

Table of Contents

| | Page |
|---|-----------|
| PREFACE..... | V |
| CHAPTER 1. PERSONAL PROPERTY: RIGHTS OF SOME POSSESSORS | 1 |
| § 1.1 Introductory Principles..... | 1 |
| § 1.2 Wild Animals and the Rule of Capture..... | 2 |
| § 1.3 Finders..... | 2 |
| § 1.4 Human Embryos | 4 |
| Note: Scarce Resources and the Rule of Capture..... | 6 |
| CHAPTER 2. BAILMENTS | 23 |
| § 2.1 Definition of Bailment | 23 |
| § 2.2 Distinguishing Bailment from Other Legal Relationships | 24 |
| § 2.3 Classification of Bailments and Standard of Care..... | 25 |
| § 2.4 Liability for Failure to Return Goods | 26 |
| § 2.5 Rights of Bailees Against Third Parties | 26 |
| § 2.6 Rights of Bailors Against Bona Fide Purchasers..... | 26 |
| CHAPTER 3. GIFTS, INCLUDING BANK ACCOUNTS | 41 |
| § 3.1 Introductory Principles..... | 41 |
| § 3.2 Intent to Make a Gift | 42 |
| § 3.3 Delivery and Acceptance | 42 |
| § 3.4 Conditional Gifts | 43 |
| § 3.5 Anatomical Gifts | 43 |
| § 3.6 Joint Bank Accounts | 44 |
| § 3.7 Tentative Trust Accounts and POD Accounts..... | 45 |
| CHAPTER 4. RIGHTS OF POSSESSORS OF LAND, INCLUDING ADVERSE POSSESSION..... | 67 |
| § 4.1 Possession and Prior Possession | 67 |
| § 4.2 The Concept of Adverse Possession | 68 |
| § 4.3 The Five Elements of Adverse Possession..... | 69 |
| § 4.4 Burden of Proof | 71 |
| § 4.5 Nature of Title Acquired by Adverse Possession | 72 |
| § 4.6 When Statute of Limitation Begins to Run..... | 73 |
| § 4.7 Tacking | 73 |
| § 4.8 Effect of Disabilities | 74 |
| § 4.9 Constructive Adverse Possession..... | 74 |
| § 4.10 Rightful Possession Becoming an Adverse Possession | 75 |
| § 4.11 Whose Interests Are Affected | 75 |
| § 4.12 Innocent Improver Doctrine/Mistaken Improvers | 76 |
| § 4.13 Adverse Possession of Chattels | 76 |

| | |
|--|----------------|
| CHAPTER 5. CLASSIFYING POSSESSORY ESTATES | 107 |
| § 5.1 Introduction to the Classification of Possessory Estates and Future Interests | 107 |
| a. Fragmentation of Ownership | 107 |
| b. Classification | 108 |
| c. Three Terms of Art: Quantum, Freehold, Particular Estate | 108 |
| d. Rules of Construction Generally | 109 |
| § 5.2 Fee Simple Absolute | 109 |
| § 5.3 Fee Simple Defeasible | 110 |
| § 5.4 Fee Simple Conditional and Fee Tail | 111 |
| § 5.5 Life Estates | 112 |
| § 5.6 Term of Years | 113 |
| § 5.7 Lesser Estates | 114 |
| CHAPTER 6. CLASSIFYING FUTURE INTERESTS | 151 |
| § 6.1 The Distinction Between Reversionary and Non- Reversionary Future Interests | 151 |
| § 6.2 Reversionary Interests Under the Traditional System of Classification | 152 |
| a. Reversions | 152 |
| b. Possibilities of Reverter | 154 |
| c. Rights of Entry | 155 |
| § 6.3 Reversionary Interests Under the Restatement Third of Property | 157 |
| § 6.4 Non-Reversionary Interests Under the Traditional System of Classification | 157 |
| a. Remainders | 158 |
| b. Executory Interests | 162 |
| § 6.5 Non-Reversionary Interests Under the Restatement Third of Property | 166 |
| § 6.6 Does Classification Matter? | 166 |
| § 6.7 Survivorship Contingencies | 168 |
| Note | 175 |
| CHAPTER 7. SPECIAL RULES GOVERNING FUTURE INTERESTS | 207 |
| § 7.1 Rule in Shelley's Case | 207 |
| § 7.2 Doctrine of Worthier Title | 210 |
| § 7.3 Common-Law Rule Against Perpetuities | 211 |
| § 7.4 Perpetuities Reform | 214 |
| § 7.5 Rule in Wild's Case | 215 |
| Note | 239 |
| CHAPTER 8. MARITAL AND CONCURRENT ESTATES | 245 |
| § 8.1 Marital Estates | 245 |
| a. Marital Estates at Common Law | 245 |
| b. Marital Estates Today | 246 |

| | | |
|---|--|------------|
| § 8.2 | Concurrent Estates | 246 |
| | a. Joint Tenancy | 246 |
| | b. Tenancy by the Entirety | 248 |
| | c. Tenancy in Common | 249 |
| CHAPTER 9. LANDLORD AND TENANT LAW | | 269 |
| § 9.1 | Types of Landlord-Tenant Estates..... | 269 |
| § 9.2 | The Duty to Deliver and Take Possession..... | 271 |
| § 9.3 | The Warranty of Fitness or Suitability for a Particular Purpose | 272 |
| § 9.4 | The Tenant's Duty to Repair and Maintain the Premises | 273 |
| § 9.5 | Illegality and Frustration of Purpose | 273 |
| § 9.6 | Eminent Domain..... | 274 |
| § 9.7 | The Covenant of Quiet Enjoyment..... | 274 |
| § 9.8 | The Implied Warranty of Habitability..... | 275 |
| § 9.9 | Abandonment by Tenant: Remedies of Landlord; Security Deposits | 279 |
| § 9.10 | Assignment and Sublet..... | 280 |
| § 9.11 | The Holdover Tenant | 282 |
| § 9.12 | Rent Control | 282 |
| | Note: Landlord's Strict Liability | 297 |
| | Introductory Note on Assignment and Sublet | 323 |
| | Note..... | 331 |
| | Note: Vacancy Control v. Vacancy Decontrol..... | 339 |
| CHAPTER 10. SERVITUDES: EASEMENTS, COVENANTS, EQUITABLE SERVITUDES | | 343 |
| § 10.1 | Easements and Licenses..... | 343 |
| | a. Easements and Profits Defined..... | 343 |
| | b. Creation and Extent..... | 347 |
| | c. Extinguishment..... | 349 |
| | d. Licenses..... | 353 |
| § 10.2 | Covenants Running with the Land..... | 356 |
| § 10.3 | Equitable Servitudes | 359 |
| § 10.4 | Public Policy Limitations on the Enforcement of Real Covenants and Equitable Servitudes | 363 |
| | Note: Fee Versus Easement Construction..... | 366 |
| | Note..... | 372 |
| | Note: The "Lost Grant" | 375 |
| | Note: Prescription and the General Public..... | 375 |
| | Note: Prescription and Negative Easements | 384 |
| | Note..... | 394 |
| | Note: The Easement by Necessity..... | 402 |
| | Note: Termination by Merger..... | 408 |
| | Note: Duration of Irrevocable License | 414 |
| | Note: Public Policy and the Touch and Concern Requirement | 418 |
| | Note: Broad and Narrow Views of Privity..... | 426 |

| | | |
|--|---|------------|
| | Note: Affirmative Covenants..... | 430 |
| | Note: Race Discrimination and Private Servitudes..... | 435 |
| | Note: The “General Scheme” and the Statute of Frauds..... | 442 |
| | Note: The Problem of Discretion in Enforcement..... | 443 |
| | Note: Termination of Servitudes..... | 446 |
| CHAPTER 11. NUISANCE | | 449 |
| § 11.1 | Nuisance..... | 449 |
| § 11.2 | Subjacent and Lateral Support..... | 454 |
| | Note..... | 461 |
| | Note: Access to Sunlight..... | 463 |
| | Note: Nuisance, Negligence and Utility: The Restatement (Second) Approach..... | 467 |
| | Note: Nuisance, Trespass and the Statute of Limitation..... | 473 |
| | Note: Falling Objects..... | 479 |
| CHAPTER 12. LEGISLATIVE CONTROL OVER LAND USE— ZONING, THE TAKINGS CLAUSE, AND HOUSING DISCRIMINATION | | 481 |
| § 12.1 | Planning and Zoning..... | 481 |
| § 12.2 | Inadvertent Takings..... | 487 |
| § 12.3 | Eminent Domain..... | 489 |
| | a. Public Use..... | 489 |
| | b. Just Compensation..... | 489 |
| § 12.4 | Discrimination in the Provision of Housing Services..... | 490 |
| | Note: Nonconforming Uses..... | 500 |
| | Note: Amortization..... | 501 |
| | Note: Fair Share and Federal Law..... | 506 |
| | Note: Exclusionary Versus Cumulative Zoning..... | 507 |
| | Note..... | 512 |
| | Note: Zoning and Free Expression..... | 519 |
| | Note: Negligent Takings..... | 532 |
| CHAPTER 13. COOPERATIVES, CONDOMINIUMS AND HOMEOWNERS ASSOCIATIONS | | 545 |
| § 13.1 | Cooperatives and Condominiums Generally..... | 545 |
| § 13.2 | Cooperatives..... | 546 |
| § 13.3 | Condominiums..... | 549 |
| | Note: Community Living..... | 564 |
| CHAPTER 14. SELLER AND BUYER: THE LAND SALE CONTRACT | | 569 |
| § 14.1 | Brokers’ Contracts..... | 569 |
| § 14.2 | Statute of Frauds..... | 571 |
| § 14.3 | Partial Performance..... | 572 |
| § 14.4 | Equitable Conversion and Risk of Loss..... | 573 |
| § 14.5 | Time of Performance..... | 575 |
| § 14.6 | Marketable Title..... | 575 |
| § 14.7 | Marketable Record Title Acts..... | 578 |

| | | |
|---|--|------------|
| § 14.8 | Remedies for Breach of the Land Sale Contract | 580 |
| § 14.9 | Liability for Defective Structures: Builder, Seller, Broker, Lender | 581 |
| | Note: Minimum Fees..... | 583 |
| | Note: Collateral Acts..... | 590 |
| | Note: The Liability Insurance Contract | 595 |
| | Note: Known Encumbrances | 597 |
| | Note: Rerecording and Other Limitation Statutes | 604 |
| CHAPTER 15. THE EVOLUTION OF THE MODERN DEED | | 611 |
| § 15.1 | Common Law Conveyances | 611 |
| § 15.2 | Conveyances Under the Statute of Uses of 1535 | 613 |
| | Note: Resulting Use | 615 |
| | Note..... | 616 |
| | Note: Historical Elements of Bargain and Sale Deed..... | 617 |
| § 15.3 | Conveyances Under Modern Statutes | 619 |
| | Note: The Statute of Uses and the Statute of Frauds | 620 |
| CHAPTER 16. CONVEYANCING BY DEED | | 625 |
| § 16.1 | The Written Deed..... | 625 |
| § 16.2 | Description and Boundaries | 625 |
| § 16.3 | Exceptions and Reservations | 629 |
| § 16.4 | Delivery, Escrow and Acceptance | 629 |
| | Note: The Federal Survey..... | 634 |
| | Note..... | 642 |
| | Note..... | 645 |
| | Note: Delivery and the Language of the Deed | 651 |
| | Note: Conditional Escrows | 661 |
| CHAPTER 17. ASSURANCE OF TITLE..... | | 667 |
| § 17.1 | Deed Covenants for Title | 667 |
| § 17.2 | Estoppel by Deed..... | 671 |
| § 17.3 | Priorities and Recording | 673 |
| | a. Common Law Priorities | 673 |
| | b. The Recording Acts | 674 |
| | 1. Types of Acts | 674 |
| | 2. Constructive Notice | 675 |
| | 3. Purchaser and Subsequent Purchaser..... | 676 |
| | 4. Recorder's Errors | 677 |
| | 5. "Duly Recorded"..... | 677 |
| | 6. Void Instruments..... | 678 |
| | 7. Adverse Possession..... | 678 |
| | 8. Chain of Title Problems | 678 |
| | 9. Persons Protected; the Bona Fide Purchaser | 679 |
| | 10. Hazards Not Covered by the Recording Acts..... | 680 |
| | 11. Indices | 681 |
| | Note | 681 |
| § 17.4 | Title Insurance | 681 |

| | | |
|--------|--|-----|
| § 17.5 | Marketable Title Acts | 682 |
| | Note: Covenants and Visible Encumbrances | 686 |
| | Note..... | 689 |
| | Note: The “Mother Hubbard” Grant | 699 |
| | Note 1..... | 706 |
| | Note 2..... | 706 |
| | Note: Marketability Insurance..... | 720 |
| | TABLE OF CASES..... | 721 |
| | INDEX | 741 |