Real Estate Principles 7th edition Ling Solutions Manual

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CHAPTER 2
Legal Foundations to Value

Test Problems

1. Which of the following is not a form of property right?
   d. License

2. Which of these easements is most likely to be an easement in gross?
   d. Power line easement

3. Rules used by courts to determine whether something is a fixture include all except
   c. Law of capture.

4. Which of these is a titled estate?
   e. All of these

5. Which of these forms of co-ownership could best be described as "normal ownership," except that multiple owners share identically in one bundle of rights?
   a. Tenancy in common

6. Which of these marriage-related forms of co-ownership gives each spouse a one-half interest in any property that is "fruits of the marriage"?
   c. Community property

7. Which of these liens has the highest priority?
   c. Property tax lien

8. Restrictive covenants for a subdivision usually can be enforced by:
   d. *a* and *b*, but not *c*.

9. Timeshare programs can involve which of the following claims or interests?
   e. All of these are possible.

10. Every condominium buyer needs to know the details of which document(s):
    d. *a* and *b*, but not *c*.

Study Questions

1. Explain how rights differ from power or force, and from permission.

   Solution: Rights have three characteristics. First, rights are claims or demands that our government is obligated to enforce. Second, rights are nonrevocable and cannot be canceled, ignored, or otherwise lessened by other private citizens. Third, rights are enduring and do not fade away with time.

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Rights are different from power because the government is obligated to honor and support the claims arising from rights. Government will not support claims without right, based merely on the use of force or threat. The government is obligated to defend property rights in subsequent generations, and it does not have the power to abandon this obligation.

Unlike permission, which is revocable, rights are nonrevocable and cannot be taken away or lessened in stature by other private citizens.

2. A developer of a subdivision wants to preserve the open space and natural habitat that runs along the back portion of a series of large lots in the proposed subdivision. He is debating whether to use restrictive covenants to accomplish this or to create a habitat easement on the same space. What are the pros and cons of each choice?

Solution: A developer may choose to use restrictive covenants to limit the use of the land for environmental purposes, while maintaining the quality, stability, and value of the surrounding lots. Restrictive covenants are strictly private because only parties of interest can enforce the covenant. In the case of an isolated deed restriction, the owner who created the restriction or that owner's heirs are the only persons who can enforce the restriction.

Court decisions frequently follow common law, which holds that property should be used productively, and favor fewer restrictions over the use of land. Whether the restriction is in an isolated deed or part of a general set of subdivision restrictions, the courts have been reluctant to maintain them for an unreasonably long time. Even in states where no time limit exists, courts may refuse to enforce restrictions due to changing neighborhood character, abandonment (neglect of enforcement), and changing public policy. In most states, it is difficult to maintain individual restrictive covenants for more than a few decades, and several states have enacted time limits of 20 years or so.

On the other hand, the developer may choose to use a habitat easement on the property. A habitat easement can limit the use of the land for the specific purpose of protecting the environment. An easement in gross, defined as the right to use land for a specific, limited purpose unrelated to any adjacent parcel, will achieve the developer’s objective. The easement can be transferred to another owner without the transfer of a parcel of land. The easement is less likely to “fade away.” Courts are more likely to honor and protect the easement than a neglected restrictive covenant.

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3. Why are restrictive covenants a good idea for a subdivision? Can they have any detrimental effects on the subdivision or its residents? For example, are there any listed in the chapter that might have questionable effects on value of a residence?

   Solution: Restrictive covenants are used most often in subdivision developments to ensure the quality, stability, and value of the lots. However, they can sometimes have detrimental effects on the subdivision. For example, adding a free-standing garage or a chain link fence to one's residence may ideally increase the value, but the existence of restrictive covenants may limit a homeowner's ability to increase the property's value in that manner. Excessive restrictive covenants may diminish the property's value by effectively reducing the rights of the owner. Restrictive covenants may also become obsolete if the character of the neighborhood changes and hinder a property owner's rights.

4. The traditional common law concept of landlord-tenant relationship was that the landlord's obligation was simply to stay off the property and the tenant's obligation was to pay the rent. Explain why this is an obsolete arrangement for apartment residents in an urban society.

   Solution: Historically, the common law application of a landlord-tenant relationship centered on agrarian relationships formed in pre-industrial England. Modern society views residential tenancy as the provision of services. It can be difficult or impossible for one tenant, alone, in an apartment complex to control pests or repair a roof, etc. Thus, the obligation of the landlord must be more than merely to "stay away" from the property. States have enacted elaborate residential landlord-tenant laws that take great strides in defining the rights and obligations of both parties under a residential lease. Laws address such matters as obligations for care and repair of the premises, rights of entry, handling of deposits, notification requirements, and many other matters.

5. A friend has an elderly mother who lives in a house adjacent to her church. The church is growing and would welcome the opportunity to obtain her house for its use. She would like to support the needs of her church, but she does not want to move and feels strongly about owning her own home. On the other hand, your friend knows that she will not be able to remain in the house many more years and will be faced with moving and selling within a few years. What options can you suggest as possible plans to explore?

   Solution: One possible option is to unbundle the fee simple absolute into an ordinary life estate and remainder estate. The church can purchase a remainder estate while the owner retains a life estate. The owner thereby receives either additional income or, if the remainder is donated, a tax deduction. This simplifies the eventual settlement of her estate, while assuring the continued right to occupy her home. At the time of her death the remainder estate becomes a complete fee simple absolute owned by the church. Another possible option is an outright sale to the church and the creation of a tenancy for years in which the elderly mother

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rents the property from the church, creating a leasehold estate for a definite number of years, or for her remaining lifetime (sometimes called a lifetime lease).

6. A friend has owned and operated a small recreational vehicle camp on a lake in Daytona Beach, Florida. It is close to the ocean and close to the Daytona Speedway, home of the Daytona 500 and a host of other prominent races. The occupants are very loyal, making reservations far in advance, and returning year after year. She is asking your thoughts on whether to continue the camp as a short-term rental operation, or to convert it and sell the parking spaces as condominium parking spaces, or to convert to condominium time-share lots. What thoughts would you offer?

   Solution: Maintaining ownership of the small recreational vehicle camp provides the owner continued control of the property, but she also retains responsibility for property management and expenses associated with running the camp. Both conversion to a condominium and conversion to time-share units would be legally feasible. The decision involves a business choice, and the possibilities would need to be analyzed as investment alternatives, and then compared to see which form creates the greatest value for the property. It might be feasible to convert only part of the camp to condominium units. Also, by creating timeshare lots through tenancy for years, the land could revert to your friend after a set number of years.

7. In the United States, the bundle of rights called real property seems to have gotten smaller in recent decades. Explain what has caused this. Why is it good? Why is it bad?

   Solution: The bundle of rights has gotten smaller in recent decades because of the government's increased use of its police power. The government has the duty to protect the health, safety, and welfare of the American people. Additionally, after the 1970's, the consciousness of "Spaceship Earth" alerted many Americans to environmental concerns and the potential adverse environmental and ecological effects of some land uses. On the other hand, excessive regulations interfere with property owners' rights to do as they please with their property. If the exercise of police power goes too far, it becomes a "taking," which requires just compensation.

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