Lesson Three
Part One

Understanding Through Video Teaching
Lesson Three

PROPERTY

77 The California Civil Code defines property as "the thing of which there may be ownership." Ownership is defined as "the right of one or more persons to possess and use property to the exclusion of others."

78 Property is divided in two classes:
   (1) Real Property - that which is immovable.
   (2) Personal Property - that which is movable.

REAL PROPERTY

79 Real property, or real estate as it is often called, consists of:
   (1) Land.
   (2) Anything affixed to it so as to be regarded as a permanent part of the land (fixtures).
   (3) That which is incidental or appurtenant to the land (e.g. stock in a Mutual Water Company, easements).
   (4) That which is immovable by law.

80 Real property is land and all that which is attached thereto or contained therein. It includes rights in the minerals that are beneath the surface of the earth, water flowing upon it, and things of a permanent nature attached to the earth, such as buildings, trees and unsevered, unripened fruits of the soil.

81 Land is thought of primarily as the ground or soil upon which we walk or upon which we place structures. It also includes the air space above as a right to build to the height allowed by law and the right to defend against the encroachment of neighboring properties. The ownership of land also includes the right to sub-adjacent support from adjoining land. The ownership of land is absolute and unconditional in the owner from the center of the earth to the outer reaches of space, except as against the right of the State to purchase land for public use by the power of eminent domain, and to enact regulations by virtue of its police powers.

PERSONAL PROPERTY

82 According to the Civil Code, "Every kind of property that is not real property is personal property."

82a Personal property provides difficulties for real estate brokers because it can be hypothecated, alienated, and may become real property.

83 Therefore, when personal property becomes immovable, it must become real property. Often documents become confused (e.g. although mortgages and trust deeds are legally tied to real property the instruments themselves are considered to be personal property).

FIXTURES

84 Anything is considered affixed to the land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to that which is permanent by means of cement, plaster, nails, bolts and screws. Items thus permanently attached are called fixtures. Rights by others to use real property are called easements (including easements in gross). These are also a form of real property. Another name you need to know is fructus naturales. It defines crops that are a product of nature alone generally classified as real property trees, whether deciduous leaf shedding or evergreen, bushes.

87 The method by which it was attached. Here the degree of permanence is important. If attached by cement, plaster, nails, or bolts, it is likely to be classed as a "fixture."
91 These five tests can be remembered by using the following memory tool - MARIA:
  M ethod of attachment
  A daptability of the property
  R elationship of the parties
  I ntention of the parties
  A greement between the parties

**TRADE FIXTURES**

94 Personal property affixed to real property for the purpose of trade, manufacture, business, etc., such as showcases permanently attached in a store, is a "trade fixture" and does not "run with the land" (become real property). A trade fixture may be removed by an owner or a tenant. If the removal causes damage or injury, the premises must be restored to their original condition. Trade fixtures which have been installed by a tenant as necessary for his particular use to earn income, or which have been so designated by an agreement between the parties, should be removed from the rented premises before the expiration of the lease. Those fixtures, which are not removed as prescribed, may become the property of the landlord as "abandoned."

**MINERAL, OIL & GAS RIGHTS**

95 Things contained in the land, such as coal, oil, minerals, etc., are real property until they are taken from the ground when they become personal property. A landowner may convey the land containing, or thought to contain, such materials without reservation, in which event the person to whom the parcel is conveyed acquires the right to such substances. Alternatively, the landowner may convey the land and reserve, in the grant deed, the right to all minerals contained therein, including oil, by a provision in the deed often referred to as a reservation or an exception.

96 When such rights have been reserved by the grantor in the conveyancing instrument, the "reserving" party has an implied easement to enter upon the conveyed land for the purpose of extracting the substances which he reserved, unless the reservation specifically states "without right of surface entry."

97 Emblements can be identified as fructus naturales or fructus industriales. Fructus naturales would be trees, shrubs, vines and crops that are produced by nature alone, and are ordinarily considered to be a part of the land to which they are attached until they are removed, at which time they become personal property. Fructus naturales can be owned separately from the land. California Law provides that for purposes of sale, things attached to the land that are agreed to be severed before sale, or are under contract of sale, are to be treated as goods, and governed by the rules regulating the sale of goods, which are personal property.

98 The term "emblements" is more frequently applied to crops such as grain, garden vegetables, fruit from orchards, and other growing crops that are the fruit or result of annual labor and industry. The latter are classed as fructus industriales and may be either real or personal property depending upon the circumstances in each case. When considering the buyer and seller of land where there are such crops, these crops are a part of the land until they are removed either physically or by agreement and their ownership will pass to the grantee (buyer) by a conveyance of the land to another. An agreement between the seller and buyer could change this understanding. Such industrial crops are sold ordinarily by abiding by the code provisions regulating the sale of goods.

99 Between tenant and landlord, emblements are owned by the tenant, since they are the result of efforts of the tenant.

**ACQUISITION & TRANSFER OF PROPERTY**

99a Throughout the years of growth in our capitalistic society, the relative nonliquidity of real estate as a form of capital continues to be the economic Achilles' heel of real estate investments. A person investing in real estate accepts such a fact and pays much more attention to the amount of his investment, to the cash flow the venture will produce, and the protection offered by urban land holdings and
their capital improvement through inflationary trends. Downturn in California real estate prices does not affect the long-term investor who has a 10 to 15 year goal of either holding or exchanging the property.

103 The principal rights an owner has in property is:
   (1) The right to occupy and use
   (2) To sell in whole or in part
   (3) Refuse to sell, rent or lease
   (4) Grant easements
   (5) Give, abandon, improve
   (6) Devise by will
   (7) Exclude others from using it

The owner of the title also has the right not to take any of these actions. All of the above rights are commonly known as the "bundle of rights."

DEED AND DELIVERY

105 When ownership of real property, or an interest in it, is transferred from one person to another, it is usually accomplished through a document called a deed. A deed is not a contract. It is a conveyancing instrument.

106 There are many kinds of deeds including: grant deed, quitclaim deed, gift deed, tax deed, etc. Whatever the type, the purpose of a deed is to pass or "convey" title to real property. A deed is often referred to as a "conveyance." To "alienate" the title also means to transfer it, as by deed. The opposite of alienation is acquisition.

107 In addition to the obvious need for competent parties, a valid deed must:
   (1) Be in writing.
   (2) Contain the identity, by name or designated in such a way that it can be determined with certainty who the (grantor and grantee) are.
   (3) Have a granting clause.
   (4) Give a proper description of the property.
   (5) Be signed by the grantor. However, a deed need not be acknowledged to be valid.

109 Identity of the Parties - the grantor must be competent to convey and the grantee capable of receiving the grant of the title and the identity of these parties must be included in the deed. Should the name of the grantor change during the course of holding title the new deed must be signed identifying the grantor as both.

109a A deed to a fictitious person is void. However, a deed to an actual person by a name that he has assumed is valid. Thus, a distinction must be made between a fictitious name (valid), and a fictitious person (void). A deed is also valid even though the grantee is not named, but is adequately described. A deed to "the wife" of a named person is valid; to a person by the name of his office such as "the pastor" of a named church is valid; a conveyance to "all the children" of a specified person is valid.

110 Granting Clause - A deed must contain an action word or phrase denoting the intent of the grantor to convey the property to the grantee. A deed may read: "I hereby convey," "transfer," "quitclaim," "deed," or "grant." On the other hand, in a gift deed, "give" serves this purpose. These are words of transfer and each kind of deed has its own special granting clause.

112a An ambiguity in a legal description of land on the face of a deed would be described as a patent ambiguity or defect. If the defect can be discovered only by reference to something other than the instrument, the ambiguity would be called latent. The ambiguity could create a cloud on the title to the property and could negate the effectiveness of the deed. Parole or extrinsic evidence referring to admissible verbal evidence to clarify the ambiguity could cure it. There are numerous court cases where additional evidence has been accepted to remove an uncertainty in the description in a deed.

113 Signature of Grantor - The person signing the deed is known as the grantor. The party or parties making the conveyance of the premises must sign a deed. If there is more than one owner all must sign. Both man and wife must sign deeds to community property. All owners in a joint tenancy must sign to convey title to the entire holding. The same is true of tenants in common or partnership holdings, except that one may be appointed to act for the others and thus convey the property. If corporate property is
sold the corporation bylaws and constitution would indicate the names of the grantees who received the deed and who would become the grantors upon a sale of the corporate property.

114 A forged deed is always void, even in the hands of an innocent purchaser.

DELIVERY

115 A deed, even though valid, is of no effect unless delivered and accepted. Government deeds such as tax deeds and trustee’s deeds as well as reconveyance deeds that clear the record must be recorded thus providing constructive notice of the transaction or event.

116 Generally speaking, signing and delivery of a deed transfers title. Whether or not there has been a delivery sufficient to pass title depends upon the intention of the grantor. Delivery, used in this connection, means more than simply turning over physical possession of the deed. The grantor must have the intention to pass title. Lacking intention to deliver title does not pass.

119 Recording the deed in the county recorder’s office, thus putting the title of record in the grantee’s name, even though the grantee may not have seen the document, would ordinarily be interpreted as evidence of a valid delivery of the deed and the title. Keep in mind that such a presumption is refutable in court with the presentation of sufficient evidence for the court to determine otherwise. The legal principle is, “an unrecorded deed is valid between the parties but invalid as to any subsequent recorded interests without notice.”

126 Consideration - It will be noted that consideration is not listed as one of the essentials to a valid deed. The law presumes some kind of consideration for the transfer. Frequently a deed will state "for one dollar and other valuable consideration" to avoid mentioning the actual purchase price, but even this is not required to make the deed valid. However, lack of consideration could be of material concern where the rights of third persons are involved and lack of consideration may adversely affect the conveyance.

128 Acknowledgement - A county recorder's office will not accept a deed for recording unless it has been acknowledged. This means that the person who executes (signs) the deed transferring his property to another, must appear before a duly authorized officer and acknowledge (admit) he signed the deed of his own free will. The law requires this acknowledgment to protect the owner from having unwarranted or unauthorized instruments filed against his title, without his knowledge or consent.

ASSIGNMENT PROHIBITED

131 A deed is non-assignable. It is not a contract. It is a conveyancing instrument. It can only be used once and therefore cannot be assigned to another party. If the property is sold a new deed must be made. The reason for this is that a deed must be signed by the grantor. If a person has received a deed in which he is named as the grantee, he cannot hand that deed to another person to affect a transfer. He becomes a grantor and must sign a new deed. This rule applies even where the title is being conveyed back to the original grantor.

GRANT DEED

133 A deed in which the grantor uses only the words "I grant" as the action or transfer word is called a grant deed. A grant deed is used only once. It is not an assignable or negotiable instrument. By reason of the magic word "grant" exclusively this deed carries certain implied warranties as to the condition of the title which is not carried by other types of deeds. When a grantor uses the words "I grant" he is in effect warranting (guaranteeing) that:

(1) He has not already conveyed the title to the property to any other person.
(2) That the estate conveyed is free from encumbrances, except for those disclosed to the grantee.

A grant deed also conveys any after-acquired title, if any involved. This means that if the grantor subsequently acquires any title or claim of title to the real property which the grantor has by implication claimed to grant in fee simple, any acquired interest passes by operation of law to
the grantee or the grantee's successors in interest. The after acquired title would pass to the trustee as additional security. Note that the grantor does not warrant that he owns the title. In California the title insurance policy is generally demanded by the buyer for this assurance of receiving title.

**QUITCLAIM DEED**

135 In this type of deed the grantor merely relinquishes any right or claim he has to the property. If he has absolute ownership he conveys absolute ownership. If he has no actual claim or right in the property the quitclaim deed transfers nothing. The granting clause contains the words "I quitclaim", meaning I quit any claim I have on the title to this property.

136 Usually, quitclaim deeds are used to clear a land contract or some "cloud", "color of title", lis pendens action, or some minor defect which needs to be removed in order to perfect the title. The party of record signs a quitclaim deed.

137 A *lis pendens* is a Latin expression meaning "litigation pending." It is recorded to cloud the title in a lawsuit affecting real property. The lis pendens is effective until judgment has been rendered and the appeal period has expired or the plaintiff rescinds it by quitclaim deed, or the court dismisses it. To record a lis pendens action there must be evidence of litigation.

138 Any conditions revealed by a title search which affect the title to property (usually relatively unimportant items) but which cannot be removed without a quitclaim deed or court quiet title action is a "cloud on the title".

140 A court action brought to establish title or to remove a cloud on title is called a quiet title action. In the event a quiet title action is necessary, it may take a considerable length of time for the court proceedings should the purchaser choose to contest the action (e.g., a contestant claiming title under adverse possession).

141 There are no implied warranties in a quitclaim deed. It guarantees nothing, not even that the grantor owns the property or any interest in it. It does not convey after-acquired title. It is often used as a quick solution to a quiet title action.

**GIFT DEED**

142 A grantor may make a gift of the property to the grantee using a grant deed or quitclaim deed. He may, but need not, say the transfer is made in consideration of "love and affection." A gift deed is valid unless made to defraud creditors in which event it may be voided by the creditors. The granting clause contains the word "give" or some similar word.

**OTHER TYPES OF DEEDS**

149 Warranty Deed - A deed used to convey real property, which contains express warranties of title and quiet possession. The grantor agrees to defend title to the premises against apparently lawful claims of third persons. It is used commonly in other states but not in California, where it has been supplanted by the grant deed. The modern practice of securing title insurance has reduced the importance of warranty deeds.

150 Trust Deed - Conveys bare legal title (but no possession) of a property to a trustee (third party) as security for a loan and differs from other deeds in that only "legal title" is conveyed. A trust deed is a "security device", in the nature of a lien, but differs from other deeds in that the trust deed, and the note for which it was given as security, may be assigned.

152 Patent - A grant from a sovereign. In American law, the instrument by which a state or government grants public land to an individual.
QUESTIONS ON GRANT DEEDS

1. Does the fact that the amount of consideration is not stated make the deed invalid?
   
   No - A statement of consideration is not essential to a deed.

2. Is the property description sufficient to be recorded as a valid deed?
   
   Yes - The deed may be valid for recording purposes, but not for title insurance purposes.

3. Can this deed be recorded?
   
   Yes - Under recording laws, where two or more persons execute an instrument by which property rights are affected, such instruments are entitled to be recorded if acknowledged by any one of such persons.

4. What would be the effect if buyers do not record?
   
   Title would remain of record in the grantor's name. The buyer runs the risk of losing title to an innocent third party.

5. Is the deed properly signed?
   
   Yes - Both grantors, husband and wife, have signed. Ordinarily, grantees do not sign.

6. How is title vested by this deed?
   
   As community property if not stated.
Lumbeau Real Estate School

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Jonathan and Margaret Brown
P.O. Box 515
San Bernardino, California

APN: 123-4-567-890

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

DOCUMENTARY TRANSFER TAX IS $22.00 CITY TAX IS $22.00

☐ computed on the full value of the property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at the time of sale,
☐ Realty not sold
☐ Unincorporated area
☐ City of

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Five Hundred Thousand Dollars ($500,000)

hereby GRANT(S) to JOHNATHAN and MARGARET Brown, husband and wife

the following described real property in the County of San Bernardino state of California:

As shown in Exhibit "A" attached hereto and made a part hereof, and commonly known as The Norton Ranch, situated in Section 16, Twp in. Range 1E, San Bernardino B&M

Dated: 1/1/2014

STATE OF CALIFORNIA

COUNTY OF San Bernardino

On January 1, 2014

John Doe

Notary Public

personally appeared Sam Smith

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

John Doe

COMM. #3958990
NOTARY PUBLIC - CALIFORNIA
SAN BERNARDINO COUNTY
My Commission Expires Jan 12, 2024

SPACE BELOW RESERVED FOR NOTARY SEAL

306
OTHER METHODS OF ACQUIRING
TITLE WITHOUT A DEED

ADVERSE POSSESSION

153 Adverse Possession - a method of acquiring title to property without a deed. Before this law was codified and written into the California statutes, title could be obtained by adverse possession by the adverse possessor using the property for 20 years.

156 Open and Notorious Occupancy - Physical occupation and use of the property as if it were owned by the adverse possessor is required. If it is a residence, he must live in it. If a farm, he must farm it, fence it, etc. Personal occupation is not essential. Possession may be by a tenant of the person claiming adverse possession. In any case, the occupancy must be adverse and hostile to the owner.

158 Payment of Property Taxes - During the preceding five-year period, the adverse possessor must pay the real property taxes on the property as they become due. The fact that the record owner is also paying the taxes would not mean that the adverse possessor had not complied with this requirement.

159 Over a period of years the laws of California have been interpreted that land held for public use cannot be taken under a claim of adverse possession.

161 Accession - Acquisition of title by accession may also be in the form of accretion where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream caused by the action of the water in washing up sand, earth, and other materials on the shore. The added land becomes the property of the owner of the waterfront property.

DEDICATION

168 Recordation - The last act required to accomplish statutory dedication is the recording of the map with the offer and acceptance attached. If not recorded, dedication has not taken place.

ESCHEAT

171 The state may acquire the property of persons dying without a will and without heirs by a method called escheat. The title is said to "revert to the state." The deceased must leave no heirs or have only alien heirs who do not reside in this country and who are citizens of a country which does not allow United States citizens to inherit property located in that country. However, the process of escheat is not automatic. Legal proceedings must be held, instituted either by an action filed by the Attorney General, or by decree or distribution by the probate court. Once there has been such legal action, the distribution or decree does not become final for five years, during which time a claimant may bring legal proceedings to recover or "redeem" the property. Where the state gains title by escheat and later sells the property, the grantee receives a State Comptroller's deed.

175 Public buildings which have been acquired through eminent domain action occasionally must be disposed of by public authority. Such sales are usually conducted by sealed bids. Public notice is given inviting sealed bids for the purchase of excess public lands. The notice sets a date on which the bids will be opened. The sale will be concluded with the person submitting the highest sealed bid.

BANKRUPTCY PROCEEDINGS

178 A liquidation proceeding, ordinarily referred to as a "straight bankruptcy", is introduced under Chapter 7 of the Bankruptcy Act. Such proceedings can be initiated voluntarily by the bankrupt party or involuntarily by the action of the bankrupt's creditors. In these proceedings, debtors disclose all the assets they own (the bankruptcy estate) and deliver them to the bankruptcy trustee. The ownership of these assets passes to the trustee. The trustee identifies certain property which the debtor can retain and then administers, liquidates and distributes the remaining assets to the benefit of the creditors.
Bankruptcy law provides a means for establishing the relative rights of creditors, for recovering any preferential payments made to creditors or improper transfers of property to others, and for setting aside any preferential liens obtained by creditors. What normally happens is that if bankrupt parties have been honest in their business dealings and in the bankruptcy proceedings, and there are no objections from creditors, they are usually given a discharge (relieved) of their debts. This relief is effective as of the date of the discharge by the bankruptcy court.

The filing of a bankruptcy petition operates as an automatic stay (effective as of the date of filing) to certain kinds of creditors' actions against the bankrupt debtors or their property. Some of these would be:

1. Actions to begin or continue judicial proceedings against the debtor.
2. Actions to create, perfect, or enforce a lien against the debtor's property (foreclosure actions) without court permission.
3. Actions to set off indebtedness owed the debtor that arose before the start of the bankruptcy proceeding.

You should recognize that certain obligations are not affected by the discharge of a bankrupt debtor. Among non-dischargeable debts would be:

1. Debts due as a tax or fine to any federal, state or local government unit.
2. Debts which result from liabilities for obtaining money by false pretenses and misrepresentation.
3. Debts which are due for alimony or child support.
4. Debts not scheduled in time for proof because the creditor was not notified of the bankruptcy proceeding even though the debtor knew that he owed the money to the creditor.
5. Debts incurred after the bankruptcy proceeding was initiated.

Should bankrupt debtors transfer property or incur obligations with intent to hinder, delay, or defraud creditors, such transfers are voidable by the bankruptcy trustee. Examples of this would be transfers of property for less than its reasonable value within a year of filing the petition in bankruptcy.
Lesson Three

Part Two

Study Questions

(Lesson Three - Paragraph 77 – Question 1)

Legally, property is:
(A) Real that is tangible.  (B) Personal fixtures.  (C) Personal, if not real.  (D) All of the above.

(C) Property is defined in California Civil Code as "the thing of which there may be ownership." Items capable of ownership that are fixed in character are identified as real property. Everything other than real property is identified as personal property.

(Lesson Three - Paragraph 77 – Question 2)

The right to use, possess, enjoy, transfer and dispose of a thing to the exclusion of others best defines:
(A) An estate.  (B) Real estate.  (C) Ownership.  (D) Equity.

(C) Identifies ownership.

(Lesson Three - Paragraph 78 – Question 1)

The principal difference between real property and personal property is:
(A) Value.  (B) Permanence.  (C) Length of life.  (D) Mobility.

(D) The principal difference between real and personal property is mobility.

(Lesson Three - Paragraph 79/3 – Question 1)

The following is generally classified as real property:
(A) Unpicked fruit sold on a contract.  (B) Stock in a mutual water company.  (C) Minerals that have been extracted from the ground.  (D) Cultivated annual crops.

(B) That which is appurtenant to the land is classified as real property. A mutual water company is owned by the land owners it serves and the stock in the company represents water rights of the land. This stock runs with the land, meaning that when the land is transferred, the stock must be transferred with the land.

(Lesson Three - Paragraph 79/3 – Question 2)

Stock in a mutual water company:
(A) Requires a separate written contract to convey to the buyer.  (B) Is appurtenant to land and thus automatically transfers to the buyer.  (C) Must be mentioned in the deed in order to transfer it to the buyer.  (D) Must be owned as tenants in common.

(B) Stock is evidence of ownership. Stock in a mutual water company is evidence of ownership of water rights. When a property that has stock in a water company appurtenant to it, the stock transfers with the ownership transfer.
Property may be real or personal. An example of property that is classified as real is:
(A) Wheat growing on leased land.    (B) A grape crop that has been mortgaged.
(C) Kitchen cabinets in a mobile home.    (D) A stand of virgin timber.

"Standing timber," that is, trees attached to the ground by roots, is real property. Answers (A), (B),
and (C) are examples of personal property.

The following is real property:
(A) Leasehold.    (B) Chattel real.    (C) Debts.    (D) Planted trees.

In the four choices, there are personal property, leasehold, and chattel real. Chattel real is
another name for a leasehold indicating it is a personal property interest in real property. In real
property, debts such as those evidenced by a note and deed of trust are personal property. Planted
trees indicate the tree has been affixed to the land; therefore, it is real property.

The legal concept of the limits or boundaries of real property is defined as:
(A) The surface of land and the material of the earth whether soil roots, or other substance.
(B) The surface of land and sufficient of the sub-surface to construct improvements on the land.
(C) The surface of land, material of the earth and sufficient air space to construct buildings on the land.
(D) From the center of the earth upward to the limits of the sky.

Real property consists of not only the surface of the land, but also includes the airspace above
and the materials of the earth below the surface. One classic definition of the boundaries of real
property is: "the boundaries of any parcel of land extend in the shape of an inverted pyramid from the
center of the earth upward to the limits of the sky." Courts in modern times have permitted the public
use of the air above private land, as a highway in the sky, so long as such use does not interfere with
the landowner's use of his property.

An example of personal property is:
(A) Fructus naturales.    (B) A load of gravel.    (C) A fixture.    (D) An easement appurtenant.

All property that is not real property is personal property. A load of gravel has been removed from
the land, is moveable, and consequently is classified as personal property. All of the others are real
property. (A) Fructus Naturales defines crops that are a product of nature alone generally classify as
real property - trees, bushes, etc. (C) A fixture is attached to the land and is real property.

Personal property provides difficulties for real estate brokers because it:
(A) Can be hypothecated.    (B) Can be alienated.    (C) Could become real property.    (D) All of the
above.

Personal property can be hypothecated, alienated, and can become real property. It can be
placed as security, sold, and it can become a fixture when affixed to real property.
Mortgages and trust deeds are:
(A) Personal property without exception.  (B) Chattels real.
(C) Real property in most cases.              (D) Always real property.

(A) Although mortgages and trust deeds are legally tied to real property the instruments themselves are considered to be personal property.

The following is generally considered personal property:
(A) A land appurtenance.   (B) Mineral rights.  (C) An existing mortgage.  (D) Growing trees in a forest.

(C) A mortgage is a contractual agreement and is always considered to be personal property. The other choices suggest examples of items that are generally considered real property.

John Smith adds some cabinets to the home that he owns. The method of construction he uses permanently attaches the cabinets to the home. The cabinets become real property because John has:
(A) Created an encumbrance.        (B) Incorporated the cabinets into the land.
(C) Created a lien.                          (D) Attached the cabinets to the chattel real.

(B) A fixture is defined as anything that becomes attached to the land. A tree, fence, or home becomes a fixture when attached to the land. When items are attached to the home, such as garbage disposals, kitchen fixtures, bathroom fixtures, or cabinets, they too become attached to the land.

When personal property is made a part of real property, it becomes a:
(A) Fixture.  (B) Appurtenance.  (C) Inclusion.  (D) Attachment.

(A) A fixture is a tangible thing that previously was personal property and which has been attached to land or a structure attached to land in such a way as to become a part of the real property.

An investor purchased a property that had a well with a pump. For purposes of real property taxation the well and pump would be assessed as:
(A) Personal property. (B) Improvements to real property. (C) Exempt from taxation. (D) Part of the land.

(B) When the pump is installed it is no longer personal property but becomes a fixture. Consequently, it would be assessed as an improvement to the land.

The following is not a test of a fixture:
(A) Agreement.  (B) Intention.  (C) Cost of the item.  (D) Annexation.

(C) Remember the tests of a fixture: The adaptability of the item, the intention of the person attaching, the method of attachment, and agreement between the parties. The cost of an item is not the test of a fixture.
All of the following are factors that can be used in determining that personal property becomes real property, except:

(A) Agreement between the parties involved.  (B) Permanence of annexation of the item.
(C) Cost of the item.  (D) Relationship between the parties involved.

(C) Agreement between the parties involved, the method of attachment effecting permanency and the relationship between the parties are standard tests used to determine the intention of the person attaching the property.

All of the following are considered to "run with the land", except:

(A) Fences. (B) Buildings. (C) Trade fixtures. (D) Stock in mutual water company.

(C) Trade fixtures are articles affixed by a tenant "for purposes of trade, manufacture, ornament, or domestic use," and may be removed unless by nature or by agreement they have become part of the premises. They, as such, are not appurtenant to real property.

Upon the termination of a lease, trade fixtures can usually:

(A) Be removed by the tenant if removal can be effected without damage.
(B) Be removed only by written consent of the lessor.
(C) Be sold by the lessor.
(D) Be removed by the tenant only if he reimburses the lessor for their value.

The tenant may remove personal property affixed to real property for the purpose of trade, manufacture, business, etc., if the removal can be effected without damage to the property, or if such damage is repaired and the property restored to its original condition.

Unless otherwise specified, the rights to minerals which lie beneath the surface of land:

(A) Are automatically transferred with the sale of the real property.
(B) Cannot be leased.
(C) Are kept by the original owner.
(D) Cannot be conveyed apart from the real estate surrounding the minerals.

Minerals are defined as real property while they remain un-mined. They are transferred with the real property unless specifically reserved in the deed.

An exception in a grant deed:

(A) Withdraws part of the property from the grant.
(B) Gives the grantee special privileges.
(C) Has no effect on the value of the property.
(D) Would make the deed invalid as to future grantees.

When a grantor retains the mineral, oil and gas rights in a property he is conveying, or when he retains an easement over a portion of the property, he reserves or excerpts (withdraws) a part of that property from the grant. The grantee then would not have full use of the property, and this could, in some instances, affect its value.
Johnson owned a farm property on which he was growing a crop of corn. Before the harvest he sold the property to Hanson. It was his intention to harvest the crop after the sale even though this was not stated in the sales agreement. The following would most likely be true regarding the corn crop:
(A) Johnson would have the right to harvest the crop, as this was his intention.
(B) The crop would go with the land as it is considered real property.
(C) Johnson’s intent would take precedence over the sales agreement.
(D) Hanson cannot claim the crop as it would be considered personal property.

(B) Growing crops on land are presumed to go with land when the land is sold unless other agreements have been made.

The following may not always be classified as real property:
(A) Land. (B) Improvements affixed to the land. (C) Seasonal crops. (D) Appurtenant easements.

(C) Seasonal crops even when still on the vine or tree are often sold before harvested and would be considered personal property. These same crops are often mortgaged before the growing season and would be considered personal property.

You may do which of the following with real property when you have the complete "bundle of rights."
(A) Possess, sell or lease. (B) Enter into an enforceable listing contract, not in writing.
(C) Give away, will or anything else. (D) Both A and C.

(D) The "bundle of rights" is the exclusive right of a person to own, possess, use, enjoy and dispose of personal or real property consistent with the law.

The active operation of residential income property generally is controlled by the:
(A) Trustee’s interest. (B) Creditor’s interest. (C) Vendor’s interest. (D) Equity interest.

(D) The owner would control the property. The owner is the equity interest mentioned in this question.

The primary purpose of a deed is to:
(A) Move title. (B) Encumber a property. (C) Secure a lien on a property. (D) Grant a person the use of a property, but not to have title to it.

(A) The primary purpose of the deed is to move title.

In the following instance, title is passed to the buyer of real property when there already is a first trust deed lien against the property:
(A) With the recording of a reconveyance deed.
(B) With the permission of the beneficiary for the assumption of the existing loan.
(C) With the grantor issuing a grant deed to the buyer.
(D) None of the above.

(C) The owner issuing the new owner a proper instrument in writing --- a grant deed in this case normally passes title.
To alienate title to real property one would:

(A) Encumber it.  (B) Cloud the title. (C) Place a homestead on the property.  (D) Convey the title.

(D) The term "alienate" means to transfer or convey. To alienate title means to convey it.

The following word is most nearly the opposite of alienation:

(A) Acceleration.  (B) Amortization. (C) Acquisition.  (D) Avulsion.

(C) "Alienate" means to transfer property to another. "Acquisition" means to acquire - to come into possession.

An inventory of the buildings and improvements to real property are required in:

(A) A deed.                           (B) A land contract/installment sales contract.
(C) A title insurance policy.  (D) None of the above.

(D) In all of the above instruments the land is described, not the improvements. When title to land is conveyed, the fixtures (items attached to the land) and appurtenances (easement rights, water rights) run with the land, even though not described in the conveyance instrument.

Concerning a deed used in the transfer of title from the seller to buyer, the following would be effective to convey title, except:

(A) A deed made to Jeb Stuart under his assumed name of Chauncey Cartwright.
(B) A deed made to Franklin and Dolly Madison.
(C) A deed made to Andrew Jackson and his wife.
(D) A deed made to John Hamilton or Harry Winkler.

(D) A deed must be made to a specific grantee. The "or" found in this choice makes it too indefinite.

Mary Thomas, a single woman, bought an apartment building in her name only. Three years later, she married Bill Jones and they purchased a home in their names as joint tenants. Mary then sold the apartment building to Barnie, signing the deed as "Mary Jones." This could result in:

(A) Bill becoming the owner of the apartment building due to the right of survivorship.
(B) Bill becoming the owner of half of the apartment building due to community property.
(C) A cloud on the title.
(D) Mary still owning the apartment building.

(C) The record shows the recorded owner of the property to be Mary Thomas, a single woman. If Mary Jones attempts to transfer title, there would be a cloud on the recorded title. Signing the deed "Mary Jones, formally Mary Thomas," could avert this.
A deed would not be valid if:
(A) A person serving time in prison executed it.  (B) It is a forged deed held by equitable buyer.
(C) The grantee is 18 and unmarried.                (D) Consideration was not paid.

(B) A person serving time in prison has the capacity to deed their interest in real property, consideration is presumed in a deed, and the status of the grantee has no effect on the validity of a deed. A forged deed always is void, regardless of who holds it.

The following would cause a deed to be void from its inception:
(A) An incompetent grantee.     (B) A grantee using an assumed name.
(C) A legal description was not used to describe the property.  (D) A forged deed.

(D) The conditions stated in choices (A), (B), & (C) do not result in void deed. With reference to (A), a grantee must be capable of receiving title, but need not be competent. For example, a deed to a deceased person is void.

All of the following must be recorded to be effective, except:
(A) Reconveyance deed.  (B) Tax deed.  (C) Trustee’s deed.  (D) Trust deed.

(D) To be effective a trust deed must be properly delivered to the person to whom it is directed. Recording of a trust deed would be good evidence that a proper delivery has been made but it is not a necessary requirement. All of the other suggested documents must be recorded to be effective.

A grant deed passes title when it is:
(A) Executed.  (B) Delivered.  (C) Recorded.  (D) Acknowledged.

(B) The grant deed passes title upon delivery. Delivery may be manual or recorded. A manual delivery would convey title and the deed could be recorded several weeks later. The purpose of the recording would be to create constructive notice of the prior delivery.

For the delivery of a deed to be effective, it must have clear evidence of:
(A) Recordation.  (B) Intention.  (C) Acknowledgment.  (D) The legal description of the property.

(B) To be effective it must be shown that the grantor intended to pass title to the grantee.

Effective delivery of a deed depends upon the:
(A) Knowledge of its existence by the grantee.  (B) Mere physical transfer of the deed to grantee.
(C) Intention of the grantor.                (D) Prior acknowledgment of grantor's signature.

(C) When a deed is delivered by mistake or without authority, there is no intention to transfer the title and therefore, no title is transferred.
A quitclaim deed was executed by Mr. Smith and delivered to Mr. Brown. Mr. Brown did not record his deed. The failure to record would most probably make the deed:
(A) Invalid as between the parties, and valid as to third parties with constructive notice.
(B) Invalid as between the parties and invalid as to third parties with constructive notice.
(C) Valid as between the parties and valid as to subsequent recorded interests without notice.
(D) Valid as between the parties and invalid as to subsequent recorded interests without notice.

(D) The legal principle involved is, "an unrecorded deed is valid between the parties but invalid as to any subsequent recorded interests without notice."

A grantor executed a deed. He acknowledged and recorded the deed. Later, he changed his mind and wanted to rescind the transaction. Considering these circumstances, the following is the correct statement:
(A) He may withdraw from the transaction, as the deed was not delivered.
(B) Recordation implies delivery.
(C) The deed was not valid, as it was not recorded by the grantee.
(D) The grantee may withdraw if the deed is still in his possession.

(B) This question illustrates the principle that recording presumes delivery. A refutable presumption is a rule of law that the court will draw a particular conclusion from a particular fact unless the truth of that conclusion is disproved. In this case, the court would conclude the deed to have been delivered unless the grantor could prove it was not his intention to deliver title.

The following is not required for a valid deed:
(A) A grantor.  (B) A grantee.  (C) Property description.  (D) An acknowledgment.

(D) The question is a negative question. An acknowledgment is not required for a deed to be valid. Acknowledgment is required for recording a deed. A deed is valid between the parties even though not recorded. The other choices are requirements for a valid deed.

All of the following are essential to a valid deed, except:
(A) It must be in writing.
(B) Parties must be competent to convey and capable of receiving the grant of the property.
(C) There must be a granting clause.
(D) It must be acknowledged.

(D) A deed does not have to be acknowledged to be valid. It must be acknowledged to be recorded. The other choices suggest items that are necessary for a valid deed.

The following is not assignable:
(A) A trust deed.  (B) A grant deed.  (C) A broker's commission.  (D) A real property sales contract.

(B) Full title instruments are not assignable. A trust deed is assignable because it is a security device only and not specifically a title instrument.
A quitclaim deed conveys only the present right, title, and interest of the:
(A) Grantor.  (B) Servient tenement.  (C) Grantee.  (D) Property.

(A) A quitclaim deed conveys only the present rights of the owner, not the future rights he may obtain. The person signing the quitclaim deed is known as the grantor. The person receiving any rights is the grantee.

Blackacre is sold on a land contract. The seller records the contract of sale. Later the buyer defaults. If a quitclaim deed is used to clear title, the person signing it would be the:
(A) Buyer.  (B) Seller.  (C) Trustee.  (D) Beneficiary.

(A) The question deals with a sale of land on a recorded contract of sale. A quitclaim deed is used to clear the title. The buyer would give the quitclaim deed to all of his interest in the property to the seller. The buyer’s interests would be removed from the record by the recording of the quitclaim deed.

A lis pendens is effective until:
(A) The plaintiff rescinds it.  (B) Dismissed.  (C) Final judgment by the court.  (D) Any of the above.

(D) A lis pendens is a Latin expression meaning "litigation pending". It is recorded to cloud the title in a lawsuit affecting real property. It is effective until judgment has been rendered and the appeal period has expired, or the plaintiff rescinds it, or the court dismisses it.

Regarding a lis pendens all of the following are true, except:
(A) If the owner of property is not involved in the litigation, the filing of a lis pendens would have no effect on title to the property.
(B) May effect a change of title depending on the outcome of the lawsuit.
(C) May be removed only by court action.
(D) Lis pendens can be recorded on a property by anyone.

(D) Again this is a negative question. We are looking for the false statement and "D" is false. A lis pendens can be recorded only by the parties involved in a pending lawsuit involving title to real property. It is a common misconception that one may record a lis pendens involving such things as commission disputes.

Vernon is a vendee in a recorded land contract of sale. He can no longer make the required monthly payments so he abandons the property. This most likely would result in:
(A) A cloud on title.  (B) The vendee would get his down payment back.
(C) No effect on the marketability of the title.  (D) The vendor has no recourse.

(A) When a land contract of sale is recorded, it gives constructive notice to the world that the vendee has the right to the title to the property. If he abandons the property, the record continues to show that he has the right to the title and it could not be sold to someone else. This cloud on the title must be removed before sale by a quit claim deed from the former vendee or a court quiet title action.
Vendor sells real property to vendee using a land contract of sale. The vendee records this instrument. The vendee has a poor record of making payments on the contract and is successful in avoiding the vendor. One night the vendee moves out and establishes residence in another state. The following would be correct:
(A) Negotiability of the instrument is not impaired.
(B) There is a cloud on vendor's title.
(C) A future purchaser would not be concerned about the disposition of this matter.
(C) None of the above.

(B) The recorded land contract would appear as a cloud on title until removed either by recording a quitclaim deed from vendee or by recording a judgment as the result of a quiet title action.

A quiet title action usually refers to the following:
(A) Foreclosure on property.   (B) Foreclosure on a trust deed.
(C) Eminent domain.               (D) Removing a cloud on title or establishing title.

(D) A quiet title action is a court action filed to remove a cloud (or claim) or to establish title. This action must specifically involve title to real property.

A properly executed quitclaim deed conveys:
(A) Two implied warranties.                                       (B) Any after-acquired title.
(C) A mere possibility not coupled with an interest.  (D) Any existing interest in the property.

(D) Any existing interest in the property is conveyed by the use of a quitclaim deed. There are no implied warranties in the quitclaim deed. A grant deed conveys after-acquired title but not a quitclaim deed. You cannot convey the mere possibility of an interest.

The following has generally brought about the infrequent use of the warranty deed in California:
(A) The abstract of title.  (B) Title insurance.  (C) The quitclaim deed.  (D) The certificate of title.

(B) In states other than California, the grantor in the warranty deed specifically guarantees certain matters regarding title to the grantee. In California where the grant deed is used with its implied warranties, the additional protection of title insurance policy is in widespread use. The title insurance company, with approved financial stability, gives more adequate assurance to the grantee of the title that he is receiving than any individual grantor could give.

A government land patent is:
(A) A deed.  (B) A protection against copies.  (C) A grant from the sovereign.  (D) An original deed.

(C) A government patent is an instrument used by the government to transfer or convey real property title to individual owners.
The following is not necessary to successfully acquire title of unimproved land by adverse possession:
(A) Minimum of five years occupancy.  (B) Open and notorious use.  
(C) Color of title or claim of right.          (D) Live on the property.

(D) If land is unimproved, it is difficult to live on the property unless it would be in a tent or trailer. This requirement is therefore waived when establishing a claim under adverse possession. You might use the property for farming or grazing and still satisfy the other requirements.

All of the following are requisites of gaining title to real property by adverse possession, except:
(A) Must occupy the property hostile to the record owner.  
(B) Must possess the property continuously for 5 years. 
(C) Must pay the taxes for five years before they become delinquent. 
(D) Must possess the property under some evidence of color of title or claim of right.

(C) Real estate taxes must be paid for the five years period of occupancy but not necessarily before they become delinquent each year.

An example of acquiring real property by accession is:
(A) Adverse possession.    (B) Eminent domain.     (C) Police power.       (D) Accretion.

(D) Accession is the addition to property by improvement or by natural growth. Accretion is an addition to land by natural causes and would be an example of the application of the doctrine of accession.

Proceedings to create an easement over a parcel of land by statutory dedication have been initiated. The last act to be accomplished is:
(A) Eminent domain.                                (B) Recordation of the final map. 
(C) Acceptance by the governing body.  (D) Approval of the planning commission.

(B) Statutory dedication proceedings follow this order:
1. Submit a preliminary map.  
2. Make an offer of dedication. 
3. Receive an acceptance of offer of dedication. 
4. Record the final map.

A statutory dedication of land for public use that gives the governmental body acquiring the parcel an easement, becomes effective by:
(A) Prescription.   (B) The government’s power of eminent domain. 
(C) Recording a subdivision map with the certificate of dedication & acceptance.  (D) Reservation.

(C) The steps required to accomplish a dedication consist of a signed certificate of dedication executed by all parties of interest. This is submitted to the local governing body with a copy of the map. The local governing body signs an acceptance and all the documents are recorded. Dedication becomes effective at that point.
Other than non-dischargeable debts, all provable debts of a bankrupt debtor are cut off (discharged) as of the date:
(A) Of filing the petition in bankruptcy.
(B) Of the first meeting of creditors.
(C) Of the discharge in bankruptcy.
(D) Of the publication of the notice of the petition in bankruptcy.

In a bankruptcy, the debts are cut off or discharged as of the date the bankruptcy court issues the:

A person and his property that is encumbered by a first deed of trust are in Chapter 7 bankruptcy. Under these circumstances the:
(A) Debtor can sell the property.
(B) Debtor need not make payments on the promissory note secured by the first deed of trust.
(C) Holder of the first deed of trust can foreclose.
(D) Court can sell the property and use the proceeds there from to pay debts owed to unsecured creditors.

The trust deed is a voluntary lien, specifically naming a beneficiary. In bankruptcy, the court will release the property for foreclosure by the trustee named in the deed of trust. These funds will go to the beneficiary named in the trust deed.
Notes
Lesson Three
Part Three
Understanding Through Question Testing

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Under the “Guided Lesson” tab click on the third of fourteen links: “Acquisition and Transfer of Real Property”.

Here you will be tested on all of the questions you have been studying and learn the most recently added questions. It is essential, for maximum retention, that you eliminate all of the questions you can easily answer and “TAG” for study the questions with which you have difficulty.