

Valuing Control

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Control over property, whether tangible or intangible, is valuable in and of itself. Previous scholars have not fully recognized or explored that straightforward premise, which has profound implications for the economic analysis of property rights. A party to a property dispute, when comparing liability-rule protection for an entitlement resting with her and liability-rule protection for an entitlement resting with the other party, may actually prefer the latter rule. This Article presents a novel economic model that determines the conditions under which that is the case. The model suggests new opportunities for policy makers to resolve disputes and to develop better information about property disputes through policy experiments. The Article makes suggestions for implementing this new approach and suggests applications in the areas of copyright, trademark, patent, and privacy law.

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