

Table of Contents

	Page
PREFACE	xvii
ACKNOWLEDGEMENTS	xix
TABLE OF CASES	xxxv
TABLE OF SECONDARY AUTHORITIES	xli
 Introduction. A Contemporary Context for the Study of Property Law	1
Chapter 1. Landlord-Tenant	2
A. Introduction	3
1. Is a Lease a Conveyance or a Contract?	4
2. Statutory Modification of Common Law: Uniform Resi- dential Landlord and Tenant Act	5
3. Sample Lease	7
B. Leases—Creation and Classification	11
1. Creation—Statute of Frauds	11
<i>Gee v. Nieberg</i>	12
2. Classification by Duration	13
a. Tenancy for a Fixed Term (Estate for Years)	14
b. Periodic Tenancy	14
<i>S.D.G. v. Inventory Control Co.</i>	15
c. Tenancy at Will	17
d. Tenancy at Sufferance (Holdover Tenant)	17
C. Tenant's Right to Possession and Quiet Enjoyment	18
1. Possession at the Commencement of the Lease	18
<i>Hannan v. Dusch</i>	18
2. Quiet Enjoyment During the Lease Term	24
a. Actual Eviction	24
<i>Smith v. McEnany</i>	24
<i>Kobouroff v. Blake</i>	26
b. Constructive Eviction	28
<i>Automobile Supply Co. v. Scene-in-Action Corp.</i>	29
<i>Net Realty Holding Trust v. Nelson</i>	33
<i>Blackett v. Olanoff</i>	35
<i>Louisiana Leasing Co. v. Sokolow</i>	38
D. Condition and Maintenance of the Leased Premises	40
1. Traditional Approach	41
a. Landlord's Duty—Caveat Emptor	41
b. Tenant's Duty—Waste	41
<i>Suydam v. Jackson</i>	41
<i>Sparkman v. Hardy</i>	45

	Page
D. Condition and Maintenance of the Leased Premises—Continued	
<i>Kennedy v. Kidd</i>	48
2. Implied Warranty of Habitability	52
<i>Javins v. First National Realty Corporation</i>	52
<i>Davidow v. Inwood North Professional Group—Phase I</i>	65
3. Express Covenant to Repair	68
a. Covenant by Landlord	69
<i>Morris v. Durham</i>	69
b. Covenant by Tenant	71
<i>Paul v. Paul's Liquor Store Co.</i>	71
<i>Washington Hydroculture, Inc. v. Payne</i>	72
E. Liability for Personal Injury and Property Damage	76
1. Tenant's Liability to Third Parties	76
<i>Howe v. Kroger Co.</i>	76
2. Landlord's Liability to Tenant and Third Parties	78
<i>Borders v. Roseberry</i>	79
<i>Janofsky v. Garland</i>	84
<i>Erhardt v. Lowe</i>	86
<i>Sacks v. Pleasant</i>	89
<i>Feld v. Merriam</i>	94
3. Validity of Exculpatory Clauses	99
<i>Lloyd v. Service Corporation of Alabama, Inc.</i>	99
F. Assignment and Sublease	106
<i>Dayenian v. American National Bank and Trust Company of Chicago</i>	106
<i>Rowe v. Great Atlantic & Pacific Tea Co., Inc.</i>	108
<i>Kendall v. Ernest Pestana, Inc.</i>	114
<i>First American National Bank of Nashville v. Chicken System of America, Inc.</i>	121
G. Termination of the Landlord-Tenant Relationship	128
1. Holdover Tenant	128
<i>A.H. Fetting Manufacturing Jewelry Co. v. Waltz</i>	128
<i>Lonergan v. Connecticut Food Store, Inc.</i>	132
2. Summary Eviction	137
<i>Bass v. Boetel & Co.</i>	138
<i>Lindsey v. Normet</i>	142
3. Retaliatory Eviction	149
<i>Edwards v. Habib</i>	149
4. Abandonment and Surrender	154
<i>Coast Federal Savings and Loan Association v. DeLoach</i>	154
<i>Sommer v. Kridel</i>	156
5. Commercial Frustration	162
<i>Smith v. Roberts</i>	162
6. When the Government Is Landlord	164
<i>Joy v. Daniels</i>	165

	Page
Chapter 2. Personal Property	172
A. Introduction: Realty v. Personalty	172
B. The Significance of Possession	173
1. Wild Animals	173
<i>Pierson v. Post</i>	173
<i>Young v. Hichens</i>	178
<i>State v. Shaw</i>	180
2. Lost Property	182
<i>Hannah v. Peel</i>	182
<i>Favorite v. Miller</i>	188
<i>Morgan v. Wiser</i>	192
3. Bailments	195
<i>Allen v. Hyatt Regency-Nashville Hotel</i>	196
<i>Buena Vista Loan & Savings Bank v. Bickerstaff</i>	202
<i>Shamrock Hilton Hotel v. Caranas</i>	205
<i>Singer Co. v. Stott & Davis Motor Express and Stoda Corp.</i>	209
<i>Carr v. Hoosier Photo Supplies, Inc.</i>	211
4. Gifts	218
<i>Titusville Trust Co. v. Johnson</i>	218
<i>In Re Estate of Gladowski</i>	222
<i>Braun v. Brown</i>	226
<i>Payne v. Tobacco Trading Corp.</i>	231
<i>Innes v. Potter</i>	238
5. Sales	242
<i>Phelps v. McQuade</i>	242
C. Fixtures	244
<i>Johnson v. Hicks</i>	245
<i>Sigrol Realty Corp. v. Valcich</i>	248
 Chapter 3. Interests in Real Property	 252
A. Historical Background	252
B. Estates in Land	255
1. Fee Simple Absolute	256
2. Defeasible Fees	257
a. Fee Simple Determinable	257
b. Fee Simple Subject to a Condition Subsequent	258
<i>Mahrenholz v. County Board of School Trustees of Lawrence</i> <i>County</i>	259
3. Fee Tail	263
4. Life Estates	265
<i>United States v. 403.15 Acres of Land, Etc. State of Tenn.</i>	267
5. Lease	271
C. Future Interests	272
1. Classification	272
a. Possibility of Reverter	273
b. Right of Entry	273
c. Reversion	273
d. Remainder	274

	Page
C. Future Interests—Continued	
(1) Vested Remainder.....	275
(2) Contingent Remainder	275
e. Executory Interest	276
(1) <i>Historical Background</i>	276
(2) <i>The "Use"</i>	277
(3) <i>Statute of Uses</i>	278
2. Common Law Rules Limiting Future Interests.....	279
a. Rule in Shelley's Case	279
b. Doctrine of Worthier Title	281
c. Destructibility of Contingent Remainders.....	282
d. Rule Against Perpetuities	283
<i>United Virginia Bank/Citizens & Marine v. Union Oil</i>	
<i>Co. of California</i>	285
<i>Berry v. Union National Bank</i>	288
D. Concurrent Interests	291
1. Types	292
a. Tenancy in Common.....	292
b. Joint Tenancy	292
c. Tenancy by the Entirety.....	293
2. Creation	294
<i>In Re Estate of Michael</i>	294
3. Rights of Creditors	298
<i>Sawada v. Endo</i>	298
4. Rights and Obligations Among Cotenants	304
<i>Baird v. Moore</i>	304
<i>Coggan v. Coggan</i>	310
5. Termination	312
<i>Shepherd v. Shepherd</i>	312
<i>Porter v. Porter</i>	315
<i>In Re Estate of Carpenter</i>	318
<i>Tenhet v. Boswell</i>	321
<i>Coolidge v. Coolidge</i>	325
<i>Chuck v. Gomes</i>	327
6. Condominiums	332
a. Creation and Operation.....	332
b. Conversion	334
<i>Comment, the Condominium Conversion Problem:</i>	
<i>Causes and Solutions</i>	334
c. Time-sharing	338
7. Cooperatives	339
E. Marital Interests.....	340
1. At Common Law (Jure Uxoris, Curtesy, and Dower)...	340
2. Community Property.....	343
3. Homestead	344
F. Non-Possessory Rights and Interests	346
1. Easements	346
a. Creation	347

	Page
F. Non-Possessory Rights and Interests—Continued	
(1) Express Provision	347
<i>Corbett v. Ruben</i>	347
<i>Garza v. Grayson</i>	350
(2) Implication	353
<i>Schmidt v. Eger</i>	353
<i>Horrihs v. Elfrank</i>	358
(3) Prescription	363
<i>Werner v. Schardt</i>	363
<i>State ex Rel. Haman v. Fox</i>	365
<i>Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.</i>	373
b. Scope	378
<i>Kelly v. Schmelz</i>	378
<i>Marden v. Mallard Decoy Club, Inc.</i>	382
<i>Clemson University v. First Provident Corp.</i>	384
c. Maintenance	387
<i>Triplett v. Beuckman</i>	387
d. Transferability	391
<i>Miller v. Lutheran Conference and Camp Association</i>	391
e. Termination	397
<i>Lindsey v. Clark</i>	398
2. Licenses	401
<i>Baseball Publishing Co. v. Bruton</i>	401
<i>Mosher v. Cook United, Inc.</i>	403
<i>Stoner v. Zucker</i>	405
3. Real Covenants	408
a. Creation (By Express Agreement or By Implication)	409
<i>Sanborn v. McLean</i>	410
b. Enforcement at Law Against Subsequent Purchasers	413
(1) Enforceable Covenant	414
<i>Caullett v. Stanley Stilwell & Sons, Inc. (Part 1)</i> ..	414
<i>Rhue v. Cheyenne Homes, Inc.</i>	416
(2) Intent	418
(3) Touch and Concern	419
<i>Caullett v. Stanley Stilwell & Sons, Inc. (Part 2)</i> ..	419
(4) Privity of Estate	423
(5) Notice	424
c. A New Look at Enforcing Covenants at Law	424
<i>Neponsit Property Owners' Association, Inc. v. Emigrant Industrial Savings Bank</i>	424
d. Enforcement in Equity Against Subsequent Purchasers	431
<i>Tulk v. Moxhay</i>	431
e. Who May Enforce?	433
<i>Christiansen v. Casey</i>	433
<i>Snow v. Van Dam</i>	438
<i>Rodgers v. Reimann</i>	443

	Page
F. Non-Possessory Rights and Interests—Continued	
<i>Nelle v. Loch Haven Homeowners' Association, Inc.</i>	448
f. Termination	450
<i>Western Land Co. v. Truskolaski</i>	450
<i>DeMarco v. Palazzolo</i>	455
Chapter 4. The Modern Real Estate Transaction	458
A. Introduction.....	458
1. The Call for Uniformity.....	458
2. Overview of the Modern Real Estate Transaction	459
<i>Report, Residential Real Estate Transactions: The Lawyer's</i> <i>Proper Role—Services—Compensation</i>	459
B. Real Estate Brokers.....	468
1. Employment Agreement.....	468
2. Commission	471
<i>Tristram's Landing, Inc. v. Wait</i>	472
3. Broker's Duties to Seller and Buyer.....	476
4. Relationship Between Brokers and Lawyers.....	477
<i>Report, Residential Real Estate Transactions: The Lawyer's</i> <i>Proper Role—Services—Compensation</i>	477
<i>Cultum v. Heritage House Realtors, Inc.</i>	478
C. Real Estate Contract of Sale	484
1. Statute of Frauds	485
a. Requirement of a Writing.....	485
<i>Cash v. Maddox</i>	485
b. Part Performance	488
2. Sample Contract.....	489
3. Marketable Title.....	491
<i>Madhavan v. Sucher</i>	491
<i>Lurette v. Bank of Italy National Trust & Saving Association</i>	495
<i>Raisor v. Jackson</i>	497
4. Specific Performance.....	501
<i>Centex Homes Corp. v. Boag</i>	501
5. Equitable Conversion—Risk of Loss	506
<i>Bryant v. Willison Real Estate Co.</i>	506
<i>Dixon v. Salvation Army</i>	511
D. Financing	515
1. Mortgage.....	515
a. Introduction	515
b. Historical Background and Underlying Theories.....	516
<i>G. Nelson & D. Whitman, Real Estate Finance Law</i>	516
c. Sample Note and Mortgage.....	521
d. Underlying Obligation—Interest Rates	526
e. "Subject to Financing" Clause.....	527
<i>Bruyere v. Jade Realty Corp.</i>	527
<i>Neiss v. Franze</i>	528
<i>Smith v. Vernon</i>	530
<i>Liuzza v. Panzer</i>	532

	Page
D. Financing—Continued	
f. May the Purchaser Take Over an Existing Mortgage?	534
2. Installment Land Contract	536
<i>Skendzel v. Marshall</i>	536
E. Recording Systems	544
<i>Report, Residential Real Estate Transactions: The Lawyer's</i>	
<i>Proper Role—Services—Compensation</i>	544
1. Common Law Rule	544
2. Mechanics of Recording	544
3. Types of Recording Statutes	547
4. Who is Protected?	548
a. Purchaser for Valuable Consideration	548
<i>Strong v. Whybark</i>	548
<i>Gabel v. Drewrys Limited, U.S.A., Inc.</i>	551
b. Without Notice	554
<i>Haner v. Bruce</i>	554
<i>Board of Education of City of Minneapolis v. Hughes</i>	558
<i>Sabo v. Horvath</i>	560
<i>Bishop v. Rueff</i>	566
<i>Kordecki v. Rizzo</i>	569
<i>Wineberg v. Moore</i>	573
<i>Nelson v. Hughes</i>	579
5. Recent Statutory Developments	582
a. Introduction	582
<i>Report, Residential Real Estate Transactions: The Law-</i>	
<i>yer's Proper Role—Services—Compensation</i>	582
b. Marketable Title Statutes	585
6. Title Registration—the Torrens System	591
F. Establishing Title by Adverse Possession	593
<i>Chaplin v. Sanders</i>	593
<i>Seaboard Coastline Railroad Co. v. Carter</i>	598
<i>Carpenter v. Huffman</i>	600
<i>Mendonca v. Cities Service Oil Co. of Pennsylvania</i>	602
<i>Marengo Cave Co. v. Ross</i>	604
<i>Ewing v. Burnet</i>	611
G. Title Insurance	615
1. Introduction	615
<i>Report, Residential Real Estate Transactions: The Lawyer's</i>	
<i>Proper Role—Services—Compensation</i>	615
2. Sample Policy of Title Insurance	616
3. Coverage	622
<i>Horn v. Lawyers Title Insurance Corp.</i>	622
<i>Heyd v. Chicago Title Insurance Co.</i>	625
<i>Title & Trust Co. of Florida v. Barrows</i>	630
<i>Stewart Title Guaranty Co. v. Lunt Land Corp.</i>	632
H. Deed	635
1. Statute of Frauds and Deed Form	635
2. Description of Land	637

	Page
H. Deed—Continued	
a. Metes and Bounds	637
b. Government Survey	638
c. Plat	640
<i>Honsinger v. State</i>	641
3. Covenants of Title	642
a. Breach of Covenants of Title/Damages	644
<i>Wilcox v. Pioneer Homes, Inc.</i>	644
<i>Hilliker v. Rueger</i>	647
<i>Foley v. Smith</i>	649
b. Running of Covenants of Title	654
<i>Schofield v. The Iowa Homestead Co.</i>	654
4. Delivery	657
<i>Chandler v. Chandler</i>	658
<i>First National Bank & Trust Co. of Woodbury v. Scott</i> ...	663
<i>Clevenger v. Moore</i>	666
<i>Chillemi v. Chillemi</i>	671
5. Merger	674
<i>Reed v. Hassell</i>	674
6. Warranty of Quality	678
<i>Gaito v. Auman</i>	678
<i>Richards v. Powercraft Homes, Inc.</i>	686
<i>Vetor v. Shockey</i>	689
7. Misrepresentation and Nondisclosure	692
<i>Lyons v. McDonald</i>	692
<i>Johnson v. Davis</i>	696
 Chapter 5. Attributes of Ownership of Real Property	 703
A. Right to Exclude	704
<i>State v. Shack</i>	704
B. Freedom of Alienation	710
1. Restraints on Alienation	710
<i>Casey v. Casey</i>	710
<i>Smith v. Mitchell</i>	713
2. Open Housing	718
<i>Shelley v. Kraemer</i>	718
<i>Jones v. Alfred H. Mayer Co.</i>	725
<i>White Egret Condominium, Inc. v. Franklin</i>	730
C. Freedom of Use (Nuisance)	737
<i>Collier v. Ernst</i>	738
<i>Boomer v. Atlantic Cement Co.</i>	741
D. Right to Lateral and Subjacent Support	745
<i>Noone v. Price</i>	746
E. Water Rights	751
1. Lakes, Ponds, Rivers, and Streams	751
<i>Game & Fresh Water Fish Commission v. Lake Islands, Ltd.</i> ..	751
<i>Pyle v. Gilbert</i>	756
<i>Coffin v. The Left Hand Ditch Co.</i>	763

	Page
E. Water Rights—Continued	
2. Diffused Surface Water	765
<i>Keys v. Romley</i>	765
3. Underground Water	772
<i>MacArtor v. Graylyn Crest III Swim Club, Inc.</i>	772
F. Mineral Rights	776
<i>Pennsylvania Bank & Trust Co. v. Dickey</i>	776
G. Right to Airspace	779
<i>Southwest Weather Research, Inc. v. Rounsaville</i>	780
<i>Macht v. Department of Assessments of Baltimore City</i>	783
<i>MacMillan, Inc. v. CF Lex Associates</i>	786
Chapter 6. Governmental Control of Private Land Use	790
A. Introduction	790
B. Eminent Domain	791
<i>Berman v. Parker</i>	791
<i>Poletown Neighborhood Council v. City of Detroit</i>	797
<i>Hawaii Housing Authority v. Midkiff</i>	802
<i>Penn Central Transportation Co. v. New York City</i>	809
<i>Loretto v. Teleprompter Manhattan CATV Corp.</i>	827
C. Zoning	831
1. Foundation	831
<i>Village of Euclid v. Ambler Realty Co.</i>	831
<i>Nectow v. City of Cambridge</i>	842
<i>First English Evangelical Lutheran Church of Glendale v.</i> <i>County of Los Angeles</i>	847
2. Flexibility	853
a. Zoning Amendment	853
<i>Pharr v. Tippitt</i>	853
<i>Collard v. Incorporated Village of Flower Hill</i>	857
b. Variance	863
<i>Puritan-Greenfield Improvement Association v. Leo</i>	863
c. Conditional Use	868
3. Zoning for Aesthetics	869
<i>Reid v. Architectural Board of Review of the City of Cleve-</i> <i>land Heights</i>	869
<i>State v. Jones</i>	875
4. Exclusionary Zoning	881
<i>Village of Belle Terre v. Boraas</i>	881
<i>Southern Burlington County NAACP v. Township of Mount</i> <i>Laurel</i>	885
<i>Village of Arlington Heights v. Metropolitan Housing Devel-</i> <i>opment Corp.</i>	902
D. Subdivision Control and Exactions	909
<i>Associated Home Builders of the Greater East Bay, Inc. v. City of</i> <i>Walnut Creek</i>	909
<i>New Jersey Builders Ass'n v. Bernards Township</i>	916
<i>Nollan v. California Coastal Commission</i>	924

	Page
E. Growth Management.....	931
<i>Golden v. Planning Board of the Town of Ramapo</i>	931
<i>Construction Industry Association of Sonoma County v. City of Petaluma</i>	936
INDEX	945