

The Right to Exclude

The Institution of Property

Thomas W Merrill & Henry E. Smith, *Property*, 1-10 (2010)

The common law is typically divided into contracts, torts, and property. A contract, roughly speaking, is a legally enforceable promise. A tort is a civil wrong based on the violation of a duty not arising from contract. Where does property fit into the picture?

One way to think about property is that it defines the entitlements people can enter into contracts about, or can sue in tort in order to protect... If *A* sells Blackacre (the proverbial name for a generic plot of land) to *B*, the transfer is governed by a contract. But what *A* and *B* are contracting about is the property rights to Blackacre.... [Similarly, if *A* brings a tort suit against *B* for trespass to *A*'s property, we need property law to know what property *A* owns.]

In this book, we will use the term “property” to refer to entitlements to resources protected by formal legal institutions [such as the right to sue in trespass].

Property in the sense of legally protected entitlements comes in a variety of forms. The paradigmatic legal property right would be full title to a parcel of land or an object like a car – real property and personal property (or “chattels”), respectively. But the law also affords legally enforceable claims to nontangible resources. Intellectual property – chiefly, patents, copyrights, and trademarks – is regarded as property despite not being a right to any physical thing. Intellectual property rights are rights in intangibles. Likewise one can own a debt or an account at a bank [or stock in a company].

The great diversity in the types of things that can be property ... gives rise to the question whether there is any essential feature or element that distinguishes property from other types of claims or rights. One school of thought holds that there is an essential core to the nature of property: the right to exclude others from some thing. This view is captured by William Blackstone's definition of property as “that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.”

Another school of thought denies the existence of any essential core to the concept of property. Rather, property is just a word denoting a bundle of rights – or more metaphorically, a bundle of sticks – in which each individual stick (whether it be a right or privilege) can be added or removed without necessarily changing the characterization of the bundle as “property.” No particular stick in the bundle – including the right to exclude – is privileged, and the measure of which bundles are preferred to which others is simply a matter of social policy. Thus, if *A* owns Blackacre, but society finds that Blackacre would be an undesirable location for a factory [perhaps because the noise or pollution would interfere with use of nearby land for single-family homes], the government may [forbid *A* from building or operating a factory on Blackacre and thus] remove the factory-building stick from the bundle of rights. Nonetheless, it is still possible to describe the remaining sticks [including the right to build a home on Blackacre or to sue trespassers] as “property.” The Legal Realist movement that started in the 1920s advanced this alternative view in order to debunk the notion of property as a natural right protected by the Constitution against fundamental reform. The bundle of rights view achieved the status of conventional wisdom in academic circles in the course of the twentieth century...

In some legal systems, property is called the “Law of Things.” The Latin expression for this is that property rights are *in rem*, which comes from the word *res* or thing, and indicates that property rights pertain directly to things, rather than people. A related use of the term in the law of civil procedure – jurisdiction *in rem* – refers to the power of a court over a thing, such as a ship. One of the more interesting *in rem* actions is the quiet title action. This allows a person to place some thing under the authority of the court, which will, after providing to all identified claimants the requisite notice and opportunity to be heard, make a definitive adjudication of who owns the thing. Such a judgment is binding on all conceivable claimants, whether or not they have participated in the proceedings. Here we see a direct acknowledgment of the centrality of the thing in the law of property.

It is instructive in this regard to return again to the relationship among contract, tort, and property, but now to draw a distinction between contract, on the one hand, and property and tort, on the other. Contract rights are created by particular agreements between particular persons, which creates obligations binding on these persons with respect to each other and no one else... A short-hand expression for this confinement of contract rights and duties to identified interacting parties is that contract rights are *in personam*... Property rights, in contrast, bind the world, not just a particular pair of parties. [So, if *A* owns Blackacre, everyone in the world has a duty not to trespass, and *A* can sue anyone for trespass.] Personal rights protected by the law of torts are similar: individual rights of bodily integrity,

privacy, and reputation apply automatically to persons as persons ... and bind all other persons in the world.

We noted earlier that property can be real or personal, tangible or intangible. Nonetheless, not every thing can be property. One implicit limitation on the set of things that are subject to ownership is that they must be things worth managing through the exercise of exclusion rights. Traditionally, the atmosphere and the oceans were said to be ineligible to be objects of ownership, probably because it was too difficult to delimit and enforce ownership shares in these resources, given the gains that might accrue from such an exercise. There are also important moral and cultural limitations on the types of things that can be the objects of ownership. Human beings were once commonly owned as slaves, a form of property now universally regarded as morally repugnant.

Economic Analysis of Property **Based on a memo written by Prof. Scott Altman**

This memo provides an explanation for property rights and in particular the right to exclude based on economics. It also introduces some key vocabulary: externality, transactions costs, collective action problem, free rider, hold out, internalization, tragedy of the commons, Coase Theorem, and governing the commons.

The main ideas in this memo were developed by a UCLA economics professor named Harold Demsetz, whose main insight was:

A primary function of property rights is that of guiding incentives to achieve a greater internalization of externalities.

Demsetz begins his argument for private property and the right to exclude by imagining a simple arrangement of shared ownership, which he called communal ownership. On his account (which is not accurate in most places), communally owned land could be used by anyone. But if someone took resources from the land, those resources could be privately consumed or sold. For example, imagine that there are ten people living in a remote village near a very small forest, so small that it has only 100 trees. The trees are large enough to cut down and sell, but not as valuable as they will be in a few more years. One problem with communal ownership of these trees is that we may chop them all down too soon. The reason, says Demsetz, has to do with externalities and transaction costs.

Externality is a simple idea. It is an effect of something I do *on someone else*. If I like loud music late at night and it keeps you awake, your sleeplessness is an externality – an external harm, a harm to you (not me). If I plant a lovely garden in my yard, just outside your window, the beautiful view you now have is an external benefit to me – external since it is a benefit to you, not me.

How is this relevant to the 100 trees in the small forest near the 10-person village? Well, if I chop down a tree and sell it, I get to keep all the money. Of course, I now have access to fewer trees in the future. That is a harm to me, because there are fewer trees for me to use for fuel or building in the future. Nevertheless, since there are 9 others with access to the forest, most of the harm of having fewer trees in the forest is a harm to other people, something that I can ignore if I am selfish. If all 10 people are similar in the way they use the forest, one could say that 10% of the harm of chopping down a tree is borne by me, but 90% of it an externality.

If there were no other people with access to this forest, I might hesitate before chopping the tree. I would still keep the profits. But I would be the one suffering the entire cost of lost inventory – since the tree was entirely mine. So I would balance the benefit of chopping down a tree with the harm of doing so. The trouble with communal ownership is that all ten of us have an incentive to chop the trees -- since each of us can keep 100% of what we chop, and suffer only 10% of the cost of our own reduced inventory. So we are each likely to chop down too many trees. The situation is similar to eating at an all-you-can-eat buffet. Each person is likely to overeat because she does not pay any additional cost for eating an additional serving.

And there is an additional problem. Since we all know that we each have an incentive to chop down too many trees, we may rush to chop trees before others do so. We will deplete the forest quickly, rather than waiting to let the trees grow larger, which might be better for all of us. All of this is because of the externality. Each person gets the full benefit of chopping down a tree, but bears only part (10%) of the cost or harm.

But things are actually even worse. Having chopped down the trees, we would be wise to replant so that eventually we will have trees again. But externalities get in the way here too. If I replant, I experience all of the costs of doing so. But I only get 10% of the benefit, since I will share the newly planted crop with nine others. The externality that led to excess harvest

was an external harm – my harvest imposed a harm on others, so I do too much of it. With planting, there is an external benefit – my planting gives a benefit to others, so I do too little of it.

The external costs and benefits that plague communal property mean that there will be over consumption (because of external harms) and under production (because of external benefits). This pattern is called the tragedy of the commons. It is probably why, when you live with six roommates, no one ever cleans the bathroom. It is also why traffic is so bad. When one person drives, she makes traffic worse for everyone. The effect of each person on traffic is small, but since there are many drivers, the effect adds up to something big. Each person bears the cost of the traffic that others create, but bears only a tiny fraction (e.g. 1 millionth) of the cost of the traffic she herself creates. So, when we decide to drive, we take into account traffic conditions generally, but not the way our driving increases traffic for others. As a result, too many people drive, and traffic is horrible.

Given all the bad things that Demsetz forecasts, why wouldn't the members of remote 10-person village just agree to limit the number of trees they cut, delay cutting trees until they are mature, and replant a tree for every one that they cut? Why don't roommates just agree to share house cleaning? Why don't drivers agree to drive less, carpool, or use public transportation?

They might. But reaching and then enforcing such agreements would be costly. All of the practical barriers to reaching such agreements are called **transaction costs** by economists.

First, getting people to agree about anything can be difficult. Even getting them to sit down and talk could be expensive and time consuming.

Second, there may be **free-riders**, persons who refuse to limit and delay their cutting and to replant, but who want to benefit from the limits, delays, and replanting that the others agree to.

Third, there will be **hold-outs** -- individual members who refuse to agree to limit or delay their cutting or to replant trees-for-tree unless the others in the group pay them to do so.

Fourth, even if the group were willing to do so, it may have trouble raising funds to pay off the hold-outs because of the free rider problem -- each person in the group preferring to let others contribute the needed funds.

Fifth, monitoring and enforcing the agreement might be difficult and expensive.

Together, these issues are called the *collective action problem*. According to Demsetz instituting private property will mitigate this problem. How?

Private property solves or mitigates these difficulties by imposing (many of) the costs of cutting trees on the individual who get the benefits, i.e. *internalizing* the costs. When harms are internalized, the person who gets the benefit of an action also bears the full cost (harm) that the action causes. The individual then weights all the costs and benefits to her actions and is likely to make the most efficient decision (the one that maximizes benefits minus harm or cost).

For example, if the forest were divided into 10 equal portions, and given as private property to the 10 members of the community, all of the incentives would change. The costs would be internalized in the sense that each member would take account of the entire cost of a lost tree in making decisions.

The incentive to over cut would disappear. Because each person could exclude others from her property, she could engage in calculations of whether it was wise to cut trees now or to wait for later harvest. She would know that no one else would prevent the plan from being effective, and that she would realize the benefit of the planning. The external harm of cutting has been internalized by imposing the entire loss from reduced inventory on one person.

She would also have an incentive to replant after chopping down a tree. Although she would still bear all cost of replanting, she would also get all of the benefit, since she could be sure that the tree she plants would not be harvested by anyone else, and would keep all of the proceeds from eventual harvest. The external benefit of planting has disappeared – has been internalized by private ownership with a right to exclude.

Private property has an additional benefit for externalities. So far, the argument has shown why there will be fewer externalities if we have a right to exclude. But many will still exist.

You and I might be neighbors. You want to hunt in the morning (on your own land). And I want to use my chain saw to make animal sculptures out of tree stumps. Unfortunately, my chain saw scares away all the animals you want to hunt. This noise is an externality to me – something I can ignore as I decide what to do if I am selfish.

Private property helps us solve this problem too. If I own the land where I am making noise, you might offer to pay me to be quiet so you can hunt. My ownership of this land might make it easier for you to find me. It also allows me to make a binding promise – not just that I will not make noise, but that no one will do so on my land, even if I sell it to someone else. That binding promise is one that you might pay for. But if I did not own the land -- I was just there – I could only make a promise about my own behavior. I could not guarantee that someone else will not come along to make noise. This would give you far less confidence about the future and would make a bargain between us less likely. In this way, private property makes it easier for us to settle disputes about the externalities that remain and to plan for our futures.

The fact that there are only two of us who need to be party to this negotiation may also make it easier for us to strike a deal than if we had to negotiate with the larger group of all persons who might make noise on the property. The transaction costs to the deal we need to make might be lower.

You can now understand more clearly what Demsetz had in mind when he said "[a] primary function of property rights is that of guiding incentives to achieve a greater internalization of externalities." By privatizing land, there are fewer external harms and benefits than there were under a communal regime. As well, the remaining externalities are easier to address by private negotiations, since it is possible to make binding agreements, and easier to make those agreements with a smaller group of people.

In addition, the discussion of the noise externality in the last few paragraphs previews a discussion we will have later of the ***Coase Theorem***. According to the Coase Theorem, when transaction costs are low, persons will negotiate efficient solutions regardless of the legal rule. In the context of the tree-cutting noise/hunting dispute, the Coase Theorem predicts that, if transactions costs are low (as they would seem to be), the neighbors would be able to negotiate an efficient solution to the noise, regardless of whether the law allows people to be so noisy as to scare game animals or not.

Although property helps solve the externalities problem, it has its own costs – the costs of defining and enforcing property rights. Sometimes these costs are higher than the costs imposed by externalities, so property rights are not worthwhile. For example, the cost of enforcing property rights on the moon would be much higher than the externalities current moon uses impose, so it's not worth creating property rights on the moon. In other situations, there are alternative ways to control externalities that might be cheaper or provide more benefits than property. For example, the 10-villagers adjacent to the 100-tree forest might decide to make laws about the forest rather than give each villager property rights over 10 trees. For example, they might state that each villager has a right to cut down 1 tree every 5 years, or that each person who wants to cut down a tree needs a permit from the village mayor. These solutions might be superior to private property rights in trees, because they control overcutting without interfering with each villager's ability to hike in the forest (which would be difficult if each villager had the right to exclude other villagers from her portion of the forest). Similarly, in dealing with traffic, selling roads to individual owners is not likely to solve the problem; rather, overuse (traffic) could be controlled by charging drivers to use the roads, with higher fees charged for times and places where traffic might otherwise be worse. That solution is called congestion pricing. More generally, ***governing the commons*** is an alternative to private property as a solution to the tragedy of the commons. That is, externalities issues can be mitigated by regulation rather than private property, an idea associated with Elinor Ostrom, the first woman to win a Nobel Prize in economics.

Jacque v. Steenberg Homes, Inc.

563 N.W.2d 154 (Wis. 1997)

WILLIAM A. BABLITCH, Justice.

Plaintiffs, Lois and Harvey Jacques, are an elderly couple, now retired from farming, who own roughly 170 acres near Wilke's Lake in the town of Schleswig. The defendant, Steenberg Homes, Inc. (Steenberg), is in the business of selling mobile homes. In the fall of 1993, a neighbor of the Jacques purchased a mobile home from Steenberg. Delivery of the mobile home was included in the sales price.

Steenberg determined that the easiest route to deliver the mobile home was across the Jacques' land ... because the only alternative was a private road which was covered in up to seven feet of snow and contained a sharp curve which would require sets of "rollers" to be used when maneuvering the home around the curve. Steenberg asked the Jacques on several separate occasions whether it could move the home across the Jacques' farm field. The Jacques refused.

... On the morning of delivery, ... the assistant manager asked Mr. Jacque how much money it would take to get permission. Mr. Jacque responded that it was not a question of money; the Jacques just did not want Steenberg to cross their land. ...

At trial, one of Steenberg's employees testified that, upon coming out of the Jacques' home, the assistant manager stated: "I don't give a ---- what [Mr. Jacque] said, just get the home in there any way you can." ... The employees, after beginning down the private road, ultimately used a "bobcat" to cut a path through the Jacques' snow-covered field and hauled the home across the Jacques' land to the neighbor's lot. ... Mr. Jacque called the Manitowoc County Sheriff's Department. After interviewing the parties and observing the scene, an officer from the sheriff's department issued a \$30 citation to Steenberg's assistant manager.

The Jacques commenced an intentional tort action in Manitowoc County Circuit Court, Judge Allan J. Deehr presiding, seeking compensatory and punitive damages from Steenberg. ...[Q]uestions of punitive and compensatory damages were submitted to the jury. The jury awarded the Jacques \$1 nominal damages and \$100,000 punitive damages. Steenberg filed post-verdict motions claiming that the punitive damage award must be set aside because Wisconsin law did not allow a punitive damage award unless the jury also awarded compensatory damages. Alternatively, Steenberg asked the circuit court to remit the punitive damage award. The circuit court granted Steenberg's motion to set aside the award. Consequently, it did not reach Steenberg's motion for remittitur.... [Jacque appealed.]

II.

... Steenberg argues that, as a matter of law, punitive damages could not be awarded by the jury because punitive damages must be supported by an award of compensatory damages and here the jury awarded only nominal and punitive damages. The Jacques contend that the rationale supporting the compensatory damage award requirement is inapposite when the wrongful act is an intentional trespass to land. We agree with the Jacques.

...The rationale for the compensatory damage requirement is that if the individual cannot show actual harm, he or she has but a nominal interest, hence, society has little interest in having the unlawful, but otherwise harmless, conduct deterred, therefore, punitive damages are inappropriate. ... The Jacques argue that both the individual and society have significant interests in deterring intentional trespass to land, regardless of the lack of measurable harm that results. We agree with the Jacques....

We turn first to the individual landowner's interest in protecting his or her land from trespass. The United States Supreme Court has recognized that the private landowner's right to exclude others from his or her land is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Dolan v. City of Tigard*, 512 U.S. 374, 384, 114 S.Ct. 2309, 2316, 129 L.Ed.2d 304 (1994). This court has long recognized "[e]very person[s] constitutional right to the exclusive enjoyment of his own property for any purpose which does not invade the rights of another person." *Diana Shooting Club v. Lamoreux*, 114 Wis. 44, 59, 89 N.W. 880 (1902) (holding that the victim of an intentional trespass should have been allowed to take judgment for nominal damages and costs). Thus, both this court and the Supreme Court recognize the individual's legal right to exclude others from private property.

Yet a right is hollow if the legal system provides insufficient means to protect it. Felix Cohen offers the following analysis summarizing the relationship between the individual and the state regarding property rights:

[T]hat is property to which the following label can be attached:

To the world: Keep off X unless you have my permission, which I may grant or withhold.

Signed: Private Citizen

Endorsed: The state

Felix S. Cohen, *Dialogue on Private Property*, IX Rutgers Law Review 357, 374 (1954). Harvey and Lois Jacque have the right to tell Steenberg Homes and any other trespasser, "No, you cannot cross our land." But that right has no practical meaning unless protected by the State....

The nature of the nominal damage award in an intentional trespass to land case further supports an exception to [the compensatory damage requirement]. Because a legal right is involved, the law recognizes that actual harm occurs in every trespass. The action for intentional trespass to land is directed at vindication of the legal right. ... Thus, in the case of intentional trespass to land, the nominal damage award represents the recognition that, although immeasurable in mere dollars, actual harm has occurred.

The potential for harm resulting from intentional trespass also supports an exception to [the compensatory damage requirement]. A series of intentional trespasses, as the Jacques had the

misfortune to discover in an unrelated action, can threaten the individual's very ownership of the land. The conduct of an intentional trespasser, if repeated, might ripen into prescription or adverse possession and, as a consequence, the individual landowner can lose his or her property rights to the trespasser.

In sum, the individual has a strong interest in excluding trespassers from his or her land. Although only nominal damages were awarded to the Jacques, Steenberg's intentional trespass caused actual harm. We turn next to society's interest in protecting private property from the intentional trespasser.

Society has an interest in punishing and deterring intentional trespassers beyond that of protecting the interests of the individual landowner. Society has an interest in preserving the integrity of the legal system. Private landowners should feel confident that wrongdoers who trespass upon their land will be appropriately punished. When landowners have confidence in the legal system, they are less likely to resort to "self-help" remedies. ... [O]ne can easily imagine a frustrated landowner taking the law into his or her own hands when faced with a brazen trespasser, like Steenberg, who refuses to heed no trespass warnings.

People expect wrongdoers to be appropriately punished. Punitive damages have the effect of bringing to punishment types of conduct that, though oppressive and hurtful to the individual, almost invariably go unpunished by the public prosecutor. ... If punitive damages are not allowed in a situation like this, what punishment will prohibit the intentional trespass to land? Moreover, what is to stop Steenberg Homes from concluding, in the future, that delivering its mobile homes via an intentional trespass and paying the resulting [\$30] forfeiture, is not more profitable than obeying the law? Steenberg Homes plowed a path across the Jacques' land and dragged the mobile home across that path, in the face of the Jacques' adamant refusal. A \$30 forfeiture and a \$1 nominal damage award are unlikely to restrain Steenberg Homes from similar conduct in the future. An appropriate punitive damage award probably will.

In sum, as the court of appeals noted, the [compensatory damage] rule sends the wrong message to Steenberg Homes and any others who contemplate trespassing on the land of another. It implicitly tells them that they are free to go where they please, regardless of the landowner's wishes. As long as they cause no compensable harm, the only deterrent intentional trespassers face is the nominal damage award of \$1 ... and the possibility of a Class B forfeiture under Wis. Stat. § 943.13. We conclude that both the private landowner and society have much more than a nominal interest in excluding others from private land. Intentional trespass to land causes actual harm to the individual, regardless of whether that harm can be measured in mere dollars. Consequently, the [compensatory damage] rationale will not support a refusal to

allow punitive damages when the tort involved is an intentional trespass to land. Accordingly, assuming that the other requirements for punitive damages have been met, we hold that nominal damages may support a punitive damage award in an action for intentional trespass to land. ... Accordingly, we reverse and remand to the circuit court for reinstatement of the punitive damage award.

Reversed and remanded with directions.

Notes and Questions

1. Do you think the jury, trial judge, and/or appellate court reached the right decision in *Jacque*?
2. How does the issue in this case relate to the economic justification of property set out in the second reading in this packet? Does the Jacques' exercise of their right to exclude reduce negative externalities or encourage efficient investment? If not, is there some other justification for their right to exclude?
3. Would (or should) the result in *Jacque* have been different if, instead of a mobile home seller making a scheduled delivery to a customer, the defendant had been an ambulance company responding to a call reporting a suspected heart attack? a broken leg?
4. Would or should the result in *Jacque* have been different if Steenberg had tried to take the private road, and the truck had accidentally tipped and fallen onto the Jacques' land?
5. Would it matter if Steenberg were Jewish, *Jacque* were an anti-Semite, and the Jacques' refusal to allow Steenberg to use the road was motivated by anti-semitism?
6. Suppose, it would cost Steenberg \$20,000 more to use the private road than to bring the mobile home over *Jacque*'s property, and suppose Steenberg had said *Jacque* could bring the mobile home over his property if Steenberg paid \$19,999. Would or should that change the outcome of the case?
7. Suppose Steenberg owned a large container ship, and *Jacque* owned the only dock within fifty miles large enough for the ship to dock at. An unexpected storm endangered the boat. Steenberg and his crew could save their lives by using lifeboats to get ashore, but the ship (worth \$50 million) and \$50 million in cargo would be lost unless it could use *Jacque*'s dock. Can Steenberg use *Jacque*'s dock? If Steenberg does so without permission, and *Jacque* sues Steenberg for trespass, what should the court (and jury) decide? Does it matter if Steenberg had a radio or phone with which he could contact *Jacque* beforehand? Does it matter if Steenberg reached *Jacque* on the radio, and *Jacque* said Steenberg could use the dock only if he paid \$99 million,

- and Jacque refused to pay? Does it matter if Jacque stood on the dock and used a bullhorn to announce that Steenberg did not have permission to dock? What if Steenberg had no way of reaching Jacque, and Jacque did not notice that the ship had docked until the storm cleared the next day?
8. Suppose Jacque owned a restaurant that refused to serve African Americans, and suppose Steenberg was one of a dozen African-American students who, in 1960, participated in a “sit-in” demonstration against Jacque’s discriminatory policy. Jacque called the police, who arrested Steenberg for trespass. Is the conviction an appropriate enforcement of the right to exclude? If, instead of having Steenberg arrested, Jacque sued him in civil court for damages, how do you think a judge and jury would decide? Would it matter if Jacque was himself not a racist, but excluded African-Americans only because serving them would have led to a boycott by white customers that would have driven him out of business? Would it matter if Jacque’s African-American employees agreed with the exclusion of African-American customers, because they were afraid that a white boycott would lead to the closing of the restaurant and the loss of their jobs? If you think that Steenberg should not be criminally or civilly liable, do you think that outcome should be based on modification of the common-law right to exclude, a statute banning discrimination, or interpretation of the U.S. Constitution?
 9. Suppose Jacque owned a shopping mall, and Steenberg solicited signatures in the mall for a California ballot proposition relating to the sale of horse meat. Jacque had Steenberg arrested for trespass. Should that be part of an owner’s right to exclude?
 10. In addition to the right to exclude, owners also usually have the right to destroy their property. Suppose Jacque owned a house in a historic district and wanted to destroy it to build a more modern home? If the neighbors sued to prevent destruction of the home, who should win and why?
 11. Would the result in the prior question be different if, instead of directing destruction during his lifetime, Jacque, in his will, directed his executor to destroy the house and sell the land, and the neighbors sued the executor to prevent destruction of the home?
 12. Do individuals have property rights in their own bodies? Which of the bundle of rights do individuals possess with respect to their own bodies? What does the right to exclude mean in this context? Would it be violated by a military draft? In answering this question, be sure to consider the first reading in this packet.
 13. In addition to the right to exclude, owners usually have the right to sell. Statutes bar individuals from selling most body parts, including kidneys. Most people have two kidneys, but only need one, so they can donate one kidney without adverse health

effects. Those in favor of allowing the sale of kidneys point out that kidneys are often in short supply, and, as a result, many people who need transplants die because there is no kidney available. Allowing sales, they argue, would increase the supply of kidneys and save lives. Opponents argue that allowing the sale of kidneys would, de facto, coerce poor people into selling their organs, degrade the sanctity of human life by creating a market in human organs, and result in lower quality organs for transplant, because healthy volunteer donors would be replaced by desperate drug addicts and other unhealthy people giving up a kidney for short-term monetary gain. Do you think sales of kidneys and other organs should be allowed?