



Redefined Horizons
3938 Kimball Lane
Stockton, California 95206

Brown's Boundary Control and Legal
Principles
Study Notes By Landon Blake
Saturday, December 12, 2020

Chapter 4 – Study Notes

Key Terms

Jurisdiction

The right or power of a particular court to hear a case and render a judgment or decision in the case.

Sovereign Immunity

A legal doctrine that offers special legal protections to the government. For example: The government can't be sued unless it gives its citizens permission to do so. This legal doctrine comes from Ancient England, where the king was had special legal protection.

Evidence

Information provided to prove to a court that a fact is true.

Judicial Notice

A legal concept under which a court can be asked to accept commonly held facts or ideas to be true. This doctrine reduces the need to present evidence to prove every fact in a dispute.

Presumption

A presumption is a statement that can be considered as true without additional proof. Presumptions are substitutes for evidence. Presumptions can be conclusive or rebuttable. Rebuttable presumptions can be proven untrue by evidence. Conclusive presumptions can't be rebutted. Presumptions are defined in the law.

Inferences

Inferences are truths that can be logically deduced from a fact or body of facts. Inferences depend on logic and available facts, and don't need to be established in law like presumptions.



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Key Concepts

- Chapter should have been entitled: "The boundary surveyor in court."

Why Should The Land Surveyor Care?

- In litigation a land surveyor may be called upon to serve as an expert witness.
- The duties of a land surveyor as an expert witness include the following:
 - 1) Collect and present evidence of facts.
 - 2) Offer opinions. (What do the facts mean? Does the provided evidence prove a fact?)
- The book doesn't seem to understand another important reason to understand litigation involving boundary disputes:
 - 1) Providing the client with legally correct boundary resolutions.
 - 2) Defending the boundary surveyor's own work.

The Four Types Of Law In The US Legal System

1. Constitutional Law
 2. Statute (State and Local)
 3. Common Law/Case Law
 4. Administrative Law (Regulations)
- I would add a fifth type of law. The rules for court or the rules for lawsuits. See book on surveyor as the expert witness. (See the "Surveying The Courtroom – A Land Experts Guide".)

The Legal Concept Of Jurisdiction

- Courts are only allowed to make a decision/ruling if they have jurisdiction. (Courts will explain why they have jurisdiction early in a written court decision.)
- There are special considerations when federal law or federal land is involved in a dispute. These cases may need to be heard in federal courts.
- There is no federal land law. Even in federal courts land disputes are handled according to state law. (Land that has always been in the public domain may be an exception.)

The Legal Concept Of Sovereign Immunity

- Sovereign immunity is a legal concept that comes from English common law. In England, the king couldn't be sued without his permission. In the US, only congress can allow the federal government to be sued. It has done this by several legislative acts (over time).



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- The US can't be disposed of land based on the concept of adverse possession. (There may be exceptions to this rule.) Land owners may be compensated for real property if they prove ownership through adverse possession.

The Legal Concept Of Judicial Notice

- Under the legal concept of judicial notice, you don't have to prove widely accepted facts in each lawsuit. Many facts are considered to be true unless proven otherwise.

The Legal Concept Of Available Evidence

- Just one rule related to evidence.
- Court cases are not open-ended. There is a limited time period during which evidence can be presented. The consequence of this rule is that land surveyors must make a diligent effort to find all evidence during a boundary survey that could impact the resolution of the subject parcel boundaries. Failure to do so could result in liability for the land surveyor.
- The evidence available may change the applicable law. (For example: The lack of found original controlling monuments.)

The Legal Concept Of Presumptions

- Presumptions are a substitute for evidence.
- Presumptions are statements of fact or law that can be considered as true without further proof.
- Presumptions may not be based on another presumption.
- The purpose of presumptions are to reduce the amount of evidence needed to prove a fact or matter of law.
- A presumption may be established by statute or common law.
- Conclusive presumptions can't be disproved. Rebuttable presumptions can be proven false by evidence. Don't rely on a presumption without searching for evidence that disproves it. (Example: The map shows no monuments...so no monuments were set during the survey.)
- Inferences are not presumptions. An inference is a conclusion that can be logically drawn from another fact or group of facts. (For example: The monument is found in the record position. It is of the record character. Therefore, the monument is the monument shown in the record.)
- There are specific presumptions related to boundary surveys.

Disposing Of Federal Lands

- There are special rules for how federal land can be disposed of.
- Congress decides how federal agencies can dispose of land.



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- Some agencies are allowed to dispose of land. Some agencies are not.
- Specific laws that allowed the disposal of federal land include the Color of Title Act of 1928, Public Law 120, and the Small Tracts Act (for the Forest Service).

Research of the Law

- There are laws governing the practice of land surveying (usually at the state level). Surveyors need to know and understand these laws.
- Boundary surveyors need to understand other areas of state law related to their work. This includes adverse possession, prescriptive rights, and easements.
- To properly understand boundary law, you may need to research and read court cases.
- Legal encyclopedias offer information about specific legal topics. So do *American Law Reports*.
- Court reports publish court decision by jurisdiction.
- Court cases can be researched online. This research can reveal related cases and cases that overturn an older court decision.

Identifying Land Owners In A Lawsuit

- There are special consequences if a lawsuit fails to name all land owners or other parties with rights to the land involved in a dispute.
- Land surveyors can help attorneys identify parcels and parties that need to be named in a lawsuit.