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## Introduction Student Symposium - Texas Land Titles: Part II - Introduction.

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## INTRODUCTION

ALOYSIUS A. LEOPOLD\*

The first part of this Texas Land Titles Symposium was presented in the prior issue of this Journal.<sup>1</sup> There, the basic instrument of land titles and conveyancing—the deed—was discussed. In this, Part II, several collateral and procedural aspects of Texas Land Titles are treated.

In the mineral-rich lands of Texas ownership of the sub-surface is extremely valuable. Ownership of land under the English Common Law “Ad Coelum” doctrine<sup>2</sup> not only included the surface but also extended from the center of the earth to the heavens above. Under the common law royal mines—those of gold and silver—belonged to the sovereign.<sup>3</sup> Under the civil law concept, all mines were owned by the sovereign, and did not pass by a grant of the land.<sup>4</sup> A part of the lands of Texas, now privately owned, was granted by civil sovereigns, and the remainder by Texas as a nation and as a state of the United States.

In 1837, the Texas Congress reserved to the Republic all minerals.<sup>5</sup> Thus was set the stage for the Relinquishment Acts, whereby the State, in a series of constitutional provisions and legislative enactments, surrendered the minerals to the landowners. In more recent times the state has retained the minerals in lands patented, granting to the surface owner certain rights to participate in the exploitation of oil and gas.<sup>6</sup> These various aspects of mineral ownerships and rights are discussed in the section on the Relinquishment Acts.

An apparently perfect title or chain of title may, on scrutiny and investigation, show defects: grantor may be without sufficient mental capacity; grantee may not have recorded before intervention of a bona fide purchaser or creditor. It is the policy of the law, however, that a time should be set at which land titles may be securely set to rest.

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1. *Symposium—Texas Land Titles*, 6 ST. MARY'S L.J. 802 (1975).

2. *Southwest Weather Research, Inc. v. Rounsaville*, 320 S.W.2d 211, 215-16 (Tex. Civ. App.—El Paso 1958), *aff'd*, 160 Tex. 104, 327 S.W.2d 417 (1959); 42 AM. JUR. *Property* § 14, at 197 (1958).

3. *Cox v. Robinson*, 105 Tex. 426, 428, 150 S.W. 1149, 1151-52 (1912).

4. *Id.* at 428, 150 S.W. at 1151-52.

5. Paschal's Dig., art. 4402 (5th ed.).

6. TEX. REV. CIV. STAT. art. 5367 (1925).

The 3 and 5-year statutes of adverse possession<sup>7</sup> are the times set to cure defects in a title or chain of title, except as against certain disabilities, where a 25-year statute comes into play.<sup>8</sup>

Even without any prior right, a possessor may acquire an original title under the 10-year statute of adverse possession,<sup>9</sup> or in 25 years, as against certain disabilities.<sup>10</sup> Limitation titles are discussed in the two sections on adverse possession.

Procedurally, a question of title to realty is litigated in a statutory trespass to try title action.<sup>11</sup> This statutory pleading asserts the claimant's possession, and an ouster—sometimes fictional—by the defendant. Defendant may, under a plea of "not guilty," assert any defense other than a statute of limitations, which must be specially pleaded.<sup>12</sup> The possessor may also claim the value of improvements made in good faith, if title is adjudged in his adversary.<sup>13</sup>

A suit to quiet title is distinguished from a trespass to try title suit in that the latter is a legal action while the former is equitable.<sup>14</sup> The section on title actions discusses these court actions.

A grant or conveyance by deed, unless limited, vests grantor's full title in grantee. Where grantor limits the conveyance to grantee as a trustee for a creditor of grantor to secure the creditor in the debt owed, by granting the trustee the power to sell and apply the proceeds to the debt, the conveyance is a trust deed or deed of trust mortgage.<sup>15</sup> This instrument, together with the promissory note which it secures, is the basic modern instrument of real property financing.

To conclude the symposium the editors have chosen a section on community property and homesteads. Texas, having its origins in Mexico and Spain, has always followed the civil law in its concepts of marital property. This civil law, as changed from time to time by the Texas constitutions and legislative enactments determines the rights, both between the spouses and with third parties, regarding the title, management and liability of the marital property.<sup>16</sup>

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7. TEX. REV. CIV. STAT. ANN. arts. 5507, 5509 (Supp. 1975).

8. TEX. REV. CIV. STAT. ANN. art. 5519 (Supp. 1975).

9. TEX. REV. CIV. STAT. ANN. art. 5510 (Supp. 1975).

10. TEX. REV. CIV. STAT. ANN. art. 5518 (Supp. 1975).

11. TEX. REV. CIV. STAT. ANN. art. 7366 (1960).

12. TEX. R. CIV. P. 789.

13. TEX. REV. CIV. STAT. ANN. arts. 7393-7396 (1960).

14. *Haskin v. Waller*, 63 Tex. 213 (1885).

15. 39 TEX. JUR. 2d *Mortgages & Trust Deeds* § 2 (1963).

16. See TEX. CONST. art. XVI, § 15; TEX. FAMILY CODE ANN. arts. 5.01-5.27 (1975).

The homestead concept has its origin in the law of the Republic of Texas in 1839.<sup>17</sup> The basic concept of the homestead is an exemption, a protection against forced sale, in favor of the claimant against creditors. In community property and homesteads, certain requirements of joint management, joinder in conveyancing, and the like must be noticed in order to assure title.

Obviously, no symposium, even in two parts, could cover all of the law of Texas land titles. The student writers have therefore limited their treatment to the more salient aspects of this important area of legal practice.

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17. See TEX. CONST. art. XVI, § 50.