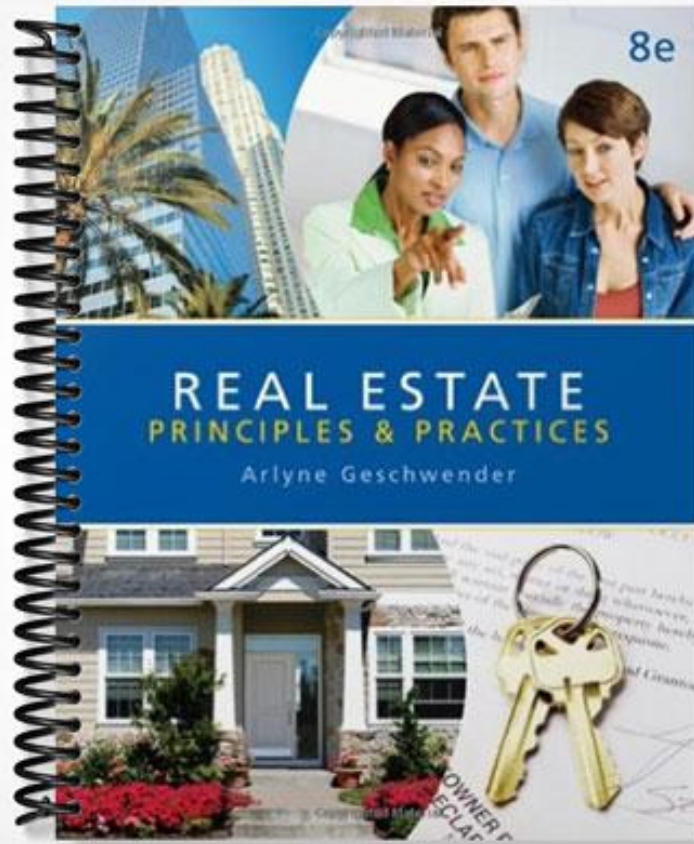


SOLUTIONS MANUAL



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REAL ESTATE PRINCIPLES & PRACTICES

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OWNER P
DECLAR

CHAPTER 2 - LAND: ITS CHARACTERISTICS AND ACQUISITION

OVERVIEW

Chapter 2 introduces readers to *land* with a brief overview of how ownership of land evolved from the days of the feudal system to our present right to own real property under the allodial system.

Readers are then given an explanation of the physical and economic characteristics of land. Ownership privileges are subject to government rights under its power of taxation, its right to seize land under eminent domain laws, and its right to regulate and control land use.

The differences between real and personal property are explained: the acquisition of land ownership by will and how the owner has the privilege of exercising the right to name who will inherit the property is covered.

Protecting ownership rights is necessary since under adverse possession laws the true owner may lose the property. The chapter concludes with the gifting of real property to the public.

LEARNING OBJECTIVES

After reading this chapter, students should be able to:

1. Understand how our allodial system of ownership permits us to own land.
2. Recognize that the characteristics of land and the uses to which it can be put determine its value.
3. Discuss the rights an owner has in real estate and the government has in private property ownership.
4. Understand that the "bundle of rights" include not just surface rights, but subsurface, air, and water rights.
5. Understand the differences between real and personal property and the many ways we can acquire or lose land.

ACTIVITIES FOR THE INSTRUCTOR'S USE

The following questions can be used to generate class discussion:

1. When does real property become personal property?

Answer: A tree is real property until it is cut down and the lumber becomes personal since it no longer is attached to the real estate. However, once the lumber is used to construct a fence it is once again real property. Discussions can follow regarding whether a mail box is real property, or a basketball hoop attached to a pole. Window shades, drapery rods, and gas grills are but a few examples that may generate class participation. When real property is placed with the intention of being removed, and it can be considered personal, it thus becomes personal property again.

2. Can more than one person own rights concurrently in a particular parcel of land? Explain.

Answer: Yes, one person may have fee simple title to a farm, another person could own the mineral rights and a third person could own the air rights. Examples could be cited in your particular area; are there walkways over streets or above the ground between buildings? Are buildings built over railroad tracks? A restaurant over a freeway? Oil rigs drilling for oil? This question could really get the students involved in the various rights people can own in one property.

3. What are trade fixtures and when are they removable?

Answer: Trade fixtures are personal property that are needed by the tenant in the business or trade the tenant is conducting and which the tenant attaches to the leased property. It may be removed if the tenant does so within the time stipulated by the state law. Generally this must be done upon expiration of the lease or they become the property of the landlord.

4. What is the difference between an executor of an estate and the personal representative?

Answer: An executor is named by the testator to fulfill his requests as stated in the testator's last will and testament. The personal representative (administrator) is appointed by the state when no executor has been named.

LECTURE OUTLINE

There will always be more people, but there will never be more land.

EVOLUTION OF LAND OWNERSHIP

- A. Feudal system - average person could not hold title to real estate
- B. Allodial system - individuals have the right to own real property

CHARACTERISTICS OF LAND

- A. Physical characteristics
 - 1. Immutability - cannot be moved- remains in a permanent location
 - 2. Indestructibility - never wears out - its durability makes it an ideal commodity for investors
 - 3. Nonhomogeneity - no two parcels are alike; each is unique
- B. Economic characteristics
 - 1. Scarcity - when supply of land is sparse in a given area its value tends to rise
 - 2. Situs - location (where the land “sits”) determines its value
 - 3. Durability - the useful life of the improvements placed on the land

REAL PROPERTY RIGHTS (A BUNDLE OF RIGHTS)

- A. Hereditament – the largest classification of property
 - 1. Corporeal rights - the tangibles; such as trees and buildings
 - 2. Incorporeal rights - intangible objects that cannot be seen such as a right of way or encroachment
- B. Tenement - all the rights of a permanent nature that accompany ownership
- C. Bundle of rights
 - 1. Surface rights - the cultivating of land, erecting buildings and fences
 - 2. Subsurface rights - mining beneath the surface
 - 3. Air rights - right to use open space such as walkways over streets or buildings erected above railroad tracts
 - 4. Water rights - the right to use water as established by either the doctrine of riparian and littoral rights or the doctrine of prior appropriation
 - a. If an owner’s land borders a moving body of water he may use the water equally with other riparian land owners
 - b. Priority right to use water for domestic use in accordance with the laws of the state

RIGHTS OF THE GOVERNMENT

- A. Police power - enabling act that the state grants to local governments to protect the public safety, health, and general welfare; giving the government the right to regulate land use
- B. Eminent domain - the right of the government to take private property for public use with just compensation to the owners

- C. Taxation - the right to collect taxes calculated by mill levy or dollar amount and to charge special assessments to pay for the cost of public improvements to the land
- D. Escheat - reverting or lapsing of property back to the sovereign state through legal proceedings when owner dies without leaving a will and has no heirs

PERSONAL PROPERTY VS. REAL PROPERTY

- A. Chattel - personal property - movable in nature, not attached to real property
- B. Trade fixtures - personal property that has been affixed to real property
- C. Leasehold fixtures - improvements installed by the tenant
- D. Real property - the land and anything that is permanently affixed to the land

ACQUIRING OWNERSHIP

- A. By purchase - the voluntary act of buying real estate
- B. By will - receiver of real property as stated in a legal document
 - 1. Devise - real estate that is willed
 - 2. Devisee - receiver of the property that is willed
 - 3. Testate - the maker of the will
- C. By descent - property passes to the heirs if no will is made

LOSING OWNERSHIP

- A. Involuntary alienation
 - 1. Adverse possession - rightful owner loses land to occupant who has taken possession in a hostile, distinct, continuous, visible, and actual manner for the statutory period.
 - 2. Easement by prescription - rights to the land of another gained through continuous use
 - 3. Mortgage foreclosure - foreclosure of a debt secured by the real estate
 - 4. Condemnation - legal right under eminent domain to take private property for public use with just compensation to the owner

PUBLIC ACQUISITION OF PROPERTY

- A. Gift by dedication, such as a subdivider that dedicates the new streets and sidewalks to the city or county where the property is located

CHAPTER 2 - QUIZ

Part A - Multiple Choice

1. If the sovereign state acquires property of an individual for the purpose of building a highway, it obtains title by an action based on:
 - a. quiet title action
 - b. adverse possession
 - c. eminent domain
 - d. easement proceeding

2. Real property is defined as:
 - a. the land, exclusive of all improvements
 - b. the improvements, exclusive of the land
 - c. whatever is erected, growing upon, or affixed to land
 - d. the land and anything erected or affixed to it, including annual crops

3. Which of the following is (are) a test(s) of a fixture?
 - a. the intent of the owner
 - b. the method of the annexation
 - c. the adaption of the property
 - d. all of these

4. The combination of privileges ownership of real property gives is referred to as:
 - a. littoral rights
 - b. riparian rights
 - c. surface and subsurface rights
 - d. bundle of rights

5. The right of the government to impose restrictions and controls upon privately owned land is known as:
 - a. police power
 - b. bundle of rights
 - c. littoral rights
 - d. escheat

6. If personal property is included in a real estate transaction, title to the personal property passes to the purchaser by:
 - a. a bill of sale
 - b. a deed
 - c. a certificate of sale
 - d. a quitclaim deed

7. Reversion of property to the sovereign state upon the death of a person who leaves no will and has no heirs is:
- encumbrance
 - escheat
 - descent
 - eminent domain
8. All of the following are considered real property, EXCEPT:
- minerals
 - trees
 - firewood
 - house
9. Physically, land is characterized by all of the following qualities, EXCEPT:
- fixity
 - homogeneity
 - permanence
 - non homogeneity
10. All of the following are true, EXCEPT:
- real property may be taxed by the government
 - real property may be acquired by the government if the owner dies intestate and has no heirs
 - fixtures are personal property that become real property when attached to real property
 - personal and real property are one and the same

Part A Matching

- | | |
|--|---------------------|
| 1. personal property which becomes real property | a. devise |
| 2. deceased, left no will | b. intestate |
| 3. right of government to control use of land | c. bundle of rights |
| 4. personal property | d. codicil |
| 5. location of land | e. accretion |
| 6. gift of real estate by will | f. fixtures |
| 7. addition to a will | g. chattel |
| 8. gives individual right to own land | h. situs |
| 9. gain of land through build-up of soil | i. allodial system |
| 10. all legal rights attached to property | j. police power |