

OUTLINE

INTRODUCTION	V
TABLE OF CASES	XLV

PART 1. INTERESTS IN LAND

Chapter 1. Possession and Ownership	3
I. Possession of Unowned and Owned	
Personal Property	3
A. Unowned Personal Property	3
1. Possessor's Rights	4
2. Rival Possessors.....	4
3. What Constitutes Possession	4
B. Owned Goods.....	6
1. Types of Possessors.....	7
2. Duty to Return	8
3. Duty of Care	8
4. Exculpatory and Limitation of Liability Clauses	9
5. Possessors' Rights Against Others	9
6. Landowner's Claims	12
a. Finder's Status	12
b. Premises' Status.....	12
c. Status of Land-Based Claim	13
d. Where Goods Are Found.....	13
e. How Goods Got There	13
7. Modern Status.....	14
II. Gifts	14
A. Inter Vivos Gift	15
1. Intent.....	15

a.	Effect of Conditions on the Transfer	15
b.	Circumstances Surrounding Gift	16
c.	Effect of Donor's Retention of Rights.....	17
2.	Delivery	18
a.	Types of Delivery	18
(1)	Actual Delivery.....	18
(2)	Constructive and Symbolic Delivery	19
b.	Delivery to Third Parties.....	20
3.	Acceptance.....	21
B.	Gift Causa Mortis	22
1.	Intent, Delivery, and Acceptance....	22
2.	Donor Anticipates Imminent Death	22
3.	Death as Anticipated	23
4.	Donor Does Not Recover	23
5.	Absence of Revocation by Donor	23
6.	Donee Survives Donor	23
7.	Condition Precedent or Subsequent	24
III.	Possession of Land Apart from Ownership	24
A.	Consequences of Possession Unconnected to Ownership	25
1.	Possessor's Liabilities— Ejectment	25
2.	Possessor's Rights	26
3.	Possession That Is Rightful and Wrongful.....	26
B.	Duration of Possession.....	27

C. Adverse Possession	28
1. Duration and Adverse Possession ...	28
a. How Long Possession Must Continue	28
b. Tacking	28
2. Acts of Possession Required—Standards	30
a. When Both Parties Pay Taxes.....	31
b. Boundary Disputes	31
3. Possession's Required Qualities	32
a. Open.....	32
b. Notorious	32
c. Actual Possession.....	34
(1) Constructive Possession and Color of Title.....	34
(2) Constructive Possession and Prior Possession	35
(3) Limits on Constructive Possession.....	35
(4) Conflicting Constructive Possessions	36
d. Continuous and Uninterrupted	37
e. Exclusive.....	40
f. Hostile.....	40
(1) Objective Standard	41
(2) Subjective Standard.....	41
(a) Mentality of Thievery	41
(b) Mentality of Mistake	41
(3) Permissive Possession	42

OUTLINE

(a) Ouster	42
(b) What Constitutes Ouster	43
(4) Other Cases of Permissive Possession	43
g. Claim of Right	44
h. Color of Title.....	44
(1) Requirement of Adverse Possession	44
(2) Required Acts	45
(3) Time Period	45
(4) Hostility	45
4. External Factors That Prolong Statute of Limitations	45
a. Disabilities.....	45
b. Future Interests	46
c. Effect of Adverse Possession on Nonpossessory Interests.....	48
5. Consequences of Having Been an Adverse Possessor	49
Chapter 2. Common Law Estates.....	51
I. Present (Possessory) Estates in Land	51
A. Kinds of Estates	51
1. Fee Simple.....	51
2. Fee Tail.....	51
3. Life Estate	52
4. Estate for Years (Also Known as Tenancy for a Term)	52
5. Periodic Estate (Also Known as Tenancy from Period to Period)	52
6. Tenancy at Will and Tenancy at Sufferance.....	52

B.	Freehold v. Nonfreehold Estates— Seisin	53
C.	Necessary Language to Create Estates	53
1.	Fee Simple—“To Bob and His Heirs”.....	53
2.	Fee Tail—“To Bob and the Heirs of His Body”.....	54
a.	Special Forms of Fee Tail	54
b.	Fee Simple Conditional	55
c.	Disentailing Conveyances— Common Recovery and Fine.....	55
3.	Life Estate—“To Bob for His Life”	56
a.	Legal Life Estate.....	56
(1)	Fee Tail Special with Possibility of Issue Extinct	57
(2)	Marital Estates	57
b.	Life Estate Pur Autre Vie— “To Bob for the Life of Cathy”	57
4.	Estate for Years—“To Bob for Ten Years”	58
5.	Periodic Estate—“To Bob from Month to Month” or “To Bob for \$10 per Month”	58
D.	Quality of Estates—Absolute or Unqualified.....	58
1.	Determinable Estate (Also Called Estate Subject to Special Limitation)	59

2.	Estate Subject to Condition Subsequent	60
3.	Estate Subject to Executory Limitation.....	61
II.	Future (Nonpossessory) Interests.....	62
A.	Future Interests Retained by Grantor	63
1.	Possibility of Reverter	63
2.	Power of Termination (Also Known as Right of Re-Entry).....	64
3.	Reversion.....	64
B.	Future Interests Created in a Grantee	65
1.	Remainder v. Executory Interest.....	66
a.	Capable of Becoming Immediately Possessory	66
b.	Cannot Divest Prior Interest....	67
2.	Types of Remainders	68
a.	Indefeasibly Vested Remainder	68
b.	Vested Remainder Subject to Open (Also Known as Vested Remainder Subject to Partial Divestiture)	69
c.	Vested Remainder Subject to Condition Subsequent (Also Known as Vested Remainder Subject to Total Divestiture)	69
d.	Contingent Remainder (Also Known as Remainder Subject to Condition Precedent)	70
3.	Types of Executory Interests	72
C.	Transferability of Interests	72

OUTLINE

XIII

1. Inter Vivos.....	72
2. Will.....	73
3. Intestate Succession	73
III. Special Rules Concerning Future Interests	73
A. Rule in Shelley's Case.....	73
1. Grantee's Interest Must Be a Freehold Estate.....	75
2. Grantee's Heirs Must Have a Remainder	75
3. Interests of Grantee and of Grantee's Heirs Must Have Been Conveyed in the Same Instrument	76
4. Remainder Must Use Words of Indefinite Succession	76
5. Grantee's and Grantee's Heirs' Interests Both Must Be Legal or Both Must Be Equitable	77
6. Real Property	77
B. Doctrine of Worthier Title	77
1. Grantee's Interest Must Be a Freehold.....	78
2. Grantor's Heirs Can Have a Remainder or an Executory Interest	78
3. Grantee's and Grantor's Heirs' Interests Must Be in Same Instrument	78
4. Grantor's Heirs' Interest Must Use Words of Indefinite Succession	78
5. The Doctrine Applies to Real and Personal Property	79

C.	Doctrine of Destructibility of Contingent Remainders.....	79
1.	Contingent Remainder Unable to Vest.....	79
2.	Merger	80
D.	Rule Against Perpetuities	81
1.	The Rule	81
2.	Measuring the Time Period.....	82
3.	Rule's Applicability to Different Interests	82
a.	Contingent Remainders.....	82
b.	Executory Interests.....	83
c.	Vested Remainders Generally Are Not Subject to the Rule.....	84
d.	Reversions	84
e.	Powers of Termination and Possibilities of Reverter.....	85
f.	Other Interests.....	85
4.	Consequences of Violating Rule.....	85
5.	Modern Revisions to Rule	86
a.	Wait-and-See	86
b.	Cy Pres.....	86
IV.	Waste	87
A.	Parties.....	87
B.	Policy.....	87
C.	Types.....	88
1.	Active Waste	88
2.	Passive Waste	88
3.	Ameliorating Waste	89
D.	Remedies.....	89
V.	Restraints on Alienation	90
A.	Disabling Restraints	90
B.	Forfeiture Restraints	90

	<i>OUTLINE</i>	XV
VI.	C. Promissory Restraints	91
	Marital Estates	91
	A. Wife's Estate—Dower	91
	1. Conditions for Dower	91
	a. Freehold Estate.....	91
	b. Inheritability	93
	2. Extent of Dower	93
	a. Before Husband's Death	93
	b. After Husband's Death	94
	B. Husband's Estate	94
	1. On Marriage but Before the Birth of Issue— <i>Jure Uxoris</i>	94
	2. On Birth of Live Issue—Curtesy Initiate	94
	3. After the Wife's Death—Curtesy Consummate	95
	C. Modern Statutory Forced Share	95
	D. Community Property	95
	1. Management and Control	99
	2. Severance	99
	3. Death Transfers	100
	4. Liabilities	100
VII.	Rules Regulating Early Common Law Estates	101
	A. Legal Interests in Land	101
	1. Seisin Can Never Be in Abeyance	101
	2. Seisin Passes from the Grantor Only by Livery.....	101
	3. No Springing Interests (No Freehold to Commence in Future).....	102
	a. Remainder Cannot Spring.....	102

b.	Remainder Must Be Created in Same Document as Estate Supporting It	103
c.	No Contingent Remainder After Term of Years	104
4.	No Shifting Interests—No Condition in a Stranger	105
B.	Equitable Interests in Land—Uses	106
1.	Equitable Conveyances	106
a.	Conveyance for Use.....	106
b.	Covenant to Stand Seised.....	106
c.	Bargain and Sale Deed	107
d.	Resulting Use	107
2.	Uses Compared to Common Law Estates	107
3.	New Equitable Estates (Executory Interests)	108
a.	Springing Use.....	108
b.	Shifting Use.....	109
4.	Indestructibility of Executory Interests	110
5.	Statute of Uses (1536)	111
a.	Executory Interests.....	112
b.	Contingent Remainders.....	113
c.	Remainder or Executory Interest?.....	114
6.	Unexecuted Uses	115
a.	Active Trust.....	115
b.	Use on a Use.....	115
c.	Uses and Seisin	116
Chapter 3. Concurrent Ownership.....		119
I.	Forms of Concurrent Ownership	119

A.	Characteristics of the Various Types of Concurrent Ownership	120
1.	Unity of Time	120
2.	Unity of Title.....	121
3.	Unity of Interest	122
4.	Unity of Possession	122
5.	Unity of Person	123
B.	Preference for One Estate Over Another	123
II.	Consequences of Different Types of Ownership	124
A.	Survivorship	124
B.	Severance.....	126
1.	Severance of Joint Tenancy.....	126
2.	Severance of Tenancy by the Entirety	127
C.	Partition.....	128
1.	Partition in Kind.....	128
2.	Partition by Sale	128
III.	Possession, Profits, and Expenditures	129
A.	Rents	129
1.	Rents from Possessing Cotenant ..	129
2.	Rents and Profits from Third Parties	130
B.	Expenditures	130
1.	Payment of Purchase Price	130
2.	Necessary Payments.....	131
3.	Improvements	132
4.	Repairs.....	133
IV.	Condominiums, Time Sharing, and Cooperatives.....	133
A.	Condominiums	133
B.	Time Sharing Arrangements.....	135

C.	Cooperatives	136
Chapter 4. Landlord and Tenant		137
I.	Types and Creation of Tenancies.....	137
A.	Tenancy for a Term	138
B.	Periodic Tenancy	138
1.	Implied Periodic Tenancies	139
2.	Length of the Period	139
C.	Tenancy at Will	140
D.	Tenancy at Sufferance	141
II.	Tenant's Possessory Interest	142
A.	Tenant's Remedies for Disturbance of Possession	142
1.	Remedies Against Strangers.....	142
2.	Remedies for Landlord's Interferences	142
3.	Eviction by Paramount Title.....	143
B.	Remedies When New Tenant Is Prevented from Taking Possession	144
1.	When Landlord Is at Fault.....	144
2.	When Third Party Is at Fault	145
a.	English Rule	145
b.	American Rule.....	145
C.	Rights Incidental to Possession	146
D.	Liabilities as a Possessor.....	146
III.	Rent	146
A.	Payment.....	147
B.	Rent Control	147
1.	Premises and Persons Covered.....	148
2.	Rates	148
3.	Ancillary Restrictions	149
IV.	Problems Arising from Disrepair of the Premises	149
A.	Parties' Basic Duties.....	149

*OUTLINE**XIX*

1. Duties Owed to Third Persons	151
2. Modern Changes in Basic Duties	151
3. Duties Regarding Common Areas.....	152
B. Altering the Basic Duties by Covenant.....	152
1. Enlarging Scope of Tenant's Duties by Covenant to Repair	152
2. Diminishing Scope of Tenant's Duties by Landlord's Covenant to Repair	153
C. Right to Recover Cost of Repairs	153
1. No Right to Recover When No Duty to Repair Exists	153
2. Tenant's Right to Recover When Landlord Has Duty to Repair	154
a. Duty Arising from Building Code	154
b. Duty Arising from Habitability Law	154
c. Duty Arising from Covenant.....	155
d. Duty Arising in Common Areas	155
3. Landlord's Right to Recover When Tenant Has Duty to Repair	155
a. Recovery When Building Code Applies to Tenant	156
b. Recovery Under Modern Statutes	156
c. Effect of Insurance	156
D. Right to Terminate Tenancy	157

1.	Landlord's Right to Terminate	157
a.	No Right to Terminate if Tenant Has No Duty.....	158
b.	Right to Terminate After Destruction	158
2.	Tenant's Right to Terminate.....	158
a.	When Building Code Applies to Landlord	160
b.	When Special Statutory Duty Applies to Landlord	160
c.	Failure to Repair Common Areas.....	161
d.	Failure to Honor Covenant to Repair—Constructive Eviction.....	161
E.	Right to Rent Reduction (Abatement)	163
1.	Landlord's Covenant to Repair	163
2.	Repair-and-Deduct.....	163
3.	Implied Warranty of Habitability	163
4.	Retaliatory Eviction.....	166
F.	Tort Liability for Disrepairs	167
1.	Early Common Law	167
a.	Landlord's Liability	167
(1)	Scope of Landlord's Duty	167
(a)	Latent Defect	167
(b)	Unreasonable Risk of Harm to Persons Outside the Premises.....	168

(c) Premises Leased for Public Admission.....	168
(d) Common Areas	168
(e) Landlord Covenanted to Make Repairs.....	169
(f) Landlord's Negligent Repairs....	169
(2) Privity of Contract Requirement.....	170
(3) Recovery Amount	170
b. Tenant's Liability	170
2. Modern Law	171
a. Scope of Duty and Privity.....	171
(1) Known Physical Defect ...	171
(2) Providing Security	171
(3) High Crime Area	172
b. Recovery Amount	172
c. Exculpatory Clauses	172
V. Transfer of Tenancy.....	174
A. Distinction Between Assigning and Subleasing	174
B. Assignment's Effect	176
1. Effect on Tenant	176
2. Effect on Assignee.....	176
3. Effect on Landlord	178
4. Effect of Second Assignment.....	178
C. Sublease's Effect	180
D. Restrictions on Tenant's Right to Transfer	181
1. Landlord's Right to Be Unreasonable	181

VI.	Termination of Tenancies.....	183
A.	Termination According to Type of Tenancy	183
1.	Tenancy for a Term.....	183
2.	Periodic Tenancy.....	183
3.	Tenancy at Will.....	184
4.	Tenancy at Sufferance	184
B.	Other Ways of Terminating a Tenancy	185
1.	Destruction of Premises	185
2.	Tenant's Breach—Doctrine of Independent Covenants.....	185
3.	Landlord's Breach—Covenant of Quiet Enjoyment.....	186
a.	Mortgages and Leases	187
b.	Constructive Eviction	188
4.	By Agreement—Surrender.....	189
5.	Eminent Domain.....	189
C.	Landlord's Remedies for Continued Possession After Lease Termination —Holdover Tenants	191
1.	Double or Treble Damages	191
2.	Increased Rent	191
3.	Eviction and Damages.....	191
4.	Self-Help.....	192
5.	Renewal of Tenancy for Additional Term	192
a.	Consequence of Tenant for a Term Becoming a Periodic Tenant.....	193
b.	Increased Rent	194

D.	Consequences of Tenant's Attempt to Surrender Estate Before End of Term	
	—Abandonment and Surrender	194
1.	Failure to Pay Rent	194
2.	Failure to Retain Possession and to Pay Rent.....	195
	a. Duty to Mitigate.....	196
	b. Surrender by Operation of Law	196
3.	Tenant's Failure to Pay Rent or to Perform Other Lease Covenants ...	197
4.	Reletting for Tenant's Account	198
5.	Difference Value Damages.....	199
Chapter 5. Easements, Profits, and Licenses.....		201
I.	Nature of Easements	201
A.	Easements Distinguished from Possessory Interests	201
B.	Easements Distinguished from Other Nonpossessory Interests	202
	1. Profits	202
	2. Natural Rights in Land	203
	3. Licenses	203
II.	Types of Easements and Profits	204
A.	Appurtenant v. In Gross.....	204
	1. No Dominant Tenement When Easement Is in Gross.....	205
	2. Profit.....	205
B.	Affirmative, Negative, or Spurious	206
III.	Creation of Easements, Profits, and Licenses	207
A.	By Express Words—Grant and Reservation.....	207

1.	Formalities and Failure to Comply with Them—Licenses	208
2.	Formal Creation of License	209
3.	Other Revocable Rights to Use	209
B.	By Implication	210
1.	Easement by Necessity	210
a.	Common Ownership	211
b.	Need Created by Subdivision	211
(1)	Implied Grant and Implied Reservation.....	212
(2)	Implied from Plat	213
c.	Necessity.....	214
2.	Quasi-Easement.....	214
a.	Prior Use.....	215
(1)	Apparent	215
(2)	Continuous.....	216
b.	Reasonable Necessity	217
C.	By Prescription.....	218
1.	Prescriptive Use v. Prescriptive Possession.....	220
2.	Elements of Prescription	220
a.	Adverse and Hostile.....	220
b.	Payment of Taxes.....	221
c.	Exclusive.....	221
d.	Uninterrupted	221
3.	Prescriptive Easement as Appurtenant or in Gross	223
IV.	Transfer of Easements	224
A.	Transfer of Easement's Burden	224
B.	Transfer of Easement's Benefit.....	224
1.	Transfer of in Gross Easement's Benefit	225

2.	Transfer of Appurtenant Easement's Benefit	225
3.	Transferability Affected by Creating Language	226
V.	Subdivision of Easements and Profits.....	227
A.	Subdivision of Burden	227
B.	Subdivision of Benefit.....	227
1.	Easements	227
a.	Subdivision of in Gross Easement's Benefit	228
b.	Subdivision of Appurtenant Easement's Benefit	228
2.	Profits	229
VI.	Scope of Use	230
A.	Uses by Dominant Tenant.....	230
1.	Standards for Determining Whether Use Can Change.....	231
a.	When Explicit Language Exists	231
b.	When Explicit Language Does Not Exist.....	231
c.	Prescriptive Easement.....	233
2.	Changes Caused by Development of Dominant Estate.....	233
B.	Uses by Servient Tenant	235
1.	Nature of Dominant Tenant's Rights	235
2.	Nature of Servient Tenant's Rights	235
VII.	Termination of Easements and Profits	236
A.	Termination by Language in the Grant.....	236
B.	Merger	237

C.	Release and Abandonment	238
1.	By Words Alone.....	239
2.	By Nonuse Alone.....	239
3.	By Words and Nonuse	239
4.	By Words and Inconsistent Acts	239
5.	By Inconsistent Acts Alone	240
6.	By Words of Dominant Tenant and Acts of Servient Tenant— Estoppel.....	240
D.	Adverse Use.....	241
E.	Invalidity	242
F.	Sale of Servient Estate to Bona Fide Purchaser.....	242
G.	Termination of Necessity for Implied Easement	243
H.	Forfeiture by Misuse.....	243
VIII.	Termination of Licenses	243
A.	Irrevocable License	243
B.	License Coupled with an Interest	244

**Chapter 6. Real Covenants and Equitable
Servitudes.....** 247

I.	Real Covenants Compared to Other Interests That Bind Future Owners.....	248
A.	Easements	248
B.	Defeasible Estates.....	249
C.	Contract Assignment and Assumption.....	250
II.	Requirements for Covenant to Run with the Land	251
A.	Covenant Must Be an Enforceable Promise	251
B.	Parties Must Have Intended That the Covenant Run	252

C.	Promise Must Touch and Concern	
	Land	252
	1. Burden v. Benefit.....	253
	a. Requirements for Burden to Run.....	254
	b. Requirements for Benefit to Run.....	255
	2. Covenants to Pay Money	256
D.	Privity of Estate	256
	1. Mutual Privity	256
	2. Horizontal Privity	257
	3. Vertical Privity.....	258
	a. Burdened Land	259
	b. Benefited Land.....	260
III.	Equitable Servitudes	260
A.	Policy Underlying Equitable Servitudes.....	260
B.	Rules Concerning Equitable Servitudes.....	262
	1. Applicability of Rules for Covenants Running at Law.....	262
	a. Privity	262
	b. Touch and Concern	262
	2. Special Equitable Requirements ..	264
	a. Notice	264
	b. Negative Promises Only	264
IV.	Enforcement of Neighborhood Restrictions	264
A.	Enforcement by Later Grantees Against Earlier Grantees—Running of Benefit	265

B.	Enforcement by Earlier Grantees Against Later Grantees—Alternative Theories	265
1.	Enforcement of Common Owner's Covenant to Prior Grantee— Running of Burden	266
2.	Enforcement of Subsequent Grantee's Covenant to Common Owner—Third Party Beneficiary	267
3.	Enforcement of Restriction When Prior Grantee Covenanted with Common Owner—Implied Reciprocal Servitudes	268
C.	Significance of Common Plan.....	269
1.	To Provide Notice.....	269
2.	To Apply Third Party Beneficiary Theory.....	269
3.	To Imply Reciprocal Servitudes	270
4.	To Burden Benefited Lots	270
D.	Enforcement by Homeowners' Association.....	271
E.	Effect of Omission in Later Deeds	272
V.	Termination of Restrictions	273
A.	Termination by Covenanting Parties' Acts	273
1.	Restricted Duration	273
2.	Release.....	273
3.	Merger	274
4.	Abandonment.....	274
5.	Prescription	274
6.	Estoppel.....	274
7.	Laches.....	275

OUTLINE

XXIX

8.	Unclean Hands.....	275
9.	Acquiescence	275
B.	Termination Resulting from External Actions	275
1.	Changed Conditions	275
2.	Government Acquisition.....	276
C.	Legal Invalidity.....	277

PART 2. CONVEYANCING

Chapter 7. Real Estate Brokers.....	281	
I.	Broker's Role	281
A.	Broker's Economic Function.....	281
B.	Who May Act as a Broker.....	281
C.	Brokers' Services.....	282
D.	Brokers' Other Legal Obligations	283
1.	Discrimination	283
2.	Practicing Law	283
3.	Antitrust.....	284
II.	Listing Agreements and Commissions	284
A.	Types of Listing Agreements.....	284
1.	Open (Nonexclusive) Listing	284
2.	Exclusive Listing	285
B.	Earning a Commission	285
1.	Sale Closing as Condition Precedent.....	285
2.	Lesser and Contingent Offers	286
III.	Broker Liability.....	287
A.	Contract	287
B.	Licensing Standards	287
C.	Negligence and Fraud.....	288
D.	Agency.....	288

Chapter 8. Contract of Sale	291
I. Contract Formation—Statute of Frauds	291
II. Marketable Title (Merchantable Title).....	293
A. What Is Marketable Title?	293
1. Vendor's Title	294
2. Title Free from Encumbrances	295
a. Easements	295
b. Covenants and Servitudes.....	296
c. Leases	296
d. Money Obligations	296
3. Title Free from Doubt.....	296
4. Circumstances Not Affecting Marketability	297
B. Effects of Unmarketable Title	298
1. Seller's Right to Cure Defects	298
2. Seller's Right to Specific Performance with Abatement	299
3. Buyer's Right to Terminate.....	299
4. Buyer's Right to Damages.....	300
5. Buyer's Right to Specific Performance	300
C. Waiver of Right to Marketable Title.....	300
1. Complete Waiver of Marketable Title.....	300
2. Waiver of Particular Defect.....	301
3. Alternative Title Standards— Insurable and Good	301
a. Insurable Title.....	302
b. Good Title	302
4. Waiver by Acceptance of Deed— Merger	303

III.	Equitable Conversion	303
A.	Seller's or Buyer's Death	304
B.	Actions for Property Damage	304
C.	Risk of Loss for Injuries Caused Without Fault.....	305
1.	Majority Rule—Risk on Buyer.....	305
2.	Minority Rule—Risk on Seller.....	305
3.	Uniform Vendor and Purchaser Risk Act	306
4.	Contrary Agreements	306
D.	Creditors.....	307
IV.	Disclosure Duties	307
A.	Disclosure	307
B.	Implied Warranty of Habitability	308
1.	Plaintiffs	308
2.	Defendants	308
3.	Disclaimers.....	309
4.	Damages	309
5.	Statute of Limitations	309
V.	Performance	310
VI.	Nonperformance.....	311
A.	By Seller	311
B.	By Buyer	311
Chapter 9. Transfer of Title by Deed		313
I.	Deeds	313
A.	Quitclaim Deed (Deed Without Warranties)	313
B.	Limited Warranty Deed (Bargain and Sale Deed, Grant Deed, or Special Warranty Deed).....	314
C.	General Warranty Deed	314
II.	Execution of Deeds.....	314
A.	Signature	314

B.	Consideration	315
C.	Essential Terms	315
	1. Parties	315
	2. Property Description (Legal Description)	316
	a. Federal Survey System (Government Survey or Rectangular System)	316
	b. Plat Maps	317
	c. Metes and Bounds.....	318
	d. Inconsistent Descriptions	318
	e. Boundaries with Width	319
	f. Water Boundaries	319
	3. Words of Conveyance.....	320
	4. Description of the Estate.....	320
D.	Acknowledgment.....	320
E.	Recording.....	321
III.	Delivery of Deeds	321
	A. What Is Delivery?.....	321
	B. Intent That Deed Be Presently Operative	323
	1. Effect of Future Events When No Intent Exists to Make Deed Presently Operative	324
	2. When Future Event Is Grantor's Death	325
	C. No Conditional Delivery to Grantee ..	326
	D. Delivery to Someone Other than Grantee	326
	1. Grantee's Agent	326
	2. Grantor's Agent.....	327
	3. Escrow	328

a.	Contingency Certain to Occur.....	329
b.	Underlying Contract.....	330
c.	Relation Back	331
E.	Effect of Delivery and Nondelivery	333
1.	Delivery	333
2.	Nondelivery	333
IV.	Title Covenants in Deeds	334
A.	Types of Deeds.....	334
1.	General Warranty Deed	334
2.	Limited Warranty Deed (Bargain and Sale Deed, Grant Deed, or Special Warranty Deed)	334
3.	Quitclaim Deed (Deed Without Warranties)	335
B.	Six Common Law Title Covenants	335
1.	Covenant of Seisin	335
2.	Covenant of Right to Convey.....	336
3.	Covenant Against Encumbrances.....	336
4 & 5.	Covenants of Warranty and Quiet Enjoyment	337
6.	Covenant of Further Assurances ...	337
C.	Estoppel by Deed (After-Acquired Title).....	337
D.	Breach of Title Covenant.....	338
1.	What Constitutes Breach	338
a.	Covenant of Seisin	338
b.	Covenant of Right to Convey	338
c.	Covenant Against Encumbrances	339

d.	Covenants of Warranty and Quiet Enjoyment	339
e.	Covenant of Further Assurances.....	339
2.	When Covenant Is Breached.....	339
a.	Present Covenants	340
b.	Future Covenants	340
E.	Subsequent Grantee's Enforcement of Covenants (Running with the Land)	340
1.	Covenants of Seisin and Right to Convey	341
2.	Covenant Against Encumbrances.....	342
3.	Covenants of Warranty, Quiet Enjoyment, and Further Assurances	342
F.	Measure of Damages.....	344
1.	Covenants of Seisin and Right to Convey	345
2.	Covenant Against Encumbrances.....	345
3.	Covenants of Warranty and Quiet Enjoyment	346
4.	Covenant of Further Assurances ...	346
Chapter 10. Priorities: The Recording System		347
I.	Common Law Priorities.....	347
II.	The Recording System—Recording Statutes	350
A.	Notice Acts.....	350
B.	Race Acts	352

C.	Race-Notice Acts (Notice-Race Acts)	354
D.	Grace Period Acts.....	355
III.	Mechanics of Recording and Searching Title.....	356
A.	Recording a Document.....	356
1.	Filing	356
2.	Recording.....	357
3.	Indexing.....	357
4.	Returning Document	359
B.	Searching Title in Name Indexes.....	359
1.	Locating Present Owner in Grantee Index	359
2.	Locating Prior Owners in Grantee Index.....	359
a.	Stopping Short of Original Source	360
b.	Dealing with Gaps	360
3.	Searching for Encumbrances and Other Interests in Grantor Index.....	360
4.	Following Subsequent History of Encumbrances.....	361
C.	Searching Title in Tract Index	361
IV.	Record Notice—Constructive Notice	362
A.	Documents That Cannot Be Located.....	363
1.	Misindexed Documents	363
2.	Wild Documents (Missing Links).....	364
B.	Documents That Are Difficult to Locate.....	365
1.	Late Recorded Document	365

2.	Early Recorded Document— Estopel by Deed	366
3.	Deed Affecting More than One Lot.....	367
C.	Documents That Can Be Located but Do Not Give Notice	368
1.	Defective Documents	368
2.	Unrecordable Documents	369
V.	Inquiry Notice	369
A.	Notice Based on Information in Records	370
1.	References in Recorded Documents to Unrecorded Documents.....	370
2.	References in Recorded but Unread Documents to Other Unrecorded Documents	371
3.	Indefinite References to Other Documents.....	372
B.	Notice Based on Possession of Property	372
1.	Information Charged to Purchaser —Constructive Notice v. Inquiry Notice.....	373
2.	Inquiry Notice When Statute Requires Actual Notice	375
3.	When Possession Is Unsuspecting	376
C.	Notice Based on Neighborhood Conditions.....	377
D.	Harmless Notice.....	378
VI.	Persons Protected Against Previous Failure to Record	379

A.	Persons Protected Under Recording Statutes	379
1.	Persons Protected in Race State	379
2.	Persons Protected in Notice State.....	380
3.	Persons Protected in Race-Notice State.....	380
B.	Purchasers Without Notice	380
C.	Purchasers for Value	380
1.	Donees	381
2.	Cancellation of Prior Debt.....	382
3.	Payment of Less than Full Consideration.....	382
4.	Promise to Pay	382
5.	Partial Payment—Alternative Solutions.....	383
D.	Encumbrancers	385
1.	Pre-Existing Debt	386
a.	Originally Unsecured Loan	386
b.	Judgment and Attachment Creditors.....	387
2.	Execution Purchasers	388
VII.	Recording System Limitations.....	389
A.	Interests Created Without a Written Instrument	389
1.	Adverse Possession and Prescriptive Easements.....	389
2.	Easements by Necessity	390
3.	Quasi-Easements (Easements Implied by Past Use)	391
B.	Interests Arising from Nonrecordable or Excepted Instruments	391
VIII.	Torrens Registration.....	392

Chapter 11. Title Insurance	395
I. Searching Title.....	395
II. Preliminary Title Reports and Title Insurance.....	396
III. Title Risks	398
A. Covered Risks.....	398
B. Excluded Risks	398
1. Buyer's Knowledge of Defects or Failure to Pay Value.....	399
2. Defects Discoverable by Investigation Outside the Property Records.....	399
3. Subsequent Defects	400
IV. Relief Under the Policy.....	400
A. Title Company's Options	400
B. Duration of Coverage	401
Chapter 12. Mortgages.....	403
I. Mortgage's Significance	403
A. Secured and Unsecured Debts	403
B. Advantage of Holding a Mortgage	404
C. History of Mortgage Law	404
1. Fee Simple Subject to Condition Subsequent.....	405
2. Equity of Redemption	405
3. Foreclosure	406
D. Mortgagor Protection Rules	407
1. Anti-Deficiency Laws.....	407
2. One-Action Rules	408
3. Statutory Right of Redemption.....	408
4. Waiver Prohibitions.....	409
5. Nondiscrimination in Lending.....	409
E. Title or Lien.....	409
II. Mortgage Instruments.....	410

III.	Possession and Rents.....	411
IV.	Priorities.....	412
V.	Transfers by the Parties.....	414
	A. Transfers of the Mortgaged Property	414
	B. Transfers of the Mortgage	415

PART 3. MISCELLANEOUS PROPERTY DOCTRINES

Chapter 13. Airspace.....	419	
I.	Lower Airspace	419
II.	Upper Airspace	420
	A. Trespass.....	420
	B. Nuisance	421
	C. Taking.....	421
Chapter 14. Water.....	423	
I.	Stream and River Water	423
	A. Preferred Use Privileges.....	424
	B. Correlative Use Privileges.....	424
	1. Natural Flow Doctrine	425
	2. Reasonable Use Doctrine	425
	C. Appropriation Systems	426
II.	Surface Water	428
	A. Common Enemy Doctrine.....	428
	B. Natural Servitude Doctrine.....	429
	C. Reasonable Use Doctrine.....	429
III.	Underground Water.....	430
	A. Absolute Ownership Doctrine	430
	B. Reasonable Use Doctrine.....	430
	C. Correlative Rights Doctrine	430
	D. Appropriation	431

Chapter 15. Support	433
I. Support of Unimproved Land	433
A. Absolute Right to Support	433
B. Liable Persons	434
II. Support of Improved Land	435
A. Extent of Obligation	435
B. Measure of Damages	435
C. Statutory Changes	436
III. Agreements Regarding Support	437
A. Release of Support Rights	437
B. Acquisition of Support Rights	437
Chapter 16. Agreed Boundaries	439
I. Difficulties in Ascertaining Boundaries	439
II. Boundary Agreements	439
III. Acquiescence	441
IV. Effect	441
Chapter 17. Fixtures	443
I. Factors in Determining What Is a Fixture	443
II. When Annexor Owns the Real Property	444
A. Property Taxation	444
B. Eminent Domain	444
C. Mortgage	444
D. Conveyance	445
E. Death	445
III. When Annexor Does Not Own the Real Property	445
A. Tenant	445
B. Stranger	446
C. Chattel Seller	446

Chapter 18. Trespass.....	447
I. Protection of Possession	447
II. What Is Trespass?.....	447
A. Intrusions Other than by Trespasser	448
B. Touching the Boundary	448
C. Above and Below the Surface.....	449
III. Privileged Entries	449
A. Consent.....	449
B. Social Need	450
C. Property Rights	450
IV. Remedies	451
A. Nominal Damages.....	451
B. Compensatory Damages	451
C. Punitive Damages.....	452
D. Equitable Relief.....	452
E. Relief According to Plaintiff's Status.....	453
Chapter 19. Nuisance.....	455
I. Nuisance v. Trespass.....	455
II. Determining Whether Nuisance Has Occurred	456
III. Relief.....	457
IV. Public Nuisance	459
Chapter 20. Land Use Regulation.....	461
I. Types of Land Use Regulation	461
A. Zoning	461
1. Typical Zoning Devices.....	461
a. Lot Regulations	462
(1) Minimum Lot Size.....	462
(2) Minimum Frontage	462
b. Building Regulations	463

(1)	Height	463
(2)	Bulk.....	463
(3)	Floor-Area Ratio.....	464
(4)	Minimum Floor Space....	465
(5)	Design and Site Plan Review.....	466
c.	Regulations on Activities.....	468
	(1) Residential.....	469
	(2) Commercial.....	470
	(3) Industrial; Performance Standards	471
2.	Mapping.....	472
a.	Size of the Zone; Spot Zoning	473
b.	Zoning Boundaries	473
3.	Special Zoning Tools	474
a.	Special Exceptions (Special Uses, Conditional Uses).....	474
b.	Floating Zones.....	476
c.	Cluster Zoning.....	477
d.	Planned Unit Development (PUD)	478
e.	Holding Zones.....	480
4.	Zoning Relief	480
a.	Variance.....	480
b.	Rezoning (Amendment)	482
c.	Contract Zoning (Conditional Zoning).....	484
B.	Subdivision Regulation.....	485
1.	What Is a Subdivision?.....	486
2.	Subdivision Process	487
3.	Subdivision Exactions (Development Exactions).....	488

C.	Growth Management	490
D.	Historic Landmarks and Districts	492
E.	Environmental Protection	494
F.	Eminent Domain	496
II.	Land Use Regulation Process	497
A.	Who May Regulate Land	497
1.	Federal Regulation	497
2.	State Regulation	498
3.	Regional Regulation	499
4.	Local Regulation	500
5.	Citizen Regulation	502
B.	Planning Process	503
1.	Comprehensive Plan	503
2.	Planning Commission	505
3.	Land Use Ordinances	506
4.	Interim Ordinances	507
C.	Enforcement	507
III.	Judicial Review	510
A.	The Judicial Role	510
B.	Grounds for Invalidation	511
1.	Arbitrary and Capricious	512
2.	Due Process	513
3.	First Amendment and Associational Rights	514
a.	Speech and Religion	515
b.	Association	516
4.	Taking	517
a.	Categorical Takings	518
b.	Other Regulatory Takings	518
(1)	Nature of Government Activity	519
(2)	Nature of Owner's Property Interest	520

OUTLINE

(3) Extent of Loss.....	520
(4) Sharing the Loss (Average Reciprocity of Advantage).....	521
(5) Mitigation and Compensation Measures.....	522
c. Relief.....	522
5. Exclusionary Zoning	523
a. Federal Courts	523
(1) Constitutional Protection.....	523
(2) Statutory Protection	525
b. State Courts	526
INDEX.....	529