

QUESTIONNAIRE ON TIME-LIMITED RIGHTS¹

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Your report should not be more than 9,000 words

PART I – RESIDENTIAL and AGRICULTURAL PROPERTY

Question 1

A is the owner² of a residential (immovable) property/farm. A wants to give B a right relating to the property which is limited in time in the sense that it is certain not to last forever³ and that it entitles B to live in the property or exploit the farm.

Briefly indicate the various ways in which this can be done, mentioning in each case the main characteristics of the right (e.g. time limits, termination) and how it is constituted between the parties (formalities).

Section 1. – Enforceability against third parties

*In this section you should determine to what extent the time-limited rights involved are enforceable against third parties. We are dealing with time-limited rights that confer some kind of **interest in the property itself**. Interests with only exclusive effect between the parties are not part of this project. The aim of the first set of questions is to determine what time-limited right so defined exist in your legal system.*

For each question, consider each type of limited right separately.

If relevant, indicate if a period of (direct or indirect) occupancy is required.

Question 2

Some time after the creation of the time-limited right concerned, A conveys the property to a third party (hereinafter always mentioned as C).

Would the right of B remain enforceable against C if the latter acquired the property for value / no consideration?

If so, briefly indicate to what extent actual or constructive knowledge, publicity or registration affects the position of C. Also mention if other criteria are relevant, e.g. a certain period of occupancy.

Question 3

Some time after the creation of the time-limited right concerned:

- a) creditors of A attach the property;
- b) A becomes insolvent/bankrupt.

¹ Please do not elaborate on the technical details of specific protective rules, but merely describe their principal features.

In particular regarding Part II, please make sure that all business applications are included.

² Or the functional equivalent, e.g. holder in fee simple.

³ Do not include time sharing nor financial leasing if the economic aim is for the lessee to acquire ownership at the end.

Is the time-limited right of B included in the attachment or insolvency/bankruptcy assets?
If A has created a prior mortgage on the property would the time-limited right be enforceable against the mortgage creditor?

Question 4

Some time after the creation of the time-limited right concerned, C dispossesses B. Can B act directly against C for return of the property? Can B act directly against D who acquired the property from C?

Does it make a difference if the dispossession is effected by force⁴ or by fraud?

Question 5

Suppose C disturbs in any way B's use and enjoyment of the property. Can B act directly against C to stop the disturbance?

Section 2 – Content of the time-limited right

The aim of this set of questions is to define the content of the time-limited rights as defined above. Do not deal with interests with exclusive effect between the parties in this section. Only explain interests to which the answer to either questions 2 OR 3 was in the affirmative.

For each question, please consider each type of limited right separately.

Please indicate in each case whether the applicable rule is mandatory or not.

Question 6

B has a time-limited right in a house/ a farm. Which of the two parties (A or B), if any, has the duty to repair, replace or renew where:

- the central heating system becomes defective;
- the central heating system becomes obsolescent (without being defective);
- the roof is damaged in a storm;
- the fences on the farm become dilapidated;
- the paint on the building flakes off.

Would it make a difference if one of the parties caused the damage?

Suppose the party responsible for repainting the building omits to do anything and due to his omission the wall is seriously damaged. Who, if anyone, is now responsible for repairing the damage?

If possible, please mention the principles and/or the theoretical distinctions applicable to repairs and then apply them to the individual cases.

Please indicate default and mandatory rules. Also indicate manifest and frequent contractual provisions deviating from default rules.

Question 7

With regard to the farm, to what extent is B entitled to:

- cut plantations for timber, fruit trees, decorative trees, shrubs?
- open mines or quarries and /or continue mineral operations?

⁴ Define what is considered to be force?

- harvest standing crops after the termination of his right?
- the proceeds, if a further right is created with regard to the object of the limited right (e.g. if he sublet the house or the farm)? What if the proceeds of the latter right become due on an annual basis, and the principal limited right expires six months before maturity of the sub-interest?

Question 8

B has a time-limited right in a house/farm. He wants to convert the house into a warehouse (store)/ the farm into a hotel .

Is he entitled to do this?

- Does it make a difference:
 - if the alteration enhances the value of the property?
 - if the neighbourhood loses its residential character/ the farm becomes incorporated within the city limits?
 - if the warehouse or hotel can at a low cost be changed back to a house/ a farm?

Question 9

A is dissatisfied with the way in which B conducts himself with regard to the property. Explain what measures of control and eventual remedies are available to him against B.

Indicate when such control and remedies can be exercised.

Question 10

Is B entitled to transfer/burden his time-limited right by:

- selling it;
- donating it;
- mortgaging it
- creating a separate limited right?

If so, to what extent is the content and duration of the later interest determined by B's interest?

Can B's time-limited right be attached in execution proceedings against B?

Can B's time-limited right be included in B's insolvency or bankruptcy assets?

Question 11

Is A or B in any circumstances entitled to alienate or mortgage the whole property (as opposed to the time-limited right) without the consent of the other?

If so, how are the rights of the other party affected by such an act?

PART II– LAND DEVELOPMENT

Question 12

A has a vacant plot of land and wants to develop a block of flats/ a shopping centre / an industrial building/ a football stadium. He neither wants to engage in the construction himself, nor to manage the structure once completed. However, he still wants to retain some control over the structure and to have unburdened ownership of the land and the structure at the end of the period.

Briefly indicate the various ways in which this can be done, and point out which mechanisms are the most commonly used in practice.

For mechanisms already described in PART I, consider the questions of PART I by analogy and indicate, if applicable, important differences.

For other mechanisms please describe them and also consider the questions of PART I by analogy.

Question 13

According to the original contract between A and B (the developer), B has an option to purchase. To what extent is this enforceable against C, a purchaser from A?

In the original contract A binds himself and his successors to maintain the gardens surrounding the development. A sells all his lands in the area to a third party. To what extent is the third party obliged to maintain the gardens?

Question 14

To what extent would your answers to questions 12 and 13 be different:

- if A owns an already existing building, and he wants it to be used as a shopping center. However, he does not want to manage it directly, and wants to retain some control over the structure and to have unburdened ownership of the building at the end of the period;
- if A is a public institution (e.g. a City Council)⁵.

⁵ Only briefly indicate public law requirements.