EXHIBIT 1022

TO PETITIONER GOOGLE INC.'S PETITION FOR COVERED BUSINESS METHOD REVIEW OF U.S. PATENT NO. 8,118,221

THE LAW OF
PROPERTY

Second Edition

By

Roger A. Cunningham
James V. Campbell Professor of Law, Emeritus,
University of Michigan School of Law

William B. Stoebuck
Professor of Law, University of Washington
School of Law

Dale A. Whitman
Guy Anderson Professor of Law, Brigham Young University
School of Law

HORNBOOK SERIES

WEST PUBLISHING CO.
ST. PAUL, MINN., 1993

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-328-9352

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Cunningham, Roger A.
The law of property / by Roger A. Cunningham, William B. Stoebuck, and Dale A. Whitman. — 2nd ed.
p. cm. — (Hornbook series)
Includes index.
ISBN 0-314-01389-X
1. Real property—United States. I. Stoebuck, William B. II. Whitman, Dale A. III. Title. IV. Series.
KF570.C86 1993
346.7304'3—dc20
[347.30643]

92-38188
CIP

ISBN 0-314-01389-X

(C., S.&W.) Prop.2d HB
2nd Reprint-1998

estate *pur autre vie* may devise the residue of his estates if the measuring life is still in existence.[12] If the tenant of an estate *pur autre vie* does not dispose of the residue of his estate, such residue will generally pass under the intestate succession law of the jurisdiction. In most states the residue of an estate *pur autre vie* need not be classified as either real or personal property, since both kinds of property pass to the same persons, and in the same shares, when the owner dies intestate. In those states where the intestate succession laws treat real and personal property differently, the residue of an estate *pur autre vie* will usually pass as personal property to the decedent's next-of-kin.[13] In some of these states, however, it will pass as real property to the decedent's heirs, as "special occupants," if the instrument creating the estate expressly gave it to the named grantee "and his heirs." [14]

It is implicit in the prior discussion of the validity of "forfeiture" restraints on the alienation of life estates that a life estate may be made defeasible by means of a special limitation, a condition subsequent, or an executory limitation.[15] In general, the rules for determining what types of special limitations, conditions subsequent, and executory limitations are invalid because they are contrary to public policy or "illegal" are substantially the same when such limitations or conditions are attached to life estates as when they are attached to fee simple estates.[16]

§ 2.16 Life Interests in Personalty

At the present time, most life interests are beneficial interests under trusts, the corpus of which consists mainly of personal rather than real property. The primary purpose of the trust device is to permit the creation of one or more beneficial life interests which entitle the life tenants to the income produced by the corpus, to preserve the corpus of the trust for distribution to one or more remaindermen after termination of all the life interests, and to permit professional management of the trust corpus for the benefit of both life tenants and remaindermen. The corpus of the trust may include real property, but typically consists mainly of "intangible" forms of personal property such as stocks and bonds.[1]

(1910) (power to use and dispose and to distribute to children by gift or by will).

12. The Statute of Frauds, 29 Car. II, c. 3 (1677) first authorized such devise.

13. This is true, e.g., in Alabama, Kentucky, Michigan, Minnesota, New Jersey, New York, West Virginia, and Wisconsin.

14. This was the rule established in England by the Statute of Frauds (1677), and has been adopted in several American jurisdictions. Rest.Prop. § 151, Special Note, states that this is the American common law rule in the absence of an inconsistent statute, because the English statutes "merely declare a result which would have been reached in due time if the problem had been allowed to be litigated under an evolving common law."

15. See Rest.Prop. § 112, and the Illustrations thereof. Id. § 113 provides that when a limitation in a deed or will "contains language specifically describing the estate as to duration in terms of the life or lives of one or more designated human beings, * * * then such limitation is effective to create an estate for life although it is accompanied by further language effective to create a special limitation, a condition subsequent or an executory limitation under such estate is terminable at the will of the conveyor."

16. See ante Section 2.3 at notes 15–22.

§ 2.16

1. Treatment of the law of trusts is generally beyond the scope of this book, although the peculiar characteristics of "equitable" future interests subject to a trust are to some extent considered in Chapter 4.

Where personal property is given directly to a life tenant, with remainder to another (or others), or where a trust terminates because of merger or for other reasons before the life tenant's death, it is often said that the life tenant is a "trustee" or "quasi-trustee" of the personal property for remainderman (or remaindermen).[2] Such a characterization of the life tenant results from the special problems arising from creation of a legal life interest in personalty—e.g., the fact that the law of waste does not adequately protect the interests of remaindermen because personalty is easily transportable, often perishable, and may require expert management to avoid diminution of the value of the personalty when it consists of stocks and/or bonds. These special problems, and the statutory and judicial efforts to deal with them, are discussed in more detail post in Section 4.13.

§ 2.17 Non-freehold (or Leasehold) Estates

Even in the heyday of English feudalism, it became common practice for tenants of freehold estates (i.e., in fee simple, fee tail, or for life) to "lease" land to another for a definite period of time, thus creating a "term of years" in the lessee.[1] Such leases seem originally to have been designed to avoid the ecclesiastical prohibition against usury in connection with loans.[2] The tenant of a freehold estate who borrowed money would give the lender a term of years of sufficient duration to enable him to recover the principal amount of the loan together with a substantial profit (in lieu of interest) out of the revenues from the land. But leases creating terms of years were not used only as a means of avoiding the prohibition against usury. By the late 12th century leases were made for a fixed term, at an agreed rent, to tenants who farmed the land. Such agricultural leases became increasingly common in the centuries that followed.

For reasons that are not entirely clear, a tenant for years was not considered to have a "free tenement" (freehold estate)[3] and therefore could not use the assize of novel disseisin to recover possession from one who wrongfully dispossessed him. Although other actions were developed in the thirteenth century to give the tenant for years a means to recover possession from the lessor or one claiming by feoffment from the lessor, prior to 1499 the tenant for years was limited to a damage remedy against a "stranger"

2. See, e.g., Farmers' Mutual Fire and Lightning Insurance Co. v. Crowley, 354 Mo. 649, 190 S.W.2d 250 (1945); Note, 137 A.L.R. 1054 (1942).

§ 2.17

1. Generally, see 1 Am.L.Prop. § 3.1; T. Plucknett, Concise History of the Common Law 570–574 (5th ed. 1956); F. Pollock & F. Maitland, History of English Law 106–117 (2d ed. 1898). Rest.Prop. § 19 defines a tenancy for years as one "the duration of which is fixed in units of a year or multiples or divisions thereof." Though there may have been an early notion that the duration of a tenancy for years was subject to some outer limit, it has long been settled that there is no limit in the absence of statute. Terms as long as 2,000 years, or of 99 years renewable forever, have been held valid, in which case the tenant, as a practical matter, has an estate equivalent to a fee simple. See 1 Am.L.Prop. § 3.15.

2. In medieval times, the taking of any interest on a loan was considered to be "usury."

3. It has sometimes been asserted that the refusal to treat the term of years as a freehold estate was a result of its unsavory reputation as a stratagem to evade the prohibition against usury. Another explanation is that the English judges were under the influence of a Roman law concept that, had it been fully developed, would have resulted in classification of the term of years as a mere "servitude."

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