

PERSONAL PROPERTY

- ◆ **Wild Animals:** Once a wild animal is captured a person gains possession of the animal.
- ◆ **Lost property:** A person who finds lost property has superior rights to everyone, but the true owner. Found property is held in trust for the benefit of the true owner.
- ◆ **Conveyance:** In general, a seller cannot convey better title to property than he holds.
- ◆ **Bonified Purchaser (BFP):** A person who buys property for value without knowledge that the seller does not hold good title to the property.
 - A thief can never convey good title.
 - If property is obtained by trickery or fraud, seller has “voidable” title, but he can convey full title to a BFP.
 - A merchant who sells similar goods always conveys full title to a BFP.
- ◆ **Bailments:** Lawful possession of property by someone other than the true owner.
 - Bailee is not an insurer of property but is liable for negligence and is expected to use ordinary care.
 - Bailee must use extraordinary care when bailment for sole benefit of bailee.
 - Bailee is only liable for gross negligence if bailment is for sole benefit of bailor.
- ◆ **Gifts:** A present transfer of property without consideration.
 - There must be intent, delivery and acceptance.
 - Once a gift is made it is not revocable except when made in contemplation of death or marriage.

REAL PROPERTY – Ownership

- ◆ **Present Interests:**
 - **Fee simple absolute:** Most complete ownership estate. e.g., O conveys to A and his heirs.
 - **Fee simple determinable:** Has possibility of reverter where ownership automatically ends upon occurrence or non-occurrence of an event and reverts to O and his heirs. e.g., O conveys a Tropical Island to A, so long as the Tropical Island is used as a coffee plantation.
 - **Fee simple subject to condition subsequent:** Has possibility of re-entry where O and his heirs may retake property if condition fails. e.g., O conveys a Tropical Island to A and his heirs upon condition that Tropical Island is used as a coffee plantation; if Tropical Island ceases being used as a coffee plantation, O or his heirs may reenter the property and terminate the estate.
 - **Fee simple subject to an executory limitation:** estate passes to a third person upon the occurrence or non-occurrence of an event. “Shifting” executory interest: e.g., O conveys

Tropical Island to A and his heirs, but if A dies without children surviving him to B and his heirs.

“Springing” executor interest: e.g., O conveys Tropical Island to A when she marries B.

- **Fee Tail:** Restricts property to a family line. e.g., O conveys Tropical Island to A and to the heirs of his body. Attempts to convey property outside of the family result in a reversion to O and his heirs.

- **Life Estate:** Conveyance of property to someone while they are alive. Possessor of a life estate must not commit waste on the property.

- ◆ **Future Interests:**

- **Reversions:** A future interest in the grantor when the grantor conveys a fee tail or a life estate.

- **Possibilities of reverter, powers of termination:** When O transfers a fee simple determinable, O retains possibility of reverter.

- **Remainders, vested and contingent:** A future interest in a third party following a fee tail or a life estate. A vested remainder is to a specific person without contingencies. A contingent remainder either has unmet contingencies or is not to any specific person (e.g. to children not yet born).

- **Executory interests:** A future interest in a transferee that divests a holder in fee simple upon the occurrence of some event.

- ◆ **Special Issues**

- **Rule against perpetuities:** A future interest must vest or fail within 21 years of the death of some person alive at the time of the creation of the interest.

- **Rule in Shelly’s Case:** O conveys “to A for life, remainder to A’s heirs” actually creates a fee simple absolute in A. (note: must be heirs not simply a child or children)

- **Doctrine of Worthier Title:** O conveys “To A for life remainder to O’s heirs” actually creates a reversion to O in fee simple. (note: must be heirs not simply a child or children)

- **Alienability:** Ability to transfer property interest.

- **Descendability:** Ability to leave property to heirs.

- **Divisibility:** Ability to divide property interest.

- ◆ **Concurrent ownership**

- **Tenancy in Common:** O conveys property to A and B. Both A and B have an equal share and are free to use the entire property. Profit earned by one tenant must be split in proportion to ownership with the other tenants. Can end tenancy by partition.

- **Joint Tenancy:** O conveys property to A and B as joint tenants with rights of survivorship. When A or

B dies, the other owns the property in fee simple absolute. Can end tenancy by partition.

- Tenancy by the entirety: At common law, if O conveyed to H and W who were husband and wife a tenancy by the entirety would be created. This tenancy can only be broken by divorce or if H or W dies.

- ◆ **Landlord and tenant**: Landlord has a duty to deliver premises, Tenant has duty to pay rent and not commit waste.
 - Terms for years: Lease beginning and ending on specific dates.
 - Periodic tenancies: Lease for a specific period (e.g. week, month, or year) which is repeated until landlord or tenant gives notice.
 - At will: No fixed duration, may be terminated by either party at any time.
 - Holdover tenancies: Tenant remaining in possession after the expiration of a lease. Landlord may eject tenant or hold the tenant to another lease term.
 - Assignment: The transfer by the tenant of all remaining interests in the lease. Assignee is in privity of estate with landlord and is directly liable to landlord. Original tenant remains directly liable to landlord through privity of contract.
 - Subletting: The transfer of a portion of the lease while retaining a reversionary interest. No privity of estate. Only original tenant is directly liable to landlord through privity of contract and estate.
 - Rent: Duty to pay rent is independent of other lease obligations.
 - Surrender of premises: A surrender of the premises stops duty to pay rent only if landlord accepts the surrender.
 - Mitigation of damages: If tenant vacates the premises, landlord must use reasonable efforts to re-let the premises.
 - Constructive eviction: Occurs when the landlord's actions or inactions interfere with the tenant's quiet enjoyment of the premises.
 - Implied warranty of habitability: Landlord must convey a habitable premises complying with local housing codes. Landlord can be sued for damages and specific performance.
 - Tort liability: Tenant, as occupier of the premises, is liable to third parties injured on the premises. Exception: landlord is liable if landlord leases the property, it is open to the general public and landlord should have known of a dangerous condition. Exception: landlord liable when landlord attempts to repair, but makes condition worse.
 - Repair of property: Landlord owes no duty to maintain or repair property. Exception: latent

defects where a reasonable inspection by tenant would not have revealed defect and landlord should have known of defect.

REAL PROPERTY – Rights in Land

- ◆ **Covenants**: Restrictions on the use of land. Covenants stay in place when title to the property transfers. In order to be created, privity of estate must exist between the covenanting parties (e.g., grantor and grantee.)
- ◆ **Easements**: The right to use the land of another. Easements stay in place when title to the property transfers.
 - Termination: Easements may be terminated by merger if title to the easement and the property are held by the same person. Easements are usually not terminated by abandonment unless some other act indicates the intent to never use the easement again.
- ◆ **Profits**: A right to remove resources from the land of another. Legally, profits are almost identical to easements. Overuse of profits results in the extinguishment of the right due to damage to the value of the property.
- ◆ **Licenses**: A license is generally not considered a property interest, but rather a contract to use the land of another. A license may be revoked at anytime.
- ◆ **Fixtures**: Anything attached to land with the intention that it permanently improve realty. Fixtures pass with the title to the property.
- ◆ **Miscellaneous rights**
 - Right to support: Landowners have the right to have their land supported by adjacent land, limiting excavation of an adjacent parcel.
 - Water: Riparian rights – those owning land touching water have the right to use the water so long as they do not change the natural flow of the water. Prior appropriation – An owner gains rights through actual use of the water.
 - Air: No limit on height of building. An owner generally has no right to sunlight.
 - Nuisance: Interference with an owner's use and enjoyment of his land. The conduct must be unreasonable and done negligently, intentionally or be inherently abnormally dangerous.
- ◆ **Zoning**: Locus test – the reasonableness of a zoning ordinance is determined by whether the ordinance brings about reasonable results to the entirely zoned area. Zoning is only a taking if it deprives the owner of all economically viable use of his land.

REAL PROPERTY – Contracts

(1) signing the contract and (2) transfer of the deed.

◆ **Construction of contracts**

- Essential contract terms are an adequate description of the property and the sales price.
- Terms which may be implied: time for performance, title required, burdens related to title defects. Implied terms are determined on the basis of commercial practice or default rules.
- Statute of frauds: Contracts for the sale of land must be in writing and signed by the party who the contract is to be enforced against. An exception to the statute of frauds is part performance.

◆ **Contract performance**

- Risk of loss: If not indicated in the contract, property damaged before closing is borne by the purchaser.

REAL PROPERTY – Secured Interests

◆ **Mortgages and deeds of trust**: A security interest in land requires a debt owed and a voluntary transfer of an interest in real property to secure repayment.

◆ **Foreclosures**: Upon default, the mortgagee or the deed of trust owner has the right to sell the property and collect amounts owed.

- Priority: In general, the first person to record a mortgage or a deed of trust has first priority. (“first in time, first in right.”)
- Notification of parties: All lower priority security instruments must be notified of the foreclosure sale because those security instruments will be extinguished by the sale. (Higher priority instruments will remain on the property after the sale.)
- Right of redemption: Any time prior to the foreclosure sale a debtor’s interest in the property can be redeemed by becoming current on the defaulted obligation.

REAL PROPERTY – Title

◆ **Adverse possession** - A person may obtain title to property by adversely possessing it for the period of time indicated under the statute.

- The possession of property must be open, notorious and visible.
- The possession of the property must be hostile, meaning without the owner’s consent.
- The adverse possession must be continuous for the statutorily required time.
 - Possession by more than one adverse possessor may be combined to reach the

statutory amount of time so long as the two adverse possessors are in privity (usually one selling or transferring the property to the other).

• Adverse possession against two owners may also be added together. In other words, if the adverse possessor is in continuous possession of the property for the requisite number of years it does not matter how many owners have owned the property or how many times it changed hands.

• Disability – If the owner of property is a minor or incompetent, the statute of limitations will be suspended until the minor or incompetent person becomes a competent adult.

◆ **Conveying title by deed**: To be valid, land being conveyed must be unambiguously identified.

• Delivery: Does not require physical delivery, but must include a present intent to relinquish legal control over the property.

◆ **Recording and priority**

• Recording acts: Protect innocent purchasers from prior unrecorded interests in land.

• Race statutes: First to file has priority.

• Notice statutes: Last to purchase has priority, if purchase was made without notice of an unrecorded interest.

• Race notice: Last to purchase has priority, if they record first and do not have notice of an unrecorded interest.

• After acquired title: If a grantor sells property he does not own to a buyer, but later acquires title to the property, the property automatically transfers to the buyer.

• Purchase money mortgages: A security instrument for a loan which was used to pay the sales price to acquire property will have super priority over other non-purchase money liens, even if the liens were filed first.