

Chattels	Intellectual Property	Deeds	Deeds (cont)
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 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. Keeble (duck) Prop owners free to do lawful activities they want without any interference from others Tyler (eastern wet states) Riparian rights - owner entitled to "reasonable use" of natural flows Coffin (western dry states) the first appropriator of water for a beneficial purpose obtains a superior right	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 INS v. AP AP has a quasi property right to news against their competitors 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.	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. Min requirements 1. Describes property. 2. Identifies parties. 3. States price. 4. Be signed by party to be bound. 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.	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 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 * 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.

Deeds (cont)	Deeds (cont)	Deeds (cont)	Fair Housing (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.	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>detrim-entally</i> relied on validity of the contract.	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.	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.
Duty to disclose 1. Caveat Emptor: Seller does not have to disclose anything, no longer modern trend. State disclosure forms (Engelhart), No fraudulent misrep (Johnson).		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.	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.
Deeds	Types of deeds	Duty to disclose	Recording
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.	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	1. Caveat Emptor: Seller does not have to disclose anything, no longer modern trend. State disclosure forms (Engelhart), No fraudulent misrep (Johnson).	Race Statute Subsequent purchaser who record first prevails. (Actual knowledge of prior purchase irrelevant.
Min requirements 1. Describes property. 2. Identifies parties. 3. States price. 4. Be signed by party to be bound.	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 *		Notice Statute Subsequent purchaser in good-faith who purchases prevails. (Without actual or constructive notice).
		Fair Housing	
		Civ. Rights Act 1866 No disc. on basis of <i>Race</i> in sale or rental of Property	



Recording (cont)		Recording (cont)		Finders (cont)		Adverse Possession: Elements (cont)	
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.	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.	McAvoy (Mislaidd)	Pocketbook purposefully put down on table. Mislaidd.	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.
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	Finders		Bailment		Color of Title	Taking possession under a defective instrument.
Nat. Packing Corp	Name spelled wrong on deed, Bolan not Bolen. Application of <i>idemsonams</i> (sounding the same) does not apply. Holding: deed only applies if it is recorded properly.	Lost	Belongs to first finder unless true owner returns.	Allen v. Hyatt (Parking Garage)	Implied bailment formed because single exit, attendant, and ticket. Bailment for hire.	Easements: Cases	
Hartig	Josh's Rule: Only responsible for things that happened before you got possession, no easement in chain of title here	Mislaidd	True owner still has <i>constructive possession</i> . Belongs to owner of premises.	Adverse Possession: Elements		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
		Abandoned	First finder has possession. Must be voluntarily relinquished by the true owner.	Actual	Use of land like normal owner	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.
		Treasure Trove	Coins or currency that have been lost for a long time. First finder unless true owner is found.	Continuous	Constant possession (used in same way as normal owner)	Dombrowski v. Ferland	No facts. Maine doctrine: subjective, bad-faith. Majority: mistaken possessio-n=claim of right.
		Amory (Lost)	Finder's rights are better than everyone except true owner.	Exclusive	Treat like private property		
				Adverse + Hostile	Majority: no permission (objective). Minority: good faith/some bad faith (subjective)		
				Open + Notorious	Visable so puts owner on notice		
				Statutory period	Must satisfy statutory period		

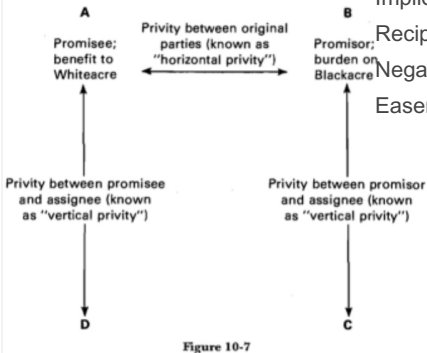
Easements: Cases (cont)		Tenancy (cont)		Tenancy (cont)		Trusts	
Howard v. Kunto	Summer home, is it continuous? Yes. It is used as any other property owner would. If you can establish privity, can tack.	Partition by sale	Court orders sale of jointly owned property. Does not require agr. from all parties. 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		
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.	Duties of Trustee	Loyalty: To bene. interests. Prudence: in managing trust assets. Obedience: to settlors instructions.

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- Eviction/- Covenant of QE	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 vacate 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)		Estates: Cases		Estates: Cases (cont)		Easements (cont)	
Implied warranty of habitability	Applies to <i>patent</i> and <i>latent</i> 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.	Dalton Craigen	Ambiguous will, the court will interpret the common word interpretation. FS assumed and full interests.	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.	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
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.	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.	Ford v. Allen	Holographic wills. Devised to other spouse. Did Lola get a FS or a life estate? Presumption of FS.	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
		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	Easements		Prescriptive	1) hostile and claim of right (w/o permission), 2) open and notorious of a distinct path, 3) statutory period
				Appurtenant	benefits another piece of land - rights transfer when property transfer	Estoppel	1) knowing permission, 2) reasonable reliance, 3) time and \$ spent on improvements w licensor's knowledge
				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		

Easement Cases		Easement Cases (cont)		Waste: Types		Types of Interests and Vestments (cont)	
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.	Richardson v Franc	Prescriptive: permission can be implied if not expressly granted by lack of objection	Permissive	Failing to act, failing to take care of property	Indefeasible Vested	Will not change. "O to A for life, then to B."
Schwab v Timmons	Prior common owner landlocked themselves when severed property - court says no easement by necessity	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	Voluntary/Affirmative	Willful destruction of something attached to the property	Vested subject to Partial Div.	"O to A for life, then to the children of B"
Strollo	Strollo wanted necessity easement widened. Crt says no - necessity easement only for reasonable/beneficial use not most profitable use	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	Ameliorative	Waste that improve value of the property. See Woodrick	Vested subject to Complete Div.	"O to A for life, then to B, but if B does X, then to C"
Soni	Prescriptive: establishes claim of right = no permission			Rule of waste	Cannot have waste in fee simple, only future interests.	Nuisance	
Holbrook v Taylor	Taylor got estoppel easement = had permission, improved road, used easement to construct house			Acquired Marital Property		Elements	
				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	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.	
				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		



Nuisance (cont)		Nuisance (cont)		Privity for Covenants		Servitudes (cont)	
Puritan Holding	Nuisance by omission: failure to maintain property. Holding: <i>Traditional threshold test</i> . Area developing, and examines level of interference (use and enjoyment) no consideration of utility.	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. <i>Coming to nuisance</i> if resident is aware of nuisance before moving then they cannot have relief.	 Figure 10-7		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. <i>Sanborn v McLean</i>
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. <i>Second restatement</i> Remedy: Injunction	Covenant					
Boomer v. Atl. Cement	D operates factory, cause pollution, neighbors sue. <i>Atl. Restatement Test</i> 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	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)	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		
		burden	duty to perform the promise			Covenant/Equitable Servitude Cases	
		benefit	right to enforce the promise			Tulk v Moxhay	UK privity (landlord tenant) not satisfied to uphold covenant, so said intent of original covenant clear and Moxhay has notice, so <i>equitable servitude</i> used to bind Moxhay
		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				

Covenant/Equitable Servitude Cases (cont)		Covenant/Equitable Servitude Cases (cont)		Covenant/Equitable Servitude Cases (cont)		CICs Cases (cont)	
Neponsit	Establishes that fees to Neponsit Property Owners Association must be paid if real covenant elements met	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	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)	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.
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	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	Common Interest Communities		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
				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"; <i>Narhstedt</i>		
				Ind Enforcement Action by Gov Body against Specific Person	Less deferential. <i>Pullman</i>		
CICs Cases							

Hidden	Rules by condo
Harbour	association are
v	considered
Norman	reasonable if it "pro-
(no alc	motes the health,
in	happiness and
common	peace of mind of maj
area)	of unit owners". Rule
	considered unreas-
	onable 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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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 Police Power	Kelo v New London (Physical Taking) Penn Central v NY (Regulatory Taking)
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	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. The general power of states to regulate private conduct for the protection of the health, safety, and well-being of the citizens.	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. 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.