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Restrictions are easements? Say What?

In 1848, the Court of England decided the preeminent case that would determine the type, nature and applicability of restrictive covenant interests in the western world. *Tulk v. Moxhay* dealt with if a subsequent owner would be bound by the restrictions placed on a deed to a prior owner. What was put forth was the new legal theory, that a restriction was actually a negative easement, and just like easements, it had a burdened and a benefited party. The benefited party retains the right to enforce the restriction. This class will discuss this case, learn the issues raised and identify how they apply to issues dealing with restrictions today. We will examine several new issues dealing with restrictive covenants that include: redaction of racial restrictions, enforcement of restrictions that grant a lien for association payments, the law of perpetuity, how to remove a restriction from a property and more.

A review: What is an easement?

Easement in gross versus easement appurtenant

How easements are created, removed and passed to future owners

Introduction: *Tulk v. Moxhay*

Discussion of the legal theories discussed in the case

Breakdown of the way we conceive restrictions in modern land use

Discussion of how restrictions are tied to our understanding of easements

Real World example of restrictions today

Subdivision Restrictions

Deed restrictions

Reverter clauses, Law against Perpetuities, and State Statutes

Racially Restrictive Covenants

Shelley v. Kraemer (1948) US Supreme Court Case

Civil Rights Act of 1964

Push to redact racially restrictive covenants

Homeowners and Condominium Association

Superliens, what are they, and their effect on title

Re-sale certificates, rights of first refusal

Conclusion

Q&A period