

Chattels	Intellectual Property	Deeds	Deeds (cont)
<p>Pierson v Post (fox) Mortal wounding (and continued pursuit) or securing the animal with a net or trap. Dissent: pursuer who is "within reach" and has "reasonable prospect" of capture</p> <p>Ghen v. Rich (whale) Swift v Taber precedent followed - crt followed local custom of how whales captured, since necessary to use custom to kill whale and whale killing small community.</p> <p>Keeble (duck) Prop owners free to do lawful activities they want without any interference from others</p> <p>Tyler (eastern wet states) Riparian rights - owner entitled to "reasonable use" of natural flows</p> <p>Coffin (western dry states) the first appropriator of water for a beneficial purpose obtains a superior right</p>	<p>White v Samsung Common Law Right of Publicity – must prove: 1) Def used of ptf identity, 2) no consent, 3) def got adv 4) injury. Separately the characteristics mean very little but put together Vanna White's identity is depicted. Dissent: Hurts public's creativity</p> <p>INS v. AP AP has a quasi property right to news against their competitors</p> <p>Cheney Bros v. Doris Silk Cheney bros only has a property right to the silks, not the designs. Allowing them copyright would allow for a monopoly on all seasonal patterns. Differentiates from INS v. AP because of freshness. News only good for a day, silk patterns good for months.</p>	<p>Executory Contract B and S must perform certain task before sale. Executory period: Period between contract and deed closing. Deed must be written instrument signed by party against whom enforcement is sought.</p> <p>Min requirements 1. Describes property. 2. Identifies parties. 3. States price. 4. Be signed by party to be bound.</p> <p>Green v. Hickey Oral agreement made btw. parties about sale of house. Hickey's pay deposit, sell their home. Green decides to sell to other buyer, Hickey's offer to match. Hickey sue for <i>specific performance</i> have Green's home sold to them. Holding: Oral land transfer may apply, even with no SOF, if buyers <i>detrimentally relied</i> on validity of the contract.</p>	<p>Types of deeds 1. Gen. Warranty Deed: guarantees that seller holds clear, unencumbered legal title to the property. 2. Spec. Warr.: makes guarantees about title only for a certain period of time. 3. Quitclaim: no warranties as to title</p> <p>McMurray v. Housworth H sells land to M. M discovers easement after sale. M sues H for breach of GWT. Holding: No breach, zoning violations and *</p> <p>Engelhart K sells to E. E discovers major structural damage that was not disclosed. E sues K for failing to disclose. Holding: Failure to disclose. <i>Caveat emptor</i> no longer valid. LL must disclose all damage they are aware of.</p>



Deeds (cont)	
Johnson v. Davis	D buys house from J. J finds additional damage after asking for disclosure. Holding: Can't lie about problems <i>fraudulent misrepresentation</i> : LL must know, lied, intended to induce action.
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Fair Housing	
Civ. Rights Act 1866	No disc. on basis of <i>Race</i> in sale or rental of Property

Fair Housing (cont)	
FHA	Pft. must prove: 1. Falls within protected group. 2. Qualified to rent apartment. 3. Rejected, Apt. still available. - Murphy Exception: 4 Units or less and lives on property.
FH Council v. Roommate.com	Roommate.com allowed for preferences: Race, gender, Orientation. FHC sued for FHA violation. Holding: FHA does not apply to personal relationships within a home.

Recording	
Race Statute	Subsequent purchaser who record first prevails. (Actual knowledge of prior purchase irrelevant.
Notice Statute	Subsequent purchaser in good-faith who purchases prevails. (Without actual or constructive notice).



<p>Recording (cont)</p> <p>Race-Notice Subsequent purchaser in good-faith, without notice. and who records first. Constructive notice is presumed if mortgage recorded, or at time of subsequent mortgage.</p>	<p>Recording (cont)</p> <p>Argent v. Wachovia Guy takes out two mortgages, one from Argent, one from Wach. Holding: Florida has notice statute. Argent wins b/c Argent never received notice of the new mortgage.</p>	<p>Finders (cont)</p> <p>McAvoy (Mislaid) Pocketbook purposefully put down on table. Mislaid.</p> <p>Corliss (Embedded - Idaho only) Embedded = goes to property owner</p>	<p>Adverse Possession: Elements (cont)</p> <p>Disability Claim can be brought after SOL if claimant is mentally incompetent, minor, or imprisoned. Owner must be competent when AP begins. Disability time is 10 yrs after disability removed.</p>
<p>Shelter Rule a grantee who has received an interest in property from a bona fide purchaser will also be protected as a bona fide purchaser, even if the grantee would not legally qualify for this status</p>	<p>Finders</p> <p>Lost Belongs to first finder unless true owner returns.</p> <p>Mislaid True owner still has <i>constructive possession</i>. Belongs to owner of premises.</p>	<p>Bailment</p> <p>Allen v. Hyatt (Parking Garage) Implied bailment formed because single exit, attendant, and ticket. Bailment for hire.</p>	<p>Color of Title Taking possession under a defective instrument.</p>
<p>Nat. Packing Corp Name spelled wrong on deed, Bolan not Bolen. Application of <i>idem</i> <i>sonams</i>(sounding the same) does not apply. Holding: deed only applies if it is recorded properly.</p>	<p>Abandoned First finder has possession. Must be voluntarily relinquished by the true owner.</p> <p>Treasure Trove Coins or currency that have been lost for a long time. First finder unless true owner is found.</p>	<p>Adverse Possession: Elements</p> <p>Actual Use of land like normal owner</p> <p>Continuous Constant possession (used in same way as normal owner)</p> <p>Exclusive Treat like private property</p> <p>Adverse + Hostile Majority: no permission (objective). Minority: good faith/some bad faith (subjective)</p>	<p>Easements: Cases</p> <p>Tieu v. Morgan Dispute over strip of land parallel to the Morgan's driveway. Morgan's were able to <i>tack</i> previous owner's adverse possession onto theirs to satisfy SOL</p>
<p>Hartig Josh's Rule: Only responsible for things that happened before you got possession, no easement in chain of title here</p>	<p>Amory (Lost) Finder's rights are better than everyone except true owner.</p>	<p>Open + Notorious Visible so puts owner on notice</p> <p>Statutory period Must satisfy statutory period</p>	<p>Mannillo v. Gorski Gorski's steps encroached 15 feet on Mannillo land. Question of whether open/n-otorious. Remanded to lower court to see if Mannillo knew about encroachment.</p>
			<p>Dombrowski v. Ferland No facts. Maine doctrine: subjective, bad-faith. Majority: mistaken possession- n=claim of right.</p>

Easements: Cases (cont)		Tenancy (cont)		Tenancy (cont)		Trusts	
Howard v. Kunto	Summer home, is it continuous? Yes. It is used as any other property owner would. If you can establish privity, can tack.	Partition by sale	Court orders sale of jointly owned property. Does not require agr. from all parties. Requires party to show that Part. in Kind is impractical and sale better promotes the interests of the parties. (Happens more in practice)	Severance of JT	An act that destroys one of the 4 unities, become TIC	Key Terms	Settlor: creates and funds the trust, provides instructions for use/disposition of property Trustee: has legal title to the corpus; manages it according to the settlor's instructions Beneficiary: has equitable title to the corpus; entitled to receive benefits from the corpus according to the settlor's instructions, but has no right to manage the corpus
Tenancy		Partition in kind	Property is divided so that each party receives their undivided interest in the land. (Preferred by courts)	Harms v. Sprague	JT's use joint tenancy as collateral to obtain mortgage. Court adopts lien theory: security interest in property when you sell the property lien holder gets paid. As opposed to title theory: mortgage gives bank title to your property Lien placed on JT does not sever JT.	Rothko v. Reis	Three executors sold painting for less than their value. Two violated duty of loyalty by being affiliated with . One violated duty of prudence by not preventing the sale.
Martin	Dispute over rent at a mobile home park. Parents held 7/8ths Child 1/8th Holding: In a In TIC, a cotenant does not owe rent to other cotenants unless he has agreed to pay rent or ousted them from the property.	Joint Tenancy Def.	Each tenant holds an undivided whole in the property. Right of survivorship - Conveys to joint tenant in event of one JT death.	Tenancy by the Entirety	Four unities + Marriage, Right of Survivorship, both spouses need to consent to any transfers, you cannot unilaterally sever	Duties of Trustee	Loyalty: To bene. interests. Prudence: in managing trust assets. Obedience: to settlors instructions.
Delfino	TIC, Delfinos have Maj, Veal. Min. Delfinos did not live on land. Delfino's request partition by sale. Veal. Request partition in kind. Ruling: Court held partition in kind makes more sense and is the preferred method whereas one of the parties lives and operates a business on the land	JT Creation	Requires: explicit language. Four unities: Time, title, interest, possession (Modern trend focusing more on intent than 4 unities)	US v. Craft	Couple, T.B.E, Mr. Craft doesn't pay income tax. Transfers interest to Mrs. Ruling: Mr. still has property interest, he lives in property, and would become TIC if divorce.		



Landlord-Tenant		Landlord-Tenant (cont)		Landlord-Tenant (cont)		Landlord-Tenant (cont)	
Lease	Conveys non-freehold estate. Two interest: LL, ownership - Tenant: Excl. Possession, use, occupancy	Effel v. Rosberg	<i>Tenancy at will</i> - Remainder of one's lifetime, is not a fixed period." Ruling: No fixed period: Automatically a tenancy at will	Julian v. Christopher	Julian leases restaurant, pub, and apartment from Chris. Julian tries to sublet apartment. Landlord tries to get additional monies. Holding: Absent CLEAR STATEMENT on lease that LL can withhold consent for subleases, LL cannot restrict alienation of property. (Minority position)	Constr-ictive Eviction/Covenant of Quiet Enjoyment	Any act or omission of LL, or LL rep, that renders property <i>substantially unsuitable</i> for habitation or <i>seriously interferes with the beneficial enjoyment</i> of the property. Tenant must cavate within reasonable time. (2nd restatement allows for tenants to remain and sue for damages)
Freehold est.	estates of indefinite duration that can exist for a lifetime or forever	Hannan v. Dusch	Dusch gets to property, holdover tenant, <i>American Rule</i> : No express covenant to deliver possession, no claim against LL. <i>English Rule</i> : Implied covenant to deliver possession			Reste Realty	Def. has business meeting in basement apt. she leases. Major water leakage issue. Def. has to vacate property. Ptf. sues for back rent. Holding: Def. C.E., serious interference with with expected use
Nonfreehold est.	a type of real property that you have a limited right to use or occupy but don't own						
Types of Leasehold Est.	Term of years: <i>Fixed period</i> , No notice of term. <i>Periodic</i> fixed duration, continues for same period unless term., may be implied, notice period 1 month, <i>Tenancy at will</i> , No fixed end, ends when one party chooses, some notice required by statute.						



Landlord-Tenant (cont)

Implied warranty of habitability Applies to *patent* and *latent* defects in essential facilities. Can never be waived. Must be a substantial breach. LL is not liable if caused by T. T must give reasonable time to notice and fix.

Hilder Hilder rented apt. that had major issues with plumbing and windows/lock. LL promised to fix but never did. Holding: All residential leases carry with them an implied covenant that the dwelling is safe, clean, and fit for human habitation. T does not need to vacate, they can withhold rent, deduct cost to fix from rent, or sue for damages.

Estates: Cases

Dalton Craigen Ambiguous will, the court will interpret the common word interpretation. FS assumed and full interests.

Jackson v. Brownson Brownson had lease on land, cut down a lot of trees. Present possessor cannot permanently damage inheritance, that constitutes waste. Diss: Lease implies use for profit, but if even one tree was not used for profit then it is waste.

Woodrick v. Wood Child sues mom for trying to tear down barn on property. Argues that it has sentimental value. Holding: Barn tear down raised value so cannot be waste. Maj: Ameliorative waste is not waste

Estates: Cases (cont)

Marenholz v. County Board Property was to be used "for school purposes only." Outlier: Most courts would interpret "only" fee simple sub to cond. subsequent. This court interprets as fee simple determinable.

Ford v. Allen Holographic wills. Devised to other spouse. Did Lola get a FS or a life estate? Presumption of FS.

Easements

Appurtenant benefits another piece of land - rights transfer when property transfer

Gross easement benefits person that exercises rights regardless of land ownership

Dominant estate land that owns/uses easement

Servient Estate land that easement is on

Express will run w land if it is
1) written 2) gives notice to servient estate holder 3) intended to run w land

Easements (cont)

Necessity 1) common ownership of dominant and servient estate, 2) severance, 3) necessity at time of severance, 4) continuing necessity, **Rule:** must show easement is reasonable necessary for use/enjoyment of property

Implied by Prior Use 1) common ownership and transfer separating ownership, 2) before severance owner used part of the united parcel for benefit of another part (obvious, apparent, continuous, permanent) 3) must remain necessary for reasonable use

Prescriptive 1) hostile and claim of right (w/o permission), 2) open and notorious of a distinct path, 3) statutory period

Estoppel 1) knowing permission, 2) reasonable reliance, 3) time and \$ spent on improvements w licensor's knowledge

Easement Cases

Thomas v Primus Thomas says no necessity easement bc Primus could buy one from another property owner. Court says Primus gets necessity easement bc do not need to exhaust all other options in order to get necessity easement.

Schwab v Timmons Prior common owner landlocked themselves when severed property - court says no easement by necessity

Strollo Strollo wanted necessity easement widened. Crt says no - necessity easement only for reasonable/beneficial use not most profitable use

Soni Prescriptive: establishes claim of right = no permission

Holbrook v Taylor Taylor got estoppel easement = had permission, improved road, used easement to construct house

Easement Cases (cont)

Richardson v Franc Prescriptive: permission can be implied if not expressly granted by lack of objection

Brown v Voss No actual injury from violating scope of express easement, only \$1 damages awarded. Crt can choose injunction or damages for equitable remedy such as: 1) burdens of dominant/servient estate 2) use of property for easement the same

MPM Builders MPM wanted change location and make 2 new easements. Restatement = servient estate owner may make reasonable changes in locations/dimensions at servient owner's expense but change can't hurt utility of easement, inc burden on easement owner, or frustrate the purpose of easement

Waste: Types

Permissive Failing to act, failing to take care of property

Voluntary/Affirmative Willful destruction of something attached to the property

Ameliorative Waste that improve value of the property. See Woodrick

Rule of waste Cannot have waste in fee simple, only future interests.

Acquired Marital Property

O'Brien Mr. enrolled in med school, supported by Mrs., who put off her own education. Mr. gets med. license - > Divorce. Check I think slides are wrong

Types of Interests and Vestments

FS subj. to executory limit Third party has a future interest. "To B so long as it is used as X, then to C"

Executory Interest Cuts short prior est. Shifting: divests to another grantee. Springing: Divests to grantor

Types of Interests and Vestments (cont)

Indefeasible Vested Will not change. "O to A for life, then to B."

Vested subject to Partial Div. "O to A for life, then to the children of B"

Vested subject to Complete Div. "O to A for life, then to B, but if B does X, then to C"

Nuisance

Elements 1. Intentional: simply intend to engage in the action in question. 2. Non-Trespassory: can't involve going on other's land. 3. Unreasonable: this is key issue, courts apply one of three general tests for determining reasonableness. 4. Substantial interference: real invasion of interests, not minor interference. 5. Use and Enjoyment of the land: damage to other's land or personal injury.

Nuisance (cont)

Puritan Holding Nuisance by omission: failure to maintain property. Holding: *Traditional threshold test*. Area developing, and examines level of interference (use and enjoyment) no consideration of utility.

Sans v. Ramsey Golf. Nuisance by golfer's (noise, golf balls, forced to be quiet.) Weigh Utility of defendants conduct vs. quantum of harm to Ptf. *Second restatement* Remedy: Injunction

Boomer v. Atl. Cement D operates factory, cause pollution, neighbors sue. *Atl. Restatement Test* Examine whether "harm caused by the conduct is serious and the financial burden of compensating for this and similar harm to others would not make the continuation of the conduct not feasible. Remedy: Damages

Nuisance (cont)

Spur v. Del Webb Spur has large feedlot that smells bad. It is a public nuisance but DW knew about it before selling Res. lots. Did not inform residents. Ruling: Feedlot must move but DW must pay for the move. *Coming to nuisance* if resident is aware of nuisance before moving then they cannot have relief.

Covenant

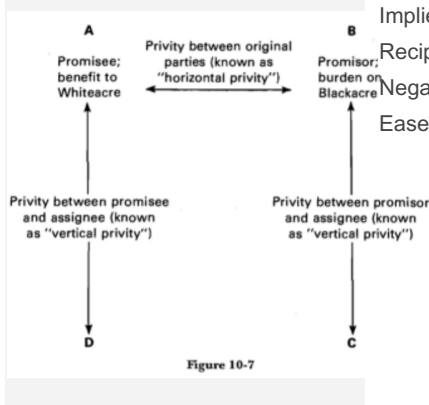
Real Covenant a promise concerning use of land that benefit and burdens both original parties to promise and their successors (remedy for breach = damages/injunction)

burden duty to perform the promise

benefit right to enforce the promise

Elements 1) in writing 2) parties must intend to bind successors 3) must touch and concern the land 4) must be horizontal and vertical privity 5) successors must have notice

Privity for Covenants



Servitudes

Equitable Servitudes Like covenant but no privity or writing required. For burden to run need: 1) intent 2) notice 3) touch and concern. Can be in writing or implied in certain cases. Remedy for breach = injunction

Servitudes (cont)

Implied Reciprocal Negative Easement Common Plan/Scheme of Dev. Covenant made to seller benefits all parcels within plan, and parcels bound by covenants. Look for lots of deeds w restrictions, recording of declaration of covenants stating intent, adv brochures, oral representations to earlier buyers. ---> then other parcels sold w/o restrictions will be bound if they have notice. *Sanborn v McLean*

Covenant/Equitable Servitude Cases

Tulk v Moxhay UK privity (landlord tenant) not satisfied to uphold covenant, so said intent of original covenant clear and Moxhay has notice, so *equitable servitude* used to bind Moxhay



Covenant/Equitable Servitude Cases (cont)

Neponsit Establishes that fees to Neponsit Property Owners Association must be paid if real covenant elements met

Sanborn v McLean McLean built gas station on property. Crt says violate covenant that restricts use of land - even tho covenant not expressly written in their deed, it was written in surrounding homes' deed and McLeans should have been on notice of common plan of development

Covenant/Equitable Servitude Cases (cont)

Western Land (single family only) Changing surrounding circumstances outside the subdivision of real covenant doesn't stop covenant enforcement. Restrictive covenant gone only if 1) covenant purpose gone and 2) no benefit to enforcement

El Di v Bethany Beach (no alc beach) Court says not enforce restrictive covenant where 1) fundamental change has occurred in intended character of neighborhood that 2) renders benefit of restriction useless

Covenant/Equitable Servitude Cases (cont)

Western Land Rule vs El Di Rule western land is about if covenant original purpose is still accomplished, and El Di is about not enforcing when changed circumstances make covenant useless (very similar)

Common Interest Communities

Types HOAs, Condos, Co-ops

Declaration of Covenants, Conditions, and Restrictions (CC&R) Most deferential in reasonableness standard, strong presumption of validity.

Rules Promulgated by Governing Body "Reasonableness Standard"; *Nahrstedt*

Ind Enforcement Action by Gov Body against Specific Person Less deferential. *Pullman*

CICs Cases (cont)

Hidden Harbour v Basso After Norman. Rules promulgated by governing body (house rules) must show reasonable relationship to health and safety. Burden is higher compared to dec of covenants, which has to be wholly arbitrary to be unreasonable.

Nahrstedt Crt holds it reasonable to ban pets, unreasonable for board to have to ind review every person's pet. CC&Rs usually only declared invalid if rule is 1) wholly arbitrary 2) hurt constitutional right 3) violate public policy

CICs Cases

Hidden Harbour v Norman (no alc in common area)
Rules by condo association are considered reasonable if it "promotes the health, happiness and peace of mind of maj of unit owners". Rule considered unreasonable if arbitrary and capricious, which is worse than nuisance. Policy: much deference to condo association bc expectation ppl buy condo to give up freedom for condo benefits



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Not published yet.
Last updated 11th December, 2023.
Page 9 of 11.

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CICs Cases (cont)		Zoning/Takings		Zoning/Takings (cont)	
Nahrstedt Dissent	Maj fails to weigh harm of affected owners, and decision is too invasive to ppl's ind freedoms. Pets promote happiness which shows Norman standard of reasonableness. CA legislature later sides w dissent and rules condos must allow minimum 1 pet.	Euclid v Amber Realty	Euclid zoning is constitutional. Residential or non-commercial zoning ordinances are valid so long as they are not arbitrary and unreasonable or w/o connection to gen welfare. Power to enforce zoning ordinances comes from police pwr of city/state.	Kelo v New London (Physical Taking)	Eminent domain allowed even if sold to private property since purpose is to promote public welfare w new job creation and inc tax revenue. Gives deference to state legisl regarding eminent domain.
Pullman	Business judgment permits corps in business settings to act in its own best interests; gives deference to actions of co-op board unless the board acts outside of authority, don't further purpose of co-op, bad faith	Police Power	The general power of states to regulate private conduct for the protection of the health, safety, and well-being of the citizens.	Penn Central v NY (Regulatory Taking)	Landmark Preservation Law not taking since Penn can still get econ benefit w/o selling airspace above grand central. State regulations only constitute taking if 1) econ impact of regulation 2) reasonable expectation of enjoyment 3) purpose of govt action. Regulatory taking hard prove.

