

### Acquiring Property

#### State Acquisition

#### Conquest

1. OIT: License occupancy, nonpossessory, revocable at any time

2. Recognized Rights by Congress (statute/treaty) treats as sacred as Fee

3. US FEE: relationship is pupillage, duty to protect from 3rd parties and St. Gov't

If recognized by congress (statute/treaty), then gov't interference is subject to takings claim

THT: Mere assertion of JX is conquest. Dominion/Conquer? Physical v. legal. Battle or Legal (force of law): "threat of force" is sufficient to be under US dominion

#### Eminent Domain

1. Taking of

2. Private Property

State Protections for Residential Property

3. For Public Use

**Kelo** Public purpose, Economic Development, Police power, Comprehensive Plan v. A -> B (literal view), Nuisance

### Acquiring Property

#### Individual Acquisition

#### First Possession

1. First in time

2. Actual Possession

3. Intent to Possess

**Depends on Policy:** Controlling or holding of personal property with or without claim of ownership

#### First Possession (cont)

Rule of Capture v. Pre-possesory rights = Equitable Division

Rule of Capture (Pierson): First with vested rights and power to exclude

Pre-Possesory Rights (Popov): Equitable division for peace, fight for exclusion may reward bad actors

#### Finders

**The finder of property is typically entitled to the property against all others except the true owner unless trespassing.**

Distinction w/ Lost/Mislaid/Abandoned

Lost

1. TO 2. Finder

Mislaid

1. TO 2. OLQ 3. Finder

Abandoned

1. Finder 2. OLQ

Trespass

Embedded

Treasure Trove

#### Adverse Possession

Grants a non-owner full ownership rights

1. Actual Possession

Physical use or occupation of the land

2. Hostile

⊗ Objective- Whether or not the AP had the TO's permission to go on the property. No permission = hostile.

⊗ Subjective- **Good Faith** (AP mistakenly uses another's property thinking it was hers) (ex. Color of Title)

**Bad Faith**- AP knew property was not her own, and took possession anyway (ex. Claim of Right: rewards wrongdoers)

#### Adverse Possession (cont)

3. Open and Continuous

⊗ Actual Notice- requires that the TO have actual knowledge that someone is on her property

⊗ Constructive Knowledge- acts that a RDO would be expected to be put on notice. Visible to an onlooker (neighbors) that the AP is the TO

4. Exclusive

AP must have dominion and control and not share ownership rights with TO or 3rd party

5. Continuous for

⊗ Tolling: (SP time is paused)

If TO is under disability, time will not run against her the disability is removed. SOL is tolled (mental illness, minor, jail)

AP Tolling:

Ousted by 3d party? Time is paused until AP's return.

Ousted by TO? Clock is restarted

⊗ Tacking: Adding the time period of successive possessors to meet the SP (must have privity of title and conveyed by previous AP)

6. Statutory Period

# of years

#### Policy:

1. Clarification of Title/Economic Efficiency
2. Promotion of socially beneficial use of land
3. Protection of expectation/psychological consideration
4. Moral/Personhood

#### Sale



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### Misrepresentation

1. Makes a False Statement Concerning a Material Fact
2. Seller Knows is False
3. With Intent to Induce Reliance by the buyer
4. Injures the Buyer

### Disclosure (Duty to disclose)

1. Known Facts
2. Material to Sale
3. Not within reach of a diligent buyer

Policy: Caveat Emptor

### Title Protection

#### Deed

1. General Warranty Deed
  - Good against all defects of title
2. Special Warranty Deed
  - Only the action of the grantor are guaranteed.
3. QuitClaim Deed
  - No kinds of warranty, no assurances that grantor has right to convey, sell "as is"

#### Warranties of Title

#### Present Covenant

- Breached, if at all, at conveyance
1. Covenant of Seisin
    - Guarantee that grantor owns the property
  2. Covenant of the Right to Convey Land
    - Overlaps w/ previous covenant
  3. Covenant Against Encumbrance
    - If there are encumbrances, they must be disclosed.

#### Future Covenant

- Breached, if at all, after conveyance

### Title Protection (cont)

1. Covenant of Warranty
  - Compensation for losses caused
2. Covenant of Quiet Enjoyment
  - Damages awarded if disturbed w/ claims of superior title
3. Covenant of Further Assurance
  - The grantor will execute any documents to perfect title.

#### Recording System

Designed to protect the subsequent **Bona Fide Purchaser** (BFP, actually pays interest for value)

1. Race
  - Language of Time: First in time had the first person who records gets the property.
2. Notice
  - Language of Notice: Whether the BFP had notice of the prior conveyance. The last bonafide purchaser wins if she had no notice of prior interest..
3. Race-Notice
  - Subsequent purchaser can prevail against prior purchasers only if 1) they didn't know of prior purchasers, and 2) if they are the first to record the interest

### Types of Notice

Recordation system  
Grantor-Grantee Index

#### Validity

Notice involves knowing that there is a competing claim. **Wild deeds** do not count as record notice (outside the chain of title). Grantee should check if the grantor has the property to convey.

### Types of Notice (cont)

1. Actual Notice
  - Conscious of a competing claim
2. Record Notice
  - Constructive knowledge with anything that has been recorded (does not include wild deeds)
3. Inquiry Notice
  - Person should've known if facts warrant an investigation. Inquiry notice does not include anything that is not discoverable.

### Ownership and Possession: Sequential Ownership

#### Ownership Across Time

#### Present Estates and Future Interest

Present Estate	WOL	Future Interest
FSA		O
FSD	Time	POR (automatic)
FSSCS	Condition	ROE
FSSEI	T/C	EI
LE	For life	O/R
LE PAV	For another's life	O/R
LE4Y	For time	O/R

#### Ambiguous

FSD or FSSCS: Modern Trend is FSSCS  
Precatory Language  
FS or LE in R: Presumption of alienability

### Remainder

VRA	CR
VRSTD	EI



### Remainder (cont)

VRS20/PD

Policy: Certainty of vesting

#### Waste Doctrine:

Affirmative Waste

Permissive Waste

Ameliorative Waste

FI has no rights until property possessory.

However, if LE allows AP, FI can sue for

Permissive Waste and sue LE for injunction

### Remainder Rules

1. Worthier Title Remainder O's Heirs

2. Rule in Shelley's Case LE in A, R in A's heirs: A has LE and VRA (B's Intent to protect FI)

3. RSC applies Merger LE in A + heirs: A has FSA (alienability)

4. RSC not applied? LE in A, R in A's heirs: A has LE, A's heirs have CR

4. Class Gifts All or Nothing

5. Destructibility Doctrine Destroys CRs if they did not vest when he preceding LE ended

### Rule Against Perpetuities (RAP) (cont)

3. Kill ML + 1 day after conveyance. Will it fail to vest within the perpetuity period? Yes, RAP is satisfied

4. If not vested by 21 years, FI is void. Strike out violating language.

5. Reconstruct the conveyance with the remaining language

Class Gifts  
 1. Terminated: All or Nothing  
 2. Modified: Rule of Convenience (closes the class when the remainder becomes possessory; the members of the class who are vested at the time of the closing take their share without threat of further partial divestment. Contingent remainders are invalid)

Wait/See: Modern Trend: Courts will wait until condition occurs or perpetuities period has ended, whichever comes first

Cy Pres: Approach where courts may reduce the age contingency to 21 to validate the future interest (25 to 21)

Policy: Promotes Alienability

### Ownership and Possession: Simultaneous Ownership

#### Co-Ownership

### The Tenancies

#### Tenancy In Common

\*Each tenant, no matter how small the fractional interest, has the right to possess the whole unless all parties agree.

\*Presumption in TIC over JT

#### Joint Tenancy

\*Each tenant has the right to possess the whole. JTs req to possess equal fractional interests.

\*Right of Survivorship- When a JT dies, her property interest is immediately transferred to the remaining JT's in equal shares.

\*Created by 4 Unities: time, title, interest, possession. Severance destroys unity(s).

#### Tenancy by the Entirety

\*Created by Unities: 1. Time, 2. Title, 3. Interest, 4. Possession, 5. Marriage.

\*Right of Survivorship- Unlike JT, tenant cannot unilaterally sever TE.

\*Per Tout et non per My- Both husband and wife must convey to sever or destroy the JT.

\*Lien Theory: Know creditor issue (1 tenant not responsible for debts of the other, mortgage has no effect).

### Rule Against Perpetuities (RAP)

Grays Rule Future Interests are valid only if they must vest or fail by the end of a life in being, plus 21 years

1. FIs subject to RAP? CR, EI, or VRS20

2. Identify the Measuring life (causal)

### TIC/JT/TIE Issues

#### Partition

1. Physical: parcel is divided physically  
 2. Sale: Property be sold with proceeds divided as fractional interest



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### TIC/JT/TIE Issues (cont)

#### Ouster v. Abandonment

1. Explicit Act by which 1 co-owner wrongfully excludes other from jointly owned property
2. Constructive Ouster- character of the property must be such as to make joint occupancy impossible or impracticable (requires that ousted tenant make demand for rent as an affirmative act)

#### Adverse Possession

Requires an affirmative act by which the non-possessionary tenant is put on notice that her co-owner is claiming adversely to the non-possessionary interest because each co-owner has the right to possess the whole.

#### Rights

- Rights to share rents paid by 3d parties
- Right to lease her property witho

### Separating Possession from Ownership

#### Leaseholds

#### Leaseholds

##### Type

- Residential and Commercial

#### Categories

##### 1. Term of Years

Specified period of time determined by the parties. FI in reversion or remainder in 3rd party.

##### 2. Periodic Tenancy

Renewed automatically at specified periods unless either the landlord or the tenant chooses to end the relationship. Ex) month to month. Requires notice be given to end relationship.

### Leaseholds (cont)

#### 3. Tenancy at Will

Similar to PT, however can be ended with no notice. Death of either party ends the tenancy. Still required to give notice, but has an absolute right to evict without being subject to defenses.

#### 4. Tenancy at sufferance (holdover tenant)

Tenant who is in rightful possession but wrongfully stays after leasehold has terminated.

#### Lease or Licence:

*Lease:* Owner transfers exclusive possession of a defined space with intent to create tenancy  
*License:* Non-possessionary right to enter another's land for some delineated purpose, freely revocable at any time by the grantor  
 Important- Lease requires notice to evict

### Tenant's Right to Assign/Sublease

#### Assignment

Conveys all tenant's remaining property interest without retaining any future rights of entry

#### Sublease

Tenant retains some future interest or in the right to control the property in the future

#### Residential:

LL can arbitrarily refuse to assign/sublease

#### Commercial:

LL cannot arbitrarily refuse to assign/sublease but must be reasonable

### Tenants Right to Habitable Premise

#### Damages

- Rent Abatement or Injunction

#### Implied Warranty of Habitability

1. Must be referenced to housing/building code
2. Landlord must have notice
3. Defects by general community standards of suitability for occupancy
4. Landlord has reasonable time to fix it  
 \*\* Tenant may move out before the end of the lease or stay and either stop paying rent or receive reduced rent until conditions are fixed

#### Breach of Covenant of Quiet Enjoyment

##### Use/Enjoyment

1. Actual Eviction (changing the locks),
2. **Constructive Eviction,**
3. Partial Constructive Eviction (interference leads to abandon a portion),

#### Constructive Eviction

1. Substantial Interference w/ cov't of QE (use/enjoyment),
2. That make it Uninhabitable
3. Actual abandonment

#### QE applicable for other tenants

Generally no, unless landlord can control the action causing the nuisance (contextual analysis)

#### Retaliatory Eviction

There is a presumption that eviction is retaliatory if it is within 6 mo. of the complaint of housing violations

#### RE Rest. Factors not retaliatory:

1. Legitimate business judgement
2. Good faith to dispose entire leased property or for different use
3. LL lacks financial ability to repair
4. LL did not act at first opportunity
5. LL was unaware of the T's activities protected by statute
6. LL's act was not discriminatory

## Fair Housing Act (FHA)

Can't discriminate because of race, color, religion, national origin, sex, disability, and familial status.

3602(b) Defines dwelling (roommate not dwelling)

3602(c) Can't make, print, publish any notice statement or ad indicating preference or limitation

3604(a) To refuse to sell/rent/negotiate after the making of a bona fide offer because of race, color, religion, sex, familial status, or national origin.

3604(d) Prohibits false dissemination of false information regarding availability of housing because of race

## Sex Discrimination (FHA)

Sex Discrimination

Hostile Environment/Uncomfortable advances to tenant affects the lease  
Quid Pro Quo (Sex for reduced payment)

Prima Facie Case Met

1. Member of protected class
2. Subject to unwelcome sexual conduct
3. Terms/conditions of situation adversely change (use/enjoyment)
4. Change causally connected to rejection
5. Hostile Environment

## Sex Discrimination (FHA) (cont)

Remedy

FHA Sect. 3613: Entitled to Rescission of lease. May award actual and punitive damages, and if appropriate, any permanent or temporary injunction, temporary restraining order, or other order.

## Race Discrimination (similar to above)

1. Protected class
2. Apply and qualify to rent
3. Denied the opportunity to rent/inspect/negotiate for the rental
4. The housing opportunity remained available

## Trespass

1. Unprivileged
  2. Intentional
  3. Physical Intrusion
- Exceptions: Necessary by Emergency, Prior consent, and Public Policy

Policy: Protects Possessory Interest

## Nuisance

### Five Factors to determine Nuisance

1. Location
2. Time
3. Surroundings
4. Situation
5. Manner in which business is performed

### 1. Intentional

- (1) Whether the person knows or should have known the results of her conduct
- (2) Whether the person was reckless or negligent

## Nuisance (cont)

### 2. Unreasonable

Balance Utility & Gravity of Harm

#### Utility:

- (1) Social value that the law attaches to the conduct
- (2) Suitability of the conduct to the character of the locality
- (3) The impracticability of preventing or avoid the invasion

#### Gravity of Harm:

- (1) Nature of the harm
- (2) Social value of the Plaintiff's use and enjoyment of the property
- (3) Suitability of use to the character and the locality
- (4) Burden on the Plaintiff to avoid the harm

### 3. Substantial

Affects normal sensitivity [Dobbs v. Wiggins-outragous number of dogs barking]

### 4. Non-trespassory

The interference with the use and enjoyment of the land of others

### 5. Interference with the Use and Enjoyment of Another's land

## Nuisance Remedies

Balance the Equities:	Fairness	Welfare
	1. The character of the harm	1. Cost and Benefit of allowing or preventing the harm
	2. Who Bears the Cost?	2. Lowest cost avoider

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### Nuisance Remedies (cont)

3. Who is at fault?

*Coase theorem:* All Coase is saying is that legal rules can effect economic efficiency, and that courts should thus increase efficiency by assigning entitlements to the parties who would purchase them in the absence of transaction costs. The feed lot would not buy out the developer, but the developer would buy out the feed lot. So the court makes the developer do that.

### Remedies to Nuisance

**P may obtain injunction against D's conduct when:**

-D's conduct is unreasonable and *causes substantial harm to P*

**P may obtain damages, but no injunction if:**

-D's conduct is **reasonable (causes more social good than harm)** but the harm is **P is substantial** so that it is unfair to burden P with the cost of D's conduct

**P is entitled to no remedy if:**

-If the harm to P is **not substantial**  
 -D's conduct is reasonable and it isn't unfair to impose the costs of D's activity on P  
 Because of the social good of D's conduct, it is more important to avoid putting D out of business than preventing P's harm

**P is entitled to purchased injunction if:**

-D's conduct is unreasonable, but it is fair to impose the cost of shutting down D's conduct on P

Boomer: D is first in time is a good defense  
 Public Interest and Market Value  
 Cost Abatement- Business costs of reducing nuisance  
 Institutional Competence- Judges are not equipped with coming up with best solution (better to make parties make private deal)

### Servitudes: Affirmative Easement

#### Express Easement

Created by will or deed

#### Easement Appurtenant

-Benefit RWL: exercise limited use or control of the SE and benefits the OWNER of the DE

#### Easement in Gross

-Benefit of the easement runs to a specific person  
 -Burden RWL on the SE, but BENEFIT IS NOT TRANSFERABLE WITHOUT WRITING and INTENT

#### Burden Requires:

- (1) Writing
- (2) Intent
- (3) Notice

#### Benefit Requires:

- (1) Writing
- (2) Intent

#### Scope of Easements

1. The use is of the kind contemplated by the grantor
2. The scope of an easement must be able to reasonably accommodate the legitimate uses of the dominant estate and not unduly burden the servient estate
  - Technological change
  - Normal Development
3. Easement can be subdivided

### Servitude: Non-Express Easements

#### Prescriptive Easements

-Presumption is permissive  
 -Laches

1. Use
2. Hostile
3. Open and Notorious
4. Continuous
5. Statutory Period
6. Some JX: Exclusive

### Servitude: Non-Express Easements (cont)

#### Estoppel (irrevocable Licenses)

1. License + Reasonably foreseeable reliance on License
2. Substantially changed position because of reliance
3. Injustice avoided only by creation of servitude.

#### Policy:

1. Permission can be implied (acquiescence)
2. Fraudulent to allow detrimental reliance and revoke
3. Should a license be irrevocable?

#### Implied by Prior Use

1. Unity of ownership: two parcels owned by common grantor
2. One part of parcel previously used for benefit of other
3. Severance

USE WAS:

1. **Apparent/visible**
2. **Continuous or Permanent**
3. **Strict or reasonable necessity:**

whether a reasonable person would expect to continue use no matter who owned property

#### Rest. Prop. Factors:

1. Claimant is the conveyor or the conveyee
2. Terms of the conveyance
3. Consideration given for it
4. Claim is made against simultaneous conveyee
5. extent of necessity of the easement to the claimant
6. Reciprocal benefits result to the conveyor and the convee
7. Manner in which the land was used prior to its conveyance
8. Extent to which the manner of prior use was or might have been known of the parties

#### Implied by Necessity

1. Unity of ownership
2. Severance creates a landlock parcel
3. Necessity for egress and ingress existed at time of severance [*strict necessity*]

### Covenants

#### Real Covenants

Benefit	Burden
1. Writing	1. Writing
2. Intent	2. Intent
3. T/C	3. Notice
4. Vertical Privity	4. VP + HP
	5. T/C

#### Equitable Servitudes

Benefit	Burden
1. Writing	1. Writing
2. Intent	2. Intent
3. T/C	3. T/C
	4. Notice

#### Touch and Concern

1. Benefit: must increase value of property
2. Burden: Involves physical use of the property (narrow),
3. Burden: Still T/C if it affects legal interests (broad),
4. Burden: Restatement for T/C: Is it reasonable?

Strict Privity: FSA to FSA

Relaxed Privity: Anything less than FSA

Modern Trend (Rest): No privity required.

Real Covenant Remedy? Damages and Injunction

Why Equitable Servitude doesn't require privity? Remedy limited to Injunction.



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