

Real Property

NOTE: For all the topics listed in the outline below, the following matters are included, to the extent relevant:

- Nature and characteristics
- Creation
- Classification of interests
- Rights of possession and use
- Legal and equitable remedies

I. Ownership

- A. Present estates
 1. Fees simple
 2. Defeasible fees simple
 3. Life estates
- B. Cotenancy
 1. Tenancy in common
 2. Joint tenancy
- C. Future interests
 1. Reversions
 2. Remainders, vested and contingent
 3. Executory interests
 4. Possibilities of reverter, powers of termination
- D. The law of landlord and tenant
 1. Fitness and suitability of premises
 2. Types of holdings: creation and termination
 - a. Terms for years
 - b. Tenancies at will
 - c. Holdovers and other tenancies at sufferance
 - d. Periodic tenancies
 3. Assignment and subletting
 4. Rent
 5. Surrender, mitigation of damages, and anticipatory breach
- E. Special problems
 1. Rule Against Perpetuities
 2. Alienability, descendability, and devisability

II. Rights in land

- A. Covenants at law and in equity
- B. Easements, profits, and licenses
- C. Other interests in land
 1. Fixtures (including relevant application of Article 9, UCC)
 2. Scope and extent of real property
 - a. Superjacent, adjacent, and subjacent space
 - b. Rights in the common resources of light, air, streams, and bodies of water
 - c. Nuisance
- D. Taking and aspects of zoning

III. Real Property Contract

- A. Relationships included
 1. Contracts to buy and sell by conveyance of realty
 2. Installment contract
- B. Creation and construction
 1. Statute of Frauds
 2. Essential terms
 3. Implied conditions or terms
 - a. Time for performance
 - b. Title required
 - c. Burdens related to title defects
- C. Performance
 1. Fitness and suitability of premises
 2. Marketable title
 3. Risk of loss
- D. Interests before conveyance
 1. Equitable conversion
 2. Earnest-money deposits
- E. Relationships after conveyance
 1. Condition of premises
 2. Title problems

- IV. Real property mortgages
 - A. Types of security devices
 - 1. Mortgages (including deeds of trust)
 - 2. Land contracts as security device
 - 3. Absolute deeds as security
 - B. Some security relationships
 - 1. Necessity and nature of obligation
 - 2. Theories: title, lien, and intermediate
 - 3. Rights and duties prior to foreclosure
 - 4. Right to redeem and clogging equity of redemption
 - C. Transfers by mortgagor
 - 1. Distinguishing "subject to" and "assuming"
 - 2. Rights and obligations of transferee
 - 3. Application of subrogation and suretyship principles
 - 4. Due-on-sale clauses
 - D. Transfers by mortgagee (including effect of Article 3 of UCC)
 - E. Discharge and defenses
 - F. Foreclosure
 - 1. Types
 - 2. Rights of omitted parties
 - 3. Deficiency and surplus
 - 4. Redemption after foreclosure
 - 5. Deed in lieu of foreclosure
- V. Titles
 - A. Adverse possession
 - B. Conveyancing by deed
 - 1. Types
 - 2. Necessity for a grantee
 - 3. Delivery (including escrows)
 - 4. Land description and boundaries
 - 5. Covenants for title
 - C. Conveyancing by will
 - 1. Ademption
 - 2. Exoneration
 - 3. Lapse
 - D. Priorities and recording
 - 1. Types of priority
 - a. Recording acts
 - b. Judgment liens
 - c. Fraudulent conveyances
 - d. Protection of bona fide purchasers other than under statutes
 - 2. Scope of coverage
 - a. Recorded documents
 - b. Elements required
 - c. Parties protected
 - d. Interests affected
 - 3. Special problems
 - a. After acquired title (including estoppel by deed)
 - b. Constructive notice
 - c. Forged instruments
 - d. Transfers by corporations and by agents
 - e. Purchase money mortgages

Approximately 75% of the Real Property questions for each MBE will be based on categories I, II, and V, and approximately 25% will be based on the remaining categories, III and IV. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics.

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