

CLSA-WFPS CONFERENCE 2007

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Disputes Between Adjoining Land Owners

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Disputes Between Adjoining Landowners

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TITLE



Title

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

(Black's Law Dictionary)

Interests in land

"...a right, claim title, or legal share in something...a right to have the advantage accruing from anything; any right in the nature of property, but less than title..."

(Black's Law Dictionary)

Same or different?

- Deed line
- Ownership line
- Occupation line
- Property line
- Boundary line

Ownership in California

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*. In this Code, the thing of which there may be ownership is called property.

Possession

Bare or Naked
Actual
Constructive
Peaceable
Adverse

Possession in California

- **CCP §751.02** (When records are lost due to "fire, earthquake, enemy attack, or from any other cause", but a person is still in "**actual and peaceable possession**")
- **CCP 751.50-.51** (When the boundaries have been disturbed by earth movements, but the person is still in "**actual and peaceable possession**", and interest is recorded or known by others)

Adverse Possession

- Open
- Notorious
- Hostile
- Exclusive
- Continuous for statutory period
- Color of title
- Taxes

Notice

"Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge. Intelligence by whatever means communicated."

(Black's Law Dictionary)

Forms of Notice

- **Statutory** (by legislative enactment)
- **Actual** ("which brings a fact directly home to the party")
 - Express (imposes a duty to inquire further)
 - Implied (provides the means of knowledge)
- **Constructive**
 - Information that inquiry would have elicited ("implied actual" notice)
 - "Designed abstinence from inquiry" to escape notice

United States v. Gallas

269 F. Supp. 141, US District Ct. for the District of MD, 1967

The US claims it has rights to the land where its pipeline is buried by deed, by seizure, or by adverse possession.

Gallas, whose new house is built directly on top of the pipeline, disagrees.

Adversity in California

CCP §324. Where it appears that there has been an *actual continued* occupation of land, under a *claim of title, exclusive* of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held *adversely*.

Title to Riparian Lands in CA

PUB R §6360.... for the purpose of determining boundary location...

- (a)...occupied *openly and notoriously* by persons claiming title thereto...
- (b) [taxes have been assessed and paid]
- (c) [claim based on a recorded deed, map or both]

Quiet Title Actions in CA - CCP

§760.010 (a): "Claim" includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title.

§760.040 [superior court has jurisdiction]

§761.020 [contents of the quiet title complaint]

Actions for Recovery of Real Property Interests in CA

- **CCP §315.** [ten years when State interests are involved]
- **CCP §318-322** [five years for actions to recover land]
- **PUB R §6360** [thirty years for riparian lands]

Tacking in California - CCP

§315. [in suits on behalf "*of the people*": include predecessors within requisite 10 years]

§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.

Exemptions and Disabilities in CA

- **CCP §328** [Time does not run against the insane or minors, not exceeding 20 years. Five year grace period after disability ceases or death]
- **CCP §328.5** [Imprisonment of up to two years is a disability. Five year grace period applies. Prisoners for life are not protected.]

Siejack v. Mayor and City Council of Baltimore

313 A 2d 843, Ct. of Appeals of MD, 1974

- Adverse claims against the government do not always fail, as in this instance where the land was not being held for public uses.

Other Loopholes

43 USC 1068

Lands held in adverse possession; issuance of patent; reservation of minerals; conflicting claims

28 USC 2409a

Real property quiet title actions

Beaver v. United States

350 F. 2d 4, US Ct. of Appeals for the 9th Circuit, 1965

- A dispute between the federal government and an Arizona landowner over the movement of soil from the Arizona side of the Colorado River over to the California side.
- Does 43 USC §1068 apply?



Marketable Title Act in CA Civil Code §880.010 et seq.

- **§880.020** [purpose is to simplify and facilitate" real property title transfers, reduce litigation to clear and quiet title]
- **§880.030** [does not limit application of equitable principles]
- **§880.240** [exceptions, particularly for gov.]
- **§880.250** [ignorance and disability no excuse]
- **§880.370** [5 year extension for existing title holders to file notice of intent to preserve interest]

Ownership in CA Streets

- **CC §831** An owner of land bounded by a road or street is presumed to own *to the center of the way*, but the contrary may be shown.
- **CC §1112** A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front *to the center thereof*, unless a different intent appears from the grant.

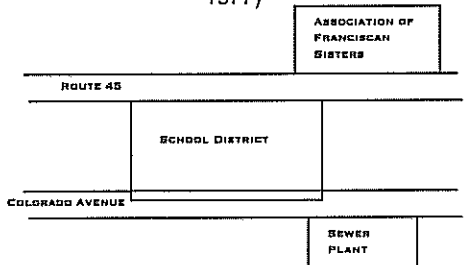
Brown v. Bachelder

7 P. 2d 1027, Supreme Ct. of CA, 1932

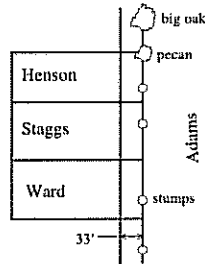
- Brown inherited land bordering an unopened street, opposite Bachelder, and claims all of this roadway (a strip 60 feet by 1340.46 feet) by his and his deceased predecessor's adverse possession of it.



**Lincoln Way Community High School
District 210 v. Village of Frankfort**
(367 NE 2d 318, Appellate Ct. of IL, Third District,
1977)

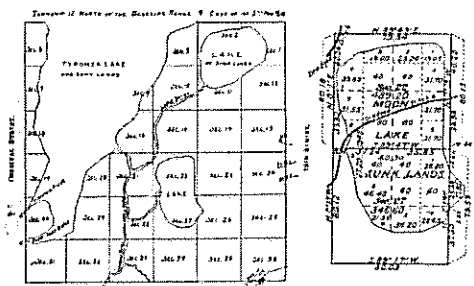


Ward v. Adams
(989 SW 2d 550, Ct. of Appeals of AR, 1999)



When multiple adjoining landowners have similar situations, why does one succeed in a claim of adverse possession and another fail?

**US v. Lee Wilson & Co.
Lee Wilson & Co. v. US**



Superior Oil Co. v. Harsh

126 F. 2d 572, US Ct. of Appeals, 1942

Hostility is necessary from the start of an adverse claim (an oil discovery in Illinois changes desires)



Whose tree is it?

- **CC§833.** Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.
- **CC §834.** Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common.

Bonde v. Bishop

245 P. 2d 617, Ct. of Appeal of CA, First Appellate Dist., Div. One, 1952

Bishop's aging white oak tree is 20 feet from the line, but its limbs and branches extend 25 feet over Bonde's lot. One day a large limb broke off, smashing Bonde's garage and part of the fence...



IS IT ACQUIESCENCE...
OR IS IT AGREEMENT?

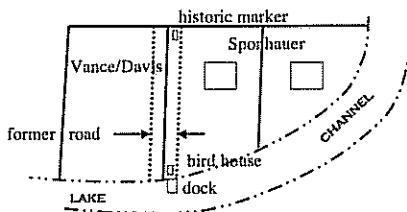
Mello v. Weaver
224 P. 2d 691, Supreme Ct. of CA, 1950

Mello's deed (from Weaver):

"*Parcel One*, the southeast quarter of the southwest quarter of Section 6, Township 20 South, Range 24 East, M.D.B. & M., containing 40 acres more or less; and *Parcel Two*, the East 3 acres of the southwest quarter of the fractional southwest quarter of Section 6."



Davis v. Sponhauer
(574 NE 2d 292, Ct. of Appeals of IN, 3rd District, 1991)



CA Statute of Frauds

CC §1091. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an *instrument in writing*, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Intent

"Design, resolve, or determination with which a person acts."

(and relating to torts:)

"...the actor desires to cause certain consequences of his act, or ... believes that the [anticipated] consequences are substantially certain to result from it."

Black's Law Dictionary

Call

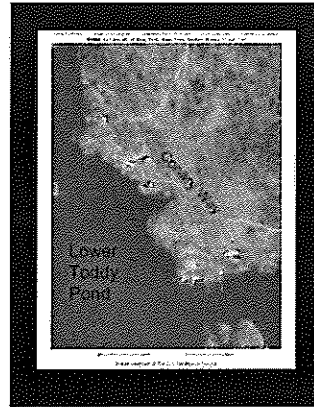
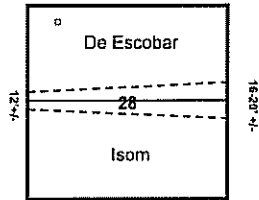
"A visible natural object or landmark designated in a patent, entry, grant, or other conveyance of lands, as a limit or boundary to the land described, with which the points of surveying must correspond."

Black's Law Dictionary

De Escobar v. Isom

(245 P 2d 1105, Dist. Ct of Appeal, 3rd Dist. CA, 1952)

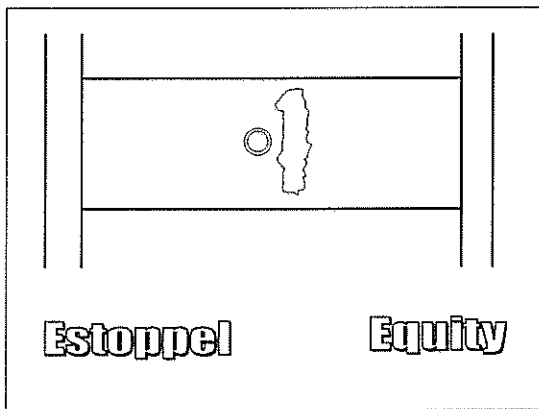
".. the question is not where an entirely accurate survey would locate them, but where the original stakes located them."



Conary v. Perkins
295 A.2d 644
(1972)

Perkins V. Conary
464 A.2d 972
(1983)

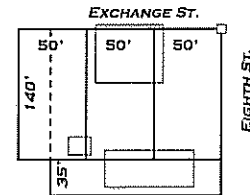
How should we reconcile conflicting deed elements?



Concannon v. Blackman

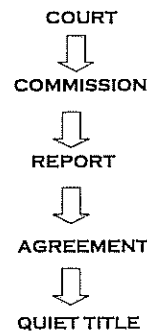
6 NW 2d 116, Supreme Ct. of IA, Des Moines, 1942

Concannon's house encroaches onto Blackman's land by 1 to 5 inches, but he claims there has been acquiescence in a line 3'3" north of his deed line.



An interest in the next lot

CC §832. Each coterminous owner is entitled to the *lateral and subjacent support* which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction or improvement, under the following conditions:...



Court-appointed referees in CA - CCP

§873.020 [separate referee for sale and for division, or same person for both]

§873.030 [court may appoint 3 referees]

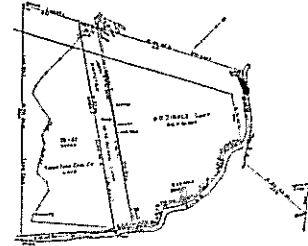
§873.130. The referee may, with the approval of the court ... employ a surveyor with the necessary assistants to aid in making a sale or division of property.

§873.210 [division to consider quality and quantity of land]

Zirkle v. Three Forks Coal Co.

138 SE 371, Supreme Ct. of Appeals of WV, Charleston, 1927

Was the court appointed surveyor's work done properly?



Partition in California - CCP

§872.110 [superior court has jurisdiction]

§872.130. [court may issue temporary restraining orders and injunctions]

§872.140. The court may, in all cases, order allowance, accounting, contribution, or other compensatory adjustment among the parties according to the principles of equity.

Cottle v. Gibbon

19 Cal. Rptr. 82, Ct. of Appeal of CA, 4th Appellate Dist., 1962

- A 1941 partition agreement between Cottle (brother) and Gibbon (sister) divided the ranches owned by their father and their aunt. Now Cottle wants to reform the partition deed.



Keeping cool when the situation gets hot...



(with thanks to Charles Schulz)