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Ezra Rosser

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The Dream of Property Professors

Author : Ezra Rosser

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Michael Heller & James Salzman, [Mine! How the Hidden Rules of Ownership Control Our Lives](#) (2021).

Michael Heller and James Salzman's new book, *Mine! How the Hidden Rules of Ownership Control Our Lives*, is a dream come true for property professors.

I suspect that many of us have moments when we think to ourselves, "wow, this stuff is really interesting," imagining that property law could somehow be of general interest. Too often that dream is killed when the eyes of non-lawyers, including family members, start to glaze over when they hear words like rule against perpetuities or trademark. Heller and Salzman have succeeded in making the stories property professors tell the stuff of a bestseller. They retell many of the standard classroom or analytical stories in a way that is both interesting to the general public and somehow worthy of broad discussion.

The primary strength of the book is its ability to describe property law cases and rules in an approachable and non-academic way. Most of the stories Heller and Salzman tell are the same stories that many of us tell and that animate first year property law classes. Natore Nahrstedt's cats make an appearance, and they are joined by Barry Bonds' 73rd homerun ball of the 2003 season and the cells UCLA doctors removed from John Moore's spleen.

In less than three hundred pages, *Mine!* covers many of the core concepts taught to 1Ls, from nuisance and the tragedy of the commons to rights of publicity and property versus liability rules. Indeed, one can foresee property professors assigning the book as supplemental reading before the semester, a way for students to get a taste of what is to come.

But, by showing how to translate property law concepts into the experiences and language of non-lawyers, *Mine!* also offers professors in particular a reminder of the payoff that is possible when authors do the hard work of inviting the public into the castle.

Heller and Salzman's work sews together an endless series of illuminating and thought-provoking examples of property contestation. But rather than being anecdotal asides, the examples open up new ways of conceptualizing many of the routine annoyances of modern life. After describing the fights that can break out over whether airline passengers should be allowed to recline their seats or not, *Mine!* argues that these disagreements arise because airlines are making use of property uncertainty to sell the same wedge of space twice (once to the person who thinks there is a right to recline and once to the person who thinks there is a right to use the airspace above their tray table).

Indeed, throughout the book, Heller and Salzman identify businesses that exploit ownership gaps, whether caused by uncertainty or an absence of rules, to extract value. Even well-known cases, such as overfishing, are covered in enlightening ways; for example, when a jurisdiction sets a catch limit, should it continue to follow a first-come, first-served rule of capture or should it give existing fishing boats a protected yearly quota? In order to best ensure a clean water supply, should New York City build a new water treatment facility or make payments to upstream communities so that they protect the city's water sources?

Mine! explores these and other questions in an open and inviting way. It does not attempt to convince the reader that a particular approach is better in all circumstances—it is neither a exultation of capitalism nor a cry for revolution. Those inclined to view property as theft might find fault in the authors' argument that tweaking ownership design can lead to

better societal outcomes. On the other hand, *Mine!* singles out inequitable inheritance rules that privilege the wealthy for particular scorn.

The book's main point is one that property scholars will readily accept: property rules matter. How ownership is structured shapes how the world works, how we relate to one another, and how the future will unfold. Heller and Salzman are engaged in an unearthing project—an effort to make visible the hidden structure of property and elevate discussion of the property rules that ordinarily slip into the background.

For property scholars, *Mine!* is worth reading both for its examples and for its language. First year property teachers can mine (excuse the pun) the book for examples to add to their own teaching. Just as there is inevitably something valuable to draw from and perhaps steal from every time one sits in on the class of a colleague, so too there is lots of material here that can help bring property more to life in the classroom.

The fact that Heller and Salzman did not even discuss the wet manure in *Spur v. Del Webb* is a sign of just how much material they had to sort through to reach a popular audience. And that sorting and framing effort is the other major contribution made by the book. We all can struggle as we translate difficult concepts, such as numerous clausus or eminent domain, from doctrine-heavy language into the common tongue. Heller and Salzman have done that heavy lifting, which alone is enough to make *Mine!* a valuable read.

So head to your local bookstore, where you will likely find it displayed (what an exciting way to start a sentence about a property book!), and make this thing yours.

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