

PROPERTY

PROFESSOR KRISTELIA GARCÍA

CLASS 2(A):
THE TRESPASS-NUISANCE DIVIDE

CLASS OUTLINE

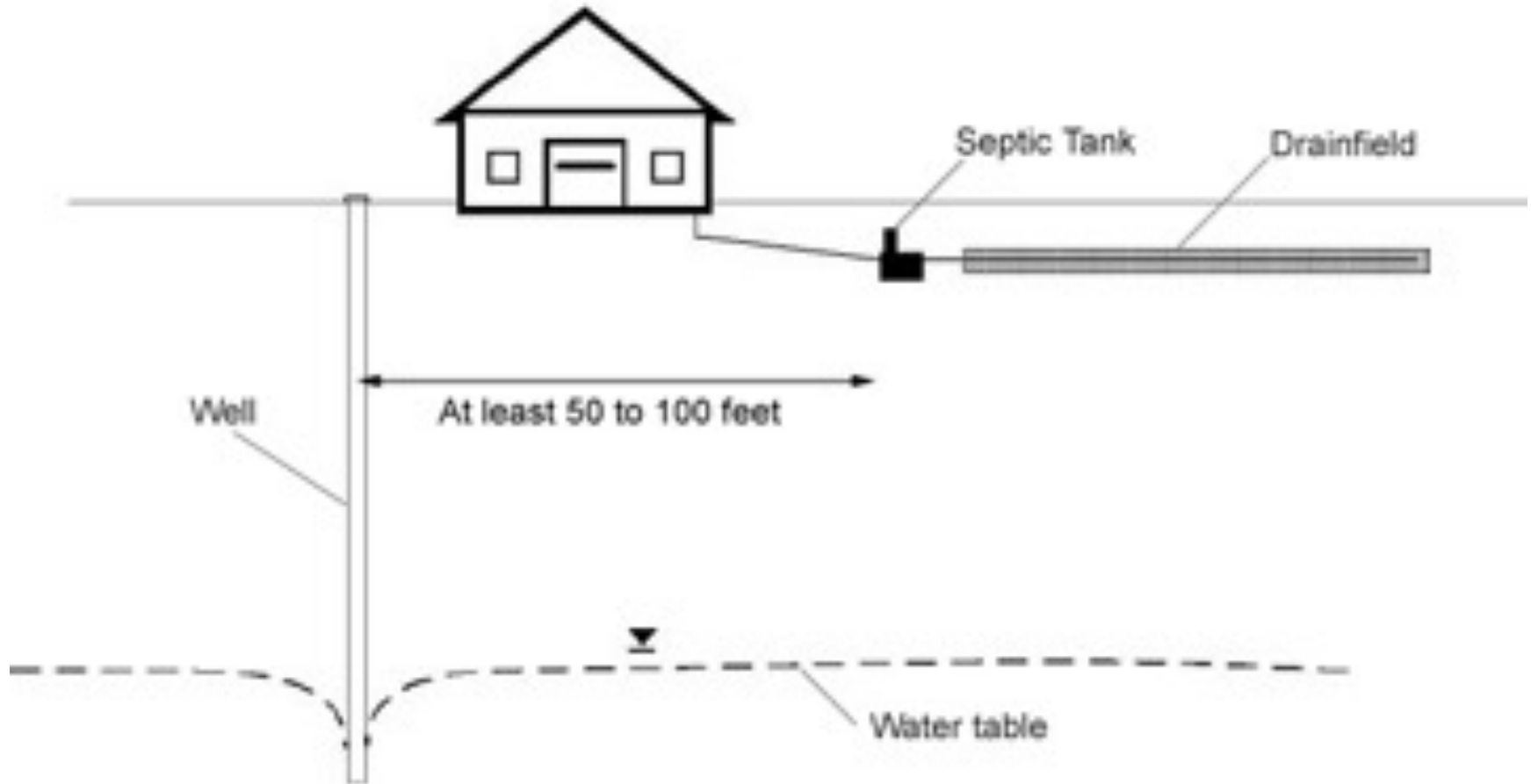
- The *ad coelum* rule (cont.)
- Exceptions to the absolute rule against trespass
- The trespass/nuisance divide
- Transaction costs & the Coase Theorem

EXCEPTIONS TO TRESPASS

- Necessity
- Retrieval of child, pet or chattel, pursuit of a thief
- Custom, e.g., hunting
- Surveys – statutory right of surveyors to enter
- Civil Rights statutes, public accommodation statutes, & other statutory exceptions
- More open-ended exceptions based on public policy or constitutional values
- Nuisance

SEPTIC SYSTEM & WELL

Source: <http://www.soil.ncsu.edu/publications/assist/farmassist/septic/>



“Gravity of Harm” factors

(Restatement 2d of Torts §827)

- a) The extent of the harm involved;
- b) The character of the harm involved;
- c) The social value that the law attaches to the type of use or enjoyment involved;
- d) The suitability of the particular use or enjoyment invaded to the character of the locality; and
- e) The burden on the person harmed of avoiding the harm.

Trespass v. Nuisance

- Requires no harm.
- Doesn't inquire about reasonableness.
- Requires significant harm.
- Requires the intrusion be unreasonable.

Trespass v. Nuisance

- Protects interest in possession of land.
- Reflects an exclusion strategy.
- Protects use and enjoyment of land.
- Reflects a governance strategy.

Coase Theorem

		Who values	more
		Farming	Ranching
	Farmer	No T/farming	R bribes/ranching
Initial Entitlement			
	Rancher	F bribes/farming	No T/ranching