

PROPERTY

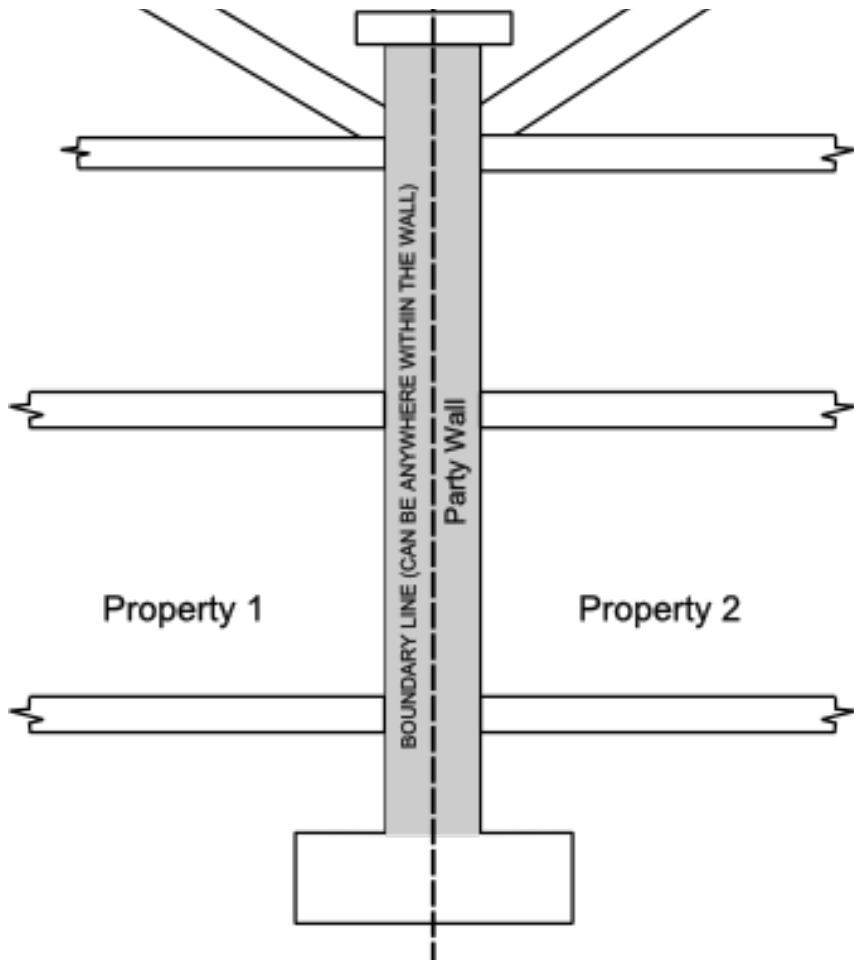
PROFESSOR KRISTELIA GARCÍA

CLASS 2(B):
PROPERTY & EQUITY

Class Outline

- Equity v. common law
- Building encroachments
- Mistaken improvers

A “Party Wall”



Continuing Trespass

Restatement 2d of Torts §158: “One is subject to liability to another for trespass...if he intentionally...(c) fails to remove from the land a thing which he is under a duty to remove”

Restatement 2d of Torts §161(1): “A trespass may be committed by the continued presence on the land of a structure...which the actor tortiously place there whether or not the actor has the ability to remove it.”

Remedies for Mistaken Improver

1. Removal: If the improvement can be removed without undue injury to the building or the land, the improver will be allowed to remove the building.
2. Unjust enrichment: If the improvement cannot be removed, the court will ascertain the difference in value between the property in its unimproved state and the property with the improvement. The true owner will be given the option of paying the difference in value to the improver (or having the property subjected to a lien in this amount).
3. Forced sale: If the true owner cannot afford this price, or elects not to pursue this remedy, then the improver will be allowed to acquire the land from the true owner, by paying the price of the unimproved land.
4. Partition: If neither party is willing to engage in a forced transaction with the other, the court will take control of the property, sell it to a third party, and divide the proceeds according to the parties' respective interests.