



**University of
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Faculty of Law

Principles of Common Law Property Law

Principles of Common Law

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Prof. Dr. Kern Alexander



Race and criminal law in America

- On August 25, 2020, Kyle Rittenhouse, a 17 year-old shot and killed two men and wounded another man, during the protests, riots and civil unrest that followed the shooting of Jacob Blake.
- Under Wisconsin state law, Rittenhouse was charged as an adult with five felonies, including first-degree intentional homicide and first-degree reckless homicide, along with a misdemeanor charge for possessing a dangerous weapon as a minor.
- In November 2021, a jury acquitted Rittenhouse on all counts.

https://en.wikipedia.org/wiki/Kenosha_unrest_shooting

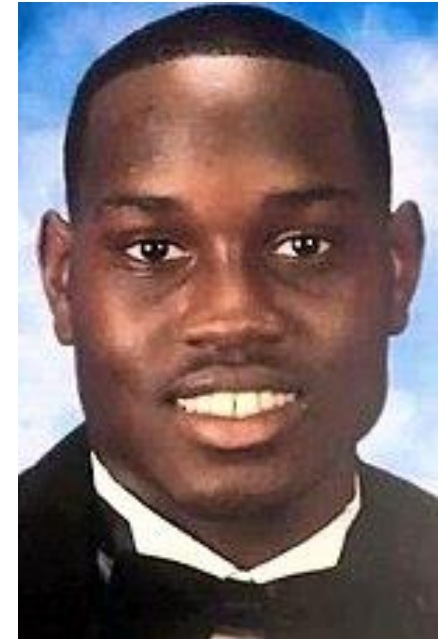


Kyle Rittenhouse



Race and criminal law in America

- On February 23, 2020, Ahmaud Arbery, a 25-year-old black man was murdered during a racially motivated hate crime.
- Three white men - Travis McMichael, Gregory McMichael, and William Bryan - pursued Arbery in trucks, claiming they assumed he was a burglar.
- The pursuit led to a physical altercation between Arbery and the armed Travis McMichael, who fatally shot Arbery.
- All three men were sentenced to life in prison after being convicted of murder in 2021. They were also found guilty of federal hate crimes in a separate trial the following year.



Ahmaud Arbery

https://en.wikipedia.org/wiki/Murder_of_Ahmaud_Arbery



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Muhammad Aziz poses for photos outside the courthouse after his conviction in the killing of Malcolm X was vacated, on November 18, 2021. https://en.wikipedia.org/wiki/Muhammad_Abdul_Aziz





R v Hayes & Palombo

- Tom Hayes was convicted in 2015 and sentenced to 14 years' imprisonment (later reduced to 11) for Conspiracy to Defraud by manipulating the London Inter-bank Offered Rate ("LIBOR").
- Carlo Palombo was convicted in 2019 and sentenced to 4 years' imprisonment for Conspiracy to Defraud by manipulating the Euro Inter-bank Offered Rate ("EURIBOR").
- LIBOR/EURIBOR are benchmark rates intended to reflect the current cost of borrowing in a market.
- The Serious Fraud Office (SFO) prosecuted Hayes and Palombo, arguing that they had agreed to procure rate submissions that were false or misleading and intended to favour their trading positions.
- Both convictions were upheld in two separate appeals.
- In 2023 the Criminal Cases Review Commission (CCRC) referred both cases back to the Court of Appeal.
- The UK Court of Appeal dismissed the renewed appeals, paving the way to the UK Supreme Court.



Carlo Palombo and Tom Hayes



The UK Supreme Court's Decision – Overturning a Jury Verdict

- The UK Supreme Court considered the legal construction of the LIBOR/EURIBOR definitions, specifically:
 - 1) Whether a LIBOR or EURIBOR submission is automatically not genuine or honest if influenced by trading advantage
 - 2) Whether the submission must be an assessment of the single cheapest rate at which the panel bank, or a prime bank, respectively, could borrow at the time of submission, rather than a selection from within a range of borrowing rates.
 - In a unanimous judgment, the Supreme Court answered „NO“ to both questions.
 - Both appeals were allowed and the convictions were quashed (overturned).
- This case demonstrates how a higher Appellate Court (Supreme Court) can reverse a conviction imposed by a jury based on incorrect instructions about the legal definition of manipulation of the benchmark reference rates for bank loans given to the jury by the trial judges.



Real property and personal property

- Real property includes all immovables, with exception of leaseholds
- Personal property includes almost all movables, with the addition of leaseholds



Property law – main areas

- Various forms of ownership and tenancy in real property (land as distinct from personal or movable possessions)
- Common law - personal property, real property
- Civil law system - movable and immovable property.
 - Movable property roughly corresponds to personal property (chattels)
 - Immovable property roughly corresponds to real estate or real property, and the associated rights and obligations (lightbulbs doorhandles, fixtures?)
- Property law rights often referred to as a 'bundle of sticks'
- Property law rights are much more strongly linked to the thing itself, as opposed to contract law which focuses on personal obligations and rights



Types of proprietary interests

- Ownership (freehold, or ‘fee simple absolute possession’)
- Lease / rentcharge
- License to use
- Security (eg: mortgage)
- Easement
- Freehold covenant
 - All of those legal or equitable
 - Registered or unregistered land
 - Temporal priorities (who came first)



Land Registration Act (LRA) 2002- explanatory notes

Background

Origins of the Act

3. In 1996, the Law Commission and HM Land Registry began a joint programme to update and reform the statute law relating to land registration. Their initial proposals were published in *Land Registration for the Twenty-First Century: A Consultative Document* in September 1998. Revised recommendations, amended in the light of the consultation response, were published in *Land Registration for the Twenty-First Century: A Conveyancing Revolution* on 10 July. The Act implements most of those recommendations. The joint report contains a detailed discussion of the policy behind the recommendations, and full explanatory notes on each clause of the draft Bill contained in the report.



Title to land

4. The Crown is the only absolute owner of land in England and Wales: all others hold an estate in land. Estates, which derive from feudal terms of tenure, originally took many forms but were reduced by the Law of Property Act 1925 to two, an estate in fee simple absolute in possession, generally known as “freehold”; and an estate for a term of years absolute generally known as “leasehold”. Apart from an estate, land may have the benefit of or be subject to other interests, which are rights and obligations relating to the land, belonging to the owner or to a third party.



The current legislation

9. The principal legislation was provided by the Land Registration Act 1925, as amended by Land Registration Acts in 1936, 1986, 1988, and 1997, and by the Land Registration and Land Charges Act 1971. That legislation provides an improved machinery of conveyancing, rather than changing the underlying law, which applies to both unregistered and registered conveyancing. Its principles and definitions have sometimes been found obscure and confusing, and its language not easy for even professional users.



The objectives of the Act

10. The joint project undertaken by the Law Commission and the Land Registry therefore faced a complex, and in many respects, out-dated piece of legislation. As work proceeded an additional factor had to be considered. The Land Registry has now automated many of its functions, which can now be accessed online. It became clear during the Commission's work that there was wide support within the property industry and from many legal practitioners for the introduction of a system of dealing with land electronically. The Law Commission and Land Registry therefore recommend that the new legislation should aim to create the necessary legal framework in which all registered conveyancing can be conducted electronically. The Act establishes such a system. The Law Commission and the Land Registry recommend a fundamental objective. To enable an effective system of electronic dealing with land, the register should be a complete and accurate reflection of the state of the title of the land at any given time, so that it is possible to investigate title to land online, with the absolute minimum of additional inquiries and inspections.



Electronic conveyancing

11. The Act creates a framework in which it will be possible to transfer and create interests in registered land by electronic means. It does so by enabling the formal documents to be executed electronically; and providing for a secure electronic communications network. Because it is envisaged that the execution of those documents and their registration will be simultaneous, and the process of registration will be initiated by conveyancers, permitting access to the network is to be controlled by the Land Registry, which will also exercise control over the changes which can be made to the register. The Land Registry will be obliged to make arrangements for access to the network by those who wish to undertake their own conveyancing. Establishment of the system will require new ways of working by the Registry, and by conveyancing practitioners. It will, therefore, best be introduced in stages, starting with the simplest transactions and progressing to the more complex. The Act therefore provides for the Lord Chancellor to regulate by rules transactions that can be carried out electronically.



12. Some of the benefits of electronic conveyancing can only be maximised if it is used universally. The Act, therefore gives the Lord Chancellor power to make the use of electronic means for conveyancing compulsory, subject to appropriate consultation. The use of this power will become feasible only when electronic conveyancing has become much the most usual way of effecting transactions.



Land Registration Act 2002

Section 4 stipulates that registration of an estate in land is compulsory when one of the following events occurs:

- 1) Freehold estate is transferred, whether under a sale, gift or other circumstances;
- 2) Legal lease for more than seven years is granted;
- 3) Legal lease with more than seven years to run is transferred; or
- 4) Grant of a first legal charge (mortgage).

Failure to register when required, means that the purchaser or transferee gains only an **equitable title** to the land and the seller or transferor remains as the registered proprietor. A person with an equitable title, *i.e.* who has failed to register, cannot take advantage of the priority rules found and may be vulnerable if the (still) registered proprietor attempts another dealing with the land.



Property law v contract law

- Property rights are rights over things enforceable against all other persons (rights *in rem* = against the thing itself)
- By contrast, contractual rights are rights enforceable against specific persons (rights *in personam* = against the person)
- Property rights may, however, arise from a contract; the two systems of rights overlap.
 - For example, sale of land involves two sets of legal relationships: the contractual right to sue for damages, and the property right exercisable over the land.
- Other property rights may be created by contract: *easements, covenants, and equitable servitudes*.
- *Even minor rights, such as Licences created by a binding contract, do not give rise to property rights.*



Property rights v personal rights

- Historical context: disenfranchised people not allowed property – women and Jews in 19th century England.
- People could become ‘objects’ of property or chattels – ‘things’ ie., slavery.
- Difficult to draw distinction between ‘property’ and ‘personal’ rights. Eg: A right in one’s reputation?
 - Right *in rem*: right to the thing itself (right to the actual house)
 - Right *in personam*: right against the person, usually under the contract, to give you either the thing or its value in money (damages)



Property Law also applies to...

- Commercial law and insolvency.
- Trusts affects everything in **English property law**
- Legal interest/right
 - Equitable interest/right
- Intellectual property also important branch of the law of property:
copyright, trademarks, registered designs



Trust

“A trust is an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestuis que trust), of whom he may himself be one, and any one of whom may enforce the obligation.”



Trust

