



Note 1(b): FHA Exceptions

- Hansen’s discriminatory decision to exclude family does not violate FHA
 - § 3604(a) doesn’t apply to an owner-occupied duplex [§ 3603(b)(2)]
 - Thus, FHA does not prohibit **Hansen from refusing based on race/family status!**
- Why should FHA exempt Hansen (and permit this conduct)?



FHA Exceptions: Rationale?

- (1) FHA focused primarily on those “in the business” of providing housing
 - Public accommodation laws justified by Congress’s power to regulate commerce and activities that affect interstate commerce
 - Regulating “little guys” like Hansen is not needed to open up “access”
- (2) Should Hansen get more slack where he’s “sharing” his own house?



FHA Exceptions: Rationale?

- (3) Relative unsophistication of Hansens (more likely unaware of FHA limitations), by contrast to persons involved in rental business
- (4) Enforcement resources: FHA can’t enforce the statute vs. everyone, as resources would be insufficient

Advertising Restrictions

HOME FOR RENT

5915 Applewood Lane. 2 bedroom, 2 bath, air conditioning and garage, \$500/month including utilities. No children! Call Fred or Sally Hansen, 555-2121.

Does this ad violate FHA or present Hansens with risk of liability?



Advertising Regulations

- Ad violates FHA § 3604(c), as it expresses a preference based on protected class — § 3603(b) **doesn’t protect preferential advertisements**
 - Note: use of preferential advertisement means Hansens’ denial decision — otherwise exempt — **will now violate § 3604(a)** [§ 3603(b)(1)(B)]
- Why let the Hansens discriminate in the leasing decision, but not advertise this preference?



Problem 7

- Hansens post a listing for their home on Craigslist
- Listing says “No BLACKS, ASIANS, OR NON-ENGLISH SPEAKERS”
- Should Craigslist also be held liable for violating the FHA?



A. Yes

B. No



Problem 7

- *Craigslist* (7th Cir. 2008): under CDA § 230(c)(1), Craigslist is not the “speaker” of the information
 - Hansens could be liable, but not Craigslist
- Compare: if newspaper ran comparable ad, it would be liable for violating § 3604(c)
- Is this an appropriate distinction?



Easements

- An easement is a **nonpossessory** property interest in another’s land (the “servient estate”)
- An easement is either
 - **Affirmative** (it permits its holder to use the servient estate in some way, e.g., by crossing it)
 - **Negative** (it permits its holder to prevent the servient landowner from using her land in a particular way, e.g., to block the holder’s view)

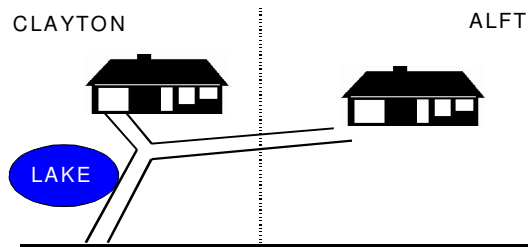


Easements

- **Most** easements are affirmative
 - The common law typically refused to recognize negative easements, except in certain limited situations (obstruction of light, air, or view; blocking a stream; removing a building’s support)
- Affirmative easements are either
 - **Appurtenant** (benefits other land), or
 - **In gross** (benefits its holder personally)



Alft v. Stewart



Alft v. Stewart

- Clayton deeds a portion of his land to his sister, Gracie Alft
 - ¶ 3 grants her a “right of egress and ingress over a dam and the Charles Clayton driveway.”
 - ¶ 4 also grants M/M Alft “the right of access and use of the lake ... as long as Grantee owns” the land (this right can’t be transferred, and terminates if Alfts die or transfer the land)
- Later, Alft sues for a declaration that driveway easement (¶ 3) is appurtenant to her parcel

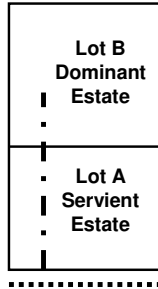


Questions About Alft

- Why does it matter whether the driveway easement is appurtenant or in gross?
- Why does the court treat the driveway easement as appurtenant?
- If the language creating an easement is appurtenant, common law typically interpreted the easement as appurtenant. Why?
- Might Clayton have intended this easement to be personal to Gracie?

Appurtenant Easements

- Easement is **appurtenant** if it benefits the ownership of a different parcel of land (the dominant estate)
 - E.g.*, Owner of Lot B has an easement to cross Lot A to reach public road from Lot B
- Ownership of appurtenant easement "runs with" ownership of dominant estate
 - Buyer of Lot B gets the easement, too, which can't be "severed" from Lot B



Easements in Gross

- Easement is **in gross** if it benefits its holder individually, and not as an owner of land
 - E.g.*, *O*, owner of beachfront land, grants *X* an easement to get access to beach
 - X* owns no other land (so, there's no parcel capable of being benefited by easement)
 - X*'s easement would burden the beachfront parcel (the "servient estate") for as long as easement lasts (even if *O* sells the land)



Preference for Appurtenance

- Any easement burdens servient land (thus reducing its expected value)
 - Appurtenance raises expected value of the "dominant" estate (e.g., saves Gracie cost of building another means of access to her home); this might "offset" burden on servient land
 - If easement is in gross, there's no "offsetting" benefit to other land
- Preference for appurtenance thus promotes maximization of value of land



Alft: Charles' Intent

- Why might Charles have wanted the easement to be in gross (rather than appurtenant)?
 - Gracie wouldn't have been able to transfer the easement along w/ownership of her land
 - This could have given Charles more influence over Gracie's effective ability to sell the land (if cost of alternate access was prohibitive)

- 1975: Bryan, owner of a lot, granted an easement for parking to First Episcopal Church

Note 2(c)

- 2004: First Episcopal Church moves, sells its building to Grace Pentecostal Church
- 2005: Chen wants to buy lot and build on it, which would prevent its use for parking
- Can Chen develop the land, or is the land still subject to an easement for parking in favor of Grace Pentecostal Church?

