

PROPERTY CHEAT SHEET

ADVERSE POSSESSION

- 1) Actual Possession – ordinary owner, community standard
- 2) Open And Notorious – enuf to put owner on Notice?
- 3) Continuous - Season use? Tacking? Community standard
- 4) Exclusive – vistors are OK. (If NO think PE)
- 5) Hostile – OBJ test – presumed non-permissive. Ouster?
- 6) Stat Period – tacking?
 - a) NOTES:
 - i) Color of Title – some jx require
 - ii) Can't AP gov't property used for public
 - iii) Unified groups can AP.
 - iv) ENCROACHING STRUCTURES: **Somerville v. Jacobs** – Relative Hardship doctrine if structure is 1) Innocently built 2) Harm is minimal 3) Interference w/ True Owners interest is small OR 4) cost of removal is substantial → court can require true owner pay for improvement, or force him to sell land at MV.
 - b) CASES:
 - i) **Brown v. Gobble** – tacking
 - ii) **Romero v. Garcia** - Color of Title
 - iii) **Nome v. Fagerstrom** - Must use property as average owner, Hostility determined from OBJ standard “acted toward land as if owned”

RIGHT TO USE

- 1) **FLOODING AND DIFFUSE SURFACE WATER**
 - a) Common Enemy Rule – no liability
 - b) Natural Flow Rule – strict liability
 - c) Reasonable Use Rule – internalize the externalities
 - i) CASE: **Armstrong** – Balance needs of the parties and reasonableness of the harm
- 2) **SUBJACENT SUPPORT**
 - a) CASE: **Friendswood** – future reasonable use rule, cannot remove water negligently
- 3) **LIGHT AND AIR**
 - a) CASE: **Prah v. Maretti** – rt to light an air if when serves a utilitarian purpose
 - b) CASE: **Fountainbleu** – no right to aesthetic light and air
 - c) Ancient Lights
- 4) **NUISANCE**
 - a) Substantial harm
 - b) Unreasonable Interference w/ use and enjoyment
 - i) CASE: **Honey well** – balancing factors
 - ii) NOTE: Trespass = physical encroachment
 - iii) EXCEPTION: Hypersensitive use

EASEMENTS

- 1) **LICENSE** – informal, REVOCABLE at will w/ Permission of owner. NOT transferable and for LIMITED purpose
- 2) **PERSCRIPTION EASEMENTS**
 - a) Actual Use
 - b) Open and Notorious
 - c) Continuous
 - d) Hostile
 - e) For Statutory Period
 - i) CASE: **Community Feed Store**

- 3) **EASEMENT BY ESTOPPEL** (Irrevocable)
 - a) Permission
 - b) Reliance / Interest
 - i) CASE: **Holbrook v. Taylor**– allowed use of private road, P made improvements then D tried to revoke. P relied on promise = easement is irrevocable
- 4) **CONSTRUCTIVE TRUST** (Revocable)
 - a) Permission
 - b) Reasonable Reliance / Investment
 - c) Equity Considerations (Granted by Cts, legal fiction)
 - i) CASE: **Rase v. Castle Mtn** – owner would be unjustly enriched if allowed to kick people off land and take their cabins
 - ii) NOTE: Non-permanent
- 5) **EASEMENT BY PRIOR USE**
 - a) Previous Common Ownership
 - b) Visible USE before Conveyance
 - i) To put owner on notice
 - ii) Continuous and Permanent
 - c) Reasonable Necessity
 - i) CASE: **Granite Prop. v. Mann** – grocery store case.
 - ii) NOTE: Sliding scale, more notice less necessity required
- 6) **EASEMENT BY NECESSITY**
 - a) Previous common Ownership
 - b) Absolute Necessity (can lay dormant)
 - i) CASE: **Finn v. Williams** – landlocked parcel
- 7) **EXPRESS EASEMENT**
 - a) In Gross
 - i) Exclusive – means can be transferred / apportioned
 - (1) CASE: **Henley v. Continental Cable**
 - ii) Non Exclusive – means grantor intends to benefit >> can't be apportioned.
 - b) Appurtenant (Presumption for if ambiguous)
 - i) FOR BURDEN TO RUN
 - (1) Writing
 - (2) Owner's Intent
 - (a) Must be w/in Scope can't Exceed
 - (3) Future Owner's Notice (Actual, Constructive, Inquiry)
 - ii) FOR BENEFIT TO RUN
 - (1) Grantor's Intent
 - iii) CASE: **Cox v. Glenbrook** – easement can be apportioned to all people living on property, but cannot exceed scope. Can make improvements but can't widen.
 - iv) CASE: **Green v. Lupo** – servient estate can impose reasonable restraints to lessen burden
 - c) Terminating Easements: Merger, Abandonment, AP, Frustration of Purpose, Release, Changed Conditions

COVENANTS

- 1) **BURDEN TO RUN**
 - a) Writing
 - b) Intent
 - c) Notice (Actual, Constructive, Inquiry)
 - d) Touch and Concern
 - e) Privity (for \$ damages)
 - i) HP – Instantaneous or Mutual
 - ii) VP – transferor retains no future interest (NOT lease)
- 2) **BENEFIT TO RUN**
 - a) Common ownership
 - b) Intent (express or implied)
 - c) Vertical Privity (NOT lease or LE)
- 3) CASEs:
 - a) **Kotseas** – no VP can only get an injunction, and money damages from leasor, lease ≠ VP
 - b) **Blevins** – limit to single family home restricts building, not use, limit use would discriminate against disabled group homes.
- 4) **TERMINATING COVENANTS**
 - a) Undue Hardship
 - i) CASE: **Blakely** – weighing of interest, don't want to impede most suitable use for the land.
 - b) Changed Conditions
 - i) CASE: **Ei Di**
 - c) Abandonment, Acquiescence, Unclean Hands, Estoppel
 - d) Merger
 - e) Laches
 - f) Lapse (Marketable Titles Act)
 - g) Language in Instrument
 - h) Release
 - i) Prescription

COMMON OWNERSHIP

- a) **TENANCY IN COMMON** (if deed ambiguous interpret as TC, less restrictive)
 - i) Undivided interest to possession whole property
 - ii) Can be devised
 - iii) Lease: Tenant can lease interest w/o consent of other co-tenant. Lessor steps in shoes of co-tenant, lease survives death. (**Carr v. Deking**)
- b) **JOINT TENANCY**
 - i) 4 unities: time, title, (= undiv) interest, possession (rt to possess entire parcel)
 - ii) Rt Of Survivorship
 - iii) Ouster – starts AP clock ticking, (rent - owe fractional share of rental value)
 - iv) Constructive Ouster? (not getting along)
 - (1) CASE: **Olivas** – survives divorce, but if pushed out of property = ouster and have to pay rent; if abandons property no rent.
 - v) Severance SPLIT
 - (1) **Tehnet** – lease ≠ sever
 - (2) **Alexander** – lease = sever
 - (3) NOTE: devising in will ≠ severance; sale = severance; conveyance = S;
 - (4) Severance only occurs bt selling owner and remaining owners; doesn't change relations bt remaining owners among themselves
 - vi) Adverse Possession – must put other party on notice
 - vii) Lease SPLIT:
 - (1) **Tehnet**: dies w/ death of lessor
 - (2) **Kresha**: survivor acquires subject to existing leases

LEASEHOLD

- 1) Rent:
 - a) Can be Rent through svc (Janitor, Super)
- 2) Types of Leaseholds:
 - a) At will – can terminate at any time (no longer allowed)
 - b) Periodic – can only terminate w/ one periods notice
 - c) Term of Yrs – terminates automatically at end of term
 - d) At Sufferance – tenant wrongfully stays over after lease terminated
- 3) Duty to Mitigate Damages (Sommer)
- 4) Constructive Eviction – can recover rent
 - a) CASE: **Minjak** – allows for Partial CE, don't have to leave
 - b) CASE: **Blackett** – implied covenant of quiet enjoyment.
- 5) Implied Warranty of Habitability
 - a) CASE: **Javins** – LL required to upkeep premise to Code
- 6) Eviction
 - a) CASE: **Vasquez** – migrant work ≠ tenant but equity requires landowner give reasonable notice of eviction
- 7) **ANTI-DISCRIMINATION**
 - a) Race: **Starrett City** – non-permanent quotas violate FHA
 - b) Disability: **Family Style** – purpose of statute is beneficial not discriminatory >> OK

TAKINGS

- 1) **PER SE TAKINGS**
 - a) Physical Invasion
 - i) YES: **Loretto** = forced, physical, permanent invasion
 - ii) NO: **Yee** – not forced, not permanent
 - iii) NO: **Pruneyard** – temporary
 - b) Abolition of Core Property Right
 - i) CORE: Right to pass on – **Hodel**
 - ii) NOT CORE: Rt to sell - **Andrus**
 - c) Total Taking
 - i) YES: Can destroy one class of property to save another which would be of greater use to public (**Miller v. Schoene**)
 - ii) YES: denial of all econ. Viable use 100% (**Lucas**)
 - (1) EXCEPTION: nuisance / CL property doctrines already prohibit (**Prah / Fountainbleu**)
 - iii) NO: denial of 75% ≠ T (**Euclid**)
 - iv) NO: Can deprive of sky rights (**Penn Station**)
- 2) **3-PRONG HODEL BALANCING**
 - a) Economic Impact
 - i) Not entitled to MOST profitable use (**Penn – Lucas D**)
 - ii) Value of Land, NOT income (**Hodel**)
 - iii) What's taken v. What's left (**Keystone**)
 - b) Interferes w/ Reasonable Investment Backed Expectations
 - i) Reciprocity of Advantage?
 - ii) Mere opportunity loss insufficient, must be ECON loss (**Kaiser, Lucas D**)
 - c) Character of Gov't Action
 - i) Extraordinary-ness of Gov't Action
 - ii) How big a stick, how long protected
 - (1) **Youpee** – rt to pass on = BIG stick
- 3) **PUBLIC USE** – Extracting a benefit vs. avoiding a harm?
 - a) CASE: **HW Housing v. Midkiff** – effectuated by private individuals is irrelevant
 - b) CASE: **Poletown** – heightened scrutiny when powerful private interest behind, but still extremely deferential arbitrary and capricious standard
 - c) NOTE: Some state constitutions have stricter public use requirements

THEORIES OF PROPERTY

2) CONQUEST

- a) CASE: **Johnson v. Mc'Intosh** – conquest gives rt to extinguish Indian title to land thru purchase or conquest.

3) CAPTURE / PRIOR APPROPRIATION

- a) Free Use / Capture Rule (**Pierson v. Post**)
- b) Capture Rule w/ Neg Exception (**Eliff Oil**)
- c) Reasonable Use (w/ Water) (**Armstrong**)
- d) Correlative Rights

4) LOST PROPERTY

- a) CASE: **Charrier v. Bell** – burial artifacts do to Indian tribes because not abandoned. Abandonment requires intent to relinquish control to next person who comes along

5) RELATIVITY OF TITLE

- a) CASE: **Tapscott v. Cobbs** – Do not need to have BEST title, just need to have superior title against person who dispute w/

6) LABOR INVESTMENT

- a) CASE: **Ins v. AP**
 - i) Property rts in info if requires degree of labor and investment = “quasi-property”
 - ii) Property rts extinguished when disclosed publicly
 - (1) EXCEPTION: except w/ respect to direct competitor

7) BODY PARTS / GENETIC MATERIALS

- a) CASE: **Moore v. UC Regents** – will not recognize property rts in non-unique cells. Recog property rts in drs. Who expended labor and investment to make valuable cell line.
- b) Kidneys for Sale

8) RIGHT TO EXCLUDE

- a) Statutory Limits
 - i) Civil Rights Act 1964 – places of “public accommodation” can't discriminate
 - ii) Civil Rights Act 1866 – sometimes applied to cover private conduct.
 - iii) CASE: **Jaycees** – Place does not have to be fixed, conduct can establish facility. Private Group determined by Selectiveness and Limitation of Size. Cannot exclude women – place of Pub Accom
 - (1) **Boy Scouts** EXCEPTION: Can limit if conflicts w/ orgs “core values”
- b) Common Law / Public Policy
 - i) MAJ: ABSOLUTE Rt to exclude
 - (1) EXCEPTION: Common Carriers
 - ii) MIN: Places of Public Accommodation can exclude ONLY when people are being disorderly, disruptive (**Uston**)
 - iii) CASE: **State v. Shack** – can't use rt to exclude to harm others. More you open land up to public more rts become circumscribed

c) Constitutional Limits

- i) CASE: **Lloyd Corp v. Tanner** – no co. owned town, not related to mall business >> mall can limit free speech.
- ii) CASE: **NJ Coalition Against War** – state law gives > protection to speech, malls cannot deny speech, but can put reasonable time, place, manner restrictions.

9) COPYRIGHT / PATENT

- a) Facts / Compilations – NOT copyrightable unless some degree of originality in compilation (**Feist**)
- b) Contributing to Copyright Infringement – technology not liable if has substantial non-infringing use (**Sony Corp**)
- c) Patenting Living Things – have to be product of human invention not occurring naturally (**Diamond v. Chakrabarty**)

10) PEOPLE and PROPERTY

a) Slavery

- i) CASE: **Dred Scott** – Ct finds MO Compromise UnCon. Slaves ≠ citizens not entitled to protections of Con. States cannot embrace new citizens and give protections not entitled to. Rt to purchase slaves sanctioned by 3/5s clause
- ii) CASE: **State v. Mann** – no battery on slave shot.

b) Surrogacy

- i) CASE: **Baby M Case** – Jewish guy wants kid. Ct finds surrogacy K invalid bc it violates NJ statute that says you can't pay for adoption
- ii) CASE: **Johnson v. Calvert** – conflict between gestational mother and genetic parents. Ct finds As bt two possible candidates to be mother - genetic mother gets to keep bc intending parents
 - (1) DISSENT woman: pregnant woman ≠ breeding container. Should apply standard of best interests of child

c) Embryos

- i) **Davis v. Davis** – couple splits, what to do w/ frozen embryos.
 - (1) TC → embryos = people, Best interests of the embryo should apply and awards to mother.
 - (2) SC reverses → not people, essentially property. Analogizes to where you can't sell organs. Must balance Parties interests.
 - (a) Interest to procreate
 - (b) Interest not to be a parent
 - (c) Any prior agreement
 - (d) In this case awards to non-consenting bc wife just wants to donate not use.