1-1-1956

Property I, Volume 1

Maynard Jackson

BOSTON UNIVERSITY

Property of Maynard H. Jackson, Jr.

Class Property I

LAW RECORD

Boston University Law Supply Shop

"ANOTHER MAPLE LEAF PRODUCT"

F

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(2)

(3)

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PROF. Boyer

ASSIGNMENT: Chapters 2, 3, 4, 9, 27.

NOTES: 9.14.56

Standard ASSIGNMENT: 15 pages OR 5 cases, whichever is longer.

BROWN: PERSONAL PROPERTY

FREYER: Readings in PERSONAL PROPERTY

*

* Abstracts * *

@ Title + Citation
(2) Action (e.g., trespass, theft)
(3) FACTS.
(4) Issue
(5) Decision
(6) Reasons for decision
(7) Rule of law for the case.

Substantive law: general rules of possession of property.

Procedural " : general rules governing operation of cases, litigation, etc.

NOTES: 9.17.56

Trespass: direct injury to the indiv. &/or his property.

Trespass on the case: indirect injury, often negligent Trespass.

PIERSON v. POST: The law in N.Y. before the case was the same estab. by the Judges. The prior law was imbued in the body of common law & the Judges reaffirmed it.

Keeble v. Hickeringill: Difference between this & the previous: Interference with a man's occupation and livelihood here, and nothing of the sort there. Also, the interference here took place on property owned by the plaintiff.

PROPERTY: ⟷ Tangible things which are subject to ownership.

Econ. definition ⟷ Something of an exchange value

legal " ⟷ The legal relations between persons in respect to a thing.

NOTES: 9.19.56

(Legal def. of) Property — Legal relations between persons in respect to things.

Hohfeld (Yale)

Legal relations: (Hohfeld felt there were 8 fundamental conceptions of legal relations): In pairs or correlatives

(1) Right, duty
(2) power, liability
(3) Immunity, disability
(4) Privilege, NO right

Right: a legally enforceable claim that another person shall do a given act or refrain from doing the act.

Duty: a legally enforceable obligation to do or not to do a given act.

Power: the ability to produce a change in a given legal relation by doing or not doing a given act.

Liability: A subjection to having a legal relation changed by the exercise of a power.

Disability: the inability to alter the given relation of one who has an immunity.

Immunity: The freedom against having a legal relation altered by a given act or non-act on the part of another.

Privilege: the legal freedom to do a given act or refrain from doing it.

No right: NO right to interfere with the action or non-action of the person who has the privilege.

Property: At first, real property action concerned rights in rem (i.e., things themselves). But damages for indirect injury concerned personal property. Today:

(1) Real - concerning property or land.
(2) Personal - " chattel and other intangibles

Chattel Real - originated as personal property.

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* Action in Rem : to RECOVER ~~collect~~ the thing itself
  " " Personnum : to collect damage for the worth of the thing.

Interest : either singularly or generically as a group the 8 fundamental conceptions.

Rule Nisi : Burden on Appellant. Judgment will be given for the losing party unless the original winner can show cause why it shouldn't be.

Rule Absolute : Judgment reversed + RULE NISI upheld.

NOTES: 9.21.56

JURY : TO DETERMINE QUESTIONS OF FACT.
JUDGE : " " ISSUES OF LAW.

IF THE JURY IS WAIVED, THE JUDGE HAS BOTH FUNCTIONS. CASES ARE NEVER APPEALED ON ?? of FACT; ONLY ON LAW. THIS MIGHT ARISE BY QUESTIONING THE DECISION OF THE JUDGE.

* METHODS OF RAISING ?? OF LAW IN ORDER TO GET AN APPEAL:
  * (1) DEMURRER - (APPEAL COULD BE ON THIS GROUND.)
  * (2) MOTION FOR A DIRECTED VERDICT - MIGHT BE GRANTED IF THE JUDGE FEELS THAT EVERYTHING A HAS SAID WAS TRUE; AND THAT B FAILED ~~TO~~ PRESENT ANY PERTINENT EVIDENCE. FAILURE TO DIRECT VERDICT FOR A DOES NOT NECESSARILY MEAN THAT B WILL WIN. [NO NEW EVIDENCE IS PRESENTED ON THE APPELLATE LEVEL.]
  * (3) A MOTION FOR A JUDGMENT N.O.V. (NOTWITHSTANDING THE VERDICT) - IF THERE IS ANY EVIDENCE TO SUPPORT THE VERDICT, THE JUDGE SHOULD NOT GRANT THE N.O.V.

* PIERSON V. POST : ON APPEAL BY CERTIORARI. WAS THE DECLARATION SUFFICIENT TO JUSTIFY JUDGMENT FOR POST?
* KEEBLE V. HICKERINGILL : ON A MOTION FOR A JUDGMENT N.O.V.
* YOUNG V. HICHENS : ON A RULE NISI (JUDGMENT FOR INITIAL LOSER UNLESS JUST CAUSE CAN BE SHOWN [WHY IT SHOULD NOT BE REVERSED]). If allowed, then Rule Absolute.

NOTES: 9.24.56

Wild Animals

General Rule { If AN ANIMAL FERAE NATURAE, which was once in captivity, escapes ~~and~~ from A, + B finds the animal, A cannot reclaim the animal, for the animal had returned to its natural state when it was found.

Notes: 9.27.56

Notes: 9.27.56 — Assign – next chapter.

Problem (p. 24): anything of a wild nature, even gas, which escapes its confines cannot be claimed by the original possessor.

Problem (p. 27): NO DIRECTED VERDICT. Should go to JURY.

" #3 (P. 28): Can this be distinguished? Yes. Mussels don't move much, certainly not as much as trout.

read more & check on ~~[illegible]~~ Boyer's ans.

Accession: Increasing the value of property by laboring on it or by adding to it.

Specification: change of form of the property. e.g. grapes into wine, or wheat into bread. (see, CONFUSION)

But, you must distinguish between the above + articles which are incorporated but can be easily detached; e.g. tires on a car.

If something has been greatly enriched, the claimant cannot obtain the thing itself, even against known trespasser. May recover damages: value of article before conversion.

NOTES: 10/1/56

In an admiralty case, the custom of the industry plays an important role. Even if the person is ignorant of these customs, he is still ~~[illegible]~~ liable.

Summary of Chap.

* (1) animals ferae naturae, etc., belong to no one.
* (2) Such things become private property when reduced to possession.
* (3) Possession: constructive + actual. One can have dominion without either kind of possession.
* (4) Role of Judge + Jury – under proper directions the decision as regards possession lies with the jury. The judge decides the facts of possession when everything is so clear that reasonable minds cannot disagree.

The test when judge decides: D.V. - N.O.V.

(1) Is there any evidence at all which, if believed, would support an opposite finding. If so, no directed verdict + no verdict N.O.V.

The belief or disbelief of facts is up to the jury. The judge tests the case by seeing if there is any evidence to support the finding

EXAMS:) Ans. the ?? asked. Don't argue with the given facts.

(2) Are the facts clear enough in favor of D; if, if so, there should be no directed verdict, vice versa. Is there any doubt which would lend any skepticism at all? If so, it should go to the jury + no directed verdict nor verdict N.O.V. If there is any evidence in support of ~~directed verdict~~ the other party, there should be a directed verdict.

Hannah v. Peel LOST PROPERTY

The owner has precedence [sic] over the finder as regards custody of ~~of~~ ownership in the case of default.

Notes 20/3/56

Hannah Case

Res Judicata - once parties have litigated a particular dispute, "the same" cannot again litigate over the same".

Possible actions an action to recover IN SPECIE the thing unlawfully taken + now contested.

(1) Replevin against finder for Thing itself (In Rem)

(2) Against seller in conversion for value of brooch

The finder of lost items has better rights than anyone else. Lost imbedded items belong to the owner (imbedded in the soil), as a general rule.

Whether the Judge or the Jury decides depends on the inferences involved in the finding of the object in ??. Technically, these should be ?? of fact. But, often they are construed to be ?? of law.

Notes: 10/5/56

Danielson v. Robbs 44 Ore. 108 (1904)

Kids found a can of gold coins while in the employ of A. It claimed it: money was carefully put in can & buried. This is a new form of "property": Treasure trove. In ∪/ property, the object is left in protection of the house, drawer, etc. Treasure trove was placed in a hiding place + not in the land owners custody and therefore, as far as he knew, it never existed. Here, the gold coins were said to be treasure trove + given to the Kids.
Treasure trove is hidden property.

If one is within his line of duty, he is supposed to return the articles. e.g., bus drivers, train conductor. It is within their scope of employment.

Allred v Biegel 219 S.W. Sect
Owner of the land owned the buried canal found by kids.
Ferguson v. Ray 44 Ore 557
Lessee found mineral oil in bags under ground. Not lost, not treasure trove, and not abandoned. Ct. held, left property & belonged to lessee.
To lose is to involuntarily release rights of property.
Durfee v. Jones 11 R.I. 588 (1877)
Money in crack of safe. Held, for finder (money construed to be lost and unwittingly held.)
Treasure trove - to finder, even in trespass.
Lost property - finder prevails
Imbedded " - owner " usually

Notes: 10/8/56

Bridges v. Hawkesworth

Views of the decision:

(1) Notes never were in custody of D nor in protection of his house as they would have been had they been intentionally placed there. The place of finding is immaterial

Russell (2) Notes, being dropped in public part of shop, were never in shopkeeper's custody nor within protection of his house (public v. private places of finding).

Holmes (3) There was no intent to exclude others from pocketbook: no intent to exclude others from the place of finding.

Pollock, J (4) No de facto control. Some customer was more likely to find notes than shopkeeper or employee

Salmond (5) No mental attitude (animus) on shopkeeper's part to get them due to ignorance of their existence

(6) Dissention: Shopkeeper would have control over all things found on his premisis. No distinction between private & public places of finding.

A servant can only have custody of a thing & theft, to-wit therefrom, would be a crime against the master or employer. [Larceny would lie]

Problem #5 (p. 38)

Notes: 10/10/56 Adverse Possession

Characteristics of adverse possession (necessary to have)

(1) Notorious and open possession

(2) Continuous possession by same person or persons (or by "tacking on")

(3) Adverse or hostile - under claim of right. Possession must be insubordination of the deed of the grantor. He does not recognize the true owner.

(4) Possession - there must be possession by the adverse possessor.

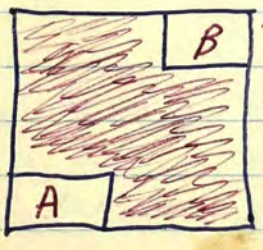
Notes: 10/15/56

Adverse Possession: P. 43 Problem #1

Opposing Theories { ① As long as A claims land, regardless of reasons for claiming it, adverse possession will accrue after the statutory requirement of time has elapsed. (Illinois Statute)
② If A has no intention of subordinating the land owner's title and establishing adverse possession, A will not acquire ownership of said land, regardless of the length of time A is on the land. (Iowa Statute)

Elements of A/P:
(1.) Notorious
(2.) Continuous
(3.) ~~Open~~ Adverse
(4.) Possession
(5.) Exclusive

In order to have adverse possession, you must have claim of title, not necessarily color of title. As long as the action is not in subordination of the true owner's title, there is no adversity. If subordination is present at the time of the initial action, then subordination continues. Hypo: A, going to Fla. for winter, lets B stay in his northern home for the winter. A doesn't return until 25 years later. B lives in the house for those 25 yrs. Does B have adverse Possession. - No. The initial action was not in subordination of the owner's title.



#1

If A establishes adverse possession to a part of a tract of land and A has color of title to the whole tract, A can claim all of the tract of land under constructive adverse possession. If the tract is divided into separate parcels, const.

(p.

#2

adverse possession would not apply. [Note #2]. If the tract is excessively large for the particular part of the country, constructive adverse possession would NOT necessarily apply. Eng. pt. of view - Not USA

If A owns land next to B's land and there is no visible separation, C cannot claim title to A's land by establishing adverse possession on B's land.

Hypo: [Note No. 1] A and B settle on opposite ends of a tract of land. B files his claim first, but A had settled first. The tract of land separates A + B. B chops down trees on this tract and A sues for trespass. Held, for A: A had estab. adverse possession first and therefore had color of title to the intermediate tract of land.

Rule of Law: There must be color of title for constructive adverse possession to be in effect.

(p.43) **Problem #2**: The first will (1944) could have been sustained since the intent to revoke was only conditional upon the 2nd will being valid. 2nd will was invalid.

State v. Cox: Faulty instructions to the jury by the Judge. The Judge stretched the statute by saying the porter needed no intent to possess the illegal whiskey. This was reversed above.

10

✓(1) Georgia Board of Regents ✓(5) Grandfather
✓(2) Sandra
✓(3) Janet
✓(4) Jeanne

ΦBK ΦBK

Notes: 10/16/56

Ewing v. Burnet

The court was correct in not awarding a directed verdict; for, in order to do so, there must be NO evidence or doubt against the moving party; and for a ct. to grant a directed verdict, while doubting whether the case for the moving party was beyond reproach, would be an error.

Had to determine:

① What acts were made (by the claimant to the land) which would show possession?

② And, after determining the above, the ct. must establish a norm to which the acts could be ~~comparison~~ compared so as to decide whether the acts constituted possession.

Possession - demands some direct and phy rel between the possessor & the land - living, building or cultivating it, plus intent.

Continuity - y must be a reas persistency in the poss. On le land is neglected for long periods of time, le poss is deficient in continuity.

* Trespass v. possession - depends upon the utility of the land, the use to which it could be put, and the intention at the ~~time~~ of entry.

Brumagim v. Bradshaw

This case was reversed due to error in the directions to the Jury (i.e, the instructions). The Judge invaded the province of the Jury.

Did the conduct amount to possession? Does the P have prior possession? The true owner is not involved, but the claimant claims prior possession.

Gillespie v. Dew

Reversed on appeal for ~~error~~ error. On land is not occupied by the owner, he is held to be in poss by construction of the law (a fiction) and may maintain an action against trespassers. Title implies Constr. Poss.

One holding title (even by constructive poss) may put out one having A/P only.

Bailments

Notes: 10/19/56

State v. Schingen

* **Bailment v. Custody**

A S may have phy control of an article, & still have only custody thereof. The intent is that the owner, not the S, still has within himself, the elements of poss., including the right to exclude others. The owner is considered to be in constructive poss.

If the owner puts goods in actual phy. control of another, but doesn't intend to relinquish the right over them, as distinguished from the right of dominion over them, there is no possession, but custody. * If a third person gives them to the servant, the servant has possession; for, if the servant is to have custody only, the master himself must give them to the servant. *

N.Y. = Ken. Oil + Gas v. Miller Constructive A/P

Color of title - what purports to be a valid muniment of title.

* As far as the statute is concerned, forcible entry is entry sans consent of actual possessor.

Con-Ed. possession is the doctrine of possession where the indiv. must be on the land or show notoriety.

Constructive ~~actual~~ possession?

If the possessor occupies adversely a portion of the land, the balance of the area covered by the deed is also considered to be adversely possessed even though the adverse possessor never actually goes on the rest of the land.

Notes: 10/22/56

(p.64) Problem #3:

ⓐ S 1 would win. Where you have attachment of a lot of chattel and one piece is touched, the full lot " " is construed to be under attachment.

ⓑ The debtor might not own outright all of the attached property.

ⓒ S 2 might declare bankruptcy within 4 mos. and " have a chance for equality of standing.

Cowen v. Pressprich

The ordinary B^ee is under a duty of returning the bailed goods to the B^or on demand, & if he delivers the same to a wrong person, is liable in trover for a conversion, altho' the B^ee exercised reasonable care.

But, an involuntary B^ee is liable for a misdelivery only if he has been negligent (reason: he hasn't voluntarily assumed the usual obligations).

The dissenting opinion became law of the case upon appeal. Bailee should be liable here because of misdelivery, which was deemed a conversion if delivered to a wrong party. Negligence not an issue here. Judge thought they acted reasonably by trying to divest themselves of the wrong bond. The D's took no action to retain the bond and therefore they did not make themselves a bailee. No duty on the usual bailee until he assumes control or a frame of mind relaying the impression that he intends to assume the bailment.

Notes: 10/24/56 ~~Problem #2 (p. 5)~~ Bailments (cont'd)

Peet v. Roth Hotel Co.

Some cts hold que the essence of B^nt is poss, & que a person possesses only those articles of which he has knowledge, & sans knowledge y can be no poss, & sans poss y can be no B^nt. * D not relieved of liability merely due to erroneous ~~understatement~~ underestimate of its value.

① This was a bailment of the ring & there was no mistake as to the item per se, even tho' there might have ~~been~~ been a mistake as to the value of the ring. The mistaken value was said to be immaterial here.

② What degree of care was required? This is according to the type:

- (a) Bailment for sole benefit of bailor
- (b) " " mutual " " & bailee
- (c) " " sole " " bailee.

Degree of care varies according to type:

B^or (a) Only obliged to use slight care & would be liable for gross negligence only.

Mutual (b) Ordinary care & liable for ordi. neg.

B^ee (c) Great " " " " slight ".

The hotel owed a duty of care that a reasonable man would exercise under

similar circumstances. What would be reasonable care under the circumstances?

Tests: (1) What benefit would the bailee derive?

(2) What was the status of the bailee? How much care should he exer. accord. to his training? e.g., If you were to leave a prize dog with a vet, you would expect the vet to exercise more care than a mechanic would.

?? of neg. usually for the jury. Gen. trend is to deëmphasize the variations between degrees of bailments.

(3) Type of article bailed

(4) Was it a gratuitous Bailment?

(5) Burden of proof: In an ord. civil case, the P has burden of proof and must prove it by a "preponderence of evidence." In criminal cases, the state must meet the proof beyond a reasonable doubt. In bailment cases, when P shows delivery of object to D and D fails to deliver or redelivers in a damaged condition, the P (or bailor) has a **prima facie case.** Bailee liable for neg., not the value of the thing itself always. If bailee fails to rebut the case of Bailor by denying one or both of the charges above, bailor wins.

If bailee shows he exercised due care but circumstances beyond his control occurred (e.g., a fire, etc.), D (or bailee) has a good rebuttle against bailor. But, the burden of proof rests on the bailor. Of course, There is no unanimity here, but the maj. goes along with the above. Minnesota is an exception.

res ipsi loquitur: thing speaks for itself

A

If the bailee neg. converts thing, he is liable for thing per se.

Notes: 10/26/56

(1919)
Altman v. Aronson, 231 Mass. 588, 121 N.E. 505
[Bailments] - a suit for damages. D ordered silk from P but sent it back. Agent for D said it was only worth $50 but it was worth more. Silk lost on the way. Held, D a grat. bailee and liable only for gross neg. (Neg. is the failure to exercise that degree of care which an O.P.M. would exercise under similar conditions.) (Gross neg. - substantially and appreciably higher in magnitude than ordinary neg. But it is less than intentional + wilful conduct which should be known to eventually injure.) Wilful and wanton misconduct is even higher than gross negligence. (If

Degrees of Negligence

hypo: A is a guest in a car + there is a wreck, A cannot recover from the driver of his car unless the driver is guilty of wonton neg or misconduct, + this being more than gross neg.)

1. Gratuitous bailment
   (1) Sole benefit of bailor - slight care, liable for gross negligence.
   (2) Mutual Benefit - Ordinary " , ord. neg.
   (3) Sole benefit of bailee - great " , slight " . (lawnmower case)

Defense of contrib. neg. in case of damage during bailment cannot be found; for the bailor has relinquished

poss. and can therefore not contribute to the neg.

Tests for neg. and care! (In Mass.)

(1.) In a bail. for sole bene. of bailor — the degree of care toward the property as he ~~would~~ actually uses toward his own property. The honest man test.

a gratuitous bailment ←

(2.) In bail. mutual bene., the degree of care req. is that which would be exercised by the O.P.M. toward his own property.

In common carriers, innkeepers, the bailee is held for great care and liable for slight neg.

Parking lot cases

Sandler v. Commonwealth Station Co. 30 N.E. 2d 389 (1940) - F or P.

Soutier v. Caplow 330 Mass 448, 115 N.E. 2d 149 (1953)

Butter v. Bowdoin Sq. Garage 329 Mass. 28

*Perreault v. Circle Club- 326 Mass. 458 (1950) - t.v. set leased to club. After lease expired, the set was allowed to stay a bit longer. Set stolen. It was held that the provision in lease to return set in ao good condition added nothing. Ct. held this to be analogous to other cases where a piano on bail was in a house which was blown down; and where something else was lost in a big Boston fire. D not liable here.

Notes: 10/29/56

*Problem #1: (p. 76)

In a bailment, the ct. usually finds an implied agreement therein, the dept. store was a gratuitous bailee. But, the store was not neg. enuf to be liable. If the bailment is for the sole benefit of the bailor, it is gratuitous. (Gratuitous Bmt)

*Problem #2:

The ? might be asked: did the bailee have an absolute duty to find the true owner, or just to exercise due care in finding the true owner of the lost article? If there is a duty, the D-

is liable even if there is no implied agreement.

*PROBLEM #3:

Is the bailee liable? There was a bailment of the coat, but did the bailee consent to be bailee of anything in addition to the coat. A bailee is not ordinarily responsible for things inside of a container unless this is known or should reasonably be expected.

Rule of Law

Bailment - rightful possession of goods by one who is not the owner, generally founded on contract, either expressed or implied.

*Generally there is no recovery for the loss of valuable articles delivered to a bailee, if, under the circums. the bailee didn't know nor as a reasonable man could be expected to know the valuable nature of the article.

Rule of Law

*Riggs v. Bank of Camas Prairie 34 Idaho 176, 200 P. 118

A gave B a safety deposit box, informing him that there were valuable contents. B lost the box and A was out of $700. in currency. Held, B not liable. A had not said there was " in the box.

*Problem #4

Possession remained with the owner and therefore there was no bailment. The space was rented.

*Problem #5

No conversion of the coal. P had exercised control over the coal + also exerted dominion.

Notes: 10/31/56 (B.F.P.?)

Armory v. Delamirie

The owner could have sued either the finder or the pawnbroker. He could have sued "in personum" against the finder - "in rem" against the pawnbroker. If the " had lost the poss. in the jewel by no neg. act of his own (i.e., he had exercised due care),

the owner could not have redress against the finder. He could however, sue the pawnbroker or whoever got poss. after the finder lost poss.

*The owner is entitled to only one satisfaction.

[Note: The "rule of passing of title relates only to actions in Trover"] Trover - an action on the case for damages for prop. found by another and wrongfully converted to their own use.

If the finder wrongfully converts or sells the object, the owner would have recourse against either the finder or the pawnbroker.

Subrogation — The pawnbroker is subrogated. ~~to the~~

The pawnbroker is subrogated to Owner who has a course of action against the finder.

Notes: 11/2/56 **MORTGAGES** (outline 65)

Armory v. Delamirie (1722) 1 Strange 505

Mortgagor —— Mortgagee

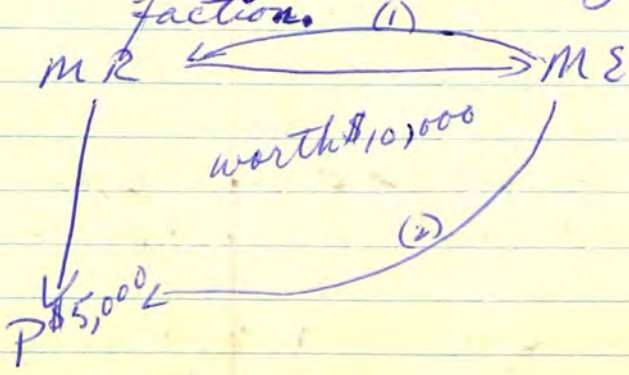
If the ~~MR~~ MR defaults, the ~~ME~~ ME may have two remedies:

(1.) Sue on the note

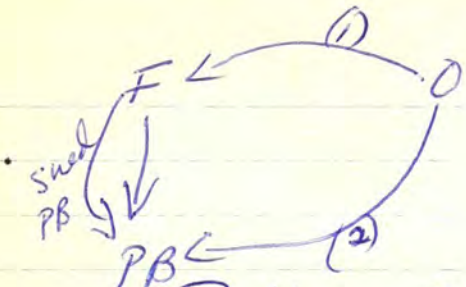
(2.) May foreclose on the Land and have the proceeds satisfy the debt.

If the MR sells the land to P (land worth $10,000) ~~or~~ the mortgage is $5,000, then ~~the~~ P owes the balance on the land, $5,000. P takes subject to the mtge.

Subrogation — an equitable remedy to prevent undue satisfaction.



ME is subrogated to P for $5,000.



PB subrogated to Ds right to go against F.

*Problem, p. 80: As between B + C, B is a prior finder + can recover from C. If C still had the cement + B was not negligent in losing it, A would have no remedy against B.

The Winkfield (1901) [1902] p. 42 Ct. of App. ch 80

The Post Master is a bailee but he is not liable, for he exercised due care + no neg. (1) The D's liability is limited to a small amt. providing a big ship was lost (2) There were a large no. of bailors of small amts + it was probably up to the bailee to sue for them.

(3) If a compensation fund were set up for the bailors to recover for their property lost + the " failed to do so, the fund would in time revert to the bailee.

(4) Clerk could have provided for the recovery fund but didn't.

(5) The bailee's interest was nothing + was not liable.

(6) The P. M. did not recover for his claims, but not for the 3rd claims.

Notes: 11/8/56

The Winkfield

Bailee could recover for damages done. But, the bailor could now sue also. Bailee could recover even though he was not responsible. Be had poss + could, ∴, sue.

*Problem, p. 82: Both bailee + bailor could sue if they wanted. Bailee here reached settlement before the case reached court. This makes it difficult for the bailor now. A release such as this, if

providing for bailee and bailor, would make it impossible for bailor to sue. The release was very general. Did bailee mean to release both b + b or just the claims for her personal injuries?
Remedies: (atty's arguments, possibly)
① Have release reformed to show that it applied only to bailee's injuries. The principle of the Winkfield case does not apply where both b + b are concurrently asserting a claim.
② Release should be construed to evidence the " of bailee's claim only
Query: (Quaere) Should bailee have signed the release with the ambiguities in it? — No.
If you were atty. for bailee, you should make sure the release is clear and that it does not release the Co. from the bailor's claims.
In the case of close family relationships (e.g., man + wife), the Co. could mean the release to apply to both (e.g., husband + wife both drive the car).
C could sue D + B if they were concurrent partiss.

Life Tenants and Life Estates

Hypo: A owns realty + leases it to B for 1 yr., both have rights in the land. B has poss. + the landlord has reversion. A has no right to poss. during the term of the release. A has a possessory interest since the land is due to revert.
Life estate — there must be something left over, either:
(1) Remainder, or — land goes on to the Remainderman
(2) Reversion — land goes back to donor
Fee Simple Absolute — max. no. of rights that one can get in a piece of real estate. The largest estate. — Complete ownership.

Remainder:
(1) Contingent remainder - prior to birth child.
(2) Vested remainder - after birth of the child.

Fee simple may:
(1) Be inherited (3) Revert (very unusual)
(2) ~~Revert~~ Devised

O has fee simple ab., + takes a part of the land + leases it in "term for years," the fee simple becomes something less than a fee s. ab.

Reversion - land or realty goes back to grantor; or the land might go to a third party who would have a remainder therein + be called a remainderman. [O leases land to B, + X has right to land when B dies, etc.]

Zimmerman V. Shreeve

Here the remainder is called a contingent remainder; for the " was gotten prior to the remaindermen's birth. After birth, vested remainder. // Here there was one remainderman + one life tenant. The life tenant could only recover for the extent of damages to his rights, and this would not make it possible for a remainderman to recover. The likelihood of a trespasser being sued by a remainderman is not very great; for, many remainderman by law are not even born (grandchildren + great-grandchildren, etc.), minors. Also, by the time a remnon. is able to sue a wrongdoer, the wrongdoer might be dead, moved away, etc. (*Rns. to problem 6 on p. 88).

Rogers Case

*A life-ten. could recover full value.

Notes: 11/7/56

Waste

What is meant by waste?

*Rogers V. A, C + P Co. (p. 88) 1915 213 N.Y. 246.

*The life tenant is liable to the remaindermen.

*Waste - an action by the holder of a future

{Gloucester ("Glue ester")}

interest against the owner of a possessory estate for damages done to the reversion or inheritance; i.e., permanent damage to the freehold. Youre speaking only of damages done to the property by the HOLDER OF THE POSSESSORY ESTATE (i.e., the tenant)

* Action in the Nature of the Waste:
  { A future tenant can sue a trespasser for damages done to the reversion.

Types of Waste

* ① Voluntary Waste - an affirm. act done by the tenant.
* ② Permissive " - failure to act to prevent damages, this " being done by the tenant.
  (nonfeasance)

* Life tenants are liable for per. waste (105 ALR 1434). * A tenant at will (either party may terminate without notice) is not liable for per. waste.

Chap. 242, §1 (Mass. Ann. Laws): A tenant is liable to a remainderman & a rem. may recover the place wasted & damages also.

* ③ Ameliorative Waste - to change the use of the land usually to the increased value thereof, but it is repulsive to or not desired by the remainderman. And, burdens on the future holder might be increased. [e.g., to construct a hotel on property].

* Zapscott v. Cobbs
  ~~The tip~~ P alleged he was in poss., but there was a gap in his proof.

Notes. 11/9/56

Zapscott v. Cobbs

* In an action of ejectment, the primary issue is the RIGHT TO POSSESSION.

JUS TERTII – "The right of a third party."

The D was allowed to recover without proving title. PRIOR POSSESSION is sufficient to maintain ejectment against the wrong-doer, even though there was a break in the D's possession.

*(1.) Prior poss. is sufficient to recover in an ejectment as against a wrongdoer. JUS TERTII is not a defense. (Same applies to replevin and trover.)

*(2.) If D connects himself to an outstanding title superior to that of P's, then JUS TERTII is a defense.

*(3.) Some cts. would allow JUS TERTII as a defense if P is relying not on prior poss., but on a right to poss. (In a sense, D is rebutting P's case).

*(4.) Burden is on P to prove a preponderance of the evidence.

In Tapscott v. Cobbs, the action was not for damages but to renew poss. of the land. And this type of action is easier.

Winchester v. City of Stevens Point (p. 91) – A suit to recover a sum of money. – Can possessor recover damages to the freehold? P relied on recorded title but there were certain defective deeds which ct. held were not entitled to be recorded. So, there are two (2) gaps in the chain of title.

NOTES: 11-14-56

Winchester Case

P brought action for permanent damage to the freehold. Having elected to prove title, she was compelled to do so. For all of the temporary dams she could recover, but for the per. dams. to the freehold she could not recover.

* [A tenant does not have the right to defend jus tertii (rights of a third party).

[Eminent Domain Case - a person seeking an award is required to prove his right thereto]

Rationale

* As owners can claim dams. for per. injury to his freehold; but, a possessor cannot, for this would not preclude that the real owner would not later sue (himself).

If you conclude this was a continuing trespass (often done; frequently), there can be no recovery for per. dam. to the freehold. A yearly law suit (every time dams. occur) is Mrs. Winchester's remedy.

ADVERSE POSSESSION

Cobb Case (p. 96)

Cobb never alleged title, but had poss. & fenced in. P was always suing for recurring dams. P asked that P be allowed to recover only for the dam. to his (P's) poss. interest. Poss. can recover full damages against a wrongdoer; & the P, as against a wrongdoer, when in peaceable poss. is not compelled to prove title. Poss. is enuf to allow P to recover, JUS TERTII being no defense. Pres. is usually considered a violation of the possessory interest.

* A person in poss. sans title cannot recover for per. dam. to the free.; only for dam. to

his possessory interest.
*The presumption is for title unless proved otherwise.

Lasalle County Case (Illinois)
P an adverse poss. & waited until Stat. of Lims. EXPIRED. A Sue the sanitary dept. for per. dams. to the freehold. Theories:
(1) A poss. could recover everything.
(2.) Once title is acquired by ad. poss., it relates back to the date of original entry.
Ct. held that in some cases title in ad. poss. would relate back to the date of orig. entry; but, it would not be so here, for he could not recover for prior per. damage to the freehold

*Problem #1 - D brings action against A for dams. & profits. — No Recovery.
(1) At end of 1940, A acquired title.
(2) D said he had 6 years to sue for tres. & that he was doing so. The
*Reasoning: Ct. said it would relate back to cut off action & that it would not cut out this relation back to create new actions.

Notes: 11/16/56 - Read Chap. 18 (p. 416) in conjunction with 1st case on p. 180.
*Problem #1 on p. 102: ad. poss. gets no poss. until the full 20 yrs. have run. Prior to 1940, the ad. poss. was actually trespassing. So, D sues for the time of 6 yrs. prior to the time action accrued. But, the Ct. said that once the statute of lims. has run,

Student query: Suppose an owner had a child in childbirth ....

orig. entry

ownership reverts back to (time when A first came on land) & he (A) was therefore not a tres. as of 1940. i.e., after 1940, the entry was lawful. This was said to prevent a flow of unnecessary cases.

p. 51 Statute of Limitations. Ohio — a. 21 yrs. from accrual of c/a
b. 10 yrs. after removal of disability

Disabilities:
① Minority
② Unsound mind
③ Imprisonment

① Hypo: 1920 A goes into A/P
O is 15
1926 O is 21
1936 O is 21 + 10
1940 A gets poss.
(1946 c/a expires)

When can O bring Action?
Ans. - 1940. Disability cannot decrease the limitation. Here, the disability might as well have been disregarded.

② Hypo: 1920 - A goes into A/P [O is insane]
1936
1946 - A has possession
1955 - O is still insane

③ Hypo:
A. 1920 - A goes into a/p [20 yrs. statute]
O is 19 yrs. old
1921 - O is imprisoned for life
1950 - O is pardoned

[* There can be no tacking of intervening disabilities.]

B. 1920 - O is okay. A is in A/P.
1925 - O dies, S, A 10 yr. old infant, inherits
1936 - S of age
1940 - S barred from action.

C. 1920 - O a convict (A is in a/p)
1921 - O electrocuted + S, a 5 yr. old, inherits
1937 - S of age
1940 - End of period when action can be brought

You can only use the disability in effect when the cause of action accrues. And, you use the longest period of time (disability period was over in 1951).

Notes: 11/19/56

The existence of two ~~tortfeasors~~ disabilities at time cause of action accrued:

(1.) 1920 a/p - O minor - 19 yrs. old in prison
1922 - O of age
1940 - O out of jail
- 1950 - O barred

If there are simultaneous disabs., the longer one would be used.

*Problem #2 (p. 102) Subsequent or Intervening Disabilities

1926 - A a/p, O sui juris (no disab.) 5 Yrs. Statute - poss 2 yrs. = damage to land
[1931] - SOL would run
1927 - Son - owner, age 11
1938 - son of age
1940 - c/a expires

2 yr. SOL for damage or taking of per. prop.

*Statute of Lims. running against a holder of a future interest:

[20 yr SOL] G - A for life, Rm to B (B, i.e., has a fut. interest)
1920 - X goes into A/p and stays
[in 1955 A dies]
1956 - B brings ejectment v. X

SOL and A/p does not run against a holder of a fut. interest. i.e., B could bring action of ejectment against X.

Anderson v. Gouldberg
The tres. had rights as against all except the rightful

owner. Here, P won (P was orig. tres.) against D (a stranger wrongdoer). One who has acquired the poss. of prop. whether by finding, bailment, or by mere tort, has a right to retain the poss. as against a mere wrongdoer who is a stranger to the prop.

Rule of Law

Notes: 11/21/56

INSURANCE

Hessen v. Iowa Automobile Mutual Insurance Co. [1922] p. 180

P bought auto from thief. Auto then stolen from P. — P could not recover for the P could acquire no better title than the thief.

An insurable interest is necessary to sustain an insurance policy.

* Aleatory Contracts — obligation & performance depend on an uncertain event. (Ins. K)
  Wagering Contracts — void as against public policy. (May be usurious)

* A person has an insurable interest if he might reasonably expect to gain an advantage from the cont'd existence from the thing (subject-matter of the insurance) or might expect to suffer from the loss of it. — He might even be a bailee and have an ins. interest. And, the interest might even be remote.

The defn and test of an ins. int.

** Prop. ~~interest~~ insurance — ins. int. must exist when loss occurs.
** Life insurance — " " " " " ins. is acquired or taken out. Everyone has an ins. int. ON his own life. If you take out the ins. on your own life, anyone can be made the beneficiary. But, if A takes out a policy on B, it raises a problem as to whether A has an ins. int. in B.

Rule: * A vendee can get no better title than ~~that~~ held by the vendor.

* Sole and unconditional ownership — if the ins. int. is less than this, then the policy shall be deemed void.

* A breach of warranty usually voids the whole policy. Fraud + misrep. void the policy, also.

Each state has some regulation of insurance and each state usually has an insurance agency.

[28 Look up Mortgage Clause]

*Proof of Loss Clause - within a prescribed time and in like manner you must notify the co. of a loss.

*Clause Identifying the insured property - oftimes very vague.

Morgan v. Hodges [1891] p. 182
A --> B --> C (BFP)

A recovered from C. C could get no better title from B (the thief) than B had himself; and B had a voidable title. Court said there was not adequate consideration to warrant finding a contract, to wit, C could keep the proceeds of the horse if he would turn over to A the remaining chattels.

Notes: 11/26/56

PLEDGES - LIENS

Problem #2 (p. 184)

B gets no title . . ., A recovers. N.Y. + Ind. require a demand + refusal before an action would lie

Lien - a right to poss. but not to sell. Title remains in the owner. Artisans Lien diff. from Mechanics Lien (relates to real estate). If he relinquishes poss. at com. law, the lien is lost.

Artisans Lien - an artisan makes improvements in a bailed chattel + until he is paid by B^or or relinquishes poss. to the B^or, he has a lien or right to poss.

Mech. Lien - suppliers of material have a lien, but here, possl. does not lie in the supplier of material.

Warehousemen + cabriers are said to have liens. Also, factors + bankers.

PLEDGE

① Poss. must pass from P^or to P^ee
② Leg. title must stay in P^or
③ P^ee must have a lien on the prop. for payment of the debt or performance of the duty owed him.

** A delivery of goods by debtor to P^ee until debt is satis. is a PLEDGE. A surety type thing.

Pledge v. Chattel Mortgage

① Ch Mor - poss. not trans. but a security interest is.

[Mortgages: ① lien theory of Mortgages.
② title " " " .]

Cond. Sale [similar to chattel mortgage] - title to be retained by seller until buyer completes payments.

Donald v. Suckling

P pledged securities with Simpson as security for a bill of exchange (a bill drawn by a drawer, endorsed by a drawee + payable to a payee) ~~pledged by P to Simpson~~ with power of sale. Sanders (the drawee) accepted the bill of exchange and in effect promised to pay the bill (it thus becomes something of a promissory note)

Notes: 11/27/56

Donald Case (supra)

In an action of detinue, P seeks recovery of ~~bonds~~ bonds sans ~~1st~~ paying Simpson. ~~If P wins in detinue, he won't even get as good a title~~ Ct. saw that if P recovered, he would slight someone in the transaction. This case is dealing with the rights of the third party, not so much " " " " " " pledgee. When Simpson trans. the security interest to D, he also trans. the right to be paid by P. Now, the D would be the one to be paid.

* The pledgor can't recover from a bona fide ~~purchaser~~ transferee sans 1st tendering the amt. of the debt.

* The BFP, from a pledgee, acquires no better title than the P^ee himself has.

If P^ee sells to someone else, that is a conversion ~~sued~~ sans a demand & refusal. That is to say,

Pledges & PLEDGE SITUATIONS

(A) A makes loan from B, giving note + pledging something for security. C (BF Pledgee of note from B) vs D (BF Pledgee of sec from B).

1 C N - neg 2 C N - non-neg (C)
1 C S - neg 2 C S - non-neg (D)

(1) [C not involved] 2 C S - D has only derivative right, but eq treat. D as between B & D, as the person entitled to receive the payt.

(2) 1 C N + 1 C S - order of events immaterial C + D get indep rts. i.e., A must pay C + he(C) is not subj to any eCs that A may have V. B. Nor can A touch D. If he wants sec de D he must bargain for it. If D is a Pge, then A must pay D the amt. of the debt created by B & D.

(3) 1 C N + 2 C S - order immat.
C gets indep rts.; A must pay C. And when A pays C, D has only poss. of sec. Whatever extinguishes the debt by its nature extinguishes the rt to the sec. A may recover full value from D. Only time when note is 1C + sec is 2C.

④ 2CN + 1CS – order immat

D = indep rts., + A can't touch him.
C = derivative rts. (in B's shoes).
If the sec is worth more than debt, then A does not have to pay C. If the sec isn't worth more than debt, C could recover B could recover, i.e. the excess of the debt over the conversion damages.

⑤ 2CN + 2CS –

B sells to C BEFORE he sells to D. C = deriv. rts. If conversion made B liable to A in damages in excess of debt wh A owed B, then A need not pay C. If val of sec is more than val of debt then A pays nothing. But A may consent to pay C + stand by the conversion. If A agrees to pay, then C can get an injunction to prevent D from trans the sec.; if the ct will order A to pay C, & D to trans the sec. to A. If debt worth more than sec., then C can recover from A irrespective of consent.

(b) 2 CK + 2 CS.

B sells to D BEFORE C.

If sec more than note, then A has to consent to pay C. If so, C gets injunction to prevent D from trans.

Theories:

(A) If C got legal title to debt, being A B & C, his " " won't be subject to any eq claims & D's interest is cut off.

(B) If C got eq interest only in debt, then even tho' his eq is subsequent to D's, it's superior. And Ct will order A to pay C & D to trans sec. to A.

even pons demand and refusal, if a Pee tries to make a complete trans. of the title, there is found to be conversion.

* If Pee wrongfully repledges, there is still a right of demand and refusal, and if after the demand there is refusal, there is conversion.

* If the repledge is for a time not longer nor the amt. greater than the orig. debt, there is no automatic conversion.

Sherer – Gillett Co. v. Long

[CS] Conditional Seller – Vendee – D

May the cond. S. recover? Title is retained by a CS until the terms of sale are met, so how will D protect himself? Now, if there are written records of the trans., D may look them up + find out + protect himself.

Notes: 12/3/56 LIENS

** There were some who had gen. (rather than special) liens:

had general liens.

1. Factors (Broker, commission agent or gen. agent)
2. Packer
3. Wharfinger
4. Banker
5. * Lawyer – a. charging lien (a particular special lien when the judgment, decree or award obtained by him for his client, for his services rendered by him in procuring it. The right to get his money out of any fund granted to his client; and the right to intervene + prevent direct payment to the client).

b. + Retaining Lien – the right of an atty. to retain all documents, books, securities, + money that come to the atty. in the course of his professional employment + belonging to his client, as

security for the balance due him by his client.
A gen. type lien.

Bankers lien —
Gen. in a sense in that it doesn't have to grow out of the same type of transaction.

Typo: A has $500 in acct. + borrows $1000 from this bank. The Bank bankrupts ~~+~~ A tries to get his $500. —
" Can withhold the $500 as against $1000 debt.

Factor - Could retain any of the goods of the principal for his compensation if the lien is gen. In a special lien, factor could only retain those goods from which the lien arose. (e.g., if factor handles two separate orders of goods to Dr Can, in a gen. lien, retain the second if the prin. fails to pay for the first. (In a special lien, factor could only retain the first order of goods for failure to pay for the commission for the" " ").

O'Connor, Admx v. Clark [p. 195]
Owner of wagon designedly painted on wagon his employee's name, Tracy.
Owner's rept of him sued (owner died). P recovered in trial Ct. Reversed by Sup. Ct.: D could keep wagon.
A purchaser, usually, can get no better title than the seller had. Blot. The owner was guilty of inequitable conduct + estopped himself.
Owner clothed Tracy with indicia of ownership + thereby estopped himself.

Market Overt
*Not applicable in good old U.S.A. Holds in England. *No market overt nor sher. sale act as a transf of title.

PROBLEM #1 (Pg. 199): Sheriff could only transfer B's title to C + C had no title. ∴ A could recover against C.

PROBLEM #2 (Pg. 200): An IN REM proceeding + Ct. deter. title of the goods (the French Ct.). The interest of anyone is not determined but the goods were deemed forfeited by violation of the law. ∴, A could not recover.

PROBLEM #1 (Pg. 202): A could recover in both Courts. The Purchaser not protected under Factor's Act when goods given to B sans stipulation of sale.

PROBLEM #2 (Pg. 202): Same answer as in #1 (pg. 202) even tho' at first, A gave authority to sell. But later, A revoked B's authority to sell before B sold the goods. So, A can recover from the 3rd party.

Hypo: B, a factor, has authority to sell + does so. But, prior to delivery + immediately after sale, A (the principal) revokes author. to sell. — A cannot recover for he is bound by the acts of his agent.

Phelps v. McQuade

The title actually passed from the jewelry store to the fraudulent buyer. He rep. falsely, that he was someone else + did it in person. — Croynine had a voidable title but the BFP for val. sans notice got valid title. Jewelry store, could not recover.

A person having a voidable title could trans. a valid title to a BFP (Rule of Law)

PROBLEM #1 (Pg. 205):
C can recover. There was intent to pass title to B. A had agreed to sell, too,

[A direct, personal dealing, here.] A meant to trans. title to B. Here, a voidable title was trans. to B & B could thereby trans. valid title to a BFP.

#2 (pg. 205) - For A, B had only poss. & had no authority to sell. No title was given to B.

S → T [Legal title only] → B [Beneficiary, equitable title only]

↓

X [Legal + eq. title if the sale was sans notice]
BFP

Trustee's title not voidable. X is a BFP sans notice of B's interest. If he has notice, X would NOT get superior title to B.
Leg. + Eq. title considered superior to B's right or claim.

Miller v. Race

Purchaser gets no better title than seller or grantor has. The holder in due course will get a better title than transferor had if anything was wrong with transferor's title. And, the holder has title against the maker of the instrument. This, of course, is dealing with NEGOTIABLE INSTRUMENTS.

Mortgages

PROBLEM #1 (Pg. 687) - Is a mort. a trans., alienation or what? A mort. is an alienation. If the alienation was in a lien state, there was no voiding of the policy. (Some juris. hold there would be no voiding of the policy.) Policy may be void in title theory states.

MORTGAGES

Notes: 12/5/56 [* Assign: Chaps. 10, 11, 29 (761–786), 30 *]

Mortgages

Dorfman used various words of conveyance. Mort, a conveyance subject to defeasance. Another theory is that it operates as an equitable lien.

Usual method of foreclosure is by judicial sale (a public sale directed by Ct.).

* You are actually foreclosing the eq. of redemption (in a title theory state).

* In a lien theory state, a lien of the land is in MR and when foreclosing, you are enforcing the lien.

Problem #1 (p. 687): Is this a type of conveyance met within the meaning of the policy? Held, that the policy was not void. How was the word "alienation" used? As a conveyance?

#2 (p. 687): Could Creditor [C] attack ME's lien in MR's prop. as security? C could not attack Blackacre for ME doesn't own Blackacre. ME has a security interest against MR and a way of C collecting would be to garnish the debt of MR to ME. After judg. in garn. is awarded + a default by MR, C could foreclose. C would actually bring the action in ME's name + it would be SUBROGATION.

ME - the "EQUITY" in the land. Had "title" before. "EQUITY" means title-subject-to-a-mtge. i.e., equity of redemption.

Two other theories:

① Creditor's Bill - against ME. an eq. proceeding.

② Put ME in bankruptcy.

#3 (p. 687): Payable in 1937 — 4 / 8 } years statute

'42 '46 '49 } Possibilities — 12

The MORTGAGE is a document, varying in form according to local law and custom, which gives to ME a claim against the land for repayment of his money.
The note will not be recorded since it does not create any interest in land; it is not a document of title but merely a promise. Mtge involves 2 documents:

1) Note - establ obligation from MR to ME

2) the Mtge - MR gives to ME a security interest in the land to assure performance of the obligation. (A Discharge / An Assignment) should be recorded.)

If the action on the note could be had, ME could get a deficiency judg. But the note was barred by the Stat. of Lims. Whether or not the mort. had or should have been under seal depends on the jurisdiction. ME can foreclose in 1942. Title Theory state: may wait until '42 to foreclose. Lien th. state: ME has a lien on the land and as long as there is no stat. on it, he could foreclose anytime he wanted after the provided time.

1946 - under all three year alternatives, foreclosure can be had. In a title theory state, the longer the ME waits to foreclose, the greater ~~his~~ eq. is said to be.

In every mort, there are two instruments:
(1.) The note (usually negotiable) for debt
(2.) The mort.
The ~~mort~~ note can be assigned + with it some eq. can be assigned.

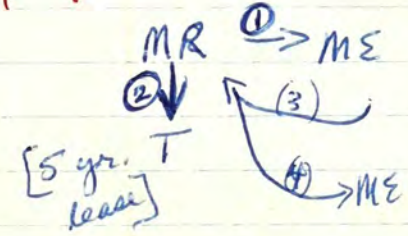
Notes: 12/7/56

A mort. is a conveyance on the land subject to defeasance (Mass.).

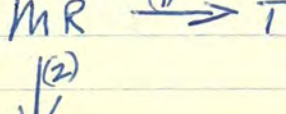
Problem #3: (supra)
In 1942, action on the note barred because it was a simple K not under seal. So all ans., A B + C, ME can still foreclose

on the land. You are not suing to recover poss. of the land. The ME already has title; you are suing to cut off the MR equity. The longer ME waits, the more he (ME) has, and the more prepensed the Ct. would be to allow MR's equity to be cut off. Usually 2 or 3 mos. (after time of foreclosure) is allowed so the ME may have a chance at redemption.

Problem #4 :



ME had superior rights to T (tenant) and if he foreclosed, he could take over. In a lien theory state, ME had prior lien + all prior liens cut off " subsequent liens. Thus, ME could put T out because T had a subsequent lien. This applies only if the mort. preceded the lease. If the lease had proceeded, T would have had rights against ME after MR defaulted. And, the mort. would probably have been taken subject to a 5 yr. lease. Would T have any rights against MR? Yes, probably for breach of K.



When MR mort. to ME, it is subject to a 5 yr. lease. If there is foreclosure or sale, ME or P would then take title subject to the 5 yr. lease. The lease

Accretion
Relation
Reunion
Maynard v. Jackson, Jr.

would be a prior encumbrance. [If it turns out that an Adverse Possessor against MR really comes into title over MR, the foreclosure would not bind the AP.]

[You cannot trans. or create any better interest than you have; and the first in terms of time will reign supreme.]

PROBLEM 5:

MR ① → ME ME assigned the note to the Bank (a pledge for his personal loan). What are the relationships? [No assignment of the mort.] The Bank is an equitable ME up to the extent of $2000. Who forecloses in case MR defaults? Would have to be decided by the cts. to prevent further litigation. / The Bank is liable also; and can only avoid its liability by endorsing the note in recourse. On a foreclosure the Bank would come out first with its $3000, ME second with $2000 + maybe MR. Who decides on foreclosure is an unsettled matter.

In spite of the language, the acceleration was at the option of the ME.

Acceleration - upon failure to perform the minor obligations, the remaining principal will become due at the option of the ME.

Problem 6:

Notes: 12/12/56

Problem #7 (p. 688)

MR ① → ME, $5,000 How much of the proceeds of the sale go to ME, ? No $$ would go to ME, and the Purchaser buys subject to the mortgage of ME_2.

MR ② → ME_2 $3,000

foreclosure ME_2

P. $5,000

If ME_1 foreclosed, ~~it~~ and the land sold for $6,000, ME_1 would get $5,000 + ME_2 gets $1,000 with MR getting nothing. (If sold for $4,000, ME_1 would get it all.) The $1,000 would be a set-off against ME_2's $3,000 mortgage.

MR —(1)→ ME_1, $5,000
(2) ↓
P (subject to mort)

ME_1 could sue MR on the note + get judgment; or foreclose. When MR sells to P and there is a mort., the purchase document may read either "assumes" or "subject to" the mort.

"Subject To" - not agreement to pay the mort and on default, deficiency judgment could not be had against him.

"Assumes" - in case of default, the purchaser might be made ~~to~~ satisfy a deficiency judgment.

Open mort. - after default, ME doesn't foreclose and says there is no rush for payment.

Open and mort. - any subsequently acquired land will be subject to the mortgage.

When a Person is a Bona Fide Purchaser.
Butters v. Haughwout (1866)

P —(1)→ Morgan (voidable title)
(2) ↓
Duncan (BFP) (wins)

Is Duncan a BFP? Yes. And he paid value because the ct. held that a pre-existing debt is consideration and suff value.

B F P

Notice

(1 BFP must purchase for value. And, even if no notice is given, if there is just reason for suspicion and the purchaser does not take cognizance thereof, the " will not usually be held to be a Bona Fide Purchaser for value.

Notes: 12/14/56

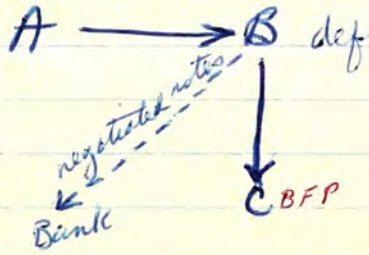
[Read the Chapter on the Mass Recording Act]

The owner (chap. 10) will not be able to recover the specific chattel d'un BFP.

Hurd v. Bickford

(1 pre-existing debt is not a valuable consideration for the sale of goods. This is in opposition to the Butters Case. For negotiable instruments, it is widely held that a pre-existing debt is suff consideration.

Problem #1 (Pg. 223)



If C is a BFP, C can keep the chattels + A can't recover. (Actually, C didn't pay anything but signed notes. If A recovered from C the chattels, then B could not sue C on the notes; and C could sue B to enjoin the notes. But, it is held by Boyer that C would be a BFP. B was a holder in due course. A could not recover from C.

"the Commander"

* (1 BFP is one who pays value sans notice of any fraud which might be connected. (1 gross discrepancy in value puts one on notice + if it doesn't, the Cts. hold it to be.

gross discrepancy in value

Higgins v. Lodge

If a person, a BFP, buys on terms for time, ~~can he still~~ he can still hold all of the chattels against the original seller. The ct. said, if C advanced the money in parts, and he was a BFP, it was held ~~that~~ C would keep the chattels. Protection to the extent one has paid. (eg. ½ paid, ½ protection).

* A fraudulent misrepresentation will vitiate a good sale from A to B (defrauder).

Pg. 227

Pro tanto - one has not paid all he is expected to pay.

b. C could keep all of the goods and pay B $ nothing.

c. In many cases this is impractical because many things can't be divided.

Notes: 12/17/56

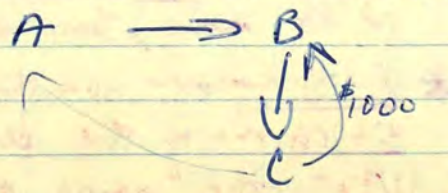
Higgins Case (p.223)

(Discharge of inquiry notice) It is not necessary that the purchaser get notice from the seller of the seller's fraudulent conduct. But, if the ordinary person were put on notice and the purchaser were not, the purchaser would be assumed to be on notice even tho he had not inquired into the circumstances.

O.P.M. test of Notice

Problem 1 (p. 227)

Certain commodities cannot be divided but there are some (gravel, fruit, etc.) which can be divided.



If, after C pays B $1000, A sues C for the

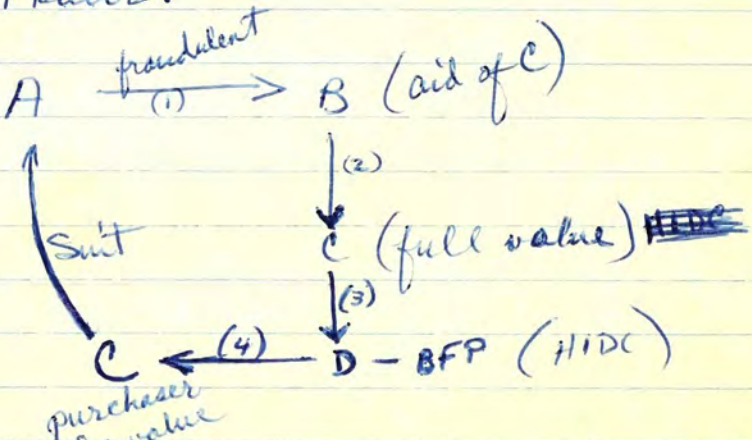
2.4
$ 12.10
10
20

goods and gets them, C could sue B for Breach of warranty of title.

PROBLEM (p. 228)

① This discrepancy in value was such as to put C on inquiry as to why B would sell at such a bargain. This, of course, would depend on the way the Ct. is disposed. ~~The~~ THE DISCREPANCY IN PRICES, AT TIMES, ARE NOT SUFI ALONE (MITIGATING CIRCUMS.); BUT GENERALLY, IT IS SUFI.

② C is a purchaser + paid full value, but has notice due to his PARTICIPATION IN THE FRAUD.



* C could not recover because, even though he acquired title from an HIDC, he (C) was a party to the fraud.
* If C were not a party to the fraud, in transaction 4, C could recover as against A.
* If C had notice, sans participation in the fraud, the ct. might go either way on C's recovery after transaction 4.
* D would be protected: a BFP + HIDC.

hypo: D cuts trees ($100 before cut, $120 cut, $150 at mill) on P's land, Tres. while so doing. This is a willful conversion and the D is a known wrongdoer. — Which one of the prices would P recover? More than likely the price at the saw mill (English case with coal at mine).

Notes: 12/19/56

Chapter 11 Accession

If a man owned something and it was absorbed (corn into meal, wheat into bread).

Where the change in form is such that a new product is made, even a willful converter might gain title.

Adjunction

Here, there is an adding on of something to another (another link to your chain). And, the person (between the converter and owner) with the principal part will have title to it all, eg., A has a mounting + B a diamond. B converts A's mounting, makes a ring out of the diamond + " . Thus, B will have title to the whole thing since he owned the principal part, the diamond.

* Usually, if the owner sues in Trover, he will recover the unenhanced value of the thing converted.
* If owner replevies the article from an innocent converter and the enhanced value was even slight, owner would find difficulty of getting the thing back in its enhanced state.
* If a willful converter enhances the value of something, the owner would find it difficult to replevie the thing.

Wooden-Ware v. U.S.

The enhanced value was awarded. The willful tres. was deprived of the value of his labor.

Wooden-Ware enhanced the value thereof so much that they were not liable; but the Indians had to pay.

Pg. 233 "Somewhere up the line of accession after seven (7), the point of enhancement reaches such that the cts. will not allow the owner to recover the thing.

Take notice of THE Enhancement Ratio

1(b) If the Indians acquired title thru accession the co. is not liable at all + notice is not necessary.

(c) W-W co. would be liable for the full enhanced value of the wood. They could be liable for the ~~added~~ added value and be a converter thereof.

2. Various rules for assessment of value:

Usual Rule 1. Value at time of taking

English Rule 2. Highest point between the conversion + trial.

Old N.Y. Rule 3. Value deter. at the highest pt. reached between time of ~~taking~~ con. + discovery ~~of~~ by the owner and a reasonable time thereafter.

New N.Y. Rule 4. Value at highest pt. between time of discovery + a reasonable time thereafter.

Notes: 1-2-57

Recording Act (Carlin) (Brilliant lecture & brilliant man)

The registry doesn't cover titles gotten by ad. poss. (Ewing v. Burnett)

hypo: O owns Blackacre. A forges O's name to a deed & it is recorded. A conveys to B (BFP). Is B protected? NO. BFP loses. So registry ~~pro~~ protects you against forgery.

hypo: O is insane. Down widow promises to marry O if he conveys land to her. She then

BFP v. MFP (mala fide purchaser)

REGISTRY DOES NOT PROTECT AGAINST:

1. AD. POSS
2. FORGERY
3. INSANITY
4. SOMEONE WHO SHOWS UP WHEN THOUGHT DEAD
5. A MORT. WHICH HAS BEEN PAID UP.

Hypo: has conveyance recorded, then goes to Bank to have a $2000 mortgage. Is the Bank a BFP? Yes! Are they protected? NO. O had no capacity to convey due to insanity; ∴ no title passed to the woman + nothing could be mortgaged. No title, no good mort. There is nothing the Bank could do. They have no security interest for their money. Had nothing but the note. W defrauded O, mortgaged to Bank for $2,000. – The bank is a BFP + is protected: O, due to fraud, has an equity of redemption, W a legal title, and the Bank had a leg. title + a legal title takes precedence over an equitable title.

DOWER

Dower: a wife has an interest in the land of her H and he has a right of seizure due to the coverture (marriage). ⅓ goes to W for life + to collect it she must outlive H. ⅓ of all lands of which H was seised.

You record the deed, not the title.

What does the registry protect you against and what good is it? It protects against unrecorded instruments which are entitled or required to be recorded. This depends on the state and what kinds of instruments it requires to be recorded.

Leases: In Mass, leases which last for 7 yrs. or more must be recorded. If a lessee does not record the lease, a BFP is protected and does not purchase subject to the

* What you record is the deed, not the title.

lease. Where lease is less than 7 yrs. & unrecorded, BFP not protected & buys subject to the lease.

Contracts of Sale: Usually a BFP is protected if unrecorded and protection is due to the Com. Laws.

Other forms of protection:

(1) Title Insurance.

Faults { (a) It is a K
(b) Youre only protected & for as terms of K.
(c) Only protected as far as assets of Co.

(2) Title Registration - Where the title is recorded, not the deed.

(a) In case of forgery, BFP isn't protected

Notes: 1/7/57

Accession

Accession: Something added. Comes in when labor or materials are added to another's chattels.

I. Who gets the changed chattel?

(1) Specification:

"Change of species" (grapes into wine). When the orig. product was changed & could not be recog., the orig. owner would not get it. This is an old and somewhat antiquated theory.]

(A) Ratio of Change of Value - [Majority View.]

"Acquisition of Title by Accession" [If the value of the item(s) is materially increased, or greatly increased, it goes to the tort feasor. It is necessary to distinguish between a willful & and an innocent wrongdoer. In a " wrongdoer, if the change is great, the " will probably keep it. If an innocent wrongdoer changes the item at least 7 times the orig. value. The usually adhered to

an extreme case

standard is 28 to 1.

(B) Where the chattels of one receive added value from the incorporation into them of the goods of another:

* The resulting product goes to owner of principal goods. Good or bad faith is not T.I. here. The one with the greater interest or principal product will get the whole.

(C) Does the prin. of accession apply when the attached articles can be removed without dam. to the principal thing?

* Cts. have used 2 criteria:
  (1) Intention of the annexor
  (2) Equities of the situation are T.I.

No unanimity here, but some conclusions can be reached: (arguable)

(1) If the ~~poss. of~~ possessor + ostensible owner places the things on the car, it is generally held they become part of car by Accession.

(2) If the things added are not property of the subsequent possessor, the parts added will probably be severed.

(D) Accession to realty. The principal is the land, so he who owns the land owns (e.s.) the house accessed.

II. What are the rights of the owner if he seeks Dams. Rather than the chattel.

A. Against the orig. treas himself.

1. If the " " was innocent

the orig. owner recovers only the val. at the time of the conversion.

2. If the converter was willful, the orig. owner would recover the increased value, unless title had passed to the bona fide. (maj. rule)

B. Against a purchaser from the converter who made the accession.

1. The maj. holds the distinction between innocent and willful converters. If the orig. converter was willful, the BFP would be liable for the increased val.

2. If the converter were innocent, the BFP would only be liable for the value of the chattels at the time of the conversion.

III. If the owner of the chattel does recover it, may the converter be entitled to compensation for the value he added to the chattel?

A. If the converter was willful, no compensation.

B. If the " " innocent, he still cannot recover in an action at law.

[(1) The com. law will not hardly make a person a debtor against his will.

(2) Owner may have wanted to keep the chattel as it was.]

In real estate, the case in equity may find the owner to comp. the converter. And some states have statutes which provide for comp. when realty has been accessed.

Betterment Acts or Occupied Claimants Acts

48 A fixed rule of law for the protection of prop owners puts upon one so dealing with stolen prop the duty, no matter how innocently he dealt, to account to the true owner for its value. (Richtmeyer Case)

Richtmeyer v. Mutual Live Stock Commission Company

Note this case and read it.

Whittler v. Sharp — After there is an orig. innocent conversion, may the converter return the undamaged chattel (even against the consent of the owner) for the purpose of mitigating damages? The court here held YES.

Doctrine of Confusion: An intermingling of goods owned by different persons so that the prop. of each can no longer be distinguished. Only applies where the particular things cannot be definitely identified.

* Where there is confusion of goods of equal val. & the proportions are known, then the owners are tenants in common of aliquot portions (or to the extent of his interest). It should make no difference if the acts were willful. No forfeiture as long as goods were of equal val. & proportions were known.

* If the Con. results from act of owner or third party, the losses should be heared equally if the proportions cannot be distinguished.

* Where there is a willful Con. of goods & division is not possible (due to: (1) the goods may be of different kinds or qualities (2) the amt. of each owner is unknown), the willful confuser forfeits all his rights & the entire mass is given to the other party in toto. Another rule holds that no forfeiture by willful confuser, but burden of ~~proving~~

proving his title to his part of the mass is on him.

* A non-willful con. where the division is impossible: (different rules)
  (1) The careless con. forfeits all rights
  (2) No forfeiture, but difficulty is how to prove who owns what. Done by:
    a. Treating all as tenants in common with each having to prove his proportion.
  (3) Put burden of proving what the shares are (THE BEST RULE OF THE 3) ~~and if he~~ on the willful con., proving his forfeiture in case of failure.

Effect of Obtaining a Judgment for Title.

hypo: A v. B in trover { A = 0 J/A, but no satis.
B = converter

A got judgment, but no ~~confusion~~ satisfaction. A could not now sue in Replevin because of:
  (1) Election of remedies
  (2) Res judicata

Neither could A again sue in Trover. Does this mean A can resort to self-help to recover the chattel? Some cases say yes. ~~Now~~ Judgment does not pass title.

hy: Suppose after judgment (A could no longer sue B) B sells to C, does B also pass him immunity to suit? ("Two possibilities: yes and no.") Some cases hold yes, but A could still use self-help.

Problem 1 (Pg. 245): Generally, the answer is yes. Can A sue in specie & recover? Generally ~~yes~~ yes. A would usually have any recourse against C as would lie against B. B had no immunity to pass on to C.

Baggy-Shaggy
a pregnant
Collie dog

Problem 2 (pg. 245): C ~~acq~~ could have possibly gotten the immunity from B. The Ill. Ct. held differently, but either one can be argued. A would probably be better using self-help.

[There may be a question on the comp. on accession and confusion. Nothing on the Recording Act.] On the EXAM, Tho'.

Notes: 1-9-57

RECORDING ACT

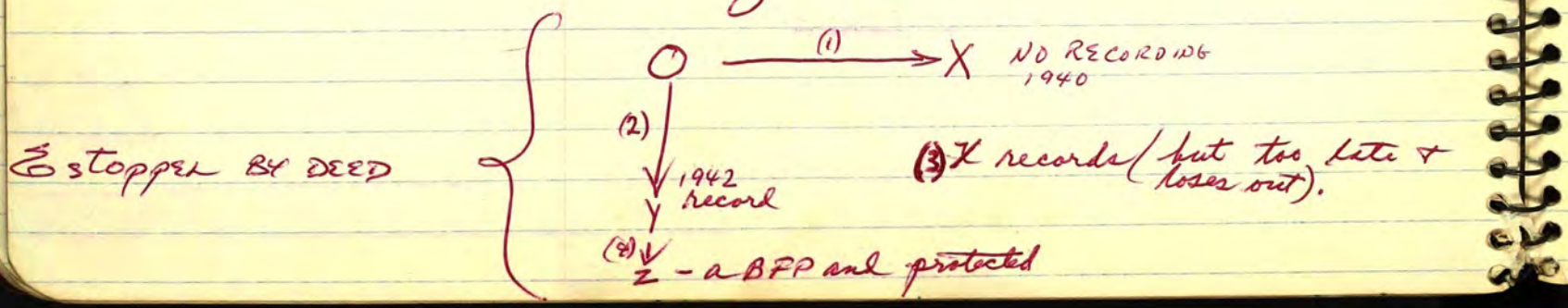
Recording Act: The purpose of the act is to make it possible for a vendee to know whether the prop. is free and clear of encumberances to affect the purchase.

Mechanics

Abstracts of title are gotten (a condensation of all material pertaining to the land in question). You can go to the Index of Grantees (your grantor was a grantee). If in the history of the realty in question there have been matters of Probate, you might have to go to the Probate Court Indexes.

* After you find the orig. grantor, you check the grantor indexes until he conveys out.

Pg. 903 - [Estoppel by Deed - not modified by the Recording Act.]



Pg. 893: The Daily Sheet will be the last thing to check. You should check up to the instant minute because if a deed is recorded just 5 ~~mm~~ mins. before you close, the Ct. would say there was constructive notice.

Pg. 895: Check deeds of lands with boundaries on your own land.

Pg. 896: Get to the original record and find out whether he is still living. If, then, he is living," you can ask him." No matter how careful you are, you can't always be sure. e.g. there may be an adverse possessn involved.

Modes of Protecting a Purchaser

1. The Recording Act
2. Title Registration (chap. 31) - Mass. has this Act, too.
   * There is a state insurance fund which compensates for the loss of land and this fund is connected with Title Reg. Act. This Title Insurance is really a warranty saying your ~~deed~~ title is good and if there wrong, you'll be compensated.

Notes: 1-11-57

RECORDING ACTS (TYPES)

I. NOTICE (OHIO STATUTE p.g.) (note p. 783) Unrecorded instruments of notice are deemed fraudulent as against a BFP. Failure to record does not prevent title from passing, but it does allow the owner to convey to a BFP and the latter would prevail as against the orig. ~~grantee~~ BFP of the transaction.

(e.g.) A (owner) —(1)→ B (BFP)

B —(2)→ C BFP (wins against A)

A sues C

Mort. no good even between the parties until recorded under the Ohio Mort. Statute.

Notice Stats - place no premium on the race to the recorder's office, & protect the BFP whether he records or not.

If the deed is recorded, the first grantee will prevail. Recording is not a part of the passing of title. The purpose of recording is to protect against a subsequent BFP for value sans notice.

O —(1)→ A

(2) ↓

B (BFP) never recorded

(3) A records

(4) B records

It does not matter when A + B record and B does not even have to record. And, B would prevail as against A if there was no notice of A's claim when B bought for value sans notice from B.

Theories:

(1) A is ESTOPPED DUE TO FAILURE TO RECORD.

(2) By A not recording he left in O everything but power of divestment and B was thereby passed everything but the power of divestment.

II. Race: (N.C. Statute, e.g.)

Race Stats - place a premium on the race to the recorder's office & protect the purchaser whether he has notice or not, if he records first.

The one who records first.

O —(1)→ A

(2) ↓

B

3. A Records

Here, A would win and B would not even have to be a BFP. B could be a purchaser avec notice. If B records first, B wins. Under this N.C. stat., a mort. would be good between parties even sans a recording. Not like the Ohio statute.

III. Race-Notice
(Michigan) p. 784
place a premium on the race to the recorders office, + protect the BFP only if he records first

(You must check the statute in each State), Notice to B here is immaterial. The unrecorded instrument is void against B only if he is a BFP and had recorded first. For B to win:
(1) He must be a BFP, and
(2) " " have recorded first.
(p. 784)

IV Period of Grace Statute
(Delaware)
P/G stats give the prior grantee a period of grace in which to record, and protect the BFP only if the prior Gee does not record in the time allowed him by the statute.

Now often found today. It gives a period of grace (15 days in Dela.) to allow the first purchaser to record (A) and if A does so, he would prevail. This statute is usually coupled with one of the other types. Even if B is a BFP for value sans notice and recorded first, if A records within the period of grace then A would prevail. If the ~~deed~~ ~~statute~~ is recorded within the period of grace, then the instrument would not be void as against a subsequent BFP (i.e., A would prevail). The converse is true.

Rule of Law * A subsequent legal title plus an equity will prevail over a prior equity.

54

"Where a K for the sale and conveyance of lands remains executory, and no deed has passed, each of the parties has an interest in the premises which may be made the subject of a mortgage. A mortgage by the vendor in such circumstances, will pass to the mortgagee exactly the rights which remain in the vendor and no others." (Ames v. Roberts)

SECOND SEMESTER

Notes: 1-23-57

Assignment: (for 2d Sem.)

795
803
807
853
867 } 1 {Chisum [sic]}
872
875

928-934
248-427 } 2

Gifts } 3 pp. 105-179

Outside Readings
#2 - Moynihan
Ch. Smith - Real Prop. Survey

Ames v. Robert

S —(1)→ Ames
(2) mtge Chisholm
(3) ↓
Robt. ("BFP")

N.R.
Q/t.

did not although Robt. prevail there was a Notice R.A. and Ames failed to record. The deed of Ames could not be valid until recorded, but under the stat. his land was exempt from Robt's deed.

Problem 1 (Pg. 768)
This is a race statute we are dealing with.

Problem 2
For C under the circumstances.

Problem 3
For B because love and affection are not "valid consideration" as between Mother and son.

Earle v. Fiske

"NR = NOT RECORDED"

Nancy —(1)→ B + E for life, rem. to Mary (NR)
(2) ↓ heir (Benj.)
(3) ↓
P1 BFP - prevails against B+E (Mass. Stat.)

B+E are superior to Benj. for he is only an heir + has given no valuable consideration. In Mass., P1 would win against B+E. In Conn., B+E would win. The Mass. Stat. is probably better than the Conn. Stat.

"When a deed is made of all grantor's real estate sans description, nothing passes except such property as is then vested in him by legal title. A deed of land tho' not recorded, is good as between grantor and grantee, and divests the title of the former, so that it does not pass to a subsequent grantee, who takes a conveyance only of the estate which belongs to the grantor at the time of the grant." (Ames v. Roberts)

Notes: 1-24-57

Mayham v. Coombs

C —(1)→ P PB mtge. / NR

(2) ↓

M (w/N)

We have a race statute

w/N = with notice

Problem 1 (p. 778) Here, the mortgage statute is a Race and the Deed stat. is a Notice type. As a general rule, jurisdictions do not have different types of statutes; Ohio is an exception here.

Problem 2:

A —→ B NR

(2) ↓

C (w/N) records

(3) ↓

D (B.F.P)

{C v. B - J/B}

{D v. B - J/D}

Under the Ohio Statute, the decisions are the best.

Suppose that C repurchases from D:

A —(1)→ B

(2) ↓ A

C

(3) ↓

C ←(4)— D [—(4)→ X]

C would not get all of the rights of D (BFP) upon repurchase if C was previously a party to the transaction with notice. But, if X bought from D, even if X had notice of the prior transactions, X would get the rights of D (BFP).

Karger v. Steele - Wedeles Co.

A —(1)→ B N.R. (mtge.)

Creditors attachment (2) ↓

C lien

The Recording Statute does not protect creditors.

Problem (Pg. 779)

A —→ B

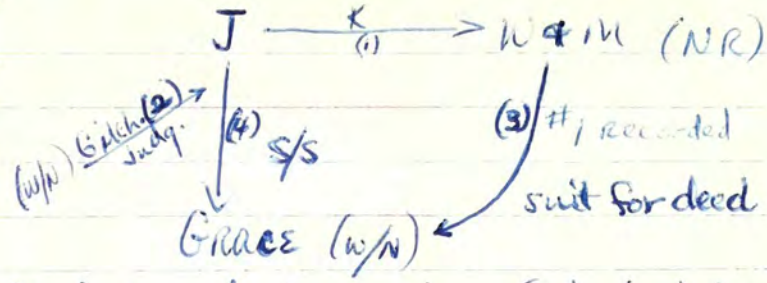
or. ↓ C

C —SS→ B

At a sheriff's sale a BFP (D) would prevail.

Notes: 1-28-57

Grace v. Wade

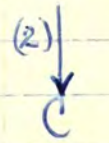


Anybody claiming thru Gilchrist gets the same priority that " had., i.e., Grace, who was claiming thru the creditor (Gilchrist) got the same priority and Wade & Mam. are "Kaput." The lien acquired by judgment or levy of an execution by the com. law, extends to and binds only such title or interest as the debtor has in the land at the date of the judg. or levy of the execution under which the lien is claimed, and that the equitable rights of third persons will be upheld against the legal lien of the debtor.

In some juris. the judg. lien takes effect automatically, but in some juris. they must be recorded.

PROBLEMS (Pg. 784)

(1)



You are Atty. for C.

(1) Under the Notice type, C prevails if he is a BFP sans notice for value. C protected by checking all records up to the instant moment from prior purchasers, and from subsequent purchasers by having C to record. Notice is constituted from the minute it is recorded.

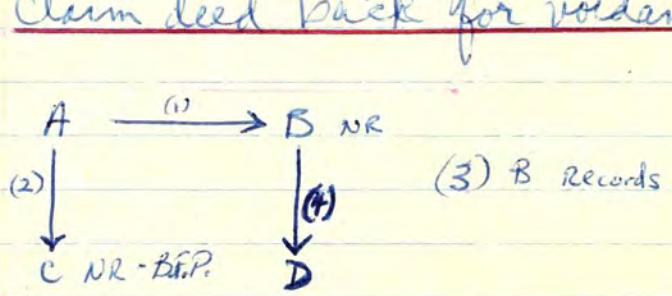
(2) Race-Notice - make sure nothing has been

filed up to the minute you record; and, you must treat B to recording, even if you are a B.F.P. You must get your deed recorded 1st.
(3) Race - the priority is determined only in reference to who records first. (You must make sure there is no prior recording and as soon as you have the conveyance, you ~~must~~ should record.
(4) Period-of-grace - (let us assume 15 days) you should escrow the delivery money. If there is no prior deed recorded after the grace, the escrow agent will be authorized to give the money to A, the seller. (Or, you could put a ~~quit~~-claim deed with the money (both in escrow) and if there is a prior deed recorded, the money would go back to C and the atty. (you) would get the quit-claim deed back for voidance.

(quit-claim)

Notes: 1-30-57

(11.)



(Notice Stat.) As between C + B, C wins because C is a subsequent BFP. Against C, however, D wins by getting title through B who had then recorded. Therefore, D gets B's rights under color of title. Even if B had recorded, as against C the latter would win. In a Race - Notice juris., the only question is whether he would be a BFP at the time the title is passed. C only protected from prior grantees only and not from subsequent purchaser (that is, where C is a B.F.P.) In a R-N juris., D would prevail. Recording is prime requisite. B would also prevail against C. The only thing they have to worry about

A subsequent legal title plus an equity will prevail over a prior equity

(Race-N Stat.)

(II)

and, C wins against B if C records within period of grace.

is a subsequent B.F.P.
Re: a Grake Statute, D would again prevail because the Grace would act as a Notice Statute here. C would prevail over B.
Re: Race Statute - D again prevails against C

(III):

A —(1)→ B NR
(2)↓
C w/N (Rec.)
(3)↓
D (BFP)

4. B recds
5. D "

In Notice + RN, B over C because C has Notice of the prior conveyance. In Notice D wins against B because D is a BFP and he has a clear chain of title from A via B; and there had been no recording before D bought. D should win in all types except R-N.

Notes: 1-31-57
III (cont'd)

Notice - a BFP prevails.
Race - C v. B, C would win because he recorded first. The first to record in a race jurisd. wins.
Race-Notice - In order for a subsequent purchaser to win, he must be a BFP ~~of~~ without notice and record first. The better view is that D would prevail. C got title before B and passed this good title to D before B recorded.
Period of Grace - if periods for both B and C have run, the statute would act as a Notice act and D would prevail.

Period of Grace

Hypo: A → B → C → D → E
6/1 7/1 8/1 9/1

C→B $C^{LE} = C^{CL}$ Index
B→C C^{CL} Index + 20 days

M/C
date ~~M~~ 6/20
M records on 7/2
M had 20 days to record and did so ∴, title would go to M at this point.

A link in the chain would overlap for 20 days in a period of grace jurisdiction and you would have to check each one.

ch 785 (IV.)

A —(1)→ B $5,000 N.R.
A —(2)→ C $7,000 W/D Rec.
A —(3)→ D $3,000 { No notice of #1 / Yes " " #2

Notice Jurisdiction

Results would be:
(1) B/C J/B
(2) C/D J/C
(3) D/B J/D

These were mortgages and upon judgment the sums would be divided (out of $10,000) thusly:
B — $5,000
D — $3,000
C — $2,000

another result might be: (Buyer's result: very fault(y))
C - $5,000
B - $2,000
D - $3,000

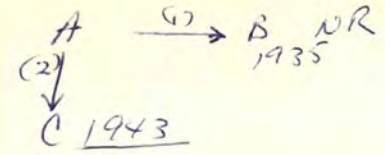
(V.)

[B v. C - B wins]
Recording Act does not protect sub. purchasers of adversely poss. prop.

A - ad. poss. in 1920
B - a/p 1942
C - purchases
1935 - deed to B

SOL - 20 years.

C would win because the acceptance of the deed denotes recognition of a superior title of A. ∴, the continuity was disturbed in 1935.



Notes: 2-4-57

(V.)

You would grant a dir. verdict for C because he is a BFP. In a race notice, under the facts you could not give a dir. verdict (or in a race). C is a BFP but he must also record first and until he does he cannot prevail.

Section 2, p. 786 **Record Notice**

Some say the index is part of the record and some say not. Where the former view is held, failure to index voids notice, but in the **Jones v. Folks** case, the jurisdiction held that it did not matter that the deed had not been indexed so long as it was recorded. Not prevelant today due to photostatic copies. But, where such a mistake is made (**Prouty v. Marshall**) it does matter and it does not constitute notice. It would make a difference if Penn. had a tract index.

Actual mistakes in the Record

Note on p. 794

Problem (Pg. 795)

Change of name of woman due to marriage but later sold under her maiden name.

(a) No, if the index is part of the record.

(b) Would a statement such as the woman made be sufficient to constitute notice to check on the possibility of a change of name? No the average person would not be put on notice of inquiry.

(c) Yes, the result would be affected, for all would be classified under Blackacre itself and the change of name would not arise.

Board of Education of Minneapolis v. Hughes

Race notice jurisdiction

H —(1)→ Defendant H (U.S.) LR

G/e —(2)→ D and W (notice)

—(3)→ Plaintiff recd. (no notice) BFP

+. #1 OK and recorded
5. #2 recorded

The deed might not have become valid until the name was filled in, thereby making P a subsequent grantee. Although D and W weren't BFP's, P was because he was sans notice and a purchaser sans notice can get better title than the grantee who had notice. D goofed when he failed to put in his name, and that might be an argument to be used against him. Hughes won because he was a "sub. purchaser." D would lose anyway even if D were a ~~prior~~ subsequent grantee; and therefore the prior grantee would lose. The old Com. law view of "first in time, first in right" might well apply here.

Problem, p. 798

Read in connection with the Conn. and Mass. the paragraphs on P. 903. (Estoppel by deed)

Ayer v. Philadelphia and Boston Face Brick Company (Sup. Jud. Ct. of Mass. 1873)

W —(1)→ X mtge.
W —(2)→ Y mtge.

foreclosure (3) A
(4)↓
(5) W
↓
B (BFP) ← To foreclose

62 Estoppel by Deed - where one sans title has conveyed with covenants of warranty, and has afterwards acquired title, he is estopped from asserting his want of title at the time of making such conveyance.

Notes: 2-6-57

Estoppel by Deed - If A, sans title, conveys to B, and later A later gets title, this after-acquired title will inure to B and for his benefit

Ayer v. Phila. Brick Co. Warranty of a fee simple.

Rule of Repugnant Clauses - you read every part of the deed separately and construe them accordingly.

"Four Corner" Doctrine - you read the deed as a whole (everything within the four corners).

The first mortg. (X) was frclsed & land conveyed to A who then sold it to W. W then sold to B (not a prior party), a BFP FUWN. Ct. held the doctrine of estoppel is not affected by the Recording Act. (Y had brought suit against B to foreclose the mortge. - T/F).

Rule of Construction — A deed with a quitclaim ~~deed~~ covenant (not a quitclaim deed) is actually a warranty deed.

Problem 2 (p. 807) — If it were a sensible stat., it should codify the Connecticut doctrine. The statute (2 decks) is like the Mass.

Morse v. Curtis — A much more sensible holding by Massachusetts.

H —(1)→ P1 NR

(2)↓ Clerk W/N recorded

(3). #1 rec'd.

(4)↓

(BFP) T W/O N

P's mtge would have priority because Clark is not a BFP. So the recording out of turn (#3) within the chain of title is not sufficient to constitute notice to T (tenant)? The Ct. held that Pl's recording did not const. suff notice to T. (Note the rule in my abstract of this case). If it were a direct index, the result would be different because T would certainly run across the recordation by P. The time of delivery is when the instrument takes effect.

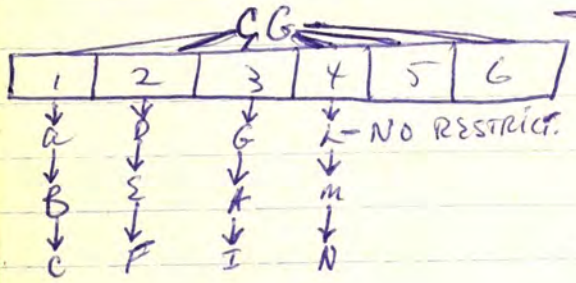
Woods v. Garnett — Even tho' the instrument was recorded if it was not properly executed then the recordation would not affect a sub. pur. for val. if he did not see the instrument. However, if C runs across the defective deed, he is put on inquiry notice. Holds (opposite from Morse v. Curtis) that deeds recorded out of chain of title are still notice (constructive) to sub. pur.

Notes: 2-7-57

The Buffalo Academy of the Sacre Coeur v. Boehm Bros., Inc.

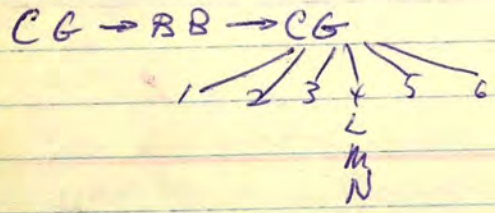
(1) Eq. Servitude
(2) Restrictive Covenants
(3) Bldg. restrictions

Many Restrictive Covenants are allowed and are valid re: the use of prop., building restrictions, etc. (e.g., no. of ft. from street, no. stories, etc.). Racial



restrictions were held void by the Sup. Ct. of U.S.

Here, D included in the deed the restrictions when selling lots of land in the subdivision he had developed. When he conveyed a lot to L he forgot to include the restrictions. L conveyed to M absent " " .
M " " N " " .
N was building a drug store in this residential dist. & the residents sought to enjoin N. N said that (under a NOTICE JURISDICTION) he was a BFPFUWN and that he was therefore not restricted. (Claimed no notice of the restrictions). N would (under a NOTICE JURIS.) check back thru M, L, and CG (the common grantor) and the rest of the chain of title back from CG. (In this case, it probably would not matter if the juris. used the tract index because the others (A-I) would not be included in the chain of title of lot #4). You should trace back about 60 years. Now, if CG had conveyed from himself to BB (a lawyer) and BB reconveyed to CG & then CG conveyed to L, etc., N would be put on notice of the restrictions because in tracing the chain of title back, the other people on the other lots would be brought



"vicarious education"

Note: Snow v. Van Dam (p. 1126) - Covenants

into view due to the fact that GG - BB - CG ~~included~~ dealt with the conveyance of ALL of the lots, Easement - the limited right to make use of another's land (e.g. right of way). Usually created by conveyance of a deed. There can be Easements by implication (e.g., A owns prop. and the only way out by car is thru B's land. A has an Easement by Implication). The best way to guard against an implied Easement is to look at the prop. and the adjoining prop. to see if there is chance of an easement or if an easement already exists.

Reciprocal Negative Easements -

Subservient Estate - the one subjected to the easement or the right of easement.

If land is conveyed, the easement goes along with it. The one who has the easement must keep it in repair. And, if the person with the right of way is injured due to failure of the land owner to maintain the land properly, he has a cause of action.

land of the →

Sanborn v. McLean

Adjoining lots are subject to the restrictions in the deed of one lot adjoining. And, notice may sometimes be had thru observing the adjoining lot, the type of neighborhood, etc.

Notes: 2-11-57 Read Chapter 31 next

Meeks v. Bickford (p. 839) A quitclaim deed is one devoid of warranties or covenants as to the title ~~he has~~ the conveyor has.

Results: (views)

A → (1) → B N/R
(2) ↓ Q/C
C

(1) A person should be aroused by a person declining to warrant his title. So,

B v. C, J/B → B v. C, J/B. If C conveyed with warranty deed to D, D would win vs. B. (Kansas view). He (C) takes subject to the infirmities of the grantor.

(2) A Q/C deed puts infirmities on the title all of the way. So, since A could pass nothing to C, all down the line from C thru Z would have a permanent cloud on the title. (N. J. view)

B v. C, J/C → (3) Q/C deed just like the other deeds and C is a BFP because the Q/C deed does not charge C with notice. (The Better View). C is not charged with notice.
Better view

In Mass., Q/C deed is a special kind of warranty deed and certain covenants (under the statute) are included in the Q/C deed.

NOTICE WHICH POSSESSION CONSTITUTES

A → (1) → B NR
(2) ↓ C
(3) ↓ D

D checks title and finds chain clear and no record by B. But, D sees B in poss. of the premises, and most states hold this to be a type of inquiry notice. (Colley v. Ward, p. 86). Poss. constitutes inquiry notice.

Toupin v. Peabody (p. 853) Mass.

A —(1)→ B (N/R lease + 5 yr. option)
(2) ↓
P - defendant

T/P: D is a subsequent BFP and takes precedence over B who had not recorded his lease. The stat. provides that instruments covering 7 or more years shall be recorded. Here, it was treated as a lease for 7 years. Mass. holds that facts insufi to put a purchaser on inquiry are not sufi to affect him with actual notice of an unrecorded instrument within the meaning of the language of the statute.

Mass. view re inquiry notice

Brinkman v. Jones (p. 857)

A —(1)→ B (NR but in poss.)
(2) ↓
C

If the purchaser actually knows someone is in poss., he is charged with inquiry and should check. But, if he doesn't know about it, he (C) takes free of encumberances. In the latter case, C would be a BFP.

Toland v. Corey (p. 867)

Life estate + Remainder

(1) O → L/tenant of Rmdrsman
(2) L/t ←(2)— Rm (NR)
↙ fee simple owner
↓
X

The L/T could invalidate all of the mtges because her poss. constitutes notice of even her fee simple.

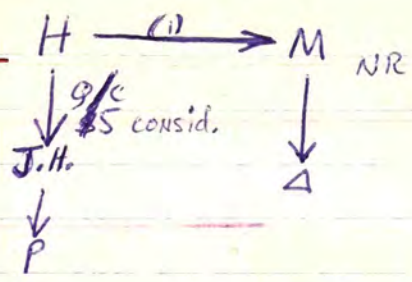
Rule of Law

*Problem #2 (p. 871)

T/B. B takes free of the mtge. C should have checked all tenants in the bldg. and ascertained their interests in the #10, also checking the leases. The unrecorded instrument is invalid as against a subsequent B.F.P unless he had actual notice.

Notes: 2-13-57

Strong v. Whybark



Was Josephine Hayden a BFP? She knew nothing of Moore but to be a BFP, must pur. for val. Did she pay val. ($5) consideration. Ct held that "love, affection $5" was sufi consideration. A quit/c deed doesn't necessarily const notice to the receiver. Does paying such an inadequate price const notice? Is $5 sufi as a price + consideration? A q/c deed usually should const more notice to strangers and others than to a relative. In a deed, the recital of "consid" is merely a formality. In most states (Mass.), the sealed instru precludes the raising of issues re: consid. When the practice of conveying to others arose, consid. arose. This was prior to the stat. of Uses. Josephine, a sub. BFP for val, prevailed over Moore, a prior grantee (unrecorded).

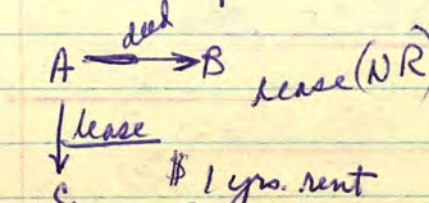
"Balloon Case"

MH.

~~Durst v. Daughtery~~

Three ways to protect them: (Josephine, Moore, P, + D)
(1) Make them tenants in common - may not be practical
(2) Josephine gets land & Moore is reimbursed.
(3) Moore gets the land & Josephine has a lien.

PROBLEM (Pg. 877)



Under Pro tanto protection, C could only

insist on protection for 1 yr. since he's paid for only a 1 yr. lease. C was in poss. of the property.

Mc Donald v. Johns — Rec. Act not applicable if pre-existing debt is given for the consid. So, D (Johns) prevailed. First in time, first in right.

Notes: 2-14-57

Pre-existing Debt as Valuable Consideration

A —(1)→ B NR
(2) mtge
C (REC)

If C is a BFP for value, he will prevail over B. But, to be BFP, you must give val. consid.

And, is the pre-ex. debt (mtge) val. consid? (Some juris hold that, for the purposes of the Rec. Act, the ans. is YES. Some hold no.) If A has mtge. on B's land and agrees to wait until later to ask for the money, this is val. consid. in All juris because A is now assuming more legal obligations and actually doing something to his detriment.

Notice & Possession

Rule of Law

A —(1)→ B (POSS) NR
(2)
C

Where a Notice Stat is involved, and there is poss. and occupancy by someone other than the grantor, then you are charged with notice and put on guard. This is not actual notice, but inquiry notice (A TYPE of actual notice). Poss. itself not sufficient if C doesn't investigate. But, if C knows that somebody other than the grantor is in poss. and fails to

Note: Chapter 30 not on the final!!

investigate, he is not a BFP because he is undera duty to investigate.

Chapter 31 - Title Registration

The title per se is registered + a certif of title (c/t) is issued and any encumbrance will be inserted on the c/t. Generally thought to be better than the Recording System even tho' it isn't perfect. Leases for 7yrs. or or better should be checked in the Rec. Act. The method of conveyance is different from the Rec. Act: The grantors c/t must be surrendered + the deed to the clerk and the clerk will issue a new c/t to the grantee. Adverse poss. will not hold power against the Title Registration. It is much simpler because everything is there on the one piece of paper for you. People recovering from disabilities are cut off under the Torrens Act; and also kids who have valid rights to land + could not be found but are now found are also cut off under the Torrens Act.

Torrens Act (TORRENS)

Eliason v. Wilborn — P entrusted his c/t to B, who defrauded P by forgery + used the c/t to defraud D, F/D he kept the land. If this had happened in Rec. Act. Juris, P would have recovered

since Rec. Act. doesn't protect or allow for fraud.

Hypo: Thief steals deed from A + conveys to B, a B.F.P. – B would not have good title. A matter of policy mostly. Reg. Act broader than Rec. Act.

Follette v. Pacific Light and Power Corp.

Personal service of notice to D was deemed necessary under the Stat. Poss under a prereq. instrument will constitute notice if the orig. recorded instrument was valid.

Abrahamson v. Sundman

P/Ds. K/S poss. did NOT constitute NOTICE AT THE REGISTRY SALE.

(Go to chap 12 for Monday)

Notes: 2-18-57

ESTATES IN LAND

Chapter 12 (p. 247)

Prop. Law dev. – changes relatively slow: (1) Constitutional prohibitions against certain things (2) Much reliance by citizens on estab. rules of law.

Feudalism was dev. after the fall of strong central govts. Wm The Conqueror brought partially the system of land holding:

(1) Confiscation of lands of the opposition Wm parcelled out these big estates to his big followers (for rewards, etc.) and the " would parcel it out to their own " , etc.

(2) Pledging of support by small land-holders to the Master – mutual protection. Graphically, it is like a pyramid: King at top as chief land-holder, then "tenants-in-chief", etc. – SUBINFEUDATION.

1
2
4
8
16
32
64
127

These people could be both lords and tenants in one. The system of holding the land was called TENURE (holding rather than owning).
Allodial - holding land not in subordination to anyone else.

*Tenure - (1) Freehold - most dignified
(a) Military - tenure by knight service. The amt. of annual contribution was not stable due to failure of ability to foresee how many Knights will be needed + for how many days. As time passed, this obligation was commuted into a money pymt (scutage) to maintain a standing army. The Incidentes of Tenure (marriage, aids, etc.) were uncertain and this was not good. They didn't know when they would be called. The Incidents (money to be paid for marriage, wardships, etc.)

Took care of military needs.

Incidents:
(a) Marriage
(b) Wardship
(c) Homage
(d) Relief
(e) Aids
(f) Escheat

(b) Socage - predominantly an agriculture tenure + characterized by a certain no. of days of work on Masters land, later commuted into $$ payment. Later became the chief tenure of England + even tenants-in-chief might be liable for it.

Took care of econ needs.

(c) Serjeantry - a means by which the manor houses got servants, gardners, falconers, cooks, etc. Means of getting minor services.

Took care of flunkies to impress the subinfendants

(d) Frankalmoign - tenure of the church. The land would at times be absolutely given to the church.

(2) Servile
(a) Copyhold
(b) Villein

Manorial System — had the following parts:

(Domain) (1) Lord's Demesne - land exclusively for the lord's use.
(2) Village - occupied by all of the tenants of the Manor.
(3) Strips of land to be farmed by the ". All of the land was recorded on records of the manor, thus came the name "copyhold."
(4) Manor had a judicial function (Court Baron) and the chief jurymen would be the villains. Not only civil juris, but Crim. juris. (Ct. Leet). The Baron was the chief mediator in both juris. of the Manor.
(5) Ecclesiastical land
(6) Land in common.
[The origin of easements goes back to the Manor.]
(7) Hunting Grands of the lord exclusively.

Problem 1 (p. 257) - the King in both instances.
" 2 - (a) A, (b) A by escheat, (c) King by forfeiture, (d) B would move up & take A's place in relation to the King.

Notes: 2-20-57

Escheat only applies where the tenurial system is used. No subinfeudation in the U.S.A. except in Maryland and Pennsylvania. Chap. 190 Mass. Laws, sec. 3: If a land holder dies sans someone to leave the land to, the land will ESCHEAT to the Commonwealth.

Statute Quia Emptores (1290)
Subinfeudation increased and incedents decreased

before this statute. This statute (1) prohibited subinfeudation by alienation and subinfendation of a fee simple estate, and (2) recognized the right of the freeholder to sell his lands at his pleasure, but this was prohibitive of subenfendation while allowing substitution. This statute applied to only fee simple estates. Under the Statute of Mmre all people held under (directly under) the King. This revoked the Quia Emptores. (1290)

In U.S.A. There are 3 types of states:
(1) Allodial (no subinfeudation)
(2) Jenurial with Quia Emptores enforced (no subinfendation)
(3) Jenurial - subinfendation allowed

Maryland and Penn. are exceptions where they hand quit-rents and ground rents. In Md., they use long leases (99 yrs + renewable forever) and pay periodic rents.

Notes: 2-21-57

Problem (p. 265) You would argue that Quia Emptores prevented P from recovery; that D had a fee simple determinable and this would preclude recovery by P.

Problem (p. 266) "They look feudal" (ha, ha!) Quit-rents are recognizances of a higher "lord".

On the Exam:
(1) Jenure
(2) Allodial
(3) Quia Emptores
(4) Subinfeudation
(5) Alienation by substitution

Chapter 13

What is seisin? Possession of land under claim of title to freehold estate (greater in dignity than an ~~life estate~~ estate pur autre vie). Livery of Seisin was the method by which seisin was conveyed.

(passing of clod of earth, etc.). Seisin could refer to ownership either allodial or tenurial. When one is disseised, he tech. loses poss. and the right to possession.

* Theory of Estates: in real prop. there are a recog. no. of estates or interests with certain chief characteristics. (A great deal of memory work will be required on this section of work.) Property is legal relations between persons in respect to a thing. Estates usually measured by:
  (1) Duration and durability
  (2) Inheritable characteristics

* Def. of Property

[I.] FEE SIMPLE ABSOLUTE - there are lesser fee simples (eg. F. S. deter., F. S. subject to a cond. subs).

(A) Duration - F. S. A. may last forever. If there is no trans. or forfeiture by taxes, it may last forever.

(B) Inh. Chars. - subject to collateral heirs (opposed to lineal heirs).

"TO A and his heirs" are the distinguishing words."

F. S. A. is the max. no. of rights that one can acquire in one piece of land. It is close to absolute power over land as the law will recog. The law usually imposes some restrictions on all land. How do you recog. these various estates? In F S A the standard form of conveyance is "TO A and his heirs." "Words of purchase" describe the

(Chap. 183, sec. 13 of the Mass. Laws)

people who take the land as a result of the Conveyance e.g. "A" "Words of limitation" describe what is taken. e.g. "and his heirs."
The distinction between these two type of words. In most states, unless otherwise stipulated, a FSA is presumed. The words "TO A" are subj. in many states. The heirs are not orig. conveyed a FSA but A does. The heirs have a remainder, but the estate upon passing to the heirs still is a FSA.

Notes: 2-25-57

FEE SIMPLE You should note what was conveyed and should make sure a marketable title is conveyed. O → to A and his heirs: O has nothing left & the heirs have nothing; A has a FSA.

1) TO A or his heirs
2) TO A and his heir
3) TO A " " Children

(1) The logical interpretation might be to construe "or" as meaning "and." This depends on the whole conveyance. So, it would be FSA here.

(2) Probably an assumption of a mistake of words & construe it to mean heirs & it would be FSA. This too must be taken in context. Or, it could mean A & his heir would be co-tenants.

(3) "Children" does not, prima facie, mean "heirs." So, it could be a Co-tenancy was intended. Old Eng. Case (Wyles Case) construed it to convey a FEE TAIL. Or, you could maybe construe it to be a life estate remainder in FSA to the children. May depend on the juris. re: deciding what interpretation should be used.

*Lesser FSs (1) FS Determinable - possibility of Reverter
(2) FS subject to a cond. sub. - right of re-entry or pwr/term

(1) FSD - an inheritable estate (lineal or collateral). Terminates upon br/cond expressed + automatically (ipso facto) terminates as by law. A little less ~~that~~ than FSA. There is a possibility of reverter + this is what is left over after termination. FSD called sometimes BASE FEE. e.g., O → A + his heirs for so long as used for Church purposes. It can be devised to whomsoever the grantee (or the grantor) desires. FSD sometimes implied where imminent domain is involved.

(2) FS Subj. Cond. subs. - "To A + his heirs but if the land is not used for Church purposes then the grantor may re-enter."
Does not term. automatically upon br/cond subs but a right of re-entry is vested in the grantor. The interest left over is known as a right of re-entry or power of termination (both are synonymous) - if it is vest in grantor upon br/cond subs. Notice the phrases "but if" and "may". These and similar phrases are usually found in FSS to C/s. It is inheritable by coll. or lineal heirs; freely alienable; grantee gets no better title than the grantor (Rec. Act comes in here). Statutes sometimes place restrictions on the length of time it can persist. Bldg. restrictions, etc., may limit the conveyance.

27 Feb, 57

A deed does not take effect until delivered and in the presence; but one, today, can deliver a valid future interest.

contra to (b) p. 268

Problem #1 cb-269

a) yes, the statute applies
b) yes
c) no, y only has it for 10 yrs.

#2

Yes, Anne's will is effective. Seised by whom? according to meaning at the time — she wasn't in seisin of land & therefore she couldn't convey to her brother, John. Therefore, descendants prevail — Henry takes & can bring ejectment against Mary.

Problem 1, p. 271

"A conveys "to B for ten (1) years, remainder to C for life, remainder to the First Baptist Church, its successors and assigns, so long as the premises shall be used for Church purposes."

"to B for 10 years".
"to B" are words of purchase.
"for 10 years" are " " limitation.
"to C" are words of purchase
"for life" " " " limitation — what he takes.
"First Baptist Church" w/o/purchase
"its successors + assigns, etc." w/o/limitation
Do L for life
" Do L" w/o/lim
" remainder to the heirs of M "
"to the heirs of M" performs both functions

K conveys "to L for life (2) remainder To the heirs of M.

(I) The word "purchaser" means one who takes the land by grant or devise. Words of purchase are words which indicate the person who is to take the land by grant or devise. "TOA"

(II) Words of limitation define the extent or limits of the estate which is taken by the purchaser. "And his heirs" is the legalistic equivalent of "in fee simple."

Dissiesin - wrongful taking away from the real owner of his actual seisin. The dissiebor became the holder of the f/s, and the dissiesee had only a right of entry. Until upset, the dissiesor enjoyed all the fees and all its incidents.

Livery of Seisin - to create or transfer a present estate of freehold, it was necessary to use livery of seisin - delivery of poss of the land, by symbolical act such as the delivering of a twig or a "rose at midsummer"

An estate IN FEE SIMPLE is an estate in land which is of potentially infinite duration or of a duration that will terminate upon an event that is certain to ~~occupy~~ occur, but is not certain to occur within a fixed or com-

putable period of time, or within the duration of any specified life or lives. It is an unrestricted estate (F/S absolute) which gives a man the totality of rights that one can have in respect of land.

Determinable fees) Estates which would otherwise be estates in F/S, if subject to such a contingent possibility of termination, i.e., ~~the~~ a grant or devise "until" a named event occurs, or "while" or "so long as" an existing ~~e~~state of things shall endure, are known as "determinable fees."

a) The creator retains a ~~reversion~~ reversionary interest, i.e., the undisposed of residue remaining in a person who conveys an estate less than he himself has (possibility of reverter).

b) So, when land is granted for certain purposes, as for a church, and it is evidently the grantor's intention that it shall be used for such purpose only, and that, on the cessation of such use, the

automatic termination

estate shall end without any re-entry by the grantor, a determinable fee is created.

Fees subject to a Condition Subsequent

"An estate in F/S which may be terminated by the conveyor, or those claiming under him, upon the happening of a named event.

1) The estate continues in the grantee, or his successors, unless and until the power of termination is exercised; the estate does not end, ipso facto, upon the happening of the named event (in F/S determinable, the estate ends automatically upon the happening of the event.) The interest created in the grantor of such an estate is a power of termination, or right of re-entry.

Estates in Fee Tail - to "A and the heirs of his body."

1) It is an estate of inheritance which, if left to itself, after the death of the 1st owner, passes to his lawful issue, including children and grandchildren, so long as his posterity endures and will terminate on the failure of such posterity.

a.) Estates tail general - they are limited to the heirs of the body of the donee generally.

b) Estates tail special - limited to the issue of the body of the donee by a particular marriage.
c) Estates tail male - limited to the issue of male heirs.
d) Estates tail female - limited to the issue of female heirs.

And if the line runs out, the estate passes to the remainderman, and if none, to the original creator or his heirs.

* Estates tail in the U.S.A.
1) Generally abolished in all but a few states. Statutes have treated it in several ways:
   (A) N.Y. - all fed tails are turned into a F/S.
   (B) Ill. - gives life estate to A with remainder in F/S to A's issue.
   (C) Mass. - still has estate tail, but permits a simple type of disentailing conveyance.
   (D) S.C. - old fed simple conditional still in effect.

(1285) The Statute De Donis Conditionalibus ... provided that the donors intent should be observed according to the form, so that they to whom the land was

given should have no power to alienate, but that it should revert to the donor or his heirs if issue failed, either by an absolute default of issue, or after the birth of issue, by its subsequent extinction.

1) Effect of the statute - a new estate (estate tail) which descended to such heirs as were named in the gift, and if left to itself passed upon death to the lawful issue in the regulad order of descent as long as the line continued, was created.

2) As a result of the statute fee simple could not be conveyed to others by B even if the conveyance was made during the life of the heirs. It protected the original grantor (A) and the heirs of B.

28 Feb, 57

Problem (p 271) (3)

X conveys "to Y and his heirs, but if Y shall die sans issue living at his death, to Z and his heirs."

"to Y" wo/pur
"and his heirs" wo/lim
Called a F/S subject to a special limitation and it could not have existed at CL because of the rule that a cond could not apply to a stranger. This is a modern conveyance. Z has something in the nature of a shifting legal interest.

"but if Y shall die sans issue living at his death, to Z & his heirs" is a cond strictly limiting the estate of Y.

Problem (p. 272) Ct said this was a conveyance purporting to limit the estate to heirs on her father's side & such a conveyance is not recog.; "on her father's side" was held void.

*(1) If she gets a F/S, Johnson gets a F/S.

*(2) The two aunts take equally.

*(3) Probably yes. But, what did Robert Whiton intend? Apparently he did not want her to have the whole estate; or, if she didn't sell the land, the land should go to his heirs.

*You could give Sarah a life estate, contingent remainder to closest relative on her father's side. Or you could give her a F/S if she died with issue, or a F/S with ~~Reverter~~ reversion if she died sans issue. Or, there are other possibilities such as a life estate with a contingent remainder to some paternal heir or heirs.

You should ask the question: what did the conveyor (owner) intend when he made the conveyance?

* Fee Tail *

"To A and the heirs of his body." The type of estate which will result will depend on the juris + the time when it was made:

(1) Fee simple cond - the estate that A gets. When A gets a child, the estate blossoms into a F/S. [In a F/S sub to cond sub, however, when the sub-cond happens, instead of a greater estate developing, the estate in A would be lessened.] This creates in the donor a possibility of reverter, until the estate develops into a F/S. This is found in only a few states today. Was in effect in Eng before 1285 (Stat De Donis).

(2) Fee tail - An inheritable estate inheritable by lineal descendants only and a reversion is created. The Stat De Donis created this and changed the F/S cond to the fee tail.

* None of the tenants in tail could convey or affect an estate greater than his life. He still had a fee tail, but if father conveyed an estate greater than

his life, upon his death, the son could oust the donee (the son or the next heir in line). If father conveyed to C, then C would only have it for the life of the father. The father is tenant in tail for his life & the son cannot take over until the father's death. The donor could sell his reversionary interest (or convey, devise it, etc.) if he so wishes. No heirs, it reverts to the donor. (Note: THERE IS A DIFFERENCE BETWEEN REVERTER AND REVERSION).

The donor has a transferable future interest – a reversion.

Limitations:

(1) Can be tkd. to sex.
- a.) fee tail male gen.
- b.) " " female gen.
- c.) " " male special
- d.) " " female special

Problem # 3 (p. 278) (a) Richard has a fee tail with a cond estinct, i.e., a life estate. (b) The second wife would get no dower whereas the first wife would get dower. The issues of 1st wife would get fee tails so long as they are lineal descendants claiming thru Richard + Elizabeth.

After De Donis, in fee tails there are only reversions as future interests. (note: wherever you use "issue", qualify it so there will be no doubt).
The fictitous suits of Common Recovery & Fine were used (200 years later) against fee tails.

4 March, 57

* O → to A + heirs of his body
May result in:
(1) F/S cond (refer to it as such)
(2) F/T - with possibility to dock the entail.
{Common fine / Common recovery} Devices for converting F/T to FSA.
(3) Statutory modification - many states have statutes which provide for these changes. In Fla a life est. with a contingent remainder to his lineal descendants with or at the death of the 1st taker. Under Fla. stat. if there are no contingent remainders, the land reverts to the orig O or his heirs. The exact estate will depend upon the words of the statute. (Profound!)
Mass. — Fee Tail Chap 183, sec. 45 M. Ann. Stats.
A person seised of land as tenant in tail & poss. may convey such land as FSA by executing a deed & conveying. (Whittaker v. id 99 Mass. 364, 366).
* At CL a tenant in tail & remainder cannot pass an estate either by

grant or estoppel (Ash v. Price (?) Grant Dund). * Re est tail in Mass, primogeniture will rule & the eldest son will get the estate, a fee tail. If you have a life" and a remainder in tail (in Mass.) [to A for life & then to "B" and the heirs of his body] A & B could get together and convey a FSA. Equitable est tails can be barred. Land held in FT is liable for the debts of the tenant in tail (Mass.).

Problem (p. 277) A FS cond.

" (p. 278) (1)(a.) Sans issue - means if A's line of lineal descendents becomes extinct, we call it an "indefinite failure of issue."

look up def. of Remainder;

(b.) A would get a FS A ~~Remainder~~. You can only have a rem if you have an est left over which est is something less than the orig est (or than the FS here).

Sans issue - if the line ever becomes extinct, the cond takes place. [The rem. of a FT did not violate the Rule against perpetuities.] i.e., If the line of A ever becomes extinct, the land would revert to B.

(2)(a.) "Die without issue" - maybe just like problem #1, "the indefinite failure of issue". If we construe it so, the estates would be the same. But under Modern law, it

is possible to give a "definite failure of issue": we will deter that condition at A's death. We set a definite time to deter the cond. So, if when A dies there is an issue (and we have set the time for deter the cond as being when A dies), then the est. would never go to B or his heirs because A died with issue. If, then, we use "def failure of issue," A would get a FSA subject to a special interest, & B would get an executory interest.

A. FSA subj. to special int
B. exec int

6 Mar, 57

"Def. failure of issue" presumed by stat unless "indef. fa/iss" is specified. (See: Simes, Hand Book of Future Interests in library)

Section 3: The Life Estate (p. 280)

Life est is self explanatory. Any " " subj to termination prior to death of the person is a determinable life estate. Most common type was (or is) a gift to a woman "for life so long as she shall remain a widow."

"To John so long as he wishes to live in Boston." What kind of estate is this? Split of authority but this is a determinable life estate — not a tenancy at will (either party may terminate). An earlier view was that either party could terminate, reasoning that if it were at the will of one party, it is at the will of both parties.

note disenabling restraint - a forfeiture restraint on a F/S is usually valid, however, on interests on less than F/S. This is protection of the future estate.

Problem, p. 281 C should try to join all of the remaindermen in the lease. But this is not too valid; more children (or remaindermen) may be born later + you can't join the unborn. (However, you could get a trusteeship.) You could get a 5 year release from reversions.

Legal life estate - infrequently found.
Equitable " " - arrange for trustee to take over.

Estates pur autre vie - one cannot transfer an estate greater than he has; i.e. when a holder of a life estate he must convey it for the length of his (grantor) life.

Section 4: Husband and Wife (p. 282)

A. Husband's interest in Wife's realty - He had a life est in all of wife's realty (during their marriage) under jure uxoris. No necessity for kids. He was entitled to everything upon marriage. He could convey it & debtors could levy on it. It was actually HIS land. When an alive child was born, it (the estate) bloomed into a curtesy estate (a genuine life estate). The " " was of two types:

(1) Initiate - during the wife's life
(2) Consummate - after the death of W.

If wife died before H, under jure uxoris, the estate is terminated (a life estate determinable of a sort).

If wife died before H, under CURTESY, the estate (life estate) continued.

Dower
A species of life estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seized in fee during the marriage, and which her issue, if any, might by possibility have inherited. (⅓)

st in H's Realty - Dower
of all lands of which
l. While the H is alive, it
Dower. After death, Consum-
She must survive the
estate. She cannot transfer
any land. None of her credi-
each it, all before death.
consummate dower, W reale-
ate, all rights pursuant.
ive her dower by
signing release in a lease or a
deed to land to be conveyed by H.

7 Mar, 57

PROBLEM #1 (p. 285-286)

(a.) If there were a wife, she would have dower. You take the deed at face value, but if he is married you may be in a fix. The transaction would, ∴, constitute a defect in the title if the grantor is married for dower would then be in force.

(b.) The S/L would probably cure this and you would not have to worry about it. S/L would not run against any dower right until the husband dies. (Com. law dower was only a life estate for ~~⅓~~ ⅓.) The normal S/L re dower rights is 20 yrs.

(c.) You would not disregard the corp. entity and the Presidents signature would suffice. The wife of the Pres. (or the stockholder's) would not have dower.

(d.) Don't have to worry about K's wife because K was not seised of the property in question.

B. Wife's Interest in H's Realty - Dower
Wife had 1/3 of all lands of which H was seised. While the H is alive, it is Inchoate Dower. After death, Consummate Dower. She must survive the H to get the estate. She cannot transfer and convey any land. None of her creditors could reach it, all before death. But, under Consummate dower, W realizes her estate, all rights pursuant. W could waive her dower by signing release in a lease or a deed to land to be conveyed by H.

7 Mar, 57
PROBLEM #1 (p. 285-286)

(a.) If there were a wife, she would have dower. You take the deed at face value, but if he is married, you may be in a fix. The transaction would, ∴, constitute a defect in the title if the grantor is married for dower would then be in force.

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(c.) You would not disregard the corp. entity and the Presidents signature would suffice. The wife of the Pres. (or the stockholder's) would not have dower.

(d.) Don't have to worry about K's wife because K was not seised of the property in question.

(There is no such thing as Inchoate Right of dower in personal property).

(e.) Q was never seisd of the land, ∴ not allowing the wife to have dower.

#2

(a.) (b.) (c.) Advise her to take the absolute or statutory share – $15,000, even though the dower share would be $18,000 (but here there is a chance it will be contested + maybe lost to D).

Mass. Laws

Chap. 190, sec. 1 Dissent and Distribution → After the debts are paid, if the deceased leaves . . . . (look it up, fool). The man + wife put on equal footing as far as inheritance goes.

Dower + Curtesy Chap. 189, secs. 1 to 15 (look it up, peasant)

Chap. 209, §35 If the couple is adjudicated as living apart for a justifiable cause, either may convey + dower may not be claimed. Divorce bars recovery of dower. Another method of barring dower was JOINTURE - the conveying of certain property upon provision that dower in all other property would be waived. (usually found when chorus girl gets divorce for a settlement).

* Elopement barred dower. " meant running off with a man + living in adultery (C.L.)

see 192 Mass 75 When land is mixed, dower is stopped and dower would be

(Holbrook v. Finney 4 Mass 566)

cut off. If a person mtges prop as soon as he starts seisin, the mtge would be superior + right of dower would not take effect because the H would have been said to have been in only "instantaneous seisin."

If ~~male~~ spouse died intestate, 2 choices:

(1) Stat share
(2) dower ~~or cobtes~~

With will:

(1) Elect to take that given under the will. To elect under a will, she only has to do nothing (wait 6 mos.).
(2) Waive the will + take stat. forced share by filing a renunciation with Probate Ct. ~~not~~ within 6 mos. after probate of the will.
(3) She can elect to take both the will + stat. forced share + take dower by:
   a) filing claim for dower within 6 mos. after the approval of the executor's bond
   b) renunciate the will within 6 mos. after probate.

She should be advised to take dower only when her H died insolvent or almost insolvent, for H's creditors could not attach.

If H had mtgd the property, under dower the widow would take free of the mtge because the Mtge would be a creditor of H + he could not attack after she had taken dower. The ~~wife's~~ widow's creditors can attack, but not H's creditors.

Community Property (need not know for EXAM)

From the Civil Law of France and Spain came this concept of property being owned equally by H + W.

Problem #1 (p. 288) Law was never in effect, conceptualistically, in Penn. because it was a judicial decision & never was valid. But, a legis law would be valid while in effect and property acquired while the law was in effect would be held acquired lawfully and could be retained even after repeal of the laws.

Non-freehold Estates

A = seisin
B = T/Y determ.

Team for years (T/Y)

Problem #1 (p. 291)
A would have seisin & B would have a T/Y.

Problem #2

(1) Between A + B you have privity of K + privity of estate. So, A could go against B and (2) D, the latter's liability being predicated on privity of estate.

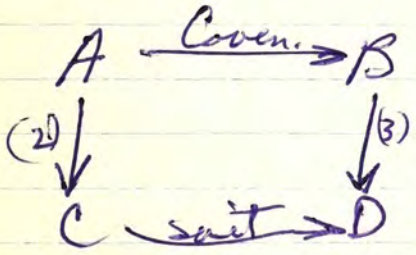
11 Mar, 57 Problem 11 (p. 291) - privity of estate; 2 or more people have some interest in the same land. Not always used in the same way. The 2 people (at Cl) must have some relation. So, between Landlord + T, the lease can be maintained either on K theory or on privity. On assignment, every thing is surrendered; but in a sub-lease, privity still remains and there is still relationship between L + T1. But, an assignor (T_1) cuts off all dealings between himself + L; but the assignee (T_2) becomes primarily liable for the rent + the ΠCO is secondarily liable. All has benefit of all covenants in the land. Mere occupancy with permission of L implies a duty to pay L for the reasonable value of the use of the prop. A L can have someone on his prop sans a duty to pay if L so consents. Otherwise, the T must pay. All property rights are assignable sans consent of L unless otherwise provided.

① Forfeiture restraints - valid where you have reversions + future interests; for f. rests. are protecting devices for those two interests.

② Disabling restraints - attempts to prevent the estate from being transferred. Usually held invalid.

③ Promissory restraints - for estates less than freehold they are valid.

tenancy by sufferance - The holding of another by one that comes into the poss. of land by lawful title but holds over by wrongful after the determination of his interest.



All restraints on alienation of a F/s are void.

Privity also means other things: Covenant between A+B is violated (supposedly) + suit is brought by C against D. For a suit like this, privity of estate must be present. Three holdings on pris/est:

*(1) When A+B agreed, there was simultaneously a conveyance of an estate or some land to be held commonly by A+B (majority view).

[Privity is a succession to estate. In Equity, pris/est not necessary.].

*(2) Mass view - there must be mutual & simultaneous interest in the same land by the ~~K~~ B parties. Often satisfied by an easement (narrow pt/view)

*3) Covenant between A+B + succession to the estate of one of the parties (broad pt./view).

A → B → C → D

D evicted by P who had a claim outstanding. D could sue A on the basis of a covenant of general warranty. All that's required is a chain of title. A succession to the estate of the party must be found. A has to have given a quit deed to have this action maintained against him.

Abandonment of the Leased Premises by the Tenant

(see page 527)

A ⟶ B

(2)(p.292) A can get judgment against nobody here.

(Look up the property concept of surrender.) Most cts. treat the abandonment of the lease as an offer to surrender & the L can either accept it or reject it. Some courts have held that the L has a duty to mitigate damages & some hold that where L has br/duty to mitigate the dams, L may not recover. ~~It here~~

Surrender: the giving up of a lease before its expiration. Differs from "abandonment," as applied to leased premises, inasmuch as the latter is simply an act on the part of the lessee alone; but to show a surrender, a mutual agreement between lessor and lessee that the lease is terminated must be clearly proved.

Section 6: Periodic Tenancies

Requires a notice for as long as the rental payment period. The T holds from mo. to mo. ("to A from month to month") & for successive mos. thereafter until one party terminates the lease by appropriate notice.

18 Mar 57

Tenancy in Common

Preference is for a T in C rather than for a JOINT TENANCY. THERE MUST BE UNITY OF OWNERSHIP. HERE, THERE IS NO SURVIVORSHIP. Ts IN C ARE OWNERS OF UNDIVIDED shares in land. If there is a devise of a joint T's 1/3 share in the joint tenancy in land, the devisee would be a T in C & the other 2/3 would still be held by joint tenancy. If you want a joint tenancy, particularly if they are not H+W, you should express it carefully.

Tenancy by the Entirety

Between H + W.

Right of survivorship is big feature of a JOINT TENANCY and A T by the E.

GR → "To A+B + to the survivor of them, + his or her heirs."
A ~~T in C~~ JOINT TENANCY with each one having an executory interest in the other half.
In a T by the E, neither party can convey sans the consent of the other.
There is a slight fiduciary relationship between all ~~co-partners~~ cotenants, be they Ts in C or JT. Ts or Ts by the E.

1. Coparcenary — Today, it is equivalent to a T in C. Applied only when females took land as coparceners.

T by the Entirety — Alienation of prop. must be by mutual consent. There is survivorship. A creditor of one spouse cannot sell the share of the debtor (during the life of the other spouse) upon execution. Divorce or annulment ends T by the E & creates a T in C. Then, they can partition. (but before they cannot partition; there is no right to partition.)

20 Mar 51

Hoag v. Hoog — An estate by the entirety & therefore partition would not lie. If they were joint tenants, either party could convey.

Licker v. Gluskin — Interest of H in est/entirety:
(1) Sole right to poss. during their joint lives.

(2.) H has a FSA if he survives.
W's interest: (Mass.)
(1) FSA if she survives. This is all for W.

In Mass., both estates of H can be attached by his creditors + sold.

The contingent interest of W cannot be attached by creditors (On p. 314, others interests of W are attachable.

In Fla., both H+W are treated the same; creditors can attach neither estate; neither can convey (except to each other.)

PROBLEM (cb 316) No, Blanche not liable as prop. owner because H has full ownership. Her father was agent of H. So, H is the only one who could be held liable here.

Pico v. Columbet (bet) [sic] A non occupying co-tenant has no right to an accounting unless specifically agreed so. Follows the usual CL rule.

McKnight v. Bobides An occupying tenant must account to the co-tenant. Opposite from Pico v. Columbet. Here, H + W had had community prop (Wash.). "Little house" sold. Charles was in control with the kids + is held accountable. After sale of the house, Chas. no longer accountable to the kids: " could only convey 1/2 interest + the grantee

Case held that a co-T's poss of the land becomes adverse to his fellow Ts by his repudiation of the co-tenancy and by his act signifying his intention to hold the premises exclusively of which the co-Ts have knowledge.

is now + in com with kids + grantee is held accountable to the kids.
"Big house." - occupying co-tenant in exclusive poss. (Charles) + is held accountable. Will be entitled on offsets for his expenses.

Adverse poss. - not hostile, i.e. not adverse. S/L begins when one tenant is in exclusive, hostile poss + the other tenant has notice of some adequate kind that adv poss is going on. Gen rule holds that a tenant cannot hold adversely to the co-tenant. The poss. must be adverse.
The case is well founded + so is the dissent. Under S/L, they normally would be precluded from recovery after 6 yrs.

*Laches - an equitable doctrine barring ~~late~~ claims. The test is:
(1) has the delay been such that it would be unfair to the respondent to allow the claim to be asserted? Would it be unfair to make respondent defend? Is the " " in a worse position than he would have been if the claim had been asserted originally?

This doctrine may or may not be affected by S/L.

Problem (cb 328) 1) B can get an accounting (dealing with depleting assets) even in a juris normally not recog an accounting.

2) Contend that you, as a co-tenant, should be subrogated to the city's liens for taxes so that you can be a preferred creditor & can get your money back.

Swartzbaugh v. Sampson

W could have brought partition. Held a lease by one ~~co~~ co-T is not void; the other co-Ts are merely entitled to share the poss with the lessee.

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1 April 57

Problem 1 (cb. 333) May one co-T mine or extract minerals? Split of author. (1) If one co-T could mine minerals sans author of the other T, then Kapp could legally extract. Seybert was lessee of Kapp. (2) But, if you were in a juris wh did not authorize a co-T to mine minerals, then K legally liable.

Problem 2 Rule against perpetuities was not violated.

(a) Yes, in that he wanted to help the 5 men & to keep the stock together. Not sensible, however, in that one family will be tremendously benefited with the others getting only royalties & voting rights. It

was not binding because a sale could be made even tho' the seller would be held liable. Did not bind the creditors. And, it opens up much litigation & did so.

(b) No (see above).

(c) Set up a trust:

(1.) Convey stock outright to a trustee. Could last until the last of the 5 are gone.

(2.) Trustee could give dividends (equal) to the 5 families & at the end of the trust, the stock would be turned over outright.

Set up a "voting trust" - stock turned over to the 5 sans voting power for the duration of the trust.

Problem 3

The executor of Martha's will is entitled to the contents of the box. (See cb 336)

In Re Strong's Will (cb 336)

[*See abstract in abstracts II]

Uniform Simultaneous Death Act involved (in force in Mass.). Treat it as tho' each survived to his respective share.

(NOT ON EXAM) cb (341)

Read Chapon Taxation

① Tax Aspects of Co-ownership

Fed. Gift Tax - extent of the gift shall be determined by state law. So, it would vary on this pt. according to the state.

1

Problem cb343 @ No, only $\frac{\$5\,000}{2} = \$2,500$ is involved A+B would only have an "equity" in the remaining $12,000.

(b) Advise ~~each one~~ to pay $3,000 in Dec. & then each one to pay $3,000 in January.

24 Miami L.Q. 7 (?)

(c) presumption of a JT over a T in C is a well settled rule. Mortgages & trusts, usually excepted (by Mass. stat.), are also presumed to be descended or devised by JT. Mass stat, requires use of the word "jointly" or "together", etc.

Homestead

Enters into dower & H&W estates.

Chap 188 (Mass. Homestead Laws)

An allowance given to the head of the family preventing creditors from levying on a certain amt. of the estate as homestead ($4,000 in Mass.) This ~~of~~ right survives the husband or head of the homestead & is good on the prop for W & the minority of kids.

3 April 57

Section I.

Conveying and Future Interests Before the S/U

Chap. 15

Chapter 15

Methods of Conveying

(1.) Enfeoffement or livery of seisin

(2.) Lease and Release — Lease is the conveyance of a non-freehold estate in a tenant. Then comes the release, by written deed, of the reversion. It took both of these

to get a fee simple. Lease = conveyance of a non-freehold estate. Release = " by a holder of a future interest to the holder of a possessory interest. Surrender = conveyance by a holder of a possessory interest to the holder of the future interest. Generally, the modern quit-claim deed takes the place of the release; ~~and~~ but surrender is frequently used.

Under the S/F, the conveyance must be in writing.

(3) Law suits of fine and recovery - were used to bar the end tail of a fee tail, but may be used (& is often used) to convey.

A release had to be made by GRANT, i.e. instrument under seal.

S/F required that surrenders be in writing except those which took place "by operation of law."

Section II — Common Law Future Interests (i.e., pre-S/U).

Reversionary Interests

Definition of Reversion

Where the only interest conveyed is a present interest of ltd. duration, the grantor has, as a future interest, the balance of his orig estate. Hence arise the following correlatives:

Four types of estates that have Reversionary Interests

(1) F/S determinable : possibility of reverter
(2) F/T : reversion
(3) Life estate : reversion
(4) Term/yrs. : reversion

When an estate like F/S was conveyed, there were no real future interests in the grantor. However, two interests could be had:

F/S subj to cond. subs. (1) Right of entry - cuts short a F/S which would otherwise continue indefinitely, i.e. optional. It is not assignable, and an attempt so to do will result in forfeiture. In Mass., this is not assignable and attempt so to do will result in forfeiture.

F/S determinable (2) Possibility of Reverter - arises when the preceding determinable fee expires by the terms of its own limitations, i.e. it automatically vests back into the grantor. Automatic

Problem ch 350 (1) Yes.
(2) No

Rights of Entry Incident to a Reversion - LL already has a reversion & in the lease there are covenants, and if the T fails to abide by the " the LL may re-enter.

Rights of Entry not Incident to a Reversion - LL has no reversion but upon violation of covenant in lease by T, LL has right of entry. Usually re a F/S.

Chap 184-A sec. 53 → Mass. Laws (1955) a modification of the Ch rule against perpetuities. In essence, holds that all of the private little provisions making a possibility of reverter or Rights of entry that a LL or T may have will be ltd. in duration to 30 years.

Problem ch 352 Two possibilities of advice
(1) See if you can get X to sell you a quit claim deed releasing his interest.

The clause that determines is the " expressing the reversion.

If this interest is assignable, the club will get a F/S. If not " ", & a deed is given (i.e., sold) then the provision in the conveyance will be destroyed by the attempt to assign.
(2) Or, another way to say it is that this is a F/S sub to a cond subsequent. Since this is by will, you could say this was an inter vivos conveyance & therefore the provision is void & you can tell the club to go ahead and install "thirst's Nemesis" — a bar.

4 April 57

Typo: A's Peacock lays an egg on B's land. Who owns the egg? Nobody — a Peacock does not lay an egg. (2'm dying, already. [8 minutes wasted with this damn fool.])

*Reversion - an undisposed residue left in the grantor when he conveys something less than he has. They are always vested: A present possessory estate (F/S + F/T etc) with reversion is vested. Right/entry (incident + not incident) is vested for purpose of the Rule Against Perpetuities.

*Remainder - a future interest created in favor of a transferee which can become a present possessory estate only on the natural expiration of prior estates created by the same conveyance. A remainder is a future interest in.

Rm v. Rev.

a third person, but a reversion is a future estate in the grantor

Vested & Contingent Remainders

Rems. have the power to vest in interest prior to the time when they can vest in possession.

Vested Rem – has all of the characteristics of a possessory estate (devisable, attachable, etc.). A rem is vested if is ltd. in favor of a person who is ascertained & in being who is ready to take the seisin whenever ~~& to~~ however the preceding estate (s) terminates.

Examples on p. 353

(1) C = vested rem; B = life estate

(2) B has life est, C has vested rem for life, and A has a reversion.

(3) A = nothing; B = vested life est; C = vested rem in tail; D = vested rem in F/s. The only condition necessary for C to get his life est in tail is B's death. The only condition necessary for D to get his vested rem in F/s is for the natural life of C to become extinct.

(4) B = est for 10 yrs.; C = vested rem in F/s (Actually C has a ~~future~~ present estate subject to B's term.)

A Rm is vested if:

(a) It is given to a born and ascertained person and

(b) no condition precedent is attached to it.

A Rm is contingent if:

(a) It is given to a person who is unborn or unascertained

(b) It is subject to a condition precedent.

RM 24

8 April 57

cb 354

(2) Contingent remainder. Will not get the rmdr here if he does not survive.

(3) Rmdr contingent because the kids must survive. Contingency expresses that the " " " . The grantor has a reversion.

(4) Contingent Rmdr. Since A has no SOL, the Rm is " . The grantor has a reversion.

(5) Contingent because no living person has heirs. Must die to get heirs. Until B dies, the remdr is contingent; Upon death, B has a vested remdr. Grantor has reversion.

(6) Due to manner of expression, B's interest considered vested subject to divestment. If B survives A, rmdr is vested; if B does not survive A, " " contingent. B's rmdr vested subject to cond subsequent. A has life est; B has rmdr vested subject to being divested; C has a shifting interest (you cannot have a Rm after a F/S.)

(7) B + C have contingent Rms in F/S, referred to as either alternative " " , or con Rms upon a double aspect. Unlike (6), A has a reversion, but it will never become possessory. In jurisdictions following the "destructive rule", B + C could get together and A could destroy their intrest.

Problem (1) cb 356:

B's life est, vested, widow's Rm for life is contingent, C has a vested Rm in F/S. Widow's interest is contingent and she is not ascertained (it will not necessarily be the widow). The contingent Rm will vest at death.

(2) at cb 356: C1 dies but does not lose his interest at death but remains. When B dies, C1's interest goes to either the estate or the heirs, + C2 has ½ interest.

Rules re Conveyancing before the S/U:

* Rule (1) Freehold could not be made to take effect in the future. (due to requirement of Ch of livery of seisin). This precluded springing interests. Later, this rule changed. The deed must, however still take effect immediately. Deed may be valid to take effect immediately but may convey a valid future interest. The deed conveys presently a valid future interest. Leaseholds to begin in future were valid. The one Ch rule (above) applied only to freeholds. (There can be no freeholds in personal prop.)

Problem ch 35?: Yes, there was a rule that there could be no cont Rm after a term /yrs.

(1) B gets 100 yr term determinable; B's children, if valid, would get a contin Rm. A would, if valid, get a Rm. B's children, however, have a void interest; they would not get the contin Rm. So, actually A has a F/S subject to a 100 yr term determinable in B.

(2) All interests here are valid. B has a 100 yr term deter out of the 999 yr term, + B's children have a Rm in the balance of the term. Here, Rule (1) would not apply because A did not have a freehold estate. The children's interest is contingent because they must survive B.

(3) B has term for 10 yrs; contingent Rm to B's son for 10 yrs.; C = vested Rm in F/S. All are valid: The rule only applies to CONTINGENT RMS only, and not to vested Rms. Here, C's interest was vested.

* Rule (2) A cont could not be reserved in a stranger. This prohibits shifting freehold interests.

Rule 3: A contingent rm is destroyed unless it vests at or before the termination of the preceding freehold estates. (21)

10 April 57

Contingent Remainders

O → "To A for life, rm to B if he graduates from Law Sch."
A has a life estate.
B has a contingent rm.
If A should die before B satisfies the contingency, B's rm is destroyed and the estate ~~vests~~ reverts to the grantor in F/S
In the old days, there was forfeiture by tortious enfeoffement

O → "To A for life, rm to B and his heirs if B grads from Law Sch."
A has a life estate.
B has a contingent rm.
If A dies ~~before~~ after B, and B does not finish Law School, the life estate of A and the rm of B both go back to the grantor (O) and both of the estates meet together, forming a F/S in O. The life estate terminates and the contingent rm is destroyed.
[Identify the type of rm, e.g. rm in F/T.]

Problems, Cb 361

(1) A owns the land. B had a life estate. C is a living person with a contingent rm (living person had ~~an~~ have no heirs).

(2) B = life estate; C = life estate with vested rm.
C's son = contin rm in F/S; A = reversion
The state of title: C's estate was destroyed, along with the contingent rm, when he died. C's son's rm [note: Reversions are always vested.] would not become vested until he turns 21. The son's rm stays the same because B is still alive & the rm still exists.

(3) B = F/S only as a Trustee (legal only)
C = Equitable or beneficial life estate (he will get the benefits of the land only).
C's son = Equitable contingent rm.
At 19, the son's interest is not destroyed because B is a trustee who will hold the legal title & seisin for the son until he is 21. If the son never becomes 21, B could not convey the estate to the son, and the estate will revert to A. (Springing & shifting interests at CL did not apply to Equitable estates). A has a resulting trust (use).

122 Brush up on the destructability of contingent rmns. Mass + some other states have abolished this rule.

A's interest could be called an equitable reversion.

Equitable contingent rmns were not destructable at CL.

(4) No seisin problem since all of this was carved out of a non-freehold estate. The son will get the land when he reaches 21 because a non-freehold estate may vest in future. B = term for years; C = life estate in the term/yrs. C's son = ~~term~~ cont. rm. in term/yrs.

(5) B = F/S : B was given life estate; 1st son given cont. rmn in ~~tail~~; A had a reverson. When A died, the reversion descended to B + with his life est, a F/S was made.

(6) A = Reversion in F/S
B = F/F
when A dies, the rever descends to B, but since a F/F + a rever cannot merge, B would not get a F/S. (see Rule (a), p. 360 under Merger)

(7) B = life est
B's 1st son = cont rmn in tail
C = vested rmn in F/S
This ~~was~~ stayed the same after A's death.

11 April 57

[(7) cont'd] son's rmn contn because B was childless. A retained nothing because he had conveyed everything. So when A died, nothing changed.

2 → "To A for life & then to A's children." The juris follows the destructability rule.
No reversion. Unborn kids have contingent rmn.
A has life estate. A, has rmn (vested) subject to open. (note: concept of tortious conveyances is no longer recognized.)

Rule 4 Rule in Shelley's Case

If an instrument creates a freehold in A & purports to create a rmn in A's heirs (or the heirs of A's body) & the estates are both legal or both equitable,

the rem becomes a F/S (or F/T) in A.

O → "To A for life, Rm to A's heirs."

"To A for life, Rm to A's 1st son, and Rm to B's first son + his heirs."

A = life estate
A's first son = contingent Rm (unborn)
B's first son ~~+ his heirs~~ = contingent Rm in F/T

Problems: CB 365

(1.) B's 1st son would have a vested Rm in tail, + B has a vested Rm.
(c) Under (a), the ans. is yes; and (b) the ans is no.
(a) Vested Rm in B
(b) Vested Rm in tail in the son

(2.) Case held this was a devise of a F/S to B which lapsed (conveyance to one already dead). The instrument purported to give a life estate in B with Rm to the heirs. These merged in # forming a F/S, but B had already died, thereby caused the lapse of conveyance to B. Lapse holds true unless there is an anti-Lapse statute. This case is probably wrong, because B never had a life estate since he died before the life estate ever vested in him. So, actually Shelley's Rule is inapplicable.

(3.) Has nothing to do with Shelley's Rule because the Rm was in C's heirs.
(a) A = reversion; B = life estate; C = contin Rm.
(b) A = ; B = life estate; C's heirs = vested Rm if they are known.

15 April 57

Rule in Shelley's Case applies when there is a life estate in the grantee + a Rm to his heirs (+ "heirs" must be used)

Problems CB 365

(1) No; the rule does not apply, because from the context of the problem, the word "heirs"

does not mean heirs per se but means his children. Note words "their father." Children are appointees + also takers by default of appointment. If B has no kids, A has a reversion.

(5.) State of title: life estate in B + rem to B's heirs (referred to as such because in U.S.A., "heirs" would be the ones to take upon intestacy). So, the Rule in Shelley's Case would apply + ∴ B would have a E/S.

(6.) (A rule/construction or a rule/law?) If the rule is one of law, it will take effect + operate regardless of the grantor's intent. Rule/construction used to further interpret the grantor's intent. Better view is that Shelley's Rule is a rule of law (treat it as such on the exam). Here, the grantor is held to the consequences of the law + what he said will be taken literally. (If a rule/const, B would get a life est + his heirs would have a contingent rem.)

(7.) B = legal title per outer vie in trust
C = life estate (equitable)
C's heirs = complete contingent rm,
Rule does not apply because here the interests were not of the same quality (both eq or both legal).

(8.) Dealing with personalty (money) under the rule of equitable conversion. Shelley's Rule historically did not apply to personalty.
B = eq life est; trustee = legal title only (absolute ownership)
B's heirs = cont remainder (equitable)
A = reversion (complete, i.e. eq + legal)
Some juris hold that re personalty, the Rule is a rule of construction.

(9) Rule applicable.
B = life est
C = con rm in fee
B = " " " " also
A = reversion (since you have only life estates and alternative contingent rme.)
The Rule applied to make the con rm in fee go to B instead of to his heirs.
(b) A, B, C would have to execute together to give P a fee simple.

5. Doctrine of Worthier Title

Rule 5a: If a will devises to a person a freehold estate of the same quality and quantity which he would have taken by descent if the testator had died intestate, then such estate passes by descent & not by devise (Testamentary rule)

Rule 5b: If a grantor who is an owner in F/s purports to create a life estate or estate tail, with rem to the grantor's heirs, the rm is void and the grantor has a reversion.

Problem: cb 368
S → Trustees for T + S for lives, then to survivor for life, then for children + their heirs, & if no children to heirs of S
T + S - eg. life estate
survivor - cont rm for life
children - " " in F/s (equitable)
heirs of S - void under the Rule & S has a reversion.

17 April 57

Rule in Shelley's case has been abolished in ~~not~~ many states, including Mass. (G.L. 184, c.5).

STATUTE OF USES

Uses before the Statute of Uses (S/U):

What is a use?

"A → B & heirs for use of C & heirs"

B had only a legal title: he had no duties to perform; more like a figurehead.

C had an equitable estate: all of the benefits of the land would go to C & A beneficial interest.

Reasons for conveyance of Uses:

(1) To avoid the Mortmain Statutes (prohibited the Church from owning lands). So, how the land could be held to the use of the Church.

(2) Permitted a land owner to avoid his feudal obligations (excluding the fixed ones). Primarily avoided the feudal incidents. The land would be conveyed to a feoffee to uses (trustee) & he would have the legal title. Not good to have had only 1 feoffee to uses.

(3) Permitted the making of wills before the Statute of Wills permitted land to be devised. Before, wills were only used to pass personalty.

(4) Easier to transfer use estates.

(5) For a time, it was a successful device in defeating creditors. Today, trusts can be reached. Exception: "spendthrift trust."

(6) To enable Lds to avoid forfeitures and escheats.

Enforcement of Uses:
(1) Ecclesiastics - at first the Church enforced the uses.
(2) Chancellor - an official of the Regis (King). Here, the Ct of Chancery evolved. His reasons were moral:
(a) Enforcement of promises
(b) Prevention of unjust enrichment.
Method of enforcement: in personam (worked against the person). Chancellor would tell a person to do or not to do something; he never worked in rem (on the thing itself, e.g. deter state of title); never alter the title.
Would enforce use against:
(a) Feoffee to uses - trustee; possibility of unjust enrichment.
(b) Heirs of feoffee to uses (trustee).
(c) Donee from " " " - if trustee conveyed, the donee would get only the bare legal title & Chancellor would enforce use against donee.
(c) Purchaser with notice from trustee.
Would not enforce against:
(a) BFP for value from the trustee.
(b) The overlord if he got the land by escheat. Took by operation of law.
(c) Wife of trustee who had dower. Took by operation of law, & not directly from the trustee. She would take free of the use.
(d) Disseisor - an adverse possessor. Claiming in SPITE OF the trustee & the usee and not thru the trustee and usee.
How was a use raised (created):
I. ~~From~~ With transmutation of possession -
(A) tacking on to a C.L. conveyance. Expression of intent to raise a use + C.L. conveyance. A C.L. conveyance

with the expression of use.

(B.) If consid were ~~given~~ made, even though nominal, the presumption would be that the use was raised for the feoffee to use. If the grant was gratuitous, the Chancellor would presume the use to the grantor. The mere recital of consid. was sufficient.

II. Without transmutation of possession

(A.) Bargain and Sale deed - A keeps legal title + B would have the use. Consid had to be expressed. Being under seal was not sufficient to raise a use. Did not even have to be written. Could be made by parol.

(B.) Covenant to stand seised - "in consid of love + aff of my sister, &." Operated by close relatives. General use of the covenant to stand seised is to give effect to an attempted bargain and sale otherwise void for lack of consid, between near relatives, so as to carry out the intention of the parties as near as possible.

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18 April 57

Disadvantages of Uses:

(1) Titles were in a confused condition - no recording act yet.

(2) The treasury of the King suffered

Effect of the S/U:

To change a use into its corresponding legal estate. When this happened, the feoffee to uses passed out of the picture. The S/U executed the use; made or converted that equitable interest into a good & complete legal corresponding estate.

S/U converted the use interest into the corresponding legal interest

S/U had threefold effect on Property law:

(1.) Conveyancing - three ways to convey prior to S/U! (CL methods)

a) Enfeoffement or livery of seisin - delibery of something + formal entry.

b) Lease and Release - required a formal entry by the tenant by tenant before release could be effected.

c) Fine or Recovery - becomes a matter of judicial record.

Enfeoffement - After the S/U, secret conveyances were made possible. Later, something was ~~made~~ added to the S/U to do away with this secrecy.

*Whenever you see "bargain and sale", you should think of not a CL conveyance, but of uses. "A B+S B+ his heirs." After the S/U B would have the complete legal title, whereas before B would have had an use. The S/U executed this use.

Statute of Enrollments - bargains and sales had to be recorded, i. oral conveyancing then B+S was eliminated! This applied only to freeholds. Eliminated secrecy.

* Covenant to stand seised - love + affection for a close relative would raise a use. Was not within Stat/Enrollments, i. among close relatives, there could still be secrecy.

*"Bargain + Sale" of a term for years or a year was not a freehold, & was not i. within the S/Enrolments. Therefore, the secrecy here could still persist. Then, there would

follow a release (entry by tenant required before release), thereby achieving a freehold but still not coming under the S/Enrolmts.

** At C.L. there could be no abeyance of seisin. "O → B to take effect from January next." After S/U, O had F/S + B would have an executory interest (springing or shifting interests).

* "O B+S → B+ heirs, but if X+Y marry, then To C+ heirs." ~~Before~~ After S/U:
O has nothing
B has a F/S subject to executory interests
C has an executory interest.
These executory interests had the possibility of being non-destructible.
∴ The Rule against Perpetuities was enacted to guard against some of this.

22 April 57

Rule Against Perpetuities

C L Rule Against Perpetuities
"Every interest, to be valid, must vest, if at all, within lives in being + 21." If it does not necessarily vest within that time, it would be invalid.
Executory interests, by their very nature are contingent + cannot vest in interest before they vest in poss.

* "To A + his heirs but if A die w/o living Wm, then to B + his heirs." Would this gift over to B violate the rule against perpetuities? "Living Wm" - is the lifetime of Wm. The gift to B, of an executory interest, will be valid: A will die some issue,

* "To A & his heirs but if X marry Y, then to B & his heirs." It will take effect, if at all, within the lives of X & Y.

* "To A & his heirs for so long as it is used for Church purposes & then to B & his heirs." Invalid under Rule against Perps. because it will not necessarily vest within lives in being, since the S/L, conditions in a stranger are OK.

The test under the Rule/Perpetuities

At the time of transfer, the ct. will look to see whether there is a possibility of this taking effect beyond the lives in being and 21 years. And, if so, the ct will invalidate the transfer.

Effect of S/U on Modern Law of Trusts

Cts concluded que certain estates in use were not executed by S/U:

TRUSTS
(1) Use Estates in Personalty
(2) Active Uses
(3) Use on a Use.

Out of this problem developed the modern concept of Trusts.

* O → "A for 99 yrs for the use of B for life."

This did NOT come under the S/U.

O = Rev or FS subj to term & then to C for life.
A = 99 yr. term, legal title only
C = Eq. Rm in 99 yr. term.
B = Eq title "for life" in 99 yr. term.

Active Uses - a trustee has an active interest (e.g., repairs, paying net profit to the holders of the eq interest).

Use on a Use - * O → "to A & his heirs for use of B & heirs for use of C & heirs."

On A bargains & sells to B & his heirs to the use of C & his heirs, C has an equitable estate. The B & S raises a use in B, which was the statute executes by giving B = legal title only; C = Eq title in

Before S/U, this interest was void. (About 100 yrs. later, it was held that A got nothing;

to B the legal estate. But the statute does not undertake the second operation of executing the use in C. F/S.

This was a use on a use - a type of trust.

* O $\xrightarrow{B+S}$ "to A ~~for life~~, his heirs for the use of C for life & then for use of D & his heirs"

C's use + D's use are engrafted on A's interest. D has a rm. in F/S.

Problems cb 376 (1) Professional skill not too good. — used lease + release to avoid Stat/Enrollments which applied only to freeholds. So, there was no need to circumvent the Stat/Enrolls by use of lease + release. Could have simply conveyed less than a freehold.

24 April 57

Problem (2) cb 376

Would have been void as a C.L. conveyance, CT held it to be a covenant to stand seised.

Thos. = F/S subj to 1 yr. term in Chris

Chris. = executory interest in tail to take effect at death of Thos.

John = springing executory interest in F/S

Problem cb 378

B = F/S because this is a C.L. conveyance & ∴ not under the S/U. Hence, the interest over to C is void under the Rules of conveyance before S/U. Remember (for exam) that C.L. conveyances and conveyances under S/U are different. No rm. is possible after a F/S. This would be void under the Rule/Perpetuities.

Problems cb 379

(1.) B = determinable term/yrs (leg. + eq.)

B's heirs = deter " in springing executory interest

A = F/S subj to springing interest + term (i.e., reversion).

Why would this form of conveyance be made? So as to avoid the Rule in Shelley's Case and accomplish what the grantor intended. There can be no contingent Rm. following a term/yrs. However, Y may be a vested Rm after a term/yrs.

(2.) B+S under S/u. B = life estate
A = Reversion in f/s (complete legal title) for 1 day
B's heirs = executory interest (springing) in F/S.
This was done to avoid the Rule in Shelley's Case.

(3.) C.L. conveyance under early C.L.
A = F/S subj to deter term/yrs in B
Gift to B's heirs is void: There could be no contng Rms supported by non-freehold estates (C.L.)

Problems cb-380

(1.) B+S under S/u.
B = Term/yrs. determinable
B's 1st son = executory interest
A = Reversion or present F/S subj to term & executory interest of the son.
Why this type of conveyance? To avoid the destructability Rule.
Purefoy V. Rogers (1670) held that any limitation capable of taking effect as a contingent Rm must take effect as a " "

(2.) A = Reversion subj to executory interest in The son.
B = life estate (legal)
B's son = Executory interest in F/S.

25 April 57
(cb 381)
Problems cb 382

Trustees to Preserve Contingent Rms.
Two ways of protecting Contingent Rms:
(1.) Estab. trustees to preserve contingent rms.
(2.) Convert contingent rms into an executory interest.

to B the land estate. But

(1.) Sarah = term for years determinable
John = vested rm for life
trustees = vested rm for life of John (legal)
children = contingent rm (following the life estates + due to Purefoy v. Rogers since it is a possibility of a rm taking effect, it ~~could~~ must take effect instead of the executory interest taking place.) in F/S.

(2.) Effect would be to give the son both a contng rm + an executory interest. He gets both due to terminology.
A = has life estate
So, the son will take whenever he reaches 21.
T = Reversion (y may not be any son).

Point of Law { CRmns are destructable, while executory interests are not destructable.

(3.) Does this matter of expression create 1 or 2 future interests in the son? If 2 are created the son will take anyway. If only 1 is created, under Purefoy v. Rogers it (the interest) will be construed to be a CRm and the son would not take since the contingency never happened.

Devise = a will

Section 5. Unexecuted Uses: The Modern Trust

Type 1: A use on a use

Must use the appropriate words so that one use is engrafted on another use, not after another. A use on a use was not executed by the S/U.

29 April 57

Problems p386

(2.) C = eq interest because it is a use on a use (not executed).
B = legal title only in f/s
C = eq term/yrs (20)
D = eq rm in fee (vested)

for 20 yrs.

(1.) B = legal title, (term/yrs.) because the use was executed.
C = eq title for 20 yrs. (use on a use - unexecuted)
There can be vested rms after a term/years but there cannot be contingent rms after t/yrs. And, this applies only to legal estates. A contingent rm can only come after a freehold estate.

(3.) C = eq. life estate
C's heirs = legal rm (contingent), complete ownership
B = legal life estate for life of C (legal title only)
T = reversion
The heirs' use is executed because the trustee had no duties to perform. Shelley's rule would not apply due to presence of legal & eq estates. The trustees in re C had duties to perform, ∴ C = EQ life estate.

(4.) C's heirs = EQ rm due to active interest of the trustee (B)
B = legal F/s title & legal only
C = eq F/s (Shelley's Rule would apply)
(On the exam on a have legal title ~~to~~ only, be sure to say one y is legal title only.)

1 May 57

GIFTS

Drons v. Smallpiece

A donatio mortis causa does not transfer the property save an actual delivery. The poss. must be transferred, in point of fact. There must be a change of possession.

No gift or grant of a chattel was effectual to pass whether by parol or by deed, & whether with or sans consid unless accompanied by delivery. Two exceptions: deeds, Ks of sale.

Newell v. Natl. Bank of Norwich

It is possible to make an irrevocable gift causa mortis. Here, such was the case. The burden is on the P to establish such a gift.

What happens when A gives ring to B & B lets A have it back to keep for him. A becomes a bailee of the ring. But, when the pass is not in the donee when the donor dies, how do we prove that there was delivery? Cts hold the gift take effect Intent T. I, because of 2 requirements:

(1.) Tend to estab. intention of death (effect of)
(2.) If a gift is made in anticipation of death, we need to know intent to determine whether there was intent to have the gift take effect irrevocably (inter vivos) or to take effect if he dies (causa mortis).

2 May 57
Problem #2 co 117

The gift was held valid here. The donor must die from the particular peril anticipated for the gift causa mortis to take effect; so hold some cases. Here, the heart attack was within the general peril & contemplation.

(#3) R causa mortis gift is made subject to three conditions implied by law, the occurrence of any one of which will defeat the gift:

(1.) Recovery of D^r from sickness or his delivery from the peril;
(2.) Revocation by D^r before his death.
(3.) Death of the D^ee before the death of the D^r.

Here, A's admin's or B's admin could recover. could go either way. Probably no gift.

(#4) If the gift takes effect on a condition precedent, valid. Cases usually hold that the will is ineffective to revoke the gift. This ill. case held the will effectively revoked

the gift. So, C would get the ring. The cts. try to enforce the intent of the Dor because even if the Dee is deprived of the gift, he won't be out of anything since he didn't give Dor anything for the gift.

Tami v. Pikowitz cb 113
Intent to transfer title is insufficient if such intent is obtained by fraud or duress.

In Re Stevenson's Estate cb 117

Cts sustain the gift in these cases when the intent is clear, and an objective fact is present, which is at least some evid of the fact of gift.

DELIVERY:
(1.) CONSTRUCTIVE - giving of the means of getting control of the gift.
(2.) SYMBOLIC - Delivery of something symbolical, incapable of manual tradition (being handed over). Given in place of the gift as evid of ownership.

So, here, this was constructive delivery (giving of the key to the safety deposit box).

PROBLEMS cb 120
(#1) - (a) No effect on the outcome
(b) Most cts would hold it was a valid gift.
(c) Whether the donee could get it from the third party depends on the degree of control of the third party.
(#2) No, his intent was to give to W (if it can be so proved).

Matter of Mills cb 122
HELD, a delivery need not be made to the Dee in person; it may be made to a 3d person for him, even w/o the latter's knowledge. For the delivery necessary to make a valid gift, the donor may deliver directly to the Dee or intermediately thru the agency of a 3d person. The delivery must be made to such 3d person for the use of the Dee, and if it is made under

such circumstances as to indicate that the Dor relinquishes all right to the poss or control of the thing given, and ~~inte~~ intends to vest a present title in the Dee, the gift will be sustained.
A gift of chattels already in the poss. of the D~~ee~~ is effective ~~and~~ an additional delivery.
If the 3d person be the ~~representative of the Dee~~ agent, bailee, or trustee of the Dor, the gift must fail for lack of complete delivery, for in such case the Dor retains, by means of his control over the agent, dominion & control over the subject matter of the gift.

6 May 57

Problems cb-128, 129

(1.) The gift could be taxed.
(2.) A gift causa mortis is ~~not~~ always within the meaning of the provisions of the Fed. Estate Tax Act.
(a.) No, for it doesn't have to necessarily come within the S/L's.
(3.) Will he have enough to cover ~~their~~ his own expenses (Doctor bills)? Will son have enough common sense to wisely invest the money? Will the kids continue to love the father after they have the money.
You will not escape the gift tax ~~but~~ it will work out against the estate taxes. The estate tax will be lessened greatly since the amt. of the gifts will have been deducted from the estate. So, A should go ahead and make the gift since he cannot possibly live for more than one year.

Grymes v. Hone cb 130 (Read this case, T.I.)
Three things are necessary for a gift causa mortis:
(1.) It must be made with a view to donor's death.

(2.) The donor must die of that ailment or peril.
(3.) There must be a delivery.

In corps, the transfer of anything is incomplete until entered upon the books.

Problem cb-133

A sift causa mortis cannot be validly based on self-destruction. So, the Adm's of A would keep it. This is assuming A sift causa mortis. If the sift were inter vivos, the sift would be valid.

Myers v. Myers cb 134

This was a causa mortis sift made thru the lawyer. The bond & mtge actually held by the father, however. The lawyer had an instrument saying B would go to the 15 yr. old son. So, even tho' the father could have revoked, he did not & ∴ the sift was held valid. The son did not even know of the sift.

8 May 57

Innes v. Potter cb 138 Inter Vivos

If y is a complete divesting of control by the dor, then y is a valid delivery, even tho' the thing is not to be turned over to the dee until after the dor dies.
The sift must take control immediately and fully, and these rules apply when an agent is used.

dor → A → dee

If the dor reserves power to get it back, the third party will be held to be the A of the dor & the sift will be revoked by death or any one of the three methods.

Grimes v. Hone cb 130

Donatio Causa mortis requires that:

(1.) It must be made with a view to dor's death.

(2.) The dor must die of THAT ailment or peril.

(3.) There must be a delivery.

Delivery in re real estate: you have an escrow situation (dor = escrow agent - dee). The ~~grantee~~ has control of the thing (realty) because all of the ~~thing~~ situation, after delivery to escrow A, depends on the grantee's activity.

Problem cb 136

Ct held the dee was entitled to the yacht.

Questions cb 137

(2.) Probably not; but if you make a gift causa mortis, the rest of the estate will be exhausted before the gift of the dee will be reached. The dee is usually the last to be reached.

(5.) Have a question here of a Predemented Child. The gift causa mortis would probably not work the same as the will. Can upset the will. — Split of Author.

Innes v. Potter

Future interests in personal prop. are valid. No future interests in perishables.

Problems cb 142

(1.) Several possibilities:

(a.) Valid gift of a future interest on basis of Innes v. Potter. i.e., C gets a valid fut int which could not be revoked.

This is in "the twilight zone" and could go either way.

(a) No delivery, invalid.

(c) Construe daughter as dee to be given to C upon the happening of the contingency.

(2.) He may recover under the case cited. This was a gift upon condition precedent of marriage.

(3.) He can recover the $500 under K (Lanfier v. Lanfier).

Eggard v. McComb

The purpose was to prevent the step-mother (decedent's wife) from getting the money in the account, + for his daughters to get it, i.e the account. CT held: no valid gift. He had no intent to make the inter vivos gift and nothing attached to it. Had retained control.

Malone v. Walsh

There was a valid joint tenancy in the account, with rights of survivorship. This was the ostensible intent of the decedent. The fact that the husband brother never put anything in was immaterial.

9 May 57

TRUSTS

In the ord trust, you have three parties:

(1) Donor
(2) Donee
(3) Beneficiary

Even though the dor does not express this intent, at the time, it (the trust) will still be binding.

No delivery required, but must be set aside. It must be intended

- to take effect immediately.

There must be written proof of the transaction.

ACCEPTANCE

The ct will not worry about acceptance when the transaction is beneficial to the donee.

For the immediately valid gift, y must be delivery and acceptance.

But when a gift rests in him, it remains until repudiation (d^ce) by the donee. i.e. this acceptance is presumed.

Exam:

No questions on:

1. Taxation
2. Chapter 30
3. Insurance

Same 1¾ to 2 hrs. for the essay.

- 50 objectives - 50 pts
- 3 Essay questions - 50 pts.

Includes:

1. Gifts ✓
2. Trusts, Oral Acceptance ✓
3. Torrens System ✓
4. Title Registration ✓

Criminal Law Abstracts – 1958-59

Motive and Intention

People Ex Rel Hegeman v. Corrigan, 1909
195 N.Y. 1, 8-15, 87 N.E. 792

Action: Prosecution for perjury.
Facts: D signed a report under oath to the ins. dept. of the state stating that the co. had no loans secured by the pledge of bonds, stocks or other collateral. Sec. 96 of the N.Y. Penal Code governs conduct re perjury.
Issue: Can the means be justified by the ends?
Held: Reversed and the relator remanded to custody.
Reasoning: That the ultimate object to be attained by the perjury may be beneficient or indifferent in no way absolves or qualifies the criminality of the act. One may not commit a crime because he hopes or expects that good will come of it. A CRIMINAL INTENT is an intent to do knowingly and willfully that which is condemned as wrong by the law and common morality of the country, and if such an intent exists, it is neither justification nor excuse that the actor intended by its commission to accomplish some ultimate good.

Schmidt v. United States
C.C.A., 9th C. 1908 66 C.C.A. 389, 133 Fed. 257

Action: Prosecution for perjury.
Facts: P sought out certain aliens, who had not been in the U.S. the requisite time to entitle them to citizenship, and actively induced them to appear before the ct. and take out their final papers, and on their behalf falsely testified before the court.
Issue: Can the criminality of the act of perjury be in any way absolved or qualified if it was the intention of the actor that its commission accomplish some ultimate good? And, should this

be considered by the jury in determining the innocence or guilt of the actor?

Held: P/contra P in error. Error is assigned to the refusal of the Ct. to instruct the jury re the motive of P and the consideration that should be given to the motive. Affirmed.

Reasoning: Except in cases where the proof consists in circumstantial evidence, a charge to the jury to give credence to the alleged motive of the actor should not be made. In the present case the proof was not circumstantial, but was direct, and was undisputed.

United States v. Harmon, 1891, 45 Fed 414, 421-422

Facts: D used obscene language in an article he wrote. D contended that it was necessary to use obscenity to gain the desired effect in his attempt to correct certain alleged misconceptions in the public mind about certain matters pertaining to sex.

Held: D found guilty.

Reasoning: The proposition that a man can do no public wrong who believes that what he does is for the ultimate public good is without support. The law-making power of the government, within the limits of constitutional authority, must be recognized as the body to prescribe what is right and prohibit what is wrong. A noble motive is immaterial when the result conflicts or violates the law of society and govt.

State v. Torphy, 1898, Ct. of Apps. of Mo. 78 Mo. 206

Facts: D, acting with police power properly delegated to him, joined in an illegal poker game where there was gambling, and did himself place a bet, the purpose of which was to disarm suspicion. Violation of statute.

Held: D guilty. Reversed.

Reasoning: D had no criminal intent, and without criminal intent there ought not to be criminal punishment.

DISSENT: D intended to gamble and did gamble, but said he did ~~so~~ with the view of detecting others. That was, merely his motive, as distinguished from his intention. His intention was to do the act prohibited and his motive was to catch others. But one's motive, however sincere, will not excuse his violation of the penal statute.

Combination of Act and Intent

Proctor v. State Crim. Ct. of Apps. of Okla., 1918. 15 Okla. Crim. 338

Facts: P in error was charged by ~~Keeping~~ information, tried and convicted of "Keeping a ... building with the intent and for the purpose of unlawfully selling, bartering & gibing away ... malt liquors," etc. P in error demurred to the information: fails to state a public offense under any law of Okla. & the stat. is unconstitutional.

Held: J of conviction vacated & P in error to be discharged by trial court.

Reasoning: No overt act, under the statute, had been made. An intent to commit a crime is not indictable; and, although the intent is, in general, ~~of~~ the very essence of a crime, some overt act is the only sufficient evidence of the criminal intent.

Issue: Is the commission of a lawful act minus any indication of crim. intent sufi to constitute an overt act which can be construed to be crim. in nature?

Dugdale v. Regina. Q.B., 1853. 1 El. + Bl. 435, 118 Eng. Reprint 499

Facts: D indicted on seven counts, two of which were the procuring and poss. of obscene prints with intent to publish.

Held: D indicted. Appealed: judgment in error. Joinder in error. Affirmed.

Issue: Does the mere poss. of a thing which has criminal potential constitute an overt act?

Reasoning: Procuring with the intent to commit a crime is the first ~~step~~ (i.e., overt act) toward the commission of the crime. The law will not take notice of an intent without an act. Poss. is no such act.

Jackson v. Commonwealth

Ct. of Appeals of Ky, 1896. 100 Ky. 239, 38 S.W. 422, 1091.

Facts: D found guilty of murder of Pearl Bryan. D gave Pearl cocaine in Ohio, thought she was dead, cut off her head in Ky., not knowing that at the time Pearl was still alive. D = P in error.

Held: D guilty; appealed. Affirmed

Issue: Can the killing of a living human being by one who thinks the person is already dead absolve the actor where, in reality, the person was still alive?

Reasoning: The mistaken belief that a person is already dead is no excuse where one commits an act which finally does bring death regardless of the motive for the act. The intention at the time was to commit ~~on~~ the act which, in reality, effectuated the demise of the victim.

Qualifications of the Intent Element

I. Unintended Consequences

Mayweather v. State

S.C. of Ariz., 1926. 29 Ariz. 460, 242 Pac. 864.

Action: Murder

Facts: D missed intended victim, Downs, with shot and killed one Jackson, a bystander a few ft. from Downs. D fired first shot, but alleged self-defense.

Issue: Where there is intent to kill one person but another is killed, does the lack of malice toward the victim exonerate the actor?

Holding: No. D: guilty. appealed / affirmed.

Reasoning: Legal malice does not require ill will toward the victim. Actual malice toward the unintended victim is not necessary. The grade of the crime in such cases will be the same as though D had killed the person whom he had intended to kill.

Williams v. U.S.

Ct. of Apps of D.C., 1927. 20 F. (2d) 269.

Facts: D hit victim with oil lamp. Lamp fell to floor ignited and set fire to rug. In struggle, victim's clothes caught fire and he, V's husband, died as result of burns.

Issue: Where the unintentional death of a person results from the intentional and wrongful use of a dangerous instrumentality, is the actor liable for such death?

Holding: D / guilty / affirmed.

Reasoning: Where a person intentionally sets a dangerous instrumentality or agency in operation, he is responsible for the consequences resulting from the act.

Silver V. State

Ct. of Apps. of the State of Ga., 1913. 13 Ga. App. 722, 79 S.E. 919.

Facts: D, being expressly forbidden by stat., sold and administered to victim some morphine which caused her death.

Issue: Is one responsible for the unintended consequences of any intended act which is malum prohibitum but not malum in se? What const. an unlawful act?

Holding: yes. J/Aff.

Reasoning: An unlawful act from which flow unintended but natural consequences may be either malum prohibitum or malum in se. The question of what would be evil or wrong in its nature depends on indiv. conception and environment.

Commonwealth V. Williams

Super. Ct. of Pa., 1938. 133 Pa. Super. 104, 1 A(2d) 812.

Facts: D, driving carefully w/o license in viol. of stat., swerved to avoid an uncontrolled car and hit telephone pole. Victim, a rider in D's car, was killed.

Issue: Is liability imputed to one for unintended consequences where they are in no way related to nor flow from the unlawful act?

Holding: No. - D guilty. Appealed, Revsd.

Reasoning: Where the unintentional consequence of an act is incidental to and not causally connected to an unlawful act, the mere presence of the [redacted] " " will not impute liability to the actor.

Crim. Neg., Recklessness & Crimss by Omission

Nash v. U.S.
(1913) 229 U.S. 373

Mr. Justice Holmes:

At the C.L., the very meaning of the fiction of implied malice was that a man might have to answer with his life for consequences wh he neither intended nor foresaw. "The criterion in such cases is to examine whether common social duty would, under the circums., have suggested a more circumspect conduct."

Fitzgerald v. State
S.C. of Ala., 1895. 112 Ala. 34, 20 So. 966

Facts: D, a friend of the deceased, handed deceased a gun (barrel first) at his request. Accidentally, the pistol discharged and killed the deceased. Pin error (D) was tried under an indictment charging him with murder, and was convicted of second degree manslaughter.

Proc: D found guilty of 2nd degree manslaughter. Rvsd. due to erroneous charge to the jury.

Issue: Is a person who does a lawful act liable for any degree of negl. as a result of which some unintended consequence may occur?

Holding: No. Where one is in the commission of a lawful act and some unintended consequence results, the actor must be guilty of negl. to be liable therefor. The carelessness must be aggravated; it must be gross, implying an indifference to consequences.

Rex v. Bateman
Ct. of Crim. App., 1925. 19 Cr. App. R. 8

Facts: D, a doctor, delivered stillborn baby after using chloroform and "version" operation requiring force. Instruments used at first were ineffectual. Deceased (mother) was not put in hospital until five days later, too weak to undergo an operation. Deceased's bladder had been ruptured, colon

was crushed against the sacral promontory, rectum was slightly ruptured and the uterus was almost completely gone. D charged with manslaughter.

Pro: D convicted. Appealed: Conviction quashed

Issue: In a criminal proceeding for manslaughter, is it reversable error for a Judge to charge a jury that any falling short of a fair average degree of care would imputel liability?

Holding: Yes. In a criminal proceeding for manslaughter, it will be necessary that the negl. of the accused will be sufi to constitute mens rea. The degree that the accused fell short of the standard of care requised by law is the determining fdctor, not the amount of damage done as would be the case in a trial for civil liability.

> To support an indictment for manslaughter the prosecution must prove the matters necessary to establish civil liability (except pecuniary loss), and, in addition, must satisfy the jury that the negl. or incompetence of the accused went beyond a mere matter of compensation and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment.

People v. Barnes

S.C. of Mich. 1914. 182 Mich. 179, 148 N.W. 400.

Facts: D indicted for manslaughter. D in viol. of a stat. approached Mary Robb, a pedestrian in the roadway of the highway, at a speed greater than 10 M.P.H. She jumped in front of D's car too late for him to stop. Mary was killed. Ct. charged the jury that whether Mary jumped in front of the car too late for D to stop was immaterial if D was going over 10 MPH; and if D was exceeding 10 MPH, that is the only

thing that need be considered to estab. his liability.

Pro: D convicted of manslaughter. Appealed: jury charge Rvsd. and new trial offered.

Issue: Is the mere violation of a statute sufi to impute liability where the injury would not have been occasioned even it not for the negl. and contributory actions of the victim?

Holding: No. Where the injury would not have happened ~~except~~ but for the acts of the victim, D would not be liable even tho' he is in viol. of a stats because there was no direct causation between the viol. and the injury-causing act. The acts of the victim would not afford a defense where there is a causal connection between the D's act and the injury, but they (the victim's acts) would be material to show the lack or absence of causation on D's part.

People v. Beardsley

S.C. of Mich., 1907. 150 Mich. 206, 113 N.W. 1128.

Facts: D and victim voluntarily caroused in his apt. and became intoxicated. Victim, Blanche Burns, obtained morphine from drug store using hotel clerk as the purchaser and delivery boy. Despite attempts to forcefully stop her, she took sufi morphine to make her unconscious. D requested clerk to carry victim to another apt. because he was too intoxicated to care for her. She later died. Prosecutor contends that D owed a ~~legal~~ duty to care for her, and a duty to protect her which the failure to exercise ~~such~~ ~~created~~ implied liability to him. D convicted of manslaughter. Appeal by the State assigning as error the charge to the jury and refusal to give certain other requested charges. Reversed & D discharged.

Issue: Is a person liable for failing to act where such person had no legal duty to act?

Holding: No. One cannot be held responsible for failing to act where such person had no duty to act.
— Where y is a duty act, the omission to perform the duty must be the immediate and direct cause of death.

Specific Intent

Cb. 74

Bantovich v. Commonwealth

S.C. of Apps of Va., 1954. 196 Va. 210, 83 S.E.(2d) 369.

Facts: D, who claimed to be a M.D. but who was unlicensed in Va., applied some of his own salves w/h were to have cured victim's "cancer" of the nose. The salves contained zinc chlorid and carbolic acid w/h ate away victim's nose. D indicted under the maiming stat. w/h provides that any person who "maliciously or unlawfully shoot, stab, cut or wound another, or by any means cause him bodily ~~harm~~ injury with the intent to maim, disfigure, disable or kill him, he shall be punished as the stat. provides." D found guilty of viol. the statute. Appealed: evid was insufi. to sustain the verdict. Rvsd. & Rmd.

Issue: Can proof, submitted to prove the commission of certain acts, suffice to impute liability for the consequences where a specific intent to have the consequences occur must be shown and no evid. of same is intro.?

Holding: No. Where the showing of a specific intent is a prerequisite to conviction for a crime requiring such showing, it will not suffice to merely show the commission of the acts. The intent to have the consequences occur must be proved.

Cb. 77

State v. Martin

S.C. of Mo., 1938. 342 Mo. 1089, 119 S.W. (2d) 298.

Facts: D charged by information w/ felonious assault w/ intent to maim. D was driving his car from which was thrown by someone therein a light bulb w/ sulphuric acid

against taxi cab in wh were riding complainant, companion, and cab driver, Complainant and friend were hidden from view and no one was burned. D convicted under stat. making it a felony to "assault ... with intent to kill maim, ravish or rob such person." Appealed: evid. did not justify submission of the case to the Jury. Rvsd. and rmfd.

Issue: Can y be specific intent to have certain consequences occur on be aggrieved party's presence unknown to the actor at the time of his intentional act?

Holding: No. If, w/o his knowledge y be still another person present concealed, the actor would not be liable as to that person for he could have no specific intent as to him.

— If he knows the probable consequence of the assault will be to injure any one or all of the persons he sees or otherwise is led to believe are before him, he will be liable as to any one of them.

Ch. 79

People v. Connors

S.C. of Ill., 1912. 253 Ill. 266, 97 N.E. 643.

Facts: P in error, one of Ds, told one Bell, a member of another labor union, that he "would tore a hole through him" unless he took off his overalls. Ds were indicted and convicted for an assault w/ intent to murder. Appeal taken from conviction.

Proc: Ds guilty, appealed, affirmed.

Issue: Is an intent to commit an offense coupled w/ an unlawful cond. or demand sufficient to constit. a specific intent requisite to conviction for that offense?

Holding: Yes. If the present injury, coupled w/ present ability to inflict it, is conditioned upon the party assaulted refusing to do something wh the assailant has no right to require him to do, it

will const. an assault even though the Conds. are complied w/ & no violence is used.

cb. 82 **Hairston v. State**

S.C. of Miss., 1877. 54 Miss. 689, 28 Am. Rep. 392.

Facts: When one Richards sought to stop D from lawfully removing the furnishings of one of Richards' debtors, wh Richards sought to retain as security for a debt, by holding D's mules, D said, w/ gun in hand and in an angry and threatening manner, that he would shoot anyone who tried to stop his mules. D convicted of assault w/ intent to commit murder. D appealed, Rvsd.

Issue: Is a threat to shoot a person conditioned upon non-compliance with a proper demand sufi to const. a specific intent to murder?

Holding: No. On a party makes a proper demand upon wh the threat of shooting is conditioned for the non-conformance therewith, such demand is insufi to const. intent to murder. The intent must be actual, not conditional.

* Ignorance and Mistake *

cb. 93 **Rex v. Esop**

Central Crim. Ct., 1836. 7 Car. & P. 456.

Facts: D indicted for an unnatural offense committed on board an East India ship lying at an English dock. D native of Baghdad. D contends that because the act of wh he is accused is accepted in India, he should not be held to know the act is an offense in England because he believed the Act to be a perfectly innocent one. D found NOT guilty due to prejudiced witnesses.

Issue: Whether a party who commits an act wh he does not know was an offense in a foreign land and wh he knows not to be an offense in his native land, is held to know that such act is an offense in the foreign land in wh he commits the act?

Holding: Yes. Such a defense is inadequate because ignorance of the law is no excuse.

Cb 94 **State v. Gardner**

S.C. of Mo., 1876. 65 Mo. 30.

Facts: The respondents are jointly indicted for adultery, they having cohabited as husband and wife while the female respondent was lawfully married to another man who is living & remarried. The J.P. who married the respondents told them they were free to marry because the other man had remarried, & they believed the statement to be true & acted thereon in good faith. They contend this shows lack of guilty intent. The crime of adultery cannot be committed w/o a criminal intent.

Pro: Exceptions by Ds to rejection of certain evid. Overruled.

Issue: Whether parties who honestly & in good faith in reliance on erroneous legal advice and commit an act wh would have been illegal even if the advice had been correct can present their ignorance of the law and their reliance on the advice as justification for the act?

Holding: NO. They were bound to know or ascertain the law and the facts for themselves at their peril. And where the act is itself unlawful, the proof of justification or excuse lies on the D; and the failure thereof, the law implies a crim. intent from the criminality of the act itself.

Cb 95 **State v. Newkirk**

S.C. of Mo., 1871. 49 Mo. 84.

Facts: Ds had assigned their lease to a bldg. to the complainant and had expressly arranged that the complainant was to have use of certain scales & partition for the remainder of the term. Before the term expired, Ds broke a lock on the bldg. and removed therefrom the scales & partition. Ds indicted under a stat. for a malicious trespass. Ds removed the scales & partition believing they had a legal right so to do.

Pro: D convicted of a malicious trespass pursuant to the applicable statute. Rvsd, & Rmnd.

Issue: Whether a party who is charged w/ a crime wh requires a specific intent can be held guilty of such crime when he committed the act mistakenly believing he had a legal right so to do?

Holding: NO. Where a party is charged w/ a crime which requires a specific intent because he committed an act which he believed he had a legal right to commit, such party will not be held guilty even though his belief was mistaken and the act, in fact, was illegal.

Cb 96

Hargrove v. United States

C.C.A., 5th Cir., 1933. 67 F.(2d) 820

Facts: D convicted on four counts under the Revenue Act of 1928 w/ "wilfully" failing to make and file a return of income for the years 1928 and '29 and for wilfully and knowingly attempting to defeat and evade the pymt. of income taxes for those years. D appealed on three (3) points all relating to the matter of his wilfulness. D assigned as error the refusal of his request for instructions, to wit, that wilfulness, as used in the act, implies a crim. intent, a knowledge and purpose to do wrong, + that unless the jury found D's failures to return + pay to have been w/ such intent, they must acquit him. Judge chgd. that wilfulness, under the act, meant an intent to do the wrongful act, even though it was no knowledge that a violation was being committed.

Proc: Rvsd. and Rmnd. for further proceedings.

Issue: Whether wilfulness, as used in the Revenue Act of 1928, means "that gen. intent wh always arises as a matter of law when some one wilfully or intentionally does that wh is unlawful?

Holding: NO. The very essence of "wilfulness" here is a specific wrongful intent, that is, actual knowledge of the existence of obligation and a wrongful intent to evade it, and unless the D's act had these elements, its mere commission will not suffice to convict the D of the crime w/ which he is charged.

Cb 99

People v. Flumerfelt

Dist. Cts. of App. of the State of Calif., 1939. 35 Cal. App. (2d) 495, 96 P(2d) 190.

Facts: Ds Flumerfelt and Ardell were convicted of the crime of grand theft at a trial before the ct. w/o a jury. Both Ds appeal from the judg. of conviction & from the order

denying their motion for a new trial. At the same trial D Ardelle was convicted of the crime of violating the Corporate Securities Act by KNOWINGLY selling stock w/o first obtaining a permit to so do from the Corp. Commissioner, and he has appealed from the judg. & from the order denying her motion for a new trial. D offered to prove that her Atty. had told her that he had obtained the permit for her. Trial ct. sustained an objection to the offer of that proof.

Pro: Rvsd. & new trial ordered.

Issue: Whether a person under the act can be said to have "knowingly" committed an offense when the commission of such act was in reliance on legal advice that the requirements of the statute had been met and satisfied, even though the advice was wrong, unknown to the actor?

Holding: NO. The term "knowingly" means "w/ knowledge" and when used in a prohibitory stat. is usually held to refer to a knowledge of the essential facts; and from such knowledge of the facts the law presumes a knowledge of the legal ~~effect~~ consequences arising from the performance of the prohibited ~~act~~ act.

People v. Ferguson

D. Cts. of App. of State of Cal., 1933, 134 Cal. App. 411, 24 P (2d.) 965.

Facts: D convicted of the crime of grand theft, and of violating the Corporate Securities Act by selling securities w/o a permit. D offered to prove that he had been advised by the Corp. Commissioner that a permit was unnecessary since what he proposed to sell was not a security. Dist. Atty. objected to the intro. of evid. to prove this as being irrelevant and immaterial. D appealed from the verdict & the exclusion of the evidence.

Pro: Judg. & order denying a new trial are rvsd. as to the corporate security counts.

Issue: Whether, in a crim. action, it is a suff defense to say that one has relied on the advice of an expert

and high authority in a certain field ≠ in doing certain acts in the honest belief that they are lawful ≠ where, in fact, they are unlawful?

Holding: Yes, in certain situations. where the regulation wh has not been complied w/ is Malum prohibitum and not malum in se, and where a party has relied on the advice of a qualified + competent person after having exhausted other methods to ascertain the validity of the advice, he will be heard to offer this as evid. Public policy makes this necessary.

✱ Statutory Crimes in which Proof of Intent is not Required. ✱

Regina v. PRINCE

Ct. of Crim. App., 1875. L.R. 2 C.C.R. 152, 13 Cox C.C. 138.

Facts: D took an unmarried girl out of the poss., and against the will of her father, and that the girl was in fact under the age of 16, but que le D bona fide + on reas. grounds, believed that she was above 16, viz.; 18 years old. D was indicted under a statute that enacts that "whosoever shall unlawfully take any married girl under the age of 16 out of the poss. and against the will of her father, or mother, or any other person having the lawful care or charge of her, shall be guilty of a misdemeanor." D was found guilty but judg. was reserved so that the Ct. for Crown Cases Reserved could render an opinion.

Proc: D/guilty/affirmed.

Issue: Whether a person accused of a crime can be held guilty when the act constituting the crime was done or committed w/o mens rea ???

Holding: Or a party commits an act prohibited by statute, it is not necessary to prove mens rea to convict him for the doing of the prohibited act will suffice; and a bona fide belief that such act is not wrong will not const. a defense wh will effect exoneration.

Regina v. Jolson

Crown Cases Reserved, 1889. 23 Q.B.D. 168, 16 Cox C.C. 629.

FACTS: D charged w/ and convicted of Bigamy. She married a second time w/in 7 years of the time when she last knew of her husband being alive but reas. believing that he was dead. D indicted under statute reading: "Whoever, being married, shall marry any other person during the life of the former husband or wife shall be guilty of felony, punishable w/ ...," w/ a proviso that "nothing in this ACT shall extend to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of 7 years last past, and shall not have been known by such person to be living w/in that time."

PRO: D convicted/quashed. (Dissent) (9 to 5 in favor of quashing.)

ISSUE: Whether a person who commits an act in violation of a stat. wh absolutely prohibits the doing of such act can exonerate himself or herself by showing that had the facts been as they were reas. and bona fide believed to be y would have been no crime? ??

HOLDING: Yes. A statutory mention of absence and want of information for a certain period does not exclude bona-fide belief of death based upon other reasonable grounded.

DISSENT: The conviction should be affirmed because the enactment is couched in the clearest language that could be used to prohibit the act and make it a felony if the act is committed.

State v. Dombroski

S.C. of Minn., 1920. 145 Minn. 278, 176 N.W. 985.

FACTS: The D was convicted of the crime of ~~murder~~ rape pursuant to a state statute providing that any person who shall perpetrate an act of carnal intercourse w/ a female of 10 yrs. or upwards, not his wife, when through idiocy, imbecility or unsoundness of mind she is incapable of giving her consent, shall be guilty of the crime of rape and punished accordingly.

PRO: At the trial the ct instructed the jury that it was not necessary, in order to justify a conviction under the statute that the prosecution affirmatively show that

D at the time of committing the act knew that complainant was of unsound mind. D excepted to the correctness of this instruction and the cause was certified to the instant Ct. for the determination of certain questions of law.

Issue: whether a defense presented by a person accused of violating a stat. that he did not know that the victim was of the nature of the class or group sought to be protected by the stat. will suffice to exonerate the accused or such knowledge is not made a prerequisite to conviction and is thereby immaterial?

Holding: No. A person is strictly liable ~~for~~ ~~the~~ his statutorily prohibited acts on the applicable stat. makes immaterial the ignorance of facts or law.

People v. Ferguson

S.C. of Ill., 1919. 286 Ill. 627, 122 N.E. 155

Facts: By Information, D (pin errors) was charged w/ unlawfully and knowingly having in his poss. 10 automobiles, from wh the manufacturer's serial numbers had been removed (~~for~~ by one in the hire of D) for the purpose of concealing or destroying the identity of the motor vehicles. D pleaded not guilty and moved to quash the Information on the ground that sec. 15 of the Motor Vehicle law is unconstitutional and void. Motion overruled, D found guilty & fined $100 and costs. A writ of error was sued out of this Ct., & the errors assigned question the constitutionality of the law under wh the D was convicted. Judgment affirmed. (See p. 112 of casebook for the statute).

Issue: Whether the mere performance of a specific statutorily prohibited act may constitute the crime regardless of either knowledge or intent on both or either of which are immaterial on the question of guilt??

Holding: Yes. The purpose of the stat. was to ~~[redacted]~~ protect against the ~~unlawful~~ use of automobiles and the intent of the legis. was to impose strict liability for the commission of the prohibited act.

Cb. 114

State v. Park

S.C. of Nev., 1919. 42 Nev. 386, 178 Pac. 389, 3 ALR. 75

FACTS: D was charged w/ having in his poss. a hide of a heifer, from which the ears had been removed. (See p. 114 for statute applied here.)

Procedure: D) contends that the stat. conflicts w/ sec. 1 of the 14th amend. to the constitution of the U.S. by exceeding the legitimate bounds of the police power of the state. From an order sustaining D's demurrer to information, the State appealed.

Sustained.

Issue: Whether a party who commits a statutorily prohibited act in the exercise of his right to the use and enjoyment of private property can be absolved from the crime w/ which he is charged by showing that the stat., while attempting to enforce the police power of the state, actually abrogates the accused's right to due process of law by imposing an intolerable incoherence on the enactment, while further attempting to prevent a person from illegal practices?

Holding: Yes. / Conceding the purpose of the enactment to be the prevention of the larceny of cattle, the effectiveness of the act — that is, the extent to which its provisions are designed to accomplish this purpose — when closely scanned is doubtful. It is an unreas. exertion of the police power. It is not a regulation of the use of prop. but a restriction that virtually amounts to a prohibition of its use w/o effecting proportionate ends conducive to the public welfare.

United States v. Parfait Powder Puff Co.

C.C.A., 7th Cir., 1947. 163 F.(2d) 1008.

Facts: D, engaged in the manufacture and sale of cosmetics, K'd w/ Helfrich Laboratories to manufacture, package, and distribute to D's customers hair lacquer pads. When the agreement was first made, the sample was tested and found satis. by D. Later, w/o D's knowledge, Helfrich substituted a deleterious substance

which did not conform w/ the brand description. As soon as D learned of the substitution it forbade use of the gum. D indicted under Sec. 301(a) of the Fed. Food, Drug and Cosmetic Act, 21 U.S.C.A sec. 331 et seq. which provides: (see p. 118 bbb).

Procedure: D appeals from judgment of conviction. Affo

Issue: Whether a person who puts into operation an instrumentality wh violates a stat., is strictly liable for the acts of the instrumentality wh are done thereon to such person? =

Holding: One who owes a certain duty to the public and entrusts its performance to another, whether it be an independent Kor agent, becomes criminally responsible for the failure of the person to whom he has delegated the obligation to comply w/ the law if the nonperformance of such duty is a crime. Lack of knowledge is no defense, and intent to have the wrongful acts occur need not be shown by the prosecutor.

Morissette v. United States

The Sup. Ct., 1952. 342 U.S. 246, 96 L. Ed. 288, 72 Sup. Ct. 240.

Facts: D removed spent bomb casings from a U.S. Govt. bombing range. D contends that he thought the casings were abandoned and did innocently sell them as scrap iron for $84.00. D was indicted, however, on the charge that he "did unlawfully, wilfully and knowingly steal & convert" prop. of the U.S. of the value of $84.00 in viol. of 18 U.S.C. sec. 641, wh provides that "whoever embezzles, steals, purloins, or knowingly converts" Govt. prop. is punishable by fine and imprisonment. D was convicted & sentenced to 2 yrs. and $200.00.

Procedure: D appealed from the conviction. C.C.A. affirmed even though the trial judge had refused to even allow evid. of inno-

cent intention to be intro., and reversed as to charge. On certiorari, reversed.

Issue: Whether the omission by Congress to include an intent element in a criminal statute means that an intent is not required for conviction??

Holding: On Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such cases, absence of contrary direction may be taken as satis. of widely accepted definitions, not as a departure from them.

Statutory Interpretation re the intent element

United States v. Healy

Dist. Ct., D. Montana, 1913: 202 Fed. 349

Facts: D sold liquor to an Indian who was a decoy in the service of govt. officers. D did not know the Indian was really an Indian and had no reason to know it. D convicted of a felony, an unlawful sale of intoxicating liquor to an Indian, contrary to Act Jan. 30, 1897, c. 109, 29 Stat. 506.

Procedure: The ct., of its own motion, vacates the sentence and judgment, sets aside the verdict, and discharges the D.

Issue: Whether ignorance of fact is an excuse where an act, prohibited by stat., is done voluntarily, but upon solicitation and fraud by the govt.?

Holding: Yes, where a stat., as there makes an act a crime regardless of the actor's intent or knowledge, ignorance of fact is no excuse if the act be done voluntarily; but when done upon solicitation by the government's instrument, to that end ignorance of fact stamps the act as involun., and excuses, or at least estops the govt. from a conviction.

Disorders of the Mind Affecting Criminal Responsibility

[I.] Mental Illness (Insanity)

M'Naghten's Case — House of Lords, 1843. 10 Cl. & Fin. 200

Facts: D indicted for the murder of Edward Drummond, secretary to Sir Rbt. Peel for whom M'Naghten had mistaken him. Witnesses in Ds behalf stated that at the time of committing the act, D was not in a sound state of mind. Med. evid. was submitted to the effect, that an otherwise sane person cd have morbid delusions and a moral perception of right and wrong, but be so deluded as to lose power of control and power of perception, that D was not capable of exer! any control over acts wh had connection w/ his delusion.

D held "not guilty" on the ground of insanity.

Issue: Whether a party who knows the difference between right and wrong but who is incapable of acting accordingly due to a mental disorder at the time of the commission of the act, can be held crim. responsible?

Holding: If the accused was conscious at the time of committing the act that the act was one which he ought not to do, even if he could not repress his desire to do it, he is punishable. – The "right and wrong" test.

Parsons v. State

S.C. of Ala., 1886. 81 Ala. 577, 60 Am. Rep. 193

Facts: Ds, wife and daughter of deceased, shot & killed same. Wife was lunatic who believed deceased had supernatural powers to bring bad health to her and feared for her life. Daughter was an idiot. The defense set up in the trial was the plea of insanity, that D-wife was subject to delusions and that

the killing on her part was the product and result of those delusions. Ds was convicted. Appealed. Reversed and remanded.

Issue: (1) Whether an accused party who, at the time he committed the ~~crime~~ act, had the capacity to distinguish right from wrong, but who was unable to refrain from doing the act, is crim. responsible therefor?

(2) Whether this decision is a matter of law or a question of fact for the determination of the jury?

Holding: where, as a matter of fact, the disease of insanity so affects the mind as to subvert the freedom of the will, and thereby destroy the power of the accused to choose between the right and wrong, although he perceive it — by which is meant the power of volition to adhere in action to the right and abstain from the wrong — such a one is not crim. responsible for an act done under the influence of such controlling disease.

Durham v. United States

U.S. Ct. of Appe. for D.C., 1954. 94 App. D.C. 228, 214 F.(2d) 862.

FACTS: D was convicted of housebreaking. D had long record of mental illness and crimes, of imprisonment and hospitalization. D's counsel argued ~~that~~ upon appeal that (1) the trial ct. did not correctly apply existing rules governing the burden of proof on the defense of insanity, (2) existing tests of crim. responsibility are obsolete & should be superseded.

Holding: Reversed and remanded for a new trial. where acts which violate the law stem from and are the product of a mental disease or defect, moral blame shall not attach and hence criminal will not be criminal responsibility. This is the product test.

Chapter VII: Assault, Battery and Mayhem

I. Assault and Battery

People v. Lee Kong

S.C. of State of Cal., 1892. 95 Cal. 666, 30 Pac. 800, 17 L.R.A. 626, 29 Am. St. Rep. 165

Facts: D knew policeman was secretly watching D's bldg. and rooms therein from a certain position on roof of D's bldg. One night, D took aim with a pistol and fired, and the bullet went right through the hole where cop was supposed to have been. By chance, cop was a few feet over and was not hit. D indicted for assault w/ intent to commit murder.

Pro: D convicted. Appealed; the evid. is insuff. to support the verdict. Affirmed.

Issue: Whether a person is guilty of assault where, unknown to the accused at the time, the criminal result of his attempt cannot be accomplished because the facts were not as the accused had thought them to be?

Holding: Yes. The fact that D was mistaken in judgment as to the exact spot where his intended victim was located was immaterial. Cop was suff. near to be killed by the bullet; therefore, D had the present ability to inflict the intended harm.

Assault

Assault is (1) an unlawful attempt, coupled w/ a (2) present ability, to commit a violent injury upon the person of another. Thus, to const. an assault two elements are necessary and the absence of either is fatal to the charge.

Chapman v. State

S.C. of Ala., 1885. 78 Ala. 463, 56 Am. Rep. 42

Facts: D presented an unloaded gun at a person who supposed it to be loaded. D indicted for an A+B, was convicted of a mere A.

Pro: D appealed. Rvsd. and Rmnded.

Issue: Whether a conviction for criminal A can be sustained on de actor did not have the

present ability to perpetrate the wrong even though the victim was in reasonable apprehension of immediate harm?

Holding: No. The indictment for such an act could be sustained only upon proof of criminal intention to do personal harm to another by violence. Inherent in the def. of crim. A is the idea of an unlawful violence to the person of another, w/ the present means of carrying the intent into effect.

The test in Crim. Law is more concerned w/ the actor than w/ the victim.

Commonwealth v. Hawkins

S.J.C. of Mass., 1893. 157 Mass. 551, 32 N.E. 862.

Facts: D ran into the street adjoining his home in a thickly populated ~~scene~~ neighborhood and, intending to let persons who had been ringing his doorbell and insulting him when she answered it, shot down at the ground. D had looked around and had seen no one and it was admitted that he did not intend to shoot anyone. One Mary Powers, standing on a corner 216 ft. away, was hit by the bullet. D was indicted for A w/ a dangerous weapon. Judge instructed the jury that it was only necessary that it be shown that D shot in a reckless or grossly negl. manner, and by so doing wounded Mary Powers.

Prs: D found guilty. Exceptions alleged. Overruled.

Issue: Whether Crim. A requires a specific intent?

Holding: No! Nothing more is required than an intentional doing of an act which, by reason of its wanton or grossly negl. character, exposes another to personal injury, and causes such injury.

II. Aggravated Assaults

Acers v. United States

S.C. of the U.S. 1896. 164 U.S. 388, 41 L.Ed. 481, 17 Sup. Ct. 91.

Facts: D fractured victim's skull w/ large stone due to dispute over biz affairs.

Pro: D convicted of an assault w/ intent to kill and sentenced to 2½ years. D appealed from an alleged error in the charge re intent. Aff.

Issue: Whether in a conviction for an assault w/ intent to kill the objective test may be used to deter. whether the requisite intent was present?

Holding: Yes. It is a question of fact for the jury to deter. if the requisite intent was present by looking at the circumstances, the character of the act, the manner in which it was executed, the weapon used, the part of the body affected and the result of the act.

Brimhall v. State

S.C. of Ariz. 1927. 31 Ariz. 322, 255 Pac. 165, 53 A.L.R. 231

Facts: Information charged that D, while intoxicated, drove his automobile in a crim. negl. manner, at night-time, w/o head lights, on the wrong side of the road at a speed in excess of the legal limit, and "did wilfully, unlawfully, negligently and feloniously commit an assault upon the body of one Lena McKinney" by hitting the car in which she was riding, inflicting upon her person bodily injuries. D was convicted of an aggravated assault. ~~with intent to kill.~~ Stat. (p. 249) was violated allegedly.

Proc: D appealed from the conviction assigning as error the ~~charge to the jury. Affirmed~~ information as being ~~Issue:~~ defective on its face in that it did not show that D intentionally assaulted the complaining witness, but that he was only negl. – Affirmed.

Issue: Whether a conviction of the driver of an automobile for an aggravated assault can be sustained by the showing of crim. negl. as constituting the requisite intent?

Holding: On the same facts would have sustained Manslaughter had the result been death, then serious bodily injury (a result short of death) under the same circums. should justify a conviction for aggravated assault.

(SEE DISSENT!!) p. 251

State v. Woodward

S.C. of Idaho, 1937. 58 Idaho 585, 74 P.(2d) 92, 114 A.L.R. 627.

Facts: D, while sitting in his car trying to avoid a personal conflict, was attacked and beaten by one Woodrow Spray. D tried to repel the attack w/ the use of a gun intending to use it ~~in the~~ as a club only, but the gun discharged in the opposite direction during the scuffle. D was convicted of an A w/ a deadly weapon.

Procedure: D appealed from the conviction assigning as error the part of the instruction in ~~Italics~~ ~~out~~ Italics stating "... that if the act done by D was necessary to prevent the infliction ~~of~~ upon him of great bodily harm by the person alleged to have been assaulted by the D," D acted in self-defense and would not be guilty. Rvsd. and remanded.

Issue: whether y must be an imminent manifestation of intention by an attacker to inflict great bodily injury at the time of the fact to justify the use of a deadly weapon as a self-defensive measure?

Holding: One, assailed or threatened w/ imminent danger to life or of great bodily injury, has the right to defend himself, and if the danger or peril is of such APPARENT imminence, may use a sufficient quantum of force or violence on his part to protect his person.

Solicitation (see notes)

* ATTEMPT *

People v. Miller

S.C. of State of Calif., 1935. 2 Cal.(2d) 527, 42 P.(2d) 308, 98 A.L.R. 913.

Facts: D, suspecting foul play, warned one Albert Jeans to stay away from his wife or he would kill him. D said the authorities should not do anything. Later the same day, D went out to the Constable's hop ranch

where Jeans was working. D had a .22 caliber rifle. The Constable was 250 to 300 yards away and Jeans was 30 yards past him. D began walking toward the constable and then stopped to load the rifle, barrel pointed downward. At no time did he lift the gun as if to aim. Jeans fled either before or after the loading, this point not being clear. Constable took rifle, D offered no resistance. Bullets were .22 caliber high-speed.

Pro: D indicted for attempt to commit murder. Guilty. D appealed: (1.) denial of motion for new trial; (2.) insuff. of indictment to const. a public offense; (3.) insuff. of evid to sustain verdict; and (4.) prejudicial error in giving of certain instructions.

Issue: Whether acts as indicative of one frame of mind as another are suff. to sustain an indictment for attempt to commit murder?

Holding: The specific intent to commit murder must be unequivocally manifested, and the acts must be in furtherance or in execution of the design, as distinguished from mere preparation. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act, or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains no one can say w/ certainty what the intent of the defendant is.

Collins v. City of Radford

S.C. of Apps. of Va., 1922. 134 Va. 518, 113 S.E. 735.

Facts: D indicted for an "attempt to transport, sell, keep or store for sale ardent spirits." D had whiskey stored in a haystack but, unknown to him, someone had removed. D arrested while "jisting around in the haystack for it."

Pro: Guilty. Appealed: The acts shown in evid. do not const. an

attempt to transport ardent spirits. Affirmed.

Issue: whether impossibility of performance vitiates an attempt to commit a crim?

Holding: All authorities hold that in order to constitute an attempt the act attempted must NOT be impossible, BUT this has reference to inherent impossibility, and not to cases where impossibility has been brought about by outside interference or grows out of extraneous facts not within the knowledge and control of the accused.

Commonwealth v. Johnson

S.C. of Pa., 1933. 312 Pa. 140, 167 A. 844, 89 A.L.R. 333.

Facts: D, a licensed physician, was approached by two officers disguised as customers. The officers requested treatment by D for a fictitious sister. D rubbed paper w/ "sister's" name on it on the back of what was supposedly an electrical instrument and pronounced a diagnosis. D then asked either $65 a month or $4.60 per month for treatments for a period of from 9 to 12 months. Officers told D's stmts. to be false and paid $25.00 down in marked bills. D was arrested by two other officers w/ the marked bills in his poss.

Proc: D indicted for attempting to obtain money by false pretenses. Convicted + sentenced. Superior Ct. arrested judg. and discharged D. Com. appealed. Reversed and judg. and sentence of Ct. of Q.S. sessions reinstated.

Issue: Whether the failure of the prosecutor to rely on the stmts. of a person accused of ——— where the prosecutor knew the stmts. to be false will void an indictment charging the accused w/ ———?

Holding: There was no legal impossibility of consummating the offense, only a factual impossibility. — The failure to deceive the intended victim. In such a case, there ~~is~~ is present the requisite crim. intent.

D's attempt to obtain the larger and further sums

remains an attempt, notwithstanding he rec'd. part of the money he was endeavoring to collect.

Dissent: The completed crime of false pretense is not established unless it appears that the person alleged to have been defrauded believed the false repn. to be true. So, on le act, if accomplished, would not const. the crime intended, as a matter of law, then y is no indictable attempt.

People v. Lardner

S.C. of Ill., 1921. 300 Ill. 264, 133 N.E. 375.

Facts: D took 5 leaded bags from Complainant's store showcase, carried them in his overcoat pocket for about 6 feet, laid the overcoat on another showcase and walked out w/out the bags.

Pro: D indicted for larceny but convicted for attempted larceny. Appealed: the People only tended to prove the completed offense of larceny - y could be no conviction for an attempt to commit the crime resulting in a failure. Reversed and remanded.

Issue: Whether y can be a conviction for an attempt where the crime was consummated?

Holding: When an indictment charges an offense wh includes w/in it a lesser offense, the D, though acquitted of the higher offense, may be convicted of the ~~latter~~ lesser; but that rule cannot be applied to an attempt defined by the statute, because an essential element of the attempt is a failure to consummate a crime. The statute only includes a case on y is a direct, ineffectual act toward the commission of crime.

* LARCENY *

People v. Meenagan

S.C. of Ill., 1937. 367 Ill. 330, 11 N.E.(2d) 403, 113 A.L.R. 1276.

Facts: D was indicted for larceny of 70,601 Kilowatt hours of electricity belonging to Commonwealth Edison Co.

Pro: Indictment quashed on motion of D. People sued out writ of error. Reversed and remanded w/ directions to overrule the motion to quash.

Issue: Whether electricity may properly be the subject of larceny?

Holding: Yes. The true test is whether it is capable of appropriation and asportation by another than the owner. Electricity is a valuable article of merchandise, bought and sold like other personal prop. and is capable of appropriation by one other than the owner.

Adams v. Com.

Ct. of Apps. of Ky., 1913. 153 Ky. 88, 154 S.W. 331, 44 L.R.A. (N.S.) 637.

Facts: Adams & Clark were acting jointly when Clark put his hand into the complaint Sharp's pocket. Upon a warning from one Gormley, Sharp caught Clark's hand in his pocket w/ some money between his fingers and near the top of the pocket. Adams' hand, according to Gormley, was about ½ of the way out of Sharp's pocket and the money could be seen. $2.70 ¢ involved.

Pro: Appellant convicted of grand larceny. Appeal from the conviction assigning as error instructions 4 and 5. Affirmed.

Issue: What constitutes sufficient asportation?

Holding: To const. asportation, it must be a taking or severance of the goods from the poss. of the owner, and even the slightest removal of the entire article will suffice. Larceny is the felonious caption and asportation of the personal goods of another.