**PROPERTY OUTLINE (Updated 4/18/2009)**

* **PHILOSOPHY**
  + **“People’s rights come only through the government.”**
    - **Hobbes = legal positivism**
      * **Man is innately brutish and mean 🡪 absolute power should go to sovereign 🡪 men should be sanctioned if they disobey sovereign**
    - **Bentham = utilitarianism** 
      * **Law is only good if it makes the majority happy.**
      * **Voting ensures those with policies that make us happy are in office.**
      * **Utilitarian Theory of Property:**
        + **Idea is that a primary function of property rights is to promote the efficient use of resources. Is also a means of distributing and redistributing wealth of a society.**
    - **Austin = IS v. OUGHT**
      * **Law = IS = command of the sovereign, set by judges (from Hobbes)**
      * **Legislation = OUGHT = set by legislature (from Bentham)**
  + **“Natural Rights” - Locke**
    - **Natural rights = life, liberty and property**
    - **State has limited power to protect the people’s natural rights**
    - **CONSTITUTION IS FOUNDED ON LOCKE VIEW (Bill of Rights limits power of government, reserves power for the states/the people – 14th Amendment)**
      * Note: Supreme Court views break down based on natural rights
        + Left: natural rights don’t need to be enumerated in the Constitution for people to have them (ex. right to privacy is a natural right)
        + Right: natural rights are enumerated in the Constitution.
  + **Critical Legal Thinkers**
    - **Law = Politics = Not Natural, Rigged to favor interests of the rich**
  + **Law & Economics/Market**
    - Asks what is efficient – what is best for society?
      * **Pareto – allocation of resources is efficient if it makes at least one person better off and no one worse off.**
      * “Rational Maximizer” – every person is rational and tries to maximize utility
      * **Kaldor-Hicks – if there is a net overall gain, then the action is good**
    - **Adam Smith – Capitalism**
      * **“Free Market” Economy may look chaotic, but it is actually guided by an invisible hand.**
      * **When the individual pursues his self-interest, he is promoting the good of society more than if he acts with the sole intention to benefit society 🡪 so self-interested competition in the free market is good for society, because it keeps prices low and still builds an incentive for manufacturing/introducing goods and services.**
      * **Value of good = cost of acquiring it (effort to earn money to buy it)**
  + **Cognitive Science – George Lecock**
    - **Physical realities come from our personal perceptions and the resulting schemas in our brains – our background shapes how we define things… if we encounter something new, we will try to fit in into existing schemas.**
    - **Politics:**
      * **Conservative/Republican = Strict Father** 
        + Favors authority, obedience, punishment, responsibility and independence
      * **Liberal/Democrat = Nurturing Parent**
        + Favors democracy, negotiation, compassion and COMMUNITY
* **EXTERNALITIES**
  + **Exist whenever some person makes a decision about how to use resources without taking full account of the effects of the decision. They ignore some of the effects because they would fall on others.**
  + **Externalities cause incentives to take a free ride – persons may reason that no contribution to a group payment is necessary because the contributions of others will be enough, so the free rider benefits at no cost.**
* **Basic Property Ownership – Types**
  + **Communal Ownership = rights that can be exercised by all members of the community.**
    - Means that no one individual can interfere with any person’s exercise of communally owned rights.
    - Results in great externalities – the full costs of the activities of an owner of communal property are not borne directly by him.
  + **Private Ownership = the community recognizes the right of the owner to exclude others from exercising the owner’s private rights.**
    - If a single person owns land, he will attempt to maximize its present value, acting like a broker.
    - Private ownership results in the internalization of costs.
  + **State ownership = the state may exclude anyone from the use of a right as long as they follow accepted procedures for doing so.**
* DESCRIPTIONS OF PROPERTY – BASIC TYPES
  + Description by Government Survey
    - At formation of US – all public land was surveyed into rectangular tracts by running parallel lines north and south (range lines) and crossing them at approximately right angles with other parallel lines running east and west (township lines) to form rectangles six miles square. These six mile tracts are townships. Each township was surveyed into 36 tracts (sections), each one square mile and containing apx. 640 acres.
* **“TAKINGS” CLAUSE (Eminent Domain)**
  + **Eminent domain**
    - **= the power of the government to force transfers of property from owners to itself**
    - Arguments for:
      * Economic argument – necessary to prevent monopoly (where high transaction costs exist for purchasers) – allows shifting of resources
  + **Power of Eminent Domain comes from 5TH AMENDMENT, US Constitution – “Nor shall private property be taken for PUBLIC USE, without JUST COMPENSATION” and 14th Amendment (due process application to state)**
    - Note: limits government’s right to take property AND freedom to regulate
  + **Inverse Condemnation Action – claimant rather than government initiates the suit, alleging that a taking has occurred and seeking compensation.**
  + **“TAKINGS” ANALYSIS:**
    - **Can the government do it (5th Amendment)?**
      * **Yes, if the action is CAUSALLY RELATED to a CONCIEVABLE PUBLIC PURPOSE.** (Berman and Midkiff)
      * **If not, then stop analysis, and government cannot do the action.**
        + note: federal test – individual states may have stricter test
        + **PUBLIC USE = CONCIEVABLE PUBLIC PURPOSE**

**Main question: What does “public use” mean?**

**Two different views**

**Advantage/benefit to the public (broad view) OR**

Taking’s PURPOSE, not MECHANICS matters. (Midkiff)

End result of taking matters, but legislature is given deference in determining what public needs (may tie with police power) justify the use of the takings power. (KELO)

**Actual use or right to use of the condemned property by the public (narrow view).**

* + - * + Tie between “Police Power” and “Takings” Clause in the 5th Amendment – how closely you believe they are connected determines what you think “public use” – is it for the land to be used by the public, or for the government to police the people?
    - **Must government pay? (Has there been a taking?)**
      * **Note: What the government DID, not what they INTENDED matters.**
      * **A permanent physical occupation, no matter how inconsequential, authorized by the government, is a taking. This includes noise interference and other non-tangible occupations. (Loretto v. Teleprompter Manhatten CATV Corp.; US v. Causby)**
      * **If the regulation denies all economically beneficial or productive use of the land, there is a taking. (Lucas v. South Carolina Coastal Council)**
      * **If the government action is a NUISANCE CONTROL MEASURE/REGULATION (exercise of police power), then there is generally no taking. (Hadacheck v. Sebastian)**
        + Note: Difference between eminent domain and police power (what is a nuisance control measure?):

Under the police power, the rights of property owners are impaired because their free exercise is believed to be detrimental to public interests.

Under eminent domain, property is taken because it is beneficial to the public, not harmful in its existing state.

Note: whether you view it as eliminating public harm or for the public good depends on how you frame the issue - SUBJECTIVE

* + - * **If the regulation GOES TOO FAR, imposing too great a burden on property owners, it will be CONSIDERED A TAKING. This is a balancing test (Penn Coal v. Mahon)…**
        + **Considers EXTENT OF THE DIMINUTION IN VALUE of the property to the property owner caused by the regulation. (Penn Coal v. Mahon).**
        + **Considers the INVESTMENT BACKED EXPECTATIONS of the property owner and effect of government action on those expectations. (Penn Central Transport. Co. v. City of New York)**

Note**:** Future generations can have “investment backed expectations” – “right to be compensated cannot be destroyed by a change of title” – purchase of title comes with right to bring inverse condemnation action. (Palazzolo v. Rhode Island)

* + - * + **Considers the AVERAGE RECIPROCITY OF ADVANTAGE to the landowner caused by the regulation. If this exists, it may not be considered a taking. (Penn Coal v. Mahon)**
        + **Considers the character of the regulation – if it GOES BEYOND COMMON LAW NUISANCE results that could be achieved in the state’s courts, it is a taking. (Lucas v. South Carolina Coastal Council)**
        + **Considers CONCEPTUAL SEVERANCE – focuses on the extent of the interference with rights in the parcel as a whole, the entire bundle of rights, both in physical space and time. (Penn Central Transport. Co. v. City of New York; Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency)**
    - **What does compensation mean?**
      * **Compensation is FAIR MARKET VALUE, NOT personal value** (US v. Miller)
        + FMV = price in cash for which the property would change hands in a transaction between a willing buyer and a willing seller.
      * **If the government regulation is a taking, then the government must pay just compensation from the time the regulation first results in a taking until the time the government rescinds the regulation or changes it. Merely rescinding the regulation is not adequate – compensation must be given – INTERIM DAMAGES. (First English Evangelical Lutheran Church v. County of Los Angeles)**
      * Is compensation efficient?
        + Yes, because it gives investors/purchasers security when purchasing
        + No, if it leads to overinvestment in capital by owners without regard for efficiency of government projects
      * Can “transferable development rights” count as compensation?
        + Possibly – can “ease the burden of regulation such that it would not amount to a taking”, but not clear. (Penn Central Transport. Co. v. City of New York)
  + **EXACTIONS**
    - **Exaction = Local government measure that requires developers to provide goods and services or pay fees as a condition to getting project approval.**
    - **First ask, it is an exaction? (If not, use takings analysis).**
    - **If it is an exaction, can the government do it (is it constitutional)? – Two Step Analysis**
      * **There must be an ESSENTIAL NEXUS between the exaction and a CONCIEVABLE PUBLIC PURPOSE to be advanced for the exaction to be constitutional (Nollan v. California Coastal Commission).**
      * **If such a nexus exists, then must decide the degree of connection that exists between the exactions and the projected impact of the proposed development. (Dolan v. City of Tigard)**
        + **Must be a ROUGH PROPORTIONALITY between the exaction required and the development.**

(focus on what exaction WOULD do, not COULD do)

* + - * + **No precise mathematical calculation is required, but the city must show that the required dedication is RELATED IN BOTH NATURE AND EXTENT to the impact of the proposed development.**
        + This is like “average reciprocity of advantage”, as in Penn Coal – when has the exaction requirement gone too far? **If the burden on the developer of the exaction is > the increased burdens caused by the developer’s development, then government has gone too far and it is a TAKING (so compensation must be given).**
    - Supreme Court takes bifurcated approach to takings problem, with heightened scrutiny applied to exactions but deference to other regulatory acts facing takings challenges.
    - Community v. Individual Solution when the Government wants to control land use:
      * Community owns part of property, through easement (i.e. exaction/taking) OR
      * Individual owns the land, but the city can regulate its use.
      * But is this really different?
* **ZONING**
  + Brief History:
    - Civil War to Beg. 20th Century – Courts were hesitant to declare anything a nuisance for fear of hindering development. When nuisance law was used, it did not prevent nuisances from arising, but just gave damages/injunction after the fact.
    - Ebenezer Howard/Garden Cities – Howard proposed separating land uses. At core of scheme was wholesome housing, defined in terms of suburban/ small-town qualities. Utilitarian based idea.
    - **American planners took the following principles from Howard’s ideal community:**
      * **Separation of uses;**
      * **Protection of single-family homes;**
      * **Low rise development; and**
      * **Medium-density population.**
    - 1916 – NY City enacted the first comprehensive zoning program, classifying uses into types and assigning them to zones and establishing restrictions on height of buildings.
    - **1922 – Standard State zoning Enabling Act passed by Advisory Committee on Zoning appointed by President Hoover. Standard State Zoning Enabling Act:**
      * Empowers municipalities to “regulate and restrict the height, number of stories, size of buildings/structures, % of lot that may be occupied, density, location and use of buildings, etc”… State gives power 🡪 municipality can zone
      * Permits the division of municipalities into districts (zones)
      * **Zoning ordinances must be “made in accordance with a comprehensive plan” and designed to (do the above)**
        + **Comprehensive Plan = statement of the local government’s objectives and standards for development.**

Problem with a static comprehensive plan – future may be unpredictable

* + - * + **2 step process: PLAN 🡪 ZONE from plan**

Note: questionable whether steps have to be distinct, or if you can plan as you zone

* + - * **Individual cities must create a Planning and Zoning Commission and a Board of Adjustment**
        + **Planning and Zoning Commission is LEGISLATIVE. Sets zoning ordinances in accordance with police power use, creating comprehensive plan.**
        + **Board of Adjustment**

**…is AJUDICATIVE, not legislative. Individual owners can appeal for variances/exceptions to Board.**

**Board must act under a statement of policy that acts as a guide “so that the determination of individual rights will not be left to the purely arbitrary discretion of the administration”**

Must give procedural due process – standards set before adjudication, notice, hearing, unbiased decision makers, decision and reasoning articulated, ability to appeal

* + - “Euclidian Zoning” – districts are graded from highest to lowest, and uses permitted in each district are cumulative.
  + **Zoning Ordinances must find their justification in the police power – for public health, safety or welfare. Deference will be given to the legislative body – ordinance will be declared unconstitutional only if the zoning is clearly arbitrary and unreasonable. TEST = CONCIEVABLE PUBLIC PURPOSE? (Village of Euclid v. Ambler Realty Co.)**
    - Possible police power justifications – increased safety and security of home life; prevent street accidents; reduce traffic in residential sections; decrease noise.
    - **Aesthetic Regulation**
      * **Aesthetic Regulation falls under the General Welfare part of Police Power**
      * Ties back to Berman v. Parker – Public welfare aspect of Police Power includes “the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled…”
  + Zoning v. Taking?
    - Use Takings Analysis:
      * Can government do it? – “CONCIEVABLE PUBLIC PURPOSE”
      * Must government pay? – If zoning destroys all ECONOMICALLY VIALBE USE, then government must pay. (same tests as under takings analysis)
    - Zoning ordinances are generally upheld, especially if they are controlling nuisance-like conditions, or so long as they leave the property owner with some reasonable use.
  + **Non-Conforming Use Problem – Where Owner holds title BEFORE zoning.**
    - **A (at one time) lawful nonconforming use establishes in the property owner a vested property right that cannot be abrogated, unless it is abandoned, destroyed, or is extinguished through eminent domain (with compensation). (PA Northwestern Distributors, Inc. v. Zoning Hearing Board)**
      * Vested rights – rights are usually only protected if there is a pre-existing operation. Ties into investment backed expectations.
      * Right to maintain a non-conforming use runs with the land (survives ownership change).
    - **Amortization/Grandfathering – An amortization period may make taking away an existing non-conforming use reasonable.** Factors considered are: nature of the use in question, amount invested in use, character of the surrounding neighborhood, etc. **Should be an adjudicative decision, based on individual circumstances.** (PA Northwestern Distributors, Inc. v. Zoning Hearing Board)
  + **Achieving Flexibility in Zoning**
    - **Variances**
      * **VARIANCE = AUTHORIZATION FOR LANDOWNER TO USE PROPERTY IN MANNER PROHIBITED BY ORDINANCE**
      * **Enabling Act – Board of Adjustment may authorize “in specific cases such variance from the terms of the ordinance as will NOT BE CONTRARY TO THE PUBLIC INTEREST, where a literal enforcement of the provisions of the ordinance will RESULT IN UNNECESSARY HARDSHIP”.**
      * Factors to consider before granting variance:
        + Origin of existing situation – was hardship self-imposed?
        + What efforts has the property owner made to bring the property into compliance?
        + Would granting the variance substantially impinge on the public good and intent and purpose of the zoning plan/ordinance?
      * **Grant of variance is meant to avoid it being unconstitutional (a taking).**
    - **Special Exceptions**
      * **SPECIAL EXCEPTION – ALLOWS LANDOWNER TO PUT HIS PROPERTY TO A USE WHICH THE ORDINANCE EXPRESSLY PERMITS** (use is not necessarily incompatible, but use may cause harm if not watched)
      * **Enabling Act – Board of Adjustment may “in appropriate cases, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent.”**
      * Two different approaches to special exceptions:
        + Listed uses will be granted an exception only if a very general criteria (affects on health, welfare and safety) are met – USUALLY FOUND UNCONSTITUTIONAL B/C TOO VAGUE or
        + **Listed uses will be granted an exception if they meet a very detailed criteria, such as design, location, hours of operation, standards of performance, etc.**
    - **Problems with “Spot Zoning”**
      * **“Spot Zoning” refers to certain zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with surrounding uses, which dramatically reduces the value for uses specified in the zoning ordinance of either the rezoned plot or surrounding property.**
      * **“Spot Zoning” will be found invalid where:**
        + **A small parcel of land is singled out for special treatment;**
        + **The singling out is not in the best interest of the public but is for the benefit of the landowner; and**
        + **The action is not in accord with the comprehensive plan.**
    - Amendments to Zoning Ordinances
      * Issue - Legislative act, which should be given deference, or is it a departure from comprehensive plan (hard to prove if city plans as it zones – i.e. no written comprehensive plan)?
  + Challenges to Zoning
    - Spot Zoning – see above
    - Economic Argument – does society run better when the free market determines use?
      * If members of a community are unhappy enough with land use, then they will buy the land outright.
      * If neighbors don’t purchase the land out of dissatisfaction with use, then it is more efficient for the owner to develop.
    - “If regulation goes too far, it is a taking.” (Hadacheck)
    - 42 USC 1983 – There is a civil remedy for violation of constitutional property rights if it is done under “color of law”
* **ADVERSE POSSESSION**
  + **Adverse possession = a method of transferring interest in land without the consent of the prior owner to a person who has been “possessing” the land.**
  + Every state has a statute of limitations that fix a period of time beyond which the owner of land can no longer bring an action for the recovery of land from another person in possession, unless owner is in a certain category (i.e. minor, incapacitated, etc). Length of time varies by state.
  + Once acquired by the “adverse possessor”, new title is created and “relates back” to the date on which the statute of limitations began running – law acts as adverse possessor were the owner from that date.
* **REAL ESTATE TRANSACTIONS**
  + **BASIC TWO STEP PROCESS:**
    - **(1) EARNEST MONEY CONTRACT 🡪**
      * **THIS IS WHERE IMPLIED WARRANTY OF MARKETABILITY (OF TITLE) IS.**
    - **(time to fulfill conditions) 🡪**
    - **(2) CLOSING AND DEED**
      * **THIS IS WHERE WARRANTIES ARISE BASED ON COVENANTS.**
  + Basic Steps of Transaction:
    - Seller hires a real estate broker.
    - Buyer finds house and starts negotiating a purchase and sale agreement (EARNEST MONEY CONTRACT) with the Seller through Broker.
    - Buyer and seller enter into Earnest Money Contract (offer/acceptance when signed by both parties), with Buyer giving Seller EMC with earnest money check
    - Buyer obtains a title search.
    - Buyer has inspector visit property.
    - Buyer applies for a mortgage loan.
    - Title Company provides an abstract of title, listing any encumbrances as well as preceding owners of the property.
    - If Buyer is approved, mortgage company issues mortgage commitment.
    - Buyer and Seller begin closing process.
      * Buyer has opportunity to remove things that make title unmarketable up to time of closing (buyer cannot claim unmarketability until time of close).
      * Lender: Loan Money 🡪 Seller 🡪 pay off existing mortgages + pay brokers commission + pay legal fees and other fees + keep rest of proceeds.
      * Seller: Title from Seller 🡪 Buyer by Deed.
      * Buyers sign Promissory Note for loan.
        + Note: Promissory note is negotiable = “Holder in Due Course” treatment (can be bought and sold)
      * Buyers execute a mortgage or deed of trust in favor of lender.
      * Remember, even if closing is rushed, both parties still have “duty to read”.
    - Title insurance company records deed and mortgage at County Clerk’s office.
    - Title Company issues Title Insurance.
  + **Real Estate Broker**
    - **Hired by Seller to attract prospective buyers for the property and facilitate the real estate transaction** by: marketing the property; listing the property on a multiple listing service (MLS), negotiating purchase agreements, serving as the intermediary between seller and buyers, participating in physical inspections of the property, assisting in arranging financing, etc. **Average commission (in return) is 6% of SALE PRICE**
    - **The real estate broker is a FIDUCIARY for the Seller. The Seller is the Principal, the Buyer is his Agent. (Licari v. Blackwelder)**
      * Two basic types of brokers (who will usually split the total commission):
        + Listing broker – who contracts with the seller to sell the property AND
        + Selling broker – who introduces buyers to the sellers property
      * **This means he is required to exercise loyalty and good faith –** should not put himself in a position contrary to the principal’s interest, act adversely to his client’s interests, or fail to communicate information helpful to his principal.
      * **A broker that does not uphold his fiduciary duties leaves him liable to the principal for losses that result from his actions, and may bar recovery of a commission.**
      * **Though the Broker may work with the Buyer, they owe them no fiduciary duty. This may cause confusion for Buyers.** Solutions:
        + Buyer may hire a broker (who shares commission with the seller’s broker)
        + Dual Agent – Buyer and Seller may hire the same person to act as a Broker (but this may be confusing because of dual loyalties).
        + Disclosure requirements

Some states require brokers to disclose to buyers in writing that they are the seller’s agent, not the buyers.

**In many states, brokers must also disclose to the Buyer any material defects known by the Broker and unknown to the Buyer. (Eaton v. Strassburger)**

* + - Economics of Brokerage:
      * Brokers exist because there is a scarcity of information in the real estate market. Sellers are sporadic actors who wish to sell for as much as they can as fast as they can – they rely on brokers’ expertise to do this. Because Buyers and Sellers enter into transactions so rarely, it is more efficient to have Brokers facilitate.
  + **Multiple Listing Services (MLS)**
    - **MLS = a system of cooperation that allows (ONLY) brokers and appraisers to share residential listing information for a fee, on one main database.**
    - Pros: efficiency for searching
    - Cons: possible antitrust issues and price fixing of commissions by limited access
  + **Listing Agreement**
    - **= an employment contract between broker and seller. If Broker satisfies his obligations, seller pays the broker a commission.**
    - **Contents: description of property + seller’s asking price + names of parties + duration of contract**
    - **Types:**
      * **Open Listing: Seller retains right to sell property herself or use a different broker. Broker earns commission only if she is able to procure an offer from a ready, willing and able buyer with terms acceptable to seller.**
      * **Exclusive-Agency: Permits only one broker, the exclusive agent, to sell the property for a specified period of time.**
      * **Exclusive-Right-To-Sell Listing: Owner must pay broker if ANY buyer purchases during the specified duration of the listing, no matter who found them.**
    - **When is a commission due?**
      * **Traditional rule = when the Broker brings to the Seller a Buyer who is READY, WILLING AND ABLE to buy** (desire to buy + offer for asking price + sufficient assets to purchase). Technically, Broker is entitled to commission even if sale fails to close, but industry custom is that Brokers are not paid until after close.
      * **Parties may contract a different commission arrangement.**
  + **Earnest Money Contract (Purchase and Sale Agreement)**
    - **Written agreement that sets forth the legal description of the property, its price, provision for earnest money deposit, and the date for closing or transfer of title.**
      * **Note: Remember Statute of Frauds requirement – must be signed by the party to be bound, and contain the “essential terms”** (name of buyer + name of seller + description of property + agreed upon terms, like price and condition)**.** **Two possible ways to get around Statute of Frauds writing requirement:**
        + **Part Performance Doctrine – Allows specific performance remedy for oral agreement when: buyer has taken possession + buyer has paid all/part of purchase price + buyer has made valuable improvements.**
        + **Equitable Estoppel Doctrine – promise + relied upon + detriment (Hickey v. Green)**
    - **Contains a promise that “SELLER SHALL CONVEY GOOD AND MARKETABLE TITLE”, regardless of the type of Deed the Contract discusses. If the Seller can’t do this, the Buyer may rescind because Seller hasn’t tendered title.**
      * **MARKETABLE = “title reasonably free from doubt, which a prudent purchaser would accept” or “unencumbered fee simple”**
      * **Unmarketable v. Market Value Affected**
        + **Defect must be of a SUBSTANTIAL character and have the potential to CAUSE INJURY (LIKE LITIGATION) to make title unmarketable. Possible causes of unmarketability:**

**Defects in a prior instrument in the chain of title.**

**Restrictions on the use of property, through private covenant, if restriction interferes with intended use.**

* + - * + **Some things affect Market Value, NOT Marketability**

**Presence of hazardous waste does not make title unmarketable.** (HM Holdings, Inc. v. Rankin)

**Land with deed restrictions or zoning ordinances is not unmarketable unless the current use is in violation.** (Lohmeyer v. Bower)

* + - * **Marketable title is a problem considered at time of Earnest Money Contract – once Deed is conveyed, merger doctrine means that promise of marketable title in the EMC is inadmissible.**
    - **Contractual duty to disclose defects?**
      * Old Common Law: “caveat emptor” – “let the buyer beware”
      * Current:
        + **Where a condition which has been created by the seller materially impairs the value of the contract and is within the knowledge of the seller or UNLIKELY TO BE DISCOVERED BY A PRUDENT PURCHASER exercising due care, NONDISCLOSURE CONSTITUTES A BASIS FOR RESCISSION.** (Stambovsky v. Ackley; Johnson v. Davis)
        + Most states have enacted statutes requiring Seller to deliver to Buyer a written statement disclosing MATERIAL facts about: significant structural defects, soil problems, underground sewage/storage tanks, presence of hazardous materials, alterations/repairs made without permits, violation of building codes/zoning ordinances, etc.
        + Hazardous waste/CERCLA

Act imposes strict liability (“status liability”) for cleanup costs of a hazardous waste site upon any CURRENT OWNER of a site containing waste.

Bona Fide Purchaser defense – If (1) release of hazardous materials took place before the purchaser bought the property, and (2) purchaser made appropriate inquiries before the purchase, and (3) the purchaser exercises appropriate care with respect to these materials, then they are not liable.

* + - * Remember – possible remedy under fraud or misrepresentation theories
    - **Is executory – a list of things must be done before title is actually transferred (see above “basic steps”). Usually has the following contingency clauses:**
      * **Title – Seller must be able to convey good title.**
      * **Mortgage – If Buyer cannot obtain a mortgage loan, then she can rescind.**
      * **Inspection – If big enough problems are found, the Buyer can rescind.**
        + Note: usually a set time period for inspection (like 15 days), in format of option contract (with consideration given for option… consideration ≠ earnest money)
    - **Buyer is viewed in equity as the owner from date of contract; the seller holds legal title as trustee for buyer.**
      * This means that Risk of Loss is on the Buyer (usually).
      * Uniform Vendor and Purchaser Act – in effect in TX – If the purchaser has the risk of loss, and the seller has insurance, in most states the seller holds the insurance proceeds as trustee for the buyer.
    - **“Time of Essence” Provision – Unless this clause is in the contract, if one party does not tender specified performance by a specified date, the other party will be kept waiting** (and is not excused from performance).
    - **Remedies for Breach of Purchase and Sale Agreement**
      * Remember, neither party can place the other in default and seek a remedy unless he himself tenders his own performance and demands that the other party perform.
      * **Three basic types:**
        + **Damages**

**When Buyer breaches, damages = purchase price – market value at time of breach (NOT LATER RE-SALE VALUE) + special** (incidental/consequential) **damages if foreseeable at the formation of the contract + NOT punitive damages.** (Jones v. Lee)

**When Seller breaches, damages usually = down payment + interest + reasonable expenses in investigating title + other damages, if Seller acted in bad faith.**

Note: some jurisdictions allow expectation damages - damages based on defaulting Seller’s re-sale of property to include profit made on re-sale (idea is that Seller is a trustee for Buyer). (Coppola Enterprises v. Alfone)

Contract may stipulate liquidated damages as an alternative, in the event of breach – will be enforced if reasonable in light of anticipated loss caused by breach AND difficulties in proving loss. (Rstmt. Contracts §374)

* + - * + **Retention of the Deposit (Sellers) or Restitution of the Deposit (Buyers) – General Rule**

Rstmt. Contracts §374 – “… the party in breach is entitled to restitution for any benefit that he has conferred by way of part performance or in reliance in excess of the loss he has caused by the breach.” (Kutzin v. Pirnie)

* + - * + **Specific Performance – Judicial order that a breached contract be fulfilled as originally intended.**

Common in real estate because it is “unique”, so damages as a remedy may be inadequate.

**Estoppel by Deed: If grantor conveys land that he does not actually own and warrants title to the land, and grantor subsequently acquires title, grantor is estopped from denying that he had title to land at time of Deed.**

**Doctrine of After-Acquired Title: Same situation as previous; title goes straight to grantee with Deed.**

* + **Earnest Money**
    - **Buyer 🡪 Seller with Earnest Money Contract, with check made out to Title Company to hold in escrow**
    - **Purpose = to protect the Seller if the Buyer backs out of the Contract**
  + **Encumbrances**
    - **= existing mortgages, liens, easements and covenants**
    - ARE NOT:
      * Zoning Ordinances, or other Police Power exercises by the State.
  + **Title Insurance**
    - **Purpose: To assure the lender and buyers that they have good title to the property, and to promise to defend against future adverse claims.**
      * **Title insurance guarantees that the insurance company has searched the public records and insures against any defects, unless defects are specially excepted from coverage in the policy.**
      * The standard policy excludes:
        + losses arising from government regulations affecting the use, occupancy or enjoyment of land, unless notice of enforcement or violation is recorded in the public records;
        + claims of persons in possession not shown in the records;
        + unrecorded easements;
        + implied easements;
        + easements arising from prescription; and
        + defects that would be revealed by a survey or inspection.
      * **DOES NOT INSURE AGAINST ACREAGE, in the absence of a recital of acreage or an explicit insurance against acreage, or title company endorsement of a survey.** (Walker Rogge v. Chelsea Title & Guaranty; AND IS TEXAS VIEW)
      * **Title insurance does not cover the existence of hazardous waste.** Title insurance guarantees against marketability, not against the condition of the land (which includes any waste). (Lick Mill Creek Apts v. Chicago Title Ins.)
      * **Title Insurance also does not cover public land use restrictions.** (Somerset Savings Bank v. Chicago Title Ins. Co.)
    - **Duration: No fixed term – continues for as long as the insured has an interest in the property. BUT, it does not run with the land – a subsequent purchaser will have to take out new title insurance.**
    - **A title insurance company may be held liable for negligent misrepresentation only when it is in the business of providing information. BUT, where information provided is ancillary to tangible goods and/or non-informational goods or services, there is no liability.** (Homes v. Chicago Title Ins. Co.)
  + **Title Assurance**
    - **The Recording System**
      * **In every state, statutes provide for land title records to be maintained by the county recorder in each country. The land title records include copies of documents filed with the recorder and indexes to these copied documents.**
      * Functions of the recording system:
        + Establish a system of public recordation of land titles.
        + Preserves a secure place for important documents.
        + Protects purchasers for value and lien creditors against prior unrecorded interests.
      * **Title records are kept by indexes, usually under a Grantor-Grantee Index.**
      * **NOTE: A DEED IS VALID AND GOOD AGAINST THE GRANTOR UPON DELIVERY WITHOUT BEING RECORDED.**
      * **Notice**
        + **3 Types of Notice:**

**ACTUAL = where one is PERSONALLY AWARE of a conflicting interest in real property**

**Constructive = where the law deems one to have notice regardless of actual knowledge, either from:**

**RECORD = notice based on properly recorded instruments**

**INQUIRY = based on facts that would cause a reasonable person to make inquiry into the possible existence of an interest in real property**

* + - * + **Actual Notice:**

**Actual possession is notice of whatever right the occupants have in the land, when possession is open, visible and exclusive.** (Waldorf Ins. And Bonding v. Elgin Nat’l Bank)

BUT, if the purchaser makes inquiry into title, and actual use seems to match with title (even if inconsistent), then the purchaser is NOT put on notice of the real title condition. (Grose v. Sauvageau)

* + - * + **Constructive Notice:**

**A reference in the index to a document usually sets forth essentials – grantor, grantee, description of the land, type of instrument, etc. A specific enough description is required in order to impart constructive notice to a subsequent purchaser – a description is sufficient if it identifies the property or provides the means of identification within the instrument itself or reference to another recorded interest.** (Luthi v. Evans)

**A deed in the chain of title, discovered by the investigator, is constructive notice of all other deeds referred to in the deed discovered.** (Harper v. Paradise)

**Jurisdictions are split on whether a recorded memorandum of lease (without the full contents of the lease recorded) put a subsequent purchaser on constructive notice of the contents of the lease.** (Howard Johnson Co v. Parkside Dev. Corp.; Mister Donut of America v. Kemp)

* + - * + A mistake in indexing, where the instrument contains a sufficient description and is recorded, does not prevent constructive notice. (Luthi v. Evans)
        + **Notice and Variations of Name Spelling**

**Doctrine of idem sonans (**that although a person’s name has been inaccurately written, the identity of the person can be presumed from sound similarity) **has not been applied to give constructive notice.** (Orr v. Byers)

Some jurisdictions hold that an instrument indexed under nickname or an incorrect first name that is “sufficiently dissimilar” does not give constructive notice. (Fred. Ward Assoc. v. Venture)

Some jurisdictions hold that indexing under a hyphenated name is insufficient to provide constructive notice of claims against either of the unhypenated versions of a name. (Teschke v. Keller)

* + - * **Types of Recording Acts**
        + **Race Statute = Person who records first prevails. Whether a subsequent purchaser has actual knowledge of the prior purchaser’s claim is irrelevant.**
        + **Notice Statute = Protects a subsequent purchaser against prior unrecorded instruments or against those instruments of which he had no notice.**
        + **Race-Notice Statute = A subsequent purchaser is protected against prior unrecorded instruments only if he:**

**Is without notice of the prior instrument AND**

**Records before the prior instrument was recorded.**

* + - **Marketable Title Acts**
      * **Under a marketable title act, all claimants of interest in land must file a notice of claim every 30-40 years after the recording of their instruments of acquisition. If they do not do this, their claim is extinguished.**
      * **Certain interests are excepted which do not have to be re-recorded.** Examples include mineral rights, easements, interests of persons in possession, claims of the federal government, etc. These exceptions arguably defeat the act’s objective of limiting title search because the title examiner must check beyond the set period of years to be sure to excepted interests exist on the record.
  + **Mortgage**
    - **People rarely pay cash when buying real estate – they usually make a down payment for a small portion of the purchase price and borrow the rest through a mortgage.** A mortgage is typically a first lien – “wipes out all other interests”
    - Typical mortgage market: buyer applies 🡪 lender checks buyer’s credit rating, earnings, job security, etc to determine credit risk 🡪 loan is approved 🡪 lender issues commitment to provide financing on specific terms within specific period 🡪 borrower gives lender promissory note and mortgage on the property.
    - **If Buyer fails to make payments:** 
      * **(In TX): Buyer given notice and opportunity to cure 🡪 Mortgagee accelerates balance (remaining due by X date) 🡪 Buyer gets notice of sale 21 days prior to sale 🡪 Sale (first Tuesday of the next month)**
      * **Lender may foreclose at private sale or judicial sale and apply proceeds to amount due on note.**
        + **Foreclosure by sale: Property is auctioned to the highest bidder at a public sale. If surplus at sale, surplus 🡪 Present Owner (not necessarily Borrower). If deficiency at sale, Lender seeks deficiency judgment against Borrower.** If cost of getting judgment > worth, then Mortgagor may not bring suit.
        + **Judicial Sale: Judgment is given against Borrower at the Courthouse and a deficiency judgment is automatically entered if Sale Price < Amount outstanding on note**
        + **After foreclosure: title given to Purchaser 🡪 eviction notice given to Borrower 🡪 Borrower must leave**
      * Alternative to Foreclosure Sale – Deed of Trust
        + Under Deed of Trust, Borrower conveys title to land to a person to hold in trust to secure payment of debt to the lender.
        + Trustee is given power to sell the land without going to court if the borrower defaults.
      * **In foreclosure sale, the Mortgagee has no general duty of good faith or to get a fair price to the Mortgagor – they just have to follow the procedure and give notice.** BUT, a foreclosure sale may be invalidated based on price if the price is so grossly inadequate as to shock the conscience of the court, warranting an inference of fraud.
    - **“Refinance” = Purchaser goes to Lender who provides new mortgage financing 🡪 new mortgage pays off all of old mortgage**
    - **In general, when the mortgagor transfers his interest in the land by sale, the transfer does not remove the Seller’s liability for the mortgage. BUT – purchaser may buy the land “subject to the mortgage” or “assuming the mortgage”.**
      * If “subject to the mortgage” – purchaser does not assume any personal debt/obligatons – the mortgagor still remains liable, even if purchaser makes payments. Warranty is “reduced” by the mortgage.
      * If “assuming the mortgage” – Buyer makes a promise in the Deed to make payments on the mortgage. If Buyer fails to make payments, he has breached the contract (part of the Deed) 🡪 Seller can sue for Breach of Contract, Mortgagee can sue as 3rd party beneficiary
  + **Deed**
    - **When buyer accepts the Deed, the Purchase and Sale Agreement is “MERGED” into it – the Deed is the new and ENTIRE agreement between the parties.**
      * Remember parol evidence rule – once Deed is signed, content of Deed = content of agreement, regardless of prior oral agreements.
    - **Basic Parts of Deed: grantor, grantee, words of grant, consideration** (minimal, not actual purchase price; not necessary for conveyance, but for contract part of Deed)**, description of land involved** (with reference to starting point, government survey, recorded plat, metes and bounds, or street number/name of property)**, signature of grantor, attestation/acknowledgement**
    - **DEED = TRANSFER (of land) + CONTRACT (any warranties)**
    - **3 Types of Deeds (all of which convey land; differ by warranties):**
      * **General Warranty Deed – warrants against all defects in title, regardless of when they arose.**
      * **Special Warranty Deed – warrants ONLY against the grantor’s own acts**
      * **Quitclaim Deed – contains no warranties of any kind**
    - **Types of Deed Warranties** 
      * **Present Covenants** (statute of limitations begins when deed is delivered)
        + **Covenant of seisin – grantor owns the land he is purporting to convey\*\***

Damages are return of purchase price (for Buyer)

* + - * + **Of Right to Convey – grantor he has the right to convey the property**
        + **Against Encumbrances – there are no encumbrances on the property\*\***

What if the buyer has knowledge of an encumbrance when he accepts a deed with this kind of warranty?

If in the contemplation of the parties at time of contracting, may NOT be included in the warranty.

Alternate view - mere knowledge is not enough to exclude from warranty, with exception of apparent and permanent public easements (i.e. like a highway).

Measure of Damages = cost of removal OR value of land without encumbrance – value of land with encumbrance

* + - * **Future Covenants** (statute of limitations begins at time of eviction or when covenant is broken)
        + **Of General Warranty – grantor will defend against unlawful claims when they arise and compensate the grantee for any loss that he may sustain by assertion of superior title**
        + **Of Quiet Enjoyment – grantee will not be disturbed in possession and enjoyment of the property by assertion of superior title\*\***
        + **Of Future Assurances – grantor will execute other documents as needed required to perfect title conveyed.**
      * **\*\* = most common warranties**
    - **DEED IS EFFECTIVE against Grantor WHEN PHYSICALLY DELIVERED + INTENDED TO PASS TITLE. Conditional delivery is not delivery.** (Sweeny v. Sweeny; Rosengrant v. Rosengrant)
    - Intervivos transfer of land v. Transfer at death
      * Intervivos transfer of land - Deed made during life, which requires delivery of a signed instrument
      * Transfer at Death requires an instrument complying with the statute of Wills to be effective.
      * Solution to problem of Deed written during life conditioned on death before title passes:
        + Establish a Revocable Trust – Grantors hold land in trust, retaining right to possession, where on their death, title passes to grantee. Grantors retain right to revoke the trust and reclaim legal title.
  + **Installment Land Sale Contract/Contract for Deed**
    - **Is an arrangement where the purchaser takes possession and the seller contracts to convey title to the purchaser when they have paid the purchase price in regular installments over a fixed period of time.**
    - **Used in transfers of real estate in particularly low-cost housing. No bank loan is necessary, the down payment may be minimal, and the seller may be willing to sell to persons deemed poor credit risks.**
    - **The buyer develops equitable title in the property as he makes installment payments. As a result, if the buyer does not make payments, the seller must go through the normal foreclosure process – he must first extinguish the buyer’s equity.** (Bean v. Walker)
  + **Implied Warranties of Quality** (Lempke v. Dagenais)
    - **Privity no longer necessary for warranty. Builder/Merchant has a duty to perform in “a workmanlike manner and in accordance with accepted standards”.**
      * Two types of privity:
        + “privity of creation” = builder 🡪 homeowner 1
        + “privity of transfer” = homeowner 1 🡪 homeowner 2
    - **Limitations:**
      * **Limited to latent defects that were not discoverable by a reasonable inspection of the structure prior to purchase.**
      * **Limited to a reasonable period of time.**
      * **Plaintiff has burden of showing that the defect was caused by the defendant’s workmanship.**
    - Why??? – protect innocent buyers, defects may “hide” themselves for many years, homes changing ownership more often, ordinary buyer is not in a position to discover hidden defects, builder already owes a duty to construct in a workmanlike manner, builder is in a better position to evaluate and guard against risk created by defects, etc.
* **NUISANCE LAW**
  + **Guiding Principle: ONE SHOULD USE HIS OWN PROPERTY IN SUCH A WAY AS NOT TO INJURE THE PROPERTY OF ANOTHER.** (Morgan v. High Penn Oil Co)
  + **Private Nuisance** (Morgan v. High Penn Oil Co.):
    - **Exists when one person makes an improper use of his own property and injures the land or infringes on a right of his neighbor (usually use and enjoyment of his land).**
    - **May be intentional or unintentional.**
      * **Intentional = when the person acts for the purpose of causing the nuisance, or knows that it is resulting from his conduct, or is substantially certain to result.**
      * **Unintentional = based on traditional tort categories of negligence, recklessness, abnormally dangerous activities. Asks whether the actor’s actions are unreasonable (gravity of harm v. utility of conduct – “Balancing the Equities”)** (Estancias Dallas Corp. Shultz)
    - **A person who intentionally creates/maintains a private nuisance is liable for the resulting injury regardless of the degree of care/skill exercised by him to avoid injury.**
    - **Only the person harmed can bring suit for private nuisance.**
  + **Public Nuisance**
    - **Is an unreasonable interference with a right common to the general public.**
    - Circumstances that determine whether the activity is UNREASONABLE:
      * Whether the conduct in question significantly interferes with the public health, safety, peace, comfort or convenience and
      * Whether the conduct is of a continuing nature or has been produced a permanent or long-lasting effect.
  + **Nuisance law protects ordinary uses, not abnormally sensitive uses/individuals.**
  + **Courts commonly find nuisance liability in instances where a landowner builds a structure of no use whatsoever other than to vex a neighbor.**
  + **Remedies:**
    - **4 Basic Types:**
      * **Abate the activity by granting the plaintiff injunctive relief**
      * **Let the activity continue if the defendant pays damages**
      * **Let the activity continue by denying all relief**
      * **Abate the activity if the plaintiff pays damages**
    - **Where the injury is slight, the remedy usually lies in an action for damages.** (Spur Industries v. Del E Webb Dev.)
    - **Where a nuisance is of such a permanent and unabatable character that a single recovery can be had, including the whole damage, past and future, there is one recovery – permanent damages are generally awarded.** (Boomer v. Atlantic Cement)
    - **“Coming to the Nuisance” Doctrine –** **Courts have held that a landowner may not have relief if he knowingly came into an area reserved for another use and has been damaged by that use. However, an injunction may be given against the actor causing the nuisance, and the plaintiff may indemnify him for a portion of the costs.** (Spur Industries v. Del E Webb Dev)
  + **Problems with Nuisance Litigation**
    - **Is an expensive and cumbersome means for resolving major environmental problems.**
    - **Could be overcome by class actions, but this is rare.**
  + **Alternative to Judicial Resolution – Legislative and Administrative Intervention**
    - **Today most efforts to control environmental problems have taken the form of regulatory programs.**
    - **A regulatory program typically prohibits certain activities, requires installation of prescribed technologies and setting standards. Measures are backed up by civil/criminal sanctions.**
    - **Alternative – Incentive Programs**
      * **Instead of demanding, seek to induce, either through:**
        + **Effluent fees: Sets a fee aiming to yield an appropriate level of control in the aggregate – idea is that the higher the charge, the less pollution**
        + **Marketable/Transferable Rights: Sets a fixed number of pollution rights, distributes them, and then permits trading of the rights.**
* **LAW OF SERVITUDES**
  + **(General) Servitudes = Agreements that create interest in land, binding and benefiting not only the parties to the agreement, but their successors.**
  + **Traditional servitude law - Two main types:**
    - **Easements**
      * **Require both a DOMINANT TENEMENT and a SERVIENT TENEMENT. The easement attaches to and benefits the DOMINANT TENEMENT.**
      * **Two types of easements:**
        + **Appurtenant – gives the right to whomever owns a parcel of land that the easement benefits.**

Are usually transferable – transfers with the dominant tenement to successive owners.

Can be made personal to the easement owner only.

* + - * + **In Gross – gives the right to some person without regard to ownership of land (benefits the easement owner personally).**

Involves no dominant estate.

Only personal in the sense that they do not attach to any parcel of land, not in the sense that they may be transferred to another person.

* + - **Covenants**
      * **Enforceable at law (“Real Covenants”)**
      * **Enforceable in equity (“Equitable Servitudes”)**
  + **Creation of Easements**
    - **Negative Easement**
      * **= a right of the dominant owner to stop the servient owner from doing something on the servient land.**
      * Common types:
        + Blocking neighbor’s windows.
        + Interfering with air flowing to the neighbor’s land.
        + Removing the support of a building.
        + Interfering with the flow of water in an artificial stream.
        + Conservation easement – preventing the servient owner from building on/altering land, etc, to maintain existing state.

Special examples – façade preservation easement, primary residence easement.

* + - **Easements are within the Statute of Frauds – requires a written instrument signed by the party to be bound.**
    - **BUT, easements may be created without a writing under exceptions for:**
      * **Fraud**
      * **Part Performance**
      * **Estoppel**
        + **Like normal estoppel – usually based on investment in improvements.**
      * **Implication**
        + **Easements are implied in two basic situations:**

**On the basis of apparent and continuous use of a portion of the tract existing when the tract is divided (quasi-easement) AND**

**When the court finds strict necessity of the easement.**

Most jurisdictions require strict necessity – some however will grant an easement when access exists, but it is inadequate, difficult or costly.

**Easement by necessity endures for so long as it is necessary – is extinguished when necessity ceases.**

* + - * **By Prescription**
        + **An easement is created when the person has OPENLY, PEACEABLY, CONTINUOUSLY and UNDER A CLAIM OF RIGHT ADVERSE TO THE OWNER of the soil, and WITH HIS KNOWLEDGE AND ACQUIESCENCE, used part of the land for > x years.** (Holbrook v. Taylor)
        + Most courts require exclusive use for prescription, but define it differently – don’t require showing that only the claimant made use of the way, but that their right to use the land does not depend upon a like right in others.
    - **Creation by Reservation v. Exception**
      * **Reservation = A provision in a Deed creating some new servitude which did not exist before as an independent interest.**
        + **Note: CANNOT RESERVE TO A 3RD PARTY.**
        + **Re-Grant Theory:**

**= The idea that an easement “reserved” by the Grantor was not a reservation at all – it was a re-grant of the easement from the Grantee to the Grantor.**

* + - * **Exception = A provision in a Deed that excludes from the grant some pre-existing servitude on the land.**
  + **Public Easements**
    - **In most states, a public prescriptive easement can be obtained by LONG AND CONTINUOUS USE by the public UNDER A CLAIM OF RIGHT. The landowner must be PUT ON NOTICE, by the kind and extent of use, that an adverse right is being claimed by the general public.**
    - **Beach Access**
      * **In most states, the state holds in PUBLIC TRUST the beach from the water to the mean high-tide line – “CUSTOMARY RIGHT”**
      * **Public access requires both a way of access from inland to the coast and a lateral easement up and down the beach to enjoy the beach.** (Matthews v. Bay Head Improvement Ass’n).
      * **Factors generally considered in determining what part of the beach is in the PUBLIC TRUST:**
        + **Location of the dry sand area in relation to the foreshore;**
        + **Extent and availability of publicly-owned upland sand area;**
        + **Nature and extent of the public demand; and**
        + **Usage of the upland sand land by the owner.**
    - **Remember, may be viewed as a govt taking 🡪 govt must pay**
  + **Termination of Easements**
    - **May occur in several different ways:**
      * **Expiration of a stated period in the granting of the easement.**
      * **Easements by necessity end when the necessity is over.**
      * **Easement ends by merger if the easement owner becomes the owner of the servient estate - the easement is extinguished and will not be revived by future severance – a new easement would have to be implied.**
      * **May terminate by abandonment - When the easement is no longer used in a manner consistent with the terms of the original grant OR holder of the easement manifests an intent to relinquish the easement, the easement is abandoned and is extinguished.** (Preseault v. United States)
      * **May terminate by condemnation if the government exercises its eminent domain power to take title to a fee interest in the servient estate for a purpose that is inconsistent with continued existence of the easement.**
      * **An easement may be terminated by prescription – if the servient owner physically prevents the easement from being used for the prescriptive period, the easement is terminated.**
  + **Licenses**
    - **= An oral or written permission given by the occupant of land allowing the licensee to do some act that otherwise would be a trespass.**
    - **Like an easement, but is revocable.**
      * Two exceptions to revocability – a license coupled with an interest cannot be revoked; a license may become irrevocable under the rules of estoppel.
    - **May create a right by estoppel, if the user has in exercise of the privilege spent money in improving it, etc.** (Holbrook v. Taylor)
  + **Covenants Running with the Land**
    - **Covenants run with the land – they are enforceable by and against a successive landowner/tenant, regardless of extent of privity.**
    - **Types of privity:**
      * **Horizontal privity (privity of estate) = privity between the original covenanting parties.**
      * **Vertical privity (privity of transfer) = privity between one of the original parties and a successor in interest.**
* **CONVEYANCE BY DEED POLL**
  + **Deed Poll = Deed executed by only the Grantor**
  + **Where the conveyance is by way of Deed Poll, all obligations in the Deed are enforceable against the grantee, because he accepted the Deed.** (Greene v. White)

Note: outline does not include all of ch. 3-6, 10