PROPERTY OUTLINE:

BASIC CONCEPT:
- Relational: you own things in relation to someone else
- Bundle of sticks metaphor: property rights are a bundle of sticks, you can give some to others while maintaining the rest for yourself
- Purposes of Property: division into public/private spheres
  - 1.] Privacy
  - 2.] Common Good: level of organization
  - 3.] Encourages Productivity: if you receive fruits of labor you are encouraged to work
  - 4.] Enhances Productivity: if you know your house is safe, you can leave to work
  - 5.] Stability
  - 6.] Maintains existing social order
  - 7.] Helps allocate scarce resources
  - 8.] Promotes individual development

THEORIES OF PROPERTY RIGHTS:
- Locke:
  - LABOR THEORY of Property: Unowned thing + Labor = Property
  - Limits:
    - 1.] Limits to amount one can mingle w/ labor; however, one can combine a lot
    - 2.] Limit of wasting: cannot combine everything and then let it go to waste -> God would get mad
  - A person takes what his family labors for
  - Justification for disparity in property ownership:
    - 1.] people have incentive to gather and labor for more than they can use
    - 2.] They gather more and barter for more than they can use
    - 3.] Everyone benefits by there being more goods
    - 4.] Common stock of mankind is increased
- Blackstone:
  - Property rights from God
  - Everything in the world is held in common
    - Once it is abandoned, it goes back into the common: theory of temporary possessive rights; you can use it, but you don’t have the substance
    - Problem: no incentive for people to make, build, or create more b/c rights to objects not secure; everyone fights over the same things – individual property rights over substance of item needed
  - Property used to structure society the way we want
    - One group is going to have more power than the other
- Reich: Property rights are creation of the government, they are no longer a natural right
  - Property allows us to have stability & privacy
    - Property seen as a source of liberty
    - Property became a source of power -> abusive
  - Government Power eroding the power and liberty of the individual:
    - 1.] Grants, government contracts
    - 2.] Professional Licenses
  - Property used to be liberty – now the government has the property and the individual is dependent upon the public instead of private wealth
  - Regulation w/ respect to the public interest:
    - 1.] substantive constitutional limits: the Bill of Rights should precede any rights the government wants to take away
    - 2.] procedural safeguards: separation of functions – follow rules in a fair manner (due process): problem is due process is expensive
3.] Privacy: draw zone of privacy around individuals to which government cannot trek...do this by giving individuals a property right

- Demsetz:
  - Internalize externalities: do this when the gains of internalization are larger than costs of internalization
    - Externality: cost of an activity, where that cost of an activity is not taken into account
  - Allocative/Distributive Efficiency: Solution to free-riders (everyone chopping down trees): private ownership; make people take into consideration the social costs of their own decisions
    - Communal ownership encourages over-consumption
    - Tragedy of the commons
  - If transaction costs are sufficiently low, economic incentives are going to cause resources to be used efficiently
  - Coase Theorem: absent transaction costs, parties will bargain around the rule to reach the most efficient outcome

ACQUISITION BY DISCOVERY:

- Johnson v. McIntosh (1823): II granted land by two Indian tribes. Δ purchased land from the federal government. Virginia claimed land initially and conveyed it to federal government. **Holding:** Government had the right to possess and distribute land. U.S. transferred right from Great Britain to extinguish Indian occupancy. **Rule:** First in time (as long as occupancy is maintained) trumps possession.
  - 1.] Acquisition by Purchase (1775): Johnson worked the land. **(Lockified)** it so to speak. Johnson only bought the right to occupancy.
  - 2.] Acquisition by Discovery (1590 - Cabot) – Indians did not own the land since they did not work it
  - 3.] Acquisition by Conquest: British came in and conquered Indians – defeated nation incorporated/assimilated into conquering nation
  - First in Time:
    - **Pros:** 1.] Clear; 2.] Fair; 3.] Disruptive to Change
    - **Cons:** Rule might not have been first in time, but first in time w/ a sword; unequal distribution
  - Conqueror determines the rights of the captured

ACQUISITION BY CAPTURE:

- Pursuit alone does not give title:
  - Pierson v. Post (1805): II pursued fox w/ dogs and hounds on command. Δ prevented II from catching fox by killing and carrying it off. **Issue:** Is pursuit enough? **Rule:** One must at least wound, circumvent, or capture animal before it can be considered under one’s occupancy. **(Constructive possession)** First in time means [actual] possession, or intent & ability to possess [constructive possession], not to follow.
    - Puffendorf: Bodily possession = occupancy
    - Barbeyrac: Pursuit + mortal wounding is enough; ambiguous (“as long as you’re likely to get the fox, it’s your fox”)
    - Tompkins: Less than physical possession is sometimes enough
    - Blackstone: One must “seize upon” ferae naturae; ambiguous like Barbeyrac
    - Policy argument: Certainty; less fights w/ ruling – best from certainty and piece of order argument
    - DISSENT: Matter should be left to sportsmen to decide. Perspective that law is an instrument for promoting social good – law should be whatever maximizes foxkilling. Better from perspective of incentive to kill foxes.
  - Possession is required and sufficient to establish title:
    - Actual Physical possession (**Pierson**)
    - Constructive Possession:
      - Mortal wounding while pursuing w/ intent to kill (**Pierson**)
      - **Animals on your land whether you know it or not.**
        - Keeble v. Hickeringill (1707)
      - Custom replaces Possession Requirements:
• **Ghen v. Rich (1881):** Custom present: Killer of whale owns it & finder gets a fee.  
  **Rule:** *Ownership awarded to one who first injured, killed or tried to gain possession.*  
  (Finds in favor of custom)
  
  o **Policy:** Creation of an incentive system; custom must be followed or else industry would be destroyed  
  o **First in time vs. possession:** Ghen has first in time, Rich had possession. First in time trumps possession in this case; possession is usual rule  
  o **Swift v. Gifford:** When custom can be valid  
    1. custom must embrace entire industry (at least within scope of application)  
    2. has to be longstanding  
    3. custom has to be of limited application

**ACQUISITION BY CREATION:**

- **RIGHT TO COPY:**
  - Creator has property right in thing which is created, but not in idea: “In the absence of some recognized right at common law, or under the statutes-and the plaintiff claims neither - man’s property is limited to the chattels which embody his invention. Others may imitate these at their pleasure” [Cheney Brothers v. Doris Silk, (1930)]
    - Encouragement of efficient markets  
    - **Smith v. Chanel, Inc. (1968):**
  - **Quasi-Property - INS vs. AP (1918):** Defining what type of property news is, is relative to the relationship b/w the parties involved: News is quasi-property between INS vs. AP  
    - INS/AP vs. Public: No property right at all  
    - **POLICY:** Society will be better off w/ copying, only as long as copying does not undermine our incentive to gather (as in this instance).
  - Exceptions:
    - **Patents:** protect inventions – novel, useful, and non-obvious processes/products  
    - **Trademarks:** protect words & symbols of a company  
      - Virtual Works v. Volkswagen of America: Where company acts in bad faith to profit off another’s trademark, and their actions are in direct violation of statutory law (Anticybersquatting Act), they will not be allowed to use the trademark.  
    - **Copyrights:** protect expression of ideas, not the idea itself  
    - **Right of Publicity:** bar others from exploiting persona (Bette Middler)
  - Right to Include/Exclude: “relationship among people that entitles so-called owners to include or exclude use or possession of owned property by other people.” – Cohen [transferability]
    - **Jacque v. Steenberg Homes (1997):** Person has right to exclusive enjoyment of own property for any purpose which does invade the rights of another person.  
      - **POLICY:** Court does not want people to take the self-help approach.  
    - **State v. Shack (1971):** There are limits to how far & what you can exclude as a property owner: title to real property cannot include dominion over the destiny of persons the owner permits to come upon the premises

**ACQUISITION BY FIND:**

- **LOST/ABANDONED property:**
  - **Finder - Armory v. Delamirie (1722):** Chimney sweeper’s boy found jewels. Took it to Δ’s shop. Δ offered Π money for jewels, but Π wanted them back instead. **Rule:** A finder prevails against all but the true owner or prior possessors (whether they are thieves or finders). (Good is found in public place)
    - Reasons for ruling:
      1. ownership means productive use  
      2. clear rule: if there is none, it encourages self-help  
      3. assigning responsibility for costs
4. encourages return to true owner
5. finding is socially productive

**Constructive bailee** – Finder

- **Two Finders** – First finder still gets to keep the jewel against subsequent finders
  - **Helmholz**: In case of disputes w/ prior wrongful possessor and honest subsequent one, courts regularly prefer the latter, in DEFANCE of the hornbook rule
- **Trespasser**: If Hannah were a trespasser, he would lose against Peel

**Bailment**: rightful possession of property by a person (bailee) who is not the true owner (bailor)

- **Land in Quo - Hannah v. Peel (1945)**: Π stationed at house & discovered a brooch. Π handed it over to police, who then handed it to Δ when original owner was not found. Δ sold brooch for 66 pounds. Π wanted brooch back. **Rule**: Finders generally have superior rights in lost property to all but the true owner. Owners of land in quo, own things attached to the land or under it, even though they don’t know it is there. Here, the owner of the locus in quo, was not and had never been in actual possession of land. He had no knowledge of brooch until Hannah had found it, and therefore had no possessory right to the brooch.
  - Because Peel never took physical possession, he is denied constructive possession
  - **POLICY**: Court rewards honesty

- **Agency**: “If a man finds a thing as the servant or agent of another, he finds it not for himself, but for that other” – South Staffordshire Water Co.

**MISLAID PROPERTY**: Distinction b/w mislaid and lost – assumption that person who has mislaid property wants it back; property is intentionally placed, but then forgotten.

- **McAvoy v. Medina (1866)**: Π discovered pocket book which contained money in Δ’s barber shop. Π told Δ to hold onto pocket book and give it to owner if he were to come by. Owner never came by, and Π wanted money back. **Rule**: Finders of mislaid property do not get to keep property; it instead goes to the owner of the locus in quo.
  - **POLICY**: Encourage property to be returned to the true owner.

**ADVERSE POSSESSION**

**ELEMENTS**:

- 1.] Actual possession: be on the land; put up a fence, etc.
- 2.] Open & Notorious:
  - Reasonable person must be able to recognize the adverse possessor is claiming the land
  - Actual owner need not be aware that someone is claiming their land
- 3.] Exclusive: cannot be shared; someone else cannot be there w/ you
- 4.] Continuous: (piecable)
  - Must avoid: 1.] physical eviction; 2.] court eviction order
  - **Howard v. Kunto**: Δ’s occupied land under color of title (defective deed). Δ’s utilized the home as a summer house. Δ’s immediate predecessors hired a surveyor, who confirmed they were on the land deeded to them. Δ’s put up boundaries and improvements were made. Π eventually found out mix-up of deeds.
    - **Rule**: Continuity is measured based on how the land is capable of being used. (If it’s a summer home, then you have to use it in the summer)
  - **TACKING**: Furthermore, where there is sufficient privity of estate, tacking is permitted.
    - **Privity of estate** is defined as a reasonable connection b/w successive occupants of real property such that they have more rights than wrongdoers.
    - want to protect purchasers; do not stretch it to squatters; if there is a physical ouster, it does not count.
  - **POLICY**: Don’t want to have to make people hire surveyors after they buy and sell property.
- 5.] Hostile (and under claim of right): state of mind; without owners intent and with intention to remain; does not mean w/ “malice”
1. There must be a good faith belief that adverse possessor owns occupied land. (criticized b/c it rewards lazy owner and penalizes productive owner)

2. Knows the property is not his, but intends to claim it nevertheless (rarely used today since it rewards trespassers)

3. state of mind irrelevant: 1.] lack of permission; 2.] occupiers acts and statements appear to be claim of ownership (majority rule)

*Mannillo v. Gorski*: Π’s encroach land by small area; encroachment is not clear. Holding: Π’s claim fails on open & notorious element – owner does not have knowledge of adverse occupancy. Rule: Δ can still fulfill “hostile” element of adverse possession even if Δ mistakenly occupied the land.

- POLICY: Maine Doctrine – Honest mistake is not hostile; thus if there is mistaken possession, there cannot be adverse possession. Court recognizes doctrine is poor policy: it creates incentive for people to be evil.
  - Court jettisons rule: Π did not rely on the fact that there was a mistake. Instead, there was just lack of knowledge.

- Connecticut Doctrine – State of mind does not matter. [Adopted by most courts]

- Statute of Limitations: does not start running if disability exists when the cause of action accrued (disability exists before intrusion) until after the disability is removed (within ten years of removal of disability) [Problems – pg. 161]
  - Disability: unsound mind, minor, imprisoned
  - May be used by successors in interest; however, disability cannot be tacked
    - Ex: If successor in interest upon O’s death is minor, can only take from the 10 year removal of disability from O

- Government: One cannot adversely possess against the government

- POLICY arguments:
  - 1.] provides proof of meritorious titles
  - 2.] corrects errors in conveyancing
  - 3.] better to take away from someone whose association w/ property has faded w/ time (Holmes)
  - 4.] encourage productive use of land

ACQUISITION BY GIFTS:

- Gifts Causa Mortis – gift’s made on one’s deathbed in contemplation of one’s death
  - Revocable if donor recovers from illness
  - *Newman v. Bost*: Π, female, was housekeeper for Van Pelt. Prior to death, intestate handed Π keys, and told her he wanted her take and keep them, and that he desired her to have them and everything in the house. One of the keys unlocked a bureau in the house insurance policy, payable to intestate’s estates, and a few notes. No other keys which unlocked bureau. Π occupied room in intestate’s residence for ten years. Holding: Π not entitled to life insurance policy in bureau: bureau was of alternate uses to the Π; bureau has domestic uses and is typically used by females; insurance policy is typically used by males; intestate did not mention policy and could have taken it out and handed it to her. Rule: When dealing with gifts causa mortis, courts tend to get very technical. Court only allows a very narrow form of constructive delivery and did not allow a form of symbolic delivery.
    - POLICY: wills offer protection & are hard to forge; gifts causa mortis are discouraged since person “soundness of mind” is questioned, few people are there, and it is oral.

- Gifts Inter Vivos – gift between those who are alive
  - Revocable if donor recovers from illness
  - *Gruen v. Gruen*: Father wanted to give Π a Klimt painting, but hold onto it for life. Series of letters indicating intent to donate. Π acknowledged receipt of gift to friends and displayed letter. Rule: When the owner wishes to maintain a life estate in the chattel, actual manual delivery is not required, and symbolic delivery (handing over piece of paper) will suffice.

- Note: Moving tangible chattel from where owner has dominion to area of room where donee has dominion is sufficient.
Father gives away a future interest in the painting
Intent is to give gift at current time

- **ELEMENTS OF VALID GIFT:**
  - 1.] donative intent – oral evidence; “feelings”
  - 2.] delivery: transfer of the object given; have to engage in some sort of objective act
    - B.] Constructive Delivery: Handing over key or other object which opens up access to gift
    - C.] Symbolic Delivery: A piece of paper saying I give this to you (“deed”)
  - Rule: *If something is capable of manual delivery, manual delivery must be had.* 1.] want to have clear evidence that gift is given; 2.] wrench of delivery; 3.] clear evidence of intent.
  - 3.] Acceptance: often presumed

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**FREEHOLD ESTATES IN LAND:**

- **FEUDAL TENURES:**
  - Feudal hierarchy: pyramid scheme w/ the King at the top
  - Land held by those below; owed duties to those above
  - Freehold tenure: tenure of free men
    - As close to ownership as holders of the land
    - Developed into our concept of ownership of land
  - Non-Freehold tenure: tenure of peasant who worked the land (surf/villein)
    - Akin to renting
    - Possession of land & in possession they owed duty to those who had freehold tenure

- **FEE SIMPLE:** absolute ownership in land (freehold estate)
  - Modern system: rise of heritability & alienability
    - Heritability: Concept of someone who owns land can give the land to heirs when they die; ownership can be in perpetuity
    - Alienability: Right of owner to separate himself from the land and give it to another while they are alive
    - Escheat: returns to the lord/king
  - Early common law: to convey simple, one must write “to A and his heirs” to distinguish heirs (no longer necessary)
    - Now all you need is to “A for life, then B”
  - Intestate Heirs: Common Law
    - Issue -> Lineal Ancestors -> Collaterals
    - Issue: descendants who have lineal consanguinity (down)
      - Primogeniture: eldest son would take (now per stirpes)
    - Lineal Ancestors: parents -> grandparents (who may have descendants) (up)
    - Collateral Consanguinity: brothers, sisters, aunts, uncles, cousins (sideways)
    - Neither spouses or adopted children could take

- **FEE TAIL:** interest created to vest title in one family hopefully in perpetuity
  - Arrangement of a series of life estates: binding descendants to the land, assuring that the land stays in the family
  - Modern law: attempt to set a fee tail is treated as a fee simple
  - O conveys “To A for life, then to B for life, then to C for life:”
    - Reversion: When A, B, and C die, the time between when C dies and the end of time is retained by O
    - A, B, and C have limited rights of alienability, and no rights of heritability.
  - “To A and the heirs of his body.”
    - If O conveyed Blackacre to A and the heirs of his body, A has a fee tail. If A conveys Blackacre to B and B’s heirs, B does not have a fee simple absolute, but rather possession of Blackacre until A’s death, at which point A1, A’s son, gets possession
- Lasts until all of the lineal descendants of A have died – until the end of the bloodline.
  Followed by a future interest.
  - Subject on rule against perpetuities

- **LIFE ESTATE**: possessory estate that expires on the death of that specified person
  - Ambiguous cases between life estate & fee simple:
    - **White v. Brown**: Testatrix dies with will stating for Π to have her home to live in and “not to be sold.” **Holding**: Since there is no clear evidence of intention to convey a “life estate” to Π, and the court presumes a fee simple, conveyance is ruled a fee simple with an absolute restraint upon alienation. Since absolute restraints upon alienation are void, it is just a fee simple. **Rule**: In ambiguous cases, courts
      - 1.] try to carry out the intent of intestate – look to language of instrument in light of surrounding circumstances
      - 2.] presume a fee simple over a life estate
      - 3.] Disfavor partial intestacies.
  - When life estate is created, so is a remainder
  - Life estate **pur autre vie**: Life interest measured by the life of another

- **WASTE**:
  - Balance interests when two people have concurrent or consecutive interests in land
    - Co-tenants (roommates or husband/wife) or life tenant & remaindermen
    - **Baker v. Weedon**: (life tenant & remaindermen) Husband, in last will, left life estate of land to Π, and the remainder upon her death to her children, and if they are not alive to her grandchildren sharing equally. Π remarried but had no children. Π’s income is insufficient and looks to sell the land. **Holding**: Π allowed to sell part of the land. **Rule**: Where the interest in land is divided between a life tenant and remaindermen, the court looks to perform what is in the best interests of all the parties.
  - **Crux**: One interest holder should not be able to use the property in a way that unreasonably interferes w/ the expectations of the other
  - *****When you have present and future interests in land, and external circumstances change so that the current use of land has become unproductive, the court can order a sale of the land in order to preserve all the interest in the land.**
  - Courts way balance according to respective strengths in interest the parties have in the land
    - 1.] the longer a person has an interest
    - 2.] the more certain the interest the person has in the land: more likely to internalize externalities and protect land
  - Types of Waste:
    - **Affirmative**: life tenant acts affirmatively to damage land permanently
      - Voluntary waste
      - Ex: cutting down trees
    - **Permissive**: life tenant fails to act reasonably to protect the deterioration of the land
      - Involuntary waste
      - Ex: failure to fix a leaky roof
    - **Ameliorative**: life tenant acts affirmatively to change the principal use of the land and increased the value of the land
      - Only actionable when 1.] it is clear the grantor intended for there to be no change in the use and 2.] the property may still be used in the fashion the grantor intended

- **DEFEASIBLE FEES**: subject to termination upon the happening of a specified event
  - **Heritability & Alienability** of Reversionary Interests:
    - Common Law: Reversionary interests could not be transferred inter vivos and devisable by will -> instead they automatically descended to heirs
    - Possibility of reverter and power of entry were not viewed as property rights: instead they were viewed as mere expectancies
    - Now: Freely alienable and devisable. They are treated like future interests.
Fee simple determinable: Fee simple that could last forever, but which never the less terminates automatically the moment a certain event, stated in the grant, occurs
- Possibility of Reverter in grantor: Automatic reversion upon certain event occurring
  - Future interest which always remains with the grantor
  - “As long as,” “until,” “while used for,” “only”
  - Statute of Limitations: starts to run once stated event occurs; fee simple determinable ends automatically and former grantee has nothing
    - Former grantee who remains on the land, however, is an adverse possessor
  - Mesne profits: Grantor is entitled to profits if you remain on land after expiration of fee simple determinable; measure is reasonable rental value of land

Fee simple subject to condition subsequent: Once the condition subsequent occurs, the reversionary interest has the right of entry to enter the property and take the land
- Fee does not automatically terminate once the condition occurs
- Statute of Limitations: starts only upon “re-entry” or “get off my land” or filing a lawsuit
- Exercised by: 1.] Verbally stating; 2.] Go to the land and you enter
- Mesne profits: Are not given until grantor exercises right of entry
  - “Upon condition that,” “provided that,” “but if”

Distinguishing b/w Fee simple determinable & Fee simple subject to condition subsequent:
- Mahrenholz v. County Board of School Trustees: Huttons conveyed warranty deed to trustees of school board: “land to be used for school purposes only; otherwise to revert to grantor’s herein.” Huttons conveyed reversionary interest to Jacqmain’s who conveyed it to Π’s. Harry Hutton conveyed interests in land to Π’s in 1977, but later disclaimed his interest in the property in favor of Δ’s. Rule: Use of the word “only,” phrase “otherwise to revert,” and lack of use of the word “may,” indicate conveyance of fee simple determinable.
  - Distinguishing b/w the two is key, b/c if a fee simple determinable was conveyed, the moment the School Board stopped using the land for school purposes it reverted back to Harry, who would then have fee simple. Thus in 1977, Harry conveyed his interest in fee simple, not his reversionary interest which at the time were inalienable. If it was a FSSCS, the School Board still owns the land, since rights of entry are not alienable.

Defeasible Fees & Restraints Upon Alienation:
- Mountain Brow Lodge v. Toscano: Π conveyed land, which was initially conveyed to them by Δ’s through gift deed. Gift deed had a restraint upon alienation, in which Δ’s were the only ones who could use the land. Deed also contains a use restriction: land must be used for a lodge. Holding: Deed created fee simple subject to condition subsequent. Rule: Conditions restricting land use are upheld, even though they hamper and impede alienation. Restraints upon alienation are void.
  - Restraints upon land use: creates disincentives for improving land
- Policy reason for construing restraints upon use as separate from restraints upon alienation:
  - 1.] court could be encouraging charitable gifts
  - 2.] uneasy tension b/w restraint upon alienation & resistance of defeasible fees: want to encourage economic growth – what if property becomes better suited for a different use

Possibility of reverter is transferable sooner than right of re-entry (automatic vs. non-automatic)

FUTURE INTERESTS: right to use and enjoyment of a piece of property at some future point in time

BACKGROUND:
- Intangible property right
- Can be vested or contingent: even if it is contingent it is still possessory
- All of the property interests added together must equal fee simple

Future Interests retained by transferor:
- Reversion: Interest remaining with grantor when grantor gives to another person anything less in the estate than he has
  - Always vested, transferable freely during life (alienable), and heritable
• “From O to A for life”

2.] Possibility of Reverter:
- A reversion cannot remain after conveyance of fee simple, even if it is a fee simple determinable
- Possible for possibility of reversion and reverter treated by same conveyance: “To B for twenty years or for so long as intoxicating substances are not sold on premises, whichever comes first.”

3.] Right of Entry/Power of Termination
- Future Interests retained by transferee:
  - 1.] Vested Remainder
  - 2.] Contingent Remainder
  - 3.] Executory Interest
- REMAINDERS: Future interest that is capable of becoming possessory immediately upon termination of preceding estate, as opposed just to an executory interest
  - Alienable: devisable, descendable, transferable inter vivos
  - Requirements of Remainders:
    - 1.] must be created in a person who is not the transferor; if it is created to O, it’s a reversion
    - 2.] remainder must be created at same time and in the same interest as the estate which precedes it
    - 3.] must be limited so it can take effect as a present possessory interest immediately upon termination of prior estate.
    - 4.] Prior estate must be a lesser interest than that possessed by grantor
  - KEY RULE: If the first future interest created is a contingent remainder in fee simple, the second future interest in a transferee will also be a contingent remainder. If the future interest is a vested remainder in fee simple, the second future interest in a transferee will be a divesting executory interest.
- Vested Remainders:
  - Requirements:
    - 1.] given to ascertained person
    - 2.] not subject to condition precedent other than natural expiration of preceding estates (natural termination – death)
  - Types:
    - 1.] Indefeasibly vested remainders:
      - Certain to vest in B and his heirs regardless of what happens: “to A for life then to B and his heirs.”
    - 2.] Vested remainder subject to partial divestment (a.k.a. vested remainder subject to open):
      - Where there is a gift to a “class” of people
      - “To A for life, then to B’s children” where B has children X and Y and B is still around: Share that X and Y get can be reduced by B having another child, Z
    - 3.] Vested remainder subject to complete divestment
      - Fine distinction b/w it and contingent remainder: distinguished based on punctuation
      - Read to the comma: “To A for life, then to B and his heirs, but if B does not survive A to C and his heirs.”
        - “to A for life”: life estate
        - “then to B and his heirs”: vested remainder
        - “but if…”: condition subsequent
      - Contrasted w/: “to A for life, then to B and her heirs if B survives A.” This is a condition precedent – there is no
comma, the grant and the limitation are all in one phrase and the condition precedent makes it a contingent remainder.

- Remainder can be vested as long as the person is ascertained and there is no condition precedent to the vesting; however, a vested remainder can be divested by a condition subsequent
- Condition precedent = contingent remainder
- Condition subsequent = vested remainder subject to complete divestment
- If the grant is made at the same time, w/o commas, the condition is a condition precedent and not a vested remainder subject to complete divestment
- If you have a vested remainder subject to complete divestment, the interest that follows (in third person), is always an executory interest – it cannot be a contingent remainder

Ex: “To A for life, then to B and her heirs, but if B marries before A’s death then to C and her heirs.”

Ex: “To A for life, then to B and her heirs. However, should B marry before A’s death, property goes to C and her heirs.”

**Contingent Remainders:**
- **Requirements:**
  - 1.] must be given to an unascertained person
  - 2.] made contingent on some event happening other than natural expiration of preceding estate (condition precedent)

- **Alternative contingent remainders:**
  - O conveys “to A for life, then to B and her heirs if B survives A, and if B does not survive A to C and his heirs.” If the remainder in B vests, the remainder in C cannot, and vice versa.

**The law prefers a vested remainder to a contingent remainder:**
- 1.] Vested remainder becomes possessory immediately whenever and however the preceding estate ends; there is no contingency that has to be met before holder of vested remainder takes property
- 2.] Assignability
- 3.] **Rule of Destructability of Contingent Remainders:** Not the law today
  - O conveys “to A for life, then to B and her heirs if B survives A, and if B does not survive A to C and his heirs.” If the remainder in B vests, the remainder in C cannot, and vice versa.

**EXECUTORY INTERESTS:** a future interest created in a transferee that must divest a prior vested interest in order to become possessory
- **Springing:** An executory interest that divests the transferor. (O)
  - Ex: From O to A and his heirs – this deed to take effect when A reaches 21.
  - Ex: From O to A and his heirs – this deed to take effect in three years. (Executory interest which divests O; creates a fee simple subject to executory limitation in O and a springing executory interest in A.
  - Ex: From O to A for life, then to B one year after A’s death. (O has reversion in fee simple subject to executory limitation; B has a springing executory interest)
  - Ex: To A for life, then to B if B gives A a proper funeral. (Must work off the assumption that there are days in between death and funeral. O has reversion of fee simple subject to executory limitation if B doesn’t satisfy condition)

- **Shifting:** An executory interest that divests another transferee; follows a vested remainder subject to complete divestment.
RULE AGAINST PERPETUITIES: No interest is good unless it must vest, if at all, not later than 21 years after some lively being at the creation of the grant. If it is possible that a contingent future interest might possibly vest at some point in the future 21 years after all the people around the time of the grant are dead, the future interest is void and is stricken from the document.

- Purpose: promote alienability and marketability in land
- Look for validating or measuring life: usually a person who is alive at time of grant that you can use to prove that their future interest will vest or fail within lives in being plus twenty one years
  - **Contingent interest created by will:** life in being must be person alive at testator’s death
  - **Contingent interest created by irrevocable inter vivos transfer:** life in being must be person alive at time of transfer
  - **Contingent interest created by revocable transfer:** life in being must be alive when power of revocation ceases
- **Approach:** give everyone a child & everyone dies except the children
- **Rule Applies To:**
  - 1. **contingent remainders in individual or class:** then to B, or then to B’s issue
  - 2. **vested remainders in a class (subject to open):** then to B’s issue; B’s issue not determined until B dies; law presumes anyone is capable of having children: **fertile octogenarian rule**
  - 3. **executory interest:** shifting or springing
- **Rule Does Not Apply To:**
  - 1. present possessory estates
  - 2. all future interest retained by transferor (reversion, possibility of reverter, right of entry)
  - 3. vested remainders in an individual (then to B)
- **Four Step Approach:**
  - 1. Determine which future interests have been created by the conveyance
  - 2. Identify the conditions precedent to the vesting of that suspect future interest.
  - 3. Find a measuring life: look for person alive at the time of conveyance and ask whether that person’s life or death is relevant to the condition’s occurrence; must be relevant to the condition’s occurrence.
  - 4. Will we know with certainty within 21 years of the death of our measuring life if our future interest holder can or cannot take? Yes – conveyance is good. No – conveyance is not good.
- **Executory Interests:** Many shifting interests will violate the Rule Against Perpetuities. An executory interest with no limit on the time within which it must vest, will violate the Rule Against Perpetuities.
  - **Ex:** To A and his heirs, so long as the land is used for farm purposes, and if the land ceases to be so used, to B and his heirs.
  - **Jee v. Audley:** “From O to A for life, then to B and the issue of her body, and in default of such issue, then to the daughters of John & Elizabeth Jee then living.”
    - Relevant Information:
      - A is dead, B is childless
      - The Jee’s are 75, and have four daughters.
      - B: has a present interest – fee simple subject to executory limitation
      - Daughters have executory interest which divest B and issue
      - When B’s issue runs out and descendants are dead, then daughters take
      - Hypothetical example which violates rule: B could have another child, P, and Jee’s could have another child, G. If P is born and B dies, and G is born and the Jee’s and the four daughters die, P has fee simple subject to executory limitation. P could live for 50 years, and G could take well outside the perpetuities period.
      - Cross out “in default of such issue, then to the daughters…”
  - **After-born widow ex:** “To A for life, then to A’s widow, if any, for life, then to A’s issue then living.”
• Hypothetical example: A gets divorced, kills A’s wife, gets out of jail and marries a 20 year old. Then A dies. A’s widow could live for 80 years.
  • 2000: Conveyance occurs
  • 2001: A kills wife
  • 2002: Julia (future wife) is born
  • 2030: A marries Julia
  • 2031: A and all other lives in being die
  • 2102: Julia dies.

o Reform:
  • Wait-and-see approach: the validity of any suspect future interest is determined on the basis of the facts as they now exist at the conclusion of our measuring life
  • Statutory Rule Against Perpetuities: codifies the common law Rule Against Perpetuities – provides for an alternative 90 year vesting period
  • Cy Pres: R.A.P. a court may reform it in a way that most closely matches grantor’s intent while still complying w/ the R.A.P. Gives the court the power to redraft and recast infirm conveyance – approximate grantor’s true intent while complying with R.A.P.
  • Reduce any offensive age contingency to 21 years: if you had concluded that gift or transfer was infirm, age contingency will automatically be reduced to 21 years to allow transfer muster.

➢ CONCURRENT OWNERSHIP:
  o Tenancy in Common: basic form of co-ownership
    • Presumed in ambiguous cases – it is presumptive
    • No magic words necessary to create tenancy in common
    • Tenants in common own a separate but undivided interest in a piece of land/property
    • Freely alienable, descendable, and transferable
    • Only need unity of possession
    • Ex: If Blackacre is given to A&B. A devises property through will to E&F.
      • A & B are tenants in common
      • E, F, & B would be tenants in common, with E&F having a quarter share a piece.
  o Joint Tenancy:
    • Two differences of form:
      • 1.] Must have unity of the following: If one of the unities is severed, so is the joint-tenancy. Tenants are made tenants in common. (Best way to do this is sell off interest in land – title is broken)
        ❖ A.] Time: joint tenancy must be created at the same time
        ❖ B.] Title: have to receive interests by the same document/title
        ❖ C.] Interest: ownership stake has to be equal, identical, and undivided
        ❖ D.] Possession: each tenant must have the right of possession to the whole
      • 2.] Magic words:
        ❖ A.] “to A and B as joint tenants and not tenants in common.” - something less than this might not count
        ❖ B.] “to A and B as right of survivorship.” – To A and B “jointly” will not cut it
    • ***Key distinguishing feature: Right of survivorship – If A dies his share goes to B, if B dies her share goes to A.
    • Unity is not broken if there is a divorce.
  o REMEDIES for Tenants in Common & Joint Tenants:
    • Partition: Any joint tenant or tenant in common can ask for partition of property; ends the cotenancy in one of two ways:
      • 1.] Partition in kind: draw a line – left half to one tenant, right half to the other
      • 2.] Partition by sale: sell the whole thing and give proceeds of sale to two parties
• **Delfino v. Vealencis:** Π and Δ were tenants in common. Δ was only one who lived on the property, and she maintained a garbage and waste removal on one part of it. Π’s want to develop property into 45 residential building lots. **Rule:** When deciding on what type of partition to utilize, courts only look to the equities between the co-tenants and not to society as a whole.
  
  ◦ **Partition by sale** - Drastic measure — only used when:
    • 1.] The physical attributes make partition in kind impracticable
    • 2.] The partition in kind would be inequitable, equity would be better promoted by a sale
  
  ◦ **Tenancy by Entirety:** No right to partition — divorce would end marriage and two tenants by entirety would become tenants in common

  o **Tenancy by the Entirety:**
    • Exists in about half the states
    • Only created b/w husband & wife: Exact same requirements as joint tenancy except there is a fifth unity — **unity of marriage**
    • Divorce leads to tenants in common
    • Neither spouse can lease property w/o other’s consent.
    • *Neither husband nor wife can sever their interest and thus defeat survivorship by a conveyance of an ownership interest to a third party* — both spouses must consent to the sale

  o **Harms v. Sprague:** Π and brother, John, took title to land as joint tenants. John gave mortgage on interest in joint property for piece of property Sprague was buying. Harms died, and Sprague was devisee of his entire estate.
    • **Title theory of mortgages:** $7,000 from Simmons to Harms in exchange for title to property. (Under this theory, unities of title and time are broken)
    • **Lien theory of mortgages:** Rather than John Harms giving Simmons title, it was rather cause of action for right to sue for $7,000.
    • **Holding:** Utilize lien theory of mortgages. Harms did not give away title. Williams gets 1/2th interest of John’s and he has fee simple.
    • Lien perished along w/ John’s interest
    • **Rule:** Where a joint tenant gives a mortgage on his interest in joint property, that mortgage is treated as a cause of action, and thus at death it is extinguished along w/ decedent’s interest.

  o **Schwartzbaugh v. Sampson:** Schwartzbaugh’s owned land as joint tenants w/ right of survivorship. Mr. Schwartzbaugh negotiated lease for small fraction of land for a boxing pavilion. Π objected to leases and did not put her name on them. Sampson erected boxing pavilion. Π received no rent from that.
    • **Rule:** Joint tenants are free to alienate their interests and have the right to possess the property as a whole. Joint tenants are free to convey their interests.
    • If Π is excluded from using the property, she can claim **ouster,** and collect rent
    • Neither partition-in-kind nor partition by sale work in this instance: court would divide land around the ring, and Sampson would buy back the sale
    • **Accounting:** Π can account for the rent and receive rental payments from her husband. However, this would not allow her to do anything on the leased land.
      • **Accountant:** A co-tenant who receives rental payment from a sub-tenant can be called to account by other tenants for proportional share of value
    • If husband dies, Π takes husband’s interest through right of survivorship

  o **Ouster:**
    • **Two Types:**
      • 1.] beginning of running of statute of limitations — adverse possession: claim of absolute ownership and denial of co-tenancy relationship by occupying tenant
      • 2.] **general ouster:** liable for rent when
        • A.] wrongful dispossession or
exclusion of someone from property; denial of access to use and enjoy property

- **Policy reasons:**
  - Ouster encourages property to be used productively.
  - Prevents windfall to lazy cotenant who does not demand rent or entry
  - Encourages party to deal w/ each – interaction so parties can sort this out themselves (contrary to other situations where law discourages interaction)

- **Spiller v. Mackereth:** Spiller & Mackereth are tenants in common. Spiller entered and used structure as a warehouse. Mackereth wrote a letter, demanding Spiller vacate or pay half the rent. Spiller did neither, but did put locks to protect his merchandise. **Rule:** Co-tenant has the right to occupy the whole property. When the “aggrieved” party is not denied entry, he cannot claim “ouster.”
  - **Minority Rule:** Co-tenant in exclusive possession of jointly held property must pay rent even if there is no ouster. Discourages partition.

**LEASEHOLD ESTATES:** relationship b/w landlord & tenant

- **BACKGROUND:**
  - “Non-freehold estates:” evolved under the common law from the estates which had no seisen
  - Deemed even lower then life estates
  - Lease itself is a personal estate
  - FEATURES in common among leasehold estates:
    - 1. Estate in the tenant: present possessory estate
    - 2. Reversion in the landlord
    - 3. Exclusive possession and control of land by tenant
    - 4. (most have 4th element) contract b/w landlord and tenant: lease [do not have to have a lease to have a leasehold estate]

- **TYPES** of leasehold estates:
  - 1. **TERM FOR YEARS:** terminates at a specific time
    - Estate which lasts for a fixed period of time and terminates automatically at the end of that time
    - Can terminate before end of period of time if lease so provides (default for non-payment of rent)
    - No notice is required: tenant knows lease is ending
    - Death of tenant or landlord has no effect on tenancy of term for years
    - Ex: Tenancy for term of years determinable: A lease by L to T for 10 years, or if L decides to terminate the lease before the ten years is up
    - Statute of Frauds: oral leases longer than a year must be in writing
    - Ones which do not conform become tenancy at will
  - 2. **PERIODIC TENANCY:** repeating period of time
    - Tenancy for a fixed but repeating period of time: month-to-month or year-to-year
    - If notice of termination is not given by landlord or tenant, lease is automatically extended for another period
      - Must be given 6 months before expiration of one year term
        - Tenant must give notice 6 months before the end of the NATURAL term: if not, the landlord can hold him over for another one year lease
      - Must be given equal to length of terms for terms less than one year, except it need not be more than six months
      - Certain states: shortened general rule so tenancy’s less than a year can be terminated at any time following thirty days notice
        - Death of landlord and/or death of tenant have no effect on periodic tenancy
  - 3. **TENANCY AT WILL:** landlord and tenant can terminate at any time
    - Terminated when either party dies
    - Must have bilateral power of termination
    - Unilateral power of termination: can be made w/ tenancy for term of years or periodic tenancy
4. TENANCY AT SUFFERANCE: Landlord can terminate or w/ his option convert to a new lease

- Occurs when tenants remain in possession after expiration of lease
- Creation of a hold-over tenant
  - Landlord has two options:
    1. Treat tenant as a trespasser: evict and sue for lost rent
    2. Consent to creation of a new tenancy
      - Express creation
      - Implied creation: by operation of law
        - Landlord cashes a rent check for a period after the lease, most jurisdictions will assume an implied periodic tenancy for not more than 1 year
        - If the rent check is for a month, the holdover period is month-to-month
- Once the landlord chooses trespasser or new tenant, he cannot change his mind
- Crechale & Polles, Inc. v. Smith: II sent letter to Δ, treating him as a trespasser past the end of the lease. Δ wrote checks for first two months after expiration of lease, which II cashed. Δ wrote checks for another two months, which II did not cash. Rule: Once a landlord elects to treat a tenant as a trespasser and refuses to extend the lease on a month-to-month basis, but fails to pursue his remedy of ejecting the tenant, and accepts monthly checks for rent due, he agrees to extension of lease on month-to-month basis.
- Duty to Deliver Possession: Hannan v. Dusch: Δ leased II real estate. Pre-existing tenant held over & Δ failed to open property or take any action against the pre-existing tenants. Rule: Where there is a trespassing prior tenant, it is not the landlord’s duty to bring action against the pre-existing tenant. He should not have to bear the burden of an independent tort of another.
- Right of possession: Landlord has implied duty to deliver right
- Actual possession: Tenant has duty to oust trespassers after he is in actual possession
- Delivery of ACTUAL possession:
  - English Rule: Landlord is better able to know who is on the property
    - Pros: there is a closer relationship between L and the holdover tenant. It is easier for L to oust. More fair, since tenant would not sign lease if he knew there was a holdover
    - Cons: Makes it hard to lease while there is a tenant, b/c that tenant could possibly hold over.
  - American Rule: The wrongdoer is the tenant, not the landlord. Tenant has right to possess but must take actual possession himself.
    - Most states have rules that allow tenant to evict a holdover tenant.
- Tenants Options:
  - cancel lease and sue for damages
  - Tenant can retain lease, and not pay rent for when he is kept out of possession.
  - proceed directly against the holdover tenant.

Determinable Life Tenancy on behalf of the tenant:
- Garner v. Garrison: Decedent leased premises to Δ for term ending “at the privilege of the Δ.” Decedent died, and executor wants Δ out of premises. Rule: Even without livery of seisen, a unilateral power of termination can still be created on behalf of the tenant, creating a terminable life estate, terminable solely by the tenant.
  - Common law rule: If a lease is made terminable at the will of the lessee, it must also be made terminable at the will of the landlord.
  - At common law, if you had livery of seisen it could be unilateral, but if you didn’t, it must be bilaterally terminable.
  - Court follows language of the grant
➢ OTHER TYPES OF LEASES:
  o Form Leases: no bargaining power over terms b/w landlord and tenant
    ▪ Debate as to whether form leases are unconscionable (no bargaining power for tenant)
    ▪ However, they do allocate transaction costs effectively.
    ▪ Unequal bargaining power vs. efficient markets.
➢ SUBLEASES AND ASSIGNMENTS:
  o Sublease: lease from one tenant to a sub-tenant for less than the entire estate
  o Assignment: lease from one tenant to another of everything that tenant has left
  o How courts distinguish between the two:
    ▪ 1.] Formal: there is a sublease whenever less than the entire interest in conveyed
    ▪ 2.] Intentions of Parties: Look for actual words used of the parties
      • Even though the choice of the words used is important, they are not determinative
  o PRIVITY: between landlord-tenant-subtenant
    ▪ Privity of estate: mutual or successive relationship to same estate in property such as that
      exists b/w landlord & tenant or their successors
      • subtenants, whether they are sublessees or assignees are in privity of estate with the
        landlord
        o Tenant, T, who sublets, only gives away part of estate to sublessee, S.  T retains part of
          the estate b/c T still owns some piece of Blackacre.  Tenant remains in privity of estate w/ landlord.
        o If tenant assigns all of his interest to subtenant, tenant is no longer in privity of
          estate with the landlord.
    ▪ Privity of contract:
      • On the contract side of the lease, access to all contract remedies
      • Connection or relationship which binds two contracting parties
      • Two people who make a contract are in privity of contract
      • Landlord & tenant are always in privity of contract
      • S & L are never in privity of contract b/c S never signs a contract w/ L
        o Exceptions:
          ▪ 1.] L, T, and S sign a new agreement (Ernst)
          ▪ 2.] Third party beneficiary contract: two people contract for third parties benefit.
    ▪ Ernest v. Conditt: Π’s leased track of land to Rogers.  Rogers negotiated a sale of business on
      land to Δ, who wanted a two year lease.  Lease was amended, and everyone signed on new
      contract: Rogers remained personally liable for faithful performance of all terms & conditions
      of lease.  Δ remained in possession until expiration of leasehold, but stopped paying.  Rule: Even
      though the word “sublet” is used in an amended contract, if the whole estate is given away such
      that the tenant has no right to re-enter, it is an assignment.
      • Ramifications: If there is a sublease, Rogers (tenant) is still in privity of estate to Ernst
        (landlord), and thus responsible to him.
  o Restraints Upon Alienation:
    ▪ Kendall v. Ernest Pestana, Inc.: Perlitch’s assigned lease to Δ.  Perlitches also entered into
      sublease w/ Bixlers for 25 years.  Bixlers wanted to assign interest in land to Π (sell their
      business).  Bixler requested consent from Δ, who refused to consent unless the rent was
      increased and other conditions were imposed.  Rule: Lessor’s consent to an assignment of land
      must be commercially reasonable in regards to the assignee or the proposed use.
      • California Supreme Court: adoption of the minority rule – L must be commercially
        reasonable
      • Two Theories: leases are both conveyances and contracts:
        o 1.] courts import general contract law notion of good faith and fair dealing into leases. Denial
          of request can only be in good faith and for good reason.  (Tenant’s selection of an assignee can
          only be refused in good faith)
• Rule only applies to commercial leases

• Objections to Minority rule:
  o 1.] Lease is still a conveyance: lessor personally selected tenant as a lessee; lessor should be under no obligation to look to anyone else for rent payments
    ▪ Response: this is a restraint upon alienation; there is still a right to refuse, but it must be reasonable
  o 2.] Contract law objection: If lessee wanted a reasonableness clause they could have bargained for that and they did not.
    ▪ Response: the better reading is that unless you have an “acting like a jerk” clause, contract is made in “good faith” and the other party must act reasonably
    ▪ (Landlord has reversion in land: landlord is no worse off then he was and piece of property is better off b/c piece of property is being used more efficiently.)
  o 3.] Stare decisis: courts should not depart from common law rule; many leases in effect relied on current rule; people make decisions based on subtle expectations of what the law is.
    ▪ Response: Sometimes the law should change particularly where, arguably as here, the benefits of the rule outweigh the costs. Court has a duty not just to follow the law, but in a way that is best for all parties and society as a whole. California is not upsetting subtle precedent b/c nobody knew what the law was.
  o 4.] Economic: landlord has right to recover appreciation in value in term of lease
    ▪ Response: If this were right, landlord would have right to increase rent payments anytime value of land went up. Landlord should be bound by allocation of risk.

➢ TENANT DEFAULT:
  o Berg v. Wiley: Π took assignment of lease from prior lessee. Original lease stated, Wiley had “at his option to retake possession of premises should lessee fail to meet the conditions of the lease. Berg remodeled restaurant. Wiley objected to: 1.] changes in building structure and 2.] Berg operated an unclean kitchen in violation of health regulations. During two-week deadline, Berg continued to operate restaurant and finally put up sign saying “closed for remodeling.” Wiley eventually locked Berg out. **Rule:** We hold that, subsequent to our decision in this case, the only lawful means to dispossess a tenant who has not abandoned nor voluntarily surrendered but who claims possession adversely to a landlord’s claim of breach of a written lease is by resort to judicial process.
    ▪ There no sufficient evidence that there was abandonment.
    ▪ Common Law rule: Landlord can exercise self-help if
       • 1.] he is legally entitled to possession
       • 2.] ways he goes about it is peaceable
    ▪ Any self-help is wrongful against modern trend
    ▪ Minnesota: one of a minority of jurisdictions saying self-help is no longer allowed as a method for reclaiming premises
  o ABANDONMENT: Sommer v. Kridel: Δ entered into lease with Π. Δ paid security deposit and first month’s rent. Δ wrote to Π, stating he could not take possession and surrendered rights to it. 3rd party, who was ready, willing, and able to rent, inquired but was told apartment was rented. Apartment was not rented out again until a year later. **Rule:** Landlord seeking damages from a defaulting tenant is under a duty to mitigate damages by making reasonable efforts to re-let apartment wrongfully vacated by the tenant. **[RESIDENTIAL CONTEXT]**
    ▪ Landlord required to carry burden of proof showing he used reasonable diligence in attempting to re-let premises.
    ▪ **Rationale:** landlord in better position to demonstrate whether he exercised reasonable diligence
- It cannot just be any tenant who is willing to lease the apartment; mitigating tenant must be suitable.
- Landlord options when a tenant abandons property:
  - 1.] landlord can accept surrender of premises and relieve tenant of liability
  - 2.] retake possession on behalf of tenant for purposes of mitigating damages
  - 3.] do nothing and sue for rent that comes due (most have amended this and added: landlord simply cannot do nothing; landlord has duty to mitigate damages)
  - 4.] Allow landlord to treat tenant’s conduct as anticipatory breach of contract; accept surrender and sue for damages present and prospective (not adopted everywhere)
- Modern trend: partly about contracts, partly about property.

**DUTIES, RIGHTS, AND REMEDIES:**

- **DUTY:**
  - **Covenant of Quiet Enjoyment:** expressly granted in most leases; implied into every lease as an operation of law (commercial & residential leases)
    - 1.] *Landlord warrants the tenant will not be disturbed in possession with someone of superior right to legal possession*
      - If there is a disturbance, landlord covenants to defend tenant. Continuing duty to guarantee superior legal title to tenant
    - 2.] *Landlord warrants that he won’t evict the tenant himself: actual or constructive eviction* (takes place when there is a substantial interference with the use or enjoyment of the property as the result of some act or omission by the landlord or any of the landlord’s agents. – ex: failure to maintain common areas, allowing other tenants to use their property for lewd purposes, etc.)
- **Interference must be PERMANENT**
- Old rule: to sue under covenant, one had to abandon the premises
- Modern rule: no longer have to abandon, although it would be an issue
- At common law, landlord had no duty to control other tenants
  - New position: by signing an agreement and moving into a residential community, the tenants promise not to disturb other tenants, for both landlord’s and other’s tenants’ benefits
- **Reste Realty Corp v. Cooper:** Δ made a new lease w/ Π covering entire ground floor. Whenever it rained during Δ’s first year of occupancy, water leaked from driveway into office/meeting rooms. Δ notified resident manager who would take care of it: agent promised to remedy problem when negotiating substitute lease. Δ notified Π and left premises. Lease stipulated: “Π would redecorate, paint, and renovate said premises as may be necessary to keep them in good repair and good appearance.” **Holding:** Breach of an express covenant of quiet enjoyment.
  - **Arguments** made:
    - 1.] **Waiver** argument: clause in lease: examine premises and accept them as they are
      - Court rejects argument: Extension of lease contingent upon agent’s remedy of driveway; even if there was a waiver, there is an obligation as Cooper’s condition to sign lease extension
      - The lease was signed in reliance on Π’s promise
      - There is such a thing as waiver, but Cooper did not waive it
      - **Waiver from subsequent actions:** b/c the tenant didn’t abandon within reasonable time after presence of constructive eviction, her claim is waived
    - 2.] **Permanent interference** argument: must be permanent interference to be breach
      - Defect is permanent: it is substantial and recurring
      - 3.] Landlord says she is entitled to all future payments under lease
o Driveway in the case not part of the “premises;” second lease was signed thinking driveway would be fixed

o **Illegal Lease Doctrine**: contract lease made in violation of law – contrary to public policy
  - If landlord and tenant execute lease in significant violation, and landlord had notice of defect when lease was signed, you have an illegal lease: tenant becomes *tenant at sufferance* – landlord is entitled to reasonable rental value of premises, including defects
  - Remedy: does not require eviction; tenant holding under illegal lease may remain under possession

o **Implied Warranty of Habitability**:
  - *Hilder v. St. Peter*: II occupied apartment at Δ’s apartment building. II spent money to fix a variety of problems which Δ stated he would fix; they were never fixed and II was never reimbursed. **Rule**: An implied warranty of habitability exists, whether oral or written, that the landlord will deliver over and maintain, throughout the period of tenancy, premises that are safe, clean, and fit for human habitation.
    - 1. Tenants can use violation of housing code as violation of implied warranty. To prove prima facie case, one must…:
      - o Deminimis (so small to be legally sufficient) and technical violations don’t count; violations must be substantial
      - o Courts should look to violations which effect the health or safety of tenant
    - 2. Tenant must show he brought defect to attention of landlord and allowed reasonable time for landlord to fix.
      - o **Damages under warranty**: difference in value of warranty to landlord and value of dwelling in defective state
    - 3. Warranty creates reverse rent control
    - 4. Tenants can get damages for discomfort: noise conditions; failure of air-conditioning system, etc. “Habitability” is evolving.
    - 5. Tenants can withhold rent if there is a breach; **abandonment is not necessary**
    - 6. If tenant repairs defect, he can deduct reasonable value from rent
    - 7. Punitive damages available for willful or wanton conduct: housing code violation test
    - 8. **Implied warranty of habitability CANNOT BE WAIVED**.
    - 9. only applies to residential leases/merchant landlords
    - 10. Applies even if tenant assumed duty of care.

- No common law warranty of habitability
- Changed conceptualization of leaseholds: conveyances -> contracts
- **Implied Warranty of Habitability vs. Covenant of Quiet Enjoyment**
  - For claim of covenant of quiet enjoyment to be invoked: tenant must assert constructive eviction (in this case, there is a partial constructive eviction)
  - Covenant of quiet enjoyment can be waived either through acquiescence (acceptance) or failing to abandon
  - Covenant of quiet enjoyment applicable to commercial and non-merchant residential leases

**LAND USE CONTROL:**

- NUISANCE: a judge made tort doctrine which regulates competing uses of land; use of property in such a way that it injures the property of someone else
  - o **Judicial land control**: land use control effected by judicial system
  - o Tort litigation over what constitutes a nuisance
  - o Use of land unreasonable & significantly effects use and enjoyment of my land
  - o TYPES:
    - Nuisance *per se*: a nuisance by itself at all times and under all circumstances; true regardless of context of surroundings in which particular land use take place
      - Ex: Nuclear waste, nuclear storage of explosives (highly dangerous)
• Ex: crackhouse & brothel (illegal)
  - Nuisance per accidens: something that becomes a nuisance because of its location or by manner of construction or operation; may be merely a right thing in the wrong place
    • Ex: Baseball stadium, airport, frat house

- Intentional vs. Unintentional:
  - Intentional: actionable nuisance when conduct was unreasonable within the circumstances
  - Non-intentional: actionable nuisance if conduct is negligent, reckless, or ultra-hazardous

- Public vs. Private:
  - Public: something which effects the community at large
    - 1. Circumstances which bear on the issue: whether conduct in question significantly interfered w/ public health, safety, peace, comfort, or convenience; whether conduct is proscribed by statute or ordinance; whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect.
    - 2. substantial harm caused by intentional and unreasonable conduct or conduct that is negligent, reckless, or abnormally dangerous
    - 3. protects public rights – any member of the affected public can sue, but usually only if the person bringing suit can show “special injury.”
  - Private: involves unreasonable use w/ particular piece of land
    - 1. protects rights in use & enjoyment of land
    - 2. only owners of interests in land can bring suit

- Factors effecting unreasonableness:
  - What the rest of the area looks like…
  - First in time: Unfair for person to come to the nuisance; unfair for farmer to move near the sewage plant
  - Is treatment plant being run differently than others?
  - Whether activity creates observable effects that ordinary people would find offensive
  - Easiness of Δ to pack up and move

- Two Approaches for measuring unreasonableness:
  - Majority Rule - Unreasonableness as an order of magnitude: As more of the factors come in, irritation goes up, and at a certain point, it is unreasonable. (High Penn)
  - Utilitarian: Ask whether the gravity of the harm outweighs the utility of the conduct. It is a balancing calculation. (Restatement approach) (High Penn would probably argue utility of oil is so valuable they need to stay)

- Morgan v. High Penn Oil: Π’s own dwelling house, restaurant, and accommodations for 32 trailers. High Penn Oil Company operated oil refining factory at all times: located 1,000 feet from dwelling of Π’s. Refinery emitting nauseating gases and odors which invaded 9 acres of Π’s. Rule: Where there is substantial evidence that an oil refining company intentionally and unreasonably causes noxious gases and odors to escape such as to substantially impair nearby homeowner’s use and enjoyment of the land, there is a private nuisance.
  - Intentional nuisance: High Penn knows these consequences are the likely result

- Nuisance vs. Trespass:
  - Artificial distinction between the two: trespass deals w/ things that are physical
  - There is no reasonableness inquiry w/ intentional trespass

- REMEDIES:
  - ENJOIN & ABATE:
    - Estancias Dallas Corp. v. Schultz: Δ’s operate air conditioning equipment and tower on property next to Π’s residence. Air conditioning used for 155 rentable apartments and is located in back of Δ’s property: 55 from Π’s back door & 70 feet from Π’s room. Rule: Where there is little evidence showing benefit of the nuisance to the public and there is no evidence to indicate necessity, an injunction may be granted.
    - Courts balanced the equities: look at cost of damage to Π and cost of damage to Δ
    - Might be unfair to require Δ’s to abate the nuisance; but there is still a violation and there must be a remedy: damages either temporary or permanent
• Rule allows Schultzs’ to export more than the reasonable amount of damages.

• **Coase Theorem**: Injunction should have no effect on allocable solution. Schultz’s will try to sell their injunction for between what they suffer and what it will cost Estancias to build the new AC system.

• **Alternative Option**: Let Estancias pay as they go as damages are incurred. This is essentially forcing the Schultz’s to sell their injunction against their will at a court appointed price: this could lead to a series of lawsuits in order for them to get compensation for damages Estancias is causing them.

- **PAY DAMAGES & CONTINUE ACTIVITY:**
  - **Boomer v. Atlantic Cement Co.** : Δ owns a large cement plant which Π’s allege injury to property from dirt, smoke, vibration.  
    - **Holding**: Court grants an injunction conditioned on payment of permanent damages by Π.  
      - (conditional injunction)
      - Court does not feel confident in laying down and implementing a policy for the elimination of air pollution
      - Court had two options:
        • 1.) postpone the injunction: they believed that the global cement industry should work on together, not one plant in NY; that would be an unfair burden.
        • 2.) permanent damages: damages encompass all foreseeable by cement plant for future operations; avoid undesirable consequences of series of lawsuits and injunctions (court chooses)
        - Court believes their ruling addresses the economic loss to properties, and that the permanent damages will be a reasonable effective spur to research for improved techniques to minimize nuisance
        - Conditional injunction gives Δ’s the option in *Boomer* compared to giving Π’s the option in *Estancias*
      - Court balanced the equities: total damage to homeowners small compared to damage to Δ cement plant.
      - By giving the cement company the option, there is an efficient allocation of resources: if total benefit to cement company is greater than costs, cement company will pay out the costs.
        - Negative: court might not appropriately measure or value injury to owners surrounding cement plant.
        - From an allocative perspective, in *Estancias*, the efficient result is to let the air conditioner run – so there is a possibility of getting an efficient result if the parties bargain around the rule, but there is possibility/potential for extortion – over-compensation
      - ***Dissent: boomer is licensing a continuing harm.***

- **ABATE ACTIVITY BUT LET Π PAY PARTY WHO HAS TO ABATE BUT HAS DONE NOTHING WRONG:**
  - **Spur Industries v. Del E. Webb**: Spur purchased property (1960) for feedlot and began rebuilding/expanding. Seven years later, Webb’s property extended south to 500 feet of where Spur’s feedlot was.  
    - Webb went out there and took advantage of lower land price. (Essentially, Webb came to the “nuisance”)  
    - **Rule**: The granting of an injunction, where the wrongdoer must indemnify the initial party for cost of moving or shutting down, limited to case wherein a developer has, w/ foreseeability, brought into a previously agricultural or industrial area the population which makes necessary the granting of an injunction against a lawful business and for which the business has no adequate relief.
      - Situation where there is both a public & private nuisance.
      - This is a nuisance as a matter of law: statute where feedlots are a breeding ground
Court protects interest of the public even though they are not wholly blameless: court is privileging interests of the population over interests of the agriculturalists

- LET ACTIVITY CONTINUE BY DENYING ALL RELIEF

- SERVITUDES: private land use control; attempt to resolve competing uses of land through contracts; contracts are wrapped up in property interest
  - EASEMENTS: the right to enter land in the possession of another person and do something on it, specifically to use it.
    - Ex: A has the right to walk across the land of O
    - Appurtenant: at time of Easement’s creation, it is attached to typically an adjacent piece of land that benefits the owner in his use and enjoyment (same for profits)
      - Dominant Tenement: piece of land that is benefited by the easement
      - Servient Tenement: piece of land burdened by the easement
      - Alienability: Easement cannot be detached from dominant tenement, without agreement from both dominant and servient tenement
        - Easement appurtenant is attached to fee simple and fee simples are freely alienable
    - In Gross: not intended to benefit owner of piece of land; intended to exist in the absence of a dominant tenement. You do have a servient tenement and you do have a dominant tenant. (typically going to be a profit)
      - Ex: right of A to hunt on B’s land: interest in plot of land owned by B.
      - can be alienated by dominant tenant w/o consent of B
      - At common law, easements in gross were not assignable
      - Today, the unassignability of easements in gross is questioned:
        - Commercial easements in gross are freely alienable
        - Personal easements in gross are generally freely alienable
        - Exception: recreational easements
        - Look to the intention of the parties in creating the easement
    - Ambiguous cases: Courts prefer easement appurtenants since they are less alienable
    - Five Categories:
      - 1. by EXPRESS PROVISION in deed or will
      - 2. by PRESCRIPTION: adverse possession
        - Hostility: differ b/w prescriptive easement and adverse possession
          - in prescriptive easements it means you use the land in the absence of permission, license, or some other indicia.
          - In adverse possession, ownership is inconsistent to title vs. prescriptive easement – “it’s still your land, but I can use it.”
        - Exclusivity: “not open to the public”
          - Someone else will always be using the land b/c it sits on someone else’s land
          - Cannot have same claim to land as owner: if owner claims fee simple you cannot also.
        - Othen v. Rosier: fails on prescription because Othen has permission to use the road. The gate is the key: gate is evidence of control and access. Rosier and not Othen is the one keeping the road in repair.
      - 3. by IMPLICATION: develop from the division of one plot of land held by the same owner into smaller parcels.
        - Quasi-Easement: easement implied upon the basis of prior use
          - Exists when part of the owners land is used for the benefit of the another part. (Quasi-dominant & quasi-servient tenements)
• When Quasi-dominant tenement is conveyed to third party, so is implied easement.
• Buyer must have been on notice of quasi-easement when he purchased
• Persists indefinitely b/c it is based on existing use
  1.] Use of land is apparent
  2.] Use of land for purposes of easement is continuous or permanent
  3.] implied easement is reasonably necessary to use of quasi-dominant tenement (degree of importance differs from easement implied by necessity)
• Van Sandt v. Royster: Private lateral drain runs across Π’s property. Nothing visible on ground in rear of houses to indicate drain. Π discovered basement flooded w/ sewage & filth. Rule: Use of the land is apparent, when before buying the house, the owner found out the house had a lateral sewer and there was sufficient information to put the owner on notice that that a sewage line ran across his house.

- **Easement Implied by Necessity:** Implied when one track of land is divided such as to deprive a portion of that land from a public road or some way to get out.
  - Actual standard of necessity
  - **Othen v. Rosier:** Hill initially owned four tracts of land; he later conveyed two tracts to the Π and two to the Δ. Roadway runs across Δ’s two tracts; Othen utilizes it to get to the highway. Gate opening from lane into road erected at same time it was fenced and has been kept closed by Rosier’s and Othen.
    o In order for Othen to prevail under an easement implied by necessity, he must demonstrate that Hill was landlocked in 1896, when he sold plot one to Rosier.
    o Othen was unable to show that in 1896, the 53 and 60 acre lots were deprived of road access by the deed to Rosier of 100 acres.
    o Othen lost b/c of bad lawyers: could have argued quasi-easement or estoppel
    o When a person buys the land over which they have an easement, easement is destroyed.
  4.] Estoppel: Holbrook
  5.] Easements by eminent domain: government can take an easement

- **PROFITS:** right to enter into possession of land and take something from it, either some piece of the land – minerals, or some product of the land – apples, trees
  - **Alternate term:** Usufructuary privileges
  - A can enter O’s land and hunt or fish on it, or can cut down trees, can remove sand
- Easements and profits are legal interests in land: you can have easements for life, easements in fee simple, defeasible easements
- **May grantor reserve easement when making reservation to third party?**
  - **Willard v. First Church of Christ:** Petersen bought lots from original owner w/provision: conveyance of lot 20 subject to an easement for parking, allowing church’s members to park there. Clause inserted into deed and Peterson recorded deed. Willard paid purchase price and received deed for lots 19 and 20 which did not mention
**Rule:** Balance the injustice which would result from refusing to give effect to the grantor’s intent against the injustice, if any, which might result by failing to give effect to reliance on the old rule and the policy against disturbing settled title.

- Willard is on constructive notice, and most likely actual notice
- Even if Willard did not have actual or constructive notice, a reasonable owner of the lot should have known people were parking in the lot on Sunday. Willard could also have inspected record books.

**Common law rule:** cannot create easements by reservation

### AFFIRMATIVE VS. NEGATIVE EASEMENTS:

- **Affirmative:** always allows holder to do affirmative acts on land in possession of another
- **Negative:** takes away from the owner of the servient estate the right to do certain things that they would otherwise be able to do on the land
  - Ex: Conservation Easement: A agrees to not demolish or alter the historically significant building that happens to be on her piece of land
  - Freely alienable
  - Presumption against negative easements
  - Courts have developed **covenants** to get around negative easements

### LICENSES:

- Permissions to do things on your land; not a property interest in land, it is merely permission
  - Defense to the tort of trespass
  - Oral or written
  - Generally revocable at any time:
    - **Exceptions**:
      - 1.] intention: if the licensor expressly makes the license irrevocable
      - 2.] license coupled w/ interest (A has right to hunt on Blackacre and carry off what he kills; profit would be once you kill something you carry it off.)
      - 3.] Equitable Estoppel: If a license is granted and a licensee reasonably relies on it, making improvements on the property, equity requires that the licensor be estopped from revoking the license until the value of the improvements have been exhausted.

- **Holbrook v. Taylor:** Prior to 1965, Δ’s used road w/ permission of Π’s. After, it is disputed as to whether the use is by permission or by claim of right. During preparation of construction of their house, Δ’s used and repaired roadway w/ permission. No other location over which roadway could be built to provide outlet for appellees. **Estoppel argument:** You let me build the house, I relied upon that license, you allowed me to invest in the land: you are estopped from denying me to do so. Δ could not also win on prescription, b/c they were on land w/ permission. Scope of license which is irrevocable should be constrained to original purpose: Δ’s should not be able to build casino next to land.

- **Restatement:** when house burns down, license is gone.

- Irrevocable license: same thing as an easement; dinner guest, cable guys, landscapers all have licenses

- **REAL COVENANTS:** agreement b/w two or more landowners that one of them will or won’t do something w/ his or her land; enforceable by and against assignees

  - **Enforceability called “running with the land”**
  - **Four requirements** for covenant to “run w/ the land”
1. covenant contract agreement or other writing
2. intent that covenant “run with the land” – put “successors” in the document is the best way to convey intent
3. covenant must touch and concern the land: effect of covenant must increase the usefulness or value of land to covenantee or decrease the usefulness or value of land to covenantor
4. privity of estate – some sort of successive relationship to the land from one of the original covenanting parties; horizontal or vertical privity (must be a grantor-grantee relationship)
   - Do not need horizontal privity for benefit to run
   - For burden to run, successor C must have estate of same duration that B had. If B had fee simple, B must convey fee simple for burden to run. (Similar to distinction b/w subleases & assignments)
   - For benefit to run, only need some quantum of estate to run to D; D needs only a scrap of A’s estate

Courts are more likely to find that benefits side is running more than the burden side is running (more likely to find D to be bound to A’s promise to B than C to be bound to B’s promise to A)

Real covenants: on the law side of things; remedy = damages
Under normal contract doctrine, contract of this sort is not enforceable against successors or assigns
Courts became restrictive of real covenants
AFFIRMATIVE COVENANT: promising to do something on land
NEGATIVE COVENANT: promising not to do something on land

Tulk v. Moxhay: Π sold piece of ground to Elms in fee. Deed of conveyance included covenant by Elms, for himself, his heirs, and assign w/ Π, his heirs, executors, and administrators. Covenant stated: keep and maintain garden. Δ purchased the deed from Elms w/o the same covenant, but he admitted that he purchased the deed w/ notice of the covenant. Rule: Although English law requires horizontal privity between A and C, a court of equity will still enforce a negative covenant when the legal remedy is inadequate to the aggrieved party and it would be unfair to do otherwise.

- Is the covenant enforceable at law:
  1. there is a writing
  2. Intent: uses the words heirs & assigns
  3. Touch & Concern: yes, decreases the value to Elm, b/c he can’t build a theater, etc.
  4. Horizontal Privity: yes, Tulk sold to Elms, and somebody sold to Moxhay
- If there is no equitable remedy, Tulk is out of luck: English courts, as a matter of law, demand horizontal between A (Tulk) and C (Moxhay)
- Chancellor in Tulk, cuts through all of the technicality which characterized English law on servitudes up to that point, cuts through road block of privity, cuts through prohibition on new negative easements, etc.
- Court of Equity:
  1. legal remedy inadequate to protect Π
  2. equity and fairness favor Π
  3. court fashions an injunctive remedy that mitigates the harsh consequences of the technical legal rule.

Real covenant doctrine: attempt to expand contract law to cover private land uses; should be seen as something more than a contract, but still a contract at heart

Private Communities: Nahrstedt v. Lakeside Village Condominium: Δ’s condominiums subject to certain covenants, conditions, and restrictions: “no animals, livestock…shall be kept in any unit.” Π purchased condo in village and moved in w/ three cats. Rule: When there are
no facts that support the finding that burden of restriction on affected property is so disproportionate to benefit that restriction is unreasonable, the restriction is enforced.

- **Condominium arrangement**: Individuals own the insides of their homes, but they are tenants in common to big area of property, which is heavily deed restricted.
- Association makes rules not only on common interest but also fee simple property
- California statute: uphold unless unreasonable – unreasonableness not assessed individually, but the question is if something is unreasonable in light of whether the burdens substantially outweigh the benefits.
  - Reading unreasonableness narrowly: 1.] protects homeowners; 2.] avoids litigation costs; 3.] protects social fabric of the common interest development
- In this case, there must be some fundamental discrimination: just because Π’s feelings are hurt is not enough
- *Line could be drawn where it is a “bold faced necessity for life”*
- How much individual liberty do we want to give people balanced against people going to far…race covenants are too far
- What could go to far: unreasonable restraint upon alienation
  - **EQUITABLE SERVITUDES**: interests in land enforceable in equity; might be something less than fee simple, but still is an interest in land.
    - First negative easements, then real covenants to get around dim view of negative easements, then equitable servitudes to get around dim view of negative easements
    - **Consequences:**
      - 1.] These are the same promises: equitable servitude in equity or real covenant in law
      - Equitable servitude conceptually indistinct as a negative easement enforceable by injunction
    - **ELEMENTS:**
      - 1.] writing
      - 2.] intent to run w/ the land
      - 3.] touch and concern
      - 4.] notice – awareness of land use restriction in deed or writing (*Tulk v. Moxhay*)
    - Replaces privity
  - **Real covenant vs. Equitable Servitude:**
    - Real covenants are not interests in land – contract doctrine
      - Not part of fee
      - Real covenant law is an attempt to use and expand contract law to create a private land use regime.
      - At the end of the day, a real covenant is a contract.
    - Equitable servitudes are interests in land – property interest
      - It is a piece of the fee
      - Interests in land enforceable in equity
  - **Restatement**: intended to eliminate difference b/w real covenants and equitable servitudes
  - **Restatement 3rd**: a servitude is valid unless...
    - 1.] Illegal or unconstitutional or violates public policy or
      - Similar to touch and concern requirements for covenants
    - 2.] Unreasonably burdens a fundamental constitutional right
      - *Shelly v. Kramer*: Petitioners, blacks, acquired property which was bound by restrictive covenants: excluded people of designated races and colors from ownership or occupancy of real title
        - problem here is that this is a private agreement among private parties
        - minute judicial enforcement takes place (police evicting African-American) which violates Constitution
        - Implication: everything is state action
Violates equitable servitudes: this is a racist covenant, which are not equitable
Violates real covenants: this is a restraint upon alienation

**ZONING**: attempt by legislature and government; enact a global resolution for land use problems

- Big Question: **HOW FAR SHOULD ZONING BE ALLOWED TO GO?**
  - 1.] how much authority over controlling land use can we vest in zoning rules?
    - *Euclid v. Amber Realty Co.*: Π owns three strips of land. Land cannot be used for industrial purposes, although it is suitable for general trade, commercial purposes. Land has significantly higher market value for industrial use than commercial purposes. **Rule**: Where the ordinance is not unreasonable or arbitrary (businesses and trade structures are typically excluded from residential districts), zoning ordinances are not in violation of constitutional rights.
      - Euclidean zoning: class, height class, area class (lot sizes)
      - Purest -> least pure
      - U1: single family dwelling -> U6: heavy industry
      - Municipal authorities can set up rules to avoid nuisances
      - **Police power**: Power of government, state or local, to regulate to protect the wealth, welfare, safety, and morals of the citizens
      - Industrial uses may be controlled, b/c industry is likely to create nuisances – b/c of the risk of industry & pollution it can create a nuisance; local govt. should have substantial leeway to prevent nuisances
  - 2.] how much authority under controlling land use should we vest in zoning land rules?
    - Aesthetic zoning.
        - Courts reading of *Euclid* is wrong: states that *Euclid* was about protecting property values, when it was really about preventing nuisances
        - Zoning statutes delegate the responsibility of general welfare to zoning boards (power to protect property value within general welfare)
        - Two major factors: 1.] comfort and happiness of residents; 2.] property value
        - Accepts preservation of neighborhood character & value as legitimate zoning objectives
        - Aesthetic factors alone cannot be considered, must consider other things (bring in property values)

- **Keys to Zoning**:
  - 1.] separation of uses
  - 2.] protection of the single family home
  - 3.] low-rise development
  - 4.] medium density of population – preserve an idealized status quo

- **Objections to Euclidean Zoning**:
  - 1.] social segregation; racial segregation
  - 2.] ignores cultural sense of a metropolis – you get sprawl