

## PROPERTY I OUTLINE

### **What is Property?**

Property Exists because of scarcity of resources

1. Bundle of Sticks
  - Rights you have against others
  - Elements: (need them all)
    - Transferable
    - economic value
    - Exclusivity- can others be excluded from its use
    - describable, identifiable
    - Tangible
  - Sometimes gets trumped by some higher value
2. Lawyer Circular Definition
  - If a court says its property then it is (until a court says it isn't)
3. Ad Coleum doctrine: owner of the land owns the space above and below
4. Cases
  - United States v. Willow River: Distance, such as an operating head for a hydro electric plant, is not property.
5. Goal of Property Law: Internalize externalities
  - A cost or benefit not felt by a property owner because it falls on others
  - Positive externality- external benefit
    - Internalize to be valued by owner, ie. Historic building
    - internalize to preserve resources and prevent tragedy of the commons
  - Negative externality- external cost
    - polluter should have to pay for the damage, not society

### **Acquisition by Conquest and Discovery**

1. Discovery- finding of uncharted territory gives exclusive title
  - John Locke- Law of accession- own land when you put labor and energy into it
  - Changed original condition and greatly enhanced value of something abandoned
  - Only one party can have Absolute title
  - Discovery afforded the right to conquest
  - No such thing as unowned land
2. Conquest- taking possession of enemy land
3. 1<sup>st</sup> in time to discover and improve upon the land
4. Johnson v. McIntosh (Marshall): Discovery gave exclusive title to British despite Indians occupancy

### **Acquisition by Capture**

1. Wild Animals: First to Possess
  - Rule of Capture- depriving the animal of their natural liberty and rendering escape impossible
  - Constructive possession- when a wild animal is on your land you are the possessor
    - It is lawful to use art to seduce them and to catch them
    - No property before capture

- Except when not found in its natural habitat
      - Old rules: custom of hunters should decide 1<sup>st</sup> in time, mortally wound
- 2. Domestic Animal
  - Lost property- 1<sup>st</sup> in time to find is subject to the owner
  - Rule of capture doesn't apply
- 3. Oil and Gas
  - Rule of capture
  - has the power to escape without the volition of the owner
  - Possession of land is not possession of gas
  - Reinjection
    - i. when put back in natural habitat it is not free to capture again
- 4. Water
  - English rule- absolute ownership
    - i. Allowed each landowner over an aquifer to withdraw freely without regard to effects on neighbor
  - American Rule- reasonable use
    - i. Rule of capture but with the addition that wasteful use of water, if they actually harmed neighbors, were considered unreasonable and hence unlawful
  - Riparian rights- each owner of land along a water source has a right to use the water, subject to the rights of other riparian's
- 5. Cases
  - Pierson v. Post: possession does not occur until the fox is void of its natural liberty, despite chase or effort
  - Keeble v. Hicheringill: ducks on your land is constructive possession

#### **Acquisition By Creation- Right to Destroy**

- Nobel and clean, have perfect root to title
- 1. First in time to Create
  - Make something new and valuable (Lock)
  - It becomes yours to exploit/ destroy
  - Property of Ideas granted by congress- promote creative activity, but limit in order to advance competition
  - Have to fundamentally alter property for it to become yours
- 2. Right to destroy
  - Old Rule- right to destroy was inherent
  - New Rule- Doctrine of Waste- may not waste property of value
- 3. Cases
  - Cheny Brothers v. Doris Silk Corp: design of silk not considered property

#### **Acquisition of Found Property**

- 1. Mislaid: a finder has no rights in mislaid property
  - Employees and agents- considered to be mislaid, finders duty to return to owner
- 2. Abandoned: first in time to claim is the true owner
  - items intentionally and voluntarily relinquished, with no intent to reclaim
  - Must (1) declare sever ties and (2) affirmative act showing ties are severed

- Objective Test- some act or statement suggesting relinquishment of legal rights to property
- Subjective test-what a reasonable person would believe by this act/statement
- 3. Lost: a finder is entitled to possession against all but the true owner
  - Prior possession is invoked only in support of honest claimants
  - First in time to possess
  - Finder Duty- advertise
  - Stationary object- maybe call it, or have to be touching it
- 4. Bailment: rightful possession of goods by a person who is not the true owners
  - Bailor: duty of care, and duty to return
  - Bailee: true owner
- 5. Treasure
  - English common law: found treasure belongs to the king
  - American common law: treat treasure like any other found property
- 6. Shipwreck
  - English common law: a ship lost at sea with no survivors went to the crown
    - i. Protecting sea from pirates
  - Traditional maritime law: a ship lost at sea and settled on the ocean floor remains the owners property
  - American law: finders entitled to an abandoned shipwreck unless the wreck was embedded in territorial waters- constructive possession
- 7. Stolen Items
  - Trover- monetary compensation for what was stolen from you
    - i. Best possible condition: largest stone that fits
  - Replevin- when you want the actual stolen item back
- 8. Cases
  - Armory v. Delamirie: chimney sweep found a jewel and it was stolen by the appraiser. Chimney sweep had right to property in the face of all but the true owner.

### **Adverse Possession**

- File action to quiet title

Elements (all must be present)

1. Actual
  - Trespass
  - Can't trespass on government land, for the right of the people
  - Improved it, treated it as his own, created barrier
2. Exclusive
3. Open and notorious
  - To put any rightful owner on notice
  - Open- Would put a reasonable owner on notice
  - Notorious- make sure people know you're there
  - Using property in a manner that an average true owner would use it under the circumstances
4. Adverse

- to the rights of the record owner
- Without permission
- 5. Under claim of right
  - Hostile- Known it's not your property, but go after it anyways
  - Good faith- thought the land was his
  - English rule- state of mind doesn't matter
  - Color of title- claim founded on a written instrument or judgment or decree that is for some reason defective and invalid
    - i. Doctrine of agreed boundaries- uncertain boundary lines are orally enforceable if the neighbor accepts for a long period of time
  - Encroachment- builds over the edge of property line
- 6. Continuous use for the statutory period (21 years)
  - Privity through tacking with previous owners
  - Tacking- add on the amount of time predecessors were adversely possessing
    - i. Privity=permission, relationship.

#### Disabilities

1. Statute of limitation is extended if disabilities are present at time of trespass
  - 
  - 1<sup>st</sup> disability, then entry
  - Get 10 years after the disability is removed
  - Minor, unsound mind, imprisoned

#### Cases:

1. VanValkenburgh v. Lutz: Court found no AP because property was not enclosed, wasn't using all of the property, had to be usually cultivated and improved. Departure from norm.
2. Howard v. Kunto: summer rental home was considered continuous use because it is the way a true owner would use the property.

#### **Acquisition by Gift**

Elements: (order irrelevant, just need a moment of all 3)

1. Intent
  - a. Intent to presently sever interests
  - b. Must be irrevocable
    - i. Except, if you are cured from your death bed
2. Delivery
  - a. If manually transmissible, then you need actual delivery
  - b. Or constructive/symbolic delivery when manual transmission not available
    - i. Constructive: Able to hand over keys, deed
    - ii. Symbolic: Something representative of the item
  - c. Intention by the grantor to divest himself of total interests
    - i. Must be presently operative when handed over
  - d. Gift causa mortis- in anticipation of death
    - i. Strictly construed because it denies the will
  - e. Gift intervivos- with reasonable amount of time until death to get assets in order
3. Acceptance- presumed, but is rebuttable

4. Cases:
  - a. Newman v. Bost: old man on his death bed point to some things. Delivery needs to be clear.
  - b. Rosengrant v. Rosengrant: envelop with the deed to the house with the giftor and the giftee's name. Delivery needs to be of all present interests.

### **NUISANCE LAW**

Issue: (1) Cause of action: balance the harm (2) Remedy: balance the value

1. Is there a Nuisance
  - a. Trespass v. nuisance
    - i. Trespass: physical invasion on someone's property (intent irrelevant)
    - ii. Nuisance: non-trespassory invasion
2. Private: interference with the use and enjoyment of one's land.
  - a. Precursor elements:
    - i. Behavior of  $\Pi$  is ordinary
    - ii.  $\Pi$  is of normal sensitivity
    - iii.  $\Pi$  is first in time
    - iv. Damage
  - b. Intentional v. unintentional
    - i. Intentional behavior:
      1. Act for the purpose of causing it, or
      2. Knows that it is resulting from his conduct, or
      3. Substantially certain it will happen
    - ii. Unintentional
      1. negligent, reckless, or ultrahazardous
      2. or, 2<sup>nd</sup> in time and cause damage, or loss in property value
  - c. Reasonable v. Unreasonable
    - i. Reasonable
      1. not a nuisance
      2. Except, if done out of spite
      3. Mere fear is not enough to create a nuisance
        - a. Need to be able to attach some measurable damages
    - ii. Unreasonable
      1. impair in a substantial manner the  $\Pi$ 's use and enjoyment of their land
  - d. 1<sup>st</sup> in time to **use** of land
    - i. planning to build a house is not enough
    - ii. Give notice to the world that you have started use
    - iii. If you drastically change your present use, your become 2<sup>nd</sup> in time for your new use
      1. Allowed natural progression
    - iv. 2<sup>nd</sup> in time can't bring private nuisance
3. Public: An unreasonable interference with a right common to the general public
  - a. Precursor Elements
    - i. No hypersensitivity

- ii. Real damages/annoyance
    - iii. Behavior creates a realistic threat to health, safety, welfare of community
    - iv. 1<sup>st</sup> in time is irrelevant
  - b. Community
    - i. Enough people affected in a substantially similar way
  - c. Duration
    - i. Continuing nature, permanent/lasting effect
  - d. Damage
    - i. Substantial harm
  - e. Action brought by state-extension of police power
  - f. Action brought by individual- must prove special injury
    - i. Effected in a different degree or manner
  - g. Remedy: Injunction only- until issue resolved
    - i. May have special damages also for individuals
- 4. Difference between Public and Private- the interests being protected
  - a. Private: interference with use and enjoyment of land
  - b. Public: interference with public right
- 5. 3 tests for Reasonableness of harm:
  - a. Threshold test (Judge Ervin): I know an unreasonable use when I see it
    - i. Substantial impairment is unreasonable
    - ii. Reasonable person standards- would that person feel impaired
    - iii. Remedy= injunction
  - b. Balancing the Equities Test §826
    - i. Throws out threshold test
    - ii. Reasonable if value out weights the harm
    - iii. Unreasonable if the harm is severe and unjustified by the value
    - iv. Put societal value and damages on both sides of equation
    - v. Remedy=Injunction when harm > value
  - c. Modified Threshold Test
    - i. Harm caused is serious
    - ii. Paying damages won't put them out of business
    - iii. Remedy=Monetary damages only
- 6. Remedies: balance the value
  - a. Balance equity
    - i. Injury to  $\Delta$  and public by an injunction v. injury to  $\Pi$
    - ii. Unequal test- pro  $\Delta$
    - iii. consider employees, and affect on town
  - b. Goal of remedies: internalize externalities
  - c. Value of injunction= creates monopolist
- 7. Cases:
  - a. Morgan v. High Penn Oil: Threshold test found an intentional and unreasonable nuisance with the admittance of noxious gases from an oil refinery.

- b. Estancia: balancing the equities test- permanent, continuous, caused discomfort, inconvenience, impairment of health. Intentional, unreasonable. Harm outweighs the utility of actors conduct
- c. Boomer: cement plant causes smoke, dirt, vibrations. payment by  $\Delta$  of permanent damages to  $\Pi$ . Licensing a continuous wrong

### **EMINENT DOMAIN**

***5<sup>th</sup> Amendment: nor shall private property be taken for public use, without just compensation.***

1. Taking Clause v. Police power
  - a. Police power of the state doesn't have to pay when injunction for nuisance
  - b. Eminent domain- inherent power of the state to seize citizens private property
2. Public Use
  - i. Without public use, taking is unconstitutional
  - ii. Can't take from one private party and give to another private party
- b. Ends test v. Means test
  - i. Ends Tests (majority)
    1. Trying to achieve end of "public use" by taking
    2. Minority Rule (narrow): Public gets to use it
    3. Majority Rule (broad): Public benefit
  - ii. Means Test
    1. Questions whether the power eminent domain is really necessary as means to achieve the stated goal
    2. Best means to achieve end of "public use"
    3. Never has been adopted
    4. Condemn, negotiate, regulation
- c. False Positives v. False negative
  - i. If there is a broad understanding of public benefit, a few false positives on the way is ok
  - ii. Ie. A safe home in the middle of urban blight is a false positive
- d. Level of Judicial Scrutiny
  - i. Rational relationship test
    1. Rational relationship between the stated goal and the means of achieving it
    2. Rationale of condemning authority and the objective
  - ii. Strict Scrutiny (new test)
    1. When red flags are present, look at things more strictly
      - a. Red flags= NIMBY, family, capture of legislature, race
    2. Evaluate if there was equal protection by condemning authority
    3. Needs a close connection between taking and if it achieved objective
    4. More false positives- more likely to fail strict scrutiny test
3. Just compensation
  - a. Objective value
    - i. Something that can be valued- sentimental value doesn't work
    - ii. Market value- realistic value even if it is not the amount desired

4. Per Se tests
  - a. Loretto
    - i. Permanent physical occupation is a taking regardless of public use
      1. takes away right to exclude
      2. Assume the permanence of regulation/statute
  - b. Kaiser Aetna
    - i. Ad hoc factual inquiry- balancing test- if it so frustrates your interest in private property
      1. Economic impact of regulation
      2. Interference with reasonable investment backed expectation
      3. Character of governmental action
  - c. Penn Central
    - i. Test: does the regulation interfere with present, existing, substantial use of property
      1. Purely regulatory behavior
    - ii. Conceptual severance
      1. taking of the space above Penn Central
      2. court doesn't accept treating the area above as a separate parcel
    - iii. Transferable development rights (TDR)
      1. Allowed to move to another sight
      2. Compensation by another name
  - d. Lucas
    - i. Regulations denying all economically beneficial or productive use of land is a taking
      1. Have to show that it is beyond taking by police power
    - ii. Limitations
      1. If aware of background law inherent in title, no taking
  - e. Palazzolo
    - i. Says some regulation so frustrates use of land that it is a taking
      1. Doesn't matter who brings the action or when
5. Cases:
  - a. Kelo: taking for public benefit- revive an economically depressed neighborhood.
  - b. Loretto: lost exclusivity after a statute required cable TV box.
  - c. Kaiser Aetna: army said the river was navigable, frustrated private property interest
  - d. Penn- put on the historic building list- no interference with present use
  - e. Lucas- bought 2 unimproved lots, court found a taking because regulation denied all economic benefits of the land
  - f. Palazzolo: regulation passed protecting coastal wetlands and denies use of land, doesn't matter that law was enacted before property was transferred. Taking.
6. Lateral and Subjacent Support
  - a. Lateral: support necessary to support your home (ie. Crack in foundation) may affect neighbors property
  - b. Neighbor is entitled to have his property undisturbed unless improved

## **ZOANING**

1. Elements
  - a. 1<sup>st</sup> in Time- to use property
    - i. Grandfathered in- can't be zoned out
    - ii. A lawful nonconforming use establishes in the property owner a vested right which cannot be destroyed unless a nuisance or abandoned
    - iii. Right to maintain a nonconforming use runs with the land
      1. Survives change of ownership
      2. Use has to essentially remain the same
      3. Destruction by an Act of God usually terminates it
  - b. 10<sup>th</sup> amendment- gives all powers not specified in constitution to the state
    - i. Police power- for public welfare
    - ii. Created by a board of elected community members
    - iii. Trumps 14<sup>th</sup> amendment- equal protection of classes
2. Rule
  - a. Must have a scheme
    - i. For a county to zone, they must have a plan
    - ii. Can ask for a variance- exception to the plan
  - b. Must have zoning act
    - i. State enabled legislation
  - c. Only zoning if zoning
3. Amortization
  - a. Allow nonconforming uses to continue for a specified maximum period of time after which they will no longer be permitted in the district
4. Purpose: to separate uses for safe, efficient community. Eliminate nuisance disputes before they happen
5. Cases:
  - a. Village of Euclid: unimproved land, use has not begun. U1-U6 classification. U6 includes all classes before it. Zoning in this case is constitutional
  - b. PA Northwestern Distributors: Adult bookstore, 1<sup>st</sup> in time, so grand-fathered in.

## **LANDLORD/TENANT LAW**

1. Lease v. License
  - a. License: a non-exclusive right to use property
    - i. Revocable at any time
    - ii. Governed by contract law
  - b. Lease: transfer of exclusive right to possession and to exclude, but will come to an end
    - i. End of lease creates a reversion in the land
      1. Reversion- future interest
      2. Lease- present interest
2. 3 types of Lease (distinguished by how they end)
  - a. Term of years
    - i. Any amount of time with definite endpoint, pre-dated
    - ii. Death of land lord does not end tenancy

- iii. No notice needed
  - iv. Can terminate earlier upon some event or condition
- b. Periodic Tenancy
  - i. A lease for a period of some fixed duration that continues for succeeding periods until either the landlord or tenant gives notice of termination
  - ii. Length of notice required is the length of period
  - iii. Death of land lord does not end the lease
- c. Tenancy at will
  - i. No fixed period that terminates at either parties will at any time
  - ii. Modern statutes require notice (30 days)
  - iii. The power of each party to terminate must be equal
  - iv. Terminates with death of landlord
- d. Holdover- not a true lease
  - i. Staying over the stated term after lease ends
  - ii. gives rise to a periodic tenancy, maximum period of 1 year
  - iii. Landlord has an election:
    - 1. Eviction- Treat tenant as trespasser
    - 2. Consent- expressed or implied to the creation of a new tenancy
      - a. Terms- subject to same terms of original lease
        - i. Or, look to holdover language in old lease
          - 1. Usually charge much higher rent
      - b. Length of term
        - i. Old Rule: same term as old lease (commercial)
        - ii. New Rule: monthly period (residential)
  - iv. If a tenant vacates but leaves furniture, not a holdover because he did not stay voluntarily
- e. Tenant abandons
  - i. Landlord has an election (election can be made my behavior):
    - 1. Continue to treat them as a tenant and accrue rent
    - 2. Or accept surrender and re-rent

### Landlord Obligations

- i. Deliver land physically
  - ii. Quiet enjoyment of property
  - iii. Implied warranty of habitability
- 1. Delivery of possession
  - a. Old rule (American)- lease grants exclusive legal right to possession so tenant has to evict holdover
    - i. Rationale: tenant has greatest incentive to use legal remedies available to protect himself
  - b. New rule (English)- on the day the term begins, landlord must place you in physical possession
    - i. But, after lease commences, it is tenants job to keep others out
  - c. Self-help
    - i. Flat prohibition of self-help is the trend

- ii. Now, summary proceedings for landlords
        - 1. Aka forcible entry and detainer status
        - 2. Quick and efficient way to recover
    - d. Security devices
      - i. Security deposit- protects landlord
        - 1. Landlord has incentive to imagine damages
    - e. Liability
      - i. Landlord is not liable to tenant or tenants guests for torts on the property
      - ii. Tenant is the one in possession, tenant is the one liable
      - iii. Exceptions
        - 1. Public and common use areas
          - a. Under landlords dominion and control
2. Implied covenant of Quiet enjoyment
  - a. Contract law:
    - i. When the other party had a serious breach, you are free from contract
  - b. Property Law: Lease- independence of covenant
    - i. If landlord breaches, tenant must still pay rent
  - c. Obligation to pay rent is dependent upon the tenant having right to possession undisturbed by the landlord
  - d. If interference, as though the tenant has been evicted
  - e. Pay rent is an independent covenant- promise
    - i. Except, Landlord could not physically remove you- one dependant covenant
  - f. Substitutes for Physical removal- can stop paying rent
    - i. Constructive eviction (defense)
      - 1. Elements
        - a. Have to leave asap
          - i. Wait too long, lose argument
          - ii. Two quick- need to give landlord a chance
        - b. Give landlord notice
        - c. Problem that makes you miserable
          - i. Untenantable
        - d. Promise made in lease
      - 2. Only a defense, risky, have to wait for landlord to sue
    - ii. Illegal lease (defense)
      - 1. Something significantly wrong with the property on the day lease was signed
      - 2. Could withhold rent and stay there
      - 3. No longer used (bridge to IWH)
3. Implied Warranty of Habitability (cause of action)
  - a. Only applicable to residence, not commercial space
    - i. Assume in commercial can protect themselves
  - b. Elements
    - i. Habitable premises- safe, clean, healthy, fit for human habitation

1. Throughout entire tenancy
  2. Can't be waived by tenant
  3. Fault is irrelevant
  4. Look to the city housing codes
  5. Premises can be broadened to include common areas under landlords dominion
- ii. Give notice to landlord with reasonable time to cure
  - iii. Damages
    1. Sufficient violation
    2. Use reasonably intended by the parties → doesn't extend to IWH
    3. Can narrow codes- minimum habitability
- c. Remedies
- i. Can sue, but may not be able to get out of lease
  - ii. Difference between the value of the dwelling as warranted and the value as it exists
  - iii. Can breach and withhold future rent
    1. Must show defect existed while withholding rent
    2. Once defect is corrected, pay rent again
  - iv. Punitive damages: reckless disregard
    1. Pattern of intentional conduct
    2. Bad spirit, wrong intention
- d. Self-Help for Tenant
- i. If you repair yourself, deduct expense from future rent
  - ii. Standard of habitability has been breached when leased premise is uninhabitable to a reasonable person
    1. Safety and health
- e. Retaliatory eviction- not allowed
- i. Illegal to evict because landlord is angry about IWH holding
- f. *Hilder v. St. Peter*: slum. Poor. Couldn't leave.

### Tenant Obligations

1. Pay Rent
2. Duty not to commit waste
  - a. Affirmative waste
    - i. any type of alteration that affects the value of property
    - ii. Cannot change a vital and substantial portion of the premise
    - iii. may have obligation to do minor repairs, but not implied
  - b. Passive waste
    - i. Duty to Notify landlord
    - ii. Then not waste
  - c. Rational
    - i. Landlord is more familiar with the unit, tenant inferior bargaining power
3. Going dark
  - a. Paying rent but not living there or operating business there
    - i. Majority rule: no duty to stay open, landlord could have put it in the lease

- ii. Minority: not intent, exception- not good faith and fair dealing
- 4. Tenant can use self help
  - a. When landlord repeatedly doesn't perform
    - 1. Withhold rent
    - 2. Landlord has right to sue for back rent and damages
    - 3. Anticipatory breach is usually unavailable
- 5. Tenant liability ends when:
  - a. Full performance
  - b. Breach sufficient enough to relieve tenant of obligation
  - c. Landlord waives performance- Release
  - d. Contract terminates on its own
    - i. I.e. Property burns down
  - e. Partial eviction
    - i. Actual eviction even from a part of the premise only, tenant is relieved of all liability
    - ii. Not when a constructive partial eviction
  - f. (otherwise, personally liable when fail to perform)

#### Assignment and Sublease

- 1. Property Law v. Contract Law
  - a. Property law in nature, contract law in practice- battling
  - b. Lease as contract (newer interpretation)
    - i. looks at intent, expectations, assumption
  - c. Lease under property law (roots in English caste system)
    - i. property right is inherently valuable, don't care about intent
    - ii. Property words: assignment, Privity of estate
- 2. Sublease: if possible it won't be for the duration, retain right to re-enter
- 3. Assignment
  - a. Tenant → subtenant= landlord → tenant
    - i. Moved tenancy from one person to another
    - ii. Subtenant becomes tenant and must perform
  - b. Total transfer of all interest in the lease for its entire duration
  - c. Privity of estate between landlord and tenant is terminated
  - d. Actual word on the document is not conclusive
  - e. Modern theory of assignment
    - i. Assignment if intended to be an assignment
      - 1. Difficult to determine intention
  - f. 3<sup>rd</sup> party beneficiary contract
    - i. Tenant assigns to subtenant, benefit to landlord (3<sup>rd</sup> party) because can now hold someone else liable
- 4. Assignability
  - a. Base Rule
    - i. in the absence of a clause, tenant has right to transfer interests
  - b. Majority Ryle
    - i. Landlord may arbitrarily refuse to approve a proposed assignee

1. Reservation of absolute discretion
- c. Minority Rule (trend)
  - i. Landlord can only withhold consent with a commercially reasonable objection to the assignment
    1. Reasonable: Overall profitability, financial responsibility, nature of occupancy
    2. Unreasonable: personal taste, to raise rent
  - ii. Property law Rational of reasonableness
    1. If underlying purpose is perverted by the arbitrary or unreasonable withholding of consent, unreasonable restraint on alienation
    2. Impersonal landlord/tenant relation
      - a. Personal nature is more sensible in residential
  - iii. Contract law Rational of reasonableness
    1. importance of good faith and fair dealing
  - iv. *Kendal v. Ernest*: follows minority rule
5. Privity of Estate
  - a. relationship between landlord and subtenant
  - b. Assignment moves tenancy from one person to another
    - i. Subtenant becomes the tenant and must perform
  - c. If subtenant breaches, tenant still remains liable to landlord
    - i. Can't release yourself from liability
    - ii. Look for assumption of personal liability, then both will be liable
  - d. Only one tenant at a time, so Privity of estate can only be between two parties
  - e. Sublease: subtenant not liable under Privity of estate
6. Privity of Contract
  - a. No Privity of contract between landlord and subtenant, unless there is an assumption of personal liability
  - b. Privity of contract between landlord and tenant, despite assignment
  - c. Tenant and subtenant both liable under Privity of contract
  - d. Sublease: subtenant can assume personal liability and be held liable under Privity of contract
7. Mitigation- landlord leasing for the tenants benefit
8. Novation- when contract is renegotiated between landlord and subtenant, tenant is relieved of previous obligations
9. Religious affiliation
  - a. Once you begin to rent property, then you are a landlord like everyone else
10. Fair housing act
  - a. Civil rights act of 1866
    - i. "all citizens have the right to property"
    - ii. No state action requirement
    - iii. Private conduct
    - iv. Allow slaves to buy and own real property
    - v. Weakly enforced

- b. 14<sup>th</sup> amended equal protection clause
  - i. “nor shall any state deprive any person of life, liberty, or property, without due process of law”
  - ii. State has to be involved
  - iii. Does not reach purely private conduct
- c. Fair Housing Act
  - i. §3604(b)- It shall be unlawful to deny a person of property for race, color, religion, sex, familial status, or national origin
  - ii. (c)Unlawful to make, print, notice that indicates a preference
  - iii. Except
    - 1. Private clubs
    - 2. Religious organizations
    - 3. If landlord resides in the building
      - a. Can discriminate, but not in advertising
      - b. Intimate, personal- not regulated
    - 4. If landlord does not reside in the building
      - a. Can discriminate once every 24 months
- d. *Shelly v. Kraemer*: state action occurs with the courts enforcement

#### Other/overview

1. “in this case...”
2. Address what type of problem it is at the top
3. Start broad, put it into perspective
4. List rules/tests that may apply
5. Give the other side
6. Must know supreme court case names