



The Estate System

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Primary Modes of Transferring Rights to Real and Personal Property

- *Inter vivos* (during the owner's lifetime)
 - Grants for consideration
 - Gifts
- Upon Death
 - Intestate succession (inheritance)
 - Testate succession ("devise")



The functions of language in grants and wills

- “words of purchase” identify who gets an estate
- “words of limitation” define the nature, scope, or duration of the estate that person receives



Abbreviations

Freehold Estates

FS = fee simple (absolute)
FT = fee tail
FTM = fee tail male
FTF = fee tail female
FTS = fee tail special
FSD = fee simple determinable
FSCS = fee simple subject to a condition subsequent
FSEL = fee simple subject to an executory limitation
LE = life estate
LEAV = life estate pur autre vie

Nonfreehold Estates

TY = term of years
TW = tenancy at will
TP = periodic tenancy
TS = tenancy at sufferance
ll = landlord
t = tenant

Future Interests

RV = reversion
PR = possibility of reverter
PT = power of termination (right of entry)
RM = remainder
VRM = vested remainder
VRMSD = vested remainder subject to divestment
VRMSO = vested remainder subject to open
CRM = contingent remainder
EI = executory interest
ShEI = shifting executory interest
SpEI = springing executory interest

Concurrent Interests

TC = tenancy in common
JT = joint tenancy
TE = tenancy by the entirety
CP = community property



Code	Interest of O	Interest of A	Interest of B
O grants “to A” O grants “to A and his heirs”	nothing	FS	nothing
O grants “to A for life”	RV	LE	nothing
O grants “to A for life, then to B”	nothing	LE	RM
O grants “to A so long as used for a residence”	PR	FSD	nothing
O grants “to A, but A forfeits if not used for a residence”	PT	FSCS	nothing
O grants “to A so long as used for a residence, upon breach to B”	nothing	FSEL	EI
O grants “to A and the heirs of his body”	RV	FT	nothing



Fee Simple

- Potentially infinite duration
- Inheritable by lineal or collateral heirs
- Freely transferrable – inter vivos or by will
- Not subject to any provision for defeasance



Future Interests

- Retained
by grantor

 - Reversion = Interest retained by grantor after conveyance of less than a fee
 - Possibility of Reverter = Interest retained by grantor after conveyance of a FSD
 - Power of Termination = Interest retained by grantor after conveyance of a FSCS
- Transferred to
3rd parties

 - Remainder = Interest left over after creation of an estate lesser in duration than the estate of the grantor
 - Executory Interest = Interest left over after a defeasible fee (or other defeasible estate)



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- For the most part, today all future interests may be conveyed *inter vivos* or devised, and will pass through intestate succession, but vestiges of old limits on alienability persisted until recently
 - E.g., in Illinois, until recently neither a PR nor a PT could be conveyed *inter vivos* or devised, except to the holder of the possessory estate, but were inheritable



Fee Tail

- Potentially infinite duration
- Inheritable only by lineal heirs
- Longstanding historical struggle over the degree to which the interest of a “tenant in tail” was alienable
- Current status: All of the states that currently recognize the fee tail have reformed it in some way; exactly how varies by state



Life Estate pur autre vie

- Same set of entitlements as a Life Estate, but lasts for the duration of the life of a person other than the owner



Successive Inconsistent Transfers

- Common law rule: first in time, first in right
- In all states, the common law rule has been displaced by recording statutes, which come in 3 flavors:
 - a) “Race” statutes: an unrecorded document is invalid as against a subsequent purchaser who records first
 - b) “Notice” statutes: an unrecorded document is invalid as against a subsequent purchaser who lacks notice of the first transaction
 - c) “Race/Notice” statutes: an unrecorded document is invalid as against a subsequent purchaser who lacks notice of the first transaction and records first