CONVERSION, TRUST, USE, ESTATE and PROPERTY in Land and in Chattel

CONVERSION. torts. the unlawful turning or applying the personal goods of another to the **use** of the **taker**, or of some other person than the, owner; or the unlawful destroying or altering their nature. Bull. N. P. 44; 6 Mass. 20; 14 Pick. 356; 3 Brod. & Bing. 2; Cro. Eliz. 219 12 Mod. 519; 5 Mass. 104; 6 Shepl. 382; Story, Bailm. 188, 269, 306; 6 Mass. 422; 2 B. & P. 488; 3 B. & Ald. 702; 11 M. & W. 363; 8 Taunt. 237; 4 Taunt. 24.

6. The wrongful taking of the personal property of another, when in his actual possession, or such taking of the goods of another who, has the right of immediate possession, subject the tort feasor to an action. For example, **such wrongful taking will be evidence of a conversion**, and an action of trover may be maintained. 2 Saund. 47, h. t.; 3 Willes, 55. Trespass is a concurrent remedy in such a case. 3 Wils. 336. Replevin may be supported by the unlawful taking of a personal chattel. 1 Chit. Pl. 158. Vide Bouv. Inst. Index, h. t.

MJ's comments – Lets check out the terms – cause they are gonna get interesting.

Lets first check out USE

USE, estates. A confidence reposed in another, who was made **tenant of the land** or **terre tenant**, that he should dispose of the land according to the intention of the cestui que use, or him to whose use it was granted, and suffer him to take the profits. Plowd. 352; Gilb. on Uses, 1; Bac. Tr. 150, 306; Cornish on Uses, 1 3; 1 Fonb. Eq. 363; 2 Id. 7; Sanders on Uses, 2; Co. Litt. 272, b; 1 Co. 121; 2 Bl. Com. 328; 2 Bouv. Inst. n. 1885, et seq.

Reposed means "resting in Confidence"

Confidence means "A trusting, or reliance; an assurance of mind or firm belief in the integrity, stability or veracity of another."

2. In order to create a use, there must always be a good Consideration; though, when once raised, it may be passed by grant to a stranger, without consideration. Doct. & Stu. , Dial. ch. 22, 23; Rob. Fr. Conv. 87, n.

3. Uses were borrowed from the **fidei commissum** (q. v.) of the civil law; it was the duty of a Roman magistrate, the praetor fidei commissarius, whom Bacon terms the particular chancellor for uses, to enforce the observance of this confidence. Inst. 2, 23, 2.

FIDEI-COMMISSUM

civil law. A gift which a man makes to another, through the agency of a third person, who is requested to perform the desire of the giver. For example, when a testator writes, "I institute for my heir, Lucius Titius," he may add, "I pray my heir, Lucius Titius, to deliver, as soon as he shall be able, my succession to Caius Seius: cum igitur aliquis scripserit Lucius Tilius heres esto, potest ajicere, rogo te Luci Titi, ut cum poteris hereditatem meam adire, eam Caio Sceio reddas, restituas. Inst. 2, 23, 2, vide Code 6, 42.

MJ's comments: Under "Fidei-Commissum" there exists an appointment of Agency in "A" for the benefit of "B" done by gift. Under "Use" there exists a trust in "A" for the benefit of "B" done by grant.

Back to USE

3. **The uses of the common law, it is said, were borrowed from the Roman fidei-commissum**. 1 Cru. Dig. 388, Bac. Read. 19, 1 Madd. Ch. 446-7.

4. Uses were introduced into England by the ecclesiastics in the reign of Edward III or Richard II, for the purpose of avoiding the statutes of mortmain; and the clerical chancellors of those times held them to be fidei commissa, and binding in conscience. To obviate many inconveniencies and difficulties, which had arisen out of the doctrine and introduction of uses, the statute of 274 Henry VIII, c. 10, commonly called the statute of uses, or in conveyances and pleadings, the statute for transferring uses into possession, was passed. It enacts, that **"when any person shall be seised of lands, &c., to the use, confidence or trust of any other person or body politic, the person or corporation entitled to the use in fee simple, fee tail, for life, or years, or otherwise, shall from thenceforth stand and be seised or possessed of the land, &c., of and in the like estate as they have in the use, trust or confidence; and that the estates of the persons so seised to the uses, shall be deemed to be in him or them that have the use, in such quality, manner, form and condition, as they had before in the use."** The statute thus executes the use; that is, it conveys the possession to the use, and transfers the use to the possession; and, in this manner, making the cestui que use complete owner of the lands and tenements, as well at law as in equity. 2 Bl. Com. 333; 1 Saund. 254, note 6.

5. A modern use has been defined to be an estate of right, which is acquired through the operation of the statute of 27 Hen. VIII., c. 10; and which, when it may take effect according to the rules of the common law, is called the legal estate; and when it may not, is denominated a use, with a term descriptive of its modification. Cornish on Uses, 35.

6. The common law judges decided, in the construction of this statute, that a use could not be raised upon a use; Dyer, 155 A; and that on a feoffment to A and his heirs, to the use of B and his heirs, in trust for C and his heirs, the statute executed only the first use, and that the second was a mere nullity. The judges also held that, as the statute mentioned only such persons as were seised to the use of others, it did not extend to a term of years, or other chattel interests, of which a term or is not seised but only possessed. Bac. Tr. 336; Poph. 76; Dyer, 369; 2 Bl. Com. 336; The rigid literal construction of the statute by the courts of law again opened the doors of the chancery courts. 1 Madd. Ch. 448, 450.

USE, civil law. A right of receiving so much of the natural profits of a thing as is necessary to daily sustenance; it differs from usufruct, which is a right not only to use but to enjoy. 1 Browne's Civ. Law, 184; Lecons Elem. du Dr. Civ. Rom. §414, 416.

USE AND OCCUPATION. When a contract has been made, either by express or implied agreement, for the use of a house or other real estate, where there was no amount of rent fixed and ascertained, the landlord can recover a reasonable rent in an action of assumpsit for use and occupation. 1 Munf. R. 407; 2 Aik. R. 252; 7 J. J. Marsh. 6; 4 Day, R. 228; 13 John. R. 240; 13 John. R. 297; 4 H. & M. 161; 15 Mass. R. 270; 2 Whart. R. 42; 10 S. & R. 251.

2. The action for use and occupation is founded not on a privity of estate, but on a privity of contract; 3 S. & R. 500; C. & N. 19; therefore it will not lie where the possession is tortious. 2 N. & M. 156; 3 S. & R. 500; 6 N. H. Rep. 298; 6 Ham. R. 371; 14 Mass. R. 95. See Arch. L. & T. 148.

PRIVITY. The mutual or successive relationship to the same rights of property. 1 Greenl. Ev. 189; 6 How. U. S. R. 60.

PRIVITY OF CONTRACT. The relation which subsists between two contracting parties. Hamm. on Part. 182.

2. From the nature of the covenant entered into by him, a lessee has both privity of contract and of estate; and though by an assignment of his lease he may destroy his privity of estate, still the privity of contract remains, and he is liable on his covenant notwithstanding the assignment. Dougl. 458, 764; Vin. Ab. h. t. 6 How. U. S. R. 60. Vide Privies.

PRIVITY OF ESTATE. The relation which subsists between a landlord and his tenant.

2. It is a general rule that a **termor** cannot transfer the tenancy or privity of estate between himself and his landlord, without the latter's consent: an assignee, who comes in only in privity of estate, is liable only while he continues to be legal assignee; that is, while in possession under the assignment. Bac. Ab. Covenant, E 4; Woodf. L. & T. 279; Vin. Ab. h: t.; Hamm. on Part. 132. Vide Privies.

TERMOR. One who holds lands and tenements for a term of years or, life. Litt. sect. 100; 4 Tyr. 561.

First lets check out GRANT…..Then TENANT

GRANT, conveyancing, concessio. **….the term comprehends everything that is granted or passed from one to another, and is applied to every species of property…** [Not to jump ahead but Property is Rights and Interests IN a THING.]

3. To render the grant effectual, the common law **required the consent of the tenant** of the land out of which the rent, or other incorporeal interest proceeded; and this was called attornment. (q. v.) It arose from the intimate alliance between the lord and vassal existing under the feudal tenures., The tenant could not alien [alien means to transfer] the feud without the consent of the lord, nor the lord part with his seigniory without the consent of the tenant. The necessity of attornment has been abolished in the United States. 4 Kent, Com. 479. He who makes the grant is called the grantor, and he to whom it is made the grantee. Vide Com. Dig. h. t.; 14 Vin. Ab. 27; Bac. Ab. h. t. 4 Kent, Com. 477; 2 Bl. Com. 317, 440; Perk. ch. 1; Touchs. c. 12; 8 Cowen's R. 36.

TENANT, estates. One who holds or possesses lands or tenements by any kind of title, either in fee, for life, for years, or at will. See 5 Mann. & Gr. 54; S. C. 44 Eng. C. L. Rep. 39; 5 Mann. & Gr. 112; Bouv. Inst. Index, h . t.

Comments by MJ: Notice a Tenant is a Trustee. Have you caught that yet? If you have not you will by the end of this treatise, I promise.

SEIGNIORY, Eng. law. The rights of a lord as such, IN lands. Swinb. 174.

LAND TENANT. He who actually possesses the land. He is technically called the terre-tenant.

LANDLORD. He who **rents** or leases real estate to another.

RENT, estates, contracts. A certain profit in money, provisions, chattels, or labor, **issuing out of lands and tenements** in retribution **for the use**. 2 Bl. Com. 41; 14 Pet. Rep. 526; Gilb., on Rents, 9; Co. Litt. 142 a; Civ. Code of Lo. art. 2750; Com. on L. & T. 95; 1 Kent, Com. 367; Bradb. on Distr. 24; Bac. Ab. h. t.; Crabb, R. P. SSSS 149-258.

CESTUI QUE He whose

CESTUI QUE USE. He to whose use ["B"] **land** is granted to another person ["A"] the latter is called the terre-tenant, having in himself the legal property and possession; yet not to his own use, but to dispose of it according to the directions of the cestui que use, and to suffer [allow] him to take the profits. Vide Bac. Read. on Stat. of Uses, 303, 309, 310. 335, 349; 7 Com. Dig. 593.

MJ's comments: Think of yourself as the Grantor and you make a Grant, in Trust, to "A" for the use of "B". In the foregoing example "B" is the "cestui que use". And "B" has the power of direction upon "A". Therefore "A" is with the Legal Title and Possession but "B" is with the personal property in the Land or in the chattel.

Being Very careful, the Tenant is "A".

Before continuing with Cestui Que Trust, lets explore LAND and then PROPERTY.

LAND. This term comprehends any found, soil or earth whatsoever, as meadows, pastures, woods, waters, marshes, furze and heath. It has an indefinite extent upwards as well as downwards; **therefore land, legally includes all houses and other buildings standing or built on it; and whatever is in a direct line between the surface and the centre of the earth, such as mines of metals and fossils**. 1 Inst. 4 a; Wood's Inst. 120; 2 B1. Com. 18; 1 Cruise on Real Prop. 58.

2. Land, as above observed, **includes in general all the buildings erected upon it**; 9 Day, R. 374; but to this general rule there are some exceptions. It is true, that if a stranger voluntarily erect buildings on another's land, they will belong to the owner of the land, and will become a part of it; 16 Mass. R. 449; yet cases are, not wanting where it has been decided that such an erection, under peculiar circumstances, would be considered as personal property. 4 Mass. R. 514; 8 Pick. R. 283, 402; 5 Pick, R. 487; 6 N. H. Rep. 555; 2 Fairf. R. 371; 1 Dana, R. 591; 1 Burr. 144.

LEASE, n.

1. A demise or letting of lands, tenements or hereditaments to another for life, for a term of years, or at will, for a rent or compensation reserved; also, the contract for such letting.

2. Any tenure by grant or permission.

LEASE, v

To let; to demise; to grant the temporary possession of lands, tenements or hereditaments to another for a rent reserved.

A leased to B his land for the annual rent of a pepper corn.

DEMISE, v

1. To transfer or convey; to lease.
2. To bequeath; to grant by will.

LET, v

1. To permit; to allow; to suffer; to give leave or power by a positive act, or negatively, to withhold restraint; not to prevent. A leaky ship lets water enter into the hold. Let is followed by the infinitive without the sign to.

2. To lease; **to grant possession and use for a compensation**; as, to let to farm; to let an estate for a year; to let a room to lodgers; often followed by out, as, to let out a farm; but the use of out is unnecessary.

MJ's comments: Example the room is let out to Michael Joseph, as Tenant for the Use of the "Owner", as Cestui Que Use. What is an OWNER?

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OWNER, property. The owner is he **who has dominion** [MJ's comment Genesis 1:26] of a thing real or personal, corporeal or incorporeal, which he has a **right to enjoy** and to do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right.

ENJOYMENT. The right which a man possesses of receiving all the product of a thing for his necessity, his use, or his pleasure.

USUFRUCT, civil law. The right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantage which it may produce, provided it be without altering the substance of the thing.

3. Usufructs are of two kinds; **perfect and imperfect**. Perfect usufruct, which is of things which the usufructuary can enjoy without altering their substance, though their substance may be diminished or deteriorated naturally by time or by the use to which they are applied; as a house, a piece of land, animals, furniture and other movable effects. Imperfect or quasi usufruct, which is of things which would be useless to the usufructuary if be did not consume and expend them, or change the substance of them, as money, grain, liquors. Civ. Code of Louis. art. 525, et seq.; 1 Browne's Civ. Law, 184; Poth. Tr. du Douaire, n. 194; Ayl. Pand. 319; Poth. Pand. tom. 6, p. 91; Lecons El. du Dr. Civ. Rom. 414 Inst. lib. 2, t. 4; Dig. lib. 7, t. 1, 1. 1 Code, lib. 3, t. 33; 1 Bouv. Inst. Theolo. ps. 1, c. 1, art. 2, p. 76.

USUFRUCTUARY, civil law. One who has the right and enjoyment of an usufruct.

Back to OWNER……

2. The right of **the owner** is more extended than that of him who has only the use of the thing. The owner of an estate may, therefore change the face of it; he may cut the wood, demolish the buildings, build new ones, and dig wherever he may deem proper, for minerals, stone, plaster, and similar things. He may commit what would be considered **waste** if done by another.

3. The owner continues to have the same right although he performs no acts of ownership, or be disabled from performing them, and although another perform such acts, without the knowledge or against the will of the owner. [MJ's comment, the Owner can sell, transfer or convey or grant his Right] But the owner may lose his right in a thing, if he permit it to remain in the possession of a third person, for sufficient time to enable the latter to acquire a title to it by prescription, or lapse of time. [MJ's comment – takes 20 years] See Civil Code of Louis. B. 2, t. 2, c. 1; Encyclopedie de M. D'Alembert, Proprietaire.

OWNERSHIP, **title to property**. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. Louis. Code, art. 480.

TITLE estates. A title is defined by Lord Coke to be the means whereby the owner of lands hath the just possession of his property. Co. Lit. 345; 2 Bl. Com. 195. Vide 1 Ohio Rep. 349. This is the definition of title to lands only.

11. Title to real estate is acquired by two methods, namely, **by descent** and **by purchase**. (See these words.)

DESCENT. Hereditary succession. Descent is the title, whereby a person, upon the death of his ancestor, acquires the estate of the latter, as his heir at law: This manner of acquiring title is directly opposed to that of purchase. (q. v.) 2 Bouv. Inst. n. 1952, et seq.

PURCHASE. In its most enlarged and technical sense, purchase signifies the lawful acquisition of real estate by any means whatever, except descent. It is thus defined by Littleton, section 12. "Purchase is called the possession of lands or tenements that a man hath by his own deed or agreement, unto which possession he cometh, not by title of descent from any of his ancestors or cousins, but by his own deed."

3. There are six ways of acquiring a title by purchase, namely, 1. By, deed. 2. By devise. 3. By execution. 4. By prescription. 5. By possession, or occupancy. 6. By escheat. In its more limited sense, purchase is applied only to such acquisitions of lands as are obtained by way of bargain and sale for money, or some other valuable consideration. Id. Cruise, Dig. tit. 30, s. 1, to 4; 1 Dall. R. 20. In common parlance, purchase signifies the buying of real estate and of goods and chattels.

DEVISE. A devise is a disposition of real property by a person's last will and testament, to take effect after the testator's death. [MJ's comments: dealing with real estate]

Back to TITLE…..

12. Title to personal property may accrue in three different ways. By original acquisition. 2. By transfer, by act of law. 3. By transfer, by, act of the parties.

16. - §2. The title to personal property is acquired and lost by transfer, by act of law, in various ways. 1. By forfeiture. 2. By succession. 3. By marriage. 4. By judgment. 5. By insolvency. 6. By intestacy.

17. - §3. Title is also acquired and lost by transfer by the act of the party. 1. By gift. 2. By contract or sale.

20. To convey a title the seller must himself have a title to the property which is the subject of the transfer. But to this general rule there are exceptions. 1. The lawful coin of the United States will pass the property along with the possession. 2. **A negotiable instrument endorsed in blank is transferable by any person holding it, so as by its delivery to give a good title "to any person honestly acquiring it."** 3 B. & C. 47; 3 Burr. 1516; 5 T. R. 683; 7 Bing. 284; 7 Taunt. 265, 278; 13 East, 509; Bouv. Inst. Index, h. t.

Now on to PROPERTY….

PROPERTY. **The right and interest** which a man has **IN** lands and **IN** chattels to the exclusion of others. [MJ's comments: Notice the Right and Interest is IN the land – **the rights and interest form an Estate**] 6 Binn. 98; 4 Pet. 511; 17 Johns. 283; 14 East, 370; 11 East, 290, 518. It is the right to enjoy and to dispose of certain **things** in the most absolute manner as he pleases, provided he makes no use of them prohibited by law.

THINGS. By **this word is understood every object, except man**, which may become an active **subject of right**. Code du Canton de Berne, art. 332. In this sense it is opposed, in the language of the law, to the word persons. (q. v.)

2. Things, by the common law, are divided into, 1. Things real, which are such as are permanent, fixed and immovable, and which cannot be carried from place to place; they are usually said to consist in lands, tenements and hereditaments. 2 Bl. Com. 16; Co. Litt. 4 a to 6 b. 2. Things personal, include all sorts of things movable which attend a man's person wherever he goes. Things personal include not only things movable, but also something more, the whole of which is generally comprehended under the name of chattels. Chattels are distinguished into two kinds, namely, chattels real and chattels personal.

CHATTELS, property. A term which includes all kinds of property, except the freehold or things which are parcel of it. It is a more extensive term than goods or effects. Debtors taken in execution, captives, apprentices, are accounted chattels. Godol. Orph. Leg. part 3, chap. 6, 1.

2. Chattels are personal or real. Personal, are such as belong immediately to the person of a man; chattels real, are such as either appertain not immediately to the person, but to something by way of dependency, as a box with the title deeds of lands; or such as are issuing out of some real estate, as a lease of lands, or term of years, which pass like personally to the executor of the owner. Co. Litt. 118; 1 Chit. Pr. 90; 8 Vin. Ab. 296; 11 Vin. Ab. 166; 14 Vin. Ab. 109; Bac. Ab. Baron, &c. C 2; 2 Kent, Com. 278; Dane's Ab. Index, h. t.; Com. Dig. Biens, A; Bouv. Inst. Index, h. t.

ASSETS', n.

> **Goods or estate of a deceased person**, sufficient to pay the debts of the deceased. But the word sufficient, though expressing the original signification of assets, is not with us necessary to the definition. In present usage, assets are the money, goods or estate of a deceased person, subject by law to the payment of his debts and legacies. Assets are real or personal; real assets are lands which descend to the heir, subject to the fulfillment of the obligations of the ancestor; personal assets are the money or goods of the deceased, or debts due to him, which come into the hands of the executor or administrator, or which he is bound to collect and convert into money.

DE BONIS NON. This phrase is used in cases **where the goods of a deceased person have not all been administered**. When an executor or administrator has been appointed, and the estate is not fully settled, and the executor or administrator is dead, has absconded, or from any cause has been removed, a second administrator is appointed to to perform the duty remaining to be done, who is called an administrator de bonis non, an administrator of the goods not administered and he becomes by the appointment the only representative of the deceased. 11 Vin. Ab. 111; 2 P. Wms. 340; Com. Dig. Administration, B I; 1 Root's 11. 425. And it seems that though the estate has been distributed, an administrator de nonis non may be appointed, if debts remain unsatisfied. 1 Root's R. 174.

Back to PROPERTY….

7. Personal property is further divided into property in possession, and property or choses in action. (q. v.)

CHOSE, property. This is a French word, signifying thing. In law, it is applied to personal property; as choses in possession, are such personal things of which one has possession; **choses in action, are such as the owner has not the possession, but merely a right of action for their possession.** 2 Bl. Com. 889, 397; 1 Chit. Pract. 99; 1 Supp. to Ves. Jr. 26, 59. Chitty defines choses in actions to be rights to receive or recover a debt, or money, or damages for breach of contract, or for a tort connected with contract, but which cannot be enforced without action, and therefore termed choses, or things in action. Com. Dig. Biens; Harr. Dig. Chose in ActionChitty's Eq. Dig. b. t. Vide 1 Ch. Pr. 140.

Back to PROPERTY….

8. Property is again divided into corporeal and incorporeal. The former comprehends such property as is perceptible to the senses, as lands, houses, goods, merchandise and the like; the latter consists in legal rights, as choses in action, easements, and the like.

9. Property is lost, in general, in three ways, by the act of man, by the act of law, and by the act of God.

10. - 1. It is lost by the act of man by, 1st. Alienation; but in order to do this, the owner must have a legal capacity to make a contract. 2d. By the voluntary abandonment of the thing; but unless the abandonment be purely voluntary, the title to the property is not lost; as, if things be thrown into the sea to save the ship, the right is not lost. Poth. h. t., n. 270; 3 Toull. ii. 346. But even a voluntary abandonment does not deprive the former owner from taking possessiou of the thing abandoned, at any time before another takes possession of it.

11. - 2. The title to property is lost by operation of law. 1st. By the forced sale, under a lawful process, of the property of a debtor to satisfy a judgment, sentence, or decree rendered against him, to compel him to fulfil his obligations. 2d. By confiscation, or sentence of a criminal court. 3d. By prescription. 4th. By civil death. 6th. By capture of a public enemy.

12. - 3. The title to property is lost by the act of God, as in the case of the death of slaves or animals, or in the total destruction of a thing; for example, if a house be swallowed up by an opening in the earth during an earthquake.

CESTUI QUE TRUST, A barbarous phrase, to **signify the beneficiary of an estate held in trust**. He for whose benefit another person is enfeoffed or seised of land or tenements, or is possessed of personal property. The cestui que trust is entitled to receive the rents and profits of the land; he may direct such conveyances, consistent with the trust, deed or will, as he shall choose, and the trustee (q. v.) is bound to execute them: he may defend his title in the name of the trustee. 1 Cruise, Dig. tit. 12, c. 4, s. 4; vide Vin. Ab. Trust, U, W, X, and Y 1 Vern. 14; Dane's Ab. Index, h. t.: 1 Story, Eq. Jur. 321, note 1; Bouv. Inst. Index, h. t.

MJ's comments: Before continuing with elaboration lets check out estate.

ESTATE. This word his several meanings: 1. In its most extensive sense, it is applied to signify every thing of which riches or, fortune may consist and includes personal and real property; hence we say personal estate, real estate. 8 Ves. 504. 2. In its more limited sense, the word estate is applied to lands, It is so applied in two senses. The first describes or points out the land itself, without ascertaining the extent or nature of the interest therein; as "my estate at A." **The second, which is the proper and technical meaning of estate, is the degree, quantity, nature and extent of interest which one has IN real property**; as, an estate in fee, whether the same be a fee simple or fee tail; or an estate for life or for years, &c. Lord Coke says: Estate signifies such inheritance, freehold, term of years, tenancy by statute merchant, staple, eligit, or the like, as any man hath in lands or tenements, &c. Co. Lit. §650, 345 a. See Jones on Land Office Titles in Penna. 165-170.

2. In Latin, it is called status, because it signifies the condition or circumstances in which the owner stands with regard to his property.

MJ's comments: What is INTEREST?

INTEREST, estates. The right which a man has in a chattel real, and more particularly in a future term. It is a word of less efficacy and extent than estates, though, in legal understanding, an interest extends to estates, rights and titles which a man has in or out of lands, so that by a grant of his **whole interest** in land, a reversion as well as the fee simple shall pass. Co. Litt. 345.

INTEREST, contracts. The right of property which a man has in a thing, commonly called insurable interest. It is not easy to give all accurate definition of insurable interest. 1 Burr. 480; 1 Pet. R. 163; 12 Wend. 507 16 Wend. 385; 16 Pick. 397; 13 Mass. 61, 96; 3 Day, 108; 1 Wash. C. C. Rep. 409.

COMMERCE, trade, contracts. The exchange of commodities for commodities; considered in a legal point of view, it consists in the various agreements which have for their object to facilitate the exchange of the products of the earth or industry of man, with an intent to realize a profit. Pard. Dr. Coin. n. 1. In a narrower sense, commerce signifies any reciprocal agreements between two persons, by which one delivers to the other a thing, which the latter accepts, and for which he pays a consideration; **if the consideration be money, it is called a sale**; if any other thing than money, it is called exchange or barter. Domat, Dr. Pub. liv. 1, tit. 7, s. 1, n. 2. Congress have power by the constitution to regulate commerce with foreign nations and among the several states, and with the Indian tribes. 1 Kent. 431; Story on Corst. 1052, et seq. The sense in which the word commerce is used in the constitution seems not only to include traffic, but intercourse and navigation. Story, 1057; 9 Wheat. 190, 191, 215, 229; 1 Tuck. Bl. App. 249 to 252. Vide 17 John. R. 488; 4 John. Ch. R. 150; 6 John. Ch. R. 300; 1 Halst. R. 285; Id. 236; 3 Cowen R. 713; 12 Wheat. R. 419; 1 Brock. R. 423; 11 Pet. R. 102; 6 Cowen, R. 169; 3 Dana, R. 274; 6 Pet. R. 515; 13 S. & R. 205.

MJ's comments: Now back to Cestui Que Trust. An Estate is Rights IN Real Property. Therefore, the model of CQT is one where the Trust Corpus is an Estate! And the beneficiary of the Estate is the Cestui Que Trust. Think of the United States of America held in Trust by the United States. The Cestui Que Trust in that model is the States.

CESTUI QUE VIE. He for whose life land is holden by another person; the latter is called tenant per auter vie, or tenant for another's life. Vide Dane's Ab. Index, h. t.

MJ's comments: Cestui Que Vie is the Beneficiary of an Inter-vi[e]vos Trust.

AUTER. Another.

PER. **By.** When a writ of entry is sued out against the alienee, or descendant of the original disseisor, it is then said to be brought in the per, because the writ states that the tenant had not the entry but by the original wrong doer. 3 Bl. Com. 181. See Entry, writ of.

ENTRY, estates, rights. The taking possession of lands by the legal owner.

POSSESSION, property. The detention or enjoyment of a thing which a man holds or exercises by himself or by another who keeps or exercises it in his name. By the possession of a thing, we always conceive the condition, in which not only one's own dealing with the thing is physically possible, but every other person's dealing with it is capable of being excluded. Thus, the seaman possesses his ship, but not the water in which it moves, although he makes each subserve his purpose.

2. In order to complete a possession two things are required. 1st. That there be an **occupancy**, apprehension, (q. v.) or **taking.** 2dly. That the taking be with an intent to possess (animus possidendi), hence persons who have no legal wills, as children and idiots, cannot possess or acquire possession. Poth. h. It.; Etienne, h. t. See Mer. R. 358; Abbott on Shipp. 9, et seq. But an infant of sufficient understanding may lawfully acquire the possession of a thing.

OCCUPANCY. The taking possession of those things corporeal **which are without an owner, with an intention of appropriating them to one's own use.** Pothier defines it to be **the title by which one acquires property in a thing which belongs to nobody,** by taking possession of it, with design of acquiring. Tr. du Dr. de Propriete n. 20. The Civil Code of Lo. art. 3375, nearly following Pothier, defines occupancy to be "a mode of acquiring

property by which a thing, which belongs to nobody, becomes the property of the person who took possession of it, with an intention of acquiring a right of ownership in it."

2. To constitute occupancy there must be a taking of a thing corporeal, belonging to nobody with an intention of becoming the owner of it.

5. - 3. The thing taken must belong to nobody; for if it were in the possession of another the taking would be larceny, and if it had been lost and not abandoned, the taker would have only a qualified property in it, and would hold the possession for the owner.

TAKE. This is a technical expression which signifies to be entitled to; as, a devisee will take under the will. To take also signifies to seize, as to take and carry away.

2. **When a party takes away or wrongfully assumes the right to goods which belong to another, it will in general be sufficient evidence of a conversion** but when the original taking was, lawful, as when the party found the goods, and the detention only is illegal, it is absolutely necessary to make a demand of the goods, and there must be a refusal to deliver them before the conversion will, be complete. 1 Ch. Pr. 566; 2 Saund. 47 e, note 1 Ch. Pl. 179; Bac. Ab. Trover, B 1 Com. Dig. 439; 3 Com. Dig. 142; 1 Vin. Ab. 236; Yelv. 174, n.; 2 East, R. 405; 6 East, R. 540; 4 Taunt. 799 5 Barn. & Cr. 146; S. C. 11 Eng. C. L. Rep. 185; 3 Bl. Com. 152; 3 Bouv. Inst. n. 3522, et seq. The refusal by a servant to deliver the goods entrusted to him by his master, is not evidence of a conversion by his master. 5 Hill, 455.

3. The tortious taking of property is, of itself, a conversion 15 John. R. 431 and any intermeddling with it, or any exercise of dominion over it, subversive of the dominion of the owner, or the nature of the bailment, if it be bailed, is, evidence of a conversion. 1 Nott & McCord, R. 592; 2 Mass. R. 398; 1 Har. & John. 519; 7 John. R. 254; 10 John. R. 172 14 John. R. 128; Cro. Eliz. 219; 2 John. Cas. 411. Vide Trover.

CONVERSION, in equity, The considering of one thing as changed into another; **for example, land will be considered as converted into money, and treated as such by a court of equity**, when the owner has contracted to sell his estate in which case, if he die before the conveyance, his executors and not his heirs will be entitled to the money. 2 Vern. 52; S., C. 3 Chan. R. 217; 1 B1. Rep. 129. On the other hand, money is converted into land in a variety of ways as **for example, when a man agrees to buy land, and dies before he has received the conveyance, the money he was to pay for it will be considered as converted into lands, and descend to the heir**. 1 P. Wms. 176 2 Vern. 227 10 Pet. 563; Bouv. Inst. Index, h. t.

ABANDONMENT, contracts. In insurances the act by which the insured relinquishes to the assurer all the property to the thing insured. [MJ's comments: Remember PROPERTY is Rights and Interests IN Land or IN Chattels]

2. – No particular form is required for an abandonment, nor need it be in writing; but it must be explicit and absolute, and must set forth the reasons upon which it is founded.

5. – The abandonment, when legally made transfers from the insured to the insurer the property in the thing insured, and obliges him to pay to the insured what he promised him by the contract of insurance. 3 Kent, Com. 265; 2 Marsh. Ins. 559 Pard. Dr. Coin. n. 836 et seq. Boulay Paty, Dr. Com. Maritime, tit. 11, tom. 4, p. 215.

MJ's comments: Ever hear tell of a Mortgage Lender taking out an insurance policy securing its rights and interest in the Chattel Mortgage? Interesting, yes? In light of foreclosure.

ABANDONMENT, Rights. **The relinquishment of a right; the giving up of something to which we are entitled.**

2. – Legal rights, when once vested, must be divested according to law, **but equitable rights may be abandoned.** 2 Wash. R. 106. See 1 H. & M. 429; a mill site, once occupied, may be abandoned. 17 Mass. 297; an application for land, which is an inception of title, 5 S. & R. 215; 2 S. & R. 378; 1 Yeates, 193, 289; 2 Yeates, 81, 88, 318; an improvement, 1 Yeates, 515 ; 2 Yeates, 476; 5 Binn. 73; 3 S. & R. 319; Jones' Syllabus of Land Office Titles in Pennsylvania, chap. xx; and a trust fund, 3 Yerg. 258 may be abandoned.

TO VEST, estates. To give an immediate fixed right of present or future enjoyment; an estate is vested in possession when there exists a right of present enjoyment; and an estate is vested in interest, when there is a present fixed right of future, enjoyment. Feame on Rem. 2; vide 2 Rop on Leg. 757; 8 Com. Dig. App. h. t.; 1 Vern. 323, n.; 10 Vin. Ab. 230; 1 Suppl. to Ves. jr. 200, 242, 315, 434; 2 Id. 157 5 Ves. 511.

VESTED REMAINDER, estates. One by which a present interest passes to the party, though to be enjoyed in future, and by which the estate is invariably fixed to remain to a determinate person, after the particular estate has been spent. 2 Bouv. Inst. n. 1831. Vide Remainder.

VESTURE OF LAND. By this phrase is meant all things, trees excepted, which grow upon the surface of the land, and clothe it externally.

2. He who has the vesture of land has a right, generally, to exclude others from entering upon the superficies of the soil. 1 Inst. 4, b; Hamm. N. P. 151; pee. 7 East, R. 200; 1 Ventr. 393; 2 Roll. Ab. 2.

Back to ABANDONMENT

3. – The abandonment must be made by the owner without being pressed by any duty, necessity or utility to himself, but simply because he wishes no longer to possess the thing; and further it must be made without any desire that any other person shall acquire the same; **for if it were made for a consideration, it would be a sale or barter, and if without consideration, but with an intention that some other person should become the possessor, it would be a gift:** and it would still be a gift though the owner might be indifferent as to whom the right should be transferred; for example, he threw money among a crowd with intent that someone should acquire the title to it.

VIVUM VADIUM, or living pledge, contracts. When a man borrows a sum of money (suppose two hundred dollars) of another, and grants him an estate, as of twenty dollars per annum, to hold till the rents and profits shall repay the sum so borrowed.

2. This is an estate conditioned to be void as soon as such sum is raised. And in this case the land or pledge is said to be living; it subsists, and survives the debt, and immediately on the discharge, of that, results back to the borrower. 2 Bl. Com. 157. See Antichresis; Mortgage.

RIGHT. This word is used in various senses: 1. Sometimes it signifies a law, as when we say that natural right requires us to keep our promises, or that it commands restitution, or that it forbids murder. In our language it is seldom used in this sense. 2. It sometimes means that quality in our actions by which they are denominated just ones. This is usually denominated rectitude. 3. It is that quality **IN** a person by which he can do certain actions, or **possess certain things** which belong to him **by virtue of some title.** In this sense, we use it when we say that a man has **a right to his estate** or a right to defend himself. Ruth, Inst. c. 2, §1, 2, 3; Merlin,; Repert. de Jurisp. mot Droit. See Wood's Inst. 119.

CLAIM. A challenge of the ownership of a thing which a man has not in possession, and a challenge of the ownership of a thing that is wrongfully withheld by another. Plowd. 359; Wee i Dall.444; 12 S. & R. 179.

TRUST, contracts, **devises**. An equitable right, title or interest in property, real or personal, distinct from its legal ownership; or it is a personal obligation for paying, delivering or performing anything, **where the person trusting has no real. right or security, for by, that act he confides altogether to the faithfulness of those intrusted.** This is its most general meaning, and includes deposits, bailments, and the like. In its more technical sense, it may be defined to be **an obligation upon a person, arising out of a confidence reposed in him**, to apply property faithfully, and according to such confidence. Willis on Trustees, 1; 4 Kent, Com. 295; 2 Fonb. Eq. 1; 1 Saund. Uses and Tr. 6; Coop. Eq. Pl. Introd. 27; 3 Bl. Com. 431.

2. Trusts were probably derived from the civil law. The fidei commissum, (q. v.) is not dissimilar to a trust.

3. Trusts are either express or implied. 1st. Express trusts are those which are created in express terms in the deed, writing **or will**. The terms to create an express trust will be sufficient, if it can be fairly collected upon the face of the instrument that a trust was intended. Express trusts are usually found in preliminary sealed agreements, such as marriage articles, or articles for the purchase of land; in formal conveyances, such as marriage settlements, terms for years, mortgages, assignments for the payment of debts, raising portions or other purposes; and in wills and testaments, when the bequests involve fiduciary interests for private benefit or public charity,, they may be created even by parol. 6 Watts & Serg. 97.

TO BEQUEATH. To give personal property **by will** to another.

BEQUEST. **A gift by last will or testament**; a legacy. (q. v.) This word is sometimes, though improperly used, as synonymous with devise. There is, however, a distinction between them. A bequest is applied, more properly, to a gift by will of a legacy, that is, of personal property; devise is properly a gift by testament of real property.

Back to TRUST

4. - 2d. Implied trusts are those which without being expressed, are deducible from the nature of the transaction, as matters of intent; or which are superinduced upon the transaction by operation of law, as matters of equity, independently of the particular intention of the parties.

5. The most common form of an implied trust is where property or money is delivered by one person to another, to be by the latter delivered to a third person. These implied trusts greatly extend over the business and pursuits of men: a few examples will be given.

6. When land is purchased by one man [“A”] in the name of another [“B”], and the former [“A”] pays the consideration money, the land will in general be held by the grantee [“B”] in Trust for the person who so paid the consideration money. Com. Dig. Chancery, 3 W 3; 2 Fonbl. Eq. book 2, c. 5, §1, note a. Story, Eq. Jur. §1201.

MJ’s comments: Consider what happens when one uses Federal Reserve Notes to Purchase. Who is in fact providing the Consideration Money? It is the Lender. Therefore, Re-Read 6. The Lender will generally want security. Consider who is the Cestui Que Trust in this Example. Eye opening, yes?

7. When real property is purchased out of partnership funds, and the title is taken in the name of one of the partners, he will hold it in trust for all the partners. 7 Ves. jr. 453; Montague on Partn. 97, n.; Colly. Partn. 68.

8. When a contract is made for the sale of land, in equity the **vendor** is immediately deemed a trustee for the vendee of the estate; and the vendee, a trustee for the vendor of the purchase money; and by this means

there is an equitable conversion of the property. 1 Fonbl. Eq. book 1, ch. 6, §9, note t; Story, Eq. Jur. SSSS 789, 790, 1212. See Conversion. For the origin of trusts in the civil law, see 5 Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 1, n. 18; 1 Brown's Civ. Law, 190. Vide Resulting Trusts. See, generally, Bouv. Inst. Index, h. t.

VENDOR, contracts. A seller. (q. v.) One wbo disposes of a thing in consideration of money. Vide Purchaser; Seller.

MJ's comments:

The THING is the Subject of the Right and Interest. Now recall that PROPERTY is rights and interest IN Land and IN Chattel where Land and Chattels are the THING. Now ESTATE is the degree, quantity and extent of Rights and Interest IN Real Property as subjected upon a Real THING.

Now therefore, it stands to reason that one must know about the THING such that it can be claimed as Property. Therefore, a Survey is commissioned by a Grantor – there is ALWAYS a higher Power – St. Paul is correct – Romans 13. Now, from that Survey a Claim is made on the ABANDONED THING. In other words a Claim is issued upon potentially interested parties, if no one rebuts the claim, then the Claimant TAKES POSSESSION and OCCUPANCY VESTING RIGHT in the TAKER who becomes SEIZED in POSSESSION in fee simple.

Now see carefully, whoever Granted the Survey may be able to Un-Grant the Survey and therefore the Settlor/Grantor maybe sovereign in regard to the dominion upon the THING.

PRODIGAL, civil law, persons. Prodigals were persons who, though of full age, were incapable of managing their affairs, and of the obligations which attended them, in consequence of their bad conduct, **and for whom a curator was therefore appointed.**

CURATOR, persons, contracts. One who has been legally appointed to take care of the interests of one who, on account of his youth, or defect of his understanding, or for some other cause, is unable to attend to them himself. [MJ adds also according to their ignorance]

2. There are curators ad bona, of property, who administer the estate of a minor, take care of his person, **and intervene in all his contracts**; curators ad litem, of suits, who assist the minor in courts of justice, and act as curator ad bona in cases where the interests of the curator are opposed to the interests of the minor. Civ. Code of Louis. art. 357 to 366. There are also curators of insane persons Id. art. 31; and of vacant successions and absent heirs. Id. art. 1105 to 1125.

3. **The term curator is** usually employed in the civil law, for **that of guardian.**

MJ's comments:

Remember the OWNER of the ESTATE is the TENANT, as TRUSTEE. Lets check out LEGAL.

LEGAL. That which is according to law. It is used in opposition to equitable, **as the legal estate is, in the trustee,** the equitable estate in the cestui que trust. Vide Powell on Mortg. Index, h. t.

3. The person who holds the legal estate for the benefit of another, is called a trustee; he who has the beneficiary interest and does not hold the legal title, is called the beneficiary, or more technically, the cestui que trust.

4. When the trustee has a claim, he must enforce his right in a court of equity, for he cannot sue any one at law, in his own name; 1 East, 497; 8 T. R. 332; 1 Saund. 158, n. 1; 2 Bing. 20; **still less can he in such court sue his own trustee. 1 East, 497.**

MJ's comments:

Did you catch that? There is ALWAYS a higher power. Meaning if you are trustee holding the estate as TENANT for cestui que trust [probably Lender]; you may go to "court of equity" to gain a benefit of that court, but the Judge, as Trustee cannot be sued. The benefit being the Law and Judgment. Scratch your head on this one…."*We the People of the United States……do ordain and establish this Constitution for the United States of America"*

What if the US Government is the International Banker? Consider.