

Summary Article: **property**

From *The Columbia Encyclopedia*

rights to the enjoyment of things of economic value, whether the enjoyment is exclusive or shared, present or prospective. The rightful possession of such rights is called *ownership*. Ownership necessarily is supported by correlative rights to exclude others from enjoyment. By extension of usage, the things in which one has property rights are called one's property; thus the person who holds title to a house, even though there is a mortgage outstanding, calls it his or her "property."

## **Nature of Modern Property**

Modern Anglo-American property law provides at least potentially for the ownership of nearly all things that have or may have value. The terminology and much of the content of modern property law stem from its origins in feudalism. The fundamental division is into realty (or real estate or real property) and personalty (or personal property). (For rules affecting marital property, see husband and wife; for certain special types of property, see copyright and patent.)

### ***Realty***

Realty is chiefly land and improvements built thereon. Sometimes it is comprehensively, but loosely, described as lands, tenements (holdings by another's authority), and hereditaments (that which is capable of being inherited). Formerly its chief characteristics in a legal sense were that it went by descent to the heir of the owner (who had no control over its disposition) and that ownership might be recovered from any other party by a lawsuit (a so-called real action). Also possessing such characteristics, and hence classified as real property, were titles of honor, heirlooms, and advowsons, i.e., rights to sell ecclesiastical benefices. The manner in which realty is owned is called an *estate*; specifically, ownership is a fee of some sort, for example, an estate in fee simple (see tenure).

### ***Personalty***

Personal property consists chiefly of movables, that is, portable objects. Typically (but by no means invariably) the owner can by will, gift, or sale determine its distribution (note the contrast with the term *descent*), and if it has been wrongly taken, a lawsuit (a so-called personal action) will recover damages but will not restore the object. Certain types of interests in land are also classified as personalty; examples are leases for a period of years, mortgages, and liens.

### ***Limits on Ownership***

The need for unobstructed intercourse between nations prohibits the assertion of ownership of the high seas, and special rules apply to territorial waters (see waters, territorial) and to domestic navigable water. Air space beyond that which can be used by airplanes is often considered not subject to ownership. In a sense, all land presently or ultimately belongs to the state, for whatever is not actually owned by the public authority may be transferred to it by escheat (when there is no heir to the owner) or in condemnation proceedings under the power of eminent domain. In fact, much or most land in capitalist societies is in private hands, although public lands may be extensive and ownership of subsoil mineral wealth or of buried objects (see treasure-trove) may in some instances be public. (See also public ownership.)

## Development of Property Law

Protection and content are given to the ownership of property by custom or law. The type of property law in a society may be taken as an index of its social and economic system. For example, a primitive pastoral tribe that must be closely united to resist its enemies may hold pasture lands in common or rotate ownership, thereby avoiding disruptive quarrels. By contrast, in societies that enjoy an economic surplus and relative security, the institution of private property may be highly developed, with marked division of ownership and a competitive struggle for control. On the other hand, private property may be all but eliminated in certain societies, as in those envisioned by Karl Marx.

In Europe, the distinction between realty and personalty served the purposes of early feudal society. The ownership and disposition of land, the basis of most wealth and the keystone of the social structure, were controlled to protect society, while the ownership of personalty, being of minor importance, was almost unfettered.

As the economic system was altered during the late Middle Ages, however, personalty lost its subordinate position and grew to be the economic mainstay of the rising middle class of merchants and manufacturers. Personalty could be bought and sold in relative freedom without the hindrances that beset the disposal of land. By taking advantage of its economic freedom, the middle class was able to replace the landed aristocracy as society's dominant class. Concurrently, it sought to relieve real property of its medieval fetters in order to use it, along with personalty, as revenue-producing capital.

Gradually the law of realty tended in all important respects to be assimilated to that of personalty. In time land could be sold or distributed by will with almost perfect freedom; in effect it joined the list of other commodities. Differences of detail in the law of realty and personalty persist, especially in the transfer of realty, however, which involves great formality.

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## MLA

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