

## REAL PROPERTY

## ESTATES

## HISTORY

## • FEUDALISM

1. **Tenants-in-Chief**

- a. Supporters of William of Normandy
- b. Received parcels of land in exchange for providing services to king, including military and economic support

2. **Subtenants**

- a. Received parcels of land from tenants-in-chief in exchange for services

3. **Feudal Relationships**

- a. Parcels of land further subdivided
- b. Possessor was at bottom of feudal hierarchy
  - i. Upon death and without heirs, possession of land reverted back to lord
  - ii. Upon breach of promise or felony, possession was forfeited to lord

4. **Statute Quia Emptores**

- a. Further continuation of fee-simple hierarchy abolished
- i. Tenants given right to alienate land, i.e. substitute another tenant without lord's consent, with services being apportioned

• **DEFINITION OF ESTATE**

- 1. Interest in land that is currently or may become possessory, measured by some period of time

## FEE SIMPLE

• **COMMON LAW**

- 1. Presumption of Life Estate unless words of limitation and inheritance to the contrary

• **DURATION FOREVER**

- **NO RESTRAINT ON ALIENABILITY**

• **MODERN TREND**

- 1. Courts favor Fee-Simple Absolute over Defeasible Fee

## FEE TAIL

• **COMMON LAW**

- 1. To "A and the Heirs of his Body"

2. **Lineal Heirs**• **DURATION**

- 1. Lasts until Owner's blood line ends

• **INHERITABLE**

- 1. Restricted alienability to Grantee's descendants

• **MODERN STATUTES [NOT UNIFORM]**

- 1. Fee Simple in Grantee
  - a. Excessory interest in fee simple to become possessory if Grantee dies without issue
- 2. Life Estate in Grantee
  - a. Fee-Simple Remainder in issue
- 3. No issue (reverts to Grantor)

## LIFE ESTATE

• **DURATION FIXED BY LIFE OF GRANTEE**

- 1. **Per Aucte Vie (Life of another)**
  - a. Modern Law: If Occupant dies before measuring life, life estate passes to Occupant's heirs

• **COMMON LAW**

- 1. **Curtsey (Husband's Life Estate)**
- 2. **Dower**
  - a. Wife took 1/3 Life Estate in each parcel of realty Husband was seized during marriage

• **REVERSION TO REMAINDERMAN AT DEATH OF NAMED GRANTEE**

- i. Restricted alienability

• **MODERN STATUTES**

- 1. **Dower & Curtsey abolished**
  - a. Upon death, surviving spouse takes elective share - 30% of net assets
- b. Upon divorce, property is divided under principle of equitable distribution

NONFREEHOLD  
[LEASEHOLD] ESTATES• **TENANCY AT WILL**

- 1. No fixed duration
  - a. Terminated at any time by agreement of both Landlord and Tenant

2. **Termination by operation of law with notice**

- a. Sale of property
- b. Death of either party

• **PERIODIC TENANCY**

- 1. Automatic renewal
  - a. Example: Month-to-month or year-to-year
  - b. Termination by notification equal to terms
  - i. Notice must specify the date of termination
  - ii. Exception: Tenancy of 1 yr. required 6 mos. notice
- 2. **Modern Trend: Governed by Statute**
  - a. (E.g., Lease for year-to-year requires 1 month notice to terminate)

• **TENANCY AT SUFFERANCE**

- 1. **Wrongful hold-over**
- 2. Landlord has option to evict Tenant or hold Tenant to another term

• **TENANCY FOR YEARS**

- 1. Specific period of time
  - a. Generally fixed by calendar but may be terminable upon some event
  - b. Termination at end of period without necessity of notice
- 2. **More than one year**
  - a. In writing
  - b. Subject to Statute of Frauds

• **LANDLORD'S RIGHTS AND DUTIES**

- 1. **Common Law**
  - a. No liability for subsequent arising conditions
  - b. No duty to maintain
- 2. **Modern Law**
  - a. **Assumption of repairs (not universal)**
    - i. Reasonable care required
    - ii. Not for commercial leases
  - b. **Common passages**
    - i. Duty to exercise ordinary care
    - c. Short term
      - i. Warrants premises in good repair
      - d. **Liability for personal injuries**
        - i. Duty to disclose latent defects

- 3. **Duty not to interfere with Tenant's quiet enjoyment**
  - a. Duty not to permit a nuisance
  - b. Not responsible for acts of Tenants interfering with other Tenants, except where existence of legal ability has been granted

• **TENANT'S RIGHTS AND DUTIES**

- 1. **Entitled to possession**
- 2. **Residential Tenant entitled to Implied Warranty of Habitability**
  - a. Modern trend holds suitability implied in commercial leases
- 3. **Duty to pay rent**
- 4. **Liability for waste**
  - a. Destruction b. Decay c. Alteration
- 5. **Duty of reasonably good repair**
  - a. **Liability as third parties**

• **REMEDIES FOR BREACH OF IMPLIED WARRANTY OF HABITABILITY**

- 1. **Constructive Eviction**
  - a. Tenant may terminate lease, leave premises and not pay further rent when, through the fault of landlord, there has been a substantial interference with the use and enjoyment of tenant's leased premises
- 2. **Retaliatory Eviction**
  - a. Tenant who claims violation of Housing Code and reports violations to authorities, and withholds rent, cannot be evicted as a retaliation for reporting

## RIGHTS OF POSSESSOR

• **LATERAL SUPPORT**

- 1. **Right to have land supported in natural state by adjacent owners**
  - a. **Liability for damage to building if land would have collapsed in natural state**

• **SUBJACENT SUPPORT**

- 1. **Right to have land supported in natural state by owners of interest under surface**
  - a. **Liability for damages if land would have collapsed in natural state**

• **WATER RIGHTS**

- 1. **Riparian right of each owner to use all water needed for domestic purposes**
  - a. Commercial limited to reasonable use
- 2. **Prior Appropriation (First in time, first in right)**

## TYPES OF TENANCY

• **JOINT**

- 1. **Right of Survivorship**
  - a. Survivor retains right in property no longer subject to interest of deceased co-tenant
    - i. Right of survivor takes precedence over devise under will or court creditors of deceased co-tenant
  - b. Some jurisdictions recognize only tenants in common where survivor's remainder in whole cannot be destroyed without consent
- 2. **Unities required**
  - a. Time, title, interest and possession
  - b. **Modern Statutes**
    - i. Unities + Owner's intent clearly expressed in Deed
- 3. **Incidental Severance**
  - a. **Creditor's lien**
    - i. Individual's rights subject to individual creditors
  - b. **Judicial sale**
    - i. No severance
  - c. **Disturbance of unities creates Tenants in Common**
    - i. Joint tenant's conveyance of interest severs joint tenancy with respect to that share
      - (a) Recipient of conveyance holds share as Tenant in Common with remaining joint tenants
- 4. **Voluntary Partition**
  - a. **Mortgage**
    - i. **Title Theory (Minority)** - Execution causes severance
      - (a) Common Law: Legal title conveyed to bank and borrower keep equity of redemption to receive legal title back upon payment of mortgage
    - ii. **Lien Theory (Majority)** - No title passes as long as contract in writing and capable of specific performance
      - (a) Bank holds security interest and not legal title
  - b. **Lease**
    - i. Common Law: Unity of interest is destroyed, thereby severing joint tenancy
    - ii. **Modern Statutes: Surviving joint tenant takes the whole, thereby not severing joint tenancy**
      - (a) **Jurisdictional Split: Whether surviving joint tenant takes subject to lease on 1/2 interest or whether survivor holds whole not subject to lease**

- 5. **Equal right to possess whole subject to rights of other tenants**
- **BY THE ENTIRETY**
  - 1. **Husband & Wife**
  - 2. **Unities required**
    - a. Time, title, interest, possession and person
    - b. Deed must refer to parties' marital relationship
  - 3. **By the whole**
    - a. No right of partition
  - 4. **Severance**
    - a. Right of Survivorship
    - b. Divorce
    - c. Execution proceeding in favor of joint creditor
  - 5. **Immune from individual creditors but federal tax lien may attach to property [U.S. v. Craft]**

• **IN COMMON**

- 1. **No Right of Survivorship**
  - a. Interest passes to heirs of deceased tenant
- 2. **Ownership by part but right to possess entire property unless restricted by agreement**
  - a. Interest in property proportionate to consideration paid by each tenant
- 3. **Freely alienable**
- 4. **Subject to claims of creditors**
- 5. **Modern Statutes**
  - a. Presumption of tenancy in common if conveyance fails to specify form of concurrent ownership
- **GENERAL RULES OF ACCOUNTABILITY**
  - 1. **Statute of Anne**
    - a. Contribution of 3rd party charges
  - 2. **May deduct reasonable expenses (Taxes, Utilities, etc.)**
    - a. Account to co-tenants for rents/profits
  - 3. **Life Tenant - pays taxes, assessments, and interest on mortgage (limited to fair market value of rent)**
  - 4. **Remainderman - pays principal and insurance**

# Real Estate Law Study Guide

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