

Property I- Prof. Bross, G.S.U., Fall 1999

I. Possessory Interests

A. Adverse Possession- Basically legally “stealing” land by occupying it for a fixed length of time.

1. Adverse possessors must:

- Act like an owner.
- Maintain a degree of hostility, exclusivity, and continuity in relation to the land they are possessing.
- Use the land in a manner consistent with an ideal owner.

2. Tacking- Adding occupant times together to achieve continuity for statute of limitations.

3. Cannot adversely possess against Federal or State Government.

B. Estates In Land

1. Fee Simple Absolute- Highest possible form of ownership.

2. Fee Simple Determinable- Has limitation based on time element.

- Example: O to A until (time element) war is over (limitation).
- Grantor (O) retains a Possibility of Reverter.

3. Fee Simple Subject to Condition Subsequent- Has limitation based on condition element.

- Example: O to A, but (condition element) if war ends (limitation), O may re-enter.
- Grantor (O) retains a Right of Re-entry.

4. Fee Simple Conditional/ Fee Tail- O to A and heirs of his body; property stays within bloodline.

5. Other Estates: Grantor always has a reversion

- Life Estate- Estate with natural expiration at death of grantee. Example: O to A for life.
- Estate for years- Lease for a fixed time, then over; duration is beyond the control of the parties once begun.
- Periodic Tenancy- Estate from period to period (year, month, week); continually renewing until stopped by 1 full period's notice.
- Estate at Will- No fixed time period, no notice required; ends at the will of either party.
- Estate at Sufferance- cannot be created, happens at the end of another tenancy when occupant stays past the ends of the tenancy. Occupant cannot adversely possess.

C. Future Interests

1. Reversion- Only created in the grantor; automatically occurs at the end of a life estate of estate for years.

2. Possibility of Reverter- Only created in the grantor; automatically occurs upon the fulfillment of the condition in a Fee Simple Determinable.

• Transferrable in 3 ways:

- Alienable: transfer or sell it while still alive.
- Devisable: left to someone in will.
- Descendable: left to heir (as defined by the state) if no will exists.

3. Right of Re-entry/ Power of Termination- Only created in the grantor; goes into effect upon fulfillment of the condition in a Fee Simple Subject to Condition Subsequent.

- Grantor may or may not decide to exercise right/power; not automatic.
- Only descendably transferred.

4. Remainders- created in a third party. MUST:
 - Take effect immediately,
 - Upon the natural expiration,
 - Of a prior particular estate,
 - Created in the same instrument.
 - If it is subject to a condition precedent other than the termination of the prior estate, or if the grantees are unborn/unascertainable it is a contingent remainder, if not, it is a vested remainder.
 - Vested Subject to Complete Divestment: Party will take, but may lose possession if a condition occurs (subject to condition subsequent).
 - Vested Subject to Open: Taking class is started (someone exists) but not yet completely determined.
5. Executory Interest- Occurs if any of the conditions for remainders fail.

D. Future Interests Doctrines

1. Rule in Shelly's Case: "O to A for life, then to the heirs of A" becomes: "O to A for life, then to A"
2. Rule of Merger: "O to A for life, then to A" becomes: "O to A" (A has Fee Simple Absolute)
3. Destructibility Rule (Obsolete): "O to A for life, then to heirs of B." If A dies before B, estate reverts to O and remainder in B's heirs is destroyed. Living person, B, has no heirs, so seisin is interrupted.
4. Rule Against Perpetuities: Any remainder must vest within a life in being plus 21 years.
 - Only applies to Contingent Remainders and Executory interests.
 - Future Interests created in the grantor are considered vested for purposes of RAP.
 - RAP Reforms:
 - Wait and See: wait and see how events play out, see if estate vests.
 - Cy Pres: courts try to get as close as possible to original intent.

D. Concurrent Estates- shared present rights.

1. Tenancy in Common: presumed tenancy; no right of survivorship.
2. Joint Tenancy: has right of survivorship; must expressly state that there is right of survivorship.
 - Joint Tenancies must have 4 unites:
 - Unity of time: Must acquire interests at the same time.
 - Unity of title: Must acquire interests in the same deed or will.
 - Unity of interest: Must have same/equal interests.
 - Unity of possession: Must have common right to possess the whole property.
3. Tenancy by the Entireties: marital estate, only exists between husband and wife; has right of survivorship. Creates a life estate and remainder in each spouse.
 - Courts are of three opinions as to what voluntary creditors of only one spouse can get:
 - Can't get anything (majority)
 - Can get all interest of that spouse
 - Can get only the remainder of that spouse (KY, TN)
4. Co-tenant can collect from fellow co-tenant for:
 - Ouster
 - Fair share of rent from third parties
 - Waste: occurs by depleting resources or exhausting use. If ordinary person can divide resources (i.e. trees), co-tenant can take his fair share. If only expert can divide, only court can divide. If divided without court order, all co-tenants share profit.
 - Absent co-tenant cannot collect for occupancy of 2nd co-tenant if absence from the property is voluntary, unless by statute or Exclusion: where property can physically be used by only some of the co-tenants, non-occupants get more money at sale.

- II. Non-possessory Interests
- A. License- Right to use given for a period of time at will of licensor.
 - B. Profit- Right to take resources (trees, minerals, etc.) from land.
 - C. Easement- Right to use for a pre-determined, fixed length of time (1 day, 1 year, forever).
 1. Expressed easements- explicitly defined in deed.
 - Dominant Estate- Receives benefit.
 - Servient Estate- Receives burden.
 2. Non-expressed easements
 - Quasi-Easement- Easement not explicitly granted, but implied.
 - Previous Usage: Any actual use during common ownership of property.
 - Used for: Reasonably necessary infrastructures.
 - Gained on: Previously commonly owned land.
 - Standard for Discovery: Apparent.
 - Gained By: Implied agreement; consensual.
 - *Implied Grant- Sell benefit, keep burden.
 - *Implied Reservation- Sell burden, keep benefit.
 - Prescription- Easement gained by use.
 - Previous Usage: Actual use for set period.
 - Used for: Any easement.
 - Gained on: Any identifiable group of land, except land owned by government.
 - Standard for Discovery: Open and notorious.
 - Gained By: Basically stealing (equivalent of adverse possession).
 - Common Law Necessity- Easement for necessity.
 - Previous Usage: No actual use.
 - Used for: Access.
 - Gained on: Previously commonly owned land.
 - Standard for Discovery: Discoverable by expert.
 - Gained By: Necessity for access to otherwise landlocked parcels; consensual.
 3. Change in use/overuse of easement.
 - Express Easement- if not defined by document, look at:
 - Dominant tenement: any reasonable use.
 - Easement: different kind of use AND additional burden for servient estate.
 - Prescriptive Easement- if not defined by document, look at:
 - Dominant tenement: normal evolution of use.
 - Easement: change in physical character, purpose, and relative burden (what is happening now compared to what was happening when it was prescribed).
 - Cannot gain more land.
 4. If the easement is exceeded, trespass occurs.
 5. Abandonment of easement requires time to prove.