

QUESTIONS AND ANSWERS ON REAL PROPERTY

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Questions and Answers on Real Property by Frederick S. Tyler

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FREDERICK S. TYLER

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ANSWERS ON
REAL PROPERTY**

Questions and Answers

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ON

Real Property

Prepared with Reference to Tiffany, Tiedeman, Hopkins,
Blackstone, and Selected Cases.

BY ^{Stansbury}
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QUESTIONS AND ANSWERS
ON
REAL PROPERTY

1. What is meant by the *jura rerum*?

A. All those rights which a man may acquire in and to such external things as are unconnected with his person.

Blackstone, Chapter I, Book 2.

2. In the beginning what was the general distribution of these rights?

A. A dominion was given to man by the Creator over all the earth, and over the fish of the sea, and over the fowls of the air, and over every living thing that moveth upon the earth.

Blackstone, Chapter I, Book 2.

3. What was the general idea of the rights of property in early times as illustrated by the Latin phrase, "*erant omnia communia et indivisa omnibus, veluti unum cunctis patrimonium esset*"?

A. That all property was in common, and that whosoever desired could take whatever he saw fit and

apply it to his own use; that so long as he had the actual possession of a thing he had the property or dominion over it, but the moment he gave up or left the possession it again became common and any one could acquire a right in the thing by merely taking possession. This was in reality only the use of the thing, and lasted only during the actual possession of it by the person.

4. Does this idea of property prevail in modern times?

A. No, gradually as the number of mankind increased it was recognized that a man could by a continuous use of a thing acquire in it a right which could not be taken away by any other person. That is, the substance of the thing was recognized as well as the use.

5. Generally speaking how many kinds of property are there?

A. Two.

6. Name them?

A. Real property and personal property.

7. Define each?

A. 1. Real property is that which is immovable or permanent of location. Tiedeman Sec. 1.

2. Personal property is every kind of property which

does not have the characteristics of immobility and permanency.

8. What is land?

A. It is the soil of the earth.

9. What does land include?

A. It includes all things on its surface and all things buried within it. Tiedeman, Sec. 2.

10. What is the general rule in regard to the ownership of property?

A. The general rule is that all things must have an owner.

11. What are things real?

A. They are such things as are fixed and immovable such as land, or whatever may be considered a part thereof. Tiffany, Sec. 5.

12. What are the several classes of things real with regard to kind?

A. Lands, tenements and hereditaments. Tiffany, Sec. 4.

13. What is a tenement?

A. A tenement is "anything that may be holden provided it be of a permanent nature; whether it be of a substantial and sensible or of an unsubstantial, ideal kind." Tiffany, Sec. 4, citing Black. Comm. 17.

14. What is a hereditament?

A. "Any property which is heritable." Tiedeman, Sec. 6.

15. Of what kinds are hereditaments?

A. Corporeal and incorporeal.

16. Define corporeal hereditaments?

A. Corporeal hereditaments consist of such as effect the senses, such as may be seen and handled by the body. They are of a substantial nature.

17. What is an incorporeal hereditament?

A. It is a right of an intangible nature issuing out of a thing corporeal, (whether real or personal,) or concerning, or annexed to, or exercisable within the same.

18. Name the different classes of incorporeal hereditaments?

A. Advowsons, tithes, commons, ways, offices, dignities, franchises, corodies, annuities, and rents.

19. Define an advowson?

A. It is the "right of appointment to a church or ecclesiastical benefice." Tiffany, Sec. 5.

20. What are tithes?

A. Tithes are "A right to the tenth part of the produce of lands, the stocks upon lands, and the per-

sonal industry of the inhabitants." Bouvier's Dict., Vol. 3, P. 3280.

21. What is meant by the right of common?

A. It is the profit which one man has in the lands of another. That is, a right to take certain substantial products pertaining to the realty. Tiedeman, Sec. 424.

22. Name the principal kinds of rights of common?

A. The right of pasture, the right of piscary, the right of turbary, the right of estovers.

23. Explain the right of pasture?

A. It is the right to pasture cattle upon the land of another.

24. Explain the right of piscary?

A. It is the right to fish in water passing over the land of another. Tiedeman, *Supra*.

25. Explain what is meant by the right of turbary?

A. It is the right to dig turf or peat for fuel from the land of another.

26. Explain what is meant by the right of estovers?

A. It is the right to take whatever wood that is necessary for fuel, agricultural implements and fences.

27. Into how many classes at common law were rights of common divided?