

## Chapter 12 Lecture Notes

## 12-1 Introduction:

Unwritten rights are a question of law not surveying. Surveyors are vital to the process, because we provide the data and information to render a decision. We can locate lines of possession relative to lines of record. The decision rests with the courts to decide ownership.

Unwritten ownership rights can be created by

1. a creation of a boundary by agreement or acquiescence or
2. a hostile creation (e.g. adverse possession, estoppel (to bar, stop or impede), acquiescence or prescription)

In recent years the court has looked unfavorably on adverse possession. It can, however, be proven in court and upheld.

It is the surveyor's responsibility to inform their clients of possible unwritten claims and the significance of such claims.

## Chapter 16 Principles

## 12-2 General Concept of Unwritten Conveyances or Rights:

A person may gain or lose land rights or modify boundaries without writings by use of the following:

- agreement, expressed or implied, practical location, silent recognition, estoppel (someone misrepresents themselves as having authority and therefore changes the expressed agreement) where both agreement and dishonesty enter.
- Adverse possession
- Acts of nature
- Statutory proceedings
- Prescription ripening into easements or other rights

Unwritten agreements: These are verbal "handshakes" as to where the adjoiner's agree to the boundary location. There is no transfer of land rather an agreement to the disputed line.

"The best way to settle a dispute is to have the adjoiner's come to an agreement!"

Agreement Deed: Boundary Agreement Line. Legally fixes the position of the line for the adjoiner's and their heirs.

Adverse Relationships: Only against private ownership not the gov't or quasi-public entities.

Acts of Nature: Erosion, Reliction or Accretion.

Statutory Proceedings: Failure to pay taxes, assessments, eminent domain, or condemnation.

Prescription: Long usage of land may or may not ripen into adverse title.

Recent Court Development: Will not grant fee title but rather use rights.

## 12-3 Unwritten Conveyances and Government:

Cannot gain rights to government land through unwritten rights.

## 12-4 Unwritten Title Supercedes Written Title:

## Principle 1

You first show possession relative to written title rights!

## 12-5 Written Title:

## Principle 2

In order to gain title to land there must have been some form of written title.

## 12-6 Introduction to Estoppel:

Estoppel the deceiving an individual out of what is rightfully theirs.

12-7 Estoppel by Conduct:

Principle 3

See four considerations in text. See example in text on page 348.

12-8 Unwritten Agreement:

Principle 4

There must be some question as to the location of the line.

12-9 Elements of Unwritten Agreement:

See the list of four conditions of an Unwritten Agreement.

12-10 Described Line Known:

Principle 5

If the line is known to one or more of the parties, then the "agreed" location of a line may not be binding.

12-11 Property Line in Dispute:

Principle 6

12-12 Adjoining Owners Must Agree:

Principle 7

12-13 Practical Location:

Practical Location...Lot Line Adjustment?

12-14: Possession following Agreement

Some states require a statutory period of time for possession. Other states once the agreement is recorded it becomes set.

12-15 Recognition and Acquiescence:

Principle 8

12-16 Dedications:

Granting rights of land to the public for specific uses. There must be an offer to dedicate and an acceptance of that offer in order for the right to pass. Not up to the surveyor to decide whether it is public or private use.

12-17 Dedication and Easement:

Dedication is the giving up of land, either as a fee title or as an easement right, by its owner for public, charitable, semi-public or utility use.

12-18 Elements of Common-Law Dedications:

Principle 9

See the list of four in text.

12-19 Statutory Dedications:

Required in writing the dedication and the acceptance.

12-20 Donor of Dedication:

You must have the authority to donate in order to do so.

#### 12-21 Location and Description of Dedication:

the land being dedicated must be capable of positive location. Location of the dedication must be described in writing.

#### 12-22 Express Intent to Dedicate:

Common Law allows for a dedication to be made by intent and not in writing. A dedication is a gift and therefore must be clear. Use of a Beach, Warf, etc.

#### 12-23 Implied Intent to Dedicate

Long continued acquiescence by the owner may eliminate the necessity of direct expression of intent to dedicate.

#### 12-24 Acceptance of Dedication:

Not only does a competent person have to make an offer, an equally competent person must accept the offer. It doesn't have to be by writing but may be by actions, maintenance, or use.

#### 12-25 Revoking Offer:

Reverts back to the Dedicator.

#### 12-26 Purpose of Dedication:

Dedication is a gift to the public. The donor may impose any restriction wished, and the land cannot be used for any other reasons.

#### 12-26 Effect of Dedication:

Streets normally give usage of the land back to the original owner.  
Statutory dedication is by way of grant.  
Common-law dedication is by way of estoppel

#### 12-27 Dedication by Plat:

Dedication by Plat, ie streets alleys walkways ALL accepted.

#### 12-29 Prescription:

Principle 10:

#### 12-30 Adverse Possession:

Principle 11:

The possessor must maintain that their possession is their ownership irrespective of written title. Adverse Possession can commonly be called a penalty against the original owner.

#### 12-31 Historical Concepts of Adverse Possession:

#### 12-32 Statutory Character of Adverse Actions

Two means...long possession or short possession...if it is the latter then other means are added, taxes paid, color of title, etc.

#### 12-33 Burden of Proof

Principle 12:

#### 12-34 Character of Title Acquired:

Principle 13:

#### 12-35 Prescriptive Title:

Generally construed as an easement rather than fee.

12-36 Effect of Survey on Adverse Rights:

Principle 14:

12-37 Against Whom Adverse Rights Do Not Run:

Principle 15:

12-38 Elements of Adverse Rights:

See list of 11 on page 366 in text.

12-39 occupancy, actual possession

12-40 "open and notorious" not secretive...for all to see

12-41 no Squatter's Rights...there must be written title to the land.

12-42 continuous over a period of time.

12-43 without permission

12-44 cannot be shared

12-45 statute of limitations...CA it is 10 to 20 years depending on who pays the taxes

12-46 written conveyance appears to be good, but in actuality it is not.

12-47 payment of taxes...based on occupation rather than record.

12-48 Good faith?

12-49 Actual Possession vs Constructive Possession:

Actual possession is farming, timber, grazing, etc. Constructive possession is placing that actual possession within the boundary of the parcel. Boundary lines must be shown to determine if constructive possession has taken place.

12-50 Difficulty in Determining Unwritten Rights:

It's the surveyors responsibility to inform your client of encroachments, unwritten rights, and the effect of such things.

12-51 Duties of Unwritten Title Transfers:

Principle 16

Don't mix up senior rights with possession.

Principle 17

12-52 Role of the Surveyor in Unwritten Rights:

The surveyor should never give legal advice as to unwritten rights to a client and should only give such advice to an attorney if and when asked.

You are the expert measurer and evidence gatherer. You are not the "determinator" of fact or law. Practice within your area of expertise and leave the law making to the lawyers and court...only offer your opinion when asked and represent it as your opinion.