

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**

- 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
 - 2. Residential Tenant entitled to *Implied Warranty of Habitability*
 - a. Modern trend holds suitability implied in commercial leases
 - 3. Duty to pay rent
 - a. Liable for waste
 - b. Destruction c. Decay d. Alteration
 - 5. Duty of reasonably good repair
 - a. Liable to 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. **Voluntary 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**

- 1. **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

- 2. **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**

- 1. **Common Law: Unity of interest is destroyed, thereby severing joint tenancy**
 - a. 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
 - d. 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

Padhraic Smyth



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entstanden ist auch dieses mal ein extrem spannender kinder und jugendkrimi der in einem aktuellen und brisanten umfeld

spielt die story im dorf der kaminskis werden auf rätselhafte weise hunde getötet auf ihrem hof trifft ein anonym drohbrief ein in dem angekündigt wird die kids würden bald ihren collie verlieren

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