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Property I, Volume 2

Maynard Jackson

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Class PROPERTY I - VOL. II

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9 January 59

* Accession *

There are two broad categories:

(h) Specification - the chattel of one person has received an added value from the labor of another person. (Superman hypo)

DEFINITION

Replevin

Quaere: * Does Replevin lie here? There are a no. of factors that must be considered! It could be said that the T.O. should not be required to forfeit his prop. regardless of the fact that another's labor has improved it.
On the other hand, we could say that Superman's efforts should be rewarded, esp. since the value of the object has been so greatly enhanced.

* Courts usually consider the following theories:

(1) Physical Identity Theory - if the chattel has undergone such a phy. change that it cannot be changed back into its orig. form, replevin will not lie. e.g., wheat into bread.

Applies whether the taking was willful or not

Weatherbee v. Green
22 Wis 431

(2) Comparative Value Test -
The maj of cts. follow this. If the value of the chattel after the conversion is increas. dispro-

Applies if taking was w/o wrongful intent.

Silsbury v. McCoon
3 N.Y. 379

portionate to the value of the chattel before conversion, no replevin will lie.

EXCEPTION | Weatherbee v. Green, 22 Mich. 311 - held that if the converter was wilful replevin will lie regardless.

Applies only if taking was intentional and willful. (3.) "Old N.Y. view" - Silsbury v. McCoon, 3 N.Y. 378 - If y is a wilful tres., TO can get the chattel back so long as TO can prove that the chattel was his, i.e., Replevin will lie.

The three above views are followed by the unenlightened courts. However, the enlightened courts consider the following which are combinations of the above:

(1.) Plty. Identity
(2.) Comp. value
(3.) Trespasser, innocent or wilful (distinction made)
(4.) Proof that the chattel was his.

These are the factors considered in accession in so far as suits in Replevin are concerned.

Money Damages

Quaere: What about the TO getting money damages?

WILFUL V. INNOCENT TRESPASSERS | If the tres. was wilful, the tres. will be liable for the enhanced value of the chattel. If innocent, only liable for the orig. value.

Quaere: If the tres- poses the action, can he be compensated for his "labor pains"? — NO. A man cannot be made a debtor against his will and this would open

Pulsifer v Page
32 Me 404

the door to abuse by trespassers and officious persons.

(2) Adjunction

DEFINITION — This is ~~whether~~ where the value of the converted chattel is greatly enhanced by adding other goods to the orig. chattel.

* Pulsifer v. Page, 32 Me. 404 — TO had chain w/ three links + T added two links. Ct. held that the party who owns the principal parts owns the chattel. TO would not have to compensate T.

Principal Parts Test

typo: TO has two links and T has three links. — T would prevail, but TO would be entitled to compensation for the loss of his two links. Also, (TO could conceivably recover dams. for the detention, but it would be better to bring Detinue rather than Replevin at C.L.).

CAVEAT — In pure adjunction cases, the wilfulness of the tres. is not a factor w/ the cts. consider. The only factor considered is who owns the principal part.

* CONFUSION *

DEFINITION — When several things of the same kind belonging to different owners are so intermixed or

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Willard v. Rice
11 Metcalf 493 - negl. confuser

intermingled that they cannot be identified or distinguished.

Quaere: How does the confusion occur? This must be considered.

hypo: Two banana carts collide and the bananas mix on the street. Accidental collision. - Treated as tenants in common.

hypo: A wilfully bit B's cart, but 4 were 100 lbs. in each cart. — Since the bananas are the same and each had an ascertained amt., the bananas could be allocated and redistributed.

hypo: X wilfully overturns barrels of bananas owned by A & B. We don't know how much each had. — They (A+B) would be tenants in common and would divide evenly.

hypo: B wilfully overturns and confuses the bananas on purpose. — Ct. would force B to forfeit his share whatever it was.

hypo: B inadvertently knocks over both barrels and amts. are unascertained. — Willard v. Rice, 11 Metcalfe 493 held that a negl. confuser would forfeit his share.

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PROBLEM #3 on Exam in May, 1958 —

Crash Freeway places 2 sacks of cement on his truck. Elvis Pretzel mistakes truck for his own and puts 3 sacks of his own on ~~the~~ Crash's truck. Crash doesn't know it and drives off. Three sacks fall off and are found and kept by Greasy Grimaldi.

(A) E v. C

(1) We could not say that a forfeiture should be decreed because Elvis was an innocent confuser and could prove how many he had.

(2) ~~I~~ Crash was not guilty of losing the three sacks because the law will not be held liable w/o fault. Crash was like an involuntary bailee and only owes a slight d/care and can be held liable only for gross negligence. Elvis would get 1/5 of the 2 sacks and Crash would get 4/5 of a sack.

(B) C v. G —

Can Crash, an involun. bailee sue Greasy and recover the three sacks or their value? = For the Winkfield Case, a volun. B$^{ee}_{=}$ can sue, but an involun. B$^{ee}_{=}$ can only sue w/ express permission from the B$^{or}_{=}$.

(C) E v. G Assuming that Crash did sue and gets a judgment outstanding; Does a mere suit by an involun. B$^{ee}_{=}$ preclude the B$^{or}_{=}$ from maintaining a suit against the finder? ?=

* What is the Effect of a Satis. of Judg. on

Miller v. Hyde
161/472

Bacon v. Kimble
14 Mich 201

a Passage of Title?

hypo: A v. B in trover. J/A but judg. is not satis. Can A turn around and sue B in Replevin for the return of the chattel in specie? = NO. There has been an election of remedies and after the case has moved to judg. we don't want to harrass B w/ a multiplicity of suits.

hypo: Before satis. of judg., B sells the chattel to C. Can A v. B in conversion? = Yes, because title only passes upon satis of judgment. B would not have passed title to A until he (B) satis. the judgment. Miller v. Hyde, 161 Mass. 472.

RULE OF LAW

hypo: Bacon v. Kimble, 14 Mich. 201 - held that as between a B.F.P. and the converter, even though the converter's title relates back to the date of conversion, if he wins the action, the BFP will prevail. This is an exception to the gen. rule of relation back of title to date action was began.

RELATION BACK OF TITLE TO COMMENCEMENT OF ACTION

* Liens *

DEFINITION - A right created by law in a Bee as an incident of certain types of Bmts: The right of a Bee to hold the bailed chattel until some debt owed by the Bor is paid.

* 2 types of C.L. liens:
(1) Specific lien

(2.) General lien.

DEFINITION OF SPECIFIC LIEN

* Specific lien = a lien wh extends only to cover the specific debt wh was incurred in rel. to the specific chattel wh was the subject matter of the Bmt.

hypo: A gets clothes from cleaners and says that he will pay the man later. Next week, A takes another suit of clothes and pays in advance for 2nd suit. Cleaner says that he won't return suit because A owes him for the previous suit. A v. Cleaner = J/A.

(cleaner says okay.)

DEFINITION OF GENERAL LIEN

* General lien = extends to include not only the specific debt wh was incurred in rel. to the specific chattel wh was the subject matter of the Bmt, but also to the balance of the gen. debt. wh exists between the parties. - e.g., an attorney's general lien. The law looks down on this general lien.

Quaere: * In what kinds of cases did the CL give someone a lien? Two broad categories:

(1.) Ou le Bee is either a com. carrier or an innkeeper. Y is a lien upon the goods of the customer for failure to pay. These Bee's have an obligation to accept all Bors as customers, i.e., they cannot refuse anyone service.

(2.) The Bee who volun. enhances

the value of the chattel.

hypo (cont'd): The cleaning man cannot sell the suit to reimburse himself. If he does, he is a converter and forfeits his lien. He cannot even get a Bill in Equity to allow the sale of the suit. The cleaner would not even be compensated for expenses incurred. An exception to the latter rule is the garageman's lien where the law says it is implied in the storage agreement that he will be repaid for the storage.

Exception: compensation for expenses of storage.

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A man who asserts a lien is merely asserting his right to hold the chattel until the debt is paid. You cannot try to enforce the pymt. of a debt by the sale of the property. If he does sell, he will be a converter and can be held liable for conversion (full value at time of conversion).

(EXCEPTION: FACTORS can SELL. See p. 134, infra)

At C.L., a lienor cannot compel compensation for expenses in keeping the chattel during the assertion of his lien. At C.L., the lienor holds the chattel at his own expense. Exception: garageman's lien.

In case the Bor goes bankrupt, the lienor does not have to give up the chattel & does not have to share pro rata w/ the Bor's other creditors.

sec. 57 n
EFFECT OF Bor GOING BANKRUPT

Waiver of lien after Bor's Bankruptcy

If, at the time of Bor's bankruptcy, the lienor does not assert his lien, he has waived his lien and this is the law under the Bankruptcy Act, sec. 57 N.

Conveyance of title to liened chattel by Bor:

All party who gets title to the chattel from the Bor, such party takes subject to the lien.

EFFECT OF S/L ON LIENS

If the lienor (Bee) does not commence action for the pymt. of the debt w/in the S/L, the lien will be unaffected. The S/L only bars the lienee's remedy, but it does not extinguish the underlying debt.

EFFECT OF S/L ON Mortgages

An analogous situation is the case of a mortgage. In a mortgage, it is a note and the mortgage deed. Many states provide S/L of 6 years on unsealed instruments, and 20 years on sealed " . The note is unsealed and the deed is sealed.

hypo: 8 years elapse and the bank has not foreclosed. — The bank could say that they merely could not bring an action on the note, but that the debt of wh the deed is evid. still remains.

ATTACHMENT OF LIEN BY Bee's CREDITORS

Can creditors of the Bee attach his lien in the chattel? — No. The lien is a personal right of the Bee and only those in privity w/ the Bee could reach it. But, this works both ways: If a third party converts the ~~title~~ chattel and Bor V. T,

the Bee could recover in an action of conversion against T. T could not use the defense that Bee had poss. because only the Bee could assert that defense since it is the Bee's personal right.

TRANSFER AND ASSIGNMENT OF LIEN

If the Bee transfers the lien w/o assigning the debt wh underlies the lien, the Bee could be held liable for conversion. So, if Bee wants to transfer the lien to X and wants to avoid conversion, he must assign the underlying debt along w/ the lien.

Specific liens

Essential elements:

(1) Poss. in the Bee

(2) Bee must ordinarily add to the value of the chattel. Exception: common carriers. (An innkeeper only has a general lien).

hypo: T.V. repairman repairs the set in X's home, and X refuses to pay. — T.V. repairman had no poss. because it (set) was on the premises of X. T/X.

hypo: Leaving car in garage and nothing done to it. Owner refuses to pay. — T/O because garagemen did not enhance the value of the chattel.

hypo: same, but new tires are put on

the car. Would garageman have a lien? The critical issue is whether the chattel itself has been enhanced or whether the removability of the nature of the tires from the car vitiates the theory of enhancement. The cases are badly split on this point.

General liens

These are seldom allowed by law, but there are situations where they are allowed:

(1.) when provided by stat.

(2.) when the parties agree

(3.) When, according to the usage or custom of a certain calling or trade, a gen. lien is so common and so well estab. that the parties must be taken or presumed to have included the gen. lien as a part of their agreement. This is the assumption or presumption where the custom is so well known that anyone could have found out if they had only inquired. The Burl proof is on the P to show that this is the well known custom.

(a.) Innkeepers - to cover the debts and fees of the guest's room, board and entertainment. He is entitled to hold on to the luggages.

(b.) Attorneys and the legal profession - two liens here: The atty's gen. lien

Blake v. Corcoran
211/406

entitles him to retain the papers, prop. documents and moneys for failure of the client to pay for services rendered. (2) The specific or charging lien - asserted against the judgment rendered in favor of the client. He can compel the party who must pay the judgment (judg. debtor) by notifying that party of the lien assertion. If the judg. debtor pays the client anyway, he runs the risk of having to pay the atty. out of his pocket. If the atty. does not notify the judg. debtor before he pays the client, the atty. cannot compel the j. debtor to pay.

At C.L., the lien included all fees, expenses and value of legal services. But in certain jurisdictions (Mass. included), only the taxable parts can be the subject of the lien. The legal fees are not included. Blake v. Corcoran, 211 Mass. 406. Costs, expenses & disbursements are included.

* This lien applies only to judgments, not causes of action. So, if it is a settlement, the atty. would not have the lien.

(c.) Bankers (in some situations)

(d.) Factors (like pawnbrokers) - these people CAN sell the chattel to enforce their lien. This is the only case or situation where the chattel can be sold w/o making the Bee a converter.

EXCEPTION WHERE LIENOR CAN SELL THE CHATTEL

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[I.] Wild Animals

(A.) How do you reconcile Rexroath v. Coon w/ Anderson v. Gouldberg? In Wild Animals, the emphasis is upon poss. In Chattels, y can be a trans. of title in other ways and emphasis not so much on poss. In Wild Animals, T^1 cannot sue T^2. In Chattels, T^1 can sue T^2.

(B.) O giving consent to hunter to hunt on O's land does not necessarily mean y has been a trans. of rights ratione soli. Cts. say that the O is only saying "I will not oppose you." But, it depends on whether the intent of O was to trans. ratione soli.

(C.) Should be concerned w/:

(a.) Defs. of poss.

(b.) Stephens v. Albers & M v. B.

(c.) Exceptions to the rule of loss of title in wild animals. - proof of title, animus revertendi, pursuit

[II.] FINDERS - c/a accrues upon demand and refusal, or F tells to someone else w/o trying to find T.O.

(A.) T.I. - rights of finder on another's prop. & rights of the O of the prop. F of abandoned prop. prevails over everyone.

(1.) Tres or not. - maj.: tres. prevails. Mass: O prevails unless tres. comes only on prop. to keep find.

(2.) Serious tres. or trivial - trivial - serious - F/O.

(3.) Servants rule find. - maj. - servant prevails (not one is hired to find)

(4.) lost v. mislaid (O prevails in mislaid)

(5.) Place of finding - makes no difference in U.S.A.

[III.] Adverse Poss.

(A.) Disabilities -

(1.) Must exist at time ~~of action~~ c/a accrues

(2.) Statutes sometimes provide for 10 yr. period after removal of disability.

(B.) Maj. view – regardless of what you claim, you get F.S.A. Only thing that can stop this is Estoppel.

(C.) O → B for life rem. to C = A goes into AP after conveyance. – A v. B – T/A
A/C = T/C because the s/l has not begun to run. C would ~~not~~ have to bring Ejectment w/in 21 years after the end of B's estate. Could argue B's estate ended when A got title by AP // O – B for life, rem. to C.
A goes into poss. before conveyance out of O. T/A against all.

(D.) AP's title relates back to date of orig. entry for certain purposes only. Will not block dower rights of wife who marries O after A has entered.

~~[III.]~~ [IV.] Constructive Adverse Poss.

(A.) AP must be of such a nature that it gives notice to the world that the other part of the land is claimed.

[V.] Bailments

(A.) Bailments v. other things (lease, debtor-creditor, sales, etc.)

(B.) St/care owed by Bee

(C.) Misdelivery – (1) a VOL. Bee is liable w/o fault. Seems that involv. is not liable for misdel. w/o fault. only liable for gross negl.
(2.) Qualified + Unqual. refusals.

[VI.] Remedies of a Poss.

(A) (1.) Winkfield – Bee can recover full value

and B^{or} precluded from suing. Ex: (1) B^{or} starts suit concurrently. (Manifestation of contrary intent.) — exception
(2) a settlement w/ B^{ee} precludes B^{or} from suing.
(3) " " has same effect as judg.

(B.) B^{ee} can sue B^{or} when y is b/c of term of B^{ee}.

(C.) Be aware of following critical problem:
(1.) Wt. of author. holds that life tenant can only recover for his interest. Mass. in accord. — y is a split of author. (Zimmerman v. Shreve)
↓ 2 exceptions:
(1) Power of sale
(2) lessee du/care for prop.

VII. Gifts

A. Some cts. hold (mass.) that you can't have valid delivery of gift c.m. by a deed of gift. should have will. Stat. of Wills in accord.

(B.) (Inter vivos)
Del. to agent of Donee is good.
" " " " Donor is not good. } D.V.
(Causa mortis) " " " " either D^{ee} or D^{or} is good to either agent because y can be a revocation at anytime before death.

(C.) y does not have to be del. of any sort of equitable gift (e.g., D^{or} declares himself to be trustee of 100 shares for B, the beneficiary.)

(D.) In contemplation of suicide (VOID IF CAUSA MORTIS)

(E) ~~Title~~ Choses in Action
(1.) 1st class " " " by manual del.
(2.) 2nd " " " " by assignment
(3.) Checks are promises to make gift. No underlying obligation.
(a.) Only effect of lack of endorsement is to prevent BFP + HIDC.
(4.) Shares of stock — 1st class chose/action. —
(a) Can be done by written assign. or trans. on the books. This is contra to Stock Trans. Act. — Better rule is actual del. (Mont. case — Freshman)

(F.) ESTATE PLANNING

VIII. BFP

A. If thief sells to BFP, BFP will lose. Nemo dat, etc. Lots exceptions.

(1.) One exception is Doctrine of Shelter, but shelter does not apply to participant in fraud.

EXAMINATION

(1.) 1½ hrs.
(2.) 92 questions
(3.) In case of doubt, guess.
(4.) Ans in accordance w/ prevailing C.L. view unless otherwise informed.
(5.) 15% of grade.

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Assignment: Chap. 12 (omit last problem)

Quaere: (1) Does the non-owner of a chattel have the right to subject it to a lien? — Hypo: T steals O's car and has it serviced. T comes to garage to claim the car but has no money to pay for it. Garage-man asserts a lien. Is it valid? — No, because nemo dat quo non habet. If O had not given his consent, either express or implied, it would NOT be sufficient. No one can assert a lien, even after enhancing the value, w/o the consent of the O.

Exceptions:

(1.) Extraordinary Responsibilities —

(a.) Innkeepers:

hypo: T can't pay hotel bill and hotel holds the stolen luggage. [redacted]

(b.) Common Carriers — have the right to their specific liens.

hypo: Salesman tells the hotel that the luggage belongs to his Co. along w/ the samples inside. The hotel could hold the luggage because Salesman had rightful poss. of the luggage and samples.

Knowledge of wrongful poss. vitiates Lien

* If the hotel knows that the subject of the lien is not in the rightful poss. of the person, no lien.

HONEST BUT UNREASONABLE BELIEF AS BASIS FOR LIEN

* If the innkeeper honestly believes the luggage belongs to the person altho' the belief is unreas. or imprudent, he may still rightfully assert a lien. (per Schubartz)

Duty of Care

An innkeeper and common carrier owe a great duty/care to their customers.

140 Restitution

Guaranty Trust Co. Case 243/597

Erlich v. Chappell 311 Ill. 467

hypo: Cond. vendee of a car has it repaired. Then he defaults on pymts. & cond. vendor ~~tries~~ to repossess the chattel.

* Mass. View - cond. vendor knows that in the natural course of events repairs will be necessary and ∴ gives his implied consent. * Guaranty Security Trust Co. Case, 243 Mass. 597. i.e. Garageman could hold car for lien.

Even under this view, the garageman should be entitled to Restitution under a quasi-Kual obligation.

* Illinois View - the cond. vendor gives the cond. vendee limited consent and it does not include subjecting the car to a lien. * Erlich v. Chappell, 311 Ill. 467.

Quaere: (2) How can one lose a lien?

(1) A Bee who volun. surrenders the chattel will lose the lien.

Voluntary Surrender

hypo: If an attachment is levied by a third party who is executed by the sheriff, and the Bee gives up the chattel, the lien is lost because Bee volun. surrendered the chattel.

* If there is an agreement

that the chattel will be returned, and the B^{or} does not return it, the B^{ee} is said to have an Equitable Lien and can bring a Bill in Equity for Specific Performance of the K.

Involuntary Surrender — If either a third party or the T^{o} forcefully retakes the chattel the lien is NOT lost.

(2.) Refusal of Pymt. of debt — Where the B^{ee} refuses to accept pymt. of the debt for wh/ the chattel is security.

(3.) Conversion — Where the B^{ee} converts the chattel. * Two questions must be asked where the B^{or} requests the return of the chattel and the B^{ee} refuses:

(a.) Does the refusal take the form of an unqual. refusal?

(b.) Does the B^{ee} mislead the B^{or} to believe that the tender of the pymt. would be futile?

* Excessive debt claimed by B^{ee}: If The B^{ee} claims an excessive amt., the lien is not lost automatically, but it depends. If the excessive claim leads the B^{or} to believe that the tender of the correct amt. would be

futile, the lien is lost. Otherwise, it is not lost.

Unlienable Agreement

(4) On the agreement itself is inconsistent w/ the assertion of a C.L. lien.

Hypo: The garageman says the Bors can get the car that night and ~~the~~ would not have to pay until later. That night, Bor refuses to give up cas. The lien is then lost due to contrary agreement.

* Summary of Personal Property *

Key methods of acquiring title to personal property:

(1.) Reduction to poss. / wild animals
(2.) Finding Abandoned property.
(3.) Purchase of the chattel.
(4.) Gifts
(5.) Acquisition of personal prop. through a decedent's estate.
(6.) Accession
(7.) Doctrine of Confusion
(8.) Adverse Possession — keystat. in personalty is Replevin.
(9.) Satis. of a Judg. in Trover.
(10.) Doctrine of Escheat — man dies w/o heirs, prop. goes to State.
(11) Forfeiture

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* REAL PROPERTY *

The Doctrine of Stare Decisis is strongest in the area of Real Property. There is a great desire for stability.

ORIGINS -

Real Prop. finds its genesis in Feudalism which was a mode of life encompassing centuries of life in Europe and had bearings on the social, governmental, economic and political institutions.

Features of Feudalism -

(1.) Classification of all people - placing all people in the rel. of Lord and Vassal. Cultural, social and religious life revolved around this relationship.

(2.) Holding of Land - the lesser held land of the higher.

(3.) The Lord over land was the prop. holder as well as Sovereign. Even today in England, only the Queen owns land, and all land is held of the Queen.

The person holding immediately under the Lord Paramount (King) was known as Tenant in Capite or Tenant in Chief.

Any land retained by one in the feudal chain was held to his **demesne** if held for his personal use.

The relationship that existed between each of the parties in the hold was a tenurial rel.

* There were different kinds of tenure:

(I.) Knight Tenure - furnished to the Lord a certain number of knights for a year & 40 days. This later decayed and gave way to

* Scutage - money payment in lieu of Knight tenure.

* There were incidents of knight tenure which grew in importance:

(a.) Aids - vassal obligated to help the Lord in times of financial distress and emergency. e.g., to pay for lord's daughter's wedding.

(b.) Relief - the sum payed by the heir of a deceased tenant to the latter's lord for the privilege of entering upon his stipulated inheritance. Like today's Inheritance Tax.

(c.) Primer Seisin - pending outcome of inheritance suits, lord held the disputed land directly.

(d.) Marriage, Wardship and Escheat

(1) Wardship - lord took over a ward who was a minor heir and lord took care of everything.

(I) [redacted] Property

Tenure: A, owning Blackacre in FSA, leases to B for 1 yr. B holds (tenes) of A; B is the tenant, i.e. the holder. A, the landlord, owes to B a duty of protecting him in his holding; and this is evidenced by the warranty of quiet enjoyment which is implied in the tenancy. B owes to his landlord the service of providing a periodic rent. In feudal times the lord-tenant relationship was essentially personal and only incidentally proprietary.

B holds of A

Allodial: a form of ownership where by land is not held in subordination to anyone else.

B holds of B

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Magna Carta.

(III.) Frankalmoign Tenure - dealt w/ free alms. The Church and its subsidiaries got land in return for religious services. Did not involve marriage and wardship. These incidents usually provided much money; so, to avoid too much land being given away, the Statute of Mortmain (1279) was enacted. Provided that before land could be given to a religious group, a royal license must have been gotten.

(2.) Marriage - a minor heir could only marry w/ consent of Lord. Word had to marry the choice of the Lord or pay the worth of the marriage. If ward ran away and married, double the worth of the marriage.

(3.) Escheat - land of a vassal who dies intestate escheats to the lord.

(II.) Serjeanty Tenure - tenure by one who serves. Involves a peculiarly personal type of service. The very important services were called Grand Serjeanty. Menial types of service were called Petty Serjeanty. The only incidents which were not here were wardship and marriage. King John renounced the latter two in the Magna Carta.

(III.) Frankalmoign Tenure - dealt w/ free alms. The Church and its subsidiaries got land in return for religious services. Did not involve marriage and wardship. These incidents usually provided much money; so, to avoid too much land being given away, the Statute of Mortmain (1279) was enacted. Provided that before land could be given to a religious group, a royal license must have been gotten.

(IV.) Socage Tenure - any tenure other than the other three. e.g. giving a rose every summer.

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Socage Tenure became the most firmly entrenched and most widespread.

* Villeins - unfree men under feudalism. Could not sue the Lord in Cts. of Law. No rights of Land. Almost like Slaves.

Formed a sort of "un-free rel." w/ the Lord. The land that the Lord owned to his own demesne was worked by the villeins and lived on by " . All profits went to the Lord. This was known as Villein Tenure or Unfree Tenure.

Later the villeins were given some rights in the land they worked and lived on. The Manorial Courts enforced these claims based on the copy of the paper given them by the Lord showing the land on wh they lived. Therefore they were called Copyhold Tenants and

this was called Copyhold Tenure.

In Villein Tenure, the villeins held at the whim and caprice of the Lord.

Due to the Bubonic Plague and the Mechanical Revolution w/ its more attractive wages, the Lords had to make some concessions to the Copy-holders:

(1.) first, the villeins were paid for some of their services.

(2.) Then, they (1925) were finally given Socage Tenure on y was full tenure and on the villeins held of another.

Subinfeudation and Substitution

The Lords opposed substitution at early feudal times because they wanted to pick their own tenants and keep the incidents. With the greater spread of Socage tenure w/ its token vestiges of homage and fealty, however, the Lords' objections became merely academic. Therefore, a statute was passed.

Statute of Quia Emptores - (1290)

Very Important

This stat held that y could be

free alienation by substitution.
Abolished Subinfeudation.

Limitations of Quia Emptores

Limitations:
(1.) Did not apply to King unless he so chooses.
(2.) Only to fee simple estates.
(3.) Applied only to conveyances inter vivos.
(4) King could give right to subinfeudate only to his tenants-in-capite.

As the times changed tenures fell into practical disuse and by 1660 there were no more incidents of tenure in England at common law.

Tenure in United States of America

The King gave Wm. Penn, the Royal Proprietor full power of subinfeudation despite Emptores. After 1776, some states adopted different views of the nature of land holding.

(1.) Allodial — no holding of anyone. The holder owned the land. By stat., it could be escheat.
(2.) Seigniorial w/ Quia Emptores in force — it was holding of only the orig. owner. Escheat by tenure would be to the state.
(3.) Seigniorial — it was a holding of the orig. owner. Escheat by tenure would be to the orig. owner (e.g., South Carolina).

1 and 2 are most alike: no holding of another.

Limitations of Quia Emptores

Quia emptores: (1290) declared that every freeman might sell his tenement or any part of it, but that the transferee should hold of the same lord of whom his transferor had held, and by the same services. (No application to tenants in capite.) It applied only to conveyances in FSA; prevented the creation of new tenures; abolished sub-infeudation; allowed complete alienation by way of substitution upon payment of a fine, even though the lands were thereby divided.

Subinfeudation: B conveys the land to C in perpetuity, but at the same time he preserves certain

...bstitution.

...con.

...to King

...mple estate. ...convey-...ces.

...yto his tenants-in-capite ...d tenures ...disuse and ...re no more ... in England

Tenure in Un... ...a ...m. Tenure, the ...owers of ...te Emptores, ...states ...views of the nature of [illegible] holding:

(1.) Allodial — no holding of anyone. The holder owned the land. By stat., y could be escheat.

(2.) Tenurial w/ Quia Emptores in force — y was holding of only the orig. owner. Escheat by tenure would be to the state.

(3.) Tenurial — y was a holding of the orig. owner. Escheat by tenure would be to the orig. owner (eg., South Carolina).

1 and 2 are most alike: no holding of another.

(3) Obligations from C to himself (he interposes as a mesne lord between A and C). A method of alienating land before stat. of Q.E.

Substitution: a method of alienating land after the Stat. of Q.E. Tenant B alienates his complete interest in the land to another tenant, C, by simply paying a fine to the overlord. This did not deprive the lord of any of his rights or feudal dues.

Limitations of Quia Emptores

...stitution.

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1 and 2 are most alike: no holding of another.

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Quia Emptores (cont'd)

Permits free alienation of land. This resulted in the simplification of the feudal structure.

Subinfeudation did not decrease the value of the SERVICES, but it did decrease the value and the amt. of the INCIDENTS. As far as the services, the land could be reached to satisfy the services, but the land could not be reached to satisfy the incidents of tenure, especially wardship and marriage. So, the Lords sanctioned this statute due to basically selfish motivations.

PROBLEMS ON PAGE 258

① Yes, a tax is due under the stat. because the land was taken by intestate succession.

② A would get the land back because he had a reversion. Quia Emptores would not apply because it only applies to fee simple estates. A tax would not have to be paid because A's getting the land by reversion was neither by will nor by intestate succession.

③ ⓐ Contend that the land is owned allodially and that ∴ the State

150 Joke: Suspended sentence - got hung.
Joke: No noose is good news.

would be, under the statute here, an "heir" by escheat and would take by intestate succession.

(b) You would contend that the land was held tenurially and therefore no tax would be paid; that the decedent held of the state and that the state got it by escheat and not by intestate succession nor testamentary transfer.

PROBLEM ON PAGE 261

A and B are practically the same. In *State A if the land owner dies w/o heirs, the state will take it by statutory escheat because C.L. escheat is not applicable in Allodial states. In *State B the state would take by C.L. escheat. In *State C it could still be subinfeudation and holding of others. Therefore, the land would escheat to the lord.

Problem on Page 265

@ It seems that the Good Patroon could contend that this was a K between the parties to do these services and that Emptores did not apply to Ks; that this was a F/S subject to a right of entry and that Emptores would not apply.

⑥ The farmer could contend that the good Patroon tried to estab. a tenurial rel. and that that is forbidden by Quia Emptores and that ∴ he got a fee/S/A.

The good Patroon prevailed on all three clauses except clause (d) which has no pertinence to the present discussion).

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Three theories of Landholding:

① Tenure - land is held of the King and y is [redacted] either substitution or subinfeudation. England basically had this before Emptores.

② Tenure w/ Quia Emptores - held of some one and y could be no more subinfeudation.

③ Allodial - land held of no one.

* Doctrine of Estates *

Estate - the interest ∞h a person owns in real prop.

* There are 2 [redacted] categories:
  (1.) Freehold - F/S, F/T, life estate
  (2.) Non-freehold - others.

* Freehold Estates — y is and must be Seisin here.

F/S - O → "A and his heirs."
F/I - O → "A and the heirs of his body."
L/E - O → "A for life."

* Non-freehold
Tenancy for years or estate for years
O → A for 5 years.

* Seisin
In freehold estates, the taker of the land gets seisin of the land.
At early C.L., no deeds.

* Livery of Seisin - the ceremony by wch land is or was transferred at C.L. ① This was a ceremonial act of delivery of a part of the land (twig) and the expression verbally of the delivery of the land. This would be on the land

② Another way of livery of seisin would be off the land or O says the words and the grantee immediately enters upon the land.

C.L

In a freehold estate, someone has poss and seisin.

Seisin - claim of land under one of the freehold estates. It was poss. under a claim of freehold. Therefore, a tortfeasor could have seisin.

COMMON LAW FEOFFMENT

Problems on Page 269

(2.) * Mary could contend that she would prevail because Anne was not seised of the land and ∴ Henry could get nothing. When technical words are used, they are given technical construction and not lay construction.

* Henry could argue that the true intent of Anne was to devise the land to him; that a will is construed to give effect to the true intent of the one making the will; that Anne is intended the lay def. of seisin and not the technical def. of seisin; that Anne should not be required to govern her activities and change her will due to the actions of a tortfeasor.

(testatrix) ←

C.L. Rule of Law — To create any freehold, ∃ must be a current livery of seisin. Later in the 17th Century, the deed took over.

[I.] * Fee Simple Estate * (F/S)

(1.) Fee Simple Absolute – the maximum interest in land.

(1.) Can use the land.
(2.) Can abuse the land.
(3.) Entitled to excluisve poss.
(4.) " " profits from the land
(5.) Can be disposed of by livery of seisin,

deed or (after 1540) by will.

"TO A and his heirs." - these are the "magic words" which create this estate of potentially indefinite duration. If heirs run out, either lineal or collateral, the land will escheat to the State.

Two types:
1. Initiate
2. Consummate

* F/s is subject to Dower and Curtesy - the right of the surviving husband to take the lands of his wife for his life.

* The land can be reached by Creditors. It can be forfeited.

* Methods of creating F/s:
  1. Use of the words "To A and his heirs" in an inter vivos transfer. These words must be used. If you say "to A in FSA" in a will, the Cts. will probably give effect to the intent of the testator and grant a FS.

* Words of Purchase - "to A" - the words denoting who takes.

* Words of Limitation - "and his heirs" - the words denoting the quantum of the estate, the limits.

(See Problem on p. 270)

Even at C.L., 4 were exceptions to the use

of the magic words "to A and his heirs:"

① Joint tenants - each one deemed to be seised of the entire estate. When one J.T. gives to another J.T., it is such because the J.T. leaving is only giving up his right of survivorship.

② Corporations - if you say "to A Corp. for life" it would be A F.S.A because the life of a corp. is of potentially indefinite duration.

"I give to you A" and expressly reserves a small portion of the land for himself but not expressly for himself and his heirs.

Need be no words/lim. Only necessary for one J.T. to give to the other J.T. by saying (e.g., "I give to you, J.T."

If corp. charter limits its life (e.g., 5 yrs.) + conveyance is for life, life = 5 yrs.

③ The heirs of the grantor would take the excepted portion. Grantor only retains what he already had.

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* F/S Estates: TYPES:

① F/S absolute - must be words of limitation ("... and his heirs"). Words of purchase are "TO A." For all practical purposes, A is the full, complete & absolute owner, of course subject to certains limitations such as C.L. action of nuisance and zoning laws.

Mass. - has modified the C.L. M.G.L. ch. 183, §13 - "TO A". Under Mass. law, A would get a FSA because there is a presumption of intent to convey a FSA w/ can be rebutted. This is so even on no words/lim are used, as here.

c 183 xx c 13

PRESUMPTION OF F/S, EVEN W/O WORDS/LIM.

(2.) F/S DETERMINABLE

A → "B and his heirs, so long as the property is used for school purposes."

This is a fee simple, but not absolute because of the imposed condition. It is of indefinitely infinite duration, however.

A has a POSSIBILITY OF REVERTER.

If the property ceases to be used for school purposes, legal title automatically reverts to A, immediately and on the spot and automatically.

hypo: A → "B, so long as the prop. is used for school purposes."

This would not be a FS because there are no words of limn. This would be a det. life estate, and A, having conveyed less than he has, should have a possibility of reverter and a reversion.

Since A has a potential interest in the conveyed property, B could be liable to A for Waste.

(3) F/S subject to a right of entry

A → "B and his heirs ~~PROVIDED THAT~~ it is not used for gambling purposes, but if gambling takes place A and his heirs may re-enter and re-take."

(provided that)

If the conveyee (B) uses the

property for gambling purposes, the estate will continue until A exercises his right of re-entry. The estate will continue until A re-enters & re-takes. This is done today by an action of Ejectment.

hypo [A → "B, so long as not used, etc." This is a life estate in B & A has a right of re-entry & a reversion. B may be liable in this case and in the case of the F/S w/ right of re-entry to an action in Waste. Usually, the words "provided that" are used here. In the F/S deter., the words "so long as" are used.

Note: * A grantor's heirs may release the condition from the estate.

Restrictive Conditions [Also, when a cond. is highly unreas. (e.g., limitation to certain races), cts. may overthrow the condition.

(4.) FS subject to an Executory Interest

(a.) A → "B and his heirs, but B shall not take until 5 years from now."

FS subject to a Springing Executory Interest (springs from the Gr.)

At early C.L., this would not be good because y had to be present livery of seisin. After the Stat. of Uses (1535), this was good. A would have poss. & A would have a F/S subject to a

springing Executory interest in B.

(b) [A → "B and his heirs if B marries X, but if B does not marry X, then to C and his heirs.

FS Subject to a Shifting Executory Interest (Shifts from a Gee).

at early C.L., this could not be because it could be not abrupt shifting of seisin. B would have a FS subject to a shifting executory interest. The seisin here would shift out of one grantee (B) to another grantee (C) if B does not marry X.

If it is springing, it springs out of the grantor to the grantee, B.

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PROBLEM, PAGE 273

(1.) Holmes, C.J. said that due to the use of the words "and her heirs", even though followed by words attempting to limit the estate, Sarah got a F/S. Further, because a will was involved, we try to give effectuation to the testator's intent. However, this is not good reasoning. Since this is an inter vivos conveyance, we can say that Grandpa Walton never intended to limit her estate, and go

(Grandpa devised)

(Sarah conveyed)

Johnson would get a valid FSA.

(2.) The Mass. Statute says that a new sort of FS cannot be created and limit the rights of one set of heirs. Therefore the two sets of heirs would take equally. Mass. stat. applies only to inheritable estates.

(3.) You could say that the prop. is to go to Sarah for life and remainder to the heirs of Sarah on her father's side. They would take by way of purchase, not by inheritance. The heirs would take directly of Whiton. The Mass. Stat. applies only to inheritable estates. This is good but not sufficient flexible. A better way would be to give Sarah a life estate w/ the power of appointment from the special group of heirs. that is limited. The appointment power would not be general. Under sec. 2041 of the Internal Revenue Code it would be no state tax because she has a special power of appointment which is limited to a specific group of heirs. It would be taxable if Sarah had a general

2041 & RC

Tax Aspects

power of appointment.

If Sarah does not exer. her power of appointment, there are three points of view. One of them (Gray Theory) says it would be an implied gift to the heirs equally and they would take a legal interest. So if Sarah does not exer. her power, the heirs would still take. All courts agree the heirs would take equally, but under the other two points of view the heirs would have an equitable interest (and a BFP could cut it off). The Rest. of Prop. agrees w/ the Gray Theory.

(John Shipman) Gray Theory (Rest., Prop. in accord)

Evans Rec

[II.] * THE FEE TAIL *

Hypo: [O → "To A and the heirs of his body" before 1285. This obviously excludes collateral heirs. Before 1285 — A has a FS Conditional, to wit: if A has no children at his death, the land reverts to O. But, if children were born, regardless of whether they live or not, it is said that a cond. has been fulfilled. A could then convey a FSA because A would have the power. If A → B, in FSA, B will probably be a straw

Fee Simple Conditional (before De Donis)

man who will turn around and reconvey to A and A would then have a FSA.

* If A does not convey, and the land descends, the children will take what their father had, a FS conditional. * In their hands, children must be born before they can convey a FSA.

* If the Children predecease A, the land will revert to O upon A's death.

However, the obvious intent of O was to tie up the land in the side of the family he designated.

(1285) Statute DE Donis Conditionalibus

Evaded by Common Recovery & Fine.

(1.) A cannot convey a FSA if y are children. The children cannot be cut off.
(2.) If y are no kids, the land reverts to O upon A's death.
(3.) Called the * Fee Tail Estate.
(4.) Any lineal descendants will take. If children predecease A but y are grandchildren, the grandchildren will take. The oldest child, in the case of more than one, will take by the Doctrine of Primoganiture.

This statute was a triumph for those who wanted to tie

up the land in a certain family line.

Methods of Docking the Entail

* By 1472, the law resorted to the fictional collusive lawsuits of Common Recovery and of Fine to evade the fee tail and to have free alienation of land. In 1833, the English Parliament said that via a simple deed recorded in Chancery, A could get a FSA.

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* "De Donis" converted the FS Cond. into the Fee Tail Estate.

Grantor's potential reversion

Once the line of lineal descendants runs out whenever that occurs, the land reverts to the orig. grantor. But, as long as y are lineal descendants, thd grantee cannot defeat the descendants nor the reversion of the orig. grantor.

Disentailment = docking or barring the entail.

The upshot of the Com. Recovery or Fine is the disentailment of the lineal descendants, thereby creating a FSA in the grantee.

hypo: A, grantee, goes thru Com. Recovery and then conveys to x who gets a FSA. If A had gone thru a Fine, x would acquire a Base fee, i.e., x would get an estate for as long

as y are lineal descendants. Therefore, the reversion of grantor (o) should not be defeated. So, w/ Fine, X would get a Base Fee.

The Com. Recovery applied only on the tenant in tail is in poss. (i.e.,) hypo: O → "To B for life Rm to A and the heirs of his body." So, since A was not in poss., A could only use the Fine and could only convey a Base Fee to X.

So, after 1833, if you convey a Fee Tail in England y is no assurance que the land will remain in the family. So, we can say que Eng. is in favor of free alienation of land.

Types of Fee Tail Estates:

(1.) Fee Tail General — above.
O → "To A and the heirs of his body." Any lineal descendants of A can take.

(2.) Fee Tail Special —
O → "To A and the heirs of his body by his wife, Mary."
The land can only go to the children of Mary.

hypo: O → "To A and the heirs of his body by his wife Mary." Mary dies childless. — The law says this is a "TITAPIE" — a tenant in tail after the possibility of issue is extinct. When this occurs, A would have a so called life estate.

Titapie cannot occur on y is a FT general, only on y is a Fee Tail Special.

(3.) Fee Tail Male –
A → "To B and the heirs male of his body."
Only the male heirs of the body can take.

(4.) Fee Tail Male Special
A → "To B and the heirs male of his body by his wife Mary."
Only heirs male by Mary can take.

(5.) Fee Tail Female
A → "To B and the female heirs of his body."
Only heirs female of the body can take.

(6.) Fee Tail Female Special
A → "To B and the heirs female of his body by his wife Mary."
Only the daughters by Mary can take.

*The Legal Characteristics of the Fee Tail:

(1.) *The tenant in tail is not liable for waste. This is so even though the orig. grantor has a potential reversionary estate upon default of lineal heirs.

(2.) *By and large, it is subject to Dower and Curtesy since the F/T is an inheritable estate.

(3.) Subject to forfeiture (e.g., treason by tenant in tail).

(4.) Creditors

Mass. ch. 184, sec. 4 of Mass. G.L. – the creditors of a fee tailman can reach the property if the

Mass ch. 184, sec. 4

fee tailman has poss. In all juris., despite varying stats., if the creditors can reach the prop., the debtor must be in poss.

(5.) If A dies intestate at C.L., the oldest son will take under the Doctrine of Primogeniture. Today under most modern stats., the heirs will share equally — Mass. — Primogeniture still prevails. The F/T does not exist by statute in Mass. due to oversight. Therefore C.L. F/T is in effect. White v. Thayer 67 Mass. 284.

White v. Thayer 67 Mass. 284

Mass.

* Status of F/T in U.S. Today:
There are five pts. of view.

(1.) About 6 states (Mass. included) hold that F/T is in effect and the tenant in tail can disentail, if in poss., by a deed to another, or, if not in poss., by way of a straw man he can convey away. * Sec. 451 of Ch 153 of M.G.L.

ch. 153 sec. 451

Mass. Ch. 153, sec. 451

(2.) Conn. point of view —
While A is alive, A has a fee tail estate. Upon his death, the heirs of his body who take, get a FSA.

(3.) Illinois View —
A takes a life estate during his life. Upon his death, the heirs of his body take FSA.

Ia, Ore, SC.

* Conn. v. Illinois —
(1.) Life estate subject to Doctrine of Merger. F/T is not.
(2.) No waste in F/T.
(3.) Can disentail F/T.

(4.) Alabama View —
The "tenant in tail" gets a FS.

(5.) Iowa, Oregon and South Carolina — as jo
The F/S Cond. is in effect. De Donis is not recognized.

Quaere [* what words of limitation will create a fee tail estate? =
[I.] Inter Vivos Conveyance
— "and the heirs of his body" are the "magic words." If they were not used at C.L., by could be no F/T.

Important hypo: * hypo: O → "To A and his issue."

Issue defined [* Issue means an indefinite line of lineal descendants. — It depends whether y are any issue living at the time of the [redacted] conveyance. If the conveyance is made before A marries ("a presumption of regularity"), A gets life estate and the words are words of purchase, not limitation. Upon A's death, if y are then issue, the issue will take a life estate. In Mass., [I.]

Issue alive at A's death:
1. At C.L., Ts in C in LE
2. Mass., Ts in C in FSA.
Issue not born at A's death:

the heirs would probably take in F.S.A. (Ch. 185, sec. 34 (maybe sec. 3)

If y are issue upon ~~death~~ CONVEYANCE, ~~by~~ is no reason why the issue must wait. Therefore, A and his issue take concurrently or today as tenants in common. At C.L., due to the absence of words of limitation, they would take a concurrent life estate. Today they (A + issue) would take as tenants in common in F.S.A.

as joint tenants ←

[II.] Testamentary Transfer

Rule in Wilds Case

If A has no issue upon transfer, A gets F/T. If A has issue upon death of testator, A + issue take as tenants in common.

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[I.] Inter Vivos (cont'd.)

hypo: O → "A and his ~~heirs~~ issue." = (cont'd)

At C.L., these words "and his issue" would not be words of limitation, but would be words of purchase. So, this would be to A for life w/ a contingent rem. for life in the issue. (assuming unborn issue.)

In Mass., A would get a life estate w/ a contingent rem. in ~~FSA~~ heirs. It would be contingent because the issue aren't alive.

Today, A and his issue would take a concurrent FSA (since they are words of purchase) as tenants in common. At C.L., a joint tenancy was favored so as to give purfect effect to the institutions of feudal services and incidents so that the lord would know on to look for them. Upon the death of a joint ten. the land goes to the surviving J.T.

Survival in a Joint Tenancy

Today they take concurrently a life estate as tens in com. In Mass. they would take a FSA concurrently as tens in com.

In a tenancy in common the death of one of the tenants would cause the land to descend to the heirs of the deceased tenant.

Tenancy in Common

[II.] Issue

A. Involuntary Transfer (cont'd)

→ "A and his issue."

Under Wilds Rule if A has no issue alive at the time the will goes into effect (at death), A would get a fee tail and can disentail and get

a FSA. A will is an ambulatory document — it can be changed as often as desirable until death. Today, A & his lineal descendants take a FSA as tens. in com., thus effectuating the seeming intent of the testator.

Under **Wild's Rule** if B are issue alive at the date on wh/ the will takes effect, A and his issue will take concurrently a life estate as tenants in C.

hypo

Inter Vivos Conveyance

O → "A and his issue, but if A dies w/o issue to B & his heirs." ① One construction is that this means a definite failure of issue, i.e., B could only take when it becomes impossible for any lineal descendants to show up.

② **Another construction is** that the words "but if, etc." mean an indefinite failure of issue, i.e., at any time the line runs out even if there might be the possibility of one showing up in the future, B takes.

Court Interpretation

The cts. say that if the words mean an indefinite failure of issue, it is implicitly implied que A gets a fee tail. Would be a rm. in B to take effect upon the failure of issue.

Testamentary Transfer

In case of a will, A gets a fee tail estate here (yes the issue alive at date of effect of will) and, assuming an indef. failure of issue, B would get a rm. to take effect upon the first failure of issue. This being so, A could disentail & and cut off B's rm.

The key reason que A takes a Fee Tail in these cases is that effect is given to the words "and his issue." Effectuation of intent is the general rule in testamentary transfers. Under ch. 210, sec. 8 as amended in 1958, in Mass. G.L., an adopted child is treated as a lineal descendant and as a legal child of body. Not so w/ illegitimate child.

Under M.G.L. ch. 184 sec. 6, the words "w/o issue" mean a definite failure of issue

hypo:

[I.] Inter vivos - (no lineal descends. alive)
- A gets life estate & unborn issue get a contingent rem. in FSA (in Mass.)

* B has an alternative contingent rem. in FSA because if the issue do not fail, the alternative is that the issue will take.

[II.] Restriction to lineal heirs

* Testamentary Transfer

An estate in FSA is usually inheritable by lineal and collateral heirs. But, the words "but if A dies w/o issue" restrict it so that if A dies w/o issue, then B will take. It restricts it so that only lineal heirs can take.

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If the words "d/w/o/i" mean an indefinite failure of issue, whether inter vivos or via will, A gets a FSA tail w/ a rem. in FS in B and his heirs contingent upon the failure of issue. Of course, A could

cut off B's FS by disentailing. A FS cannot follow a FS by way of rem.

Definite failure — Inter Vivos - No living issue

Definite Failure of Issue

In a definite failure of issue interpretation, if A is only one lineal descendant, B will not take. A will get a life estate (assuming no ascertained issue at time of conveyance) and a contingent remainder in the issue in FS. If A are no lineal descendants, B will get a FS. But, B has, until that time, an alternative contingent rem. in FS.

Definite failure - Inter vivos or testamentary - living issue

If y are living issue at the date of conveyance, after the Stat. of Uses (1858) A would take a FS concurrently w/ the issue as tens. in common (today) subject to a shifting executory interest in B and his heirs in FS.

Same for a will as above.

Hypo O → "To A and his issue, but if A d/w/o/i, to B and his heirs." — Assume at the time of the death of A (y is a will and testamentary transfer) y are no living lineal

heirs.

A = fee tail

B = Contingent Rm. in FS (alternative)

If y are lineal descendants at the death of A, they will take a FS. They have an alternative contingent remainder. The contingent rmr. of the issue and B are alternative to each other. A would take fee tail estate under Wild's Case.

POSSIBILITIES

Will — no alive issue — def. failure

(1) A = FT

B = alternative contingent rm. in FS

issue = " " " in FS

Same

(2) A = FT

B = Con. rm. only if no issue at death of A

issue (if alive) = take FT

Same

(3) A = FS (inheritable by lineal or collateral

If y are no lineal heirs at death, B has shifting exec. interest in FS. B = nothing if y are lineal heirs.

* Assuming the words d/s/p/o/i mean indefinite failure —

All cases, A takes FT and can cut off B by disentailing.

* Assuming live issue, def. failure, inter vivos or will A + issue take concurr. as Rms. in com. a FS subj. to shifting exec. interest in B.

* Assuming no issue, def. failure, inter vivos —

A = LE
B or issue – alter. con. rm.

PROBLEM on PAGE 278

O → "To A and his heirs, but if A d/s/p/i, to B and his heirs."

Under this, it makes no difference whether y is a shell or whether it is via inter vivos.

The real question is where the words mean- ing definite or indef. failure of issue ("but if A d/s/p/i").

Even though standing by themselves the words "to A and his heirs" lead us to see a FSA, the words are dependent upon the rest of the conveyance. If we read the words as meaning an indef. failure of issue, A has an estate equiva- lent to a FT. The ob- vious intent of the grant- or is to have the estate stay in A and his lineal heirs only.

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A could contend for a FSA, but it would be better here to take the lesser estate, a Fee Tail, because a FSA would still be subject to B's shifting

executory interest. However, w/ a Fee Tail, A could disentail and cut off B. A would then have a FSA (subject to nothing. – B's shifting executory interest is in FSA ("B and his heirs")

Caveat re the Rule in Wild's Case

The Rule in Wild's Case is only applicable where the words "A and his children" or "A and his issue" are used.

* LIFE ESTATE *

DEFINITION

An estate wch is not terminable at any fixed or computable period of time, and wch cannot last longer than the life or lives of one or more persons.

Two major types:

(1.) Legal life estates – arise by operation of law. Not the result of any human act.

(2) Conventional LE – created by an act of a human.

[I.] Legal LE –

Types:
1. Titapie
2. Curtesy
   a. Initiate
   b. Consummate
3. Dower

(A.) Titapie – tenant in tail after the possibility of issue is extinct. Assume a fee tail special on the specified wife dies childless. The estate would become a LE. (Smith is off on this point.)

(B.) Estate by the Marital Right – at early

H & W seised jure uxoris (by right of the wife)

C.L., the H had control over his wife's property for the duration of his life. The law created this until either death or divorce. H has full control. But, until children are born, he only has a joint interest. H + W hold jointly. As soon as a child is born, the H's estate by the marital right is called curtesy initiate. As the C.L. developed, Equity said that the wife's equitable interest of enjoyment would be recognized as the legal owner. Law followed and passed Married Women's Prop. Acts and abolished this estate.

Curtesy Initiate

(c.) Dower and Curtesy (Consummate)

These are created by law.

Curtesy Consummate (applies only to husbands)

* In order for H to get Curtesy, the following must be shown:

(1.) There must be a valid marriage between H and W.

(2.) W must die. No curtesy if H dies first.

(3.) W must have inheritable freehold property — LE is not inheritable.

(4.) Children must be born alive.

Quaere: * What does H get?

H gets a LE in all of W's inheritable freehold estates.

Curtesy Consummate also extends to W's equitable interests in inheritable estates

Seisin

Dower (applies only to wives)

1. W gets dower in only ⅓ of husband's inheritable prop. of wh he was seised during marriage.
2. H must own inheritable freehold estate.
3. Must be a valid marriage.
4. H must predecease W.
5. No children necessary.
6. Does not extend to the equitable estates.

Main differences between Dower and Curtesy.

Detailing of Dower Requisites:

1. The marriage must be valid. If the marriage is void, no dower. If, however, the marriage is only voidable, until it is avoided it will be deemed valid for dower purposes. An annulment relates back to the date of marriage.

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In order for W to get Dower, the H must have been seised of an inheritable freehold estate during coverture. Even if H conveys away the freehold, if at any time during marriage he was seised thereof, W will still get

Ex
(1)
(2.)
(3)
(4)

But, signing W is also liable on the covenants and warranties.

Dower. So, it is advisable to have a W sign the conveyance. As long as H is seised of an inheritable freehold estate at anytime during marriage, W will get Dower, i.e., ⅓ of all the prop. of wh H was seised during coverture.

Dower is never affected by AP when the latter starts after marriage. If le AP$^{or}_{=}$ enters before marriage and H waits 21 yrs, no dower. If le AP$^{or}_{=}$ enters before marriage and H dies before 21 yrs. expire, the S/L starts again because the widow's c/a accrues at death of H. W's dower would take effect immediately but would be cut off after 21 yrs. if she brings no Ejectment against the AP$^{or}_{=}$.

Hypo: O is a bachelor and is seised of B/A. T disseises O and then O marries. O dies and W v. T for ⅓ of the prop. — Strictly speaking, W should not get Dower, because during marriage, O (the husband) was not seised of an inheritable freehold. But, the better rule is that since O can easily regain seisin by bringing an action of Ejectment, technically H had seisin. Therefore, W should get Dower. This is what a reasonable thinking Ct. would say.

Dower rights will not be affected by adverse poss. But, if H waits out the S/L until the AP$^{or}_{=}$ gets title (21 yrs.), dower would be cut off.

Hypo: O → "To Trusty Trustee ~~in trust~~ FOR LIFE in trust for A and his heirs". Quere: Could Mrs. Trustee

Exceptions to dower:

(1.) On y is a trust.
(2.) On H is a J.T. w/ someone else.
(3.) LE w/ vested rem.
(4.) W#2 in FT Special

TRUST

get dower upon Trusty's death? = No, because seisin must be beneficial and the benefits of the trust go to A and his heirs. Further, A's wife could not get dower because A did not have seisin. A only had an equitable estate and Trusty had seisin.

Joint Tenancy

Hypo: A + B are joint tenants. If A dies, does Mrs. A get dower of the property? = No, because it is a right of survivorship in B and thus overpowers dower. But, if B then dies, Mrs. B gets dower.

Hypo: Tenants in Common: A + B are T/C. If A dies, Mrs. A gets dower. She gets 1/2 of 1/2 or 1/6.

Dower in a FT Special

A freehold estate must be inheritable by the children of the marriage. If y is a Fee Tail Special and the particular wife has no children of her own (e.g. on wife #1 had 3 children + then predeceased H + H remarried), the second wife gets no dower because she had no kids by whom the estate could be inherited.

Hypo: O → "A for life rem to B & his heirs." — If B dies first Mrs. B gets no dower because B had no seisin. If A dies, Mrs. A gets no dower because A did not have an inheritable estate.

Hypo: O → "A for ten years then to B and his heirs." — We say that A accepts seisin for B and that B therefore has seisin as soon as O gave it to A. Therefore, although B dies the wife of B gets dower. Mrs. B can only get dower after the 10 years.

F S subj. to a term of years

Hypo: A bachelor gives mortgage to bank. A then marries and while the bank still has the mortgage, A dies. Does mrs. A get dower? The effect of giving a mortgage at C.L. is to give legal title to the mortgagee and the mortgagor keeps only an equitable title. Therefore, at C.L., Mrs. A gets no dower because A had only an equitable interest at marriage and during marriage.

Quaere: Could the wife of the banker get dower? As between

The note is only security for the debt.

a mort^{or} and a mort^{ee} is a debtor-creditor relationship secured by the note. Since the note is not prop. subject to dower, the banker's wife could not get dower.

Rule of Law

* Thus far, these results are at C.L. If the marriage takes place before the mortgage and the wife does not sign the mortgage, she will get dower.

The mortgage situation as it is today.

Now, today the cts. view the mortgage differently. They say it is merely a security interest and that the mortgagor has legal title. * 15 Mass. 278 - held that even though a mort. is executed before marriage, the wife still gets dower but gul it's subject to the mortgage.

Today the wife of the mortgagee is not entitled to dower under any circumstances.

15/278

Typ: A & B are partners & have considerable real estate holdings. A & B held by a tenancy called a tenancy by the partnership. - Can the widow

of A set dower in the partnership realty, i.e. 1/3 of 1/2. (assume A was seisin in A + B)? = For purposes of the law, the interest of a partner is considered personalty after the satis. of Creditors. Uniform Partnership Act, sec. 25 (e) says que a widow of a partner gets no dower.

Typo: During marriage Mrs. A commits adultery. A dies. Does she get dower?? = At C.L. yes. Misconduct only will not stop dower. (The) adultery will be grounds for divorce, until divorce is obtained, the widow gets dower.

Misconduct

Effect of Divorce

If divorce is obtained, dower is cut off from the widow at C.L. But some states say que it depends on wh one of the two is the guilty party in the divorce. If the wife is the cause of the divorce, no dower. If the husband is the cause of the divorce, then dies, the widow gets dower. (By statute.)

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Rule of Law (1.)

Dower is taken subject to the same conds. to wh the husband's estate was subject

PROBLEMS - PAGE 285 to 286

As attorney for P, you first must search the registered deeds at the Registry of Deeds — a title search.

Rule of Law (a.)

(Note: a conveyance by H will not cut off the Dower of W unless W joins in the conveyance.)

We could say that P was a BFP because he had no notice of a marriage. The records showed by was no wife. The purpose of the Registry is to have records on wh people can rely. Therefore, people who rely on the records of the Reg. of Deeds should be protected. But, reliance should be protected only when relating to recordable interests. Since Dower arises by law, it doesn't have to be recorded. Therefore, Dower would prevail under this reasoning. But, you would advise P to purchase anyway: we can assume that the clause re L was "unmarried" was put in the deed at M's insistence and we need not be more cautious than M was. Since M was satis., we should be satisfied. (whatever that means!)

Since Dower is a legal interest, a B.F.P. would not cut it off, thus would argue the wife.

(b.) Even if C were married, C's wife would probably be dead or pretty close to it. If she is alive, the S/L has probably run against her.

(c.) All that Gorman owned was personalty and the corp. owned the realty. Therefore, Mrs. Gorman would not be entitled to Dower. (Form a Corp. and have the corp. "buy" the realty and that would cut off W's Dower. To what extent can this be done purposely?)

(d.) It seems on the surface that K was trying to cut off his wife. K was really the owner and used legal formalities to try to cut off his wife. Therefore, a Ct. would probably say that all of this was merely subterfuge and that the wife would get Dower.

(e.) All D ower had was an equitable interest and Dower does not extend to equitable interests.

(2.) (a.) W could get Dower in Blackacre for $3,000
(b.) " " " " " Whiteacre " $10,000
(c.) " " not " " " the bonds because they are choses in action.

If the wife takes Dower, she gets 1/3 of $54,000 but only the proceeds of that $18,000, not the principle itself.

If the wife takes the Statutory forced share, she gets the $15,000 itself and not just the proceeds therefrom. This would be 1/3 of $45,000. The $18,000 would only give proceeds for life, but the $15,000 would be W's forever. ∴, advise her to take the Stat. forced share.

(Consider W's age [42] ?'s.)

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The theory behind the Stat. Forced Share is that W will get Dower from all realty owned by H at his death despite an express exclusion from the will by H. So, W here would get 1/3 of ~~$45~~ $15,000 (value of estate at death) outright, not just the income from it as would be the case at C.L. Dower. W would get no Dower in any realty wh H may have conveyed away before death.

$15,000 ←

So, on the value of the realty at death is little or non-existent, advise her to take C.L. Dower because she will get the income from 1/3 of all real estate of wh H was seised at any time during coverture whether or not he had anything at the time of death.

Sec. 203(a) of the Internal Revenue Code - the entire value of an estate will be taxed, not the value of the estate minus Dower. There will be no deductions for Dower for the purposes of levying taxes.

hypo: H-1 and W-1 married. H-1 conveyed to H-2 w/o W-1 joining in the conveyance. H-2 and W-2 are married. When H-1 dies and H-2 dies, what do W-1 and W-2 respectively have? — Since W-1 did not join in the conveyance she still gets 1/3. That leaves 2/3 of the prop. to have been conveyed. [illegible]

W-2 gets 1/3 of 2/3, or 2/9. When W-1 dies, W-2 gets 1/3 of 1/3 or 1/9. Therefore, in the final analysis, W-2 gets 3/9, or 1/3 of all lands of wh H-2 was seised during his life. If H-2 had not been seised of the 1/3, W-2 could not get Dower in that 1/3.

Hypo: H-1 married to W-1. H-1 → 2/3 of prop. to H-2, and 1/3 to B, a bachelor. H-1 and H-2 die. What do W-1 and W-2 get? W-1 gets 1/3 of everything because she did not join. W-2 would get 1/3 of 2/3 of 2/3, or 4/27 of the property during W-1's life. When W-1 dies, W-2 gets 1/3 of 1/3 of 2/3, or 2/27. 4/27 + 2/27 = 6/27 or 2/9 of all.

W-1 got 1/3 of the 2/3 conveyed to H-2, and 1/3 of 1/3 conveyed to B since she had not joined in the conveyances.

Explanation: (Since W-1 was entitled to 1/3 of the 2/3 conveyed to H-2, W-1 would get 1/3 of 2/3, leaving 2/3 of 2/3 to W-2. Since W-1 got 1/3 of 2/3, upon her death, W-2 will get 1/3 of that, i.e., 1/3 of 1/3 of 2/3 = 2/27. 2/27 + 4/27 = 6/27 = 2/9 = 1/3.)

[II.] Conventional Life Estates

(A.) **Life Estate** - measured by the life of the grantee. O → "To A for life."

(B) **Life Estate Pur Autre Vie** - measured by the life of one other than the grantee. If the grantee (A) dies before B ("O → To A for the life of B"), the first one to take the property will take it for the rema

Doctrine of the Common Occupant

Ch. 190, Sec. 3 Mass. Gen. Laws: intestate estate

of the life of B. This is the doctrine of the Common Occupant. That is the C.L. result.

M.G.L., ch. 190, sec. 3 provides that a life estate pur autre vie is inheritable. Therefore, any descendent of A next in line could take it for the rem. of B's life. ∴, the prop. would be subject to Fed. Estate Taxes.

Mass. Common Occupant

words/purs. Hypo:

O → to A and his heirs for the life of B.

In a C.L. state, the heirs take it by purchase directly from A. So, would be no tax which would have to be paid. This is the way a ct. would probably interpret it. Further, if we are in another type of state a fed. estate tax may have to be paid.

Today as Ts in C; at C.L. as J. Ts.

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In re the M.G.L., ch. 190, sec. 3, if that sort of thing happened in a C.L. state, it would have to be no tax paid.

The Fed. Tax to be paid depends on the type of purs. It would not take priority over the C.L. state's interpretation.

Query: Can a LE be sold? =

Hypo: If A has a L.E. for his life and sells to B, B gets a life estate for the life of A. This is so because the only estate

created was for the life of A. If a life tenant tries to convey more than a LE he will forfeit what he has. At C.L. this was called a tortious feoffment.

Tortious Feoffment

Problem - Page 281

The only thing we're worried about is A dying before the end of 5 years! So in case the kids did not play along in case A died, your client might lose. So, to afford some protection for your client, take out term life insurance on A's life since your client would have an insurable interest in A.

Another way would be to fix the original grant from O so that A would have the power of lease or the power of sale.

HYPO: O → "To A for life rem. to B and his heirs."

A has a life estate and a vested rem. in B. We know who will take when A dies, so the rem. is vested.

Hypo: A let the farm fall into disrepair. Who pays for the

improvements?= If A leaves a mortgage, who must pay?=

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Quaere: What are the rights and liabilities of a life tenant?=

(1.) While he is alive, he is entitled to the net profits derived from the land.

(2.) Liable for waste, either intentional (i.e. voluntary) or permissive waste.

Obligation to make repairs.

Hypo: Net profits from land = $1,000.00 per year. Necessary repairs must be made by a life tenant. The necessary repairs will cost $1500.00. — The obligation of a life tenant to make repairs is limited to the amount of the net profits.

Hypo: O → "To A for life rem. to B and his heirs."
Same as above, but A goes on and pays the $500.00
Quaere: Could A compel B to refund the $500.00 to him? Schwartz says that A would lose because his obligation would only be to the extent of $1000.00 and that he (B) would be officious to the extent of the $500.00. Nor is there an obligation on B to pay for improvements made or paid for by A be-

You cannot make a man a debtor against his will.

cause A was not in lawful entry.

Ca
Life
Es

Duties or obligations of a life tenant re mortgages.

Re a mortgage, a life tenant only must pay the interest and not the principle. The life tenant does not have to pay the principle payments. The payment of the principle would be enhancing the rem. man because the life tenant only gets the net profits from the prop. for life.

Property Taxes

*If the net profits are less than the mortgage interest he need only pay to the extent of the net profits from the land. *The same is true for prop. taxes.

Obligations of life tenant re municipal improvements

Permanent v. Temporary Improvements

Re municipal improvements and assessments (e.g. sewers), both parties should contribute because the improvement is permanent. *But if the improvement will not outlive the life of the life tenant only the latter must pay because only the latter will derive benefit from the improvement.

Caveat re Life Estates

If you are setting up remainder, it is awkward to have a life estate (legal). It would be best to set up an equitable life estate in the life tenant w/ an ~~eq.~~ rem. and a trustee will handle all of the foregoing matters. So ~~and be the~~ the better way on is set up a life estate is to set up an equitable life estate w/ an eq. rem.

Hypo: A → "To B for life, then to C for life, rem. to D and his heirs."

State of Title
B = life estate
C = vested rem. for life
D = " " in FSA.

Assume B pays no taxes and city requests the $1200.00 to be paid by C. ($1000 is the assessment, $200 is the interest.) = C is a life tenant and is only obligated to pay the interest on the taxes. = $200.00.

* NON-FREEHOLD ESTATES *

[I.] Landlord – Tenant Relationships

These are all non-freehold because Y is ~~in~~ lacks livery of seisin. It is created by a written agreement called a LEASE. This is an

interest in land "by and large." There are those who contend that it is a real relationship. The tenant gets an interest in the land nothing to the contrary appearing in the lease! This is so even though a bldg. may have been rented. If the bldg. burns down the land interest in the tenant is not destroyed.

Interest in Land

Interest in Building (part the keg)

But, if the lease is only for a part of a bldg. and the bldg. burns down, the tenants interest is destroyed because s/he was no interest in the land, but only in the bldg.

Duty to Mitigate Damages

There is no duty on the part of the non-breaching party to try to mitigate damages.

The L-T rel. is called a Chattel Real. for some purposes it is treated as realty, and for other purposes as personalty. Reasons: in medieval CL Europe, people dealt in tenancies for years as a source of investment instead of today's stocks and bonds. So, the leases were freely exchanged and therefore

REAL

PERSO

TEN
V
LICE

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Irre
of a

treated as personalty.

REALTY

* Treated as personalty for the purpose of an heir or devisee or legatee to finish the unexpired term of the tenancy.

PERSONALTY

* For the purposes of the Statute of Frauds (1677) a lease is treated as realty. Must be in writing if for over one year.

PROBLEM #2 - PAGE 295

TENANCY V. LICENSE

When you rent a hotel room, you become a licensee, i.e. you don't have any interest in the land; and, a license to occupy premises is ord. revocable. Therefore, a hotel mgr. could require an occupant to leave at any time.

A tenant has an interest in the land, but a licensee does not.

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Characteristics of LICENSEES

A licensee merely has permission to come upon the land of another or in the poss. of another w/o being considered a trespasser. A licensee never gets possession.

Irrevocability of a Tenancy

A tenancy is an executed transaction, i.e., irrevocable for the agreed period, normally.

* Irrevocable licenses:

(1.) Or le license is coupled w/ an interest.

Hypo: A owns land w/ standing timber

on it. A orally sells to B the timber. (Under the S/F, an oral sale of realty can be reneged on and is not binding if one of the parties chooses to break). B cuts down the trees, goes to get a wagon to haul off the trees. A then says he can't carry off the trees and that B only had a license to come on the land and cut the timber. A says that he revokes B's license. = B would prevail because the timber, when cut, is personalty and title has passed to B. So, B has a license coupled w/ an interest — title in the personalty, the trees. * As to the standing trees, the license is revoked.

Statute of Frauds

Whether the timber is realty or personalty depending on the intent of the parties at the time of the transaction.

Ans

No spe in Ct. o is onl licen

* Ord., a license is revocable and is not an interest in the land.

* A licensee does not get poss.

Characteristics of a License

Problem, bottom of p. 297

Did D have the privilege of ejecting the P? = Did D only have a license, or a tenancy of the boat for the day? = A mere w/ poss. has the right to use reas. force to eject. But, if

A licensee never has possession! 195

D only had a license, he would have NO privilege to evict P.

If D was only a licensee, the Capt. of the ship had poss., and he would have had the privilege of ejectment. It is admitted that P was a trespasser.

Answer: D was probably a licensee due to the limitation on the no. of the ship party to 50 people, and that poss., therefore, was in the ship owner, and that D had no privilege to eject P. Therefore, the instruction requested by D should be denied.

No spec. perf. in Ct. of Eq. any is only a license

A license is not an interest in the land, and one could not, therefore, go into equity for specific performance.

Problem on p. 296

The use of the words "to have" indicates a tenancy.

The great degree of control by McCutchins and his agents over the matters tends to indicate an Ent — Ent rel.

There could be intimated a joint enterprise; Mc is to contribute something and so is there something to be contributed by the sharecroppers. So, we could say that they are joint venturers w/ a licensee in the sharecroppers to come on the prop., and that they would be tenants in common

of the crop.

The obvious answer is that it would depend on the court. A southern ct. would probably say this was an Emr - Eke relationship and that the three sharecroppers had no interest in the land.

Creditors

hypo: If the goods were stored & a creditor of the sharecroppers tried to attach the crop, then McCutchin could allege an Eol - Emr rel. and that the sharecroppers only were due a wage. This would mean that the creditor could only garnishee the wages, at best.

Bankruptcy

hypo: If Mc bankrupted and creditors tried to reach the crop, the executor would be best to allege pay was a tenancy in common of the crop.

Fire

hypo: In case of fire, if they are tenants in common, they will share the loss equally. If they have dy Emr - Eke rel. and all of the crop is lost, the croppers would still be entitled to their wages.

Less Than Freehold Estates

[I.] Tenancy for Years - p. 290 cbk.

Must end at or before a g.g., o leases ~~or leases~~ B/A to A "for fixed date." "To A for one 100 years." This would be a day." - "To A for 1000 yrs." ten. for yrs. A chattel real. Definite period.

[II.] Periodic Tenancy - page 292 cbk.

"To A from month to month." Indefinite period.

[III.] Tenancy at Will - p. 293 cbk.

Terminable at will of either party, and is for no definite period.

[IV.] Tenancy at Sufferance

This is on a tenancy expires, but the tenant remains on the land.

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[I.] Tenancy for Years

This a term applied to all tenancies wh have ~~any~~ fixed and definite time limit. But, this could be and is applied to tenancies for less than a year, e.g., 6 months.

At C.L., all T. for years for ~~[redacted]~~ more than 3 years had to be in writing and signed by the landlord. This is pkr the S/F of 1677.

In Mass., any ten. for yrs. regardless of the time (even less than 3 years) must be in writing. But, it may be treated as something other than a T. for yrs. It will be construed to be a tenancy at will.

Statute of Frauds (1677)

Mass. View (No ten. for years even if written if for 6 months)

Per Amer. decisions, once a T for Years expires, the Ll can compel the pymt. of rent for holding over, and a Periodic Tenancy is then created. At C.L., it could not be a periodic tenancy created against the will of the T.

Notice of Intent to Quit Not Necessary

if not in writing.
Since there is a fixed time of duration for the tenancy, upon the end of the time of the tenancy the tenant does not have to give notice of intent to quit or terminate. It ends by its own terms.

Quaere: why are 99 year leases so prevalent instead of 100 or more? =

Ch. 186 sec. 1 of M.G.L. — a lease for 100 or more years is in the nature of a freehold estate and seisin is in the tenant if at the tenant's death 50 or more years on the lease. That means the wife of the ten. can get dower and the land would descend to the real prop. heirs. It would not just be a chattel real. This would be a freehold estate if for more than 100 years immediately upon the giving of the lease subject to the cond. subsequent that more than 50 years remain after the death of the tenant. If less

Mass. View

tenancy = a freehold estate depending on whether y are more than 50 yrs. remaining at the death of the tenant.

than 5's years after tenant's death it will be a non-freehold estate and the personal prop. heirs will take. — Dower would be only for the remainder of the term of the tenancy.

[II.] PERIODIC TENANCY

Can be created by:

Methods of Creation

(1.) a lease — e.g., "from week to week." Express agreement.

(2.) Legal construction of what was intended to have been a tenancy for years. e.g., or if was an oral lease for more than three years, the law (except Mass.) will imply a periodic tenancy.

Mass. View

Mass. says that even on the S/F would apply, a periodic tenancy would not be created. It would a tenancy at will. However, under Mass. law, the difference between the two is non-existent because notice in both would depend on the manner and regularity of the pymt. of rent.

(3.) The acceptance of rent on a periodic basis from a tenant at sufferance. Here,

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the law says the understanding of the parties is the creation of a periodic tenancy and will be terminated by the giving of appropriate notice.

Terms of the Periodic Tenancy

Here all of the terms of the original lease are carried over to the periodic tenancy except the (e.g.) five year stipulation of the previous ten. (or years)

Adequacy of Notice

The amt. of notice must equal the amt. of the period. Ex.- a tenancy from year to year requires only 6 months notice.

PROBLEM ON PAGE 293

This is a periodic tenancy from month to month. The notice must specify the date ending the tenancy and must be a full month ending on the (15th) of the month. The "months" of this tenancy ran from the 15th to the 15th. The notice cannot be given between the periods.

Notice, to be effective, must be received.

The second notice was not good either. It was only

mailed on the 15th, not rec'd. Below is an infallible notice form:

Form of a Notice Letter

Dear ——
I hereby elect to term. the ten. if any, wh I hold of you at the end of the rental period commencing next after the date upon wh you receive this notice.

Proof of Receipt of Notice = Oral Lease and Proof Thereof

It should be sent by registered mail with a return receipt requested. An oral notice can be given, but proving it in case of litigation will be difficult. Therefore, it would be best to have the return receipt in hand as incontrovertible proof that the notice was received.

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[III.] TENANCY at Will

Definition

A L-T rel. held at the will of either the L or the T, and at C.L. y need be no notice given. Mass. requires notice equivalent to the term. Reas. notice.

Quaere: How can it be created? =

Possible Methods of Creation

(1.) Express Agreement
(2.) Or a T remains over s/o any express agreement re rent.
(3.) In Mass. [illegible] y is no written

Mass. Law

instrument of lease and on the Tenant entered under the understanding that he would be ~~y~~ for a term or a period.

Quaere: How can it be terminated?? =

Possible Methods of Termination

(1.) By the express termination w/ sufi notice.
(2.) Death of one of the parties
(3.) A conveyance out by the LL to someone else.

Quaere: Can T assign his interest to a third party?? = No.

(4) So, the assignment of the tenancy interest by T will terminate the tenancy.

Notice

At C.L., notice did not have to be given. But when the LL does give notice to T, he must allow a reasonable time to the T.

* Problem on page 294 *

(1.) Here, we have an oral agreement for years, and per the Mass. S/F this would be illegal and nugatory.

There is no doubt that ~~y~~ is no liability for any rent after the death of the LL because under Mass. law, this would

be a tenancy at will. But would B be liable for the rent between 6-30-47 and 10-'47??=No. Ten. at will for def. period.

Notice — Here, however, this is a tenancy at will for a specified term. Therefore if either party wished during the year to terminate under the statute a month's notice had to be given. Since this was a ten. at will for a def. period (under Mass. law), no notice held to be given. Therefore, B not liable for rent after 6-30-47 since that was the end of the specified period of the tenancy.

[IV.] TENANCY AT SUFFERANCE

Definition — Tenant of whatever sort who holds over w/o the consent of the LL after the tenancy has come to an end.

Characteristics —
(1.) There is no longer a LL-T rel.
(2.) T just like a tres.
(3.) LL can eject T by action of ejectment.
(4.) LL can sue T for tres. for mesne profits for the use and enjoyment of the land.

Rule of Law per the weight of authority — If T holds over and LL sues for the rent, the wt. of author. holds that the T can exer. his option to convert it into a tn. at will.

Not being a T, the "T" would not be liable for rent, but would be subject to the two aforementioned actions.

Further, the LL may treat it as a periodic ten. and T would be liable for the rent.

No necessity for notice

There need be no notice in a ten. at sufferance.

* LEASES *

A lease consists of:

1. Description of the premises
2. " " " parties
3. Covenants — descriptions of the rights and liabilities of the respective parties.

COVENANTS

(a.) Express — anything can be put in as long as they aren't contrary to public policy.

(b.) Implied — there are certain types of Implied Covenants

(1.) Covenant of Quiet Enjoyment — protects against anything wh/ interferes w/ T's quiet enjoyment of the premises and against the assertion of any rights to the premises by the LL wh are contrary to the lease.

(a.) Before you can say that the covenant of

Test of Br/Covenant (one method)

Q.E. has been breached, you must show that the T has been evicted. There are two types of evictions:

Evictions

1.) actual eviction
2.) constructive eviction - e.g., on the LL blows a whistle every night. i.e. the wrongful action of the LL w/h is not just one occurrence, but is a continuing type of thing.

Another method to breach a Covenant

(b.) The assertion by a third party of claim of superior title to the premises will const. a br/ covenant of Q.E.

Rule of Law

An eviction suspends the obligation to pay rent. For breach of the covenant, T can get damages.

T could counterclaim in LL's suit for rent.

Quaere: Are T's obligations resting on

Covenant to make repairs

T has the implied obligation to repair. Such this is no express covenant, the covenant to make certain reas. repairs w/h will keep the premises wind and water tight is implied. T will have to also keep the heating and plumbing in from falling into a

Lewett 92/119 (1865)
" Fletcher

ruin and state of decay. ¶ is no obligation to rebuild a substantial part of the premises. ¶ is an implied obligation to make limited repairs.

¶ is no obligation to keep the premises from depreciating.

e.g. T may have to repair the leaking roof so long as it will not entail the whole roof.

Usually ¶ will be an express stipulation or provision in the lease to make repairs, ~~but~~ and the English courts reason that even though T may have to be a complete rebuilding of the entire roof it will have to be done. The reason: an express provision to repair was not intended to be the same in limited scope as the implied covenant to repair. ✱ Mass. in accord: Lewett v. Fletcher, 92 Mass. 119 (1865)

English and Mass. Rule

Amer. rule: the T does not have to rebuild but has to only make limited, reas. repairs.

✱ Before T can sue LL for breach of ~~the~~ covenant, he must first show a request to the LL that the LL correct the malady.

Rule of Construction

✱ There is no implied covenant to repair on the landlord. Therefore, in the absence of

No implied covenant of repairs on LL. Rent need not be express in the lease.

TAXES

an express provision to repair, the tenant cannot hold the LL responsible for failing to make whatever repairs are needed. However, on the premises fall into such a state of disrepair, due to the LL's failure to make the repairs, that the T's quiet enjoyment of the premises is disturbed, then the LL can be held liable for breach of the covenant of quiet enjoyment.

* Rent need not be expressly provided for in a lease.

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Taxes

Obligation to pay taxes:

1. On the taxes are levied even after the giving of the lease, the lessor (LL) will have to pay.

But, on the taxes on the prop. have been augmented by the addition of improvements on the prop. To wh the T intends to keep title, the T will have to pay a share of the taxes. This is the better rule and the one adopted by the courts.

* Assignments and Sub-leases *

Quaere: Can a T for a term assign or sub-let the premises to a third party? = At C.L.,

Gen. Rule: absent any conds. in the lease to the contrary, a T can assign or sub-let.

But, on y are those conds. in the

lease, usually the penalty will be forfeiture of the lease.

If a lease only says no assignments, the T can sub-let due to the distinct legal differences between assignments and sub-lets, and the law abhors a forfeiture. The converse is true.

Quaere: Can ~~y~~ be an assignment done by legal operation? = e.g., if the T goes bankrupt, the law operates via the Bankruptcy Act to assign the lease to the trustee in bankruptcy. (sec. 70 of the Bankruptcy Act). So, here, even in the presence of the no-assignment restrictive clause, by operation of law an assignment can be validly made.

Assignment—

Definition and Effect

a transfer of all the rights and interests of the T to an assignee, and T no longer has any interest in the non-freehold estate. The effect is to obliterate the LL-T rel. between A & B, and C, the assignee, is now the T of A, the orig. LL.

Subletting—

T-1 does not transfer his interests and rights to T-2, for the rel. between LL and T-1 still exists.

Rule

[I.]

Con
L
T

But, y is a new rel. between T-1 and T-2. LL becomes a land-lord to both T-1 and T-2.

Rule of Construction

If y is any doubt as to who is involved, a legal presumption favors assignment, and the burden of proof (i.e., the risk of non-persuasion) falls on the one alleging no assignment.

[I.] ASSIGNMENTS

In an assignment, all covenants wh/ touch and concern the land are deemed to run w/ the land; i.e. the assignee would be obligated by and benefitted by all covenants wh/ affected the assignor.

This further means that all obligations under the lease are taken off of the back of T-1 and are placed on T-2. But, T-1 could still be held liable under the K for the rent. Therefore, T-1 should get LL to release him from the K or to do a novation. This is under the K theory, but y would be no liability under the covenant of rent.

CONTRACTUAL LIABILITY OF T-1

So, if T-1 has to pay, T-1 can be SUBROGATED to the rights of LL to go against T-2.

If T-2 assigns to T-3, the privity of estate between T-2 and LL is destroyed. LL and T-3 will thenbe in privity.

hypo: T-1 → T-2. After the rent fell due, T-2 → T-3 w/o paying the rent. Who can be held liable for the rent?

T-1 can be held liable for br/k.
T-2 " " " " under br/ covenant to pay the rent, and that was a covenant wh/ runs w/ the land.
T-3 would not be liable because he did not have the land when the rent fell due.

Assignee's liability under Covenants

Quaere: Upon what sorts of covenants will an assignee - Tenant be liable? =

(1) Generally any covenant touching and concerning the land.
  (a.) Covenant to pay rent
  (b.) If T-1 expressly covenants to repair the land and T-1 → T-2, this is a covenant running w/ the land & T-2 would have to make repairs also. Any covenant wh touches and concerns the land runs w/ the land.
(c) Any implied covenant wh touches and concerns the land will run w/ the land, and T-2 would be obligated to abide thereby even if he

Re cl
T-1 is
after

[11

had no notice of the implied covenant.

Summary:

(1.) Liabilities of assignee –
  (a.) For all covenants wh run w/ the land. Not liable for personal-type covenants between assignor and LL wh do not run w/ the land.
  (b.) Not liable for breaches of covenants wh occurred before the assignment.

(2.) Liabilities of assignor –
  (a.) Liable for all covenants wh existed between himself + the LL, but only under br/K.
  Re implied covenants, T-1 is only liable for breaches thereof only so long as he has the estate (i.e., before the assignment).

Re express covenants, (b.) T-1 is liable thereon even after the assignment.

* Problem on page 291:
B can be held liable under a theory of privity of K, and D can be held liable on the theory of privity of estate. As between B and D, D should be liable to LL, for D can be subrogated to LL against B.

[11.] * SUB-LEASES

T-2 is a complete stranger to LL. ∴ LL cannot sue T-2 for the rent for he is neither privity of K nor

privity of estate. The only one who can be held liable is T-1 and he can be held liable on all covenants.
T-2's tenancy lasts only as long as T-1's tenancy lasts.
In Mass. if T-1 fails to pay rent for 14 days, L can kick T-1 but, and it would be no defense for T-2 to say that he had not failed to pay & that he had paid regularly and on time. So, T-2 would, indirectly but actually, be kicked out, too.

Mass.

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Rent -
(1.) Falls due on the date stipulated ~~date~~ in the lease if y is a date".
(2.) If y is no stipulated date, rent falls due on the last of the month.
(3.) Rent cannot be apportioned.
Hypo. O owns apt. house and rents apt. to X. O → A after 27 days of the month have passed and A gets it (bldg.) three (3) days before the rent falls due. X who can collect the rent since, at C.L., y can be no apportionment of the rent? = A could collect the full month's rent. Now, by statutes,

The Rule at C.L. was that the owner, at the time the rent fell due, took the full amt.
Now, by statutes in the majority of jurisdictions, y is an apportionment pro rata. So, X would get 27/30 of the rent, and A would get 3/30 of the rent. i.e., X=90% and A=10% of the Total month's rent.

This - either const= viction

Effec Evict ligat Rent

3d p asser paran Title to part o build

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y can be apportionment and this is the better rule. See Rest. of Prop. sec. 120, comm. (d).

(4) An eviction suspends the obligation to pay the rent.

This is true of either actual or constructive evictions.

(a.) Has no effect on rent that falls due prior to the date of the eviction.

(b.) If T returns to the premises after eviction, the obligation will resume. But, during the eviction y is no rent obligation.

Effect of Partial Eviction on Obligation to pay Rent.

* If y is a partial eviction & is a total ~~function~~ suspension of the rent obligation and T may exercise his option to terminate the tenancy. e.g. on T rents 5 story bldg. and only one (1) floor has cock roaches.

3d party assertion of paramount title to only a part of the building

(c.) * But, on a 3rd party asserts paramount title to only a part of the 5 story bldg i.e., one floor, the obligation to pay rent for that one floor is suspended. * However, T still has an option to terminate the tenancy.

General Rule

So, any is a total eviction y is a total suspension of the obligation to pay rent.

General Rule — Dy y is a partial eviction, generally y is a total suspension w/ the one exception: 3rd party.

Option — In any case, y will be an option for T to terminate the tenancy.

Problem on page 291

If there is an assignee, and T is evicted, the assignee is also evicted, and vice versa. T would not even be obligated under the K to LL to pay the rent or meet any of the other obligations.

Wrongful Eviction — T's remedy — On y is a wrongful eviction, T may sue LL for breach of the covenant of quiet enjoyment and get damages.

Waiver of Elective Rights — On y is an elective right e.g. option to terminate the tenancy, if y is not noticed w/in a reas. time, y is a waiver of the elective right.

Suspension v. Termination — The above applies to the suspension of the obligation, not a termination of the obligation.

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* CONCURRENT OWNERSHIP *

(1.) Tenancy in Common - land or holdings descend to heirs upon death of a T in C.

(2.) Joint Tenancy - the survivor(s) takes the share of the deceased J.T.

(3.) Tenancy by the Entirety - deals w/ H and W holding together.

Legal Presumptions

At C.L., ∃ was a legal presumption in favor of the J.T. In a J.T., the surviving Tenant takes. Now, by statute, the legal presumption favors a T. in C. This is the most widespread presumption today. - ½ of the states.

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[I.] (A.) Tenancy in Common

Unity of Poss. (first characteristic)

This means that if A & B are T in C of B/A, they must own and poss. B/A as a unit, i.e., together. However, there does not have to be equal division between Ts in C. So, A may own ¾ and B may own ¼, but A & B have undivided and equal poss. of the land. A would not dominate B. Each is entitled to poss. of the whole. There is no necessity that the shares be like and equal.

The T in C must have the same unities as the J.T., except that ∃ need not be equal distribution of the prop. interests between the tenants.

(B.) No Right by Survivorship (2nd =)

If A dies, his share will

Either party can partition. The tenancy will then be severed.

descend to the heirs of A.

(c.) Legal Presumption

"To A and B and their heirs."

At C.L., the J.T. was favored and legally presumed in the absence of anything "au contraire."

Today, by stat., the reverse is true: T in C is favored.

*Mass. Stat. on p. 308

Hand and one.

Mortgages

If the promissory note says "Pay to A + B", y will be a presumption of a J.T. If the note says "pay to A or B", y will be a presum. of a T. in C.

*In a mortgage transfer, y are two instruments involved:

(1) Mort. deed - security for the promissory note
(2) Promissory Note

The legal maxim is that the mort. deed follows the note and that the note is the main instrument.

*So, we look at the note to deter. wh type of co-tenancy is intended.

When legal and T. in a right is expl forgy

[I

Conveyances in Trust

In conveyances in trust, the J.T. is favored because the trustees (J.Ts.) have the right of survivorship: if one of the trustees dies,

the other will carry on. If it were a T in C, the heirs of the deceased would take over the part of the legal title held by deceased, and this is not good: the heirs may not be qualified to be trustees.

* New York Statute (p. 308)

Does this elim. T by the entirety? = No, because still when conveying to H & W at C.L., & you were conveying to only one person — the H. Therefore, this stat. does not apply to T. by the E.

Hand Ware one, and H is the one.

* Florida Statute (p. 308)

This is the best of the three statutes because oftentimes laymen use the words "J. Ts" loosely and don't intend to be survivorship. So, if only "J. T." appears w/ nothing more, the Fla. Ct. will construe it to mean a T in C, and the shares of the tenants will descend.

When & is doubt, legal construction will take over "J. Ts" and create a T. in C. - Unless a right of survivorship is explicitly provided for & will be none.

[II.] Joint Tenancy

(A.) There must be certain unities of:

(1.) Interest
(2.) Time
(3.) Title
(4.) Possession

18th sec. 5

Governing Rule of Law of the Joint Tenancy

i.e., they must acquire identical interests or shares at the same time and by the same deed, and y must be equal poss. or right to poss.

hypo: Owns B/A in FSA and → A. A then tries to set up a J.T. with B and C. — No good because the unities of time and title (same deed or instrument) are lacking.

If A wants to create a J.T. between himself and B and C, he could convey out to a straw man and have the straw man reconvey to A, B & C. However, in Mass. by M.G.L. Ch. 184, sec. 8, the necessity of a straw man has been elim. and A can set up the J.T. w/ B and C and himself.

Mass.

This part of the by.

Methods of Creation

(B.) A J.T. can only be created by way of:
1. An inter vivos conveyance
or, 2. a will

Problem on Page 305

There would not have to be any inheritance tax because

sec. 2040 J.T.'s

Each J.T. is thought of as owning the whole, subject to the equal rights of the other. When one dies, the estate is "simply freed from participation by him."

Rule of Law (Each J.T. is seised per my et per tout.)

the surviving J.T. does not take by inheritance but by survivorship. It is simply that the deceased J.T. is removed from the picture.

This created a loophole in the Estate Tax Law, so ~~sec. 2040~~ sec. 2040 of the Internal Rev. Code provides that tax must be paid on the land the deceased bought and to the extent of the decedent's interest. So, if decedent was a J.T. with X, the estate of the decedent would still have to pay the full tax on the full amt. of the property since a J.T. is deemed to have full interest in the land.

This would be a partial severance of the joint tenancy.

Hypo: O → A, B, C, and D as J.T.'s. Now A → X. X can't be a J.T. because the unities of time and title are absent. So, X would own his 1/4 as a T. in C with B, C, and D.

B, C and D still hold their 3/4 as J.T.s as between themselves. So, if B dies, 1/8 goes to C and 1/8 goes to D.

If X dies, his 1/4 descends. So, generally speaking as a rule, all J.T.s must join

in order to convey a J.T. to others.

Dest... of th... Joint Tenan...

Hypo: X (as above) reconveys to A, A will not be a J.T. due to the lack of the unities of time and title. Since A's instant grantor was a T in C w/ B, C and D), A will assume the same relationship as his grantor had, to-wit: that of a tenant in common w/ B, C and D.

Conve... JT's in... another...

CAVEAT

Always remember that u must be all of the unities in order to create a J.T.

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The four unities:

(a) Unity of time - i.e., the interests of the joint tenants must vest at the same time.

(b.) Unity of Possession - i.e., the joint tenants must have undivided interests in the whole, not divided interests in separate parts.

(c.) Unity of Title - i.e., the joint tenants must derive their interests by the same instrument.

(d.) Unity of Interest - i.e., the joint tenants must have estates of the same type and duration.

Conv... life ... third ...

* Methods of Severing a Joint Tenancy

Destruction of the Joint Tenancy

The survivorship feature of a J.T. is destructible by either party, or, to put it differently, the J.T. can be severed and thereby changed into a T. in C. Severance occurs when one J.T. transfers his interest, voluntarily or involuntarily, to another J.T. This follows because the conveyance destroys two of the four unities which must exist in any J.T.

Conveyance of one JT's interest to another J.T.

Hypo: O → "A, B, C, D." Then, A → his ¼ to B. = B would still be a J.T. as to his orig. ¼, but a T. in C. as to A's ¼.

When B dies, the orig. ¼ will be taken by survivorship by C and D, but "A's" ¼ will descend to the heirs of B.

Conveyance of a life estate to a third party

Hypo: [I.] O → "to A and B as J.Ts in FSA." A → "to X for life." (A's interest). X gets a life estate. While X is alive, there is no type of concurrent estate between A and B because A has no poss. While X is alive, X and B are Ts in C, but not JTs because the unities of time and interest are lacking.

[II.] When X dies, the land reverts to A because A conveyed away less than he had. So, A had a FSA in reversion. Since the reversion is a future interest, we

do not concern ourselves w/ the unity of poss. during X's life. So, A would retain a J.T. w/ B since A retained a reversion in FSA directly from the same conveyance from O.

[III.] If either A or B dies during X's life, the J.T. is destroyed and the property interest of the decedent will descend, not survive.

Death of a J.T. during X's LE:

[IV.] If X dies before A and B, the J.T. resumes.

*So, here the J.T. is again severed partially, although it really is only held in abeyance.

hypo: O → A and B as JTs in FSA. A makes a K with X (sub satis. the stat. of Frauds) to convey his (A's) interest in the land to X, but the land and poss. thereof do not pass. — Since X would have an equity in B/A by the K, X could get specific perform. in Equity. Therefore the J.T. would be severed.

One J.T. makes K for sale of his land to 3rd party even tho' poss. and title do not pass

Problem on Page 305, bottom.

hypo: A + B are JTs, etc. — The Bank would get legal title upon the mortgage. Therefore, when this legal title

Giving of a mortgage by a J.T.

Rssue

Rssue Tod

Schw View

Result at C.L.

is transferred, it passes out of A. Thus, when A gets it back, the J.T will not resume because 4 will be certain unities lacking. *This would be the result under Common Law.

Result Today

*However, today a mortgage is deemed merely a security for the loan (*the Lien Theory), thereby leaving actual legal title in A. Thus, the J.T. could be said to remain unsevered. *Wilkins v. Young says that the J.T. would not be severed but that the mortgage would attach to the interest of the mortgagor. Thus, if A = the mortgagor and dies first, B would take by right of survivorship A's interest plus the mortgage.

SCHWARTZ'S VIEW

*Per Schwartz, the better and more modern view is that the J.T. would be severed because of the lack of the unity of interest. The mortgagor (A) would not have an interest equal to that of the J.T., B. *E.g. If the mortgage is 90% of the interest of A and A dies before B, under the Wilkins Case, B would only really get 10% of the orig. interest of A. But, if B dies before A, A would get 100% of B's interest by right of survivorship. Thus, 4 is no equality of interest.

Incidents of Co-ownership

① Partition –

There can be a vol. partitioning of the prop.

A can convey out his interest in B/A, but he cannot convey out a specific portion of the land. Before y is a partitioning, y is his interest in each T.T. in a particular portion of the prop. They, as joint tenants, hold all of the land together, jointly and equally.

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HYPO: A and B are co-tenants of a three story bldg. and surrounding land. B lives on one floor + A does not. – ① Does B have to account for the fair rental value to A? = The majority holds that y is no duty to account for the fair rental value of the first floor. Mass. in accord: 290/142. (Pico v. Columbet, p. 316). The minority (McKnight v. Basildon) holds y is a duty.

② For renting out floors 2+3 to someone else, y is a duty to account for half of the rent received.

③ For taking oil out of the

Duties to Account

Fair Rental Value for a Co-tenant Living or using Premises

Proceeds of Rent from Third Party

Extraction of Minerals

land, as is a serious depletion of the land and ∴ a duty to account to A for ½ of fair profits.

④ Use of Land for Farming

For farming the land + raising the crops, as is not a serious depletion of the land and ∴ no duty to account to A. ③ and ④ can be distinguished on the basis of the seriousness of the depletion.

⑤ In #3, B can make Reas. deductions for expenses and labor.

⑤ Business Ventures

For running a green house and selling flowers, no duty to account. So, serious depletion of the land is the test.

Quaere: What if A waited 30 years before bringing an action to compel an accounting? =

a/p

(1) B may have the defense of "Adverse Poss." Normally, a co-tenant cannot get title by a/p from the other co-tenant. However, on 4 has been an actual ouster and the S/L has run. (See McKnight v. Basilides)

(2) LACHES - this may apply in an appropriate case. D must show that P has been an unreas. delay AND a detriment to D as a result of the delay. This

226 It is a general rule that the act of ~~the~~ one J.T. w/o express or implied author. from or the consent of his cotenant cannot bind or prejudically affect the rights of the latter. (See p. 331) Exception: conveyance of all of prop. by trade. as only an Equitable defense. Its equal at Law is S/L.

Quaere: Knowing that a co-tenant can sell his interest, can he lease his interest? = Obviously, yes. Since he can sell, he can certainly do less than that w/ his interest, to wit: lease the interest.

* Swartzbaugh v. Sampson

Since the wife cannot compel rescission of the lease, she could only go and sit down in the middle of the boxing ring. The co-tenant could then petition for partition.

Improv

Common Law Views:

Pymt. for Services Rendered

① In the absence of an express K, a co-tenant who cares for the prop. cannot compel the other co-tenant to pay him for services rendered even in an action of Restitution.

Taxes

② If A pays taxes on the property he can get 50% from B for the amt. of the taxes paid.

Necessary Repairs

③ A co-tenant who repairs runs the risk of the total cost as there is no obligation on the other co-tenant to contribute. So, that is the rule as to necessary repairs.

Joint tenancy cont'd management.

A lease to all of the joint prop. by one J.T. is not a nullity but is a valid and supportable K in so far as the interest of the lessor in the joint prop. is concerned. 227

This is the ~~majority~~ rule, but not the better reasoned rule.

However, on the necessary repairs are made to enable renting it out, and then arises the duty to split (i.e., account) for 50% of the rents recd, & may be a duty to contribute for the necessary repairs.

(4) Improvements — a fortiori, & no duty to contribute for improvements. However, the improver can get back his improvements or the value thereof upon partitioning. Otherwise A could improve B right into a state of bankruptcy.

Improvements

PROBLEM #2, page 334

What deceased attempted to do was to set up an arrangement whereby all of the five men would share equally. However, under the clause, if A died, A's family would not take his interest but B, C, D and E would take it by survivorship. The end result will be that when A, B, C and D are dead, all of the stock would be vested in E, and the families of A, B, C & D would be penniless. This would obviously defeat the apparent purpose of Peyton, the benefactor.

A better way would have been to set up a joint trusteeship in the five men and the managerial duties

First trustee cont'd management.

a beneficial trust.

Set up a spend-thrift trust = it would pay the creditors at a certain time each year. It would pay once a year. If the creditor does not reach it then, he will have to wait until the next year.

would be administered by the trust (i.e., one or all of the five) so long as at least one of the five remained alive. Thisway the families of each would enjoy the proceeds of their respective testators, and when all five have died, the five families will share equally.

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Problem #3, page 336

The husband, at best, could contend that wife made a gift of a joint tenancy as to the box. However, it is not apparent that wife had any donative intent in that it seems that it was only done for the purpose of getting the box. * Further, wife only gave poss. to husband by the terms of the signed card. Further, under most state laws, a third party would have to convey to the joint tenants in order to create a J.T. Under Mass. law, however, this is not necessary. A can make B a J.T. w/o using a third party to convey.

J.T.s usually have full ownership of the prop, but the card only gave right of access + poss.

Chap. 184, sec. 8.

* Tenancy by the Entirety *

Ordinarily, if a conveyance is made

to H & W "as J. Ts.", the courts will construe this to be a tenancy by the Entirety.

In the absence of the express words "as Ts by the E", there will be presumed a T. by the E when conveyed to a H+W.

All of the unities of the J.T. are present here plus the unity of marriage.

Joint Tenancy v. Tenancy by the Entirety

In a J.T., a J.T. can defeat the right of survivorship of the other J.T. by conveying out. However, this is not so in a T. by the E. Even if one spouse conveys out, the taker will take subject to the other spouse's right of survivorship.

The conveyance must be made when H and W are married to create a T by the E, and not even when H and W are engaged will a T by the E be created.

Modern Construction (legal presumption)

Today, unless expressed as intending a T by the E even when the conveyees are H and W, a tenancy in Common is construed.

In Mass., if you want to create a J.T., you must say "as JT" and not as T by the E."

In 1/2 of the states, ~~y~~ is no T by the E recognized, only J.T. and T in C. In Mass., however, the T by the E is recog. even in its original C.L. form if the magic words "as T by the E" are used. Otherwise, a T in C is presumed in Mass.

The C.L. characteristics of T by the E:

(1.) The four unities

259/37 The H and wife are one and the H is the one (at C.L.).

(2.) The unity of marriage, but all mismanagement, poss. enjoyment etc. are in the H. The W had only a right of survivorship. The control was in H. The H could validly convey out, but if the wife outlives him, she will take because her right of survivorship cannot be defeated

Purchaser takes the chance that H will outlive W.

Creditors of H can reach the entire property, but the purchaser at an execution sale will take subject to the W's right of survivorship. See 259 Mass. 87.

The Creditors of W cannot reach the prop. Hicker v. Guskin, p 312 of c&k.

Afterwards, the Married Women's Prop. Acts gave greater power to W, but it is a matter of statute. Mass. says that this does NOT change the tendency by the E. Some states hold that as a result of the Acts, the W has equality in the property.

No change in Mass. But, check your local states.

Tort Liability of W = (bear in mind that the husband, under the C.L., has full control)

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This was a common stairway

All w would EXCEPT unity mar

and was therefore under the control of the owner. This is the basis of tort liability in this situation! Since the W in a T. by the E is not deemed to have control under C.L. and Mass. would Blanche be liable? = although Blanche had no legal right to exer. control and no duty to do so, since she did, in fact, exert control she should be held liable.

However, the court held the W not liable, and this is maybe the correct result Tort-wise.

The better rule would be that only is no PRE-existing duty to act, is no liability for non-feasance unless the condition of the P is worsened. If we can say that the W, by making the repairs, lulled H into a false sense of security and therefore worsened the P's cond., then W should be held liable.

* Divorce and Severance of the T by the E—

The tenancy can only be severed by the severance of the marriage. Thus, a H only wanting to live apart from W or merely to have the prop. severed will not have his wish granted.

Upon divorce, w/o severance, the "H and W" will hold as Tenants in Common.

All unities would remain except the unity of marriage.

* Summary *

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[I.] Tenancy in Common

(1.) No right of survivorship

(2.) Only one unity - poss. The others need not be present. The one who owns the smaller interest is entitled to full rights so long as ~~y~~ is unity of poss.

Y can be severance either by volun. or involun. partition.

[II.] Joint Tenancy

(1.) Can only arise when the four unities are present.

(2.) Subject to right of survivor. (1090) as long as the J.T. lasts.

(3.) Can be either partially severed temporarily, or completely severed.

Four ways to sever:
(1.) Volun. or involun. partitioning.
(2.) Conveyance out
(3.) K to convey
(4.) Mortgage

It only takes one of the Tenants to sever the J.T. One of the co-tenants can destroy the right of survivor. by severing the J.T. and creating a T. in C.

(4.) All of the incidents of the T in C are present here plus the incident of survivor.

[III.] Tenancy by the Entirety

(1.) Only between H and W.

(2.) Only created when H and W are married, not before.

(3.) Y is a right of survivor. but only one of the tenants cannot

Mass. 2 d 522

sever. It requires both.

You can't defeat right of survivorship of W unless Y is a divorce. You can only partition the tenancy by partitioning the marriage.

(4.) No partition by the parties.
(5.) Upon divorce, it changes into a T in C.
(6.) H is in full control at C.L. and in Mass.; wife's creditors can't reach the property.
(7.) Survivorship can't be cut off. Purchaser takes subject thereto. Creditors can attach H's interest but subject to W's right/survivorship.
(8.) There can be a J.T. between H and W but only one is an explicitly worded conveyance. Thus, on Y is a J.T. between H & W, one of the tenants can sever.

* "To A and B"
(1.) At C.L., presumption of J.T.
(2.) More than ½ of the States have held the presumption to be a T in C today.

(1959) * 148 A.2d 522 (R.I., per Powers, J.)
0 → "A and W, the consid. being paid by A and W jointly."
H dies. W → X → Y. Y then refused to pay. Y contended that X did not have legal title to pass because W did not have full, marketable, legal title to convey to X.
Statute presumes a T in C in the absence of a clear

manifestation of intent to the contrary. Held, that the language was too ambiguous to overcome the legal presumption, even in view of the recital of consid being paid jointly by H and W. Therefore, this would be a T in C and H's interest descended to his heirs. Therefore, the specific performance of the K prayed for by P was denied.

* Tax Aspects of Co-ownership *

* Gift Taxes *

(1.) Imposed upon the donor, not the donee.

(2.) There are many exemptions and exclusions:

(a.) A may give away $3000.00 per annum, to as many people as A wishes.

(b.) It is a cumulative amt. of $30,000.00 allowed per lifetime of the donor. e.g., A makes gift of $4,000.00 to B in 1954, he may count off the per annum exemption of $3000.00 plus deduct $1000.00 from the $30,000.00 lifetime exemption, leaving a balance of $29,000.00.

T. in

J.

2515
2040

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(a.) B is only getting $2,500.00 worth of interest since A only got $5,000.00 worth of legal interest.

(b.) Advise him to pay $6,000.00 in Dec. and $6000.00 in January. This way, A's gift to B would not then exceed $3,000.00 per year per person.

If a gift of $6,000.00 is made to H & W, the gift can be split, making only $3,000.00 per party per year. Further, jointly, H & W can have a joint lifetime exemption of $60,000.00

Sec. 2515 of the I.R.C. — if H purchases land and sets it up as a J.T. or T by the E in W, they do not have to pay a gift tax if they don't want to.

Sec. 2040 of the I.R.C. - if H pays full consideration for property and H dies, the entire amt. will be includable in H's gross estate for estate tax purposes.

T. in C. — T in C - includable in each tenant's estate (gross) ½ each, no matter how much each paid if are only two.

J.T. — But, in J.T. or T/E, the amt. includable in each estate for ~~tax~~ estate tax purposes is to the extent paid by each tenant upon purchase.

* Probate Considerations *

Joint Tenancy - since in a J.T. is survivorship and no descent of prop. there is no need for Probate of a J.T. Upon the death of one J.T. the remaining J.T. immediately takes by way of survivorship.

Tenancy in Common - since land descends, the estate must undergo probate.

Tenancy by the Entirety - same advantages as attach to a J.T.

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* FUTURE INTERESTS *

Future Interest Defined

Future Interest - an interest in land which involves the poss. and enjoyment of land in the future.

Types:

(1.) Reversion
(2.) Remainder
(3.) Possibility of Reverter
(4.) Right of Entry
(5.) Executory Interests

* Reversion *

Definition

The fut. int. that is left in the grantor or in the successor in int. of a testator when

one or more vested estates of lesser duration are granted or devised.

Hypo: A owns B/A in FSA. A → "B for life." - Since a life est. is less than a FSA, what A has retained is a reversion.

A did not have to expressly retain the Reversion. This is implied when a lesser estate is conveyed.

Hypo: A → "B and the heirs of his body." This fee tail is of lesser duration than a FSA, thus A has a reversion which will vest upon the running out of B's line of heirs (lineal).

B could disentail + cut off A's reversion and thereby acquire a FSA.

Hypo: A → "To B for 99 years." - B has term of years. A has a revers. in FSA and he retains seisin since he did not convey a freehold.

Hypo: A → "To B + his heirs so long as the property is used for school

purposes." - Since the potentiality of B's F/S Deter. is indefinite, A does not have a reversion. B's est. is equal in duration to A's. So, A here would have a possibility of reverter.

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(1.) It would be in the nature of a reversion.

(2.) No, the prop. would not go back to the grantor, but to the state.

Hypo: A owns B/A in FSA. → "To B for life." ~~To C~~ AND "To C and his heirs." (one conveyance)

Here C would be deemed to have a rmndr., not a rever. because A has given away all that he had and C would not be a successor in interest.

If A had, in a separate conveyance, given only what he had, A would be a succ. in int. + have a rever.

Characteristics of a Reversion

(1.) It is a vested estate (not future):

Vested Fut. Int. Defined

A vested fut. int. is an est. that is ready to take effect in poss. whenever however

the prior estate terminates.

(2.) It is descendable, devisable & alienable inter vivos.

(3.) Can it be reached by creditors? = Yes, it can be attached and sold to repay the debts. The purchaser at the attachment sale gets a FSA.

(4.) Under sec. 70 of the Bankruptcy act, the reversion will succeed to the bankrupt party's administrator in bankruptcy.

* Remainder *

(1.) Created in someone other than the grantor.

(2.) Created simultaneously w/ a prior possessory est. in someone else.

(3.) Never cuts shorts a prior poss. estate. Rather, it is limited to take effect only upon the termination of the prior poss. estate. It will wait expectantly until the termination of the prior possessory estate.

(4.) The prior poss. estate that is created simultaneously w/ the rmndr. must be of lesser duration than the grantor's original estate.

Rule of Law

HYPO: A ⟶ "To B & his heirs and then to C and his heirs." — C would not have a rmndr. because A gave to B all that he had. There cannot be a FSA following a FSA.

HYPO: A ⟶ "To B & his heirs so long as used for school purposes but if it ceases to be used for school purposes, then to C and his heirs"

C would not get a rmndr. because B's estate is of potentially indefinite duration and is, therefore, not of less duration than A's orig. estate. C would have a shifting executory interest.

Vested v. Contingent (Remainders.)

Vested rmndr. is a vested future int., i.e., ready to

take effect in poss. whenever + however the prior poss. estate terminates.

A contingt remndr. is an estate not ready to take effect in poss. whenever + however the prior poss. estate terminates. e.g., if is a cond. precedent & but that cond. has not been fulfilled, it will be deemed contingt. e.g. A → "To B for life and remndr. to the children of C." C is unmarried + the presumption of regularity prevails. Thus, the remndr. cannot be vested since the group to benefit is, as yet, unascertained.