

**A Student's Guide to
Estates in Land and
Future Interests**

A Student's Guide to Estates in Land and Future Interests

*Text, Examples, Problems,
and Answers*

FOURTH EDITION

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*Professor Anderson dedicates the fourth edition
to his friend and colleague Robert Laurence.*

To
Robert Laurence
You taught me much about teaching.

*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.*

*The third edition was dedicated
to the memory of
Pamela Burgy Minzner.*

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Preface

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.

The origins of the book began before most of you were born, 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. The fourth edition includes significant updates to chapter 7, particularly to the modern variations of the rule against perpetuities and some changes to the other chapters. The earlier chapters have been updated with some additional clarification and a bit more history, but it is still far from a history book. The bits of history are meant to enliven the study and provide citations to some historical materials. Anderson studied this subject the old-fashioned way—by taking a class in Anglo-American History in his first semester of law school, taught by a master professor, the late Robert Beck. That said, Anderson quickly appreciated the more efficient way of learning the subject, leaving more time for the study of other rich topics that make up a class in property law.

A Student's Guide never was a treatise requiring careful updating. Rather, it is a teaching and learning tool. The original and subsequent 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 area of law.

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 the third and this edition, which are patterned after Kennedy's work, were prepared on computers by the staff at Lexis and Carolina Academic Press.

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. We do not use the year 1536 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. Hence, the first three chapters address pre-1536 classifications that still reflect modern common law except for those future interests that were not then recognized as valid. Chapter 4 addresses the future interests not recognized as valid pre-1536 but validated in 1536 when Parliament passed the Statute of Uses. Thus, like the math teacher that Professor Laurence once was, the book provides a formula for classifying estates and future interests that gradually becomes a bit more complex. You will learn how to apply the formula to solve classification problems much as math students learn basic math—by solving numerous problems at the end of each chapter. Chapter 6 adds some additional complexities that supplement the formula for particular present and future interests. Chapters 2 through 6 conclude with a step-by-step analytical approach that gradually grows to incorporate all but the chapter 7 materials. Some professors may have students study only chapters 1 through 4 or 5, so the step-by-step approach is especially helpful in short-circuiting the subject matter. Chapter 7 offers examples of some modern variations on the law of estates in land and future interests, which are becoming increasingly varied from state-to-state—in part, we believe, because judges did not learn how to properly classify interests in law school.

Although we write usually in the present tense, we describe a system of estates in land that never existed in fact at any given time. We simply gradually modify the formula until it reflects the modern law of estates in land. However, 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 as of about 1700 in England. We use the present tense to describe this artificially simplified system so

that students can more easily learn how to classify estates in land and future interests through a system that does not require consideration of historic details, which should ease learning the modern variations adopted by a particular state. To understand the modern variations, many of which are statutory, we believe students must first understand common law.

We recognize a trend among professors of first-year property to diminish the teaching of estates in land and future interests in favor of more “modern” issues. As with all law subjects, the contemporary importance of particular topics changes. However, we still believe that it is important for students to recognize that, just as various interests in property can exist in numerous persons simultaneously in the same tract of land, various interests can presently exist in the same tract of land tied to the passage of time. Hence, a tract of land simultaneously may have a present owner and a future owner. We believe this text provides an efficient means for students to learn this time-based feature of property, allowing more time to consider contemporary topics. With the wide-spread use of single semester property classes, time is precious. This book can save time—one of its key advantages.

As always, we appreciate suggestions from 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 7 and the second appendix still heavily draw. Alice E. Herter, New Mexico '79, developed a series of slide presentations, initially done for use with an overhead projector, 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 Arkansas, Florida, New Mexico, North Dakota, Oklahoma, and Texas 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 have not 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 the third 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.

For the fourth edition, Professor Anderson once again thanks his colleague, Professor Taiwagi Helton, the W. DeVier Pierson Professor of Law at the University of Oklahoma, for his helpful comments and suggestions. Professor Anderson again thanks his spouse, Dr. Kathie Anderson, for her editing assistance.

Owen L. Anderson
The University of Texas at Austin
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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 legal concepts and vocabulary of 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 a range of land interests of a rather different sort was recognized. One could acquire and hold interests measured in terms of time—*e.g.*, 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 and future interests may not have been a direct or necessary result of feudalism, English common law was at least an indirect result of the economic aspects of the feudalism that William the Conqueror introduced and strengthened following his conquest of England in 1066 at the Battle of Hastings.

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 on property law in the United States, we de-emphasize English legal history.

We have tried to isolate those concepts basic to a first-year 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 without being fettered by strict historical

accuracy, and we offer that system as an effective introduction for beginning law students. Moreover, we think that our approach better prepares students for tackling other classes—especially ones based on comprehensive statutory frameworks, which can often be mastered through a step-by-step analysis.

This book is not a treatise. Although we have given the book a great deal of thought, this book is not a scholarly treatment of the law of estates in land and future interests. Rather, it is a tool for first-year property students to facilitate efficient learning of the modern common law of estates in land and future interest.

We believe our presentation is special in three ways. First, the text will introduce you, in a formalistic, often mechanical, 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. Our presentation provides a firm base for further discussions of the topic 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.

Second, 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 and, we trust, easier 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.

Third, the presentation includes extensive review problems with answers and explanations. With a few exceptions, the problems have been answered first as they would have been by the “law” courts just prior to enactment of the Statute of Uses in 1536, then as they would have been answered by the law court after 1536, ultimately ending, prior to chapter 7, at a somewhat arbitrary date of about 1700. In chapter 7 and in the final problem sets in Appendices I and II, we test these same time periods again, along with modern variations from select states. Appendix III includes examples of statutes, updated to 2020, from the states of California, Illinois, Minnesota, New Mexico, and North Dakota, along with a few cases that illustrate modern variations. We hope you will find your state or a state with variations 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 by defining five present estates in real property and illustrate how to create them.