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CHAPTER 5

Estates and Construction of Documents Creating Estates

**SECTION 27‑5‑10.** Tenure of lands in State.

The only tenure of lands in this State is that of free and common socage.

HISTORY: 1962 Code Section 57‑1; 1952 Code Section 57‑1; 1942 Code Section 8680; 1932 Code Section 8680; Civ. C. ‘22 Section 5202; Civ. C. ‘12 Section 3439; Civ. C. ‘02 Section 2353; G. S. 1761; R. S. 1872; 1712 (2) 413.

**SECTION 27‑5‑20.** Rule in Shelley’s Case.

The rule of law known as the rule in Shelley’s Case is hereby abolished in the following particulars, to wit: When, by deed or will or by any instrument in writing, a remainder in lands, tenements, hereditaments or other real estate shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs or heirs of the body of such tenant for life shall take as purchasers in fee simple, by virtue of the remainder so limited to them. The provisions of this section shall not affect wills, deeds and other instruments in writing executed prior to October 1, 1924 or the construction of such wills, deeds and other instruments in writing.

HISTORY: 1962 Code Section 57‑2; 1952 Code Section 57‑2; 1942 Code Section 8802; 1932 Code Section 8802; 1924 (33) 1140.

**SECTION 27‑5‑30.** Construction of terms “failure of issue” and the like.

Whenever in any deed or other instrument in writing, not testamentary, or in any will of a testator, an estate, either in real or personal property, shall be limited to take effect on the death of any person without heirs of the body, issue or issue of the body, or other equivalent words, such words shall not be construed to mean an indefinite failure of issue, but failure at the time of the death of such person.

HISTORY: 1962 Code Section 57‑3; 1952 Code Section 57‑3; 1942 Code Section 8871; 1932 Code Section 8871; Civ. C. ‘22 Section 5323; Civ. C. ‘12 Section 3551; Civ. C. ‘02 Section 2464; G. S. 1682; R. S. 1976; 1853 (12) 298.

**SECTION 27‑5‑40.** Feoffment with livery of seizin shall not defeat remainder.

No estate in remainder, whether vested or contingent, shall be defeated by any deed of feoffment with livery of seizin.

HISTORY: 1962 Code Section 57‑4; 1952 Code Section 57‑4; 1942 Code Section 8872; 1932 Code Section 8872; Civ. C. ‘22 Section 5324; Civ. C. ‘12 Section 3552; Civ. C. ‘02 Section 2465; R. S. 1977; 1883 (18) 430.

**SECTION 27‑5‑50.** Warranties by life tenants; collateral warranties.

All warranties which shall be made by any tenant for life of any lands, tenements or hereditaments descending or coming to any person in reversion or remainder shall be void and of no effect.

All collateral warranties which shall be made of any lands, tenements or hereditaments by any ancestor who has no estate of inheritance in possession in them shall be void against his heir.

HISTORY: 1962 Code Section 57‑5; 1952 Code Section 57‑5; 1942 Code Section 8801; 1932 Code Section 8801; Civ. C. ‘22 Section 5268; Civ. C. ‘12 Section 3498; Civ. C. ‘02 Section 2412; G. S. 1809; R. S. 1928; 1712 (2) 437.

**SECTION 27‑5‑60.** Feoffments made by person wrongfully in possession.

If any person after such entry as is mentioned in Section 15‑67‑430 into lands or tenements holden with force make a feoffment or other discontinuance to any person to have maintenance or to take away and defraud the possessor of his recovery in any wise and afterwards in an action thereof to be taken or pursued before magistrates by due inquiry thereof such feoffments and discontinuances are duly proved to be made for maintenance as aforesaid then such feoffments or other discontinuances shall be void, frustrate and of no effect.

HISTORY: 1962 Code Section 57‑6; 1952 Code Section 57‑6; 1942 Code Section 888; 1932 Code Section 888; Civ. P. ‘22 Section 836; Civ. C. ‘12 Section 4067; Civ. C. ‘02 Section 2966; G. S. 2293; R. S. 2426; 1712 (2) 444.

**SECTION 27‑5‑80.** Certain pension plans, annuity trusts, and the like of employers exempt from laws against perpetuities.

Pension, profit sharing, stock bonus and annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, shall not be invalid as violating any laws or rules against perpetuities or restraints on the power of alienation of title to property; but such trust may continue for such period of time as may be required by the provisions thereof to accomplish the purposes for which they are established.

HISTORY: 1962 Code Section 57‑7.1; 1960 (51) 1630.

**SECTION 27‑5‑90.** Effect of descent cast.

The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

HISTORY: 1962 Code Section 57‑8; 1952 Code Section 57‑8; 1942 Code Section 383; 1932 Code Section 383; Civ. P. ‘22 Section 326; Civ. P. ‘12 Section 132; Civ. P. ‘02 Section 107; 1870 (14) Section 110.

**SECTION 27‑5‑100.** Right of entry of lawful owner or heirs against heirs of disseizor.

The dying of any disseizor seized of or in any lands, tenements or other hereditaments, having no right or title therein, shall not be taken or deemed any such descent as to take away the entry of any such person or persons, or their heirs, as, at the time of such descent, had good and lawful title of entry into such lands, tenements or hereditaments unless such disseizor has had the peaceable possession of such lands, tenements or hereditaments for the space of ten years next after the disseizin therein by him committed, without entry or continual claim by or of such person or persons as had lawful title thereunto.

HISTORY: 1962 Code Section 57‑9; 1952 Code Section 57‑9; 1942 Code Section 877; 1932 Code Section 877; Civ. P. ‘22 Section 825; Civ. C. ‘12 Section 4063; Civ. C. ‘02 Section 2962; G. S. 2282; R. S. 2422; 1712 (2) 474.

**SECTION 27‑5‑110.** Entry on land.

No person shall make any entry into any lands and tenements but in case entry is given by law; and in such case not with strong hand nor with multitude of people, but only in peaceable and easy manner.

HISTORY: 1962 Code Section 57‑10; 1952 Code Section 57‑10; 1942 Code Section 885; 1932 Code Section 885; Civ. P. ‘22 Section 833; Civ. C. ‘12 Section 4064; Civ. C. ‘02 Section 2963; G. S. 2290; R. S. 2423; 1712 (2) 442.

**SECTION 27‑5‑120.** Posthumous child shall take under will or settlement.

A posthumous child shall take under any will or settlement as though born in the lifetime of the father and shall not be liable to be defeated on the ground that the remainder was contingent and did not vest at the instant that the prior estate terminated and that there was no trustee to preserve the contingent remainder.

HISTORY: Former 1976 Code Section 21‑1‑30 [1962 Code Section 19‑3; 1952 Code Section 19‑3; 1942 Code Section 8873; 1932 Code Section 8873; Civ. C. ‘22 Section 5325; Civ. C. ‘12 Section 3553; Civ. C. ‘02 Section 2466; G. S. 1846; R. S. 1978; 1712 (2) 542] redesignated 27‑5‑120 by 1986 Act No. 539, Section 2.

**SECTION 27‑5‑130.** Deeds of real estate to pass entire estate; conveyance of fee simple absolute; construction of conflicting language.

(A) Every deed of real estate executed after December 31, 1993, passes to the grantee the entire interest of the grantor in the property described in the deed, unless provided to the contrary in the deed.

(B) Words of inheritance or succession are unnecessary to convey property in fee simple absolute.

(C) This section modifies the common law and only applies to deeds executed after December 31, 1993.

(D) In the event of a discrepancy between a deed and any addendum or attachment thereto where the words of inheritance or succession are contained in one of the documents, but not in all documents, or where conflicting language exists as to whether or not the grantor intended to convey a fee simple or a life estate interest in the real property, it is presumed rebuttable by clear and convincing evidence that the grantor intended to convey a fee simple absolute interest in the real property if he owned such an interest or his entire interest in the property if he did not own it in fee simple.

HISTORY: 1993 Act No. 51, Section 1.