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A STUDENT’S GUIDE TO ESTATES IN LAND AND FUTURE INTERESTS:

Text, Examples, Problems and Answers

Third Edition

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STUDENT GUIDE SERIES

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DEDICATION

The first and second editions of this book were dedicated to Frederick M. Hart, Professor and Dean Emeritus at the University of New Mexico. Fred Hart remains “teacher, colleague and friend” to us and many, many people. But we are sure that Fred Hart will agree that our dedication of this third edition must be

To
Pamela Burgy Minzner,
gone too soon.
Requiescat in pace.

R.L. and O.L.A.
The first edition of *A Student's Guide to Estates in Land and Future Interests* was successful in ways surprising to many, not least to Laurence and Minzner. Many thousands of students during the ‘80s and early ‘90s turned to it as a guide through what is — or can be — one of the dreary parts of the property course, a worm in the otherwise savory apple of the first year of law school. While we are hesitant to say that *A Student’s Guide* made the going either easy or pleasant, it seems to have made the learning more palatable and the experience more tolerable.

Students may be interested to know the origins of this book. In a very real way it began on the floor in the living room of Anne Kass, retired now from the New Mexico trial bench, as Laurence and his study group struggled to prepare for Minzner’s exam. Feeling ourselves to be the latest in the long line of American law students trying to figure out what an executory interest was, we started drawing diagrams and making charts, and things began to fall into place — we hoped. Well, we made it, and you will too.

From those early sketches, the presentation was formalized and presented to patient students at the University of New Mexico and, later, at the University of North Dakota. The presentation seemed to work, and Matthew Bender & Co. took a chance on the book, its unknown authors and its unusual format. The book did well and became the first in a series of “Student Guides” from Matthew Bender.

Laurence and Anderson were colleagues at the University of North Dakota in the early 1980s, and Anderson has recommended the book to his property students since it was first published and has occasionally corresponded with the authors about its content. His students know that estates in land, future interests, and the rule against perpetuities are among his favorite subjects. A few years ago, Minzner died and Laurence retired, and when it became time to consider a third edition, Anderson was an obvious choice to work on the new edition.

*A Student’s Guide* never was a treatise requiring careful updating. Rather, it is a teaching and learning tool. The original and second editions of *A Student’s Guide to Estates in Land and Future Interests* have been too successful and well received by students to make us eager to make sweeping changes. On each page is the imprint of a student like yourself trying to learn a mysterious and difficult subject.

We’ve discovered over the years a few pedagogic changes that we think should be made, and we admit that technology has caught up with us. The original diagrams were painstakingly drawn by hand by Carol Kennedy, a New Mexican graphic artist. She used a computer to draw the diagrams for the second edition. The diagrams in this addition, which are patterned after Kennedy’s work, were prepared on a computer by the staff at Lexis.

One final point to both teachers and students: we continue to believe that students have the most difficulty distinguishing among contingent remainders, executory interests, and vested remainders subject to divestment. In a large measure, the goal of this book, with its constant emphasis on the year 1536, is to make these distinctions understandable. This year 1536 is not used as a historic landmark, although it is, but as a marker to indicate the need for students to use a slightly more complicated formula to classify interests properly. Note that we write usually in the present tense, though we describe a system of estates in land that never really existed in fact. Later in the presentation we modify the system with statutory law until it becomes the modern law of estates in land. We intentionally do not cover modern law in detail, as the variations from state to state are far too great for our purpose, which is to provide students with a workable means of learning the common law of estates in land and future interests in England in about 1700. We use the present tense to describe this artificially simplified system so students will not be tempted to ask: When and in what order and which came first? As always, we appreciate suggestions of both students and teachers about improving the presentation.

We are grateful to those who helped develop the first edition. Lynn Cianci Eby, New Mexico ’78, put together an original outline, problem set, and answers from which chapter seven and the second appendix still heavily draw. Alice E. Herter, New Mexico ’79, developed a series of slide presentations which improved the original presentation and influenced the textual treatment in this manuscript. Claudette Abel, Cory Carlson, Richard Gleason, and Karen Johnson, all North Dakota ’81, provided valuable assistance by researching the property law of the several states. Ms. Johnson deserves special mention for her efficient and professional direction of the first editorial process. Ms.
Adele Hunter, formerly of the University of New Mexico School of Law staff, typed all of the drafts when such a task was far more demanding than it is today.

Since the original appearance of the first edition of *A Student’s Guide*, we have had valuable advice from many, many people. Much of that advice came from our students who used the text with varying degrees of enthusiasm at the New Mexico, North Dakota, Arkansas, Florida State, and Oklahoma law schools. Teachers and colleagues from those institutions and from around the country have offered suggestions. Though too numerous to be listed here, we thank them all, even while admitting that we haven’t always followed their advice. Also, the geometric properties of the system will be obvious and, hence, some credit must go to Laurence’s former patient high school math students in DeWitt, New York; Andover, Massachusetts; and Moriarty, New Mexico.

For this new edition, Dr. Kathie Anderson read and edited the manuscript. Professor Anderson’s colleagues at the University of Oklahoma, Professors Katheleen Guzman and Taiawagi Helton, offered their suggestions, and Professor Helton test drove the manuscript in his property class.

Robert Laurence
Hindsville, Arkansas

Owen L. Anderson
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September 2011
INTRODUCTION

The American legal system is part of the common law family of legal systems. The common law brought to America by English colonists survived both the American Revolution and an effort by some reformers to adopt a civil law system. Louisiana, a former French colony, follows civil law. The significance of English common law, of course, has lessened with the modern emphasis on legislative innovation, in particular such important legislative events as the Uniform Commercial Code and the Uniform Probate Code. Nevertheless, the English common law influence remains, even in the twenty-first century, in the particular — some would say peculiar — set of concepts and a good deal of vocabulary for the law of real property.

A traditional introduction to the law of real property has been a sketchy survey of the period between 1066 and 1290, from which flows a good bit of the intellectual heritage of property law. During this period, for example, the concepts of alienability by gift or sale and inheritability by intestate succession became associated with an individual’s interests in real property. During this period, additionally, a range of interests in land of a rather different sort was recognized. One could acquire and hold interests measured in terms of time, for example, for one’s life or for the life of one’s bloodline as represented by direct descendants, and for other time periods.

During the era of Norman feudalism in England between 1066 and 1290, a system of property developed that proved better and stronger than its feudal beginnings. While the so-called English common law system of estates in land, which evolved as the English common law itself emerged, may not have been a direct or necessary result of the feudal times that fostered both, the English common law system of estates and associated doctrines were at least an indirect result of the economic aspects of the feudalism, which William the Conqueror introduced and strengthened beginning in 1066.

The property law that emerged in the English feudal era seems to have been a reasonable response to contemporary societal and economic conditions. More importantly, however, that same set of feudal ideas still influences modern property law. In this book, in order to emphasize the practical significance of English real property law, we have de-emphasized English legal history.

We have tried to isolate those concepts basic to a beginning American law student’s understanding of estates and future interests and to clarify the relationships among those concepts. A relatively coherent and conceptual system can be extracted from the English common law of real property, and we offer that system as an effective introduction for beginning law students.

This book is not a treatise. That is not to say that we have not given the book a great deal of thought. We have, but this is not a scholarly treatment of the law of estates in land and future interests. This book is a learning tool, a presentation of the material covered in a first-year property course in a way that makes sense to us and has made sense to our students.

We believe our presentation is special in three ways. Firstly, the text will introduce you, in a formalistic, even mechanistic, and certainly oversimplified form, to a system of estates in land that never existed. History takes second place to logic, detail to broad outline, and practical importance to chronology. We have found that this presentation provides a firm base on which to build other discussions of the topic, discussions that will be led by your property professor. Furthermore, we think that other approaches obscure the essential legacy of English common law and equity, which is to provide a set of concepts and a technical vocabulary to express those concepts.

Secondly, the graphic illustrations that symbolize the various interests in real property are intended to make the sometimes slippery distinction among the various interests less slippery, although we decline to say “easy to grasp.” We have developed the symbols and the graphic illustration into their current form, but we make no claim that we were the first to put pencil to paper in an attempt to draw a contingent remainder.

Finally, the presentation includes extensive review problems with answers and explanations. The problems have been answered as they would have been at English common law, which we fix somewhat arbitrarily at about 1700.
At the end of the presentation, problems are answered as they would be affected by modern statutes, such as those included in Appendix III, representing in 2011 the states of California, Illinois, Minnesota, New Mexico, and North Dakota. We hope you will find your state or a state with statutes similar to yours on that list. To begin, you are invited to learn the common law, the first step to learning the modern departures from common law by particular states.

As with prior editions, we begin with the definition of five present estates in real property and how they are created.
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