REAL PROPERTY AND INTEREST IN REAL PROPERTY

REAL ESTATE LAW

REAL PROPERTY INTERESTS

TRANSFER OF REAL PROPERTY

Fee Simple Estate

A tenant in fee simple is one that has an estate to hold to himself and his heirs forever absolutely. Fee is derived from fief or feudum and implies an estate is held of some superior land on condition of rendering him services. The land of all British Subjects is held of the sovereign as feudal superior, the subject having the use, not the absolute property in the soil.

Formerly strict wording was required to grant fee simple, and unless the granter used the words "heirs" or "heirs (fee tail) of the body" the estate would lapse on the death of the grantee and revert to the grantor. Now in any document under seal, it is not necessary to use the word "heirs to for a fee simple or the words "heirs of my body" for a fee tail. It is sufficient to say fee simple, in tail. Where no such words of limitation are used, the conveyance passes all the estate, right, title and interest the grantor had or may have in the land unless contrary intention is shown in the instrument.

Fee tail

An interest in land that restricts who may inherit it. The typical words creating a fee tail estate are: "to A and the heirs of his body". The fee tail can be special (limited to the children of a particular spouse) and can also be limited to male or female heirs. This estate passes by inheritance from generation to generation. It cannot be inherited by collateral heirs (nephew and niece).

The holder of the fee tail has limited power; he cannot sell or will away the land.

Because fee tails restrict the transfer of property, most states have restricted it or abolished it. Some states transform a fee tail into a fee simple for the first heir. Other States give the children of the first heir a fee simple interest in the property.

Life Estate

A life estate is a freehold estate but not an estate of inheritance. It may arise by act of the parties or by operation of the law. It may be for a grantee's life, a grantor's life or the life of a third person. (estate pur autre vie).

If an estate is given to a certain person during the life of another, and the grantee should die before such other person, he may dispose of the remainder of it by will, and if he dies intestate, it is disposed of according to statute.
A life tenant cannot waste the land. A life tenant must leave the land unimpaired for the remainder man. Waste includes mutilating or pulling down buildings, garden or trees etc. A life tenant may not commit malicious acts such as destroying houses or falling trees that were erected for shelter. This form of waste is equitable waste because the courts of Equity restrain it.

A life tenant is not to be prejudiced by a sudden cessation of his estate. If he sows crops and dies before the harvest, his executors have the profits of the crop called *emblements*.

Life estates may be granted for the life of a tenant for the duration of his own life.

Blackacre

A own blackacre in fee simple, grants to B for and during B natural life.

Life estates may also be granted for the life of another (pur autre vie).

Blackacre

A own blackacre in fee simple, grants to B "to my son in law (B) for the lifetime of my daughter (C)."
Life estates may be determinable i.e. it may end specifically on occurrence of some event.

"to my son, Roger, as long as no alcoholic beverage is sold on blackacre"
Legal Life Estates

Dower

Widows right to part of the property her husband owned during his lifetime, the interest a wife has in the estate of her deceased husband. Recognized very early in common law, dower is a right still provided by a few states to ensure the continuing welfare of a wife who survives her husband. Even if the husband leaves nothing to his wife in his will, or dies intestate she is entitled to some property as provided by state law.

Curtesy

A common law, a husband was entitled to a life estate in all the land that his wife owned at any time during the marriage, provided there were children born who could inherit the land.

Blackacre


Leasehold Estates

A person who owns an estate in Blackacre and is a tenant of some level above. The old fashioned method of ownership applied literally to non-free hold estates. They were concerned with concept of possession not seisin.

The term of years

In early times, the church had tremendous influence over the affairs of man. It frowned on the lending of money for investment purposes with high return so developed leasehold estates.
In early times

Blackacre
A owns fee simple in blackacre

A grants B a leasehold estate in blackacre, until debt paid. B has the right to possession of blackacre. This gave him the right to rent and profit from blackacre. The rent and the profit were the interest, which was high.

Today

Blackacre
O owns blackacre in fee simple. O conveys to A for a term of month, (year) (99 years), O retains the reversion in fee, A acquires leasehold interest in blackacre with right to possession for an estate called a term of year (estate for years).

Tenancy from year to year

Where O conveys to A an estate from week to week, month-to-month, year to year, A has acquired an estate of periodic tenancy. The immediate difference between this form and the term of years above is that no automatic termination is present. There are definite terms (week, months, years) but these are but portions of the entire tenancy.
When A moves into a house a house or apartment on a monthly tenancy, for $100 month, having received from O, the right to stay for an indefinite period of time on this basis, a periodic tenancy is engendered. For O to get A out, or for a to leave on his own, a certain amount of notice must be given by one to the other.

**Tenancy at Will**

If the owner of a house says to a prospective tenant "move and live there and we'll arrange the terms at a later date" then a tenancy at will is created. The "will" means that both parties have the right to bring the relationship to a close whenever either desires.

1. Can be withdraw expressly where landlord informs tenant he want the property.
2. Can be withdrawn involuntarily where either party dies.

Tenancy at will is related to the fact that all states require the statute of frauds upheld. The transfer of leasehold land (1 yr. or 3 yrs) must be in writing and signed by both parties. Many statutes provide that where a grantor without this prerequisite has created an estate, the result is at the most an estate at will. Rent converts tenancy at will to periodic tenancy.

**Tenancy at Sufferance**

When the term for which a tenant has originally contracted has come to an end (say, term of years) and he is required to leave but facts to do so, the landlord may exercise certain legal remedies to insure his removal. If, rather than proceed thus, the landlord allows the tenant to remain, and goes one step further and accept rent from the tenant, a distinct change takes place. The tenant is now an over holding tenant, his possession is wrongful and if nothing else changes and no claim is put forward by the landlord and the tenant doesn't move, the tenant is a tenant at sufferance.

**Estates for Future Enjoyment**

**Reversion**

When a person has an interest in lands and grants a portion of that interest, the possession of the lands, on the determination of the interest granted, returns or reverts to the grantor. Thus a grant to a for life leaves the grantor the reversion in for simple, which is a present and vested interest which will commence in possession after the determination of A's life estate, and this is called the particular interest.

**Remainder**

A remnant of an estate in lands expectant upon a particular estate created together with the same at one time. For example if A, a tenant in fee simple, grants land to B for life and after B's decease to C and his heirs. C's interest is termed a remainder in fee expectant upon the decease of B.

Remainders may be vested or contingent.
1. **Vested.** If A, a tenant in fee simple, granted land to B for life and after B death to C and his heirs. C’s interest is a vested remainder.

2. **Contingent.** If A had limited the land after B’s estate to the heir of C, a unborn person the remainder would not come into possession at once, because until C had an heir, there was no one to take the remainder.

**Estates of Plural Interest**

**Estates in Severalty**

A person in his own right holds the Estate of severalty, without any other person being joined or connected with him in point of interest during his estate. All estates not estates by severalty are joint estates.

**Joint Tenancy**

If it is desired that persons should hold land as joint tenants, it must be so stated in the instrument creation their interest. The characteristics of joint tenancy are unity, interest, time and possession.

1. Joint Tenants must have the same interest or period of duration e.g. one cannot be a tenant in fee simple and the other in fee tail.

2. They must have the same title; their estate must be created by the same act as one grant. Joint tenancy cannot arise by descent or operation of law.

3. Their estates must be vested at the same time except under the statute of uses and under a will, in which cases persons may take as joint tenants at different times.

4. They must have unity of possession; each has an undivided interest in the whole property as well as in his proportionate share.

A number of incidences are attached to joint tenancies. If joint tenants make a base of the property, the rent, though paid to one, ensures to the benefit of all. *On the death of one joint tenant, the entire tenancy goes to the survivors, and so at length to the last survivor.*

Destroying any of the four items mentioned above may destroy a joint tenancy.

**Tenancy in Common**

The only unity is that of possession and tenants in common may hold under different titles, for different interests and take at different times. Tenancy in common may be created either by destruction of a joint tenancy, or by a deed or title by acquisition though mere possession against
the true owner, for wherever two people acquire title by possession, they hold as tenants in common. Tenancy in common can be dissolved in two ways.

1. By uniting all titles and interests in one person as by all selling to one.
2. By partition.

**Tenancy in Coparcenary**

Straddling joint tenancy and tenancy in common was a type of co-ownership arising only by operation of the law. When a man died seized of an estate of inheritance, as a fee simple, the rule of primogeniture worked to rest the estate in the eldest son. Sometimes there were no sons.

Blackacre

O died intestate, his fee in Blackacre descended to his two daughters A and B so they held it as parcellers or co-parcellers.

i.e. they became co-owners of the fee in blackacre. The interest they took had the four unities of joint tenancy and they resembled joint tenant, but they had no right of survivorship so it also resembled tenants-in-common.

**Tenants in Entirety**

Law in early stages treated husband and wife as one person.

Consider the following:

O conveys Blackacre to A and B. A and B are married. If (A) four unities are present a joint tenancy is created. If A and B are married a tenancy by entirety is created.

If O conveys to A, B, and C and A and B are married, a joint tenancy is created.
Interests not classified as estates

**EASEMENTS**

*Definition*

An easement is a right annexed to land, to utilize other land of different ownership in a particular manner or to prevent the owner of such land from utilizing his land in some manner, but does not involve the taking of any part of the natural produce of that land or of its soil.

Possession of an easement by a person must be in respect of his enjoyment of some interest in a particular piece of land, and the easement is said to the appurtenant to that land or to the ownership of the land passing with it without expenses mention.

The land with respect to which an easement is enjoyed is called a dominant tenement and its owner is the dominant owner; that over which the right is exercised is called the servient tenement and its owner the servient owner. The dominant tenement to which the easement is appurtenant generally consists of real property (i.e. lands and building). The owner of the dominant tenement has his rights enhanced while the owner of the servient tenement has his rights diminished. The owner of the dominant tenement does not have the exclusive use of any part of the servient tenement.

There is a difference between an easement and a license to use land in a particular manner. A license is revocable at the will of the person who has given it, while an easement is not. An easement cannot be revoked and a deed is generally executed. With a license there is no dominant or servient tenement.

*Types of Easement*

*Affirmative Easements*

Affirmative easements authorize the commission of some act(s) upon the servient tenement, such as causing traffic to cross it or as discharging water upon it.
For example

i. Right of way.
ii. Right to tunnel under another's land.
iii. Right to let down surface by mining under it.
iv. Right to make spoil banks on surface in mining area.
v. Right to use neighbors chimney for purpose of smoke.
vi. Right to drive piles in bed of a river.

Negative easement

A negative easement restrains the owner of the servient tenement from doing things that he would otherwise be entitled to do, such as where the owner is prevented from building on his own land in such a manner as to obstruct lights in a neighbors building.

For example

i. Right of support for buildings from land.
ii. Right to receive a flow of water in artificial stream.
iii. Right to receive light.
iv. Right to receive air by defined channel.

Creation of Easements

1. By grant.
2. By Statute.

Creation of easements by grant may be either.
   a. Express grant.
   b. Implied grant.
   c. Prescription.
   d. Dedication.

a. Express Grant

Easements may arise through express grant, either by particular description or under the general words of a deed.

Easements may be granted by separate instrument apart from any conveyance of the dominant tenement or they may be included in any conveyance of it.

b. Implied grant

The creation of an easement by implication is founded upon a complied grant or reservation that arises in connection with some disposition of one or the other of the adjoining properties. Such grant can only be implied where the properties have been in common ownership. e.g. a parcel of
land cannot be landlocked and the law will imply a right in favor of the owner and occupant to ingress and egress.

c. By Prescription

An easement may be established by a court on the grounds of long enjoyment and use in accordance with the doctrine of prescription. Two basic ideas characterize the acquisition of an easement by prescription.

a. Acquiescence or implied consent on the part of the owner of the servient tenement.

b. Possibility of interruption of the enjoyment by the servient tenement.

The enjoyment must have been uninterrupted for the period required by law (5 years in California). The use must be definite with the knowledge of the servient tenement and could have been prevented if the servient tenement took the correct action. The use must not be secret, violent, permissive, or contrary to law.

Typical easements

Right of way

A right of way is the right to traverse the land belonging to another. It may be either private or public. If it is a public right it may not be an easement as there are no dominant or servient tenements.

Private rights may be general or limited. If they are general there is no restriction, on the other hand if limited, the may be restricted to certain times of day, or to certain persons.

Right to Support

An owner of a plot of land is entitled to have it supported in its natural state by the land adjoining, or by subjacent land, it happens that some one else has the rights to remove the minerals. The law is the same whether the required support is lateral or subjacent. An owner's land must neither be caused to flow laterally, nor to subside as a result of the operations of another. In such a case, the person interfering with the natural support renders himself liable for such damage as may arise by reason of his wrongful act.

Supports by water: Owner of land is not entitled to support offered by subterranean water. His neighbor may drain his lands of water not flowing in any defined channel although such action may let down the surface.

Support of buildings by land: The right to natural support continues although buildings are created on the land requiring support but as a natural right only to the extent necessary to prevent the land in its natural state from subsiding. In damage claims arising out of failure of support, it is a
sufficient defense to show that had a plaintiff's land been in its natural state no injury would have resulted.

Support of buildings by buildings: Apart from agreement there is ordinarily no right of the owner of a building to have it supported by a building belonging to an adjacent or subjacent owner. The right of support for one building by an adjacent or subjacent building is similar to the right of support for a building by land. Such a right may be claimed on the ground of long enjoyment, but such enjoyment must have been open and as of right and not secret and surreptitious.