

Land Transaction

- Typically two parts to the land transaction
- Sale contract
 - Promise to sell the property at a given price
- Deed itself
- Typically, statute of frauds for both

Harding v. Ja Laur

- Mrs. Harding signs a blank piece of paper
 - Believes signing to straighten out boundary disputes
 - Alleges stapled to deed to 1517 land in Montgomery County
- Why do we need a written deed?
- Is this forgery?
 - False making
 - Material alteration
- If allegations are true, would this be a forgery?
 - Different if she was tricked into signing blank sheet attached to deed?

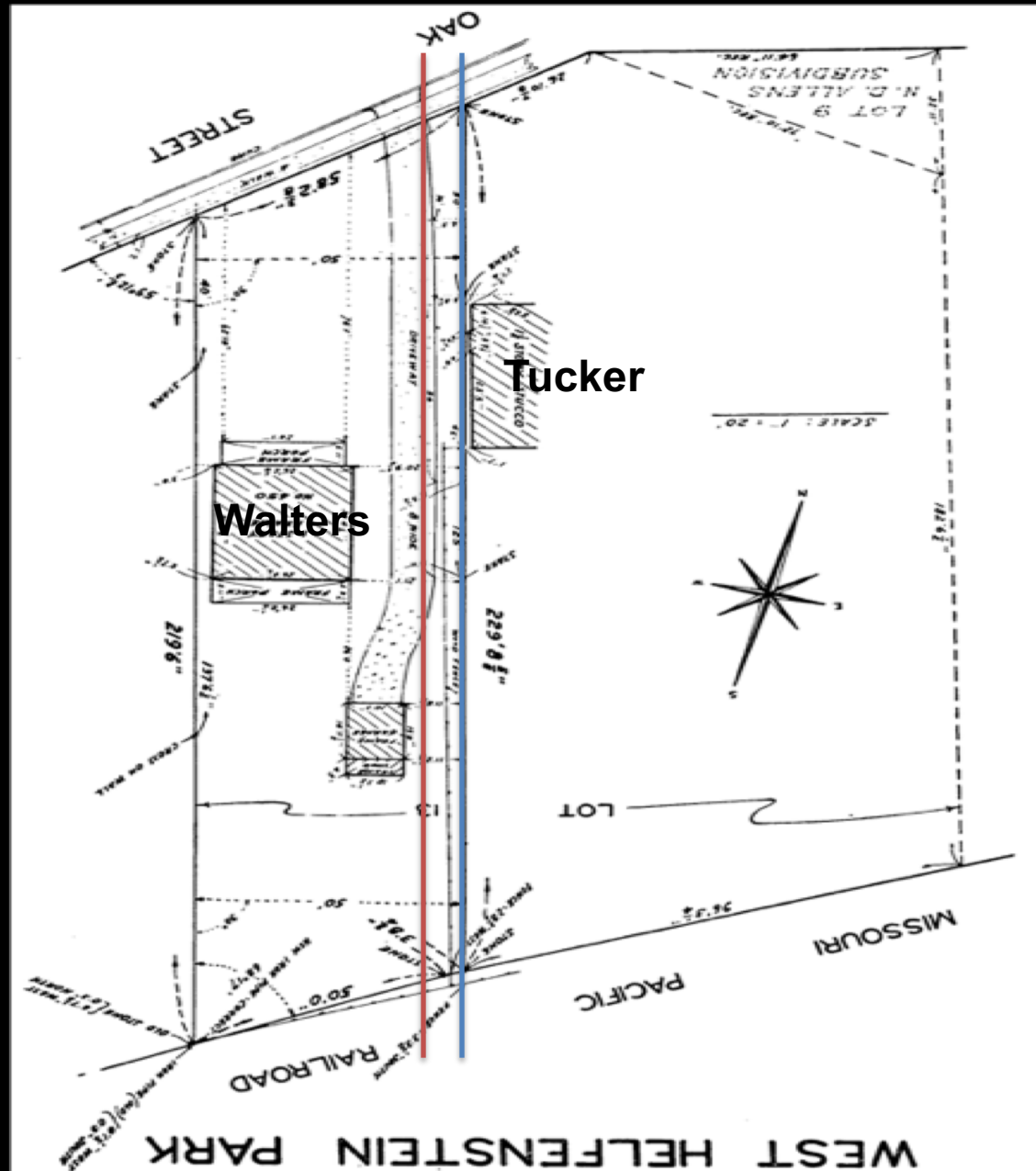
Harding v. Ja Laur

- Why does this matter for other defendants?
- Bona fide purchaser, without notice
 - If fraud, not forgery, can Mrs. Harding void transfers to bona fide purchaser, without notice?
 - What if it is forgery?

2. Mrs. Harding signs a blank piece of paper, which Ja Laur then staples to a deed. Forgery? What if she signs the same piece of paper *after* it is stapled to the deed? Do the policy reasons for distinguishing forgery from fraud provide a convincing reason to treat these cases differently?

Walters v. Tucker

- “The West 50 feet of Lot 13 of West Helfenstein Park, a Subdivision in United States Survey 1953, Twp. 45, Range 8 East, St. Louis County, Missouri,”



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- “The West 50 feet of Lot 13 of West Helfenstein Park, a Sub-division in United States Survey 1953, Twp. 45, Range 8 East, St. Louis County, Missouri,”



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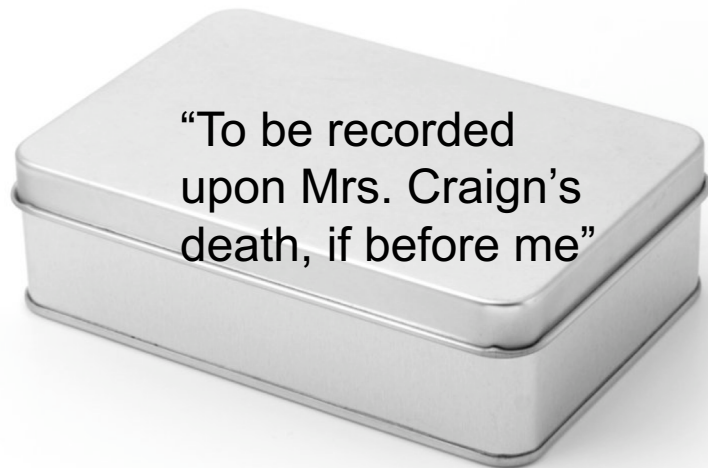
- Time conveyance only 450 Oak St. house
- After conveyance, build Lot 13 house
- Language unambiguous?
- Parol evidence?
- Adverse Possession?



Loughran v. Kummer

- Loughran – conveys property to Kummer for \$1
 - Gives deed to Kummer
 - Condition – not record until Loughran dies
- Loughran, still alive, asks Kummer to tear up deed
 - Kummer says she does
 - But actually doesn't
 - “wanted to ease his mind”
- Control of deed when
 - Signed
 - Sealed
 - Delivered
- Application here?

Loughran v. Kummer



- What about “take the deed to the bank to be held in escrow”? (Q.4 – p. 218)

McMurray v. Housworth

- Houseworth sold 24-acre to McMurray's
- Including in deed was a “general warranty of title” clause:
 - Grantors agree to “defend the right and title to the above described property, unto [the grantees], their heirs, assigns, and successors in title, against the claims of all persons.”
- OCRSCD has “floodwater retarding structure” easement on McMurray's parcel



McMurray v. Housworth

- Easement breach general warranty of title?
- Existence of public encumbrance violate general warranty?
 - Public Road
 - Zoning
 - What if public encumbrance is being violated when sold?
- Existence of private encumbrance violate general warranty?
 - Easement
 - Does it matter if private encumbrance is being violated?
- How does notice/knowledge play a role here?

8. The exception for zoning regulations can be tricky. Suppose that the property is a vacant lot and that local zoning laws restrict houses to 15 feet in height? Is this an encumbrance? What if the property contains a house 30 feet high? Would it make a difference in either case if the restriction came from a private neighborhood covenant rather than a public zoning law?

A contracts to buy from C

- Contract contains following clauses:
 - “certified to date showing good merchantable title . . . guaranteeing said title . . . free and clear of all encumbrances”
 - “subject, however, to all restrictions and easements of record applying to this property
 - “shall have sufficient time to . . . correct any imperfections”
- House subject to a restrictive covenant requiring any house erected to be two stories or higher
 - Current house one story
- House also subject to a zoning ordinance— 3 foot setback on rear and side of property
 - Not currently violating

DEED WITH FULL COVENANTS.

This indenture, made the day of nineteen hundred and, between(insert residence) party of the first part, and (insert residence) party of the second part,

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, and assigns forever. And said covenants as follows:

First. That said is seized of said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said will forever warrant the title to said premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

QUITCLAIM DEED.

This indenture, made the day of, nineteen hundred and, between, (insert residence), party of the first part, and, (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release, and quitclaim unto the party of the second part, and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

Engelhart v. Kramer



Engelhart v. Kramer

- “property condition disclosure statement”
- “Have you experienced water penetration in the basement ... within the past two years?” Kramer replied, “Small amt of H₂O penetration in NW + NE corners [when it] rains.”
- “[a]re there any cracked walls or floors?” Kramer responded “basement floor, some spots in basement walls, East bedroom walls.”
- Any additional problems?— “basement cement walls have some crumbling, behind paneling, basement floor cracked [and] uneven in spots.”

Engelhart v. Kramer

- Under disclosure law, if “truthfully completes” disclosure statement, no liability
- But must complete disclosure in “good faith”
 - “an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious;”
- Good faith disclosure here?

Engelhart v. Kramer

- No longer *caveat emptor*
 - Previous, only liable for disclosures made
 - Affirmative Misrepresentation
 - Now can be liable for non-disclosure
 - How change real estate deals?
 - “as is” clauses
- Still some mandatory disclosures cannot avoid
 - Can you still *de facto* avoid them?
 - Some not waiveable

Brush Grocery Kart, Inc. v. Sure Fine Market, Inc.



- Brush has option to buy
- Exercises option
 - But dispute over price
- During litigation—significant hail storm damage

Brush Grocery Kart, Inc. v. Sure Fine Market, Inc.

1. Equitable Conversion – slim majority
 - Risk solely on buyer
 2. Massachusetts Rule – Risk solely on seller
 - Handful of states
 3. Who has right of possession
 - Growing number of states
 - Including Colorado
 - So what is the result for Brush?
 - Change under either of the above theories?
- Change if damage due to seller's negligence?
 - Other ways to shift risk?