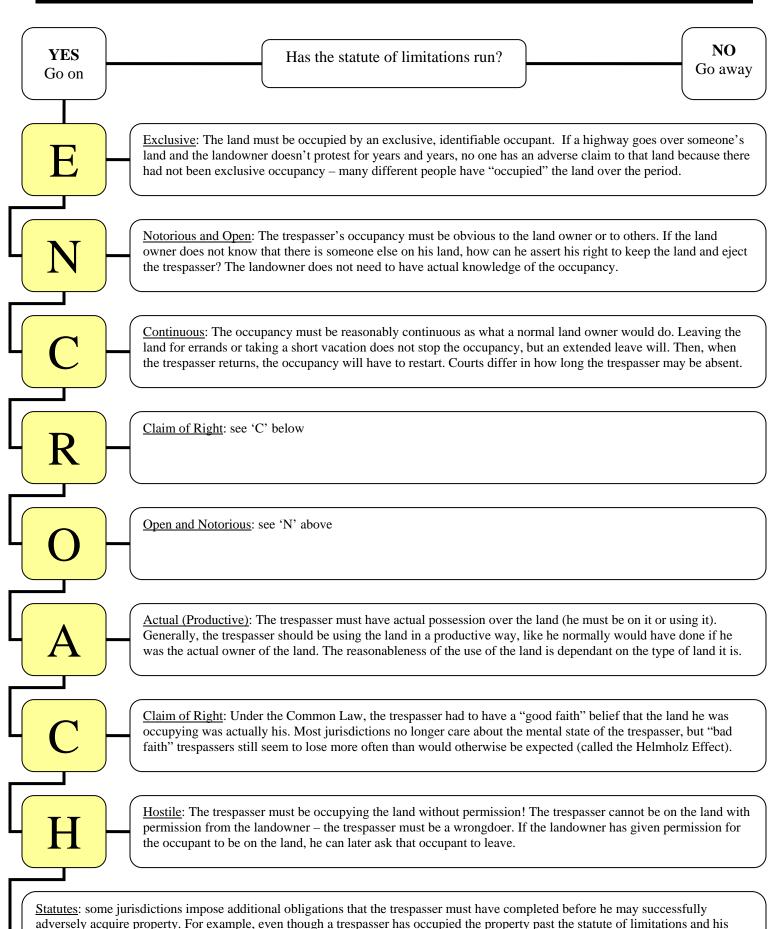
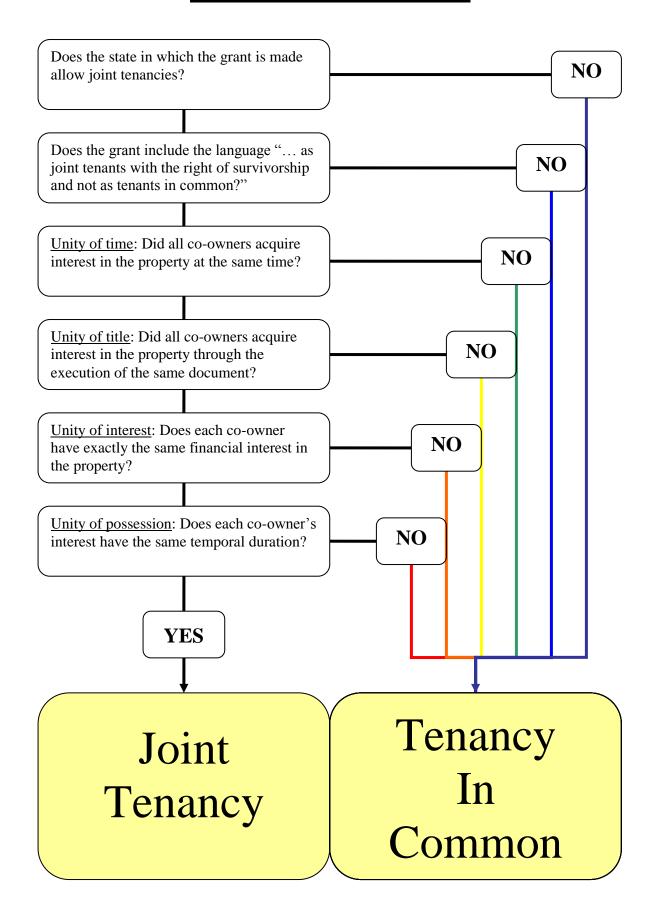
# **Adverse Possession (ENCROACH)**



occupancy has met all of the ENCROACH criteria, the jurisdiction may require the adverse possessor to have been paying property

taxes all during that time. Trespasser's failure to comply with these statutes will bar any successful adverse possession.

# **Co-Tenancies**



# **Covenant of Quiet Enjoyment**

#### **Covenant of Quiet Enjoyment**

Landlord has no valid title to the land.

Landlord has violated the Covenant and Tenant may sue for damages or walk away from the lease. There's a squatter on the land.

If Landlord does not act to eject the trespasser, then Landlord has violated the Covenant and Tenant can sue for damages or walk away from the lease.

The property is uninhabitable.

- Is Landlord responsible for the situation?
- Is the property *completely* uninhabitable?
- Has Tenant given Landlord a reasonable time to fix the problem?

ALL YES

Constructive Eviction: Landlord has violated the Covenant and Tenant may sue for damages or walk away from the lease. The property is not suited for the rental purpose.

Common Law: If the lease doesn't make a promise that the land is suitable for the Tenant's intended purpose, then the Landlord is not bound by any promise.

More Recently: In certain circumstances, the nature of the context of the transaction implies certain standards.

### **Deadbeat Tenants**

Tenant has stopped paying rent.
Is he still on the property?

Yes

Tenant has probably abandoned the property (that is, he has left with no intention to return).

Landlord can do one of three things.

Payment of the rent was most likely a defeasible condition, which means that Landlord has regained a possessory interest in the property and can eject Tenant.

Accept

Reject and mitigate

Reject and do nothing

Landlord has turned Tenant's abandonment into a surrender. From this point on, neither part is bound by the lease. Tenant is still liable for any past rent due

Two types of

surrender

1) the normal

Any rent that Landlord is not able to recoup by re-letting the property, Tenant will be liable for. As a matter of Contract law, Landlord may have a duty to mitigate the damages if he can.

As a matter of Property law, Landlord has no such duty.

Property law will *usually* win here.

roperty, Tenant vill be liable for.

- Landlord will never be forced to accept an abandonment
- Landlord will always be allowed to try to mitigate
- Tenant will have no cause of action against either Landlord or the new tenant since part of abandonment is an intention not to return

Landlord can take action on his own by waiting for Tenant to leave, changing the locks and throwing Tenants stuff out in the street.

The law doesn't really like
Landlords to take action into their own hands, though, and so many jurisdictions have created
Forcible Entry and Detainer statutes that prohibit this activity.

get to stay on the property and since he has no money, he will probably not be able to pay for any of this time.

To encourage Landlords to go

Landlord can go

this might be

expensive and it

will take a long

time. During this

time, Tenant will

through the proper

legal channels, but

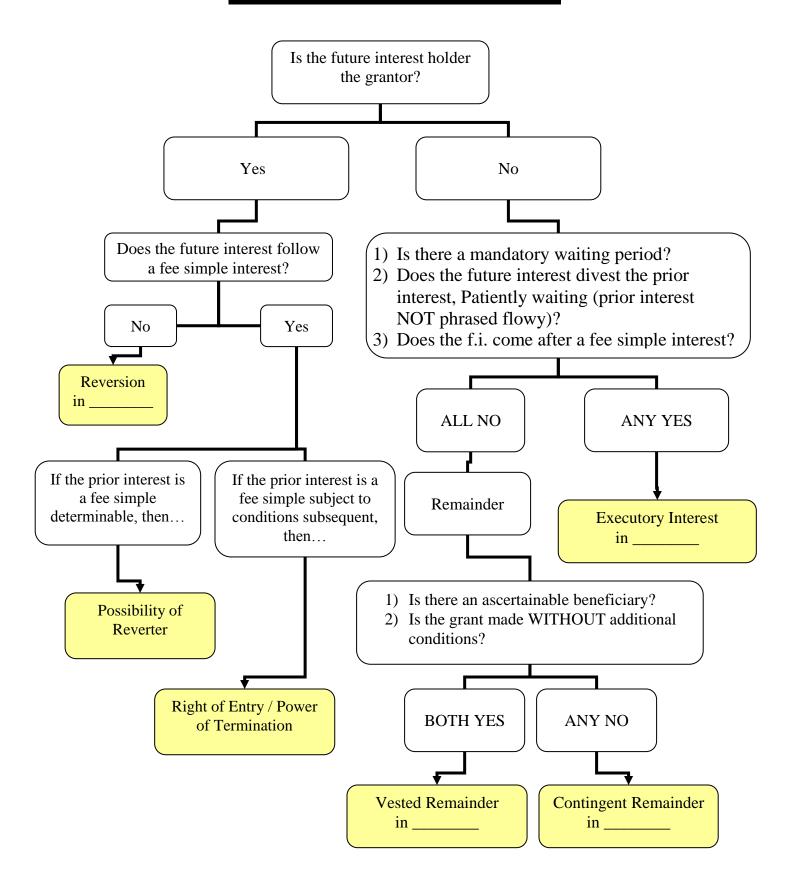
Landlords to go through the proper channels, some jurisdictions have created Landlord / Tenant courts to deal exclusively with these issues.

surrender with lots of lawyers and paperwork

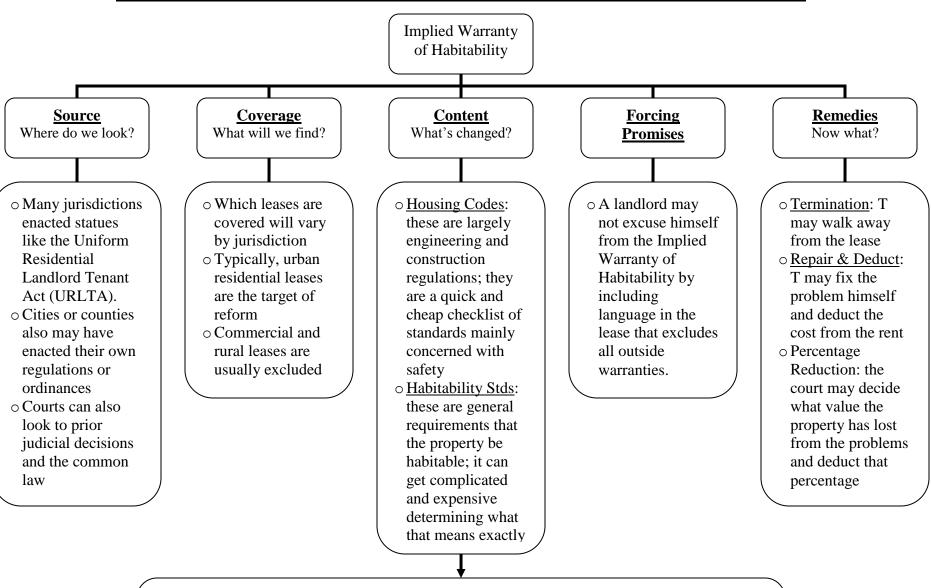
2) Surrender by
Operation of
Law: if it is perfectly obvious by the parties' actions that they no longer wish to be bound by the lease, the lease is

dissolved

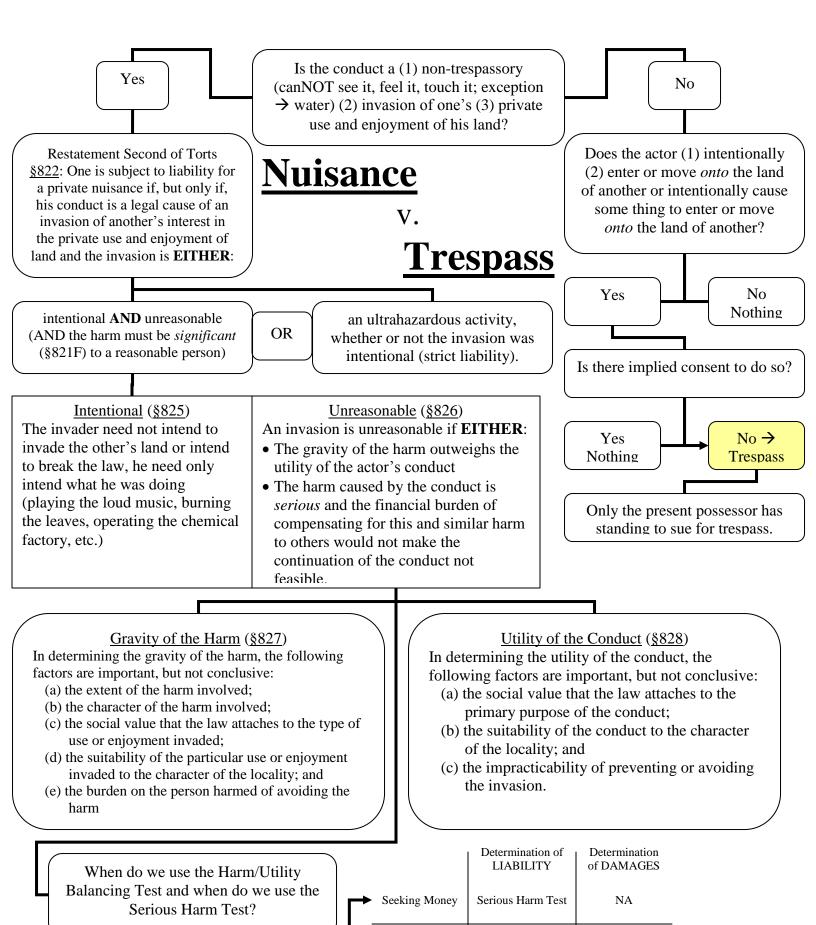
### **Future Interests**



# Implied Warranty of Habitability



<u>Hybrid</u>: combining the ease of Housing Codes with the tenant-mindedness of Habitability Standards, the law may give the tenant civil remedies for the landlord's violation of any housing regulation that deals directly with the habitability of the property. The jurisdiction may also create a set of specific standards of habitability so that the court has some sort of checklist that they can go through to easily and cheaply say that the housing is or is not habitable.



Seeking Injunction

Seeking Both

**Balancing Test** 

Serious Harm Test

NA

**Balancing Test** 

## **Present Possessory Interests**

