

CLSA-WFPS CONFERENCE 2007

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Ownership Versus Possession

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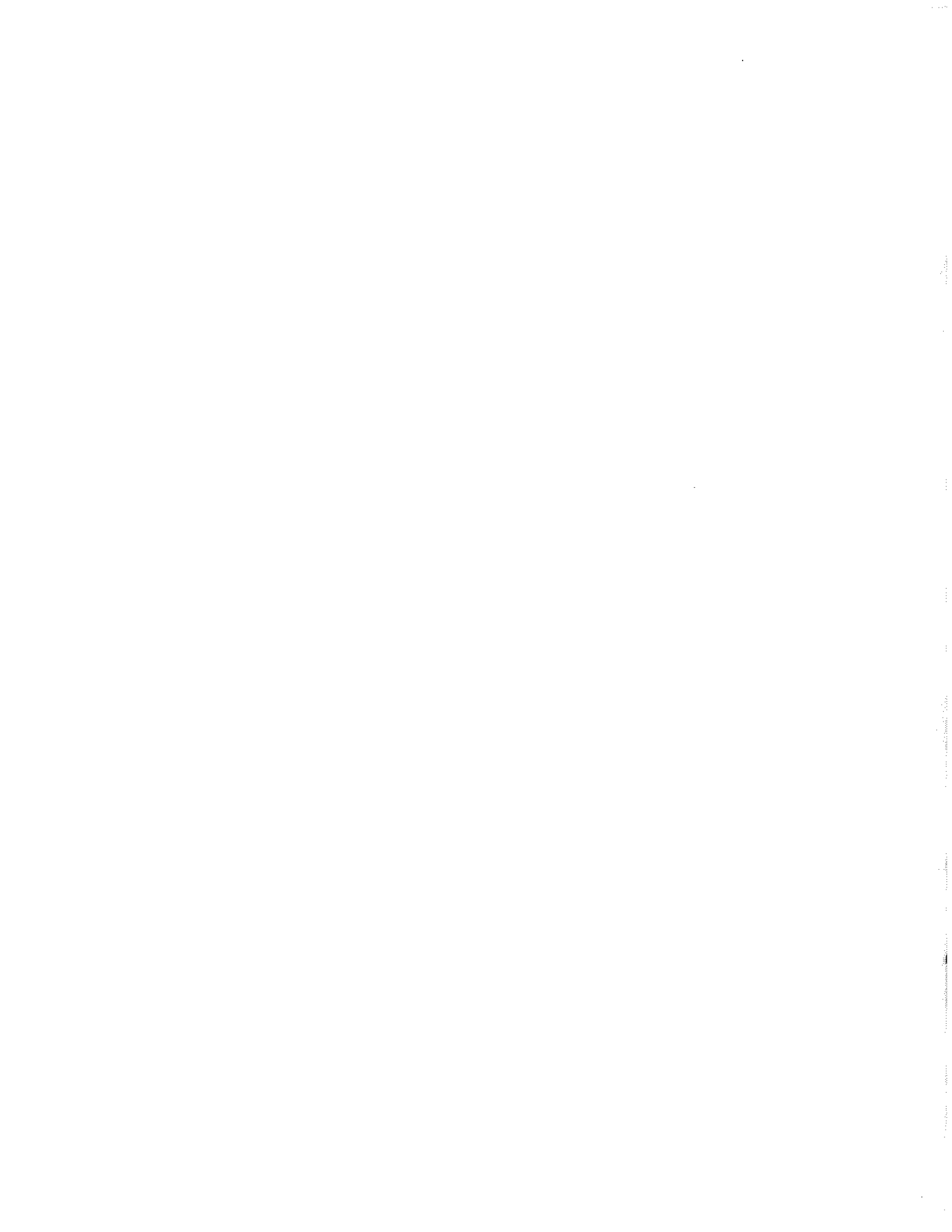
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Ownership versus Possession: Distinctions between Land Title and Land Use

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California Definitions

CIVIL CODE §658

Real or immovable property consists of:

1. Land;
2. That which is affixed to land
3. That which is incidental or appurtenant to land;
4. That which is immovable by law; except that for the purposes of sale, [contracts control]

Rights and interests in land: Title

"Title is the means whereby the owner of lands has the most possession of his property. The union of all the elements which constitute ownership...."

(Black's Law Dictionary, 1979)

Ownership

"Collection of rights to use and enjoy property, including right to transmit it to others...The entirety of the powers of use and disposal allowed by law....The right of one or more persons to possess and use a thing to the exclusion of others...."

(Black's Law Dictionary, 1979)

Ownership in California

CIVIL CODE §654

The *ownership* of a thing is the right of one or more persons to *possess and use it to the exclusion of others*. In this Code, the thing of which there may be ownership is called property.

Possession

".... A person who knowingly has direct *physical control* over a thing, at a given time, is then in *actual* possession of it.

"[One] who, although not in actual possession, knowingly has both *the power and the intention* at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in *constructive* possession of it...."

(Black's Law Dictionary, 1979)

Possession

- Actual
- Bare or naked
- Constructive
- Peaceable
- Adverse

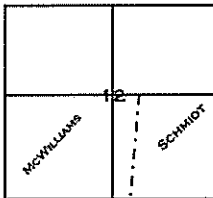
Effect of possession under color of title in CA: CCP §323

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. [cultivated or improved]
2. [enclosed]
3. [other ordinary uses]
4. [local custom for uncleared unenclosed areas]

McWilliams v. Schmidt

61 SW 3d 898, Ct. of Appeals of Arkansas, Div. IV, 2001



McWilliams' claim to the fence and his claim to only what he owns are not the same.

Rights

"...Rights are defined generally as 'powers of free action.'...a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others."

(Black's Law Dictionary, 1979)

Interests in Land

"The most *general term* that can be employed to denote a right, claim, title, or legal share in something. In its application to lands or things real, it is frequently used in connection with the terms '*estate*', '*right*', and '*title*.' More particularly it means a right to have the advantage accruing from anything; *any right in the nature of property, but less than title...*"

(Black's Law Dictionary, 1979)

Defeasible Interests

- Interests or rights in land *may* be voided or nullified in the future, when certain conditions occur or do not occur (qualified rights)

Determinable Interests

- Although the events or conditions that might nullify these interests are only possible and not certain, when they do occur, rights in the land *shall* be voided (qualified interest)

Simplifying Title in CA

CC §885.020

Fees simple determinable and possibilities of reverter are abolished. Every ... fee simple determinable is deemed to be a fee simple subject to a *restriction* in the form of a condition subsequent. Every ... possibility of reverter is deemed to be and is enforceable as a *power of termination*.

US Property Law Roots in English Feudalism

- The king, his grantees, tenants = holders of land
- Tenancy = occupation of land
- Tenure = terms of holding the land

Free Tenure (freehold estates)

Elements

- Homage and fealty
- Relief and primer seisin
- Wardship and marriage
- Aid
- Fine for alienation
- Escheat

Acquiring Freehold Tenure

- Tenure by knight service
- Serjeanty tenure
- Frankalmoin tenure
- Free and common socage

Unfree Tenure (less than freehold)

Elements:

- Can't leave the land
- Time and work at the command of the landlord

Serfdom

Modern Freehold Estates

- Fee simple estate
 - Absolute, unconditional
- Life estate
 - For one's own life
 - For the life of another
- Fee tail estate
- Dower and Estate by Curtesy

Lynch v. Lynch

115 SE 2d 301, Supreme Ct. of SC, 1960

[20 ac. Jordan + 99 Ac. Steele]
JC to Troy (1930)
Troy est. to Esther (1956)

N. 165.5 ac. – Frazier Miles to JC (1907)

JC to FM (1920)
FM est. to defendants (1955)
[519.5 acres total]

- A boundary dispute in a life estate: paper title rules

Modern "Unfree" or "Less than Freehold" Estates

- Estate for years
 - Leaseholds
- Estate at will
 - Leaseholds
 - Distinct from Licenses
- Estate at sufferance

Conlin v. Southern Pacific Railroad Company

182 P 67, Ct. of Appeal of CA, 1st Appellate District, Division One, 1919

- Interests other than fee simple absolute or easement: an estate for years



Problems in Law

- Axel was the owner in fee simple of a parcel of real property on which there was a building housing five tenants who carried on separate businesses in the building...

Written Title: Deeds (the contract!)

Original terms:
"Indentures"
"Deed Polls"

Present day terms:
Warrant
Quitclaim

Intent and meaning of language

“I do hereby grant, alien, enfeoff, assign, bargain and sell...”

Intent and meaning of language

- Parts of a deed (caption, body, augmenting clauses)
- What interests are being conveyed?
- Language of the era
- Clarity of description
- Monetary exchange (nominal or fair market value?)

US Trust Co. of New York v. State of New Jersey

226 NJ Super. 8, NJ Superior Ct., 1988

- Was conveyance of title reversionary in nature? How did use and transfer of the property affect the court’s decision?

Chevy Chase Land Co. of Montgomery v. US

37 Fed. Cl. 545, 1997

Was the conveyance for an easement or full title? Did abandonment of rail use cause a reversion of title?

Other Written Transfers

- Wills
- Dedications
 - Offer and acceptance
- Eminent domain
 - Government power
 - Entities other than governmental
 - Condemnation proceedings

Problems in Law

- “A” was the owner of land in the City of X. The ocean-front boundary involved a cliff-like drop to a shelf-area and then a another drop to the ocean...

Statute of Frauds in California

CIVIL CODE §1624.

- (a) The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:
- (3) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; ...

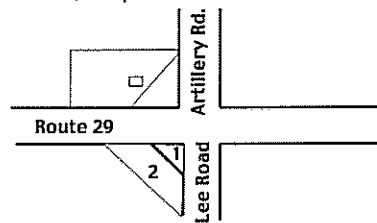
Construing deeds in CA

EV §1856

- (h) As used in this section, the term **agreement** includes deeds and wills, as well as contracts between parties.

Scurry v. Edwards

100 SE 2d 812, Supreme Ct. of SC, 1957



- History and practice of equity relating to the statute of frauds relating to oral agreements

CA Statutes – Civil Code §659 Extent of Ownership

Land is the material of the earth, whatever may be the ingredients of which it is composed ..., and includes free or occupied space for an **indefinite distance upwards as well as downwards**, subject to limitations upon the use of airspace imposed, and rights in the use of airspace granted, by law.

CA Statutes – Civil Code §829 Extent of Ownership

The owner of land in fee has the right to the surface and to everything **permanently** situated beneath or above it.

Unwritten Transfers

- Adverse possession
- Estoppel and equity
- Acts of nature (accretion)
- Statutory proceedings
- Practical location and agreements

Actions for Recovery of Real Property Interests in CA

CCP §315.

The people of this State will *not* sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title *of the people* to the same, *unless*:

- 1. Such right or title shall have *accrued within ten years* before any action or other proceeding for the same is commenced; or,
- 2. [predecessors profited within 10 years]

Actions for Recovery of Real Property Interests in CA

CCP §318.

No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was *seized or possessed* of the property in question, *within five years* before the commencement of the action.

Actions for Recovery of Real Property Interests in CA

CC §1006. Occupancy for *any period* confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession; but the title ... is *not a sufficient interest* ... to commence or maintain an action to quiet title, *unless the occupancy has ripened* into title by prescription.

Equity in California

CC §1013.5.

- (a) [affixing improvements in good faith and error permits removal of those improvements]
- (e) The right created by this section is a right to remove improvements from land [when affixed in good faith or by mistake] This section shall not be construed to affect or qualify the law ... with regard to the circumstances under which a *court of equity* will refuse to compel removal of an encroachment.

Raab v. Casper

51 Cal. App. 3d 866, Ct. of Appeal of CA, 3rd Appellate District, 1975

Casper built his house and drive on Raab's land, plus utility lines and yard

- Does "good faith" apply?
- Mistake or negligence?
- Easement or attempt at estate?

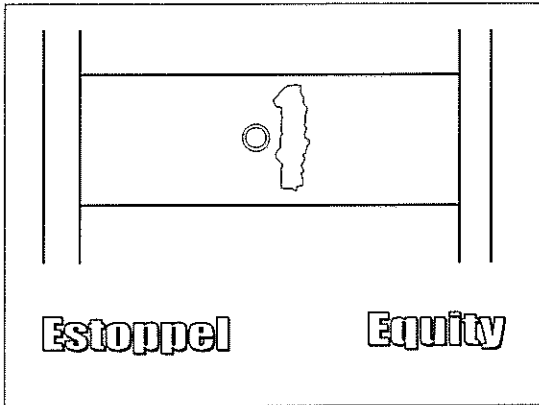


Tyree v. Gosa

119 P. 2d 926, Supreme Ct. of WA, 1941

After Tyree's new neighbors built a home that encroached on his lot, he sued for its removal.

Did estoppel apply, and did the lower court have the right to force him to sell his land to the encroaching parties?



Jones v. Turlington
 92 NE 2d 75, Supreme Ct. of NC, 1956

- Who owns accreted lands adjoining a platted road that was the boundary of platted lots?

Duff v. Seubert
 719 P.2d 1125, Supreme Ct. of ID, 1986

- Can an oral agreement overcome a subsequent written description meant to memorialize that agreement?

**Other Possessory Rights:
 Easements and Prescriptive Rights**

- Dominant and Servient estates
- Types of easements
 - Affirmative
 - Negative
 - In gross
 - Appurtenant

Creation of Easements

- by express grant
- by implication
- by necessity
- by prescription

Custom Warehouse, Inc. v. Lenertz
 975 F. Supp. 1240, US Dist. Ct. for the Eastern Dist. of MO, Southeastern Div., 1997

- Is there an easement by prescription, by implication, by necessity, or not at all?

Lovvorn v. Salisbury

701 P 2d 142, CO Ct. of Appeals,
Div. II, 1985

If a traveled way becomes a "public highway" through adverse use by meeting the statutory requirements, can a court limit the uses of that road?

Termination or Extinction of Easements

- by release agreed upon by involved parties
- by termination of the need by merger
- by destruction of the servient estate
- by increased burden or inconsistent use
- by abandonment of the easement

But what about reversions?

What about rights of the public?

The People v. Southern Pacific Company

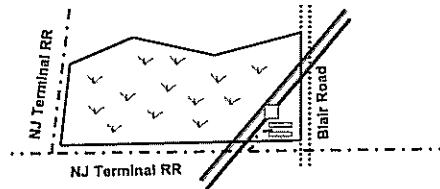
158 P 177, Supreme Ct. of CA, 1916

- How do California's statutes apply to the variables of real life regarding where a railroad may construct its lines and whether or not it has abandoned its rights?



Tide-Water Pipe Company v. Blair Holding Company, Inc.

202 A.2d 405, Supreme Ct. of NJ, 1964



- What are the rights of the pipeline in its easement over the servient estate?

Problems in Law

- In 1992, Tramp, Inc. (hereinafter referred to as "Tramp"), a real estate developer, purchases eight adjoining parcels on the west side of a city block...

