**Property**

1. **Freehold Estates**
   1. **Present Estates**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Estate** | **Language** | **Duration** | **Transferability** | **Future Interest** |
| Fee Simple Absolute | "To A and his heirs"  "To A" | Absolute ownership, potentially infinite duration | Alienable Descendible Devisable | None |
| Fee Simple Determinable | "To A so long as" "To A until..."  "To A while..." | Potentially infinite, so long as event doesn't occur. If it does, forfeiture automatic | Alienable Descendible Devisable  (all subject to condition) | Possibility of Reverter (held by grantor only)  FSDPOR |
| Fee Simple Subject to Condition Subsequent | "To A, but if event X happens, grantor reserves the right to reenter and retake"  [Grantor must carve out right to reenter] | Potentially infinite, so long as the condition is not breached, and thereafter, until the holder of the right of entry timely exercises power of termination. Not automatic. | Alienable Descendible Devisable  (all subject to condition) | Right of Entry/Power of Termination (held by grantor only) |
| Fee Simple Subject to Executory Limitation | "To A, but if X event occurs, then to B" | Potentially infinite, so long as stated contingency doesn't occur. If it does, estate goes to 3rd party, not grantor | Alienable Descendible Devisable  (all subject to condition) | Executory Interest (held by third party only) |
| Life Estate | "To A for life"  "To A for the life of B"  *Not* “To A for 100 years” | Measured by life of transferee or by some other life (pur autre vie) | Alienable, Descendible  Devisable  (all if measuring life is still alive) | Reversion (if held by grantor); Remainder (if held by third party) |

* + 1. Heirs: a living person has no heirs; only has prospective heirs.
    2. Fee Tail: abolished; attempted creation of a fee tail creates a fee simple absolute.
    3. **Defeasible Fees Require Clear Durational Language**: Words of mere desire, hope, or intention are insufficiently limiting, and instead create fee simple absolute. Insufficiently clear: “To A for purposes of constructing a day care center”; “To A in hopes he becomes a lawyer.”
    4. **Absolute Restraints on Alienability**: void if not linked to any reasonable time or purpose. Instead, FSA results. E.g., “To A so long as she never attempts to sell.”
    5. **Life Estate**
       1. **Waste Doctrine**: Life tenant is entitled to all ordinary uses and profits from the land. However, the life tenant must not commit waste. Three types of waste:
          1. **Voluntary/Affirmative Waste**: overt conduct that decreases value.

Natural Resources: Life tenant must not consume or exploit natural resources on the property, unless (i) prior to grant, land was used for exploitation; thus, one may continue to mine, but limited only to mines already open, (ii) reasonable repairs: life tenant may consume them for reasonable repair and maintenance of the premises; (iii) if granted the right to do so, or (iv) land is suitable only to exploit, not for any other purpose.

* + - * 1. **Permissive Waste / Neglect**: land falls into disrepair. Life tenant must *maintain* premises in reasonably good repair.

Taxes: life tenant is obligated to pay ordinary taxes on land to extent of his profits, or if no profits, to the extent of the fair rental value of land.

* + - * 1. **Ameliorative Waste**: life tenant must not engage in acts that will enhance property value unless all future interest holders are known and consent to it.
  1. **Future Interests** in Estates
     1. **For Grantor**
        1. Possibility of Reverter: accompanies FSD.
        2. Right of Entry / Power of Termination: accompanies FSSCS
        3. Reversion: grantor’s future interest when grantor transfers estate of lesser quantum then she started with, other than FSD or FSSCS.
     2. **For Transferee**
        1. **Remainders**: follows expiration of estate that *must* end (life estate, term of years) and was created in same conveyance of the expiring estate. Never follows possession by grantor.
           1. **Vested Remainder**: both created in an *ascertained* person and not subject to any condition *precedent*.

**Indefeasibly Vested Remainder**: holder is certain to acquire an estate in the future with no conditions, precedent or subsequent.

**Vested Remainder Subject to Complete Defeasance**: no condition precedent for remainderman, but his right to possession can be cut short because of a condition subsequent. How to Tell? Read from left to right, set off by commas. E.g., O conveys “To A for life, remainder to B, provided however, that if B dies under age 25, to C.” B has vested remainder subject to complete defeasance.

**Vested Remainder Subject to Open**: a remainder is vested in a group of takers, at least one of whom is qualified to take possession (if no one was qualified, it would be contingent, not vested). Each class member’s share is subject to partial diminution because additional takers, not yet ascertained, can still qualify as class members. E.g. “To A for life, then to B’s children.” B has two children.

**Class Closing**: Class is closed when its maximum membership has been set so that persons born thereafter are shut out. According to the rule of convenience, the class closes whenever any member can demand possession, even if subject to diminution. This usually occurs at expiration of prior estate. E.g. O conveys to “A for life, then to B’s children.” A is alive and B has two children, C and D. Class closes when A dies. However, child of B in the womb at A’s death will share.

* + - * 1. **Contingent Remainder**: created in an unascertained person or subject to condition precedent. E.g., “To A for life, then to B’s first child.” Once ascertained or precedent is met, transforms into indefeasibly vested remainder.

Rule of Destructibility (historical): contingent remainder would be destroyed if still contingent at the time the preceding estate ended. Goes to grantor and heirs in fee simple absolute.

Rule in Shelley’s Case (historical): if the *same* instrument creates a life estate in A and gives the remainder only to A’s heirs, remainder is invalid, and A takes in FSA. E.g. X conveys “to A for life, then to A’s heirs.” Rule of law, regardless of intent of parties.

**Doctrine of Worthier Title** (rule against remainders in *grantor’s* heirs): a remainder in grantor’s heirs is invalid and becomes a reversion to grantor. E.g., A conveys to “B for life, then to A’s heirs.” This is a rule of construction, and does not apply if an intent to create a remainder in heirs has been clearly manifested, using term “heirs.” Applies only to inter vivos transfers.

* + - 1. **Executory Interest**: a future interest created in a transferee that isn’t a remainder and which takes effect by *cutting short* interest of another person (shifting) or the grantor and his heirs (springing)
         1. Shifting: always follows a defeasible fee, and cuts short someone other than the grantor. E.g. O conveys “To A and her heirs, but if B returns from Canada sometime next year, to B and his heirs.” B has shifting executory interest.
         2. Springing: E.g. O conveys “To A, if and when he marries.” A is unmarried. A has springing executory interest.
    1. **Rule Against Perpetuities**:certain future interests void if any possibility, however remote, that the given interest may vest more than 21 years after the death of a measuring life (life in being).
       1. **What Future Interest is in Question?**
          1. RAP Applicable To: Contingent Remainders, Executory Interests, and certain Vested Remainders Subject to Open.
          2. RAP Inapplicable To: Does apply to: Any Future Interest In Grantor, Indefeasibly Vested Remainders, and Vested Remainders Subject to Complete Defeasance.
       2. **Two Bright Line Rules of Common Law RAP**
          1. A gift to an open class that is conditioned on the members surviving to an age beyond 21 always violates the common law RAP.

**Bad as to One, Bad as to All**: To be valid, it must be shown that the condition precedent to every class member’s taking will occur within the perpetuities period. If it is possible that a disposition might vest too remotely with respect to any member of the class, the entire gift is invalid.

* + - * 1. Many shifting executory interests violate the RAP. An executory interest with no limit on the time within which it must vest violates the RAP.
      1. Charity-to-Charity Exception: RAP inapplicable.
      2. **Reform of RAP**
         1. Wait & See / Second Look Doctrine: the validity of any suspect future interest is determined on the basis of facts as they end up existing at the conclusion of the measuring life, not at possible scenarios before the measuring life is over.
         2. Uniform Statutory Rule Against Perpetuities (USRAP): provides for an alternative 90-year vesting period.

Both Wait and See and USRAP embrace *cy pres doctrine*: when reformulating invalid provision, try as best to carry out donor’s intent.

1. **Concurrent Estates**: Joint, Entirety, Common
   1. **Joint Tenancy**: two or more own with right of survivorship
      1. **Right of Survivorship**: share passes automatically to the surviving joint tenant.
      2. **Transferability**: Alienable, but *not* Devisable or Descendible.
      3. **Creation**: common law requires
         1. Four Unities: joint tenants must take their interests
            1. At the same time
            2. By the same title (in same instrument)
            3. With identical, equal interests, and
            4. With identical rights to possess the whole
         2. Grantor must clearly express/state the right of survivorship.
         3. Straw: if I own Blackacre, and want to hold it in joint tenancy with B, I convey to straw, who conveys it back to B and I as joint tenants with right of survivorship.
      4. **Severance of Joint Tenancy**: any of SPaM
         1. **Sale**: joint tenant can sell or transfer interest, *even without other tenant’s knowledge or consent*. Buyer becomes tenant in common with remaining joint tenants. Remaining joint tenants still have a joint tenancy among them. Under equitable conversion, mere entry into sale contract counts as sale.
         2. **Partition**
            1. Voluntary Agreement
            2. Partition in Kind: court physically divides real property if in the best interests of all.
            3. Forced Sale: court sale of real property if in the best interests of all, proceeds divided up among tenants.
         3. **\*Mortgage**
            1. Majority: one joint tenant’s execution of a mortgage or lien on his share will *not* sever the joint tenancy
            2. Minority: one joint tenant’s execution of a mortgage or lien on his or her share will sever the joint tenancy as to that now encumbered share
   2. **Tenancy by the Entirety**:a highly protected marital interest between married partners with the right of survivorship
      1. **Creation**: presumed in any conveyance to married partners, unless clearly stated otherwise.
      2. **Limits on Creditors**: Creditors of only one spouse cannot touch the tenancy.
      3. **No Unilateral Conveyance**: neither tenant, acting alone, can defeat the right of survivorship by unilateral conveyance to a 3rd party.
   3. **Tenancy in Common**:two or more own with *no* right of survivorship
      1. Each co-tenant owns an individual part (need not be equal) and each *has a right to possess the whole*.
      2. **Transferability**: unlimited. Devisable, Descendible, Alienable.
      3. Default tenancy unless proven otherwise.
   4. **Rights & Duties of Co-Tenants**
      1. Possession: each co-tenant is entitled to use and enjoy the whole of the property. If a co-tenant excludes another from any part, he has committed *ouster*.
      2. Rent from Co-tenant in Exclusive Possession: absent ouster, a co-tenant in exclusive possession is not liable to the others for rent.
      3. Profits: no need to share profits (unless rent from third-party)
      4. Rent From Third Parties: a co-tenant who leases all or part of the premises to a third party must account to the others and provide them their fair share of rental income.
      5. Adverse Possession: absent ouster, co-tenant cannot acquire title by adverse possession because hostility is absent.
      6. Carrying Costs: each co-tenant is responsible for his or her undivided share.
      7. Repairs: repairing co-tenant has right to contribution for reasonable, necessary repairs, provided she has told the others of the need.
      8. Improvements: during life of co-tenancy, no right to contribution for improvements. At partition, improving co-tenant is entitled to a credit/debit equal to increase/decrease in value.
      9. Waste: co-tenant must not commit *unilateral* waste of any sort (even improvement). Co-tenant can bring a waste action during life of co-tenancy.
      10. Partition: joint tenants and tenants in common have rights to bring an action for partition.
2. **Landlord-Tenant Law**
   1. **Four Leasehold Estates**
      1. **Tenancy for Years**: fixed period of time (e.g. 1 day or 50 years)
         1. No notice required to terminate, as term of years states date at the outset.
         2. > 1 year must be in writing (Statute of Frauds)
      2. **Periodic Tenancy**: continues for successive intervals until L or T give proper notice of termination. E.g. L conveys to T for month to month or year to year.
         1. **May Arise by Implication**: in any of the following ways: (i) no duration but rent at set intervals; (ii) oral term of years in violation of the Statute of Frauds creates an implied periodic tenancy measured by the way rent is paid; or (iii) Holdover: in a residential lease, if L elects to holdover a T who has wrongfully stayed on past end of the original lease, an implied periodic tenancy arises measured by the way rent is currently tendered.
         2. **Termination**: notice, usually written, must be given. At common law, at least equal to the length of the period itself, unless otherwise agreed. However, if tenancy is year to year or greater, notice must be 6 months unless otherwise agreed. The periodic tenancy must end at the conclusion of a natural lease period.
      3. **Tenancy at Will**: tenancy for no fixed duration (“as long as T desires”)
         1. Must be Express: otherwise, payment of regular rent will result in treatment as an implied periodic tenancy.
         2. Termination: traditionally, by either party at any time; however, a reasonable demand to vacate is now usually required.
      4. **Tenancy at Sufferance**: created when T has wrongfully heldover past the expiration of the lease. Lasts only until eviction or L elects to hold T to a new tenancy.
   2. **Independence of Duties/Covenants**: generally, covenants contained in the lease are independent of one another, such that breach of one does not excuse performance of any other. Non-breaching party must sue for damages, and cannot withhold performance or rent. Exceptions: eviction, implied covenant of quiet enjoyment, implied warranty of habitability. In some states, failure to pay rent is additional exception.
   3. **Tenant’s Duties**
      1. **Liability to 3rd Parties**: matter of tort law. Tenant is responsible for keeping premises in reasonably good repair, and is liable for injury sustained by third parties tenant invited, *even where landlord promised to make all repairs*.
      2. **Tenant’s Duty to Repair**
         1. **Lease is Silent**: must maintain premises and make ordinary repairs. No waste.
            1. **Fixtures** (linked to waste). A fixture is a once moveable chattel that by virtue of its attachment to the property objectively shows the intent to permanently improve the realty, e.g. heating systems, custom storm windows. Removal of a fixture is voluntary waste, even if tenant installed it. Fixtures pass with ownership of the land. How to know if given tenant installation is a fixture: express agreement as to the issue; in absence of agreement, removal of a self-installed chattel is permitted so long as it doesn’t cause substantial harm to the premises. If it will cause substantial damage, then in objective judgment tenant has shown the intent to install a fixture, and the fixture must stay.
         2. **Tenant Expressly Agreed to Maintain**: historically, tenant liable for *any* loss. Today, majority view is that tenant not liable for loss due to things that aren’t tenant’s fault, unless the tenant has expressly agreed to do so.
      3. **Tenant’s Duty to Pay Rent**: where breached:
         1. **Tenant Still in Possession**: landlord can only evict through the courts or continue the relationship and sue for rent due. If landlord moves to evict, she is still entitled to rent from tenant (who is tenant at sufferance) until tenant vacates. *No* self-help (e.g. changing locks or forcibly removing tenant).
         2. **Tenant Not in Possession**: landlord can
            1. Treat as Surrender: treat abandonment as tacit offer of surrender. If unexpired term is greater than one year, treatment as surrender must be in writing.
            2. Ignore abandonment and hold tenant responsible for unpaid rent as if tenant was still there. Only available in minority of states.
            3. Re-Let premises on tenant’s behalf, and hold tenant liable for deficiencies. Majority rule is that landlord must at least try to mitigate.
         3. **Note**: other than expressly provided (e.g., implied covenant and warranty), tenant cannot withhold rent for a breach of a covenant contained in the lease. Must sue.
   4. **Landlord’s Duties**
      1. **Duty to Deliver Possession**:Majority (English) Rule: landlord must put tenant in physical possession of premises. Minority (American) Rule: landlord need not put tenant in physical possession, but only must provide legal possession.
      2. **Implied Covenant of Quiet Enjoyment**: applies to residential and commercial: tenant has right to use and enjoyment of the premises without interference from L.
         1. How Breached:
            1. Actual Wrongful Eviction
            2. Constructive Eviction: (1) *substantial interference* (a chronic problem due to landlords actions or failure to act), (2) notice to landlord, and (3) tenant vacates within reasonable time after failure to correct problem.
         2. Landlord Liability to Tenant for Acts of Other Tenants: generally no, but L must not permit a nuisance on the premises, and L must control common areas.
      3. **Implied Warranty of Habitability**: *non-waivable* right to *residential* premises fit for human dwelling.
         1. Standard may be supplied or illuminated by housing code or caselaw.
         2. Tenant’s *Alternative* Entitlements Upon Breach
            1. Move out and end lease
            2. Repair and deduct from rent
            3. Reduce or withhold rent (into escrow) until court determines fair rental value.
            4. Remain in possession, pay rent, and seek money damages.
      4. Retaliatory Eviction prohibited (including raising rent, harassing).
   5. **Assignments & Subleases**
      1. **Generally**: absent of prohibition in lease, tenant may freely transfer his remaining interest in whole (assignment), or in part (sublease). In lease, landlord can prohibit assignment or sublet without landlord’s written consent, or completely, regardless of whether reasonable. However, once landlord consents to one transfer by tenant, landlord waives right to object to future transfers by that tenant unless he reserves the right expressly.
      2. **Privity Resulting from Transfer**
         1. Sublease: L and sublessee share no nexus. T2 is responsible to T1.
         2. Assignment: L and T2 are in privity of estate, but not privity of contract, unless T2 expressly assumed contract; thus, they are liable to each other for covenants of the original lease that run with the land. L and T1 are no longer in privity of estate, but are still in privity of contract, and are thus secondarily liable to each other.
      3. **Covenants Running With Land**: payment of rent and money, durational terms (e.g., renewal), to do or not do something on the land.
   6. **Landlord’s Tort Liability**
      1. Common Law: in tort, L was under no duty to make the premises safe for tenant.
      2. Exceptions (CLAPS): Common areas (L must maintain), Latent defects rule (L must *warn* T of hidden defects of which L has knowledge or reason to know), Assumption of repairs (L voluntarily makes repairs negligently, he is liable), Public use rule (if L leases public space such as convention hall and should know because of the nature of the defect and the length of the lease that T will not repair, is going to be liable for any defects on the premises), Short term lease of furnished dwelling (L is responsible for any defect which proximately harms T).
3. **Servitudes**: Non-Possessory Interests in Real Property: Easement, Covenant, Eq. Servitude
   1. **Easements**: grant of a nonpossessory property interest that entitles its holder to some form of use or enjoyment of another’s land, called the servient tenement.
      1. Either
         1. **Affirmative**: right to do something on servient land (e.g. lay power lines)
         2. **\*Negative**: entitles holder to prevent servient land-owner from doing something, limited to Light, Air, Support, and Streamwater from artificial flow. *Must* be created expressly by *writing signed by grantor*.
      2. Either
         1. **Appurtenant to Land**: it benefits its holder in physical use or enjoyment of his property. Two parcels of land must be involved: a dominant tenement (derives the benefit) and a servient tenement. The easement is appurtenant only to the dominant land.
         2. **Held in Gross**: confers upon its holder only some personal or pecuniary advantage that is not related to his use or enjoyment of his own land. There is servient land, but no benefited dominant tenement. Only requires one land. Common examples: right to place a billboard on another’s lot.
      3. **\*Transferability**
         1. Appurtenant Easement: passes automatically with any conveyance of the dominant land. The burden of the easement on the servient land will pass automatically with the servient estate, unless the new owner is a bona fide purchaser without notice
         2. Easement in Gross: not transferable, unless it is for commercial purposes.
      4. **\*Creation of Affirmative Easement**: PING: Prescription, Implication, Necessity, or Grant.
         1. **Grant**: an easement to endure for more than 1 year must be in a writing that comports with formal elements of deed, called a deed of easement.
         2. **Implication**: implied if the previous use was apparent, and the parties expected that the use would continue because it is reasonably necessary to the dominant land’s use and enjoyment.
         3. **Necessity**: an easement of right of way will be implied by necessity if grantor conveys a portion of his land with no way for grantee to get to the land except over a portion of grantor’s remaining land.
         4. **Prescription**: an easement may be acquired by satisfying adverse possession: continuous use for the statutory period, open and notorious, actual and exclusive use, and hostile use.
      5. Scope of Easement: set by terms of grant or conditions that created it.
      6. **\*Termination of Easement**: END CRAMP
         1. **Estoppel**: servient owner materially changes his or her position in reasonable reliance on the easement holder’s assurances that the easement will not be enforced.
         2. **Necessity ends**: easements created by necessity expire as soon as necessity ends, however, if it was created by express grant, even if necessary, it will not end automatically once necessity ends.
         3. **Destruction** of the servient land other than through willful conduct of the servient owner will end the easement.
         4. **Condemnation** of the servient estate through eminent domain ends the easement.
         5. **Release**: a written release given by easement holder to servient owner.
         6. **Abandonment**: easement holder must demonstrate by *physical action* the intent to never use the easement again. Mere non-use, or words, isn’t enough.
         7. **Merger** (unity of ownership): easement is extinguished when title to easement and title to servient land become vested in the same person.
         8. **Prescription**: the servient owner may extinguish the easement by interfering with it in accordance with the elements of adverse possession.
   2. **License**: a mere privilege to enter another’s land for some delineated purpose.Not subject to statute of frauds, need not be in writing. Freely revocable at will of licensor unless estoppel applies to bar revocation—where there is substantial investment of money or labor or both in reasonable reliance on the license’s continuation. E.g., theatre tickets, neighbors talking by fence giving what purports to be an oral easement.
   3. **The Profit**: entitles its holder to enter servient land and take soil or some substance of the soil. Profit shares all the rules of easements.
   4. **Covenant**: a promise to do (affirmative) or not do (restrictive) something related to land (which is either benefitted or burdened by the covenant). It is not the grant of a property interest, but a contractual limitation. Sprang from the need to have negative easements beyond narrow situations in which they can be had.
      1. **How to Distinguish Covenant & Equitable Servitude**: see *remedy*. If money, it is covenant (contract). If injunctive, equitable servitude.
      2. **When Covenant Runs With Land**: when capable of binding *both* successors. Must find that both the burden *and* the benefit run.
         1. **Burden Runs** where
            1. Writing: original promise in writing
            2. Intent that covenant should run
            3. Touch & Concern: promise affects parties’ legal relations as landowners
            4. Horizontal *Estate* Privity among original parties (grantor-grantee, landlord-tenant, mortgagor-mortgagee). Hard to establish.
            5. Vertical Privity between original and subsequent burdened party, such as contract, devise, but not adverse possession
            6. Notice to potentially burdened party
         2. **Benefit Runs** where
            1. Writing
            2. Intent
            3. Touch & Concern
            4. Vertical Privity
   5. **Equitable Servitude**: promise that *equity* will enforce against successors, accompanied by injunctive relief.
      1. **When Successors Bound**:
         1. Writing: original promise in writing
         2. Intent: parties intended promise would bind successors
         3. Touch & Concern
         4. Notice: successors of the *burdened* land had notice of the promise.

*No privity* of any kind is required. Equitable servitude more flexible than covenant.

* + 1. Implied (Negative) Equitable Servitude (general or common scheme doctrine): where a subdivider sells vast majority of lots with a certain restrictive covenant, but sells to D without the restrictive covenant, court will find an implied negative equitable servitude imposing the restrictive covenant on D where (i) when sales began, subdivider had a general scheme of residential development which included D’s lot, and (ii) D had notice of the promise contained in the *prior* deeds.
       1. **Notice**: AIR: three forms of notice: Actual, Inquiry (neighborhood conforms to common restriction), & Record (but courts split on sufficiency, better view is no).
    2. **Defense to Enforcement of Equitable Servitude**: **Changed Conditions**: if there have been *pervasive* changes to the entire area or subdivision, these changed circumstances release a lot-holder from the restrictions of the equitable servitude. Mere limited or piecemeal change is insufficient.

1. **Adverse Possession**
   1. **Elements**: for possession to ripen into title it must be (COAH)
      1. **Continuous**: uninterrupted for given statutory period.
      2. **Open & Notorious**: sort of possession that usual owner would make under the circumstances.
      3. **Actual & Exclusive Use**: the entry cannot be symbolic, you must actually enter onto the property. Leasing it to another counts.
      4. **Hostile**: the possessor doesn’t have the owner’s consent.

Possessor’s subjective state of mind or actual knowledge is *irrelevant*. Even if possessor thought he was merely borrowing land, and had no intent to get title, it can happen.

* 1. Tacking: so long as there is privity – any non-hostile nexus (e.g. blood, contract, deed, or will). Tacking is not allowed where there has been ouster. Ouster defeats privity.
  2. Disabilities: SOL will not run against a true owner who is afflicted by a disability at the *inception* of the adverse possession (if he becomes disabled after inception, it doesn’t toll the statute). Common disabilities include insanity, infancy, and imprisonment.

1. **Land Conveyancing: Purchase & Sale of Real Estate**: two-step process: 1) the land contract, which endures until step two; 2) the closing, where the deed becomes operative document.
   1. **Land Contract**
      1. **Statute of Frauds Requirements**: Must be in writing, signed by the party to be bound. Must describe the land and state some consideration.
         1. **Exception to Writing: Doctrine of Part Performance**: if any *two* of the following three circumstances, equity will intervene and force specific performance even though contract was oral: buyer
            1. takes physical possession of land
            2. pays all or part of the purchase price
            3. makes substantial improvements to the land
      2. When amount of land recited in land contract is more than the actual size of the parcel, remedy is specific performance with pro-rata reduction in purchase price.
      3. **Problem of Risk of Loss Until Closing**: **Equitable Conversion**: In equity, once the contract is signed, B is owner of the land, subject to the condition that he pay purchase price at closing. Thus, if between contract and closing land is destroyed through no fault of either party, buyer bears risk of loss unless contract says otherwise
      4. **Two Implied Promises in Every Land Contract**: provided by seller
         1. **To Provide Marketable Title**: free from reasonable doubt—lawsuits and the threat of lawsuits. Three circumstances render title unmarketable:
            1. Adverse Possession: if *any* portion of the title resting on adverse possession. All of the title must be record title.
            2. Encumbrances: marketable title means unencumbered fee simple. Thus, servitudes and mortgages render title unmarketable unless buyer has waived them. Seller can always satisfy outstanding mortgages or liens up to point of closing, such as using the proceeds of the sale.
            3. Zoning Violations
         2. **No False Statements of Material Fact**: Majority of states also hold sellers liable for failing to disclose latent material defects (omissions). If the contract contains a general disclaimer of liability (e.g. sold “as is”), it still *does not* excuse seller from liability from fraud or failure to disclose.
      5. Land contract *doesn’t* contain any implied warranties of fitness or habitability (contrast to landlord/tenant). There is, however, an implied warranty of fitness and workmanlike construction where the sale of a new home is by a builder-vendor.
   2. **Closing**
      1. **Deed**: now controlling document is deed, and passes legal title to buyer by being (1) lawfully executed and (2) delivered.
      2. **Lawful Execution**: must be in writing, signed by the grantor, generally (but not perfectly) describing the land (e.g., “all of O’s land”), but need not recite consideration, nor must consideration pass.
      3. **\*Delivery**: can be satisfied when grantor physically or manually transfers the deed to the grantee, and may use mail or messenger. *However, delivery does not necessarily require actual physical transfer of the instrument itself*; delivery is legally a question of *grantor’s intent*. If the grantor had the present intent to be immediately bound, there is delivery, even if the deed wasn’t literally handed over. If the recipient expressly rejects the deed, defeats delivery. If a deed, absolute on its face, is transferred to a grantee with an oral condition, the oral condition drops out and delivery is valid. Delivery by escrow is ok (escrow holds until certain conditions are met, when title transfers automatically to grantee).
      4. **Types of Deed (Covenants of Title)**
         1. **Quitclaim**: contains no covenants, not even that grantor has good title. Grantor, though, does implicitly promise in the land contract to provide marketable title at closing. However, with quitclaim, grantor is not liable for post-closing problems.
         2. **\*General Warranty**: warrants against all defects in title, *including those attributable to grantor’s predecessors*. Typically contains all 6 covenants, whereby grantor promises:
            1. **Present Covenants**: breached, if ever, only at time deed is delivered.

Seisin: owns estate he now purports to convey.

Right to Convey: has power to make the transfer.

Against Encumbrances: no servitudes, liens, or mortgages on the land.

* + - * 1. **Future Covenants**: breached, if ever, when grantee is disturbed in possession.

Quiet Enjoyment: grantee won’t be disturbed in possession by a third party’s lawful claim of title.

Warranty: to defend grantee against any lawful claims of title brought by others

Further Assurances: to do whatever future act is necessary to perfect grantee’s title if it later turns out to be imperfect (even pay the liens).

* + - 1. **Statutory Special Warranty**: provided for by statute in many states, this deed contains two promises that grantor makes only on behalf of *himself* (not on behalf of predecessors in interest): (1) hasn’t conveyed the estate to anyone other than grantee, and (2) estate free from encumbrances made by the grantor only.

1. **Recording System**
   1. Model: O conveys Blackacre to A. Later, O conveys Blackacre to B.
   2. The Two Brightline Rules
      1. If B is bona fide purchaser in Notice Jurisdiction, B wins.
      2. If B is bona fide purchaser in Race-Notice Jurisdiction, B wins if she records properly before A does. If no one records, A wins.
   3. **Bona Fide Purchaser**: one who purchases for value without notice
      1. **Value**: substantial pecuniary consideration, even if very much under value of the property. *Recording statutes don’t protect donees, heirs or devisees, unless the shelter rule applies.*
      2. **Forms of Notice**
         1. Actual: prior to B’s closing B, gets literal knowledge of A’s existence.
         2. Inquiry: whether he looks or not, B is on notice of whatever an inspection of the land would reveal or a reasonable investigation.
         3. Record: whether grantee checks or not, B is on record notice of A’s deed if at the time B takes, A’s deed was *properly* recorded.
   4. The Recording Statutes
      1. **Notice Statute**: “A conveyance of an interest in land shall not be valid against any subsequent purchaser for value, without notice thereof, unless the conveyance is (properly) recorded.” Thus, if at the time B takes, he is a BFP, he wins if A hadn’t recorded by that time, even if A thereafter records before B does. However, B should record, so a new BFP doesn’t come along. Last BFP to enter wins.
      2. **Race Notice Statute**: “Any conveyance of an interest in land shall not be valid against any subsequent purchaser for value, without notice thereof, whose conveyance is first (properly) recorded.” Thus, to prevail, B must be a BFP and also win the race to record. If A records first, A wins. If no one records, A wins until someone records.
   5. **Chain of Title Problems**
      1. **Shelter Rule**: one who takes from BFP prevails against any entity that the transferor BFP would have prevailed against, *even if the taker had notice or gave no value*.
      2. Wild Deed
         1. Problem: O sells Blackacre to A, who doesn’t record. Then A, sells to B. B records the A-to-B deed. Note: the A-to-B deed, although recorded, is not connected to the chain of title, because it contains a missing link, the O-to-A link. The A-to-B deed hasn’t been recorded properly and is a “wild deed.”
         2. Rule: If a deed, entered on the records, has a grantor unconnected to the chain of title, the deed is a wild deed, and is incapable of giving record notice.
         3. Application: If O, initial grantor and double dealer, later sells Blackacre to C who records and has no notice, who prevails in contest of B vs. C? C wins.
      3. Estoppel by Deed: one who conveys realty in which he has no interest is estopped from denying the validity of that conveyance if he later acquires the interest that he had previously transferred. Note: grantee of this fraudulent conveyance only wins against the fraudulent grantor, not against anyone else, as his recording is improper.
2. **Mortgages**
   1. **General Definition**: the conveyance of a security interest in land, intended by the parties to be collateral to secure the debt.
   2. **\*Legal Mortgage**: The note is the promise to pay back the loan and agreement to give security interest, and the mortgage is the actual security interest. Must be in writing to satisfy statute of frauds.
   3. **\*Equitable Mortgage**: instead of executing a legal instrument, O hands creditor a deed to Blackacre that is absolute on its face. As between O and creditor, parol evidence is freely admissible to show the parties true intent, which must be to enter into mortgage. What if creditor proceeds to sell Blackacre to BFP? BFP owns the land. O’s only recourse is to proceed against creditor for fraud and recover proceeds of the sale.
   4. **Parties’ Rights During Mortgage**: unless and until foreclosure, debtor-mortgagor has title and right to possession. Creditor-mortgagee has a lien – the right look to the land in the event of default.
   5. **Transferability**: each party can transfer note, and, if properly transferred, mortgage automatically follows the note.
      1. **\*Creditor-Mortgagee Transferring Interest** 
         1. Done by either (1) indorsing the note and delivering it to transferee or (2) executing a separate document of assignment. If done by (1), the transferee is eligible to become a “holder in due course:” he obtains the note free of any personal defenses the debtor-mortgager could have raised against the original creditor. These personal defenses include lack of consideration, fraud in the inducement, unconscionability, waiver, and estoppel. Thus, the holder of the mortgage may foreclose it despite the presence of such defenses. However, the holder in due course is still subject to the following real defenses (MADFIFI4): material alteration, duress, fraud in the factum (lying about what instrument a person is signing), incapacity, illegality, infancy, and insolvency.
         2. To be a holder in due course, the following must be met: (i) note must be negotiable (able to be made payable to a different person), (ii) the original note must be indorsed—signed by the original creditor-mortgagee, (iii) the *original* note must be delivered to transferee; (iv) the transferee must take the note in good faith without any notice of illegality, and (v) the transferee must pay value for the note—some amount that is more than nominal.
      2. **Debtor-Mortgager Selling the Land**
         1. Recording statutes protect mortgagees. If land has a mortgage on it, and is sold, mortgage will remain with land if it was properly recorded. All recording statutes apply to both deeds and mortgages. Any buyer is on record notice of mortgage.
         2. Personal Liability for Debt: if the land is sold, who is personally liable on the debt secure by the interest in the land? If the buyer has “assumed” the mortgage, both the buyer and the original owner are personally liable, the *buyer* being primarily liable and the original owner secondarily liable. If the buyer has taken the land “subject” to the mortgage, buyer assumes no personal liability on the debt, but, if the mortgage has been properly recorded it passes with the land, and buyer risks foreclosure if original owner doesn’t pay back debt.
   6. **Foreclosure**: when debt is not satisfied, foreclosure is process of satisfying debt.
      1. **Must Foreclose by Judicial Proceeding**. Land is sold, and proceeds go to satisfying debt. If deficit, mortgagee brings action for deficiency judgment. If surplus, any leftover after junior liens (paid in order of priority) goes to debtor.
      2. **Effect of Foreclosure on Various Interests**
         1. Terminates Property Interest of Junior Liens: to the extent of mortgage value.Junior lienholders may seek deficiency judgment, but cannot look to property for recourse. Junior lienholders and mortgagor are necessary parties to foreclosure action, and if improperly excluded, their claims to land are preserved. Also, if senior holder failed to give notice to juniors, juniors could have recovered in foreclosure sale, and senior got it all, juniors can go after senior for money judgment.
         2. Does Not Affect Senior Interests: The buyer at foreclosure sale takes the property *subject to those interests*. While not personally liable for the debt, the buyer could face foreclosure of the land by senior interest holder. Thus, foreclosure sale buyer has strong incentive to pay off senior debts.
      3. **Priorities**
         1. *To get any priority, creditor must properly record*, or else no priority. Once properly recorded, priority is determined by the norm of first in time, first in right.
         2. Purchase Money Mortgage: creditor who lent money to purchase property takes priority over all others, even those who recorded first in time.
   7. **Redemption**: from foreclosure
      1. Redemption in Equity: at any time *prior* *to the foreclosure sale*, debtor has a right to redeem, freeing the land of the mortgage. Right is exercised by paying off delinquency + interest and costs. If the note contains an acceleration clause, must pay full balance + interest and costs. Note: cannot waive right to redeem in the mortgage, but can at time of breach.
      2. Statutory Redemption: available in some states: statutory right to redeem for some fixed period *after* the foreclosure sale has occurred. Amount paid is foreclosure sale price, not the amount of the original debt. Debtor will often even have a right to possess property during statutory period. Redemption nullifies the foreclosure sale.
3. **Lateral Support**: if land is improved by buildings and an adjacent landowner’s excavation causes that improved land to cave in, the excavator will be liable only if he acted negligently. Strict liability does not attach to the excavator’s actions unless plaintiff proves that the improvements could not have caused the caving in.
4. **Water Rights**
   1. Streams, Rivers, and Lakes: two systems for determining allocation
      1. Riparian: water belongs to those who own the land bordering the watercourse. Riparians share the right of reasonable use of the water. One riparian will be liable to others if his use unreasonably interferes with others’ use.
      2. Prior Appropriation: water belongs initially to the state, but the right to use it can be acquired by an individual regardless of whether he happens to be a riparian owner. Rights are determined by priority of beneficial use. The norm for allocation is first in time, first in right. Thus, a person can acquire right to divert and use water from a watercourse merely by being first to do so, for any beneficial use, even agriculture.
   2. Groundwater: water beneath surface of the earth. Surface owner is entitled to make reasonable use of groundwater, but the use must not be wasteful.
   3. Surface Waters (those which come from rain, springs, or melting snow, and which have not yet reached a natural watercourse or basin): Common Enemy Rule: because surface water is considered a bad thing, a landowner may change drainage or make any changes on his land to combat the flow of surface water. Many courts modify it to prohibit unnecessary harm to others’ land.
5. **Possessor’s Rights**: possessor of land has right to be free of trespass and nuisance
   1. Trespass: the invasion of land by tangible, physical object. To remove a trespasser, you bring an action for ejectment.
   2. Nuisance: the substantial and unreasonable interference with another’s use and enjoyment of land. Unlike trespass, nuisance doesn’t require tangible, physical invasion. Thus, odors and noise may give rise to a nuisance, not trespass. Hypersensitive plaintiffs lose.
6. **Zoning**: pursuant to police powers, gov’t may enact statutes to reasonably control land use.
   1. Variance: exception from zoning ordinance: proponent must show 1) undue hardship and 2) that the variance won’t cause detriment to neighboring property values.
   2. Nonconforming Use: a once lawful, existing use now deemed non-conforming because of a new zoning ordinance cannot be eliminated all at once unless just compensation is paid. Otherwise, it could be deemed an unconstitutional taking.
   3. Unconstitutional Exactions:Exactions are those amenities government seeks in exchange for granting permission to build. E.g. if we give you permission to build, you must put up street-lights. To pass constitutional muster, the exactions must be reasonably related both in nature and scope to the impact of the proposed development.

When down to the wire, study: Concurrent Estates, Landlord Tenant, Servitudes, Land Conveyance