

## CHAPTER 1

# Introduction to the Law of Real Property

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This chapter is an introduction to the law of real property. The concept of ownership of real property and the legal characteristics of ownership are discussed. The chapter finishes with a discussion of the methods of acquiring ownership to real property and a full explanation of the modern-day estates in real property. The chapter is important because it introduces the student to several basic real property concepts and key terms, which will be further defined and refined in the chapters that follow.

## CHAPTER OUTLINE

- I. Real Property Law
  - A. Laws That Govern Real Property Transactions
  - B. Real Property versus Personal Property
    - 1. Tangible Personal Property
    - 2. Intangible Personal Property
  - C. Fixtures
    - Case: *Ex Parte Brown*
  - D. Physical Elements of Real Property
    - 1. Airspace
    - 2. Mineral Rights
    - 3. Water Rights
  - E. Ownership of Real Property
- II. History of American Real Property Law
  - A. Modern-Day Estates in Real Property
    - 1. Fee Simple or Fee Simple Absolute
    - 2. Fee Simple Determinable
    - 3. Fee Simple on Condition Subsequent
    - 4. Life Estate
    - 5. Future Interests
    - 6. Estate for Years
    - 7. Estate at Will

- III. Methods of Acquiring Ownership to Real Property
  - A. Inheritance and Devise
  - B. Gift
  - C. Contract and Sale
  - D. Adverse Possession
- IV. Transfer of Ownership (Conveyances)
- V. Role of Paralegals in Real Estate Legal Practice
  - A. Research Materials for Real Property Law
- VI. Ethics: Introduction
- VII. Summary
- VIII. Key Terms
- IX. Review Questions
- X. Case Problems
- XI. Practical Assignments

## TEACHING IDEAS

1. This chapter introduces the student to the basic concepts of real property law. The student is also introduced for the first time to many new real estate and legal terms. Outlining and listing the new terms and concepts on a whiteboard or with a PowerPoint presentation can be beneficial in assisting the students in learning the new material.
2. This chapter contains an expanded discussion of personal property. You may want to use classroom time to discuss the distinctions between real and personal property. The legal distinction is for the most part historical and is based upon the type of action an owner could take to recover property. This chapter also contains an expanded discussion of the history of the real property estates. Some students may be interested in a brief discussion of the history of real property law.
3. Fixtures, that are a hybrid between personal and real property law, can be a fascinating subject for students. A review of the fixture judicial opinion in the chapter can provide a worthwhile classroom exercise. You may want to supplement the discussion with an opinion from your own state.
4. The topic of adverse possession usually proves interesting for students. Many of them have heard of the concept of “squatter’s rights.” A discussion of adverse possession cases from your own state can be informative.
5. It is helpful to illustrate the various estates for the students. This will give the student a clear idea of how the property ownership can shift from one owner to another upon the happening of

a contingency such as death in a life estate or breach of a condition in a conditional fee estate. Names of characters in this chapter's hypotheticals and in questions regarding the various estates are alphabetical: Andy, Barbara, etc. This facilitates an easy discussion of the material in the text by diagramming on the board A to B, etc.

6. Obtain a copy of your state's inheritance statute and compare it with the sample inheritance statute included in the chapter.
7. The chapter contains information concerning the utilization of paralegals in the real estate practice. In addition, it would be helpful to have a practicing paralegal attend this class and speak briefly with the students about the paralegal's professional duties and work experiences.
8. The Web has become a very important source of information for real estate lawyers and paralegals. Major websites for legal information are set forth in this chapter.

## ANSWERS TO REVIEW QUESTIONS

1. What is real property, and how does it differ from personal property?

**Answer:** Real property relates to land and those things that are more or less permanently attached to the land, such as homes, office buildings, and trees. Personal property refers to all other things, such as automobiles, furniture, stocks, and bonds.

2. What is the difference between riparian rights and appropriation?

**Answer:** The right to the beneficial use of water is governed by one of two areas of water law known as riparian rights and appropriation. Riparian rights provide that all owners of riparian lands must share equally in the use of the water for domestic purposes. Appropriation provides that the right to use water is given to the landowner who uses the water first.

3. What test does the court use to determine if an item is a fixture?

**Answer:** A court will look at three things: (a) the manner in which the item is attached to the real property—the more permanent the attachment, the more likely a court will find the item is a fixture; (b) the character of the item and its adaptation to real property—if it is clear that the item has been specifically constructed or fitted with a view to its location and use in a particular building, then the item is more likely to be a fixture; and (c) the intention of the parties—if it is clear from the circumstances surrounding the attachment of the item to the building that the parties intended for it to be a fixture and part of real property, then the item is likely to be a fixture.

4. What are the chief legal rights accorded to an owner of real property?

**Answer:** (a) possession of the property, (b) use of the property, (c) power of disposition

5. How does a fee simple determinable differ from a fee simple on condition subsequent?

**Answer:** A fee simple determinable is an ownership in real property limited to expire automatically on the happening or nonhappening of an event stated in the deed or the will creating the estate. The termination is automatic. Fee simple on condition is ownership that is also subject to an express condition, the breach of which shall subject the ownership to termination. The termination is not automatic, but it does require the new owner to exercise the power of termination.

6. What is the concept of waste, and how is it applicable to a life estate?

**Answer:** Waste is the failure to exercise ordinary care and prudence for the preservation or protection of a property, which results in permanent injury to the value of the property. The importance of waste in a life estate is that if the life estate owner commits waste, the life estate will terminate, even though the person who is the measuring life is still alive.

7. Name the various ways a person can become an owner of real property.

**Answer:** (a) inheritance, (b) devise, (c) gift, (d) contract and sale, (e) adverse possession

8. What is the difference between inheritance and receiving property by devise?

**Answer:** A person inherits property when the previous property owner dies without a will and the person is the closest in kinship to the deceased. A person receives property by devise when the previous property owner dies and has a will that provides that the person is to receive the property at death of the previous owner.

9. What are the elements of adverse possession?

**Answer:** Rules on adverse possession vary from state to state. Typically, the possessor must possess the property for a period of time ranging from 7 to 20 years. Possession must be adverse, which means without the consent or permission of the true owner. The possession must be public, continuous, peaceful, exclusive, and uninterrupted.

10. Why would anyone want to create a life estate?

**Answer:** A life estate is a means of providing ownership of property for a person's life and the ability to transfer the ownership to another person upon the life tenant's death. One common example of where life estates have been used is where one spouse transfers in a last will and testament a family home or other property to the surviving spouse for life, with the property then to be transferred upon the death of the surviving spouse to the children. This method of transfer will guarantee that the children will receive the property upon the death of both parents but will also provide for the surviving parent's use of the property during his or her lifetime.

## ANSWERS TO CASE PROBLEMS

The case problems for this chapter have different degrees of difficulty. Case problems 2, 3, and 4 are easier than 1, 5, and 6.

- Answer:** Question 1 is about adverse possession and the concept of “tacking” of adverse possession. Adam’s acts of taking possession of the lot, enclosing the lot, mowing the grass, etc., could be actions sufficient to make Adam an adverse possessor capable of obtaining title to the property. When Adam sells the lot to Bob, Bob as a purchaser is entitled to “tack” (add on to) Adam’s 8-year period of adverse possession. Bob’s possession of the lot for 5 years, when added or tacked on to Adam’s 8-year possession, is enough to satisfy the state’s 10-year requirement. We do not know the extent of Bob’s possession, but assuming it is similar to Adam’s, Bob could be the owner of the lot and not a trespasser.
- Answer:** The property would go to Carol’s heirs upon Bob’s death. Carol has received from Aaron a vested remainder in fee simple. The vested remainder in fee simple does not require that Carol survive Bob.
- Answer:** Carol does not have an interest in the property, but is the measuring life by which Bob’s life estate is determined. If Bob dies before Carol, Bob’s heirs or the devisee of the property under Bob’s last will and testament will be the owner of the property until Carol’s death. This is an example of a life estate that has a limited right of inheritance.
- Answer:** Upon Carol’s death, Bill’s life estate will terminate and the property will be vested in David.
- Answer:** The answer to this question involves the law of fixtures in the state where the property is located. Generally, if an item is declared to be a fixture, it will pass in a contract for sale with the real property. If an item is personal property, however, the item will not pass with the real property unless the contract specifically provides. The main issues that a court will use in making a determination as to whether an item is a fixture or not are (a) the actual annexation to the realty or to something appurtenant thereto, (b) the appropriateness to the use or purpose of that part of the realty to which it is connected, and (c) the intention of the party making the annexation or making permanent attachments to the property. Generally, the more permanent the attachment, the more likely it is that the court will determine that the item is a fixture. In addition, an item which appears to be custom-designed for the real property to which it is attached will lead a court to rule that it is a fixture. Although there are various possible correct answers to Question 5 as to which items are fixtures and which are not, it would appear that the hot tub and the built-in home entertainment center would be fixtures. The chandelier may or may not be a fixture.

6. **Answer:** Question 6 involves a property owner's responsibility for the flow of surface water. The general rule is that a property owner cannot interfere with the natural flow of surface water. Since the natural flow of surface water is from higher elevations to lower elevations, Dennis's construction of the dam interferes with the natural flow. Susan can recover damages from Dennis for the flooding of her property caused by the dam.