

PROPERTY

The life tenant must not commit waste – i.e. she must not do anything that would hurt the future interest holders.

The life tenant must **not** consume or exploit **natural resources** on the property **UNLESS**

1. PU: Prior Use, meaning that **prior to the grant**, the land was used for **exploitation**
2. R: Reasonable repairs and **maintenance of the premises.**
3. G: Grant. The life tenant may exploit if **expressly granted** the right to do so.
4. E: Exploitation, meaning this land is **suitable only for exploitation** (ex. 採石場).

1. The joint tenancy: 2 or more own with right of survivorship.

2. The tenancy by the entirety: a protected marital interest between husband and wife with the right of survivorship.

3. The tenancy in common: 2 or more own with no right of survivorship.

Creation of a Joint Tenancy: Joint tenants must take their interests

T: At the same TIME

T: By the same TITLE (i.e., in the same instrument)

I: With identical equal INTERESTS; and

P: Identical right to POSSESS the whole.

(*Profits は単独占有者が保有できる。Rent は按分する。)

II. Tenant's Duties:

1) T's liability to third parties; / (*Trade Fixture is one installed for the purpose of carrying on a trade or business)

2) T's duty to repair; **Fixture** : (i) the **nature** of the article, (ii) the **manner** in which it is attached to the land, (iii) the amount of **damage** that would be caused by its removal, (iv) the **adaption** of the item to the use of the realty

3) T's duty to pay rent.

a) T breaches this duty, and still *is in possession* of the premises: The landlord's only options are to:

(i) Evict through the courts; or (ii) Continue the relationship, and sue for rent.

b) T breaches this duty, but *is out of possession* <**S I R**>

i) Surrender: L could choose to treat T's abandonment as an implicit offer to surrender, which L accepts.

ii) Ignore

iii) Re-let the premises to a **new tenant** on the wrongdoer tenant's behalf, and hold him or her liable for any deficiency.

III. Landlord's Duties

1) Duty to deliver possession:

2) The implied covenant of quiet enjoyment: (下記"habitability"と set!!⇒両方検討する!!)

Breach by constructive eviction: (more likely this on the test) <**S I N G**>

i) Substantial Interference: Attributable to L's actions or failure to act (when he has legal duty to act).

ii) Notice: T must give L notice of the problem, and L must fail to respond.

iii) Goodbye: Tenant must vacate within reasonable time after L fails to fix the problem.

3) The implied warranty of habitability: Applies only to residential leases. Never applies to commercial leases.

T's entitlements when the implied warranty of habitability is breached: <"**Mr. Cube**" - **MR**³>

M: Move out and terminate the lease.

R: Repair and deduct, T may make the **reasonable repairs** and **deduct** their cost from **future rent**.

R: Reduce rent, or **withhold** all rent until the court determines fair rental value.

R: Remain in possession, pay rent and affirmatively seek money damages.

Landlord's Tort Liability: <**CLAPS**>

a) Common areas: dangerous condition in the common area, which is knowable to the landlord

b) Latent defects rule: L must **warn** T of **hidden defects** of which L has **knowledge or reason to know**.

c) Assumption of repairs: L must, **with reasonable care**, complete any repairs that L **voluntarily undertakes**.

d) Public use rule: leases **public space**, and **should know**, because of **nature of the defect** and **length of the lease**,

e) Short term lease of furnished dwelling:

Creation of an affirmative easement: <P I N G>

P: Prescription

I: Implication (★)

N: Necessity

G: Grant (1年以上は、SOF。Deedの様式)

By Prescription: acquired by satisfying the elements of adverse possession. <C O A H>

C: Continuous use for statutory period

O: Open and notorious

A: Actual use

H: Hostile use (without servient owner's consent)

Termination of an easement: <END CRAMP>

- a) Estoppel: the servient owner **materially changes** his or her **position**, in **reasonable reliance** on the easement holder's **assurances**
- b) Necessity: Easements created *by necessity* expire as soon as: **the necessity ends**.
- c) Destruction of the servient land, OTHER THAN through the **willful conduct** of the servient owner:
- d) Condemnation (収用) of the servient estate: **by eminent domain** terminates the easement.
- e) Release: A **written release**, given by **the easement holder** to the **servient owner**.
- f) Abandonment: must demonstrate by **physical action**: **the intent to never use the easement again**.
- g) Merger doctrine: when **title to easement** and **title to servient land** become **vested** in the **same person**.
- h) Prescription: by interfering with it in accordance with the elements of **adverse possession**. <C O A H>

Covenant (cf. <privity of contract>, <privity of estate>)

(1) does the *burden* of A's promise to B run **from A to A-1**? (義務の承継) <W I T H N>

- i) Writing: **the original promise** between A and B was **in writing**.
- ii) Intent: **the original parties** (A and B) **must have intended** that the **covenant would run**.
- iii) Touch and concern the land: The **promise** must **affect** the parties' legal relations as **landowners**, and not simply as members of **the community at large**.
- iv) Horizontal and vertical privity: Both are needed for the burden to run.
- v) Notice: **A1 must have had some notice of the promise when he took**.

(2) does the *benefit* of A's promise to B run **from B to B-1**? (権利の承継) <W I T V>

- i) Writing: the original promises between A and B was **in writing**
- ii) Intent: the original parties (A and B) **intended** that the benefit would run.
- iii) Touch and Concern the land: the promise affects the parties as **landowners**.
- iv) Vertical Privity: some **non-hostile nexus** between **B and B1**.

Easement is a nonpossessory interest in land that gives the holder the right to use another's land.

Implied Equitable Servitudes

To create an equitable servitude that will **bind successors**: <W I T N es>

- i) Writing – **generally**, but not always, the original promises was **in writing**.
- ii) Intent – **the original parties intended** that the promises would be **enforceable by and against assignees**.
- iii) Touch and Concern – **the promises effects** the parties as **landowners**.
- iv) Notice – the **assignees** of the **burdened land** had **notice** of the promise.
es – equitable servitude

*<Private Nuisance>の不成立を検討しても OK!!

The Implied Equitable Servitude (common scheme doctrine): <注>「義務の Covenant」 移転の議論と SET!!

- i) When the sales began, the subdivider (A): **had a general scheme of residential development which included defendant's lots**.
- ii) The defendant lotholder (B) **had notice of the promises contained in the prior deeds**. <A I R>
 - A: Actual notice,
 - I: Inquiry notice: The neighborhood **seems to conform** to the common restrictions
 - R: Record notice,

LAND CONVEYANCING: THE PURCHASE AND SALE OF REAL ESTATE:

Step I: **The land contract**, which endures until step II. “marketable title” is title reasonably free from doubt

Step II: **The closing**, where the deed becomes our operative document.

- 1) **Lawful execution of a deed**: (1年以上は、SOF)
- 2) **Delivery requirement**: (Recorded ⇒ presumption of deliver) / (死後に権利移転する deed も、生前に deliver される)
- 3) Covenants for title and the three types of deed:
 - a) **Quitclaim deed** is basically a release of whatever interest, if any, the grantor has in the property.
 - b) **General warranty deed**: Warrants against all defects in title, including those attributable to grantor's predecessors.
present covenants (Present covenants don't "run with the land.")
 - i) **Covenant of seisin**: 所有権
 - ii) **Covenant of right to convey**: 移転可能
 - iii) **Covenant against encumbrances**: 地役権、担保権の不存在*future covenants (Future covenants do "run with the land.")*
 - iv) **Covenant for quiet enjoyment**: 第三者から権利主張されない
 - v) **Covenant of warranty**: 第三者の権利主張から防御する
 - vi) **Covenant for further assurances**: 後に判明した瑕疵について、必要な措置を施す

MORTGAGES:

By way of vocabulary, debtor is: **the mortgagor**; and creditor is: **the mortgagee**.

The creditor-mortgagee (債権者による譲渡) can transfer his interest by:

- (1) **endorsing the note and delivering it to the transferee**; or,
- (2) **executing a separate document of assignment of the mortgage**.

If the note is **endorsed and delivered**, the transferee takes note **free** of any: **personal defenses**

- (1) Lack of consideration
- (2) Fraud in the inducement
- (3) Unconscionability
- (4) Waiver
- (5) Estoppel.

the holder is **still subject** to “**real**” **defenses** that the maker might raise. <MAD FIF⁴>

- MA: **Material Alteration**
- D: **Duress**
- FIF: **Fraud in the factum** (a lie about the instrument)
- I: **Incapacity**
- I: **Illegality**
- I: **Infancy**
- I: **Insolvency**

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 shows that, because of defendant's actions, **petitioner's improved land would have collapsed even in its natural state** (in absence of its improvements).

WATER RIGHTS:

- 1) **Riparian doctrine**: liable only if the purpose of water use is malicious or the water is simply wasted.
Under the riparian doctrine, when a **natural use (households)** conflicts with an **artificial use (agriculture)**, **the natural use prevails**.
- 2) **Prior appropriation doctrine**: The water belongs initially to the state, **but the right to divert it and use it** can be acquired by: **an individual**, regardless of whether or not he happens to be: **a riparian owner**.

Groundwater: The surface owner is entitled to make **reasonable use of the groundwater**.

Surface Waters:

- 1) **The common enemy rule**: **Surface water is considered as "common enemy."**
- 2) **Natural Flow Theory**: A landowner cannot alter the rate or manner of natural flow of surface waters, where such actions would injure others above or below him.

Summary of Freehold Estates

Estate	Language To Create	Duration	Transferability	Future Interest
1. Fee Simple absolute	"To A and his heirs." "To A."	Absolute ownership, of potentially infinite duration.	Devisable, descendible, alienable.	None.
2. Fee Tail	"To A and the heirs of his body."	Lasts only as long as there are lineal blood descendants of grantee.	Passes automatically to grantee's lineal descendants.	Reversion (if held by grantor); Remainder (if held by third party).
3. Defeasible Fees: A. Fee simple determinable	"To A so long as..." "To A until..." "To A while..." (Language providing that upon the happening of a stated event, the land is to revert to the grantor.)	Potentially infinite , so long as event does not occur.	Alienable, devisable, descendible, subject to condition.	Possibility of Reverter (held by grantor).
B. Fee Simple subject to condition subsequent	"To A, but if X event happens, grantor reserves the right to reenter and retake." Grantor must carve out right of reentry.	Potentially infinite , so long as the condition is not breached and, thereafter, until the holder of the right of entry timely exercises the power of termination.	Same.	Right of Entry/Power of Termination (held by grantor).
C. Fee Simple subject to an executory limitation	"To A, but if X event occurs, then to B."	Potentially infinite , so long as stated contingency does not occur.	Same.	Executory Interest (held by third party).
4. Life Estate	"To A for life." "To A for the life of B."	Measured by life of transferee or by some other life (pur autre vie).	Alienable, devisable and descendible if <i>pur autre vie</i> and measuring life is still alive.	Reversion (if held by grantor); Remainder (if held by third party).