I. Fundamentals
   
   A. Intro/History
      
      1. What is property? *Property is relational. Real property – land, Personal property – tangible and intangible
      
      2. What can we do with property? (Bundle of sticks)
         a) Alienation – rid possession of by sale, abandonment, gift, will. Consume, Destroy, Exclude/include (others’ use), Improve/modify, Possession,
            Use (or lack thereof – storage)
      
      3. What is the purpose of Property?
         a) Allocation of resources, efficiency, privacy and Security, stability, Greed, Productivity
      
      4. Theories of Property:
         a) Labor Theory (Locke, formalist) – by mixing one’s labor with something, they own product of labor. Limits to property = only as much as one
            can enjoy.
         b) Blackstone, formalist – Property rights are from god. Division of property instead of just use is orderly, civilized, and increases labor efficiency.
            Rights of descent keep order.
         c) Reich, realist – Government largess bad. Constitutional regulation of property rights good, so citizens cannot waive rights for property benefits
            (substantive safeguard). Procedural safeguards keep it fair, maintains privacy.
   
   B. Acquisition by discovery/conquest
      
      1. Principle of first-in-time
   
   C. Acquisition by capture
      
      1. Formalist v Instrumentalist views – Manucaption
         a) Formalist – Fox is part of nature, manucaption is necessary for rights to it, not just mortal wound.
         b) Instrumentalist – Need for clear custom, Barbeyrac states ‘likelihood of capture’ rule.
      
      2. Importance of custom
         a) Ghen v Rich – Custom dictates standard action in industry, this preserves the business. Customs offer incentives to all actors. Custom prevails
over general rule if longstanding.
3. Interference with others’ industry – Ratione soli (constructive possession of animals on land until they take off.)
4. Theory of externalities
   a) Demsetz – Property rights are useful. They internalize externalities.
      (i) Internalization – bearing the cost to the community for personal gain
      (ii) Externalization – no consideration of cost to society for personal gain
   b) Efficiencies
      (i) Allocative – is total benefit greater with or without action, adding up ALL costs and benefits
      (ii) Distributive (justice) – how benefits are spread among all affected parties.
D. Acquisition by creation – usually intellectual property
   1. Labor theory applies well
   2. Encourages innovation and creativity, but pressures society economically for a share
      a) INS v AP and Cheney v Doris – gives rights to thing that embodies invention, but imitations are permitted.
   3. Internet property – intent matters. Protection of trademarks for public information and trust. GOOD FAITH RULE
   4. Property in person – Identity characteristics are protected, but one cannot alienate body parts. Regenerative parts can be sold.
      a) Moore v. UC Regents – wanted commercial rights over cell lines and scientific products from rare condition. Informed consent enforced, but not conversion.
   5. Rights of inclusion/exclusion – protected by society
      a) Jacque v Steenberg – Society has penchant for using punitive damages to sustain right of inclusion/exclusion. Deters ‘self-help’ response.
      b) State v Shack – Right to exclude does not apply to landowners refusing legal services to workers on their land. Rights for person, not property as in Jacque.
E. Acquisition by find
   1. Finder has claim against entire world but true owner, and prior possessors.
2. Bailment – rightful possession of goods by someone who is not true owner, usually temporary.
   a) Bailor – owner, Bailee – possessor
   b) Finding = constructive bailment
3. Policy with regard to finders – to encourage return to true owner
   a) Hannah v Peel – Actual possession of land is required for things found on the land to belong to landowner. As Peel never took possession of land, finder keeps brooch.
   b) McEvoy v Medina – money found in public part of shop, so belongs to finder. If had been in shopkeepers realm, would not go to finder if not claimed.
F. Acquisition by adverse possession
1. NACHOE requirements:
   a) Notorious – visible, observable, Actual possession – fence it in, Continuous – without interruption, Hostile – puts owner on notice of occupation, cannot be by housekeeper unless permission is revoked, Open, Exclusive – no other residents
2. Policy of Adverse Possession – protect legal rights
   a) Mannillo v Gorski – Steps encroach by 15 inches. Requiring Mannillo to sell land to Gorski is equitable remedy. No harsh response, but must have clean hands in equity/innocence.
   b) Howard v Kunto – All elements of adverse possession are contingent upon particular land plot (continuous may be accomplished with summer home).
G. Acquisition by gift
1. Requirements:
   a) Intent to transfer ownership
   b) Delivery of object – clear evidence of intent and gift, manifestation of changing of hands
   (i) Actual – if object can be handed over, it must be.
   (ii) Constructive – key or object enabling possession
(iii) Symbolic – written statement declaring gift
c) Acceptance – usually presumed

2. Policy of gift – avoid fraud, cannot make valid gift while retaining life interest

II. Fee simple absolute
A. Language of creation: “to A” or “to A and his heirs” (when alive, person has no heirs. Only heirs apparent.)
1. Devisable (pass by will), Descendible (pass by intestacy), Alienable (transferable inter vivos)
B. Future interest: none.

III. Fee tail
A. Created by “to A and the heirs of his body”
B. Not used in the US today, (for all practical purposes, creates fee simple absolute). Used to pass to lineal blood descendants NO MATTER WHAT (will, etc.)
C. Reversion created in the grantor. Remainder to 3rd party.

IV. Defeasible Fees (3 types) – not created by words of desire/intention do not create, only clear conditions. (Courts dislike restrictions on land use, so tend not to find defeasible fees unless clear durational language used).
Absolute restraints on alienation are void (as a matter of public policy). –Brown v. White, restraint on sale of home not allowed by court. Fee simple absolute created.
A. Fee simple determinable – terminates AUTOMATICALLY upon condition/end of duration
1. created by “to A for so long as/during/until…” (must use clear durational language)
2. Freely devisable, descendible, and alienable BUT always subject to the condition.
3. Possibility of reverter created in O. FSD – POR
B. Fee simple subject to condition subsequent – NOT automatically terminated, but can be cut short AT THE GRANTOR’S OPTION if the stated condition occurs.
1. created by “to A, but if X condition occurs, grantor reserves the right to re-enter and retake” (must use clear durational language and must state
right to re-enter.
2. freely devisable, descendible, alienable but ALWAYS subject to condition.
3. Right of entry created in O, AKA the power of termination.
C. Fee simple subject to executory limitation – just like FSD, but goes to 3rd party AUTOMATICALLY upon condition occurring.
1. created by “to A, but if X event occurs, THEN TO B”
2. freely devisable, descendible, alienable. If the condition is broken, it is automatically forfeited to someone other than grantor.
3. Shifting executory interest created in 3rd party.
V. Life Estate – measured in explicit lifetime terms, NOT IN YEARS.
A. Created by “to A for life”
1. Life estate pur autre vie – measured by life other than grantee’s “to A for the life of B”
B. Rooted in protection from WASTE.
1. Life tenant is entitled to all ordinary uses and profits from land.
2. Life tenant must not commit waste – must not harm the future interest holders.
   a) Voluntary/affirmative waste – actual overt conduct causing a decrease in value.
   b) Permissive waste/neglect – allowing to fall into disrepair, failure to reasonably protect and MAINTAIN.
   c) Ameliorative waste – life tenant must not enhance the value unless all future interest holders are known and consent.
3. Reversion held by O, remainder held by 3rd party.
VI. Future interests retained by transferor
A. Reversion
1. automatically created in defeasible fee simple
2. property goes back to O
3. alienable, heritable, devisable
B. Possibility of reverter
1. after fee simple determinable, upon condition occurring

C. Right of entry/power of termination

1. After FSCS

VII. Created in the transferee

A. Conditions for remainders:

1. Possessory immediately after expiration of previous interest
2. Can be in fee simple, fee tail, life estate, estate for x years
3. Must be vested at the time of previous estate

B. Vested remainder (comma separating clauses)

1. To ascertained person
2. Not subject to condition precedent
3. Special subsets: Indefeasibly vested, Vested subject to partial divestment (class could grow), Vested subject to complete divestment (can be divested by condition subsequent, condition comes after vesting)

C. Contingent remainder – heirs are not apparent until death of prev. estate

1. To unascertained person OR
2. Made contingent upon some event other than termination of previous estate
3. If first remainder is contingent, all following are contingent.

D. Executory interest

1. *Divests prior interest
2. Types – Shifting (from another transferee), Springing (from transferor)
3. Occurs when property is not immediately possessed after expiration of previous estate
4. Always indestructible and freely alienable

VIII. Rule Against Perpetuities – Interest must vest no later than 21 years after some life in being at the
creation of the interest.

A. Assumptions:
1. Fertile octogenarian
2. Unborn widow

B. Alternatives
1. Wait and see – more time costly, but also more common sense.
2. USRAP – 90 years waiting period from creation of interest (common in states)

IX. Joint tenancy – 2 or more own, with right of survivorship (must be expressed). Typical disfavored by the courts, because it avoids probate. TTIP

A. Defining characteristics:
1. Right of survivorship – when one tenant dies, his share passes automatically to surviving joint tenants.
2. Interest is alienable, but NOT devisable or descendible (because share passes to others).

B. Creation – 4 unities plus right of survivorship. “to A, B, and C, as joint tenants with right of survivorship”

One cannot convey to self and 3rd person, must use “straw man”. Step 1 – A to straw. Step 2 – Straw to A and B as joint tenants, with all unities intact.

1. Time – tenants must take interests at the same time, Title – must take in same title, Identical/equal interests, Possession – equal rights to possess whole, Right of survivorship must be expressed.

C. Severance by sale or partition.

1. Sale – JT can alienate interest during lifetime, does not need consent of others.
   a) This severs joint tenancy to seller’s interest, buyer becomes tenant in common.
   b) Other joint tenants hold their shares in joint tenancy.

2. Partition:
   a) Voluntary agreement – allowable peaceful way to end JT
   b) Partition in kind – judicial action, physical division of property, for best interest of all
   c) Forced sale – judicial action, for best interest, land is sold and proceeds are divided proportionately.
X. Tenancy by the entirety – highly protected marital interest between husband and wife, with right of survivorship
   A. Creation – between husband and wife with right of survivorship
      1. Arises presumptively in conveyance to H&W, unless clearly stated otherwise.
   B. Protection:
      1. Creditors of only one spouse can’t touch the tenancy in entirety.
      2. Neither tenant alone can defeat right of survivorship by unilateral conveyance to 3rd party.

XI. Tenancy in common – 2 or more own, with NO RIGHT OF SURVIVORSHIP.
   A. Characteristics:
      1. Each owns individual part of whole AND each has a right to possess the whole, can be unequal shares.
      2. Each interest is freely descendible, devisable and alienable (NO SURVIVORSHIP RIGHTS)
      3. Courts favor tenancy in common (presumed in ambiguous cases).

XII. Rights and duties of cotenants
   A. Possession – each cotenant is entitled to possess and enjoy the whole.
      1. Wrongful ouster – one cotenant wrongfully excluding another
   B. Absent ouster – cotenant in exclusive possession is not liable to others for rent. (rent from tenant in exclusive possession not allowed)
   C. Rent from 3rd parties – cotenant who leases all or part of premises to 3rd party must account to cotenants, providing fair share of rental income (proportionate to ownership shares)
   D. Adverse possession – unless other cotenants ousted, one cotenant in exclusive possession for statutory period cannot adversely possess whole title (no hostility).
   E. Carrying costs – each cotenant is responsible for fair share of costs (taxes, payments, etc.)
   F. Repairs – repairing cotenant enjoys right to contribution for necessary repairs provided that they notify the other cotenants of need.
   G. Improvements – during the life of the co-tenancy, no right to contribution for improvements.
      (Improver gets credit equal to increase in value due to improvements at partition. Improver bears sole liability for any decrease in value caused by
improvements. ← “Upside-downside doctrine”

H. Waste – cotenant must not commit waste. Cotenant can bring action for waste during life of co-tenancy.

I. Partition – right to bring action for partition.

XIII. Leasehold/non-freehold estates

A. Tenancy for years/estate for years/term of years – termination date is established at start.

1. Fixed, determined period of time (any length of time – days, months, years)

2. Termination notice – not necessary, because length is determined at start.

3. Term of years greater than ONE YEAR must be in writing to be enforceable. (statute of frauds)

B. Periodic tenancy

1. For successive or continuous intervals until L or T give notice of termination.

   a) “to T from month to month”

2. Termination notice – must be given. Common law – at least equal to period length itself, unless otherwise stated.

   a) If tenancy is year to year or greater, only 6mo. notice required. (may always contract otherwise.)

C. Tenancy at will

1. No fixed period of duration

   a) “to T for as long as L or T desires”

2. May be terminated by either party at any time.

   a) by statute in most states, a reasonable demand to vacate is required.

D. Tenancy at sufferance – short-lived.

1. When T wrongfully holds over past expiration of lease

2. Lasts only until L evicts tenant, or elects to hold tenant to new term.

XIV. Landlord-tenant relationship

A. Tenant duties
1. Duty to repair
   a) Keep premises in good repair, may not commit waste.
   b) Law of fixtures – when a tenant removes a fixture, he commits voluntary waste. T must not remove the fixture, no matter if they installed it.
2. Duty to pay rent
   a) Still in possession, has not paid rent – only 2 options for L.
      L must not engage in self-help (forcibly remove T or possessions, or change locks), punishable civilly and criminally.
      (i) Evict thru courts and sue for rent owed.
      (ii) Continue relation with T and sue for rent owed.
   b) T does not pay rent, but no longer in possession
      (i) T wrongfully vacates with time left on term of years lease. SIR
         * Surrender – treat T’s abandonment as surrender of premises, terminate lease.
         * Ignore – treat as if T was still there, hold responsible for rent.
         * Re-let – re-let on T’s behalf and hold T liable for any deficiency. (L must try to re-let in most jurisdictions. Attempt to mitigate damages.)
B. Landlord duties
1. Duty to deliver possession – put T in actual physical possession of premises.
2. **Implied covenant of quiet enjoyment – applies to residential and commercial leases.
   a) Fundamental and implicit to every lease
   b) T has a right to quiet use and enjoyment of premises without interference from L.
      (i) Breach by actual wrongful eviction – exclusion from premises
      (ii) Constructive eviction – breached covenant of quiet enjoyment. SING
         * Substantial Interference – attributable to L’s actions or failure to act. Does not need to be permanent, but chronic.
         * Notice – T must give L notice, L must fail to respond meaningfully.
• Get out – T must vacate within reasonable time after L fails to correct, but not required by modern law

c) L’s responsibility for bothersome conduct of other tenants – NOT USUALLY.
   (i) L has a duty not to permit nuisance on the premises.
   (ii) L must control common areas.

3. *Implied warranty of habitability – only to residential leases.
   a) Non-waiveable. (not even with as-as clause)
   b) Premises must be fit for basic human habitation, By Local housing code, or Independent judicial conclusion
   c) When breach occurs, MR3
      (i) Move out, and terminate lease, Repair and deduct costs from rent, Reduce rent, or withhold all rent (until fair value determined by courts), Remain in possession, pay rent, and affirmatively sue for damages.

4. Retaliatory eviction prohibited

C. Assignment vs. Sublease: unless law says otherwise, tenant can transfer interest.

1. Assignment – transfer of interest in whole
   a) When assignment occurs from T1 to T2, L and T2 are in privity of estate. They are not in privity of contract, unless T2 expressly assumed promises in lease. L and T1 are now secondarily liable to each other, still in privity of contract.
      (i) Privity of estate – parties are responsible to each other for all promises in lease that run with the land. L and T2, no longer L and T1
      (ii) Privity of contract – assumption of ALL PROMISES in lease. L and T1, not L and T2.

In the event that T2 assigns to T3, T3 abuses premises, L has action against T3 due to privity of estate. L can take action against T1 due to privity of contract and secondary liability. L has no action against T2, because there is no privity of estate or contract.

2. Sublease – transfer of less than entire interest.
   a) T2 is responsible to T1, and T1 is responsible to T2.

XV. Nuisance (public = rights of entire public, private = intentional (unreasonable), unintentional (dangerous, unreasonable risk to others))
A. Nuisance per se – not dependent on location, always a nuisance
B. Nuisance per accidens – right thing, wrong place
C. Factors:
   1. societal value, response of general public, reasonable alternatives, value to performing party, timing of activity (first in use, etc.)
D. Coming to the nuisance – opening up in middle of where people would find annoyance
   1. likely to find nuisance in this case, unless sensitive party moves to nuisance.
   2. remedy – find damages up to that point, then either injunction or permanent damages.

XVI. Easements/servitudes – private land use controls
A. Def – grant of non-possessory property interest entitling its holder to some form of use/enjoyment of another’s land (servient tenement)
B. Affirmative v. Negative easements
   1. Affirmative easement – most common.  Right to go onto and do something on servient land.
      a) privilege to lay utility lines on servient land
      b) giving right of way across land
   2. Negative easements.  LASS(S) – Compels servient owner to refrain from doing something that would otherwise be permissible.  ONLY CREATED EXPRESSLY IN SIGNED WRITING.  No natural right to negative easements.
      Can compel one from building on land because it would hinder other property’s access to light, air, support, water, scenic view (at times).
      a) Light, Air, Support, Stream water from artificial flow, Scenic view – in some states.
C. Easement Appurtenant or In gross:
   1. Appurtenant – when benefits holder in his physical use or enjoyment of HIS property.
      a) When 2 parcels of land are involved.
         i) Dominant tenement – derives benefit, Servient tenement – bears burden
            “A grants B right of way across A’s land, so B can more easily reach his land.”  A = servient, B = dominant.  Easement appurtenant.
      b) Passes automatically with dominant tenement, even if not mentioned in conveyance.
c) Creation - PING
(i) Prescription – adverse possession
• Must satisfy elements of adverse possession
(ii) Implication – implied from existing use
• Previous use was apparent
• Parties expected that use would survive division, because reasonably necessary to dominant land’s use and enjoyment.
(iii) Necessity – landlocked setting.
• If grantor conveys portion of land with no way out, except over portion of land.
(iv) Grant – for more than one year, must be in writing, complying for formal element of deed (SoF) – Deed of Easement.

2. In Gross – gives holder only personal or commercial gain, (not related to use/enjoyment of his land) No dominant tenement.
Ex: right to lay power lines, bill boards, etc. on another’s land. Right to fish in another’s lake. Must be one parcel of land. Not transferable, unless for commercial purposes.

D. Limitations of easements:
1. Scope based on circumstances under which created, Unilateral expansion of easement not allowed.

XVII. License – mere privilege to enter another’s land for delineated purpose

A. Not subject to Statute of Frauds
B. Freely revocable at will of licensor, unless estoppel applies to bar revocation
C. Common cases:
1. Tickets create freely revocable licenses.
2. Neighbors talking by the fence: Oral easements are not enforceable., Only creates a freely revocable license.
D. Estoppel – applies to bar revocation, but only when licensee has invested substantial money/labor in REASONABLE reliance on license’s continuation.

XVIII. Profit – entitles holder to enter servient land and take from it soil or some substance of the soil.


(Timber, minerals, oil)

A. Profits share all rules of easements.

XIX. Zoning – legislative land use control, public law

A. Administered by police power – power of municipal to set regulations to protect health, safety, welfare (also morals, sometimes).

B. Purposes – prevent incompatible uses, increase values (minimize conflicting uses), efficient development for larger purpose.

C. Generally constitutionally valid

1. Nonconforming uses – can appeal zoning board, or given a reasonable time to phase out (amortization period).
   a) Factors – length of period to phase out, nature of use, character and location, effect on users business.
   2. regulated by constitution, state power, etc.

   a) Aesthetic zoning not allowed, due to subjectivity.