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PART II

PROPERTY RIGHTS AND DOMESTIC
RELATIONS

CHAPTER 59

ESTATES IN REAL PROPERTY

3191. How divided—Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance. (4362)

Estate defined (85-473, 89+848). Tenancies from year to year are estates at will (47-1, 49+327).

3192. Estates in fee simple—Every estate of inheritance shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be a fee simple absolute or an absolute fee. (4363)

3193. Estates tail changed to fee simple—In all cases where any person, if this chapter had not been passed, would at any time hereafter become seized in fee tail of any lands, tenements, or hereditaments, by virtue of any devise, gift, grant, or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to be seized thereof as in fee simple. (4364)

3194. Conveyance, etc., by tenants in tail—Where lands, tenements, or hereditaments heretofore have been devised, granted, or otherwise conveyed by a tenant in tail, and the person to whom such devise, grant, or other conveyance has been made, his heirs or assigns, have from the time such devise took effect, or from the time such grant or conveyance was made, to the day of passing this chapter, been in the uninterrupted possession of such lands, tenements, or hereditaments, and claiming and holding the same under or by virtue of such devise, grant, or other conveyance, they shall be deemed as good and legal to all intents and purposes as if such tenant in tail had, at the time of making such devise, grant, or other conveyance, been seized in fee simple of such lands, tenements, or hereditaments, any law to the contrary hereof notwithstanding. (4365)

3195. Freeholds—Chattels real—Chattel interests—Estates of inheritance and for life shall be denominated estates of freehold; estates for years shall be denominated chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on execution. (4366)

Freeholder defined (85-83, 88+419).

3196. Estate for life of third person—An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real. (4367)

3197. Division as to time—Estates, as respects the time of their enjoyment, are divided into estates in possession and estates in expectancy. An estate in possession is where the owner has an immediate right to the possession of the land; an estate in expectancy is where the right to the possession is postponed to a future period. (4368, 4369)

85-473, 89+848.

3198. Estates in expectancy, how divided—Estates in expectancy are divided into, (1) estates commencing at a future day, denominated future estates, and (2) reversions. (4370)

3199. Future estates defined—A future estate is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time. (4371)

50-475, 52+920; 85-473, 89+848.

3200. Remainders defined—When a future estate is dependent upon a precedent estate, it may be termed a remainder, and may be created and transferred by that name. (4372)

50-475, 52+920.

3201. Reversions defined—A reversion is the residue of an estate left in the grantor, or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. (4373)

36-15, 33, 29+352; 45-341, 48+187.

3202. Future estates vested or contingent—Future estates are either vested or contingent. They are vested when there is a person in being who would have an immediate right to the possession of the lands upon the ceasing of the intermediate or precedent estate. They are contingent while the person to whom, or the event upon which, they are limited to take effect remains uncertain. (4374)

34-173, 177, 24+924; 42-548, 44+1030; 54-248, 55+971; 85-473, 89+848.

3203. Suspension of power of alienation—Every future estate is void in its creation, which suspends the absolute power of alienation for a longer period than is prescribed in this chapter; such power of alienation is suspended when there are no persons in being by whom an absolute fee in possession can be conveyed. (4375)

24-180; 49-371, 52+27.

3204. Limit of suspension—The absolute power of alienation shall not be suspended, by any limitation or condition whatever, for a longer period than during the continuance of two lives in being at the creation of the estate, except in the single case mentioned in § 3205. (4376)

24-180; 49-371, 52+27.

3205. Contingent remainder in fee, how created—A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age. (4377)

3206. Successive estates for life, how limited—Successive estates for life shall not be limited unless to persons in being at the creation thereof; and, when a remainder is limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void; and upon the death of those persons the remainder shall take effect in the same manner as if no other life estate had been created. (4378)

3207. Remainder on estate for life of another—No remainder shall be created upon an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder is in fee; nor shall any remainder be created upon such estate in a term for years, unless it is for the whole residue of the term. (4379)

3208. When such remainder takes effect—When a remainder is created upon any such life estate, and more than two persons are named as the persons during whose lives the estate shall continue, the remainder shall take effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced. (4380)

3209. Contingent remainder on term of years—A contingent remainder shall not be created on a term of years, unless the nature of the contingency

upon which it is limited is such that the remainder must vest in interest during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof. (4381)

3210. Remainder for life on term—No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate. (4382)

3211. "Heirs" and "issue" defined—When a remainder is limited to take effect on the death of any person without heirs or heirs of his body, or without issue, the word "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor. (4383)

3212. Limitations of chattels real—All the provisions in this chapter contained relative to future estates shall be construed to apply to limitations of chattels real as well as freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee. (4384)

3213. Future estates, etc., how created—Subject to the rules established in §§ 3191-3212, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon. (4385)

42-548, 44+1030; 50-475, 52+920.

3214. Two or more future estates in alternative—Two or more future estates may also be created, to take effect in the alternative, so that if the first in order fails to vest the next in succession shall be substituted for it, and take effect accordingly. (4386)

3215. Future estates—Contingency—No future estate, otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect. (4387)

3216. Remainder as conditional limitation—A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation, and shall have the same effect as such limitation would have by law. (4388)

3217. Rule in Shelley's Case abolished—When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs or heirs of the body of such tenant for life shall be entitled to take as purchasers, by virtue of the remainder so limited to them. (4389)

42-548, 44+1030.

3218. Construction of certain remainders—When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect only on the death of the first taker, or at the expiration, by lapse of time, of such term of years. (4390)

3219. Posthumous children—When a future estate is limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parent. (4391)

3220. Birth of child—Future estate—A future estate, depending on the contingency of the death of any person without heirs or issue or children, shall be defeated by the birth of a posthumous child of such person capable of taking by descent. (4392)

3221. Expectant estates protected—No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseizin, forfeiture, surrender, merger, or otherwise. (4393)

3222. When may be defeated—Section 3221 shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means, which the party creating such estate has, in the creation thereof, pro-

vided or authorized; nor shall an expectant estate thus liable to be defeated be on that ground adjudged void in its creation. (4394)

34-173, 24+924; 36-15, 33, 29+352; 45-341, 48+187.

3223. Premature determination of precedent estate—No remainder, valid in its creation, shall be defeated by the determination of the precedent estate before the happening of the contingency on which the remainder is limited to take effect; but, should such contingency afterward happen, the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period. (4395)

3224. Qualities of expectant estates—Expectant estates are descendible, devisable, and alienable in the same manner as estates in possession. (4396)

3225. Dispositions of rents and profits—Dispositions of the rents and profits of lands, to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this chapter in relation to future estates in lands. (4397)

3226. Accumulation of rents and profits—An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real estate, as follows:

1. If such accumulation is directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority.

2. If such accumulation is directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this chapter permitted for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority. (4398)

3227. Directions for accumulation, when void—If, in either of the cases mentioned in § 3226, the direction for such accumulation is for a longer time than during the minority of the persons intended to be benefited thereby, it shall be void as to the time beyond such minority; and all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void. (4399)

3228. Application of profits to support of infants—When such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants are destitute of other sufficient means of support and education, the district court, upon the application of their guardian, may direct a suitable sum, out of such rents and profits, to be applied to their maintenance and education. (4400)

3229. Rents and profits not disposed of—When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the person presumptively entitled to the next eventual estate. (4401)

3230. Expectant estates, when created—The delivery of the grant, where an expectant estate is created by grant, and, where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate. (4402)

3231. When abolished—All expectant estates, except such as are enumerated and defined in this chapter, are abolished. (4403)

3232. Several and joint estates, etc.—Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy, and in common; the nature and properties of which, respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter. (4404)

43-398, 45+710.

3233. Estates in common—All grants and devises of lands, made to two or more persons, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy. This section shall not apply to mortgages, nor to devises or grants made in trust, or to executors. (4405, 4406)

No estates by entirety (43-398, 45+710; 93-76, 100+662).

3234. Nominal conditions disregarded—When any conditions annexed to a grant or conveyance of lands are merely nominal, and evince no intention of actual and substantial benefit to the party to whom or in whose favor they are to be performed, they may be wholly disregarded; and a failure to perform the same shall in no case operate as a forfeiture of the lands conveyed subject thereto. (4407)

49-301, 51+905; 68-442; 71+682.

3235. Aliens, etc., not to acquire land—Except as hereinafter provided, no person, unless he be a citizen of the United States or has declared his intention to become a citizen, and no corporation, unless created by or under the laws of the United States or of some state thereof, shall hereafter acquire lands, or any interest therein, exceeding ninety thousand square feet, except such as may be acquired by devise or inheritance, and such as may be held as security for indebtedness. But the provisions of this section shall not apply to actual settlers upon farms of not more than one hundred and sixty acres, or to citizens or subjects of a foreign country whose rights to hold lands are secured by treaty. (5875)

3236. Corporations having alien stockholders, etc.—Except as hereinafter provided, no corporation or association, more than twenty per cent. of whose stock is owned by persons not citizens of the United States, or by corporations or associations not created under the laws of the United States or some state thereof, shall acquire lands in this state. (5876)

76-334, 79+315.

3237. Other corporations—Except as hereinafter provided, no corporation, unless organized for the construction or operation of a railway, canal, or turnpike, shall acquire more than five thousand acres of land; and no railway, canal, or turnpike corporation shall acquire lands, except so much as may be necessary for the proper operation of its railroad, canal, or turnpike, and lands granted to it by the United States or by the state. (5877; '99 c. 129)

3238. Exceptions—The prohibitions of §§ 3235-3237 shall not apply to lands acquired by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; nor to any person or corporation engaged in the business of selling lands to actual settlers, provided all lands acquired by such person or corporation be disposed of within ten years after acquiring title thereto. (5878; '97 c. 112)

3239. Forfeiture—All lands acquired or held in violation of §§ 3235-3238 shall be forfeited to the state, and the attorney general shall enforce such forfeiture; but no such forfeiture shall be adjudged unless the action to enforce the same be brought within three years after such property has been so acquired or so held by such alien or corporation; and no title to land shall be invalid or liable to forfeiture by reason of the alienage of any former owner or person interested therein. (5878; '97 c. 112)