

Real Property II

4 Non-Freehold Estates (developed outside feudal system)(Landlord & Tenant)

1) Estate for years - time - any estate measured by time - ends automatically at end of time, no notice to quit is ever required, but subject to Statute of Frauds - any estate for MORE THAN 1 YEAR MUST BE IN WRITING

2) Periodic Estate - continues month after month until terminates - since continuous, goes on forever unless and until 1 party terminates the estate by giving proper notification to quit - must give notice at least equal to the period. Exception - tenancy from year to year only needs 6 months notice

a) Can be created expressly - A leases to B month after month for money

b) can be created by implication:

1) no agreement case - A leases to B, there is no agreement as to duration (lease is silent) - B originally enters as tenant at will, but after 1st payment automatically becomes periodic estate for duration of original agreement.

2) Invalid term of years - term only mentioned orally, violates State of Frauds - after 1st payment becomes a periodic estate for time of original rental agreement

3) Tenant holds over - B sends next month's check at end of lease, A cashes check, becomes a periodic estate, based on original rental period

3) Estate at will - A conveys to B at will (can only be created expressly, worst estate) - shortest potential duration of creation, has no fixed period of duration, either party at any time can terminate

NY Distinction - By statute, landlords must give 30 days notice

4) Estate at sufferance - bare naked possession when tenant holds over at end of lease - TRESSPASSER - landlord can recover full damages - Landlord has option to treat as trespass, or elect to hold a tenant fully liable for rent - until choice made no notice to quit required

NY Distinction - Landlord must give 30 days notice before bringing action to eject

LANDLORD-TENANT RELATIONSHIP

1) Tenant's duties:

a) Duty to repair & maintain premises - at END OF LEASE, look what the lease says - if SILENT as to duty to maintain, tenant under common law duty to maintain tenantable repairs (doctrine of waste - both voluntary & ameliorative

b) Liability under covenant to repair - "tenant will maintain property in good repair" - BAD LEASE, tenant acting as insurer

NY DISTINCTION - NY will not impose liability on tenant for acts of god or acts of 3rd parties unless expressly stated

c) Duty to pay rent - 4 excuses:

1) Surrender - by any instrument in writing tenant conveys to landlord, completely excused

2) Unjustified abandonment by tenant - tenant gets up and leaves, landlord has 3 options:

a) Landlord can repossess, treat abandonment as offer to surrender

b) LL can do nothing - tenant fully liable for each month's rent as it comes due

c) LL can re-let, then hold original tenant liable for any deficiency - but LL

doesn't want tenant to claim this is acceptance of surrender -
landlord must notify tenant

so

3) Constructive Eviction (quiet enjoyment) - direct PHYSICAL handling of tenant by LL - complete excuse. An indirect interference of quiet enjoyment to the point the premises are UNFIT FOR HUMAN HABITATION is a constructive eviction. Must show:

a) substantial interference with the promise of quiet enjoyment by LL (akin to throwing out in street, like no water or heat), and

b) abandonment by tenant within reasonable time (tenant needs to show premises unfit for human habitation)

4) Condemnation by eminent domain:

a) all or nothing rule - only excused when ENTIRE estate is taken - both the LL & tenant's interest entirely taken

b) Partial taking - NO EXCUSE - tenant still owes full rent but can recover losses directly from the state

LANDLORD'S DUTIES

1) Duty to deliver possession - Landlord had no duty under common law - by universal statute today LL's duty is to deliver actual possession of the premises. Tenant's remedies are damages for alternative housing for LL's failure

NY DISTINCTION - Tenant can avoid the lease unless the lease expressly provides otherwise

2) Duty of quiet enjoyment - LL can do nothing to interfere with tenant's enjoyment

3) Implied warranty of habitability - at common law, none, caveat emptor. Universal Statutory Exception today: applies ONLY to residential leasehold - attaches to beginning of RESIDENTIAL lease. Caveat emptor for commercial lease

ASSIGNMENTS and SUBLEASES

Assignment - tenant transfers all interest

Sublease - tenant reserves right to re-occupy at or near end of lease

Liabilities of Assignment - Lease is both a conveyance & contract, liability can be found under either theory

1) privity of estate - liability of ongoing relationship between a landlord & a tenant - anytime current landlord sues current tenant

2) Privity of contract - contract between 2 specific individuals

If $t1 \Rightarrow t2 \Rightarrow t3$, what is liability of $t1$?

If $t1$ promised in contract to pay the rent, privity of contract continues even after the assignment, and $t2$ is secondarily liable

If $t1 \Rightarrow t2$, what is liability of $t2$? $t2$ has no agreement with landlord, but $t2$ is liable because $t2$ is the tenant and liable from privity of estate

if $t1 \Rightarrow t2 \Rightarrow t3$, after $t2$ transfers to $t3$, ordinarily $t2$ will have no contract with landlord, unless there is an express contract stating "express assumption," there is no privity, and $t2$ is no longer liable.

Sublease - when $t1$ has reserved a period of time. LL usually can't recover rent from sublease, no contract and no privity of estate. $t2$ has no covenant to pay rent

Non-assignment clause - tenant forbidden from either assigning or subletting w/o LL's permission - fully enforceable. Waivable - If LL allows $t1$ to assign to $t2$, now LL can't restrict future assignments unless express clause in contract, $t2$ can assign at will

NY DISTINCTION - in a residential building with 4 or more units, right to sublease with landlord's written consent, & consent may not be unreasonably withheld

Tort Liability of Landlord & Tenant (problem of maintenance)

At common law, LL had no duty to maintain the property in good repair during the term; LL has no duty to maintain & no liability for subsequent conditions

1) Latent Defects Rule: Landlord must DISCLOSE all latent defects which tenant could not reasonably be expected to discover

2) Furnished Dwelling Rule: (summer cottage) On a furnished short term lease, LL liable for all defects, known or not

3) Common Areas Rule (Garden Apartment) LL must maintain all common areas (parts under LL's control & possession)

4) Negligent repair rule (Plaster cases) - Even if LL has no duty to repair, LL liable for negligent repairs. It is the DECEPTIVE APPEARANCE OF SAFETY

5) Public Use Rule (Tavern Case): Anytime property lease to use by the general public, L is liable for injuries caused by any defects (known or should have known) which the tenant probably will not fix (structural problems)

6) Covenant to Repair: LL fails to make promised repairs and tenant hurt. LL liable for all injuries

Tenant's liability - even if LL expressly promises to fix and does not, if an invitee injured tenant loses, because t has the primary duty to maintain the property in good repair (although under an express promise tenant will be indemnified)

Fixtures

A fixture is a chattel (personal property) attached to the land by the tenant with the

INTENT to permanently improve the real property & becomes real prop.

Institutional Use Test of Intention (OBJECTIVE TEST): Is the chattel ESSENTIAL to the uses for which the structure is being put - if yes it is a fixture, otherwise remains personal property. Ex: Washer dryer is never a fixture, furnace & bricks are

Movable chattel -washer dryer - never a fixture, can always take

Chattels incorporated into the structure: Bricks & mortar attached to structure where removal would cause injury to structure - can never be removed

Ordinary fixture: furnace - fixtures tenant can remove if has: LL's express permission, or is a trade fixture

EASEMENTS- non possessory interests in land, right to use rather than possess

1) Easement Appurtenant- any time easement connected with use & enjoyment of specific land - dominant & servient. Inseverable from dominant estate, even if land sold and deed is silent

2) Easement in gross - (utility lines) any time no specific land benefits

Negative easement: restricts activities which can be used on the estate. Common law only recognized 4 negative easements:

- a) light
- b) air
- c) support
- d) flowing water

3 Methods of easement creation:

- 1) Express agreement - MUST be in WRITING to comply with Statute of Frauds
 - 2) Implication: O owns both L1 & L2, drives across 1 to get to 2, sells lot 2 to X, X drives across 1 to get to 2, even though nothing was said between the parties, an easement may be created by implication. Must show:
 - a) A PREVIOUS USE BY **COMMON OWNER**
 - b) The previous use was CONTINUOUS (permanently adapted to the estate)
 - c) Prior use was APPARENT - reasonably prudent inspection would reveal right of way
 - d) Prior use was REASONABLY NECESSARY for X's enjoyment - would it take X a considerable expenditure to create reasonable use otherwise?Exception: Right of Access (Right of absolute NECESSITY) - ONLY when X has no other method of access to land
- Prescription (like adverse possession) - Common driveway theme - A drives across B's lot to reach A's garage. A has easement by prescription if:
- a) Adverse prior use (by stranger rather than owner)
 - b) Must be continuous for full 20 years (NY DISTINCTION - 10 years)
 - c) Must be visible & notorious, or with B's acquiescence (doesn't mean B's permission, but B let it happen, suffered it to continue)
(with oral permission only get a revocable oral license)

Transfer of Easements

Appurtenant - automatically with transfer of dominant estate

In Gross - can be transferred as long as commercial or impersonal use (ex. to hunt would not transfer)

Use of Easements

If easement assignment is silent it is perpetual and easement holder is granted presumption of normal development of his land, can increase use of easement

Any time a dominant estate is subdivided each parcel has easement

Excessive Use - ok to normally develop land, but not ok to obtain more land after easement and haul timber across the easement, etc

Termination of Easement

- 1) Merger - Owner of dominant estate buys servient estate - easement merges and is absolutely destroyed
- 2) Release - must comply with Statute of Frauds (in writing)
- 3) Abandonment by Action - mere lack of use is NOT an abandonment - A must have acted to destroy the easement (build house across it)
- 4) Estoppel - need representation by A he won't use it, then material change by B based on reasonable reliance (puts in pool)
- 5) Prescription - must work to interfere with A's use for 20 years (NY DISTINCTION - 10 years)

Profit - non possessory interest like easement which allows A to enter B's land & remove timber or coal, treat exactly like easement

License - mere privilege to use someone else's land, not a property interest, only a contract right, always revocable by licensor

Example: Ticket cases - they only create license, and ticket is always revocable

B talking, gives A right of way for money, then B puts up fence. A only got a revocable license because interest was oral

Irrevocable license - if Oral license is directly acted upon by A for direct improvement of right away

Restrictive Covenants

Action at law = covenant runs with the land. Action at equity = equitable servitude

Most restrictive covenants can not be enforced at law. Must have:

- a) Agreement in writing
- b) parties must have had the intent for succession
- c) must touch & concern the land - affect the physical use of land in favor of A against B
- d) Privity of estate (USUALLY FAILS) - need Vertical privity - between B & X (easy) and need Horizontal privity (between A & B - Grantor-grantee) At law the covenant must always be carried with a deed