PROPERTY CASES

State v. Shack
277 A.2d 369 (N.J.1971)

FACTS:
-Tedesco had migrant workers on his property who received funding from federal government organizations SCOPE and CRLS
-D's entered priv. prop. to aid migrant farm workers employed there and were charged with violating a NJ statute which forbid trespass
-P called a state trooper who refused to remove D's, P executed a formal complaint charging violations of the trespass statute (charged with criminal trespass)

ISSUE:
Is the trespass stature constitutional?

I. The constitutionality of the trespass statute is challenged
- 1st Amendment rights of the defendants were offended, and the property they were on was open to the general public
-Trespass clause barred by the Supremacy Clause of the Constitution (defeat the purpose of federal statues under which SCOPE and CRLS are funded)

II. Property rights serve human values
-Title to real property cannot include dominion over the destiny of persons the owner permits to come upon the premises
-Importance between FREEDOM and UTILITY and ASSOCIATION
-Freedom: one should be able to use his land as they wish while not injuring others; camp operator's rights to land may stand between the migrant workers and those who would aid them
-Utility: necessity (private or public) may justify entry upon the lands of others
-ACCOMODATIONS and LANDLORD/TENNET AGREEMENTS
- The right of the owner and the interests of the general public in his use of his property, but involves also Accommodation between the right of the owner and the right of the individual
-Partial ownership of the land = rights (and visitors)
*Rights argument, but similar to a traditional Blackstonian argument
→ Individual freedoms, individualistic, external

HOLDING:
-The ownership of real property does not include the right to bar access to governmental services available to migrant workers and hence there was no trespass within the meaning of the statute
-"Unthinkable that the farmer can assert a right to isolate the migrant worker in any respect significant for the worker well-being"
-No need to deny services
-D's here invaded no possessory right of the farmer and there conduct was beyond the reach of the trespass statute

Desnick v. American Broadcasting Companies, Inc
44 F.3d 1345 (7th Cir. 1995)

FACTS:
-P's suing for fraud against ABC broadcasting company for trespassing, defamation, and other torts arising from the production of a hidden video camera broadcast
-ABC promised that the report would be "fair and balanced" but the reporters used hidden cameras and test patients and caught doctors doing unnecessary surgeries that would constitute malpractice

-P claims that the D's committed trespass, invaded their right to privacy, committed fraud, and that the implied consent that they gave to enter and videotape did not give permission for what they actually did

ISSUE:
-What does consent cover? Does it deal with fraud and misrepresentation?

HOLDING:
-There was no trespass because it was not the class of persons the trespass statute was meant to protect

REASONING:
-Entering another person's land without consent is considered trespass; there is no "journalist's privilege, and there is no implied consent when express consent is procured by misrepresentation or misleading omission
-CONSENT THROUGH FRAUD
    -What interest does the tort in question protect?
-In the present case, there was no injury of any of the specific interests that the tort of trespass seeks to protect
    -Test patients entered the office that was open to the public
    -Engaged in PROFESSIONAL not public services
    -The activities of the office were not disrupted
    - No embarrassing details of anyone's life were published
    -No violation of Dr/Patient Privilege

Uston v. Resorts International hotel, Inc.
445 A.2d 370 (N.J. 1982)

FACTS:
-Card counter who frequented casinos, was excluded from the blackjack tables at Resorts International Hotel
-Uston contends that Resorts has no common law or statutory right to exclude him because of his card "strategy"

ISSUE:
-The right to exclude vs. reasonable access to places of public accommodation

HOLDING:
-NJ courts contend that there has to be a right of reasonable access unless there is some disruption
-property owners who have opened their property to the public have a duty not to act in an arbitrary manner

New Jersey Law Against Discrimination
N.J. Stat. §§10:5-1 to 10:5-49

-The New Jersey statue adds SEX and SEXUAL ORIENTATION to its antidiscrimination language
- Explicitly discusses the PURPOSE of the law→ allows for the law to be liberally construed
-PLACES OF PUBLIC ACCOMODATION: places that previously would not have been covered under necessity, monopoly, etc.
    - "*Shall include but not be limited to...*": allows for additional places which were not listed in the statute
-Most state statues also prohibit discrimination on the basis of RELIGION as well as the additions of sex/orientation

Dale v. Boy Scouts of America
734 A.2d 1196 (N.J. 1999), *rev'd sub nom.*
Boy Scouts of America v. Dale, 530 U.S. 640 (2000)

1. Places of Public Accommodation

-Boy Scouts determined to be a place of public accommodation and are not exempt from the PA statute
    -Therefore, they should not be allowed to discriminate based on sex or sexual orientation
-"*All persons shall have the opportunity...to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation,...without discrimination because of...affectional or sexual orientation"*
-PLACES: BSA interprets "place" to be a limiting factor encompassing only a fixed location
    -Court DECLINES to construe "place" so as "to include only membership associations that are connected to a particular geographic location or facility
-Broad public solicitation
    -National TV advertising, uniforms worn in public
-Close relationship with the government
    -Recipient of equipment, supplies, and services

2. LAD Exemptions
-Boy scouts claim that even if the organization fits under the statute of a "PLACE OF PUBLIC ACCOMODATION", it is exempt from the LAD under the "distinctly private" exception
-Selectivity:
    -Admission criteria
    -Size
    -Membership moral requirements
-BSA only requirement is "moral fitness"

HOLDING:
-Find that the BSA IS a place of public of accommodation and is NOT exempt from the LAD statute

3. Have The Boy Scots Violated the LAD?
-YES, the BSA have violated the LAD
-"*The forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association in the presence of that affects in a significant way the groups ability to advocate public of private viewpoints" –Rehnquist*
-PROPORTIONALITY and a COMPELLING STATE INTEREST
-Dissent: BSA does not have a well-publicized political/moral position
    -No set of religious beliefs, no moral standards

THREE MAIN QUESTIONS TO BE ANSWERED:
1. Are membership organizations places of public accommodation?
2. Are membership organizations open to the public?
3. Do members have the right to freedom of association?

Lloyd Corp., LTD. v. Tanner
407 U.S. 551 (1972)

FACTS:
-Open concept design shopping center that is considered "private" property even though there is an open invitation to the public to come in and shop

PROCEDURAL HISTORY:
-Court of appeals affirmed, certiorari granted to decide if the petitioner's contention violates rights of pro

ISSUE:
-The rights of a privately owned shopping center to prohibit the distribution of handbills on its property when the handbills are unrelated to the shopping center's operations

Noone v. Price (WV 982)

-The defendant has a duty to maintain the wall that supported the plaintiff's land; this duty runs with the land, is binding on all future owners of the land;
-An adjacent landowner is strictly liable for acts of omission and commission that result in the withdrawal of lateral support to the neighbor's land in its natural state:
-If the land in its natural condition was sufficient to support the building and withdrawal of lateral support caused the building to subside: excavating owner is liable for damages to both the land and the building (damage to the building is "consequential");
-If the land in its natural condition would not have supported the building, and the building would have subsided eventually even if defendant had not withdrawn support for the land around it, the excavating owner is liable only if she negligently withdrew support for the building

Page Country Appliance Center, INC. v. Honeywell, INC.
347 N.W.2d 171 (Iowa 1984)

FACTS:

-P: Page Appl. Ctr. sued Honeywell for nuisance and tortious interference with their business relations
-P owned the appliance center and had no problems with their TV reception previous to 1980
-Early 19800 ITT placed one of its computers with Central Travel as part of a nationwide plan to lease computer to retail travel agents
    -Computer was manufactured/maintained by Honeywell
-After, reception trouble, traced the problem to the operations of Central travel's computer

PROC. HISTORY:

-Submitted to the jury on theories of tortious interference and nuisance
-Asked for injunctive relief→ jury found for the appliance center and found for recovery

ISSUE:

-Who is liable?

HOLDING:

-"We reverse and remand with instructions to set aside the judgment in favor of Appliance Center against Honeywell and ITT, and the judgment entered on ITT's cross claim against Honeywell. Defendants shall be granted a new trial"

RATIONALE:

-Nuisance vs. negligence: Nuisance is a condition and not a failure to act on the part of the responsible party: a person responsible for a harmful condition found to be a nuisance may be liable even though that person has used the highest possible degree of care to prevent or minimize the effect
-Nuisance "per accidens", or in fact→ a lawful activity conducted in such a manner as to be a nuisance
-The existence of a nuisance is not affected by the intention of its creator not to injure anyone
-"Normalcy Standard": normal persons in a particular locality:
    -Clearly the presence of TVs on any presence is not such an abnormal condition that we can say, as a matter of law that the owner has engaged in a peculiarly sensitive use of the property
-Honeywell's design permitted radiation to escape the computer, although technology was available to minimize the effect

What is the TEST for nuisance?

    -Harm substantial: if offensive or inconvenient to the "ordinary or average person in local circumstances"; minor harms are privileged, relief denied if plaintiff is unusually sensitive

- Interference unreasonable: balancing gravity of the harm and utility of the actor's conduct

Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, INC.
114 So.2d 257 (Fla. Dist. Ct. App. 1959)

FACTS:
-Interlocutory appeal from an order enjoining the appellants from continuing with the construction of a 14 story addition to the Font. Hotel
-In certain months, the new addition will cast a shadow over the cabana of an adjacent hotel, interfering with the use and enjoyment of this part of the property
-Addition would violate building statutes, was being put up in "malice and ill will", and would cause a permanent lack of enjoyment
-Ds answer denied material allegations of the complaint

HOLDING:
-P did not establish a cause of action against the defendants by reason of the structure in question, the order granting a temporary injunction should be and is hereby reversed with directions to dismiss the complaint

RATIONALE:
-Nuisance, Malice, and Implied Easement
-One may not use their land so as to interfere with the RIGHTS of another, and so long as the law will not pronounce his use a nuisance
-It is universally held that where a structure serves a useful and beneficial purpose, it does not give rise to a cause of action, either for damages or for an injunction under the maxim of "sic utere tuo ut alienum non laedas" even though it causes injury to another by cutting off the light and air and interfering with the view
    -Narrowing the scope of the "sic utere" maxim
-Institutional Competence Argument:
    -If public policy requires that a landowner in Miami Beach refrain from constructing buildings that would cast shadow on her neighbors, an amendment to the zoning ordinance is the way to go; to change the universal rule would amount to judicial legislation;
-Spite fence statue: defined the obstruction of light and air as a nuisance
-Express Easement: (contractual agreement) vs. Implied Easement: (granted by the law)

Prah v. Maretti
321 N.W.2d 182 (Wis. 1982)

FACTS:
-Question of whether an owner of a solar heated residence sates a claim upon which relief can be granted when he asserts that his neighbors proposed construction of a residence interferes with his access to an unobstructed path for sunlight
-Compliance with building statutes
-P claims he is entitled to unrestricted use of the sun and its solar power and demands judgment for injunctive relief and damages

PROC. HISTORY:
-Lower court dismissed the case claiming there was no cause of action

RATIONALE:
-Majority
    -Precedent: English doctrine of "ancient lights" and American doctrine of "spite fences"
    -Social utility: sunlight is now a valued economic resource; need to regulate development in the public interest

-Formal realizability: need for flexible nuisance standard; general trend towards reasonableness as a way to take into account modern social needs

-Rights: rejection of the 19th century notion of absolute rights

-Dissent

-Rights: a landowner's right to use her property is a fundamental principle of a free society and should be vigorously protected

-Social utility: regulating development not for private benefit (Prah's need for solar energy) but in the public interest (shortage in housing for disadvantaged groups)

-Institutional competence: what type of development is advisable is a question for the legislature; the judiciary should not exercise legislative power

Brown v. Gobble
474 S.E.2d 489 (W.Va. 1996)

-Standard of proof: clear & convincing evidence (fairness/rights argument: a preponderance standard would increase the number of cases where land is erroneously taken from the title owner under spurious adverse possession claims; the interests at stake are traditional family and societal values);

-Tacking: *permits adding together the periods of successive adverse possessors*

-Precedent argument: this court, West Virginia, has long recognized the principle of tacking)

-Allowed when there is PRIVITY: acquiring possession through a legal act

-Requirements for adverse possession: evidence that they have been satisfied:

-*Actual possession* (they planted a garden, maintained a fence, constructed a shed, removed weeds, picked berries and walnuts...built a tree-house)

-*Open & notorious* (the community regarded them and their predecessors as owners)

-E*xclusive* (they and their predecessor had dominion and control of the stripe of land and their claim was never objected to)

-*Continuous* (each of the succeeding owners maintained the tract of land continuously up to the moment they sold the land)

Romero v. Garcia
546 P.2d 66 (N.M. 1976)

-Where the description in the deed is so faulty that the land cannot be located, the deed does not constitute color of title...but an indefinite and vague description in the deed may be clarified by subsequent acts of the parties;

-In the case at hand, evidence is clear that subsequent acts of the parties in pointing out the boundaries and other extrinsic evidence aided the surveyor in preparing the plate

Nome 2000 v. Fagerstrom
799 P.2d 304 (Alaska 1990)

-Argument of the plaintiffs: the Fargerstrom's possession did not satisfy the requirements for adverse possession:

1. No significant activity or physical improvement until 1978 (when they built the cabin)
2. Their possession was seasonal and hence not continuous
3. It was not exclusive: they let in fishers and people who picked berries
4. Cultural argument: Native Americans have a different notion of ownership: stewardship rather than ownership, only a first-priority claim to the resources of the land…..

-The Court: the Fagerstroms' use of the land does satisfy the requirements for adverse possession (though only for the parcel of land around the cabin)

1. Continuous and exclusive possession: there are no fixed standards, the character of the land matters: in a rural area largely used for seasonal recreation a lesser exercise of control and dominion;
2. Open and notorious: again, the character of the property matters: possession, consistent with that type of land, such that a reasonably diligent owner could see that a hostile flag is being flown on her property;

3. Hostile: we reject Nome's "cultural argument" (Native American notion of ownership as "stewardship" = sharing): hostility is determined by the application of an objective test: whether the possessor acted toward the land as if he owned it without the permission of one with legal authority to give permission

-Objective test instead of a subjective test

Community Feed Store, INC. v. Northeastern Culvert Corp.
559 A.2d 1068 (Vt. 1989)

FACTS:

-Plaintiff brought an action claiming a prescriptive easement over a portion of D's land

PROC. HISTORY:

-Trial court rejected the claim of prescriptive easement and entered judgment for D on their counterclaim for ejectment

-Plaintiff's appeal

HOLDING:

-Court concluded that the plaintiff's claim of prescriptive easement failed for two reasons:

1. P failed to prove with sufficient particularity the with and length of the easement
2. Any use of the area in question by P was made with the permission of the fee owner

RATIONALE:

-Elements required to establish prescriptive easement are essentially the same as adverse possession:

-Use that is open and notorious
-Hostile
-Exclusive
-Continuous
-Persisted for a period of 15 years;

-Difference between adverse possession and prescriptive easement: INTEREST CLAIMED:

-Prescription applies to the acquisition of non-fee interests, adverse possession to the fee interests

-The extent of the easement depends on the extent of the use: need not be proved with absolute precision but only as to the general outlines consistent with the pattern of use throughout the prescriptive period;

1. Open and notorious use, where no explicit permission or prohibition, is presumed to be non-permissive;

-The scope of the use does not need to be precise→ it can be general and undefined

Somervile v. Jacobs
170 S.E.2d 805 (W. Va. 1969)

FACTS:

-Homeland Addition constructed a building which they thought was being constructed on lot 46, which they owned, but was actually being constructed on lot 47, owned by the defendants

-D's claimed ownership of the building on the theory of annexation (fixtures become a part of the real estate to which they are attached)

PROC. HISTORY:

-P's instituted this proceeding for equitable relief and for judgment for the value of the improvements made

-Alternative: D's ordered to convey their interest in the land for a fair consideration

ISSUE:

-Whether a court of equity can award compensation to an improver for improvements which he has placed upon his land not owned by him, which, because of a mistake, he believed he owned, and these improvements were not known until after their completion

HOLDING:
-Court holds that an improver of land owned by another, who through reasonable mistake of fact and good faith erects a building on land of another owner, is entitled to recover the value of the improvements from the landowner and to a lien, or an option to purchase the property

RATIONALE:
-Reasonable, factual mistake made in good faith

1. Fairness /Rights argument: it would be unfair to allow the Jacobs to be unjustly enriched: we are dealing with two innocent parties and the solution requires application of principles of equity and fair dealing;
2. Precedent: other jurisdictions have said that a court of equity can grant relief to the improver who through a reasonable mistake of fact and in good faith places improvement on another's land: either award compensation to the improver to avoid unjust enrichment or, alternatively, require the owner to convey the property to the improver upon payment of the fair value of the land

Miller v. Schoene
276 U.S. 272 (1928)

FACTS:
-Needs to cut down infected cedar trees in order to protect apple trees which are essential to Virginia's economy
-Comparison of the relevance of two classes of property:
-Red cedars: ornamental value and use value as lumber
-Apple trees: export, investments, employment, related development (railroads)

ISSUE:
-Implementation of the ad hoc test and balancing to decide which set of interests is most important
-Two categories of issues at stake

HOLDING:
-The state does not exceed its constitutional powers by deciding upon the destruction of one class of property in order to save another that is of greater value to the public

RATIONALE:
-Application of the ad hoc test
-The state is under necessity of a choice: it has to choose between the preservation of one class of property in order to save another
-Balance between public interest and private interest: this is not a conflict between two private interests: there is a preponderant public concern in the preservation of one class of property;

Penn Central Transportation Co. v. New York City
438 U.S. 104 (1978)

FACTS:
-Landmark building that wanted to vertically expand their space

RATIONALE:
-Plaintiff's argument:
-Taking of property rights in air space deprived of any gainful use of their "air rights" irrespective of the value of the remainder of the parcel, the city has taken their rights to the super adjacent space
-"Reverse spot zoning": a land use decision that arbitrarily singles out a particular parcel for different, less favorable use; it selects single parcels that are solely burdened and receive no benefit;
-Court's Argument:

-Untenable: takings jurisprudence does not divide a parcel of land into segments and then attempt to determine whether rights in a particular segment have been abrogated; it focuses on the nature and character of the interference with rights in the parcel as a whole; we cannot accept this argument: we would need to invalidate all comparable landmark legislation in the nation;

-Of course it has a more severe impact on some owners, but legislation designed to promote the general welfare commonly burdens some more than others (zoning)
-Claim that solely burdened and unbenefited: inaccurate: part of a general plan that will improve quality of the life of the city as a whole→ NO RECEPROCITY OF ADVANTAGE
-Assessment of the magnitude of the interference:
-Regulation does not interfere with the present, primary use of the Grand Terminal
-It does not abrogate any right to use the air space: it is a question of harmony with the size, shape and materials of the Grand Terminal; other plans may be approved;
-The NYC Transferable-Development Rights Program mitigates the economic consequences of the regulation
-Economic impact is SIGNIFICANT but not SUBSTANTIAL or UNFAIR
-No interference with reasonable investment backed expectations

Pruneyard Shopping Center v. Robbins
447 U.S. 74 (1980)

FACTS:
-Privately owned shopping center ruled by a policy not to permit any visitor or tenant to engage in any publicly expressive activity including the circulation of petitions that is not directly related to its commercial purposes
-Appellants are HS students who solicited a petition in Pruneyard's courtyard
-Security guard asked them to leave because their activity violated the area's regulations
-P's filed lawsuit to enjoin appellants from denying access to Pruneyard

PROC HISTORY:
-Cal Supreme Court held that Cal constitution protects speech and petitioning when it is reasonably exercised even in privately owned areas, and concluded that appellees were entitled to conduct their activity on the property
-Established rights under the 14th and 5th amendments that cannot be denied by invocation of a state constitutional provision or by judicial reconstruction of a state's laws of private property

HOLDING:
-Appellant failed to demonstrate that the right to exclude others is so essential to the use or economic value of their property
-Thus the state authorized limitation of it amounted to a taking

RATIONALE:
-The determination whether a state law unlawfully infringes a landowner's property in violation of the Takings Clause requires an examination of whether the restriction on private property forces some people alone to bear public burdens which, in all fairness and justice should be borne by the public as a whole
-When regulation goes too far it will be recognized as a taking
-Case different from Kaiser because it involved substantial improvement to the property
-Kaiser had reasonable investment backed expectations
-Not every injury to property by governmental action is a taking: the test is a 3-pronged one:
1) Character of the governmental action
2) Economic impact
3) Interference with reasonable investment-backed expectations
-TEST IS NOT MET
-Economic impact: nothing suggests that preventing the shopping center from excluding this sort of expressive activity will unreasonably impair the use or value of the property as a shopping center;

-No interference with reasonable investment-backed expectations

(CONCURRING)

-Forums may be forced to host organizations that purport a message that they do not agree with and this still has to be acceptable

Loretto v. Teleprompter Manhattan CATV Corp.
458 U.S. 419 (1982)

FACTS:

-Loretto purchased a 5 story rental apartment building where the owner had granted Teleprompter permission to install a crossover cable on the building to furnish tenants with cable

-NY law: residential landlords required to allow cable TV companies to install cable boxes on their property to enable tenants to get cable

-Loretto filed a class action lawsuit alleging trespassing

PROC HISTORY:

-NY Court of Appeals ruled that this appropriation did not amount to a taking

-Supreme court reversed; holding this type of property occupation IS a taking

ISSUE:

-Whether a minor but permanent physical occupation of an owner's property authorized by government constitutes a taking of property for which just compensation is due under the 5th and 14th amendment

HOLDING:

-Court concludes that a permanent physical occupation authorized by government is a taking without regard to the public interests it may serve

RATIONALE:

-When faced with a constitutional challenge to permanent physical occupation of real property, this court has upheld TAKING

-State constitution does not prevent the owner from restricting expressive activities by imposing reasonable time, place, and manner restrictions to minimize interference with the owner's commercial functions

-Takings will be upheld even if the action achieves an "important" public benefit or has only minimal economic impact to the owner

-When the government permanently occupies physical property, it effectively destroys:

-The right to possess the occupied space himself and also has no power to exclude the occupier from possession and use of the space

-The permanent physical occupation of property forever denies the owner any power to control the use of the property

-Protection for the rights of private property does not depend on the size of the area occupied (small area taken up by the cables is not less important)

-ARGUMENTS:

Precedent: the Supreme Court has long considered a physical invasion a taking (Pumpelly, Kaiser Aetna) distinguished Pruneyard: invasion was temporary and limited in nature

Rights/fairness: chops through the owner's bundle of rights taking a slice of each: the right to possess, to use and to transfer; qualitative difference when a stranger occupies property: owners have an expectation to be at least relatively undisturbed in the possession of property

Formal Realizability: it avoids difficult line-drawing problems: where to draw the line between a swimming pool on the roof and a TV cable?

Social utility: it has no dire consequences on the important policy goal of regulating fairly potentially uneven landlord/tenant relationships

(DISSENT)
-§828 represented a reasoned legislative effort to balance the interests of landlords and tenants
-The court concluded the statute's economic interests was "de minimis" because §828 did not affect the fair return on her property
-The statute did not interfere with appellants reasonable investment backed expectations
-Once the appellant chooses to have her property used for rental, she must comply with the preexisting conditions of rental property
-ARGUMENTS:

Formalism: the distinction between temporary and permanent invasions is talismanic and does not hold: what does "permanent" mean? What is the difference with regulations requiring landlords to provide mailboxes, smoke detectors…etc

Precedent: no support for this talismanic distinction: the court has upheld rent control statutes permitting temporary invasions of considerable magnitude…

Social utility: the regulation actually increases both the building's resale value and its attractiveness on the rental market

Lucas v. South Carolina Costa Council
505 U.S. 1003 (1992)

FACTS:
-Lucas purchased beachfront property and then discovered that the management act did not allow him to develop the property
-Lucas claimed that the lack of development was a detriment to the economic value of his property
-Beachfront management act causes extinguishment of economic value of Lucas' property

ISSUE:
-Court must decide whether the acts effect on the economic value of Lucas's lots accomplished a taking of private property under the 5th and 14th amendment requiring a payment of just compensation

PROC. HISTORY:
-Court ruled that when a regulation respecting the use of property is designed to prevent serious public harm, no compensation is owning under the takings clause regardless of the regulations effect on the property's value
-Court grants certiorari

RATIONALE:
-Core values of a taking
-Nuisance exceptions to a taking→ nuisance exception is equally determinant to the interests presented
-Protection of property argument and rights argument
(Dissent)
-Since no individual has a right to use his property so as to create a nuisance or otherwise harm others, the state has not taken anything when it asserts its power to enjoin the nuisance like activity
-Court cannot embrace the full implications of its per se rule: eventually agrees that there cannot be a categorical rule for a taking based on economical value that wholly disregards the public need asserted
-New per se test would have perverse effects

-Lucas leaves us with two unanswered questions:
1. The denominator problem:

-The Lucas rule applies when an owner has been deprived of economically viable use. To determine how great the diminution in value has been, we need to determine the denominator of the fraction

2. What happens if someone has purchased a tract of land after the regulation has already been put in place?

Almota Farmers Elevator $ Warehouse v. United States
409 U.S. 470 (1972)

FACTS:
-Petitioner conducted grain elevator operations, occupied the land under a series of successive leases from the railroad
-Give instituted the eminent domain proceeding to acquire the petitioner's property interest by condemnation
-At the time there were buildings and other improvements that had been erected on the land by the petitioner and the current lease had 71/2 years to run

PROC HISTORY:
-District court held that just compensation for the leasehold interest should be the FAIR MARKET VALUE OF THE LEGAL RIGHTS POSSESSED BY THE DEFENDANT BY VIRTURE OF THE LEASE AS THE DATE OF TAKING
-Petitioner urged that just compensation should be measured by what a willing buyer would pay in an open market

ISSUE:
-Whether Almota would have to be satisfied with its right to remove the structures with there consequent SALVAGE VALUE or whether it was entitled to an award reflecting the value of the improvements in place beyond the lease term
-Controversy centered on the valuation to be placed upon their structures and there appurtenances

HOLDING:
-The way the government wanted to value the property is not what a private buyer would have paid Almota
-The constitutional requirement of just compensation should put the person in no worse a position than they would have ordinarily been in

RATIONALE:
-Just Compensation: full monetary equivalent of the property taken
-Market Value: the owner is entitled to the fair market value of his property at the time of the taking→ ascertained from what a willing buyer would pay in cash to a willing seller
-The court failing to account the possibility that the lease might be renewed failed to recognize what a willing buyer would have paid for the improvements
-Almota could have sold the leasehold at a price that would have reflected the continued ability of the buyer to use the improvements
-Right of Salvage: use of the facilities over the remainder of the lease term, with Almota retaining the right thereafter to remove the facilities
-Gov arguments:
-Unreasonable to compensate Almota for the value of the improvements
-Once it has purchased the fee there is no further expectancy that the improvements will be used during their useful life since the gov will assuredly require their removal at the end of the term

(DISSENT)
-Court concedes that the petitioner's expectation of having its lease renewed upon expiration is not itself an interest in property for which it may be compensated

-In the case of improvements the fair market value may be computed in terms of a willing buyer's expectation that the lease would be renewed
-The holding in this case departs from the precedent set in other cases that the destruction of value by itself affords no occasion for compensation
    -Why should this case be any different?
-The endorsement of calculation computed in part of an expectancy that is no part of the property taken represents a departure from this settled doctrine

United States v. 564.54 Acres of Land, More or Less
441 U.S. 506 (1979)

FACTS:
-Non-profit church camps were part of land that the government wanted to take
-Gov offered to pay $485,400 as the fair market value
-P rejected and demanded $5.8 million the asserted cost of developing the functionally equivalent of a new site, claiming that new facilities would be subject to financially burdensome regulations from which existing facilities were exempt under grandfather provisions

ISSUE:
-The proper measure of compensation when the government condemns property owned by a private nonprofit organization and operated for a public purpose
    -SPECIFICALLY: must decide if the Just Compensation clause of the 5th amendment requires payment of replacement cost rather than fair market value of the property taken

HOLDING:
-Court previously determined that nontransferable values arising from the owner's unique need for the property are not compensable, and has found that this divergence from full indemnification does not violate the 5th amendment

RATIONALE:
-Need for an objective rule to determine value
-Market Value Standard: owner is entitled to receive what a willing buyer would pay in cash to a willing seller at the time of the taking
-Court has acknowledged that such a award (market value) does not necessarily compensate for all values an owner may derive from their property
    -Ex. Special value of certain property arising from its adaptability to use
        -Subjective needs and attitudes, value to the owner may therefore differ widely from its value to the taker
-The concept of fair market value has been chosen to strike a fair balance between the public's need and the claimants loss upon condemnation of property for a public purpose
-Court refused to designate market value as the sole measure of just compensation
-Would the application of the fair market standard be impracticable or would an award of market value diverge so substantially from the indemnity principle as to violate the 5th amendment
-Sometimes there are types of property that are so infrequently traded that court could not discern their market value, but camps, though rare, ARE traded, and thus has a readily discernible market value
-Primary value of the condemned property lied in the use to which it is put→ respondent argues that compensating just for market value would unjust in the present context
-While camps may benefit the community, it does not warrant compensating the respondent differently from other private owners
-OBJECTIVE STANDARD: to make the measure of compensation depend on a jury's subjective estimation of whether a particular use benefits the community would conflict with the courts efforts to remain objective
-Like other private owners, respondent is not entitled to recover for nontransferable values arising from its unique need for the property

-Formal Realizabiltiy Argument: inappropriate to try and measure the value someone else holds for the land

Granite Properties Limited Partnership v. Manns
512 N.E.2d 1230 (Ill. 1987)

FACTS:
-Roads leading to and from the shopping center interfered with an apartment complex and trucks that needed to make deliveries to the shopping centers couldn't turn around
-Changes could be made, but it would cause great difficulty
-Owner didn't know of these problems, but he saw the use of these buildings

HOLDING:
-Easement by necessity that will require flexibility

RATIONALE:
-Restatement of property operates on the basis of eight "important circumstances from which the inference of intention to create or reserve an easement may be drawn":

1. Whether the claimant is the conveyor or the conveyee
2. The terms of the conveyance
3. The consideration given for it
4. Whether the claim is made against a simultaneous conveyee
5. The extent of necessity of the easement
6. Whether reciprocal benefits result
7. The manner the land was used prior to its conveyance
8. The extent to which the manner of prior use was or might have been know to the parties

-Best argument in this case is easement for prior use and permanent character

Easements Implied from Prior Use:

-The dominant estate and the servant estate owned by a singe party
-The dominant and the servant estate were severed
-Before the conveyance severing the parcels, the owner used one parcel for the benefit of the other parcel
-This use was OBVIOUS, LONG-CONTINUED, and MANIFEST
-At the time of the severance, the parties impliedly conveyed or reserved an easement/intended to convey and easement
-The claimed easement is reasonably necessary and beneficial to the enjoyment of the parcel conveyed or retained by the grantor,
The scope of the easement is determent and may not be expanded to meet an increase in the dominant estates need

Finn v. Williams
33 N.E.2d 226 (Ill. 1941)

FACTS:
-Landlocked property, no unity of title, plaintiffs wanted an easement of necessity to gain access to the land
-Plaintiff's charge that the nearest and only available means of egress from and ingress to their land

ISSUE:
-Is this an easement of necessity?

HOLDING:
-When such permission is denied, as in the present case, the subsequent grantees may avail themselves of the dormant easement implied in the deed severing the dominant and servant estates

RATIONALE:

-Where an owner of land conveys a parcel which has no outlet to a highway except over the remaining lands of the grantor or over the land of strangers, a way by necessity exists over the remaining lands of the grantor

Green v. Lupo
647 P.2d 51 (Wash. Ct. App. 1982)

FACTS:
-P's were adjoining landowners who requested a deed to release a small section of the north tract to allow financing for the construction of a home on a tract of land
-P's development of their land for mobile home occupancy caused tension between landowners
-Easement developed as an entry way to property was being used for motorcycle practice way

ISSUE:
-Whether parole evidence is admissible to construe an easement as personal to the grantees where the easement is agreed in writing to be for ingress and egress for road and utility purposes but the writing does not expressly characterize the easement as either personal or appurtenant

PROC HISTORY:
-TC concluded that an easement was granted for the use and benefit of the plaintiffs alone and could not be assigned or conveyed
-The court ordered the plaintiff's use to be limited to ingress and egress for their own home or cabin and prohibited the passage of motorcycles

HOLDING:
-Reversed and remanded with directions to modify the decree so as to declare the easement for ingress and egress for road and utility purposes to be appurtenant to plaintiff's property and to devise reasonable restrictions to assure that the easement shall not be used in such a manner as to create a dangerous nuisance

RATIONALE:
-Most important part is the intention of the parties
-Where the language is ambiguous the court may consider the situation of the property and of the parties and the surrounding circumstances at the time the instrument was executed, and the practical construction of the instrument given by the parties by their conduct or admissions
-A written instrument is ambiguous when its terms are uncertain or capable of being understood or having more than one meaning
-Court concludes that parole evidence is properly admitted
-TC's conclusion that the easement was personal to the plaintiff's was erroneous→factual findings mandate the conclusion that the easement was intended to be appurtenant to plaintiff's property
-A servient owner is entitled to impose reasonable restraints on a right of way to avoid a greater burden on the servient owner's estate than that originally contemplated in the easement grant, so long as such restraints do not unreasonable interfere with the dominant owner's use

Cox v. Glenbrook Company
371 P.2d 437 (Nev. 1962)

FACTS:
-Quill easement is the only existing ingress to and egress from the tract of disputed land
-Glenbrook company has sold small parcels of its property to individuals and granted the purchaser a right-of-way for ingress and egress
-Each party requests a declaratory judgment as to the scope and extent of a certain right-of-way referred to as the Quill Easement
PROC HISTORY:
-TC declared that he Quill Easement is limited in three respects:

1. To such uses as are and will be reasonably consistent with the use which the servient property is employed
2. To use of the Glenbrook roads as those roads are presently constructed and maintained
3. That the proposed use of the so called Quill Easement by the defendants therein would constitute an illegal and unjustified burden and surcharge upon the servient estate

HOLDING:
-Lower court erred in declaring that the proposed use of the Quill Easement would constitute an unreasonable burden upon the servient estate in the absence of existing evidence

RATIONALE:
-Those who succeed to the possession of each of the parts into which the dominant tenement may be subdivided, also succeeded to such privileges of use, unless otherwise provided by the terms of the conveyance
-The Quill conveyance does not contain a restriction that the easement granted is to be appurtenant to the dominant estate only when such estate remains in single possession
-Judgment restricts the use of the easement to use of the Glenbrook roads as those roads presently constructed and maintained
-As a general rule, the owner of an easement may prepare, maintain, improve, or repair the way in a manner and to an extent reasonably calculated to promote the purposes for which it was created
-Owner MAY NOT cause and undue burden upon the servient estate or an unwarranted interference with the independent rights of others who have a similar right of use

CONCLUSIONS:
1. The privilege of use of the Glenbrook roads as located is not restricted by the terms of the grant and is appurtenant to the dominant estate
2. Owners of the easement may maintain repair and improve the way in a manner reasonably calculated to promote the purposes for which the easement was created; however
    a) Confined to the area within the exterior border of the way it existed
    b) Cannot cause an undue burden
    c) Cannot cause unwarranted interference
3. Owners may not widen the way
4. Right includes the right to barricade that portion of the existing way
5. Owners of the easement may not cause an undue burden upon the servient estate or unwarranted interference with the independent rights of others who have similar rights of use

Henley v. Continental Cablevision of St. Louis County, Inc.
692 S.W.2d 825 (Mo.Ct. App. 1985)

FACTS:
-P's predecessors as trustees were granted the right to construct and maintain electric, telephone and telegraphic service on or over the rear five feet of all lots in a subdivision and to grant easements to other parties for maintaining these systems

PROC HISTORY:
-P's filed for an injunction to compel the removal of the D's wires and cables AND seeking $300,000 in damages
-Both parties agree the easements are easements in gross

ISSUE:
-Whether or not these easements are exclusive and therefore apparitional by the utilities to, in this case, defendant Continental Cable

RATIONALE:

-Here there is no clam that P's predecessors had, at the time the easements were granted, any intention to seek authority for, or intention to use, the area in question
-The owner of an easement my license or authorize third persons to use its right of way for purposes not inconsistent with the principle use granted
-Clearly it is in the public interest to use the facilities already installed for the purposed of carrying out this intention to provide the most economically feasible and least environmentally damaging vehicle system for installing cable systems

Davidson Bros., Inc. v. D. Katz & Sons, Inc
579 A.2d 288 (N.J. 1990)

FACTS:
-Supermarket owners with a restrictive covenant not to operate a competitive supermarket on the nearby property
-By eliminating the other supermarket, low income residents in the neighborhood are forced to take other transportation to the farther supermarket, creating a public policy issue

ISSUE:
-When do covenants run with the land?
-Are there any instances when covenants will not be forced?
-What is the proper remedy for a breach of a covenant? Injunction or damages?

HOLDING:
-The following factors should be considered:

1. The intention of the parties when the covenant was executed, and whether the parties had a viable purpose which did not at the time interfere with existing commercial law
2. Whether the covenant had an impact on the considerations exchanged when the covenant was originally executed
3. Whether the covenant clearly and expressly sets fourth the restrictions
4. Whether the was in writing, recorded, and if so, whether the subsequent grantee had actual notice of the covenant
5. Whether the covenant is reasonable concerning the area, time or duration
6. Whether the covenant imposes an unreasonable restraint on trade or secures a monopoly for the covenanter
7. Whether the covenant interferes with the public interest
8. Whether, even if the covenant was reasonable at the time it was executed, "changed circumstances" now make the covenant unreasonable"

RATIONALE:
-Court examines whether or whether the covenant is reasonable enough to warrant enforcement
-A reasonableness test allows the court to consider the enforceability of a covenant in view of the realities of today's commercial world and not in light of outmoded theories in a vastly different commercial environment
-The fact sensitive nature of a reasonableness analysis make resolution of this dispute though summary judgment inappropriate→ remand the case to TC for a through analysis of the reasonableness factors delineated here
(DISSENT)
-Balance between two worthy objectives:
-People of the neighborhood need a grocery store, and the interest of upholding the contract
-Traditional remedy was injunction

Whitinsville Plaza v. Kotseas
390 N.E.2d 243 (Mass. 1979)

-Mass. Supreme Judicial Court held that both the benefit of the covenant and the burden ran with the land, and remanded to determine whether the anticompetitive covenant was reasonable, and if so, the appropriate remedy

-The court found:

1) That the covenant was in writing
2) The language of the deed was fairly stated
3) That CVS had actual notice of the covenant and constructive notice
4) Privity of estate existed between the original covenanting parties under the mutual privity test because both parties had easements in the other's land

Evans v. Pollock
769 S.W.2d 465 (Tex. 1990)

FACTS:
-Platted a subdivision around lake Travis, divided it into seven blocks and divided the blocks into 31 lots
-Each plaintiff divided received half the lots
-Each deed contained the same restrictive covenants prohibiting commercial use of the land, restricting the land to residential use, and providing the and restrictions could only be changed by ¾ of the property owners

ISSUE:
-Whether all the tracks in the development must be intended to be subject to the restrictions for the implied reciprocal negative easement doctrine to apply to any of the retained lots

PROC HISTORY:
-TC held that the original subdivides indented the restrictions to apply to all the lakefront lots but no to the hilltop. COA reversed, holding that none of the retained lots were restricted on the ground that the implied reciprocal negative easement to apply, the original grantors must have intended that the entire subdivision must be similarly restricted

HOLDING:
-Held that the general plan or scheme may be that the restrictions only apply to certain well defined similarly situated lots for the doctrine of implied reciprocal negative easements to apply to such lots

RATIONALE:
-Provisions in restrictive covenants that the restrictions may be waived or modified by the consent of ¾ of the lot owners constitute strong evidence that there is a general scheme or plan of development furthered by the restrictive covenant

Sanborn v. McLean (Mich. 1925)
-Court held that the McLean's were on constructive notice of the restrictions in the deed to the neighboring properties and that the uniform residential character of the surrounding properties also put the McLean's on inquiry notice to determine whether there were restrictive covenants on neighboring lots that might be interpreted to create a plan to restrict the entire neighborhood to residential uses

Riley v, Bear Creek Planning Committee (Cal. 1976)
-Built a snow tunnel without first obtaining approval of the architectural committee
-Evidence of their knowledge of the grantor's intent to impose restrictions was not admissible under the parole evidence rule and the statute of frauds

(DISSENT)
-Fairness and realizability argument

Appel v. Presley Companies
806 P.2d 1054 (N.M 1991)

FACTS:
-Presley recorded a set of restrictive covenants covering all the property shown on the replat, regulating the land use, building type, etc.
-Appels met with Presley and the agents regarding the purchase of a lot in the subdivision→ allege that the restrictive covenants were used as a sales tool which they relied on in purchasing a lot and constructing their home

PROC HISTORY:
-P's appeal from an order granting summary judgment to D's
-P's assert 3 claims: breech of restrictive covenants, negligent and fraudulent misrepresentation, and unfair trade practices
-Request a permanent injunction enjoining Wolfe from constructing any building on its lot unless it complied with the restrictive covenants applicable to the subdivision
-Also sought compensatory and punitive damages
-TC reversed and remanded

HOLDING:
-TC's order granting summary judgment is revered and remanded

RATIONALE:
-TC found that the language was unambiguous and that the covenant permitted the Architectural committee to make exceptions to remove individual lots from the covenants
-To permit individual lots within an area to be relieved of the burden of such covenants, in the absence of a clear expression in the instrument so providing, would destroy the right to rely on restrictive covenants which has traditionally been upheld by our law of real property
-A court of equity will not enforce restrictions where there are circumstances that render their enforcement inequitable
-Reasonableness Test
    -Covenants must be reasonable with due regard for the property rights and investments of the persons who relied upon the residential covenants which were in full force at the time of their purchase
-The Appels produced sufficient evidence to raise factual questions as to whether Presley misrepresented that Lot 30 would remain open space and that the covenants would maintain in the intended character of the subdivision

Davidson Brothers, Inc. v, D, Katz & Sons, Inc,
643 A.2d 642 (Super. Ct. App. Div. 1994), on remand from 579 A.2d 288 (N.J. 1990)

FACTS:
-Closing of George Street as a supermarket created a hardship for downtown residents who did not have access to a car
-D C-Town, on condition that C-Town invest at least 10K for improvements, operate George Street as a supermarket
-Davidson commenced this action to enforce the covenant, and appealed from an adverse summary judgment an we affirmed in an unreported opinion, utilizing traditional touch and concern analysis
-SC granted Davidson's petition for certification and reversed and remanded for a new trial
    -Court determined that "ridged adherence to the "touch and concern" requirement was no loner warranted
-Experts found that the downtown area contains the greatest concentration of disadvantaged person's
-The absence of a supermarket in a low income city neighborhood makes food more expensive and has a negative impact on diet and, therefore, on the inner city population and health
    -Contributes to inner city decay because a supermarket is a retail anchor that attracts other retailers

-Supermarket Migration: supermarkets migrate to the suburbs and low-income areas in the inner cities become worse off
-New Jersey Economic Development Authority Act is intended to promote economic development generally throughout the state
-Provision of buildings, structures and other facilities to increase opportunity for employment in manufacturing, industrial, commercial, recreational, retail, and public interest services
-The City of New Brunswick is currently eligible for Open Competitive Urban Enterprise Zone Designation

HOLDING:
-Davidson has the right to terminate the George street operation→ However it imposed a restriction on the use of its former property designed to impede the relocation of another supermarket operation to the downtown area
-Court is persuaded that in the absence of any reciprocal benefit to the city, D's scorched earth policy is so contrary to the public interest in these circumstances that the covenant is unreasonable and unenforceable

O'Buck v. Cottonwood Village Condominium Association, Inc
750 P.2d 813 (Alaska 1988)

FACTS:
-O'Bucks wanted to purchase a condo but were concerned about the use of their TV's within the condo, wanted to be able to keep a satellite dish on the roof of condo
-Condo board prohibited the mounting of television antennae anywhere on the buildings to protect the roof and to enhance the marketability of the units
-O'Bucks subsequentially filed a complaint seeking damages and an injunction against the enforcement of the rule

HOLDING:
-The declaration and bylaws granted the board the authority to enact the subject rule banning television antennae on the buildings

RATIONALE:
-Rules and regulations of the condo board authorizes them to preserve the exterior of he appearance of the condo
-Board has the authority to ban antennae on any of the buildings
-O'Bucks argue that this provision is not explicitly in the bylaws→ it would be impossible to list every single restrictive use
-Legitimate considerations motivated the antennae ban: preserve the exterior appearance of the building and enhance the marketability of the units
-Condo owners consciously sacrifice some freedom of choice in their decision to live in this type of housing
-Antenna ban curtails no significant interests

Neuman v. Grandview at Emerald Hills, Inc
861 So.2d 494 (Fla. Dist. Ct. App. 2003)

FACTS:
-Members of condo association were using condo auditorium for religious services, claiming that to forbid such a use was unconstitutional
-When others complained, 70% of the owners voted in favor of prohibiting religious services

PROC HISTORY:
-Appellants filed suit against Grandview seeking injunctive and declaratory relief to determine whether the rule violated their constitutional rights or was in violation of §718.123
-Appellants moved for temporary injunction preventing the owners from holding religious services of any kind

ISSUE:

-Whether a condo association rule banning the holding of religious services in the auditorium of the condo constitutes a violation of a statute which precluded condo rules from unreasonably restricting a unit owner's right to peaceably assemble
-We hold that the rule does not violate the statute and affirm

HOLDING:
-TC found the restriction reasonable under the facts. No abuse of discretion has been shown
-Judgment of TC is affirmed

RATIONALE:
-Argued that religious services fell into the category of a peaceable assembly and a categorical ban on religious services was per se unreasonable
-Rule did not violate §718.123 and the condo association had the authority to enact this reasonable restriction on the use of the authority
-Board may not restrict any unit owner's right to peaceably assemble
-Homeowner's associations work as their own mini governments

El Di, Inc. v. Town of Bethany Beach
477 A.2d 1066 (Del. 1984)

FACTS:
-Bethany beach was set out to be a quiet, residential, family beach community
-Covenants prohibiting the sale of alcohol to keep the family environment
-However, in the late 1920s, commercial properties began to develop in the town
-1952: town enacted a zoning ordinance that established a zoning ordinance designated as C-1, where Holiday house was located
-Holiday House patrons were permitted to carry their own alcoholic beverages with them into the restaurant
-To control the excessive use of alcohol, Holiday House applied for a liquor license→ granted, started selling alcohol

PROC HISTORY:
-Appeal from a permanent injunction granted by the court of chancery upon5t the petition of the plaintiffs from selling alcoholic beverages at Holiday House
-On appeal it is undisputed that the chain of title for the Holiday house lot included restrictive covenants prohibiting both the sale of alcoholic beverage on the property and nonresidential construction
-TC rejected D's contention that plaintiff's acquiescence and abandonment rendered that covenants unenforceable

HOLDING:
-Find the TC erred in holding that the change of conditions was sufficient to negate the restrictive covenant
-Unreasonable and inequitable now to enforce the restrictive covenant

RATIONALE:
-A court will not enforce a restrictive covenant where a fundamental change has occurred in the intended character of the neighborhood that renders the benefits underlying imposition of the restrictions incapable of enjoyment
-Town has changed from a church community to a residential summer town visited by tourists
-The commercial uses of the town have gone unchallenged for more than 82 years
-Time has relaxed not only the strictly residential character of the area but the pattern of alcohol use and consumption
(DISSENT)
-The fact that alcoholic beverages may be purchased right outside this town is not inconsistent with my view that the quiet town atmosphere in this small area has not broken down, and that it can and should be preserved

Shelly v. Kraemer
334 U.S. 1 (1948)

FACTS:
-Questions relating to the validity of court enforcement of private agreements (restrictive covenants) which have as their purpose racially restrictive rules
-30 owners of a subdivision wanted the area to be exclusively available to whites only, while before this decision was passed, blacks already lived in the designated "white only" areas

PROC HISTORY:
-TC found that the petitioners has no actual knowledge of the restrictive agreements at the time of the purchase
-Respondents wanted petitioners Shelly to be restrained from taking possession of the property and reverting title
-Supreme court of Missouri reversed and directed the TC to grant relief to the respondents

ISSUE:
-Whether enforcement by state courts of the restrictive agreements in these cases may be deemed to be the acts of those states, and if so, whether that action has denied these petitioner the equal protection of the laws which the amendment was intended to insure

HOLDING:
-Judgment of the SC of Missouri and the SC of Michigan must be reversed

RATIONALE:
-All citizens of the United States have the same right, in every territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property
-Do these cases count as private conduct that would be protected?
    -The 14th amendment erects no shield against merely private conduct, however discriminatory or wrongful
-These are cases in which the purpose of the agreements were secured only by judicial enforcement by start courts of the restrictive terms of the agreements
-The action of the state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend has long been regarded as a denial of the due process of law guaranteed by the 14th amendment
-PERSONAL RIGHTS: Equal protection is not achieved through discrimination
-These are cases in which states have made available to such individuals the full coercive powers of government to deny to petitioners, on the grounds of race, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell
-Judicial action is not immunized from the operation of the 14th amendment simply because it is taken pursuant to the state's common law policy. Nor is the amendment ineffective simply because the particular pattern of discrimination was defined initially by the terms of a private agreement
-Early victory by the NAACP in overturning racial discrimination after having lost many cases involving similar cases
-HORIZONTAL PRIVITY

Evans v. Abney
396 U.S. 435 (1970)

FACTS:
-Court must consider the constitutional implications of conveyed property in a trust for the creation of a public park for the exclusive use of whites
-Senator Bacon willed the use of a public park to the exclusive use of whites only, not because he "disliked blacks", but because he thought that they should not mix socially

PROC HISTORY:
-SC rule that intention to provide a park for whites only had become impossible to fulfill and that accordingly the trust has failed and the parkland and the other trust property had reverted by operation of Georgia law to the heirs of the Senator

ISSUE:
-Use of the cy pres doctrine?

HOLDING:
-Since racial separation was found to be an inseparable part of the testator's intent, the Georgia courts held that the state's cy pres doctrine could not be used to alter the will to permit racial integration

RATIONALE:
-**Cy Pres Doctrine**: when a valid charitable bequest is incapable for some reason of execution in the exact manner provided by the testator, a court of equity will vary it into effect in such a way as will as nearly as possible effectuate his intention (PRIVATE LAW)
-Georgia courts have held that the fundamental purpose of these cy pres provisions is to allow the court to carry out the general charitable intent of the testator where this intent might otherwise by thwarted by the impossibility of the particular plan provided
-Eliminates discriminations by eliminating the park→ while in Shelly the court did not take such drastic actions (DISSENT→Douglas)
-Putting the property into the hands of the heirs will not necessarily achieve the racial segregation that Senator Bacon desired
-"Vicissitudes of time there is no constitutional way to assure that this property will not serve the needs of negroes"
(DISSENT→Brennan)
-Baconsfield was transformed into a modern recreational facility by employees of the WPA, a federal agency, using federal money, and therefore became PUBLIC
-Court agrees that this city park is being destroyed because the constitution requires it to be integrated
-Three elements where state action is present here:

1) There is state action wherever a state enters into an arrangement that creates a private right to compel or enforce the reversion of a public facility
2) State action where parties of different races are willing to deal with one another a state cannot keep them from doing so by enforcing a privately devised racial restriction
3) States act in violation of the Equal Protection Clause when it singles out racial discrimination for particular encouragement, and thereby gives it a special preferred status in the law, even thought the state does not impose or compel segregation

Olivas v. Olivas
780 P.2d 640 (N.M. Ct. App. 1989)

-Husband and wife separated after husband chose to move out of the family house and maintained another home
-Although the wife was the exclusive occupant of the house after the separation, ordinarily a cotenant incurs no obligation to fellow cotenant by being the exclusive occupant of the premises
-Applying the notion of constructive ouster in the marital context is simply another way of saying that when the emotions of a divorce make it impossible for spouses to continue to share the marital residence pending a property division; the spouse who departs the residence may be entitled to rent from the remaining spouse
-The husband has the burden of proving constructive ouster in this case→ therefore we must sustain the district court's ruling against husband unless the evidence at trial was such to compel the district court to fins ouster

Carr v. Decking
765 P.2d 40 (Wash. Ct. App. 1988)

FACTS:
-Decking and Carr executed a written 10 yr crop share lease and Decking agreed to pay all fertilizer costs
-Carr neither consented nor ratified this lease and never authorized Carr to act on his behalf
-Carr gave notice that the lease would terminate at the end of the crop year
-Carr contends that the rights of Decking as lessee are subordinate to those of a nonjoining tenant in common

PROC HISTORY:
-Decking believes that Carr could lawfully enter into a lease with respect to his own undivided one-half interest in the property, and Carr was not entitled to bring an ejectment action to which Carr did not agree. He asserts the proper remedy is partition, not ejectment

HOLDING:
-No indication that this property is not amenable to physical partition. Carr clearly has the right to that remedy

RATIONALE:
-TC properly denied Carr's effort to eject Decking, Carr is entitled to the benefit of the lease, until the partition of the property occurs

Tenhet v. Boswell
554 P.2d 330 (Cal. 1976)

FACTS:
-A joint tenant leases his interest in the joint tenancy property to a third person for a term of years, and dies during that term
-Johnson leased the property to D Boswell for a period of 10 years at a rental of $150 per year with a provision granting the lessee an option to purchase
-After an unsuccessful demand upon D to vacate the premises, P brought this section to have the lease declared invalid

ISSUE:
-Whether the partial alienation of Johnson's interest in the property effected a severance of the joint tenancy under these principles

HOLDING:
-The lease here in issue did not operate to sever the joint tenancy

RATIONALE:
-A joint interest is one owned by tow or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy
-Severance of the joint tenancy extinguishes the principle feature of that estate (the jus accrescendi) or right of survivorship
-The interest of the nonsurviving joint tenant extinguishes upon his death
-A joint tenant may grant certain rights in the joint property without severing the tenancy...but when such a joint tenant dies his interest dies with him and any encumbrances placed by him on the property become unenforceable against the surviving joint tenant

Kresha v. Kresha
371 N.W.2d 280 (Neb. 1985)
-Mother wrote the son advising that she was terminating a lease that the son signed with father
-Son in turn wrote that he considered his lease to be valid and remained on the lands
-Mother brought this forcible entry and detainer action in the country court to obtain possession of the lands

-Court concludes that the father could and did encumber his own interest in the lands by the lease with his son but did not encumber the mother's interest
-The mother knew of the lease and its provisions throughout the dissolution proceedings and was free to develop all the facts surrounding it for the consideration for the dissolution court

Sawada v. Endo
561 P.2d 1291 (Haw. 1977)

- Seeking a conveyance from judgment after a car accident on the ground that the conveyance was fraudulent
-In a tenancy by the entirety, can creditors reach the other spouse? The answer in this type of marital arrangement is YES
-The nature of this type of estate is unity and indivisibility
-Property is an important part of a married couples assets, and they should each be able to own it in whole

O'Brien v. O'Brien
489 N.E.2d 712 (N.Y. 1985)

FACTS:
-P and D were married and were both teachers. D was working full time, but gave up the chance for a full certificate in teaching because P wanted to pursue medicine
-P and D moved to Mexico and completed the sufficient course to enter medical school
-P was licensed to practice medicine when P and D filed for divorce
-During the marriage, both parties contributed to the paying the living and educational expenses of each other

PROC HISTORY:
-TC found that she has contributed 76% of the parties income
-Finding the plaintiff's medical degree and license are marital property, the court received evidence of its value and ordered a distributive award to the defendant
-After considering the life style the plaintiff would enjoy, made a distributive award to her of $188,800 representing 40% of the value of the license

ISSUE:
-Whether P's medical license, acquired during their marriage, is marital property subject to equitable distribution under domestic relations law

HOLDING:
-When other marital assets are of sufficient value to provide for the supporting spouse's equitable portion of the marital property, including his or her contributions to the acquisition of the professional license, however, the court retains the discretion to distribute these other marital assets or to make a distributive award in lieu of an actual distribution of the value of the professional spouse's license

RATIONALE:
-The equitable distribution law contemplates only two classes of property: marriage property and separate property
-All property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, regardless of the form in which the title is held
-P claims that license is not property at all but represents a personal attainment in acquiring knowledge
-Marital property encompasses a license to practice medicine to the extent that the license is acquired during marriage
-The distribution of an interest in a business, corporation or profession would be contrary to law, the court shall make a distributive award in lieu
-The determination that a professional license is marital property is also consistent with the conceptual base upon which the statute rests

-P's principle argument is that a professional license is not marital property because it does not fit into the traditional view of property as something which can be exchanged on the open market
-Doesn't hold up for two reasons:

1) Ignores the fact that whether a professional license constitutes marital property is t be judged by the language of the statute which created this new species of property previously unknown at common law or under prior statute
2) An overstatement to assert that a professional license could not be considered property even outside the context of section 236(B)

Watts v. Watts
405 N.W.2d 303 (Wis. 1987)

-Nonmarital cohabitation relationship which spanned 12 years and produced 2 children
-D indicated to P that he would provide for her
-P worked for D both in and out of the home
-P alleged that in 1981the defendant made their relationship so intolerable that she was forced to move from their home and their relationship was irretrievably broken
-P alleges that she never received any compensation for these contributions to the relationship and that D indicated that she was considered his wife and she would share equally in the wealth

Leasehold: property interests between the landlord and tenant

-What are the drawbacks of seeing leaseholds as property?

Duty to pay rent will be a covenant between the landlord and tenant
-A leasehold is a transfer or possession of real property
-What was the degree of stability in the lodging? Did the lodger intend to make the residency permanent?

Vasquez v. Glassboro Service Association, Inc.
415 A.2d 1156 (N.J. 1980)

FACTS:
-Workers hired from Puerto Rico and employed at Glassboro in NJ
-Stay for the length of their contract, but then are sent back
-Contract does not define in any way the nature of their relationship to Glassboro
-Vasquez is fired from Glassboro and required to leave that night
-Vasquez seeks an order permitting him to reenter his living quarters and an injunction from removing him from the camp

ISSUE:
-Is Vasquez's employment/stay at Glassboro a leasehold?
-Does public policy allow him to be kicked out of the housing?

HOLDING:
-NO, this is not a leasehold and he is not a tenant under NJ law

RATIONALE:
-Court looks at common law
-NJ anti eviction law
-State turns to contract law in upholding an adhesion contract when it is consistent with public policy
-Court holds that he should have been given a hearing before ejection, especially given that Vasquez didn't speak English and was at a serious disadvantage to others at Glassboro

Minjak Co. v. Randolph
528 N.Y.S.2d 554 (App. Div. 1988)

FACTS:
-Tenant's non payment of rent based on their inability to use 2/3 of their loft space due to the landlord's renovations and other conditions, and they claimed that they were entitled to an abatement of 2/3 of the rent
-Entitled t a further abatement of rent due to the landlord's failure to supply essential services
-Respondents suffered water leaks, sand leaking from the walls, clouds of dust, damage to the stairs, and faulty construction

PROC HISTORY:
-Jury rendered a verdict awarding respondents a rent abatement on the theory of constructive eviction and the remainder of the rent abatement on the theory of breach of warranty of habitability, and also punitive damages
-On appeal, appellate term reversed the judgment holding the doctrine of constructive eviction could not provide a defense to this non payment proceeding because tenants had not abandoned possession of the demised premises

HOLDING:
-Tenant may assert as a defense to the nonpayment of rent the doctrine of constructive eviction even is he or she has abandoned only part of the demised premises due to the landlord's acts in making that portion of the premises unusable by the tenant

RATIONALE:
-Punitive damages may be awarded when to so would deter morally culpable conduct
    -Intentional and malicious conduct
-Satisfied that this record supports the jury's finding of morally culpable conduct in light of the dangerous and offensive manner in which the landlord permitted the constructed work to be performed, the landlord's indifference to the health and safety of others and its disregard for the rights of others, so as to imply even a criminal indifference to civil obligations
-Such indifference must be viewed as rising to the level of high moral culpability→ punitive damages are sustained

Blackett v. Olanoff
358 N.E.2d 817 (Mass. 1976)

FACTS:
-Constructive eviction as a defense against the landlord's claim
-Tenant's were deprived of the implied warranty of quiet enjoyment of their property for a substantial amount of time by the behavior of other tenants that the landlord had control over

PROC HISTORY:
-Tenants vacated the apartments, TC affirms the judgments
-Landlord claims that he is not responsible for the conduct of other tenants

HOLDING:
-Landlord must perform some act that allowed the tenants to enjoy their property

RATIONALE:
-As a matter of law, the landlords had a right to control the objectionable noise coming from the lounge and that the judge was warranted in finding as a fact that the landlord could control the objectionable conditions
-Landlord's should not be entitled to collect rent for the residential premises which were not reasonable habitable

Javins v. First National Realty Corp.
428 F.2d 1071 (D.C. Cir. 1970)

ISSUE:
-Whether housing code violations which arise during the term of a lease have any effect upon the tenants obligation to pay rent

HOLDING:
-A warranty of habitability, measured by the standards set out in the housing regulations for the district of Columbia, is implied by operation of law into leased of urban dwelling units covered by those regulations and that breach of this warranty gives rise to the usual remedies for breach of contract

RATIONALE:
-Courts have a duty to reappraise old doctrines in light of facts and values of contemporary life
-In this courts judgment, the trend towards treading leases as contracts is wise and well considered
-The old no-repair rule cannot co-exist with the obligations imposed on the landlord by a typical modern housing code, and must be abandoned in favor of an implied warranty of habitability
-The common law must recognize the landlord's obligation to keep his premises in a habitable condition
    1) The old rule was bases on certain factual assumptions that are no longer true
    2) We believe that the consumer protection cases discussed require the old rule be abandoned in order to bring residential landlord tenant law into harmony with the principles on which those cases rest
    3) The nature of today's urban housing market also dictates abandonment of the old rule
-Since the lessees continue to pay the same rent, they were entitled to expect that the landlord would continue to keep the premises in their beginning condition during the lease term

Hillview Associations v. Bloomquist
440 N.W.2d 867 (Iowa 1989)

FACTS:
-Tenants at Gracious Estates began to meet informally to discuss their concerns over the physical condition of their trailer park residences
-Meeting was held between five members of an established tenant association and Ms. Nitz, the park supervisor
-Meeting where complaints were voiced led to a physical altercation between the tenants and the supervisor
-Later, tenants who were part of the altercation were subject to eviction

HOLDING:
-Court finds that the tenants have offered substantial evidence of a retaliatory termination

RATIONALE:
-In deciding whether a tenant has established a defense of retaliatory eviction, we consider the following factors tending to show the landlord's primary motivation was not retaliatory:
    (a) The landlord's decision was a reasonable exercise of business judgment;
    (b) The landlord in good faith desires to dispose of the entire leased property free of all tenants;
    (c) The landlord in good faith desires to make a different use of the leased property;
    (d) The landlord lacks the financial ability to repair the leased property and therefore, in good faith, wishes to have it free of any tenant
    (e) The landlord was unaware of the tenant's activities which were protected by statute;
    (f) The landlord did not act at the first opportunity after he learned of the tenant's conduct
    (g) The landlord's act was not discriminatory (Restatement (Second) of Property)

Imperial Colliery Co. v. Fout
373 S.E.2d 489 (W.Va. 1988)

ISSUE:

-Whether a residential tenant who is sued for possession of rental property under W. Va. Code may assert retaliation by the landlord as a defense

-Whether retaliation motive must relate to the tenant's exercise of a right incidental to the tenancy

RATIONALE:

-Court concludes that the retaliatory eviction defense must relate to activities of the tenant incidental to the tenancy

-1st amendment rights are unrelated to the tenant's property interest and are not protected under retaliatory eviction defense in that they do not arise from the tenancy relationship