

Title Tips by TUTE

Description

He was a legend in his own mind.

LEGEND

Dear Readers:

Someone, somewhere, must think I am slipping. Losing my marbles. Past my prime. Make up your own phrase. They sent me to title examination class! For day after insufferable day after excruciatingly painfully repetitious day. Not that your author, in their own humble opinion, thinks title exam training is a bad thing. It is a great thing . . . for other people. Especially new people. Especially that guy I saw in, oh, you might know him, never mind.

There was one interesting part, which brought to mind certain processes and procedures that, I have to admit, had gotten rusty through disuse. Once upon a time (come on you all know this part), in a galaxy far, far away, the process of title examination involved a review of the descriptions off the adjoining properties. **Why?** Because in an era before subdivision plats became such a ubiquitous part of land development, descriptions were generally written courses and distances, or even more vaguely, by reference to adjoining owners. And in an age before calculators and deed plotting software, an era before adult onset dyslexia was pandemic, error was always a possibility. (Come to think of it, error remains a possibility even today with all the checks and balances of modern land division tools.)

You may remember those descriptions. They read in some variation of "All that certain parcel of land, bounded on the north by Smith, on the east by the public road, on the south by Johnson, and on the west by Williams. Or they got a little more measured: "All that certain parcel of land, beginning at the intersection of the public road with the southeast corner of Johnson, thence running southerly 200' along the public road to the northeast corner of the land now or formerly of Brown, thence turning and running westerly 200' to the eastern boundary of the property now or formerly of Williams; thence turning and running northerly 200' along the boundary of now or formerly Williams to the line of Johnson; thence turning and running easterly 200' along the boundary of Johnson to the public road, the point of beginning."

These are variations of a metes and bounds description, once removed. Just as a description by reference to a subdivision plat incorporates the courses and distances drawn on the plat into the deed of conveyance, these derived descriptions incorporate the boundary lines from the adjoining owners

deeds (or deeds in their chain of title) into the deed description. Which means the examiner has to read the adjoiner's deeds to find out how those lines were described.

And why do we care? Let me digress briefly into some of the inspiring guidance provided by the Supreme Court of Virginia. Believe it or not, there is a priority list setting forth the methods evidencing boundaries (where there are inconsistencies) in descending order:

- a natural monuments or landmarks
- b artificial monuments and established lines, marked or surveyed
- c adjacent boundaries or lines of adjoining tracts
- d calls for courses and distances
- e designations of quantity.

Providence Properties, Inc. v. United Virginia Bank/Seaboard National, Trustee, 219 Va. 735 VA. (1979), which the court reiterated in Spainhour v. B. Aubrey Huffman & Assoc., 237 Va. 340 (1989). While that list favors monuments (and what is a surveyor's corner pin, but an artificial monument?), adjacent boundaries come right behind that, perhaps due to another Court decision ruling an adjoining owner's lines, when the location is certain, is a monument of the highest dignity. Richmond Cedar Works v. West, 152 Va. 533 (1930).

And why has the Court provided us with its inspired guidance? Did I make reference earlier to possibility of error? Looks, yes, I did. And what does all this stuff about monuments and descriptions have to do with resolving those errors? I wish I could answer these deep questions with the same rapidity in which I ask them. What is the most likely modern manifestation of such an error going to look like? One might hypothesize two angry neighbors, standing on their common boundary with loaded shotguns (people holding shotguns are definitely monuments with dignity in my book!!) after having discovered that their descriptions have resulted in what may be called an interlock, or more commonly, an overlap. This is not a new error, as the Court has addressed it before

[W]here a senior patentee settles upon any portion of his land claiming title to the whole, whether inside or outside of the interlock, before the junior patentee has settled upon any part of the interlock, the senior patentee is in possession to the extent of his grant, and a subsequent entry of the junior patentee upon the interlock only ousts the senior patentee to the extent of the land actually in the occupancy of the junior patentee by residence, improvement, cultivation, or other open, notorious and habitual acts of ownership. • Smith v. The Pittston Company, 203 Va. 408, 413-414, 124 S.E.2d 1, ___ (1962).

This repeats the holdings in earlier cases such as LaDue v. Currell, 201 Va. 200 (1959), Baldwin v. Mothena, 171 Va. 94 (1938), and Fry v. Stowers, 98 Va. 417 (1900).

How to apply it here? We all know that being first in time is an important concept in title examination. When Mater Res Publica conveyed a portion of her land (let's analogize to a pizza here) to the first purchaser, that was like a slice out of the pizza. When she conveys the second parcel (slice of pizza), it can't include any of the first parcel, because that parcel is gone. And so on and so on until the

whole acreage (pizza) is gone. And even if one of the slices is larger than intended, as long as everyone today is an innocent purchaser for value without notice, it can still be gone (See *Guss v. Realty Corporation*, 204 Va. 65, 129 S.E.2d 43 (1963)). I'm going to assume the pizza slices are still on a platter (because the alternative is just too disgusting to contemplate), so people can act on those slices even though they don't really own them (I am infamous in certain circles for snatching slices of pepperoni from other people's (usually folks of a vegetarian persuasion) slices - look over there, the Winged Victory of Samothrace!! I am no longer an innocent purchaser for value - unless the jalapeno pepper stuck to the pepperoni constitutes consideration, waitress, can I get another beer, please?). Trespass can ripen to adverse possession, but that requires facts other than the boundary's description, and besides, the pizza will be cold, so we are not going there today

If the Court can identify the boundaries, the first conveyance is almost always going to prevail over the second conveyance (first in time is first in right). So if that first conveyance included 10% of what was also described in the second conveyance, the second purchaser has a problem. Which means our employers have a problem.

Let's make sure we are not the problem and let's be careful out there.

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Questions & Answers For Title Examiners And Underwriters

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Category

1. Columns

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