

## PART II

## PRIVATE RIGHTS

## PROPERTY INTERESTS AND LIENS

## CHAPTER 500

## ESTATES IN REAL PROPERTY

## 500.01 DIVISION AS TO QUANTITY.

At early common law interests designated: (1) Possibility of reverter, (2) entry for breach of condition, (3) reversions, related to possible right of possession in the future in the grantor or devisor's heirs; while (1) remainders, (2) springing and shifting uses (after enactment of the statute of uses in 1535), and (3) executory devises (after enactment of the statute of wills in 1940) were future estates inuring to third persons. Gray on Perpetuities, Restatement of Real Property.

Where a dwelling was occupied by a life tenant a mortgagee from her is not a purchaser without notice where the latter knew of the life tenant's possession and that she was the mother of two children, plaintiffs herein, who had the remainder. The acquisition of her mortgage being not in the usual course the circumstances were such as to put her on inquiry. As to remaindermen, a life tenant's only duty in respect to a prior mortgage lien upon the whole estate is to keep down the interest. That the lien secures a debt for the payment of which the life tenant is liable contractually does not impose upon the latter, as to the remaindermen, the duty to pay the principal. *Faulkenburg v Windorf*, 194 M 154, 259 NW 802.

Where plaintiff held upon certain land, after agreement with the county attorney, who was acting neither in an official capacity nor for the owner, he acquired no rights to the crops growing thereon as against the owner and hence none against the defendant acting under authority of a contract with the owner which contract covers the crops on the land. One can become a tenant at will only by permission from the owner, or one acting for him, to go onto the land. *Johnson v Wiseth*, 197 M 280, 266 NW 852.

By proceedings under the declaratory judgment act the instrument in question clearly holds that the profit was assignable to the plaintiff and that enjoyment by the members was intended. The instrument created a profit a prendre to hunt wild game upon designated premises. The contract does not come within the provisions of Minnesota Constitution, Article 1, Section 15. *Minnesota Valley Gun Club v Northline Corp.* 207 M 126, 290 NW 222.

One who enters into a collusive agreement with a life tenant for the purpose of defeating the interests of the remaindermen cannot enforce a lien on the property for the amount paid to acquire title thereto at a tax sale. As between the life tenant and remaindermen, it is the life tenant's duty to pay the taxes. The acquisition of a tax title by a life tenant is treated as a payment or redemption since otherwise a defrauding life tenant would be permitted to benefit by his own wrong. *Turner v Edwards*, 207 M 455, 292 NW 257.

An "owner" is not necessarily one owning the fee title since there may be different estates in the same property vested in different persons and each be an owner thereof. *Judd v Landin*, 211 M 466, 1 NW(2d) 861.

A license to use and occupy land may be created by parol revocable at the will of the owner; and in the instant case the possession of respondent's predecessors

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in interest was permissive and was not transformed into an adverse possession 15 years before the commencement of these proceedings. *State ex rel v Riley*, 213 M 448, 7 NW(2d) 770.

The term tenant "from year to year" owes its origin to the disposition of the courts to convert tenancies at will into tenancies "from year to year" wherever an annual rent is reserved or circumstances appear from which an annual holding might be implied; and in the instant case where there was no written lease or evidence of any agreement between the landlord and a tenant who occupied the premises for many years, the tenant owning all the livestock, machinery, seed, and similar items, the tenancy was a "tenancy from year to year" which except as to the requirements of notice to quit (s. 504.06) was substantially a "tenancy at will." *State Bank v Dixon*, 214 M 41, 7 NW(2d) 351.

An estate for years is one limited for a certain time. A tenant under a lease is one who has been given a possession of land which is exclusive even against the landlord, unless the lease permits his entry, saving also the landlord's right to enter to demand renter to make repairs; while a licensee is one who has mere permission to use the land. Even though a lease conveys no actual interest in the land itself and as such is not real estate, yet, where it creates a right in the lessee to use and occupy the land for a definite term, it is, under our constitution and statutes, property for which, in condemnation, compensation must be made. *Seabloom v Krier*, 219 M 363, 18 NW(2d) 88.

Rights in soil and minerals under water. 1 MLR 34.

Charitable gifts and the Minnesota statute of trusts. 1 MLR 201.

Title to soil under public waters. 2 MLR 313, 429.

Passing of the corporation in business; the trustee. 2 MLR 407.

Right of state to forbid removal of sand. 3 MLR 211.

Future interests in property. 3 MLR 320; 4 MLR 320.

Restraints on alienation; authorized purposes of trusts of real property. 9 MLR 317.

Necessity of a writing for personal property trusts in Minnesota. 17 MLR 316.

Effect of limitation in form of remainder. 17 MLR 346.

Profits a prendre in granting hunting and fishing privileges. 24 MLR 1000.

Inter-vivos transfers subject to power in donor to alter, amend, revoke, or terminate. 30 MLR 306.

## 500.02 ESTATES OF INHERITANCE.

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the state of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in the trust to the named beneficiaries in virtue of the rule that words of inheritance are not necessary to pass such interests, the words of inheritance being consistent with an intention to pass a fee or absolute interest and the superadded words being insufficient to cut it down to a lesser one. A beneficiary is not prevented from taking a vested interest in a trust by section 501.17 under which the whole trust estate, in law and equity, vests in the trustee and the beneficiary takes no estate or interest in the lands but may enforce the performance of the trust in equity. *First and American Bank v Higgins*, 208 M 295, 293 NW 585.

In the instant case the language sought no intent to pass a lesser estate or interest so an absolute interest in the corpus of the trust should pass equally to Charlotte and Charles. The testamentary trust is not ambiguous or equivocal. The trial court's order in striking out paragraphs of a pleading alleging extrinsic evidence of an intent contrary to that expressed in the will was justified. *Re Silverson's Will*, 214 M 313, 8 NW(2d) 21.

Indian land titles in Minnesota. 2 MLR 177.

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Future interests in property. 3 MLR 320; 4 MLR 320.

Suspension of the power of alienation. 8 MLR 297.

## 500.03 EFFECT OF CONVEYANCE TO GRANTEE IN FEE TAIL.

Reversions. 3 MLR 339.

"History of a title." 22 MLR 134.

Worthier title rule. 22 MLR 135.

## 500.05 DIVISION OF REALTY OR PERSONALTY.

The royalty tax, L. 1923, c. 226, is imposed upon the right, title, and interest of the lessor in ore lands let for the purpose of mining the ore for a royalty; but where the lessee in such lease has covenanted to pay all taxes and assessments, ordinary and extraordinary, general and specific, upon the demised land, he must pay the royalty tax. *Marble v Oliver Iron Co.* 172 M 263, 215 NW 71.

An "owner" is not necessarily one owning the fee title since there may be different estates in the same property vested in different persons and each be an owner of an estate; and a leasehold estate though a chattel real is an estate or interest in lands. *Judd v Landin*, 211 M 466, 1 NW(2d) 861.

Reservation of life estate in favor of non-owning spouse. 25 MLR 241.

## 500.07 ESTATES IN POSSESSION.

Future interests in Minnesota; statutory changes in future estates. 4 MLR 319.

## 500.08 ESTATES IN EXPECTANCY.

While minor children were the owners of the land subject to a life estate of their grandparents, no duty was imposed on the children to pay the taxes, but while the taxes remained unpaid the children could be denied the benefits of education in the school district where the land was situated. OAG Oct. 3, 1946 (166-A-8).

Future interests in property. 3 MLR 320.

## 500.09 REVERSIONS.

An intention to convey a contingent future estate in fee simple and not a joint tenancy was clearly the intention of the parties. The parties intended to convey to the grantee title in fee and possession in the event the grantee survived the grantor. The statute defines reversions as they are at common law. *Papke v Pearson*, 203 M 131, 280 NW 183.

Property conveyed to a city for park purposes may not be sold, except by obtaining a deed from the owner of the reversionary interest. OAG June 6, 1947 (59-a-40).

Future interests in property. 3 MLR 339.

Effect of limitation in form of remainder created in favor of persons entitled in case of intestacy. 17 MLR 346.

Reservation of life estate in favor of non-owning spouse. 25 MLR 241.

## 500.10 FUTURE ESTATE; STATUTORY REMAINDERS.

A person may own the surface of the land and another the growing timber. A landowner's deed of the timber limiting the time for the removal thereof contains an interest in the land. The grantor in such deed has a contingent future estate in the timber and an estate in reversion in the soil. *LaCook v Northern Improvement Co.* 159 M 523, 200 NW 801.

The rule requiring income from a wasting asset to be apportioned as between a life tenant and a remainderman so as to set up a reserve for depletion of the asset

has no application where the trustee is authorized to retain the asset as an investment of the testator with power to sell in his discretion, as between a life tenant and a remainderman dividends are income or corpus, in accordance whether they accrued before or after the life estate arose. *Koffend's Will*, 218 M 206, 15 NW(2d) 590.

Future interests in property. 4 MLR 307.

Presumption of possibility of issue as applied to taxation. 18 MLR 755.

#### 500.11 FUTURE ESTATES; INCLUSIVENESS.

Where, as here, the evidence does not show what portion, if any, was earned before the life estate arose, the dividend will be treated as income payable to the party entitled to the income at the date of its declaration; but this expression is limited to stock and extraordinary cash dividends without indicating whether the rule for apportioning dividends between corpus and income ever applies to ordinary dividends. Generally, as between a life tenant and a remainderman, dividends will be treated as income or corpus depending upon if they were earned or accrued before or after the life estate arose. *Griffin v First National Bank*, 218 M 206, 15 NW(2d) 590.

Future estates in property. 3 MLR 320; 4 MLR 307.

Vested and contingent remainders; acceleration. 10 MLR 549.

Effect of limitation in form of remainder created in favor of those entitled in case of intestacy. 17 MLR 346.

Validity under Minnesota statute of vested remainder in personalty, payment of which is directed to be postponed. 18 MLR 891.

Creation of future estates; reservation of power of sale. 23 MLR 683.

Vested future estates. 31 MLR 64.

#### 500.12 FUTURE ESTATES; CONTINGENT.

Under the decisions of Minnesota the word "vested" has a well understood meaning. It is used to define an estate either present or future, the title to which has become established in some person or persons and is no longer subject to any contingency. A curative act cannot impair vested rights. *Snortum v Snortum*, 155 M 230, 193 NW 304.

Where parties by mistake fail to embody their intention in a written instrument because they do not understand the meaning of the words used or the legal effect reformation will be allowed; and in the instant case an intention to convey a contingent future estate in fee simple is quite evident. A joint tenancy is not indicated. *Papke v Pearson*, 203 M 130, 280 NW 183.

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the state of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in the trusts to the named beneficiaries in virtue of the rule that words of inheritance are not necessary to pass such interests, the words of inheritance being consistent with an intention to pass a fee or absolute interest and the superadded words being insufficient to cut it down to a lesser one. *First and American Bank v Higgins*, 208 M 295, 293 NW 585.

Although the interest of a contingent beneficiary under a testamentary trust is remote, he may upon reasonable cause apply to the court to have his interest properly secured. *Northwestern National Bank v Pirich*, 215 M 313, 9 NW(2d) 773.

Where a testator devised and bequeathed his residuary estate to his widow for life or until her remarriage with remainder to his son and daughter in equal shares, the latter took at once a vested interest in remainder in the real estate which was alienable under the laws of Minnesota. *Perkins v Gibbs*, 153 F. 952.

Future interests in property in Minnesota. 4 MLR 307.

Future estates. 4 MLR 319.

Suspension of the power of alienation. 8 MLR 301.

Liability of remainder estate for fraud of life tenant. 8 MLR 349.

Acceleration of vested and contingent remainders. 10 MLR 549.

Vested and contingent remainders. 13 MLR 68.

Title. 22 MLR 135.

Passing of a contingent future interest by deed; delivery. 22 MLR 94.

Walsh on future estates, page 197.

#### 500.13 FUTURE ESTATES; RESTRICTIONS ON CREATION.

Subds. 3, 4, 5, and 6, repealed by L. 1947 c. 207 s. 1.

Subd. 7, amended by L. 1947 c. 207 s. 2.

Grantor by deed of general warranty conveyed lands to his son and in the deed inserted the following provision: "By this conveyance it is understood that the property cannot be sold or mortgaged for at least ten years, after the death of the father, John Schafer. Should John Schafer, Jr. die before the ten years, the property is to go to his sisters, and brother, share and share alike." Held: (1) A written instrument is to be considered as an entirety, and all language used therein must be given force and effect if that can consistently be done; and, whenever possible, a contract should be so construed as to give it effect rather than to nullify it. (2) The named grantee, John, Jr., took a conditional fee dependent upon his survival during the ten years next following grantor's death. Having died within that period, the fee (theretofore contingent) vested immediately upon his death in plaintiffs. The quoted provision is not repugnant to the general grant, but a limitation thereon. *Youngers v Schafer*, 196 M 147, 264 NW 794.

When the provisions of a deed are such that the absolute fee must vest at the end of two lives in being, the rule against perpetuities is not violated. The fact that a court action might be necessary to determine where the fee is vested is immaterial, since the rule against perpetuities is concerned with the times within which title vests and not with the postponement of the enjoyment of the estate. *Peterson v Peterson*, 222 M 208, 23 NW(2d) 581.

Statutory modification of the rule against perpetuities. 1 MLR 158.

Charitable trusts. 1 MLR 224; 14 MLR 590; 17 MLR 564.

Possibility of reverter. 3 MLR 333.

Future interests in real property. 4 MLR 323.

Rationale of the rule against perpetuities. 6 MLR 560.

Rules against restraints on alienation. 8 MLR 187.

Suspension of the power of alienation. 8 MLR 296.

Creation of future interests in personalty. 8 MLR 315.

Restriction on duration of trusts in personal property. 9 MLR 328.

Restriction on number of lives in estates pur autre vie. 10 MLR 326.

Vested and contingent remainders. 10 MLR 550.

Worthier title rule. 22 MLR 135.

#### 500.14 FUTURE ESTATES; CONSTRUCTION, VALIDITY, AND EFFECT OF CREATING INSTRUMENTS.

Where property is given in trust to pay the income to a beneficiary for life with remainder to the "lawful issue" of the life beneficiary, the gift in remainder is to a class, which, absent context or circumstances to show a contrary intention, includes adopted children in consequence of a statute defining "issue" as lineal descendants and section 259.07 conferring on adopted children the status of natural children with the right of inheritance from the adopting parents and their kindred. *Holden v First National Bank*, 207 M 211, 291 NW 104.

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Abolition of the rule in Shelley's Case construed. *Bank v Higgins*, 208 M 308, 293 NW 585.

In case of an active trust for life, and on the death of the beneficiary, to make title to a remainderman, the trust is executed on the death of the life beneficiary into a legal estate in the remainderman without the necessity of a conveyance from the trustee. *Zuckman v Freiermuth*, 222 M 172, 23 NW(2d) 541.

History of a title and comment. Worthier title rule abolished. 22 MLR 134.

Limitation in the form of a remainder to grantor or his heirs to nominee is void, and the grantor has a reversion in himself. 24 MLR 253.

Where there is identity between the trustees and the beneficiaries. 27 MLR 100.

## 500.15 FUTURE ESTATES; PROTECTION FROM DESTRUCTIBILITY RULES.

Termination of life estate by merger. 3 MLR 136.

Statutory changes in future estates. 4 MLR 320.

Contingent remainders. 5 MLR 134.

Restrictions on suspension of the power of alienation. 8 MLR 295.

Effect of creation of a resulting trust. 13 MLR 749.

## 500.16 ALIENABILITY AND DESCENDIBILITY OF EXPECTANT ESTATES INCLUDING REVERSIONARY POSSIBILITIES.

Notwithstanding the provisions of sections 500.12, 500.16, 501.13, and 501.14, the intent of a testator-trustor prevails, and in the case at bar that intent is clear to confine the distribution of income to the grandchildren living at the time the class came into enjoyment of such income. A widow of a grandchild who died prior to such time was not intended to be included. *Long v Disque*, 207 M 7, 290 NW 312.

Prior to L. 1927, c. 487, a right of re-entry for breach of condition subsequent could not be alienated in Minnesota. 22 MLR 243.

## 500.17 FUTURE ESTATES; RENTS AND PROFITS.

A trust agreement between depositors and a bank for the purpose of reorganization by which the depositors accepted a proportionate interest in trust assets charged off by the bank in consideration of acquitting the bank of 50 per cent of deposit liability does not offend the rule against perpetuities and is not a restraint upon alienation and is valid. *Holm v Merchants State Bank*, 197 M 384, 267 NW 201.

Statutory modification of rule against perpetuities. 1 MLR 158.

Rule as to perpetuities applied as to ore royalties. 1 MLR 378.

Rule as to suspension of the power of alienation. 8 MLR 297.

Restriction as to duration of a trust. 9 MLR 328.

Suspension of the power of alienation. 9 MLR 352.

## 500.19 DIVISION.

Where parties by mistake fail to embody their intention in a written instrument because they do not understand the meaning of the words used or their legal effect reformation will be allowed, and in the instant case it is clearly the intention to convey a contingent future estate in fee simple and not a joint tenancy. *Papke v Pearson*, 203 M 130, 280 NW 183.

Rights of creditors not being involved a grant of land to one for a consideration paid by another vests the title in the named grantee. *Drees v Gosling*, 208 M 399, 294 NW 374.

To constitute a joint tenancy four unities are required, namely, unity of inter-

est, title, time, and possession, and if any of these elements is lacking, the estate is not one in joint tenancy. A joint tenant may at his pleasure dispose of his share in the joint property and convey it to another, and such conveyance results in the severance or termination of the joint tenancy. *Greiger v Pye*, 210 M 71, 297 NW 173.

Right of survivorship in joint tenancy of real or personal property. 3 MLR 349.

Restrictions on rights of co-tenants respecting the common property. 5 MLR 134.

Gift to a class; survivorship as tenants in common. 5 MLR 368.

Creditor's rights against survivor of tenant by entirety. 9 MLR 684.

Joint tenancy with unequal shares. 10 MLR 325.

Effect of divorce on tenants by entirety. 14 MLR 563.

Right of corporate trust company to hold property in joint tenancy. 17 MLR 340.

Grant to several persons "and to the survivor" creates joint tenancy. 18 MLR 79.

Power of grantor to create a direct conveyance to himself and another in joint tenancy. 23 MLR 385.

Joint tenant; tenant by entirety; disinheritance for murder. 24 MLR 430.

Power of shareholder to create joint tenancy by having shares transferred on books of corporation to himself and another. 24 MLR 876.

Conveyance of grantor to himself and another. 26 MLR 128.

Tenancy by entirety; liability of wife for negligence as landlord. 27 MLR 536.

#### 500.20 DEFEASIBLE ESTATES.

Conditions subsequent are to be strictly construed and taken more strictly against the grantor. A forfeiture for a breach of condition subsequent may be waived by acts as well as by express agreement, and once waived the grantor cannot take advantage of it; and in the instant case, where the grantee built the fence and afterwards with the full knowledge and consent of the plaintiff, the defendant removed it and with plaintiff's consent it remained down for 12 years, such facts justify the finding of the trial court that the plaintiff had waived a forfeiture of defendant's rights in the land for the breach of the condition. *McCue v Barrett*, 99 M 352, 109 NW 594.

The intent of the parties being clear their rights and liabilities will be determined and enforced as in other contracts. The provisions in the instant case created a condition subsequent and are strictly construed. *Fürst v Lacher*, 149 M 53, 182 NW 720.

Where parents conveyed land to a son on condition the deed should be null and void in case he failed to pay them each year as long as they lived a specific sum of money, the title reverted to the grantors because of the son's failure to make the payments. *Joecks v Farmers Bank*, 169 M 519, 211 NW 675.

Extinguishment of right of re-entry by attempted transfer before condition subsequent was broken. 13 MLR 271.

Effect of failure in deed to provide for forfeiture or reversion. 14 MLR 187.

Restrictive covenant against occupancy by non-Caucasians; action to enforce. 31 MLR 385.

#### 500.22 RESTRICTIONS ON ACQUISITION OF TITLE.

Subd. 4, amended by L. 1947 c. 155 s. 1.

In respects to conveyances to or by a corporation no one whose interests are not affected, except the state, can call in question the capacity of the corporation either to convey or receive and hold property. As to persons whose interests are not so affected, if the state acquires in the exercise by the corporation of the power to purchase and convey, beyond what the state has conferred on it, they have no right to complain. *Crolley v Mpls. and St. Louis Ry.* 30 M 543, 16 NW 422.

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Union college, a foreign corporation not organized for pecuniary profit, may own land in Minnesota within the restrictions of section 500.22, without having qualified in this state unless it is holding under circumstances which amount to doing business in the state. OAG Oct. 18, 1946 (92c).

Restrictive covenant against occupancy by non-Caucasians; action to enforce. 31 MLR 385.