

# Agricultural Law- Lecture 5 Property Law

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# Introduction

- ▶ Real property
- ▶ Landlord and tenant law
- ▶ Personal property

# Real property

- ▶ real property and personal property involve different laws
- ▶ differences in terms of inheritance, tax and contracts
- ▶ What is personal property?
  - ▶ All property that is not real property
- ▶ Not always clear what is personal and what is real property, this leads to litigation.

# Example

- ▶ Fixtures were once personal property but once installed become part of real property
- ▶ Difference is *intent*
- ▶ Test:
  - ▶ Actions of owner at time of fixation
- ▶ Important to know during sale of property
- ▶ specify in sale or lease agreement what is part of the property to create clarity

# General rules

- ▶ If not specified then the rule is it stays with the property
- ▶ Things attached to land are part of real property
- ▶ Example lift in barn installed by tenant cannot be removed by tenant at end of lease

# Exceptions

- ▶ special purpose property not viewed as part of real property but part of personal property
- ▶ Taxation of fixtures and personal property differs
- ▶ Not all personal property attached to land is a fixture
- ▶ Criteria: maintenance of identity and character (to remain personal property)

# Plants

- ▶ are plants part of the land or personal property?
- ▶ *fructus naturales* part of land
- ▶ *fructus industriales* are personal property
- ▶ Doctrine of *emblements*

# Annual crops vs perennials

- ▶ Annuals are personal property
- ▶ Perennials are real property

This becomes interesting with something like sugar cane (grown in some southern US states, but likely to be treated as real property by courts.



# Ownership

- ▶ “bundle” model of ownership
- ▶ lease, mineral rights, surface rights, etc.
- ▶ Property owners have a right of possession, they can exclude others from property
- ▶ Right to destroy or dispose of property (this can be limited by regulation), e.g. you own a cow it dies, disposal of carcass would be regulated.

# Types of ownership

- ▶ Freehold
  - ▶ interest in land (attached to freehold) that is of indeterminate
  - ▶ duration (not time limited)
  - ▶ can be in perpetuity (infinite length) or indeterminate
- ▶ leasehold
  - ▶ right of possession
  - ▶ fixed duration
  - ▶ Fee simple (absolute)

# Loss of rights

- ▶ Fee simple determinable
  - ▶ Estate continues until some event occurs
  - ▶ Land reverts to Grantor
  - ▶ Right of entry to for condition broken or power of termination
  - ▶ (Analogy: Hong Kong)
- ▶ Example: 1887 RSP granted land to NCSU and to the City of Raleigh North Carolina, fee simple determinable estates.  
Purpose of grant was education and for a park. Use for other purposes would terminate the grant.

# Life estate

- ▶ Freehold estate for life (measuring life)
- ▶ Example : life tenancy
- ▶ Measuring life could be a third person
- ▶ Reversioner (to whom property reverts prior owner)
- ▶ Remainderman (designated person who acquires ownership at end of life)
- ▶ Example (international): French property law.

# Duties (Remember Hohfeld)

- ▶ quasi-fiduciary duty of life tenant to reversioner or remainderman
- ▶ duty to protect and preserve property
- ▶ taxes and maintenance
- ▶ But no duty to insure
- ▶ estovers

# Estovers

- ▶ use of timber for personal use
- ▶ use of timber for repairs
- ▶ commercial timber operations not permitted (unless there is a prior history of this)

# Waste

- ▶ life tenant cannot make improvements
- ▶ life tenant cannot change properties purpose
- ▶ Reversioner or remainderman may obtain injunction to prevent this
- ▶ Reversioner or remainderman cannot enter property in possession of life tenant (trespass)

# Life estate creation

- ▶ often by deed or will
- ▶ Retained life estate (grantor=tenant)
- ▶ Sometimes used for estate planning (not a good idea)



# Co-ownership

- ▶ Tenancy in common
- ▶ undivided, separate and distinct shares
- ▶ equal rights
- ▶ shares can be inherited and sold
- ▶ No right of survivorship
- ▶ Fiduciary relationship: Co-owners cannot benefit from property at expense of other co-owners

# Right of survivorship

Survivors after death of co-owner acquire rights to property (only for joint tenancy covered later)

# Sharing costs

- ▶ pro rata contributions
- ▶ contribution for repairs (unless made by co-owner in possession)

# Termination

- ▶ For co-ownership
- ▶ *partition*
- ▶ court divided land or court sells land and divides sale monies

# Joint tenancy

undivided equal interest of owners

1. Time - all interests created at the same time
2. Title - interests all come from the same source (e.g. deed or will)
3. Interest- each owner has an identical type and duration of interest.
4. Possession - all interests have identical rights of enjoyment

Joint tenancy has a right of survivorship

## Q: Co-ownership or joint tenancy

- ▶ unless stated in contract there is a presumption of co-ownership (tenancy in common) and no survivorship rights
- ▶ joint tenancy needs to be explicitly stated and it needs to be made clear that survivorship rights are intended.

# Trusts

- ▶ Trustor (Grantor or settlor)
- ▶ Trustee (representative of beneficiary)
- ▶ Beneficiary (reaps benefits of party)
- ▶ Legal title held by trustee
- ▶ Beneficial interest held by beneficiary
- ▶ Better than a life estate for estate planning purposes (more flexible)

# Acquiring and disposing of property (buying and selling etc.)

- ▶ options
- ▶ preemptive rights (right of first refusal)
- ▶ interim or long-term contracts
- ▶ long-term sales contracts (instalment contracts often treated as mortgages)



## Case: Rawls and Assoc. v Hurst

- ▶ Contracts must be in writing
- ▶ Signed by both parties
- ▶ Adequately describe property
- ▶ Sum of consideration must be stated
- ▶ Contain key terms and conditions

# Deeds and evidence of title

- ▶ transfers real property from grantor to grantee (signed, sealed and delivered)
- ▶ Types of deeds:
  - ▶ general warranty deed (conveys land + assurances)
  - ▶ quit claim deed (conveys grantors interest or lack of interest)
- ▶ Torrens system (some states) land registration through courts

# Methods of sale

- ▶ private agreement
- ▶ licensed brokers
- ▶ auctions

# Rights and limitations

- ▶ Easements
  - ▶ easement appurtenant (right of way):
    - ▶ dominant tenement (property to which access is granted)
    - ▶ servient tenement (right of way goes through this property)
    - ▶ easement in gross (e.g. for power lines, there is no dominant tenement)
- ▶ Covenants (agreements regarding use associated with land)
  - ▶ express covenants
  - ▶ implied covenants
- ▶ Covenants confer burden or benefit
- ▶ Easements and covenants differ in that covenants are more general than easements

# Summary

- ▶ These are the most important aspects of real property
- ▶ Personal property still to come
- ▶ Landlord-tenant relationships relate to contract law so will treat this as part of contract law (slight deviation from syllabus)