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Introduction Student Symposium - Texas Land Titles - Introduction.

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STUDENT SYMPOSIUM

TEXAS LAND TITLES

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INTRODUCTION

ALOYSIUS A. LEOPOLD*

"The law has got to be stated over again; and I venture to say that in fifty years we shall have it in a form of which no man could have dreamed fifty years ago."¹

Perhaps Justice Holmes overstated the issue in this heraclitean analysis of the progress of the law. Historically, real property law has always regarded the future with an ear keenly attuned to the past. Yet, even in this static

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1. O.W. HOLMES, *Use of Law School*, in SPEECHES 39 (1913).

area, law has developed and changed. If it were otherwise, the sections of this symposium would be no more than dull staccato echoes reverberating down the corridor of time. But time has brought change, and change has brought about the desirability of restating the old in light of the new.

The students have prepared this symposium with the intent to give a concise but complete overview of the present law in Texas concerning titles to real property. Aimed especially at the practicing attorney, the symposium hopefully will refresh and make current many of those real property title concepts which time and haste have caused to fade.

A person's right to claim realty is generally commensurate with his title. As against the state, if he cannot show a grant out of the sovereign he has no title.² As against other claimants, his right may depend on a successful showing of his title by virtue of a chain of conveyances or an adverse possession or prior peaceable possession superior to his adversary.³

By virtue of articles 5507-5519A the adverse possessor may gain an original title⁴ or cure a defective chain of title.⁵ The prior peaceable possessor may assert title against all claimants except any who can prove a superior right. Another claimant can oust him only on the strength of his own right, not on the weakness of the possessor's right.⁶ These two areas, however, are a mere ripple on the ocean of real titles. The vast legal practice involved here is in the area of conveyancing: it is to this field that this symposium is directed.

The workhorse of real property titles is the deed, the instrument which evidences claimant's title. When linked together with other deeds, commencing with the sovereign and culminating with claimant, it gives claimant an insurmountable title, good against the world. It is also claimant's means of transferring his title to others.

This symposium will treat the construction and operation of the deed, various covenants for title expressed in the deed, and the effect of the registration statutes. Before going on to these areas, it is necessary to consider the deed in general.

In its particulars, the deed may be concisely simple or sophisticatedly complex.⁷ In order to construct a deed, however, the parties must intend that

2. *Smith v. Power*, 23 Tex. 29 (1859). The State of Texas recognizes grants out of prior sovereigns who had jurisdiction over areas now within the state. These prior sovereigns are the Kings of Spain, the Republic of Mexico, and the Republic of Texas. See TEX. CONST. arts. XII, XIV.

3. *Land v. Turner*, 377 S.W.2d 181, 183 (Tex. 1964).

4. *MacGregor v. Thompson*, 26 S.W. 649 (Tex. Civ. App. 1894, no writ).

5. *Phelps v. Pecos Valley S. Ry.*, 182 S.W. 1156, 1157 (Tex. Civ. App.—El Paso 1916, no writ).

6. See, e.g., *House v. Reavis*, 89 Tex. 626, 35 S.W. 1063 (1896).

7. See TEX. REV. CIV. STAT. ANN. art. 1296 (1962) for a statutory example of a general warranty deed.

it operate as a conveyance of real property from grantor to grantee.⁸ If it is the product of a fraudulently procured intent⁹ or of a mind physically¹⁰ or legally¹¹ incapable of formulating an irrevocable intent, the deed is voidable and subject to being set aside in court.

The deed must be in writing by virtue of the Texas Statute of Frauds governing conveyancing.¹² This same statute requires that it be subscribed and delivered. The purpose of the Statute of Frauds is to prevent fraud. If, however, the enforcement of the statute would allow a fraud to be perpetrated, then the statute may not be invoked. Thus has arisen the doctrine that an oral conveyance will be enforced in equity if the vendee takes possession pursuant to the grant, makes payment, and makes permanent and valuable improvements.¹³

Consideration must also be given to what the statute requires to be in writing to effect a transfer. The grantor and grantee must be named,¹⁴ and the interest sought to be conveyed must be specified.¹⁵ Finally, the land must be described with sufficient certainty to make the land ascertainable.¹⁶ This area frequently gives rise to uncertainty and ambiguity, and forms a major part of the following section on the construction of a deed.

No consideration is required in order for a deed to be effective to transfer title,¹⁷ but it must be subscribed. Generally the deed will be executed only by the grantor. This, however, does not preclude the grantee from being bound by obligations imposed on him in the deed.¹⁸ Although an acknowledgment may be necessary in order for the deed to be registered,¹⁹ its absence does not affect the validity of the deed as a conveyance.²⁰ Additionally, in order for the deed to be effective, it must be delivered.²¹ Delivery is defined as the placing of the instrument of conveyance beyond the control of grantor with intent to effect a transfer of the realty.²²

8. *Wilson v. Dearing, Inc.*, 415 S.W.2d 475, 478 (Tex. Civ. App.—Eastland 1967, no writ).

9. *Deaton v. Rush*, 113 Tex. 176, 193, 252 S.W. 1025, 1031 (1923).

10. *Haile v. Holtzclaw*, 414 S.W.2d 916 (Tex. 1967).

11. *Neill v. Pure Oil Co.*, 101 S.W.2d 402, 404 (Tex. Civ. App.—Dallas 1937, writ ref'd).

12. TEX. REV. CIV. STAT. ANN. art. 1288 (1962).

13. *Hooks v. Bridgewater*, 111 Tex. 122, 126-27, 229 S.W. 1114, 1116 (1921).

14. *Southern Pine Lumber Co. v. Arnold*, 139 S.W. 917, 922 (Tex. Civ. App.—Texarkana 1911, no writ) (grantor); *Hopkins v. Walters*, 224 S.W. 516, 519-20 (Tex. Civ. App.—Amarillo 1920, no writ) (grantee).

15. *W.T. Carter & Bro. v. Evers*, 133 Tex. 616, 618, 131 S.W.2d 86, 87 (1939).

16. *Stringer v. Ivy*, 355 S.W.2d 577, 579 (Tex. Civ. App.—Beaumont 1962, no writ).

17. *Burgess v. Hatton*, 209 S.W.2d 999, 1002 (Tex. Civ. App.—Beaumont 1948, writ ref'd).

18. *Orbeck v. Alfei*, 276 S.W. 947, 948 (Tex. Civ. App.—Waco 1925, no writ).

19. TEX. REV. CIV. STAT. ANN. art. 1289 (1962).

20. *McLane v. Canales*, 25 S.W. 29, 30 (Tex. Civ. App. 1894, no writ).

21. *Dikes v. Miller*, 24 Tex. 417, 423 (1859).

22. *Ragland v. Kelner*, 148 Tex. 132, 134-35, 221 S.W.2d 357, 359 (1949).

Thus, if article 1288 has been fulfilled in that there is a written instrument, subscribed and delivered, conveying real property, one might envision no further problem. The first section of this symposium, however, dealing with the operation and construction of deeds, graphically illustrates many problems which may be encountered, even though the black letter of the statute has been adhered to.

This symposium also treats the types of deeds which grantor and grantee may agree to use in their transfer of real property. Basically the type of deed used, be it general warranty, quit claim or another, is determined by grantor's further obligations concerning grantee's title. In addition to a covenant of warranty, grantor may also be bound by other expressed or implied covenants known to the common law, such as seisin. Grantor may further be bound by certain statutory covenants.²³ All of the covenants to assure grantee's title will be discussed, including their construction and the damages for breach.

Perhaps one of the most difficult areas in the law of real property titles is the registration laws. The purpose of these statutes is to preclude the possibility of innocent purchasers by affording a system of constructive notice. The section on registration sets out the types of instruments and titles which *must* be recorded, which *may* be recorded, or which *cannot* be recorded. Consideration is also given to the effects on adverse parties of these statutes and their construction.

No treatment of the registration statutes would be complete without a discussion and interpretation of the cases concerning "chain of title." For example, is a conveyance to claimant's grantor subsequent in time to the registration of claimant's deed, in claimant's chain of title, or, stated otherwise, must claimant take notice of such transfer? These and other chain of title problems are presented and discussed in the section on registration.

The purpose of this introduction has been simply to denote the utility, architectural style and building materials used by the symposium writers in erecting their legal edifice. This foundation having been laid, construction now follows.

23. TEX. REV. CIV. STAT. ANN. art. 1297 (1962).