

SURV 58 Evidence and Procedures for Boundary Location

Chapter 1 Lecture Notes

1-1 Scope of Book

This course is not a "how to" course on property and boundary surveying. The focus is on the principles and practices of boundary determination. This is the first of two courses in the study of property line determination. This course is designed for those interested in surveying, engineering, title insurance, and real estate, to become more familiar with the art and science of boundary surveying.

Boundary surveying can be broken down into two general areas: **LOCATING OR RELOCATING DESCRIBED PARCELS OF LAND** and **CREATING NEW PARCELS OF LAND**.

In attempting to survey and locate a described parcel of land, the only permanent and correct location of its boundary is where the court determines it to be. To know where the court would locate property boundaries, the surveyor must have expert knowledge of the laws of boundaries. Regardless of where the surveyor would locate the boundaries of a parcel, the final decision is nothing more than the opinion of the evidence presented and this is always subject to review of the courts.

Once a boundary is disputed and litigated, and the parties seek determination by jury, the trial is broken down into two parts: **JURY IS TO DETERMINE THE FACTS** and **JUDGE APPLIES THE LAW**. This has led many courts to hold to the old saying,

"What boundaries are is a matter of law; where boundaries are is a matter of fact!"

Thus in a trial the jury decides the position of the monuments from fact and the judge decides whether the monument or measurement controls as a matter of law.

According to the Statute of Frauds that was first enacted in England in 1677 and later adopted by the U.S., some form of written evidence must prove land ownership. To prove the right of legal possession, a written document must be produced witnessing such right. However, this sometimes caused an individual to commit fraud. The courts thus allowed for title to pass without a written document. This was based on the Roman Law, **ADVERSE POSSESSION**, of unwritten title. This meant that a legally created unwritten title was legally superior to the written title.

The courts have more recently marked change in these areas of thinking. Privity of contract, statute of limitations and time of commencement are vastly different today as they were yesterday and between the states themselves. The object of the surveyor is to determine the intent of the original survey and "follow in the footsteps of the original surveyor". Thus the surveyor must have adequate knowledge in the historical background and geographic area.

Although surveying history will be shown to be quite ancient, the U.S. is rich in the history of surveying and boundary law. The U.S. has widespread applications in English Law, Roman Law, Mexican and Spanish Land Grants, the French system used in the Louisiana Purchase and parts of Florida, sectionalized public domain land systems, land

divisions under state laws in Texas and the eastern seaboard states, and other systems (combinations of these) in Georgia and Maine brought about by the events in history of how our nation grew and developed.

The intent and meaning of a deed are always interpreted in light of the laws, words, and conditions existing at the date of the document. In New York, under Dutch rule, land dedicated for roads passed in fee title to the Crown. New York retained the fee title when the Dutch control reverted to the state. Texas had the same under the Mexican and Spanish control. The ownership of streambeds or bodies of water is often dependent on which nation has jurisdiction at the time of the land's original alienation and on the effect of the laws in force at the time of the grant. An indispensable part of all boundary determination is knowledge of the history of the development and the settlement of the area.

This course will allow you the opportunity to expand your knowledge and learn the procedures used in locating already-described parcels, procedures to create new parcels, and suggestions as to how to describe parcels in writings.

1-2 Definition of Surveys and Surveyors

"The art, science and technology of determining the relative positions of points or features of above, on, or below the surface of the earth, or the establishment of such points." More simply put, surveying can be regarded as that discipline which encompasses all methods for measuring, processing, and disseminating information about the physical earth and its environment.

There are many types of surveys: Control, Topographic, Route, Construction, Mineral, Mines, ALTA, and Boundary surveys. Boundary surveys are sometimes known as Land, Property or Cadastral. The latter is concerned with the land, the law, and the people. In popular use, Land Surveying is defined as the determination of boundaries and areas of a tract of land. Boundary Surveys are generally referred to as the location or establishment of lines between legal estates, or the marking of the limits of a parcel or political unit. Whereas Cadastral Survey refers to the subdivision of public domain. In either case they are both forms of Property Surveying.

1-3 Activities of the Property Surveyor

Property Surveyors are primarily found in private practice. However the local agencies also have a need to employ personnel that understand property surveying to enforce the law of surveying and development. The federal gov't also hires cadastral surveyors to maintain their interest and perform the duties of the gov't property surveyor.

1-4 Surveyor in Society

History supports the fact that the practice of surveying has been around a long time. From the beginning of land ownership, surveying and surveyors have been in business. In Babylon over 3500 years ago, the name of the surveyor was found inscribed on a boundary stone. In Cairo, Egypt, one can visit the tomb of a surveyor.

It's recorded that for over 1000 years the ancient Romans used the services of surveyors

to locate boundaries, layout roads, bldgs, and aqueducts. Roman surveyors may have been the first to require the candidate to pass an exam to become a surveyor. The separated the surveyor into two categories; Civil and Military surveyor. The same could be said today. A military surveyor performs much different tasks as opposed to the civilian surveyor.

1-5 Present Needs for Surveyors

The growth of the US, natural disasters and an aging infrastructure has caused the greatest need for surveyors than ever before. The aging LS population is also a concern to the profession to replace ourselves with a “new” crop of surveyors to take on the future needs of society.

1-6 Future Needs for the Property Surveyor

Surveyors look with pride to the many famous men and women in history, including several presidents, who have been engaged in the profession of surveying. The property surveyor, perhaps more than their associates in engineering, is in constant contact with people. This allows the surveyor to present a professional image, with superior standing, integrity, and knowledge, or appear as a backwoods journeyman out to make a buck regardless of the client or the situation. The surveyor has the opportunity to maintain status in society with professional obligation and reverence or forever grovel as an apprentice, on the job-trained servant to the masses.

Technology advances and the globalization of our work will lead the way for future surveyors.

1-7 Land Data Systems

Surveying should be considered to be a combination of three separate and distinct areas: TECHNICAL, LEGAL, and ADMINISTRATIVE or PROFESSIONAL. Although each of these is separate, they do have an area of common overlap, in which all three are interrelated. When one of the areas change so do the others to adapt to their commonality. It is more and more apparent that the surveyor of tomorrow will need to have an extensive training with the advancing technologies, a professional obligation to provide the necessary services to the public, and a better understanding of the legal aspects of surveying principles.

See figure 1-1 on page 9.

Evidence and Procedures for Boundary Location Chapter 2 Lecture Notes

2.1 Historical Concept of Evidence

Evidence becomes paramount in being able to identify both large and small parcels of land.

Often cases are won or lost on the quality of evidence, but also the presentation of the evidence.

There are rules of evidence...however they don't necessarily apply from state to state or jurisdiction to jurisdiction. It is still interpreted by the presentation and quality...evidence is subjective however it should be objective!

A mastery of evidence is crucial to making the correct decision for boundary determination.

All survey or boundary questions can be categorized into three areas:

1. Questions of Fact
2. Questions or propositions of law
3. A combination of 1 and 2.

Questions of fact: Evidence is the material that is offered to persuade the jury. Whether you have a jury (trial for facts) or just the judge (bench trial) the two evaluate the evidence presented and form a determination. So does a surveyor!

Facts vs. Evidence The actual corner point is FACT...all the information used to identify, describe, recover, or preserve that point is EVIDENCE of that point, the corner.

Evidence can consist of almost any OBJECT, ACTION, or VERBAL STATEMENT. The laws of evidence consider the admissibility, effect, and relative importance of the evidence produced.

A found monument is evidence. The laws of evidence determine the control afforded the found monument.

The laws of evidence could include most phases of boundary surveying. Land transfers must be in writing...Writings are evidence. Measurements are evidence to prove or disprove where deed lines are located. Evidence of possession may be proof of an unwritten conveyance, but it may also show possession of unwritten rights. Scientific principles are evidence as is judicial notice that is accepted by the court.

See the definitions of Evidence on page 13.

California Evidence Code defines evidence as: ***“Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or non-existence of a fact.”***

Basically, the surveyor should use this definition: ***“Any document, object, writing, action, thing, verbal statement, or other information that is identified to prove the fact that is in question.”***

2-2 Surveyor's Role in Evidence

The surveyor is intimately involved with evidence from the creation of the original survey to the retracement of that survey. The original survey creates the initial evidence until the retracing survey acting as a witness is asked to recover it, interpret it, and explain it to their client, attorney or court of law.

2-3 Scope

See the Principles (1-12) for the Chapter.

2-4 Importance of Being Impartial.

Principle 1

No surveyor should become an advocate for the client, but the surveyor should approach the evaluation and analysis of evidence in a wholly impartial manner. From the totality of evidence should an opinion be formed!

Principle 2.

A surveyor's decision/opinion is based on the evidence available at the time the decision is made...if new evidence comes to light, it may or may not change the decision previously made.

Principle 3.

Same is true about never saying never!

Principle 4.

The Basis of Bearings, control, POB, etc.

See fig. 2-1 on page 15

2-5 Arrangement of Subject Matter.

Evidence in itself is not proof of facts; conclusions and inferences that are drawn from evidence are proof.

Law uses such terms as presumption, inference, burden of proof, extrinsic evidence, preponderance of evidence, clear and convincing evidence, and evidence beyond a reasonable doubt.

Evidence varies in significance, importance and application. Witness testifies to the location of a corner...such evidence is irrelevant when the original undisturbed corner is recovered in a location different than the verbal testimony. Evidence is of little importance when a rock mound is found where an oak tree is called for. Evidence of measurement is inferior to the original corner.

Objectives of the arrangement of subject matter are:

1. understanding the importance of presumptions when it comes to evidence
2. defining what is acceptable evidence
3. stressing the order of importance of evidence, that is, what is the best available evidence at the time it is discovered

2-6 Kinds of Evidence

Courts and Legal Scholars recognize five kinds of Evidence:

1. **Written Evidence** in the form of documents
2. **Real Evidence** consist of material objects addresses directly to the senses, such as physical monuments
3. **Oral Evidence** or testimony given by witnesses
4. **Judicial Notice** is evidence in the form of knowledge. Meaning of words or phrases or well-known or commonly accepted facts.
5. **Circumstantial Evidence.**

2-7 Evidence, Conclusions and Proof

Principle 5.

Evidence is not proof. A written document is evidence of ownership, but not proof of ownership.

Interesting comments on how two surveyors may differ in their opinions or decision based on the same evidence...see comments on pages 21 and 21.

2-8 Classification of Evidence

See the list of 10 on pages 21 and 22.

2-9 Types of Evidence Gathered by Surveyors

See the list of 6 types of evidence on page 22

2-10 Scope

2-11 The Laws of Evidence

See Definition and 6 rules on page 22 and 23.

2-12 Burden of Proof

The law points out two burdens:

1. the burden to produce enough evidence so that a reasonable conclusion can be reached
2. the burden of persuasion or producing evidence so that the preponderance of the evidence will be in favor of the individual who raises the question.

Principle 6.

1. the plaintiff's obligation to produce the degree of evidence required to prove the facts which are being relied on
2. the party's obligation to introduce or go forward with the evidence.

2-13 Degree (Quantum) of Proof of Evidence

Courts rank evidence...surveyors collect...evidence is evidence, neither good nor bad.

2-14 Preponderance of Evidence

Principle 7.

Preponderance usually refers to the quality not the weight or amount of evidence.

2-15 Clear and Convincing

Principle 8.

2-16 Beyond a Reasonable Doubt.

Obliterated Corner vs. Lost corner

Principle 9.

2-17 Relevancy and Materiality

Evidence should be both relevant and material...always ask yourself, “what issue is the evidence relevant to?” What are you trying to prove?

2-18 Admissibility, Relevancy and Conclusiveness of Evidence

See Definition on page 31.

Principle 10.

2-19 Admissibility

See definition on page 32

2-20 Inferences as substitute for Evidence

See definition on page 33.

2-21 Extrinsic Evidence

Evidence other than the writings itself...Patent and Latent Ambiguities

Patent ambiguities cannot be explained. “A house and lot on Main St.”

Latent ambiguities can be explained. “The southeast corner of Jones watermelon patch.”

2-22 Judging the Effect or Value of Evidence

See the 7 rules a jury is commanded to uphold on page 34.

2-23 Judicial Notice as Substitute for Evidence

Judicial Notice may be in the form of textbooks, laws, dictionaries, and encyclopedias commonly used to explain things.

Judicial Knowledge is the information contained by the notice.

2-24 Weight of New Evidence

2-25 Best Available evidence

Principle 11.

See the 4 circumstances that may prevail on the surveyor, page 37.

2-26 Understanding Law of Boundaries and Evidence.

2-27 Duties of the Surveyor in Finding Evidence

See the two methods of ownership on page 38

Principle 12.