

1944 Supplement  
To  
**Mason's Minnesota Statutes, 1927**  
and  
**Mason's 1940 Supplement**

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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1944

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## Part II. Property Rights and Domestic Relations

### CHAPTER 59

#### Estates in Real Property

##### 8032. How divided.

A profit a prendre is more substantial than a license, and gives a right enforceable against others, and if in gross, a profit which is held by one independently of his ownership of other land, it is generally transferable and inheritable. *Minnesota Valley Gun Club v. N.*, 207M126, 290NW222. See Dun. Dig. 2851, 5571.

A license is not an estate but a permission giving license a personal legal privilege enjoyable on land of another, and it is destroyed by an attempted transfer if licensor so elects, and is revocable at licensor's will, and normally payment of consideration does not render it irrevocable. *Id.* See Dun. Dig. 5576.

Right to hunt and take wild game appertains to the land and is a profit a prendre flowing from the ownership. *Id.* See Dun. Dig. 5571.

An instrument giving right to construct a club house and the exclusive right to hunt on the land in consideration of a lump sum annual rental held to grant a profit a prendre and not a mere license, and the right was assignable to a club and survived the death of the grantor. *Id.* See Dun. Dig. 5571.

One occupying premises under a revocable license with unconditional right to remove house if license were revoked, was not entitled to any part of an award in a highway condemnation proceeding, and owner of land can claim no greater sum than value of the land without house. *State v. Riley*, 208M6, 293NW95. See Dun. Dig. 5576.

Appropriate language to create a life estate is by limitation to life tenant for life or during his lifetime with a provision that at death of life tenant remainder shall go to his heirs, or equivalent expressions. *First & American Nat. Bank v. H.*, 208M295, 293NW585. See Dun. Dig. 3165.

An owner is not necessarily one owning fee-simple, or one having in property highest estate it will admit of, and one having a lesser estate may be an owner, and there may be different estates in same property, vested in different persons, and each be an owner thereof. *Judd v. Landin*, 211M465, 1NW(2d)861. See Dun. Dig. 3154.

Fructus industriales are regarded as personalty, whether separated from the soil or not, and a tenant, as owner of crops, may remove them even after entry of a judgment in ejectment against him. *State Bank of Loretto v. Dixon*, 214M39, 7NW(2d)351. See Dun. Dig. 2508.

A license to occupy and use land could have been created by parol that would be revocable at the will of the owner. *State v. Riley*, 213M448, 7NW(2d)770. See Dun. Dig. 5571, 5576.

Owner of house on land of another under a license is entitled to notice, actual or constructive, of revocation of license, as affecting his right to a reasonable time to remove his building. *Id.* See Dun. Dig. 5576.

One having an oral license to construct and occupy house on land is entitled to a reasonable time to remove building after revocation of license. *Id.* See Dun. Dig. 5576.

Where state condemns land for a highway, owner of a house upon the land under an oral lease or a license terminable at will by owner of land is not entitled to any damages where he is permitted to remove his house, and owner of land is only entitled to damages equal to value of land itself. *Id.* See Dun. Dig. 5571-5576.

##### 8033. Estates in fee simple.

A limitation to a named person and an unusual class of heirs such as would not at common law create a fee simple conditional, a fee tail or some similar form of fee, creates a fee simple. *First & American Nat. Bank v. H.*, 208M295, 293NW585. See Dun. Dig. 3157.

##### 8041. Remainders defined.

As between life tenant and remaindermen, it is duty of former to pay taxes, and acquisition of a tax title by a life tenant is treated as a payment or a redemption thereof for benefit of both life tenant and remaindermen. *Turner v. E.*, 207M455, 292NW257. See Dun. Dig. 3170.

Parent-child relationship as between a life tenant and a purchaser of tax title is a factor to be given serious consideration in deciding if breach of duty on part of life tenant and purchase by child were fruit of a collusive agreement between them to defeat interests of remaindermen. *Id.* See Dun. Dig. 3170.

Respective duties of life tenant and remaindermen with respect to payment of taxes upon land due at time of death of common ancestor. *Id.* See Dun. Dig. 3170.

Evidence sustains finding that life tenant and plaintiff entered into a collusive agreement whereby latter, upon failure of former to pay taxes on premises in accordance with her duty, became nominal purchaser thereof at a delinquent tax sale. *Id.* See Dun. Dig. 3167.

One who enters into a collusive agreement with a life tenant for purpose of defeating interests of remaindermen cannot enforce a lien on property for amount paid to acquire title thereto at a tax sale. *Id.* See Dun. Dig. 3167.

Where intestate left half interest in newspaper business and one-third was decreed to widow and two-thirds to children and children agreed that widow should have whole interest in newspaper and income therefrom during her lifetime, limitations did not begin to run against some of the children who desired an accounting after death of widow until death of widow, litigation involving question whether children transferred their interest absolutely or only for life of widow. *Lewis v. Lewis*, 211M587, 2NW(2d)134. See Dun. Dig. 3175a.

##### 8043. Future estates — Vested or contingent.

Future estates are either vested or contingent. They are contingent while the person to whom, or the event upon which, they are limited to take effect remains uncertain. (As amended Act Feb. 25, 1943, c. 69, §1.)

Notwithstanding provisions of §§8043, 8065, 8091 and 8092, intent of a testator trustor prevails. *Murray's Will*, 207M7, 290NW312. See Dun. Dig. 10257.

An interim gift of part of corpus in addition to income is strong evidence of intention that beneficiary is to take a vested interest. *First & American Nat. Bank v. H.*, 208M295, 293NW585. See Dun. Dig. 9888a.

A future gift is vested when right to receive it is not subject to a condition precedent. *First & American Nat. Bank v. H.*, 208M295, 293NW585. See Dun. Dig. 3172.

A dividend was paid to a trustee in form of additional stock, which should be apportioned to the life tenant under a provision of a testamentary trust that all dividends on stock comprising corpus of trust, whether paid in form of cash or additional stock, should be paid to life tenant, where trustee exchanged original stock for new stock issued by corporation under arrangement whereby corporation increased its capital by a transfer of earned surplus capital, increased par value of its shares of stock so that existing number of shares represented entire capital as increased and exchanged new stock at increased par value for old stock share for share. *Whitacre's Will*, 208M286, 293NW784. See Dun. Dig. 3169.

##### 8044. Suspension of power of alienation.

Restraints on the alienation of an absolute interest in personalty are void. *Warner & Swasey Co. v. Rusterholz*, (DC-Minn.), 41FSupp498. See Dun. Dig. 1520, 1749a, 2037, 2040a, 2112a, 3560, 3653, 7480, 9888a, 10258.

Where trust instrument, settling corporate stock on beneficiary, gave the corporation an option to purchase the stock either upon sale or disposal of the stock during beneficiary's lifetime or upon its passing by descent or devise, rule against perpetuities was not violated, since any claim to be made upon the option would have to be made within the applicable statute of limitations. *Id.*

Option must be exercised within six years of death of beneficiary. *Id.*

In case of a joint tenancy with right of survivorship, one tenant could create a severance by conveying all of his interest directly to the other joint tenant, since if this were not so there would be a time during which complete alienation could not take place, thereby resulting in violation of statute against suspension of power of alienation. *Greiger v. Pye*, 210M71, 297NW173. See Dun. Dig. 7480.

##### 8058. Rule in Shelley's Case abolished.

Where devise is in trust with remainder over to the heirs of the taker of life estate, lawful "issue" includes an adopted child, word "issue" being one of purchase. *Holden's Trust*, 207M211, 291NW104. See Dun. Dig. 2722a.

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 trusts to named beneficiaries in virtue of rule that words of inheritance are not necessary to pass such interests, words of inheritance being consistent with an intention to pass a fee or absolute interest and superadded words being insufficient to cut it down to a lesser one. *First & American Nat. Bank of Duluth v. H.*, 208M295, 293NW585. See Dun. Dig. 3162.

**8065. Qualities of expectant estates.**

Notwithstanding provisions of §§8043, 8065, 8091 and 8092, intent of a testator trustor prevails. *Murray's Will*, 207M7, 290NW312. See Dun. Dig. 10257.

**8073. Several and joint estates, etc.**

Joint tenants by their mutual agreement may sever their joint tenancies and create a tenancy in common. *Greiger v. Pye*, 210M71, 297NW173. See Dun. Dig. 4950.

Where intention of the parties is to create an estate by survivorship at all events, a joint tenancy does not effectuate that intention. *Id.* See Dun. Dig. 4951.

A joint tenant may, at his pleasure, dispose of his share and convey it to a stranger, resulting in a severance or termination of joint tenancy. *Id.* See Dun. Dig. 4952.

**8074. Estates in common.**

Where plaintiff purchased land, paying consideration therefor, and had title taken in name of himself and defendant, making them tenants in common, title vested in defendant as to an undivided interest, rights of creditors not being involved, subject to any claims they may have against each other as tenants in common. *Drees v. G.*, 208M399, 294NW374. See Dun. Dig. 9895.

To constitute a joint tenancy, four unities are required, unity of interest, title, time, and possession, and if any of these elements is lacking estate is not one in joint tenancy. *Greiger v. Pye*, 210M71, 297NW173. See Dun. Dig. 4950.

In case of a joint tenancy with right of survivorship, one tenant could create a severance by conveying all of his interest directly to the other joint tenant, since if this were not so there would be a time during which complete alienation could not take place, thereby resulting in violation of statute against suspension of power of alienation. *Id.* See Dun. Dig. 4952.

Where cotenant demanding interest has been in possession of land asserting title in himself and receiving rents and profits, and a tender by his cotenants of amount due him for expenditures made by him on account of common property would be futile, he is entitled to interest on expenditures only from entry of judgment. *Larkin v. McCabe*, 211M11, 299NW649. See Dun. Dig. 9604.

In case of cotenancy a tenant making payments in protecting estate is entitled to interest only from time he demands contribution. *Id.*

Absent an agreement for compensation, a cotenant is not entitled to compensation for services rendered in managing, operating, or taking care of common property. *Id.*

Uniform Interparty Agreement Act has no application in determination of whether husband's deed to wife created an estate by the entirety. *Walker's Estate*, 16 Atl(2d)(Pa)28.

**8075. Nominal conditions disregarded.**

(a).

Where land was conveyed to a town wherein grantee "agreed that the above described property shall be improved and kept improved, and that said grounds shall be used for a public park and picnic grounds only and for no other purpose whatsoever," property went to county upon dissolution of town by operation of law, including appurtenant rights, privileges and duties, and whether county could use property for uses other than as a public park or picnic grounds would depend upon whether there was a condition subsequent or language was intended to be merely directory, a question of fact to be determined from all circumstances. *Op. Atty. Gen.* (441B), Jan. 4, 1941.

A conveyance to a town "this town to maintain car tracks and wall gate, said land to revert to the party of the first part when ceased to be used by said town," constituted a condition subsequent, upon breach of which, coupled with re-entry, estate of town will be defeated, unless condition has become merely nominal, but such

condition is directed toward a particular public use and not against succession of property to county upon dissolution of town, and there is no reverter resulting from failure to use the property unless there is a re-entry or an equivalent act before performance of condition as resumed. *Id.*

**8076. Aliens, etc., not to acquire land.**

Mere purchase of 160 acres of land at present time is not sufficient to bring alien within class of an "actual settler", but an alien who is actually occupying up to 160 of land at the present time with intention of continuing possession for exclusive occupancy and use as his residence comes within exception. *Op. Atty. Gen.* (3G), Feb. 15, 1940.

## COMMON LAW DECISIONS RELATING TO ADJOINING LAND OWNERS

**1. In general.**

Adjoining owner is entitled to a mandatory injunction to compel the removal of a retaining wall encroaching on his land. *Sime v. Jensen*, 213M476, 7NW(2d)325. See Dun. Dig. 95a.

Owner who by filling raises level of his land above that of his neighbor's is bound to build a retaining wall or other structure if necessary to keep such soil within his own line. *Id.* See Dun. Dig. 95c.

An adjoining owner who raised his land above that of his neighbor and built a terrace half on land of neighbor, and when neighbor removed half of terrace had his servants enter upon such land to cut sod in process of making a new grade for the terrace, he was guilty of both nuisance and trespass. *Id.* See Dun. Dig. 95d.

There are cases to effect that when pursuant to a verbal contract owners of adjoining land co-operate in construction of a ditch or drain equitable doctrine of estoppel will prevent one of them from interfering with it to detriment of other. *Herrmann v. Larson*, 214M46, 7NW(2d)330. See Dun. Dig. 95a, 2823, 3209, 10157a.

**2. Lateral support.**

An excavating land owner cannot recover from the owner of adjoining burdened land sums expended by the former to brace and shore the latter's property when the expenditures were made voluntarily even though excavation could not be safely carried on without such precautions and the owner of the burdened land refused to provide necessary protection. *Braun v. H.*, 206M572, 289 NW553, 129ALR618. See Dun. Dig. 96.

Where a landowner by filling raises his land above adjoining land, he is not entitled to lateral support for the raised land from adjoining land, but, on the contrary, he is bound to keep soil used for filling from falling on adjoining land, and where he erects a retaining wall for that purpose, he must erect it entirely upon his own land, and adjoining landowner cannot be compelled to pay any part of the cost thereof. *Sime v. Jensen*, 213M476, 7NW(2d)325. See Dun. Dig. 96.

Supported land has a right of lateral support from that which naturally affords its support, and supporting land is burdened with affording such support to land which it naturally supports. *Id.*

Right of lateral support does not include support needed because of artificial alterations in supported land. *Id.*

Right of lateral support from adjoining land consists in having soil in its natural condition remain in its natural position without being caused to fall away by reason of excavations or improvements made on adjacent land. *Id.*

Right of excavating landowner to recover expense of shoring up adjacent building. 24MinnLawRev852.

Removal of lateral support—substitution of artificial support by predecessor in title—duty of successor in title. 27MinnLawRev201.

## CHAPTER 59A

### Property of Absentees

**8080-1. Possession, management and disposition of certain property.**

Dispositions of stolen property and in hands of sheriff when he is unable to find the owner. *Op. Atty. Gen.* (605b-40), May 20, 1943.