

I. YESTERDAY

1. Micklethwait v. Fulton. The court's summary of the case at the beginning says: "Abigail Micklethwait, claimed title to said property, free from the judgment lien of defendant in error, and prayed that the conveyance from her to Louise be ordered canceled of record" She prevailed in the trial court but that was reversed in the intermediate appellate court. The opinion of the Supreme Court deals only with the question of the judgment lien, and doesn't say anything about the title to the property. Clearly, I think, as between Abigail and Louise, Abigail has the better right even after the judgment. Presumably, the Micklethwaits are going to have to discharge the judgment lien if they want to continue to own the property. If they can and do, they will then file the discharge as of record. If they want to put the record title back into Abigail, they will then have to sue Louise, get a judgment and record that. Much, obviously, depends on how annoyed they are with Louise. Abigail is now 85 and they may just want to leave it as is. They might, however, want to put the property in trust so that Leon G. can't get at it again.
2. Hood v. Webster. Anything the Websters can do now? There's a possibility that the executor of Florence Hood's estate, who was not a party to the case, could try again.

II. ESTATES AND FUTURE INTERESTS IN GENERAL

1. Why study estates and future interests? The question is a fair one. The traditional answer – it's the law and so you should learn it – seems to me to be unsatisfactory.
2. Estates and future interests as a study in the analytical possibilities of law.
3. Estates and future interests as illustrative of a fundamental tension in property law.
4. How to learn estates and future interests?
 - a. Learn the definitions.
 - b. Work the problems. (We will not do Problems 6 and 7 in class, but they are good exercises. I don't recommend that you do Problems 11 and 14. They involve the common-law rule of merger and destructability, on which you will not be tested.)
 - c. A 'self-test' version of the problems in this outline, which allows you to enter an answer and then check it, is available at http://www.law.harvard.edu/faculty/cdonahue/courses/prop/lec/outcl15_19S_selftest.html.
5. What kinds of problems will be on the short-answer questions on the exam about estates and future interests? The common-law system as generally modified today.
 - a. presumption that a grant is a grant in fee
 - b. no fees tail
 - c. no common-law destructability of contingent remainders
 - d. no Rule in Shelley's Case

- e. no Doctrine of Worthier Title
- f. no common-law dower or curtesy
- g. preference for joint tenancy has been abolished

I will not ask you what the result of a problem would be before the passage of the reforms of the 19th and 20th centuries. I remain of the view that it is easier to understand what we have today if you have some command of the unreformed common-law system, and when I, or the book, refers to the common-law system what we mean is the system as it existed c.1800, on the eve of reform.

III. PRESENT ESTATES

1. The fee simple: Fully describe the interest of all parties named or described in the following instruments in a common-law jurisdiction as of the effective date of the instrument (recall that a devise is not effective until the devisor's death). Assume that the grant or devise is of adequately described land of which grantor/devisor is solely seised in a fee simple absolute. Assume that the statute Quia Emptores is in effect, that there is a statute of wills, and that there is a statute that states that **all grants are assumed to be in fee simple unless the contrary is expressed:**

G = grants

D = devises

—> = the land to

- a. G —> A (p. S202 Problem no. 1)
 - b. G —> A and his heirs (p. S202 Problem no. 2)
 - c. G —> le (i.e., a life estate) A (p. S202 Problem no. 3)
 - d. D —> A (p. S202 Problem no. 4)
 - e. D —>le A (p. S202 Problem no. 5)
 - f. Would your answer to these questions be any different if the jurisdiction in question did not have the statute making the presumption about grants?
 - g. Why are there still a number of jurisdictions where the necessity of using words of inheritance is a matter of doubt?
2. The fee tail (we'll skip this this year in class, but the problems are good exercises). There is one thing that you do need to know about the fee tail, but it's negative. The common-law did not allow the creation of any form of inheritance other than the fee simple and the fee tail. Hence, if someone made a grant to "A and his/her heirs on his/her mother's side," the type of inheritance created is invalid, and the grant would be interpreted as one in fee simple. The same rule applies today, and with the abolition of the fee tail in almost all jurisdictions, the only type of inheritance that you can create is the one that is given in the state's intestacy statute.

- a. Problems nos. 6–7, p. S204:
 6. D →ft (i.e. fee tail) A
 7. D →ft A →rdr B
 - a. A has no issue; A dies
 - b. A has issue; A dies
 - c. A has issue; A → C
 - d. A has no issue; A → C
 - b. South Carolina (fsc, i.e., a fee simple conditional)
 - c. Del., Me., Mass., R.I. (ft)
 - d. 6 states (le + rdr, i.e., a life estate plus a remainder)
 - e. 25 states (fs, i.e., a fee simple with or without rdr effective)
3. The fee simple determinable / fee simple on a condition subsequent (fsd/fscs)
- a. G → A so long as liquor is not sold, stored or used on the premises [no booze], and upon its determination the estate shall revert to G; G(D) → B (p. S205 Problem no. 8)
 - b. G → A but if booze G shall have a right to re-enter and determine the estate; G(D) → B (p. S205 Problem no. 9)
 - c. G → A provided that the estate shall cease and determine if booze; G(D) → B (p. S205 Problem no. 10)
- https://www.google.com/maps/place/Chicago,+IL+60620/@41.757765,-87.644207,3a,75y,178h,90t/data=!3m7!1e1!3m5!1sL1wQWHXAESAQw0sEf4cMmg!2e0!6s%2F%2Fgeo2.ggpht.com%2Fcbk%3Fpanoid%3DL1wQWHXAESAQw0sEf4cMmg%26output%3Dthumbnail%26cb_client%3Dsearch.TACTILE.gps%26thumb%3D2%26w%3D203%26h%3D100%26yaw%3D178.59964%26pitch%3D0!7i13312!8i6656!4m2!3m1!1s0x880e2f1369f26bcf:0xa1c1c11f5801ad7b!6m1!1e1
4. *Storke*
- a. What did the court hold?
 - b. What consequences if fsd?
 - c. What consequences if fscs with a right of entry (r/e)?
 - d. What consequences if a covenant?
 - e. Why hold fscs?
 - f. Historical background of *Storke* (we'll deal with this after we get more deeply into the reasons offered for the holding)
5. “And the party of the second part [the grantee in said deed], his heirs and assigns hereby covenant and agree that no saloon shall be kept and no intoxicating liquors be sold or permitted to be sold on said premises herein conveyed or in any building erected upon said premises; and that in case of

breach in these covenants or any of them said premises shall immediately revert to the grantors, and the said party of the second part shall forfeit all right, title and interest in and to said premises.” (S206)

6. “Appellants say they do not deem it necessary to classify their supposed reversionary interests as either based upon a conditional limitation or as a condition subsequent, but assert that they rely upon the decision of *Pure Oil Co. v. Miller-McFarland Drilling Co., Inc.*, 376 Ill. 486. Since the reversionary right in that case was held to arise from a deed containing a conditional limitation, we must infer that such is the basis of appellants’ case. Appellee insurance company, however, contends the provisions in the deed upon which appellants seek to recover constitute conditions subsequent. Such different results follow from these different contentions that resolving the character of the restrictions contained in the deed will be determinative of the case.” This is a pretty good indication that the court is forcing the interpretation. But the appellants should never have argued this granted the statute of limitations.
7. Let me just reinforce what we just said.
 - a. By any fair reading, this is a fsd, but the court intreprets it as a fscs.
 - b. It does so because the courts have more control over fscs than it does over fsd’s.
 - i. In this case, the failure specifically to retain a right of entry bars any attempt to exercise it.
 - ii. Even if one had been retained, the court seems willing to hold that the waiver of similar rights in the past will give rise to a waiver of this one.
 - iii. The fact that the plaintiffs knew of the violation and did nothing about it will bar an attempt to exercise the right now. The doctrine here is not so called but is, in fact, the doctrine of laches.
 - c. In this case, it made no difference bc the s/Lims had run if it were an fsd.
 - d. That raises the question why bother, and the answer to that probably is the Women’s Christian Temperance Union (WCTU).
 - e. These interests, however, are a problem beyond the WCTU. It’s a problem that we’ll come back to, but the basic problem can be simply stated: Neither the right of entry (r/e) nor the possibility of revervter (p/rvtr) by the weight of American authority is subject to the Rule Against Perpetuities. Both the fsd and the fscs were in the past and are to some extent today popular land use control devices. It is in the nature of land use that it changes in ways that are hard to predict. Hence, the restrictions run considerable risk of getting out of date.
 - f. Note on p. S208, the court says (this must be dictum) that as a covenant this one is unenforceable because of changed conditions. (“If

the provisions in the deed were construed as a restrictive covenant, they could not be enforced by the plaintiffs because the stipulation of facts and findings of the court show that the change in the circumstances and use of the property in the subdivision has been brought about by the acts of the grantors or their assigns.”) That is a doctrine to which we will return when we deal with covenants.

8. If time, which there probably won't be, a few words about the fee tail.