I. Property, Possession and Ownership

A. What distinguishes private property from public?
   1. private property is a social relationship between the owner of the property and society.
   2. property refers to this social relationship and not just the subject matter of the relationship (ie the thing).

B. How should property interest be defined?
   1. can be the totality of available rights, privileges, powers and immunities in a thing, or any one right, privilege, power, and/or immunity.
   2. interest can be divided
   3. hold certain property interests as member of society—these interests not usually the subject matter of property law.

C. What constitutes a private property relationship
   1. social relationship—need other people to have private property relationship
   2. can have a private property relationship without value
   3. can have something valuable without private property relationship existing
   4. private property requires some measure of scarcity.
   5. Can have a privilege to use something without a property relationship existing.
   6. you can not have the privilege to use something and still have a property relationship. (the privilege to use something is not essesential for the existence of a property relationship)
   7. capacity for transfer is not an essential part of property relationship—can be sold something by someone who does not have the capacity to transfer
   8. the capacity to exclude is at the heart of the private property relationship
      a. exclusion needs to be supported by gov’t to be legitimate
      b. need consistency—certaintity that right will be protected

D. Role of choice in Private Property relationship
   1. spectrum of full choice with regard to property to zero choice—where does private property relationship end? Where should you be compensated for loss of that relationship
   2. Fifth ammendment entitles owner to compensation when government appropriates property for public use—power of eminent domain
   3. ownership can be regulated but private property still exists
      a. regulation continues to diminish spectrum of choice available with respect to property
      b. no compensation b/c government could not regulate if it had to compensate each time.
   4. The value of a piece of property reflects both the current use and the potential future use of the property—limit future use, limit value

E. Contractual Rights v. Private Property Rights
   1. Contractual Rights are enforceable only against the seller or promisor
   2. Property Rights are enforceable against everyone “To the world: Keep off, unless you have my express consent. Endorsed the government. Signed private citizen”

F. Remedies in Property law
1. Seeking to maximize: certainty, efficiency, and fairness.

II. Estates

III. The Theory of Estates

A. Quia Emptores—forbid subinfeudation
   1. Can not “hold” in fee simple absolute from someone else. Still applies to lesser estates.

B. Do not own land, but rather own “an estate” of land.
   1. Estate—is or may become possessory and measured in terms of duration
   2. May have multiple interests in same land even if only one is currently possessory.
   3. Future interests are future only in terms of possession. Interest exists from the moment it is created by the grantor. Law of future interests really law of non-possessory estates.
      a. Whenever someone holds in less than fee simple absolute, someone else holds a future estate
      b. Reversion—grantor who holds in fee simple absolute conveys a lesser estate—transferable by will, deed, and intestacy.

C. In re O’Connor’s estate
   1. O’Connor died intestate, without heirs at law, without having made a lifetime transfer, in possession of a fee simple absolute in land in Nebraska. The estate escheated back to the state for want of heirs. The sole question was whether the county could levy an inheritance tax on the state.
      a. Escheat only applies when one dies without heirs, without a will, and without having made a lifetime transfer. Can also happen if sole heir or beneficary renounces the will.
      b. Escheat example of reversion—reversion—reverts back to original grantor
   2. Holding: The county could not tax the state because the state’s interest was not created at O’Connor’s death. The reversion interest was future only in terms of possession.
      a. Tax only applies to inheritance by will or at law, or transfer in contemplation of death
      b. Tax only applies when interest is created. Only when interest that used to belong to deceased is given to someone else.
1) If O’Connor makes inter vivos transfer to A to life then to B to life etc, no tax even though transfer is taking place upon someone’s death because no new interest created. All interests were created in initial conveyance and were not in contemplation of O’Connor’s death or at his death. Examples:
   a) O’Connor inter vivos not in contemplation of death to A for life then to B for life then to C for life then to D for life then to E in fee simple absolute. Only tax would be at E’s death unless E made lifetime transfer.
   b) O’Connor inter vivos not in contemplation of death to B for life with remainder to heirs of B. Only tax at B’s heirs death.
   c) O’Connor inter vivos not in contemplation of death to B, if B has heirs then to B has power of appointment, if B does not then to C
in fee simple absolute. Tax at B’s death if has heirs b/c B get to pick—interest not created by O’Connor even if B picks C there is a tax. No tax if B dies without heirs because C’s interest was created by O’Connor.

d) O’Connor inter vivos not in contemplation of death to A for life then to B for life then to C for life then to D for life then to E in fee simple absolute. O’Connor dies during life of C and wills his reversion to O’Connor Jr. Tax only at O’Connor’s death and based on value of O’Connor Jr’s non-possessory interest.

e) O’Connor inter vivos not in contemplation of death to B for 100 years then to C in fee simple absolute. No tax until C’s death. But if B dies prior to 100 years and transfers in contemplation of death, wills or B jr takes by law then tax at B’s death.

f) A transfers inter vivos not in contemplation of death to B for life then C in fee simple absolute and C repeats cycle—no tax as long as cycle keeps repeating.

2.) Key is when interests where created. Transfers inter vivos can get around estate tax—but too many trappings of death transfer and will be taxed. Revocable trust treated same as will. General power of appointment is taxed while special power of appointment is not because one can only refine grantor’s choice.

IV. Fee Simple Absolute

A. Represents the largest bundle of rights and privileges available in piece of land. Potentially unlimited in duration and can be alienated, devised, and inherited as chosen by holder.

1. No future estate

2. created by to “a and his heirs”—necessary language in some jurisdictions in others fee simple absolute assumed unless otherwise indicated.

a. “and heirs” not words of purchase (do not describe who takes estate) but rather words of limitation (type of estate given) and words of inheritance.

b. “heirs” describes who takes at law by state statute if one dies intestate.

  Living person can not have heirs.

c. A to B in fee simple absolute created at common law a life estate—most jurisdictions now recognize as fee simple absolute

3. Possibility of having the maximum interest allowed by law—but does not have to be—i.e. covenants, zoning laws, mineral contracts can all restrict rights but still have fee simple absolute.

4. Difference between fee simple absolute and other interests. A to B and B wills to X—What does X receive?

a. A to B for Life—X gets nothing

b. A to B and her children—depends on whether children are words of purchase or words of limitation—courts have arrived at various interpretation

c. A to B and her bodily heirs—X gets nothing—must go to bodily heirs (fee tail)

d. A to B for life then to B’s heirs—X gets nothing
e. A to B for 100 years, and B dies at 50 years—X gets remainder of interest
f. A to B and her heirs so long as the land is not used Z activity—X gets defeasible estate subject to condition
g. A to B and her heirs—B has fee simple absolute, X gets fee simple absolute.

B. Vendor/Purchaser Relations—transfers in fee simple absolute.
   1. No restrictive covenants based on race—Federal Fair housing act
   2. Principal documents in transfer
      a. Earnest money contract—covers period between agreement to sell and closing of sale—record of details of agreement. Deposit of earnest money at time of agreement—forfeited as liquidated damages if buyer breaches agreement.
      b. Statute of frauds—must have some writing documenting contract to sell signed by the party that one is bring suit against
         1.) Oral contract enforceable by doctrine of part performance (i.e. purchaser has possession and makes improvements—other things can count).
      c. Closing may be handled by escrow—all documents deposited with third party
      d. Deed of conveyance—transfers vendor’s interest to purchaser
         1.) Warranty deed—guarantees title against all other claims “good and sufficient deed”
            a) Implied that conveyance is for good title unless otherwise indicated
            b) Purchaser can not acquire greater interest than vendor
         2.) Deeds without covenants or quitclaim deed—no warranty against other claims
      e. Mortgage—creditor has interest in the property documented by mortgage bond or promissory note
      f. Alternative to mortgage: title-retention contract—vendor is extending credit to purchaser, purchaser gets title when certain sum has been paid

3. Hebb v. Stevenson—when a good title is promised, violation of a use restriction is an encumbrance sufficient to reject title. Insurable does not always mean marketable because the insurance company does not insure against all possible loss—possibility of lawsuit enough to reject even if title is insurable.

4. Doctrine of merger— all prior contracts are merged into the deed.
5. Regent Internation v. Lear—Encumberances on a title do not excuse the purchasers failure to perform if the parties have agreed on the time frame in which objections are to be made. The seller must have the opportunity to cure the defects.

C. Cole v. Steinlauf
   1. dispute between vendor and purchaser over prior deed to land which was “to grantee and assigns forever. Under Connecticut law “and heirs” is required to create a fee simple.
2. Holding: The title is not on trial here; the issue is whether or sufficient doubt it cast on the title. Having to prove the intent of the prior grantor would be an unreasonable burden on plaintiffs even if the courts might find in their favor.
a. Marketable title: free and clear of encumberances, in fee simple absolute, available for immediate possession (not transferring a reversion interest)
b. Interests which restrict value encumber title—mortgage, covenant with B for right of first refusal, etc.

D. Johnson v. Whiton
1. Royal Whiton devised part of his estate to his granddaughter and “her heirs on her father’s side.” Issue is whether or not she could convey a fee simple absolute.
2. Held: Can not create new kinds of estates. Holding that she could not convey a fee simple absolute would be a unfair burden on the alienability of the estate.
a. Limitation on type of interests that can be created. Strict rules govern transactions.
b. Essence of holding: Even if you could create a new type of interest, could not restrict ability to transfer inter vivos fee simple absolute. Decision only pertains to alienability, so discussion of inheritability could be argued to be dictum.

V. Defeasible Estates
A. Estates which may not last as long a fee simple absolute
1. Life estates and other freehold estates can also be defeasible
   a. Can have both possibility of reverter or right of reentry and reversion or remainder
2. Transferable by deed will or intestacy but grantee’s estate is subject to the same limitation as the grantor.
B. determinable fee—automatically terminates upon specified condition
1. grantor retains possibility of reverter which is devisable and inheritable and in most jurisdictions transferable inter vivos.
2. created using language of duration: so long as, until, during the time that and specifies the automatic termination upon the specified event
C. fee simple on condition subsequent—grantor can elect to reenter and terminate upon specified event
1. grantor retains right of reentry which is devisable, inheritable, and in some jurisdictions transferable inter vivos. No longer held that attempted transfer destroys the right.
2. created using language of duration: on condition that, provided that and provides for right of reentry at the specified event
3. usual method for reentering initiating law suit
D. fee simple subject to executory limitation—upon specified event the estate transfers over to a named third party
1. third party has a executory interest
E. How to determine which type of estate created with ambiguous language?
1. Up to court to decide
2. Words of duration with no automatic termination—probably held to create defeasible estate
3. Words of condition with no right of re-entry—not enough, held to be either words of purpose or restrictive covenant. Upon Condition that, etc w/o a clause for re-entry could be held to be:
   a. Creation of right of reentry
   b. Creation of a covenant
   c. Creation of an easement
   d. Creation of a trust obligation
   e. Merely the expression of a wish

F. Wood v. Board of County Commissioners—Courts will not find defeasible fee if other reasonable interpretations can be drawn from the language used. A conveyance of land “For the purpose of a county hospital” with no language of termination does not create either a determinable fee or fee subject to condition subsequent.

G. Recovery of land
   1. Limited by statute of limitations
   2. Mesne profits—reasonable rental value of the land during period of wrongful occupancy.
   3. Defendant who holds fee simple subject to condition subsequent may argue waiver or election—some jurisdictions hold that holder of right of reentry can waive right of reentry by not exercising it in time. Can be express or shown by substantial reliance on waiver or election.
   4. Defendant who holds in fee simple determinable can not argue waiver or election, but may argue estoppel based on substantial reliance on plaintiff’s promise not exercise possibility of reverter.

H. Collette v. Town of Charlotte
   1. Scofield transfer a portion of his farm to school district “and when town fails to use it for school purposes it shall revert back to Scofield his heirs and assigns. Sole question is is the possibility of reverter alienable by deed?
   2. Holding: The possibility of reverter is alienable because such a right was specifically reversed in the deed.
   3. When in doubt to what estate was created, err on side of fee subject to condition subsequent.

I. Chouteau v. City of St. Louis
   1. subject to an enabling statute, Chouteau and John Lucas donated land to the City of St. Louis for a county courthouse upon condition that the land be used “forever” as the site of the County Courthouse. The heirs of Chouteau claimed that the words created a defeasible fee and that they should take the land.
   2. Holding: “upon condition that” without language of termination or provision for reentry only states the purpose for which the land was conveyed.
      a. Expression of reverter or termination is not necessary in some jurisdictions if special language “until” or “so long as” is used.
         1.) Condition subsequent must have both or be able to be implied from surrounding evidence
         2.) Can not enforce illegal condition
         3.) Conditions can be such that either party, both parties or a third party has the power to terminate the relationship
4.) Courts prefer damages or injunctive relief over forfeiture, prefer optional forfeiture over mandatory forfeiture.

J. Oldfield v. Stoeco Homes---The use of conditional language can overcome language of automatic termination to create a fee subject to condition subsequent—must look at the context of the transaction.

K. Nowlin v. Columbia—Judgement determining title is not final until three years after it is decreed in Missouri and it is not until the time has elapsed that the title is marketable.

L. **Board of Education v. Miles**
   1. Townsend gave land to school district provided that it should be used for school purposes only and if it not that it should revert back to him and his heirs. Issue is whether Statute Section 345 can apply retroactively to defeasible interests which have not yet become possessory.
   2. Holding: Statute unconstitutionally applies to possibility of reverter interests that have not yet matured. Statute valid as it applies to reverter and right of reentry created after its enactment.
      a. Purpose of the statute is served by statutory non-compliance
      b. Q of whether statute or other like statutes are appropriate uses of the police power
         1.) Can use police power in matters of health, safety, morality, and general welfare
         2.) Recording acts as way to prevent fraud—do they really prevent fraud because fraud can still place? Which way to enact a recording act?
            a) Pure notice recording act—protected if purchase for value, without notice of prior purchasers. If A sells to B, then sells to C for value and without notice of prior sale then court finds for C.
            b) Pure race recording act—first grantee to race to courthouse to register gets title
            c) Race notice recording act—protects subsequent purchaser who purchases without notice, for value and whom registers the title first.
      c. Criticism of holding: ignores that future interests are future only in terms of possession. Someone is always the owner of the future interest.
         1.) Court too narrow in definition of police power—only looks at fraud prevention statutes

M. Evans v. Abney: Provision of trust for purposes of a city park for white women and children is now illegal. Trust reverts back to heirs at law.
   1. Doctrine of Cy Pres—even if part of a charitable bequest is invalid, can save the bequest by reconstruing it in such a way that will meet the intention of the grantor and still bring the trust within the law. Invalid here b/c Senator Bacon’s intent can not be fulfilled by applying the doctrine.
   2. Violation of equal protection clause for state to enforce a private agreement to segregate residential property.

N. **Hiddleston v. Nebraska Jewish Education Society**
   1. Avery’s conveyed a tract of land to the school district with conveyance to become void if the land ceased to be used for school purposes. Issue is
whether a Nebraska Statute that limits all possibility of reverts and rights or reentry to thirty years whether created before or after the statute is constitutional in its retroactive application?

2. Holding: The statute is constitutional because the benefits of limiting the possibility of reverter interest are more than the costs associated with limiting these rights. One looks at the nature of the right altered, the type of public interest served, and how much the right was altered by the statute.
   a. Is the goal reasonable and necessary?
   b. Is the methodology used to reach the goal reasonable and necessary?

O. **Dehart v. Ritenour Consolidated School District**
   1. The Dehart’s gave land to Ritenour School district but if it was not used for school purposes then to revert back to grantors and heirs.
   2. Holding: The court held that the school district had a fee subject to condition subsequent but that the condition for termination had not yet arisen since just because classes were ceased did not meant that the building would not be used for school purposes.
      a. Conflicts with Chouteau—does not recognize the doctrine of substantial performance

P. **Kennamer v. BiLow Foods**—nonpayment of rent does not in and of itself give rise to right of reentry

Q. **City of Carthage v. United Bank of Mo**—Possibility of Reverter is alienable and devisable in MO.

VI. Fee Tail
   A. “To A and the heirs of his Body” of “To A and the Heirs of his body, remainder to B”
      1. could be construed both as words of purchase (who takes) and as words of limitation (what they take)
      2. must have words of inheritance + words of procreation
   B. Creates a reversion in grantor or a remainder in third party
   C. Lasts as long as A’s line lasts.
   D. In most states, tenants in fee tail may convey a fee simple by deed.
      1. In many states, A to B and the heirs of his body creates a fee simple absolute. A to B and the heirs of the body with remainder to C \(\rightarrow\) A to B in fee simple if B should die without bodily heirs then to C.
      2. In other states A to B and his heirs of the body creates a life estate in B with remainder in fee simple absolute to B’s bodily heirs.
      3. Other states can bar fee tail through conveying by deed and having it conveyed back again.
   E. The Rule in Shelley’s Case
      1. A to B for life and remainder to B’s heirs \(\rightarrow\) A to B and his heirs (A to B for life with remainder to B in fee simple absolute)
      2. A to B for life and remainder to B’s bodily heirs \(\rightarrow\) A to B in fee tail (A to B for life with remainder to B in fee tail)
      3. Doctrine of Merger—merges both of B’s estates
      4. Abolished in most jurisdictions but statutes don’t retroactively apply
   F. **Doctrine of Worthier Title**
1. A to B for life then to A’s heirs → A to B for life (reversion goes to A)
   a. Only applies to transfers by deeds
   b. Still majority view in US

G. **Caccamo v. Banning**
   1. Grandfather devised to granddaughter in fee simple, but if she should die with bodily heirs then the children of William Potter in fee simple. Question presented was: Could granddaughter convey a fee simple after barring a fee tail?
   2. Holding: Yes, estate conveyed was fee tail and could be barred.
      a. Indefinite construction treated as if it said to Anna and when her line comes to an end to the children of William Potter—fee tail
      b. Definite Construction—event is under one circumstance only—fee simple defeasible
         1.) “leaving” not sufficient to find definite construction
      c. Court choices indefinite b/c that which is absolute (fee tail) is preferred over that which is not (fee simple defeasible—would be ongoing encumbrance to title)

H. **Bibo v. Bibo**
   1. Philip Bibo conveys to Max Bibo “and his bodily heirs.” Philip dies leaving all to his wife via will. Max dies without heirs leaving all to his wife.
   2. Under IL, “and bodily heirs” creates a fee tail which is then under section 6 converted into a life estate in Max and remainder in bodily heirs. Elizabeth takes Phillip’s reversion interest.
   3. Could argue that fee tail not intended since statute has been around so long.
   4. Can not have an “heir” until deceased

I. **Evans v. Giles**
   1. Sard Giles devised a tract of land in IL to Leta Timmons for life with remainder to her heirs of the body, if she dies without issue then to Elmo Sr for life with remainder to his heirs of the body. Issue: Did Elmo Jr have to survive Leta to take?
   2. Holding: No survivorship of Leta was required for Elmo Jr. to take all.

VII. **Life Estates**
   A. Overview
      1. grantor, his heirs or assigns retains a reversion
      2. can assign remainder to a third-party
      3. created by:
         a. to A for life, to A until he dies, to A for life for B
            1.) measured by A’s life
            2.) measured by life of another—life estate pur autrie vie
               a) measuring life or lives has no interest—just words of limitations
               b) measuring lives must be alive at time of conveyance
         b. at common law, just “to A” was enough to create
      4. transferable by deed
         a. life estate pur autrie vie transferable by intestacy
      5. can subject to defeasance
   B. **Carrier v. Price**
1. gift to X for X’s life and life of X’s heir valid

C. *Thompson v. Baxter*
   1. To X so long as X chooses to live in Y town creates a defeasible life estate; lease can not be terminated by successor to landlord.
   2. no tenancy at will b/c duration is specified—when he wishes to leave Albert Lea confined to lifetime
      a. not a periodic tenancy even though monthly rental b/c duration specified
      b. problem b/c arguing both no definite period of time—life estate and definite period of time—life estate
      c. had power to assign life estate—as long as still lived in town

D. *Foley v. Gamester*
   1. “as many years as desired” creates a tenancy at will under Lord Coke’s rule that if a tenancy is terminable at the will of one party, it must be terminable at the will of both.
      a. No defeasible life estate b/c lacks a condition for defeasance

E. *Chestnut v. Chestnut*
   1. Gift left to sister with property left at sister’s death to go to brother created a life estate w/ power of consumption
   2. key is whether language is precatory or mandatory
      a. can’t be fee simple defeasible b/c does not have the power to last forever—either she uses it up or she doesn’t—either way divested at death—no way to last longer
      b. if had said fee simple absolute then would have found language precatory—but when ambiguous err on side of legal consequences for language
      c. gift over accompanied by language willed, devised, bequeathed—clear making gift over
   3. basic principle—life tenant entitled to interest with principle reserved for remainders
      a. entitled to profits, rents, proceeds etc.
      b. some estates can only be enjoyed by consuming in entirety—consumable life estate
      c. power to consume—power to sell and use income of non-consumable estate estate

F. *Burnett v. USA*
   1. devise to wife for life with privilege to sell and convey created a life estate with power of consumption and did not qualify for marital deduction under estate tax laws b/c she did not have sole and complete power of app’t as she could not make a gift and any transfer would have to benefit her.

G. *St. Louis Union Trust Company v. Marian Morton*
   1. Gift to wife for life with “absolute power of disposal” did not extend to placing the proceeds of sale of real property in trust for beneficiaries of own choosing—residuary beneficiaries of husband’s will entitled to proceeds at her death.

H. *Haltom v. Austin National Bank*
1. Language “would like if not disposed . . .” is precatory only and does not create a remainder in the corpus.

2. Unlike chestnut language is not clear that gift is being made

I. Garner v. Gerrish

1. Clause in lease allowing leasee to terminate whenever he choose created a life estate—Lord’s Coke’s rule no longer applies and one party can have power of termination while other can not.
   - Coke’s rule frustrates intention of Grantor

VIII. Marital Estates

A. Dower

1. At common law, woman granted life estate in 1/3 of lands which husband had estate inheritable by wife’s issue.
   - Could release dower during marriage
   - Even if no heirs or fee tail terminate—still get dower even if executory interest waiting to take possession
   - Fee simple subject to condition subsequent and fee simple determinable or fee w/ power of appointment—no dower on divestiture

2. Inchoate dower—interest during life of husband

3. Consummating dower—if she survived husband

4. Election between provision of postnuptial settlement and dower

5. Election between husband’s testamentary provisions and dower (didn’t always have to choose just when was supposed to replace)

6. Husband had to be sole owner of property

B. Estate by Marital Right

1. Husband had estate in all lands that wife had freehold estate in

2. Right to exclusive possession and profits

3. Could convey or mortgage w/o wife’s permission

4. Once had child who could inherit wife’s estate, husband got curtesy initiate in lands—became curtesy consummate upon wife’s death—life estate

C. Modern Marital Estates

1. In most of US dower and curtesy eliminated by statute

2. Wife now an heir at common law

3. Statutes give right to claim 1/3 or other share of husband’s estate if left out of will
   - Can also take against the will—renounce will and take intestate share
   - Uniform probate code—right to 1/3 of augmented estate—estate + all property disposed of during marriage

D. Homestead acts—protect home from creditors

IX. Direct Restraints on Alienation

A. Overview

1. High priority on alienation

2. Difference between direct and indirect restraints on alienation
   - Indirect restraints—through fee simple defeasible and life estates more likely to be upheld
   - Restraints on use rather than on alienation upheld

3. Three Categories of direct restraints
a. Disabling restraints—transfer of land impossible—says transfer void
   1.) Almost always found to be void
b. Forfeiture restraint—estate automatically terminates upon attempt to
   alienate or is subject to power of termination
   1.) Unlimited restraint of fee—void
   2.) Limited restraint on fee—sometimes upheld
   3.) Restraints on leasehold estates valid
c. Promissory restraints—creates a contractual promise not to convey
   1.) More likely to be upheld—but still wary of allowing on fee simple /c
   of possibility of injunctive relief

4. *Mandelbaum v. McDonnell*
   a. Will left property to wife for life then to children and grandson and
      goddaughter in fee simple with the property not to be sold until the
      grandson was 25 or 21 years from the date of the will or until the wife
      died.
   b. Held: disabling restraint against alienability of fee simple invalid.
      1.) Different from forfeiture restraint b/c w/ forfeiture restraint property is
         not completely removed from the market place—just imposes
         transaction cost that holder of possessory interest and holder of
         contingent interest must work together to transfer.
   c. When is forfeiture allowed?
      1.) Direct forfeiture restraint on a contingent interest in fee is valid if by
         its terms it can last no longer than the time such non-possessory
         contingent interest is contingent
         a) Must have independent contingency besides restraint on alienablity
         b) What will be impact of restraint? Allow in cases where
            insubstantial impact b/c marketability already restrained
         c) Could require both or either non-possessory interest and
            independent uncertainty
         d) Restatement allows where impact insubstantial
         e) Could argue that should be modified as to make it reasonable

5. *Conger v. Lowe*
   a. will left to wife for life then to son for life provided he lived on the land
      remainder in fee to the children at his death or if he ceased to live on the
      land.
   b. Held: restraint against alienablity of life estate upheld
   c. Children held both vested remainder in fee simple absolute and executory
      interest for life of father—both interests merged to give them present fee
      simple.
   d. Rule in Shelley’s case does not apply—court: lawful heirs means children
      b/c heirs only at death and testator gave “heirs” contingent executory
      interest too—even if it had applied condition would have remained—have
      to argue invalid to defeat.
   e. Lesser estates are less marketable to begin w/-not as concerned

6. *Mountain Brow Lodge v. Toscano*
a. Grant “for use and benefit of party only” created a fee simple subject to condition subsequent and as a restriction on who uses the property was valid.
b. Court is saying restriction only goes to use even though effect is restraint on alienability
   1.) Trying to encourage charitable gifts

X. Law of Waste
   A. Overview
      1. general rule: waste is unreasonable use of property by owner of possessory estate which restricts the value of the future interest
      2. waste per se: actual removal of the soil
      3. Life tenant—can use interest but not damage principle
         a. Holder of remainder/reversion entitled to corpus intact
         b. No voluntary waste—acts which would reduce value of future estate
         c. No permissive waste—obligation to keep property in reasonable repair
            1.) No obligation to increase value of premises
            2.) Destruction by natural forces—no obligation to rebuild
            3.) Obligation for upkeep can be limited by income of property
         d. May be allowed to remove timber for use on property
         e. If mine already open when gets life estate—can continue to keep open
      4. Fee Simple Defeasance
         a. More privileges since estate may last forever
         b. Can use principle
         c. Liable if:
            1.) Unconscionable waste
            2.) Reasonable probability that future interest will become a present interest
      5. Indefeasibly vested future interest—can get damages, injunction
      6. contingent or vested subject to defeasance future interest
         a. unless possibility of vesting remote—can get injunction but not damages
      7. Double damages/forfeiture remedies only with statute
      8. length of lease also key—short term lease no right to make changes, life tenant more rights, lease for 999 years more rights than life tenant.

B. Gannon v. Peterson
   1. Will was to three sons forever but if they died without issue then to remaindermen. Remaindermen sued to prevent last living son from committing waste by mining coal from land.
   2. Held: No waste b/c son held fee simple determinable and waste was not unconscionable and interest of remaindermen was not vested.
   3. important that court gives dies w/o issue definite construction to preserve fee simple defeasible.
   4. public policy favored allowing land to be mined
   5. assumed that person can have children up until death—interest would not vest until death of holder of fee simple determinable.
6. if condition directly addresses waste—better cause of action for holder of
   right of reentry or possibility of reverter or exectory interest—but still if not
directly prohibited needs to be equitable waste—unconscionable
   a. what is likelihood of condition being breached?
7. important that holder of fee has rights and privileges of fee

C. Melms v. Pabst Brewing Company
   1. It was not waste for holder of life estate to destroy home and level land when
      it was completely useless as a residence and was isolated 30 feet above other
      properties in the area.
   2. Key was that property was completely useless—ordinarily remaindermen
      entitled to identical estate that life tenant received. Look at surrounding
      conditions.
   3. Melms thought they had fee at time waste was committed.
   4. W/o such extenuating circumstances, act would still be waste even if property
      made more profitable.

D. Brokaw v. Fairchild
   1. holder of life estate could not destroy mansion and replace with apartment
      house. Objection did not have to be reasonable and waste did not have to
decrease property’s value. Not a case where property was isolated and useless
like in Melms.
   2. house still generating enough income but barely—not completely useless.
   3. said “my residence”—expectation that building would remain
   4. many courts would have refused to allow the holders of contingent interests
      with remote possibility of vesting to prosecute.

E. Baker v. Weedon
   1. Where the future value of land is likely to be much greater then its present
      value a judicial sale is not warranted as long as the income from the land is still
      enough to pay taxes.

XI. Concurrent Estates
A. Joint Tenancy
   1. at common law tenancy to two or more assumed to create joint tenancy
      a. preference now for tenancy in common
   2. also created by To A and B not as tenants as common but as joint tenants with
      rights of surviorship
      a. need words of survivorship—“jointly” may not be enough
   3. when tenant dies other surviving tenants receive their interests
   4. depends on 4 unities—unities of time, title, interest, and possession
      a. at common law one could not grant to another and himself as tenants in
         common—some states have statutes allowing this
   5. severance
      a. if joint tenant transfers interest to third party they hold as tenants in
         common with remaining joint tenants who remain joint tenants among
         themselves
      b. divorce does not severe joint tenancy with rights of survivorship unless it
         does so explicitly
         1.) exclusive occupancy not the same thing as exclusive possession

1.)
c. joint tenancy w/ “Full rights of survivorship”
   1.) one tenant may convey interest w/o extinguishing other’s right of
surviorship—who takes fee still determined by lives of original
grantors—third party takes life estate subject to dual contingent
remainders

d. deed of trust lien/mortgage on one tenant’s interest does not severe the
tenancy—subject to right of survivorship
   1.) tenancy not destroyed unless all four unities destroyed

e. earnest money agreement does not severe joint tenancy with rights of
survivorship unless it does so explicitly

6. partition—right to request physical division of the property

B. Tenancy by the Entirety
1. married couple holds concurrently—rights of survivorship
2. non-severable
   a. neither can convey or encumber any part of estate w/o other’s approval
3. husband and wife can have any concurrent estate—depends on language used
4. divorce either tenancy at common or joint tenancy
5. murder spouse—sever tenancy by entirety—each holds 1/2
6. majority of jurisdictions: prohibit creditors from levying on either one’s
interest, or the contingent right of survivorship
   a. other jurisdictions allow claim to be subject to right of survivorship of
spouse
7. when government takes property held by entirety because of forfeiture statute,
innocent spouse retains interest and government takes guilti spouse’s
contingent remainder in fee—get fee if innocent spouse dies first.

C. Tenancy in Common
1. no right of survivorship—interest is inheritable, deviseable, and alienable
2. tenant in common cannot purchase a title at a tax sale greater than that held as
cotenant—purchases for all cotenants and can be reimbursed for purchase
3. cotenant may be able to recover use and occupancy fees from cotenants in
possession of property
   a. at common law had to show wrongful exclusion or ouster
4. courts favor physical partition over partition by sale
   a. partition by sale when impossible/impractical to divide or inequitable and
when interests of owners would be better promoted by partition by sale
5. cotenant can lease interest w/o approval from other cotenants—non-
approving cotenants can demand partition but may not oust leasee.

D. Tenancy of Private Property
1. “joint and survivorship bank accounts”—party does not have to attain present
interest to be able to claim at death of other holder.
2. assumption that joint and survivorship accounts with signature cards creates
survivorship rights
3. can not force donor/depositor to share funds with potential donee
4. “totten trust” A has account “in trust for B”—creates revocable trust
5. can be liable for withdrawals in excess of contributions
6. joint holding of stock creates life estate in grantor with power to revoke the gift of the future interest

E. Community Property
   1. community property states
      a. each partner of marriage may own property separately
      b. property owned jointly during marriage—entitled to $\frac{1}{2}$
         1.) property acquired during marriage is community property
      c. through transmutation (either gift or contract) can convert community property into separate and vice versa

XII. Landlord, Tenant, Issues
   A. Nature and Creation of Leasehold estates
      1. tenants v. licensees/concessionaires
         a. tenants gets estate less than that of landlord who holds reversion
         b. tenant has right to exclusive control and possession of defined space
         c. contract either express or implied between parties
         d. licensee doesn’t have right to exclusive control and possession where city had no leasing authority, company could only have license. Document that purported to give license that in effect created lease was void.
      2. The several tenancies
         a. Estate for years
            1.) Duration must be for certain period
            2.) Have to have precise, not vague moment in time when ends
            3.) Can be defeasible—i.e. one year lease but can terminate w/ 30 days notice
            4.) Subject to statute of frauds but can be created by writing or oral
            5.) Landlord retains reversion and often retains right of reentry as security for rent
         b. Tenancy at will
            1.) Uncertain as to duration
            2.) Right of either party to terminate—don’t need a reason—just need notice
            3.) Preferred estate of courts
            4.) Landlord has power to terminate—always tenancy at will
            5.) Tenant has power to terminate—sometimes defeasible life estate, sometimes tenancy at will
            6.) Terminates when landlord conveys fee, when the tenant attempts to assign interest, when either party dies
         c. Tenancy at sufferance
            1.) Arises when tenant holds over after expiration of term—wrongful holdover
         d. Tenancy from month to month or year to year/ Periodic Tenancy
            1.) No fixed term—periods can repeat infinitely
            2.) May be terminated at expiration of rental period by either party
            3.) Monthly or yearly rental payments
               a) Payment alone doesn’t indicate periodic tenancy
               b) Annual rent paid in monthly installments—year to year tenancy
c) Notice to terminate at end of period
   i  Tenancies of 6 months or less—one full period notice
   ii Greater than 6 months—most notice needed 6 months
4.) Not argued b/c plaintiff wants immediate possession—otherwise would have to wait until end of period to terminate
5.) Power to terminate at anytime—can’t be periodic
e. Problem determining what was intended to be created—look to what is done with other tenants in building—constistency—what meaning have other courts given language

3. statute of frauds
   a. all leases more than 1 year must in writing
      1.) some jurisdictions 3 years
   b. when leases for longer than allowed made orally void as to duration but otherwise enforceable—tenancy at will or periodic tenancy results

4. Security Deposits
   a. Uniform landlord and tenant act—may not demand more than one-months rent as security
   b. Must be returned within 14 days with an itemized list of charges withheld and itemized list only if entire thing withheld

B. Fundamentals of Relationship
1. landlord warrants tenant will have quiet possession on date set for possession
2. no implied covenant that tenant will occupy
3. at common law: no covenant that premises be habitable—caveat emptor—buyer beware
4. where lease stipulates that lessee must comply with all regulations, only applies to regulations governing lessee’s use of the land—landlord still has responsibility for complying with other regulations.
   a. In deciding who pays for something: look at cost of compliance—where a small percentage then less hardship on lessee
      1.) Look at term of lease—short term lease—more likely to assign costs to lessor
      2.) Who benefits from action—lessor primary then lessor should pay
      3.) Landlord pays for structural changes
      4.) Unforeseeable costs—landlord
      5.) If lessee’s enjoyment will be interfered w/ during changes, then landlord should bear costs
   b. In absence of express agreement—at common law neither had a duty to repair, tenant had duty not to commit waste
5. housing codes impose duties on landlord
   a. problems enforcing
6. implied and statutory warranties of habitability
   a. courts today imply a warranty that premises will be habitable
      1.) can use housing codes as threshold
      2.) habitable—safe, sanitary, and weather tight
         a) heat, water, plumbing, sewers, garbage disposal be available
b) also works as a repair clause—warranty to keep premises fit for human habitation
c) not always applied to single-family dwellings
d) not usually applied to commercial buildings

3.) tenant must show that they notified landlord of the defect and allowed a reasonable time for its correction
   a) at common law had option of withholding rent to cover cost of fixing defect

4.) no need to abandon to get damages
   b. still have to pay rent while pursuing damages for breach of covenant
   c. remedies:
      1.) termination
      2.) damages—difference between rent and fair value of apartment
      3.) withholding rent
         a) not always available
      4.) repair and deduct from rent
   d. statutes—similar to judicial warranties

7. Landlord’s tort Liability
   a. General rule: not liable
   b. New rule: liability based on ordinary negligence
   c. New Rule: liability for injuries caused from breach of warranty of habitability
      1.) Must use reasonable care in making repairs
   d. Exculpatory clauses relieving landlord of liability—tendency to find void as public policy
   e. Duty to keep common areas safe—was crime foreseeable

C. Government Activities in Housing Market
   1. consideration of hardship on tenant by rent-control officer when considering whether to approve a rent increase not unconstitutional
   2. Fair Housing laws prohibit discrimination in sale or rental of housing on the basis of race, color, religion, sex, or national origin
      a. Use of financial criterion for rent not violation where motivation is economic and not racial.

D. Termination
   1. notice to terminate must state exactly when lease terminates—must be given at proper time—at least 6 months in advance of tenancy from year to year
   2. eviction
      a. majority rule—no self-help when tenant is still in possession, must take judicial action
      b. minority—allow peaceful self-help, if peaceful eviction fails must resort to judicial action
      c. failure of landlord to maintain premises not a defense to eviction under statute unless statute forbids eviction for those reasons
      d. no right of perpetual renewal
      e. no notice required for tenants at sufferance
3. partial actual eviction—use and enjoyment substantially diminished—courts reluctant to allow claim as long as lessee had possession

4. constructive eviction—no physical eviction, but landlord’s wrongful acts substantially and materially deprive the tenant of the beneficial use and enjoyment of premises
   a. can’t have constructive eviction where tenant remains in possession of premises
   b. works with implied warranty of habitability—warranty of habitability establishes obligation, constructive eviction one of several possible remedies

5. Retaliatory Eviction Doctrine
   a. Not free to evict in retaliation for reporting housing code violations—within one year of report
   b. Exception: tenant caused the violation, tenant in default of rent, need tenant to leave to bring premises in compliance

6. lease for years—not entitled to notice of termination—assumed it will end

E. Illegality and frustration of purpose
   1. where no law is violated by making of lease—lessee is still liable for rent even if can not carry out intended purpose
      a. if parties intended purpose to be carried out illegally no enforcement
      b. if they intended zoning variance then enforcement
      c. legal at time of lease, now illegal, lease limited to illegal activity—get out of lease

F. Abandonment and Surrender
   1. surrender—terminate at end of agreement or by mutual agreement
      a. some jurisdiction require surrender to be in writing
   2. abandonment and surrender—tenant quits premises w/o intent to return b4 end of term
      a. landlord gets election:
         1.) accept surrender and use for own use again
            a) equivalent of termination
         2.) do nothing
            a) tenant still owes rent
            b) some courts and uniform landlord tenant act eliminates second choice—impose duty to mitigate
         3.) re-enter and re-let for “tenants account”
            a) mitigation—tent owes difference between old and new rents
            b) landlord can’t relet for longer term than original
            c) needs to make clear that he is mitigating
            d) each apartment unique item—no recovery for lost chance to rent a different apartment
            e) duty to treat as one of vacant stock—landlord must prove reasonable efforts

G. Assignment and Subletting
   1. assignment—conveys whole term w/o retaining a reversionary interest
      a. “replaces” lessee in relationship w/ landlord
2. sublet conveys less than whole term  
   a. most courts say retention of power of assignment not enough to create 
      sublease—not retaining part of estate  
3. lessor can restrict power to sublet and assignment in the lease  
   a. Majority of jurisdictions say lessor can arbitrarily refuse to give consent  
   b. Minority—objection must be reasonable

H. Tenants Fixtures  
   1. tenant allowed to remove many chattels they installed that if installed by an 
      owner would become fixtures

I. Condemnation of leased land  
   1. how to divide up settlement for condemned land  
   2. if lease is less than fair market value tenant gets “discounted bonus value” of 
      amount between fair market value and rent

J. Hold-over tenants  
   1. Mississippi State Dept of Public Welfare v. Howie  
      a. Where there is a statute allowing double rents it is the sole remedy 
         available to the landlord and he has no election. Once he accepts a rent 
         check, he establishes a month to month tenancy.  
   2. Mason v. Wierengo’s Estate  
      a. Where one has expressly contracted to an obligation an act of god does not 
         excuse his performance of the obligation unless the subject matter is 
         destroyed or performance is otherwise impossible  
   3. Commonwealth Building Corp. v. Hirschfield  
      a. Where a lease provides for double rent in the event of holdover, the 
         common law rule does not apply and recovery is limited to terms of the 
         lease. Tenant only held over a day b/c of difficulties moving. No duty to 
         move in middle of night.  
      b. Court also saying look at intent—no intent to holdover.  
      c. Every slight holdover does not give rise to cause of action—need to 
         forgive minimal holdovers based on number of leases expiring on that day 
         in Chicago  
      d. Existence of double rent provision + intent—have to talk about both b/c 
         double rent only applies where lesior fails to evict and fails to make new 
         agreement—did tenant agree?  
   4. First Capital v. Pennington  
      a. Double rent is not a penalty when it is part of contract.  
      b. Have to take into account month of notice required in most cases to 
         terminate when factoring amount due  
   5. Fetting v. Waltz  
      a. Lease contained clause that Fetting liable for all damages if held over. 
         Fetting held over one month.  
      b. Landlord has election to treat as a tenant from year to year or as a 
         trespasser. Once elected to treat as tenant for year to year, Fetting was 
         liable for rent for whole year. Waltz dropped right to claim damages when 
         elected to treat as tenant from year to year.
c. Year to year tenancy implied at law—doesn’t matter if previous tenancy
was periodic tenancy or estate for years

1.) Reasons for rules—protects incoming tenants so they don’t have to
worry about when they can take possession
   a) Rule suspect b/c only time landlord would assert right to elect new
year to year tenancy is when does not have incoming tenant. If
have incoming tenant don’t want to be sued for breach—will evict
to get them possession as guaranteed. More protecting Landlord’s
loss when can’t get new tenant.

2.) Landlord’s election limited by original lease—most courts new
periodic tenancy from year to year arises no matter if original lease
was longer
   a) Some courts the new tenancy for a year automatically expires at
end of year
   b) If original lease 6 months then 6 month tenancy if hold over
   c) Even if landlord’s election not enforceable if too long, then still
able to claim election of tenancy from year to year b/c elected to
treat as tenant.

3.) Tenant bound by whatever landlord elects
d. Election can also be implied from actions of parties—American rule
e. Fetting reconciled with Hirshfield—lease gave landlord right he would
   have had anyway—Hirschfield lease gave landlord new right—stronger
   argument for preclusion

6. Herter v. Mullen
   a. When defendant had to hold over for 15 days b/c family member could not
be moved without risking death, holdover was involuntary and landlord
did not have election to treat as new tenant from year to year—only to
claim damages for 15 days.

XIII. Future Estates
A. Review
   1. only future in terms of possession
   2. exist anytime someone owns less than a fee simple absolute
   3. what type of future interest is it? When it becomes possessory what type will
it be?

B. 5 kinds:
   1. in grantor:
      a. reversion
         1.) gets whatever estate originally had back
         2.) created when grantor creates estate less than fee simple
         3.) when in will—heirs or residuary grantees take reversion
         4.) doesn’t have to be certain to occur—i.e. reversion if condition
            precedent to taking remainder doesn’t occur and no executory interest
            was created
         5.) transferable by deed, will, and by intestate succession
      b. possibility of reverter
         1.) created with determinable estate
a) can have both reversion and possibility of reverter

2.) devisable and descendible generally
   a) modern view: alienable

3.) can be limited by statute

c. right of entry/power of termination
   1.) estate subject to condition subsequent
      a) can have both reversion and right of entry
   2.) also arises with landlord/tenant
   3.) generally devisable and descendible
      a) not transferable at common law and destroyed if transfer attempted
      b) modern view—transferable

2. someone other than the grantor
   a. remainder
      1.) future interest which will become possessory no soon than termination of someone else’s interest
   2.) Four rules:
      a) Must be created at same time as and in same instrument as prior estates
      b) Remainder does not follow fee simple defeasible—follow either leases or life estates
      c) Remainder can not be able to limit the duration of the prior estates
      d) No built in time gap between prior estate and taking
   3.) Can be for life, for years, in fee simple absolute, in fee simple defeasible, in fee tail
   4.) Contingent v. vested
      a) Contingent remainders destructible at common law
         i) Under common law—if not vested at termination of preceding estate interest destroyed, does not take and reversion or executory interests takes instead
         ii) Must vest by artificial termination as well
            (a) If prior estates forfeits
            (b) Merger—occurs where holder of life estate and reversion are same person—life estate and reversion merge to exclude holder of contingent interest if not vested by date of merger
               (1) If dual contingent remainders both can be destroyed
               (2) Exception no merger if life estate and reversion created at the same time—but if holder of both transferred then applied
               (3) Dependent on theory that grantor always has reversion
         iii) Only applies in some states now
         iv) Never applies to trusts
      b) Contingent remainders not always alienable—vested remainders are
      c) Contingent remainders subject to Rule Against Perpetuities; vested remainders unless class gift are not
d) True contingency adds something not inherent in the nature of the
estate—uncertainties part of every gift are not condition enough to
make gift contingent

5.) Contingent
a) Taker of remainder is unascertainable
b) Remainder is subject to unfulfilled condition precedent
c) Key: If A died at any time now or in future would B be entitled to
possession? If don’t know then look to placement of condition to
make sure contingent
d) Once condition is met then contingent remainder becomes vested
e) As long as remainder contingent, grantor retains reversion—even
if executory interest as well in someone else
f) Devisable and descendible at common law but not transferable
inter vivos—retains same condition
   i Today most jurisdictions say transferable
   ii Exceptions at common law: release it to holder of
      possessor interest, transfer it by warranty deed
g) A to B for life then to C in fee simple if then living
   i By position of language looks like vested subject to
      divestment, but where A’s right of entry or possibility of
      reverter is not expressed most courts say contingent interest

6.) Types of vested remainders
a) Indefeasibly vested remainders
   i Certain to become possessory and certain as to size
b) Remainders vested subject to complete defeasance
   i One which may come to an end prematurely
   ii Difference from contingent remainder—location of
      language
      (a) Contingent remainder—condition precedent—precedes gift
      (b) Vested remainder subject to complete defeasance—
         condition subsequent—follows gift
      (c) Precedent and subsequent language rule only applies where
         condition itself is a prerequisite only to taking estate.
         Where condition operates subsequent to taking estate,
         always vested.
      (d) Ongoing conditions that could happen before or after
         possession—some courts say vested subject to divestment
         w/o regard to where language is placed
         iii Once condition satisfied becomes indefeasibly vested
         iv Not subject to rule of destructibility
         v Not subject to rule against perpetuities
         vi Preference for vested remainder
         vii Gifts where condition is implicit in nature of estate—life
            estate, fee tail—vested not contingent
   c) Remainders vested subject to open
      i Gift to class capable of increasing in size
ii  Know someone will take just don’t know how much
iii  General rule: class closes at time interest becomes possessory—rule of convenience
  (a) Exception: To the children of B who reach 21—if have child 21 and children 8, 5, 4—closes to those children but wait to see if they reach 21 and then limit first child’s share
  (b) Subject to rule against perpetuities
b.  executory interest
  1.) generally take effect by divesting holder of possessory estate of estate
  2.) any interest following fee simple defeasible is executory
  3.) don’t have to be in fee simple
  4.) modern use: to A for life, then to B if she has attained age 21
     a) if B has not yet attained age 21 but A has died, Grantor takes reversion and B has executory interest to divest his estate if she reaches 21
  5.) subject to rule against Perpetuities
C.  Kost v. Foster
  1. In a gift to Ross Kost for life then to children in fee simple, the children of any deceased child to take the parent’s share, a child took a vested remainder subject to divestment of a undetermined amount
     a. Whether contingent or vested still need language of gift over to preserve grantor’s intent that children take
  2. Could still be sold by trustee in bankruptcy proceedings—owner acquired vested remainder subject to divestment—contingent remainder could not be sold by trustee
     a. Some courts still say contingent interest not saleable—can only attach lien to sell when it becomes vested
D.  § 2-707 of Uniform Probate act assumes requirement of survivorship—difficult to overcome
  1. where not a class gift, if beneficiary leaves surviving decedents they take by means of a substitute gift. If no surviving decedents residuary beneficiaries take or passes by intestacy
  2. same thing w/ class gift, only decedents take beneficiaries share
XIV. Perpetuities
A.  Rule against Perpetuities
  1. No interest is good unless it must vest if at all not later than 21 years after some life in being at the creation of the interest.
     a. Three options for valid vesting:
        1.) W/in 21 years
        2.) By death of life of in being at creation of interest
        3.) W/in 21 years after death of life in being at creation of interest
     b. Does not have to become possessory w/in time—just has to either vest OR fail w/in time limits
        1.) Problem is not remoteness of possession but rather remoteness of vesting
c. Start measuring from date will speaks (date of death of grantor), date irrevocable trust is created, or date of death of grantor if revocable trust is created
1.) Concerned with when property is tied up—take into account all known at that date
2.) Assumed people possible of having children from birth until death
3.) Measuring life—impacts vesting or failing or breach of condition, don’t have to be mentioned in the will but have to be causally related to the event
d. Only the voided future interest is struck
1.) Where language of special limitation is used, many courts will create fee simple determinable and give grantor a possibility of reverter
2.) Very few jurisdictions rewrite most just strike
3.) Few courts will add “reasonable time period requirement” but most reluctant to do so
2. Number of states and Uniform Statutory Rule Against Perpetuities take a “wait and see” approach to see if interest vests w/in time limits
a. If you satisfy common law rule of perpetuities then you satisfy any state requirements
3. Doctrine of Infectious Invalidity
a. If interest is grammatically or systematically inseparable from rest of document, courts will strike more than contingency to best give effect to testator’s intent
1.) PA any portion fails, whole instrument fails