

Monuments



presented by

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Monument

- Black's Law Dictionary 8th ed.
 - Any natural or artificial object that is fixed permanently in land and referred to in a legal description
- Two kinds:
 - An original monument
 - One called for in original conveyance
 - First monument of record
- An original or perpetuated monument will control over distance, direction and area

- Land surveyors receive right to practice under ORS 672
 - Engineers & photogrammetrist perform some functions
- Only land surveyors can establish, re-establish, or restore land boundaries, corners or monuments between land not held in common ownership (ORS 672.025(3))

- Deeds, which acknowledge land ownership, required in England since 1677
 - Primary source of US land ownership
 - A deed is a writing, signed, sealed, acknowledged, delivered, and recorded
 - ‘Grantor’ is person selling; ‘grantee’ is person buying

Most land transactions accomplished by passing of a deed

Deed Contains Four Parts

- Caption gives general area of land transfer
- Body written or graphical information
- Qualifying clause subtracts from body
- Augmenting clause puts back into body

About 95% of land boundaries are located from the deed body

Order of Conflicting Elements that Determine Land and Boundary Location

- Right of possession by an unwritten conveyance
 - Unwritten agreement
 - Adverse possession
 - Acts of nature
- Senior right
- Written intention of parties



ORS 93.310 Rules for Construing Description of Real Property

- If the construction in deed is not doubtful lay out the deed
Holcomb v. Mooney 11 P. 274, 13 Or 503
- Facts:
 - Grantor sold in 1882 to “Dedman” who sold to “Mooney”
 - Grantor sold remainder of land in 1883 to “Holcomb”
 - Both deeds called common boundary South 65 degrees east, 15.60 chains to the county road
- Mooney was over line and action of ejectment was upheld because deeds were clear and explicit

Unclear Deed

- One in which there is uncertainty of meaning. This is an ambiguity. Two kinds:
 - 1) Patent
 - One appearing on the deed face
 - Wide range such as wrong direction
 - Cannot be cleared by parol evidence
 - Deed might be void for lack of agreement
 - 2) Latent
 - An ambiguity not apparent on deed face
 - Can be addressed with extrinsic evidence

Patent Ambiguity

Sellards et ux v. Malheur County et al.
272 P. 2d 975, 202 Or 188

- Facts:
 - Suit to quiet title
 - “Coin” property sold to “Denkey” as land between county road and Malheur River except 7 acres on east side
 - In 1932 Malheur County foreclosed for taxes with different description – west 17 acres
 - In 1934 “Sellards” purchased sheriff’s deed, west 17 acres and further purchased a quitclaim deed with original description from “Denkey”
 - In 1935 Malheur Co. foreclosed on remainder of “Coin” property described as less 17 acres
 - In 1937 a land contract and deed from county to “Welty”, less 17 acres
 - “Welty’s” deed is patently ambiguous and void for uncertainty. Parol evidence could not be used.
 - “Sellards” wins case because of quitclaim deed from “Denkey”

Latent Ambiguity

Weniger v. Ripley et al.
293 P. 425, 135 Or 265

- Facts:
 - Suit to quiet title
 - “Wright” owned 88.35 acres along Calapooia River
 - In May 1907 she conveyed 30 acres more or less to ‘Lee’ with no field survey. From North to main channel of Calapooia River
 - By mesne conveyance “Ripley” became owner
 - In August 1907 “Wright” conveyed 58.35 acres more or less to “Guion”. From South to center of Calapooia River thence down middle of main channel
 - By mesne conveyance “Weniger” became owner

- Calapooia River had two channels around a 10 acre island causing a latent ambiguity
 - Testimony showed south channel to be main channel. “Ripley” occupying island. No per acre purchase price
 - Plaintiff believe “Wright” and Lee” had an oral agreement to north channel. Acreage estimated to north channel. “Ripley” won increasing area to approx. 40 acres. Area considered last

Original Monuments Set & Accepted Control

- US legal principle – monuments control
 - Basis for US Public Land Survey beginning in Ohio
 - Some other countries do not follow the principle
 - Maritime provinces in Canada have changed this principle – coordinates control – adverse possession is not allowed

Wirotek v. Johnson 511 P. 2d 373, 266 Or 72

- Facts
 - 40 tracts divided into 8 parcels by survey called in deeds with conspicuous monuments set at lot corners
 - Defendant “Johnson” purchased third parcel and later plaintiff “Wirostek” purchased parcel to east with common boundary line
 - Defendant built house, a wire fenced dog run and a rock retaining wall
 - Plaintiff hired original surveyor to locate original common line and found dog run and wall on his property, so he brought an action to recover strip of land

- Defendants hired another surveyor who concluded that original surveyor made a mistake locating a center section line and the plaintiff's NW corner was 30.64 ft west of true position and dog run and wall were in this strip
- Court held that original survey monuments controlled as called in deeds which represented intention of the parties. All lots were entirely within the original tract. Plaintiff won suit.

ORS 93.310 – Rules for Construing Description of Real Property

(1) Where there are certain definite and ascertained particulars in the description, the addition of others, which are indefinite, unknown or false, does not frustrate the conveyance, but it is to be construed by such particulars, if they constitute a sufficient description to ascertain its application.

- False items in deeds can be rejected and the deed will stand
- Omitted items in deed such as a call for 6 sides followed by 5 courses and distances can be investigated to determine error
- By theory of ellipsis, the court can supply missing words

ORS 93.310 – Rules for Construing Description of Real Property

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles or surfaces, the boundaries or monuments are paramount.

(3) Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both.

- These sections declare the order of precedence of monumentation in Oregon
 - Monuments, distances, direction and area
- This order is not universal in the United States as other states such as Kentucky hold direction over distance

Bean v. Kinetic 588 P. 2d 1022, 282 Or 739

- Boundary dispute proceeding
 - Plaintiff’s surveyor “Kucera” fixed on the west by a line beginning at an agreed starting point on Division St and along north line of Jewell tract to a monument found by his crew at NE corner of Bean tract as called in surveys by Johnson in 1910 and 1913
 - Defendant’s surveyor “McIntosh” argued that prior surveys and his construction of old deeds yielded a different angle from agreed point
 - He further argued that “Kucera” did not see the stone monument
 - Court held “Kucera” line correct because it ended on monument. 93.310 (2)

Hennigan v. Mathews 155 P. 169, 79 Or 622

- Facts:
 - Common grantor owned 2 lots laying in a west-east direction and terminating to Willamette River, thence up said river to east-west line, thence to place of beginning
 - “Hennigan” received by mesne conveyance fee simple title to the lots with river description
 - Common grantor originally had survey which set pipes on west-east lines at some distance from bank and included the number of acres mentioned. After executing conveyances, grantor sold quitclaim deed to Mathews to the land east of the pipes and to the river.



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- Hennigan purchased without any knowledge of pipes which matched the distance and direction calls
- Original deeds did not call pipes but Willamette River
- The river monument controls over the course and distance calls and the undisclosed pipes. The quitclaim deed did not convey any land.

Surveyor Duties

In general, monuments control and the surveyor should report his findings in a resurvey plat filed in the County Surveyors office under ORS 209.250

