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by Victor D. López, J.D.
Hofstra University

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This textbook is based on my Business Law: An Introduction textbook first published by Irwin/Mirror Press in 1992 and later by McGraw Hill when it acquired Irwin. I have tried to maintain the elements and tone that made the text unique and that helped keep it in print long after it had become dated for loyal adopters throughout the United States. I will always be very grateful to these colleagues and to their efforts to keep the book in print and to have it updated. For good or ill, the book was and remains unique and I hope it will be rediscovered by old friends and new. The first edition was my second book and my first textbook early in my academic career. My experience with Mirror Press, its president, David Helmstadter, and my editor, Carla Tishler, encouraged me to pursue other textbook projects.

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### Business Law: An Introduction, 2e

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Learning Objectives for Chapter 4

After studying this chapter you will be able to:

1. Describe the difference between express, implied, simple and formal contracts
2. Explain the requirements for a valid offer and acceptance
3. Explain the provisions for revoking an offer
4. Define the five requirements for a valid contract
5. Distinguish unilateral from bilateral contracts
Introduction

A contract is, as previously noted, a legally enforceable agreement. As this definition implies, a contract comes into existence from the voluntary assent of two or more individuals to enter into a legally binding agreement. Mutual accord is crucial to the formation of a contract. One party makes an offer—a business proposition—to another; the other accepts. Provided that the other three requirements are present (consideration, capacity/genuine assent and legality), a valid contract is formed. Let’s look at a simple example:

Manuela offers to sell Linda her car for $5,000. Linda accepts the offer. A valid contract is formed since there is a valid offer and acceptance, consideration (something of value is given and received by each party—the car and the $5,000), capacity (both parties are of sound mind and are freely entering into the agreement), and the contract is for a legal purpose.

The above seems simple enough. But matters are sometimes not simple when one looks at the law, and problems can arise at the very onset when we look at different types of contracts and try to determine what constitutes a valid offer and acceptance.

Types of Contracts

Contracts can be classified as express, implied in fact, bilateral, unilateral, simple, formal or quasi contract. Each type of contract will be briefly examined below.

Express Contracts

Express contracts are formed by the express language of the parties—the actual words they use in their agreement—and can be either written or oral. Whenever parties either verbalize or put in writing what it is that they are obligating themselves to do, the contract is an express one. It is a popular misconception that contracts are not binding unless they are in writing, witnessed or notarized. It is always a good idea to reduce business agreements to a writing to avoid future misunderstandings—and to keep the parties honest as to what it is that they have obligated themselves to do—but most contracts are legally valid whether they are oral or in written form. Some contracts, however, such as those transferring an interest in real property, are required to be in writing, witnessed, notarized, and sealed in most jurisdictions. The vast majority of contracts, however, do not need to follow any of those formalities in order to be binding.

Implied in Fact Contracts

Implied contracts are formed not by the words of the parties, but rather by their actions. Both parties must clearly show their assent to enter into an agreement the terms of which are clear to both. As long as the parties’ actions plainly indicate an intention to enter into a contract, and as long as the terms of that contract can clearly be inferred from
those actions, a binding contract can be created without a single word being spoken. Consider the following examples:

1. Harold goes to a movie theater where only one movie is showing. He puts down a ten-dollar bill at the cashier’s window. The cashier takes the money and gives him a ticket.

2. Dana walks into a newsstand and places three quarters on the counter and takes a copy of her hometown newspaper.

3. Steve enters Nilda’s hardware store. He picks up a screwdriver from a rack and, looking over at Nilda, who is taking care of a line of customers at the moment, waves the screwdriver in the air. She recognizes Steve, a long-time customer, and understands that he would like to take the screwdriver now and pay for the purchase later. She signals her consent by nodding in his direction. He leaves, taking the screwdriver with him.

In each of the above three examples, an implied contract has been entered into. Harold has implicitly agreed to pay $10 for the privilege of watching a movie, Dana has paid seventy-five cents for a copy of a newspaper, and Steve has agreed to pay the selling price of the screwdriver to Nilda at a later time.

**Bilateral Contracts**

If the offeror (the person who makes an offer to enter into a contract) and offeree (the person to whom a contract offer is made) exchange promises to perform some act in the future, a bilateral contract is formed. A bilateral or "two sided" contract results from an exchange of promises whereby both parties to the contract bind themselves to undertake some future action, as in the following examples:

1. Bruce offers to sell his old car to Irving if he agrees to pay him $2,000. Irving accepts the offer.

2. Lina offers to babysit for Inga every Saturday for the next three months if Inga will agree to pay her $8.00 per hour. Inga accepts.

3. Tina offers to sing at Charles’ club next Friday, Saturday and Sunday if he agrees to pay her $5,000 per night. He agrees.

In each of the above examples, both parties are obligating themselves to take some action in the future. As soon as the offer is accepted, a valid contract comes into existence. When a bilateral contract is involved, contracting parties exchange mutual promises to perform some future act. As soon as a bilateral contract offer is accepted, a contract comes into ex-
istence and both parties are obligated to perform their contractual promises. If either party fails to live up to the agreement, a suit for breach of contract can result.

**Unilateral Contracts**

In a bilateral contract, the parties exchange promises with each other. In a unilateral contract, one party makes a promise to the other which can only be accepted by the other's performance. The acceptance of a unilateral contract does not come about by giving a promise in return for another's promise, but rather by beginning performance of a requested act. The following examples will illustrate:

1. Larry promises to pay Moe $500 if Moe will paint Curley's house. Moe goes over to Curley's house and begins painting it. He has accepted Larry's unilateral promise by undertaking the desired task.

2. Bill promises his son, Michael, that he will pay him $100,000 if he can stop smoking cigarettes for two years. Michael immediately quits smoking. Michael has accepted his father's unilateral offer and the former must pay the $100,000 if Michael in fact refrains from smoking cigarettes for two years.

3. Jenine promises to pay Olga $1,000 if she will paint her portrait within the next six months. Three months later, Olga goes to Jenine's house with her paint supplies and tells Jenine that she is ready to begin the portrait. She has accepted the contract through her actions.

In each of the above three examples, the offerees are not obligated to do anything; it is only the *offeror* who is obligated to do some act (pay a specific sum of money in the above examples) if the offeree takes the specified action. The offeree is free to accept the offer by performing the desired act, or to reject it by doing nothing. The acceptance of the offer, and thereby the formation of the contract, comes about by the offeree beginning to perform the required act.

**Simple Contracts**

A simple contract is any oral or written contract that is not required to follow a specific form, or be signed, witnessed or sealed. The vast majority of contracts entered into by businesses and private individuals are simple contracts, even though some may seem rather complex and go on for many pages.

**Formal Contracts**

A formal contract at common law was one that needed to be in writing, signed, witnessed and sealed by the parties. At common law, a person's seal on a contract (usually a unique mark made by a signet ring pressed into hot sealing wax—but a seal could be any symbol adopted by an individual or a company) gave that contract special significance. The
seal legitimized a contract to such an extent that a contract not supported by consideration would still be generally binding if sealed. Today, the Uniform Commercial Code (UCC)—the most important statute affecting business, drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and adopted in every state save Louisiana—has abolished the significance of the seal for contracts involving the sale of goods (UCC § 2-203), and many states have likewise abolished the significance of the seal for contracts in general. Where the formality of the seal is retained, most states permit any mark to be made to take the place of the seal, including adding the word SEAL or the initials L.S. (for Locus Sigilli—Latin for in place of seal) to be used instead of an actual seal.

Characteristics of an Offer

An offer must contain an unequivocal (clear, unambiguous) promise to enter into a contract and must be communicated by the promisor (the person making the promise) to the promisee (the person to whom the promise is made). Sometimes statements that at first glance appear to contain a valid offer may not meet this simple test upon closer inspection. Examine the following three statements and see which, if any, meet the test as to a valid offer by being an unequivocal promise that is communicated to the offeree:

1. Seller tells buyer: "I would consider selling you my car for $5,000."
2. Seller tells buyer: "I'd sure like to sell my car for $5,000."
3. Seller tells buyer: "If you give me $5,000, I will sell you my car."

In the first two examples, there is no valid offer since there is neither a clear, unequivocal offer, nor a promise. In example 1, the seller simply says that he would consider selling his car; there is no promise stated or implied to sell it to the buyer. Likewise, in example two the seller states that he'd like to sell his car, but does not promise to sell it to the buyer. Example three, however, does contain a valid offer. The seller makes an unequivocal offer, which cannot be misinterpreted, that he is willing to sell to buyer his car for $5,000. If buyer accepts, a valid contract will be formed.

Clear Intent: An Unequivocal Promise

An offer does not need to contain specific language such as "I promise to sell you" or "I offer to sell you" in order to be effective. What matters is that a reasonable person under the same circumstances would clearly understand that an offer was intended by the offeror. The language used is always important in helping to determine the intent of the parties, but a valid offer can be made even when no words are spoken, simply by the actions of the parties. If, for example, Muhammad holds out a twenty-dollar bill and tells Carol "I'll
give you this for that fountain pen on your desk," and Carol takes the money and puts it in her pocket without saying a word, she will have clearly accepted his offer by her actions. What is important in determining whether a valid offer or acceptance existed is the objective intent of the parties as communicated through their words or actions.

Since an offer must contain a clear intent to enter into a contract, an offer that is not seriously intended is not a valid offer. It can be difficult at times to determine whether an offer is seriously intended. The subjective intent of the offeror and offeree are irrelevant and will not be examined by a court in determining the validity of an offer. What is important is not whether an offeror subjectively made an offer in jest, but rather whether the person to whom the offer was made, the offeree, should have realized that the offeror was only joking when he made the offer. It must be clear to an average person that the offer was not seriously intended; otherwise, the offeree can accept it and form a valid contract. Examine the following examples:

1. Alvin offers to sell his brand new Ford Mustang convertible to Margaret for $1.00. Margaret, knowing that he just paid $30,000 for the automobile, promptly accepts.
2. Laverne tells Ernest: "I will give you $1,000,000 for a kiss." Ernest, knowing a good deal when he hears it, runs to her and gives her a quick smooch before she can change her mind.
3. Deborah, exasperated at Gabe's incessant chatter, tells him: "If you can keep your mouth shut for five minutes, I'll give you an all-expense-paid cruise around the world." He smiles and remains silent for the required time period.

In each of the above examples if the offerees seek to enforce the offerors' promises they will have a difficult time. Alvin, Laverne, and Deborah will almost certainly prevail if they claim that the offers were not seriously intended. Under the circumstances, a reasonable person should have realized that the offers were intended in jest and were not serious proposals. But consider the following examples:

1. Glenda offers to sell Richard her Ferrari for $1. Richard, who knows the car is worth in excess of $180,000, replies: "I wish you were serious. I'd take you up on the offer in a minute!" Glenda insists that she is serious, that the car has brought her bad luck and given her nothing but headaches since she bought it, and that she'd be much better off without it. Richard, after questioning the seriousness of the offer several times, finally accepts.
2. Rufus shows his friend Donald a new painting he has just purchased. Donald knows nothing about art, and does not recognize that it is a genuine Picasso, worth several million dollars. Nevertheless, he is intrigued and tantalizingly disturbed by the images on the canvas and offers to buy it if from Rufus for $100. Rufus, thinking that his friend is kidding, accepts in a serious tone, playing along with what he thinks is a joke.
In both of the above examples, Glenda and Rufus will have a hard time trying to get out of the contracts by claiming that the offers were not seriously intended. In Glenda's case, her insistence that she was serious after being specifically asked the question by Richard will make it unlikely that her offer will be held to have been made in jest. If a reasonable person under the circumstances would have thought the offer seriously made, she will be bound by it. Rufus is also in trouble. If Donald can convince the trier of facts that he did not realize that the painting was an expensive artwork, then he would have been justified in thinking the offer seriously made and could bind Rufus with his acceptance. (As you will see in the next chapter, the mere fact that the consideration given by one party is much less than that of the other will not of itself ordinarily invalidate the contract.)

**Provisions for Revocation**

As a general rule, an offer can be accepted at any time until it is revoked or expires.

Tawana's statement to Jerome constituted a valid offer since it clearly conveyed to him her unequivocal willingness to sell him her automobile. Once Jerome accepts the offer, a valid contract is formed and neither party will be able to back out of it without the other's consent. After Jerome accepts, he is obligated to buy her car and she to sell it to him. If either one refuses to perform his part of the agreement, the other party may sue for damages (the consequences of breach of contract will be fully explored in chapter 10). But if Tawana had changed her mind in the above example and communicated a revocation of her offer to Jerome before he accepted the offer, no contract would come into existence. Once an offer is revoked by the offeror, the offeree loses the ability to accept it and thereby enter into a contract.

Unless the offer itself states otherwise, it can be accepted within a reasonable time until it is revoked by the offeror. What is a reasonable time varies depending on the circumstances of each case. Jerome's acceptance of Tawana's offer two days after it was made would be deemed timely (within a reasonable time) by most courts. But if Tawana's offer to Jerome involved pork belly futures, rather than a car, his acceptance two days later would not be deemed timely by most courts. What is the difference in these
situations? The futures market in commodities such as pork bellies and soybeans can fluctuate widely within a short period of time. But the same is not true for the classic automobile market (or for the used car market in general). For this reason, courts are very likely to hold that the passing of several days is a reasonable time with regard to accepting an offer to buy a car, but not for accepting an offer to buy pork belly futures. What if Jerome had waited a year before accepting Tawana’s offer and Tawana had not revoked the same in that period of time? Would the offer still be valid? The answer would be no. A year is not a reasonable period of time for an offer to remain open. What about four days? a week? a month? Where does one draw the line? It is difficult to predict with certainty what might be deemed to be a reasonable period of time to accept an offer. For that reason, it is a good idea to expressly state in the offer itself an outside time limit for its acceptance. For example, if Tawana tells Jerome that she is willing to sell him her car for $8,000 provided he accepts the offer before 5:00 P.M. that afternoon, then the offer will automatically expire at 5:00 P.M. if Jerome has not accepted it by that time. Tawana can still revoke the offer before 5:00 P.M. simply by telling Jerome that she has changed her mind and is no longer willing to sell him her car.

An offer can also be revoked by the offeree in two other ways. First, a rejection of the offer by the offeree automatically revokes the offer and removes his ability to accept it should he change his mind later. In addition, if the offeree makes a counteroffer containing significantly different terms than those of the original offer, the original offer is also automatically revoked.

Tawana offers to sell her automobile to Jerome for $8,000. Jerome accepts, provided she is willing to take $7,500 for her car. Jerome has made a counteroffer that automatically revoked Tawana’s original offer. If he offers her $8,000 and she still wishes to sell him the car, it is she who will be accepting his new offer to buy the car for $8,000. If she no longer wishes to sell him her car, she will not be obligated to do so, even though he is willing to pay what she originally required.

**Provisions for Acceptance**

Acceptance of an offer is the clear manifestation of assent to the terms of the offer. For an acceptance to be valid, it must be (1) made by a person to whom the offer was made, (2) unequivocal and (3) communicated to the offeror. The first requirement is simple: only a person to whom an offer was made may accept it. The following example will illustrate:

Professor Smith, an attorney, offers to draft a will for anyone in his Business Law class for $25. Bill Jones, who is not a student in the class, overhears the offer while passing by the lecture hall and promptly walks in to accept the offer. Bill’s acceptance is not valid since the professor’s offer was made only to students in his class and could be accepted only by them.
The requirement that the offer be unequivocal is also rather straightforward: In order for the acceptance to be valid, it must be clear from the offeree's words or actions that he intends to accept the offeror's offer under the offeror's terms. At common law, under the mirror image rule, an acceptance was deemed valid only if it mirrored the offer exactly. Any substantial deviation, such as a difference in price or other material terms, served to revoke the original offer. Today, the mirror image rule has been modified by Article 2 of the Uniform Commercial Code in transactions involving the sale of goods. Under UCC §2-207, acceptance is valid even if it contains terms different from the original offer unless it is conditioned on the offeree accepting the additional terms. The additional terms in the acceptance are simply ignored and the contract is formed under the terms of the offeror's offer. If both parties are merchants (individuals engaged in the business of buying and selling goods of the type involved in the contract), however, the additional terms in the acceptance become part of the contract unless:

1. they are objected to within a reasonable time of receipt of the acceptance;
2. the additional terms materially alter the contract; or
3. the offer specifically limits acceptance to the stated terms.

In transactions other than contracts for the sale of goods, the mirror image rule is still very much in force for both merchants and non-merchants alike. Finally, an acceptance is not valid until it is communicated to the offeror. Unless the offeror requires that acceptance be made in a specific way, such as in writing or in person, the offeree may generally communicate her acceptance to the offeror in any reasonable manner, so long as the offeror is given a clear, unmistakable indication that the offeree accepts the offer. In face-to-face transactions, acceptance is usually communicated verbally. But acceptance can also be communicated by telegram, telephone, videotape, letter, or, in some circumstances, by actions such as the nod of the head to indicate assent. As soon as assent is given, a contract is formed that obligates both parties to render whatever performance was promised.

Since a contract comes into existence as soon as the offeror's offer is accepted by the offeree, problems can arise when parties are not dealing face to face when a contract is made. In such instances, the general rule is that an acceptance is binding at the time that it is sent. Therefore, leaving a voice message on an answering machine constitutes acceptance at the time that the message is recorded, not at the time that it is actually heard by the offeror. Likewise, sending an email message or a telegram containing a valid acceptance results in a valid contract as soon as the messages are sent. Consider the following situation:
This last example illustrates the mailbox rule, which states that an offer accepted by mail forms a binding contract as soon as a properly addressed and stamped envelope is mailed. In the above example, Matilda’s acceptance was complete and binding as soon as she mailed her letter to Joan. Joan attempted to revoke too late, since Matilda had validly accepted the offer the previous day as soon as she dropped the letter into the mailbox. Unless the offer limits acceptance to a specific mode, such as in person or by telephone, acceptance may be made in any reasonable fashion. It makes no difference that the offeror may not receive the acceptance for a day or two; indeed, if the postal service loses the letter and the offeror never receives it, a valid contract still exists. All the offeree needs to do is to prove that the letter was in fact mailed properly addressed and stamped. If he can do so, the offeror will be bound to the contract even though he will never receive actual notification of acceptance. This may seem unfair, but keep in mind that the offeror can easily protect himself by requiring as part of the offer that acceptance be made in a particular way (e.g., in person or by telephone). If an offeror states: "I will sell you my car for $1,000 provided you accept this offer by coming to my office prior to 3:00 P.M. tomorrow and informing me of your acceptance in person," then the offeree can only accept in person, at the place and time designated in the offer. If she calls by telephone, sends a fax, telegrams or mails her acceptance, such acceptance will be invalid and no contract will arise; the non-conforming acceptance will be deemed a counteroffer that the offeror is free to accept or reject. If acceptance is not required in a particular form, however, any one of these methods of acceptance would suffice, since each is reasonable.
End of Chapter Hypothetical Cases

**Case 1.** Jonas tells Candide "You know, I might consider paying you $100 if you wash and wax my car." Candide says nothing, but goes out and begins washing and waxing the car. Four hours later, she calls Jonas over, shows him the gleaming car and demands to be paid $100.

A. Was there a valid contract that Jonas must honor? Why or why not?
B. If there were a valid contract, would it be bilateral or unilateral? Why?

**Case 2.** Bertha calls Anita by telephone and offers to sell Anita her oriental rug for $400. Anita says she'll think about it. Later on that day, she writes Bertha telling her that she accepts her offer. On her way back from mailing the letter, Anita receives a phone call from Bertha in which she tries to revoke the offer, since she's found someone who is willing to pay $800 for the rug.

A. Has Bertha revoked her offer in a timely manner? Why?
B. If Bertha sells the rug to the third person for $800, can Anita successfully sue Bertha for breach of contract? Explain.
C. Is it true that the contract between Bertha and Anita came into existence as soon as she mailed the letter?
D. If Anita mailed the letter but forgot to put a stamp on it, will Bertha's telephone call later that day successfully revoke the offer?
E. Assume that Anita's letter was properly addressed and contained the proper postage. Will a valid contract come into existence if the letter contained the following language? "I accept your offer to sell me your oriental rug provided you will take $350 for it instead of $400." What effect would this letter have on Bertha's offer?

**Case 3.** Angela offers Tai Chang $1,000 if he will paint her house while she is away on vacation. While she is away, Tai Chang buys the paint and begins painting the house.

A. Is this an example of a unilateral or a bilateral contract?
B. If Angela calls Tai Chang ten minutes after he has begun painting the house and tells him she has changed her mind, will she successfully revoke her offer?
C. If Angela returns from her trip to find that the house has not been painted, can she successfully sue Tai Chang?
D. If Tai Chang began painting the house and then changed his mind, after completing half of the work, would Angela be able to sue him for breach of contract?

**Case 4.** Curt asks Michelle to the senior prom. She accepts. On the night of the prom, Curt calls Michelle and tells her that he will not be able to escort her to the prom, since he has been asked to go with Gretchen and has accepted.
A. Can Michelle sue Curt for breach of contract?
B. What are the five basic criteria that need to be present for there to be a contract? Which of the five seems to be missing here?
C. If Curt had offered to take Michelle to the prom in exchange for her paying him $100, and if she had accepted, would a valid contract have existed? What is different between the two situations?
Learning Objectives for Chapter 16

After studying this chapter you will be able to:

1. List the types of concurrent ownership and describe how they differ
2. Describe the major differences between traditional fee simple ownership and owning a cooperative, condominium or time share
3. List and define the major types of easements
4. Define and distinguish between easements, licenses, and profits
5. Define adverse possession and explain how it can be used to obtain title to real estate and easements by prescription
Introduction

Real property, or real estate, consists of land, everything permanently attached to the land (such as buildings, trees and fixtures) as well as the space above (air rights) and the contents of the soil beneath the land (subsurface rights). What distinguishes real property from personal property is that the former is fixed and unmovable, while the latter is portable (goods) or intangible (intellectual property).

At common law, the owner of real estate was deemed to own not just the land and everything permanently attached to it (including buildings, timber and growing crops), but also the air rights above her land all the way up to the heavens, and the mineral rights below to the center of the earth. A problem arose as to air rights with the advent of air travel: if every person owns the space above the land all the way to the heavens, then a dirigible flying hundreds of feet above the land is trespassing on it, as is a jet plane flying 30,000 feet above it, or a satellite in orbit many miles above the land. Fortunately, the law is ever flexible, and the traditional common law definition of air rights was adjusted to conform with the modern realities of air travel. Today, air rights are typically determined by local land use ordinances that determine how far above one's land a structure may be built. Therefore, if a jurisdiction states that air rights extend thirty feet above the surface of the land, a plane flying a thousand feet above it is not trespassing; but a person throwing a stone 29 feet over the land, or firing a bullet over the land at the same height would be guilty of trespass.

Subsurface rights have not been significantly modified from the traditional common law definition, and land owners today usually still own the space below their land all the way to the center of the earth. What about underground travel? Does an urban subway system trespass on the property owners' subsurface rights by going below their property? The answer is yes, but keep in mind that the government can, by way of its power of eminent domain, condemn any property for public use and pay its owner the reasonable value of such property. If a municipality wishes to build a subway system that passes below private property, it can condemn the subsurface rights to such property and pay its owner appropriate compensation.
Possessory Interests in Land

Estates in land are ownership interests in land that give the real estate owner varying degrees of possessory interests in the land she owns. These range from the total ownership right of fee simple absolute, which gives the owner complete right to use and dispose of the land as she sees fit forever, to a variety of qualified interests in land that represent less than complete, perpetual ownership. The more common estates in land, also known as freehold estates, are briefly discussed below.

Fee Simple

Fee simple ownership is the most complete ownership right recognized by law. The owner of a fee simple absolute interest in realty has the right to dispose of the property forever; he may use the property, destroy it, give it away, sell it, or otherwise dispose of it in any way he wishes during his lifetime, or, upon his death, bequeath it to his heirs who will likewise inherit the absolute right to use or transfer the property at will forever.

Life Estate

A life estate is an ownership interest in realty that lasts only for a person's lifetime. The owner of a life estate, called a life tenant, has many but not all of the rights as a fee simple owner during her lifetime. Since the life estate is necessarily temporary, the owner may not sell the property outright, but she may sell what possessory interest she has in it; she can freely transfer to any third party the right to use and occupy the land during her lifetime. Likewise, because the estate is a temporary one, she must take steps not to destroy or unreasonably diminish its value for the person or persons who will receive the land after her death. The life tenant has the right to enjoy the ordinary uses of the land and to receive ordinary profits from a reasonable use of the land and its resources during her lifetime. But if she does anything that injures the interest of persons who will receive the land after her death, she will be guilty of waste and be liable for damages to the person or persons who own the future interest in the land. For example, a life tenant may cut down trees in the land to make firewood for her own use, or to use as timber for improvements to the land, but she may not sell all the trees to a mill for a profit. Likewise, she may use water and minerals contained on or below the surface of the land, and allow others to make use of these as well, but may not remove the same in such large quantities so that the she infringes on the rights of the future owners of the land. Consider the following example:
Harry owns both an oil field and a gold mine. He deeds to his two children, Charlie and Sally, the oil field and gold mine, respectively, for their lives, with the remainder of the property to go to UNICEF, his favorite charity, upon their deaths. Throughout the past ten years, the oil field has produced 1,000 barrels of oil per day, and the gold mine has produced approximately 1,000 ounces of gold per year. Charlie and Sally may continue to extract approximately 1,000 barrels of oil per day and 1,000 ounces of gold per year for their own use. If they decide to greatly increase the output during their lifetime by, for example, strip mining and sinking new wells, they will be guilty of waste and will be liable for damages to the future owner of the land--UNICEF. UNICEF will also be able to seek an injunction to stop Charlie and Sally from committing waste if it learns of their plans in time; otherwise, it can sue them for damages.

In addition to refraining from committing waste on the property, the life tenant must pay taxes on the property during his lifetime, as well as make repairs to structures on the land to the extent of any income he receives from the land or to the extent of the reasonable rental value of the land, if no income is received from it.

**Concurrent Ownership**

Property--both real and personal--may be owned by a single person or by two or more people. When it is owned by more than one person, it is said to be owned concurrently. Fee simple and life estates are subject to three basic types of concurrent ownership: tenancy in common, joint tenancy, and tenancy by the entirety.

**Tenancy in Common**

In a tenancy in common each tenant owns a proportionate interest in the land. Each tenant in common shares the right to possess and use the land equally with every other tenant in common, as well as the right to transfer his right in the land to anyone else during his lifetime or by a gift by will upon his death.

Tom, Dick and Harriet decide to pool their resources together to purchase a home. Tom provides 80 percent of the financing, Harriet 19 percent and Dick one percent. The deed lists Tom as owning an 80 percent interest in the property, Harriet a 19 percent interest and Dick a one percent interest. Despite their unequal ownership rights, absent a contractual agreement to the contrary each one has an equal right to possess the entire property as long as the tenancy in common is maintained, and to transfer their interest to any third party, who would have the same right.
The above example illustrates two potential problems with all types of joint ownership. First, even though the ownership interest of each party may be unequal, each enjoys an equal right to use and occupy the land. This means that Dick, with his one percent ownership interest, has the same privileges with respect to occupying all of the property as do Tom and Harriet. Even more problematic is the right of each owner to freely transfer his or her share to any third party. If Dick has a falling out with Tom and Harriet, he would be able to give away his one percent interest in the property to Charles Manson, should he be paroled at some point in this century. This would leave Tom and Harriet, who together own 99 percent of the house, having to share the same equally with good old Charlie and friends. For this reason, most purchasers of real estate under some type of concurrent ownership arrangement execute a separate contract specifying what portions of the property each will be entitled to use, as well as limiting the transfer of the property to third parties without the approval of the other tenants, and giving these the right of first refusal with regard to purchasing any tenant's share in the property for the same price offered by an outside party. Absent an agreement to the contrary, the expenses (including taxes) and income from a property, if applicable, are shared in relation to the ownership interest of each cotenant. And if the property is sold, the proceeds are divided in accordance with the ownership interest of each cotenant.

**Joint Tenancy**

Joint tenancy is the same as tenancy in common with one important addition: the right of survivorship. Joint tenants own property under the same conditions as tenants in common, but when one dies, the survivor(s) automatically absorb his ownership interest. The deceased joint tenant's share automatically passes to the surviving joint tenant(s) and cannot be disposed of through a provision in the decedent's will. A joint tenant may, however, generally dispose of his share of the property during his life.

Darren and Darlene own property as joint tenants, with each holding an equal interest in the property. Darlene dies, leaving a provision in her will that her share of the property is to pass to Patty, her daughter. Darren will automatically become the owner of the entire property upon Darlene's death, and the testamentary provision will have no effect, since the realty will not be part of Darlene's estate.
**Tenancy by the Entirety**

Tenancy by the entirety is a form of joint tenancy reserved for property owned by husbands and wives. As of this writing, seven states (Illinois, Indiana, Kentucky, Michigan, New York, North Carolina and Oregon) recognize tenancy by the entirety as a means of owning real property, while 19 states and Washington D.C. allow personal property to be owned by husbands and wives as tenants by the entirety. The main difference between tenancy by the entirety and joint tenancy is that property owned by a husband and wife cannot be transferred without the consent of both spouses. As with joint tenancy, the survivor automatically becomes the sole owner of the whole property upon the death of the spouse. In states that recognize tenancy by the entirety, such as New York, when a husband and wife purchase real estate jointly, it is presumed to be as tenants by the entirety unless the deed specifically states otherwise. The main benefit of tenancy by the entirety is that it offers some protection against property attachment by creditors.

Owners of property as tenants in common or joint tenants each have the right to petition a court to partition the land at any time. If the land in question is unimproved realty, a court can partition it by dividing it into separate parcels in an equitable manner, with each parcel reflecting the ownership interest of each tenant in the whole land. For example, if 10 acres are owned equally by two people as joint tenants, a court can divide the land into two equal parcels of 5 acres and give each owner a deed to his own parcel. When it is impractical to subdivide the land (a one-family home owned by three people, for example), a court can order the sale of the property and the equitable division of the proceeds among the cotenants. The partitioning can be voluntary when all owners agree to it, or involuntary, where one or more of the owners are unwilling that the partition be made. Any individual owner has the right to have the land partitioned at any time, regardless of the wishes of her co-tenants.

**Non-Possessory Interests in Land**

There are essentially four non-possessory, or non-freehold, interests in land that give their holder the right to use and occupy land, but no ownership interest in it. These are the tenancy for years, periodic tenancy, tenancy at will and tenancy at sufferance.

**Tenancy for Years**

A tenancy for years (also known as an estate for years), arises out of a contractual agreement between the land owner and the tenant whereby the tenant is given the right to occupy and use the realty for a set period of time, or term, in exchange for payment of a
specific consideration (e.g., rent). The term of the tenancy can last for any given period of time, and is usually for one or more years. The most common example of a term tenancy is the one or two-year apartment lease.

An agreement to lease real property does not transfer an interest in property within the meaning of the statute of frauds; a lease, therefore, need not be in writing to be binding if it is to last for up to one year. A lease of real estate that lasts for more than one year, however, needs to be in writing to satisfy the statute of frauds since it is a contract that by its terms cannot be performed within one year.

**Periodic Tenancy**

A periodic tenancy (also known as a tenancy from term to term) continues for a specified period of time and is automatically renewed at the end of the stated period unless either the owner or tenant gives proper notice of his wish to terminate the tenancy. The most common example of this type of tenancy is a month-to-month tenancy of an apartment or a home. A tenant agrees to pay $1,000 rent the first of each month. At the end of the month, the tenancy is automatically extended unless either the landlord or the tenant has expressed a wish to discontinue it by giving one month's notice to the other. A term tenancy can become a periodic tenancy if the tenant pays and the landlord accepts the regular monthly rent at the expiration of the term stated in the lease. For example:

Tenant signs a two-year lease running from January 1010 through December 2011. In January 2011, the tenant's lease has expired, but she stays on and tenders to the landlord the usual monthly rent and the landlord accepts it. At that time, she has entered into a periodic tenancy—one that will run from month to month until either she or the landlord gives one another notice that they wish to end the arrangement.

While the notice required to be given in order to terminate a periodic tenancy can vary from state to state, and even within different areas of a state, as a general rule the landlord or tenant must give one period's notice prior to termination. Thus in a month-to-month tenancy, a month's notice is usually required, while in a week-to-week tenancy, one week's notice will usually suffice.
Tenancy at Will

A tenancy at will is one that can be terminated at any time by either the landlord or tenant without previous notice. Unless there is a specific understanding between the parties that they intend to enter into a tenancy at will, a periodic tenancy is assumed to exist. Therefore, if a tenant moves into an apartment and begins paying rent on a monthly basis, a month-to-month periodic tenancy will be presumed unless there is a specific agreement between the parties that a tenancy at will was intended.

Tenancy at Sufferance

A tenancy at sufferance comes into existence when a tenant lawfully in possession of rented property under a tenancy at will, periodic tenancy or term tenancy remains in possession of the property without the landlord's consent at the expiration of the tenancy. Such a tenant is, in fact, a trespasser and becomes liable to the landlord for the market value of the rental property over the period that he occupies it pending eviction proceedings by the landlord.

Rights and Responsibilities of Landlords and Tenants

Tenant's Rights

During his tenancy, a tenant is entitled to occupy property that is habitable and free from unreasonable dangerous defects. Most states, either through legislation or court decision, provide some measure of protection to tenants who are denied essential services by landlords, or whose rental property has become uninhabitable due to the landlord's unwillingness to make necessary repairs. In addition all landlords make an implied covenant of quiet enjoyment to tenants through which they warrant that the tenant will be allowed to enjoy the rented property free from outside interference that is preventable by the landlord. A tenant can treat a landlord's unwillingness to provide essential services or make necessary repairs, or any other condition within the landlord's power that prevents the tenant from peacefully enjoying the rented property, as constructive eviction and a breach of the lease. In order to sue the landlord for damages, the tenant must give timely notification to the landlord of the defect and a reasonable opportunity to cure it; if the landlord does not cure the defect within a reasonable time after being notified of its existence, the tenant is entitled to leave the premises and sue for constructive eviction. If the tenant does
not leave the premises, however, he may be deemed to have waived his right to do so and may not be able to successfully sue the landlord for damages. In addition, the acts that the tenant claims constitute constructive eviction by making the premises uninhabitable must be caused by the landlord, not by third parties over whom the latter has no control. If, for example, a landlord refuses to fix a badly leaking roof after being duly notified, or fails to provide heat in winter or hot water, she is guilty of constructive eviction. But if a water main break in the street causes the rental premises to be without heat or hot water until the municipality fixes the problem, the landlord is not responsible for the condition and the lack of heat or hot water will not constitute a constructive eviction.

The tenant, absent an agreement to the contrary, has the right to assign or sublease the leased premises. An assignment of the premises occurs when a tenant transfers all of her rights and responsibilities in the rental property to a third party; a sublease occurs when a tenant leases only a part of the rental property to a third party, or the entire rental property but for only a part of the lease period:

1. Alejandro assigns the remaining year of his two-year lease to Alissa, who will take over the property and inhabit it until the end of the lease period and make the monthly payments directly to the landlord. This is a lease assignment.
2. Alejandro agrees to allow Alissa to inhabit his apartment for two months, while he is on vacation, in return for her paying him $1,000. This is a sublease.

Most landlords are understandably leery of assignments and subleases, since they have no control over the selection of the assignees or sublessees that the tenant chooses. For this reason, most written leases contain clauses specifically prohibiting assignment or subleasing without the landlord's express written consent.

**Tenant's Responsibilities**

A tenant is responsible for payment of rent when it is due, and a failure to do so is a breach of the lease and grounds for eviction. A tenant is also responsible for making minor repairs to the rental property, including unstopping clogged sinks or changing a washer in a leaky faucet. Major structural repairs are, of course, the responsibility of the landlord. Major repairs, such as fixing broken plumbing inside a wall, repairing a leaky roof or waterproofing a leaky basement would all be the responsibility of the landlord. Where additional restrictions on the tenant's conduct are specified in a lease, the tenant must abide by such restrictions.

**Landlord's Rights**

The landlord's principal right under a rental agreement is the collection of the agreed-upon rent on a periodic basis. A tenant who fails to pay his rent on time is in breach of the tenancy agreement and can be evicted by the landlord. In addition, the land-
lord can expect the tenant to return the leased property in the same condition that she occupied it, minus acceptable wear and tear. The landlord also has the right to expect that the tenant will make minor repairs to the rental property as necessary, and can sue the tenant for waste if the tenant’s inability to make minor repairs results in damage to the rented property. Finally, the landlord has the right to expect that the tenant will notify her of any major damage to the property requiring her attention when she would not otherwise discover the damage herself. If the roof leaks, for example, the tenant must notify the landlord immediately upon discovering the condition so that she can get it fixed. If the tenant fails to notify the landlord and greater damage ensues, the tenant will be liable for the damage to the extent that a timely notification would have avoided it. The landlord can reserve to herself additional rights or place on the tenant additional duties or restrictions pursuant to specific provisions in a lease.

**Landlord's Responsibilities**

At common law, *caveat emptor* (let the buyer beware) was a term that very much applied to tenants of rental property, since the landlord was under absolutely no obligation to provide safe or even habitable premises to the tenant. Today, however, there is a growing trend to hold landlords accountable to tenants if they fail to provide safe, habitable premises. In most jurisdictions, a landlord has a duty to exercise reasonable care with respect to residential tenants. Injuries suffered by tenants as a result of a landlord's negligence in correcting any dangerous condition can lead to liability. There are a substantial number of cases, for example, holding landlords responsible for tenants' injuries arising from the criminal acts of others such as muggings and rapes that might have been prevented had some rudimentary protective measures been in place, such as working locks on doors. In addition, the landlord has the duty to provide necessary services to his tenants, and to maintain the premises in a habitable condition; failure to live up to this duty is a breach of the implied covenant of quiet enjoyment and results in a constructive eviction of the tenant.

**Easements, Licenses, Profits and Future Interests**

Easements, licenses and profits are additional non-possessory interests in land that, while they do not provide an ownership interest in property, allow the property of one person to be used for limited specific purposes for the benefit of another.
Easements

An easement is the right to use the land of another for a specific, limited purpose, such as getting in and out of one's own land.

The above diagram illustrates a common example of a situation where an easement might be negotiated. The owner of White Acre has no right of access to the county road. He can negotiate an easement with the owner of Blackacre, allowing him to cross over her land where indicated by the dashed line in the above illustration. Once he obtains the easement, the owner of Whiteacre will be able to cross over his neighbor’s land to access the county road. The owner of Blackacre would continue to have complete use of all of his land, including the tract of land over which the owner of White Acre is given the easement, as long as she does not interfere with the easement (e.g., as long as she allows the owner of White Acre to freely pass over the land to enter and leave his property).

Easements Appurtenant and Easements in Gross

There are two basic types of easements that can be created: easements appurtenant and easements in gross. An easement appurtenant is one in which the special use of one piece of land is given to benefit another piece of land. In an easement appurtenant, the land benefited by the easement is called the dominant tenement and the land burdened by the easement is called the servient tenement. The above example represents an easement appurtenant, since it benefits the owner of Whiteacre in the use or enjoyment of his land; Blackacre is the servient tenement and White Acre the dominant tenement for purposes of the easement. An easement in gross is one that does not benefit a specific tract of land owned by the holder of the easement. In an easement in gross, the holder of an easement is given the right to use part or all of the land for a
specific purpose, but such use is personal in nature and not for the benefit of another tract of land. The following are examples of easements in gross:

1. John, a hunter, negotiates an easement with the owner of Blackacre giving him the right to use the land for target practice during the hunting season.
2. Jane, an archaeologist, negotiates an easement from the owner of Greenacre allowing her to conduct a dig in a particular area.
3. Limbo Oil negotiates with the owner of Blackacre to cart shale over Blackacre for the next ten years.

**Affirmative and Negative Easements**

An easement can be classified as either affirmative or negative, depending on the type of right it grants to its holder. An affirmative easement allows its holder to physically enter into the property it covers (the servient tenement) in order to conduct the activity permitted under the easement. The last three examples of easements in gross cover affirmative easements, since the hunter, archaeologist and oil company are given the right to enter into the respective servient tenements to perform the permitted acts of target shooting, digging and carting shale, respectively. A negative easement, on the other hand, prevents the owner of the servient tenement from making a particular use of the land which, absent the easement, she would be free to engage in. Consider the following example:

Hilda, a wealthy socialite from Big City, decides to build a summer estate in Small Town. After building a duly ostentatious home in her new property that clashes appropriately with the local architecture, she is horrified to learn that her neighbors are farmers who utilize organic manure to fertilize their crops at various times during the year. Unwilling to put up with what is to her an horrendously offensive odor, she offers her neighbors $100,000 in return for a negative easement preventing them from using malodorous substances, including natural fertilizers, during the spring and summer months.

Hilda's easement does not give her the right to go into her neighbors' land for any specific purpose; rather, it prevents her neighbors from using their land in a way that, were it not for the negative easement, they would be free to use it.

**Creating Easements**

There are four separate ways of creating an easement: express grant, reservation, implication and prescription.
Creating Easements: *Easement by Express Grant*

An easement is an interest in land that can be created in much the same way as any land conveyance--by executing, conveying and recording a deed. Unless the deed conveying the easement states otherwise, an easement will be deemed to last perpetually in most jurisdictions. It is possible, however, to create an easement that lasts only for the life of a person, or for a set number of years. Because easements are considered to convey an interest in real estate, albeit not an ownership interest, easements must be evidenced by a signed writing in order to satisfy the statute of frauds.

Creating Easements: *Easement by Reservation*

An easement is created by reservation when the owner of land conveys it but reserves to himself the right to use the land for a given purpose after the conveyance. Example:

Farmer Jones wishes to sell his land but wants to continue farming it for another five years, until he retires. He finds a buyer who is interested in the long-term investment potential of the land and does not mind if Mr. Jones continues to use the land for the next five years. When he conveys the land with the specific provision in the deed that he may continue farming it for five years, Mr. Jones will retain an easement by reservation.

Creating Easements: *Easement by Implication*

An easement by implication arises when parties convey land but neglect to specifically mention that an easement will be necessary for the land to be used. Let's take a look at another example for purposes of illustration:
Assume that in this example that Blueacre and Greenacre were both originally owned by Mr. Wong, who conveyed Blueacre to Mr. Washington. Neither Mr. Wong nor Mr. Washington realized that Greenacre lacked direct access to a road when the conveyance was made. A court would hold that, under the circumstances, an easement by implication arose by the conveyance of Greenacre, since such an easement is a necessity for Greenacre to be of any practical use.

An easement by implication can also arise where, prior to the conveyance, the land of another had been in previous use for a specific purpose. In the above diagram, assume that a home on Blueacre is set up to discharge waste onto a cesspool in Greenacre. If this previous use was in existence at the time that the land was conveyed and no mention of it is made in the deed, an easement by implication will exist allowing the owner of Blueacre to continue using the cesspool in Greenacre.

Creating Easements: *Easement by Prescription*

If land is used for a specific purpose for a long enough period of time, an easement by prescription will arise regardless of the fact that no actual permission was ever given for such use. As with adverse possession (discussed below), if a person openly, exclusively and continually uses a piece of land for a particular purpose for a set period of time, an easement by prescription will come into effect that cannot be challenged by anyone.

**Over a period of 20 years, Harold allows his cows to graze in a one-acre tract of land he does not own. His use of the land is continual, exclusive, open and notorious. At the end of 20 years, he has an easement by prescription that neither the original owner of the land nor any of her assigns will be able to challenge.**

**Licenses**

Unlike an easement that actually grants limited rights to real estate to its holder, a license merely gives one person the right to temporarily enter the land of another. A license is a revocable privilege given by the owner of realty to a licensee (the person to whom the license is given) allowing the licensee to enter the land for a specific purpose. A license does not create an interest in realty within the meaning of the statute of frauds; therefore, a license can arise from a verbal agreement as well as a written one. The grantor of the license can revoke it at any time, and the license is automatically revoked by his death. Upon revocation of the license by the grantor, the licensee must immediately leave her premises; this is true even if the licensee paid a fee for the license. If a licensee fails to immediately leave the grantor’s premises upon demand (e.g., upon revocation of the license), he is guilty of trespass and subject to criminal prosecution as well as civil penalties. The following are examples of licenses granted by the owner of real property to a licensee:
1. Fumio allows Victor access his private library to conduct research for a book on Japanese law;
2. Aretha purchases a ticket to a movie and is allowed into the theater;
3. Afareen purchases a ticket for herself and her son, Abbas, and both enter the Magic Kingdom;
4. Bogdana knocks on Dan's door and the latter invites her into his home.

Note that in examples 2 and 3 above, Aretha and Afareen pay for the privilege of being given a license to enter the theater and Disney World, respectively. Nevertheless, each may have his or her license revoked at any time with or without cause by the management of each establishment. If the license is revoked without cause, the licensee is free to sue for breach of contract; but she must still leave the premises.

**Profits and Future Interests**

A profit (short for the French phrase *profit-à-prendre*, or right of taking) is a non-possessory right in real estate giving the holder the privilege to go into another's land and take something of value from it (e.g., soil, precious metals, minerals, water, etc.). Profits are created in the same way as easements and function in similar fashion; the difference between an easement and a profit is that while an easement allows one the privilege to enter into another’s land for a specific use, a profit permits one to remove a given substance from the land.

Future interests are non-possessory interests in real property that can turn into possessory interests in the future upon a given event. When property is transferred subject to the happening of a future event, a conditional fee transfer occurs. If property is transferred with the understanding that it may be taken back if a specified event happens in the future, a fee simple defeasible estate is created. And a future interest is also involved whenever property is transferred under circumstances where a future interest is retained to the property either for the benefit of the grantor or some other third party. If the future interest, otherwise known as a residuary interest, is for the benefit of the original grantor or her estate, it is called a reversion; if it is for the benefit of some other third party it called a remainder. If a reversion or remainder interest is given contingent upon an event that is not certain to occur, the residuary interests are termed possibility of a reverter and contingent remainder, respectively. The following examples will illustrate:
1. Atonwa conveys Whiteacre to Kateri for life. He has retained a reversionary interest in the land, since its title will revert to him or to his estate upon Kateri's death.
2. Anen conveys Whiteacre to Atonwa for life, remainder to Kateri. Kateri's residuary interest in Whiteacre is a remainder, since she is the third party in whose favor title to Whiteacre will accrue upon Atonwa's death. (If Kateri dies before Anen, the remainder interest in Whiteacre will pass to Kateri's heirs.)
3. Laurent conveys Whiteacre to Jane provided she remains single, and to Joan if Jane should marry. Joan is given a contingent remainder interest in Whiteacre which may or may not accrue to her or her heirs depending upon whether Jane marries. Jane, on the other hand, is given a conditional fee interest in the property.
4. Helena conveys Whiteacre to John for as long as the St. Louis Cardinals have a winning season. Helena retains the possibility of a reverter, since title to the property will vest in him or his heirs if the Cardinals ever lose more games than they win in any future season.

Acquiring Title to Real Property

Like personal property, real estate can be acquired in a number of ways, including by purchase, gift or inheritance, condemnation by the state, and even by simply holding on to it long enough under certain circumstances (adverse possession).

**Deed**

The most common method of transferring title to real property is through conveyance of a deed by a grantor (the person transferring the property) to a grantee (the person to whom the property is being transferred). A deed is a signed writing by the owner (grantor) of real property that transfers ownership to another (the grantee). In order to be valid, a deed must contain the following information:

1. The names of the grantor(s) and grantee(s);
2. Words that clearly show the intent to transfer the land;
3. A clear description of the land being transferred; and
4. The signature of the grantor(s).

Once a valid deed is executed, it must be delivered from the grantor to the grantee. Title to the property passes upon delivery of the deed.

**Eminent Domain**

At common law, all land in the realm belonged to the crown, with the king or queen free to dispose of it at will. What the king gave by way of grants to favored subjects, he was free to take back under his power of eminent domain—the predominant right of the
sovereign to dispose of all property. The role of the king has been absorbed by the government in our country, which still preserves the right of eminent domain. With regard to real property, the government retains a right that is superior even to holders of a fee simple absolute interest in realty; if the government decides it needs a tract of land for public use, it can condemn the land and take it from its owner, provided the latter is paid the reasonable value of the land. When land is condemned by either the local, state or federal government for public use, a landowner has two options: Bargain with the government as to a fair price and, if agreement is reached, willingly transfer the land for the offered consideration; or if agreement cannot be amicably reached by the landowner and government, the landowner can ask a court to determine the market price of the land.

Sally Homeowner lives in a house where she and five generations of Homeowners before her have lived all their lives. Sally's state decides it would be nice to build a new six-lane highway, but Sally's house is in the way. The state condemns Sally's property and offers her its reasonable market price. Sally vows to fight for her rights. Will she win? No. Her only right is to be paid the market price for the house. What of her emotional attachment to the house or its personal value? Alas, such considerations will not halt the march of progress.

**Inheritance**

Real property, as well as personal property, can be disposed of by will or through the provisions of intestacy statutes that determine how the property of a decedent is to be divided when a valid will is not available. (For a full treatment of wills and intestacy, see Chapter 17).

**Adverse Possession**

Mere possession of real property gives rise to an inference that the possession is lawful. The longer the possession, the stronger the inference becomes, until it reaches a point at which the presumption of lawful possession becomes irrefutable. Such is the nature of ownership of real property by adverse possession. If a person remains in continuous possession of real property for a set period of time under certain circumstances, mere possession will be transformed into legal title. In order for title to be acquired through adverse possession, all of the following conditions must be met:
Consider the following example:

William and Wendy move into town and clear a half-acre lot in a 200 acre tract owned by John Doe, an absentee landowner who lives in another state. They build a house, plant a few crops and live in the land for 20 years, telling people that they are the owners and preventing anyone else from using the land without their permission. If the statutory period for claiming adverse possession is 20 years in the state and John learns of William and Wendy’s adverse possession 21 years later and tries to oust them from his land, will he succeed? Unfortunately for John, he is too late; the adverse possession had been open and notorious, continuous for 20 years, adverse, exclusive and without claim or right. (Wendy and William had no legal right to claim the land when they began their adverse possession.)

In the above example, the half-acre tract that was used by the couple belongs to them by virtue of their adverse possession. Notice, however, that the remaining 199.5 acres still belong to John Doe, since the couple never treated that property as their own.
In the last example, if Wendy and William lived on the land for 19 years, abandoned it for a year, and then returned for an additional 2 years, they would not have a valid claim of adverse possession; the 20-year time span must be uninterrupted. (If they stay on for an additional 18 years, however, they would then meet the 20-year uninterrupted possession requirement.)

Recording Statutes

A problem existed at common law where an unscrupulous grantor transferred an interest in real property to more than one grantee. Whenever this happened, the courts would follow the first in time, first in right rule, making the first grantee of the land its true owner. But it is not always easy to prove who was first in time when multiple conveyances were made by a grantor. The problem was resolved by enacting recording statutes which provided a simple way for grantees to prove when they acquired title, and to give notice to others that a transfer of title had taken place. Every state today has a recording act that serves to protect a grantee’s interest in land, and to provide a permanent record of all land transfers.

At common law, Debbie would own the land, presuming she could prove that the conveyance to her came before that of the other two parties. Under most recording statutes, however, Sylvia would prevail. Even though she was the last to receive a conveyance from Terry to Black Acre, she was the first to record her deed, thus perfecting her interest in the property.

Property Ownership through Cooperatives, Condominiums and Time Shares

The rise in population density in urban areas, coupled with the increase in value of traditional one- and two-family homes, gave rise to the popularity of two new types of property ownership in the U.S. starting in the 1950’s. Both the cooperative and condominium forms of property ownership represent a radical departure from the traditional fee
simple ownership of property. Cooperative ownership is, in fact, not ownership of realty at all, but rather shares in a cooperative corporation that give a shareholder the right to occupy an apartment. The condominium form of ownership, on the other hand, does represent fee ownership of realty, but in a radically different form; the condominium owner does not personally own the traditional land, mineral and air rights to property, but rather the space within the walls of his condominium unit, and is a co-tenant of all other parts of the building and its grounds with the owners of other condominiums in the same building complex. Finally, the time share scheme of ownership further subdivides a condominium or cooperative unit into slices of time, with each time share owner holding title to (or the right to occupy) a condominium or cooperative unit for a given length of time each year. Each form of ownership will be analyzed in greater detail in the discussion that follows.

**Cooperatives**

The cooperative form of property ownership allows multi-family dwellings--either existing or new construction--to be purchased by a corporation which in turn sells shares in the building to individuals who, by purchasing the shares, are entitled to occupy an apartment in the co-op. The owner of a share in a cooperative does not own real estate; rather she owns personal property--shares in the corporation that owns the building and grounds of the cooperative and that give her the right to occupy an apartment in the co-op. The corporation itself holds the deed to the building in its own name, pays taxes and expends all necessary capital to manage the building and provide needed services, such as heat, hot water and grounds maintenance. The shareholders/tenants in turn pay a monthly maintenance fee that represents a portion of all management expenses for the building, including real estate taxes, covered utilities, maintenance fees and management expenses. The amount of the maintenance fee paid by each shareholder/tenant is proportionate to the value of their shares, which is in turn relative to the value of the apartment they occupy. The actual price of the co-op share, and its attendant maintenance fee, depends on such factors as the size of the apartment and its distance from the ground floor; in general, the larger the apartment and the further away it is from the noise of the ground floor, the more it costs. The portion of the co-op monthly maintenance fee that is earmarked for payment of real estate and other taxes (e.g., school taxes) is tax-deductible by the shareholder/tenant. (Typically, 50-60 percent of monthly maintenance fees are tax deductible, but this can vary widely depending on real estate tax rates and other costs.)

Because the owner of a co-op does not own real property, but merely owns shares in the corporation that actually owns the realty, there are substantial restrictions on his abil-
Condominiums

The condominium form of property ownership is not indigenous to the U.S., but was imported from Europe and Latin America, where it has been a popular form of ownership for a great many years. Condominiums are considered real property, and their owners are far freer to transfer condos than are co-op owners. In a condominium form of property ownership, a multiple dwelling is purchased and subdivided, with each unit maintaining a separate deed. Because condos are considered realty, owners pay real estate and school taxes directly to the state government, rather than indirectly through their monthly maintenance fees.

The owner of a condominium literally owns the space within his unit—from the paint inward—individually, and all other structures, including the walls, floors, ceilings, and common areas, such as hallways, stairwells, elevators and grounds, as a tenant in common with all other condominium owners. Like the co-op shareholder/tenant, the condo owner pays a monthly maintenance fee that represents a portion of the total expense of running the building equal to the relative value of his condominium unit. Like a co-op, size and distance from the ground floor are the main criteria upon which the value of individual units is based. The monthly maintenance fee represents such operational expenses as building maintenance and the cost of providing heat and hot water to common areas, as well as other building services (e.g., security, grounds maintenance, snow removal, pest control, etc.). In addition to the monthly maintenance charges, members of a condominium association from time to time levy special charges for extraordinary repairs or improvements to the building. If, for example, 80 percent of the residents want to install central air conditioning or a heated pool, such improvements would be undertaken and all co-op owners would be billed for a total share of the expense in accordance with the relative value of their unit, whether or not they approve of the improvements.

Even though condominiums are typically new, high-rise structures in most cities, they need not be. It is perfectly possible (if not economically practical) to turn a two- or three-bedroom family house into a condominium, if one wished to do so. Indeed, one could conceivably turn a four-bedroom single family home into a four-unit condominium, issuing a deed for each bedroom and keeping the dining room, kitchen, living room, bathrooms and back yard as common areas, assuming of course that local zoning laws would not preclude it. Townhouses are also a common condominium type.
Time Shares

The time share form of property ownership takes the co-op and condominium one step further and divides each unit into slices of time, typically in one-week blocks, that are then sold to individuals who purchase the right to occupy the unit they cover for the same week or weeks every year. Time share schemes vary, as do the underlying properties they cover. It is possible to sell timeshares to a private home, a coop or a condominium complex and, for that matter, a house boat. And time shares can be true forms of property ownership (e.g., a 1/26th fee simple interest in a condominium unit, giving its owner the right to occupy the unit for a two-week period forever), or a mere license to occupy premises for the time they cover (e.g., the right to occupy a cooperative apartment for two weeks per year for the next ten years). Timeshares are particularly popular in areas with great appeal to tourists, although they can also be found in unexpected, out of the way places.

Owners of fee and non-fee timeshare interests pay a yearly maintenance fee similar to the monthly maintenance fees paid by co-op and condo owners; this fee typically includes a portion of the real estate taxes due on the unit, cleaning, and various maintenance fees and management expenses. There is great appeal to promoters of time shares in that a single unit can be sold for many times the price the same unit would bring as a condominium or cooperative unit. Consider the following example:

ABC Corp. owns a condominium complex of 25 one-bedroom units in Hawaii. The average market price of each unit is $250,000. It decides to turn the complex into time-shares and sell each unit in one-week chunks of time, giving each buyer a 1/52nd fee simple interest in each unit, along with the right to occupy it during a stated one-week period during the year. On average, the one-week time shares sell for $10,000 each. The total price at which each unit is sold, then, will be $10,000 x 52 or $520,000--more than twice the price per unit than ABC would have been able to realize by selling each unit as a traditional condominium. In addition, the timeshare operator can charge hefty maintenance and management fees that are significantly greater than the fees charged for a traditional condominium unit.

The appeal of timeshares is the possibility of purchasing the right to vacation yearly in a popular vacation spot for a fraction of what a traditional vacation home would cost. To further enhance the value of timeshares, most timeshare developers allow owners to trade their timeshare units with other timeshare owners in different parts of the world—often for an additional fee.
End of Chapter Hypothetical Cases

Case 1. Mary agrees to rent an apartment to Joshua for $750 per month. No formal lease is entered into, and the parties make no other agreement.

A. What type of tenancy is involved?
   Answer: This is a periodic tenancy (a tenancy from month to month).

B. If either party wishes to terminate the agreement, what will they need to do?
   Answer: They will generally have to give one-month’s notice before terminating the agreement.

C. If the roof of the apartment develops a leak, what must Joshua do?
   Answer: Joshua must promptly notify Mary of the condition.

D. If the faucet in Joshua’s sink leaks because it needs to have a twenty-cent washer replaced, whose responsibility is it to fix it? Why?
   Answer: Joshua must fix it. It is the tenant’s responsibilities to make minor repairs to rental property absent an agreement to the contrary with the landlord.

Case 2. Fred and Barney own homes on adjacent lots. Over a period of 20 years, Fred, with Barney's permission, parks his car on Barney's land. After 20 years of putting up with Fred's car on his property, Barney tires of the arrangement and informs Fred that he may no longer park the car there.

A. How would you classify Fred's use of Barney's land for 20 years?
   Answer: Fred was a licensee during the time that Barney allowed him to park his car in Barney’s land.

B. If Fred refuses to stop using Barney's land to park his car, what remedies, if any, are open to Barney?
   Answer: Barney can sue for trespass.

C. Can Fred claim an absolute right to Barney's land through adverse possession? Explain.
   Answer: No. One who has the land owner’s permission to use property may not claim title to it through adverse possession.

D. Would Fred have a valid claim of adverse possession if he continues to use Barney’s land for an additional 20 years after Barney tells him not to?
   Answer: Yes. Once Barney retracts his permission to Fred, if Fred continues to adversely possess the land without claim or right in an open, notorious and exclusive way, he will obtain title after the statutory period of time. (This presumes that the statutory period in the state is 20 years or less, of course.)
Case 3. Sally and Jane buy two tickets to see a movie at their local theater. Half way through the movie, they are bored by it and decide to strike up a conversation. Other patrons, annoyed by their conduct, ask them to quiet down, and loud words are exchanged. The manager finally steps in and asks the young ladies to leave. They refuse, becoming even more boisterous and loudly proclaiming that they paid for the right to be in the theater and need not leave until they movie is over. The manager then has them physically removed from the theater and forces them to wait in the lobby--very much against their wishes--until police arrive so that he can have them arrested for criminal trespass.

A. Will the manager be able to prove a case of trespass against the two young women?
Answer: Yes. Licensees whose license is revoked must leave the premises when asked to do so whether or not they paid for the license.

B. Will the women have a valid case of false arrest against the theater and/or its manager?
Answer: No. Refusing to leave when the license privilege is revoked constitutes criminal trespass.

C. If the manager refuses to return the price of admission to the women, can they sue him for it? If so, under what legal theory? Will they recover?
Answer: Of course they can sue under a breach of contract theory, but they will not recover if their behavior constituted a breach of the license agreement. Behaving in a manner that interferes with other patron’s enjoyment of a movie is grounds for revoking a moviegoer’s licensee status.

Case 4. Emily Henderson transfers a deed to her son, Ricky, that reads as follows: To Ricky Henderson provided he graduates from college by 2012, otherwise to Jamie Henderson.

A. Assuming that Ricky graduates from college by the stated date, what type of interest will he have in the property?
Answer: Fee simple absolute.

B. What type of interest does Jamie have in the property when the deed is issued?
Answer: Jamie has a contingent remainder interest.

C. Emily, who has a terrible memory, conveys the same land to Oscar a week later for $100,000. Oscar immediately records the deed, something that neither Ricky nor Jamie had yet done. What are the rights of the parties?
Answer: In most states that apply a race-notice statute, the first to record the deed is first in right so that Emily will have title to the land.