

B. S/L is never tolled if P becomes disabled after the property is adversely possessed.

C. S/L is tolled until disability is removed

Color of Title and Constructive Adverse Possession (will extend to what is in the deed) ^{10 acres to 150 acres}

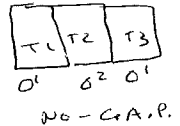
1. a title which is in some way defective
 - a. the instrument is defective or there is a chink in the chain of title
2. Some extraneous fact that appears to support a claim of title but in reality, it falls short because of some defect
3. enters into possession under appearance of ownership (must have partial possession)
Ex. AP holds PO of BA to the boundaries described by the instrument, which is defective. The AP has PO of the conveyer is not w/in the original PO of the conveyer

Benefits of Constructive

1. statutory period for acquiring title is shortened when there is no color of title?
2. if possessor entered under an instrument that described a larger tract of land than the possessor actually possessed, actual PO of only part of the land may act as constructive AP of the whole

Exceptions

1. in a contest b/n AP, neither may invoke constructive PO against the other
 - a. they are confined to the land they are in PO of
2. If the TO occupies a misdeed tract, constructive PO does not enter into the picture - TO occupies all the land -
3. Contiguous and non-contiguous tracts
 - a. if the instruments describes contiguous tracts, PO extends to both of them
 - b. actual PO does not extend to non-contiguous tract (T1 to T3 no go)
 - c. does not extend to tracts ~~not~~ occupied
4. If there are two separate owners of contiguous tracts, constructive PO can not be used
 - a. contiguous tracts must have same owner (w)
 - b. if different owners, AP can not constructively possess



Innocent Improver Tx. 22.024, 2011

1. the ct. will grant equitable relief for ind. who makes improvements to the land who in good faith believed it to be his own
2. if the AP makes improvements on BA which increase the value of the property, he is entitled to compensation for it (must exceed use & waste costs.)
 - a. owner can buy improvements from improver
 - b. AP buys the land
 - c. TO and AP become tenants in common of disputed land

Case Note.. Carpenter

Ct ruled you acted in bad faith in taking land so therefore you cannot claim title to it, however, you can be compensated for improvements - did not understand why,

→ Texas Statute of limitations

All must be Adverse
and
Peaceable -

Begins when cause of action against the possessor accrues
against adverse possessor.

enters visibility

fact wrong

A. 3 year

1. only s/l which requires the AP to have (title of color of title)
a. the regular chain of title back to the sovereign
2. a consecutive chain of transfers which are not regular or are defective
a. can not be the result of dishonesty
b. AP must produce documents going back to the sovereign that he has title

B. 5 year

1. not required to produce a chain of title - *claim under a recorded deed.*
2. required to pay taxes and be the claimant under the deed.

C. 10 year

1. Squatter statute
2. limited to 160 acres unless he has a written document fixing the boundary elsewhere for more acreage
3. must meet other requirement of AP

D. 25 year

1. Requires AP be in good faith ✓ - *removes disability*
2. Permits AP in the event the TO is under a disability not arising the AP ✓
3. Cannot claim disability after the s/l has run

The heart of AP is notice. The AP is so open and notorious that it is obvious

Adverse Possession of Chattels

A. Elements

1. Same as with land (exclusive, open, and continuously)
2. act to put the TO on notice of the AP
a. problem is that chattle isn't always out in the open

B. The cause of action accrues when chattel becomes adversely possessed

1. S/L begins at the accrual of cause of action
2. when you have a right to recover the chattel (you demand and they refuse).
a. this is known as the demand and refusal rule

C. Discovery Doctrine

1. If the TO diligently seeks the chattel or uses reasonable efforts to report the lost chattel, then he preserves his right to title
2. shifts the burden of proof to the TO to prove that he acted with due diligence
3. mitigates against the harshness where the TO did not know of the accrual of cause of action
4. statute begins to run when the P discovers or reasonably should have discovered the missing chattel
a. known as the discovery rule.

Case Note Gudadine v. Snyder

P sued to recover painting which had been stolen many years prior

not reasonable effort
Ct. held she did not act with due diligence to locate the chattels b/c she did not report them missing for 15 years, therefore not entitled to recover them

*Discovery rule
estoppel rule*
Case Note DeWeerth v. Baldinger

P sued to recover painting who bought it from art dealer. Painting had been stolen during WWII and P had reported it missing to many places. Ct. held that she acted with due diligence, therefore she was entitled to the painting

***** Class note on case GOOD EXAM QUESTION*****

I agree -
Good argument for UCC and equitable estoppel. D bought painting in good faith from a dealer in the painting business. The UCC should estoppe the true owners from having a claim against the painting.

Adverse Possession Against the Government

- A. s/l never runs against the government
- B. you can never adversely possess lands which are designated as public lands

In Texas, two year statute Sec. 16.003. Discovery rule does apply in TX, on claims of conversion.

Property and Co -habitants

- A. Common law was that when husband and wife joined together, when 1 died a survivorship to the other was granted
 - 1. interest that wife had when husband died was a DOWER
 - 2. interest that husband had when wife died was a Courtesy
 - a. always favored the husband's interest

Legal unity b/t husband and wife did not exist ~~it~~ was tenancy in common

Case Note.. Sawada v. Endo

conveyed land to children after hubby was in accident. did it to prevent creditors from taking it away b/c no accident insurance. husband then died

- ** If you know you are going to lose a suit and you convey land to avoid repo. that is fraud and you could be held liable for it

Comm. Law says wife only had a right of survivorship.. on a contingent basis

Husband had possession of the estate, therefore husband could alienate to whoever

- ROL*
- ** A creditor can reach an interest that is alienable.. she could not alienate, so once papa died the creditors took it.. if papa did not convey and he didn't die.. no creditor

Married Acts came into play..

- 1. they now had equal poss. rights, so one spouse could not convey with out the others permission. Both would have to die - *entirety in entirety*

Some states have modified the common law concept to give equal poss. rights to tenancy by the entirety

Community Property Rights (8 states recognize it.. including texas)

- unmarried people can not own community property
- in Texas every piece of property is community after marriage
- separate property.. owned before marr. and gifts and inheritance and pers. injuries
- awards... Art. 16 sec15

Law of city where married usually prevails

Tx. no ~~alimony~~ ALIMONY

Non vested property is not community property and not subject to division upon divorce
ex. pension plan not that has not yet been earned (french rule)

A contract right that has been achieved b/tn employer and employee is property and subject to community penalties

ex. rights prior to maturity are contingent interest .. subject to division

Professional Degrees and Property

1. Majority says degree is not property and not subject to division
 - a. cant give it to someone (Texas)
2. Minority.. it is property and divisible
 - a. cost in obtaining (detriment.. consideration.. restitution issue)
 - b. future earnings

Equitable Distribution.. everything obtained after marriage, regardless of how obtained is property subject to division

Lytton sum up.. We recognize that there are inequalities involved in a divorce proceeding.. there are many factors that go into the decisions involved in situations like these...earning capacity, etc. However, the ct. is limited to the boundaries set by the laws of this state and the property in question, and a degree is not property divisible by comm. property. ~ TY —

Common Law Marriage

- A. Requirements for valid Common law marriage
 1. must agree as a couple to be married ✓
 2. must live together as husband and wife ✓
 3. must represent to others they were married ✓
- B. Not sure about Common law divorces
 1. there is no such thing?

Unmarried Folk

1. can't claim on common or marital property, but can be supported by contractual rights

Definitions and Helpful hints for Life Estates

Look for the punctuation of the sentence. Not always a perfect indicator, but close to 95%. Remember, you are looking at one possible estate at a time. To A for life, then to B; but if it is used as a porno store, then to C.

Examine then to B; the semi colon is saying that something stops. VESTED

Ex. then to B, if B attains the age of 21

The comma signals a continuation towards a condition to possess. CONTINGENT

Fee simple determinable... so long as, while, during, possibility of reversion, (executive ? interest for 3rd party) Automatically terminates upon the happening of some stated event

Fee simple on condition subsequent... provided that, on condition, but if, right of entry for condition broken or power of termination (executory interest for 3rd party ?)

Life estate... for life, reversion, remainders

Contingent remainders always follow contingent remainders

You can convey less than what you have, but not more than you have

A living person has no heirs

FSDPOR..Frank Sinatra Doesn't (FSD) prefer Orville Redebacher (POR).. Fee simple determinable always accompanies possibility of reverter

Memorize Ikes chart

Learn the language

2. fees simple absolute. Indefinite

B. How to determine the intentions of deceased ✓

1. Four Corners Doctrine

- a. look at language of entire document
- b. look outside of will to determine meaning and intentions
- c. relationship with deceased and grantee
- d. future considerations

C. Statutory Presumptions

1. a will conveys all of the real property unless there is a contest to the will
2. a bequest (divise) of real estate will pass the entire estate that the grantor has unless passed by a lesser estate
 - a. presumption is always against someone dying intestate

D. Alienation

1. a characteristic that one who holds estate can sell it or transfer it
 - a. give to someone else by gift or something
2. creates problem with fee simple absolute
 - a. by not allowing an individual to sell house it takes away the rights that an individual has a fee simple absolute

XIV.

Terms of transfer

A. Heir- a person designated as an interstates successor as determined by statute

1. spouse, children, parents, brothers, and sisters
- * 2. no heirs until you die ✓

B. Issue- close to and often confused with heir

1. descendants
 - a. grand children
 - b. great grandchildren

C. Intestate- person dies without will ... probate will determine heirs

E. Collateral- blood relatives that are niether ancestors ^{or} descendants (not blood line)

- a. aunts and uncles
- b. cousins
- c. brothers and sisters

F. Escheats- land passed to the lord of the manor or the state if descendant has no heirs, ancestors, or decendants.

XV.

Two ways property can pass

1. Per Capita – equal share distributed to the # of persons that stand an equal degree in relationship to deceased.
2. Per Sterpes – decendant takes an equal share that a parent would be entitled to if parent would still be alive

Ex. A dies and distributes per sterpes.. A has 3 children, but C3 is dead ^{but} leaves children of his own.

1. equal shares between C1, C2 and C3 children

Vested Remainders:

1. **Absolutely vested** (you get it all and nothing can take it away from you)
(Other name: Indefeasibly vested remainder)
2. **Vested remainder subject to complete divestment** (you get it all but you can lose it all)
(Other name: VR subject to complete defeasance)
3. **Vested remainder subject to partial divestment** (you get all or part and your % can get smaller) (Other names: VR subject to partial defeasance or VR subject to open)

Contingent Remainders:

A CR can only be followed by a CR (then called an alternative or alternate CR)

Executory Interests:

1. **Springing executory interest** - always come from grantor to 3rd party.
2. **Shifting executory interest** - never comes from the grantor (always from someone else)

Definitions:

Fee Simple - words used when describing present possessory interests (never used w/future interest)
 Executory "Limitation" - The word "limitation" is used only when describing present possessory interest that is followed by a 3rd party executory future interest.
 Executory "Interest" - If the word "interest" is used with "executory" it only describes the 3rd party future interest (not a possessory interest)

Still left to discuss:

1. Open classes - how and when they close. *— per's rule of closure*
2. With remainders - how you can tell if it is a condition precedent or subsequent when it all sounds like precedent. *must happen to set must happen to lose*
3. Rule of Destructibility, Rule in Shelly's Case, Doctrine of Worthier Title
4. Rule against perpetuities (Cy pres & wait & see)
5. How you can tell if it is a FSD or FSSCS.
6. Waste - Life Estates

Destructibility - can't get remainder

A buys, then to B if he sets 21

Shelly case - O → A for life then to A's heirs.

*Cy pres - from to thing what it would
 wait and see - to wait and see if it would*

*Vol.
 per.
 in*

*FSD
 ↓
 Antich
 port*

*FSSCS
 possible
 but if
 on condition
 must be like*

Back together

3. Apply any reform statutes

a. cy pres doctrine in Texas

1. power of court to reform conveyance to make valid

VIII. CONCURRENT ESTATES

Concurrent interests

1. possession between two or more people

2. equal right to possession and use in estate

Types

A. Tenancy by Entirety

1. void in Texas (20 states)

2. between husband and wife

3. characterized by right of survivorship

4. husband and wife considered one entity and received the land as one

5. only severed by divorce or a bilateral voluntary action (consent by both)

B. Joint Tenants with right of survivorship

1. Four Unities

a. Time- interest acquired at same time

b. Title- acquired rights under same title

c. Interest- equal % of concurrent estate (same type same duration)

d. Possession- identical share respecting duration, quality and right to PO

2. must satisfy all four unities

3. easily destroyed

4. alienability severs it into a tenancy in common

*** Right of survivorship ***

* when a tenant dies that tenants interest goes to the other people in tenancy

* does not pass to heirs of tenant, only back to other tenants (equally)

5. In Texas never assumed - But records must correct language needed

a. must be an expressed agreement

b. if will does not designate right of survivorship then it is considered a tenancy in common

Ex. A(1/3) B(1/3) C(1/3).. C gives his 3rd to D and D gives to E

E has right until C dies.. once C dies E loses everything and it his

interest is divided equally between the original tenants.. A and B

E has a tenancy in common with A & B and A & B are still in ROS. ~~the entire survivorship is destroyed~~

C. Tenancy in Common

- ownership of property by more than 1 person sized as a stake.

a. interest does not have to be equal %

b. just right to possession of estate, occupancy not necessary

c. common and favored by statutory presumption

d. no right of survivorship - passes to heirs of tenant.

e. can pass to someone else and tenancy continues with others involved

joint ownership
unity in possession

passes to heirs

each tenant equally entitled to the right to possess all of the property

and has no obligation to the other

A B C contracts - B, A, want to drill oil well C doesn't. If oil well strikes they can recover from C but must share % w/ C on profits. - if well does not strike - A, B out of luck -

Ex.. (A 1/3) (B 1/3) (C 1/3)... C gives his 3rd to D now... D has C 1/3 with A and B. D has all the power that C had and C has nothing.. When C dies it stays with D and does not go to A and B. When D dies his interest goes to D's heirs

IX. Rights of Co-Tenants - Each tenant retains pos. of amount of proportion yours

1. Income and expenses

a. determined by % in interest

1. if you own 2/3 you get 2/3 of any income derived from BA

b. consenting co tenant can not seek reimbursement for improvements he made without consenting other co tenant

1. if they improve BA co tenant can seek reimbursement only at time of severing tenancy

2. if no improvement co tenant is barred from reimbursement

a. burden of proof of increase in BA on improver

2. Waste

a. liable for waste

1. voluntary

2. ordinary maintenance - not liable

3. immelurative - not liable

b. question of fact for judge or jury

3. Ousting - Cause of action to regain possession is appropriate

a. violation of co tenants rights with direct and intended removal or denial of a co tenants rights to possess - preventing joint tenant from enjoying what the tenant has the right to use.

*** Case Note ***

Cummings v. Anderson... tenants in common

P and D purchase a house prior to marriage. P leaves D for another man and takes all ~~their~~ cash and all his heart. P later come back and sues for partition and back rent. P wanted 1/2 of any interest from purchase and any rent for her 1/2 of the property while he was living there.

1. Ct. ruled she was not ousted (left voluntarily - at own will)

2. only entitled to % of interest that she invested

3. not entitled to rent because she left voluntarily and that he was not renting to someone other than himself

a. if he was renting to a third party she would be entitled to only the % proportionate to her original investment

4. all monies for her must be after considering her % due to husband for necessary payments to continue with ownership of BA (house)

a. insurance, mortgage %, etc.

b. it is still up to P to prove if any improvements enhanced the value of BA. If so, he can seek reimbursement.. if not no reimbursement

each tenant has undivided right

proportionately

2/3 for me
1/3 for you -

* expenses to preserve (nec. exp) are shared proportionately

After partitioning side but

0/1/1/1/1

learn these rights in summary

Better be specific

Right of Survivorship extra notes

- A. in Texas and in most cases the terms must be specific.. very strict approach
- B. survivorship is never inferred just b/c the joint tenancy exist
- C. Texas will not go to grantors intentions
- D. Choplin case sys you must look at probate code
 - 1. person with joint account dies
 - 2. if not expressed no right of survivorship
 - 3. better be expressed

with to sec

Adverse Possession *Burden of Proof on AP*

*** the action of transfer of property involuntarily from one party to another.. an acquisition of property -

- 1. Titles are not uniform
 - a. they are based on statute of limitations for each state
 - b. required to bring claim to regain your property that someone else has possession of by the time statute runs

2. Statute of Limitations-

- a. speaks only to true owner and not possessor
- b. starts once adverse possessor takes possession

*Plea of limitation
defensively against TO by the AP
offensively by AP as source of title -*

- 3. The HEART of all statutes is notice open, notorious, reasonable
Prior possessor prevails over subsequent possessor, Prior always wins.. can exclude all but true owner

Adverse Possession can be used as a defense to prevent true owner from taking possession of property. Once 10 years is up (or applicable statute of limitations) the adverse possessor goes to ct. to claim trespass to try by title.. claiming stat. of lim. has given me source of title for possession.

*Discovery rule can apply
Demand and refusal*

*Prior Adverse
Common Law
See 4th*

*How you prove
prior 10 years*

Elements for Adverse Possession - must be consistent w/ those of a TO.

- Actual 1. actual and visible possession that is reasonable to true owner

2. open and available - ^{notorious}
3. notorious
4. continuous possession.. regular use for entire statutory period
5. hostile.. can be exceptions
6. exclusive

A.V.H.A.C

✓ Texas according to Prop. Code

1. Actual appropriation ✓
2. visible appropriation ✓
3. under a claim of right which is inconsistent and hostile to the claim of another
4. PO must be peaceable ✓
5. must be continuous and uninterrupted ✓

Elements

Actual, Open, Continuous, and Exclusive Requirements - Burden of proof on AP,

A. Actual

1. must be actual and give notice to the TO of AP.
2. Reasonable test?

B. Open / ^{notorious}

1. constructive knowledge is not going to bar recovery of the AP
 - a. TO needs actual knowledge
2. reasonable to give TO notice of AP

In Tx - must be peaceable not interrupted

(Case Note Carter)

Ct. ruled that pure belief of ownership, while all other elements were met, was sufficient to maintain possession

C. Exclusive

1. You can not claim the land when you are using it with the permission of the TO ✓
2. ~~if you know the land is not yours you can not claim title?~~ AP can have no contact w/ TO

D. Continuous

1. land must be held continually by the AP through the statute
2. interruption is a question of fact? -
3. seasonal possession may bar recovery.
 - a. what would reasonable land owner do with his land on off season

Case Note Poretto..

P operated a beach front business during warm season and rented chairs. He cleaned it and provided access to it. He never posted signs.

Ct. ruled that AP elements were not met b/c his possession was not continuous

- a. cts will determine this question considering the circumstances

5. State of Mind (Hostility)

1. what is state of mind of the AP?
2. hostility goes hand in hand with claim of right

~~AP possession~~ AP must maintain

9. Claim of right some states, the elements of ad. poss

no notice

a. Claim of right Statute

1. you must BELIEVE that you own the property and have claim to it
2. not a NAKED SQUATTER (i.e. 10 years)
3. inconsistent and hostile to a claim of another
4. what are the actions of the AP? Reasonable test...

inconsistent
hostile to claim of another

Hostile

in TX check it off

Key questions in Adverse Possession Case

- ✓ 1. did adv. pos. act as a reasonable land owner would act?
- ✓ 2. did true owner have reasonable opportunity to make a claim?
- ✓ 3. would reasonable true owner have known or should of known about Adverse Possessor?
- ✓ 4. did A.P. do things that a reasonable ordinary owner person would do to land?

~~TX~~

AP can't transfer to 3rd party → Jus Tertii

Rules of Law

1. a.p. gauged by actual state of mind and not BA's capabilities
 2. can't be lapse of time between possession (continuous) (question of fact) +
 3. a.p. must actually take possession of real property "as his own"
 4. as a general rule one can not claim a.p. on state or federal property
 5. ~~a.p. can not be claimed by ind. who knows property is not his~~ → unless he needs state?
- ex. go over to neighbors land and build something on it.. they live out of state and come back ten years later to find you have claimed poss. by adverse. No Go - ~~if you know~~

You can know that prop is not yours and still claim it by AP? maybe?

Case Note.. Carpenter

- a. puts septic tank on corn field that is neglected by owner
- b. owner sales land after statute
- c. buyer wants her to move septic tank off property
- d. ct rules that adverse poss. cant be acquired by one who knows she has no title?

6. Good faith actions do not eliminate adverse possession based on lack of hostility
 - a. either way, by good or bad faith the same result. Adverse possession can be claimed as long as other requirements are met. (do D's acts meet the necessary standard of "open and notorious" possession?
 - b. intentional and knowing possession is not required for hostility

Case Note... Gorski thought land was hers

7. True owner needs and has right of opportunity to learn of A.P claim
8. acts must be so that a reasonable, ordinary, prudent person would notice actual poss. of another
9. if visible possession, true owner consents to knowledge
10. if adverse poss. is proved and awarded, true owner can be forced to convey the land.. you snooze you lose...

11. Tracts of land must be big enough to give sufficient notice to - small tracts ≠ AP

What are the intentions of the adverse possessor????

- TX vs →
- ✓ Conn. Rule - poss. is hostile even though AP did not subjectively intend to AP - As long as "I intend to claim the land as my own" (A mistaken belief)
 - ✓ Maine Rule - hostile poss. is knowingly going into someone else's property for AP.
 1. encourages people to lie just say did not know (encourages perjury)

merger - entire life vest is one person

X. How do you get out of a co-tenancy ✓ *Joint ownership*

1. Partition- an act terminating the relationship by dividing up the property *(terminating joint ownership)*

a. Voluntary

1. all cotes agree to end relationship
2. cotes consent and then exchange partition deeds

must consent all parties

b. Involuntary

1. absolute right to *partition* force by any cote with any % *(even if A owns 99% and B 1% B can't)*
 - a. homestead community property can't be partitioned by children to whom 1/2 the interest as long as the surviving spouse uses it as a home.

Exception force

Co-tenant has absolute right to partition at his %

2. How it is done.. Types

1. Partition in Kind - *Physical division*

- a. ct orders partition and divides among owners
- b. divided by proportion - *tries to be fair*

*K
S
K*

2. Partition by Sale

- a. ct orders the sale of BA
- b. proceeds divided proportionately

3. Partition in Kind as closely as possible

- a. order payment to cote with greater % in BA

**** Severence of Concurrent Estates... Leases do not severe the joint tenancy

3. Mortgages and JTROS

a. Lien Theory (Texas follows this rule) *No Destroy JT*

1. mortgage will not severe JT
2. holds only lien and not actual title
3. owner holds real title whereas the bank holds the mortgage

b. Title Theory *Will destroy JT.*

1. a mortgage *conveys the property* will destroy JT
2. owner holds an equitable title whereas the bank holds the real title, *breaks in JT*

*** Case Note*** Tehnet v. Boswell

D held a JT with decedent but prior to his death, he leased the land to P. P did not want to leave the premises.

1. ct ruled that right to lease died with him
2. Rule of Law

a. JT terminates with the death of one JT and the lease dies too

*** Case Note*** Kirby Lumber Co v. Temple Lumber

Lumber was cut from 427 acres of Temple % of land
Kirby sued for its 1/3

Ct. ruled that since Temple acted in good faith Kirby was not entitled to the enhanced value of the land

*** Rule of Law***

* Cotes own all property equally but profit proportionately from the entirety

*capita = cap. h.
more
no child*

Ex #2. A dies and distributes per capita.. equal shares between C1 and C2. C3 children are not entitled to anything

*** Summary of FSA

1. more than one estate can exist in Blackacre, but they all must equal FSA
2. "all the sticks in bundle"
3. indefinite rights
4. all estates are in the possession now, or they will come into the holders poss. *in the future*

XVI.

Future Interests

- A. a fee simple estate in which several interest are created
- B. future interest are not created in the future, they are created today with terms used by grantor
- C. the right of possession is just postponed to the future

*** Example***

O to A and his heirs as long as ^{cap} Black Acre is operated as snake FARM *farm*

THESE ARE WORDS OF LIMITATION

1. it is still a fee simple estate with the potential to be indefinite
2. almost all sticks in bundle
3. as soon as snake farm stops operating A's possession automatically stops. No reentry needed for revert back to O
4. future interests in O is called a (reverter) *Define: is date in outline*

*** Example***

O to A, but in event that BA ceases to operate as a snake farm, O can reclaim *isolate*

1. this is a (condition on estate) and once condition is broken it gives O the right to reclaim
2. when snake farm goes out of benny, A still has possession until O takes action to reclaim it..
 - a. must do within the statute of limitations
 - b. future interest that O creates for himself is called a "right of reentry" or "power to terminate"

*** Case Note*** Marenholz v. County Board

O to A "for school purposes only, otherwise to revert back to O"

This is a condition subsequent and it requires that O take action within the statute of limitations to regain possession

XVII.

How does court determine if condition subsequent or limitation

1. look at intention of grantor
2. words used by grantor "otherwise"
3. revert does not necessarily mean that possession ceases once condition is broken *broken = reentry nec.*
4. take everything into consideration.. Facts and circumstances

FSD = Par

FS on condition subsequent

intention: TX - you have to intend to take it, but you don't have to know that it belongs to someone else.

Adverse Possessor and the PO

1. AP can not transfer title to 3rd person
 - a. Jus Tertii ✓
2. Time of PO is important
3. a cause of action arises at the first moment of the AP and expires at the end of the statute
4. The rule of AP is the same between two adverse possessors
 - a. if AP -1 is ousted by AP-2 and the statute runs... AP-2 has rightful PO

Plea of Limitation

1. Defensively against the TO by the AP ✓ to get AP ✓
2. Offensively by AP as a source of title ✓

Trespass to try Title

1. method of determining ownership, vesting and divesting of BA
2. may be brought as a cause or a defense for either party
 - a. AP can bring a cause of action in try title and then plead the Statute of limitations as the source of title

Tacking

- A. PO of one can be tacked on to the PO of another AP to satisfy the S/L
 1. adds the period of PO to that a prior possessor
- B. The two possessors must be in privity with each other (possession, deed, oral, will, consent or permission)
 1. identification of interests in two people that identifies the same legal right in real property
 2. exists when the subsequent possessor enters with the permission of the prior possessor
 3. permission may be evidenced orally or written as in a will or other conveyance
 4. must pass by mutual consent as opposed to abandonment
 5. the test of privity turns on (actual PO)
 6. if AP-1 conveys BA TO ap-2 in a faulty instrument, tacking may still occur because INTENT supersedes description
- C. Occurs not only to aggregate the times of PO but also the TO's causes of actions

Exceptions that toll statute of limitations Texas 16.022 ✓ 25-15

- A. Disability will toll the S/L if P is entitled to bring an action at the time the cause of action accrues
 1. minor w/or w/out marriage
 2. unsound mind
 3. armed forces in time of war
 - a. nothing can be tolled and protected forever now can it?
 4. ~~Incarceration?~~

Case Note From Class: Barron Case, small hedges over land; water's maintained hedges for years - Ct ruled not enough to give NOTICE OF AP to true owner -

Julian Baker Case - Actual visible appropriation of real property (must intend to appropriate)
1. she did not intend to appropriate the land as her own.

*** B = vested remainder subject to complete divestment

*** C = shifting executory interest

3. Both Shifting and Springing are alienable, deviseable and descendable
 - a. both must follow vested remainders, but are considered to be contingent

*** Case Note***

In Re Houston... children fighting over how to divide estate

**Court held it was a vested remainder subject to partial divestment based on legal and technical words used in will.

- a. Strong Dissenting Opinion.. "only living people should receive benefits were testators intentions"

D. Class Gift Closing Rules

1. Physiologically- whenever the person capable of giving birth to or adopting class member dies
Ex. O----> A for life and then to B's children, the class gift to B's children closes physiologically when B dies (or A dies)
2. Rules of Convenience--- a rule of judicial construction. a class close whenever any member of the class is entitled to demand possession of his or her share.

EX.. in situation above... if both B and X, a child of B, survive A, the class closes at A's death because X can demand possession of his share at that time (any child. born after A's death cannot be added)

*** once a class closes no new members can join the class***

II. Rule of Destructability

1. most states have abolished it including Texas (has not) destroys contingent
2. To A for life, then, if he turns 21 to B.
 - a. ROD eliminates B interest if he is not 21 at A's death
 - b. Now, without rule O gets rev. and it springs to B when he is 21
 - c. ~~Does violate the rule of perp if B is not 21 at A's death~~ - does not violate we know in 21 yrs
 - d. However, in Texas cy-pre will adjust to satisfy grantors intent

III. Rule in Shelly's Case - take life estate when not makes it FLS

1. abolished in most states including Texas on Jan 1, 1964 O -> A for life, then to A's children takes cont makes it vested -
2. To A for life, then to A's heirs
 - a. RISC would merge them together and give A a FSA
 - b. Now, A's heirs have a contingent remainder as long as A is alive
 - c. a person has no heirs(they are unascertained) until a person dies
 - d. does not violate ROP = A = UE heirs = cont remainder

IV. Doctrine of Worthier Title - To keep all in the family

1. still in effect in most states

RAP
(RULE AGAINST PERPETUITIES)

Future interest or condition precedent to vesting must be certain to occur or not to occur within 21 years after the death of some measuring life ("life in being") or else conveyance is void.

What interests RAP never applies to:

1. Present possessory interests
2. Future interests in a grantor (there are 3 - POR, Right or Re-entry, Reversion)
3. Vested remainders (except sometimes to vested remainders subject to open - if conveyance to open class is conditioned on the members surviving to an age beyond 21)

What interests RAP can apply to:

1. Contingent remainders
2. Executory remainders (**shifting ones almost always violate RAP**)
3. Vested remainders subject to open (only sometimes - if conveyance to open class is conditioned on the members surviving to an age beyond 21)

RAP ≠
PPI
VR

So - if you see a CR or ExI or VR subject to open - you are on RAP Alert!!!

Measuring Life (Life in Being):

Person(s) alive at the time of the conveyance whose life or death is relevant to the conditions occurring. If it is a class then the class cannot be open (must be closed) at time of creation of conveyance or else it can't be the measuring lives. It must not be possible for more members to be added to the class after the conveyance.

FOUR PRONG TEST:

1. Classify the future interest and determine if it is of the type that can or cannot violate RAP
2. Identify the conditions precedent to vesting.
3. Look for a measuring life.
4. Ask your self if when the measuring life person(s) dies - will we know for certain within 21 years whether future interest will or will not vest?

Reform statutes:

1. Cy Pres - makes the conveyance work.
2. Wait and See - waits to see if it will vest within 21 years after death of measuring life.

Midterm Examination

Fall Semester, 1997

Prof. L. Lytton

Directions: CAREFULLY READ THE QUESTION BEFORE YOU BEGIN WRITING. Spend as much time thinking about the question as you do writing the answer. You may, in fact, want to outline your reasoning and solutions on scratch paper before you formalize your answer. Please pay special attention to:

1. Explaining the applicable law.
2. Analyzing the applicable law as applied to the particular facts.
3. Specifically answering the question(s) asked.

PLEASE NOTE: Verbosity and meaningless "blather" should be avoided at all costs. You will be given a limited space to answer the questions on the real final at the end of the semester to discourage "stream of conscience" writing on every possible topic. Concentrate on being succinct, but thorough.

Good Luck!

QUESTION NO. 1

Mary owned a beautiful diamond ring of great value. Because the ring had become encrusted with dirt and grime from years of wear, she took the ring to Rex Jewelers, a retail jewelry store, for cleaning and polishing. Rex cleaned and restored the ring to its original beauty, and was so impressed with the ring's rare quality, that he placed it in his display case, along with other rings, for all to see.

Soon afterwards, Charles, an unsuspecting customer, entered the store, and recognizing the ring as the perfect gift for his wife, purchased it from Rex, paying full value.

When Mary returned to pick up her ring, she was shocked to find this sordid state of affairs, and she demanded that Rex immediately pay her the value of the ring. Rex flatly refused to pay Mary anything, telling Mary that Charles now had the ring, and that she should see Charles if she wanted it back.

Though extremely upset with Rex, Mary decided that because of the ring's sentimental value, she really wanted it returned. When she confronted Charles, he responded that the ring was now his wife's favorite jewelry, and under no circumstances would he give it back to Mary.

Mary filed suit against Charles to recover the ring. Will Mary win? Why?

JRR

UCC

Model Answers - Midterm Examination

Fall Semester, 1997

Prof. L. Lytton

QUESTION NO. 1

Mary will not recover the ring as against Charles.

As a general rule, a true owner has title against all the world, and someone who is in possession cannot convey better title to a third person than that which the possessor has. Under certain circumstances, however, an innocent purchaser who pays value for goods and who has no reason to suspect that the possessor is a wrongdoer, can acquire a greater right than the true owner.

Here, as between Mary and Rex, the relationship was clearly that of Bailor (Mary) and Bailee (Rex), with Rex only having the right to possess the ring for the specific purpose of the bailment (cleaning the ring for a fee). However, Mary has chosen to entrust her ring to someone who, for all outward appearances, is authorized to sell diamond rings to the general public. Although the law has as its purpose the protection of titles in true owners, there is also a strong incentive to foster the free movement of goods in commerce, where "possession" is the best evidence of title. As the Bailor, Mary could have avoided the situation which enabled the wrong to occur by cleaning the ring herself. As an innocent purchaser, Charles could have done little to protect himself from the wrongdoing of Rex, and Mary will be estopped from asserting that she is the true owner.

The "estoppel" theme is inherent in the Uniform Commercial Code provision that specifies that the entrusting of goods to a merchant dealing with like goods, gives the merchant the right to transfer those rights to a buyer in the ordinary course of business, when the buyer is in good faith and without knowledge of the existing rights in the true owner. Because Rex is a retail jeweler; and because Charles could rightfully assume that Rex had title to a ring which was in a jewelry case in which rings were being offered to the public; and because Mary should have been aware that by entrusting a ring to Rex, a retail jeweler, there was always a risk that Rex would sell the ring as part of his stock in trade, Mary will be estopped to assert her position as true owner, and Charles will win.

QUESTION NO. 2

Rex owned the Ponderosa in fee simple absolute. By deed, Rex conveyed "to Little Joe so long as the Ponderosa is used as a cattle ranch, and then to Hoss."

Subsequent to this conveyance, and at a time when the Ponderosa was still being operated as a cattle ranch, Rex died intestate, leaving only his daughter Sally as his sole heir.

One year later, Little Joe threw in the towel on the romantic life of a rancher when a severe Texas drought killed all the cattle and left him broke and destitute. Hoss immediately took possession of the Ponderosa.

Sally filed suit against Hoss to remove him from the premises and to recover the Ponderosa for herself. Can Sally recover the Ponderosa? Why?

Rex → Little Joe, "As long as the Ranch
is used as a cattle ranch, and then
to Hoss"

O to Rex as long as the P is

FSD
POT
UWA

FSSC
POT
BCP

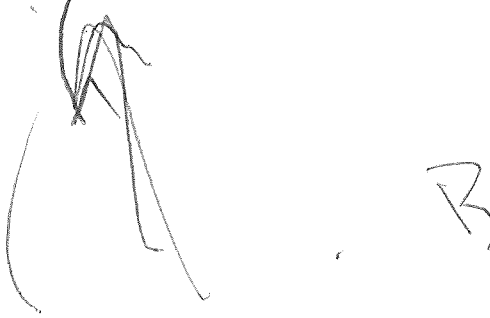
QUESTION NO. 2

Sally can recover as against Hoss.

If Rex had stopped after "so long as the Ponderosa is used as a cattle ranch", he would have conveyed Little Joe a fee simple determinable, retaining a reversionary future interest called a "possibility of reverter". The estate in Little Joe might last forever, but would be subject to automatic termination upon the happening of the specified condition precedent - i.e. that the Ponderosa cease being used as a cattle ranch. The facts, however, dictate that Rex intended to give Hoss the residual estate, rather than retaining it in himself. This means that Little Joe had a fee simple interest, but it was one subject to complete divestment upon the happening of a condition subsequent, otherwise known as an "executory limitation" (the Ponderosa ceased being used as a cattle ranch). Therefore, Hoss has a contingent interest which is called a "shifting executory interest" - upon the happening of the condition, Little Joe's estate is "cut short", and the interest is "shifted" to Hoss.

Contingent interests, including "shifting executory interests" are subject to the Rule Against Perpetuities which voids "ab initio" contingent interests that might vest or fail more than 21 years + nine months after the death of a life or lives in being at the creation of the interest. No matter how remote, the possibility exists that Little Joe, as the life in being at the creation of the interest, may die immediately after the conveyance, and the Ponderosa may continue to be used as a cattle ranch for a period of more than 21 years + 9 months after Little Joe's death. Therefore, the possibility exists that Hoss' interest would neither vest or fail within the period provided by the rule, and remain a contingent shifting executory interest beyond the required period.

Because the contingent interest in Hoss is void from the beginning, the shifting executory interest is stricken from the instrument as if it had never existed. Since Hoss has no interest, Rex retained the "possibility of reverter", a vested future interest which will descend under the laws of descent and distribution to Sally, his sole heir. When the Ponderosa ceased being operated as a cattle ranch, Sally's "possibility of reverter" and Little Joe's "fee simple determinable" merged together in Sally to form the greatest of all of the estates - the fee simple absolute, giving Sally the right to recover possession of the Ponderosa from Hoss.



FUTURE INTERESTS

PRESENT POSSESSORY INTERESTS	FUTURE INTEREST IN GRANTOR ONLY	FUTURE INTEREST IN THIRD PARTY ONLY	TRIGGER WORDS
Fee Simple Absolute	XXXXXXXXXX	XXXXXXXXXX	"to (person)"
Defeasible Fees: ("Defeatable")			
1. Fee Simple Determinable (future interest <u>only</u> in grantor)	Possibility of Reverter (automatic)	XXXXXXXXXX	"so long as" "while" "during"
2. Fee Simple Subject to Condition Subsequent (future interest <u>only</u> in grantor)	Right of re-entry (not automatic)	XXXXXXXXXX	"but if" "provided that" "on condition"
3. Fee Simple Subject to Executory Limitation (future interest <u>only</u> in 3rd party)	XXXXXXXXXX	<u>Executory Interests:</u> 1. Springing (<u>only</u> if it comes from grantor) 2. Shifting (<u>only</u> if from anyone else but grantor)	(same trigger words as for FSD & FSSCS - but future interest goes to 3rd party instead of grantor)
Life Estate (if someone has estate for the life of someone else it is called life estate pur autre vie)	Reversion	<u>Remainder:</u> 1. Vested 2. Contingent	"for life" "for the life of"
YOU HAVE TO MEMORIZE THE FOLLOWING:			
A Living Person Has No Heirs			
<u>What can only follow what?</u>			
1. Remainder can only follow a life estate. A life estate (if followed by a third party) can only be followed by a remainder. 2. An executory interest can only follow a fee simple subject to executory limitation. A fee simple subject to executory limitation can only be followed by an executory interest.			
<u>Difference between vested and contingent remainders:</u>			
Always think of two criteria: <ol style="list-style-type: none"> 1. People 2. Condition precedent 			
Vested (both 1 <u>and</u> 2 must be true): <ol style="list-style-type: none"> 1. People - always in an already ascertained person (at least 1); <u>and</u> 2. Condition precedent - <u>never</u> a condition precedent <i>substantive precedent</i> 			
Contingent (either/or 1 or 2): <ol style="list-style-type: none"> 1. People - Unknown, unascertained, or unborn person; <u>or</u> 2. Condition precedent - if there is a condition precedent it <u>must</u> be a contingent remainder 			

To A for life, then to B, if B gives A a proper burial
A=LE
B=springing executory interest in FSA
O=reversion in FS subject to executory limitation

To A for life, then to A's children
A=LE

A's children= vested remainder subject to partial divestment
O=N

If no children at time

A= LE

A's children= contingent remainder

O=reversion in FSA

To A for life, then to B, if B survives A

A=LE

B=contingent remainder (subject to con. prec.)

O=reversion in FSA

To A for life, then to B, if B survives A; and if B does not survive A, then to C

A=LE

B=contingent remainder

C=contingent remainder (alternative)

O=N

To A for life, then to B; but if B does not survive A, then to C

A= LE

B= vested remainder subject to complete divestment in FSA

C= shifting exec. interest in FSA

O=N

To A for life, then to B for life, then to C

A=LE

B= vested remainder in LE

C= vested remainder in FSA

O=N

To A for life, and A now having two children, to such of A's children who survive her; but if none of A's children survive her, then to B

A=LE

A's children=contingent remainder

B=contingent remainder

O=N

Back to
Jury put into
Sovereign's line
Deduction of 1/4
AP-FSA
Ogth but ill son
Shelby Rule

cond precedent
= contingent

Alternative
Before
Contingent

O to A for life, then to the first son of A who reaches 21 and his heirs

*If A dies leaving a son (16), the contingent remainder is destroyed, O reversion becomes possessory, and after A's death O has fee simple absolute

O to A for life, then to S and his heirs if S marries A and, if S fails to marry A, then B

*A has life estate, S contingent remainder in FS, B alternative contingent remainder in FS, and O has a reversion

O to A for life, then to B and his heirs

*B has a vested remainder in fee simple

O to A and heirs, as long as the land is used for a church

*Church has fee simple determinable

*O has possibility of reverter

O to A for life, then to B and his heirs if B marries C

*If while A is still living and B is unmarried, never having married, O conveys reversion to A, then B's interest vanishes. (B did not meet the deadline for contingent remainder.. destruction of contingent remainder by merger)

*A has fee simple absolute and O's reversion is destroyed

O to W for life, then to A and his heirs if A survives W, and if A fails to survive W, then to B and his heirs

1) W, A, and B are still living

*W= life estate

*A= contingent remainder in Fee simple

*B= alternative contingent remainder in fee simple

*O= reversion

2.) B dies leaving a sole heir, D

* no change except D has B's alternative contingent remainder in fee

3.) W dies

*A= Fee simple Absolute

4.) A dies leaving a sole heir, E

* E= fee simple absolute

*they have to have a child
contingent on it
would prior
visits rule*

O to A and the heirs of his body, then to the firstborn son of B and his heirs

1) O, A, and B are still living; neither A nor B have children. A and B are both married

*A= fee simple absolute

*Firstborn son of B= contingent remainder in fee simple

* O = reversion

2) A has son, C. A's wife dies in childbirth

* no change

3) B has a son, D

*A= fee tail

*D= vested remainder in fee simple

4) B dies

* no change

5) A dies never having married again, and with a will leaving all his property to E and his heirs

*C= fee tail

*D= vested remainder in fee simple

*E= nothing

O to A for life, remainder to the children of A who survive A and their heirs

1) A is living but has no children

* A= life estate; there is a contingent remainder in favor of the children of A who survive A

*O = reversion

2) A has a child X

* no change

3) A has a child, Y

* no change

4) X dies leaving H as his heir

* no change, H inherits nothing

5) A dies

* Y = fee simple absolute

O to A for life, then to B and his heirs so long as liquor is not sold on the premises

1) O, A, and B are still living

* O= possibility of reverter (if liquor is sold on premises)

* A= life estate

* B= vested remainder in fee simple determinable ✓ ?

2) A dies

* O = possibility of reverter

* B = fee simple determinable

3) O dies leaving his heir D

* No change except D has O's possibility of reverter

4) B had to open liquor on premises

* D = fee simple absolute

one & is fore

To A for life, then to B, but if A, who has two children, is survived at her death by any children, then to such surviving children

A=LE

B=vested remainder subject to complete divestment

A's children= shifting executory interest in FSA

O=N

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when A dies

) ?

Future Interest Problems

Directions: In each of the following problems, state the title of each party immediately after the transfer becomes effective. Assume that immediately prior to the transfer, "O", the grantor-transferor, holds title in Fee Simple Absolute. Assume further, that all transfers are modern and valid at the time made and not subject to failure. Be sure to include "O" when you state the interests of the parties.

O CONVEYS:

1. To A for the life of B, and then to the heirs of B. (B has one child at the time of the conveyance).
2. To A for life, and then to the children of B who survive B. (B has one child as of the conveyance).
3. To A, provided that you shall provide support for my children.
4. To A for life, and then to B for life. Upon B's death to C, so long as D does not marry my daughter; then to D. (assume that A predeceases B for both situations)
 - a. what if D never marries the daughter during B's life?
 - b. what if D does marry the daughter during B's life?
5. To A, but if the Marlins win the World Series then to B.
 - a. The Marlins win.
 - b. The Marlins don't win.
6. To A for life, and then to B, but if A now having one child is survived by any children to such surviving children.
7. To A for life, and then to B, if B supports A's surviving children. A has 10 kids.
 - a. state the title at the time of the conveyance.
8. To A for life, and then to B, when B is 21.
 - a. A dies when B is 19.
 - b. A dies when B is 22.
9. To A, provided that my business is maintained on the premises.
10. To A, until my business can no longer be maintained on the premises.
11. To A for life, and then to A's children.
 - a. A has no children
 - b. A has one child
 - c. assume that the rule in Shelly's Case applies and the conveyance is to A for life and then to A's heirs.

ANSWERS:

1.
 - O: reversion in FSA if B dies without heirs
 - A: life estate per autre vie (for the life of B)
 - B's heirs: contingent remainder in FSA
2.
 - O: reversion in FSA if B dies without children
 - A: life estate
 - B's children: contingent remainder in FSA
3.
 - a.
 - A: Fee Simple On Condition Subsequent
 - O: right of re-entry
 - b. if O exercises his right he will obtain an FSA
4.
 - A: life estate
 - B: life estate
 - C: on B's death FS subject to executory limitation
 - D: shifting executory interest

(at time of conveyance)
5.
 - A: FS subject to executory limitation
 - B: shifting executory interest

(at time of conveyance)
6.
 - A: life estate
 - B: vested remainder subject to complete divestment
 - C: shifting executory interest in surviving children
7.
 - A: life estate
 - B: ~~vested remainder subject to complete divestment~~ Contingent Remainder
 - O: reversion
8.
 - A: life estate
 - B: contingent remainder (In Texas the contingent remainder is destroyed, or B has springing executory interest)

could argue both based on language

9.

- A: FS on condition subsequent
- O: right of re-entry

10:

- A: Fee simple determinable
- O: possibility of reverter

11.

a)

- A: life estate
- O: reversion
- Children: contingent remainder

b)

- A: life estate
- Child: vested remainder subject to partial divestment
- O: nothing

c) A: Life estate + vested remainder in FSA (Shelly's)

Merger then applies to say

Life Estate + Vested remainder in FSA

= FSA in A.

Property I - Lytton Tutorial

Future Interest Problems

Directions: In each of the following problems, state the title of each party immediately after the transfer becomes effective. Assume that immediately prior to the transfer, "O", the grantor-transferor, holds title in Fee Simple Absolute. Assume further, that all transfers are modern and valid at the time made and not subject to failure. Be sure to include "O" when you state the interests of the parties.

O CONVEYS:

1. To A for the life of B, and then to the heirs of B. (B has one child at the time of the conveyance).
2. To A for life, and then to the children of B who survive B. (B has one child as of the conveyance).
3. To A, provided that you shall provide support for my children. \neq
4. To A for life, and then to B for life. Upon B's death to C, so long as D does not marry my daughter; then to D. (assume that A predeceases B for both situations)
 - a. what if D never marries the daughter during B's life?
 - b. what if D does marry the daughter during B's life?
5. To A, but if the Marlins win the World Series then to B. FS
 - a. The Marlins win.
 - b. The Marlins don't win.
6. To A for life and then to B, but if A now having one child is survived by any children, to such surviving children. FS
7. To A for life, and then to B, if B supports A's surviving children. A has 10 kids.
 - a. state the title at the time of the conveyance.
8. To A for life, and then to B, when B is 21.
 - a. A dies when B is 19.
 - b. A dies when B is 22.
9. To A, provided that my business is maintained on the premises.
10. To A, until my business can no longer be maintained on the premises.
11. To A for life, and then to A's children.
 - a. A has no children
 - b. A has one child
 - c. assume that the rule in Shelly's Case applies and the conveyance is to A for life and then to A's heirs.

ANSWERS:

1.

O: reversion in FSA if B dies without heirs
 A: life estate per autre vie (for the life of B)
 B's heirs: contingent remainder in FSA

2.

O: reversion in FSA if B dies without children
 A: life estate
 B's children: contingent remainder in FSA

3.

a. A: Fee Simple On Condition Subsequent
 O: right of re-entry

b.

if O exercises his right he will obtain an FSA

4.

A: life estate
 B: life estate
 C: on B's death FS subject to executory limitation
 D: shifting executory interest

(at time of conveyance)

5.

A: FS subject to executory limitation
 B: shifting executory interest

(at time of conveyance)

6.

A: life estate
 B: vested remainder subject to complete divestment
 C: shifting executory interest in surviving children

?

7.

A: life estate
 B: vested remainder subject to complete divestment
 O: reversion

O = FS to the 1st
 B = gift over

8.

A: life estate
 B: contingent remainder (In Texas the contingent remainder is destroyed, or B has springing executory interest)

could argue both based on language

9.

A: FS on condition subsequent
O: right of re-entry

10:

A: Fee simple determinable
O: possibility of reverter

11.

a)

A: life estate
O: reversion
Children: contingent remainder

b)

A: life estate
Child: vested remainder subject to partial divestment
O: nothing

c) A: Life estate + vested remainder in FSA (Shelly's)

Merger then applies to say

Life Estate + Vested remainder in FSA

= FSA in A.

Life Estate Problems

9-22

To A, then to B

A= FSA;

B=N

O=N

To A for life, and then to B

A=LE

B=vested remainder in FSA

O=N

To A for life, and then to B, so long as the premises are not used for the sale of liquor

A=LE

B=vested remainder subject to complete divestment

O=Rev in FSA

To A for life, then to B; but if at B's death he is not survived by any children, then to C

A=LE

B=vested remainder subject to complete investment

C=executory int. in FSA

O=N

To A for life, then to B, if B attains the age of 21

A=LE

B= contingent remainder in FSA

O=reversion

To A, my 18 year old son, if he attains the age of 21

A=springing interest in FSA

O=FS subject to exec. limitation

FS subject to

To A, provided that A does not divorce B

A=FS subject to condition subsequent

O=right of reentry in FS

To A for life, then to B; but if the property is not used as a church, then to C

A=LE

B=vested remainder subject to complete divestment

C= shifting exec. lim. in FSA

FSSCS = POR

- (i) Frank Sinatra conveys to Orville Redenbacher so long as popcorn is never manufactured on the premises. Orville has a FSD - Frank has a future interest known as possibility of reverter. These always accompany each other. Remember - FSDPOR - Frank Sinatra Doesn't Prefer Orville Redenbacher (Fee Simple Determinable always accompanies POR - Possibility of Reverter).

- b. Fee Simple Subject to Condition Subsequent.
 - i. Estate that is not automatically terminated but can be cut short.
 - ii. Can be divested at grantor's option. At grantor's prerogative if stated condition occurs.
 - iii. How created: O to A but if alcohol is ever served on premises grantor reserves the right to re-enter and re-take. If alcohol is served estate does not automatically revert to O. It is O's prerogative to re-enter and re-take later.
 - iv. FSSCS is devisable, Descendible and transferrable inter vivos but always subject to condition.
 - v. Future Interest that accompanies FSSCS: Only one - Power of Termination which is synonymous with Right of Re-Entry.
 - vi. FSSCS must explicitly carve out the Power of Termination - Right of Re-Entry.
- c. (Fee Simple Subject to Executory Limitation)
 - i. Just like Fee Simple Determinable except if the condition is violated - the estate is automatically forfeited not to grantor but to someone other than the grantor. Works in favor of someone other than the grantor. To A but if X event occurs to B.
 - (1) Grantor conveys cottage in New England to Barry Manilow but if music is ever performed on those premises then to Mandy. Barry has FSEL subject to Mandy's executory interest.
 - ii. Future interest is an executory interest - in this case a shifting executory interest.

POR ↔ FSD

FUTURE INTERESTS:

There are 6 categories of future interests. Classified whether held by grantor or someone other than grantor.

SLA = HOS

- 1. 3 Future Interests in Grantor:
 - a. Possibility of Reverter (only accompanies FSD)
 - b. Right of Re-Entry aka Power of Termination (only accompanies FSSCS)
 - c. / Reversion (Has to be something other than FSD or FSSCS)
 - i. Future interest that arises in grantor and only grantor who transfers a vested estate of lessor quantum than he started with

"BAD BOY" CONTINGENT REMAINDERS:

Rule of Destructibility (This rule is virtually abolished now)

A contingent remainder is void if still contingent when the preceding estate is terminated.

Example: To A for life, then if he turns 21, to B.
(If B was not yet 21 when A died - the rule voided B's interests and the estate went back to O)

Modern day: Rule not applied and B's interest would endure. Upon A's death - estate would go to O as a FSSEL and wait as a springing executory interest in B until he turns 21 at which time he gets a FSA.

Rule in Shelley's Case (Used in Texas only up until 9/64)

If, in the same instrument, you try to create a life estate in A and the remainder in A's heirs, then present and future interests merge and create a FSA in A instead of a life estate.

Example: To A for life, and then to A's heirs.

Modern day: Conveyance is allowed - A's heirs have a contingent remainder as long as A is alive. (But, remember that a living person has no heirs - so they are undetermined until A's death).

Doctrine of Worthier Title (Still applies in most states today)

An inter vivos conveyances of real property that tries to create a contingent remainder in O's heirs while O is still alive.

Example: To A for life, and then to O's heirs.
Attempted creation of CR while O is alive is void. Result is a life estate in A and O has a reversion.

Modern day: Doctrine applies as above but if it can be determined that grantor fully intends to bypass this doctrine, then it is allowed. (But, remember that a living person has no heirs - so they are undetermined until O's death).

FUTURE INTERESTS

PRESENT POSSESSORY INTERESTS	FUTURE INTEREST IN GRANTOR ONLY	FUTURE INTEREST IN THIRD PARTY ONLY	TRIGGER WORDS
Fee Simple Absolute	XXXXXXXXXX	XXXXXXXXXX	"to (person)"
Defeasible Fees: ("Defeatable")			
1. Fee Simple Determinable (future interest <u>only</u> in grantor)	Possibility of Reverter (automatic)	XXXXXXXXXX	"so long as" "while" "during"
2. Fee Simple Subject to Condition Subsequent (future interest <u>only</u> in grantor)	Right of re-entry (not automatic)	XXXXXXXXXX	"but if" "provided that" "on condition"
3. Fee Simple Subject to Executory Limitation (future interest <u>only</u> in 3rd party)	XXXXXXXXXX	Executory Interests: 1. Springing (<u>only</u> if it comes from grantor) 2. Shifting (<u>only</u> if from anyone else but grantor)	(same trigger words as for FSD) & FSSCS - but future interest goes to 3rd party instead of grantor)
Life Estate (if someone has estate for the life of someone else it is called life estate pur autre vie)	Reversion	Remainder: 1. Vested 2. Contingent	"for life" "for the life of "
YOU HAVE TO MEMORIZE THE FOLLOWING:			
<i>A Living Person Has No Heirs</i>			
<u>What can only follow what?</u>			
1. Remainder can only follow a life estate. A life estate (if followed by a third party) can only be followed by a remainder. 2. An executory interest can only follow a fee simple subject to executory limitation. A fee simple subject to executory limitation can only be followed by an executory interest.			
<u>Difference between vested and contingent remainders:</u>			
Always think of two criteria: <ol style="list-style-type: none"> 1. People 2. Condition precedent 			
Vested (both 1 <u>and</u> 2 must be true): <ol style="list-style-type: none"> 1. People - always in an already ascertained person (at least 1); and 2. Condition precedent - <u>never</u> a condition precedent 			
Contingent (either/or 1 or 2): <ol style="list-style-type: none"> 1. People - Unknown, unascertained, or unborn person; or 2. Condition precedent - if there is a condition precedent it must be a contingent remainder 			

IV. Estates in Land

PRESENT INTEREST	WORDS TO CREATE AT COMMON LAW	FUTURE INTEREST IN GRANTOR	FUTURE INTEREST IN THIRD PERSON
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FREEHOLD ESTATES

I. Fee Simple

A. Fee simple absolute	"And his heirs"	None	None
B. Fee simple defeasible			
1. Fee simple determinable	"So long as" "While" "During"	Possibility of Reverter	Executory Interests
2. Fee simple on (or subject to a) condition subsequent	"Provided that," "on condition " "But if"	Right of entry for condition broken or power of termination	Executory Interests

II. Fee Tail	"And the heirs of (his or her) body"	Reversion	Remainders
III. Life Estate	"For Life"	Reversion	Remainders Executory Interests

NON-FREEHOLD ESTATES

I. Term for Years	"For ___ years"	Reversion	Remainders Executory Interests
II. Tenancy at will	"At will"	Reversion	Remainders Executory Interests
III. Periodic Tenancy	e.g. month to month	Reversion	Remainders Executory Interests

first 3 col only
by A

by B

Future Interest Tapes

1. Present Possessory Estates (Freehold Interests)
 - a. Fee Simple Absolute
 - b. Fee Tail
 - c. Life Estate
 - d. Defeasible Fees
2. Fee Simple Absolute
 - a. Created: To A and his heirs. In common law the "magic words" "and his heirs" was required or it wouldn't be a FSA. Now just "to A" works.
 - b. Absolute Ownership of potentially unlimited duration.
 - c. Freely inheritable
 - i. Devisable (pass by will)
 - ii. Descendible (passes by statutory laws of intestacy)
 - d. Freely transferable inter vivos (can be sold or transferred during lifetime of the holder)
 - e. No future interest accompanies FSA

(Trick question - "to O and his heirs" - what does O have what do the heirs have? O has FSA as long as he is alive and heirs have nothing. **A living person has not heirs.**

3. Fee Tail
 - a. How created: To A and the heirs of his body. This type of estate is only historical now. Doesn't exist today except in just a few states.
 - b. Chief objective was to keep the land "all in the family." It lasts only as long as there are blood descendants of the original grantee.
 - c. Passed directly and automatically to lineal blood descendants.
 - d. Future interest that accompanies this type of estate is back to O if the blood line runs dry, therefore a **reversion**.
4. Life Estate
 - a. How created: must be measured by life and never by time. This is the romantic estate. "For the rest of your life" Measured in lifetime terms - never in years.
 - b. To A for life. This is a lifetime estate. But if it says "to A for 100 years if she lives that long" - not a LE since it is not measured in years.
 - c. Can be measurement of someone else's life. To Madonna for the life of David Letterman. When David dies - Madonna's rights to the estate are over - or - to Madonna for life and then she sells to David Letterman. David has a Life Estate per autre vie.
 - d. Future interest that accompanies this estate: If Grantor - reversion. If to someone else - remainder.
 - e. Life tenant has rights to all ordinary uses and profits from the land.
 - f. Life Estater cannot commit Waste. Cannot do anything to work injury to future holders's rights. The "hallmark" is Maintenance. **Or else is liable.** Life Tenant

Waste defined as: any act or omission of duty by a tenant of land which does a lasting injury to the land.

open mine doctrine: if at some point life estate is created and there is an open mine - life set all.

should do more than and no less than is necessary to maintain the premises.

- PAY VPA
- i. Voluntary of affirmative waste - actual overt conduct that works a diminution in value. Voluntary waste - Johnny Depp kicks in walls after fight with girlfriend - liable

- ii. Permissive Waste - (neglect.) ^{to let things} When land is allowed to fall into disrepair. Life Tenant only needs to keep up with minimal repairs necessary to maintain the property. Forrest Gump is life tenant and there is a leak in the roof - only obliged to patch hole - not replace the whole roof. If over time his pattern of neglect or ignoring problem creates harm to property - then he is liable for permissive waste. Stupid is what stupid does. Keeping up with ordinary repairs - smartest thing.

- most courts will not hold you responsible
- iii. Ameliorative Waste - remember Maintenance is the Hallmark. Life Tenant must do no more than is necessary to maintain the premises. Can be liable for any acts taken that actually enhance the property's value. Cannot engage in any changes, improvements to premises even if enhance value. Hallmark is maintenance. Improvement or enhancement is ameliorative waste. More than mere maintenance.

5. Defeasible Fees ✓

Potentially infinite duration but subject to be terminated upon happening of some stated event.

- a. Fee simple determinable - an estate that **automatically** terminates upon the happening of some stated event.

- i. How created: Express conveyance of a Fee Simple subject to a certain string or condition. Conveying fee simple unless and until some stated event happens.

(1) Magical words required are - to A so long as, to A unless and until, to A so long as the land is used for school purposes.

(2) FSD is devisable, Descendible, transferrable inter vivos.

(a) Problem is that no matter what you do with it it is always subject to the condition.

(i) Paul McCartney grants to Ringo so long as the premises are used as a recording studio. Ringo conveys to Mick Jagger with no mention of string. Mick tries to convert premises as a love nest for Jerry Hall. He can't without forfeiting the estate. Estate is subject to condition - subject to the sting. **You can convey less than what you have - but you cannot convey more than what you have.**

"You can't always get what you want"

(3) What is the future interest that accompanies every FSD?

(a) Possibility of reverter in the grantor.

- (1) O to A for life. O has a reversion. What about O to A for life then to B for 100 years? Still a reversion to grantor.

2. 3 Categories of Future Interests in Transferee (someone other than the grantor)

a. **Remainder.** A future interest in a grantee (never a grantor) this is capable of becoming possessory upon the natural expiration of a prior estate created in the same conveyance.

i. **Remainderman** - is gentle, kind, polite, patient. He never travels along Always the caboose after a prior estate of some naturally limited finite duration.

(1) O to A for 50 years and then to B (B is remainderman)

(2) **Never follows the defeasible fee.** (O to A, but if he doesn't finish law school to B. This is **not** a remainder. O to A, but if B returns from Europe to B. This also is **not** a remainder) Remainderman waits gently and quietly awaits his turn. He waits for natural events to happen. Finite. He is passive. He waits. He gently and nicely takes. In the examples above - B is acting rudely - might pounce to interrupt the prior possessor's rights. This is someone who holds and executory interest.

ii. **2 Types of Remainders - Vested and Contingent**

(1) Vested

(a) Created in an already ascertained person

(b) Not subject to any string (known as a condition precedent)

(2) 3 Types of Vested Remainders:

(a) Indefeasibly Vested Remainder

(i) The best future interest one could hope for.

(ii) Holder is certain to acquire a possessory estate in the future.

(iii) Certain to be entitled to retain estate permanently (To A for life and remainder to B. B has an indefeasibly vested remainder. No strings preceding or following his entitlement. What if B dies before A? This is fine because all vested remainders are transferable, descendible and devisable. So if B dies before A his future interest still endures and passes by will or by intestate laws to B's heirs)

(b) Vested Remainder Subject to Complete Defeasance.

(i) Remainderman known - in existence.

Remainderman is not subject to condition precedent. However, remainderman is subject to complete defeasance - his right is capable of being cut short by some condition subsequent.

1) How do you know if it is a condition precedent or subsequent? Apply the comma rule. If the language of condition follows

Contingent -
subject to a condition precedent
or unascertained person
Vested - not subject to condition precedent
(maybe condition subsequent) and to an ascertained person

FS ok. 1.12.14
why 4/6 FSSES
has R of R
his case 0
has nothing
at all

- (i) This rule still applies in most states today. IT pertains only to inter vivos conveyances of real and personal property which attempts to create a future interest in the grantor's heirs. (O to A for life then to O's heirs. O is still alive. With this doctrine it tells us that O's heirs don't have a contingent remainder - the attempted creation of contingent remainder in O's heirs is void so long as O is alive and well. We are left with a life estate in A and O has a reversion. O and A could get together and convey a FSA in someone. This doctrine survives because it is a rule of construction and not a rule of law. This means the grantor's intent controls. If we can determine that grantor full intends to bypass doctrine of worthier title - we will let him do that. "I wish for my heirs to have a contingent remainder" - we allow that to control - if that is grantor's intentions.

Exec. interest - legally valid after 1536 (Statute of uses)
- can not follow a contingent remainder

V.R.

8. *Powers* (continued), *Obligations* P. 145-162, casebook; *Joy v. Crawford*, 154 S.W. 357 (Tex.Civ.App.-Dallas, 1937) no writ hist.; *Shamrock Hilton Hotel v. Caranas*, 488 S.W.2d 151 (Tex.Civ.App.-Houston [14th Dist.], 1972) n.r.e.; *McAshan v. Cavitt*, 229 S.W.2d 1016 (Tex. 1950); *Ampco Auto Parks, Inc. v. Williams*, 517 S.W.2d 401 (Tex.App.-Dallas, 1974).

9. **CHAPTER 4. Estates in Land and Future Interests - Introduction**, P. 209-228, casebook. (NOTE: Careful review and study of the chart on P. 228 will assist you in understanding present and future estates).

10. *The Fee Simple Absolute*, P. 228-239, casebook. Tex. Prop. Code, Sec. 5.001.

11. *Fee Simple Determinable and Fee Simple on Condition Subsequent; Fee Tail and Fee Simple Conditional*; P. 240-250, casebook; *Field v. Shaw*, 535 S.W.2d 3 (Tex.Civ.App.-Amarillo, 1976) no writ hist.; Art. I, Sec. 26, Texas Constitution. (NOTE: Please omit *Robins v. Southold* on P. 250, casebook)

12. *Life Estates and Reversions*, P. 260-269, casebook. *Moore v Vines*, 474 S.W.2d 437 (Tex. 1971).

13. *The Classification of Future Interests in Transferees*; P. 269-292, casebook, *Moore v. Reed*, 668 S.W.2d 847 (Tex.Civ.App.-El Paso, 1984) n.r.e.;

14. *Destructibility of Contingent Remainders; The Rule in Shelley's Case; The Doctrine of Worthier Title*, P. 292-317, casebook; Tex. Prop. Code, Secs. 5.003; 5.042. *Dallmeyer v Hermann*, 437 S.W.2d 367 (Tex.Civ.App.-Houston 14th Dist., 1969) no writ hist.

15. *The Rule Against Perpetuities*, P. 318-333, casebook; Art. I, Sec. 26, Texas Constitution; Tex. Prop. Code, Sec. 5.043; *Bagby v. Bredthauer*, 627 S.W.2d 190 (Tex.Civ.App.-Austin, 1981) no writ hist.; *Peveto v. Starkey*, 645 S.W.2d 770 (Tex. 1982).

16. **CHAPTER 5. Concurrent Estates - Introduction; Rights of Co-Tenants as Between Themselves**, P. 334-346, casebook; *Kirby Lumber Co. v. Temple Lumber Co.*, 83 S.W.2d 638 (Tex. 1935).

17. *Severance of Concurrent Estates; Bank Accounts*, P. 346-359, casebook; Tex. Prob. Code, Sec. 46; *Chopin v. Interfirst Bank Dallas*, 694 S.W.2d 79 (Tex.App.-Dallas, 1985) n.r.e.

writ den = parties lost to Supreme Court - they agree w/ the decision and the reasoning.

in federal system

18. **CHAPTER 3. Adverse Possession** - *Introduction; The Actual, Open, Continuous and Exclusive Requirements, State of Mind*, P. 163-179, casebook; Tex. Civ. Pract. & Rem. Code, Secs. 16.021; 16.024-16.028; Tex. Prop. Code, Sec. 22.001; *Winchester v. Porretto*, 432 S.W.2d 170 (Tex.Civ.App., 1968)

19. *State of Mind* (continued), *Adverse Possession of Chattels*, P. 179-208, casebook; Tex. Civ. Pract. & Rem. Code, Sec. 16.022; *Delanay v. Padgett*, 193 F2d 806 (5th Cir. Tex., 1952) cert. den. 344 U.S. 825; *Bywaters v. Gannon*, 686 S.W.2d 593 (Tex. 1985); *Julien v. Baker*, 758 S.W.2d 873 (Tex.App.-Houston [14th Dist.], 1988) writ den., Tex. Civ. Pract. & Rem. Code, Secs. 16.003 & 16.030; *Oncale v. Veyna*, 798 S.W.2d 802, (Tex.App.-Houston[14th Dist.], 1990).

inherited: the Cr. 7 App. 10? S.G. refused to consider case

20. **CHAPTER 6.. Property and Cohabitants** - *Introduction; Dower and Curtesy; The Property Rights of a Surviving Spouse; Tenants by the Entirety; Community Property Interests*, P. 360-386, casebook.

21. *Is Education a Marital Asset?; Property Rights of Unmarried Cohabitants*, P. 386-422, casebook; *Claveria v. Claveria*, 615 SW2d 164 (Tex. 1981).

22. **CHAPTER 7. Leasehold Estates** - *Introduction; Classification of Tenancies; The Lease; Formal Requirements of a Lease*; P. 423-440, casebook; In general, see Chapters 91 & 92; Tex. Prop. Code, *Maloy v. Wagner*, 217 S.W.2d 667 (Tex. 1949); *Urban v Crawley*, 206 S.W.2d 158 (Tex.Civ.App.-Eastland, 1947) n.r.e.

23. *The Necessity of Delivering Possession*, P. 440-449, casebook; Tex. Bus. & Com. Code, Sec. 26.01. *Garner v. Crawford*, 22 S.W.2d 975 (Tex.Civ.App.-El Paso, 1929) no writ hist..

24. *Problems Regarding Use of Leased Premises*, P. 449-459, casebook.

25. *Interference With the Tenant's Use and Enjoyment of the Premises*, P. 459-472, casebook; *Briargrove Shopping Center v. Vilar, Inc.*, 647 S.W.2d 329 (Tex.App.1982) no writ hist.

26. *Interference With the Tenant's Use and Enjoyment of the Premises* (continued), P. 472-488, casebook; Miscellaneous provisions from Chapter 92, Tex. Prop. Code.

27. *Interference With the Tenant's Use and Enjoyment of the Premises* (continued), P. 488-503, casebook;. Miscellaneous provisions from Chapter 92, Tex. Prop. Code.

28. *Landlord's Liability in Tort; Retaliatory Eviction*, P. 503-528, casebook; Tex. Prop. Code, Secs. 92.331 - 92.335; *Parker v. Highland Park, Inc.*, 565 S.W.2d 512 (Tex. 1978).

29. *Transfers of a Leasehold Interest*, P. 529-551, casebook; *Davis v. Vidal*, 105 Tex. 44, 151 S.W. 290 (1912); Tex. Prop. Code, Sec. 91.005; *Manges v. Willoughby*, 505 S.W.2d 379 (Tex.Civ.App. 1974) n.r.e..

30. *Termination of Leasehold Estates and Reversion of the Premises; The Holdover Tenant*, P. 551-575, casebook. (NOTE: Please omit PP 575-589 on Rent Control)

Be

Property Outline

I.

Lytton Exam Hints

1. Texas law
2. Do not recite facts
3. To the point not much elaboration
4. Best Outline is Table of Contents
5. How are decisions made, what were the rules?
6. Exam based on class notes

II.

Personal Property

Where does your right to claim property begin? - it is not a thing instead a subject of property -

A. Chattel (personal property)

1. moveable property
2. tangible property (capable of being possessed)
3. can be apprehended for own senses (pen)

B. Corporeal

1. body, substance
2. tangible
3. feeling involved

C. Intangible

1. in itself it has no value, but actually does... stocks

D. Intellectual Property (Incorporeal)

1. patents
2. copyrights

II. Capture

1. comes into world free of ownership
 2. first in time of ownership
 3. first in time first in right
- ***Cardinal rule of Property***

4. Ferae Naturae

- a. wild animal is free agent.. reduces wild animal to capture=possession

Case Note.. Pierson v. Post

- a. Case of first impression.. ruled that once wild animal is captured it is possessed.
- b. Dissent claimed mere pursuit was enough..problem?
 1. where would you draw that line?
- c. capture reduces variables and confusion

Objective standard v. Subjective standard

A. Objective

1. B certainty in rule..
2. B reduces variables
1. D so certain it becomes absent of the gray area

Real-land attached blank personal

the legal relations between person and things

To Texas
no corporeal can be delivered by constructive or symbolic delivery

#6

requires mortal wounding or deprivation of natural liberty through caging, etc.

2. D does not address circumstances

B. Subjective

1. B considers circumstance

2. B leads to new law

1. D leads to confusion as to where to draw line

2. too many factors to be considered

Possession Most powerful concept is the concept of possession -

A. Actual Possession is with you (object in your hands)

B. Constructive Possession is not with you (and pursuit thereof)

1. lawn mower in shed

2. fox on your land

B. Exceptions to capture - require

1. reasonable test about true ownership

a. rare animal?

b. would someone reasonably own this animal?

2. where captured..

a. whose land

b. trespasser?

c. was there permission?

protect vested commercial interests

Case Note... Stephens v. Albers "Divest the Right to Animal" "Intent to Return" Put Flexibility in Capture Rule

P put time and effort in keeping of fox, known fox breeder in area, contributes to society and market, those factors eliminated capture claim by D who killed and sold fox

Issue: whether there is a property right before fox were taken?

Against subsequent purchaser prior good faith

C. Location

1. if party has permission = generally property rights

2. if party is trespasser = no property rights ✓

3. if two parties have permission P v P holds CAPTURE

Case Note.. State v. Shaw issue above

1. Ruled that fish in net were captured despite a way for fish to swim out of net.

2. "Absolute Security was not a must for property rights" ✓

D. Rule of Capture with moveable property.. Oil and Gas

1. old days you pump it you possess it Hammonds

2. now regulated by state and fed. agencies to enforce pro rate share

a. to protect oil and gas rights

b. interest in public policy

c. Real Property in ground

d. Personal Property once drilled

II

Finders .. person who finds chattel and intends to take possession of it

A. Where does property right start?

B. Virtue of possession ✓

1. taking something and making it a tangible piece of property under his possession

2. intent to take possession

Lyttle -

A) title continues to be in the original owner

B) neighbor trespasses when he takes

Fugitive Minerals - natural resources that do not stay in one place, even when they are still under ground.

2. A) Hammonds - gas re-injected into ground and has migrated to neighboring land is no longer the property of the one who first pumped it.

power and intent to exercise control and dominion over a thing

Animals REVERT TO WILD

Animals REVERT TO WILD
if animals tend to return to wild

persons without notice

C. Transfer of Title

D. Law protects in order to give incentive to acquire property (equal rights, finder, true owner)

***Rule of Finders**

Person who finds rules over all in the world except the true owner

***Case Note .. Armory v. Delany, Ganter v. Kapiloff (little boy finds jewel and shop owner keeps it claiming his rights to ownership are the same as boys.. wrong)

E. Sequence of Finders

1. Against subsequent possessor, each prior possessor is true owner

F. Trespass does not give claim to ownership Fav. v. Miller ... King George Statue

G. Property Found Classifications

1. Lost Property: involuntary parting, no intent to part with ownership of property. Finder usually prevails (negligence, carelessness, etc.)

2. Abandoned Property: voluntarily leaves property with no intent to return for property. Finder usually prevails (statutes vary in state. T & C finder)

3. Mislaid Property: intentionally places object somewhere and forgets where he put it. Short Term Memory Classification (Locus in Quo prevails)

a. Why?

1. protects true owners rights

2. in respect for true owners return for property

4. Treasure Trove.. found buried in earth.. Not in Texas.. considered Mislaid property — Am. Ct. usually do not give to finder / exceptions have been made. FAVORITE

***Case Note.. Schely v. Couch Texas Case

1. money found buried on property where ind. was working for property owner of land not money

2. ruled that no treasure only mislaid = locus in quo not finder → to protect TO

5. Charter 72 of Property Code

1. makes abandoned property subject to statute of possession

a. Presumption of abandonment after 3 years

b. holder must report to state

c. after 1 year state gets possession

H. Flaws of Classification

1. all based on subjective intent of true owner. why is the property where it is?...

EX. Find wallet on floor in St. Mary's

1. mislaid = property of St. Mary's?

2. lost = true owner

3. abandoned = finder ✓

***Scope of employment can determine rights of finders in situations where property is found on employers property by an employee

IV.

Discovery

***Persons right of ownership can rise no higher than the parties right who transferred it (you can convey less, but never more)

A discoverer has title in the property.

Poss = ownership except to TO

Finder or bailment or lost has right to poss. over wrongdoer

U.S. if lost property and goes to finder? No treasure trove 5. Charter 72 of Property Code

Mills suggests that - considered as mislaid - since could return

— occupancy

1. Case Note... McIntosh v. Johnson

- a. Indians had possession not ownership..
 - b. A buys land from Indians and his right is not ever higher than Indians rights
 - c. this made A a possessor not an owner
2. You can not have property rights (Indians) until property actually existed
3. How else could we justify claiming land over Indians
- a. by agreement or
 - b. by force

V.

Creation

What kind of property is created and when it is who claims ownership?

A. News of the Day (Literary)

*** Case note.. Ass. Press v. Int. News

1. What gives rights to news of day (not totally, but should be weighed) *if it is literary quality and of unique creation, protect. by copy. laws*
 - a. money spent to obtain it
 - b. time to produce it
 - c. effort to make and distribute news
2. EQUITY... What is fair.. must have protection to news agencies for their efforts and labor

*** Once news is published and available for public to read and distribute property is abandoned but can still have copyright restrictions

Case note.. Davis v. Davis

1. embryos possession when parents break up.. who gets possession
2. embryos are property
3. how to decide
 - a. preferences of parties involved
 - b. intentions for future
 - c. pro creation outweighs veto power
 - d. individual circumstances in case
 - e. quasi property (seems like it is property and it is your property)

VI.

Possession by Gift

1. volunteered and gratuitous - *voluntary transfers title to another*
2. ~~no~~ intentions of receiving payment or consideration for anything in return *(not wanting)*
3. what is presently affected? a promise of future is not binding *(now you know better?)*

A. Types of Gifts

*Volunteered
no consideration
presently affected.*

1. inter-vivos- gift within the life of the donor (irrevocable)

- a. must be complete IDA (intent, del. accept)
- b. not complete until delivery is complete

I. D. A.

2. causa mortis- gift given in anticipation of donor's death *(must be made prior to death)*

— immediately effective

- total and complete control
- intent to deliver
- made in contemplation of death
- revocable upon donor's recovery.

a. must die from experience that he thought death was imminent or he can take back

3. will does not invalidate causa mortis gift ✓

B. Elements of Gift

1. Intention to give gift
2. Delivery of gift (most difficult to determine)
 - a. once delivery is determined, intent and acceptance are clearer
3. Acceptance

*** Family matters are more difficult to prove and separate delivery..

Families are natural desire and object of affection

C. Types of Delivery (must be complete delivery)

1. Constructive- donor gives up access to article that is given - delivers object which allows access.
 - a. Relinquish dominion and control by use of object
ex. key to lockerbox (only if there is only one key)
b. not always held as true delivery.. provide evidence of intent
2. Symbolic- an object given as representation of the gift to be given
 - a. man gives wife shares of company by writing on paper Symbolic = note example
 - b. more effective if actual delivery is beyond reason
 - c. no other way to transfer property
3. Actual Delivery- actually given to person - relinquishment of control and dominion over the gift
 - a. lessens questions on delivery issue

*** Case Note... Gruen v. Gruen (step mother and keeping of painting from son)

1. Major characteristic of life estate is "right of possession"
2. symbolic letter represents painting
3. possession postponed until dad's death
4. court rules son has ownership despite lack of possession

*** Case Note.. Wells v. Sansing (little leslie gets key to box in bank and bank refuses to give her possession)

1. no possession for little leslie no "present delivery" ~~there~~
2. donor never completely relinquished dominion and control (there were two keys)
3. donor could have reasonably completed delivery but never did - why not? intent?
 - a. must protect rights of donor as well
 - b. key could be stolen

D. Summary of Gifts

1. must be complete
2. must relinquish dominion and control
3. causa mortis- going to die; revocable if you don't die
4. inter-vivos- still living - delivery is key -
5. agent can be instructed in gift exchange
 1. Abernathy v. State- instructs 3rd party to give gift to 2nd party before 1st parties death - ritual delivery and valid
6. circumstances in case can persuade courts to rule in certain directions regarding intent of donor ✓
7. Once gift is completed a will has no power in relation to that property

Agent - holds something for another and awaits further instruction from the true owner -

Trustee - holds something for ~~the~~ another and true owner is completely out of the picture.

Delivery = key to gift
SAC

Will
1) effective upon death
2) testamentary disposition
3) intent is clearer

State v. Abernathy
envelope w/ cash
given before death
valid -

look to intent of donor

agent not delivered until
agent makes actual delivery

delivery made

VII. Chapter 2 Rights

A. transfer of property

B. color of title *one who enters under apparent authority by evidence of document, and for 1 reason or another it is defective*

1. the person with the strongest title gains possession rights / ownership

2. person stands on the merits of his title

a. Trespass to Title Test

1. trace ownership back to sovereignty *SCSAP*

2. trace back to common source (family heir of prop)

3. adverse possession ~~FOFBPP~~

4. prior possession *BA*

SCSAP

***Case Note.. **Tapscott v. Cobbs** - person with no title who possesses land does not own land. If no title between parties use trespass to title formula

3. Adverse Possession statute

a. taking possession when title is in possession of someone else

b. based on Trespass to Title Test

VIII.

Powers of possession — *Conveyance* - PO can only convey the same title he has; more better

A. to encourage economic flow of trade

B. to protect individual who buys something in good faith and knowledge

1. Equitable Estoppel -

individual that acts on deceptions of another and proceeds to take possession of property can be ESTOPPED from ownership of property

2. Statutory Estoppel - *creature of the legislature*

individual that is selling property is not in the business of that property that agreement can be ESTOPPED

a. selling a painting better be in paint selling business

b. good faith

***Case Note **Porter v. Wertz**

1. statutory and equitable estoppel in effect

2. STAT...seller was in food business not painting business

3. EQUIT...buyers bought painting without looking into purchase.. they acted on the deceptions of another

4. court rules possession back to true owners

***Uniform Commercial Code

1. does not protect any property transaction that based on bad faith or deceptive practices

2. it does protect good faith purchases

ex.. take watch to get fixed and store then sells your watch to A.

A has a protected interest in watch since he bought in "good faith"

Prior possessor can have better claim to property than subsequent possessor

Jus Tertii Rule -

Can not set up title in another

VALID claim can be made

Jus Tertii Rule

claimant

in transfer to another

Jus Tertii
can't bring 3rd party to defend prior poss. claim

IX.

Obligations

A. Bailments

conventure - the rightful possession by one person of the goods of another.

1. the delivery of goods to someone for an intended purpose
 - a. bailee- person in possession of personal property
 - b. bailor- person who gives possession to bailee
2. normally bailment is consented, but law will sometimes uphold no consent bailments

transfer property without transfer of ownership right.

B. Responsibility of Bailee and Classifications

1. Ordinary care and Reasonable care (*liable for ordinary negligence*)
 - a. benefits both the bailee and bailor
2. Must be grossly negligent to be held responsible
 - a. when benefit is only for bailor (*gratuitous*)
 - b. ex. neighbor keeping your belongings so they won't get stolen

Bailee - person in possession of goods

Bailor - person who entrusts the goods

3. Extraordinary care (*liable for slight negligence*)
 - a. benefit for sole purpose of bailee
 - b. ex. neighbor borrows something from you

Finder - a gratuitous bailee he has certain duties as to the property.

Intentional failure to perform duty

reckless disregard of the consequences insofar as it affects the property.

*** Practical Working Rule ***

1. Bailee is in better position to have knowledge of what happened to the goods in question. ✓

*** Case Note.. Peet v. Roth Hotel

1. lady leaves ring with desk clerk to give to another guest and places it on desk and ring disappears.
2. ruled there are benefits for both hotel and lady with bailment
3. ordinary care and reasonable care is standard
4. not reasonable to place ring there.. hotel liable ✓

C. Burden of Proof

1. prima facie case- once P establishes bailment, (often presumed) the burden of proof to disprove negligence or claimed care for property shifts to defense
 - a. if D does not refute evidence of prima he loses
 - b. bailment was active, delivered, and damaged in bailee's possession
2. practical working rule- bailee is in better position to have knowledge of what happened to the property
 - a. bailment was active
 - b. property delivered
 - c. property damaged or disappeared while in ^{bailee} ~~bailor~~ possession

① delivered & accepted

② del. in good condition

③ damaged or not returned

X.

True Ownership and the subject of Bailment

- A. Bailment is relationship between true owner and possessor
- B. Transfer possession by mutual consent
- C. Once you take possession of something you make a decision to be a bailee for true owner

B. Fuedal Characteristics

1. influence of Norman Invasions... took place in 1066...affected property law directly. What was the King going to do with all the land he conquered?
 - a. parcel the land out to his buddies (the Vassels)
 - b. subinfuedate land to next vassel (a megne lord)
 - c. land goes down further (a tenant in a megne)
 1. they are the guys that have possession of the land, but no ownership
 2. they run land for the Vassel who received land from the Lord

C. Seisen of the Land

1. service in exchange for the land
 - a. King is owner of the land, and for its use you must provide a service to him

D. Relationship between the Lord and the Vassel was called a "Free Tenure"

- a. that where the term Free Hold comes from

E. Services of land (obligations created by land possession)

1. Military
 - a. Knight service.. provide military help when called upon in exchange for possession
 2. Non Military "Socage"
 - a. provide agricultural service in exchange for possession
 3. Frankelmoin
 - a. provide ministerial services to community in exchange for possession
- *** Incidence of Tenure.. Equates with the Lord's Right

F. Blackstones tenure incidents (7)

1. reliefs
2. escheats
3. wardships
4. marriage
5. primer "seisen"
6. alienation
7. aids

*** Problems with system.. requirements of services was declining but tenure was still in effect.

EX. Daddy dies and you want to succeed on his property

1. pay relief to King to get possession
2. King is Primer Seisen
 - a. entitled to first possession over everybody else

G. Marriage and Wardship

- a. minors left after daddy dies (male under 21: female under 14)
- b. lord has obligation to the minors as the Lords ward
- c. lord gets all rights until minors are no longer minors

- d. lord has right to arrange marriage
- e. lord keeps all profits from arranged marriage
- f. if ward refuses on marriage, lord has right to the value of the marriage
 - 1. the land would be forfeited

H. Freehold Estate

- a. eliminates act of free tenure
- b. a possessory of state in which the free holder would be vassel on the tenant
 - 1. entitled to poss. Subject to services and obligations particular to tenure

XIII.

TYPES OF ESTATES

Estate in general

- 1. not the land itself, but a relationship to the land, a relationship that the law lets someone bear the land his right to hold or possess.

Measure an estate in relation to the land

- 1. what is degree
- 2. what is quantity of that right (how much)
- 3. how long is relationship (duration)
- 4. what is nature of the relationship
- 5. what is the extent of the relationship

A. FEE SIMPLE ABSOLUTE

- 1. the ultimate relationship
- 2. indefinite
- 3. all rights with respect to property
- 4. only estate that does not, can not, and will never have future interest
- 5. all the sticks in the bundle "right now"
 - a. old days words "to heirs" were important
 - b. ~~modern times "to heirs" is meaningless~~, *not true*
 - 1. unless words of limitations (FSD)

*Altogether - difficult to transfer
pros: to someone else.*

A to his heirs = B's FSA

- 6. fee simple absolute last forever
 - 1. parties can change through transfer (sell) or death by will
- 7. mathematics of fee simple absolute
 - 1. if you add up all the estates in any particular piece of land, the sum of the parts must equal Fee Simple Absolute
 - 2. $Est(p1) + Est(p2) + Est(p3) + Est(p4) = FSA$
 - 3. all estates are carved out of FSA

*to his heirs
are
words of
limitations*

*they indicate
the estate
that has
been
created*

***Case note... White v. Brown

T gives to O "my house to live in and not to be sold"

T dies intestate leaving holographic will

- 1. court looks at meaning of words.. her intentions
- 2. difficult to interpret a persons true intentions
- 3. words do not specifically say what she wants
 - 1. life estate? Over upon death
 - 2. fees simple absolute. Indefinite

I Classification of Future Interests in Transferees

A. Remainder Characteristics

1. must be capable of possessory upon termination of preceding estate to qualify as remainder
2. created simultaneously with the creation of a present possessory estate
3. must vest in right when LE is created (VR)
4. can vest during or immediately at the end of the LE

B. Two types of Remainders

1. Contingent
2. Vested

Condition Precedent v. Condition Subsequent

Condition Precedent (CP) - interest is subject to CP when the effected party is entitled to the right of PO when condition takes place

is

VESTED ABSOLUTE automatic PO b/c the only event necessary that LE ends

- a. vested remainder (indefeasible vested remainder)...becomes immediately possessory w/o being cut short or made smaller
 1. in all events the interest will become possessory, albeit sometime in the future.
 2. no condition precedents needed
 2. it is alienable, devisable and descendable

EX. O ----->A for life then to B

all B needs to do is wait for A's death

B's interest is Absolutely Vested Remainder

- b. VESTED IN PARTIAL DIVESTMENT (subject to open)(look for rule of Perp)

1. can be made smaller upon the occurrence of an event
Ex. O to A for life, then ~~A's children~~ *B's children*
the more children the smaller each estate will become
2. remainder limited in favor of a class (group of persons collectively described)

Doctrine of Marital

- a. class gift is vested as long as:

1. at least one living member of class
2. there are no unmet conditions precedent attached to the gift

- b. subject to open if new persons can join class

3. it is alienable, defeasible and descendable

EX. O ----->A for life and upon A death to B's children (C-1 C-2) (closed when A or B dies, open as long as B is alive)

- c. VESTED TO COMPLETE DIVESTMENT

1. can be cut short by the occurrence of a CS which denies the holder the right to PO and shifts the VI and poss. to someone else.

2. alienable, devisable and descendable unless the interest is subject to an express or implied condition of survivorship
 EX. O -----> A for life, then to B ; but if B dies w/out surviving children, then to C.
 if B dies w/out children, B is cut completely out and it goes to C.

a. C is has a shifting executory interest in FSA

2. Contingent-

1. may or may not become possessory

1. PO to an unborn person
2. PO to unascertained person
3. to a person who is either born or ascertained but whose interest is subject to the occurrence or nonoccurrence of a condition precedent

2. Condition precedent.. entitled to PO upon the occurrence of a specified event but not necessarily ownership

EX. O -----> A for life then to B, if B survives A

EX. O to A for life, then to B, if B attains the age of 21

a. B has a contingent remainder in both examples

3. Condition Subsequent... the denial of the right to PO if specified event occurs and the right to future interest or present PO is passed to another

remainder must be able to take effect immediately on the expiration of poss. estate.

common law prohibited the belief of destruction unless done during time of estate.

C. Executory Interests (The executioner.. abrupt possession)

1. Springing--- future interest waiting to possess by springing from O to B upon the occurrence of an event

Look for the Gap in time.. It must go back to O first, then back to another party.. it will spring

EX.. O -----> A for life, then one year later, to B

EX.. O -----> A "upon her marriage"

***O = reversion in FS subject to Sp.EI

***A = LE (life estate)

***B = Springing EI(executory interest) in FSA

were prohibited in common law because breaches a gap in seign

Some period of time when there is no transfer subject to the present interest

2. Shifting--- future interest because of which the right to PO will shift from one person to another (look for vio. of rule of perp.)

EX.. O -----> A ; but if B returns from the war, then to B and his heirs

*** O= nothing

*** A= FS subject to EL

*** B= Shifting EI in FSA

EX. O to A for life, then to B; but if the property is not used as a church, then to C

*** O = N

*** A= LE

take effect on the happening of a condition not a limitation

- D. based on fact that you never truly have title because true owner is out there

XI.

Responsibilities and Obligations

1. for damage to found goods in your possession (gross negligence)
 - a. **Case Note.. Joy v. Crawford..** chipped diamonds in ring before returning to true owner
2. for loss of goods when reasonable care is not taken
 - a. **Case Note.. Hilton Case..** busboy finds purse in hotel rest., gives to cashier, and cashier gives to wrong person
 - b. bailment established for both benefits "Mutual Bailment"
 - c. court ruled that due to ritzy hotel it was reasonable for there to \$13,000 in jewels in purse. Hotel liable
3. responsible for not only lost property for which he has knowledge, but also for property which he could "reasonably expect" to find contained in bailed property
- (4. parking lot liabilities)
 1. ticket disclaimer does not eliminate liability ✓
 2. circumstance weigh heavy on liability
 3. personal service compared to ticket dispenser
 4. notification of disclaimers
 5. communication between parties

*defendant
parking lot
liability*

*** **Case Notes.. McAshen v. Cavitt, Ampco v. Williams,** (lack of knowledge of contents in trunk.. not reasonable not liable)

Mcashen v. Cavitt

- a. P leaves car at lot and it is stolen when she returns
- b. Disclaimer and sign posted says no liability
- c. Attendant never brought disclaimer or closing time to P attention
- d. Court rules that D is liable due to lack of communication between P and D

*** Majority states that degree of care is based on how you classify bailment.. who is getting the benefit?

XII.

Foundation of Estates

A. System of Landowner

1. very personal relationship between the Lord and the person under the Lord. (the subjects of the Lord).
 - a. Vassel- good position to be in.. you choose the Lord and the Lord chooses you.
 1. Holy voluntary thing
 2. It becomes a sacred bond
 3. Receive benefits from Lord, and vassel would agree to provide services for life to Lord "swear fuedal"

2. only to inter vivos conveyances
3. O to A for life, then to O's heirs (O is still alive)
 - a. DWT tells us that O's heirs don't have a contingent remainder
 - b. the attempt of O to create a contingent remainder while he is alive is void
 - c. we are left with a life estate for A and a reversion for O
 - d. this doctrine survive b/c it is a rule of construction not law
 - e. satisfies grantors intentions to provide for heirs

V. Rule of Perpetuities (deals with future interest only) *Grantor → lives in being → ultimate taker*

Must be absolutely sure *** An interest is invalid, if there is any possibility that it might remain contingent (or not vest) for a period longer than lives in being (at the time interest is created) + 21 yrs + 9 months *** *Lives in being is measuring tool -*

- a. look for in shifting and ~~springing~~ *executory* interests
- b. must vest or fail in 21 years of life in beings death
- c. any and all possibilities should be considered ✓
- d. ~~rule of convenience~~ *rule of law not construction*

In Texas so powerful it's part of the Constitution

1. a person can give birth until death - *84 yr old, Jr*
- e. Never applies to Poss. of Reverter, Right of reentry, Reversions ✓ *Indefinite estate*
- f. does not apply to vested remainders except subject to open

*** Cy Pres ***

- a. allows court to alter a will to avoid violation of rule *constructive & lit*
- b. exist in most states including Texas

Wait and See Doctrine

- ✓ g. effects contingent remainders, exec. interests, (open classes)
- h. life in being *(open class is not life in being)*

Power of Appointment are subject to ROP

1. the person in estate that makes everything matter
2. nothing needs to be considered until ??? dies
3. at that time we must be certain that within 21 years + 9 months that future interest in question will either vest or not vest

EX. O to A for life, then to A's children who reach age 30 *violates rule of Republic it is age and then could be children 30 yrs from the rule*

VI. Womb Rule

1. + 9 months
2. time of this could be a question *b/c at A's death in 21 yrs A has child every kid child reaches 30 - 40 yr. Rep*

VII. Merger Doctrine

- a. If O conveys to A and remainder to A's children, the conveyances merge *O → A, then to A's children*

1. unless there is an intervening estate *a greater estate merges w/ a lesser estate -*
- will not destroy a contingent remainder

Three steps in working Future Interests Problems

1. Determine what interests are created A?, B?, C? ✓ *A KA*
2. Apply rule of Perp
 - a. lives in being
 - b. ultimate takers vesting in 21 yrs + 9 months???
 1. consider all possibilities

Shelly does magic on words and merge doctrine merge words together

A has life estate and next estate they merge

no intervening interest allowed if we want merge

XVIII.

Fee Simple Determinable

A. automatic cease of possession once condition is broken

B. words to look for

1. ~~for~~ as long as
2. while
3. during
4. until

Always requires P.D. Reverts

Condition Subsequent

A. possession does not cease until action is taken to reenter property

B. words to look for

1. but if
2. provided that
3. on condition that

NC?

*** you get a reverter by the words of grant and not by using revert.

ESTATES IN LAND			
Present Interest	Words to Create at Common Law	Future Interest	
		In Grantor	In Third Person
<i>A. Fee Simple Estates</i>			
FREEHOLD ESTATES			
① Fee simple absolute	"and his heirs" <i>Words to look for</i>	None <i>no grant</i>	None
② <i>Fee simple determinable</i>	"so long as," "while" "during"	Possibility of Reverter	Executory Interests
b. Fee simple on (or subject to a) condition subsequent	"provided that," "on condition" "but if"	Right of entry for condition broken or power of termination	Executory Interests ⁶
B. Fee tail ⁶	"and the heirs of (his or her) body"	Reversion	Remainders
C. Life estate	"for life"	Reversion	Remainders Executory Interests
<i>Leaseholds</i> NON-FREEHOLD ESTATES			
Term for years	"for ___ years"	Reversion	Remainders Executory Interests
Tenancy at will	"at will"	Reversion	Remainders Executory Interests
Periodic tenancy	e.g., month to month	Reversion	Remainders Executory Interests

§ 4.2 THE FEE SIMPLE ABSOLUTE

WHITE v. BROWN

Supreme Court of Tennessee (1977).
559 S.W.2d 938.

BROCK, JUSTICE.

This is a suit for the construction of a will. The Chancellor held that the will passed a life estate, but not the remainder, in certain

5. Entries expressed in the plural indicate that more than one type of the named interest may be created.

6. Prior to 1285 words that created a fee tail created a "fee simple conditional". The grantor's estate was called a possibility of reverter.

- (c) The "fee simple on condition subsequent,"
- (d) The "fee tail" (which was the successor to the "fee simple conditional"), and
- (e) The "life estate."

There are three types of non-freehold estates. These are:

- (a) The "term for years,"
- (b) The "tenancy at will," and
- (c) The "periodic tenancy."

In some instances these estates could be followed by a future interest in another person or class.

If someone has a future interest in the same property in which someone else has a present interest (whether that present interest was a freehold or non-freehold estate), the future interest is classified as either a "reversionary interest", a "remainder" or an "executory interest."

A reversionary interest is an interest retained by the grantor. There are three types of reversionary interests:

- (a) The "possibility of reverter,"
- (b) The "right of entry for condition broken or power of termination," and
- (c) The "reversion."

Remainders and executory interests are future interests that are transferred by a grantor to a third party. There are four types of remainders and two types of executory interests. The four types of remainders are:

- (a) The "indefeasibly vested remainder,"
- (b) The "contingent remainder,"
- (c) The "vested remainder subject to open (or partial divestment)," and
- (d) The "vested remainder subject to complete divestment."

The two types of executory interests are:

- (a) The "shifting executory interest," and
- (b) The "springing executory interest."

Executory interests were not recognized as valid common law estates until after the enactment of the Statute of Uses, 27 Hen. 8, c. 10 (1535), which became effective in 1536, although they were recognized earlier as valid estates in the courts of equity.

It is ironic that the states adhere to the classification of estates as developed at common law whereas in England today only the fee simple absolute and the term for years may be held as legal estates while the other estates are valid only if held as equitable estates in trust. See Law of Property Act of 1925, 15 & 16 Geo. V, c. 20.

The following chart highlights these present and future estates: