referenced words, and a third option is to help the students to experience property law, as opposed to just passively taking the course. Another option is to translate and transform the property law vocabulary to a more understandable set of terms. These options will be explored below in greater detail.

34. 248 U.S. 215 (1918).

35. 114 So. 2d 357 (Fla. Dist. Ct. App. 1959).

36. 334 U.S. 1 (1948).

37. Medieval History counts, but so do utility, economics, culture and social relationships. Further, the medieval property history is a far cry from Harry Potter Medievalism.

38. Property law has little unified context for students. It is not embedded in the popular culture like criminal law, health law or torts. Television shows about these subjects abound—such as *The Practice*; *Murder She Wrote*; *Law and Order*; *ER*—as do films, such as A CIVIL ACTION and ERIN BROCKOVICH.

A. Popular Culture

Infusions of popular culture can help students connect to a course. When popular culture is raised, the medium is often the videotape. Several relevant videos exist. One powerful video is an eight-minute tape created by Professor Okeimer Dark of Howard University Law School.[39] It describes Professor Dark's experience with race discrimination when she attempted to rent an apartment. The powerful description of the effects of the discrimination bring a vitality and life to the subject largely missing from the case law. Another video involves the attempt by the City of Detroit to use Eminent Domain to take an area of land long inhabited by Polish immigrants, and to turn that land over to General Motors.[40] The video vividly depicts the social and economic consequences of legal action as the residents struggle to maintain their homes, community and way of life.

In addition to videotapes, cases can be transposed and updated through hypotheticals. The seminal case of *Pierson v. Post*,[41] used as the introductory case in many property classes, provides an apt illustration. The case involves a dispute between two hunters who both claim legal rights to a fox that both hunted but only one killed. This case offers a vehicle for contrasting the labor theory of acquiring property with the capture or occupancy theory of acquiring property. Students have had the experience of laboring for property, but for most, the notion of fox hunting is foreign at best. Students have experienced the labor theory of obtaining property through such common activities as standing in line for services or waiting patiently for a parking space. Instead of focusing solely on the dispute between the two hunters in *Pierson v. Post*, the stage can be shared with the modernized dispute over a parking space. Most students drive cars and can readily relate to a parking problem.[42] The parking space problem can take the form of one person waiting for an occupied parking space with the car blinker on, and another person "stealing" it because of a quicker reaction time.

The parking dispute problem is well within the realm of the student's world, and draws in the students emotionally as well as intellectually. Most drivers have waited for parking spots with their blinkers on, and understand the experience of having another driver "steal" it. A permutation on this problem that more closely parallels *Pierson* involves an actual situation that occurred in

39. *See* Videotape: Housing Discrimination . . . Who Should Ever Have to Get Used to That? (HOPE Fair Housing Center, 1990).

40. *See* Videotape: Poletown Lives (George Corsetti 1982), and related case, Poletown Neighborhood Council v. City of Detroit, 304 N.W.2d 455 (Mich. 1981).

41. 3 Cai. R. 175 (N.Y. Sup. Ct. 1805)

42. In fact, parking issues transcend geography to become a national issue, particularly in urban areas. Even many law schools have parking problems, particularly at the peak periods of classes.

Chicago recently after a large snowfall. In one neighborhood, persons expended considerable effort in digging out parking spaces on a public street.[43] The diggers then "reserved" those spaces with cones. In one instance, a driver who did not clear the spot of snow drove up, removed the cones, and parked in the spot. When the person who cleared the spot drove up, a dispute ensued. Students can identify with the dual theories of labor and occupancy in the context of this problem.

B. Anchoring Issues

For many students, spotting specific property issues ranges from difficult to insuperable. There are often no commonly recognized triggering facts that point to property law issues, unlike, for example, homicide, which most people can instantly recognize is triggered by a dead body. Yet, property law questions do revolve around recurring fact themes. Some very common facts serve as anchors for several clusters of issues. To illustrate, neighbors create a variety of legal issues, from nuisance to easements to adverse possession.[44] Neighborhoods, on the other hand, are the crucible for negative covenants and equitable servitudes. Family ownership and partners give rise to joint ownership issues. Landlord-tenant questions often need no extra anchoring, since those conflicts lie within the life experience of many of the students, who may well be renting apartments or houses during the course.

C. Experiencing Property

One of the problems with a course in property law is the relative thinness of the students' experience in property-related matters. The lack of familiarity with the material can undermine the classroom experience. The challenge for the property law teacher is to make the course experience resonate for the students, especially for those who find property law irrelevant to their educational goals.

To make the classroom experience come alive, it is useful to encourage students to be active learners, who are engaged in the learning process by means of practicing, demonstrating and improving various skills, not just on the final examination but all throughout the course. This performative model of classroom learning diverges from the tripartite casebook, case analysis and coverage approach to the course, substituting real world experiences, competencies and a set of understandings about the learning process instead.[45]

43. The problem assumes there were no parking limitations, such as permit requirements, on that street.

44. For students, neighbors easily translate into roommate or sibling problems.

45. The set of understandings includes, for example, the belief that students share responsibility for their learning and that the goal is to improve incrementally in their skills, not simply demonstrate their skill level on a final examination.

To promote an experiential course, students could be asked to play a role in creating, negotiating and reworking legal documents. It would be even more useful if these legal documents fell within the students' day-to-day life, such as leases they have signed, if any. By using their leases, the intersection of the classroom with the real world is instantaneous. Students would have an immediate incentive to understand the workings of the document. Other, albeit more artificial, connections to the press of reality could be sought. Students could be asked to locate and retrieve (or photograph) easements in their everyday life, license agreements they have made, or property rights they have exercised. The search for easements, for example, takes students through an inquiry of their existing world with a new perspective. Students leaf through newspapers, walk through neighborhoods and drive on roads with a directed and specific objective—finding the servitudes often lurking before their very eyes.

A focus on student competencies reshapes the classroom orientation, changing it from reading cases to identifying and improving legal skills. A property course offers numerous competencies, such as creating and preparing an easement, a lease, a real estate purchase and sale agreement or a testamentary disposition of property. The wide variety of competencies test not just whether students know the vocabulary of property, or actively understand the concepts, but how to apply the cases in a performative framework.[46] For example, as students' knowledge about easements becomes more nuanced, the students can be asked to refine and improve their documents creating an easement.

In addition to creating and improving legal instruments, students ought to be tasked with redrafting those instruments. Redrafting serves as a model for viewing preparation as a multi-part process. It also offers the pedagogical value of incorporating writing practice into a substantive course. For example, students could be given an instrument purporting to create a joint tenancy and asked to redraft it, along with an accompanying memorandum, as homework to be discussed in the next class.

D. Translating the Vocabulary of Property Law

Property law has its own unique vocabulary, to the extent that it becomes a language all of its own. Property teachers can give students express notice that the particular vocabulary matters in the lawyering process, and that language counts even more in the property law area. Property has a surfeit of vocabulary to which legal significance attaches. What must be impressed on the students is the importance of the words themselves as triggers of legal

46. Performance includes advocacy and debate, so students can engage in mock trial and moot court as integral parts of the course structure.

consequences, where form counts over substance.[47] It is not just that vocabulary matters, but that the translated understanding of the vocabulary can improve the appreciation of the subject matter and the success rate for students in understanding it.

The subject of future interests is especially perplexing to students and can benefit greatly from translation. It is thus useful to contrast estates in land with future interests by a pivotal duality—possession now and possible possession later. Estates in land allow for "possession now," including the fee simple absolute,[48] the fee tail[49] and defeasible fees.[50] For example, with a fee simple determinable, the magic words "while," "until," "during," or "so long as" routinely appear to characterize and distinguish the transfer as such a qualified fee.[51]

Future interests can be distinguished from estates in land by the time period of possible possession, which occurs, if at all, in the future. In addition, future interests occur only in one of two types of people—grantors and grantees. The grantor's reversionary interests[52] are contrasted with the grantee's remainders or executory interests.[53] To provide students with some context, they can be informed that these future interests are by nature less than the whole bundle of property rights, since they cannot be exercised immediately, but are, nonetheless, still valuable.

This area of the law can be made more accessible to students by translating the vocabulary into understandable pivots or levers, such as describing executory interests as an interest in land with "possible possession later" that "cuts short the preceding interest." Students readily learn that the problems presented in estates in land and future interests can be categorized and filed into specific "drawers," labeled within the law—and that the words used in the conveyance helps to sort the particular conveyances. Much like foreign languages, "propertyspeak" has its own internal linguistic coherence and mechanical rules that, when properly applied, yield predictable outcomes.

V. LESSON #5: REORDERING TEACHING PRIORITIES: PROPERTY THROUGH A PROBLEM-SOLVING APPROACH

The dominance of cases in a property law class contributes to obscuring the accessibility of the subject matter. One approach that promotes

47. This notion is especially true in the area of estates in land and future interests.

48. A modern fee simple absolute needs no "magic" words.

49. A fee tail at common law used the legally significant words, "To A and the heirs of his body" (meaning to A and his lineal descendants).

50. A fee simple determinable has several significant characteristics, including particular words or terms that cause the conveyance to automatically terminate in favor of the Grantor.

51. An example would be "O to A, until the property is used for farming."

52. For example, all reversions are considered vested.

53. This is one of the more difficult areas of property law.

accessibility is the problem method. By problem method I mean a teaching technique that does not simply supplement cases with explanatory problems, but one that uses problems as a central tool for learning the rules and principles. Problems become equal to cases and at times even supercede them in the teaching methodology hierarchy.

Why use the problem approach? The answer involves both culture and pedagogy. While children grow up in the new millennium playing "Game Boy" and "Play Station," effectively competing and problem-solving as entertainment, law school offers little in the way of competitive methods and problem-solving outside of separate activities such as moot court competitions, final examinations and supplementary hypotheticals. In other areas of graduate education, the problem approach is a central educational catalyst. Medical schools train students directly in hospitals with live patients and their problems. Business schools utilize a case file approach, solving the problems of various companies. Legal education culture would do well to learn from these popular games and other educational fora as to how students learn as well as what absorbs and maintains student interest.

That is not to say problems are entirely absent from legal education methodology. Many teachers use problems to supplement the primary learning methodology, case analysis. It is perhaps no coincidence, however, that property law is one of the courses that least utilizes problems and is the most perplexing to students. Property law would become more palatable and better understood if problems occupied a more central locus of the teaching pedagogy.

The problem method is useful for an additional important reason. It offers an educational ingredient painfully missing from traditional legal education, formative feedback. The entirety of legal education feedback is often summative, consisting of a single final examination at the end of a semester. A problem orientation would offer students formative feedback, allowing them to improve on their performance as the course progresses.

In a property law course, problems are especially useful in the area of estates in land and future interests, but would assist in the learning process in each and every topic. Problems can range in length and question type. Short answer questions, for example, offer one economical problem type. For example:

> 1. Tony gives Latisha a lease for the summer cottage in Lawrenceville from July 4th to July 27th, 1997. What kind of non-freehold estate does Latisha have?
>
> 2. Astrid leases her "in-laws" apartment to David "for $600 per month." Both parties sign the lease. Five months later, David tells Astrid that he will leave at the end of the next month.
>
> a. What type of tenancy is this? Why?

b. What liability does David have if he leaves after five months, if any? Why?

3. Elmo phones Nintendo and says, "I'll lease you my house on the Oconee River for three years at $4,000 per year." Nintendo accepts.

a. What tenancy has been created by this phone call?

b. What if Nintendo immediately sends Elmo a check for $4,000 and Elmo accepts it?

4. "The Kangaroo." Bobbi, out for an afternoon of hunting in the lakes region of Maine, sees a kangaroo hopping by without a care in the world. Can Bobbi capture the kangaroo and claim it as her own?[54]

Other forms of questions also work well. Some questions call for more elaborate responses. These essay questions promote writing skills as well as knowledge, understanding and issue-spotting. For example:

The Dog Collar. Kris sees a dog run by with no apparent home. She takes the dog into her apartment, removes the collar, then bathes it, feeds it and gives it a home. Nine months later, when the dog is happily living in the apartment, a man comes by and says the dog belongs to him. Must Kris return the dog?

Oil. The Clampetts, after spending $1 million to explore for oil on some dusty and remote property in northern Texas, find a large common pool under their land and the land of their neighbors, the Trumps. The Clampetts begin to extract the oil and sell it. The Trumps see what is occurring, and set up a drill on their own land. The Trumps are able to extract and sell the oil at a lower cost because the Clampetts have spent considerable money locating the oil and the best drilling sites. The Clampetts sue the Trumps, seeking an injunction to prevent the Trumps from capitalizing on the Clampetts labor and investment. Who should win and why?

Gabriella owned land in Alaska but lived in San Diego, California. Her Alaskan property was purchased as an investment to someday be sold at a profit. Gabriella never visited the property, and while it was lying dormant, Sammy, mistakenly believing he was the rightful owner, built a log cabin and cultivated one-half of the property and regularly took walks on the other half, along with many of the townspeople. Sammy would leave the property for several months in the middle of winter and return for the months leading up to and through the summer. One year, when Sammy had the flu, he only lived at the property for four months. Thirty years later, when Gabriella went to sell the property, Sammy objected, claiming the land was his. Who owns the property?

Problems can be used in conjunction with or as a complement to competitive exercises.[55] One competitive property law exercise involves the

54. This problem, for example, is a corollary to *Pierson v. Post*, 3 Cai. R. 175, (N.Y. Sup. Ct. 1805).

skill of negotiation. Students can be asked to negotiate a lease while being assigned different objectives. One example of such a property law negotiation is listed below:

Landlords and Tenants—Negotiating a Residential Lease

[While the items listed below are what the party desires, there is a strong willingness to negotiate to obtain a signed lease. Please negotiate and attempt to reach an agreement. If you do, please memorialize the agreement in writing.]

A. *Landlords Want*: a term of years for two years; first and last month's rent paid in advance, and a security deposit; utilities to be paid by tenant; a covenant to repair and maintain; a provision that doubles the rent if tenant holds over, and landlord permits it; a covenant to repave the front walk-way; a covenant for the tenant to repair and maintain the property; a covenant for the tenant to forward and deliver any mail or other deliveries to the property for the landlord; and a "no assignment" clause.

B. *Tenants Want*: a periodic tenancy, monthly if possible; no security deposit given; washer and dryer; the opportunity to replace old carpeting, repaint the walls, and add a new heating duct; the ability to assign or sublease the property (especially during the summer when school is not in session); and to include all utilities.

VI. CONCLUSION

Property law is a rich and rewarding course to teach and ought to be the same for the students who study it. By using organizational schema and methodologies relevant to even the youngest group of students, connections can be made to enhance the educational value and enjoyment of the course. The experience of property law is tied to both the course content and its presentation. When instructors experiment with a problem-method and a reconceived synthesis of the course framework, the benefits are palpable. Teaching Property becomes a less daunting task, and the enthusiasm of the students complement the epiphanies that course more like rivers than glaciers.

55. It is far from controversial to note that law students are often competitive.