# Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td></td>
<td>xi</td>
</tr>
<tr>
<td>1 History</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Avoiding Tragedies</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Property Law: An Historically Contingent Aggregate of Formal and Informal Constraints</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Common Law</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Civil Law</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Dissimilar Form and Similar Substance?</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Notes</td>
<td>21</td>
</tr>
<tr>
<td>2 Sources</td>
<td></td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>Constitutional Law</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>Codes and Common Law Principles</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>Special Statutes</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Lower Regulation</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>Machinery of Justice</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>Notes</td>
<td>46</td>
</tr>
<tr>
<td>3 Economic Analysis</td>
<td></td>
<td>51</td>
</tr>
<tr>
<td></td>
<td>Efficiency as a Legal Principle</td>
<td>51</td>
</tr>
<tr>
<td></td>
<td>Efficiency as Waste Prevention</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Property Law: Default and Mandatory Rules</td>
<td>54</td>
</tr>
</tbody>
</table>
Judicial Interpretation and Private Bargaining  55
Minimizing the Costs of Failures in Negotiation  56
Property Rights and Internalization of Social Costs  58
Collective and Decentralized Systems to Avoid Externalities  60
Property Rules and Liability Rules  62
Efficiency and Security of Property Rights  65
Clear Social Signaling in Movable and Immovable Property  66
Efficiency and the Nature of Property  68
Notes  71

4 The Object of Property Rights  75
Taxonomy  75
Immovable Property  83
Movable Property  86
The Legal Regime of Property Rights Other Than Ownership  91
Public Law Ownership  93
Notes  94

5 Transfer of Ownership  99
A Complex Legal Problem  99
Voluntary and Involuntary Transfers Mortis Causa (after Death)  100
Voluntary Inter Vivos Transfers of Immovables  102
Transfers of Movable  105
Involuntary Transfers of Immovable Property  109
Riparian Property Rights  117
Notes  118

6 The Power to Use Ownership  123
Ownership as an Aggregate of Positive and Negative Characteristics  123
Power in General  124
The Power to Fence the Land  127
The Power to Use the Subsoil  128
The Power to Use Water  130
The Power to Plant and Acquire Fruits  132
The Power over Buildings (Superficies Solo Caedit)  134
The Power over Borders  137
Notes  142

7 Negative Aspects of Ownership: Limits and Liabilities  147
In General  147
The General Ban on Abuse of Property Rights  149
CONTENTS

Rules and Standards to Limit Property Rights 149
Limits to the Power to Build 150
Limits to Property Rights Due to Incompatible Uses in General 153
Minimal Distances and Other ex Ante Rules 154
Ex Post Standards: Reasonable Use 156
Emissions 157
Incompatible Uses: Some Economic Analysis and a
   Theoretical Framework 158
The Relative Nature of Emissions 160
First Come, First Served: Coming to the Nuisance 161
Industrial Emissions 163
Other Limits in the Interest of Neighbors 164
General Liabilities 165
Taxes 166
Notes 168

8 Remedies 171

General Background 172
Possessory and Proprietary Remedies 173
Forward-Looking and Backward-Looking Remedies 175
Protection of Title and Protection of Enjoyment 176
Effectiveness of Remedies 178.
Property Rule 181
Damages 187
Notes 189

9 Loss of Ownership 193

The Nature of Expropriation 193
Legal and Economic Principles 195
Informal Taking and Regulation 197
Public Use and Due Process of Law 199
Just Compensation and Due Process of Law 201
Notes 204

Index 207