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COVER STORY

FORTIFY THYSELF

*By Chancellor Telford E. Forgety Jr.,
George W. Kuney
and Devin P. Lyon*

Know Tennessee's Real Property Rules & Tools Before Charging into Boundary Battles

"Men would live exceedingly quiet if these two words, mine and thine, were taken away."

— *Anaxagoras*

Tennessee real property was historically partitioned through the "metes and bounds" system, and many deeds written under this English vestige still exist throughout the state. Because this type of land surveying describes parcels using natural geographic landmarks and other monuments, boundary disputes are a common, and commonly complex, occurrence. Indeed, many attorneys now regard boundary-line lawsuits as bothersome or difficult undertakings. Accordingly, this article provides practitioners with a brief restatement of Tennessee law regarding real property boundary disputes, with a view toward alleviating such concerns among the bar.

Jurisdiction and Preliminary Documentation

By statute, chancery courts have jurisdiction to hear all legal disputes involving the determination of boundary lines.¹ Before bringing a boundary dispute to the court's attention, however, both parties should perform a title search. Not only is a title search a potential path to avoiding the courtroom, the production of a clear chain of title is a requirement to identify the proper parties to litigation. Both plaintiff and defendant should package their chains of title together, with deeds in chronological order, and submit them to the court as exhibits.²

Both parties should also submit a survey to the court, because the outcome of almost all boundary actions will depend upon the surveyors' findings. The surveys must retrace the steps taken by the original surveyor as closely as possible.³ The goal is to determine the intent of the original surveyor.⁴ If this intent can be discovered, courts have generally treated the survey as controlling by applying the holding in *Wood v. Starke* (holding that a concrete marker, placed in the corner of a tract by the original surveyor, was the appropriate marker to determine the boundary).⁵ Additionally, if the original surveyor placed markers or utilized natural monuments to indicate the perimeter of the tract, these markers are the final governing objects.⁶ Even if the calls in the original survey conflict with the placement of markers, common law upholds the markers as the final location of the boundary.⁷

However, in *Cupp v. Heath* (holding that a new survey was correct in showing that the defendant incorrectly encompassed part of plaintiff's property), the Tennessee Court of Appeals recently distinguished *Starke* and narrowed its holding to only those cases where the original survey was performed for a common owner of adjacent parcels of land.⁸ The court was concerned with the legitimacy of the original survey because it was only performed for the owner of one parcel. The landowner

who commissioned the survey described the property's boundaries to the surveyor, and the surveyor did not elicit a boundary description from the neighboring owner. In the court's view, this one-sided description influenced the surveyor sufficiently to create an erroneous survey. This position was further strengthened by a subsequent surveyor who "had no idea" how the original surveyor determined the boundary in light of the deed's text. Therefore, if an original survey was completed for an individual who did not own the adjoining tract, the authority of that survey is no longer controlling under Tennessee law.

Determining Boundaries

After the parties present surveys and chains of title, Tennessee chancery courts seek the answer to two basic questions: (1) Where is the true boundary, and (2) has the true boundary changed? In determining the former, "the construction of deeds and ... instruments ... and their effect as to boundaries is a question of law."⁹ The boundaries to which a document refers are also a question of law.¹⁰ "[W]here those boundaries are located on the face of the earth," however, "is a question of fact."¹¹ Appellate review of boundary disputes is generally — as with most cases — *de novo* with a presumption of correctness in favor of the trial court's findings of fact.¹² However, conclusions of law enjoy no presumption of correctness and are reviewed *de novo* at the appellate level.

Tennessee common law uses a hierarchy of boundary markers when determining the true boundary between tracts of land. Chancery courts first look to natural monuments referenced in the deed for boundary authority, which include mountains, rivers, streams, trees, rocks, paths, fords, etc.¹³ If a natural monument no longer exists, the trial court has a duty to attempt to determine its former location.¹⁴ If determined, the natural monument's former location still serves as the boundary

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"The outcome of almost all boundary actions will depend upon the surveyors' findings."

marker referenced in the deed.¹⁵ Courts and surveyors highly favor the use of natural monuments because of their reliability — it is significantly more difficult for an individual to fraudulently move a mountain than to move an iron boundary pin. Therefore, the ability to find natural monuments is often the dispositive factor in a boundary suit because these monuments are deemed more “worthy” in court.

If no natural monuments mark a boundary, however, courts resort to the following in order of priority: uncontroverted¹⁶ artificial monuments, including iron pins, stakes, concrete markers, fences, buildings, etc.; boundaries of adjacent owners; courses and distances; and finally acreage or quantity of land, which may be used for the purpose of locating and identifying land.¹⁷ Subsequent courts have limited the use of artificial monuments as controlling only when the deed is unclear and requires interpretation.¹⁸ Additionally, “the law presumes that a course between two points, such as ‘a stake at the Southern Railroad’ to ‘a stone at the Old Mill Road’ is intended to be a straight line.”¹⁹

Fences that divide property are given careful attention in the law. The general rule provides that a fence may serve as a monument when specifically noted in a deed. However, a fence that is neither referenced as a monument in a deed nor erected to conform to a surveyed line will not be treated as an artificial monument.²⁰ For a fence to be considered a boundary, the relevant parties must intend for the fence to establish a boundary as opposed to simply a barrier.²¹ If parties agree to place a fence as a practical barrier, the fence is not a boundary marker because there is no proof that the fence is meant to mark the boundary line.²² Often, for example, one party builds a barrier fence without direct consultation with a neighboring party. In those cases, evidence of an agreement is unavailable.

A more common occurrence is for a party to construct a fence inside a

boundary line. This situation frequently arises due to local ordinances that require a set distance between fences and boundary lines to prevent disputes. In other cases, property owners build fences inside boundaries as a discretionary tactic to avoid conflicts with neighbors. In either case, if a party constructs a fence inside the true boundary of a tract of land, nothing prevents that party from claiming the

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land beyond the fence up to the true boundary.²³

The final noteworthy element in determining true boundaries is the assessment of boundaries involving rivers and streams. Property rights differ depending on whether the river or stream is navigable. In a legal sense to be “navigable” means that the waterway “must, in its ordinary state, be capable of and suited to navigation by vessels employed in the ordinary purposes of commerce.”²⁴ Owners of land with a boundary on a navigable stream own the land only to the ordinary low-water mark of the stream and not to the centerline or “thread” of the stream.²⁵ The title to the streambed remains in the state’s possession for public use.²⁶ Owners of land with a boundary on a non-navigable stream, however, enjoy ownership that extends to the centerline or thread of the stream, and the state

does not retain title to the streambed.²⁷ Despite a non-navigable determination, the private ownership of a waterway is still limited under Tennessee law. The general public retains “a right to the free and uninterrupted use and enjoyment of such [waterway] for all the purposes of transportation and navigation to which it is naturally adopted.”²⁸

Whether a river or stream is navigable is a question of fact that can only be determined by a judge or jury.²⁹ Though federal law grants the Army Corps of Engineers the power to determine the navigability of waterways, the Corps’s determinations are not binding on federal or Tennessee courts.³⁰ Instead, the Corps’s determinations are given “substantial weight,” which allows a party to submit contrary evidence and to question the Corps’s procedures and ultimate conclusion.³¹

With respect to proof of boundaries, the Tennessee Rules of Evidence provide hearsay exceptions for statements in recorded documents, ancient documents (at least 30 years old), and community reputation regarding boundaries where the reputation arose before the controversy and existed for 30 years.³² Moreover, declarations of previous owners, made while in possession, are also admissible.³³

Change of Boundaries

To answer the second basic question in boundary litigation (whether the true boundary has changed), courts look to five actions common to neighboring parties: oral agreement, estoppel, practical location, extended acquiescence, and adverse possession.

Oral Agreement

The parties may establish a boundary by oral agreement. An oral agreement may authoritatively establish a boundary where, prior to the agreement, (1) there is uncertainty or dispute regarding the boundary; (2) the parties or their predecessors agree; (3) the boundary as estab-

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lished is definite; and (4) there is possession and use of the land up to the boundary, or acquiescence in the boundary.³⁴ The agreement may be shown by circumstances and recognition as well as direct evidence of formal agreement.³⁵

For example, in *Jack v. Dillehay* (holding that an oral boundary agreement existed between predecessor landholders), a surveyor, hired to draw a plat, discovered that county tax maps did not match the landowners' muniments of title regarding the location of the boundary between their properties.³⁶ The surveyor arranged a meeting with the landowners to discuss the boundary discrepancy and came to an oral agreement that established the boundary's location. The surveyor drew the plat based on this agreement. Subsequent owners improved the property in question and engaged in activities throughout the contested area, none of which were ever challenged by adjoining owners until twenty years had passed. At trial, the surveyor and plaintiff testified that there was uncertainty regarding the boundary drawn on the county tax maps. The surveyor and subsequent owners of both properties also testified that there was an oral agreement between the original owners. Therefore, on appeal, the *Dillehay* court upheld the boundary created through oral agreement.³⁷

Estoppel

A boundary may be established by estoppel, where an owner conducts a survey and then recognizes and adopts the boundary it establishes.³⁸ There are two frequently cited cases that collaboratively define the common-law stan-

"There are two frequently cited cases that collaboratively define the common-law standard for 'recognizing and adopting' a boundary."

dard for "recognizing and adopting" a boundary. In *Mix v. Miller* (holding that landowners were not estopped from contesting their deed and relying upon their neighbors' deed), neighbors commissioned two surveyors to separately determine a disputed boundary marking adjacent tracts.³⁹ The first survey used the Miller deed while the second used the Mix deed. The surveys produced markedly different results. The Mixes relied on the second survey to remove timber from the land in question, which led to a lawsuit.

On appeal, the court upheld the survey that more closely aligned with

the artificial monuments referenced within the original deed. The trial court had erroneously held that the challenging landowners were estopped from contesting the boundary because they recognized and adopted the original survey that formed their deed. The court of appeals found "no evidence" suggesting that the Mixes ever recognized or adopted the survey, and stated that the Mixes "repeatedly questioned the accuracy of [the survey]." ⁴⁰ Accordingly, the appellate court held that the Mixes were not estopped from challenging the boundary.⁴¹

In *Douglass v. Rowland* (holding that a chancellor did not err in estopping a landowner from contesting his own survey), however, plaintiff landowner presented defendant neighbor with a survey and staked boundary, requesting defendant build a retaining wall between the two properties to prevent surface water diversion onto plaintiff's land.⁴² After the wall was constructed, the plaintiff discovered that the survey erroneously omitted a pie-shaped section of land. The court of appeals upheld the chancery court's decision to estop the plaintiff from challenging his own survey.⁴³

From these two decisions, whether a landowner "recognizes and adopts" a boundary established by a survey hinges on the landowner's actions. If the landowner challenges the surveyed boundary before either party engages in activities on the land in question, estoppel does not bar the landowner from disputing the survey. However, if the landowner engages in activities on the disputed land, the owner may be estopped from challenging the surveyed boundary.

Practical Location

Third, a boundary may be established by "practical location," where a party has marked a boundary and the same has been recognized for a long period.⁴⁴ Again, this may also require some elements of estoppel.⁴⁵ This legal theory is very similar to boundary by acquiescence because both rely on the

APPELLATE BRIEFS AND ARGUMENTS

State and Federal Court

JOHN D. KITCH

More than 30 years in private practice, including an emphasis on appellate work. Former instructor in legal research and writing, Vanderbilt Law School; current faculty member, Nashville School of Law.

Suite 305, 2300 Hillsboro Road • Nashville, TN 37212

615-385-9911 • jditch@edge.net

References available upon request.

landowner's acquiescence to the neighbor's use of the property. However, the key difference in boundary by practical location is that it requires improvement to the land in question, typically by erecting a fence or other boundary marker.

Extended Acquiescence and Adverse Possession

The fourth and fifth means of determining whether a boundary has changed are closely related, and often confused, theories: extended acquiescence and adverse possession. Tennessee law provides that, under certain circumstances, when a landowner permits a neighbor to use a particular portion of land and treat the land as a boundary, the landowner has acquiesced to the neighbor's control and ownership of that land.⁴⁶ Similarly, if a landowner fails to contest a neighbor's use of a particular portion of land, even if this use occurs without explicit permission, the landowner may be found to have acquiesced to the neighbor's control of the property. As the Supreme Court explained in *Roane County v. Anderson County* (holding that an act to detach a portion of Roane County was void and unconstitutional), "[t]he fact that Roane County has persistently exercised jurisdiction over this territory, and that Anderson County has submitted without an appeal to the Courts [sic] of the country, becomes a very weighty fact as evidence of the true line."⁴⁷

Establishing a boundary by extended acquiescence may require some elements of estoppel; the common law development of establishing boundaries by extended acquiescence closely draws from the concept of equitable estoppel, or the idea that equity demands that a party must be denied the ability to assert a particular claim. In some extended acquiescence cases, Tennessee courts have equitably estopped plaintiffs from asserting their boundary claim when a neighbor has used the land in question for many years previous. For example, in *Mynatt v. Smart*, the Court of Chancery Appeals estopped the plaintiff

landowner from asserting that his property extended past a line fence when multiple neighbors had treated the fence as the true boundary for sixteen years.⁴⁸ There was also evidence of an oral boundary agreement.⁴⁹

In contrast, adverse possession occurs when an individual obtains control over or title to the original landowner's property.⁵⁰ The difference between the two theories is that with extended acquiescence, a landowner has knowledge that another party is using his or her land and has refrained from objection. In adverse possession, a landowner may or may not have knowledge that another party is using his or her land, and any objection from the landowner is immaterial — the adverse landholder is hostile and intends to use the property regardless of boundaries or ownership.

Adverse Possession

In adverse possession, an individual receives rights to property by using or

living on the land under a specific set of criteria. The individual's possession must be "(a) actual and exclusive; (b) open, visible, and notorious; (c) continuous and peaceable; and (d) hostile and adverse."⁵¹ There are four statutory types of adverse possession in Tennessee.

Under *Tenn. Code Ann.* § 28-2-101, an adverse possessor must establish three elements: First, the possessor must have held, for at least seven years, lands that are traceable to a grant by the State of Tennessee or the State of North Carolina.⁵² Second, the claimant must hold the land by a conveyance that purports to convey an estate in fee, i.e., the land is held under "color of title."⁵³ Finally, the claimant must show that the conveyance was recorded for the full term of the seven-year statutory period of adverse possession. If the claimant succeeds, the statute vests good and enforceable title.

Similar to section 101, *Tenn. Code*

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Ann. § 28-2-102 requires seven years of adverse possession under color of title. However, this section does not require deraignment of title back to a land grant. This statute gives defensive, possessory rights only — it does not vest title in the claimant.⁵⁴ For the claimant to become vested with actual title, the adverse possession must continue until the land has been held for a total of 20 years, and the claimant can establish common law adverse possession or “prescription.”⁵⁵ Notably, under section 28-2-102, the claimant may receive possessory rights to the full extent of the property described in the conveyance that establishes the claimant’s color of title, even if only a portion of the land has actually been possessed adversely.⁵⁶

Section 28-2-103 again requires a seven-year period of adverse possession, but does not require color of title. Like section 102, section 103 gives possessory rights, not title.⁵⁷ Unlike section 102, however, this section confers rights *only* to the extent of the land actually possessed adversely.

The strongest form of statutory adverse possession is described in *Tenn. Code Ann.* § 28-2-105. This section shares the same seven-year period of adverse possession as the others, but requires that a claimant show color of title by means of a conveyance to the actual claimant. The conveyance must include a description encompassing the lands adversely possessed, and must have been recorded for at least 30 years in the claimant’s color-of-title instrument or the instruments of the claimant’s predecessors. Like section 101 — and unlike sections 102 or 103 — this section vests good title in the claimant.⁵⁸ Moreover, the statute confers rights to the full extent of the lands demised in the instrument establishing the claimant’s color of title.⁵⁹ Finally, and perhaps most importantly, this is the only type of adverse possession that runs against the state or persons under a disability.⁶⁰

In cases where both parties’ title descriptions contain the disputed prop-

erty — i.e., where there is an interlap or interlock — a special rule applies to adverse possession claims: If the junior claimant has had possession of a portion of the disputed property and the senior claimant has had no possession, then the junior claimant will prevail to the full extent of his or her description. However, if the senior claimant has had possession of any of the interlock, even where there is concurrent possession, the senior claimant will prevail by reason of superior legal title.⁶¹

“The nonpayment of property taxes can determine boundary disputes.”

Prescription (or Common Law Adverse Possession)

Adverse possession also has a common law history that is independent of statutory provisions. In Tennessee, “where one has remained in uninterrupted and continuous possession of land for 20 years, a grant or deed will be presumed.”⁶² As in section 28-2-103, no color of title is required.⁶³ Also, the actual, exclusive, open, continuous, and hostile requirements still remain in effect.⁶⁴ The landowner must have actual knowledge of the adverse possession, or the possession must be so open and obvious that there is a presumption of the landowner’s actual knowledge.⁶⁵ After the twenty-year time period has been reached, and if all other criteria are satisfied, title of the possessed land automatically vests in the adverse landholder.⁶⁶

Burden and Standard of Proof

Adverse possession is a question of fact⁶⁷ with the burden of proof on the adverse landholder.⁶⁸ The claim must be proven by clear and convincing evidence.⁶⁹ Additionally, all evidence is

strictly construed against adverse possession, and every presumption is in favor of the holder of the legal title.⁷⁰

Payment, or Lack of Payment, of Taxes

Boundaries may also be changed by determining whether taxes have been paid on the disputed property. Under *Tenn. Code Ann.* 28-2-109, proof that a landholder has paid the corresponding property tax for twenty years, and has also had the deed recorded under the landholder’s name for twenty years, will give rise to a presumption that the landholder is the legal owner. However, this presumption is rebuttable.⁷¹ In *White v. Pulaski Elec. Sys.* (holding that a trial judge did not err in granting summary judgment to the defendant regarding its land ownership despite plaintiff’s payment of property taxes), the court found a preponderance of evidence showing an erroneous property description, and clear and convincing evidence that the claimant’s purported title was invalid.⁷² Therefore, the court held that, despite the claimant’s payment of city and county taxes on the property in question for more than 20 years, the claimant could not benefit from the statutory presumption of ownership.


While property taxes may be dispositive when determining boundary disputes, the use of tax maps is seldom helpful. Tax maps are not drawn to show actual boundary lines. Therefore, such maps are not admissible for proving ownership of land.⁷³ Tax maps are only admissible to “determin[e] who paid taxes on a particular piece of real property.”⁷⁴

Conversely, the nonpayment of property taxes can determine boundary disputes. Section 28-2-110 of *Tenn. Code Ann.* permanently bars a landholder from bringing an action in law or equity to clarify title back to the owner if the owner has failed to pay state and county taxes on the property for a period greater than twenty years. Therefore, presumably, if a landowner fails to pay

property taxes for more than twenty years but then begins to pay, the landowner is still barred from filing a claim to clarify title.

However, in *Cumulus Broadcasting, Inc. v. Shim* (holding that a landowner may bring an action to clarify and reclaim title if both the landowner and neighbor have not failed to pay property taxes for a twenty-year period), the Tennessee Supreme Court affirmed the creation of a “contiguous property exception” or “homeplace exemption” by reversing the court of appeals.⁷⁵ Under this exception, section 28-2-110 will not bar a claim of adverse possession for the nonpayment of property taxes “when the tracts are contiguous, a relatively small area is at issue, and the adjacent owners making claims of ownership have paid their respective real estate taxes.”⁷⁶ As the court stated in *Cumulus Broadcasting*, “To hold otherwise would effectively eliminate the adverse possession of any part of an adjoining tract.”⁷⁷ This opinion effectively ended the competing train of thought that was advocated by the Tennessee Court of Appeals, which strictly applied the statute without exception.

Conclusion

In a boundary action, counsel should focus attention, and tailor proof, toward the location of the true boundary and whether the requirements can be met to prove a change in the boundary. Of course a party may — and frequently should — plead in the alternative. The true boundary will usually be located by references to monumentation and by surveys. Whether a change in the boundary can be proven will depend upon the requirements of the particular theory — e.g., oral agreement, estoppel, adverse possession, etc. These theories have differing elements and operate quite differently. Consequently, the practitioner must pay particular attention to proving the required elements of the type of claim asserted. While boundary actions can be complex and difficult, they need not be the conundrum they are sometimes perceived to be. 

CHANCELLOR TELFORD E. FORGETY JR. is chancellor of the 4th and 5th Judicial Districts. A devotee of the sometimes-archaic field of Equity, Chancellor Forgety lectures widely on the law of real property, wills, estates, and trusts, adoption, and domestic relations, and still considers the Chancellor to be “keeper of the King’s conscience.” He earned his law degree at Memphis State University.



GEORGE W. KUNEY is the Lindsay Young Distinguished Professor of Law and director of the Clayton Center for Entrepreneurial Law at the University of Tennessee College of Law.



DEVIN P. LYON is a graduate of Vanderbilt University and is completing the final year of dual law and master of business administration degrees at the University of Tennessee in Knoxville. He currently clerks at the

Knoxville Law Department and is an editor for *Transactions: The Tennessee Journal of Business Law* and the *Tennessee Journal of Law and Policy*.

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Notes

1. *Tenn. Code Ann.* § 16-11-106 (2011). Under this statute it is unnecessary to trace title to a common source or a state grant, as is required in ejectment actions.
2. This is very helpful to the court and witnesses in locating a particular deed.
3. *Wood v. Starko*, 197 S.W.3d 255 (Tn. Ct. App. 2006).
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Cupp v. Heath*, 2011 Tenn. App. LEXIS 434 (Tenn. Ct. App. Aug. 11, 2011).
9. *Overton v. Davis*, 2007 Tenn. App. LEXIS 737 (Tenn. Ct. App. Nov. 29, 2007) (citing 12 Am. Jur. 2d *Boundaries* at 121 p. 515 (1997)).
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* (citing *Thornburg v. Chase*, 606

- S.W.2d 672 (Tn. Ct. App. 1980); *Ayers v. Watson*, 137 U.S. 584 (1891); *Sheffield v. Franklin*, 222 S.W.2d 974 (Tn. Ct. App. 1947)). A physical object is only a monument if it is referenced as such in a deed. 12 Am. Jur. 2d *Boundaries* § 6 (1997).
14. 12 Am. Jur. 2d *Boundaries* § 6 (1997).
15. *Id.*
16. *Slack v. Antwine*, 2001 Tenn. App. LEXIS 24 (Tenn. Ct. App. Jan. 12, 2001).
17. *Overton*, 2007 Tenn. App. LEXIS 737 at 8 (citing *Sheffield*, 222 S.W.2d at 978; *Phoenix Mut. Life Ins. v. Kingston Bank and Tr. Co.*, 112 S.W.2d 381 (Tenn. 1938); 12 Am. Jur. 2d *Boundaries* § 6).
18. *Land v. Crum*, 1997 Tenn. App. LEXIS 319 (Tenn. Ct. App. May 9, 1997).
19. *Overton*, 2007 Tenn. App. LEXIS 737 at 19; see *Wright v. Hurst*, 127 S.W. 701, 703 (Tenn. 1910); see also 12 Am. Jur. 2d *Boundaries* § 52 at 459 (1997); *Overton*, 2007 Tenn. App. LEXIS 737 at 10.
20. See 12 Am. Jur. 2d *Boundaries* § 69 at 472 (1997).
21. 12 Am. Jur. 2d *Boundaries* § 90 at 490-91 (1997).
22. *Id.*
23. *Id.*
24. The legal definition of “navigable” is discussed *infra* at *.
25. *State v. Muncie Pulp Co.*, 104 S.W.437 (1907); *Elder v. Burrus*, 25 Tn. 358 (1845); *Goodall v. T.L. Herbert and Sons*, 8 Tn. App. 265 (Tn. App. 1928).
26. *Id.*
27. Of course, this general rule does not apply where a deed only extends a boundary to the low-water mark of a non-navigable stream. *Webster v. Harris*, 69 S.W. 782 (1902).
28. Op. Tenn. Att’y Gen. No. 11-75 (citing *The Pointe Ass’n LLC v. Lake Management Inc.*, 50 S.W.3d 471, 476 (Tenn. Ct. App. 2000). See also *Bauman v. Woodlake Partners LLC*, 681 S.E.2d 819, 824-25 (N.C. Ct. App. 2009). But see *Austa La Vista LLC v. Mariner’s Pointe Interval Owners Ass’n Inc.*, 173 S.W.3d 786, 791 (Tenn. Ct. App. 2005)).
29. Op. Tenn. Att’y Gen. No. 11-75 (citing *Pierce Hardy*, 2001 WL 1216992 at *6).
30. Op. Tenn. Att’y Gen. No. 11-75 (citing 33 U.S.C. Part 329 (2011); 33 C.F.R. § 329.3 (2011); *Miami Valley Conservancy Dist. v. Alexander*, 629 F.2d 447, 449, 451 (6th Cir.

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1982) (cert. denied, 462 U.S. 1123 (1983)); *Pierce Hardy*, 2001 WL 1216992 at *8).

31. Op. Tenn. Att'y Gen. No. 11-75 (citing *Pierce Hardy*, 2001 WL 1216992 at *8).

32. Tenn. R. Evid. 803(14), (16), (2011).

33. *Montgomery v. Lipscomb*, 58 S.W. 306, 307 (Tenn. 1900); *Norris v. Cross*, 1992 Tenn. App. LEXIS 886, *5 (Tenn. Ct. App. 1992).

34. *Jack v. Dillehay*, 194 S.W.3d 441, 447-48 (Tenn. Ct. App. 2005) (citing *Brooks v. Brake*, 1996 Tenn. App. LEXIS 282, No. 01A01-9508-CH-0036, 1996 WL 252322, *5 (Tenn. Ct. App. May 15, 1996)).

35. *Franks v. Burks*, 688 S.W.2d 435 (Tenn. Ct. App. 1984).

36. See generally *Dillehay*, 194 S.W.3d 441.

37. *Id.*

38. *Mix v. Miller*, 27 S.W.3d 508, 514 (Tn. Ct. App. 1998); *Douglas v. Rowland*, 540 S.W.2d 252, 256 (Tn. Ct. App. 1976).

39. *Mix*, 27 S.W.3d at 510.

40. *Id.* at 514.

41. *Id.*

42. *Douglass*, 540 S.W.2d at 254.

43. *Id.*

44. *Galbraith v. Lunsford*, 87 Tenn. (3 Pickle)

89, 98-100 (1888).

45. *Id.*

46. *Mynatt v. Smart*, 48 S.W. 270, 272 (Tenn. Ch. App. 1898); *Roane County v. Anderson Co.*, 89 Tenn. (5 Pickle) 259, 267-68 (1890).

47. *Roane County*, 89 Tenn. (5 Pickle) at 268.

48. *Mynatt*, 48 S.W. at 272.

49. *Id.*

50. *Tenn. Code Ann.* §§ 28-2-101 to 105 (2011).

51. *Cumulus Broad. Inc. v. Shim*, 226 S.W.3d 366, 376 (Tenn. 2007) (citing *Ralph E. Boyer, Survey of the Law of Property* 233 & 236 (3d ed. 1981)).

52. *Tenn. Code Ann.* § 28-2-101 (2012).

53. Color of title requires that the description in the claimant's title instrument encompass the disputed property. It is a writing that professes to pass title, but which does not do so, either for lack of title in the grantor or from a defective conveyance. *Cumulus*, 226 S.W.3d at 376 fn.9.

54. See *Tenn. Code Ann.* § 28-2-102 (2012).

55. *Gwathney v. Stump*, 2 Tenn. 308, 313 (1814); see *Ferguson v. Prince*, 190 S.W. 548,

552 (Tenn. 1916); *Webb v. Harris*, 315 S.W.2d 274, 277 (Tenn. Ct. App. 1958).

56. See *Tenn. Code Ann.* § 28-2-102 (2012).

57. See *Tenn. Code Ann.* § 28-2-103 (2012).

58. See *Tenn. Code Ann.* § 28-2-105 (2012).

59. *Id.*

60. *Id.*

61. *Corrado v. Hickman*, 113 S.W.3d 319, 323 (Tenn. Ct. App. 2003).

62. *Ferguson v. Prince*, 190 S.W. 548, 552 (Tenn. 1916); see also *Webb v. Harris*, 315 S.W.2d 274, 277 (Tenn. Ct. App. 1958).

63. *Keel v. Sutton*, 219 S.W. 351, 352-53 (Tenn. 1920); *Hallmark v. Tidwell*, 849 S.W.2d 787, 792-93 (Tenn. Ct. App. 1992).

64. *Hightower v. Pendergrass*, 662 S.W.2d 932, 935 n.2 (Tenn. 1983); cf. *Menefee v. Davidson County*, 260 S.W.2d 283, 285 (Tenn. 1953).

65. *Kirkman v. Brown*, 27 S.W. 709, 710 (Tenn. 1894).

66. *Cooke v. Smith*, 721 S.W.2d 251, 255-56 (Tenn. Ct. App. 1986).

67. *Wilson v. Price*, 195 S.W.3d 661, 666 (Tenn. Ct. App. 2005).

68. *O'Brien v. Waggoner*, 96 S.W.2d 170, 176 (Tenn. Ct. App. 1936).

69. *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 377 (Tenn. 2007).

70. *Blankenship v. Blankenship*, 658 S.W.2d 125, 127 (Tenn. Ct. App. 1983).

71. *Corrado v. Hickman*, 113 S.W.3d 319, 324 (Tenn. Ct. App. 2003).

72. *White v. Pulaski Elec. Sys.*, 2008 Tenn. App. LEXIS 483 (Tenn. Ct. App. Aug. 18, 2008).

73. *Whitworth v. Hutchison*, 731 S.W.2d 915, 917 (Tenn. Ct. App. 1986).

74. *Jack v. Dillehay*, 194 S.W.3d 441, 450 (Tn. Ct. App. 2005).

75. *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 380-81 (Tenn. 2007).

76. *Id.* at 381.

77. *Id.*

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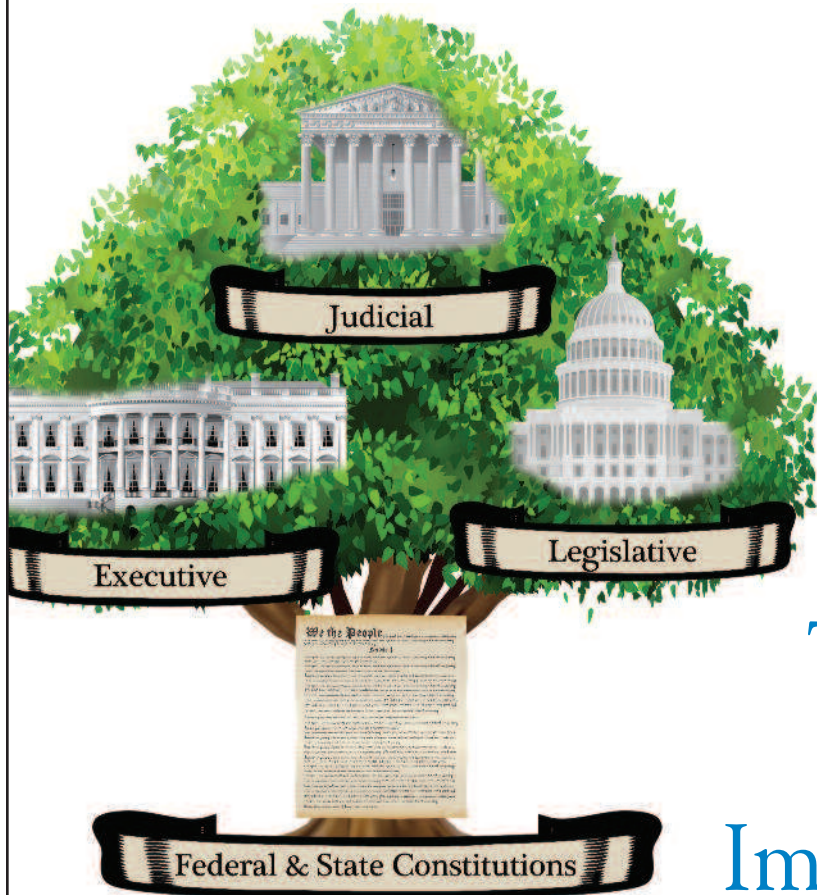
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(grades 6-8)

High school students
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THIS YEAR'S CONTEST THEME

In Federalist Paper No. 78, Alexander Hamilton wrote that the judiciary is "the least dangerous" branch of government because it "has no influence over either the sword or the purse." A central principle of our U.S. form of government is that judges should be able to reach decisions free from political pressures. The framers of our Constitution organized our government so that judges would have a proper measure of protection from the executive and legislative branches. This structure allows the court to make fair and impartial judgments in cases free from influence of the two political branches. We do not have strict majority rule in this country — when the will of the majority is contrary to individual rights as guaranteed by the Constitution, the role of the courts is to protect and uphold these rights of the individual.

Middle and high school students are invited to participate in the Tennessee Bar Association's 3rd Annual YouTube Video Contest and create a 3-minute video that explores the issue of a fair and impartial judiciary. Why is it important to have a judiciary that is independent of the legislative and executive branches? How does this structure strengthen the doctrine of separation of powers? How high should the walls between the branches be? What happens when judges aren't fair or impartial? Considering the powers granted to the three branches and the checks and balances each branch has over the others, would you agree with Hamilton that the judiciary is "the least dangerous branch"? Why or why not?

For contest rules and entry form visit <http://www.tba.org/programs/the-tba-youtube-video-contest>