

Law of Real Property 1

2018-2019

Lecture 3

Learning Outcomes

- By the end of this unit, the student will be able to:
 - Explain the term “an estate in land”.
 - Describe the various estates in land.
 - Critically assess the distinctions between types of freehold estate.
 - Explain the doctrine of waste.
 - Discuss and apply the doctrine of waste to the life tenant’s enjoyment of the property.
 - Identify the differences between the different kinds of estates.
 - Examine the distinctions between the conditional and determinable forms of the fee simple.

Examples of Exam Questions

1. The distinctions between the three types of freehold estate are so tenuous as to render its classification pedantic.

Do you agree?

Charles died in 1990, having bequeathed all his personal property to his widow, Jean. He also devised all his real property to her for life or until remarriage whichever should sooner occur and after her death to his nephew Brown absolutely.

Jean has entered into a contract to sell all the real property to Mike. Jean has allowed the family home to deteriorate through disrepair, to such an extent that it has become unsafe to use the kitchen during the rainy season. Jean is planning to remove all the paintings which are hanging in the family home to the house of her aunt Jemima, claiming that they are her personal property.

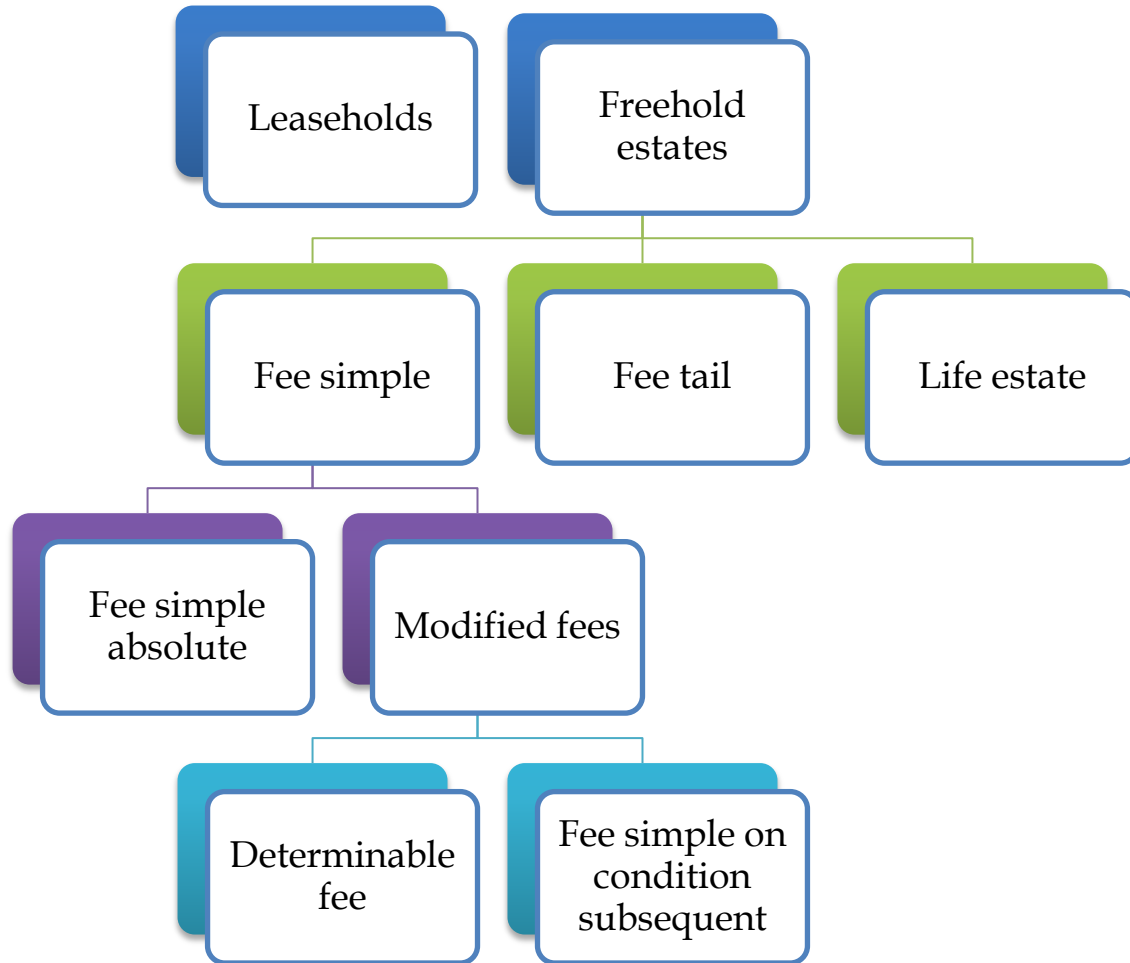
Advise Brown.

Estates (Interest in Land)

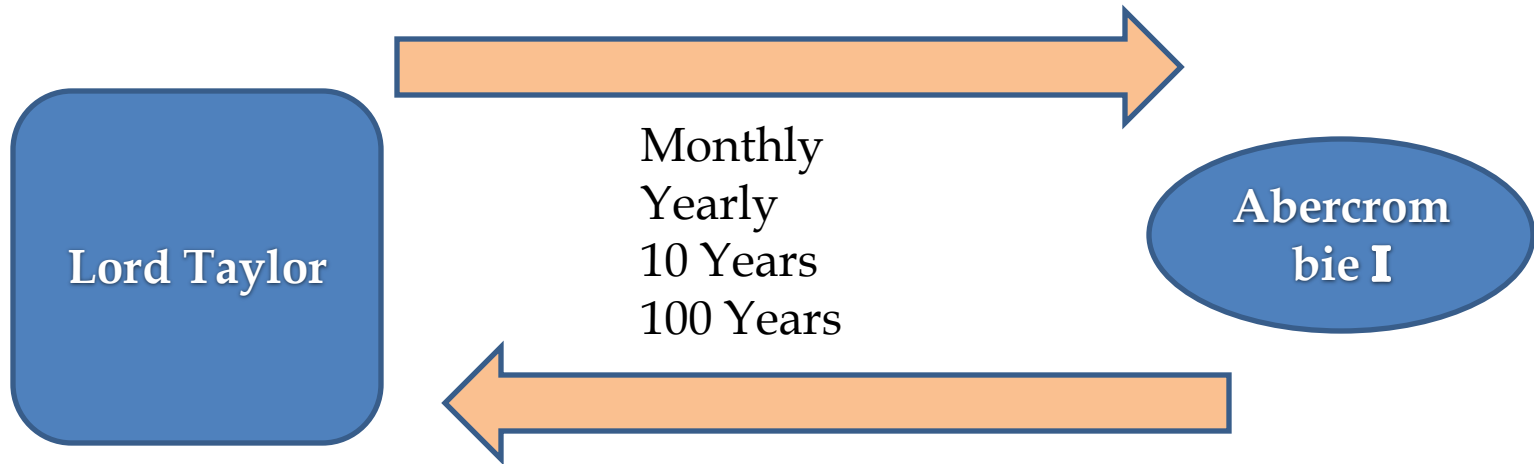
- There are now only two types of holding: Freehold and Leasehold. There were originally more types, such as Copyhold, but these are now obsolete.
- There are three types of freehold estate:
 - fee simple,
 - fee tail and
 - Life estate.
- This is a popular exam question. Do NOT write about leasehold when they ask for the types of freehold estate!!!

- Leasehold
- Freehold
 - Fee simple
 - Fee tail
 - Life

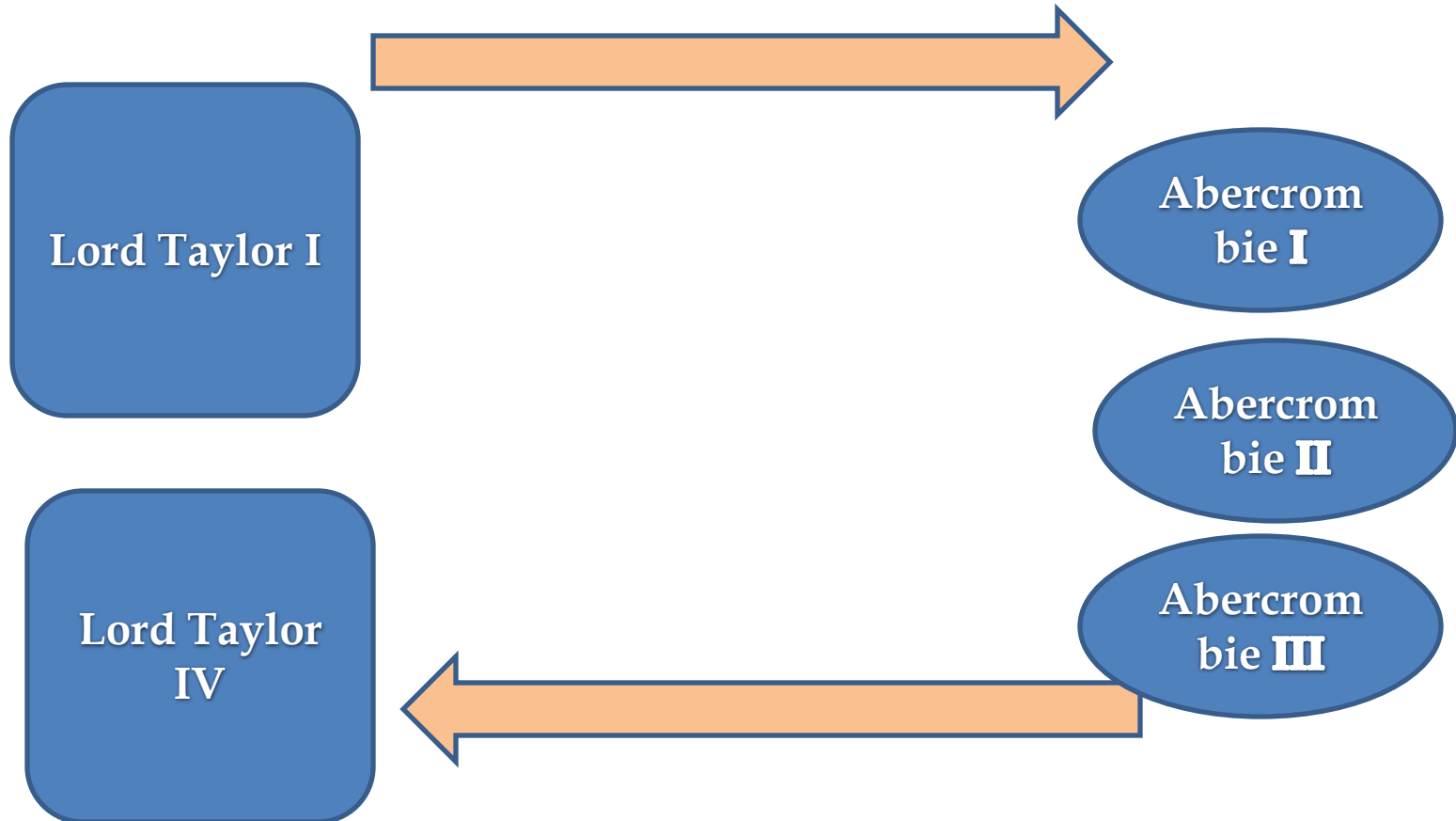
The Estates



- **Leasehold (defined by term of time)**



- **Freehold (for period of lives)**

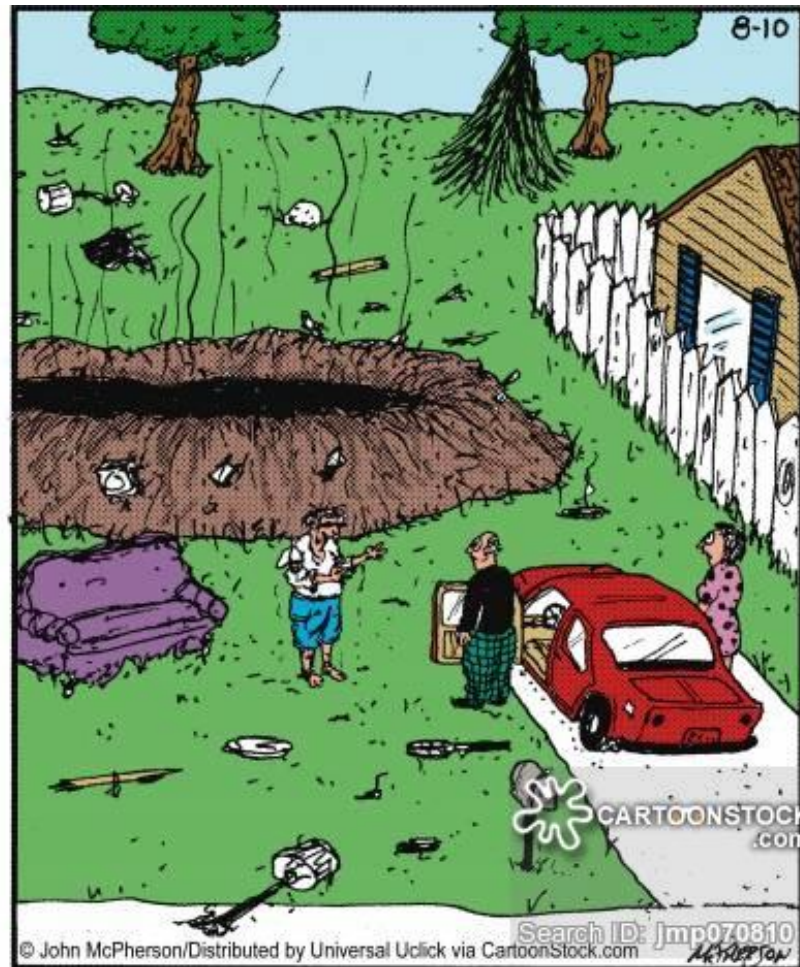


- Waste is any conduct or omission that causes damage to the freehold inheritance of land or anything which alters the nature of the property.
- The remainderman can sue for waste.
- There are four types of “waste”
 1. Equitable
 2. Permissive
 3. Ameliorating
 4. Voluntary

- Voluntary waste – purposeful or negligent permanent depletion of resources (e.g. Mines).
- Permissive waste is failure to maintain the estate, either physically or financially. This can include failure to maintain ordinary repairs, or pay taxes.

- Ameliorative waste is an improvement to an estate that changes its character even if the change increases the land's value. The original grantor may not have intended that the estate be changed.

- Equitable waste – gross acts of waste committed by a tenant, such as removing pipes, timber, glass or ornamental trees.



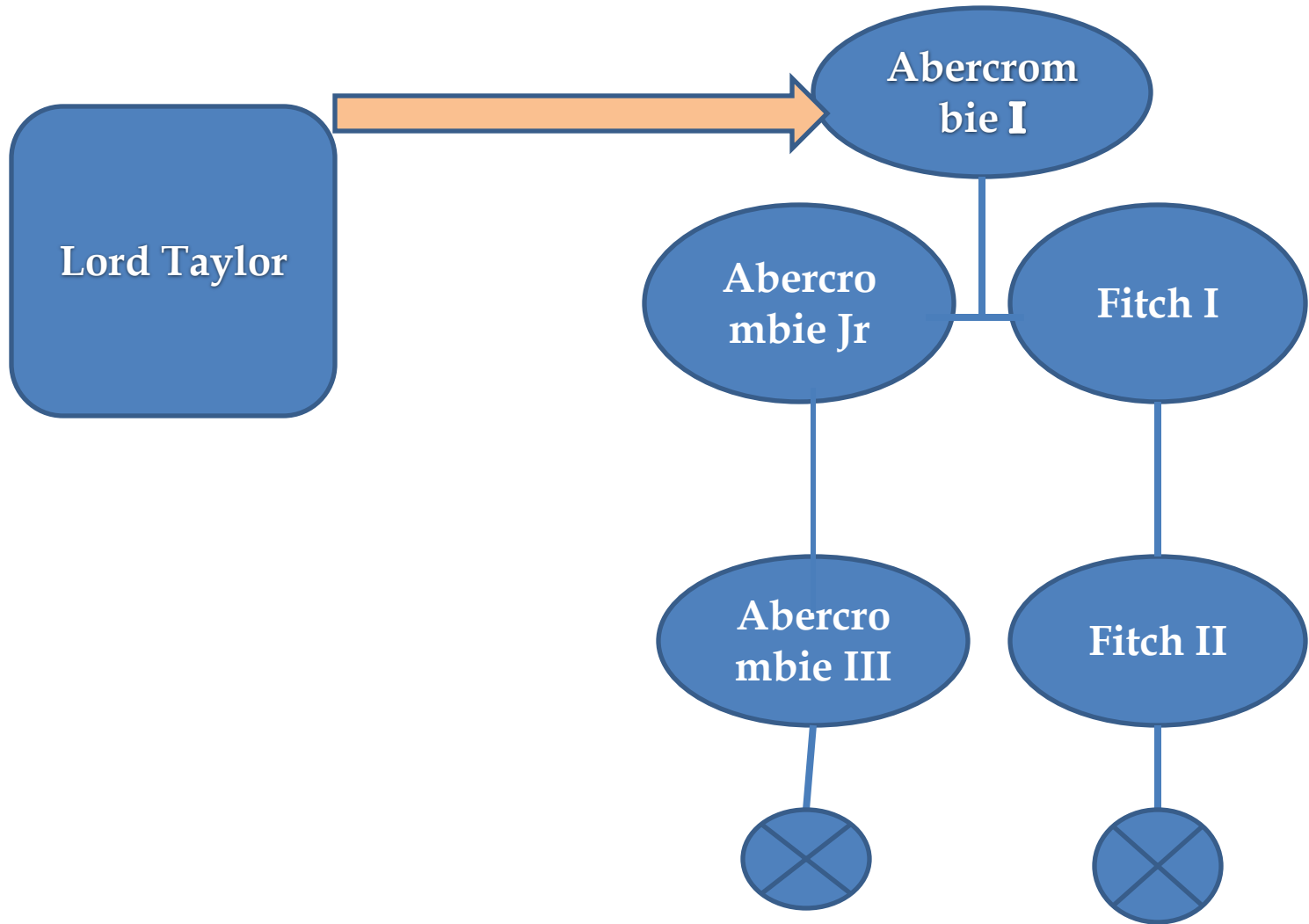
"Dad, I'm sure you're probably ticked about this, but when I tell you what happened, I'm sure you'll agree it's been a great learning experience for me."

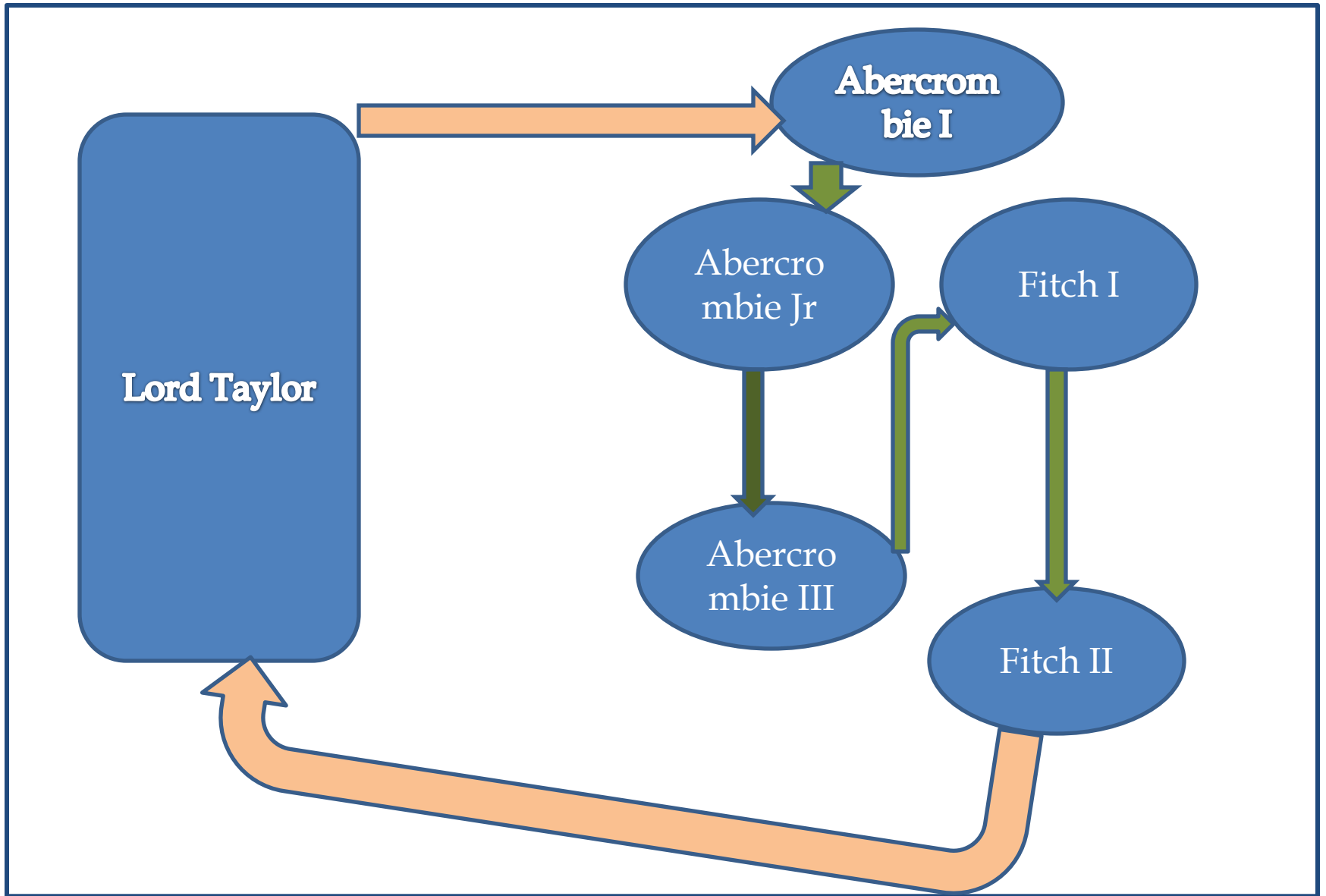
The Fee Tail Estate

The Fee Tail

- We start with the one which is obsolete.
- The object of a fee tail was to keep land in the family. It was limited to the descendants of a particular person.
- This is usually denoted as “to X and the heirs of his body”
- Note that the words of procreation are very important. “To X and his heirs” creates a fee simple estate.

- If the family line failed, the estate would revert to the grantor or to the remainderman.





- The tenant had all the rights of use and abuse as the fee simple owner at common law, except that he could still be sued for equitable waste.
- In other words, he could treat the estate as his own, cutting down trees and opening mines.
- The only exception was if the current owner was the last in the line.

- Remedies for waste – injunction or damages.

- Fee Tail estate is abolished in:
 - UK, Law of Property Act of 1925
 - Barbados, Property Act, 1979-81, Cap.236 s.6
 - Grenada, Intestate Act, 1937, Cap.150 s.3
 - St. Vincent, Intestate Act, 1947, 24 s.15(2)
 - Trinidad and Tobago, Land Law and Conveyancing Act, 1981, 20, s.6.

- However, an entailed interest can be granted to take effect as an equitable interest.
- This means that a person who accepts ownership from his family must agree to pass the land to the next in line. A trust is created. (More on trusts later.)

The Life Estate

The Life Estate

- There are two types of life estate:
 - “To Ann for her own life”
 - “To Bob for the life of Ann” (*pur autre vie*)
- The second type might arise, for example, if Ann sold or gave her estate to Bob. Bob’s interest would still end when Ann died.
- Ann is the *cestui qui vie*.

- The life estate is coupled with a reversionary interest.
- The grantor may retain the reversion or grant it to another by **way of remainder**.
- **Thus, once the life estate comes to an end it either:**
 1. reverts to the fee simple owner who has a **reversionary interest** in the property while it exists; **or**
 2. is followed by a **remainder interest** in the property.

- Therefore, where Dominic grants Blueacre **“to Ann for life”**, Blueacre will revert to Dominic who has the reversion when Ann dies.
- If Dominic grants Blueacre **“to Ann for life, then to Eva in fee simple.”** OR **“to Ann for life, remainder to Eva”**, both of these grants have the same effect - Eva has the **remainder interest** in Blueacre.

- A life tenant has common law rights which include:
 - The right to emblements (cultivated crops)
 - The right to remove certain types of fixtures (more on fixtures later)
 - Limited rights of use and abuse

- The life tenant LT can sell the property, but the purchaser's interest will end on LT's death.
- At that time, the property reverts to the remainderman.

- **Life Tenancy (defined by term of a life)**

