

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. Limited 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**
 1. Restricted alienability
- **MODERN STATUTES**
 1. **Dower & Curtsey abolished**
 - a. Upon death, surviving spouse takes elective share - 30% of net assets
 2. 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
 - a. 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. Liable for personal injuries
 - e. 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
 - a. **Residential Tenant entitled to Implied Warranty of Habitability**
 - i. Modern trend holds suitability implied in commercial leases
3. Duty to pay rent
 - a. Liable for waste
 - i. Destruction b. Decay c. Alteration
5. Duty of reasonably good repair
 - a. Liable 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

• 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
 - i. Execution proceeding in favor of joint creditor
 - c. 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

S Ben Porath



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Table of Contents Real Estate Law Study Guide

1. Understanding the eBook Real Estate Law Study Guide
 - The Rise of Digital Reading Real Estate Law Study Guide
 - Advantages of eBooks Over Traditional Books
2. Identifying Real Estate Law Study Guide
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Real Estate Law Study Guide
 - User-Friendly Interface
4. Exploring eBook Recommendations from Real Estate Law Study Guide
 - Personalized Recommendations
 - Real Estate Law Study Guide User Reviews and Ratings
 - Real Estate Law Study Guide and Bestseller Lists
5. Accessing Real Estate Law Study Guide Free and Paid eBooks
 - Real Estate Law Study Guide Public Domain eBooks
 - Real Estate Law Study Guide eBook Subscription Services
 - Real Estate Law Study Guide Budget-Friendly Options
6. Navigating Real Estate Law Study Guide eBook Formats

- ePub, PDF, MOBI, and More
- Real Estate Law Study Guide Compatibility with Devices
- Real Estate Law Study Guide Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Real Estate Law Study Guide
 - Highlighting and Note-Taking Real Estate Law Study Guide
 - Interactive Elements Real Estate Law Study Guide
- 8. Staying Engaged with Real Estate Law Study Guide
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Real Estate Law Study Guide
- 9. Balancing eBooks and Physical Books Real Estate Law Study Guide
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Real Estate Law Study Guide
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Real Estate Law Study Guide
 - Setting Reading Goals Real Estate Law Study Guide
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Real Estate Law Study Guide
 - Fact-Checking eBook Content of Real Estate Law Study Guide
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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