

PROPERTY

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CLASS 23(B): COVENANTS

Class Outline

- Covenants
 - Equitable Servitudes
 - Real Covenants

Servitudes

- Easements
- Covenants

Approaches to the Law of Neighbors

- Tort (nuisance)
- Modification of property rights (easements)
- **Contracts running with the land (covenants)**
- Regulation (zoning)

Covenants v. Easements

- The right to insist on the use or nonuse of land.
 - Most covenants are negative.
 - Basically an *in rem* contract, more like contract rights.
 - Can only obtain by a writing.
- The right to go onto land.
 - Most easements are affirmative.
 - More like property rights.
 - Can obtain by a writing, or by prescription, estoppel, necessity, etc.

2 Theories of Covenants

1. Equitable Servitudes – applies where an injunction is sought
2. Real Covenants – applies where damages are sought

Tulk v. Moxhay

(Leicester Square, London, 2009)



Equitable Servitudes

Elements:

1. Parties must intend the promise to be binding on successors.
2. Successor must have notice of the promise to be bound by the burden of the promise.
3. Promise must be one that “touches and concerns the land.”

*Neponsit Property Owners Association, Inc. v. Emigrant
Industrial Savings Bank*



Real Covenants

Elements:

1. Parties must intend the promise to be binding on successors.
2. Original promise must have been made between grantor and grantee in “privity of estate”
3. For burden of promise to run with the land, successor must have acquired entire interest of original owner (“full vertical privity”). For benefit of promise to run, successor must have acquired at least part of the interest of the original owner (“partial vertical privity”).
4. Promise must be one that “touches and concerns the land.”

Equitable Servitudes v. Real Covenants

- Requires successor have notice of the promise.
 - Does not require privity of estate.
 - Intent to bind.
 - Promise must “touch and concern” land.
- Does not require successor have notice of the promise.
 - Requires privity of estate between original grantor & grantee, and full or partial privity with successor.
 - Intent to bind.
 - Promise must “touch and concern” land.