

Deeds and Descriptions: Do's, Don't, & "Depends"

New Jersey, New York & Pennsylvania
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It Isn't That Hard... Or Is It?

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Expert on Legal Descriptions? (1)
"Ethics For the Professional Surveyor 2nd Ed."
Author: Dennis Mouland: Witness Tree Publishing

- ▶ The land surveyor is supposed to be an absolute expert on legal descriptions. This comes from two similar tasks:
- ▶ Interpreting legal descriptions already on record in order to apply them to the evidence on the ground.
- ▶ Understanding the correct procedures in creating new descriptions of parcels being broken out of parcels already in existence.

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KY: How Hard Can it Be? (1)
Mahaffey v. Wilson, 317 S.W.2d 888 (1958)

- ▶ The governing principle with respect to the adequacy of a description is that the written instrument **must contain sufficient data to identify the property**, ...
- ▶ ...so that ***no question can arise as to the intention of the parties concerning the subject matter.***
- ▶ All that is required is that the writing identify the land or afford means of identification.

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KY: How Hard Can it Be? (2)
Mahaffey v. Wilson, 317 S.W.2d 888 (1958)

- ▶ In a number of cases a **distinction is made between identifying the land and designating it.**
- ▶ It is said that the writing must identify the land, and extrinsic evidence may be invoked to designate it.
- ▶ This means that the writing is sufficient if it singles out a distinct parcel of land, even though resort to documentary or parol evidence is necessary to make certain its location and detailed description.

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NY: Mansfield on Deeds, Common Sense (1)
Jackson ex dem. Bain & Van Slyck v. Pulver
8 Johns. 370 (1811)

- ▶ In ***Goodtitle v. Bailey***, **Lord Mansfield** declared,
- ▶ ***"that the rules established for the construction of deeds were founded in law, reason, and common sense that deeds shall operate according to the intention of the parties, if by law they may; and if they cannot operate in one form, they shall operate in that which, by law, will effectuate the intention."***

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NJ: Mansfield on Deeds, Common Sense (1)
Den ex dem State v. Helmes, 3 N.J.L. 1051 (1813)

- ▶ In Cowper, 600, Lord Mansfield says,
- ▶ *"The rules laid down in respect to the construction of deeds, are founded in law, reason, and common sense; that they shall operate according to the intentions of the parties, if by law they may; if not in one form, yet in another, to effectuate that intention."*

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GA: The Key is the Key (1)
Brasher v. Tanner, 256 Ga. 812 (1987)

- ▶ There need not be confusion about this word, and no confusion will result if the word is given its true and literal meaning...
- ▶ ...[A]ny descriptive words in a contract for the sale of land, which will lead unerringly to the land in question, constitute the key which the law contemplates.
- ▶ But no amount of words in such a contract which fail to lead definitely to the land therein will constitute a key. If such words, when aided by extrinsic evidence, fail to locate and identify a certain tract of land, the description fails and the instrument is void."

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GA: Which Category is Preferable? (2)
Brasher v. Tanner, 256 Ga. 812 (1987)

- ▶ Generally, valid descriptions fall into two categories.
- ▶ The first category is those descriptions which provide by words a means of identification of land without resort to information beyond the words contained in the description.
- ▶ The second category is those descriptions which, while not sufficient to independently identify the land, provide a key which will unlock the mystery to the location of the real estate conveyed.

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GA: Which Category is Preferable? (3)
Brasher v. Tanner, 256 Ga. 812 (1987)

- ▶ From early times we have given greater weight to metes and bounds descriptions than to courses and distances descriptions.
- ▶ In fact, we have held, **"Courses and distances occupy the lowest, instead of the highest grade,** in the scale of evidence, as to the identification of land."
- ▶ The fact that the boundaries given in a metes and bounds description are in the form of adjoining lands owned by parties other than the grantor, rather than natural or artificial monuments, does not invalidate the description...

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TN: Example of a Void Deed (1)
Jackson v. Hutton, 15 Tenn. App. 281 (1932)

- ▶ *...the County hereby grants and conveys unto the Tennessee Company ...*
- ▶ *...such rights of way now or formerly used for public road or roads and which have or may be abandoned as a result of the change in the location of the said road through the property of the Tennessee Company situated in the vicinity of Victoria, Marion County, Tennessee;*

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PA: Twisting the Deed (1)
Mount Pleasant Coal Co. v. Delaware, Lackawanna & Western Railroad: 200 Pa. 434 (1901)

- ▶ The facts stated are not of a doubtful character; they are clearly established; there is but one inference from them, and that, that defendant for forty-five years misinterpreted its deed, or is now, under the stress of litigation, giving its grant a wider scope than its language and the surroundings at the date of its warrant. If this deed were obscure, or ambiguous, the conduct of the parties to it for nearly half a century would be conclusive as to their intention. We can scarcely call the language ambiguous; the only uncertainty that can be alleged, arises from the neglect to make exact measurements

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TN: Experienced Professionals?? (1)
Masada Investment v. Allen: 697 S.W.2d 332 (1985)

- ▶ The UAB building ...Hockert planned to purchase the building from WTFF for \$4,650,000 and then sell the building to the plaintiff, University Real Estate Investors-81 (University), a California partnership, for \$4,850,000.
- ▶ At some point during negotiations Hockert called upon Allen, an experienced real estate attorney, to assist him.
- ▶ Allen had no financial interest in the sale itself and was compensated solely by Hockert.

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TN: Experienced Professionals?? (2)
Masada Investment v. Allen: 697 S.W.2d 332 (1985)

- ▶ Once the general terms of the sale were agreed to, Hockert requested that Allen prepare the warranty deed and the agreement of sale and purchase for the property.
- ▶ Wendell Thomas, an attorney for WTFF, sent Allen a preliminary title insurance binder...
- ▶ ... which had attached to it the wrong legal description of the property to be sold. In addition to the UAB Building, the description included an adjacent lot.

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TN: Experienced Professionals?? (3)
Masada Investment v. Allen: 697 S.W.2d 332 (1985)

- ▶ In August of 1981, Allen sent the warranty deed and the agreement of sale and purchase which he had drafted to Tennessee for execution by WTFF. The erroneous description was still attached to these documents.
- ▶ Allen, WTFF, and University were furnished the correct legal description a few days later, but the correct description was never substituted for the incorrect one.
- ▶ The documents were executed by WTFF in Knoxville and were returned to Allen to be held in trust until closing. For the convenience of the parties the closing was held in Allen's office on September 11, 1981.

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TN: This is What Happens (4)
Masada Investment v. Allen: 697 S.W.2d 332 (1985)

- ▶ University brought suit to quiet title and to recover damages in the Chancery Court of Shelby County.
- ▶ The named defendants were WTFF Associates, Masada-Memphis Venture, Masada Investment Corp., and Milton Turner.
- ▶ WTFF filed a counterclaim seeking reformation due to mutual mistake or fraud. The defendants then filed a third-party action against Hockert & Co., Richard J. Hockert, and Robert M. Allen, charging them with negligence and breach of trust in handling the closing by using the incorrect description of the property.

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TN: This is What Happens (5)
Masada Investment v. Allen: 697 S.W.2d 332 (1985)

- ▶ By wilfully and knowingly choosing to prepare legal documents which would be filed in Tennessee and be of great consequence here, ...
- ▶ ...Allen purposely availed himself of the privilege of doing business within this state.
- ▶ This litigation itself serves to highlight the importance of Allen's work product.

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NJ: Do Some Background Research (1)
St. Pius X House of Retreats v. Diocese of Camden
88 N.J. 571 (1982)

- ▶ Plaintiff, St. Pius X House of Retreats, Salvatorian Fathers (Salvatorians), contracted to sell an 8 1/2 acre tract of land (Lot 2H) in the Township of Gloucester to Albert and Mary DiSalvio (DiSalvios) under an installment arrangement with title to pass upon the final payment.
- ▶ Several years later, but during the installment period, plaintiff mistakenly included this parcel with other land in a conveyance to the Diocese of Camden (Diocese).
- ▶ The error remained undetected until the DiSalvios were about to take title. At that time Fred Gravino, the lawyer representing the Salvatorians, discovered the problem.

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PA: Lousy Research (1)
Michael v. Stock: 162 A.3d 465 (2017)

- ▶ Stock attempted to sell to George Michael property in the Borough of Bristol, Bucks County, that was comprised of two lots (A and B).
- ▶ Stock and Michael initially believed that Stock held title to both lots, but, in fact, she did not hold title to Lot B.

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PA: Lousy Research (2)
Michael v. Stock: 162 A.3d 465 (2017)

- ▶ Title Insurance Commitment, Sched. C. It is undisputed that the metes and bounds set forth in Schedule C describe only Lot A.
- ▶ In fact, the description of the property in the Commitment, including the metes and bounds and the lot number and County Parcel Number references, is the same as that in a 1991 deed by which the Pezzolas obtained title to the property at 4 Mill Street—at a time when that property did not yet include Lot B.

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PA: Can Come Back to Haunt You... (3)
Michael v. Stock: 162 A.3d 465 (2017)

- ▶ Schedule B to the policy lists exceptions to coverage, including a "survey exception" that applies to...
- ▶ ... "[u]nrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments which an accurate and complete survey would disclose."

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Garbage In, Garbage Out...

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NM: "Surveyed Randomly"?? (8)
Vigil v. Arguello: 1984 N.M. App. No. 7409

- ▶ He did not have the Fraker map with him in the field, nor did he consult the map before proceeding from the corner.
- ▶ He testified that he then ... "surveyed randomly" to the north rim because "we did not have a starting point or original monuments" down here that I felt were the original monuments that Fraker said."
- ▶ In surveying randomly from the accepted corner, plaintiffs' surveyor did not conduct a proper resurvey and ignored relevant deed descriptions.

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The Language(s)

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Tenn: The "Melody" is Catchy...(1)
Crown Enterprises v. Woods: 557 S.W.2d 491 (1977)

- ▶ **Judge Learned Hand, whose wisdom has enriched most branches of jurisprudence**, has said of statutory interpretation:
- ▶ "It does not follow that Congress meant to cover such a transaction, **not even though the facts answer the dictionary definitions** * * * **the meaning may be more than that of the separate words as a melody is more than the notes**, and no degree of particularity can ever obviate recourse to the setting in which all appear and which all collectively create." *Helvering v. Gregory*, 69 F.2d 809, 810-11 (2d Cir.1934).

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NJ: Charting a Course (1)
Freehold Office Park, Ltd. v. Township of Freehold:
12 N.J. Tax 433 (1992)

- ▶ in his concurring opinion Judge Learned Hand said:
- ▶ There is no surer way to misread any document than to read it literally; in every interpretation we must pass between Scylla and Charybdis; and I certainly do not wish to add to the barrels of ink that have been spent in logging the route.
- ▶ As nearly as we can, we must put ourselves in the place of those who uttered the words, and try to divine how they would have dealt with the unforeseen situation; and, although their words are by far the most decisive evidence of what they would have done, they are by no means final.

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NY: Charting a Course (1)
In re Mensch: 7 B.R. 804 (1980)

- ▶ "... Judge Learned Hand wrote over thirty years ago, in a case which disregarded the explicit language of a statute in favor of the clearly expressed legislative intent:
- ▶ 'It does not therefore seem to me an undue liberty to give the section as a whole the meaning it must have had, in spite of the clause with which it begins. Such treatment of a statute needs no apology today, whatever were the scruples of the past. There is no surer way to misread any document than to read it literally; in every interpretation we must pass between Scylla and Charybdis;

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NY: Charting a Course (2)
In re Mensch: 7 B.R. 804 (1980)

- ▶ ...and I certainly do not wish to add to the barrels of ink that have been spent in logging the route.
- ▶ As nearly as we can, we must put ourselves in the place of those who uttered the words, and try to divine how they would have dealt with the unforeseen situation; ...
- ▶ ...and, although their words are by far the most decisive evidence of what they would have done, they are by no means final.'

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Fed (2nd): Learned Hand & Clarity (1)
Giardino v. Commissioner, 776 F.2d 406 (1985)

- ▶ Judge Learned Hand once wrote of the Income Tax Code, "*the words ... **dance before my eyes in a meaningless procession**; cross-reference to cross-reference, exception upon exception ...*" We are called upon today to determine whether a cross reference in the Tax Code, typical of the Code's complexities, is sufficiently unambiguous to exempt a decedent's insurance proceeds from taxation. Relying on the literal meaning of the Code provisions to impose order on the "meaningless procession," we affirm.

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Considerations for Descriptions

1. Can the description be put on the ground?
2. Is extrinsic evidence necessary to retrace the description?
3. Is the land described defined by monuments?
4. Are the monuments (if any) original to the creation of the tract? Or were they set later?
5. Does anyone know where the tract actually is? (...or do they have an opinion?)
6. Does the description conform to existing monuments/lines of possession?

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Possible Ways to Create Difficulties (though you may not have a Choice...)

1. Describe land solely by measurements/coordinates.
2. Describe any riparian boundary.
3. Set Irons but Don't call for them.
4. Call for Irons, but Don't set any.
5. Call for an Adjoiner line without knowing where it is.
6. "Cut and Paste" different prior descriptions.
7. Describe a boundary with no field work.
8. 6 or 7-Level Aliquot Description, no Punctuation
9. Pretend Easements aren't important...
10. Describe any boundary at variance with a fence...

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This is NOT a Class on Creative Writing

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Part Function, Part Ritual...

- › 'Ring a ring a pinkie,
› Ring a ring a bell,
› If ye brak the bargain
› Ye'll go to hell.'

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A Deed Wasn't
Always a
Requirement:
Ritual Was...

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The Lighter Side...

- › **Beginning on a stake, replacing a chimney...**
› D.B. 70, pg. 460 Swain County, N.C.
- › **Beginning at the gate at the foot of the hill
running with the galloping fence where it now
stands with the head of the ditch...**
› D.B. 4, pg. 595, Transylvania County, N.C.

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The Original Survey (And Associated Problems)

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The Goal: Stability of Property Titles Stability of Expectations

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Consentable Boundary Line: Penn: (1)

Plauchak v. Boling: 439 Pa. Super. 156; 1995

- › The doctrine of consentable line is a rule of repose for the purpose of quieting title and discouraging confusing and vexatious litigation.
- › There are two ways in which a boundary may be established through consentable line:
- › **(1) by dispute and compromise, or**
- › **(2) by recognition and acquiescence.**
- › As ...explained in Niles, the doctrine of consentable line is a **separate and distinct theory from that of traditional adverse possession**, although both involve a twenty-one year statute of limitation.

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NJ: Stability of Titles (1)

Hyland v. Kirkman, 204 N.J. Super. 345 (1985)

- › The issue is of concern to the court since there is no question that the title industry relies on judgments of quiet title and tax sale foreclosure certificates in which the docketed proceedings are regular on their face.
- › **The courts are admonished not to destabilize titles to real estate.**

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Acquiescence – North Carolina: (4)

Russell v. Thornton: NO. COA02–1351 (2003 App.)

- › The Andrews Court further indicated that, **where a boundary line is certain, adjoining landowners cannot change its location by parol agreement alone.**
- › We believe that adoption of the theory of acquiescence **would create additional uncertainty as to the location of boundary lines and would make deed descriptions unreliable.**

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Fed. Ct.: Stability of Property Titles (2)

Pacific Gas & Electric Co. v. USA
838 F.3d 1341 (2016) (dissent)

- › **Government is instituted to protect property of every sort;** as well that which lies in the various rights of individuals, as that which the term particularly expresses.
- › This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.
- › **The Complete Madison** at 45 (Saul K. Padover ed. 1953), letter to James Monroe, Oct. 15, 1786 (emphasis in original).

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PA.: Stability of Property Titles (2)

In re Sunoco Pipeline, L.P.: 143 A.3d 1000 (2016)

- › Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses.
- › This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own.—
- › James Madison

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Part II: Stating Intent

Meeting of Minds: Signed, Sealed & Delivered?

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Meeting of Minds: U.S. Supreme Court (1) Brawley v. U.S.A.: 96 U.S. 168; 24 L. Ed. 622; 1877

- ▶ The written contract merged all previous negotiations, and is presumed, in law, **to express the final understanding of the parties.**
- ▶ **If the contract did not express the true agreement, it was the claimant's folly to have signed it.** The court cannot be governed by any such outside considerations.
- ▶ Previous and contemporary transactions and facts may be very properly taken into consideration to ascertain the subject-matter of a contract, and the sense in which the parties may have used particular terms, but not to alter or modify the plain language which they have used.

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NJ: Signed, Sealed & Delivered (1) Hoboken Land & Improvement Co. v. Kerrigan: 31 N.J.L. 13 (1864)

- ▶ The plaintiffs, to make out their title to the premises in dispute, offered in evidence a copy of the record of a deed from Cornelius Haring to John Stevens, dated July 26th, and recorded September 8th, 1784.
- ▶ The endorsement thereon, certified by Petrus Haring, one of the judges of the court of Bergen, was, that " the said agent, Cornelius Haring, signed, sealed, and delivered the within deed in the presence of me, Petrus Haring, one of the judges of the Court of Common Pleas, have perused the same, find no erasures or interlineations, and allow the same to be recorded."

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NJ: Notary Certificate (1) SUGGESTED NOTARIAL FOR CORPORATE OR LIMITED LIABILITY CLAIMANT: N.J.S.A. 2A:44A-8

*...named herein and who by me duly sworn/affirmed, asserted authority to act on behalf of the Corporation (partnership or limited liability company) and who, by virtue of its By[-]laws, or Resolution of its Board of Directors (or partnership or operating agreement) executed the within instrument on its behalf, and thereupon acknowledged **that claimant signed, sealed and delivered same as claimant's act and deed,** for the purposes herein expressed.*

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NY: Future Hope vs. Present Event (1) Bergner v. Kick: 85 A.D.2d 911 (1981)

- ▶ Kick acknowledged that his original intention had been to develop all his land residentially and that he had other maps of the property prepared. It was his hope, he stated, to convince the municipal authorities to construct another street in the area now proposed to be sold to Conifer because without it the land could not be subdivided profitably.

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NY: Future Hope vs. Present Event (2)
Bergner v. Kick: 85 A.D.2d 911 (1981)

- ▶ Thus, while it is clear that Kick had hoped from the beginning to develop the land (indeed several of the witnesses stated that his representations were nothing more than his hope for future development), the evidence does not establish that he committed himself to develop his entire acreage exclusively for single-family residential use, and obviously, there is a great deal of difference between the future hopes of a developer and the reality which may exist later.

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GA: Deeds of Gift are Problematic (1)
Tyson v. Hutchinson: 164 Ga. 661 (1927)

- ▶ The words of the paper under consideration are that Salla Hutcheson, in consideration of the natural love and affection she has for her brother William Hutcheson, "desires at her death to give, grant, and convey to the said William Hutcheson, if living at the time of her death" and if he be not then in life, to her named brothers, "if they should be living," ...

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GA: Deeds of Gift are Problematic (2)
Tyson v. Hutchinson: 164 Ga. 661 (1927)

- ▶ The instrument does not evidence even a present gift to take effect after the death of the donor, but rather the expression of a present desire to make a gift in the future, that is, at the death of the donor. The words "desires at her death to give" constitute a testamentary expression, and do not evidence an intention to convey a present title.

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PA: Deed of Gift or a Will? (1)
Murphy's Estate, 51 Pa. D. & C. 579 (1944)

- ▶ When, however, the instrument creates and vests a present interest but merely postpones the enjoyment of the estate granted until after the death of the grantor, then the instrument must be construed as a conveyance inter vivos, or a deed, and not a will:
- ▶ As was well said by the late Mr. Justice Parker ...:
- ▶ "The essence of the definition of a will is that it is a disposition to take effect after death; if it vests no present interest, but only appoints what is to be done after the death of the maker, that is the test of its character."

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NJ: No Intent to Transfer Title (1)
Semenowich v. Melnyk 93 N.J. Eq. 615 (1922)

- ▶ 2. Proof that a conveyance was made to protect the property from the grantor's creditors until a more favorable time for selling it, and that the plan was proposed by the grantee who paid the grantor a sum of money to give apparent validity to the transaction, which sum was subsequently repaid to him to discharge taxes levied upon the land after the conveyance, shows that the grantee participated in the fraudulent intent, and, therefore, the deed is void.
- ▶ 3. The fact that the conveyance was intended only to postpone the sale until it could be made to better advantage, does not make the deed valid.

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NY: Not a Meeting of Minds (1)
Sinclair v. Sinclair: 149 A.D. 949 (1912)

- ▶ But the evidence does sustain the finding that the plaintiff did not understand or comprehend the nature and purport of the deeds, and never knowingly or voluntarily executed or acknowledged the execution of the same.
- ▶ Therefore, the judgment is reversed and a new trial granted, costs to abide the event, unless the plaintiff shall within twenty days stipulate to modify the judgment so as to provide that the several deeds are void for failure of the minds of the parties thereto to meet for the execution thereof

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Monuments

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PA: Use Monuments When Reasonable (1) **Fleming v. Klein: 100 Pa. Super. 40 (1930)**

- ▶ Though in proper cases, courses and distances yield to monuments on the ground, the rule is one of necessity, adopted to ascertain the expressed intention to the parties. In *Pringle v. Rogers*, 193 Pa. 94, Dean, J., said:
- ▶ "The rule is a very ancient one...Hundreds of thousands of acres of land in this Commonwealth are now held because of the judicial enforcement of it; for it is a well known fact that but few of the recorded distances of the early surveys were afterwards found correct, when run between the monuments on the ground."

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PA: Use Monuments When Reasonable (2) **Fleming v. Klein: 100 Pa. Super. 40 (1930)**

- ▶ Today owners of lands under deeds which have not been the subject of judicial interpretation rest secure in the conviction that their boundaries are determined by the monuments on the ground.
- ▶ The legal profession understand the rule to be so irrevocably settled that they do not counsel litigation in the face of it.

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PA: Use Monuments When Reasonable (3) **Fleming v. Klein: 100 Pa. Super. 40 (1930)**

- ▶ True, in our courts, it was probably first applied in determining disputes under original surveys, and these have been the subject of its application since in the large majority of cases; but the reasons on which it was founded were just as persuasive in impelling its adoption in disputes concerning the innumerable divisions and subdivisions of land as in those resulting from original surveys.

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PA: Use Monuments When Reasonable (4) **Fleming v. Klein: 100 Pa. Super. 40 (1930)**

- ▶ It is one to which less uncertainty is attached than to any other.
- ▶ It was not framed because mistakes occurred, only from mismeasurement of the surveyor, or carelessness of the scrivener in recording the distance, but because experience and observation had demonstrated that the surveyor or engineer was less likely to mistake by sight and record the monument at which he stopped than his measurement and computation of the distance."

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NY: The "Obvious" ... Isn't Always Right (1) **Margetin v. Jewett: 912 N.Y.S.2d 356 (2010)**

- ▶ Defendants' property is described by metes and bounds in a deed filed on January 2, 1912, while plaintiffs' property is likewise described by metes and bounds in a deed filed on January 19, 1912.
- ▶ Neither deed makes reference to a survey, subdivision or tract map.
- ▶ The parties' respective chains of title are derived from the 1912 conveyances that were made by a common grantor.

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NY: The “Obvious” ... Isn’t Always Right (2)
Margetin v. Jewett: 912 N.Y.S.2d 356 (2010)

- ▶ We note, however, that a map filed in the Onondaga County Clerk’s office on July 30, 1914 depicts the parties’ respective lots in an adjoining position, with a common boundary line, while the metes and bounds descriptions contained in the 1912 deeds create a triangular parcel between the parcels.

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NY: The “Obvious” ... Isn’t Always Right (3)
Margetin v. Jewett: 912 N.Y.S.2d 356 (2010)

- ▶ The parties agree that the triangular parcel was never conveyed to either defendants’ or plaintiffs’ predecessor in title.
- ▶ The parties have not joined the fee owner of the triangular parcel in this action, nor have they so much as identified the owner of that parcel.
- ▶ They instead seek a declaration concerning the location of the boundary line between their allegedly adjoining parcels, without regard to the outstanding fee title ownership of the triangular parcel.

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NY: The “Obvious” ... Isn’t Always Right (4)
Margetin v. Jewett: 912 N.Y.S.2d 356 (2010)

- ▶ We conclude that they are not ambiguous. We thus reverse the judgment insofar as appealed from, vacate the declaration issued upon reargument, and grant that part of defendants’ motion for summary judgment dismissing the amended complaint.
- ▶ The subject of the instant action is the triangular parcel of land, and thus the proper vehicle for seeking relief is an adverse possession action against the owner or owners of record of the triangular parcel.

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NY: The “Obvious” ... Isn’t Always Right (5)
Margetin v. Jewett: 912 N.Y.S.2d 356 (2010)

- ▶ The “intent” to which the statute refers is the objective intent of the parties as manifested by the language of the deed; unless the deed is ambiguous, evidence of unexpressed, subjective intentions of the parties is irrelevant
- ▶ We reject plaintiffs’ contention that extrinsic evidence, i.e., a subsequent tract map filed in 1914, “more accurately” describes the grantor’s intent.

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NC: Two Descriptions Don’t Match (5)
Quelch v. Futch, 172 N.C. 316 (1916)

- ▶ The entire description in a deed should be considered in determining the identity of the land conveyed.
- ▶ Clauses inserted in a deed should be regarded as inserted for a purpose, and should be given a meaning that would aid the description.
- ▶ Every part of a deed ought, if possible, take effect, and every word to operate.
A reference to another deed may control a particular description, for the deed referred to for purposes of description becomes a part of the deed that calls for it.

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NY: Map as Part of the Deed (1)
Huggins v. Castle Estates, Inc., 44 A.D.2d 25 (1974)

- ▶ sold a house and lot on Imperial Drive to Mr. and Mrs. Huggins for \$27,000 in November, 1968 and sold Mr. Lawrence a lot two doors north on Imperial Drive in August, 1968 for \$5,000.
- ▶ Their deeds restrict the property to residential use.
- ▶ The deeds executed by respondent contained no metes or bounds of the lots but referred to them solely as Lots Nos. 14 and 16 respectively of section 6 of Castle Estates as shown on a duly filed map and “*subject to all restrictions, covenants, easements, and rights of way of record.*”

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NY: Former Zoning Standard (2)

Huggins v. Castle Estates: Inc., 44 A.D.2d 25 (1974)

- ▶ ...the map showed definitive boundaries of the lots, streets and utilities, and described and delineated the setback line for the houses. Part of section 6 shown on the map was the land on the easterly side of Imperial Drive across the street from appellants' property.
- ▶ It was described as property of **Castle Estates, Inc. and underneath that wording, in letters of equal size**, was the printed legend "R-2 Zoning".
- ▶ R-2 is a two-family residence zone under the Town of New Hartford zoning ordinance. In 1968 R-2 was the existing zoning for section 6,

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NY: Changed the Zoning (3)

Huggins v. Castle Estates: Inc., 44 A.D.2d 25 (1974)

- ▶ It is this area, across the street from appellants, which respondent now proposes to sell for \$45,000 to Ibbotson Motors, Inc. for use as an automobile sales and service facility to be constructed at an estimated cost of \$100,000.
- ▶ Such a sale was made possible when, in June and July, 1969 ...the zoning of this parcel (now referred to for convenience as the Ibbotson property) was changed, apparently without notice, from residential to commercial.

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NY: Negative Easement (4)

Huggins v. Castle Estates: Inc., 44 A.D.2d 25 (1974)

- ▶ "The right sought to be enforced here is an easement, or, as it is sometimes called, an amenity, and consists in restraining the owner from doing that with, and upon his property which, but for the grant or covenant, he might lawfully have done, and hence is called a negative easement, as distinguished from the class of easements which compels the owner to suffer something to be done upon his property by another."

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NY: Negative Easement (5)

Huggins v. Castle Estates: Inc., 44 A.D.2d 25 (1974)

- ▶ It is contended by respondent that the only building restriction on the Ibbotson property is to be found in the oral representations by Mr. Kenny and in the unsigned subdivision map, and that these are unenforceable for failure to comply with the Statute of Frauds.
- ▶ But it has long been established that a reference in a deed to a particular filed plat makes the plat in effect part of the conveyance

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NY: Negative Easement (6)

Huggins v. Castle Estates: Inc., 44 A.D.2d 25 (1974)

- ▶ The agreement was set out in writing and the unsigned portion, the plat, was unequivocally referable to appellants' deeds, overcoming any suggestion of fraudulent invention and satisfying the Statute of Frauds.
- ▶ Although parol evidence is permissible, and may in some cases be necessary, to connect an unsigned document with that which is signed, the writings are undisputably connected here and oral testimony was not necessary for that purpose.

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NY: Negative Easement (7)

Huggins v. Castle Estates: Inc., 44 A.D.2d 25 (1974)

- ▶ The deed was meaningless without reference to the plat, for it contained no dimensions or courses for the lots, no data on the streets or utility locations and no building setback restrictions.
- ▶ The limiting and descriptive terms of the plat were enforceable with as much effect as if they were expressly included in the deed.
- ▶ The complete agreement between the parties when examined in light of all the existing circumstances, imposed a negative easement of "R-2 Zoning" on the respondent's land across the street from appellants.

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Texas: Valid Deed Requires...(1) Lemus v. Aguilar, 491 S.W.3d 51 (2016)

- The document must be
- (1) in writing,
- (2) signed,
- (3) describe the property, and
- (4) delivered.

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NY: Deed Must Include (1) Sinclair v. Sinclair: 149 A.D. 949 (1912)

- But these instruments have still retained their essential characteristics, ...
- ...and to this day a deed must...
- ... name the parties, ...
- ...the consideration, ...
- ...the agreed covenants, and set forth ...
- ...an adequate description of the property to be conveyed.

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Goal of the Description

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Oklahoma: Elements of a Deed (1) Couch v. Addy, 35 Okla. 355, 129 P. 709 (1912)

- A deed is **defined to be a written instrument containing a contract or agreement**, which has been delivered by the party to be bound, and accepted by the obligee or covenantee.
- (1) It is apparent ... that at the time of the execution of the deeds **neither of them intended to sell the land** to the grantees mentioned therein; and...
- (2) **neither of the grantees had any knowledge** that the deeds were executed, and there is no evidence that either of them ever accepted the transfer

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*Thence...
Northwest, missing
the Barn by 5 feet...*
(View Looking North)

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Is the Description Sufficient?

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PA: Ways to Describe Land (1)
Flynn v. Rodkey: 192 Pa. Super. 56 (1960)

- ▶ ...the description used in stipulation hereinabove quoted is a description by metes and bounds with calls to iron pins identified by the two engineers who made the survey for the plaintiff and the defendants. Both J. Thompson Henry and F. E. Robinson identified in their testimony the iron pins stated in this stipulation.
- ▶ A description of land is adequate if it uses
- ▶ (1) metes and bounds,
- ▶ (2) reference to adjoining property, or
- ▶ (3) landmarks.

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NY: Do the Maps Help? (1)
Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ The property involved consists of certain portions of "long lot 29" on the Great Division of Lots of the Town of Brookhaven of 1733 (see Records of Town of Brookhaven, Book C, 1687-1789).
- ▶ The long lots in the Great Division—appropriately named because of their extreme length—have, over the years, been the subject of numerous plat filings.
- ▶ Two maps, filed more than seven decades ago, are the focus of the current controversy.

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NY: Delivery vs. Recording (2)
Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ Yet, the title examiners who testified at the trial—including Lubmos' own witness—conceded that the tardily recorded deeds were valid and constituted a proper part of the Netling title chain.
- ▶ The record indicates that during the interim between the conveyance to Netling and the recording of the earlier instruments in his chain, no other conveyances of the property were recorded.

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NY: Delivery vs. Recording (3)
Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ In the absence of evidence to the contrary, the date a deed was signed is presumed to be the date of delivery ...and there is no presumption that it was not delivered until recorded.
- ▶ Clearly, then, there is no reason why the questioned deeds should be disregarded as part of the chain, and we conclude that Netling had title when he filed the Great South Bay map.

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NY: Sufficiency of Description (4)
Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ Our analysis reveals that the description contained in Lubmos' deed and that of its predecessor is fatally defective.
- ▶ The critical element in description analysis is whether the deed description suffices for the purchaser of the property and all others interested to ascertain what property is involved ...for the recording act itself and matters of constructive notice are implicated.

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NY: Sufficiency of Description (5)
Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ A deed description is adequate so long as it allows the property to be located, even if an actual survey is required in order to do so ...
- ▶ The question is not whether there are errors in the description, but whether the land can be identified with reasonable certainty notwithstanding the errors ...for otherwise there is no notice to subsequent purchasers searching the record.

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NY: Deed Sufficient Unless...(6)

Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ On this record, we are constrained to conclude that the description by reference to the Broadway Central map was defective.
- ▶ In arriving at this determination, we are aware of the principle that a deed is void for lack of proper description only when it is so inaccurate that the identity of the property is wholly uncertain ... and that this general rule is to be applied with the utmost liberality in order to determine the intention of the parties

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NY: Every Possible Solution (7)

Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ In determining the boundaries of described property, various descriptive elements such as monuments, courses and distances, adjacent lands, and area or quantity may be relied upon ...
- ▶ Property may also be described by reference to a map or plat on file in the register's office...
- ▶ When such resort is made, the filed map must be taken as part of the deed and explanatory notes contained on the map became part of the description ...
- ▶ Any combination of the mentioned elements or any other method which will clearly identify the property is sufficient

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NY: Plat is the Problem (8)

Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ While the Broadway Central map shows individual blocks of property in the Town of Brookhaven, it makes no reference to the Great Division of Long Lots or to long lot 29.
- ▶ The only identifiable calls or boundaries on the map which could assist a searcher in locating the area of the property are Horseblock Road and Northwest Road.

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NY: Plat is the Problem (9)

Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ In the absence of compass directions, compass courses or references to adjacent property or owners, there is no means by which to ascertain at which point Broadway Central property touches Horseblock or Northwest Road and, therefore, there is no way to know where between these two roads the parcel is to be found.

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NY: Plat is the Problem (10)

Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ The best that may be said is that the map seems to depict an area 220 feet in width running between Horseblock and Northwest Roads in the Town of Brookhaven at a point where those roads are approximately 6,000 to 6,200 feet apart.
- ▶ According to Messrs. AAAA and BBBB, however, the distance between the two roads where the condemned property is located is about 7,000 feet apart, as shown on the taking map and the Great South Bay Park map.

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NY: Plat is the Problem (11)

Town of Brookhaven v. Dinos: 76 A.D.2d 555 (1980)

- ▶ Unsure of where the Broadway property actually was, AAAA and BBBB succeeded in placing it between lots 28 and 30 on the Great Division by manipulating street widths and pushing it north almost a fifth of a mile to make it fit the taking map.
- ▶ **They thereby established that they knew not where the actual property intended** to be covered by Broadway Central abutted either of the two roads because—as BBBB stated—the map could just as easily be pushed north as to the south or a large gore created in the property between the two roads.

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NY: Plat is the Problem (12)
Town of Brookhaven v. Dinosaurs: 76 A.D.2d 555 (1980)

- ▶ We thus find that "[i]t is impossible, from the description, to ascertain * * * how far [the property] boundaries extend. It is impossible * * * to locate or identify the land thus described with any degree of certainty" ...
- ▶ A deed that is "so vague and indefinite that the property as there described is not capable of being identified as the land belonging to [respondent] * * * might as well have been a deed without any description whatever.

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GA: Two Documents Don't Agree (1)
Daniel Mill, LLC v. Lyons, 283 Ga. App. 604 (2007)

- ▶ The evidence revealed that on July 31, 2003, Lyons contracted with The Litchfield Company to sell Litchfield 94.25 acres of land.
- ▶ The closing was to take place on January 30, 2005.
- ▶ The property was described as *"all that tract of land lying and being in Land Lot 67, of the 6th District of Carroll County, Georgia, and being 94.25 acres more or less together with all fixtures. . . . A plat of the 'Property' is attached hereto as Exhibit 'A' and is incorporated herein by reference."*

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GA: We'll Survey it Later (2)
Daniel Mill, LLC v. Lyons, 283 Ga. App. 604 (2007)

- ▶ On October 25, 2004, Lyons entered into a contract to sell to Daniel Mill for \$1,746,000, *"[a] 11 that tract of land lying and being in Land Lot 67 of the 6[th] District... of Carroll County, Georgia and being known as... Bay Springs Road ... Villa Rica ... 30180."*
- ▶ The special stipulations provided the following description: *"97 acres Bay Springs Road, Villa Rica, Georgia, 30180."*
- ▶ The special stipulations also provided that **"[t]his offer shall be placed as a back-up agreement."**

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GA: Save Now, Pay Later...(3)
Daniel Mill, LLC v. Lyons, 283 Ga. App. 604 (2007)

- ▶ Daniel Mill argues that the "key" was supplied by the extrinsic evidence of the Lyons–Litchfield contract, and that the back-up contract, although it was for 97 acres, clearly referred to the 94.25 acres described therein.
- ▶ **We disagree.**
- ▶ The contract between Lyons and Daniel Mill explained that it was a back-up contract, but it did not refer specifically to the Lyons–Litchfield contract nor did it incorporate the property description in that contract by reference.

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GA: Save Now, Pay Later...(4)
Daniel Mill, LLC v. Lyons, 283 Ga. App. 604 (2007)

- ▶ Although the parties agree that the Lyons–Daniel Mill contract was intended to be a back-up contract to the Lyons–Litchfield contract, **"the key [to the identification of the land] must be in the document itself"** and lead to the establishment and location of boundaries as of the time of the execution of the contract."
- ▶ Moreover, as the trial court explained in its order, "[presumably, **some back-up agreements only encompass a portion of the property** to be conveyed in the primary agreement."

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GA: Blanket Reference to Document (5)
Daniel Mill, LLC v. Lyons, 283 Ga. App. 604 (2007)

- ▶ The only possible "key" is the printed sentence following the description:
- ▶ *"The full legal description of the Property is the same as is recorded with the Clerk of the Superior Court of the county in which the Property is located and is made a part of this Agreement by reference."*
- ▶ This standard form, however, **does not refer to a specific document** that would provide the particular location of the 97 acres or its boundaries, but only refers generally to documents in the county records concerning land lot 67.

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GA: Crunch the Numbers? (6)
Daniel Mill, LLC v. Lyons, 283 Ga. App. 604 (2007)

- ▶ The Carroll County property records produced by Daniel Mill contain a title affidavit showing Lyons and other family members owned 102.75 acres in land lot 67 and 2.66 acres in land lot 94.
- ▶ The 102.75 acres were described as "6.2 acres in the southern part of lot No. 67; 96.55 acres, more or less, in the northwest part of lot No. 67."
- ▶ A one-acre portion of property in both land lots was excluded and the exhibit made reference to a plat recorded in 1944.

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GA: Crunch the Numbers? (7)
Daniel Mill, LLC v. Lyons, 283 Ga. App. 604 (2007)

- ▶ Although Daniel Mill argues that the 96.55 acres described in these documents is the same 97 acres in the Lyons–Daniel Mill contract, ...
- ▶ ...there is no evidence to show that the location and boundaries are the same, and ...
- ▶ ...we cannot speculate which 97 acres out of the 102.75 acres in land lot 67 apparently then owned by Lyons was the subject of the Lyons–Daniel Mill contract.

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GA: No Key to the Door... (8)
Daniel Mill, LLC v. Lyons, 283 Ga. App. 604 (2007)

- ▶ As there is no "key" that "open[s] the door to extrinsic evidence... leading] unerringly to the land in question,"
- ▶ ...we must agree with the trial court that the property description is too vague to satisfy the Statute of Frauds and that ...
- ▶ ...the contract is therefore unenforceable.

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CA.: Is this Description Void?? (1)
Co. of Los Angeles v. Hannon, 159 Cal. 37 (1910)

- ▶ *Also all of the land lying between the two lines of said railway from their junction at Garvanza depot to Pasadena Avenue, where said avenue lies between said railway lines."*
- ▶ It is with reference to this particular description in the deed, which we have italicized, that the principal controversy in this case arises, the claim of appellants being that the deed is void for uncertainty in the description.

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CA.: When is a Deed Sufficient? (2)
Co. of Los Angeles v. Hannon, 159 Cal. 37 (1910)

- ▶ There can be no doubt that ...
- ▶ ...where a deed shows on its face an indefinite description of property, or where the description contained in it is so imperfect that with the aid even of surrounding circumstances a court is unable to say what particular land is intended to be conveyed, the deed must be declared void for uncertainty.
- ▶ The general rules in that respect are well settled.

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CA.: Deed Not Held 'Void' Lightly (3)
Co. of Los Angeles v. Hannon, 159 Cal. 37 (1910)

- ▶ "A deed is not to be held void for uncertainty if by any reasonable construction it can be made available.
- ▶ Parol evidence cannot be admitted to contradict or control the language of a deed, but latent ambiguities may be explained by such evidence, and the technical terms of art.
- ▶ Facts existing at the time of the conveyance, and prior thereto, may be proven by parol evidence, with a view of establishing a particular line as being the one contemplated by the parties, when by the terms of the deed such line is left uncertain."

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More Recent Problems: Tax Numbers in Deeds

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NC: What's the Problem? (1) GMAC v. Miller: 216 N.C. App. 416; (2011)

- ▶ In February 2003, owners obtained a loan in the amount of \$237,900.00 from GMAC Mortgage, LLC (GMAC). Owners executed a promissory note and a Deed of Trust (GMAC Deed of Trust). The property referenced in the Deed of Trust was described as tax parcel number 595800013803.
- ▶ **This tax parcel number encompassed both Tract I and Tract II.**
- ▶ The description of the property also included a reference to a deed recorded at Book 662, Page 415, Surry County Registry, which was the **deed for Tract II.**

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NC: What's the Problem? (4) GMAC v. Miller: 216 N.C. App. 416; (2011)

- ▶ In the instant case, the GMAC Deed of Trust does not contain a totally erroneous description of the property encumbered by the deed of trust as did the deed of trust in Fifth Third Mortgage Co.
- ▶ The description at issue contains two separate references:
- ▶ (1) tax parcel number 595800013803; and
- ▶ (2) the Frye Deed conveying Tract II to owners.

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Significance of Tax Map: New York (3) Watson v. Colwell: Docket Number: 0000251/2007

- ▶ The essence of Plaintiffs' claim against the Movants is that Watson's property interests were damaged when Movants allegedly drew an erroneous boundary line on the tax maps.
- ▶ **As Movants point out, tax maps do not create, alter, or destroy the ownership of real property**, and the maps in question carry an explicit warning that they are prepared for tax purposes only and are not to be used for surveying or conveyancing.

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NC: What's the Problem? (2) GMAC v. Miller: 216 N.C. App. 416; (2011)

- ▶ In their first argument, defendants contend that the trial court erred in finding the terms of the GMAC Deed of Trust to be ambiguous and construing it to be a valid encumbrance on the entirety of Tract I and Tract II against subsequent purchasers for value.
- ▶ We disagree.

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NC: What's the Problem? (5) GMAC v. Miller: 216 N.C. App. 416; (2011)

- ▶ *The Assessor's Parcel Number (Property Tax ID#) for the Real Property is 595800013803. ALL THAT PARCEL OF LAND IN TWP OF SOUTH WESTFIELD, SURRY COUNTY, STATE OF NORTH CAROLINA. AS MORE FULLY DESCRIBED IN DEED BOOK 662, PAGE 415, ID#595800013803, BEING MORE PARTICULARLY DESCRIBED AS A METES AND BOUNDS PROPERTY.*
- ▶ *BY FEE SIMPLE DEED FROM VALLIE REDMAN FRYE AND LOMA G. FRYE, WIFE AND HUSBAND AS SET FORTH IN BOOK 662, PAGE 415 DATED 10/02/1997 AND RECORDED 10/07/1997, SURRY COUNTY RECORDS, STATE OF NORTH CAROLINA.*
- ▶ *Parcel ID Number: 595800013803 which currently has the address of 230 Jaguar Way Pilot Mountain, North Carolina 27041 ("Property Address")*

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NC: Not the Best Solution (6)
GMAC v. Miller: 216 N.C. App. 416; (2011)

- ▶ First, the tax parcel number 595800013803 is a reference to a Surry County tax map which cites to a Plat that is recorded at the Surry County Register of Deeds at Plat Book 5, Page 41.
- ▶ **The recorded Plat contains a survey for Tract I.**
- ▶ The Frye deed referenced in the GMAC Deed of Trust also contains a metes and bounds description for Tract II.
- ▶ Thus, when viewed together, the tax parcel number and the Frye Deed identify the entirety of Tract I and Tract II as the property encumbered by the GMAC Deed of Trust.

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PA: Tax Maps and Descriptions (1)
Jerrehian v. Board of Assessment Appeals:
3 Pa. D. & C.4th 68 (1989)

- ▶ Chester County was mapped and aerially photographed, and a tax parcel identification system put into effect.
- ▶ As a result of the condemnation of Route 322 and the presence of Route 29, the Jerrehian tract was assigned **five separate tax parcel identification numbers: 52-2-114, 52-3-89, 52-3-95, 52-3-161 and 52-4-26.** Neither appellant nor appellant's decedent participated in the assignment of tax parcel identification numbers or the division of the property into tax parcels.

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PA: Tax Maps and Descriptions (2)
Jerrehian v. Board of Assessment Appeals:
3 Pa. D. & C.4th 68 (1989)

- ▶ On July 1, 1974, appellant filed an "application for covenant for preservation of land uses covered under Act 515" with the Chester County Board of Assessment Appeals.
- ▶ On that application, appellant identified the subject property as Chester County Tax Parcel **Number 52-2-114**, and stated that it was described at **Deed Book 21, Volume 501, page 116.**
- ▶ The application further described the land as 484.5 acres of open space in West Goshen Township, subject to no subdivision plans.

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PA: Tax Maps and Descriptions (3)
Jerrehian v. Board of Assessment Appeals:
3 Pa. D. & C.4th 68 (1989)

- ▶ On December 3, 1974, appellant and the County of Chester entered into an agreement captioned "Contract and Covenant (under 'Act 515')." ...the subject property "is the entire parcel or portion of tax map parcel no. described in deed book and page mentioned above and is set forth or described in application heretofore filed by owner."
- ▶ This rather awkward clause incorporated the following items set forth on the agreement:
- ▶ "Re: Tax Map Parcel no. 52-2-114"
- ▶ Deed Book D 21, Page 116"

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PA: Tax Maps and Descriptions (4)
Jerrehian v. Board of Assessment Appeals:
3 Pa. D. & C.4th 68 (1989)

- ▶ Appellant sold the property identified by tax parcel numbers 52-3-161 and 52-4-26 to Mark M. Rowan on December 28, 1986. Soon after that transfer, residential development was begun on the lot assessed as tax parcel no. 52-3-161.
- ▶ On June 10, 1987, the Board of Assessment Appeals notified appellant that "the construction of a dwelling on tax parcel no. 52-3-161.1" constituted a breach of the Act 515 covenant.

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NY: Tax Parcel Information Unreliable (1)
De Franco v. Sullivan County:
129 Misc. 2d 270 (1985)

- ▶ The property in question is approximately 18 acres of undeveloped land in the Town of Mamakating, Sullivan County, formerly owned by one Kathryn Rigney.
- ▶ The County apparently acquired the land through a tax sale for unpaid taxes assessed to Rigney.
- ▶ In November 1974, the County, ... deeded the property to plaintiff. The deed was recorded December 16, 1974. At that time, the 1974-1975 school taxes due in September 1974 were unpaid.
- ▶ Property taxes ...were assessed to Rigney despite the fact that plaintiff was already record holder of title.

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NY: Tax Parcel Information Unreliable (2)
De Franco v. Sullivan County:
129 Misc. 2d 270 (1985)

- ▶ All published notices of the tax sale named Rigney as the owner and described the parcel by reference to its tax map identification number. Similarly, notice mailed pursuant to Real Property Tax Law § 1002 (4) was addressed to Rigney via certified mail.
- ▶ The apparent reason for naming Rigney is that the County never changed the 1975 assessment rolls to reflect plaintiffs acquisition and, therefore, Rigney's name was carried over when the assessment rolls became the 1975 tax rolls ...

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NY: Tax Parcel Information Unreliable (3)
De Franco v. Sullivan County:
129 Misc. 2d 270 (1985)

- ▶ At the tax sale on June 23, 1976, the County apparently reacquired the property for nonpayment of the 1975 taxes.
- ▶ In April 1977, the County caused to be published a notice of unredeemed lands regarding the property pursuant to the Real Property Tax Law § 1014. Again, the published notices and notice sent certified mail named Rigney as record owner.
- ▶ On September 4, 1979, the County procured a tax deed ...transferring title to the property to the County as a result of the July 23, 1976-tax sale ...

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NY: Tax Parcel Information Unreliable (4)
De Franco v. Sullivan County:
129 Misc. 2d 270 (1985)

- ▶ The Appellate Division paraphrased the Supreme Court in *Mennonite Bd.* in stating that due process did not require "local taxing authorities * * * to undertake extraordinary efforts to discover the current whereabouts of a property owner whose actual address is not available through a search of the public records"...
- ▶ In the present case the court need not grapple with what constitutes such an extraordinary effort.
- ▶ The burden on the Sullivan County taxing authorities to ascertain plaintiff's identity and address could not have been much lighter.

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NY: Tax Parcel Information Unreliable (5)
De Franco v. Sullivan County:
129 Misc. 2d 270 (1985)

- ▶ Case law indicates that an improper owner's name in the notice, so long as the property is described by a tax map number, is adequate
- ▶ In view of the foregoing discussion under the principles of *Mennonite Bd.* (supra) there appears to be no logical reason why any notice should not contain the proper owner's name if the same is reasonably ascertainable.
- ▶ Therefore, in the circumstances of this case, the notices identifying Rigney as the owner were constitutionally defective despite having an adequate description of the property by its tax map number.

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Distance from Known Point

CA: Distance from a Known Point (2)
Young v. Blakeman, 153 Cal. 477 (1908)

- ▶ When the division line of adjoining owners is designated in their respective deeds as a line beginning at a specified distance from a fixed object, the only method of ascertaining the location of the line on the ground is by measuring the required distance from the object.
- ▶ Experience shows that such measurements, made at different times by different persons with different instruments, will usually vary somewhat.

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CA: Distance from a Known Point (3)

Young v. Blakeman, 153 Cal. 477 (1908)

- ▶ The position of the object or monument at which the course begins may also be changed and the change may not be known to the parties, or there may be no means of ascertaining its original position. If the position of the line always remained to be ascertained by measurement alone, the result would be that it would not be a fixed boundary, but would be subject to change with every new measurement. Such uncertainty and instability in the title to land would be intolerable.

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Part III: General Specifications For Descriptions

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Specifications for Descriptions of Land: (1) United States Department of the Interior

- ▶ The land description portion of an Order, Proclamation or any document delimiting limits of land or space must be susceptible of one, and only one, interpretation.
- ▶ **Simplicity and clarity are paramount**, and ...
- ▶ ...are to be achieved through established proper usage of terminology, phraseology, punctuation, arrangement and paragraphing. It should furnish **sufficient information for the identification of the spatial limits or area** by a land surveyor.
- ▶ It should contain clear "intent" and proper "qualification" of the lands being described for the present and the future **without ambiguity**.

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Specifications for Descriptions of Land: (2) United States Department of the Interior

- ▶ R. H. Skelton wrote in The Legal Elements of Boundaries and Adjusted Boundaries:
- ▶ "The only rule that can be given for the writing of legal descriptions is ---- that the scrivener should **place himself as nearly as possible in the seats of those which will be occupied by those who, 20 years hence, attempt to lay down the grant** --- describe the land conveyed with such clarity and certainty that the intention as effectively expressed will be significant to the next generation as it is to the writer." The definition of a legally sufficient real property description is one that can be located on the ground by a land surveyor.

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Utah: Metes & Bounds: Two Calls for the Same?? ...Railroad Track

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UTAH: Two Calls for the Railroad (5)

Finlayson v. Denver & R. G. W. R.,
110 Utah 319, 172 P.2d 142 (1946) :

- ▶ Now what about the "50 feet southwesterly at right angles **from the center line of the original main line track**"...
- ▶ ...or the "32.78 feet southwesterly at right angles from the center line of" the railroad company's **"present main track"**?
- ▶ Obviously these two descriptions are not intended to take the beginning point —point "B"—out of the southwesterly line of the railroad right of way.

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UTAH: Two Calls for the Railroad (6)

Finlayson v. Denver & R. G. W. R.,
110 Utah 319, 172 P.2d 142 (1946) :

- ▶ They are **alternative ways of checking the location of point "B", measured from two different monuments**—but
- ▶ ...**their accuracy depends upon measurements**, and, if they are in conflict with the first description, they, too, must give way to a fixed monument point.

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UTAH: Two Calls for the Railroad (7)

Finlayson v. Denver & R. G. W. R.,
110 Utah 319, 172 P.2d 142 (1946) :

- ▶ **There is no compass location Northwest or Southeast upon either main line track from which to start the right angle measurement.**
- ▶ Point "B" is located first by the initial calls discussed, then, having been located as a fixed point in the southwesterly line of the railroad, it is spoken of as being certain distances southwest from either of two points available to any interested party who may wish to check the location.

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Hypothetical

- ▶ *From said beginning stone, North 26 deg. 17 min. 41 seconds East 201.27 ft. to a rebar at Jones' Corner, said rebar being located South 23 14 West 7.14 ft. from an iron found, and with North Carolina Grid Coordinates of N. 628,372.90' and E. 949,655.41'*

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Cooley: Assumptions...: Michigan (4) Case v. Trapp: 49 Mich. 59; 12 N.W. 908; 1882

- ▶ But **it is notorious** that **the errors in the original surveys were frequent and sometimes considerable**, and they were often such as to make irregular lots and lots of different sizes in the same neighborhood, where according to the field notes and the plats they should be alike.
- ▶ The consequent difficulty in locating boundaries after corner posts and witness trees are gone is appreciated by every intelligent surveyor.

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Cooley: Government Surveys: Michigan (5) Diehl v. Zanger: 39 Mich. 601; 1878

- ▶ **CONCUR BY: Cooley**
- ▶ **Nothing is better understood than that few of our early plats will stand the test of a careful and accurate survey without disclosing errors.**
- ▶ This is **as true of the government surveys as of any others**, and if all the lines were now subject to correction on new surveys, the confusion of lines and titles that would follow would cause consternation in many communities.
- ▶ Indeed the mischiefs that must follow would be simply incalculable, and the visitation of the surveyor might well be set down as a great public calamity.

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Specifications for Descriptions of Land: (3) United States Department of the Interior (BLM)

- ▶ **The Preferred Method for the Writing of Descriptions:**
- ▶ The use of a comma is significant in writing the descriptions of the subdivisions of a section.
- ▶ A comma means "AND THE" and the absence of a comma means "OF THE".
- ▶ The **improper use or placement of a comma could drastically change an aliquot description** and the intended acreage to be described.
- ▶ The description **NE1/4 SW1/4 SE1/4** absent of the **comma** describes an aliquot part of 10 acres.
- ▶ **With a comma as such NE1/4, SW1/4, SE1/4** describes three aliquot parts totaling 480 acres.

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Aliquot Descriptions

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Professional Surveyors and Real Property Descriptions: *Stephen v. Estopinal and Wendy Lathrop*

- › The aliquot division of a section is based on the actual location of the corners established by the government surveyor. It is most definitely *not* based on the *reported dimensions and directions* presented on the township plat...
- › The minimal dimensions of the USPLS sections and the aliquot parts of a section are mere estimates based on an ideal template, and are secondary to the true measured dimensions that may be substantially longer or shorter than that ideal.

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Apportioning Excess & Deficiency: Public Land System (PLS) And in Colonial States

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Specifications for Descriptions of Land: (4) United States Department of the Interior (BLM) Half of a Half

- › For half of a half description of acquired lands, the prevailing rule does vary from state to state; whether the presumption is to describe half by area or half by government measurement.
- › Half of half descriptions should not be used or with extreme caution and if there is doubt as to the location of the division line.
- › Further explanation of the intent is required.

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Specifications for Descriptions of Land: (5) United States Department of the Interior (BLM) Irregular Tracts

- › Lots and other irregular tracts/parcels do not have aliquot characteristics.
- › When they are subdivided there is a remainder.
- › The uncertainty of the location of the remainder intended by the subdivision renders the description ambiguous and subject to more than one interpretation.

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NY: The "Fourth Wall" (1) Wood v. La Rose, 35 N.Y.2d 266 (1974)

- › Purporting to act under that statute, in 1963 the County Treasurer of Warren County accepted the bid of defendant for six eighths of an acre of land, being the easterly portion of seven eighths of an acre assessed to the plaintiff on the 1962 tax rolls and situated on the west shore of Lake George.
- › ...that the description was sufficient, since a straight line could be drawn for the western boundary at a distance from the lake far enough to contain the six-eighths acre purchased. We agree with this determination.

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NY: The Surveyor Can Do It! (2)
Wood v. La Rose, 35 N.Y.2d 266 (1974)

- ▶ We do not believe that the description of the property purchased by defendant herein creates any special problem or difficulty not inherent in many real estate conveyances.
- ▶ The location on the land of the precise boundaries of the premises intended to be conveyed frequently requires the aid of a surveyor.
- ▶ The fixation of the fourth boundary line of the property purchased in this case is purely a mathematical and surveying problem, readily solvable.

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Aliquot at its Worst:

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Specifications for Descriptions of Land: (4)
United States Department of the Interior (BLM)
Half of a Half

- ▶ **For half of a half description of acquired lands**, the prevailing rule does vary from state to state; whether the presumption is to describe **half by area or half by government measurement**.
- ▶ Half of half descriptions **should not be used or with extreme caution and if there is doubt as to the location of the division line**.
- ▶ Further explanation of the intent is required.

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Specifications for Descriptions of Land: (5)
United States Department of the Interior (BLM)
Irregular Tracts

- ▶ Lots and other irregular tracts/parcels do not have aliquot characteristics.
- ▶ When they are subdivided there is a remainder.
- ▶ The uncertainty of the location of the remainder intended by the subdivision renders the description ambiguous and subject to more than one interpretation.

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CA.: Tie to What Control?? (1)
Saunders v. Polich, 250 Cal. App. 2d 136 (1967)

- ▶ From the testimony of plaintiff's surveyor, it appears that he **did not commence his survey from any known point** established by a prior official government survey, ...
- ▶ ... **nor did he attempt to do so**, but rather "started from more than one point."
- ▶ The **"points" relied upon by this surveyor appear to have been a point established by a Department of Highways freeway survey**.

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CA.: Tie to What Control?? (2)
Saunders v. Polich, 250 Cal. App. 2d 136 (1967)

- ▶ Irrespective of the accuracy and skill with which the surveyor ran the respective courses and distances necessarily involved in the making of the survey of plaintiff's property, he **admittedly failed to locate or utilize any markers or monuments established, as section corners or otherwise**, by the last official government survey of this region.
- ▶ This witness **also admittedly failed to utilize the field notes of the last official survey** to re-establish these "lost" or "obliterated" corners, and he did not utilize these official notes to verify the accuracy of the Department of Highways' survey.

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160 Acres...quarter section? (1)

- ▶ Only for 160 acres...is the basis a square 160 poles on a side...
- ▶ New York Pennsylvania & New Jersey combined to show 190 case search responses for 160-acre parcels.

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NJ: North Half of a Township (1) Meredith v. New Jersey Zinc & Iron Co.: 55 N.J. Eq. 211 (1897)

- ▶ The result of that litigation was that the present New Jersey Zinc and Iron Company was organized, and the two warring titles to the franklinite and the zinc ores were conveyed to the new company, whereby it became the undisputed owner of all the ores in the south half of Mine hill and of the zinc ores on the north half.
- ▶ In the meantime the franklinite on the north half became vested in the Lehigh Zinc and Iron Company,

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NJ: North Half of a Township (1) Meredith v. New Jersey Zinc & Iron Co.: 55 N.J. Eq. 211 (1897)

- ▶ This decision, however, covered only a part of the north half of the hill. Another undeveloped vein of the ore still remained unaffected by the decision.
- ▶ In this state of things negotiations were entered into between the parties for the purpose of settling the litigation by the purchase by one party or the other of the opposite interests.
- ▶ The Lehigh Zinc and Iron Company, which had been taking out- ores on the north half of Mine hill

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PA: "West Half" and the Result... (1) Beals v. Allison, 161 Pa. Super. 125 (1947)

- ▶ This is an action of ejectment to secure possession of a strip of land 1.28 feet in width between the residences of adjoining property owners in' the city of Franklin.
- ▶ on that date conveyed to Sadie Ritts Foster, predecessor in title to the defendants (appellees)...

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PA: "East Half" and the Result... (2) Beals v. Allison, 161 Pa. Super. 125 (1947)

- ▶ "All that east one half of that certain In lot in the City of Franklin, Venango County, Pennsylvania, numbered Five Hundred and Forty-Eight (548) on the general plan of said City said property hereby conveyed being bounded on the west by part of said In lot No. 548, conveyed this day by first parties to Mrs. Mary A. Hollister; on the north by In lot No. 599; on the east by In lot No. 549; and on the south by Elk Street, having a frontage on Elk Street of Thirty-seven and one half (37 1/2) feet, more or less, and extending in depth one hundred and fifty (150) feet",

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PA: "East Half" and the Result... (3) Beals v. Allison, 161 Pa. Super. 125 (1947)

- ▶ "All the west one-half of that certain In lot in the City of Franklin, Venango County, Pennsylvania, numbered Five Hundred and Forty-Eight (548) on the general plan of said City said property hereby conveyed being bounded on the west by In lot 547; on the north by In lot No. 599; on the east by part of said In lot No. 548 conveyed this day by first parties to Mrs. Sadie Ritts Foster (wife of Dr. S. G. Foster); and on the south by Elk Street, having a frontage on Elk Street of Thirty-seven and one-half (37 1/2) feet, more or less, and extending in depth one hundred and fifty (150) feet".

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PA: "West Half" and the Result... (4)
Beals v. Allison, 161 Pa. Super. 125 (1947)

- ▶ Shortly after these conveyances, the grantees, planning to erect residences on the land they had purchased, employed a surveyor to locate the line dividing the east half of Lot 548 from the west half.
- ▶ **The surveyor erred in locating the line and, as a result thereof, this litigation ensued more than forty years later.**

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PA: "West Half" and the Result... (5)
Beals v. Allison, 161 Pa. Super. 125 (1947)

- ▶ Not every line assented to by parties is a consentable line. *Grogan v. Lelke, 22 Pa. Superior Ct. 59.*
- ▶ The only inference to be drawn from the evidence is that the parties assented to a building line.
- ▶ The strip of land involved in this proceeding lies between the residences of the parties and, according to the testimony, has not been in the exclusive possession of either of the litigants or their predecessors in title, but has been used "in common by the parties".

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Part IV The Legal Significance of What You Write

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Statements that Clients Make (That are Seldom Actually True)

1. I only want what's mine...
2. I don't need the whole tract surveyed, I just need one acre cut out on the west side
3. I just need the boundary lines staked, I don't care about the easements...
4. Just Cut out the west half...
5. I don't need the line 'dead-on'...I'm just building a fence...

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Retain the True, Reject the False

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NJ: Reject the False (1) Doherty v. Egan Waste Co.: 91 N.J. Eq. 400 (1920)

- ▶ But an important feature of the description is that this easterly line of lot 43 is made to coincide with the westerly side wall of the' building, and ties this easterly line twenty-seven feet five inches (27.42 feet) from the centre of the party wall.
- ▶ If, therefore, the distance of one hundred seventy-five feet is accepted, the property intended to be conveyed is not correctly described; but if rejected as false, and the fixed monument, the party wall, is accepted as correct, then McGovern gets what he bargained for and the other owners will not be disturbed in their possession.

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NY: Reject the False (1)
Case v. Dexter: 11 N.Y. St. Rep. 162 (1887)

- › 2. Same—When words may be supplied.
- › Where the description is ambiguous, or there is inconsistency in the several particulars, words, if necessary, may be supplied by intendment and...
- › ... **particular clauses and provisions qualified, transposed or rejected** in order to ascertain and give effect to the intention.

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Rules of Construction

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Creek as a Monument: Maryland (1)
Keech's Lessee v. Dansby: 1 H. & McH. 20; 1704

- › The second line of the defendant's land is expressed in the patent to run west up the creek;
- › whereas the plots returned make it appear that the course west does not run up but across the creek, and thereby runs into the plaintiff's land, which is the cause of the difference, and notwithstanding the act of Assembly a and common reason direct,
- › **that the greater certainty is always to be preferred to the less, and that the natural course of the creek is more certain than the artificial course of the compass**...

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Creek as a Monument: Maryland (2)
Keech's Lessee v. Dansby: 1 H. & McH. 20; 1704

- › ...besides the several testimonies that the taker up and the son of Ascham always intended and understood their land to be bounded by the creek,
- › and not by the artificial line; yet the Jury rejecting law, reason, and the evidence, found for the defendant; that is, that the natural bound should be rejected, and the artificial adopted, ...
- › ...so that the **defendant is permitted by the verdict to run over the creek and take the plaintiff's land, which is error.**

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Vital Link Between Deed and Monument

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NM: Fake Monument Doesn't Control (1)
Canavan v. Dugan: 10 N.M. 316; 1900

- › Defendant further shows that the **monuments now found by intervenor** and claimed by him to mark the true corner, **bear evidence of having been recently placed in their present position**, in that they are not set in the ground and **grass is found underneath them.**

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Centerline Presumption (Strip & Gore Doctrine) Surveying Roads

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NJ Strip and Gore Doctrine (1) Higbee v. Camden & Amboy RR, 19 N.J. Eq. 276 (1868) (headnotes)

- ▶ The owner of lands bounding on a street or highway is presumed to own the fee to the centre of the street.
- ▶ Such presumption arises from the lots being bounded on the street, and not that any particular deed so conveyed it.

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NY: Centerline Presumption (1) Smith v. Bartlett: 180 N.Y. 360 (1905)

- ▶ In Devlin on Deeds (2d ed.), vol. 2, section 1028A, it is stated that
- ▶ "The natural presumption where a deed conveys land bordering on a stream or highway is, that the grantor means to convey what he owns, and not to reserve a strip of land of no value to him, but the loss of which to the grantee might be productive of great injury.

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NY: Centerline Presumption (2) Smith v. Bartlett: 180 N.Y. 360 (1905)

- ▶ He has power by apt words to reserve what, and as much as he pleases, or so to frame the language of his conveyance as to limit the land conveyed to the line of the stream or highway, without extending further, and, in all such cases, courts are bound to give effect to his expressed intention.
- ▶ But in the absence of words showing such an intention, it is not presumed that the grantor intended to retain in himself the fee to the street or stream, when he has parted with the adjoining land.

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NY: Centerline Presumption (3) Smith v. Bartlett: 180 N.Y. 360 (1905)

- ▶ Therefore, it may be said to be a universal rule, that a deed giving a stream as a boundary, will convey title to the center of the stream or to low or high-water mark, depending upon how far the grantor's title extends.
- ▶ By such a description, the grantor will convey all that he owns, unless a contrary intent appears from the language of the deed.
- ▶ The deed is taken most strongly against the grantor in the application of this rule, and courts will not favor the presumption that he has retained title to the bed of the stream."

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Part IV Key Words and Phrases

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Reservation & Exception

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NC: Exception Creates Separate Tract (1) Hardison v. Lilley, 238 N.C. 309 (1953)

- ▶ "Where the grantor makes a valid exception in a deed, the thing excepted remains the property of the grantor and his heirs."

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UTAH: Reservation vs Exception... (4) Hartman v. Potter, 596 P.2d 653 (1979)

- ▶ A **reservation** is the creation in behalf of a grantor of a new right, that is, an easement issuing out of the thing granted, something which did not exist as an independent right before the grant.
- ▶ An **exception** is a clause in a deed which withdraws from its operation some part of the thing granted which would otherwise have passed to the grantor under the general description.

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NJ: Exception Creates Separate Tract (1) Tracy v. Borough of Keansburg: 99 N.J.L. 35 (1923)

- ▶ It seems indubitable that in construing the description of land in a statutory grant, the same rules of construction should obtain as are applicable in the case of a private conveyance, except, of course, that grants are to be construed favorably to the state, of which more presently.
- ▶ And in this branch of the law, the elementary proposition is laid down that the office of an exception is to take something out of the thing granted that would otherwise pass.

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NJ: 'Excepting' vs 'Reserving' (1) Haggerty v. Lee: 50 N.J. Eq. 464 (1892)

- ▶ In such case an easement may be acquired by the grantor by a clause of reservation.
- ▶ The technical distinction between reservation and exception will be disregarded and the language used so construed as to effectuate the intention of the parties.
- ▶ The effect of the reservation in this case is to prohibit the grantee from building on the common line more than twenty-four feet in depth, commencing at Main street.

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Calls for Adjoiners Are Tricky

(See) kkline@2point.net/blog
Aug. 28, 2021

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NJ: Adjoiners and Acreage (2)

Fuller v. Carr: 33 N.J.L. 157; 1868

- › In addition to that, the second course of the survey of the twenty-six fifty-five hundredths acres calls for the fifth line of the whole tract.
- › **This is a monument**, and, besides that, the fact that the quantity is stated as strict measure, is an important part of the description. The quantity is always regarded as descriptive, and will aid in ascertaining the premises.
- › **If the premises are indicated by known and definite boundaries, the quantity is of no importance;** but if not, it may help ascertain them.

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PENN: Call for Adjoiner (5)

Stark v. Equitable Gas: 116 A.3d 760; 2015

- › "[w]here monuments are doubtful, resort will be had to the courses, distances, and quantity."
- › ("When the **line of another tract** is called for in the description of a deed as one of the boundaries of the land conveyed, the line ordinarily runs to such boundary line.
- › **When such line is certain and notorious**, it is to be treated as the monument or boundary rather than the ambiguous location of the center of a paper street which need not be taken as a monument or permanent landmark for the purpose of fixing the boundary line in this case.")

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Deed of Easement

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Where, Why, and What... Describing an Easement

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