



Redefined Horizons  
3938 Kimball Lane  
Stockton, California 95206

Brown's Boundary Control and Legal  
Principles  
Study Notes By Landon Blake  
Monday, March 16, 2020

# Chapter 1 - Study Notes

## Key Terms

### Boundary

The limit of a parcel of real property. Also: The dividing line between one parcel or real property and its neighbor. A boundary is an intangible object and a legal construct. It is invisible and can't be touched or seen. A boundary is based on measurements and words in deeds or on survey maps.

### Creating Boundary Survey

A boundary survey performed to create or define parcels of land. This usually involves taking a larger parcel and dividing it into smaller parcels. In most states of the United States the subdivision process is regulated by state law.

### Retracing Boundary Survey

A boundary survey performed to locate a previously created parcel on the ground (especially in relation to other topographic features). All boundary surveys are subject to some degree of uncertainty. They require measurements, collection of evidence, and interpretation of evidence.

### Uncertainty In Retracement Boundary Surveys

All retracement boundary surveys contain some degree of uncertainty. This uncertainty is caused by differences in measurement, the collection of physical evidence, the interpretation of physical evidence, the alternate solutions to boundary resolution, and the differences in application of legal principles related to boundary surveying.

### Evidence of Boundary Location

Evidence of a boundary location collected and analyzed by a land surveyor during a land survey. This evidence can be physical, such as the character of property corner monuments or natural feature like a tree or stream. It can be intangible, such as a set of measurements, a set of calculations, or oral testimony from a landowner.

### Measurements In Boundary Surveys

Measurements of distance (length), direction (bearing or azimuth), angle, or area used by a land surveyor in the process of making a boundary survey. Measurements can be memorialized in the legal description (land description) of a deed or other document. Measurements can also be



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memorialized on a survey map.

### Real Property

Real property is land. It is distinct from personal property, which is movable. Real property is 3 dimensional. It includes the ground below the surface and air above the surface.

### Pseudo-Measurements

Data obtained through non-survey methods (like GIS grade GPS receivers) or calculated with non survey methods. Pseudo measurements, such as those shown on a tax assessor map or contained in a GIS, are not a suitable evidence for boundary surveys.

### Land Title

The means or vehicle by which ownership to land is obtained and subsequently proven. For example: A grant deed both conveys ownership of land and is proof of that ownership.

### Rights In Land

Rights to perform an action based on the ownership of land. For example: The right to sell timber that grows on a parcel of land.

### Interests In Land

An right to land that is not based on ownership of the land. This includes the rights to use land granted by an easement or the right to payment of a debt from money obtained through the sale of the land by a lien.

### Land Tenure

The manner in which land is held. Tenure defines the rights and responsibilities of the land holder. For example: In medieval England, the owner of a land might have to provide knights to fight on behalf of the king.

### Real Estate

An estate is the set of things owned by an individual. For example: The estate of Landon Blake. Real estate is the real property owned by a person. For example: The lands of Landon Blake.

### Fee Simple Absolute Estate

A type of ownership in land under the United States Legal System. Each term in Fee Simple Absolute has a specific meaning. Fee denotes a real estate that can be inherited. Simple means the owner, and not the sovereign, is free to determine who inherits the land. Absolute means there are



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no time limits on the ownership of the estate (unlike a life estate or lease).

### Statute of Frauds

The rule requiring transfer of real property from one person to another to be in writing.

### Servitude

A right in the land of another, or a restriction/obligation placed on the land of another. Includes easements, licenses, and covenants.

### Easement

The right to use the land of another without ownership of that land. Easements are typically permanent.

### License

The temporary right to use the land of another. Licenses can typically be revoked by the land owner at any time.

### Covenant

A restriction or obligation imposed on land by agreement of the parties. These restrictions burden successive owners of the land.

### Positive Easement

An easement granting a right to do something on or with the land of another person.

### Negative Easement

An easement preventing the owner of land from doing something on or with their land.

### Appurtenant Easement

An easement that attached to a parcel of land, not to a person.

### Easement in Gross

An easement that attaches to a particular person, not to a parcel of land.

### Express Easement

An easement explicitly created, usually with a deed or map.



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### Judicial Easement

An easement that is created or recognized by a judge as a matter of law. It is not an express easement.

### Implied Easement

An easement created when the parties intended to create an easement as part of the transfer of a parcel of land, but fail to do so. Creation of this type of easement requires evidence the parties intended to create the easement. This is a judicial easement.

### Easement By Necessity

An easement necessary for the reasonable enjoyment of a parcel of land that wasn't created when the parcel of land was created or conveyed. Creation of this type of easement doesn't require evidence the parties intended to create the easement. This is a judicial easement.

### Easement By Estoppel

An easement created when the seller of a parcel of land acts in a manner (or provides information) that leads the buyer to believe that an easement exists or will be created for their benefit. This is a judicial easement.

### Prescriptive Easement

An easement created through the unauthorized use of another person's land. Creation of a prescriptive easement usually requires the use of another person's land be without permission of the owner, open and notorious, continuous, for a specific purpose, and for the length of time required by law. This is a judicial easement.

### Abandoned Easement

An easement that is abandoned by the easement holder through non-use and other specific actions.

### Easement Deed

A deed that creates an easement but that doesn't convey ownership of real property. Easements can also be created by survey maps, by reservation statements in deeds that do convey ownership, or by judges (judicial easements).



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## Key Concepts

### The Importance of Measurements and Evidence

- Measurements and words (in deeds and other documents) are the legal foundation for boundaries.
- Surveyors use measurements to create boundaries. They then use measurements to retrace or “relocate and identify” boundaries that have already been created. Uncertainty in boundary surveying occurs during retracement because multiple interpretations of evidence is possible.

### The Role Of The Land Surveyor

- The land surveyor should be an expert measurer (measurement maker), collector of data, and collector of evidence related to land boundaries.
- The land surveyor locates boundaries on the surface of the earth, but also above and below the surface of the earth. (For example: Mineral rights below the earth and airspace rights above the earth.)
- Land surveyors interpret legal descriptions of land (land descriptions) and place them on the ground. They do this by conducting surveys to recover evidence of previous surveys.
- Surveyors may be asked to locate limits of possession, locate limits of ownership claims, locate improvements on property, and locate/describe rights and interests in land.
- Technology like GPS and GIS have enabled “pseudo-measurements”. Land surveyors need to understand how these technologies can negatively impact the location of boundaries.
- In the United States the land surveyor doesn't have the authority to create “binding” boundary locations. Only courts have the power to do this.
- Traditionally, questions about land title have been the domain of lawyers. Over time, courts have also looked to land surveyors for opinions on who holds title to a piece of land.

### Land Surveyors and Boundary Disputes

- In the event of a boundary dispute, the land surveyor presents measurements and other evidence of boundary location to the court.
- In a boundary dispute, surveyors can be called on to testify and provide opinions that help the judge and jury understand complicated areas of the law related to their work.
- Land surveyors present facts and evidence. They don't advocate for a particular outcome.
- Attorneys are advocates for their clients. They present facts and evidence in the light most favorable for their clients and work for a desired outcome.
- Judges apply laws in boundary disputes. As a general rule, they decide the answer to questions of law.



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- As a general rule, juries decide answers to questions of fact. They will make determinations about the evidence the land surveyor has collected.
- In the United States, courts have the exclusive right to determine the meaning of words in a land description and then to determine where that land description is located on the ground. As a result, surveyors must know and understand how courts will make these determinations, so their work will stand up to judicial scrutiny.

### Real Estate Legal Concepts For Land Surveyors

- There is a difference between title, rights, and interests in land. Title is the means or vehicle by which one becomes an owner of real estate. Rights are attributes that an individual may have as a result of land ownership. Interests are third-party rights in land that don't result from being a land owner.
- In medieval England 4 types of obligation were owed by nobles who were granted land by the King. These were military or knight service, spiritual service, socage (non-military duties such as the provision of crops or cattle) and serjeanty (providing personal services to the king).
- A fee simple estate in real property is the highest and greatest estate in land that one can obtain. Fee denotes a real estate that can be inherited. Simple means the owner, and not the sovereign, is free to determine who inherits the land. Absolute means there are no time limits on the ownership of the estate (unlike a life estate or lease).
- Real property is land. It is distinct from personal property. Real property is governed by the Statute of Frauds. Personal property is governed by the Uniform Commercial Code.
- Real property has length, width, height and depth. Rights to real property can also have a span in time.
- There can be more than one fee estate (or ownership) in a single parcel of land. (For example: One person can own the surface while another owns the mineral rights.)
- Land ownership comes with responsibilities, such as the responsibility to pay taxes.
- There are several types of rights in land. These include easements, licenses, covenants, and servitudes.
- Easements are the right to use the land of another without ownership. Licenses are a temporary right to use the land of another. The main difference between easements and licenses is that a license can be revoked by the license grantor at any time.
- A positive easement gives the easement holder a right to do something with or on the land of another. A negative easement prevents the land owners from doing a particular act with or on their own land.
- The parcel of land burdened by an easement is called the servient estate. The parcel of land benefited by an easement is called the dominant estate.



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- An appurtenant easement attaches to a parcel of land, not a person. An easement in gross attaches to a person and not a parcel of land.
- Easements are typically limited to the use cited in the document creating the easement.
- An easement deed is a deed that creates or grants an easement and not fee ownership to a parcel of land. Easements can also be created by survey maps and by reservation statements in a deed that conveys fee ownership.
- An express easement is one directly created by a deed, survey map, or other document. Easements created by judges under the common law include implied easements, easements by estoppel, and easements of necessity.
- Under the US common law, a parcel of land is presumed to be conveyed with all easements that are apparent, obvious, and that are reasonably necessary for the enjoyment of the parcel. They are created by judges when an express easement should have been created as part of a conveyance, but wasn't. An implied easement requires some evidence that the parties to a land transaction intended to create the easement, but failed to.
- An easement by estoppel is created when an innocent purchaser of land relies on the conduct of the seller that leads him to believe he has an easement when no express easement exists.
- An easement of necessity is created by judges when no express easement exists, but when an easement is necessary for the reasonable enjoyment of the property. If the need can be met reasonably by other means, an easement of necessity shouldn't be created. An easement of necessity doesn't require evidence that the parties intended to create the easement.
- Easements by prescription are created through the open and notorious use of another person's land. They are recognized by courts. To obtain a prescriptive easement, specific legal requirements must be met. These usually include use without permission of the owner, open and notorious use, continuous use, use for a specific purpose, and use for the length of time required by law.
- Easements can be abandoned through non-use and other actions by the easement holder.
- Covenants are agreements between parties that restrict the use of land or impose obligations related to land. These agreements are attached to the land. They are imposed on not just the parties that enter the agreements, but on subsequent owners of the parcels involved.

#### Governing Law For Boundary Surveys

- In most cases, boundary surveying in the United States is governed by state law, not by federal law.



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- The laws controlling the Public Land Survey System are one exception to the rule about federal control of boundary surveys.
- In most states, boundary surveying is governed by principles of common law, not statute.
- In most states, the land subdivision process (creation of new parcels by land surveys) is now governed by statute.



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## Unanswered Questions and Things Left Unsaid

Why does the land surveyor need to be an expert measurement maker?

- Landon's answer goes here.

What type of evidence does the surveyor "collect"?

- Landon's answer goes here.

Why does the land surveyor need to be an expert data collector?

- Landon's answer goes here.

What if a boundary survey isn't the source of a boundary dispute or required by a boundary dispute? What if there is never a judge, jury, or lawyers?

Why is there uncertainty in boundary retracement surveys? Is differences in evidence interpretation the only reason?

- Differences in measurements.
- Alternate solutions.
- Different applications of the law.

What is the difference between a question of law and a question of fact? Why is this important in boundary disputes?

- Answer goes here.

What is the role of federal rules and regulations related to the PLSS in governing boundary surveys?

- Answer goes here.

What is a servitude?

- A legal mechanism to tie rights and obligations to the ownership of land. Servitudes apply to successive owners. Servitudes include easements and covenants.

What is the Statute of Frauds and why is it important?

- Answer goes here.