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**Personal Property—Estates for Years—Nature of Interest
of Lessee of Estate for Years**

In a recent North Carolina case¹ the plaintiff contended the defendant's written lease for five years, renewable for an additional term of five years, was void for want of a seal. *Held*: An estate for years is personal property,² and therefore a lease is not required to be under seal.³

The authorities are in conflict as to whether a lease is a contract,⁴ a conveyance,⁵ or a conveyance with contractual obligations superimposed.⁶ This note does not discuss the nature of the instrument creating an estate for years. The treatment is focused on the question of whether an estate for years is real or personal property.

At early common law, an estate for years, although an interest in land,⁷ was termed personal property⁸ because the ousted lessee could only bring a personal action⁹ in which he might be compelled to accept damages in lieu of specific restitution of the land. However, as early as the fifteenth century, upon a judgment to recover the term by a writ *ejectione firmæ*, the sheriff executed the writ of possession by delivering possession to the lessee.¹⁰ This procedure was so effective that freeholders abandoned the hallowed but highly technical real actions and employed the fictions of John Doe and Richard Roe in order to avail themselves of the action of ejectment.¹¹ Nevertheless, the estate for years has continued through the centuries to be classified as personal property, except as modified by statute.¹²

¹ *Moche v. Leno*, 227 N. C. 159, 41 S. E. 2d 369 (1947).

² RESTATEMENT, PROPERTY §8 (1936). Interest in lands less than freehold, such as estates for years, are grouped under the generic name of personal property. These interests are merely defined and not treated by the RESTATEMENT OF PROPERTY.

³ *Mayberry v. Johnson*, 15 N. J. L. 116 (1835); *accord*, *Stephens v. Midyette*, 161 N. C. 323, 77 S. E. 243 (1913). *But see* *Patterson v. Galliher*, 122 N. C. 511, 513, 29 S. E. 773 (1898) ("... a seal has been absolutely indispensable to the validity of deeds in which is conveyed a greater estate than a three year lease").

⁴ *See* *Moring v. Ward*, 50 N. C. 272, 275 (1858) (Pearson, J.: "A lease for years is a contract, by which one agrees for valuable consideration, called rent, to let another have occupation and profits of the land for a definite time."); 2 BL. COMM. *140 ("An estate for years is a contract for the possession of lands or tenements, for some determinate period").

⁵ 2 BL. COMM. *317 ("A lease is properly a conveyance of any lands or tenements, usually in consideration of rent or other annual recompense. . .").

⁶ THOMPSON ON REAL PROPERTY §1100 (1940); 1 TIFFANY, LANDLORD AND TENANT §16 (1910); 35 C. J. 1139; 32 AM. JUR. §2.

⁷ BL. COMM. *317.

⁸ *See* *Lenow v. Fones*, 48 Ark. 557, 565, 4 S. W. 56, 59 (1887) ("No proposition has been better settled from the earliest days of common law than that a lease, of whatever duration, is but a chattel").

⁹ 1 TIFFANY, REAL PROPERTY §3 (3d ed. 1939).

¹⁰ 3 BL. COMM. *200.

¹¹ *Ibid.*

¹² *See* *Fidelity Trust Co. v. Wayne County*, 244 Mich. 182, 185, 221 N. W. 111, 112 (1928); *Waddell v. United Cigar Stores of America*, 195 N. C. 434, 438, 142 S. E. 585, 588 (1928); *State Savings & Loan Ass'n v. Bryant*, 159 Ore. 601, 630, 81 P. 2d 116, 128 (1938).

An estate for years is a chattel real. Its want of the quality of indefinite duration precludes its being real property and constitutes it a chattel. Its quality of immobility causes it to be denominated real.¹³ Such a hybrid chameleon may be expected to change its color with the purposes against which it is scrutinized. Most commonly, leaseholds go to the administrator as assets rather than descend to the heirs.¹⁴ On the other hand, estates for years have been treated as real property and governed by the law thereof for the purposes of conveyancing,¹⁵ registration and recording,¹⁶ Statute of Frauds,¹⁷ taxation,¹⁸ sale upon execution,¹⁹ venue,²⁰ eminent domain,²¹ mortgages,²² and prohibiting corporations of acquire and hold real estate.²³

The courts' difficulties arise from construing or interpreting the term "real property" to determine if it embraces estates for years. No difficulty is encountered where a particular statute, such as a Statute of Frauds, or a recording act, governs the purpose and spells out whether or not it embraces leases or chattels real. However, utmost vigilance

¹³ 2 BL. COMM. *386.

¹⁴ *Fowler v. Laughlin*, 183 Md. 48, 36 A. 2d 671 (1944); *Orchard v. Wright-Dalton-Bell, Anchor Store Co.*, 225 Mo. 414, 125 S. W. 486, 20 Ann. Cas. 1072 (1910). 2 BL. COMM. *143 ("... an estate for a thousand years is only a chattel, and reckoned as part of the personal estate."). *Contra*: *Broadwell v. Banks*, 134 Fed. 470 (C. C. D. Mo. 1905) (Ohio statute of descents controlled); *McKee v. Howe*, 17 Colo. 538, 31 Pac. 115 (1892).

¹⁵ *People ex rel. Healy v. Shedd*, 241 Ill. 155, 89 N. E. 332 (1909); *Robertson v. Scott*, 141 Tex. 374, 172 S. W. 2d 478 (1943). *Contra*: *De Kyne v. Lewis*, 4 N. J. Misc. Rep. 948, 139 Atl. 434 (1927) (Assignment of 99 year lease by wife was not a conveyance of real property requiring a seal and assent of the husband.); *Fifth Ave. Bldg. Co. v. Kernochan*, 221 N. Y. 370, 117 N. E. 579 (1917) (*Cardozo, J.*, distinguished between a conveyance of real property and a conveyance of interests in real property.).

¹⁶ *Fidelity Trust Co. v. Wayne County*, 244 Mich. 182, 221 N. W. 111 (1928). Statutes usually control; see WASH. REV. STAT. (1931) §10550. *Contra*: *Hollenbeck v. McDonald*, 112 Mass. 247 (1873) (999 year lease of spring with easement to enter and repair aqueduct held valid against bona fide purchaser without notice. Overruled by a subsequent statute.); *State Trust Co. v. Casino Co.*, 46 N. Y. Supp. 492 (1897) (Mortgage on lease invalid against creditors because it was not refiled annually as the statute required for chattel mortgages.).

¹⁷ *Palochucola Club v. Withington*, 159 S. C. 446, 157 S. E. 621 (1931). *Contra*: *Dabney v. Edwards*, 5 Cal. 2d 1, 53 P. 2d 962, 103 A. L. R. 822 (1935) (oral agreement for brokers' commissions); *Myers v. Arthur*, 135 Wash. 587, 238 Pac. 899 (1925).

¹⁸ *Moulton v. Long*, 243 Mass. 129, 137 N. E. 297 (1922) (profit from the assignment of a 5 year lease not income from sale of intangible personal property); *Chicago v. University of Chicago*, 302 Ill. 455, 134 N. E. 723, 23 A. L. R. 244 (1922). *Contra*: *Eidman v. Baldwin*, 206 Fed. 428 (C. C. A. 2d 1913) (An estate for years is personality for purposes of inheritance tax.); *Greene Line Terminal Co. v. Martin*, 122 W. Va. 483, 10 S. E. 2d 901 (1940).

¹⁹ *Hyatt v. Vincennes Bank*, 113 U. S. 408 (1884) (Indiana statute setting up procedure for sale of real property upon execution expressly embraced chattels real.).

²⁰ *Gibson v. Logino*, 111 Fla. 533, 149 So. 592 (1933).

²¹ *Mason v. City of Nashville*, 155 Tenn. 256, 291 S. W. 1074 (1927); see *Leonard v. Autocar Sales and Service Co.*, 392 Ill. 182, 64 N. E. 2d 477 (1945).

²² *Fidelity Trust Co. v. Wayne Co.*, 244 Mich. 182, 221 N. W. 111 (1928).

²³ *People ex rel. Healy v. Shedd*, 241 Ill. 155, 89 N. E. 332 (1909); *State Savings and Loan Association v. Bryant*, 159 Ore. 601, 81 P. 2d 116 (1938).

must be exercised to determine if some specific statute exists which governs estates for years for the purpose in question.

Some courts give a broad construction or interpretation corresponding to the layman's conception that real estate includes leases.²⁴ Others give a strict construction or interpretation and adhere to the technical definition²⁵ where possible, for any related statutes are in derogation of common law. The strictness of a court's construction or interpretation for a particular purpose varies with the general statutory definition of "real property" found in the construction statute, even though the court may not have mentioned the construction statute.

A construction statute is generally one of two types. The Missouri statute²⁶ is an example of the type which calls for strict construction or interpretation. It defines "real property" to be "coextensive with lands, tenements and hereditaments."²⁷ At common law, "lands, tenements and hereditaments" embraced only estates of freehold.²⁸ In *Orchard v. Wright-Dalton-Bell Anchor Store Co.*,²⁹ the testator had devised his "real estate," but the administrator *c. t. a.* took over and sold a twenty-year lease of the testator as personal property. Three related statutes expressly prescribed that for the particular purposes of conveyancing, dower, and sales upon execution certain leaseholds were to be treated as real estate. The Missouri court painstakingly showed that the particular statutes neither applied to the circumstances involved nor generally converted common law personal property into real estate. The sale was held valid.

In the other type of statute, such as found in Colorado, the general definition of "real property" includes "lands, tenements, and hereditaments, and all rights thereto and interests therein."³⁰ Estates for years

²⁴ *Fidelity Trust Co. v. Wayne Co.*, 244 Mich. 182, 221 N. W. 111 (1928); *State Savings and Loan Ass'n v. Bryant*, 159 Ore. 601, 81 P. 2d 116 (1938).

²⁵ *See Mayor of New York v. Mabie*, 13 N. Y. 151, 159, 64 Am. Dec. 538, 543 (1855) ("The legislature was dealing with terms of art and is presumed to have used them in their technical sense."); *Foster v. Perry*, 77 N. C. 160 (1877) ("... it is reasonable to give such a term [real estate] the meaning which it ordinarily bears among professional men speaking on legal subjects. . . . The words 'real estate' in this clause of the Constitution mean freehold estate.").

²⁶ Mo. REV. STAT. ANN. (1942) §655.

²⁷ Mo. REV. STAT. ANN. (1942) §655; ARK. DIG. STAT. (Pope, 1937) §13261; IND. ANN. STAT. (Burns, 1933) §2-4701(8); N. J. STAT. ANN. (1939) §1: 1-2; N. Y. GENERAL CONSTRUCTION LAW §40; *see also* N. Y. PROPERTY LAW §33 ("... estates for years are chattels real."); N. C. GEN. STAT. (1943) §12-3(6); *cf.* KY. REV. STAT. (Cullen, 1942) §446.010(13) (Land or real estate "includes lands, tenements, and hereditaments and all rights thereto and interests therein, other than chattel interests.").

²⁸ *See The Mayor of New York v. Mabie*, 13 N. Y. 151, 159, 64 Am. Dec. 538, 543 (1855).

²⁹ 225 Mo. 414, 125 S. W. 486, 20 Ann. Cas. 1072 (1910).

³⁰ COLO. STAT. ANN. (1935) c. 159, §2(5); MASS. ANN. LAWS (1944) c. 4, §7, *Moulton v. Long*, 243 Mass. 129, 137 N. E. 297 (1922) (the terms of the statute are broad enough to comprehend leaseholds); MICH. STAT. ANN. (Henderson, 1936) §2.212; TENN. ANN. CODE (Williams, 1934) §15, *Kelley v. Shulz*, 59 Tenn.

have always been considered interests or estates in land.³¹ Therefore, in *McKee v. Howe*,³² the Colorado court relied on the above statute wherein real property is defined to include all interests in land, and held that an estate for years was real property which descended to the heirs at law.

North Carolina's construction statute³³ is similar to that of Missouri. It defines "real property" to be "coextensive with lands, tenements and hereditaments." As a corollary, "personal property" is defined to include "moneys, goods, chattels, choses in action and evidences of debt, including all things capable of ownership, not descendible to the heirs at law." Thus the test for personal property is whether it is descendible to the heirs at law. By implication the North Carolina court has held that leaseholds of the decedent come into the hands of the administrator as assets rather than descend to the heirs.³⁴ In a dictum Pearson, J., said: "A term for years is a chattel real, constitutes a part of the personal estate, passes by succession to the executor or administrator, and is assets for the payment of debts."³⁵ Leaseholds have been treated as personal property for purposes of levy and execution,³⁶ registration,³⁷ and jurisdiction.³⁸ In one peculiar situation, the court construed "real estate" in a statute to mean leaseholds.³⁹

Where specific statutes for various purposes, such as the Statute of Frauds,⁴⁰ registration,⁴¹ etc., require estates for years to be treated in

218 (1873) (the Code changed the character of a leasehold, making it realty). *But cf.* Ky. REV. STAT. (Cullen, 1942) §446.010(13) (land or real estate "includes lands, tenements and hereditaments and all rights thereto and interests therein, other than chattel interests").

³¹ 2 BL. COMM. *317. *Moulton v. Long*, 243 Mass. 129, 137 N. E. 297 (1922) (alternative holding); *Moring v. Ward*, 50 N. C. 272 (1858); *Mason v. City of Nashville*, 155 Tenn. 256, 291 S. W. 1074 (1927) (lease to upper story of building vested interest in real estate). RESTATEMENT, PROPERTY §9 (1936). *See Dabney v. Edwards*, 5 Cal. 2d 1, 53 P. 2d 962, 103 A. L. R. 822 (1935); *Fifth Ave. Bldg. Co. v. Kernochan*, 221 N. Y. 370, 117 N. E. 579 (1917).

³² 17 Colo. 538, 31 Pac. 115 (1892).

³³ N. C. GEN. STAT. (1943) §12-3.

³⁴ *Reeves v. McMillan*, 101 N. C. 479, 7 S. E. 906 (1888); *Lee v. Lee*, 74 N. C. 70 (1876).

³⁵ *Glenn v. Peters*, 44 N. C. 457 (1853); *see also Pate v. Oliver*, 104 N. C. 458, 463, 10 S. E. 709, 711 (1889); *Foster v. Perry*, 77 N. C. 160, 162 (1877).

³⁶ *Glenn v. Peters*, 44 N. C. 457 (1853) (overruled by N. C. GEN. STAT. (1943) §1-315; *see also McIntosh*, NORTH CAROLINA PRACTICE AND PROCEDURE 841).

³⁷ *Burnett v. Thompson*, 35 N. C. 379 (1852) (Held that a lease of 113 years did not have to be registered. Pearson, J., recommended legislative action); *Wall v. Hinson*, 23 N. C. 276 (1840). *Cf. Holdebrand Machinery Co. v. Post*, 204 N. C. 744, 169 S. E. 629 (1933). *Contra: N. C. GEN. STAT. (1943) §43-48* (all leases for more than 3 years shall be recorded).

³⁸ *Shuford v. Greensboro Joint Stock Land Bank*, 207 N. C. 428, 177 S. E. 408 (1934) (Court of justice of peace has exclusive original jurisdiction in action of summary ejectment).

³⁹ *Lee v. Lee*, 74 N. C. 70 (1876) (Statute authorized administrator to collect the rents of "real estate." It was held that "real estate" mean "leaseholds" of the decedent, for real property in general would not come into the administrator's hands.).

⁴⁰ N. C. GEN. STAT. (1943) §22-2.

⁴¹ N. C. GEN. STAT. (1943) §43-38.

a similar manner with freehold estates, the legislature has generally explicitly specified that certain leases are covered by that statute.⁴² This practice avoids the confusion resulting where the legislature redefines "real property" for various purposes.⁴³

That an estate vests in the lessee after actual entry is not questioned.⁴⁴ However, some doubt remains as to the nature of the lessee's interest prior to actual entry. Although Justice Pearson held⁴⁵ that the Statute of Uses obviated the doctrine of *interessi termini*,⁴⁶ subsequent courts have discussed the doctrine of *interessi termini* without mentioning the effect of the Statute of Uses.⁴⁷ Thus the doctrine of *interessi termini* may still exist in North Carolina.⁴⁸

An estate for years was classified as personal property at common law; North Carolina's construction statute encourages strict construction of specific statutes subjecting estates for years to the law of real property; specific statutes have been well-drafted and clearly state if leases are to be governed by them; the doctrine of *interessi termini* may still be hanging over the court; all these factors support the court's conclusion in the principal case that estates for years are personal property.

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Real Property—Spite Fences

B built a "spite fence"¹ on his own property, within one and one-half inches of the windows of the house of *A*, adjoining landowner, effectively cutting off light and air therefrom, whereupon *A* secured an injunction ordering removal, which the Supreme Court of Pennsylvania, on appeal, reversed. The court held that malicious motive did not render a lawful use of property unlawful, that motive in such use was immaterial.²

The authorities are agreed that where the motive in erection of the

⁴² Example: N. C. GEN. STAT. (1943) §22-2 ("... and all other leases . . . exceeding in duration three years from the making thereof. . ."). *But cf.* N. C. GEN. STAT. (1943) §1-76.

⁴³ Example: WASH. REV. STAT. (1931) §2303 (As used in criminal code "real property" includes every estate, interest and right in lands, tenements and hereditaments.").

⁴⁴ *Williams v. Randolph & C. Ry.*, 182 N. C. 267, 108 S. E. 915 (1921) (assignment distinguished from lease in that a lease creates an estate in land); *Moring v. Ward*, 50 N. C. 272 (1858); 2 BL. COMM. *144.

⁴⁵ *Moring v. Ward*, 50 N. C. 272, 275 (1858).

⁴⁶ 2 BL. COMM. *339.

⁴⁷ *See Bunch v. Elizabeth City Lumber Co.*, 134 N. C. 116, 118, 46 S. E. 24, 25 (1903); *State v. Boyce*, 109 N. C. 739, 748, 14 S. E. 98, 100 (1891) (concurring opinion); *Barneycastle v. Walker*, 92 N. C. 198 (1885).

⁴⁸ 1 MORDECAI'S LAW LECTURES 531 (Dean Mordecai said: "I will back up Judge Pearson against the field.").

¹ For definitions of the term "spite fence," see *Norton v. Randolph*, 176 Ala. 381, 385, 58 So. 283, 285, 40 L. R. A. (N. S.) 129, 131 (1912); *Burris v. Creech*, 220 N. C. 302, 304, 17 S. E. 2d 123, 124 (1941); 39 WORDS AND PHRASES (perm. ed.) 816.

² *Cohen v. Perrino*, 50 A. 2d 348 (Pa. 1947).