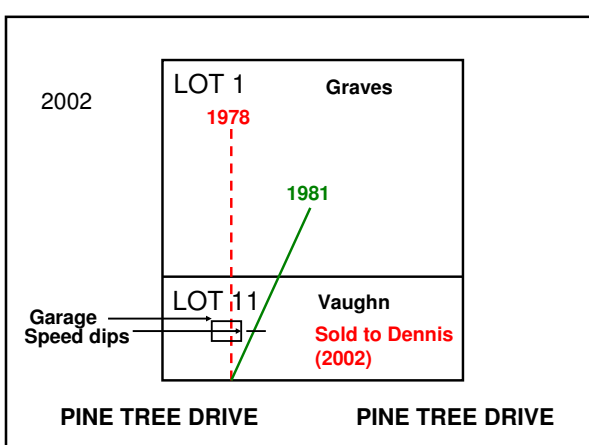
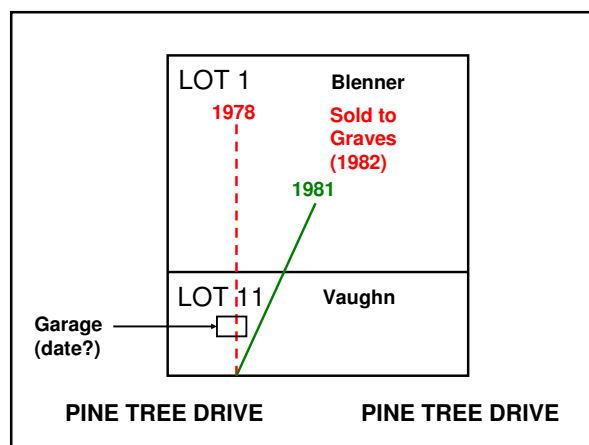
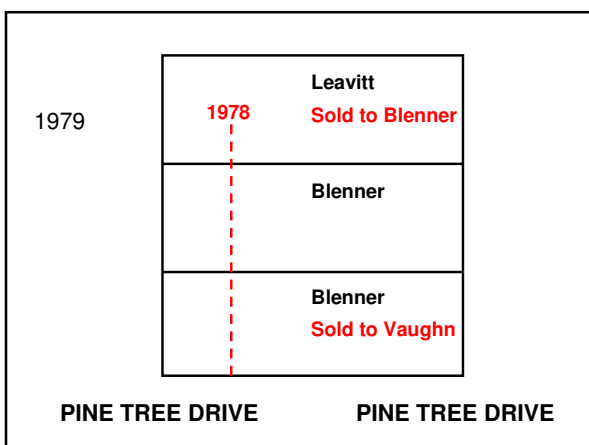
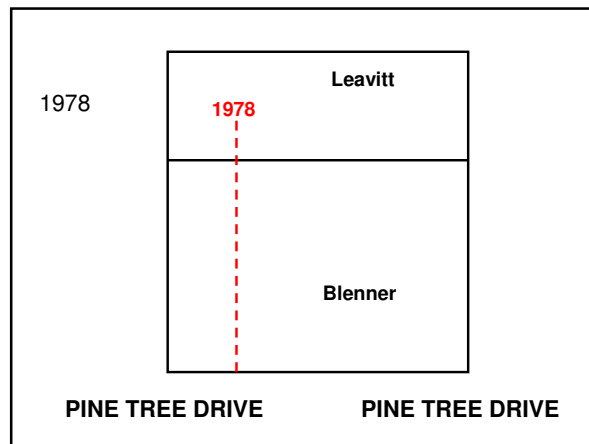




Termination of Easements

- Easements can be terminated by
 - Release (reconveyance, by written instrument, to owner of servient land)
 - Merger of dominant and servient estates
 - Prescription (interference w/easement, w/out interruption, for statutory period)
 - Abandonment



Graves v. Dennis

- 1978: Blenners (owners of Lot 11 and southern part of Lot 1) grant easement to Leavitts (who own northern part of Lot 1) to cross Lot 11
 - Easement is not ever used
- Blenners sold Lot 11 to Vaughn
- Blenners then acquired the northern part of Lot 1
- 1981: Blenners obtain new easement from Vaughn to cross Lot 11



Graves v. Dennis

- 1982: Graves buy Lot 1 from Blenners
 - Graves use the 1981 easement, and didn't know about the 1978 easement
- Vaughn builds garage on Lot 11, in path of 1978 easement
- 2002: Vaughn sells Lot 11 to Dennis, who later puts speed dips on the road



Graves v. Dennis

- 2002: Graves sue Dennis for installing speed dips, arguing this is unreasonable interference w/1981 easement
 - After suing, Graves discover the 1978 easement, at which point they amend their complaint and seek to force Dennis to move the garage blocking the 1978 easement



Graves v. Dennis: Abandonment

- Rule: mere nonuse ≠ abandonment; there must be an “affirmative act” manifesting easement holder’s intention to abandon easement
 - Rationale: an easement is a property interest, which its holder can use or not use as the holder sees fit (no requirement that a property right actually be exercised)



Graves v. Dennis: Abandonment

- Held: Graves abandoned 1978 easement
 - Blenners acquired the 1981 easement and used it exclusively, suggesting it was a “substitute” for the 1978 easement
 - Graves only used the 1981 easement
 - Graves and Vaughn discussed the garage before it was built



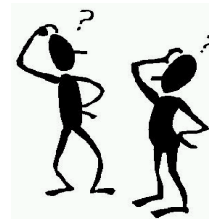
Graves v. Dennis


- Concern: new 1981 easement **might** not have been a “substitute” for old 1978 easement
 - Lot 1 had previously been two separate parcels; Blenners **might** have intended to keep both easements
 - If they ever split Lot 1 back up and sold part of it, each part would have an easement (no need for a shared driveway for access to each parcel)



Graves v. Dennis


- What’s the significance of the fact that Vaughn built a garage that blocked the path of the 1978 easement?



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Graves: Termination by Prescription

- Garage blocks 1978 easement (prevents its use)
- If Graves does not act w/in statutory period to object to this interference, 1978 easement would be terminated by prescription
 - Same basic policy as creation by prescription
- Problem: it is not clear, on the facts, when the garage was built (thus, can't say how long easement has been interfered with)

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“Private” Land Use Control

- A and B own neighboring parcels of land
- Both build homes, want to make sure the parcels remain “residential only”
- Theoretically**, each could grant a reciprocal negative appurtenant easement to the other (to prevent use of parcel for nonresidential use)
 - Burden would run w/ownership of servient parcel, benefit would run w/ownership of dominant parcel

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“Private” Land Use Control

- Problem: common law didn't recognize negative easements in these circumstances (p. 606)
- A and B might instead agree that neither will use their respective parcels for nonresidential use
 - This contract is enforceable against A and B, clearly, but would the burden and benefit of this contract run with ownership of the land? [E.g., if A sells to C, could B enforce the agreement against C?]

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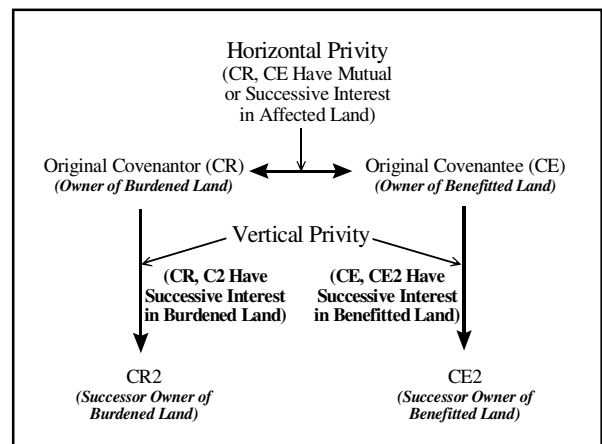
Covenants Running With the Land

- When can a contract between two landowners (A and B) be enforced by a successor to one or both landowners?
- English law allowed this in landlord-tenant
 - L and T enter lease, T promises to pay rent
 - T later makes assignment of its entire leasehold estate to T1
 - Held: L, T1 are in privity of estate, L can enforce covenant to pay rent against T1

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Test for Covenants Running with the Land (at Law)

- Covenant can be enforced against successor owner of land in action for damages, if:
 - Covenant was intended to bind successors
 - Covenant “touches and concerns” land
 - π and Δ are in “privity of estate,” and
 - Δ acquired land with notice of the covenant





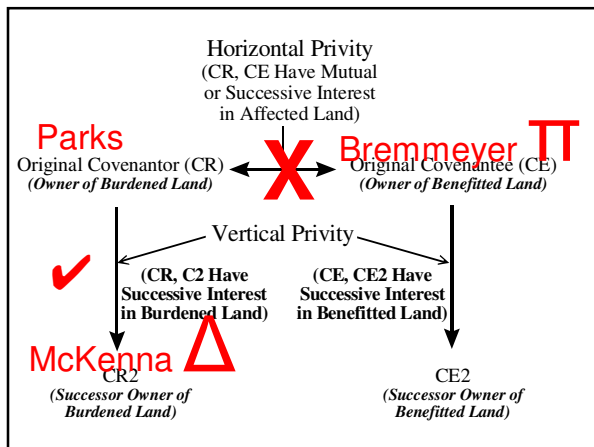
Bremmeyer Excavating

- Parks owned land that needed to be filled, so he contracted w/Bremmeyer to fill it (contract gave Bremmeyer 5-year exclusive option)
- During 5-year exclusive option period, Parks sold land to McKenna
- McKenna filled the land w/out using Bremmeyer
- Bremmeyer sues McKenna for damages



Bremmeyer Excavating

- Held: Covenant doesn't run w/land to bind McKenna as Parks' successor, b/c privity of estate is lacking
 - Vertical privity: yes (Parks did transfer all of his interest to McKenna)
 - Horizontal privity: no (covenant not made as part of a conveyance creating a mutual or successive interest between Bremmeyer and Parks)



What's the Concern?

- Burden of a running covenant may affect alienability of the land (buyers may be reluctant to buy land if it is subject to such a burden)
 - Early courts were reluctant to allow these "contracts" to bind ownership of land except (at a minimum) where they were created in conveyances that created horizontal privity



The Privity Requirement

- How might Parks and Bremmeyer have documented the transaction in a way that would've produced horizontal privity?
 - "Straw" conveyance
 - Step 1: Parks deeds land to Bremmeyer
 - Step 2: Bremmeyer deeds land back to Parks (creating successive relationship), by a deed that includes this same fill covenant



Negative Covenants: Note 3(b)

- A and B (neighbors) covenant that neither they, nor their successors, will operate a business on their lots
- A later sells to C, who opens a restaurant
- Can B recover damages from C?

A. Yes B. No



Negative Covenants: Note 3(c)

- A and B (neighbors) covenant that neither they, nor their successors, will operate a business on their lots
- A later sells to C, who opens a restaurant
- Can B get injunction vs. C?

A. Yes

B. No