

Property rights

Bundle of sticks:
 Right to exclude- essential stick in the bundle
 Right to possess
 Right to use
 Right to destroy
 Right to transfer/ alienate

Remedies

Injunction
 Treble Damages
 Punitive Damages

Competing Justification for Property Rights

First Possession
 Labor/ investment
 Efficiency/ maximization of social welfare
 Distributive Justice
 Sovereign Authority
 Gifts and Inheritance

Nuisance

A non trespassory interference with property rights (must be a substantial interference)

Analysis

- What is the harm
- What is the benefit
- Suitability for location of activity
- Fairness consideration
- Can nuisance be abated

Defense

- Who was there first
- Is P being sensitive

Nuisance (cont)

Remedies

- Injunction
- Damages

Trespass

Unprivileged intentional intrusion on property possessed by another
 Criminal trespass- Asked to leave but do not
 License: permission to enter property possessed by another (revocable)

Trespass Defenses

Human Value
 Necessity
 Consent is effective even if procured by fraud

Exclusion

Minority Rule: Cannot exclude unreasonably
 Majority Rule: Right to refuse service to anyone unless they are protected by law. (This does not apply to common carriers and inn keepers)

Improving Trespasser

Somebody builds on land and improves the value

Zoning- taking of right

Factors

- type of project
- location of project
- ultimate cost
- amount accomplished under conformity

Flexibility in Zoning: Variance

exceptional
 undue hardship

Landlord Tenant Law

Types of tenancy:

- terms of year: definite/ fixed period
- period tenancy: indefinite in length
- tenancy at will: terminated by either party at any time
- tenancy at sufferance: Relationship between LL and tenant who wrongfully holds over after termination

Adverse Possession

Exclusive: (depending on customs of that land)
 Open and Notorious: (visible)
 Continuous: (Can use tacking approach)
 Without owner permission: -
 For a period of time set by the statute of limitations: -
 Color of title: (Faulty paperwork- should convey title but does not) **only in some jurisdictions

Prescriptive Easement - Elements

Open and notorious	(acquiesce- owner knew but did nothing to stop)
Adverse and hostile	(open and notorious will be presumed to be adverse)
Continuous	-
Sustained	-

Servitude

Appurtenant	runs with the land
In gross	For an individual
Express Easement	by grant
scope of easment	language of deed
	extrinsic evidence
	burden on servient estate
servient land	burdened land
dominant land	benefited land

Steps to solve a servitude problem

- Is this appurtenant or in gross
- Benefit of each
- Look at language

Easement by Estoppel

Cannot revoke license if it is relied upon

Easement by Implied Prior Use

- 2 parcels were at one time in common ownership
- 1 parcel had derived benefit from the other parcel
- Use was apparent and continuous
- Continuation of use id "reasonably necessary"

Real Covenant

Covenant in writing	
notice	actual, inquiry, record
intent for burden and benefit run with the land	
touch and concern the land	
privity	vertical and horizontal
-	-
Relief	Money damages

Equitable Servitude Approach

covenant in writing	
notice	
intent	
touch and concern land	
-	-
relief	injunctive relief

Implied Reciprocal Negative Servitude

Even if restrictions are not specified at the outset, they may be implied in the court of law

Doctrine: Common owner subdivides property into a number of lots

Common owner has an intention to create a common plan or scheme of development for the property as a whole

Vast majority of subdivided lots contain restrictive covenants that reflect the general scheme

The property against which application of an implied covenant is sought was intended to be part of the general scheme of development AND

Implied Reciprocal Negative Servitude (cont)

The purchasers of the lot in question had notice (actual, constructive, or inquiry)

Restrictions to Covenants

Can enforce restrictions as long as its not unreasonable

Restrictions/ covenants cannot be contrary to public policy

