

The Property System

by Sophia



WHAT'S COVERED

In this lesson, you will learn about the concept of property in the United States, as well as the different types of property that can be owned. Specifically, this lesson will cover:

1. Property Ownership in the United States

The concepts of property and ownership are fundamental to any society. Property refers to **tangible** and **intangible** items that can be owned. Ownership is a concept that means the right to exclude others. Disputes over both have been at the root of conflicts and wars since time immemorial.

Without laws to protect property ownership, the stability of our society would be seriously undermined.

IN CONTEXT

If the law did not protect ownership interests in property, then people would have to protect their property themselves. This means that people would have to hire their own security forces to protect their property, or they would have to stand guard over their property personally. It would be difficult to get anything else done. Such a system would likely result in the development of powerful factions. Those with the greatest power would dominate property ownership, and weaker members of society would be at their mercy.

For example, one of the opening scenes of the movie *Black Hawk Down* illustrates a U.N. food distribution point in Mogadishu, Somalia. As depicted in that scene, people were waiting to receive the distribution of food, but a powerful, armed faction seized the cargo and opened fire on them. Obviously, such a system of property ownership would prove to be very unsettling, and it would lead to great instability in our economic system.

Our legal system creates a peaceful means to acquire, retain, and divest of property, and to settle property disputes. It punishes those who operate outside of those rules.

Indeed, those who do not acquire property lawfully or who do not settle property disputes within the confines of our legal system are subjected to criminal and civil penalties.



TERMS TO KNOW

Tangible Property

Property that can be felt or touched, either real or personal.

Intangible Property

Personal property that cannot be felt or touched and exists only in connection with something else, such as goodwill of a business, trademarks, copyrights, stock in a company, etc.

1a. Who Can Own Property?

In the United States, our legal system ensures the ability to own property to everyone that the system recognizes can own property. Of course, not everyone has always been able to own property.

The history of the United States is replete with examples of exclusion from the property ownership system.

➞ **EXAMPLE** At various times and in different ways, married women, African Americans, and people of Chinese and Japanese descent have been subject to restrictions regarding the ownership of **real property**.

Because property law is a state law issue, those restrictions and exclusions varied from state to state. Today, no such restrictions exist. Indeed, even a nonhuman legal person, such as a corporation, can own property.

However, some biological beings cannot own property.

➞ **EXAMPLE** Nonhuman animals cannot own real or **personal property** in our legal system. This is because nonhuman animals are not legal persons. However, a nonhuman animal can be a beneficiary of a trust in many states.



TERMS TO KNOW

Real Property

Real estate, as in land and buildings, and associated rights, such as mineral rights.

Personal Property

All property that is not real property.

1b. What Can Be Owned?

Moreover, not everything is subject to ownership.

IN CONTEXT

The human body cannot be owned by another, though historically, in legal systems that recognized slavery, certain human bodies could be owned. Today, public policy discourages the treatment of human body as personal property, rendering “gifts” of body parts to specific individuals largely suspect. For example, organ donees may have a need for an organ destined for transplant into their own bodies after the donor’s body dies, but they do not have a legal right to it. *Colavito v. New York Organ Donor Network*, 2006 NY Slip Op. 09320 (NY App. Ct. 2006).

Similarly, the question regarding whether human genes may be owned through patent is a hot topic. Check out [this 2010 New York Times article](#) and consider whether the benefits of patentability of certain body parts, like genes, might outstrip the concerns surrounding ownership of the human body. In 2013, the United States Supreme Court ruled in *Association for Molecular Pathology v. Myriad Genetics*, 569 U.S. 576 (2013), that naturally occurring gene sequences are not patent

eligible.

Before engaging in questions regarding the evolution of property ownership rights, it is necessary to lay the foundation for studying this fascinating area of law. It is this foundation to which we now turn.



SUMMARY

In this lesson, you learned that **property ownership in the United States**, including the rights to own, acquire, defend, and divest of real and personal property, is protected by the legal system. These protections are necessary for a peaceful, civil society. Historically, the matter of **who can own property** subjected various groups of people to discriminatory practices regarding property ownership. Today, all legal persons can own, acquire, transfer, and sell property. However, not everything is subject to property ownership (e.g., human body parts). The matter of **what can be owned** continues to evolve.

Best of luck in your learning!

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