ters to others than the testator's nominee unless he or she is incompetent or disqualified by law.[11] However, in the absence of a contrary statute, it has been held that the court is not bound by the testator's nomination[12] and may in its discretion either appoint the nominee or refuse to do so,[13] although, since a testator's selection of his or her executor is not to be set aside lightly,[14] the testator's selection should be followed in the absence of a strong showing to the contrary.[15]

To justify the court in the exercise of its discretionary power to disregard the testator's choice, there must be some basis more substantial than the contrary wishes of collateral relatives,[16] heirs,[17] or beneficiaries.[18] The court may disregard the testator's wishes where his or her nominee is for some reason legally disqualified, as where he or she is incompetent,[19] or dishonest,[20] or has attempted to suppress the will,[21] or even, it has been considered, where the court determines that under conditions as they have changed since the execution of the will the selection would not have been made by the testator.[22]

Effect of insolvency of estate.

Neb.—In re Foote's Estate, 203 Neb. 598, 279 N.W.2d 614 (1979).

[11]Ariz.—In re Lawrence's Estate, 53 Ariz. 1, 85 P.2d 45 (1938).

Fla.—Werner v. Estate of McCloskey, 943 So. 2d 1007 (Fla. Dist. Ct. App. 1st Dist. 2006).

Or.—In re Workman's Estate, 151 Or. 475, 49 P.2d 1136 (1935).

Tex.—In re Estate of Gaines, 262 S.W.3d 50 (Tex. App. Houston 14th Dist. 2008), reh'g overruled, (Sept. 11, 2008).

Power to refuse letters limited by statute

N.Y.—Matter of Shaw, 186 A.D.2d 809, 589 N.Y.S.2d 97 (2d Dep't 1992).

Express disqualification under statute

Fla.—In re Estate of Miller, 568 So. 2d 487 (Fla. Dist. Ct. App. 1st Dist. 1990).

Minority as disqualification

Tex.—In re Roots' Estate, 596 S.W.2d 240 (Tex. Civ. App. Amarillo 1980).

Insanity as disqualification

Tex.—In re Roots' Estate, 596 S.W.2d 240 (Tex. Civ. App. Amarillo 1980).

[12]Wash.—In re Robinson's Estate, 149 Wash. 307, 270 P. 1020 (1928).

[13]Iowa—Davenport v. Sandeman, 204 Iowa 927, 216 N.W. 55 (1927).

Mass.—Lindsey v. Ogden, 10 Mass. App. Ct. 142, 406 N.E.2d 701 (1980).

Discretion granted under statute

Fla.—In re Estate of Miller, 568 So. 2d 487 (Fla. Dist. Ct. App. 1st Dist. 1990).

[14]N.C.—Matter of Moore's Estate, 292 N.C. 58, 231 S.E.2d 849 (1977).

[15]Iowa—In re Schneider's Estate, 224 Iowa 598, 277 N.W. 567 (1938).

Mass.—Lindsey v. Ogden, 10 Mass. App. Ct. 142, 406 N.E.2d 701 (1980).

Necessity of substantial compelling justification

U.S.—Fain v. Hall, 463 F. Supp. 661 (M.D. Fla. 1979).

[16]Iowa—In re Schneider's Estate, 224 Iowa 598, 277 N.W. 567 (1938).

[17]Kan.—Matter of Petty's Estate, 227 Kan. 697, 608 P.2d 987, 11 A.L.R.4th 623 (1980) (holding that hostility is an insufficient reason for refusal).

[18]Fla.—Hernandez v. Hernandez, 946 So. 2d 124 (Fla. Dist. Ct. App. 5th Dist. 2007).

Preference for representative who does not charge fee

Wis.—State ex rel. First Nat. Bank and Trust Co. of Racine v. Skow, 91 Wis. 2d 773, 284 N.W.2d 74 (1979).

[19]Neb.—In re Cachelin's Estate, 124 Neb. 556, 247 N.W. 422 (1933) (overruled in part on other grounds by, In re Haeffele's Estate, 145 Neb. 809, 18 N.W.2d 228 (1945)).

N.Y.—In re Leland's Will, 175 A.D. 62, 161 N.Y.S. 316 (1st Dep't 1916), aff'd, 219 N.Y. 387, 114 N.E. 854 (1916).

[20]N.Y.—In re Cullen's Estate, 163 Misc. 410, 297 N.Y.S. 280 (Sur. Ct. 1937).

[21]Wash.—In re Robinson's Estate, 149 Wash. 307, 270 P. 1020 (1928).

[22]Fla.—In re Estate of Miller, 568 So. 2d 487 (Fla. Dist. Ct. App. 1st Dist. 1990) (holding that the court has limited discretion in this regard).

Exceptional circumstances

Exceptional circumstances permitting the trial court to refuse to appoint the personal representative named by the testator in the will may include

The insolvency of an estate does not affect the right of a qualified person to be appointed executor, but affects only the manner in which he or she will administer the estate.[23]

Exhaustion of court's power.

It has been found that where a probate court has made a decree appointing one of two executors named in a will as sole executor, its power in the premises is exhausted, and while such decree stands it cannot appoint the other person named as coexecutor.[24]

2. Competency

§ 28 Generally

Research References

West's Key Number Digest, Executors and Administrators ⇨15

Generally, and except as the rule may be changed by statute, all persons capable of making wills are eligible to become executors on nomination by the testator.

Generally, all persons who are capable of making wills are capable of becoming executors.[1] Moreover, a testator has the right to determine the qualifications and suitability of the person selected by him or her as executor,[2] and in the absence of controlling statute the power to name an executor is coextensive with the power to devise or bequeath the estate.[3] In addition, a testator may appoint anyone whom he or she deems proper.[4] Accordingly, one named as executor is not disqualified by old age, bodily infirmities, ignorance of the law,[5] or lack of business experience.[6]

Generally, the person appointed as an executor should be a fitting person, having regard to the special conditions of the estate, and those interested in it as creditors, legatees and next of kin.[7] Suitableness is capacity founded on the innate and acquired qualities of the particular person in his or her relation to the situation of the estate to be administered, and to those directly and indirectly to be affected by the settlement of the estate.[8]

The legislature has power to provide

those in which unforeseen circumstances arise that clearly would have affected the testator's decision had he been aware of such circumstances, but the testator had no reasonable opportunity prior to his death to change the designation of the personal representative in his will.

Fla.—Hernandez v. Hernandez, 946 So. 2d 124 (Fla. Dist. Ct. App. 5th Dist. 2007).

[23]Wash.—State ex rel. Lauridsen v. Superior Court for King County, 179 Wash. 198, 37 P.2d 209, 95 A.L.R. 819 (1934).

[24]Mass.—Cogswell v. Hall, 183 Mass. 575, 67 N.E. 638 (1903).

[Section 28]

[1]Or.—In re Workman's Estate, 151 Or. 475, 49 P.2d 1136 (1935).

[2]Or.—In re Workman's Estate, 151 Or. 475, 49 P.2d 1136 (1935).

Utah—Welsh, Driscoll & Buck v. Buck, 64 Utah 579, 232 P. 911 (1924).

[3]Ind.—Matter of Baird's Estate, 408 N.E.2d 1323 (Ind. Ct. App. 1980).

Wash.—State ex rel. Lauridsen v. Superior Court for King County, 179 Wash. 198, 37 P.2d 209, 95 A.L.R. 819 (1934).

A.L.R. Library: Adverse interest or position as disqualification for appointment of administrator, executor, or other personal representative, 11 A.L.R.4th 638

Who is resident within meaning of statute prohibiting appointment of nonresident executor or administrator, 9 A.L.R.4th 1223

[4]N.Y.—In re Venezia, 25 A.D.3d 717, 809 N.Y.S.2d 129 (2d Dep't 2006).

Or.—In re Workman's Estate, 151 Or. 475, 49 P.2d 1136 (1935).

[5]N.Y.—In re Leland's Will, 219 N.Y. 387, 114 N.E. 854 (1916).

Or.—In re Workman's Estate, 151 Or. 475, 49 P.2d 1136 (1935).

[6]Or.—In re Workman's Estate, 151 Or. 475, 49 P.2d 1136 (1935).

[7]Mass.—Lindsey v. Ogden, 10 Mass. App. Ct. 142, 406 N.E.2d 701 (1980).

[8]Mass.—Lindsey v. Ogden, 10 Mass. App. Ct. 142, 406 N.E.2d 701 (1980).

estate.[4]

On the other hand, a person having no interest in the estate generally has no standing to apply for its administration.[5] Nevertheless, a grant of administration made on the application of such a person may be valid if interested parties have consented to it,[6] or it has not been reversed on appeal.[7]

Under some statutes a person petitioning for administration need have no beneficial interest in the estate.[8] Some courts are granted discretionary power to appoint an administrator regardless of who presents the petition and the facts.[9]

§ 66 Time for application

Research References

West's Key Number Digest, Executors and Administrators ⇐20(2)

Application for administration must be made within the statutory time limit, or in a reasonable time. Application for letters testamentary must wait until after the will is admitted to probate.

If an express statutory time limit exists, an application for administration must be made before the allowable time expires,[1] although the prescribed period may be tolled when the applicant is under disability.[2] However, a grant of letters after the expiration of the statutory period is not beyond the jurisdiction of the court so as to subject its action to collateral attack.[3] Under a statute permitting a court to take all actions necessary and proper to administer justice, a court may allow an appointment as representative many years after the decedent's death, where no proceeding to appoint a representative was initiated within the statutory time period.[4]

If, as may occur,[5] there is no express statutory provision limiting the time within which administration must be applied for, application may and should be made within a reasonable time.[6] Accordingly, long acquiescence by persons sui juris in an informal distribution of an estate in which they are interested will debar them from seeking administration merely to disturb such settlement, where there are no interested creditors.[7] Likewise a creditor cannot secure administration after an unreasonable length of time,[8] but an application for administration by a creditor a considerable number of years after the death of the decedent has been held not too late.[9]

A statute that provides that if no application for letters testamentary is filed by an eligible person within a specified period, any interested person may apply, does not limit the time in which a named executor must file the application, but merely ensures that where an executor has failed to file in a timely manner, other interested persons are free to do so.[10]

Where decedent left a will, an application for letters testamentary should not be made until after the will has been admitted to probate.[11]

Premature grant.

Some statutes forbid the granting of administration before the expiration of a certain period after the decedent's death,[12] but an appointment is not invalidated by the mere fact that the application was made before the appropriate time.[13]

A reasonable time must be afforded after a decedent's death for a party having a prior right to administration to file a petition.[14] Where a statute restricts premature application by one not entitled to preference, application by a person of such class before the termination of the prescribed period is not improper if no person is eligible for preference.[15]

§ 67 Parties

Research References

West's Key Number Digest, Executors and Administrators ⇐20(4.5)

Any person interested in an estate is a proper party to a proceeding for its administration.

All persons who are interested in the estate are proper parties to the proceeding for the appointment of an administrator.[1] A foreign consul has been held entitled to intervene in proceedings for the appointment of an administrator of the estate of a citizen or subject of the consul's country.[2] However, in some jurisdictions, a creditor of the deceased is not a proper or necessary party to administration proceedings and has no standing in such proceedings.[3]

A person who is neither a creditor, a legatee, nor a distributee of the estate cannot be a party to a petition filed with

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[4]Iowa—Matter of Estate of Oelberg, 414 N.W.2d 672 (Iowa Ct. App. 1987).

[5]Colo.—Matter of Estate of Rienks, 844 P.2d 1295 (Colo. Ct. App. 1992).

La.—Succession of Watkins, 156 La. 1000, 101 So. 395 (1924).

Mich.—Matter of Estate of Cook, 155 Mich. App. 604, 400 N.W.2d 695 (1986).

Minn.—In re Leskela's Estate, 176 Minn. 223, 223 N.W. 133 (1929).

Mont.—Matter of Peltomaa's Estate, 193 Mont. 74, 630 P.2d 215 (1981).

Miss.—Hancock's Estate v. Pyle, 187 Miss. 801, 193 So. 812 (1940).

Pa.—Brokans v. Melnick, 391 Pa. Super. 21, 569 A.2d 1373 (1989).

Owner of land in common

Tex.—Cyphers v. Birdwell, 32 S.W.2d 937 (Tex. Civ. App. Texarkana 1930), writ refused, (Jan. 7, 1931).

[6]Ga.—Hill v. Akins, 57 Ga. App. 198, 194 S.E. 893 (1938).

[7]R.I.—Mowry v. Latham, 20 R.I. 786, 40 A. 236 (1891).

[8]Neb.—In re Pollard's Estate, 105 Neb. 432, 181 N.W. 133 (1920).

[9]Colo.—Rosenboom v. Cline, 90 Colo. 1, 6 P.2d 453 (1931).

[Section 66]

[1]U.S.—Consul General of Republic of Indonesia v. Bill's Rentals, Inc., 330 F.3d 1041, 55 Fed. R. Serv. 3d 672 (8th Cir. 2003) (applying Iowa and Nebraska law).

Me.—In re Estate of Kruzynski, 2000 ME 17, 744 A.2d 1054 (Me. 2000).

Mo.—State ex rel. Estate of Perry ex rel. Perry, 168 S.W.3d 577 (Mo. Ct. App. W.D. 2005).

Regarding a lapse of time as affecting the necessity and propriety of administration, see § 11.

Regarding the necessity for timely action to entitle a person to appointment, see § 42.

[2]Minority

Colo.—Sommermeyer v. Price, 198 Colo. 548, 603 P.2d 135 (1979).

[3]Tex.—Nelson v. Bridge, 98 Tex. 523, 86 S.W. 7 (1905).

Regarding grounds of collateral attack, generally, see § 109.

[4]Neb.—In re Estate of Nemetz, 273 Neb. 918, 735 N.W.2d 363 (2007).

[5]Minn.—In re Daniel's Estate, 208 Minn. 420, 294 N.W. 465 (1940).

[6]Ohio—In re Patterson's Estate, 26 Ohio N.P. (n.s.) 580, 1927 WL 2780 (C.P. 1927).

[7]Mich.—Diem v. Drogmiller, 158 Mich. 380, 122 N.W. 637 (1909).

[8]Ark.—Brewer v. Wilson, 185 Ark. 94, 46 S.W.2d 3 (1932).

[9]Ga.—Gorham v. Montfort, 137 Ga. 134, 72 S.E. 893 (1911).

[10]Mo.—Matter of Estate of Bloemker, 829 S.W.2d 7 (Mo. Ct. App. E.D. 1992).

[11]N.Y.—In re Mayer's Will, 144 N.Y.S. 438 (Sur. Ct. 1913).

[12]Md.—Burgess v. Boswell, 139 Md. 669, 116 A. 457 (1922).

[13]R.I.—Mowry v. Latham, 20 R.I. 786, 40 A. 236 (1891).

[14]Ohio—In re Patterson's Estate, 26 Ohio N.P. (n.s.) 580, 1927 WL 2780 (C.P. 1927).

Or.—In re MacMullen's Estate, 117 Or. 505, 243 P. 89 1926).

[15]Wash.—In re Utter's Estate, 112 Wash. 197, 191 P. 836 (1920).

[Section 67]

[1]Mass.—Hilton v. Hopkins, 275 Mass. 59, 175 N.E. 162 (1931).

Creditors

Ill.—In re Estate of Gebis, 186 Ill. 2d 188, 237 Ill. Dec. 755, 710 N.E.2d 385 (1999).

[2]Minn.—In re Lis' Estate, 120 Minn. 122, 139 N.W. 300 (1912).

[3]N.Y.—In re Rosenberg's Estate, 15 Misc. 2d 336, 184 N.Y.S.2d 706 (Sur. Ct. 1958).

the probate court for letters of administration.[4] A person claiming the right to be heard in proceedings for the appointment of an administrator must show an interest in the choice of an appointee.[5]

§ 68 Citation or notice

Research References

West's Key Number Digest, Executors and Administrators ⚖20(4)

Notice of proceedings for letters of administration or letters testamentary generally must be given to all interested persons who have not waived notice. Notice serves to summon those entitled to preference to appear and exercise their rights.

Under some statutes, the appointment of an executor or administrator may be made on an ex parte application without previous notice.[1] Generally, however, statutes require that notice of an application for administration,[2] or of a formal hearing to appoint a personal representative,[3] must be given to all interested persons, unless they waive notice.[4] A purpose of such notice is to summon those entitled to preference to appear and exercise their rights, if they so desire.[5]

Notice of a hearing involving a petition for letters of administration can be jurisdictional,[6] and letters of administration granted prior to issuing a citation to persons entitled to preference may be void ab initio.[7]

To dispense with citation, those of the class entitled to preference, or those of equal priority, may renounce their claim or else signify their assent to the grant of the petitioner's request for appointment by indorsement of the petition or by other writing of record.[8] Citation is usually required only where there are persons having a right prior to that of the person applying for letters of administration.[9]

[4]N.Y.—In re Marshall's Estate, 146 Misc. 601, 262 N.Y.S. 528 (Sur. Ct. 1933), aff'd, 239 A.D. 768, 263 N.Y.S. 936 (1st Dep't 1933).

Okla.—Murg v. Barnsdall Nursing Home, 2005 OK 74, 123 P.3d 11 (Okla. 2005).

Wyo.—In re Estate of Peters, 2001 WY 71, 29 P.3d 90 (Wyo. 2001).

[5]Ga.—Williams v. Williams, 113 Ga. 1006, 39 S.E. 474 (1901).

Mich.—Diem v. Drogmiller, 158 Mich. 380, 122 N.W. 637 (1909).

[Section 68]

[1]Idaho—Matter of Cahoon's Estates, 102 Idaho 542, 633 P.2d 607 (1981).

Mo.—State ex rel. Gott v. Fidelity & Deposit Co. of Baltimore, Md., 317 Mo. 1078, 298 S.W. 83 (1927).

[2]Cal.—In re Estate of Carter, 111 Cal. App. 4th 1139, 4 Cal. Rptr. 3d 490 (4th Dist. 2003), as modified on denial of reh'g, (Oct. 3, 2003).

Conn.—Smith v. Smith, 40 Conn. Supp. 151, 483 A.2d 629 (Super. Ct. 1984).

Mo.—In re Estate of Givens, 234 S.W.3d 519 (Mo. Ct. App. E.D. 2007), transfer denied, (Aug. 29, 2007) and transfer denied, (Oct. 30, 2007).

Notice of death insufficient

Fla.—In re Estate of Dubin, 536 So. 2d 1186 (Fla. Dist. Ct. App. 4th Dist. 1989).

[3]Idaho—Matter of Cahoon's Estates, 102 Idaho 542, 633 P.2d 607 (1981).

Neb.—In re Estate of Casselman, 219 Neb. 653, 365 N.W.2d 805 (1985).

S.D.—Estate of Nelson, 1996 SD 27, 544 N.W.2d 882 (S.D. 1996).

[4]Neb.—In re Estate of Casselman, 219 Neb. 653, 365 N.W.2d 805 (1985).

[5]Ga.—Callaway v. Arnold, 175 Ga. 55, 164 S.E. 773 (1932).

Md.—Hewitt v. Shipley, 169 Md. 221, 181 A. 345 (1935).

R.I.—Capwell v. Knight, 48 R.I. 81, 135 A. 699 (1927).

Utah—In re Phillips' Estate, 86 Utah 358, 44 P.2d 699 (1935).

Nonresidents

Md.—Silverwood v. Farnan, 180 Md. 15, 22 A.2d 444 (1941).

N.Y.—In re Gaffney's Estate, 141 Misc. 453, 252 N.Y.S. 649 (Sur. Ct. 1931).

Regarding statutory preferences, see §§ 40 to 53.

[6]Cal.—Estate of Lindsey, 108 Cal. App. 3d 428, 166 Cal. Rptr. 511 (5th Dist. 1980).

[7]Fla.—In re Baker's Estate, 339 So. 2d 240 (Fla. Dist. Ct. App. 3d Dist. 1976).

[8]U.S.—Morris v. Foster, 278 F. 321 (App. D.C. 1922).

Neb.—In re Estate of Sutherlin, 261 Neb. 297, 622 N.W.2d 657 (2001).

N.Y.—In re Rowe, 197 A.D. 449, 189 N.Y.S. 395 (1st Dep't 1921), aff'd, 232 N.Y. 554, 134 N.E. 569 (1921).

Wis.—Simpson v. Cornish, 196 Wis. 125, 218 N.W. 193 (1928).

[9]Md.—Dorsey v. Dorsey, 140 Md. 167, 116 A. 915 (1922).

N.J.—In re Stewart's Estate, 117 N.J. Eq. 256, 175 A. 360 (Prerog. Ct. 1934).

N.Y.—Matter of Johnson's Estate, 114 Misc. 2d 100, 450 N.Y.S.2d 740 (Sur. Ct. 1982).

Okla.—Continental Oil Co. v. Helms, 1937 OK 322, 187 Okla. 633, 105 P.2d 214 (1937).

Rule unaffected by time of application

Wash.—In re Brown's Estate, 170 Wash. 450, 16 P.2d 823 (1932).

§ 69 Citation or notice—Form and sufficiency

Research References

West's Key Number Digest, Executors and Administrators ⚖20(4)

The form and sufficiency of the required notice are determined by the provisions of the statute, but one having actual notice cannot ordinarily complain of the insufficiency of the notice.

The form and sufficiency of the requisite notice are ordinarily determined by the provisions of the statute.[1] Statutory requirements concerning notice must be strictly observed.[2] Where the statute requires that notice be given to "known" and "reasonably ascertainable" heirs, courts will give those words a broad meaning sufficient to include individuals whose identities are known to the petitioner and who reasonably might be heirs.[3]

Personal notice to parties interested in the estate has been held not required, it being sufficient that a general notice is published as directed by the court.[4]

One who has actual notice and seasonably appears cannot complain that the citation was insufficient.[5] Even if a notice technically does not comply with statutory requirements, a court may deny relief on the notice issue if an interested party had actual notice of the proceeding and no other party filed an objection based on inadequate notice.[6] However, actual notice of the petitioner's intention to commence proceedings is insufficient to bind one who had a right to assume that his or her interests would not be affected until legal notice was given.[7]

Publication or posting.

It is usual to publish the citation in a newspaper, or post copies of it in conspicuous places, or both. The manner of publication and the time at which it must be made or during which it must continue are regulated by statute, court rule, or the particular directions of the court in indi-

[1]La.—Succession of Schneider, 371 So. 2d 1380 (La. Ct. App. 1st Cir. 1979).

Wash.—Matter of Young's Estate, 23 Wash. App. 761, 598 P.2d 7 (Div. 3 1979).

Notice of probate as sufficient

Tex.—Williams v. White, 105 S.W.2d 1105 (Tex. Civ. App. Waco 1937).

[2]Cal.—Estate of Lindsey, 108 Cal. App. 3d 428, 166 Cal. Rptr. 511 (5th Dist. 1980).

[3]Father's out-of-wedlock children entitled to notice

Cal.—In re Estate of Carter, 111 Cal. App. 4th 1139, 4 Cal. Rptr. 3d 490 (4th Dist. 2003), as modified on denial of reh'g, (Oct. 3, 2003).

[4]Mass.—McDonald v. O'Dea, 256 Mass. 177, 152 N.E. 341 (1926).

[5]Cal.—In re Johnson's Estate, 20 Cal. App. 2d 735, 67 P.2d 1079 (1st Dist. 1937).

La.—Succession of Minacapelli, 457 So. 2d 794 (La. Ct. App. 1st Cir. 1984).

Md.—Dorsey v. Dorsey, 140 Md. 167, 116 A. 915 (1922).

[6]S.D.—Estate of Nelson, 1996 SD 27, 544 N.W.2d 882 (S.D. 1996).

[7]U.S.—Morris v. Foster, 278 F. 321 (App. D.C. 1922).

La. 1909. As used in Rev.Civ.Code, art. 2-, providing that, in all cases where the thing sold remains in the possession of the seller because he has reserved to himself the usufruct or retains possession by a precarious title, there is reason to presume that the sale is simulated, and, with respect to third persons, the parties must produce proof that they are acting in good faith and establish the reality of the sale, the word "usufruct" embraces the right of habitation or occupancy reserved by the vendor, and under which he retains possession of the thing sold. This retention of possession by reservation in the deed or by agreement with the vendee creates a prima facie presumption of fraud, since such possession is inconsistent with the nature of the contract of sale, transferring as it does the ownership and possession of the property.—Radovich v. Jenkins, 48 So. 988, 123 La. 355.

La. 1891. "Use" is distinguished from "usufruct" in this: That, while usufruct carries the right to enjoy all the fruits and revenues which the property subjected to it can produce, use consists in taking only from the fruits of the property the portion which the user can consume--such as is necessary for his person or regulated by the title. The surplus belongs to the owner of the property. Dom.Civil Law, tit. 11, § 11, art. 1. Use is a limited usufruct for the needs of the user, and it is veritable usufruct except as to extent of enjoyment. They are bought and established and lost in the same way. The user must, like the usufructuary, give security, make statements and inventories. He is subject to the costs of cultivation, to those of keeping in repair, to the payment of contributions. There is a difference between the two rights only as to their extent. The usufructuary has the right to enjoy all sorts of fruits, while the user can require only such as are necessary for himself and family.—Straus v. Elliott, 9 So. 102, 43 La.Ann. 501.

La.App. 2 Cir. 1996. "Usufruct" is real right of limited duration on the property of another, and usufructuary's rights vary according to the nature of the thing. LSA-C.C. art. 535.—Kennedy v. Kennedy, 668 So.2d 485, 27,810 (La.App. 2 Cir. 2/6/96), rehearing denied, writ granted 672 So.2d 699, 1996-0741 (La. 5/3/96), writ granted 672 So.2d 700, 1996-0732 (La. 5/3/96), affirmed in part, reversed in part 699 So.2d 351, 1996-0732, 1996-0741 (La. 11/25/96), rehearing denied.—Estates 1.

La.App. 2 Cir. 1988. Life estate granted to mother was a "usufruct"; daughter received naked ownership of property subject to use of mother, who actually enjoyed that use until sale of property. LSA-C.C. art. 535.—Noel v. Landry, 531 So.2d 570, writ denied 535 So.2d 746.—Life Est 1.

Mass. 1950. Under Greek law, "usufruct" means a right attached to the person which may not be inherited.—New England Trust Co. v. Wood, 93 N.E.2d 547, 326 Mass. 239.—Estates 1.

N.Y.A.D. 2 Dept. 1910. Civ.Code La. art. 533, defines a "usufruct" as the right of enjoying a thing the property of which is vested in another, and to draw from the same all the profits, utilities, and advantages which it may produce, provided it be tering the substance of the thing. It also .hat the obligation of not altering the substance of the thing takes place only in the case of a perfect usufruct. Article 534 declares money to be an imperfect usufruct, and by article 536 the ownership of such a usufruct is in the "usufructuary," who is entitled under article 556 to the possession and use of the usufruct, and to proceed by action against all persons who obtain possession and enjoyment thereof. Held, that the position of a "usufructuary" of money was unlike that of an executor or administrator, but like that of a legal owner.—Benedict v. Clarke, 123 N.Y.S. 964, 139 A.D. 242.

N.Y.Sur. 1973. "Usufruct" is the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantage which it may produce, provided it be without altering the substance of the thing.—In re Argersinger's Will, 348 N.Y.S.2d 304, 75 Misc.2d 767.—Propty 10.

N.Y.Mun.Ct. 1927. "Usufruct" is right to enjoy thing, property of which is vested in another, and to draw from same all profit, utility, and advantage which it may produce, without altering substance of thing, or right of use, without any property being vested in usufructuary.—Modern Music Shop v. Concordia Fire Ins. of Milwaukee, 226 N.Y.S. 630, 131 Misc. 305.

Or. 1904. The term "usufruct" signifies the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing.—Schwartz v. Gerhardt, 75 P. 698, 44 Or. 425.

Tex.App.-Dallas 1987. A "usufruct" is the right of using and enjoying and receiving the profits of property that belongs to another, and a "usufructuary" is a person who has the usufruct or right of enjoying anything in which he has no property interest.—Marshall v. Marshall, 735 S.W.2d 587, ref. n.r.e.—Estates 1.

USUFRUCTORY RIGHT

Tex.Civ.App.-Fort Worth 1978. The "usufructory right" is the right of enjoying anything in which one has no property, of enjoying a thing the property of which is vested in another, and of drawing of the same all the profit, utility, and advantage which it may produce provided that it is done without altering the substance of the thing or of using and enjoying and receiving the profits of property which belongs to another.—Kelly v. Lansford, 572 S.W.2d 369, ref. n.r.e.—Propty 1.

USUFRUCT RIGHTS

Mass. 1999. "Usufruct rights" of Native Americans are ones arising under treaty.—Com. v. Maxim, 708 N.E.2d 636, 429 Mass. 287.—Indians 3(1).

USUFRUCTS

Bkrtcy.N.D.Ga. 1993. "Usufructs" are rights which generally arise out of landlord/tenant relationship where tenants hold lesser interests in real estate than for years; tenant obtains right simply to possess and enjoy use of such real estate either for fixed time or at will of grantor. O.C.G.A. § 44-7-1.—In re Tollman-Hundley Dalton, L.P., 162 B.R. 26, affirmed Financial Sec. Assur., Inc. v. Tollman-Hundley Dalton, L.P., 165 B.R. 698, reversed 74 F.3d 1120.—Land & Ten 113, 117.

Tex.App.-Dallas 1987. There are three types of "usufructs": natural profits produced by the subject of the usufruct, industrial profits produced by cultivation, and civil profits, which are rents, freights and revenues from annuities and from other effects or rights.—Marshall v. Marshall, 735 S.W.2d 587, ref. n.r.e.—Estates 1.

USUFRUCTUARY

E.D.Wis. 1992. "Usufructuary" is defined as use and enjoyment of profits of property belonging to another as long as that property is not damaged or altered in any way.—Sokaogon Chippewa Community v. Exxon Corp., 805 F.Supp. 680, affirmed 2 F.3d 219, rehearing and suggestion for rehearing denied, certiorari denied 114 S.Ct. 1304, 510 U.S. 1196, 127 L.Ed.2d 655.—Estates 1.

Cal.App. 3 Dist. 1966. An appropriative water right is "usufructuary," that is, a right to the use only.—Amador County v. State Bd. of Equalization, 49 Cal.Rptr. 448, 240 Cal.App.2d 205.—Waters 142.

Cal.App. 4 Dist. 1964. As appropriative and prescriptive rights water rights are "usufructuary" that is, there is no right to any particular water flowing in stream, only a right to take from stream a certain amount of flowing water; a right that does not come into being until both means of diverting and means of using water have been completed.—San Bernardino Val. Municipal Water Dist. v. Meeks & Daley Water Co., 38 Cal.Rptr. 51, 226 Cal.App.2d 216.—Waters 139, 142.

La. 1903. A person to whom, out of the revenues or an estate, a certain amount is to be paid monthly is not a "usufructuary."—Succession of Ward, 34 So. 135, 110 La. 75.

La.App. 1 Cir. 1979. A "usufructuary" is a precarious possessor of land who possesses for the naked owner. LSA-C.C. art. 3510.—Cheramie v. Cheramie, 380 So.2d 166, writ granted 384 So.2d 798, writ granted 384 So.2d 798, affirmed 391 So.2d 1126.—Trusts 134.

N.Y.A.D. 2 Dept. 1910. Civ.Code La. art. 533, defines a "usufruct" as the right of enjoying a thing the property of which is vested in another, and to draw from the same all the profits, utilities, and advantages which it may produce, provided it be without altering the substance of the thing. It also declares that the obligation of not altering the substance of the thing takes place only in the case of a perfect usufruct. Article 534 declares money to be an imperfect usufruct, and by article 536 the ownership of such a usufruct is in the "usufructuary," who is entitled under article 556 to the possession and use of the usufruct, and to proceed by action against all persons who obtain possession and enjoyment thereof. Held, that the position of a "usufructuary" of money was unlike that of an executor or administrator, but like that of a legal owner.—Benedict v. Clarke, 123 N.Y.S. 964, 139 A.D. 242.

Ohio App. 9 Dist. 1943. The right to flowing water is incident to title to land and there is no right of property in such water in sense that it is subject of exclusive appropriation and dominion, but such property interest is "usufructuary".—Akron Canal & Hydraulic Co. v. Fontaine, 50 N.E.2d 897, 72 Ohio App. 93, 27 O.O. 13.—Waters 51.

Tex.App.-Dallas 1987. A "usufruct" is the right of using and enjoying and receiving the profits of property that belongs to another, and a "usufructuary" is a person who has the usufruct or right of enjoying anything in which he has no property interest.—Marshall v. Marshall, 735 S.W.2d 587, ref. n.r.e.—Estates 1.

USUFRUCTUARY RIGHT

U.S.Dist.Col. 1954. The right to use water of a stream for the generation of power, as distinguished from a claim to legal ownership of the running water itself, is a "usufructuary right" recognized, under the law of New York, as a form of real estate known as a corporeal hereditament. Federal Power Act, §§ 1 et seq., 10(d), 16 U.S.C.A. §§ 791a et seq., 803(d).—Federal Power Commission v. Niagara Mohawk Power Corp., 74 S.Ct. 487, 347 U.S. 239, 98 L.Ed. 666.—Nav Wat 40.

Cal. 1938. A riparian does not own the water of a stream but owns a "usufructuary right," which is the right of reasonable use of the water on his riparian land when he needs it.—Rancho Santa Margarita v. Vail, 81 P.2d 533, 11 Cal.2d 501.—Waters 42.

Cal.App. 2 Dist. 1943. A "usufructuary right" that is, the right of suing and enjoying the profits of a thing belonging to another, without impairing the substance, is a "property right" subject to taxation. Const.1849, art. 11, § 13; Const. art. 13, § 1.—Douglas Aircraft Co. v. Byram, 134 P.2d 15, 57 Cal.App.2d 311.—Tax 2170.

USUFRUCT, USE OR HABITATION

La.App. 4 Cir. 1981. Contract, which related to sale of house, which provided that vendor was to have right to use ground floor for purposes of exhibiting historical artifacts and holding meetings, which granted vendor no right to any profits or "advantage," which did not indicate that vendor's rights were to be transferrable, which imposed no responsibility on vendor in regard to taxes and repairs and which did not state that vendor's rights would continue in event of a subsequent sale, did not grant vendor a "usufruct, use or habitation" within meaning of statutes placing 30-year limitation on usufructs, uses and habitations in favor of corporations. LSA-C.C. arts. 533, 544, 548, 555, 571, 605, 612, 613, 626-628, 633, 640, 642.—U. S. Daughters of 1812-Chalmette Chapter v. Louisiana Dept. of Culture, Recreation and Tourism, 395

So.2d 455, writ granted 399 So.2d 607, reversed 404 So.2d 941.—Perp 6(1).

USURER

N.Y.A.D. 1 Dept. 1926. "Usurer" is a money lender who exacts excessive or inordinate interest from the needy or extravagant.—Scudder v. Hoyt, 216 N.Y.S. 305, 218 A.D. 11, affirmed 157 N.E. 842, 245 N.Y. 522.

USURIOUS

C.A.2 (N.Y.) 2002. Under New York's usury statutes, a loan is "usurious" if the lender intends to take and receive a rate of interest in excess of that allowed by law, even though the lender has no specific intent to violate the usury laws.—In re Venture Mortgage Fund, L.P., 282 F.3d 185.—Usury 12.

S.D.Ill. 1973. Computation of loan interest, on the basis of a "year" of 360 days, was subject to the doctrine de minimis non curat lex, and was thus not "usurious"; that is, any interest payments which, because of the 360-day year, might have been slightly above the statutory maximum for any given month would raise the effective annual rate of interest inconsequentially, and a claim of usury thereon would be a "trifle" with which the law will not be concerned. S.H.A.Ill. ch. 74, § 4.—Koos v. First Nat. Bank of Peoria, Ill., 358 F.Supp. 890, affirmed 496 F.2d 1162.—Usury 50.

Bkrtcy.M.D.Fla. 1990. For transaction to be "usurious" under Florida law, there must be expressed or implied loan, there must be understanding between parties that loan is to be repaid, the rate of interest agreed upon must exceed rate allowable by law, and there must be corrupt intent to extract more than legal rate of interest. West's F.S.A. §§ 687.02, 687.071(2).—In re Tammey Jewels, Inc., 116 B.R. 290.—Usury 11.

Bkrtcy.D.Mont. 2000. Contract or obligation for the payment of a sum of money larger than that actually lent to or due from debtor is "usurious" if the difference between the face amount of the obligation and the sum actually received or owed by debtor, when added to the interest, if any, stipulated in the contract, exceeds the return permitted by law upon the sum actually so received or due.—In re Wright, 256 B.R. 626.—Usury 42.

Ala. 1942. Where consideration was $6,500 for $10,009.85 mortgage and was represented by 130 monthly notes, the first for $98.33, and each of the others for 33 cents less than the amount of the last prior maturing note, interest charged was "usurious".—Goodgame v. Dawson, 7 So.2d 77, 242 Ala. 499.—Usury 34.

Ala. 1942. Where debt free from usury was combined with a new loan, and their aggregate was taken as the consideration for a new mortgage, and treated in it as a new debt, and on that amount illegal interest was agreed on, the transaction was "usurious" in its entirety.—Goodgame v. Dawson, 7 So.2d 77, 242 Ala. 499.—Usury 75.

Ala. 1926. Purchase of note at discount beyond legal rate of interest does not constitute transaction "usurious."—Commercial Credit Co. v. Tarwater, 110 So. 39, 215 Ala. 123, 48 A.L.R. 1437.—Usury 26.

Ala. 1924. Contract is not "usurious" where lender receives something of uncertain value for his loan, even though its probable value is greater than legal interest, unless so palpably in excess of legal rate as to show intent to violate usury laws.—Jones v. Moore, 102 So. 200, 212 Ala. 248.—Usury 20.

Ala.App. 1942. A bank's acceptance of note for 10 per cent. discount upon holder's indorsement and guarantee of payment was not rendered "usurious" under statute forbidding discounting by banker of note at higher rate of interest than 8 per cent. per annum, since "discount" as used in statute does not affect sale of commercial paper at its market value but presupposes a loan or advance and transaction was not one of a "loan" or "advance" of money but a "sale" of negotiable security. Code 1940, Tit. 9, § 66.—Valley Mortg. Co. v. Patterson, 8 So.2d 213, 30 Ala.App. 492.—Banks 181.

Ala.App. 1942. Where bank accepted note for 10 per cent. discount upon holder's indorsement and guarantee of payment, and upon maturity bank forbore collection and allowed renewal by execution of new note which bore interest at rate of 10 per cent. per annum, and other renewal notes were executed at same rate of interest, subsequent transactions after sale of original note at discount were "usurious". Code 1940, Tit. 9, § 65.—Valley Mortg. Co. v. Patterson, 8 So.2d 213, 30 Ala.App. 492.—Banks 181.

Ala.App. 1942. A bank's acceptance of note from holder for 10 per cent. discount upon holder's indorsement and guarantee of payment was not "usurious" but transaction constituted a valid "sale" of a chattel with warranty of its soundness and bank as purchaser could enforce full obligation against indorser. Code 1940, Tit. 9, § 65.—Valley Mortg. Co. v. Patterson, 8 So.2d 213, 30 Ala.App. 492.—Usury 26.

Ala.App. 1942. The purchase of note at discount beyond legal rate of interest does not make transaction "usurious". Code 1940, Tit. 9, § 66.—Valley Mortg. Co. v. Patterson, 8 So.2d 213, 30 Ala.App. 492.—Usury 26.

Ala.App. 1942. Where original contract is not usurious a subsequent agreement to pay usurious interest in consideration of forebearance for an indefinite time does not impart to original contract the taint of usury, but where original contract has been canceled by execution of new contract bearing usurious rate of interest, new contract is "usurious". Code 1940, Tit. 9, § 65.—Valley Mortg. Co. v. Patterson, 8 So.2d 213, 30 Ala.App. 492.—Usury 77.

Ariz. 1942. Where a loan is made pursuant to the terms of a contract to make a loan, the transaction is not "usurious" unless it is alleged and proved that its effect was necessarily such that it could be anticipated that the result was bound to be

usurious.—Daily Mines Co. v. Catalina Consol. Copper Co., 124 P.2d 320, 59 Ariz. 149.—Usury 111(1).

Ariz. 1941. A note, bearing interest at the maximum rate allowed under usury law and providing that such interest was payable quarterly, and if not paid when due should be compounded quarterly, was not "usurious" in the absence of showing other than the provision for quarterly interest dates, that interest was made payable more frequently than annually for express purpose of defeating usury law. A.R.S. § 44–1202.—Fagerberg v. Denny, 112 P.2d 578, 57 Ariz. 179.—Usury 49.

Ariz. 1941. Where note, bearing interest at 10 per cent. per annum payable quarterly, was executed October 28, 1929, but for purpose of convenience in bookkeeping interest dates in future were made to begin on January 1 following, and interest from October 28 to January 1 was deducted from principal of loan because borrower stated such interest would have to come out of the loan anyway as there would be no receipts from his business for payment of such interest on January 1, such collection in advance of interest at maximum rate permitted under usury law did not render transaction "usurious" in view of conduct of lender, which disclosed care to avoid charging usurious interest rather than intent to violate usury law. A.R.S. §§ 44–1202.—Fagerberg v. Denny, 112 P.2d 578, 57 Ariz. 179.—Usury 45.

Ariz. 1940. A provision in note calling for maximum rate of interest permissible, that unpaid interest should be added to principal and should thereafter bear same rate of interest, did not render note "usurious". A.R.S. § 44–1202.—Greer v. Greer, 108 P.2d 398, 56 Ariz. 394.—Usury 49.

Cal. 1942. The inclusion in note secured by trust deed of an amount allegedly usurious with correct amount due did not render the whole note "usurious".—Campbell v. Realty Title Co., 124 P.2d 810, 20 Cal.2d 195.—Usury 76.

Fla.App. 4 Dist. 1996. Loan of $100,000 by sister of antitrust litigant for purpose of continuing lawsuit, which provided sister an interest in antitrust suit amounting to 20 percent of first $1 million recovered, six percent of next $4 million recovered, and three percent of any recovery in excess of $5 million, was not "usurious"; sister was unsophisticated lender who accepted borrower's terms and who did not know at loan's inception total amount she would receive in consideration for making loan and thus did not demonstrate necessary corrupt purpose to get more than legal interest.—Kraft v. Mason, 668 So.2d 679, reconsideration denied, review dismissed 679 So.2d 773.—Usury 36.1.

Fla.App. 4 Dist. 1996. Sister's loan of $100,000 to enable antitrust litigant to continue litigation, in exchange for interest in antitrust suit amounting to 20 percent of first $1 million recovered, six percent of next $4 million recovered and three percent of any recovery in excess of $5 million, was not "usurious" inasmuch as payment depended upon contingency; when loan was given, talk of recovery was pure speculation and, thus, money to be paid sister could be characterized as bonus to be received for participating in uncertain transaction.—Kraft v. Mason, 668 So.2d 679, reconsideration denied, review dismissed 679 So.2d 773.—Usury 36.1.

Ga. 1939. Where borrowers were required by lender to include in principal of notes given for loan the amount of certain worthless tax fi. fas. against a corporation of which one of the borrowers was president and another owner of 90% of stock the borrowers not being legally or morally obligated to pay the fi. fas., the notes were "usurious." Code 1933, § 57–102.—Simpson v. Charters, 5 S.E.2d 27, 188 Ga. 842.—Usury 16.

Ga.App. 1994. Alleged wraparound mortgage was "usurious," where mortgagor incurred debt of $24,815.84, including $1,737.50 monthly payments plus $23,078.34 balloon payment, in six months, based on fiction that wraparound mortgagee used that amount to pay off first mortgage when in fact mortgagee did not and had no obligation to do so, and mortgagor had use in those six months of only $6,255.21 which resulted in interest in six months on amount actually lent of more than 49.45% per month. O.C.G.A. § 7–4–18.—Williams v. Powell, 447 S.E.2d 45, 214 Ga.App. 216, certiorari denied.—Usury 42.

Ga.App. 1940. A loan of $250 made by bank acting as building and loan association which was secured by personalty under which loan borrower received only $194.25, because of deductions of $32.50 as interest on basis of 8 per cent. per annum for 20 months, $5 as investigation fee, $11.50 for expenses in making loan, $5 for insurance on life of borrower, and 75 cents for recording fee, which loan was payable in 20 monthly installments, was "usurious", and hence amounts deducted were improperly charged and should have been credited on principal. Code 1933, §§ 15–101, 57–117.—Peoples Bank v. Mayo, 8 S.E.2d 405, 61 Ga.App. 877.—B & L Assoc 33(5), 33(19).

Idaho 1938. Where the borrower may by performance avoid liability for payment of an additional sum, the extra payment is not regarded as interest for the use of the money but as a means to enforce punctual payment, and as a penalty for default, and a contract providing for a higher or even excessive rate after maturity or default is not regarded as "usurious," Code 1932, § 26–1905.—Eagle Rock Corporation v. Idamont Hotel Co., 85 P.2d 242, 59 Idaho 413.—Usury 48, 61.

Ky. 1941. Where original loan secured by chattel mortgage was in complete accord with the small loan law, but thereafter lender compelled borrower to pay fee of attorney in whose hands it had placed note for collection in return for agreeing to drop criminal charges against borrower based on his sale of the automobile subject to mortgage, transaction was "usurious," and lender could collect neither interest nor principal from borrower, and borrower could recover amount paid on loan after he had been forced to pay usurious attorney's fee, with interest from the dates the various amounts were paid, but could not recover amounts paid prior thereto. Ky.St. §§ 883i–1 to 883i–32, 883i–14,

he agreement between the independent contor and the statutory employer to be repeated a relatively short span of time; (4) the perıance of which would require the statutory ıloyer to hire permanent employees absent the ement. V.A.M.S. § 287.040(1).—McGrath v. A I Ltd. Partnership, 244 S.W.3d 220.—Work ıp 278.

lo.App. E.D. 2007. "Usual business," as used Workers' Compensation Act provision defining ıtory employment, is defined as those activi- (1) that are routinely done; (2) on a regular frequent schedule; (3) contemplated in the ement between the independent contractor the statutory employer to be repeated over a tively short span of time; and (4) the perform- of which would require the statutory employ- hire permanent employees absent agreement ı subcontractor. V.A.M.S. § 287.040(1).—ıer v. Bauer Corp., 239 S.W.3d 693.—Work ıp 187.

lo.App. E.D. 2007. Worker for subcontractor performing work that was part of general tractor's "usual business" at the time he was red, for the purposes of determining whether eral contractor was the worker's statutory em- /er under the Workers' Compensation Act; the ker was injured by falling from a ladder while forming work on heating and cooling system, eral contractor performed interior commercial odeling that routinely included such work, eral contractor's was on a contract that called such work and, in order to perform the work, ıld have had to hire its own employees or tract with a subcontractor, it subcontracted ı worker's employer, and worker was perform- the work covered by the subcontract at the e of his injury. V.A.M.S. § 287.040(1).—Fish- '. Bauer Corp., 239 S.W.3d 693.—Work Comp

lo.App. W.D. 2006. As one element within vision of workers' compensation law defining ain third parties as statutory employers ex- ot from common law liability to injured em- yee, the term "usual business" is defined as se activities that are routinely done, on a ular and frequent schedule, contemplated in agreement between the independent contrac- and the statutory employer to be repeated r a relatively short span of time, and the formance of which would require the statutory ployer to hire permanent employees absent the eement. V.A.M.S. § 287.040(1).—Looper v. roll, 202 S.W.3d 59, on remand 2007 WL 6127.—Work Comp 2161.

lo.App. W.D. 2006. In making a "usual busis" assessment for purposes of defining statutoemployment under the workers' compensation , each case is determined on its own particular s and there is no "litmus paper" test for ermining what particular work is within the pe of the usual operation of the business. V.A.M.S. § 287.040(1).—Looper v. Carroll, 202 S.W.3d 59, on remand 2007 WL 3236127.—Work Comp 187.

USUAL PLACE OF ABODE

Conn. 2008. Mortgagor's home was her "usual place of abode" at time she was incarcerated, and, thus, service of process of foreclosure action commenced by mortgagee against mortgagor at mortgagor's home address was proper, pursuant to statute requiring process in any civil action to be served with defendant or at his usual place of abode; mortgagor's home, which had been her home prior to her incarceration, remained her home during period that she was incarcerated because she maintained residence as a home, her family lived there, and her absence from it was temporary. C.G.S.A. § 52–57(a).—Argent Mortg. Co., LLC v. Huertas, 953 A.2d 868, 288 Conn. 568.—Mtg 440.

Conn. 2008. One may have two or more places of residence within a state, or in two or more states, and each may be a "usual place of abode"; service of process will be valid, pursuant to statute requiring process in any civil action to be served with defendant or at his usual place of abode if made in either of the usual places of abode. C.G.S.A. § 52–57(a).—Argent Mortg. Co., LLC v. Huertas, 953 A.2d 868, 288 Conn. 568.—Proc 78.

Conn.App. 2008. For service of process pursuant to statute requiring that process be served by leaving it with the defendant or at his usual place of abode, the "usual place of abode" presumptively is the defendant's home at the time when service is made. C.G.S.A. § 52–57(a).—Jimenez v. DeRosa, 951 A.2d 632, 109 Conn.App. 332.—Proc 78, 145.

Conn.App. 2008. Defendant's failure to update his address on government records did not render his prior address his "usual place of abode," for purposes of statute governing service of process. C.G.S.A. § 52–57(a).—Jimenez v. DeRosa, 951 A.2d 632, 109 Conn.App. 332.—Proc 78.

Fla.App. 1 Dist. 2011. The requirement that substituted service of process be made at the defendant's "usual place of abode" means the place where the defendant is actually living at the time of service. West's F.S.A. § 48.031(1)(a).—Green v. Jorgensen, 56 So.3d 794, rehearing denied.—Proc 78.

Fla.App. 2 Dist. 2006. For purposes of substituted service of process, a defendant's "usual place of abode" means the place where the defendant is actually living at the time of service. West's F.S.A. § 48.031(1)(a).—Cordova v. Jolcover, 942 So.2d 1045.—Proc 78.

Fla.App. 3 Dist. 2007. For purposes of statute allowing service of process by leaving copy of pleading at defendant's usual place of abode, home of woman, who was mother of one defendant and mother-in-law of other defendant, was not defendants' "usual place of abode"; neither defendant had lived at that address for five years. West's F.S.A. § 48.031(1)(a).—Portfolio Recovery Associates, LLC v. Gonzalez, 951 So.2d 1037.—Proc 78.

Fla.App. 4 Dist. 2010. The term "usual place of abode" in statute governing substituted service of process means the place where the defendant is actually living at the time of service. West's F.S.A. § 48.031(1)(a).—Johnston v. Hudlett, 32 So.3d 700.—Proc 78.

N.Y.A.D. 2 Dept. 2009. Marital residence in New York where process was served on mortgagor was mortgagor's "usual place of abode" within meaning of statute governing service of process, even though there was some evidence mortgagor lived in Florida for business purposes during the three and a half years prior to the service, and mortgagor's wife claimed that he had abandoned her; there was no evidence residence in Florida had any permanence and stability, mortgagor never changed his address with the post office or Department of Motor Vehicles, he never obtained a new telephone number, and he visited wife every year in New York and had returned to marital residence both before and after the date of service. McKinney's CPLR 308(4).—Argent Mortg. Co., LLC v. Vlahos, 887 N.Y.S.2d 225, 66 A.D.3d 721.—Mtg 440.

USUAL RULES OF PROCEDURE AND EVIDENCE

N.C.App. 2007. The "usual rules of procedure and evidence" to which automobile policy subjected arbitration were rules and procedures set forth in the Uniform Arbitration Act, not the usual rules of civil procedure and evidence. West's N.C.G.S.A. § 1–567.8.—Capps v. Virrey, 645 S.E.2d 825, 184 N.C.App. 267.—Insurance 3275, 3301, 3302.

USUFRUCT

Ariz.App. Div. 1 2008. "Usufruct" is the right to use and enjoy the profits of property that belongs to another.—South West Sand & Gravel, Inc. v. Central Arizona Water Conservation Dist., 212 P.3d 1, 221 Ariz. 309, as amended, and review denied, certiorari denied 130 S.Ct. 1937, 176 L.Ed.2d 367.—Estates 1.

Ga.App. 2007. A "usufruct" is sometimes referred to as a license to use real property, and the conveyance of a usufruct passes no property interest.—Read v. Georgia Power Co., 641 S.E.2d 680, 283 Ga.App. 451, certiorari denied.—Estates 1.

Pa.Super. 2007. Although commercial master lease agreement stated that tenant had only a usufruct that was not subject to levy and sale, the agreement constituted a "lease" rather than a "usufruct," and thus, landlord had no duty to mitigate after tenant defaulted on lease; tenants did not bargain for a right to the stream of products or revenues produced by the master lease space, but rather bargained for the right to use and occupy the master lease space.—Trizechahn Gateway LLC v. Titus, 930 A.2d 524, reargument denied, appeal granted 958 A.2d 496, 598 Pa. 541, appeal denied 959 A.2d 320, 598 Pa. 782, reversed in part 976 A.2d 474, 601 Pa. 637.—Land & Ten 20, 195(2).

USUFRUCTUARY RIGHT

S.D.N.Y. 2006. A "usufructuary right" is a right to use another's property for a time without damaging or diminishing it, although the property might naturally deteriorate over time.—In re Methyl Tertiary Butyl Ether ('MTBE') Products Liability Litigation, 457 F.Supp.2d 298.—Estates 1.

USURY

D.Minn. 2010. Under Minnesota law, "usury" is the taking or receiving of more interest or profit on a loan or forbearance than the law allows. M.S.A. § 334.01.—Maus v. Toder, 681 F.Supp.2d 1007, affirmed 398 Fed.Appx. 174.—Usury 1.

Bkrtcy.S.D.Fla. 2010. Under Florida law, when a lender risks the principal with the chance of either getting a greater return than the lawful interest rate or possibly getting nothing if the contingent event fails to occur, there is no "usury."—In re Transcapital Financial Corp., 433 B.R. 900.—Usury 37.

Cal.App. 1 Dist. 2010. "Usury" is defined as the charging of interest for a loan or forbearance on money in excess of the legal maximum.—Junkin v. Golden West Foreclosure Service, Inc., 103 Cal.Rptr.3d 582, 180 Cal.App.4th 1150.—Usury 1.

UTILITY

S.D.Ind. 2009. There is a lack of patent "utility" when there is a complete absence of data supporting the statements which set forth the desired results of the claimed invention. 35 U.S.C.A. § 101.—Eli Lilly and Co. v. Teva Pharmaceuticals USA, Inc., 657 F.Supp.2d 967, dismissed 366 Fed.Appx. 154, affirmed 619 F.3d 1329.—Pat 49.

N.H. 2009. Cable television was a "utility" under statute that prohibited landlord from willfully causing, directly or indirectly, interruption or termination of any utility service being supplied to tenant including, but, not limited to, water, heat, light, electricity, gas, telephone, sewage, elevator or refrigeration, and, thus, unlawful termination of cable would be means of accomplishing self-help eviction; statute protected any utility service that was comparable to services specified, all of which pertained to habitability of dwelling or persons' well being, and cable pertained to habita-

ope

This title discusses the nature and incidents of interests in real or personal property, and of estates in fee or absolute ownership, as well as estates tail and life estates.

Merger of estates, rights, powers, and liabilities of tenants in tail, life tenants, remaindermen, and reversioners, abolition of estates tail, and barring entails, and remedies for protection of particular interests are also discussed.

Also included in this title are estates limited to take effect after the determination of preceding estates, ulterior estates remaining in grantors of particular estates, and executory interests.

In addition, condominiums and ground rents are discussed.

reated Elsewhere

As to the creation and transfer of estates, generally, see such specific titles as C.J.S., Deeds §§ 1 et seq.; C.J.S., Descent and Distribution §§ 1 et seq.; C.J.S., Wills §§ 1 et seq.

Decedents' estates, see C.J.S., Executors and Administrators §§ 1 et seq.

Joint or common estates, see C.J.S., Joint Tenancy §§ 1 et seq.; C.J.S., Tenancy in Common §§ 1 et seq.

Particular estates less than fee are discussed in various specific titles, including C.J.S., Dower and Curtesy §§ 1 et seq.; C.J.S., Landlord and Tenant §§ 1 et seq.; C.J.S., Trusts §§ 1 et seq.

I. IN GENERAL

Research References

A.L.R. Library
A.L.R. Index, Estates
West's A.L.R. Digest, Estates in Property ⇦1, 2, 8

A. ESTATES, IN GENERAL

Research References

A.L.R. Library
A.L.R. Index, Estates
West's A.L.R. Digest, Estates in Property ⇦1, 2, 8

§ 1 Generally

Research References

West's Key Number Digest, Estates in Property ⇦1

In its primary and technical sense, "estate" refers only to an interest in land; a usufruct is the right of using and enjoying and receiving the profits of property that belongs to another.

In its primary and technical sense the term "estate" refers only to an interest in land,[1] but it has acquired a much wider import and application,[2] and in its most extreme sense signifying everything of which riches or fortune may consist.[3]

A man's estate is that which he can dispose of at his pleasure.[4]

It is presumed that an estate is intended by its creator to be valid.[5]

Choses in action.

A "chose in action," which includes the right to bring an action to recover a debt, money, or thing, is a future interest, and, like all property interests, it is transferable.[6]

Usufruct.

A usufruct is the right of using and enjoying and receiving the profits of property that belongs to another,[7] so long as that property is not damaged or altered in

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[Section 1]

[1]Wash.—Boyd v. Sibold, 7 Wash. 2d 279, 109 P.2d 535 (1941).

Refers only to interest in realty

Tenn.—Haskins v. McCampbell, 189 Tenn. 482, 226 S.W.2d 88 (1949).

[2]Tenn.—Haskins v. McCampbell, 189 Tenn. 482, 226 S.W.2d 88 (1949).

Wash.—Boyd v. Sibold, 7 Wash. 2d 279, 109 P.2d 535 (1941).

[3]Wash.—Boyd v. Sibold, 7 Wash. 2d 279, 109 P.2d 535 (1941).

[4]S.C.—Cannon v. Ballenger, 222 S.C. 39, 71 S.E.2d 513 (1952).

Wash.—Boyd v. Sibold, 7 Wash. 2d 279, 109 P.2d 535 (1941).

[5]N.Y.—Reynolds v. Gagen, 292 A.D.2d 310, 739 N.Y.S.2d 704 (1st Dep't 2002).

[6]U.S.—In re Luna, 406 F.3d 1192 (10th Cir. 2005).

Future interests, generally, see § 20.

[7]U.S.—Sokaogon Chippewa Community v. Exxon Corp., 805 F. Supp. 680 (E.D. Wis. 1992), judgment aff'd, 2 F.3d 219 (7th Cir. 1993).

Tex.—Marshall v. Marshall, 735 S.W.2d 587 (Tex. App. Dallas 1987), writ refused n.r.e., (Dec. 16, 1987).

Entitlement to fruits of property

La.—Succession of Crain, 450 So. 2d 1374 (La. Ct. App. 1st Cir. 1984).

Mineral rights

La.—Succession of Blake, 428 So. 2d 1118 (La. Ct. App. 1st Cir. 1983), writ denied, 433 So. 2d 152 (La. 1983).

way.[8] A "usufruct" is also sometimes ɔrred to as a license to use real ıerty.[9] The exercise of usufructuary ɣities is not contingent upon actual ership of land, since the fee owner ins title and can reap the fruits of his as well.[10] Usufruct is a lesser inter- in real estate than an estate for s.[11] However, if a lease has some pro- ɔns characteristic of the conveyance of estate for years along with others cative of the grant of a mere usufruct, ɔrovisions of the lease must be scruti- d objectively to determine whether legal effect of the agreement is to ıt an estate in the property or merely ght of use.[12] It has been held that when rm of a lease is for a period greater ı five years, a rebuttable presumption es that the parties intended to create estate for years rather than a fruct.[13] The three types of usufructs natural profits produced by the subject ıe usufruct, industrial profits produced cultivation;[14] and civil profits, which rents, freights, and revenues from an- ties and from other effects or rights.[15]

he usufructuary, not the naked owner, ɔbligated to maintain the property subject to the usufruct.[16] The naked owner of a usufructuary property is generally only responsible for extraordinary repairs, but the usufructuary does not have the right to compel the naked owner to make ordinary repairs and the usufructuary's only remedy is reimbursement by the naked owner at the end of the usufruct.[17]

The usufructuary does not have the right to dispose of nonconsumable things unless the right has been expressly granted to him.[18] However, he may dispose of corporeal movables that are gradually and substantially impaired by use, wear or decay, provided that he acts as a prudent administrator.[19] Since when a usufruct is created, no estate passes out of the landlord,[20] the conveyance of a usufruct passes no property interest[21] and it is not subject to levy and sale.[22]

§ 2 Statutory provisions, generally

Research References

West's Key Number Digest, Estates in Property ⇨2

Matters relating to estates are regulated and controlled by some statutes, and where no statute controls, interests in real property must be determined by reference to the common law.

Matters relating to estates are regulated and controlled by some statutes, and where such statutes are in derogation of the common law they must be strictly construed.[1] The validity of such statutes has been upheld.[2]

In at least one state the manner of creating estates, and the methods by which estates may be conveyed, are purely statutory, and may be changed by the legislature in its discretion.[3] It has been said that if changes are effectuated, they may operate instantly on all estates which subsequently may descend, be devised, or conveyed.[4]

Only such estates as the law permits may be created in land,[5] and the owner cannot establish any other estate by will or contract.[6] However, while there are certain estates which are regarded with disfavor by the law, if such an estate is lawful, and has been created by unambiguous language, it must be upheld by the courts.[7]

Absence of statute.

Where no statute controls, interests in real property must be determined by reference to the common law.[8]

§ 3 Rule in Shelley's case

Research References

West's Key Number Digest, Estates in Property ⇨8

Modern status of the rule in Shelley's Case, 99 A.L.R.2d 1161

Under the rule in Shelley's case, a limitation of an estate to an ancestor for life, with remainder to his heirs or the heirs of his body, gives the whole estate in fee to the ancestor.

The rule in Shelley's case, which is that where an estate is limited to an ancestor for life, with remainder either mediately or immediately to his heirs or the heirs of his body, the word "heirs" is a word of limitation and not of purchase, and the ancestor takes the whole estate in fee simple or fee tail, according to the terms of the limitation,[1] is, or has been, firmly established in some states as a rule of law or property,[2] and not a rule of construc-

[8]U.S.—Sokaogon Chippewa Community v. on Corp., 805 F. Supp. 680 (E.D. Wis. 1992), ɣment aff'd, 2 F.3d 219 (7th Cir. 1993).

[9]Ga.—Read v. Georgia Power Co., 283 Ga. . 451, 641 S.E.2d 680 (2007), cert. denied, (May 2007).

[10]U.S.—Sokaogon Chippewa Community v. on Corp., 805 F. Supp. 680 (E.D. Wis. 1992), ɣment aff'd, 2 F.3d 219 (7th Cir. 1993).

[11]Ga.—Richmond County Bd. of Tax Assessors Richmond Bonded Warehouse Corp., 173 Ga. ı. 278, 325 S.E.2d 891 (1985).

[12]Ga.—Diversified Golf, LLC v. Hart County of Tax Assessors, 267 Ga. App. 8, 598 S.E.2d (2004).

[13]Ga.—Richmond County Bd. of Tax Assessors Richmond Bonded Warehouse Corp., 173 Ga. ı. 278, 325 S.E.2d 891 (1985).

[14]Tex.—Marshall v. Marshall, 735 S.W.2d 587 x. App. Dallas 1987), writ refused n.r.e., (Dec. 1987).

[15]Tex.—Marshall v. Marshall, 735 S.W.2d 587 (Tex. App. Dallas 1987), writ refused n.r.e., (Dec. 16, 1987).

[16]La.—Walker v. Holt, 888 So. 2d 255 (La. Ct. App. 3d Cir. 2004).

[17]La.—Succession of Crain, 450 So. 2d 1374 (La. Ct. App. 1st Cir. 1984).

[18]La.—Rosenthal v. Rosenthal, 436 So. 2d 670 (La. Ct. App. 4th Cir. 1983).

[19]La.—Rosenthal v. Rosenthal, 436 So. 2d 670 (La. Ct. App. 4th Cir. 1983).

[20]Ga.—Richmond County Bd. of Tax Assessors v. Richmond Bonded Warehouse Corp., 173 Ga. App. 278, 325 S.E.2d 891 (1985).

[21]Ga.—Read v. Georgia Power Co., 283 Ga. App. 451, 641 S.E.2d 680 (2007), cert. denied, (May 14, 2007).

[22]Ga.—Richmond County Bd. of Tax Assessors v. Richmond Bonded Warehouse Corp., 173 Ga. App. 278, 325 S.E.2d 891 (1985).

[Section 2]

[1]W.Va.—Stephenson v. Cavendish, 134 W. Va. 361, 59 S.E.2d 459, 19 A.L.R.2d 720 (1950).

[2]Cal.—Walton v. City of Red Bluff, 2 Cal. App. 4th 117, 3 Cal. Rptr. 2d 275 (3d Dist. 1991).

N.C.—Crumpton v. Mitchell, 303 N.C. 657, 281 S.E.2d 1 (1981).

[3]Ill.—Classen v. Heath, 389 Ill. 183, 58 N.E.2d 889 (1945).

[4]Ill.—Classen v. Heath, 389 Ill. 183, 58 N.E.2d 889 (1945).

[5]U.S.—Zanes v. Lehigh Valley Transit Co, 41 F.2d 552 (E.D. Pa. 1930), aff'd, 46 F.2d 848 (C.C.A. 3d Cir. 1931).

Intention

The intentions of parties cannot change the character of an estate which is fixed by law, and which they by their acts create.

Tex.—Bruce v. Permian Royalty Co. No. 2, 186 S.W.2d 686 (Tex. Civ. App. Galveston 1945), writ refused w.o.m..

[6]U.S.—Union Producing Co. v. Parkes, 40 F. Supp. 163 (W.D. La. 1940).

[7]Neb.—Massey v. Guaranty Trust Co., 142 Neb. 237, 5 N.W.2d 279 (1942).

[8]Colo.—Brush Grocery Kart, Inc. v. Sure Fine Market, Inc., 47 P.3d 680 (Colo. 2002).

[Section 3]

[1]Ark.—Smith v. Giles, 254 Ark. 384, 494 S.W.2d 108 (1973).

Ill.—City Bank and Trust Co. in Dixon v. Morrissey, 118 Ill. App. 3d 640, 73 Ill. Dec. 946, 454 N.E.2d 1195 (2d Dist. 1983).

N.C.—White v. Lackey, 40 N.C. App. 353, 253 S.E.2d 13 (1979).

Tenn.—Butler v. Parker, 200 Tenn. 603, 293 S.W.2d 174 (1956).

Tex.—Echart v. E. G. Senter & Co., 474 S.W.2d 14 (Tex. Civ. App. Fort Worth 1971), writ refused n.r.e., (Feb. 23, 1972).

Fee simple, generally, see §§ 12, 13.

Fee tail, generally, see §§ 27 to 34.

[2]Ark.—Smith v. Giles, 254 Ark. 384, 494 S.W.2d 108 (1973).

Ill.—City Bank and Trust Co. in Dixon v.

in any other subject of property;[1] the
gree, quality, nature, and extent of
's interest in, or ownership of, prop-
y, real or personal;[2] the quantity of
erest which a person has, from absolute
nership down to naked possession.[3]
he word "estate" may mean property,[4]
l may signify any species of property,
l or personal.[5]
he fixed absolute sense of the word
tate" in the abstract must give way to
connection in which it is used.[6]
An estate in land is the degree, quan-
, nature, or extent of interest which a
son has in real property.[7] However, it
s been held that, at common law, it did
include anything short of a freehold
ate.[8]
An estate in land is distinguished from
ien on the land in that an estate is the
ht to possession and enjoyment of the
id, whereas a lien on the land is the
ht to have it sold or otherwise applied
satisfaction of the debt.[9]

ervening estate.

An intervening estate is an estate coming between a lesser estate and a greater estate.[10]

§ 5 Interest

Research References

West's Key Number Digest, Estates in Property ⇐1

> **"Interest," as applied to property, seems to be to designate some right attached to property which either cannot, or need not, be defined with precision; its meaning may be varied according to the context, intention, and circumstances in which it is used.**

As applied to property, the chief use of the term "interest" seems to be to designate some right attached to property which either cannot, or need not, be defined with precision.[1]

The word "interest," when applied to property, has a variable meaning to be determined in any case by the context, intention, and circumstances.[2] It may be used as synonymous with "estate,"[3] or "title,"[4] or "property."[5] However, it has been said that the word "interest" is broader and more comprehensive than the word "title,"[6] and the definition of "interest" in a narrowed sense by lexicographers as any right in the nature of property less than title indicates that the terms "interest" and "title" are not considered synonymous.[7] Thus, "interest" may be distinguishable from "title,"[8] and it may also be distinguishable from "estate."[9]

An interest in property may comprehend something less than the entire title.[10] It may be used to denote something less than an estate,[11] or ownership,[12] or title;[13] a merely beneficial property right.[14] When used in contradistinction to "title," it means any right in the nature of property, less than title;[15] it may not mean a greater estate than title.[16]

"Interest" may be used in a broader and more comprehensive sense than "title."[17]

In fact, the term "interest" seems to be one of extreme elasticity, which may be used to include nearly everything legally connecting claimant with the subject matter,[18] and all varieties of titles and rights.[19] In its plain and natural meaning it may include and comprehend an attachment,[20] easement,[21] estate in fee, for life, and for years,[22] a lien,[23] mortgage,[24] and every kind of claim to land which can form the

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ction 4]

[1]Ga.—Bush v. Reconstruction Finance poration, 79 Ga. App. 25, 52 S.E.2d 515 (1949).
Mo.—Donelson's Estate v. Gorman, 239 Mo. p. 300, 192 S.W.2d 29 (1946).

[2]Cal.—California Trust Co. v. Anderson, 91 l. App. 2d 832, 205 P.2d 1127 (2d Dist. 1949).

[3]**At common law**
Ga.—Warehouses, Inc. v. Wetherbee, 203 Ga. 3, 46 S.E.2d 894 (1948).

[4]Cal.—California Trust Co. v. Anderson, 91 l. App. 2d 832, 205 P.2d 1127 (2d Dist. 1949).
Del.—In re Emory, 31 Del. Ch. 266, 70 A.2d 1 (1950).

[5]Or.—Reed v. Reed, 215 Or. 91, 332 P.2d 1049 958).

[6]Colo.—People ex rel. Dunbar v. People ex rel. y and County of Denver, 141 Colo. 459, 349 P.2d 2 (1960).
Mich.—In re Reynolds' Estate, 274 Mich. 4, 264 N.W. 399 (1936).

[7]Ky.—Howard v. Mitchell, 268 Ky. 429, 105 N.2d 128 (1936).
N.C.—Shoemaker v. Coats, 218 N.C. 251, 10 S.E.2d 810 (1940).
Tex.—Pan Am. Petroleum Corp. v. Cain, 163 Tex. 323, 355 S.W.2d 506 (1962) (overruled on other grounds by, Day & Co., Inc. v. Texland Petroleum, Inc., 786 S.W.2d 667 (Tex. 1990)).

[8]Ga.—Killingsworth v. French & Whitten Realtors, 148 Ga. App. 29, 251 S.E.2d 40 (1978).

Leasehold
Notwithstanding the fact that a lease is a present possessory interest in land, as a nonfreehold estate it is a different species of interest from a freehold estate in fee simple; a leasehold is not an ownership interest, unlike the possession of land in fee simple.
Cal.—Auerbach v. Assessment Appeals Bd. No. 1 for County of Los Angeles, 39 Cal. 4th 153, 45 Cal. Rptr. 3d 774, 137 P.3d 951 (2006).

[9]Pa.—Day v. Ostergard, 146 Pa. Super. 27, 21 A.2d 586 (1941).

[10]Ill.—Metropolitan Life Ins. Co. v. W. T. Grant Co., 321 Ill. App. 487, 53 N.E.2d 255 (1st Dist. 1944).

[Section 5]

[1]Okla.—Parsons v. Parsons, 1943 OK 104, 193 Okla. 160, 141 P.2d 559 (1943).

[2]Kan.—Hillyard v. Banchor, 85 Kan. 516, 118 P. 67 (1911).
Neb.—Baldrige v. Flothow, 123 Neb. 218, 242 N.W. 414 (1932).

[3]Ga.—Providence Washington Ins. Co. v. Pass, for Use of Nalley, 64 Ga. App. 221, 12 S.E.2d 460 (1940).
Neb.—Baldrige v. Flothow, 123 Neb. 218, 242 N.W. 414 (1932).

[4]Kan.—Hillyard v. Banchor, 85 Kan. 516, 118 P. 67 (1911).
Neb.—Baldrige v. Flothow, 123 Neb. 218, 242 N.W. 414 (1932).

[5]Neb.—Baldrige v. Flothow, 123 Neb. 218, 242 N.W. 414 (1932).

[6]Cal.—In re Baldwin's Estate, 21 Cal. 2d 586, 134 P.2d 259 (1943).
Mich.—Ornatowski v. National Liberty Ins. Co. of America, 290 Mich. 241, 287 N.W. 449 (1939).

[7]Cal.—In re Baldwin's Estate, 21 Cal. 2d 586, 134 P.2d 259 (1943).

[8]U.S.—In re Thomas, 121 B.R. 94 (Bankr. N.D. Ala. 1990).

[9]Okla.—White v. Wester, 1934 OK 618, 170 Okla. 250, 39 P.2d 22 (1934).
Definition of estate, see § 4.

[10]U.S.—In re Thomas, 121 B.R. 94 (Bankr. N.D. Ala. 1990).

[11]Kan.—Hillyard v. Banchor, 85 Kan. 516, 118 P. 67 (1911).

[12]Mass.—Copeland v. Eaton, 209 Mass. 139, 95 N.E. 291 (1911).

[13]N.J.—Class v. Strack, 85 N.J. Eq. 319, 96 A. 405 (Ch. 1915).

[14]Fla.—Pasco v. Harley, 73 Fla. 819, 75 So. 30 (1917).

[15]Cal.—In re Baldwin's Estate, 21 Cal. 2d 586, 134 P.2d 259 (1943).

[16]Kan.—Hillyard v. Banchor, 85 Kan. 516, 118 P. 67 (1911).

[17]Ga.—Providence Washington Ins. Co. v. Pass, for Use of Nalley, 64 Ga. App. 221, 12 S.E.2d 460 (1940).
Iowa—Ward v. Meredith, 186 Iowa 1108, 173 N.W. 246 (1919).

[18]N.C.—Methodist Protestant Church of Henderson v. Young, 130 N.C. 8, 40 S.E. 691 (1902).

[19]Mass.—Union Trust Co. v. Reed, 213 Mass. 199, 99 N.E. 1093 (1912).
Mich.—Ornatowski v. National Liberty Ins. Co. of America, 290 Mich. 241, 287 N.W. 449 (1939).

[20]Mass.—Union Trust Co. v. Reed, 213 Mass. 199, 99 N.E. 1093 (1912).
Mich.—Ornatowski v. National Liberty Ins. Co. of America, 290 Mich. 241, 287 N.W. 449 (1939).

[21]Mass.—Union Trust Co. v. Reed, 213 Mass. 199, 99 N.E. 1093 (1912).
Mich.—Ornatowski v. National Liberty Ins. Co. of America, 290 Mich. 241, 287 N.W. 449 (1939).

[22]Mass.—Union Trust Co. v. Reed, 213 Mass. 199, 99 N.E. 1093 (1912).
Mich.—Ornatowski v. National Liberty Ins. Co. of America, 290 Mich. 241, 287 N.W. 449 (1939).

[23]Kan.—Hillyard v. Banchor, 85 Kan. 516, 118 P. 67 (1911).
Mass.—Union Trust Co. v. Reed, 213 Mass.

of a property right.[25]

st in land.

erest in land" is a broad term which efer to any one of a variety of estates ctional shares in realty.[26] It may re- the net equity or fractional property possessed by the owner over and the sum total unpaid on outstand- ncumbrances.[27] It has also been held an interest in real property is defined e metes and bounds that describe its raphic dimensions and the term of s that describes the temporal aspect e owner's interest.[28]

perty interest.

property interest consists of rights, ers, privileges, and immunities with ject to a particular thing or particular ngs.[29]

hoate interest.

n inchoate interest is an interest in l estate which is not a present inter- , but which may ripen into a vested ate, if it is not barred, extinguished, or rested.[30]

9, 99 N.E. 1093 (1912).
Mich.—Ornatowski v. National Liberty Ins. of America, 290 Mich. 241, 287 N.W. 449 (1939).

[24]Mass.—Union Trust Co. v. Reed, 213 Mass. 9, 99 N.E. 1093 (1912).
Mich.—Ornatowski v. National Liberty Ins. o. of America, 290 Mich. 241, 287 N.W. 449 (1939).

[25]Mass.—Union Trust Co. v. Reed, 213 Mass. 99, 99 N.E. 1093 (1912).
Mich.—Ornatowski v. National Liberty Ins. o. of America, 290 Mich. 241, 287 N.W. 449 (1939).
Wis.—Weber v. Sunset Ridge, 269 Wis. 120, 68 N.W.2d 706 (1955).

[26]Minn.—In re Rood's Estate, 229 Minn. 73, 38 N.W.2d 70 (1949).

[27]Minn.—In re Rood's Estate, 229 Minn. 73, 38 N.W.2d 70 (1949).

[28]U.S.—Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 122 S. Ct. 1465, 152 L. Ed. 2d 517, 10 A.L.R. Fed. 2d 681 (2002).

[29]Cal.—Placerville Fruit Growers' Ass'n v. Irving, 135 Cal. App. 2d 731, 287 P.2d 793 (3d Dist. 1955).

[30]Colo.—Galleria Towers, Inc. v. Crump Warren & Sommer, Inc., 831 P.2d 908 (Colo. Ct. App. 1991).
Mo.—In re Marriage of Null, 608 S.W.2d 568 (Mo. Ct. App. S.D. 1980).

§ 6 Tenant; tenancy

Research References

West's Key Number Digest, Estates in Property ⇦1

A tenant, broadly speaking, is one who holds or possesses lands or tenements by any kind of right or title, either in fee, for life, for years, at will, or on sufferance. The term "tenancy" has two significations: the estate of a tenant, or the term or interest of a tenant.

Used as a generic term,[1] in the broadest sense, a "tenant" is one who holds or possesses lands or tenements by any kind of right or title, either in fee, for life, for years, at will, or on sufferance.[2]

Terre-tenant.

In a general sense, a terre-tenant is one who is seized or actually possessed of lands as the owner thereof,[3] but in a more restricted sense it means one, other than the debtor, who becomes seized or possessed of the debtor's lands subject to the lien thereof.[4]

Tenancy.

[Section 6]

[1]Mont.—Citizens' Nat. Bank of Laurel v. Western Loan & Building Co., 64 Mont. 40, 208 P. 893 (1922).

[2]Ark.—Chastain v. Hall, 182 Ark. 920, 33 S.W.2d 45 (1930).
Mont.—Citizens' Nat. Bank of Laurel v. Western Loan & Building Co., 64 Mont. 40, 208 P. 893 (1922).
N.D.—Minneapolis Iron Store Co. v. Branum, 36 N.D. 355, 162 N.W. 543 (1917).

[3]Pa.—Handel & Hayden Building & Loan Ass'n v. Elleford, 258 Pa. 143, 101 A. 951 (1917).

[4]Pa.—Lipshutz v. Plawa, 393 Pa. 268, 141 A.2d 226 (1958).

The term "tenancy" has two significations: the estate of a tenant,[5] or the term or interest of a tenant.[6]

II. CLASSIFICATION

Research References

A.L.R. Library

A.L.R. Index, Estates
West's A.L.R. Digest, Estates in Property ⇦1, 3, 5 to 7, 12; Husband and Wife ⇦14; Joint Tenancy ⇦1; Tenancy in Common ⇦1

A. IN GENERAL

Research References

A.L.R. Library

A.L.R. Index, Estates
West's A.L.R. Digest, Estates in Property ⇦1; Husband and Wife ⇦14; Joint Tenancy ⇦1; Tenancy in Common ⇦1

§ 7 Generally

Research References

West's Key Number Digest, Estates in Property ⇦1

Estates are usually considered with regard to the quantity of interest which the tenant has in the tenement; with regard to the time at which that quantity is to be enjoyed; and with regard to the number and connections of the tenants; estates may be vested or contingent.

Estates are usually considered with regard to the quantity of interest which the tenant has in the tenement; with regard to the time at which that quantity is to be enjoyed; and with regard to the number and connections of the tenants.[1]

Vested or contingent estate.

An estate is vested when there is an immediate right of present enjoyment or a present fixed right of future enjoyment.[2]

The law generally favors vested estates in preference to contingent estates,[3] and in case of doubt, an estate will be held to be vested rather than contingent;[4] no estate will be held contingent unless positive terms are employed in the will indicating a contrary intention.[5] The law

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[5]Cal.—Stone v. City of Los Angeles, 114 Cal. App. 192, 299 P. 838 (4th Dist. 1931).

[6]Or.—Klein v. City of Portland, 106 Or. 686, 213 P. 147 (1923).

[Section 7]

[1]Ohio—Lape v. Lape, 22 Ohio N.P. (n.s.) 392, 31 Ohio Dec. 188, 1920 WL 582 (C.P. 1920).

[2]U.S.—Bloemer v. Northwest Airlines, Inc., 401 F.3d 935 (8th Cir. 2005).
Iowa—Pringle v. Houghton, 249 Iowa 731, 88 N.W.2d 789 (1958).
Ky.—Curtis v. Citizens Bank & Trust Co. of Lexington, 318 S.W.2d 33 (Ky. 1958).
Md.—Reese v. Reese, 190 Md. 311, 58 A.2d 643 (1948).
Mo.—Hereford v. Unknown Heirs, Grantees or Successors of Tholozan, 365 Mo. 1048, 292 S.W.2d 289 (1956).

Meaning dependent upon context

The term "vest," whether found in a statute or in a document, must be construed with reference to, and take its meaning from, the context of the provision in which the term is found.

Ill.—Stuart v. Continental Illinois Nat. Bank and Trust Co. of Chicago, 75 Ill. 2d 22, 25 Ill. Dec. 656, 387 N.E.2d 312 (1979).

[3]Cal.—Estate of Koplin, 70 Cal. App. 3d 686, 139 Cal. Rptr. 129 (2d Dist. 1977).
Ill.—Trabue v. Gillham, 408 Ill. 508, 97 N.E.2d 341 (1951).
Mo.—Cockrell v. First Nat. Bank of Kansas City, 357 Mo. 894, 211 S.W.2d 475 (1948).

[4]U.S.—Eggleston v. Dudley, 257 F.2d 398 (3d Cir. 1958).
Cal.—Caffroy v. Fremlin, 198 Cal. App. 2d 176, 17 Cal. Rptr. 668 (2d Dist. 1961).
N.J.—In re Coe's Estate, 77 N.J. Super. 181, 185 A.2d 696 (Ch. Div. 1962), judgment rev'd on other grounds, 42 N.J. 485, 201 A.2d 571 (1964).
Or.—In re Sessions' Estate, 217 Or. 340, 341 P.2d 512 (1959).

Presumption

There is a presumption in favor of vesting.

Cal.—In re Haney's Estate, 174 Cal. App. 2d 1, 344 P.2d 16 (1st Dist. 1959).
Pa.—Estate of Rozanski, 356 Pa. Super. 234, 514 A.2d 587 (1986).

[5]Vt.—Ransom v. Bebernitz, 172 Vt. 423, 782 A.2d 1155 (2001).

rs the vesting of estates,[6] at the earli- ossible time;[7] but this rule will not be lied to defeat a clearly expressed ntion.[8]

"vested right" is an immediate right resent enjoyment,[9] or a present fixed t of future enjoyment.[10]

property right vests when every event occurred which needs to occur to make implementation of the right a ainty.[11] In other words, rights vest n the right to enjoyment, present or spective, becomes the property of some icular person as a present interest.[12]

ested interests in land may be sold or erited.[13]

owever, the word "vested," even when d as descriptive of recognized legal estates, does not exclude defeasible estates.[14] If there is a present right to a future possession, although that right may be defeated by some future event, contingent or certain, there is nevertheless a vested estate.[15] The distinction between a contingent estate and one that is vested subject to defeasance has been said to be that if the condition on which the estate depends is precedent the estate is contingent, whereas if the condition is subsequent, the estate is vested subject to defeasance.[16]

Vested, executory, or contingent interest.

Whether an interest is vested or contingent is a question of substance, not form, and is not to be arbitrarily determined by hard and fast rules.[17]

A vested interest is one that is limited

[6]Ala.—Pate v. Edwards, 388 So. 2d 544 (Ala.).

Minn.—In re Estate of Fitzgerald, 370 N.W.2d (Minn. Ct. App. 1985).

Neb.—In re Carr's Estate, 173 Neb. 189, 112 .2d 786 (1962).

S.C.—Holcombe-Burdette v. Bank of America, S.C. 648, 640 S.E.2d 480 (Ct. App. 2006), cert. ed, (Sept. 19, 2007).

[7]Conn.—Dei Cas v. Mayfield, 199 Conn. 569, A.2d 435 (1986).

S.C.—Holcombe-Burdette v. Bank of America, S.C. 648, 640 S.E.2d 480 (Ct. App. 2006), cert. ed, (Sept. 19, 2007).

Va.—Mullins v. Simmons, 235 Va. 194, 365 2d 771 (1988).

Wash.—Matter of Booker, 37 Wash. App. 682 P.2d 320 (Div. 3 1984).

W.Va.—Reedy v. Propst, 169 W. Va. 473, 288 2d 526 (1982).

The law desires property to vest as soon ossible.

Ark.—Summers v. Garland, 352 Ark. 29, 98 .3d 23 (2003).

Vt.—Ransom v. Bebernitz, 172 Vt. 423, 782 1 1155 (2001).

Ga.—Dyer v. Dyer, 275 Ga. 339, 566 S.E.2d (2002).

[8]Minn.—Matter of Kischel, 299 N.W.2d 920 an. 1980).

Ohio—Green v. Shough, 80 Ohio L. Abs. 248, N.E.2d 736 (Ct. App. 2d Dist. Fayette County 1958).

Va.—Mullins v. Simmons, 235 Va. 194, 365 S.E.2d 771 (1988).

[9]Fla.—Power v. Power, 864 So. 2d 523 (Fla. Dist. Ct. App. 5th Dist. 2004).

Kan.—In re Woods' Trust Estate, 181 Kan. 271, 311 P.2d 359 (1957).

[10]Fla.—Power v. Power, 864 So. 2d 523 (Fla. Dist. Ct. App. 5th Dist. 2004).

Kan.—Moody v. Bayer Const. Co., Inc., 6 Kan. App. 2d 276, 627 P.2d 1171 (1981).

[11]Ariz.—Naslund v. Industrial Com'n of Ariz., 210 Ariz. 262, 110 P.3d 363 (Ct. App. Div. 1 2005).

[12]U.S.—Bloemer v. Northwest Airlines, Inc., 401 F.3d 935 (8th Cir. 2005).

[13]Va.—Jones v. Hill, 267 Va. 708, 594 S.E.2d 913 (2004).

[14]Miss.—Hays v. Cole, 221 Miss. 459, 73 So. 2d 258 (1954).

Wash.—McKenna v. Seattle-First Nat. Bank, 35 Wash. 2d 662, 214 P.2d 664, 16 A.L.R.2d 679 (1950).

Defeasible estates, generally, see § 14.

[15]Miss.—Hays v. Cole, 221 Miss. 459, 73 So. 2d 258 (1954).

[16]N.Y.—In re Stemmler's Will, 129 N.Y.S.2d 395 (Sur. Ct. 1954).

Estates upon condition, generally, see §§ 21 to 26.

[17]Mo.—McDougal v. McDougal, 279 S.W.2d 731 (Mo. Ct. App. 1955).

to a certain person at a certain time, and as to which no condition other than the termination of a preceding estate postpones its enjoyment.[18] An indefeasibly vested interest is one that has vested in title and that is not subject to divestiture in quantity or quality upon the failure of a possessory condition.[19]

An interest is contingent where the right to a future interest depends upon a condition precedent;[20] an interest in property is "contingent" if an uncertain event must pass in order for it to vest.[21] More specifically, contingent rights are those that only come into existence on an event or condition which may not happen or be performed until such other event may prevent their vesting.[22] It is not the uncertainty of enjoyment in the future, but rather the right of enjoyment which makes an interest contingent rather than vested.[23]

§ 8 Legal or equitable estate or interest

Research References

West's Key Number Digest, Estates in Property ⇦1

Estates or interests in property are classified as legal or equitable and an equitable estate is considered, to all intents and purposes, as a legal estate.

Estates or interests in property are also classified as legal or equitable.[1] An equitable estate is considered, to all intents and purposes, as a legal estate.[2]

Equitable title to property is the present right to legal title.[3] More specifically, "equitable title" is a right or interest in land, which, not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, requires the aid of such court to make it available.[4]

Legal title may be in one person and the equitable ownership in another.[5]

Equitable interests can vest in the same fashion as legal interests.[6]

§ 9 With respect to number and connection of tenants

Research References

West's Key Number Digest, Estates in Property ⇦1; Husband and Wife ⇦14; Joint Tenancy ⇦1; Tenancy in Common ⇦1

With respect to the number and connection of the tenants, estates are in

[18]U.S.—Williams v. Northern Trust Bank of Florida/Sarasota, 819 F. Supp. 1042 (M.D. Fla. 1993).

[19]Cal.—Estate of Koplin, 70 Cal. App. 3d 686, 139 Cal. Rptr. 129 (2d Dist. 1977).

[20]U.S.—Williams v. Northern Trust Bank of Florida/Sarasota, 819 F. Supp. 1042 (M.D. Fla. 1993).

Ill.—Schlosser v. Schlosser, 247 Ill. App. 3d 1044, 187 Ill. Dec. 769, 618 N.E.2d 360 (1st Dist. 1993).

[21]Colo.—E-470 Public Highway Authority v. Argus Real Estate Partners, Inc., 70 P.3d 481 (Colo. Ct. App. 2002).

[22]Ariz.—In re Commitment of Frankovitch, 211 Ariz. 370, 121 P.3d 1240 (Ct. App. Div. 2 2005), review denied, (Apr. 14, 2006).

[23]U.S.—Williams v. Northern Trust Bank of Florida/Sarasota, 819 F. Supp. 1042 (M.D. Fla. 1993).

[Section 8]

[1]N.J.—In re Vail, 99 N.J. Eq. 598, 133 A. 866 (Ch. 1926).

Right to compel transfer

The grantee of a deed from a fictitious grantor had the right to compel the creator of the fictitious grantor to transfer legal title to her, and thus had equitable title to the property described in the deed.

Ariz.—Melni v. Custer, 162 Ariz. 153, 781 P.2d 631 (Ct. App. Div. 2 1989).

[2]N.J.—Siesel v. Mandeville, 140 N.J. Eq. 490, 55 A.2d 167 (Ch. 1947).

[3]U.S.—Ferrif v. City of Hot Springs, Ark., 82 F.3d 229 (8th Cir. 1996).

[4]Fla.—Tyler v. Price, 821 So. 2d 1121 (Fla. Dist. Ct. App. 4th Dist. 2002), decision approved, 890 So. 2d 246 (Fla. 2004).

[5]Neb.—De Forge v. Patrick, 162 Neb. 568, 76 N.W.2d 733 (1956).

[6]Mo.—Moore v. Moore, 111 S.W.3d 530 (Mo. Ct. App. S.D. 2003).