

## I. USES OF A COMMON PLAN

### 1. Uses of the common plan

- a. intent
  - i. that the benefit run — *Charping*
  - ii. with what land?
- b. does the benefit run to prior takers? — vertical privity
- c. may the purchaser of land w/o covenants be bound?

### 2. *Werner v. Graham* (1919)

- a. why didn't the covenants run at law? — no horizontal. privity
- b. Marshall — c. 50 lots —> Def1's  
Marshall —————> Plain.  
Marshall — c. 66 lots —> Def2's  
Marshall releases Plain.  
Marshall — c. 16 lots —> Def3's
  - i. Def3's can't enforce – why?
  - ii. Def1's can't enforce – why?
  - iii. Def2's can't enforce – why?

### 3. *Riley* (1976)—the difference between the parole evidence rule and the statute of frauds

[http://www.landwatch.com/California\\_land\\_for\\_sale/Alpine\\_Meadows](http://www.landwatch.com/California_land_for_sale/Alpine_Meadows)

<https://www.google.com/maps/place/Bear+Creek+Dr,+Tahoe+National+Forest,+Olympic+Valley,+CA+96146/@39.1751371,-120.2348893,3348m/data=!3m1!1e3!4m2!3m1!1s0x809bd75bfd867867:0x5f9f5401e6daeca1>

Once more, we're dealing with Lake Tahoe. This time we're on the California side of the lake back up in the mountains.

- a. what use of the common plan is at stake here?
- b. how does the court interpret *Werner*? in what way does the dissent disagree?
- c. should we now line up California with those jurisdictions that will not use a common plan for purpose 1c on statute of frauds grounds? (For thoughts but not total enlightenment on this topic see *Citizens for Covenant Compliance v. Anderson*, 12 Cal.4th 345, 906 P.2d 1314, 47 Cal.Rptr.2d 898 (1995).)
- d. does *Riley* overrule *Cooke v. Ramponi*?

## II. GETTING RID OF COVENANTS

### 1. *Ginsberg*

<https://maps.google.com/maps?oe=utf-8&client=firefox-a&q=Virginia+Street+Far+Rockaway+Queens&ie=UTF-8&hq=&hnear=0x89c265fc1b765f25:0x42b4a3e4868458fb, Virginia+St,+Queens,+NY+11691&gl=us&ei=B-uiUKHEIIa50QHl9IAQ&ved=0CDEQ8gEwAA>

- a. why no estoppel? – estoppel vs. acquiescence compared; see *Camelback*
  - b. why no changed conditions?
  - c. the constitutional issue
    - i. *Shelley v. Kraemer*
    - ii. public/private distinction
    - iii. interference with free exercise? (i.e., if *Shelley* applies)
2. There are remarkably few cases that raise constitutional objections to the enforcement of private covenants. But cf. *West Hill Baptist Church v. Abbate*, cited in the principal case. Most, though not quite all, of the cases cited in the Note on p. S449–50 raise the issue whether the constitutional objections that have been raised to public zoning could also be applied to private covenants.
3. *Shelley v. Kraemer*. If it illustrates nothing else, *Shelley* illustrates the legal realist proposition no. 1: property is what the law says it is. [We didn't do all of this in class; we'll come back to it in the last week.]
  - a. State the holding
  - b. How does the court get there?
    - i. *Buchanan*
    - ii. *The Civil Rights Cases*
    - iii. state action as substantive accommodation (*Moose Lodge*, p. S611)
  - c. The dinner invitation
  - d. *Barrows* (damages), *Barringer* (fsd), *Smith* (x.i.), *Evans* (cy pres)
4. *Camelback*  
<https://www.google.com/maps/place/Camelback+Del+Este,+Phoenix,+AZ+85018/@33.5091397,-112.0059441,17z/data=!4m2!3m1!1s0x872b0d04eab5d647:0x8d1ce068c6ed3832>
  - a. the concept of a buffer zone (perhaps more a product of logic than of reality)
  - b. why not estoppel?
  - c. What does the no benefit rule mean?  
\$ x = value to burdened owner of being able to build commercial  
\$ y = value to benefited owners of burdened not building  
Time (a) sum of x < sum of y  
Time (b) sum of y > 0  
Do we have an efficiency problem here?