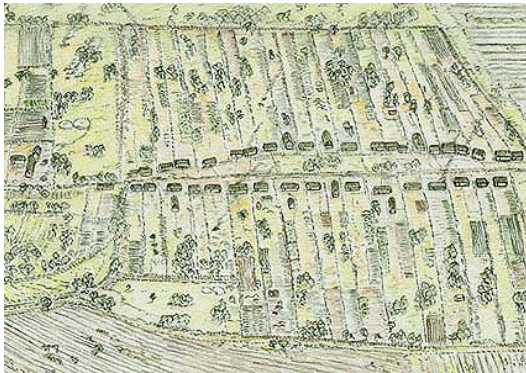


Fee Simple Ownership ~ The History



It's actually quite difficult to understand the concept of fee simple ownership when it comes to real property without looking at some of the history.

We have to go back to England in the pre-feudal days. That would be 1065 and earlier. At that time, there really was no particular concept of private

property. People definitely farmed the lands, but their rights were not well-established or well-recognized. Some contemporary historians might argue with this point.

In 1066, William arrived from Normandy and defeated King Harold in the Battle of Hastings. Crossing the English Channel was difficult and William really didn't want to spend all his time with the barbarians. People in ancient times were all called "barbarians" if they were not part of the Roman Empire. Even though parts of England were indeed captured by Caesar in the Gallic Wars, he continued to refer to the inhabitants, namely the Angles, the Saxons and the Celts as barbarians. And, so did William, hundreds of years later.

William needed a way to exert control over his newly conquered lands. He retreated most of the time to a nice castle in France and enjoyed good French wine. Crossing the English Channel, time and time again to do battle with the barbarians seemed somewhat pointless. So, he devised a nice system of land occupation. First, he owned all the land. He had all the power to enforce his ownership. He threatened to come again and kill anyone who disputed his ownership. But, here was his new and absolutely great idea! He said that if you acknowledged him to be your King, then you got to keep large parcels of property. By this he meant thousands upon thousands of acres. He would grant large tracts of land to loyal followers. These original people who stepped forward were the Tenants-in-Chief (or the original landlords or landowners in England).



So, what was the deal?

You agreed to:

- 1) pledge your allegiance to William, as your King, and
- 2) agree to pay some kind of servitude to him on a regular basis.

What you got in return was several thousand acres of prime agricultural land. The servitude was probably something along the lines of crops, livestock or men for the military. Not a bad deal, particularly if you didn't have to join the military yourself. In fact, William offered to protect you from invaders.

Allodial Title

What kind of title did William have? He acquired the lands by "conquest". After all, his name was William the Conqueror. He had what is known as "allodial title". He owns the lands. That is it! No exceptions! Anyone who challenges his title will be killed. Then, of course, you might still have a good argument, but you would be dead. So, it may not matter all that much.

When William would part with the land he would do so only upon certain conditions:

- 1) you would owe your allegiance to him as your King,
- 2) you would pay him some kind of servitude,
- 3) if he wanted the property back for a particular purpose, then he would take it, (he just loaned it to you in the first place)
- 4) while you had his property, he might make some rules, and
- 5) if you died, he would get the property back.

If we were to fast forward to today, you might recognize that allodial title is full and complete, absolute and ultimate ownership of property. It is not encumbered or restricted in any way. This is the way countries own property. Also, if you were to examine the restrictions on ownership, you might find them to be:

- 1) taxation (servitude),
- 2) expropriation (eminent domain),

- 3) regulation (police power) and
- 4) escheat.

These restrictions seem to match up quite nicely with William's ideas. These really were all good ideas, but they were not as popular with the Tenants-in-Chief as you might think. Here's what they didn't like:

- 1) taxes, yes, same thing as today, nobody really likes taxes,
- 2) let's set out some rules on expropriation, that would be nice and perhaps not quite so arbitrary,
- 3) some constraints about rules would also be appropriate, and
- 4) this doctrine of escheat was just too far reaching, why should the King always get the property back, perhaps the Tenants could pick their own successors.

These concerns among the Tenants-in-Chief continued for years and ultimately were resolved in part by the Magna Carta in 1215. However, you will indeed appreciate that William was long since dead (1087) by this point in time. It was King John who agreed to the first Magna Carta and then immediately reneged on his agreement. Later Kings accepted it, and the key point was that the King's authority and power was to be exercised in a restricted fashion.

We should go back to William's early interventions:

- 1) he insisted that the Norman language (French) be the official language of his monarchy,
- 2) he insisted upon the creation of the Domesday Book.

These two steps were very significant. Norman French became the language of the upper class. If you didn't know it, you were out of the loop. Only commoners spoke the language of the day, being "Old English". English as we know it comes from Norman French which itself was based upon Latin and Old English. You will appreciate that there is a substantial advantage if you control the new language. Actually, it's not too different from Bill Gates and MS Word.

The Domesday Book

The Domesday Book was the first record of titles. It was like a census. It perhaps was the first registry office. William wanted to know who occupied the lands, so that he could approach them with his deal: loyalty and fidelity in exchange for land tenure. It was also intended as a source of revenue. He wanted to know who owed him money. This really might have been its primary purpose since these deals had for the most part already been made. From 1066 to 1085, William had endowed his loyal subjects with property. However, the need arose in 1085 to put together an army since William was to be challenged. He authorized the King's Roll which later became to be known as the Winchester Roll. This was a very, very important document. It recorded the tenure of properties. It specifically named the Tenants-in-Chief and described the location of their lands. As a little bit of time went by, it could not be challenged. Whatever was written in the book was the law! The name "Domesday Book" is pejorative. It was something of a "nickname" based on Judgement Day in the Bible. It was to be the final word without appeal. So, years afterwards, this Winchester Tax Roll became the authoritative register of property tenure in England.

By the way, there's an interesting note in the book about a property in Essex county said to be worth 30 Pounds in 1066. By 1086 it was worth 60 Pounds. That's interesting because it indicates that property doubles in value every 20 years.

And, what about William's new land tenure system? Well, after a few years it came to be known as feudalism. It worked very well in an agrarian economy. The Tenants-in-Chief held property from the King and then they could divide it up themselves in the same way. Their own tenants became landlords and divided up the land once again. The result was a series of lords and overlords until you finally reached the King. The basic principle however, was that you only owed servitude to your immediate overlord, who then, in turn owed it to their lord, and so on.

Creation of Estates

The system that William proposed which later came to be known as feudalism was based upon the concept of tenure. The tenant occupied the lands. The tenant looked after the lands. If the tenant could no longer look

after the lands then they reverted back to the immediate lord or ultimately to the King. This seemed fine at first. But, as time went by, people got a little peeved. The rich, at the top of the food chain who spoke and conversed in French were quite skillful in setting out just exactly when they would get their lands back. They would have conveyancers draft up all sorts of conditions. They really became quite complex. Each time they got the lands back, they would get paid again to let them out. This proved to be a great source of income. They might for example say “I get the lands back:

- 1) when you die,
- 2) if you fail to pay the servitude,
- 3) if you have no children,
- 4) if you have no male descendant,
- 5) if you have no wife when you die,
- 6) when your wife dies,
- 7) if you have no grandchildren,
- 8) if you fail to farm the lands,
- 9) if you are convicted of a felony
- 10) in 10 years.

All kinds of conditions would qualify the arrangement. If you were a tenant, you would refer to your interest in the lands as your “estate”. Interestingly enough, real estate agents in the United Kingdom are still referred to as “estate agents”.

Estates in land might be:

- 1) “To Uses”, this means a specific purpose, for example, you must farm the lands, if you fail to farm the lands, then they revert to the lord.
- 2) “Life Estate”, this means throughout your lifetime, so it reverts to the lord when you die.
- 3) “Future Estate”, this means you don’t get the property until sometime in the future. So, if “X” has it now, you have to wait until X dies, then, it’s your turn.
- 4) “Leasehold Estate”, this means that you will have it for a fixed period of time, commencing at a certain date and terminating on a certain date.

The important matter was the issue of the “reversion”. If you were a lord, you liked this and if you were a vassal you didn’t. Remember that many

people would be both. In the meantime, the King was always interfering. He always wanted the lands to revert all the way back to him. Also, if someone way up the chain lost title to their estate, then everyone down the chain did too. In reality, this was just a money grab. The real farmers just stayed on their lands, but they were frequently confronted with competing claims for money due to servitude. This all could have been simply eliminated if William had thought of the GST.

So, if there was a limited purpose for the land it was a “to uses” estate. If it was limited in time or duration, then this was a temporal estate. If it was temporal, it might be for a time certain, this would be a leasehold estate, or for a time uncertain, and this might be a life or future estate. In addition to the straightforward matters, they would also have all these conditions stacked on top of one another, so it was often very difficult indeed to determine who held the rightful estate in the property.

The Development of the Concept of Private Property

After your family has cleared the lands, farmed the lands, paid servitude and built a house, you really don't particularly like the idea of everything going back to the lord, so that he might put it out to the highest bidder. So, the new idea, was to eliminate the reversion. The property did not go back.

So, in 1290 there was a Statute passed called “Quia Emptores”. This Statute allowed tenants to sell their properties to others directly. If you were at level 7 on the food chain, your purchaser came in at level 7 and replaced you. You were gone. You were paid in full. This brought an end the feudal system of the endless pyramid. The feudal system, of course, would have made modern day MLM's proud.

Fee Simple

With the elimination of the reversion came the concept of private ownership. Once you had the concept of private ownership and the ability to determine your own successor by deed or Will, most people wanted a conveyable title. They wanted a freehold title without any restrictions on transfer. All the prior restrictions were “complicated”, and the uncomplicated title was “simple” title, that is, no restrictions, free to alienate, convey or transfer by deed or by Will. The new element here was the replacement of the reversion with the right to transfer. This was the right to “own” real property. Prior to

that, it didn't exist. It was tenure only. Now, it was ownership.

Fief means "land" in Old English and "fee" meant your relationship to your property. Originally it referred to tenure alone, but it evolved into ownership. So, a fee simple estate is one that is without restriction on transfer. However, it's not quite allodial title, so you can't get too carried away with it.

Having said that "Fee Simple" is a title that may be conveyed, transferred or assigned without restriction. It is the highest form of ownership (next to allodial title). It is still, however limited by the right of the government to tax, expropriate, regulate or inherit (but, so too are every other type of ownership).

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