Real Property vs. Personal Property

Two types of property:

- Real property, ("realty"), real estate
- Personal property ("chattels" or "personalty")

Imagine a parcel of land as an inverted pyramid:

The land includes everything beneath land down to center of earth and up to upper reaches of sky.
Real Property

Bundle of rights

Real property ownership = A bundle of property rights

- Possess
- Control
- Enjoy
- Dispose

Summary

Basic Concepts

- Real property
- Personal property
- Bundle of rights
- Inverted pyramid

Real Property

Appurtenances

“Runs with the land”

Appurtenance: Something that goes with or pertains to ownership of a piece of real property, but isn’t necessarily a physical part of the property.
Appurtenances

- Air rights
- Water rights
- Mineral rights
- Support rights

Air rights

Air rights: Landowner has right to use airspace above property, within limitations imposed by law.

Example: Aircraft flight paths

Air rights can be sold separately from land (makes condominiums possible).

Water rights

Two systems for allocating water rights:

- Riparian rights
- Prior appropriation system

Either system can be applied both to surface water and to subsurface water.
Water Rights

Riparian rights system

Riparian rights: Landowner has right to use water that touches property.
Two types of water:
- Riparian water = flowing water
  - Rivers, streams
- Littoral water = standing water
  - Navigable waterways: oceans, lakes
Water may be used only on the riparian or littoral property itself.

Water Rights

Riparian rights system

- Riparian Rights: Ownership may extend to middle of water.
- Littoral Rights: Ownership only to high tide or high water mark.
- Correlative Rights: Allows owner only a reasonable share of the water during times of short supply.

Water Rights

Prior appropriation system

- Permit required for appropriative rights.
- Permit holder can take or divert water from a particular source for a specified reasonable and beneficial use.
Example: Irrigation
**Appurtenances**

**Mineral rights**

**Mineral rights**: Landowner has right to extract any minerals located within property’s inverted pyramid.

Minerals are:
- Real property when in the ground
- Personal property once extracted

**Mineral Rights**

**Oil and gas**

Special rule for oil and gas:

**Rule of capture**

A landowner owns all oil and gas produced by wells on the property, even if it migrates from neighboring land.

**Appurtenances**

**Support rights**

**Support rights**: Natural support provided to land by surrounding land.

- **Subjacent support** – provided by underlying earth.
- **Lateral support** – provided by neighboring land.
**Summary**

**Appurtenances**

- Appurtenance
- Air rights
- Water rights
- Riparian rights
- Littoral rights
- Prior appropriation
- Mineral rights
- Rule of capture
- Support rights

**Attachments**

**Attachments**: Things permanently attached to land.
- May be natural or manmade
- Are considered part of the real estate

**Natural attachments**

**Natural attachments**: Growing things attached to land by roots, such as trees, bushes, and other plants (fructus naturalis).
Crops produced by cultivated plants are classified as personal property even before they are harvested (fructus industrialis).

- **Emblements** - a tenant farmer may be able to return to harvest first crop after tenancy expires.

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**Fructus Naturalis**: real property

**Fructus Industrialis**: personal property

- Harvestable crops; emblements

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**Severance**: Natural attachments can be “severed” from land and sold separately.
Attachments

Fixtures

Fixtures: Manmade attachments to real property.
- Items that were once personal property.
- Now attached to or connected with (annexed to) real property in such a way that they are part of real property.

Natural Attachments

Annexation

Physical annexation: Permanent, physical attachment of item to land or improvements.

Constructive annexation: When item is a necessary or working part of real property.

Attachments

Distinguishing fixtures from personal property

Common legal tests:
- Method of attachment
- Adaptation of the item
- Relationship of the parties
- Intention of the parties
- Agreement - If a written agreement exists, it normally controls whether item is considered a fixture.
Fixture Tests
Adaptation test

Has item been specially adapted to realty in some way, or specially designed for it?

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Fixture Tests
Intention test

Did person who installed item intend it to become part of realty?

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Fixture Tests
Relationship test

Did person who installed item own property or was he just a tenant?

It's presumed that items installed by owners are real property, while items installed by tenants remain personal property.
Fixture Tests

Trade fixtures

Trade fixtures: Equipment and other items that commercial tenant installs to carry on a business.

Trade fixtures are not considered part of real property, no matter how they’re attached.

Fixtures

Mobile homes

- In Georgia, a mobile home is personal property until permanently attached to a piece of real estate.
  - Once attached to real estate, mobile home is a fixture and part of real property.

Summary

Attachments

- Attachments
- Natural attachments
- Doctrine of emblements
- Fixtures
- Fixture tests
- Severance
Characteristics of Real Property

Physical characteristics:
1) Immobility,
2) Indestructibility
3) Uniqueness (Non-homogenity)

Economic characteristics:
1) scarcity,
2) improvements,
3) permanence, and
4) area preference: situs

Methods of Legal Description

Legal descriptions allow precise identification of a piece of real property.

Descriptions are typically based on a property survey performed by a state-licensed surveyor.
Methods of Legal Description

Three main methods of legal description:
- Metes and bounds
- Recorded plat
- Rectangular survey

Methods of Legal Description

Mettes and Bounds

Mettes and bounds description: Describes a piece of land by specifying its boundaries.
- Monuments – Natural or manmade objects that mark a fixed point.
- Courses – Compass directions.
- Distances – Length of each boundary.

The point of beginning must always be described by reference to a monument.

Reading a Metes and Bounds Description

Starts with point of beginning, then gives course (direction) and distance for each leg of the boundary, until it has described a full circuit and arrived back at the point of beginning.
Example: “Beginning at the old oak tree, go South 15° East 200 feet. Then go North 90° West 310 feet, more or less, to the centerline of Smith Creek. Then go northwesterly along the centerline of Smith Creek to a point due west of the old oak tree. Then go North 90° East 430 feet, more or less, to the point of beginning.”

Metes and Bounds Description

- Metes
  1. Courses
  2. Distances
- Bounds
  1. Natural monuments
  2. Man-made monuments

Methods of Legal Description

**Recorded plat**

Recorded plat description: Standard method for describing property in towns and cities.

Also called recorded map method or plat map method. (aka short form)
When land is subdivided, subdivision is surveyed and map is drawn, showing each lot’s precise location and dimensions.

Each lot is assigned a lot number.

Groups of lots separated by streets within subdivision may also be assigned block numbers.

**Methods of Legal Description**

**Recorded plat**

- Map showing lots and blocks in a subdivision.

Once plat map is recorded, parcel can be described by its lot and block numbers, name of subdivision, and county or city in which it is located.

**Recorded Plat Descriptions**

**Plat map**

Typical recorded plat description:

“Lot 7, Block 2, in the Lowland Heights subdivision, according to the plat thereof recorded at Vol. 22, Page 16, in the records of Hall County, State of Georgia.”
Rectangular survey description: Property identified by its location in section, township, and range on U.S. government survey map.

Also called the government survey system.

Government survey system uses series of large survey grids covering much of United States.

Each grid has its own:
- **Principal meridian** (main north-south line)
- **Base line** (main east-west line)
Government Survey Descriptions

Range & township lines

Each survey grid is identified by the name of its principal meridian.

Each grid has grid lines running parallel to principal meridian and base line at intervals of six miles.

North-south lines are called range lines.
- Range lines divide land into columns called ranges.
- Each range is six miles wide.

East-west lines parallel to base line are called township lines.
- Township lines divide land into rows called township tiers.
Government Survey Descriptions

Townships

- Each individual square is called a township.
- Township is identified by its position in relation to base line and principal meridian.

Township = \[
\begin{array}{c}
6 \text{ miles} \\
\times 6 \text{ miles} \\
36 \text{ square miles}
\end{array}
\]

Government Survey Descriptions

Sections

- Each township is divided into 36 sections.
- Each section is one mile on each side, or one square mile.
  - Each section is 640 acres. (An acre contains 43,560 square feet.)

Sections within a township are numbered from 1 to 36. Most individual parcels are only part of a section, so they are described in terms of fractions, such as quarter sections or quarter-quarter sections.
Methods of Legal Description

Vertical Land Descriptions

- Datum: Measures air rights
  - New York Harbor: official U.S. datum

- Topographic / Contour Maps

Summary

Legal Descriptions

- Legal description
- Metes and bounds method
- Rectangular survey method
- Recorded plat method