

- **What is Property?**
 - Property is the right to a thing against the world
 - The right to exclude
 - Property is a collection of rights, a bundle of sticks
 - Property is the RIGHTS not the thing
- **Types of Property**
 - Real Property
 - Land, plants, agricultural things, real estate, buildings
 - Personal Property
 - Tangible
 - Pen, toothbrush, laptop, book
 - Intangible
 - Writing, music, ideas
 - Ex. A book is tangible but the stuff inside it is intangible
- **Two Conceptions of Property**
 - Essentialist
 - Seek single true definition of property
 - Penner- “the right to property is a right to exclude others from things which is grounded by the interest we have in the use of things”
 - Skeptics
 - Property means nothing until we define the rules in a given context
 - Grey- “No such things a property, it is just a bundle of rights, it doesn’t mean anything unless we define it”
- **Trespass, Right to Exclude**
 - Direct/Immediate Intrusion, Of a Physical, Tangible Object
 - *Jacque v. Steenberg Homes, Inc.*- J refused to let SH cut across their land to deliver a mobile home, but SH did it anyhow, J received nominal damages plus punitive damages,
 - Right to exclude is the most fundamental right in the bundle of sticks and punitives are allowed for intentional trespass
 - *Hinman v. Pacific Air Transport*-intentional trespass, PA planes flying across H land, H says plane was flying too low
 - Court says you do not have the same strong rights above the land as you do below, and you must prove actual injuries for trespass
 - **Ad Coelum Doctrine**
 - Whoever owns the soil owns also to the sky and to the depths
 - Really the owner of the land owns as much of the space above him as he uses, but only so long as he uses it
 - *Pile v. Pedrick and Golden Press, Inc. v. Rylands*, in both cases a wall was built just a little bit over the property line, not intentionally trespassing, and they were not allowed to fix the problem by entering the other’s land, both plaintiffs were seeking injunctions

- *Pile Outcome*- the defendant had to remove the wall and pay all costs within one year, while the cost of removing the wall was split between both parties, right to exclude was viewed as an absolute right
 - *Golden Press Outcome*-It would be too expensive to remove the wall, so just monetary damages were awarded, wall was constructed in good faith, so why punish by making the wall come down
 - *Baker v. Howard County Hunt*, hounds got onto B's property, injured Mrs. B, they notified HC and there were still trespasses of dogs continuously entering their land, at common law dogs are allowed to roam so long as they are reputable, but since HC was warned about dogs causing damage they were not reputable
 - **Damages**
 - Property Rule Protection
 - Emphasis on the right to exclude, results in injunctions
 - Liability Rule Protection
 - May not enforce the right to exclude, but rather compensate (monetary damages) for the loss of the right to exclude
 - To decide you must see whether or not there is an adequate remedy at law (damages)
 - In HC there was not because experiments being done on the land and were ruined by dogs were priceless
 - Clean Hands are also required in order to get Property Rule Protection
 - B had clean hands because although he shut the dog, he was provoked to do so as they were attacking his chickens
 - Injunctions are rarely used for single trespasses, but more appropriate for continuous trespasses that the owner wants to put to rest
 - *State v. Shack*, People looking for migrant workers they were trying to aid entered a farm and the owner would not let them offer their services unless they did so in the owner's office, they refused, and were told to leave
 - Property rights are butting heads with human rights and so the court balanced them and said the right to receive basic service was more important than the right to exclude in this situation
- **Self Help**
 - Using reasonable force to prevent or terminate an unlawful entry or other trespass upon land or a trespass against the unlawful carrying away of tangible property
 - *Berg v. Wiley*, landlord rented a building for use as a restaurant, there were disputes about the building being in disrepair and health code violations, gave her chances to fix problems, she waited until the end of the period, then he tried to lock her out, she says no, then he secretly changed the locks
 - Self help at Common Law requires a breach of the lease with a reentry clause or a lease that ended and the tenant did not move out AND the reentry must be peaceable

- Court rejects this approach and says if you are a landlord and you want a tenant out then you must go through a Judicial Process and go to court, to ensure peaceful means
 - Repossession is a common form of self-help that is still allowed today
 - *Williams v. Ford Motor Credit Company*, wife gets car in divorce, husband stops making payments on it, the creditor came back and repossessed the car
 - Court says repossession is peaceable
- **Necessity (exception to the right to exclude)**
 - *Ploof v. Putnam*, a storm comes about and they need to tie their sloop to the dock, the defendant unties the sloop and then it is ruined
 - Court says the entry on the land was justifiable under necessity
 - *Miller v. Fandrye*, Necessity rights because he had done as much as he could in preventing his dog from going onto someone else's land
 - Court says if you are exercising some legal right that you have and you are doing everything you can to control it and there is a breach of trespass, then you can make out a necessity defense
 - You have to do something right now, if you don't trespass on someone else's land right now then there will be some greater danger
 - Necessity is a defense, it is wrongful but excused in a sense because of limited circumstances
 - In general
 - Privileging human life over property
 - Sudden and temporary cause
 - A legal right to be there
 - The harm you are seeking to prevent is greater than the harm that you will create
 - You still have to pay damages if you create damage while exercising necessity (compensatory only)
 - You cannot exercise the right to exclude when the person is there on necessity
- **Custom (exception to the right to exclude)**
 - *McConico v. Singleton*, hunting question, apparently hunter rode over a property owners unenclosed and unimproved land, with explicit warning not to do it
 - Court holds that there is a right due to Custom of hunting because
 - People need to hunt to eat
 - People need to hunt to improve their marksmanship
 - You may not even know where the boundaries are if your land is unimproved
 - They are not using the land, so they do not need the full bundle of sticks
 - Today we have posting laws, and people are permitted to hunt on rural land unless there is a "No Hunting" or "No Trespassing" sign that has been prominently posted

- Customs evolve based on the different norms in society, the changed circumstances change the custom
- **Antidiscrimination Law (exceptions to the right to exclude)**
 - *Shelley v. Kraemer*, neighbors who signed a restrictive covenant that the property in their neighborhood would only be signed to white people, African American buys a house, neighbors sue to enforce covenant
 - Court says this covenant cannot be enforced because the fundamental rights of the Constitution allows everyone the freedom of enjoyment of property
 - 14th amendment and Equal Protection Clause, Equality in the enjoyment of property rights
 - **Fair Housing Act**
 - Federal law that impacts property across the country
 - Section A, sales and rentals (cannot refuse to rent based on group)
 - Cannot deny a dwelling based on race, color, religion, sex, familial status, or national origin
 - Section B, same groups but discriminating in terms of rentals (cannot offer different terms)
 - Section C, this goes further, not just having a preference, but advertising indicating a preference is not allowed
 - Can advertise services you perform (things that are offered by the premises) but cannot say things you provide
 - Newspapers/publishers are liable for running discriminatory ads, but craigslist is not because they are not the publisher
 - Section D- about lying that housing is unavailable
 - Section E- inducement about representations about entry into the neighborhood
 - Section F-is about discrimination toward disable, handicapped people, refusal to permit reasonable modifications of the existing premises occupied, may however include an agreement to restore the premises to the condition it was before the modification
 - Exceptions (do not apply to section c(advertising))
 - Single family homes, sold or rented by an owner
 - No more than 4 unites and the owner lives in one of them (Mrs. Murphy exception)
 - Exceptions are based on the right of association, you cannot force someone to live or be associated with people that they do not want to
 - States have their own versions, which are even more restrictive and protect more classes of people
 - *Attorney General v. Desilets*, unmarried couple turned away from renting based on landlords religious beliefs, sued under Mass. Fair housing act (no federal because marital status is not protected)

- Court balances the freedom of religion with the rights of the couple to get housing, they decide it was a sincere practice of religion and was allowed
- **Abandonment of Property**
 - Determine the intent of the owner to abandon something based upon the facts and surrounding circumstances
 - *Ponoco Springs Civil Association, Inc. v. MacKenzie*, Claims that they abandoned their property and should not have to pay homeowners fee, no one wants the land
 - Court says that you are NOT allowed to abandon real property because there is certain property that is harmful to public policy to just be abandoned and it creates problems with liability on the land
- **Nuisance**
 - Harm resulting from an unreasonable interference with use or enjoyment of property (private or public)
 - Balancing test to decide Entitlement
 - Reasonableness
 - Social Utility
 - Harm
 - Location
 - Coming to the Nuisance
 - Remedy- Damages or Injunction
 - Coase Theorem
 - If there is a substantial harm then we lean toward injunction
 - We prefer permanent damages over temporary damages because we do not want people to keep coming back and having to go to court again
 - Not a trespass, you have to right to be doing what you are doing on your own land, but neighbors are in conflict with each other for disturbing one another
 - The person with superior right to use the land has the entitlement
 - Measured by a balancing test looking at the gravity of the harm created and the utility of the actor's conduct
 - *Hendricks v. Stalnaker*, H wanted to install a septic system, but S had a well dug within 100 feet of where it was to be, preventing the septic system, but H put the septic system in anyhow and sued to have the well removed so it could be used, both are claiming nuisance on each other
 - Private nuisance because only between the two private parties and their private use and enjoyment of their land, Public nuisance affects the general public as a whole
 - Nuisance will have:
 1. a balancing test looking at the reasonableness to determine who has the entitlement
 2. a remedy in the form of an injunction to stop doing the act that is a nuisance or in the form of damages a compensation for the nuisance
 - If the homeowner has the entitlement

- Property Rule: Injunction to stop farmer from farming
 - Liability Rule: damages as a form of compensation but the farmer keeps farming
- If the farmer has entitlement
 - Property Rule: Farming continues unless homeowner pays him off
 - Liability Rule: Damages, but they might not be able to farm, no one will give them the protection that they can farm (VERY RARE)
- **Coase Theorem**
 - In the absence of transaction costs entitlement does not matter to the outcome of the dispute
 - The parties will actually negotiate to achieve the best outcome for both of them , this will maximize the resource for both parties
 - This is important because the court should do one of two things, either figure out where to put the entitlement where it would fall without transaction costs or figure out a way to decrease the transaction costs and let the parties negotiate
 - Problems with the Theorem:
 - The valuation of pieces of property are not necessarily based upon economic values
 - Economic uses are not always the best social use of the land
- *Adams v. Cleveland-Cliffs Iron Company (difference between trespass and nuisance)*, living in a neighborhood next to an iron company, spewing dust cause homes to need repainting
 - Court says Trespass is the invasion of the plaintiffs interest in the exclusive possession of his land (must have a direct or immediate invasion with a physical or tangible object of another's land in which the offender knew or reasonably should have known would result in the physical invasion of the plaintiff's land
 - Nuisance is the interference with a person's use and enjoyment of their land, must show a significant harm and an unreasonable interference
- *St. Helen's Smelting Company v. Tipping*, nuisance in fact v. normal nuisance, suing for damages to trees and crops from the smelting company, the smoke from this company was mixing with smoke from other companies and they could not determine which was causing the damage
 - The court says an actionable injury is one that produces sensible discomfort, that everyman, unless enjoying rights obtained by prescription or agreement, was bound to use his own property in such a manner as not to injure the property rights of his neighbors.
 - They end up deciding that this was not the proper place for a Smelting Company
- *Luensmann v. Zimmer-Zampese & Associates, Inc.*, nuisance per se, racing strip that was build by plaintiffs home, cars were racing in the middle of the night and it was bothersome, seeking injunction to stop races
 - The court says this is not a nuisance per se because it is not a nuisance at all times (not when it is closed) and it is not under any circumstances and at all locations and there was no law preventing the racing

disposed of anyhow) and they were not unique to him in any way because everyone has this substance

- *Hecht v. Superior Court*, guy committed suicide and had sperm in a sperm bank, kids and girlfriend fighting over what to do with the sperm because girlfriend wants to impregnate herself
 - Court says the sperm is property (which is important to decide whether power of probate extends to it) because it has the potential for human life

- **Water Rights**

- Different from land and personal property because it is a fugitive resource and it moves where it wants to move and there are societal interest in people needing water to survive
- Types of Water
 - Diffuse and Surface = Rain water runoff
 - Defined Channel and Surface= Rivers and streams
 - Diffuse and Underground= Percolating water
 - Defined Channel and Underground- Rivers and Streams
- A water course is a defined channel surface water that is flowing
- Water rights are based on use, if you have no use for the water, you are not entitled to bring a claim in regards to water on your property
- *Evans v. Merriweather*, there are two steam mills located on property adjacent to each other, using water to run the mills, there is a dry season and not enough water to run both mills, E is upstream and builds a dam so no water goes to M shutting down their mill
 - The court said it was not ok to cut off other people since this was an artificial use
 - English Rule- Natural flow Theory, you cannot divert the water, you must look at where the water would naturally flow and you cannot divert it away from this natural flow
 - Reasonable Use Rule-Riparian Rule, you can use the running water as to do as little injury to those below you as is consistent with a valuable benefit to yourself, and the use must be a reasonable one
 - This favors Natural or Domestic uses which are necessary for life (drinking, watering small amounts of livestock, washing clothes, irrigation in arid climates) over artificial ones like the steam mill
 - This is only an issue if there is a shortage of water
 - Reasonableness is based on the purpose of the use, suitability of the water course, economic and social values, harm caused, possible accommodation techniques, protection of existing investments, adverse effects on other riparians, and justice
- *Coffin v. The Left Hand Ditch Company*, arid climate, irrigation is considered a natural use, water was flowing down the St. Vrain, LHD build a dam that connected it to the James Creek, the water then flowed into irrigation ditches, C who was downstream no longer got water, so he tore up the dam, and the water could not flow into the irrigation ditches
 - Court applies the First Appropriation rules (first person there wins)
 - The irrigators win over Coffin because they were there first

- Few use the English Rule, some use Reasonable Use east of the Mississippi and most West use the first appropriate rule
 - First appropriation looks only at beneficial uses as giving rise to these property rights, that will be a question of fact whether or not it is beneficial and they have a right to the water
 - More of a property right because once you have it you can use however you want and can exclude people
 - Reasonable use is more like nuisance being dependant on how you are using the water
- **Original Acquisition**
 - Ways to Establish Ownership
 - First Possession
 - Discovery
 - Creation
 - Accession
 - Adverse Possession
 - Finding
 - Gifting
- **First Possession (First in Time)**
 - We use this because it eliminates grey area, first one here, it's yours plain and simple
 - Eliminates competition over things
 - Requires commitment, if you put the effort forth to be the first one there
 - *Pierson v. Post*, a guy was hunting a fox, before he can kill it, someone else shoots, kills, and takes it, no one owns wild animals so who gets it?
 - Majority says when you kill the fox is when you get possession, but wounding the fox and staying in pursuit giving you first possession is in the dicta
 - Dissent says closing in an getting close to the fox counts as possession
 - Actual Possession
 - Depriving the thing of its liberty (by killing or trapping the thing)
 - Actions= Legal Possession
 - Mortal Wounding and Chase
 - Custom, defines which actions give rise to legal possession in very limited situations
 - Wrecks, you must be above the salvage at the point where you have started working to get the salvage up
 - *Ghen v. Rich*, whaling case, there was a whale that was shot, it washed up on shore, someone else claimed it and sold it, it was a custom for whales to sink and a few days later be washed up on shore and whoever finds it reports it to the city and the hunter can go claim it
 - Court says the hunter wins because there were markings on the lagoon and there was no other way to get the whale after it sunk except to wait, that's why the custom was in place

- *Eads v. Brazelton*, B tracked down a boat that sunk in the Mississippi, most of the cargo was left, he marked the shore where the boat was in the river, due to financial reasons he could not get the boat yet, E came in and got it up and took the boat
 - Court says the boat was up for first possession since it had been abandoned, and that if you want to take possession of a wreck you need to give notice that you are going to dig it up and possibly start the act of retrieving it, but marking the trees was not enough
- Home run baseballs, a homerun was hit, someone caught it, people jumped up, and catcher dropped the ball, someone not in the crowd jumped in and took the ball after it fell
 - The court splits it saying they both had equal rights against everyone else and their rights against each other just negated
 - Guy who tried to catch the ball had pre-possessory interest and he should have been allowed to complete the possession without interference
- **Discovery**
 - Gives you a right to possess something, but you don't yet possess it, it is like a pre-possessory interest when you find something
 - *Johnson v. M'Intosh*, J bought land from the Indians, M bought the same land from the US government
 - Court held that Indians only had a right to occupy the land, but no title in it and certainly could not transfer the land, so J's claim failed
 - You can only transfer what you own, if you have already sold your rights to land then those rights are gone
- **Creation**
 - Typically refers to property rights in information, the rights in the idea
 - Want property rights in information to give incentive to create new things and it protects people when information is new and is most valuable
 - Quasi Property Right In Hot News
 - *International News Service v. Associated Press*, INS would take AP's news from the east coast and sent it to their newspapers in the west, news of current events may be considered common property
 - The court said there was no problem with INS reading AP's newspaper, the problem is that they were profiting off the news and work that AP did, they plagiarized the exact story and didn't do their own work
 - The right of Publicity
 - *Midler v. Ford Motor Company*, FM couldn't get M to sing a song for their commercial, so they hired someone else to sing it and sound as much like M as possible
 - Court said voices are not copy-rightable, but this was held to be a tort in CA because the sellers appropriated something that is not theirs in order to sell a product
- **Intellectual Property- 3 main types**
 - Patents- rights in inventions

- Copyrights- rights for works of authorship (books and music)
- Trademarks- also has some common law foundations, identifying marks (marks to identify source)
 - These are heavily statutory laws and have limited property rights for a term of years
- **Adverse Possession**
 - No adverse possession against the government and no adverse possession against future interest
 - Adverse possession is when the owner sleeps on his right to exclude, he then loses them after a certain amount of time
 - A way a current owner can lose title by failing to bring a claim to eject someone who is merely a possessor
 - Elements of Adverse Possession (OCEAN)
 - Actual
 - Not mere use for a specific purpose, this would just be a prescriptive easement
 - Exclusive
 - Open and Notorious
 - Continuous
 - 5-21 years for land or 3-5 years for chattel
 - Adverse/ Hostile under a claim of right (color of title) (No permission)
 - Color of title means you have the title or paper indicating that you are the owner of the land
 - You can have claim of right through
 - Good faith belief that the land belongs to you
 - Sometimes required
 - Bad faith belief
 - Never Required
 - Mental state maybe irrelevant, they do not care whether you believe in good or bad faith that that the land belongs to you
 - This is the majority of jurisdictions
 - *Lessee of Ewing v. Burnet*, Chain of possession, S sells it to F who gives it to W who dies leaving it to E, but B comes into the picture because S sold the land to B, F was the true owner at the time because he was the first one to buy it, making E the true owner of the land now, which means B would be an adverse possessor
 - Court says that yes he fulfilled all the factors, actual use in digging sand and gravel, exclusive because giving permission to some but not others to use, open because a lot of people knew of it, adverse because although not in good faith still satisfied, and yes continuous for more than 20 years
 - Difference between ouster and trespasser is that an ouster has the intent to take the land and to be the owner, they keep people off the land and such, trespassers are usually just wandering through

- *Carpenter v. Ruperto*, people are using the back field, but they know it is not theirs, the true owners never say anything to them, the issue here is that they are claiming the land in bad faith
 - The court says good faith is required, but this is a minority rule
- *Howard v. Kunto*, everyone lived in a neighborhood, did surveys of the lots, everyone bought the lot one over from where they build their homes, everything was shifted, here there were issues with the continuous element being only seasonal use
 - Court says seasonal use is enough if it is uninterrupted as to the normal use, if the normal use is only for 5 months then seasonal use fulfills this element
 - Tacking is only allowed (adding previous owners time into yours to make the statutory limit) if there is privity or a connection between the two owners
 - This is to prevent a series of squatters trying to make a claim
- Quick Claim Deed- if in fact there is a title, then I just passed it. It passes all the rights you have to the extent that you have rights
 - I can sell a quick claim deed to the Brooklyn Bridge, but I would only be selling the zero rights I have to the bridge
- Warranty Deed- warrants that you actually own the property and have full property rights for what you are selling
- **Finders (sequential possession issues)**
 - Finders have enough rights to win over anyone else, but not against the rightful owner
 - The true owner has the most rights, but the finder can ward off everyone else and no one can then take it from the finder
 - *Armory v. Delamirie*, chimney sweeper finds a jewel, brings it to a jeweler, apprentice takes it apart, offers to pay for it, sweeper says he wants it back, apprentice only gives setting back
 - Court says they must replace the jewel or they owe him for the best quality jewel possible, you presume the strongest against the person who unrightfully took it
 - Also No jus tertii- there is no defense that you should not give it to the finder because it belongs to a third party, because the third party is not part of the case
 - *Clark v. Maloney*, someone found logs, tied them up, left them then someone else found the logs and claimed them, and the first finder sued to get the value of the logs
 - Court uses the same rule, the first finder is the true owner vis a vis everyone else in the world besides the real true owner who we do not know in this case
 - If we do not give it to the first finder it would create a bad incentive for people to take other's property and claim they found it
 - To be a first finder you must exercise some type of control over the item, aka you must have First Possession against everyone in the world except for the true owner
 - *Anderson v. Goudberg*, he cuts logs on someone's land, not his own, took them to a mill, someone else took the logs, then he sued to get their value back
 - Court says A wins because they were both converters and the first converter should win

- **Gifts**
 - A gift is a transfer of property without consideration
 - Intervivos, within your life, this is the type of gift you give each other while you are alive
 - Non-revocable
 - Causa Mortis, a gift you give in expectation of death, once you die you cannot rescind, but if you do not die you can take the gift back
 - Three elements for a gift
 - Intent to make a gift
 - Delivery of a gift
 - Actual delivery
 - Letter under seal- formal legal way of transferring something, I hereby give you ... Go through a legal process to deliver the gift
 - Symbolic delivery- delivery of a symbol of the gifting item because physical transfer is impractical, giving a piece of a horse's mane to show they now possess the horse
 - Constructive delivery- delivery of some means of controlling the object that you are giving, giving keys to a car or a title to a car
 - Acceptance of the gift
 - *Irons v. Smallpiece*, father has some horses, gives them to son, but keeps possession of them because he has a barn, when father dies the executor of the estate says the horses are not his because there was no delivery
 - The court says there was no change of possession and no transfer in the way the horses were being possessed, so they become part of the estate
 - We require delivery because it evidences the donor's intent, it makes sure the person getting the gift actually wants to accept it, and it avoids multiple claims on the same piece of property
 - No delivery for sales of goods because there is consideration
 - *Foster v. Reiss*, woman on death bed, rights a note to husband giving him money and stuff, leaves it in hospital table, he receives while she is in surgery, and goes back and takes possession of the money, but if we were to rely on her will he would only get \$1
 - The majority says that there was no gift because there was no delivery, she was in the hospital and not able to give him anything and there needs to be "actual, unequivocal, and complete delivery during the lifetime of the donor, wholly divesting him of the possession, dominion, and control of the property"
- **Accession**
 - Ownership of some unclaimed or contested resource is assigned to the owner of some other resource that has a particularly prominent relationship to the unclaimed or contested resource
 - Increase
 - In the absence of an agreement to the contrary, is that the offspring or increase of tame or domestic animals belongs to the owner of the dam or mother
 - Why the mother, not the father?

- You always know who the mother is, but you don't necessarily know who the father is
 - The offspring is dependent upon the mother
 - You're putting more resources in to the development of the offspring by taking care of the mother
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- Accession (doctrine)
 - When someone mistakenly takes something from someone else and transforms it into something fundamentally different
 - Equitable decision, the person who is suing and wins is always going to get at least the value of the material that the defendant took
 - *Wetherbee v. Green*, Transformation of trees into hoops, G is suing for replevin, he wants the wood back, because the worth of the hoops is a lot more than the wood of the tree originally, Willful conversion is knowing that you're taking something from someone else but you're going to take it anyway, what you have to do in order to keep it under accession, if you're a willful converter, you will most likely not get accession at all, intent matters, it's the "I'm going to take it and then pay them off later" mentality, Good faith misappropriation is taking something that's not your right to take it, but you really thought you did have the right to take it, courts are primarily concerned with the degree of transformation, What to do to get it to be highly transformed is change its type or change its value
 - The labor that goes into the transformation may be where all of the value is, if that's the case then it is accession
- Ad Coelum
 - When you own the soil, you own to the sky and down below the property
- Accretion
 - Gradual change in the banks of the river over time
 - *Nebraska v. Iowa*, Omaha river changes which causes a change in the boundary line between the two states, taking off chunks of Iowa, contrasts this with avulsion, Avulsion is where everything changes very quickly, In this case, it's partly accretion and partly avulsion, More accretion because even though large chunks were coming off, it was still the same sort of thing that accretion does., There were large chunks coming off, but there is also a slower period where it is being deposited down stream
 - Why this is a part of accession
 - It's coming from a resource, the river and going to another place
 - Minor changes over time, not like avulsion where it's major changes in a short period of time
- Fixtures
 - Someone's property that has become so strongly attached to the real estate that it becomes part of the property
 - Important when it comes to selling a house, renting an apartment

- Although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as part of the land
 - *Strain v. Green*, took various items out of the house when G moved out of the house, Mirrors some were found to be fixtures and others not so much, two of the three mirrors were screwed into the plywood while the other was hung on a wire, the two were fixtures because there was permanent attachment to the wall, there needs to be some objective way to decide what a fixture is, it can't be on a case by case basis, however, there is no real rule but it instead depends on how you argue it to the court
 - Two tests
 - Items are in a class that would be included in the house, they are indeed fixtures
 - Example: Light fixtures
 - They change over time, no real bright line, basically a custom argument
 - "Bolted to the wall" test
 - How securely is it attached to the real estate
 - If you remove it, you take away a lot of connections
 - Ex: Furnace
 - In order to prevent all of this, change it before you put the house up for sale or in the contract, reserve certain objects for yourself so that the buyer knows what his/she is getting
 - Ex: fridge, chandelier
 - What we consider when we determine if something is a fixture (not dispositive)
 - Permanent attachment
 - Valuation to the overall house
 - Something built specifically for the house vs. something you can swap out easily
 - Ratione Soli
- **Establishing Ownership, what trumps what?**
 - *Fisher v. Steward*, swarm of bees, wanders onto land, find the honey, wants it, tells the property owner that they want it, the property owner says no, and the trespasser goes back and cuts down the tree and takes the honey
 - Court says F has claim of Discovery since he found the bees but S has claim of accession, ratione soli, where wild animals are on the land owned by someone and are caught they become the property of the owner, and through increase since he owns the bees the bees make the honey and he then owns the honey too
 - Court held since this was a trespass, it nullifies his right to be on the property and find the bees, he has no right to something he shouldn't have been doing in the first place
 - Bad actors and trespassers are unlikely to trump landowners in rights to their land and things on their land

- *Goddard v. Winchell*, G owns the land, E is the tenant and has the grass rights, E gives permission to H to come on and dig up a meteorite that fell, H sells the meteorite to W
 - G's claim was accession because it fell and became part of his property, W has discovery/ finding claim because he is the one via H that carried it off the land
 - Court held that G wins
- *Hannah v. Peel*, a soldier was staying in a manor, cleaning out a cobweb, found a broach, went home, gave it to police, they didn't find the owner, then police gave it to P, the owner of the house, who sold it to company in London
 - H was a finder, P had accession because it was found in his house and on his land
 - Court says that H wins because finder trumped landowner, P would never have found the broach had H not been there
- The place where something is found is not an exception to the fact that the first finder generally gets the piece of property
- Finder wins except when found by an employee or agent of the landowner
- Finder wins except when property is attached to or buried in the land
- Finder wins except when finder is a trespasser
- Distinction between lost and mislaid, lost is when the owner is unaware of losing possession of the property (falls out of the owners pocket) mislaid is when the owner intentionally places it somewhere and then forgets it (placing a wallet on a store counter and then leaving without it)
 - If jurisdiction cares about this distinction, lost property goes to the finder and mislaid property goes to the owner of the land where it is found
- **Estates and Future Interests (LAND)**
 - Blackacre- the stereotypical piece of land that is always at issue
 - Basic Types of Estates
 - Possessory
 - Fee Simple Absolute
 - Life Estate
 - Fee Tail
 - Leasehold or Term of Years
 - Non-Possessory
 - Easement
 - Real Covenant
 - Equitable Servitudes
 - Possessory Estates
 - Present Possessory interest, estate itself, who has it right now
 - Future interest, who will or may get it in the future, each type of present possessory estate has a specific set of future interests which follow
- **Fee Simple Absolute**
 - Grant of all possible rights
 - Duration- Potentially infinite (until land is destroyed)
 - Broadest type of land and rights, all property rights that go with a piece of blackacre

- Base estate that all others are carved out of, someone always has this!
 - O to A and his heirs
 - If A is alive then you do not know who his heirs are, you find out when they die
 - The “and his heirs” is what deems them the opportunity to give it to whoever they want when they die
 - O to A (prior to 1500’s gives you a life estate)
 - O to A in Fee Simple
 - No future interest because there are no heirs until you die, if you own it, when you die you can give it to anyone you want to
- **Life Estate**
 - Grant of full rights during life of grantee
 - Duration, life of the grantee
 - When the person having a fee simple absolute, carves out full rights of the estate but only for the life of the grantee
 - Grantee can do anything they want with the property during the grantees life, after the death it will be given back to the fee simple absolute holder
 - O to A for life
 - You only get it for your lifetime
 - At the death of A there are two choices
 - Back to Owner (O)
 - Reversion
 - To a third party (B)
- **Fee Tail**
 - Grant of succession of Life Estates
 - Passed from initial grantee to his or her offspring
 - Duration- until original grantee has no more lineal descendants
 - Abolished in most of the country
 - If someone gives you a fee tail, then you have a life estate which transfers to the offspring, it keeps going until there are no more offspring to pass it on to
 - O to A and the heirs of his body
 - His body, aka his offspring
 - At death of A’s grandson without child, two choices
 - Back to Owner
 - Reversion
 - To a Third Party
 - Remainder
- **Leasehold or Term of Years**
 - Grant of rights during the term
 - Duration- specified number of years
 - If you rent, this is what you have, duration is whatever the lease term is for
 - O to A for 5 years
 - At the end of 5 years, two choices

- Back to Owner
 - Reversion
 - To a Third Party
 - Remainder
- **Defeasible Estates**
 - Once you have basic estates then you can play with them and create this
 - **Fee Simple Determinable**
 - O to A so long as the land is used for farming, while the land is used for farming, until the land is no longer used for farming
 - You get the land until the condition is no longer met
 - Estate terminates when the land ceases to be used for farming, and then owner may enter to re-claim the land at any point after that (so long as within the statute of limitations)
 - O has a possibility of reverter
 - **Fee Simple Subject to a Condition Subsequent**
 - O to A but if the land is no longer used for farming, on the condition that the land is used for farming, provided that the land is used for farming
 - Once A takes possession, if some condition happens, then A will no longer have good title
 - Estate terminates when the Owner comes in and says that the terms of the grant have been breached
 - -O has right of re-entry
 - **Fee Simple Subject to an Executory Limitation**
 - Based on either a FSD or FSSCS but with the future interest in a third party
 - O to A so long as the land is used for farming, then to B
 - O to A but if the land is no longer used for farming, then to B
 - Terminates in the same manner as the base estate
 - B has an executory interest
 - Future interest can always be sold
- **Remainders**
 - Remainders- future interests in third parties following a life estate
 - Has the interest Vested? Deals with the amount of uncertainty about who will take the property
 - **Indefeasibly Vested**
 - Identity of the future takers is known
 - O to A then B, you know who the future is
 - It will eventually go to B
 - No contingency other than natural termination of prior estate is required
 - **Contingent**
 - Uncertainty about who the person is that will be taking the land in the future
 - If the taker is unborn
 - O to A for life, then to A's children, but A has no children

- Identity of the taker is unknown
 - O to A for 10 years, then to whomever is the then Dean of Michigan State College of Law
 - Don't know who will be the dean in 10 years
 - Some express contingency must be fulfilled before the taker can take possession
 - O to A for life, then to B and his heirs if B is married
 - Only if B is married, it is expressly stated
 - **Vested Subject to Complete Defeasance**
 - Identity of the taker is known
 - Some occurrence in the future could cause the taker to lose the right to take
 - O to A for life, then to B but if B fails to graduate from law school by the age of 30, then to C
 - We know B will get it after A, but only if they meet the contingency
 - **Vested Subject to Partial Defeasance (Subject to Open)**
 - Identities of some of the takers are known
 - No contingency other than natural termination of prior estate
 - Other people may become additional takers
 - O to A for life then to B's children and their heirs- B is living and has children C and D who each have a 50% interest in the remainder of Blackacre
 - B could have another child, E in which case C and D would each only have a 33.33% interest in the remainder of Blackacre
 - The class of B's children is "open" because more people could join
 - Contingent remainder, if you don't know who it will be
 - Vested Remainder, if you know who will be taking the land
 - *Williams v. Estate of Williams*, he wants to leave his farm to his three daughters so long as they are not married, they do not contest the will, or if they die, question of whether this was a life estate or whether it was a fee simple absolute, debating what was Williams intention in writing his will
 - Court is objectively looking at the writing and trying to figure out what the subjective intention of the writer was, Supreme Court decided it was a Life Estate Defeasible and since it was a life estate when Ethel dies, it must have reversion back to the estate of Williams because that is where the fee simple absolute is
 - Judge looks to the intent of the testator/drafter of the grant, and the end result we must have the conservation of the estate (whatever it starts in, it must also end in)
- **Rule against Perpetuities**
 - A future interest is void unless it must vest, if at all, within twenty one years after the death of some life that was around at the creation of the interest
 - Look at the time the interest is created
 - Determine whether it must vest

- When the future interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive (Michigan rule)
- RAP only applies to:
 - Contingent remainders
 - Vested remainders subject to open
 - Within this there are contingent remainders that may come in and join the group at some point, so the subject to open people could lose part of their interest if other join the group
 - Executory interests
 - All other interest are already full vested
- O to A and her heirs so long as not liquor is served, then to B and his heirs.
 - This grant does not end until liquor is sold
 - But let's say A dies, then B dies, but liquor is not sold for another 600 years
 - Then it will fail the Rule against perpetuities
- O to A so long as A does not serve liquor, then to B and his heirs
 - The grant does not end until A serves liquor, if A never serves liquor it goes to his heirs in FSA because only A cannot serve liquor
 - The contingency must vest during A's life, so there is no RAP
- MORE EXAMPLES SEE NOTES 3/16
- *City of Klamath Falls v. Bell*, Company gives land to the city so long as it was used as a library, then to someone else, it is no longer being used as a library, so it should go to heirs... this would be void under rule against perpetuities, so since it is void, the future interest is gone, but since the condition was met the issue is who gets the land now
 - Court can choice to give it to the city in FSA, give it to the corporation with possibility of reverter (corporation is dissolved so give it to shareholders, they died, so give it to the heirs of shareholders), let the state take the land
 - They decide it should go to the heirs of the shareholders through possibility of reverter because they can't let the city keep it because they failed to keep it as a library
- How courts treat voided grants
 - O to A and her heirs so long as no liquor is served, then to B and his heirs
 - O to A and her heirs so long as no liquor is served
 - O to A, but if A or A's children serve alcohol to B and his heirs
 - O to A
 - O to A for life, then A's first children to reach age 25 and his or her heirs
 - O to A for life
 - Find the comma and take everything out after the comma
- **State Rule against Perpetuities Laws Today**
 - RAP applied at time of grant (common law)
 - Certain to vest within 21 years of death of person alive at time of grant
 - Wait and See approach
 - Does it actually vest within the 21 year period

- 90 years
 - The interest actually either vests or terminates within 90 years of its creation
- **Other Estates Doctrines**
 - Merger, grant to A for life and separate grant of O's reversion interest becomes a FSA for A
 - O to A for Life
 - O's reversion in FAS to A
 - This becomes O to A and his heirs, not allowed to have this artificial break up
 - Shelley's Case, grant to A for life, then to A's heirs becomes Fas for A
 - O to A for life
 - Then to A's heirs or A's estate
 - This becomes O to A and his heirs, you cannot break it up and block A of his rights
 - Cannot give A a life estate and then give everything to his heirs, you must give everything to A
 - *Brokaw v. Fairchild*, a will was left for the children to live in these mansions, one of them could not rent out their mansion so she wanted to tear it down and build an apartment building, the other did not want this to happen because they had a future interest in the building when she dies
 - Court says that she does not have the right to remove the present structure or affecting the real estate in question because there is a future interest beyond her life
- **Waste**
 - Affirmative waste- take some action and cause the waste to happen
 - Ameliorative waste, type of affirmative waste, where the tenant changes the property increasing its monetary value (a minority will allow this type of waste)
 - Permissive Waste- no action taken
 - Most jurisdictions do not allow any type of waste
 - You can bring a waste claim anytime there is another interest in a piece of property, reversion to an owner or remainder in someone else
 - Not impairing the estate if someone else has an interest in it
 - The longer your estate lasts then the more authority you have to do this
- **Leaseholds**
 - Four Types of Leases:
 - **Term of Years**
 - Fix time
 - Stereotypical apartment lease
 - **Periodic Tenancy**
 - Can elect to renew on a periodic basis, year to year, month to month, and there must be notice given before termination by either party

- Notice must be given within the rollover period, unless it's a year lease then you can give only 6 months notice
 - Typically if it is a residential lease it is only one month and is fixed now by statute
- **Tenancy At Will**
 - Lasts only so long as both parties wish to continue, they can terminate at any time for any reason
 - Must give notice
 - Notice must be given as far out as the rent period is, if you pay rent every month, you must give a months' notice before terminating
- **Tenancy at Sufferance**
 - Lease has ended and instead of getting out like you are supposed to, you stay and hold over longer
 - Eviction does not require notice because they are a trespasser
 - If landlord accepts an extra month's rent then it turns into a periodic tenancy
- If you cannot prove you have a certain type of lease, through a written lease, then it defaults to a periodic tenancy
- *Paradine v. Jane*, the land being leased could not be used because an army had taken over the land, so the tenant tried not to pay rent
 - The court ruled that he had to continue to pay because the landlord did not breach his agreement because he never offered to protect the tenant from invading armies
- **Independent Covenants Model of Leasing**, the landlord is giving you an implied warranty of quiet enjoyment (they will not interfere with the tenants use) and in return the tenant will pay rent
 - Even if the other does not fulfill their promise, you must continue doing yours, but you might be able to bring the other to court on the contract
- *Blackett v. Olanoff*, leases out a night club with music and the apartment above it, the music from the lounge interfered with the quite enjoyment of the apartments above
 - The court said that this was constructive eviction, the tenants were not forced out, but it is the legal fiction of an eviction since the actions the landlord took of leasing out the nightclub had the natural and probable consequence of having tenants disturbed by his breach of the implied warranty of quiet enjoyment
- **Constructive Eviction (exception to independent model)**, two things you need are the landlord must complete and affirmative act that intentionally deprives the tenant of the enjoyment of their leasehold OR the tenant can do something or lack of something that will have the natural and probable consequence of disturbing the condition of the tenant (intent does not matter for this one, it is just incompatible with tenants use)
 - The problem does not have to be so bad as to force the tenant to move out of the building

- **Dependent Model**, if the landlord complete an act with the intent to deprive the tenant of quiet enjoyment of if the breach of quiet enjoyment naturally flows from the landlord action then the tenant no longer has to pay rent
- **Implied Warranty of Habitability**, this cannot be waived by a tenant, measured by standards set out in housing regulations
- *Javins v. First National Realty Corp*, there were housing code violations that were being sued upon, the question was does the tenant have to pay rent if housing violations arise after they sign the lease
 - Court says there is an implied warranty of habitability
 - Court distinguishes between rural and urban leases, rural land usually valued based off the land while urban leases are signed based off a need to use the building (this makes different standards for upkeep)
 - If problem arises from normal wear and tear then landlord is responsible, if tenant willingly causes the problem then they are responsible for the costs
- **Duty to Mitigate Damages (by the landlord)**, if a tenant moves out they need to try and get a new tenant to come in, they must try and re-rent the apartment if it is abandoned
- **Assignment v. Sublease**
 - Sublease, start off with the landlord having Fee Simple, then they give a leasehold to the tenant (term of years for 10 years) then during that term of years they say they are going to give some portion of what they have in their leasehold to another party
 - Assignment, start off with the landlord having Fee Simple, then they give a leasehold to a tenant (term of years for 10 years), then during that term of years the tenant wants to get rid of it, giving up all the time they have that remains in the leasehold, not just part of it
 - Difference is what is transferred, part of the remaining time or the entirety of the remaining time
 - Liability is why this matters... for the landlord to sue someone they must have privity of contract or privity of estate
 - Privity of contract is when the obligation of the party is arising out of a signed contract
 - Assumption-
 - Novation- when the landlord, the tenant and the new tenant all get together and sign an agreement where the landlord and the new tenant say they are the only two in the agreement and the old tenant no longer has liability
 - Privity of estate only applies to assignment and one part must have possession
 - If a landlord give a leasehold, once the tenant gives the lease to a new tenant, then the original tenant is no longer in possession and so the landlord and the new tenant are in privity of estate (if an assignment)
- Landlord tenant problems see notes on day 3/30

- **Co-Ownership**
 - **Tenancy in Common**
 - Default “as tenants in common”
 - Each tenant has separate, undivided interest
 - Each party can sell, devise, etc. their own interest
 - Each party has the right to use the property as a whole
 - Divide profits, losses, and obligation based on percentage of ownership
 - No right of survivorship
 - Passes to heirs at death
 - Can be severed by one party without consent of others
 - **Joint Tenancy**
 - Same as common except for survivorship “as joint tenants in common with right of survivorship and not as tenants in common”
 - Surviving joint tenant automatically acquires the interest of another joint tenant upon death and the interest of the other is simply extinguished
 - Requires 4 unities at time of creation
 - Time, interest of each must vest at the same time
 - Title, both must acquire title by the same deed or will or adverse possession
 - Interest, each tenant must have equal interests
 - Possession, each tenant must have the right to possess the property as a whole
 - If one party severs and sells their share then it becomes a tenancy in common
 - **Tenancy by the entirety**
 - Does not exist in most jurisdictions “as tenants by the entirety”
 - Only for married couples where it does
 - There is the right of survivorship,
 - Requires 4 unities plus marriage
 - Severance by one tenant not possible, both must agree or there must be a divorce
 - **Common Property**
 - State-wide system of ownership for married couples
 - Property acquired during the marriage (with some exception for gifts and inheritances) are deemed to be owned
 - Both spouses have rights to possess
 - Sales or encumbrances must have consent of both parties
 - Upon divorce it becomes part of the marital estate to be split
- **Legal Avenues Co-Owners have to deal with each other when they have conflict**
 - **Partition**
 - Joint Tenant and Tenant in Common may ask for this
 - Partition in kind, parties keep some portion of the land relative to the amount you own (keep land)
 - Partition by sale, the court sells the land and each of the parties get a share of the proceeds equal to their percentage of ownership (money) MORE COMMON

- **Contribution**
 - Joint tenants have to pay for part of the upkeep and repair that the land needs
 - Share all obligations and losses of the properties including taxes and repairs
 - You need to seek consent and permission from the co-tenant in order to seek contribution for repairs and additions
- **Accounting**
 - Share the profits of the property between co-tenants in common
 - Cannot claim compensation for the property if you have not been “ousted”
 - You must actively exclude the other person from the land
- **Severance**
- *Delfino v. Vealencis*, co-owners, one group wants to build houses and one group has a garbage business, court thinks the garbage business will bring down the value of the houses because it might well come a nuisance, held that partition in kind is better because the land is already physical divided and the garbage person would lose their business and house if the land were sold
- *Gilmor v. Gilmor*, brother and sister own property, sister claims brother intruded on her property by grazing his livestock where she wanted to graze hers, the sister wants compensation for not being able to use her land, she wants accounting, the value of half the profits of the farm because she was not able to develop her half by raising her own livestock
 - Court said she should get this cause the land was at capacity for animals and they would have overgrazed it, b=plus he had notice of this because she sent him a letter
- *Harms v. Sprague*, does a mortgage sever the joint tenancy, ??????????????????????
- **Easements**
 - Right for someone to use your land (utility companies want these so they can come onto your land)
 - License (basic rights to exclude)
 - Servitudes (contracts that take a step up, they run with the land... binding not only the original owners of the servitude but also on all subsequent owners of the land)
 - **Types of Easements**
 - Appurtenant- one that belongs to another parcel of land, giving someone the right to cross over your land to get to theirs (easement stays with the land no matter who the owner is)
 - Dominant- land that benefits from the easement
 - Servient- land that the easement is carved out of
 - In gross- one that belongs to a person, benefiting a person (always attached to the person it was originally given to, not transferable, when the person dies so does the easement)
 - Not attached to the land
 - Farm that lets people hunt on it is an example
 - It doesn't matter what happens to the person who gave the easement, just the person who has it

- Profit a Pendre- the right to enter on the land of another in order to extract something of value, such as timber or fruit from a tree
 - This is irrevocable as long as the profit continues to last, this is transferable though
- Other distinctions
 - Affirmative, the majority of easements give someone the right to use the land in a particular way
 - Negative, vast minority, taking away use of land from someone
 - Public, bike paths, roads, railroads, conservation easements
 - Private, easements that benefit specific private parties
- **How to create an Easement**
 - Grant- you can write up the easement in a normal grant/ written deed
 - Reservation- in the deed that you grant the new land you can reserve some part of the land for yourself (the grantor), reserving the easement for the grantor
 - Implication, requires Common ownership and separation of title, use before the separation took place (use should have continued so long and was so manifest or obvious as to show it was meant to be a permanent use), and use must appear necessary
 - Necessity, requires common ownership, severance of a landlocked parcel (by grantor who conveys the landlocked parcel to another and retains the land with access to the roadway for themselves), owner of newly landlocked parcel cannot access a public roadway
 - Prescription, requires open and notorious, continuous, adverse/hostile, certain line of travel
 - Estoppel, License to use the land, licensee makes substantial investments relying on license to use the land, licensor stands by and says nothing about the improvement
- *Schwab v. Timmons*, want an easement to get to their land, they were not granted the easement they are trying to argue it by implication or necessity
 - Court says implication fails because of the second factor since the private road was not in use before the separation took place, and necessity fails because the only common owner was the U.S. and they did not sever the landlocked parcel
- *Warsaw v. Chicago Metallic Ceilings, Inc.*, two people own land adjacent to each other, one uses the others land to back up their trucks and allow them to reach the loading docks on their own land, CM builds a building to prevent this from happening, CM continued building, and lost the case and had to remove their building to allow W to continue using their land to back up trucks
 - Court said this was easement by prescription because it was open and notorious since CM knew about the trucks on their land, it was continuous from the time the business opened, it was adverse because W refused to give permission, and it was a certain line of travel, since it was always the same process but does not need to be the exact same path

- *Holbrook v. Taylor*, T arguing they had an easement by estoppel to use the haul road to get to their home, not prescriptive because had not been there for the statutory period, no necessity or implication because no common owner
 - Court said they had a license to use the land, they widened the road and made significant improvements to the land in reliance on the road, so they were allowed to keep the land based on easement by estoppel (this was a pertinent easement, not in gross, it stays with the land)
- *Fountainbleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.*, negative easement, a duo builds a hotel, falling out, one of them builds another hotel right next to the original, and the original built a huge wall that casts a shadow on the pool of the new hotel in the winter, new hotel claiming it had a right to sunlight and FB interfered with that (you have the responsibility to not block the sunlight from passing through your property and onto mine)
 - Court did not make the wall come down because they did not have to give others an easement for a right to sunlight
 - Typically only way to establish a negative easement is by statute
 - Free flow of sunlight is very important, solar panels on houses, neighbors trees are blocking the sunlight from reaching them, high social value in solar panels so the right to sunlight is winning now
 - Some states say you are the first appropriator with the sun using solar panels, so the sun belongs to you
- **Termination of Easements**
 - Expiration, you can grant an easement for a term of years
 - Deed, make an agreement and deed the easement back to the owner
 - Merger, dominant and servient tracts common under common ownership again
 - Adverse Possession, you can adversely possess the easement by blocking access to the land or pond
 - Abandonment- pro-longed non-use
 - Changed Circumstances- only if easement is state in terms of a particular purpose and that purpose has become obsolete
- **Covenants**
 - Homeowner's associations are one of the most common types of covenants that are still around today
 - Burden, the person who is actually having to carry out whatever the restriction from the covenant is
 - Benefit, what good comes out of the covenant
 - Do the benefits and burdens "run with the land"?
 - Ways to enforce a Covenant:
 - Equitable Servitude (Injunction)
 - In order to have the burden to run with the land
 - Intent
 - Notice
 - Touch and Concern

- In order to have the promise to run with the land
 - Intent
 - Touch and concern
 - Real Covenant (Damages)
 - In order to have the burden to run with the land
 - Intent
 - Horizontal Privity
 - Vertical Privity
 - Touch and Concern
 - In order to have the promise to run with the land
 - Intent
 - Vertical Privity
 - Touch and Concern
 - One type of covenant but two different ways to enforce the covenant
- *Tulk v. Moxhay*, does the covenant run with the land even though it was not written into the contract?
 - Court says yes because even though not written into the contract they still had notice of the terms
 - **Notice** can be evidenced through custom/common plan, writing in a sales agreement, looking at previous grants of the land, having previous owners or neighbors tell you what typically happens, but whatever it is it must be present before the sales agreement is reached
 - Notice only needed if you are enforcing a burden not a benefit
- **Privity**, these need to be present at the time the covenant is made
 - Horizontal, that when the agreement is made the two parties have a common interest
 - Single owner, multiple pieces of land... you might have a land developer splitting up parcels to sell off, he owns all the land at the same time, all of those pieces are in horizontal privity
 - Landlord and tenant, the interest in the beginning is the same in the same property
 - Initial buyer and initial seller have horizontal privity because it is a full transfer of their entire interest in the property
 - Neighbors trying to start a HOA do not have this because they do not have a common interest in each other's land just in their own land
 - Vertical, like assignments, except this also happens in sales of lands, it goes down the chain of sellers because you are transferring all of your rights, as the land goes forward the new person in the line of sales
- **Touch and Concern**

- Very hard to define, look at the impact the covenant has on the land, if it impacts the land it is likely to touch and concern it, almost like touch OR concern, it must do one or the other
 - *Neoposit Property Owner's Association, Inc. v. Emigrant Industrial Savings Bank*, there was a covenant that required the purchaser to pay money to help the neighborhoods roads and sewers, and the purchaser did not want to pay and said it was not made clear, then he stopped paying and was sued by the HOA to enforce it
 - Court said there was intent since it was in the deed, there was horizontal privity because there was common ownership and the covenant was formed at the time the reality company split everything up, there was vertical privity since the HOA was an assignee of the reality company, and it touched and concerned the land because it affected everyone's land (the covenant could not be broken without affecting everyone else in the neighborhood, if he didn't upkeep his sewers it would affect everyone else as well)
 - *Eagle Enterprises, Inc. v. Gross*, covenant was to pay to receive water, seasonally 6 months out of the year, and G built his own well so he did not need the well water and so he stopped paying
 - The court said there was no touch and concern because since he was creating his own source of water then he did not have to pay for an outside source as well, the land could exist without the covenant
 - *Sandborn v. McLean*, a while back someone deeded property for residential purposes, then in present someone down the line bought the land, complete a dwelling on it and now wanted to build a gas station on it too, the suit was to enjoin the gas station because it was supposed to be residential
 - The court said that even though the covenant was not in the deed given to the current purchasers, they should have looked to the common purpose of the land and they should have been on notice
- **Termination of Covenants**
 - Changed circumstances, no one is benefitting from the covenant anymore
 - Abandonment, prior violations have not been enforced and now it would be inequitable
 - Laches, unreasonable delay for enforcement
 - Estoppel
 - Public Policy, something that today is like the Shelly case, the covenant not to sell to blacks land in the neighborhood is against public policy
- **Zoning**
 - Regulation of land use through a general regime permitting or forbidding particular uses of land in certain locations
 - Examples of Zoning Restrictions, use limitations, height limitations, area limitations, placement of buildings, exterior design, types of buildings, use of billboards, setting back of buildings from the property line
 - Ultimate authority comes from state government

- *Euclid v. Village of Ambler*, the zoning plan at issue was cumulative because each type of zoning builds upon the previous one making it more and more restrictive, this is the central case in zoning law for the reason that it determine that the principle of zoning was a valid exercise of the police power and therefore some limitation on use might not rise to the level of a taking
- Non-conforming use of property in existence when a zoning scheme is enacted are typically allowed to continue indefinitely and recognizes that owners with uses prior to zoning requirements have vested interest in that use of the land (grandfathering)
- This is a police power of the state, therefore the state has ultimate authority but then it is delegated down to city and county governments
 - They do not have to compensate you for loss in your land value from zoning regulations, but if they go too far it becomes a regulatory taking
- **Takings**
 - These give rise to liability rule protection, getting money damages
 - “Nor shall private property be taken for public use without just compensation”
 - Constitution Amendment V (5)
 - Does not authorize takings, but puts limitations on it:
 - Public Use
 - With Just Compensation
 - Government gets the authority through *Johnson v. Macintyre*, and the idea of sovereignty, they can delegate this power to others including private entities, but private parties cannot exercise eminent domain without delegation from the government
 - **Two Types**
 - **Eminent Domain**, action of the state to seize a private citizen’s property for public use, government is coming in and seizing your full property rights, taking your full interest in the piece of land
 - Requirements to exercise eminent domain
 - Statutory
 - Delegated authority for the project
 - Necessary to complete
 - Constitutional
 - Public Use
 - Just Compensation
 - Administrative (Due Process)
 - Notice
 - Opportunity for hearing
 - **Public Use Requirement**
 - Private property for public ownership
 - Road, military base
 - Private property for private party who makes property available for public use

- Common carriers, railroads, public utilities
- Private property for private party to serve a public purpose even if subsequent use is all private (most controversial, 42 states have narrowed this option)
- *Kelo v. City of New London*, this debates if serving a public purpose is really a public use, they wanted to create a shopping mall, K is the holdout, didn't want his land taken for the shopping center
 - Court says it is a public use because the major public benefit of the project, but purely economic redevelopment is never enough
- **Just Compensation**
 - Fair Market Value, but with exceptions
 - If by taking part of the land away from you and building on it they make your land more valuable they do not have to compensate you at all, because you have not lost anything
 - Adjacent tracts, just because your value drops because of an adjacent taking, does not mean you get damages
 - Fair Market Value at the time you buy it unless you lock it in when you put the plan in place (plan to take this lot but taking was not initially implemented)
- *United States v. Miller*, condemned land for railroad tracks, the land was worth less before the government flooded the area and put in the dam, the government only had to pay the base price of the land not the increased value because the taking of their land was in the original plan
- **Regulatory Takings**, regulation that affects a piece of property to such a degree that it takes away a full property right, zoning regulations that are very severe
 - There is no requirement that owner's be compensated for regulations because it is part of the government's police power, but when it effect the land to the point that the owner's full rights are affected then compensation may be due
- *Pennsylvania Coal v. Mahon*, landowner had surface rights, coal company had mining rights, the landowner signed a waiver saying they assumed risks and damages caused by the mining of the coal, then the Kohler Act came into play that would prevent the mining companies from removing all the coal, forcing them to leave support pillars so the surface would not collapse underneath its own weight
 - Court uses three factors to evaluate whether this was taking
 - Diminution in value caused by regulation
 - Denominator problem, how do you define the whole property, one pillar of coal (so they are taking the entire property away) or all the land (so they are only taking a small portion of the land away)
 - Public Nuisance
 - Average Reciprocity of advantage

- If there is no benefit to a party then it is more likely to be a taking
 - They ultimately decide that this was not a taking
 - *Penn Central Transportation Company v. City of New York*, improvements upon the terminal by building the larger tower above the train station
 - Court again uses three factors to decide whether this is a taking:
 - Economic impact of the regulation
 - Extent of Interference with investment back expectations
 - Looking at intentions for investment at the time the land was purchased
 - Character or nature of government action
 - The more it directly benefits the public the more likely it is to be a regulation (not a taking)
 - They ultimately decide this was not a taking
- **Takings Per Se**
 - *Loretto v. Teleprompter Manhattan CATV Corp.*, landlords had to let cable companies come in and run wire so that the tenants could get able and the landlords did not get compensated, the court decided that a permanent physical occupation is a per se taking
 - Physical taking (eminent domain) is different from physical occupation because they are not actually taking the property rights to the land away from the owner
 - *Lucas v. South Carolina Coastal Council*, bought two pieces of property and after they were purchased, government passed an ordinance that they could no longer build homes on this island, which was his intention, so he says this is a taking because now he has no use for his land, but the government says this is their police power since it is for an environmental reason
 - The rule that comes out of this case is that if there is 100% depletion in value then there is a per se taking IF the property owner originally had the right to use the property in that manner (had the right to use the land in the manner that was being taken away)
- **Exaction**
 - An agreement by the developer to donate certain property or money to the local community as a condition of obtaining approval from authorities to proceed with the development
 - Justification for these exactions is that they provide resources that the community can use for public goods like new parks or schools that offset, at least in part, the burdens imposed on the community by the new development
 - *Dolan v. City of Tigard*, D owns a store, wants to expand, pave the parking lot, the city of Tigard has a flooding problem and traffic congestion problems, to address those problems they are requiring D to donate land for a pedestrian bike bath so there will be less people on the roads, and donate part of their land to make a public green space in the flood area, to decrease flood area

- Physical Eminent Domain (the government taking all of your property rights and title to the thing)
 - Is it for a Public Use?
 - No, then it is not allowed
 - Yes, then just compensation is required
- Regulatory Taking (regulating use but retaining ownership)
 - Is this an Exaction?
 - If yes, then is there an essential nexus?
 - No, taking and just compensation is required
 - Yes, then is there rough proportionality?
 - Yes, then it is allowed regulation
 - No, then it is a taking and just compensation is required
 - If no, Is it a permanent physical occupation?
 - Yes, per se taking (Loretto) just compensation
 - No, Is there a 100% reduction in value of the land?
 - Yes, does the owner have the right to perform action being regulated?
 - Yes, per se taking (Lucas) just compensation
 - No, Then it is an allowed regulation
 - No, then go to factors:
 - Penn Coal Factors, diminution in value (denominator problem), public nuisance, average reciprocity of advantage
 - Penn Central Factors, economic Impact, interference with investment back expectation, character of the government action
 - Weigh all of these factors
 - No taking, allowed regulation
 - Taking, then just compensation is required