

I. Acquisition of Property Rights

A. Acquisition by Capture

1. Wild animals (*ferae naturae*)
 - a. With wild animals, a person acquires property rights by occupancy only.
 - b. *Pierson v. Post*- Pursuit alone does not establish property rights over a wild animal.
 - c. **CC _ 656**- ownership of wild animals is established if:
 - (1) animal is on property & tamed
 - (2) taken and held in possession
 - (3) or disabled and immediately pursued.
2. Occupancy- taking possession of an object not previously owned into ownership.
3. Possession- Property created by possession requires:
 - a. Intent to possess
 - b. Physical control
 - (1) deprive the thing of freedom
 - (2) exclude others from possession
 - (3) take and carry away
4. Principle of First in Time- you must be the first occupant/possessor to be the first in time and acquire property rights.
5. Custom and Usage
 - a. *Ghen v. Rich*- Ct held that custom determined ownership because the nature of the whale industry was that animals could only be killed without acquiring immediate possession. P had done everything a whale hunter could do to acquire possession (killed it and branded it).
 - b. *Pierson*- dissent said should adopt the customs of sportsmen to determine ownership of the fox.
6. Labor
 - a. Tendency to recognize legitimate investment in labor-
 - (1) In *Ghen*, whaler walked away but was considered to have done enough to acquire possession.
 - (2) In *Pierson*, the dissent argued that fox hunter had spent a great deal of time and energy, we must reward it to encourage fox hunting.

B. Acquisition by Find

1. Ownership v. Possession- There is a property interest recognized in possession, but possessing something does not necessarily mean you own it.
2. Ownership defined CC _ 654- the ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others.

3. Finder- A finder's claim to property depends on whether the property was lost, mislaid, or abandoned.
 - a. **Abandoned Property**- If the true owner has voluntarily given up ownership, the finder (first possessor) acquires ownership.
 - b. **Lost or Mislaid Property**- A finder's title is good against the whole world except the true owner, prior finders, and (sometimes) the owner of land where the object was found.
 - (1) T.O. > Finder1 > Finder2 > Finder3
 - (2) *Amory v. Delamirie*- P finds jewel, takes it to jeweler to have it appraised, jeweler keeps it. P didn't own the jewel, but had possession over it before the jeweler did. Thus, P allowed to recover its presumptive value.
4. Peaceful Possessors- Peaceful possession is a presumption of ownership, they will be protected by law against all other persons besides true owners.
5. Property found on private property
 - a. No conflict if landowner owns object found- he prevails.
 - b. Public (business) v. Private (home) space-
 - (1) Generally, a homeowner has more control over space, so they are usually awarded objects found inside their homes (whether lost or misplaced).
 - (2) Owner of a business has less control over property and the things attached to it, thus whether the property is lost or misplaced becomes more important.
 - c. If the object is *lost* and the finder is not a trespasser, the finder prevails.
 - (1) *Bridges v. Hawkesworth*- Loose money on the floor of shop, landowner had no knowledge. Because loose on the floor, probably lost rather than misplaced. Finder prevails.
 - d. BUT, the finder of lost property loses out to the landowner if:
 - (1) the finder is an employee or invitee of landowner
 - (2) the object is embedded in the soil
 - (a) *South Staffordshire* and *Elwes v. Brigg Gas*- rings buried in *mud* and boat embedded in *soil*. Finders were *invitee* workers. Even though landowners had no knowledge of objects, they prevailed.
 - e. If the object is *mislaid*, the landowner prevails, on the theory that the owner of mislaid property is more apt to retrace her steps to locate where it was misplaced.
 - (1) Landowner has responsibility for its safekeeping until the true owner returns.
 - (2) *McAvoy v. Medina*- P, a customer in D's shop, found a pocket book. D gets to keep it even if true owner never shows up.
 - f. **Absentee landowner**- resolution of the question turns on whether landowner is in *constructive possession* of the home (i.e. landowner

only briefly away on vacation- then she has constructive possession of home and objects found within it).

- (1) *Hanna v. Peel*- D never moved into home, but was owner of home. P lived in home, and found hidden brooch. D did not have constructive possession of home and its lost objects. Therefore, court found for P.
- (2) Prof says Hanna was decided wrong. Place of finding should be important. Is it really sensible to award someone something found in another person's home? What Prof thinks- T.O. > L.O. (In constructive possession) > F1

6. Duties of a finder CC 2080-

- a. any person that finds and takes personal possession of personalty
- b. must inform the owner, if known, and
- c. make restitution without compensation,
- d. except a reasonable charge for saving and taking care of the property.

7. Property worth \$100 or more

- a. **CC 2080.1-** finder must turn property over to police.
- b. **CC 2080.2-**
 - (1) If owner appears within 90 days and can prove ownership, property is restored to him.
 - (2) If no owner appears, title vests in finder
 - (3) Unless finder is employee of public agency, then it goes up for public auction.

8. Property worth \$250 or more

- a. **CC 2080.3**
 - (1) If no owner appears within 90 days
 - (2) Police must publish notice in newspaper
 - (3) If still no owner and finder pays cost of publication, title vests in finder
 - (4) Unless the property was found by an employee of a public agency, in which case it goes up for public auction.

9. **CC 2080.7- above sections have no application to abandoned property.**

C. Acquisition by Creation

1. Creation- a property right is created by a person's creation of a thing.
 - a. Copyright- This is the right to own the reproduction of the creation
 - b. Patent/Trade Secrets- protects property rights in discoveries.

D. Acquisition by Transfer (encompasses many things discussed in detail below)

1. Involuntary v. voluntary
 - a. Involuntary = adverse possession, theft
 - b. Voluntary = trade, sale, gift
2. Generally occurs inter vivos- among the living. But the property of a

deceased person can also be transferred (inheritance).

E. Acquisition by Gift

1. Definition of Gift CC _ 1146- A gift is a transfer of personal property, made voluntarily, and without consideration.
2. Inter vivos gift- To make certain a gift has been made, must satisfy three elements:
 - a. Intent- A donor must intend to transfer title, not just possession.
 - b. Delivery- Usually means giving over physical possession of the thing, there are some exceptions.
 - (1) **Deed**- property may be delivered by deed
 - (2) **Symbolic Delivery**- when actual physical possession is impossible or impractical, the delivery of something symbolic of possession will suffice
 - (a) *Gruen v. Gruen*- father gave letter to son, declaring that a painting in the father's possession was the son's (intent to give *now*), but that father wished to retain possession for the remainder of his life. It would be impractical to deliver painting (they lived on separate continents) so the letter sufficed. Father retained a life estate in painting.
 - (b) Has to be something that will protect against fraud.
 - (3) **Constructive Delivery**- when actual physical possession is possible but impractical, delivery of an object that is the means of obtaining possession will suffice (e.g. a safe deposit key)
 - (a) *Newman v. Bost*- On deathbed, owner gives P all the keys to household furniture, saying he intends to give her everything in house. Ct held delivery of keys constituted constructive delivery of the furniture, because it was impractical to make actual delivery under the circumstances. But it did not constitute constructive delivery of an insurance policy inside a bureau, because this was not impractical to deliver.
 - (b) Ct said there was a problem with intent, if he wanted to give P policy, should have specified and delivered it to her.
 - (c) A writing would have sufficed.
 - c. Acceptance- Delivery triggers a presumption of acceptance, which can only be rebutted upon proof of the donee's rejection of the gift.
3. Verbal gift CC _ 1147
 - a. Verbal gift is not valid unless
 - b. There is delivery, symbolic delivery, or constructive delivery.
4. Putting it in writing- the best way to give a gift is to put it in writing because

it is the best evidence of the donor's intent.

- a. Should have the same elements as a deed:
 - (1) Donor and donee's names
 - (2) Words of transfer
 - (3) Description of gift
 - (4) Signature by donor
 - (5) Date
- b. CC _ 1146-47 seem to imply that only verbal gifts have the special rules of intent plus delivery
- c. But some courts say if chattel can be transferred and it is not impractical to deliver, then it must be transferred and the symbolic delivery (written instrument) does not suffice. (This was the stepmother's argument in Gruen)

5. Example of no gift made- O leaves ring on bathroom sink of A's house. A informs O by telephone. O says to keep the ring as a gift. Not a gift b/c not delivered by donor to donee with intent to give. O could reclaim ring.

- a. Courts split on whether the intent and the transfer have to occur at the same time.

6. Conditional Gifts

- a. *Meyer v. Mitnick* & CC _ 1590- an engagement ring is a gift given in contemplation of marriage is a conditional gift completed only upon marriage. No fault approach.
- b. *Majority view*- If the engagement is unjustifiably called off by the donor, than the donee gets to keep the ring.
- c. A gift causa mortis is also conditional.

7. Gift not revocable CC _ 1148

- a. A gift is not revocable
- b. *Unless* it is given in view of impending death.

8. Gifts causa mortis (given in contemplation of impending death)

- a. CA Probate Code _ 5702- A gift causa mortis is
 - (1) one which is made in view of impending death
 - (2) and with the intent that it shall be revoked if the giver recovers.
- b. Is revoked by: _ 5704
 - (1) donor's recovery
 - (2) the donor's will if the will expresses and intention to revoke the gift
 - (3) Any other expression of revocation by donee.
- c. Don't have to prove acceptance- as long as gift is valuable, courts will assume the gift was accepted.
- d. Courts are cautious about these
 - (1) Worries about fraud
 - (2) Question about donor's state of mind
 - (3) All of this is taken care of through a will.

F. Acquisition by Devise or Descent

1. Will- written formal instruments that allows for the devise of *real property* upon a person's death. Supercedes applying statutes of succession.
2. Testament- written formal instrument that governs the devise of *personal property* upon death.
 - a. If you die without a testimony, you die intestate.
3. Last Will and Testament- now the above two are combined.
4. Statutes of succession- applies if someone dies without a will and testament.
 - a. Issue (children)
 - b. Ancestors (parents)
 - c. Collateral

G. Acquisition by Instrument

- 1.

H. Acquisition by Adverse Possession

1. Effect
 - a. If the true owner fails to start legal proceedings to remove a person who adversely possesses his land within the period of SOL, the true owner is forever barred from removing the adverse possessor.
 - b. The adverse possessor acquires the title to the property that the owner had.
2. Elements
 - a. The possessor must **actually enter** and take **exclusive** possession
 - (1) Exclusive possession means that the possessor has excluded the owner and the public.
 - b. Must be **open and notorious**
 - (1) Readily visible to any inspector of the property.
 - (2) *Manillo v. Gorsky*- In the case of a minor encroachment by a neighbor onto the land of another, the true owner must have actual knowledge.
 - c. **Adverse or hostile**
 - (1) No consent of landowner
 - (2) Intention to remain/claims the right to stay
 - d. **Continuous**
 - (1) Must occupy property as continually as would a reasonable and average true owner of the property.
 - e. **Uninterrupted**
 - f. For the **full SOL period**
 - (1) In CA, it is 5 years (shorter than most other jx). Adverse possessor must pay taxes on property.

II. Estates and Future Interests

A. Definition of Estate

1. An estate is an interest in land which
 - a. is or may become possessory
 - (1) is = present possession
 - (2) may = future interest
 - b. ownership measured in terms of duration.
- B. Terms
1. Fee- tenant's holding
 2. Words of purchase- "to A"
 3. Words of limitation- limits the duration of the estate; "for life"
 4. Remainder- a future interest; "than to C"
- C. Types of Estates
1. Fee simple absolute (f.s.a.)
 - a. Duration is for infinity
 - b. Land is inherited by heirs
 - c. **Creation**- a grantor conveys his entire estate *unless* the grant is to the contrary.
 - (1) e.g. "O to A"
 - (2) **CC _ 1072**- not necessary to include words of inheritance or succession, e.g. "and his heirs."
 - d. **Alienability**- freely alienable, O can convey his entire fee simple, or he can split his fee simple into lesser estates.
 - (1) **CC _ 711**- Cannot restrain alienability of f.s.a.
 - (2) e.g. "O to A, in f.s.a., but not to be sold" Not valid (see *White v. Brown* below).
 - e. Devisible
 - f. Inheritable- by heirs in cases where O dies without a will.
 - g. **CC _ 1105**- f.s.a. is presumed, unless it appears that a lesser estate was very clearly intended.
 2. Defeasible Fees- subject to termination or divestment upon the happening of some future event.
 - a. Fee simple determinable- created when the grantor intends to grant a fee simple *only until* a specified future event happens and uses language in the grant that manifests that intent.
 - (1) Examples:
 - (a) O to A until her new home is completed. Reversion to O.
 - (b) O to A, so long as used as a library. Possibility of reversion to O.
 - (2) Words evidencing intent to create.- so long as, until, during, while, instantly revert.
 - (3) Duration is determined by language of the deed.
 - (4) Transferable

- (5) Abolished in CA, turns them into f.s.s.c.s.- **CC _ 885**
 - (a) But life estate determinables are not outlawed. They are very rare. Example- O to A for life, so long as A doesn't use illegal drugs.
- (6) *Walton v. City of Red Bluff*- Library case. Stopped being used as library. But holder of reversion interest did not fulfill requirements of _ 885. Neither party brought this up, ct did. Ct enforced the reversion anyway, only case to do so, b/c it was new statute and neither party brought it up.

b. Fee simple subject to a condition subsequent

- (1) Examples:
 - (a) O to A, but if no longer used as a library, O (or successors) may re-enter and terminate.
 - (b) O to RR, but if RR station not built, O may terminate.
- (2) Words evidencing intent to create- provided, however, but if, on condition that. The key is whether the grant evidences intent to pass title completely, save only a right to take it back.
- (3) Preservation of interests in land **CC _ 885:**
 - (a) grantor's must record their interests in land (e.g. right to re-enter) every 30 years.
 - (b) Holder preserves power of termination after a breach has occurred (condition not met or adhered to) only by filing a notice or a suit within 5 years after breach.
 - (c) Times are absolute and apply notwithstanding any lack of knowledge.
 - (d) *Exception:* if a grantor has made a gift to a non-profit, than during the life of the grantor, the power of termination will not expire.
- (4) Transferable
- (5) Action necessary to assert right of entry- holder must take substantial steps to recover possession and title.
 - (a) Need not actually physically enter and retake possession
 - (b) but must do more than merely proclaim an intention to retake possession, such as filing a suit.
- (6) Sometimes the restriction becomes obsolete under **CC _ 885:**
 - (a) If the restriction is of no actual and substantial benefit to the holder of the power
 - (b) If enforcement of the power would not effectuate the purpose of the restriction
 - (c) if it would be otherwise inequitable to enforce the power because of change circumstances or conditions.
 - (d) Cannot become obsolete during the life of the

grantor.

- c. If uncertain, cts prefer to find a f.s.s.c.s. rather than a f.s.d. has been created because:
 - (1) a f.s.d. results in automatic forfeiture, whereas a f.s.s.c.s. makes forfeiture and option.
 - (2) Cts try to avoid forfeiture because it is harsh, depriving a fee holder of the considerable reliance interest she has developed by possession of the land.
- 3. Alienability of freehold estates- attempts to prevent alienation of freehold estates are generally void.
 - a. There are three types of restraints:
 - (1) Forfeiture- causes forfeiture of estate if alienation (transfer) is attempted: O to A, but if A attempts to transfer, to B.
 - (2) Disabling- disables the owner by depriving him of any power to transfer the estate: O to A, but no further transfer by A shall be valid.
 - (3) Promissory- purports to extract a promise from the grantee that she will not alienate the property: O to A, and A promises that she will never transfer.
 - b. Total restraints are always void
 - c. Partial restraints are usually void, but sometimes valid if
 - (1) it is for a reasonable purpose
 - (2) it is limited in duration
- 4. Life Estates- possessory estate that expires upon death of holder (usually) or some other specified person.
 - a. Always followed by a future interest
 - (1) remainder
 - (a) "O to A for life, than to C."
 - (2) reversion
 - (a) "O to A for life" It is implied that it reverts back to O or his heirs upon A's death.
 - (b) may only be created in grantor
 - b. Life estates may be defeasible
 - (1) "O to A for life, so long as..."
 - c. Transferable
 - (1) although restraints on life estates are more readily upheld than restraints on freehold estates.
 - d. Waste- the term used to describe the actions of a life tenant that permanently impair the property's value or the interest of the future interest holder. Is actionable if:
 - (1) Affirmative/voluntary waste- the life tenant acts affirmatively to damage the land permanently.
 - (2) Permissive/involuntary waste- the life tenant fails to act reasonably to protect deterioration of the land.
 - (3) Ameliorative waste- When the life tenant acts affirmatively to

change the principle use of the land, and thereby increases the value of the land, it is actionable only if

- (a) the grantor intended for there to be no change in use
- (b) *and* the property may still reasonably be used in the fashion the grantor intended.

D. Ambiguous Grants

1. Hierarchy of preference-

- a. Courts prefer to interpret it as f.s.a.
- b. If there are too many qualifiers, ct will interpret it as
 - (1) f.s.a. with precatory desire (?) *or*
 - (2) an invalid restriction on a f.s.a. (_ 711)
- c. Next, they may interpret it as a f.s.a. with covenants or equitable servitudes.
- d. Finally, they least prefer to interpret it as a fee simple subject to a condition subsequent.
- e. Even lower on the list are fee simple determinable, but these are outlawed in CA.

2. Grantor's intent- in the case of ambiguous grants, courts try to determine and follow the grantor's intent. But this is often indeterminate.

- a. *White v. Brown-* "I wish A to have my home to live in and not to be sold." Holographic will- written in testator's hand. Must be interpreted liberally b/c not a lawyer. Ct treated this as an invalid attempt to restrain alienation of a f.s.a. rather than clear evidence of a life estate.

E. Future Interests

1. Future interests retained by the grantor:

a. Reversion

- (1) created when the grantor conveys a lesser estate.
- (2) It is freely alienable, devisable, and inheritable.

b. Possibility of reverter (outlawed in CA under **_ 885**)

- (1) created when the grantor conveys the same quantity of estate he originally had, but it has a determinable limitation (so long as/until) attached and retains the right of future possession if and when that limitation occurs.
- (2) It is transferable, devisable, and inheritable.

c. Power of termination or right of entry

- (1) Created whenever the grantor retains the power to cut short the conveyed estate.
- (2) Jurisdictions are split as to whether to allow alienability.
- (3) Subject to **_ 885-** must record notice every 30 years, must file notice or a suit within 5 years after a breach.

2. Future interests created in grantees:

a. Vested remainder

- (1) a remainder is vested if it is created in a known person *and*

possession is not subject to any condition precedent.

- (2) As a result, it must necessarily become possessory whenever the prior possessory estate expires.
- (3) Example: O to A for life, than to B.
 - (a) B has a vested remainder because he is a known person and there is no condition precedent to her possession. When A dies, B is ready to take possession.

b. Vested remainder subject to a complete divestment

- (1) Is a remainder created in a known person and not subject to any condition precedent,
- (2) but which is subject to a condition subsequent,
- (3) if it occurs it will *completely divest* the remainderman of his interest.
- (4) Example: O to A for life, then to B and his heirs, but if C returns from Vietnam, to C and his heirs.
 - (a) B is a known person and there is no condition precedent to Bs possession.
 - (b) But Bs remainder or possession will be taken away if C returns from Vietnam. This is a condition subsequent.
 - (c) C has an executory interest
- (5) Law has a preference for vested remainders, and if it is ambiguous it will be interpreted to be a vested remainder.

c. Contingent remainder

- (1) Is a remainder created in an unknown person *or* that has a condition precedent to ultimate possession.
- (2) Condition precedent- means that it is made contingent upon some event occurring other than the natural termination of the preceding estates.
- (3) Examples:
 - (a) O to A for life, than to A's heirs. A's heirs are not known until A dies, so they have a contingent remainder.
 - (b) O to A for life, than to B if she graduates from Princeton. This is a condition precedent so B has a contingent remainder.
- (4) Freely Alienable
- (5) There is a reversion whenever the remainder isn't vested but is contingent.

d. Executory interest

- (1) Is a 3rd party interest that has the possibility of divesting a f.s.a. if a condition precedent is fulfilled.
- (2) **Springing executory interest**- divests the f.s.a. of the grantor at some future time after conveyance.

- (a) Example- O conveys blackacre to the first student in his property class who becomes a judge.
 - (3) **Shifting executory interest**- divests the f.s.a. of another grantee upon the occurrence of some condition.
 - (a) This cuts short the preceding estate prior to its expiration.
 - (b) Example- O to A, but if B should ever be released from prison, than to B.
 - (4) Subject to **CC _ 885**
 - (a) Treats it as a power of termination.
 - (b) Thus, it is subject to the 30 yr rule of renewal, and the 5 year rule of invoking the interest once able.
 - (c) Also subject to R.A.P. in CA, so can file three 30 year notices (must vest within 90 years under R.A.P.)
- e. Comparing the different future interests
- (1) **O, to A for life, then to B**
 - (a) B has a vested remainder
 - (2) **O, to A for life, then if B has survived A, to B**
 - (a) B has a contingent remainder
 - (3) **O to A for life, then to B for life, then to C and heirs**
 - (a) B has a vested remainder for a life estate
 - (b) C has a vested remainder for a f.s.a.
 - (4) **O to A for life, than to B for life, than to C if C survives A and B**
 - (a) Now C has a contingent remainder- the condition precedent is that he survives A and B.
 - (b) There is a reversion in O.
 - (5) **O to A for life, then to B but if B doesn't survive A, then to C.**
 - (a) B has a vested remainder subject to divestment if the *condition subsequent* occurs.
 - (b) C has an executory interest because he may be able to divest B of his interest if the *condition precedent* occurs- surviving B.
- f. Rule of Perpetuities
- (1) Rule- An interest is good if it will certainly vest or certainly fail to vest within 21 years after the death of some person alive at its creation (for personal property) or within 21 years (for commercial transactions).
 - (a) The person is always a person who can affect vesting of the interest.
 - (b) If an effective measuring life cannot be identified, the interest is void.
 - (2) If there is *any* possibility, no matter how unlikely, that

vesting could occur after the expiration of the permitted period the interest is void.

- (3) Reason- prevents uncertainty about future ownership and possession from continuing so far in the future that land would become inalienable.
- (4) Subject to R.A.P.- Contingent remainders and executory interests. Interests retained in grantors are exempt from R.A.P.
- (5) Examples:
 - (a) *The Symphony Space*- traditional application. B, to symphony, option to B. B had ability to exercise option up until 2003, 25 years after execution of deed. Violates R.A.P. 21 year limitation because there is a possibility it could vest after 21 years.
 - (b) **O, to school so long as...then to A and his heirs.**
 - i) Violates rule because there is a possibility that it will vest in A after 21 years plus life.
 - (c) **O to school so long as... or**
 - (d) **O to city but if...then K may re-enter and terminate.**
 - i) Interests retained in grantor, not subject to R.A.P.
 - ii) Still subject to § 885
 - (e) **O to T for life, then to T's children who reach age 21.**
 - i) T is the measuring life.
 - ii) The uncertainty of T's children will be resolved at T's death
 - iii) Certain to vest within 21 years after T's death, so it is valid.
 - (f) **Prof, to all members of her class who are admitted to the bar.**
 - i) Valid. The members of the class are the measuring lives. Must vest during their lives or not vest at all (if none are admitted).
 - (g) **O, to first child of A to become a lawyer.**
 - i) Void. First child of A might not be alive at time of deed.
 - ii) Does not matter if A has a child in law school, possibility that she might not graduate and A might have another child who becomes a lawyer.
 - iii) Does not matter if A is elderly.
- (6) The fertile octogenarian: presumption that a person of any age, whether male or female, can produce a child.
- (7) Courts now allow some kind of reformation of a deed that violates this rule so that it becomes valid.

- (8) **CA Probate Code _ 21205- CHANGES RULE:** A non vested property interest is invalid unless one of the following conditions is satisfied:
 - (a) It is certain to vest or terminate no later than 21 years after the death of an individual then alive *OR*
 - (b) The interest either vests or terminates within 90 years after its creation.
 - i) This is the “wait and see” approach- wait and see if it vests within 90 years to determine its validity.
 - ii) Liberal interpretation of life in being plus 21 years.
- (9) Interests held by Charities and Governments excluded:
 - (a) Common law “Two charity” rule- if the defeasible fee and the following executory interest are both owned by charities, than not subject to R.A.P. as a matter of public policy
 - i) e.g. A to Red Cross so long as, then to Humane Society.
 - (b) Under **CA Probate Code _ 21225-** same as above, but also applies to government agencies.

III. Landlord-Tenant (**Leasehold Estates**)

A. Types of Leaseholds

- 1. Term of years- a lease for a single, fixed term of any length.
 - a. **L, to T for 5 years**
 - b. CA has a limit on terms: 51 years for agricultural lands and 99 years for urban.
- 2. Periodic tenancy- a lease for a recurring period of time, such as month-to-month or year-to-year.
 - a. **L, to T from month-to-month**
 - b. Continues until either the landlord of the tenant gives advance notice to the other party of termination of the lease.
 - c. **CC _ 1946-** requires 30 days advance notice.
 - d. **CC _ 1943-44:** This is the presumed and preferred form of tenancy.
 - e. If there is an oral agreement, void unless rent is paid, then it is a periodic tenancy.
 - (1) Cts use different methods to figure out the period in such cases- often measured by the way the rent is calculated or paid.
- 3. Tenancy at will- lease for no fixed time period.
 - a. Bilateral- either party may terminate at any time.
 - b. A unilaterally terminable lease is not a tenancy at will. It is a determinable tenancy.

4. Tenancy at sufferance (not a true tenancy)- occurs when tenants “hold over” or remain in possession after their right to do so has expired.
 - a. Only lasts until the landlord exercises one of two legal options:
 - (1) Eviction and recovery of damages for the lost possession.
 - (2) binds the tenant to a new term.
 - b. The landlord must exercise one of these options within a reasonable time.

B. Characteristics

1. Landlord-tenant law- falls under both property and K law.
2. Alienability
 - a. Tenants can still transfer interest (called an assignment) *unless*
 - b. The lease includes a clause prohibiting transfer.
3. Death of landlord- lease is still good until the end of the specified term.
4. Rights of Landlord
 - a. Landlord may not enter leased premises during the term, because the landlord has no possessory interest.
 - b. Exceptions: **CC _ 1954**
 - (1) emergency
 - (2) to make necessary or agreed repairs
 - (3) abandonment by tenant
 - (4) court order
 - c. Notice of at least 24 hours is required, except in cases of emergency or abandonment.
5. Destruction of Property- Under **CC _ 1933**, the leasehold terminates.

IV. Concurrent Estates

A. Tenancy in Common

1. Definition- tenants in common own separate but undivided interests in the same interest in property.
 - a. Each tenant in common owns the entire property, but must share that ownership with the other tenants in common.
 - b. Undivided interests- They do have separate shares, but the property itself is undivided.
 - c. Each share is alienable and devisable.
 - d. It is the most commonly encountered form of shared interest.
2. **CC _ 685-86**- every interest shared among several people is an interest in common unless:
 - a. It is a partnership
 - b. It is declared in its creation to be a joint interest
 - c. It is acquired as community property
3. There is a preference for and a presumption in favor of tenancies in common.
4. There is a rebuttable presumption that tenants in common have equal shares

in the property. But they may have unequal shares:

- a. A,B,C own Blackacre as tenants in common. A conveys his interest to B. B and C are still tenants in common, but B owns 2/3 share and C owns 1/3 share.

B. Joint Tenancy

1. Definition- Joint tenants own an undivided share in the same interest, but the surviving joint tenant owns the entire estate.
 - a. It is a shared ownership right that is lost entirely upon death- heirs do not inherit.
 - b. Upon the death of one joint tenant, the share held by the remaining joint tenants increases proportionally.
 - c. Not devisable or descendable, but may be alienable.
2. In a majority of jurisdictions, one cannot convey a joint tenancy to oneself:
 - a. A, to A and B as Joint Tenants
 - b. Many courts are now saying this is okay. It is valid in California under **CC _ 683**
 - c. Majority of jx would use a “strawman.” A would transfer interest to an uninterested party who would then transfer it back to A and B as joint tenants.
3. In a majority of jurisdictions, tenants cannot change their status as tenants in common to joint tenants.
 - a. **_ 683** allows this, still requires a “transfer” or deed.
4. Creation of joint tenancies
 - a. **_ 683** seems to say that all one has to do is include the word “joint” to create a joint tenancy. But this isn’t wise. Should be more specific because of the layman interpretation of “joint” and the strong preference for tenancies in common. Should spell out the right of survivorship.
 - b. Must be clear evidence that parties intended to create a joint tenancy.
 - (1) The best expression is: to A and B, as joint tenants with the right of survivorship.
5. Severance of joint tenancies- A joint tenant may destroy the joint tenancy at any time by severing the joint tenancy, usually by conveyance.
 - a. If a joint tenant conveys his interest to a third party or another joint tenant, the joint tenancy is severed in that interest.
 - (1) A,B, and C are joint tenants. If A conveys his interest to D, D owns a 1/3 interest as a tenant in common with B and C.
 - (2) B and C continue to be joint tenants.
 - (3) If B dies, C and D will be tenants in common. C will have 2/3 interest and D will have 1/3 interest.
 - b. Unilateral severance/conveyance to self
 - (1) Common law regarded this as not valid.
 - (2) In *Riddle v. Harmon*- CA overruled this and held that a wife

could validly sever a joint tenancy with her husband, by a conveyance from herself as joint tenant to herself as tenant in common with her husband.

- (3) Secret severance
 - (a) Problematic if one joint tenant executes a deed in secret to create a tenant in common. If that person dies first and deed is discovered, her heirs will inherit. But if other joint tenant dies, the first one destroys the secret deed.
 - (b) CA deals with this problem by requiring such conveyances to be recorded- **CC _ 683.2.**
- c. Do not have to have the consent of nor do you have to notify the other party in order to sever the joint tenancy.

C. Partition

1. A joint tenant or a tenant in common may demand partition of the property at any time and for any reason.
2. Types of Partitions the court may order:
 - a. Partition in kind- physical division of the property.
 - (1) This is the preferred method, courts will order it unless:
 - (a) it is impossible or extremely impractical or
 - (b) it is not in the best interest of all the parties.
 - (2) *Delfino v. Vealencis*- D lived on a portion of property owned as a tenant in common with P and operated a garbage hauling business on it. D wished to develop the property into single family residences and demanded partition by sale. Because it was not in the best interest of *all* the parties to sell the entire property (because of the value for Helen in remaining in possession and continuing her business), a partition in kind was ordered.
 - (3) *Johnson v. Hendrickson*- D and his sons lived and farmed on property that they owned a 1/3 interest in as tenants in common. P sought partition by sale. The court gave little weight to the value of continued possession for P, and relied on the fact that division of the land would materially depreciate its value to order a partition in sale.
 - b. Partition in sale
 - (1) Although not favored by courts, the vast majority of cases end up in partitions in sale.

D. Marital Interests

1. Marriage creates a legal status that changes a person's property arrangement.
2. Tenancy by the entirety
 - a. A form of joint ownership available only to husband and wife.
 - b. Like a joint tenancy, each tenant has a right of survivorship.
 - c. **Undestructable right of survivorship**- neither tenant acting alone can sever/destroy it, partition it, or convey the estate. The right of survivorship remains so long as the marriage remains.
 - d. **20 states** still use it.
3. Community Property

- a. Community property **includes** the earnings during marriage by either spouse and all property acquired from such earnings.
- b. This **excludes** property acquired before marriage or acquired during marriage by gift, devise, or inheritance. Such property is separate property owned solely by that spouse.
- c. The character of the property, separate or community, may not be changed except by agreement of both spouses.
 - (1) When uncertain, courts apply a rebuttable presumption that the property is community.
- d. Each spouse has a ½ undivided interest in the shared community property.
- e. **No right of survivorship**, but
 - (1) should a spouse die intestate, it is assumed he wanted it all passed to surviving spouse.
 - (2) Under **CC _ 682.1** community property can be transferred into a joint tenancy.
- f. **Policy reasoning**- Rests on notion that husband and wife are a marital partnership that both contribute to a material success of the marriage, and that both should share equally in material acquisitions. It recognizes & rewards the work of housewives.
- g. **8-10** states (including CA) have adopted some form of this.

V. Servitudes

A. Definition of Servitudes

- 1. Servitudes are interests in land that are non-possessory.
 - a. Because they are interests, they are subject to SOF
 - b. Must be in writing
- 2. They are rights of use over land that someone else has title to.

B. Easements

- 1. Two different classifications
 - a. Affirmative or negative
 - (1) Affirmative easement- Permits a person to use the servient estate in a specified manner.
 - (2) Negative easement- Confers only the right to prevent specified use of the servient estate that would affect the dominant estate (e.g. blocking view of dominant owner's windows); it confers no right to use the servient estate.
 - b. Appurtenant or in gross
 - (1) Easement appurtenant- one that benefits the owner of another parcel of land. It is attached to the land.
 - (a) The benefitted parcel is called the **dominant estate**.
 - (b) The burdened parcel is called the **servient estate**.
 - (c) Courts prefer to construe ambiguous grants as being

easements appurtenant.

(d) *Example-* A grants an easement across Whiteacre from Blackacre for foot passage to and from the beach. The easement benefits whoever possesses Blackacre and is attached to the land.

(2) Easement in gross- confers a personal benefit, rather than a benefit to a landowner. They are not attached to any parcel of land.

(a) *Example-* A grants to Randall the personal right to enter and cross Whiteacre to get to the beach. It is created to personally benefit Randall. If Randall sells Blackacre to Rodney without any assignment of this personal right, Rodney has no right to enter Whiteacre.

2. Creation of Easements

a. Easements by grant

(1) Most easements are created expressly by deed or other grant.

(2) Subject to SOF, requires a writing signed by the grantor.

(3) **CC _ 1069-** A grant is to be interpreted in favor of grantee. But a reservation in any grant is interpreted in favor of grantor.

b. **Implied easements**

(1) Implied from prior use (or implied by quasi-easement)- A property has been divided by a common owner and, prior to division, one portion of the property has been used in an easement-like fashion for the benefit of another part of the property.

(a) Elements:

i) **Common owner-** Prior to division, the quasi-servient estate and the quasi-dominant estate must be owned by the same person.

ii) **Reasonable necessity** (modern trend)- The prior use must be reasonably necessary for the use and enjoyment of the “quasi-dominant” estate.

a) Majority courts say that *strict necessity* is required.

iii) **Continuous use-** prior uses must be continuous, not sporadic.

iv) **Intended continuation-** The parties must intend, at the time of division, to continue the prior use.

v) **Apparent-** The prior use must be apparent, which does not necessarily mean that it is visible. It is apparent if it could be detected, or even inferred, from a reasonable inspection of the premises.

(b) *Van Sandt v. Royster-* Bailey owned three adjoining lots. She built a house on one of the lots and ran an underground sewer line across two lots to get to a sewer line. She sold all three lots to different owners under deeds

making no mention of the sewer line. But those owners knew about it and built houses and connected plumbing to sewer line. Eventually, P came to own one of the houses and sewage flooded the basement. He attempted to enjoin the dominant owner from continuing to use line. Ct held that there was an implied easement, all the above elements were there, including apperency (even though not visible). Ct said that the later buyers should have inferred the existence of some sewer.

(2) Implied from necessity- An easement is implied by necessity only when a common owner divides his property in such a way that one of the resulting parcels is landlocked and left without access to a public roadway. They are only permitted for right of way.

(a) *Hewitt v. Meany*- Landowner sells a parcel of land that has no access to outside world. Usually, because the grantee and grantor would understand that it is necessary to have an easement to access the outside world, the courts would grant a right-of-way easement to grantee. However, here the grantee bought with the understanding that there would be no easement, so the court says it cannot force the grantor to give an easement. The court says the parties intended to create a landlocked parcel without an easement for right-of-way, so ct would not imply one.

(b) **CC _ 1001-02**- A private party can have limited power of eminent domain to force another party to give them an easement to provide utility services to their property.

- i) Servient owner cannot resist
- ii) Compensation must be paid
- iii) Only available in a few states
- iv) only available in cases of “great necessity”
- v) Must be done in the least damaging way.

(3) An implied easement arises at the time of conveyance.

c. **Easements by prescription**

(1) Elements-

(a) Adverse use under a claim of right that is

(b) open and notorious and

(c) continuous for the prescriptive period.

- i) This is satisfied if the adverse user continuously asserts her claim of right by making whatever use is consistent with the nature of the claimed easement
- ii) even if that use is periodic or sporadic. The adverse user does not have to use the property constantly.
- iii) The prescriptive period is the same as that required under adverse possession.

(d) *Zuni*- Tribe claiming prescriptive easement to cross land every 2 years for pilgrimage. Ct found for Zuni's, because they had already acquired a prescriptive right before landowner gained title to land.

(e) What is necessary for land owner to assert total occupancy and possession?

- i) Must demonstrate a bona fide attempt to

prevent use.

- ii) **CC _ 1008-** can post a sign every 200 hundred feet: “right to pass by permission, and subject to control of owner.”

(2) Public use

- (a) General rule is that the public at large can acquire prescriptive easements in private lands. Often called an **implied dedication**.
- (b) *Gion/Dietz cases-* access to and use of public beaches by public created an implied dedication. While the present owners made it clear that they did not approve of public use of the property, the previous owners ignored the wide-spread public use of the land for more than five years and thus impliedly dedicated the property to the public.
- (c) **CC _ 1009-** No regular use by the public will give rise to a vested right *unless*:
 - i) Landowner gives express written offer of dedication
 - ii) Government spends \$\$ to improve the land related to the public use of the land and owner knows or should have known that public is using land. After 5 years it ripens into a vested right in the government to continue such use.
 - iii) Statute speaks only to public rights, not private rights.
 - iv) This section is not applicable within 1000 yards of the coast. Implied dedications/easements through public use is okay on the coasts.
- (d) **Public Trust Doctrine-** Some states say that the water and beach front below the mean high-tide mark is held by the state in public trust, to enable the public to use it for swimming, boating etc.
 - i) This can be problematic because access to such public lands is often only through privately owned land.
 - ii) **CC _ 830-** Owner of land on coast owns all land to the ordinary high-water mark. So the owner has control over all the “dry sand.”

d. **Easements by equitable estoppel-** See irrevokable licenses below.
Elements:

- (1) Servient owner must allow use
- (2) Servient owner must be aware that the dominant owner is relying on use
- (3) Dominant owner must rely to his detriment.

3. Reservation of Easements-

- a. A grantor can always reserve an interest, including an easement, for himself.
- b. Most cts say that a grantor cannot reserve an interest in land, such as an easement, to a third party not part of the transaction.
 - (1) **Minority view: *Willard v. First Church of Christ***- Ms. McGuigan sold a lot to Mr. Peterson, but reserved an easement for her church to use the lot for parking during church hours. Mr. Peterson sold the lot to P. This ct said okay to reserve easement for 3rd party, but many cts do not agree.
 - (2) **What Church lawyer should have done:**
 - (a) McG to Peterson reserving an easement for parking for McG.
 - (b) McG to Church, my reserved easement.
 - (3) **Alternative**
 - (a) McG to Church, easement so long as used as parking during church hours.
 - (b) McG to Peterson, subject to parking easement described in Church deed.
 - i) The above is okay. Cts get hung up on the word “reserve.”

4. Transfer of Easements

- a. **Easements appurtenant**- are a part of the title to the freely transferrable dominant estate.
- b. **Easements in gross**- more restricted because the owner of the easement is not easy to locate and the burden on the land may persist long after its practical utility has ceased. *General rule*:
 - (1) Commercial easements in gross are assignable.
 - (2) Noncommercial easements in gross are not assignable unless the parties (to the original transaction) intend to permit assignment.

5. Scope of Easements

- a. **Parties intentions control-**
 - (1) To determine the scope of the easement, cts try to identify and uphold the original parties’ intentions.
 - (2) Factors considered:
 - (a) how the easement was created
 - (b) how conditions have changed to affect the originally intended use
 - (c) what changes in use were reasonably foreseeable by the parties
 - (d) what changes are necessary to achieve the intended purpose of the easement
 - (e) whether a changed use imposes an unreasonable burden on the servient estate.
- b. **Prescriptive Easements**- scope can only be that which was being used at the time easement was created.
 - (1) No increase can happen even through natural evolutionary

changes.

- (2) This is because it was created unilaterally, no greater or different use can be implied to be intended by the parties.

c. **Implied by Necessity-** use is exactly congruent with the necessity: no more, no less.

d. **Enlargement of the dominant estate (easement appurtenant)-**

- (1) The general rule is that an easement cannot be used for the benefit of land that is not the dominant estate.

- (2) Cts do not always enjoin such violations. They may look to other issues such as whether the servient estate suffered irreparable harm from the enlargement of the dominant land.

(a) *Brown v. Voss*- V's parcel was burdened by an easement for right-of-way benefitting parcel B. B purchased parcel B and an adjacent parcel C that was not benefitted by the easement. B began to build a house straddling B and C and used the easement to haul construction materials. The ct said that although any physical enlargement of the dominant estate is wrongful, an injunction should not issue because there was no evidence of irreparable harm to V from the enlargement.

- (3) Prof. says, "use of the dominant parcel defines the scope of the easement."

e. **Division of an easement in gross-**

- (1) If it is an exclusive easement in gross held by one person, that person has the right to divide it.

- (2) If it is vested in two or more persons:

(a) **"One-stock" (majority) rule-** the joint users may divide their easement but the entire use must be conducted as a single unit.

i) *Miller v. Lutheran Conference*- Frank and Rufus Miller jointly owned the right (by prescriptive easement) to fish, boat, and swim in Lake Naomi. Rufus's estate began to grant separate licenses to third parties for these purposes and Frank sought to enjoin the licensees from using the lake. Ct granted the injunction because they parties did not act jointly as "one stock" when dividing the easement. Licenses cannot be granted without consent of both parties.

(b) **"No-increased burden" (minority) rule-** permits division if the burden on the servient estate is not increased beyond what was initially contemplated.

f. **Division of the dominant estate (easement appurtenant)-**

- (1) General rule is that a dominant estate may be divided and each part of the divided estate is entitled to enjoy the easement.

- (2) *However*, the resulting increased burden on the servient estate must be within the original contemplation of the parties.

- (3) Factors considered:

(a) whether division of the dominant estate is a normal development

(b) whether it is foreseeable

(c) and whether the burden on the servient estate is

substantially increased.

- g. **Reasonable evolution-** of the dominant estate affecting an easement appurtenant is okay.
 - (1) The scope of the easement may be adjusted in the face of changing times to serve the original purpose, so long as the change is consistent with the terms of the original grant.
 - (2) The scope does not permit a change in use that is not reasonably foreseeable at the time of establishment of the easement.
- h. **Use by servient estate owner-** Unless the easement grants an exclusive use right the easement holder, the servient estate may use the easement to the extent that the use is reasonable and does not substantially interfere with the easement holder's use.

6. Termination of Easements

- a. **Expiration-** an easement created by grant may expire by its terms.
- b. **Merger-** If the easement holder also acquires title to the servient estate the easement is extinguished because an easement only exists in land owned by somebody else.
- c. **Release-** The easement holder may release the easement. Usually must be in writing, but can also be valid through equitable estoppel.
- d. **Abandonment-** the easement holder must manifest a clear and unequivocal intention to abandon the easement. Mere non-use will not suffice.
 - (1) *Preseault v. US-* The Vermont Railway owned a "right of way" easement for its rail line through Vermont. In 1970, it ceased operations over the portion of line in dispute. In 1975, it removed all the tracks and other railroad equipment. In the late 80s, the ct ruled that the railway had abandoned its easement in 1975.
 - (2) **CC _ 887**
 - (a) Owner of property subject to an easement may bring an action claiming abandoned easement.
 - (b) If not used for 20 yrs, CA treats it as abandoned.
 - (c) Dominant owner can resist this by recording a notice of intent to preserve right every 20 years. Can even do a late notice of intent and dismiss the court action.
 - (3) Courts are against presuming abandonment.
- e. **Cessation of Purpose-** If the purpose of the easement has completely ceased the easement is extinguished.

C. Licenses

- 1. A license is simply permission to enter the licensor's land.
 - a. They may be oral or written agreements.
 - b. They are revokable at any time unless
 - (1) the licensor makes it irrevocable expressly or
 - (2) Equitable estoppel- the licensor grants a license on which the licensee reasonably relies to make substantial improvements

on the property.

(a) **Holbrook v. Taylor**- P had D's oral permission to use road on D's land. P used road to construct house. Because D stood by and allowed P to invest money in improving the road and using it for a while after the house was built, D was estopped from revoking the license.

(3) An irrevokable license is an easement.

D. Real Covenants

1. **Definition**- A promise about land usage that burdens some land and benefits other land. It runs with an estate in land, meaning that it burdens or benefits subsequent owners of the land.
2. **Two types**
 - a. **Affirmative**- A promise to use the land in a specified fashion
 - b. **Negative**- A promise not to use the land in a specified fashion.
3. **Creation of real covenants**
 - a. Can *only* be created by written instrument, cannot be created by implication or prescription.
4. **Enforceability by or against successors**
 - a. **Intent**- The original parties must have intended the covenant to run to successors and their respective estates in land.
 - (1) Courts look first to the covenant itself
 - (2) then they look to the surrounding circumstances (covenant's purpose, conduct of the parties).
 - b. **Burden or Benefit**- must burden the land of the covenantor and benefit the land of the covenantee.
 - (1) The Restatement says that servitude benefits in persons rather than lands should be allowed. This is a minority view.
 - c. **Privity**
 - (1) *Horizontal*- connection of interest in the estate between the two original parties.
 - (2) *Vertical*- exists when the successor has acquired the burdened or benefitted estate in land held by the original party in the covenant.
 - (a) Harder to establish vertical privity for the burden of a covenant than for the benefit of the covenant.
 - (b) To establish vertical privity to enforce a burden of a covenant, must prove that the successor acquired the *exact same estate* in land owned by the original contracting party.
 - (c) The benefit will run if the successor gained any interest in the land.
 - (3) Traditionally, both horizontal and vertical privity were required for the burden of a real covenant to run, but only vertical privity was required for the benefit to run.
 - (4) Today, most courts have discarded horizontal privity, but not

all courts.

- d. **Touch and Concern-** In order for either the benefit or burden of a real covenant to run, the promises must relate intimately to the use of the land- physically touch the land and concern its use.
- e. *Caullett v. Stanley Stillwell-* Grantors reserve right to construct building on premises. Grantees sue maintaining clause is incapable of enforcement. Ct says the covenant does not touch and concern the property, so not enforceable. Prof. says this is wrong, it does concern the property- the building on the property. But still would come to same conclusion because it doesn't benefit the grantor's (covenantee) land, instead it conveys a personal benefit.

5. **CC 1468-**

- a. Each covenant runs with the land where the following requirements are met:
 - (1) Has to be some act on own land
 - (2) That is for the benefit of the land of the covenantee
 - (3) Has to be expressed in an "instrument" which is recorded
 - (4) The land of the covenantor and covenantee must be particularly described
 - (5) Successive owners must be expressed to be bound
 - (6) The promises must "touch and concern" the land.

6. Compared with defeasible fees

- a. A covenant is a promise concerning land use, it is not a condition of continued land use like defeasible fees.
- b. Breach of a covenant renders the violator liable for damages or injunction, breach of a condition of a defeasible fee causes forfeiture of the estate.

7. Compared with easements

- a. Affirmative covenants confer rights to use another's land; real covenants do not.
- b. Negative easements are more similar- a *right* to an unobstructed view over your neighbor's land (negative easement) is functionally identical to a *promise* by your neighbor not to obstruct your view (a real covenant).
- c. Courts are more reluctant to grant negative easements than to enforce a promise as a real covenant.

E. Equitable Servitudes

- 1. Definition- a covenant about land use that will be enforced in equity (by an injunction) against a successor to the burdened estate who acquired it with notice of the covenant.
- 2. Equitable servitudes are more commonly enforced than real covenants because they are easier to enforce by or against successors and people prefer injunctions over money damages.
- 3. Differences between equitable servitudes and real covenants:
 - a. **Remedy-** injunction rather than \$\$
 - b. **No privity needed**
 - c. **Creation-** may be created by *implication (in very limited*

circumstances), unlike real covenants.

- (1) Implication from a common development scheme: Many states will imply a negative equitable servitude where a developer sells lots in a subdivision on a promise that all the lots will be burdened with the same use restriction and later fails to carry through on this promise.
- (2) CA rejects creation of equitable servitudes by implication.

d. **Enforceability by or against successors-**

- (1) Intent- same as real covenants
- (2) Privity not required
- (3) Notice
 - (a) Can be actual notice or notice by public record.
- (4) Touch and Concern

F. Interpretation of Covenants

1. General Rule- Courts try to implement the intentions of the parties, but the very terms used are often ambiguous.
 - a. Single-family residential covenants
 - (1) this term is not self-evident. Most courts conclude that group homes for person with disabilities do not violate such covenants because people live there. (*Hill v. Community Damien of Molokai*- group home for persons living with AIDS did not violate covenant restricted to single family residential purposes).
 - (2) But any commercial or money-making enterprise is not residential.

G. Termination of Covenants

1. Merger- If the same person acquires title to the burdened land and all of the benefitted land the covenant is extinguished.
2. Expiration- Covenants sometimes have a defined life span.
3. Eminent Domain- Gov. Takes the burdened land for a purpose inconsistent with the restricted covenants.
4. Express waiver or release- If all the holders of a benefit expressly release the covenant it is extinguished.
5. Doctrine of changed conditions
 - a. **Changed conditions within the affected area**- A covenant will no longer be enforced in equity if conditions have so radically and thoroughly changed within the area affected by a covenant (usually a subdivision) that the covenant can no longer achieve its purpose.
 - b. **Changed conditions in the surrounding area**- To succeed on this it is necessary to establish that the extrinsic changes in the neighborhood have been so pervasive that all of the benefitted lots have lost the benefit of the covenant.
 - c. As long as the original purpose could still be achieved and benefits

derived, the covenants are still enforceable.

d. *Western Land Co. v. Truskolaski*- Western subdivided land into lots with restrictive covenants limiting use to single-family dwellings. Now the surrounding area has changed and wants to develop one lot into a shopping center. Residents sought injunction against violating covenant, and won, because the covenant still benefitted residents and had substantial value to them.

6. Abandonment (or implied waiver)- If violations of a covenant are sufficiently numerous and there has been no enforcement action taking the covenant is terminated by abandonment/implied waiver.

H. Common Interest Communities (Condos)

1. Definition of condo- undivided interest in common, coupled with a separate interest in a space called a unit.

2. Elements-

a. **Covenants recorded in a master deed**

b. Covenants imposed by homeowners associations

(1) Involves subordination of individual property rights to the collective judgement of the association.

c. **Covenants must be reasonable**

(1) strong presumption that they are reasonable (especially if imposed before person moves in).

(2) Burden is on challenger to demonstrate that the covenant's **effect on the community as a whole**, rather than on the individual homeowner, is unreasonable.

3. *Nahrstedt v. Lakeside Village*- Master deed said no pets allowed in any unit. P moved in with cats. Association sought injunction. Ct enforced concluding that it was reasonable because it did not violate a fundamental public policy, was not wholly arbitrary, and did not impose a burden that far outweighs any benefit.