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Limitations and Benefits of Court Case Review

Introduction

We regularly review court decisions related to boundary surveying, land development, and land planning in *Footsteps*. I will often receive comments from readers about these articles. (The comments are typically forwarded to me by Marc Cheves, the magazine's editor.) The comments are usually passionate and express strong opinions. I've heard comments from the actual parties involved in some of the court cases we've discussed, and even from both sides of a past court case.

Although I occasionally receive comments of appreciation for these articles, my fellow surveyors usually write when they disagree with the court's decision or with my comments on the court's decision.

I thought it was important to have an honest conversation with the readers of this column about my limitations when reviewing court decisions, and why, despite these limitations, I think it is important to continue discussing court decisions in this column.

In this article, I will do the following:

- Provide a definition of common law.
- Briefly discuss why court decisions are important.
- List the limitations of court decision review.
- List the benefits of court case review.

What Is "Common Law"?

You may have heard the term "common law" before. What does this term mean,

and how is it related to court decisions in the United States legal system?

The book *Legal Research, Analysis, and Writing* defined the term "common law" in its first chapter. I will summarize its definition here:

In its most narrow sense "common law" refers to the law created by judicial courts in the absence of enacted law (for example: law passed by a legislative body). "Case law" is law

executes his professional practice and advises his clients.

Land surveyors, like all citizens, have a responsibility to know the law, which includes common law. You could argue that surveyors have an added responsibility, as professionals, to be familiar with the laws that are related to the practice of their profession.

Jeffery Lucas comments on this need for land surveyors to be familiar with

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created when courts interpret or apply laws that are already enacted. In its broad sense, "common law" includes both the law created by courts in the absence of enacted law and law created by courts when they interpret and apply enacted law.

Why are court decisions important?

Court decisions are an important way in which common law is documented and explained in the United States legal system. They are a *source* of law that govern, in part, the way a land surveyor

the law in his book *Alabama Boundary Law*. In Chapter 1 of the book, under the subheading "Knowing the Law", Mr. Lucas says this:

"Presently there is an idea floating throughout the land surveying community that the land surveyor is not supposed to apply the law, or even know the law... This, however, is misguided thinking and has no foundation in truth or reality... The opinion of the survey will be tested against the law... all of the law... and ignorance by the professional land surveyor will be no excuse."

Mr. Lucas echoed the statements of Chief Justice of the Michigan Supreme Court, Thomas Cooley, when he said in an article entitled “The Judicial Functions of Surveyors”:

“...Courts and juries may be required to follow after the surveyor over the same ground, and...it is exceedingly desirable that he govern his actions by the same lights and the same rules that will govern theirs.”

Both Mr. Lucas, as a land surveyor and attorney at law, and Mr. Cooley, as a former judge, are certainly more qualified to speak on the requirement that surveyors know the law than I am. I think their words are clear: Land surveyors have a responsibility to know how the law applies to their work, and ignorance of the law is not acceptable. This requirement to know the law includes common law, and the only effective way to understand common law as it applies to land surveyors is to read and discuss court decisions related to land surveying.

What are the limitations of court case review?

We’ve seen from the previous section of this article that it is important for land surveyors to read and review court decisions. However, I wanted to be honest with my readers in this article about the limitations of court case review. These limitations will apply to most individuals (land surveyors or non-surveyors) that review court cases, and they certainly apply to me. These limitations result from the small and murky “window” we are given as readers on the real life situations discussed in a court decision.

What are these limitations?

- We typically don’t have access to survey maps or other maps related to the case.
- We typically don’t have access to deeds, land descriptions, and other real property documents related to the case.
- We often don’t have a complete record of all the testimony offered at trial.
- We don’t have the opportunity to visit the subject parcels in person, or to see photographs of the subject parcels.
- We don’t get to question the parties involved in the case directly.
- We don’t always get a complete picture of the opposing opinion in

the case. (Certainly, the attorney representing the defeated party would write a very different decision.)

- We typically don’t have access to any “friend of the court” briefs presented to the court.
- The judges and attorneys involved in the court case may not have a good understanding of boundary surveying and real property law.
- Witnesses may not have presented accurate, honest, or effective testimony at trial.
- The principle of legal equity, or fairness, which courts often weigh in their decisions, may conflict with the logical and strict application of the law.

We also have our own limitations as reviewers of the court decision. These limitations may include:

- Lack of formal legal training.
- An incomplete understanding of the United States legal and judicial system.
- An incomplete understanding of court procedures.
- An incomplete understanding of the standard of evidence used in our legal system.
- An incomplete understanding of similar cases or cases that supersede the case under review.
- An incomplete understanding of applicable statutes or enacted law related to legal issues in the court decision.
- An incomplete understanding of the aspects of boundary surveying or real property law discussed in the court decision.

Certainly many, if not most, of the limitations listed above apply to me and to all the articles in *Footsteps* that review court decisions.

Does that mean we shouldn’t read, review, and discuss court decisions as land surveyors?

I don’t think this is the correct attitude or point of view. Certainly most of us are not masters of boundary surveying and real property law. Most of us would humbly acknowledge we are perpetual students, and that we will be learning new things about our profession until we end our careers as land surveyors.

I may not always properly understand or explain every aspect of every

case discussed in this column. I don’t think this limitation merits a complete abandonment of court decision review in the pages of this magazine. We need to acknowledge our limitations and recognize that I’m a boundary surveyor interested in the law. I’m not a legal expert, attorney, or judge. I believe we can still learn useful principles of boundary surveying from the common law together in this column. I’ve certainly picked up little gems from the discussion of cases in this column, and I hope that many of my readers have to.

What are the benefits of court decision review by land surveyors?

The Benefits of Court Decision Review

The benefits of court decision review include the following:

- An awareness of the law.
- An understanding of how the courts apply the law in different scenarios (and occasionally in unexpected ways).
- Obtaining lessons for professional practice.
- Consideration of thought provoking questions on law, policy, and professional practice.

Court Decision Review in Footsteps

I’ll conclude this article with a brief description of how court decision review articles are prepared in *Footsteps*. I thought this description would help the readers form their own educated opinion on the usefulness of the articles.

Court decision review articles are typically written for *Footsteps* using the following process:

- A court case related to boundary surveying, land development, or land planning is selected for review.
- The court case is carefully read, often several times.
- A timeline of the events discussed in the court decision is assembled.
- An identification of the survey related issues discussed in the court decisions is made.
- The court’s decision on survey related issues is explained.
- If article length permits, the underlying legal principles used by the court in its decision are discussed. 