

Entailment of Property (Fee Tail)

In English common law, **fee tail or entail** is a form of trust established by deed or settlement which restricts the sale or inheritance of an estate in real property and prevents the property from being sold, devised by will, or otherwise alienated by the tenant-in-possession, and instead causes it to pass automatically by operation of law to an heir determined by the settlement deed. The term fee tail is from Medieval Latin feodum talliatum, which means "cut(-short) fee" and is in contrast to "fee simple" where no such restriction exists and where the possessor has an absolute title in the property which he can bequeath or otherwise dispose of as he wishes. The fee tail allowed a patriarch to perpetuate his blood-line, family-name, honour and armorials in the persons of a series of powerful and wealthy male descendants. By keeping his estate intact in the hands of one heir alone, in an ideally indefinite and pre-ordained chain of succession, his own wealth, power and family honour would not be dissipated amongst several male lines.

The Statute of Westminster II, passed in 1285, created and fixed the form of this estate. The new law was also formally called the statute De Donis Conditionalibus (Concerning Conditional Gifts).

Fee tail was established during feudal times by landed gentry to attempt to ensure that the high social standing of the family, as represented by a single patriarch, continued indefinitely. The concentration of the family's wealth into the hands of a single representative was essential to support this process. Unless the heir had himself inherited the personal and intellectual strengths of the original great patriarch, often a great warrior, which alone had brought him from obscurity to greatness, he would soon sink again into obscurity, and required wealth to maintain his social standing. This feature of English gentry and aristocracy differs from the aristocracy which existed in pre-Revolution France, where all sons of a nobleman inherited his title and were thus inescapably members of a separate noble caste in society. In England, primogeniture provided that an estate would be inherited entirely by the first-born legitimate son of a nobleman and that, accordingly, subsequent sons were born as mere gentlemen and commoners. Without the support of wealth, these younger sons might quickly descend into obscurity, and often did. On this eldest son was concentrated the honour of the family, and to him alone was granted all its wealth to support his role in that regard, by the process of the fee tail.

[Primogeniture (/praɪm-ə-/ also UK: /-oʊ-ˈdʒɛnɪtʃər/) is the right, by law or custom, of the firstborn legitimate child to inherit the parent's entire or main estate in preference to shared inheritance among all or some children, any illegitimate child or any collateral relative. In most contexts it means the inheritance of the firstborn son (agnatic primogeniture);^[1] it can also mean by the firstborn daughter (matrilineal primogeniture).]

Traditionally, a fee tail was created by a trust established in a deed, often a marriage settlement, or in a will "to A and the heirs of his body". The crucial difference between the words of conveyance and the words that created a fee simple ("to A and his heirs") is that the heirs "in tail" must be the children begotten by the landowner. It was also possible to have "fee tail male", which only sons could inherit, and "fee tail female", which only daughters could inherit; and "fee tail special", which had a further condition of inheritance, usually restricting succession to certain "heirs of the body" and excluding others. Land subject to these conditions was said to be "entailed" or "held in-tail", with the restrictions themselves known as entailments.

Fee tail as a legal estate in England was abolished by the Law of Property Act 1925.

The effects of English primogeniture and entail have been significant plot details or themes in a number of notable works of English literature:

Pride and Prejudice- *Pride and Prejudice* contains a particularly thorny example of the kind of problems which could arise through the entailing of property. Mr. Bennet, the father of protagonist Elizabeth Bennet, had only a life interest in the Longbourn estate, the family's home and principal source of income. He had no authority to dictate to whom it should pass upon his death, as it was strictly arranged to be inherited by the next male heir. Had Mr. Bennet fathered a son it would have passed to him, but since he did not it could not pass to any of his five daughters.[10] Instead, the next nearest male heir would inherit the property—Mr. Bennet's cousin, William Collins, a boorish minister in his mid-twenties. The inheritance of the Longbourn property completely excluded the five Bennet daughters, who were thus to lose their home and income upon their father's death. The need for the daughters to make a good marriage to ensure their future security is a key motivation for many episodes in the novel. Many fees tail arose from wills, rather than from marriage settlements which usually made some provision for daughters. Austen was very familiar with the law of entail; her brother, Edward, had inherited similarly entailed estates at Chawton, Godmersham and Winchester from distant cousins under the will of Elizabeth Knight, who died in 1737.