

We are one-third of the way through the course. The first third was about fundamentals, but the focus was on what have you got? More explicitly it was about possession. This third is about how do you transfer it and what you can do with conveyances. The last third is about how can you use it, both private and public controls on land use. In the beginning we touched on some high-level abstractions about what is property. We will return to those in the last week of the course. In Hohfeldian terms the three parts of the course are about (1) the right to possession, (2) the power to convey, and (3) the privilege of use.

Metzger

1. The conveyancing process today
 - a. Contract
 - b. Title insurance or assurance, in this process the recording system is key
 - c. Money—mortgage
 - d. DeedThe importance of the distinction between contract and conveyance.
2. The requirements of the Statute of Frauds for deeds
 - a. Name of grantor and grantee
 - b. Description
 - c. Words of conveyance
 - d. Signature in writing
3. Where does the statute say that?

PA. STAT. ANN. tit. 33, § 1:

§ 1. Parol leases, etc.; estates in lands not to be assigned, etc., except by writing

From and after April 10, 1772, all leases, estates, interests of freehold or term of years, or any uncertain interest of, in, or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents, thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding;

except, nevertheless, all leases not exceeding the term of three years from the making thereof;

and moreover, that no leases, estates or interests, either of freehold or terms of years, or any uncertain interest, of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall, at any time after the said April 10, 1772, be assigned, granted or surrendered, unless it be by deed or note, in writing, signed by the party so assigning, granting or surrendering the same, or their agents, thereto lawfully authorized by writing, or by act

and operation of law. [1772]

4. In 1951, the Pennsylvania legislature repealed § 1 of the statute insofar as it applies to leases and substituted the following: “Real property, including any personal property thereon, may be leased for a term of not more than three years by a landlord or his agent to a tenant or his agent, by oral or written contract or agreement.” PA. STAT. ANN. tit. 68, § 250.201. What change did that make? (Pa. is at the extreme of the possibilities on this topic.)
5. The original statute (29 Car. 2, c. 3 [1677]):
 - a. § 1 had wording quite similar to what is given above.
 - b. § 2 excepted short-term leases at rack (i.e. market-rate) rent. (This is the exception that we just discussed.)
 - c. § 3 dealt with the assigning and surrendering of interests already created or the creation of incorporeal interests. (This provision is, to some extent, incorporated in § 1 of the Penn. statute.)
 - d. § 4 dealt with a miscellany of contractual obligations including contracts for the sale of land. (Some of this is in §§ 3–6 of the PA statute; the PA courts have interpreted § 1 as applying to contracts for the sale of land.)
 - e. § 5 dealt with wills. (See PA. STAT. ANN. tit. 20, § 2502.)
 - f. § 6 dealt with changes in wills. (See PA. STAT. ANN. tit. 20, § 2505.)
 - g. § 7 dealt with trusts of land. (See PA. STAT. ANN. tit. 33, § 2.)
 - h. § 17 dealt with the sale of goods. (See UCC sec. 2–201 [=PA. STAT. ANN. tit. 13, § 2201]: contracts for the sale of goods for a price of \$500 or more must be in writing; partial performance validates the contract but only as to goods that have been accepted or for which payment has been made.)

In the case of contracts that must be in writing, the original statute required that what must be in the writing is “a sufficient memorandum thereof,” and similar language is carried over into most of the modern descendants.

6. What happens if you violate § 1 of the PA statute? (And why does the Statute say estate at will and not just void?)
7. Which letter in *Metzger* did the job?
 - a. 13 March 1915 (p. S166)? “You worry so much about the inheritance. All you want to know I have already often written you. The house on Ninth street mother has written you already long since; you shall have it.”
 - b. January 1916? “The house which Marcus built shall belong to you. You need no lawyer for that. I have already written Reverend Oehler to this effect. You are now living there and are to stay there and nobody can ever send you out.”

- c. The letter written later in 1916? “I am giving you that property and you now send me the remainder of the cash and then you have a nice share. I could not have done so much for you as I have for the other children. They got their share from the father so this is now yours.”
 - d. 11 February 1916? “I am grateful to you for looking after the matter and hope it will soon be settled finally”—referring to the administration of the estate.
 - e. 16 March 1916? “Now dear August, you repeatedly write of the house in which you are living. I have on several occasions written to you and the Reverend (Reverend Oehler, one of the executors) that the house and the little place with the garden are your property. It is surely a nice large share of aunt’s property. And also Uncle John’s watch. I have already written you. I do not know whether you received the letter.”
 - f. 8 June 1916? “How often have you not written about our dear aunt’s house on Ninth Street? I have written to you many times and also to the Reverend Oehler that the small place also, as well as all the mortgages are your property. On account of the wicked war some letters are lost.”
8. Suppose that the letters didn’t do the job; has Metzger got anything else going for him?
9. *Harlan* (p. S168) <We may skip this>

AFFIDAVIT

PERSONALLY APPEARED, before me, the undersigned Notary at Large, Eugene H. Harlan, and upon his oath, deposes and says:

THAT he is the owner of Mineral and Oil Leases being situated in Texas (19 counties approximately), Arkansas, Kansas, Kentucky, Louisiana and Oklahoma;

THAT he purchased these Mineral Interest from his father in 1952; FURTHER, that he is very ill with heart disease and the work of assessing and setting up in book form has fallen entirely upon his wife, NORMA JEAN HARLAN.

FURTHER, IT IS THE WISH OF Eugene H. Harlan, by the execution of this instrument, that his wife be considered to own these Mineral Interests with him as Joint Tenants, with the right of Survivorship; that this Affidavit will suffice to be filed in the appropriate counties and will stand as indeed a Mineral Deed.

FURTHER, it is the wish of Eugene H. Harlan that his wife be considered to have full power and authority over the now existing producing royalties; that she have the power to sell, assign and convey, if she deems it necessary; that she have full power and authority to sell the non-producing mineral interest or retain them, whatever suits her best. By this Affidavit, [p*360] Eugene H. Harlan, give to his wife, to be hers absolutely upon his death, all the right, control and ownership of what was United Royalty Corporation, a Missouri corporation, as well as all interest Eugene H. Harlan had in and to the Mineral Interest that may or may not be in the

name of United Royalty Corporation . . . and conveys, upon his death, full right and title to the mineral interest in his name solely. It is further the wish of Eugene Harlan, that no one cause his wife any problem in carrying out the wishes of Eugene H. Harlan.

DATED THIS the 19th day of June, 1981, and signed in the presence of witnesses.

Court held that “be considered” (under FURTHER, IT IS THE WISH OF) were not words of conveyance. “Give to his wife” (under FURTHER) conveys personal property not realty. “Conveys upon his death” (later in same) does the job (it won’t in many jurisdictions).

The problem was that “purchased from his father in 1952” was not a sufficient reference to another instrument that contained the descriptions and unlike a previous Texas case he did not say “all his mineral interests.” The wife, therefore, lost the case.

10. The lessons of *Metzger* and *Harlan*
 - a. Necessity of litigation
 - b. The Cal. statute
 - c. The position of the Alien Property Custodian

Hayes

1. Why would it be “manifest injustice” (p. S180): “We have tried, successfully we think, to determine this appeal without being influenced by the manifest injustice that would be done to the widow of Matt Hayes if the efforts of his family met with success.” Why would it be ‘manifest injustice’?
 - a. The widow ought to prevail?
 - b. The concept of “executed parol gift.”
 - c. What more is being required than simply evidence of an oral transaction?
 - d. What is the purpose of these requirements?
 - i. Part performance; UCC sec. 2–201 contrasted
 - ii. Estoppel
 - e. Suppose the suit occurred in 1893? (That’s too hard right now; let’s do no. 2)
2. Why no adverse possession under MN’s 15 yr. statute? Matt entered the land in 1892; he married in 1903; he died in 1909. Suit was brought in July of 1909. The couple had no children, something that the court tells but that you would know because Susie is his sole heir. That would prevail today in Minnesota and was the situation at the time of the case. (There’s a note in the Materials, which shows how to get to this proposition.)
3. *Metzger* compared—the distinction between taking a conveyance out of the statute and putting it in.
4. Summary of *Hayes*:
 - a. We established that *Hayes* holds that we need more than evidence of the oral conveyance such as might be provided

by the taking of possession and payment of taxes. We may need acts of detrimental reliance such as would give rise to an estoppel; at a minimum we need acts to indicate that a fee interest was conveyed. The holding is standard and different from what is normally required in cases of personal property (i.e., sales of goods). The reason for this is that there many ways in which someone may have possession of land with an interest less than full fee ownership.

- b. What is required is strong: a change of position such as could not, at least not easily, be put back with the payment of money damages. In this regard the case is stronger than some. In this regard the purchase of additional land may be key. The building of a new barn and other improvements can be compensated.
 - c. In order to get at why it is we must ask a question: Why did the court not hold that Matt and Susie had established title by adverse possession under Minnesota's 15 year statute of limitations?
 - d. The reason why the case is stronger than some is probably because there is so little evidence that an oral transaction took place. To put it bluntly we need a double estoppel: you're estopped from claiming the statute of frauds and then you're estopped from claiming that no oral conveyance took place.
5. What are the implications of this for the Statute of Frauds generally (a problem both in contracts and in property)? There are at least three different justifications "taking an oral conveyance out of the statute." The relative conceptual clarity of this scheme is rarely reflected in the opinions, where the different concepts tend to merge and blur.
- a. Do we have enough evidence that the purpose of the statute can be fulfilled, even though its specific requirements are not? This is all that need be implied in the phrase "executed part gift." An alternative idea is found in the notion of "part performance," which may be limited to taking out of the statute only that part of the oral contract (which should have been in writing) that has been performed on one side (e.g., 1000 widgets only 500 of which have been delivered). In the case of a fee interest in land more performance is required than simply taking possession, because taking possession could be evidence of a short-term lease or even of an estate at will. No estoppel is required here, at least conceptually.
 - b. Has the grantor in the oral conveyance behaved in such a way and the grantee relied on that behavior in such a way that it would be unjust to allow the grantor to claim the benefit of the statute? This is, of course, an estoppel. It assumes that there has been an oral conveyance, which we are forbidden by the statute to look into. It calls, however,

for a balancing act: how conducive to reliance was the grantor's behavior, how detrimental was the reliance?

- c. *Hayes* seems to require more, not only detrimental reliance but also such reliance as could not be set right by money damages. In this case, building the barn was not enough (we can compensate Susie for that), but buying adjoining pieces of property and getting married are things that can't be undone, or at least not easily. My suggestion was that such extreme acts of reliance may be required in this case because the court had already decided that there was no oral gift, at least not one in 1892. An entry onto land pursuant to an oral gift is "hostile," within the meaning of the concept of adverse possession. The court had already decided that Matt's entry was not hostile in 1892. Hence, it had to use estoppel both to create an oral gift where none was evidenced, and, once it had been created, to take it out of statute. Hence further, while this is one of the leading American cases on this topic, one can't be sure that in a case where it is clear that there was an oral conveyance the court would require as much as it did in the *Hayes* case.