

Law School Outline

PROPERTY

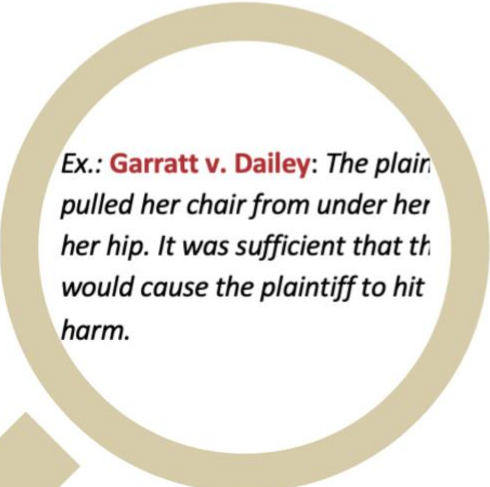


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How to Use This Outline

The best way to get a high grade in a law school class is to create your own outline. However, this outline can be a helpful resource to you. We recommend you use your class notes as a foundation and pull what you find helpful from this outline. The bottom line is: your class notes are your best resource!

If you use this outline as a foundation instead, please remember to make this outline your own! That means you should:



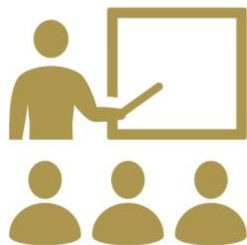
Ex.: **Garratt v. Dailey**: The plaintiff pulled her chair from under her hip. It was sufficient that this would cause the plaintiff to hit harm.

- **incorporate cases your professor discusses in class**

(Note: we have some important cases in our outline, but your professor will certainly discuss others!)

- **incorporate rules your professor discusses in class**

(Note: We purposely did not include every potential rule you could be tested on—we included the basics so that our outline is manageable and easy to use. So please incorporate any rules that you discussed in class that are not in this outline!)



- **incorporate hypotheticals or examples from class into your outline**

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Property



I. Fundamentals of Property

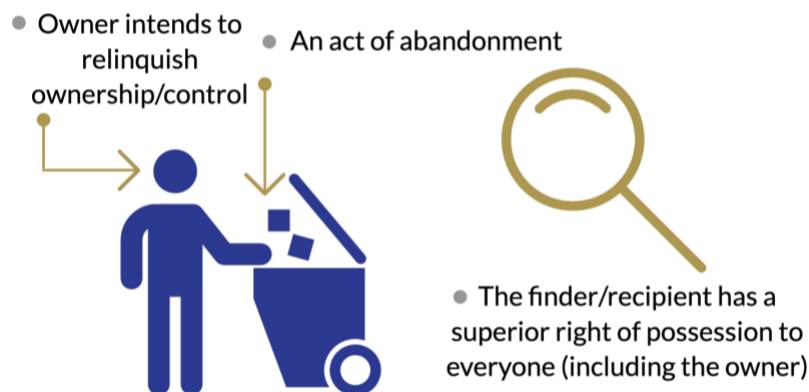
- 1) Attributes of property (together referred to as the “bundle of sticks”)
 - a) Right to exclude,
 - b) Right to dispose, and
 - c) Right to use, possess, and enjoy.
- 2) Real property (“immovables”):
 - a) land,
 - b) buildings,
 - c) plants,
 - d) subsurface, and
 - e) air/water.
- 3) Freehold estates
 - a) Involves ownership in property (e.g., a life estate).
- 4) Nonfreehold (leasehold) estates
 - a) Involves leasing property without actual ownership (e.g., a tenant’s lease).
- 5) Caveat emptor (“let the buyer beware”)
 - a) The buyer is responsible for checking the quality of what he is receiving.



II. Personal Property

- 1) Findings
 - a) Abandoned property
 - i) Property is abandoned if the owner intends to relinquish ownership or control and there is an act of abandonment (e.g., setting trash out on the curb).
 - ii) The finder has a right of possession that is superior to that of all others (including the original owner).

Abandoned Property

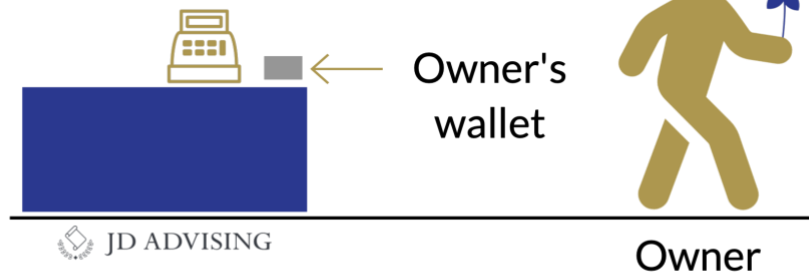


There are helpful images throughout explaining each concept or giving more examples!

- b) Mislaid property
- i) Property is mislaid if the owner intends to place it somewhere and simply forgets to retrieve it (e.g., the owner leaves keys or a wallet at a cash register when checking out).
 - ii) Under common law, the finder is not entitled to possession.
 - iii) *Locus in quo*: mislaid property found on private property goes to the private property owner, not the finder.

Mislaid Property

- The owner intends to place it somewhere and simply forgets to retrieve it
- Under common law, the finder is not entitled to possession



Ex.: If the owner accidentally leaves her wallet by the cash register when checking out of a grocery store, the wallet is considered mislaid property.

- c) Lost property
- i) Property is lost if the owner does not intend to relinquish possession or ownership (e.g., a wallet falls out of a person's backpack).
 - ii) The finder's right of possession is superior to all others except the true owner.
 - (1) *Ex.: **Armory v. Delamirie (1722)**: Armory found a piece of jewelry and took it to Delamirie, a goldsmith, to determine its value. Delamirie's apprentice removed the jewels while appraising the jewelry and returned to Armory only the empty socket. Armory sued Delamirie. The court determined that Armory was the owner of the jewel in relation to everyone but the true owner. Armory therefore had a right to recover the jewelry's value from Delamirie.*
 - (2) Treasure trove
 - (a) Gold, silver, coins, or bullion found hidden (often underground or in a basement or attic). The treasure has been hidden so long that the original owner has died, and the owner's heirs cannot be found.
 - (b) When treasure is lost under the original rule, the treasure trove goes to the state or the owner of the land.

(c) Under the American common law, finder laws apply.

Lost Property

- The owner does not intend to relinquish possession or ownership
- The finder's right of possession is superior to all others except the true owner



Ex.: If the owner's wallet falls out of her pocket while she is walking, the wallet is considered to be lost property.

2) Gifts

a) Inter vivos gift

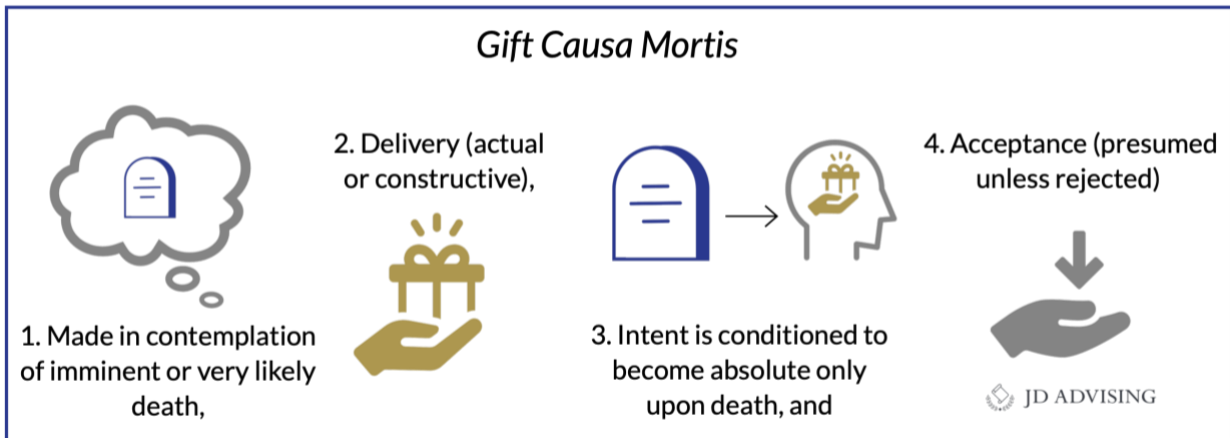
- A gift given during life. Elements:
 - donative intent,
 - delivery, and
 - acceptance.



There are helpful images throughout explaining each concept or giving more examples!

- The donor must intend to make the gift. Mere delivery without donative intent does not create a gift.

- iii) An inter vivos gift may not be revoked once it is complete.
 - iv) Note: symbolic delivery (giving a representation of the item) and constructive delivery (giving a means of access to and control over the item) may be permitted if actual physical delivery is impracticable (e.g., a donor would be permitted to deliver keys to a car when giving the gift of a car because actual delivery (handing over the car) is impracticable).
 - v) Acceptance is presumed unless there is evidence that the donee rejected the gift.
- b) *Gift causa mortis*
- i) A gift made in contemplation of death. Elements:
 - (1) made in contemplation of imminent or very likely death,
 - (2) delivery (actual or constructive),
 - (3) intent is conditioned to become absolute only upon death, and
 - (4) acceptance (presumed unless rejected).
 - ii) Note: title to the property does not actually pass until the grantor dies. Thus, the gift may be revoked by the grantor during his life.






III. Contracts of Sale and Closing



- 1) Overview: To complete a real estate transaction, first a contract of sale is signed. Then, the closing occurs.
- 2) Requirements for the contract of sale and the closing
 - a) The contract of sale
 - i) Requirement #1: must satisfy the Statute of Frauds
 - (1) The contract of sale must:
 - (a) be in **writing**;
 - (b) **signed** by the party to be charged (to comply with the Statute of Frauds); and
 - (c) contain the **essential terms**, including:
 - (i) identity of the parties,
 - (ii) description of the land, and
 - (iii) price.

Satisfying the Statute of Frauds

To satisfy the Statute of Frauds, the contract must:

- Be in writing;
- Be signed by the party to be charged; *and*
- Contain essential terms, including:
 - The identity of the parties;
 - A description of the land; *and*
 - The price.

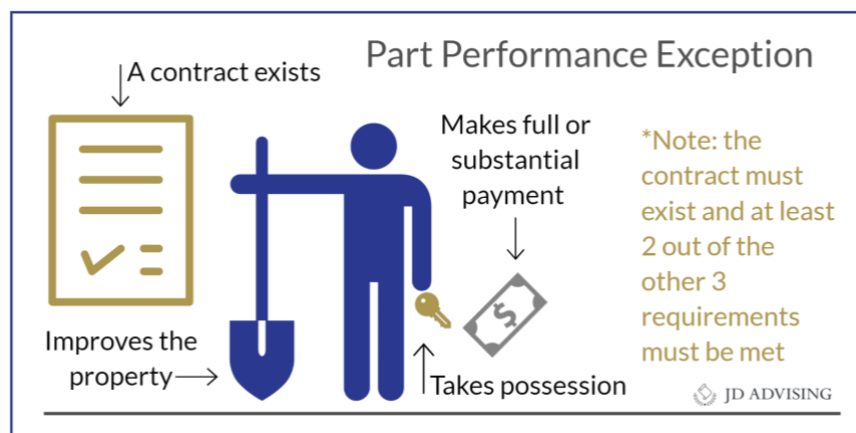




(2) Exception to the Statute of Frauds—part performance exception

(a) There are two requirements:

- (i) a contract exists and all conditions precedent have been fulfilled, and
- (ii) the actions of the parties clearly show there is a contract because the claimant does two of the following three things:
 1. takes possession,
 2. makes a full payment of the purchase price or a substantial portion,
 3. improves the property in a significant way.



ii) Requirement #2: the contract of sale must satisfy the ***implied warranty of marketable title*** (or otherwise exclude it).



- (1) Marketable title does not mean perfect title. Title is marketable if it is reasonably free of defects such that a reasonable person would accept it.
- (2) The seller must give marketable title on the day of closing.
- (3) What makes title unmarketable? (mnemonic = **DEVA**)
 - (a) A **defect in the chain of title**
 - (b) An **encumbrance** not mentioned in the contract (e.g., a mortgage, an easement that reduces the value of the property, or a covenant, an option to purchase vested in another). **Exam Tip: A mortgage on the property is not an encumbrance if it is going to be paid off by the proceeds of the sale.**
 - (c) A **violation of a zoning ordinance**
 - (i) Note: a zoning ordinance itself does not pose an encumbrance!
 - (ii) Note: a violation of a housing or building code is not an encumbrance.
 - (d) Title acquired by **adverse possession** is not marketable (unless the adverse possessor gets a judicial decision that renders her the record owner).

Law school tips can be found throughout the outline!

EXAM TIP

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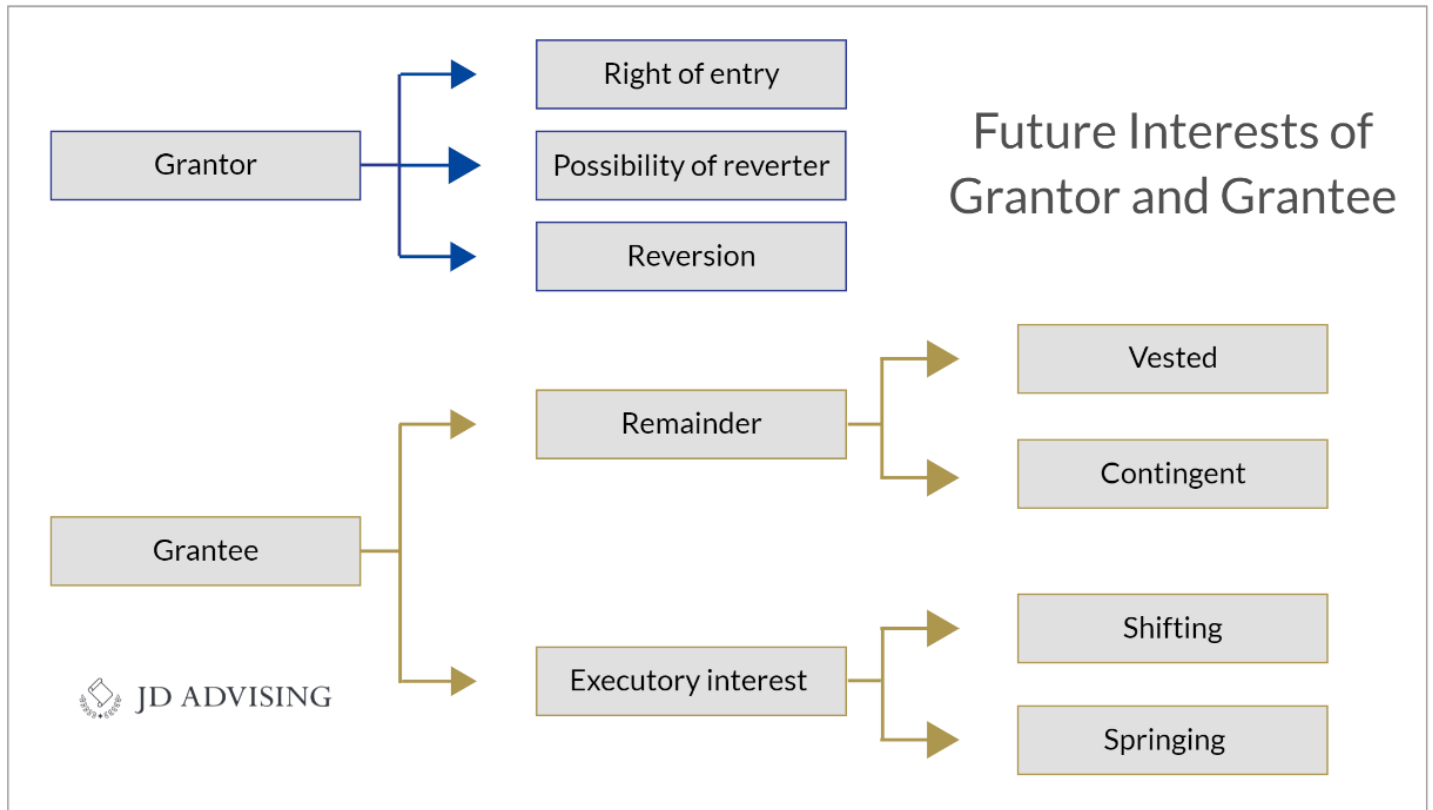
Unmarketable Title

Title is unmarketable if (**DEVA**):

• There is a <u>d</u> efect in the chain of title	• There is an <u>e</u> ncumbrance not mentioned in the contract	• There is a <u>v</u> iolation of a zoning ordinance	• Title was acquired by <u>a</u> dverse possession

- b) The time between the contract of sale and the closing date
 - i) Effect of signing the land sale contract—there are two types of title:
 - (1) Equitable title: passes to the buyer immediately.
 - (2) Legal title: remains with seller until closing.
 - ii) The doctrine of equitable conversion states that once the contract is signed, the **buyer's** interest is **real property** (i.e., the land he contracted to buy) and the **seller's** interest is **personal property** (i.e., the money he will get from the sale).

We include many charts and diagrams to illuminate difficult concepts. These are especially helpful for visual learners.



At the end of each outline, we have a mini outline to give you a broader overview of the subject.



Property Mini Outline

1. Contracts of Sale and Closing

- There is a two-step process in selling real estate: a contract of sale is signed and closing occurs.
 - The **contract of sale** must be in writing, signed, and contain essential terms (unless the **part performance** exception applies). The contract of sale must satisfy the implied warranty of marketable title. After the contract is signed, under **equitable conversion**, the risk of loss shifts to the buyer.
 - **Closing** is when the seller hands over the deed with intent to pass title. It is also the date where the implied warranty of marketable title must be satisfied.
 - For a **general warranty** deed, there are six covenants that must be satisfied.
 - A **quitclaim deed** contains no covenants.
 - Once the deed is handed over, under the doctrine of **merger**, one can only sue on the deed, not the contract.

2. Recording Acts

- **Common law:** First-in-time, first-in-right. One does not *need to record* to have title.
- **Notice act:** a subsequent bona fide **purchaser** for **value** without **notice** can change the common law default rule and have superior title to someone who technically received the property before them.
- **Race-notice act:** a subsequent bona fide **purchaser** for **value** without **notice** who **records first** can take title to a superior interest.
 - Notice can be (mnemonic = **AIR**): **actual**, **inquiry**, or **record** notice.

3. Mortgages and Security Devices

- A mortgage indicates the existence of a debt. The mortgagor is the debtor. The mortgagee is usually a bank who lends money.
- Transfer by the mortgagor:
 - If mortgagor gives away her interest “**subject to**” the mortgage, the **original mortgagor** is liable.
 - If the new transferee “**assumes**” the interest, both the **original mortgagor** and the **new transferee** are liable.
 - If there is a **novation**, then only the **new transferee** is liable.
- Theories:
 - **Title theory:** title is transferred to the bank right away.
 - **Lien theory** (majority): the mortgagee (the bank) only has a lien on the land.
- Foreclosure
 - **Equity right of redemption:** allows a debtor to redeem the property and get it back by paying **everything due under the mortgage agreement** prior to foreclosure.
 - **Statutory right of redemption** (recognized by half the states): allows the debtor to get property back after the foreclosure sale by paying the **full purchase price** within a specified period of time (usually six months).
- Who gets paid first? The bank that forecloses and anyone “junior” to them. Any senior interests remain on the property.

The remainder of the mini outline is not included in the sample.