Property Law Cheat Sheet

by parkeraz via cheatography.com/32519/cs/10020/

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 interf-erence with property rights	(must be a substantial interference)
Analysis	What is the harm
	What is the benefit
	Suitability for location of activity
	Fairness consid-eration
	Can nuisance be abated

Nuisance (cont)

Defense	Who was there first
	Is P being sensitive
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)	

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

Flexibility in Zoning: Variance

exceptional	
undue hardship	

Zoning- taking of right

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

Improving Trespasser

Somebody builds on land and improves the value

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)

Trespass Defenses

Human Value	
Necessity	
Consent is effective even if procured by fraud	

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	-

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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

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 necess-ary"

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 develo-pment AND
	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

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