

Real Property: Present Estates

STEP ONE: What type of interest in land is claimed?

PRESENT POSSESSORY FREEHOLD ESTATES IN LAND

**FEE SIMPLE/
FEE SIMPLE
ABSOLUTE**

FEE TAIL

**FEE SIMPLE
DETERMINABLE**

**FEE SIMPLE
SUBJECT TO
COND. SUBSEQ.**

**FEE SIMPLE
SUBJECT TO
EXECUT. INT.**

**LIFE
ESTATE**

**LIFE
ESTATE
PUR
AUTRE VIE**

STEP TWO: What will the effect be? Three questions

A. Was the interest validly created?

"To A" OR "To A and her heirs"
SOF applies.
C/L: "his heirs" required. Modern: no special words. FSA is assumed if other not indicated.

COMMON LAW ONLY:
"To A and the heirs of his body"
SOF

"To A so long as..." OR "while", "during"
SOF applies

"To A, but if..." OR "provided that..." OR "however, on condition that..."
If grantor reserves right of entry, must be express lang.
SOF applies

Either FSD or FSSCS language followed by: "then to B"
SOF applies

"To A for life" OR "for as long as she shall live"
SOF applies

Created when a life estate is sold OR directly: "To A for the life of B"
SOF applies

B. What are the characteristics of the interest?

Transfers clear title, owner of fee simple may sell, rent, devise, etc.
Potentially infinite duration. No future interests.

COMMON LAW ONLY:
To A and his issue, then reverts.
Modern: Replaced by fee simple

Defeasible fee:
Creates possibility of reverter in owner
If condition fails, estate automatically terminates, reverts to owner

Defeasible fee:
Creates right of re-entry in owner
If condition subseq. occurs, owner must exercise right for estate to terminate

Defeasible fee:
Either determin. or cond. subseq. when a 3rd party has the future interest

Of unknown but FINITE duration.
Creates reversion or remainder.
Open mines doctrine

Unknown but finite duration: measured by the life of the orig. life estate holder

C. What are the limitations on the interest?

None. Freely alienable. Any restriction means not fee simple.

Can't sell or devise.
Modernly thought to be unreasonable restraint on alienability.

Express limit by condition precedent that created the estate.

Express limit in that if condition subseq. occurs, owner's entry right will vest.

Not marketable title. Encumbered. Limited as FSD or FSSCS.

Duty: not to commit waste
Life tenant pays for taxes repairs, etc.

Primary limit is lifetime of the "autre."

STEP THREE: Conveyancing issues

Freely alienable. May sell, divide, or devise. If owner dies intestate, her heirs may inherit.

Can't sell or devise.

Not marketable title: condition = encumbrance.
But may be statutory expiration of future interest.

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Can only sell as life estate pur autre vie. (Can't sell more than she owns.)
May lease property.

Technically transferable but very slim market.
Would still be life estate pur autre vie. May lease property.
Inheritable (if A dies before B)
C/L: owner-less limbo

STEP FOUR: Remedies

If condition subseq. occurs, remedy of grantor is right of re-entry: the fee simple is terminated and the property goes back to grantor.