

Highlights to the 2026–2 Edition

U.S. Court of Appeals for the Ninth Circuit. The United States Court of Appeals for the Ninth Circuit held that the United States has a “finders keepers” regime for mining claims on federal land; in other words, whoever finds minerals on federal land gains an exclusive possessory interest in the land for purposes of mining and to all the minerals he extracts from that land.³⁰ U.S.C.A. § 26. In this case, it was held that a preliminary injunction was not warranted against swap of national forest land containing Apache religious ground with land held by copper miner. *Arizona Mining Reform Coalition v. United States Forest Service*, 172 F.4th 641 (9th Cir. 2026). [§ 2:15]

U.S. Court of Appeals for the Eighth Circuit. It was held by the United States Court of Appeals for the Eighth Circuit that under Missouri law, leases for a period of greater than one year are invalid unless they satisfy the statute of frauds. Mo. Ann. Stat. § 432.010. Under Missouri law, a lease agreement satisfies the statute of frauds only if its essential terms appear in writing. Mo. Ann. Stat. §§ 432.010. In this case, the proposed commercial tenant failed to show that lease contained essential terms required by the statute of frauds. *Euphoric, LLC v. Westport Community Improvement District*, 179 F.4th 1118 (8th Cir. 2026). [§ 3:9]

U.S. Court of Appeals for the Eighth Circuit. The United States Court of Appeals for the Eighth Circuit held that under Delaware law, corporate directors of a partner in a limited partnership, who were non-signatories to the partnership agreement and its arbitration provision, did not have a sufficiently close relationship to the agreement under the principles of estoppel, supporting the finding that the arbitration provision was not enforceable against the directors in their action against a purported holder of an option to purchase corporate stock, the purported option holder’s principal, and corporate entities related to purported option holder’s principal, which also controlled other partners in the partnership. None of the corporate signatories to partnership agreement controlled the directors, who were individuals, and, even to the extent that the partnership distributions might ultimately benefit the directors, that benefit was indirect. *Schlacks v. Chheda*, 174 F.4th 1061 (8th Cir. 2026). [§ 1:2]

U.S. Court of Appeals for the Sixth Circuit. According to the United States Court of Appeals for the Sixth Circuit, under

Ohio law, legal process is required to evict someone from a residential property even if the person no longer has a right to the property; self-help evictions are not permitted. Ohio Rev. Code Ann. §§ 2323.07, 5303.03, 5321.15(A) In this case, officers' alleged conduct with regard to eviction of condominium occupant was unreasonable. *Bender v. Village of Mariemont, Ohio*, 180 F.4th 861 (6th Cir. 2026). [§ 3:101]

U.S. Court of Appeals for the Federal Circuit. Under Indiana law, according to the United States Court of Appeals for the Federal Circuit, the party seeking to establish fee simple title as against an abutting landowner invoking the centerline presumption must point to something in the evidence which necessarily overcomes the presumption that the abutting landowner is the owner in fee simple to the center line. In this case, the rails-to-trails land conversion effected a taking of adjacent landowners' fee simple title in land underlying converted rail corridor. *Pressly v. United States*, 174 F.4th 1368 (Fed. Cir. 2026). [§ 2:1]

U.S. District Court for the Southern District of Florida. The United States District Court for the Southern District of Florida held that under Florida law, a joint venture is created by contractual relationship, either express or implied, which consists of following elements: (1) common purpose; (2) joint proprietary interest in subject matter; (3) right to share profits and duty to share losses, and (4) joint control or right of control. In this case, the purported consultant of baseball player failed to sufficiently allege claim against sports agency owners for tortious interference. *Guerrero v. Magnus Sports, LLC*, 820 F. Supp. 3d 1362 (S.D. Fla. 2026). [§ 1:3]

U.S. District Court for the District of Massachusetts). The United States District Court for the District of Massachusetts held that genuine issues of material fact existed as to whether the owner of construction companies had the right to an accounting from a real estate developer in the parties' development projects under the Massachusetts statute governing partnerships, on the basis that the owner and developer formed a partnership on a project not encompassed by the parties' LLC operating agreement. Thus, summary judgment in the developer's favor was precluded on the claim for an accounting in the owner's action against the developer. *Mass. Gen. Laws Ann. ch. 108A, §§ 6, 37, 43 Kerrissey v. Bruce*, 2026 WL 883777 (D. Mass. 2026). [§ 1:1]

Alabama. The Court of Civil Appeals held that genuine issues of material fact existed as to whether occupant claiming he was owner of certain real property executed a deed conveying the property under circumstances of fraud, as attested to in his summary judgment affidavit and thus, whether the purported record

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owner of the property, who received a warranty deed from a grantee of the occupant, was entitled to eject the occupant, precluding summary judgment in favor of the purported record owner, who offered a well-grounded confession of error on appeal, conceding that trial court needed to undertake additional fact-finding to adjudicate the dispute. In this case, fact issues regarding circumstances in which property's occupant signed a deed conveying the property barred summary judgment on a claim to eject him. *Morrison v. Walley*, 2026 WL 971875 (Ala. Civ. App. 2026). [§ 5:1]

Arkansas. The Court of Appeals held that the Circuit Court did not clearly err in finding, following bench trial in quiet title action, that a fence line on northern landowner's property, which was located north of a road that ran east to west, was the boundary by acquiescence between his property and southern landowners' property. Several credible witnesses testified that the road and fence line had been in its present location for decades, and the southern landowners had used and maintained parts of the disputed tract, without objection from northern landowner, since they took title to the property decades before the lawsuit. In this case, the circuit court did not clearly err in finding that a fence line on northern landowner's property was the boundary by acquiescence between properties. *Arter v. Pike*, 2026 Ark. App. 210, 734 S.W.3d 277 (2026). [§ 5:11]

California. The Superior Court, Appellate Division, held that a permissive occupation of real estate, where no rent is reserved or paid and no time agreed on to limit the occupation, is a "tenancy at will." In this case, the tenant's surviving spouse was an implied at-will tenant protected by city's rent control charter amendment. *Colonial Manor, Inc. v. Reyes*, 120 Cal. App. 5th Supp. 1, 344 Cal. Rptr. 3d 432 (Cal. App. Dep't Super. Ct. 2026). [§ 3:19]

Connecticut. The Appellate Court held that a landlord's duty reasonably to maintain property over which he exercises control serves to protect entrants, such as invitees, licensees, and trespassers, as well as tenants, but does not extend to uncontrolled land, such as neighboring property or public lands. In this case, the owner of property in front of which dog bit pedestrian was not dog's keeper and so was not liable under dog bite statute or for common law negligence. *Afonso v. Torres*, 238 Conn. App. 489, 356 A.3d 1204 (2026), certification granted in part, 354 Conn. 951, 357 A.3d 252 (2026). [§ 3:89]

District of Columbia. The Court of Appeals held that the warranty of habitability, which imports the protections of the District of Columbia's housing regulations into all residential

leases, cannot be waived or shifted by agreement. A claim for the breach of warranty of habitability is not a claim in equity but a contract claim. *Woodley v. Woodberry Village Apartment*, 352 A.3d 1240 (D.C. 2026). [§ 3:86]

Florida. According to the District Court of Appeal, a “tenancy by the entirety” is merely a form of property ownership and has no capacity to sue or be sued. In this case, it was held that the failure to apportion settlement between parties in joint proposal for settlement precluded award of attorney fees with respect to fraudulent inducement claim. *Watkins v. Corbett*, 2026 WL 816637 (Fla. 2d DCA 2026). [§ 1:11]

Florida. The District Court of Appeal concluded that leases in perpetuity are universally disfavored. Thus, the courts are loath to construe a right to renewal as perpetual, and will not do so unless the language of the agreement clearly and unambiguously compels them to do so. In this case, commercial tenant’s acquisition of property via exercise of purchase option in lease was subject to mortgage, pursuant to subordination clause. *Broadmoor Enterprises, LLC v. Super Heat and Air, LLC*, 432 So. 3d 609 (Fla. 2d DCA 2026). [§ 3:123]

Georgia. The Court of Appeals held that the declaration of a homeowners’ association, including its restrictive covenants, is considered a contract. Therefore, courts apply the normal rules of contract construction to determine the meaning of the terms therein. In this case, the balance of harms favored permanent injunction requiring homeowners to tear down structure built after HOA denied request for modification. *Cotton v. Vinings Estates Community Association, Inc.*, 379 Ga. App. 533, 930 S.E.2d 90 (2026). [§ 4:1]

Georgia. According to the Court of Appeals, the fault of the condominium association and the non-party construction company that constructed the staircase was indivisible. Thus, under the apportionment statute, fault was not assignable to construction company. This action was a condominium resident’s action against the association for negligence and premises liability. It was alleged that the staircase outside the resident’s condominium was not built to code, causing the resident to fall down the staircase. Whether or not the company was an independent contractor, under the statute imposing liability on an employer for negligence of a contractor violating duty imposed by statute, the association was vicariously liable for company’s wrongful acts in constructing the staircase in a way that violated non-delegable, statutory duty to exercise ordinary care in keeping the premises and approaches safe. Ga. Code Ann. §§ 51-2-5(4), 51-3-1, 51-12-33(b), 51-12-33(c). In this case, fault was not assignable to

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company that constructed stairs, in condominium resident's premises liability action against condominium association. *Georgia Power Co. v. Ries*, 379 Ga. App. 356, 928 S.E.2d 447 (2026). [§ 4:13]

Illinois. The Appellate Court held that the Court of Appeals had jurisdiction over the mortgagor's son's appeal of grant of summary judgment to the mortgagee on the issue of whether it had engaged in deceptive and unfair conduct in violation of Consumer Fraud and Deceptive Business Practices Act, even though neither the notice of appeal nor the docketing statement indicated that the son intended to appeal that issue. While the notice indicated the son's intention to reverse judgment regarding whether the mortgagor had a life estate in the property, it specifically delineated the order granting the mortgagee's summary judgment motion and denying his motion as one of the orders he wanted to appeal. The mortgagee was not prejudiced by the son's addressing the issue in his brief because the appeal notice notified it that he was appealing entire order, as all relevant matters were contained therein. *Ill. Sup. Ct. R. 303(b)(2). Associated Bank, National Association v. Morrison*, 2026 IL App (5th) 250622, 2026 WL 1175172 (Ill. App. Ct. 5th Dist. 2026). [§ 2:7]

Indiana. Trial court was required to determine whether purported co-tenant of real property was a joint tenant with rights of survivorship prior to issuing order to auction property as part of co-tenant's partition action against individual who resided in property and bank holding mortgage lien. Individual did not have opportunity to have co-tenant's status determined as trial court issued auction order before individual filed response to co-tenant's motion for auction within 20-day period to respond to pleading or motion, and did not grant his motion to reconsider, which asserted that she did not have interest in the property as required by statute compelling partition of land held in tenancy or tenancy in common, or hear parties' competing claims regarding her interest in the property. *Ind. Code Ann. § 32-17-4-1(a)(1)(A); Ind. R. Trial P. 6(D). Boggs v. Williams*, 281 N.E.3d 51 (Ind. Ct. App. 2026). [§ 5:1]

Iowa. The Supreme Court held that an express dedication of land to the public requires the satisfaction of three distinct elements: (1) an appropriation of the land for public use, evidenced by an act or declaration manifesting an intent to give the land to the public; (2) the owner's relinquishment of the use of the land to the public; and (3) actual acceptance of the land by the public. A dedication can take effect by operation of statute or by common law. Dedication may confer interest in property on the state. In this case, the neighbors who lived by and used road

were entitled to personal service in action to quiet title to road. *Streeter v. Dunn Trust* Dated May 20, 2005, 37 N.W.3d 1 (Iowa 2026). [§ 5:11]

Kansas. The Court of Appeals held that the joint tenant of real estate with rights of survivorship provided sufficient cite to location installment contract for deed, which was entered into by co-joint tenant and purchaser of real estate prior to co-joint tenant's death without joint tenant's knowledge or consent. The joint tenant provided pinpoint citation to contract within his brief, to trial transcript where contract was discussed extensively, and to his motion for partial summary judgment in district court, where he argued contract was null and void because co-tenant failed to convey merchantable title. *Kan. Sup. Ct. R. 6.02(a)(5) Clark v. McKee*, 66 Kan. App. 2d 637, 588 P.3d 1197 (2026). [§ 1:7]

Kansas. According to the Court of Appeals, the landlord-tenant relationship between owner of apartment building and apartment tenant did not, on its own, create a special relationship that could support imposition of duty on landlord to protect tenant from hit-and-run incident committed by third-party motorist in public alleyway behind building. The parties had a standard landlord-tenant relationship governed by a lease, and the tenant acknowledged in the lease that the landlord made no representations regarding the effectiveness or operability of any security measures nor any guarantees against "criminal or wrongful acts of third parties." Restatement (Second) of Torts §§ 315, 344. In this case, landlord-tenant relationship did not create special relationship that could support imposition of duty to protect tenant from harm by third party. *Estate of Kuebler by and through Coleman v. Kansas Village at Old Town, LLC*, 66 Kan. App. 2d 535, 589 P.3d 46 (2026). [§ 3:7]

Louisiana. The Supreme Court interpreted the principle that one who acquires immovable property subject to a recorded lease takes the property subject to all of the provisions of the lease to operate prospectively. It does not, without an express assignment, transfer a prior owner's preacquisition damage claims. *La. Rev. Stat. Ann. § 9:2721(B). Vinton Harbor & Terminal District v. Reunion Energy Company*, 2025-971 La. 5/29/26, 2026 WL 1584405 (La. 2026). [§ 3:107]

Louisiana. The Court of Appeal held that even when a lease contains a provision that the lessee is liable for all repairs, the landlord is not relieved of his obligation to deliver the premises in good condition, free from repairs. In this case, the lease provision regarding repair responsibility was clear and unambiguous, and not against public policy, and thus was effective against tenant. *Big Dog Co., Inc. v. Alec Jeansonne Gentle Arts of*

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Avoyelles, 433 So. 3d 146 (La. Ct. App. 3d Cir. 2026). [§ 3:44]

Maryland. According to the Supreme Court, “rent” for residential tenancies, as used in the summary ejectment statute, is limited to the fixed, periodic payments a tenant is obligated to pay for use or occupancy of the leased premises. Md. Code Ann., Real Prop. § 8-401. “Rent” refers to payment for a tenant’s use, possession, and enjoyment of the land. Unless the lease provides otherwise, no separate notice or demand from a landlord is necessary to trigger a tenant’s obligation to pay the form of rent consisting of the familiar fixed, periodic monthly payment. Additional rent consisting of payment obligations other than the familiar fixed, periodic payment is still “rent,” and thus a nonresidential tenant’s payment obligation, if properly classified as rent, can be enforced in a summary ejectment proceeding; if a tenant’s obligation does not qualify as “rent,” it may still be enforceable, just not in a summary ejectment proceeding. Md. Code Ann., Real Prop. § 8-401. *Kapneck 14-16, LLC v. Bkeazy’s Speakeasy, LLC*, 494 Md. 75, 356 A.3d 123 (2026). [§ 3:24]

Massachusetts. The Appeals Court held that it reviews the judge’s interpretation of the terms of insurance policy *de novo*. In this case, title insurer was not required to defend insureds in underlying suit brought by insureds’ neighbors related to dispute over certain land under stone wall. *Lester v. Old Republic Title Insurance Company*, 106 Mass. App. Ct. 658, 280 N.E.3d 964 (2026). [§ 5:4]

Michigan. The Court of Appeals noted that land burdened by an easement is typically described as “servient property.” An easement is the right to use the land of another for a specified purpose, and an easement may be created by express grant, by reservation or exception, or by covenant or agreement. The land burdened by an easement is called the servient estate, and the land benefited by an easement is called the dominant estate. In this case, the Court of Appeals held that the trial court’s easement use restriction conflicted with the easement holders’ accustomed use, and thus, the Court of Appeals vacated the restriction. *Barnard v. J.G. Pray’s Subdivision Homeowners Association*, 2026 WL 898645 (Mich. Ct. App. 2026). [§ 2:24]

New York. The Supreme Court, Appellate Division, First Department, held that the determination, as a matter of law, that the commercial landlord was entitled to its attorneys’ fees was not warranted. This was an action for breach of lease by a tenant who counterclaimed for constructive eviction. Although the landlord established that the tenant stopped paying rent and additional rent, the landlord did not establish, as a matter of law, what amounts were due and owing as its submissions did not ap-

pear to account for application of tenant's security deposit nor did evidence resolve tenant's dispute as to certain other charges, requiring further proceedings on damages, and tenant's constructive eviction claim may have resulted in offset to amounts due to landlord. *Bren-el Realty LLC v. Planetarium Travels Inc.*, 246 A.D.3d 488, 252 N.Y.S.3d 35 (1st Dep't 2026). [§ 3:86]

New York. The Supreme Court, Appellate Division, Second Department, held that the purported assignee of a limited partnership interest did not become a limited partner by assignment, and thus was not entitled under Partnership Law or partnership's limited partnership agreement to inspect the partnership's books. Neither Partnership Law nor the partnership agreement entitled assignees to become partners by virtue of assignment. The partnership agreement was not ambiguous in that regard. N.Y. Partnership Law §§ 121-106(b), 121-702(a) *SM Owner, LLC v. Envoy Towers Company, L.P.*, 245 A.D.3d 973, 250 N.Y.S.3d 600 (2d Dep't 2026). [§ 1:2]

New York. The Supreme Court, Appellate Division, Second Department held that the limited liability company (LLC) that owned leased property and acted as landlord under lease, and its sole member, ratified the farm lease, which provided equestrian center with tenancy for 15 years, by accepting benefits of lease for a period of more than one year, and thus LLC and its member relinquished their right to challenge the lease. In this case, a limited liability company (LLC) and its sole member were estopped, under doctrine of corporation by estoppel, from denying validity of farm lease. *Sobiech v. Dillon*, 245 A.D.3d 858, 250 N.Y.S.3d 579 (2d Dep't 2026). [§ 3:1]

New York. The Supreme Court, Appellate Division, Second Department held that allegations that the defendant had a fiduciary or confidential relationship with the realty company and its sole member, that she was instructed to purchase a property in member's name for purpose of her co-defendant residing there, and that she instead used funds from company and member to purchase property for herself and her co-defendant, adequately stated a cause of action to impose a constructive trust on the subject property. N.Y. CPLR § 3211(a) *Hersko v. Hersko*, 245 A.D.3d 685, 250 N.Y.S.3d 112 (2d Dep't 2026). [§ 1:5]

New York. The Civil Court of the City of New York held that to create tenancy at sufferance there must be delay by owner seeking recovery of premises. Tenancy at sufferance does not require any prior relationship between parties at all. A tenancy at sufferance arises at common law when occupant continues in possession after possessory interest terminates and occupant has no privity to party entitled to possession. In this case, the hous-

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ing court did not have subject matter jurisdiction over action to remove tenants at sufferance, which was properly an ejectment proceeding. *Gomez v. Gomez*, 249 N.Y.S.3d 792 (N.Y. City Civ. Ct. 2026). [§ 3:20]

North Carolina. The Court of Appeals held that a trial court may impose a constructive trust, even in the absence of fraud or a breach of fiduciary duty, upon the showing of either that (1) some other circumstance making it inequitable for the defendant to retain the funds against the claim of the beneficiary of the constructive trust, or (2) the defendant acquired the funds in an unconscientious manner. In this case, an issue of fact as to whether fourth land purchaser paid fair consideration precluded summary judgment on whether it was innocent purchaser. *Figueroa v. Monsivais*, 929 S.E.2d 51 (N.C. Ct. App. 2026). [§ 1:6]

Ohio. The Court of Appeals held that typically, membership in a property owners' association or the obligation to pay for the upkeep of common areas in a residential area is created through deed restrictions filed upon the creation of the district or subdivision. Sheriff's deed issued to purchaser in foreclosure action did not nullify restrictions on property established by planned community association, even though deed stated "[t]his deed does not reflect any restrictions, conditions or easements of record"; deed did not reflect such restrictions, conditions, or easements of record because it was not required by statute to reflect such encumbrances, which remained unaffected by the sale. *Ohio Rev. Code Ann. § 2329.37. Hitchcock v. Delta Trust*, 2026-Ohio-600, 279 N.E.3d 1247 (Ohio Ct. App. 11th Dist. Geauga County 2026), appeal not allowed, 181 Ohio St. 3d 1502, 2026-Ohio-2301, 281 N.E.3d 285 (2026). [§ 4:19]

Oregon. The Court of Appeals held that eviction was proper as to primary month-to-month tenant, although tenant had lived in the dwelling for more than one year, and landlord had no cause for the eviction because the tenant was up to date on his rent and no complaints had been filed against him. The landlord's notice of eviction was within first year of occupancy of at least one cotenant, as required by Residential Landlord and Tenant Act for termination of month-to-month tenancies, Act permitted termination without cause when the notice requirement was met, and tenant did not claim that notice was defective or improperly served. *Or. Rev. Stat. §§ 90.427(1)(a), 90.427(3)(b)*. In this case, the landlord's notice of termination of tenancy was valid as to all tenants listed on the rental agreement that established month-to-month tenancy. *Fircrest Properties, LLC v. Simmons*, 347 Or. App. 637, 587 P.3d 921 (2026). [§ 3:95]

Pennsylvania. The Superior Court held that the sister in this case waived for appellate review claim that trial court erred

in finding that subsequent deed purporting to convey real property from father as grantor to sister and father as grantees was void, in appeal of her brother's and wife's quiet title action. In her brief, sister only addressed the validity of the earlier deed, which purported to transfer the same property from, inter alia, brother, as grantor, to father and mother, as grantees, but not the validity of the subsequent deed. In this case, the evidence was sufficient to demonstrate that signatures on deed purporting to convey property from brother to his father were forged. *Imbrenda v. Imbrenda*, 2026 PA Super 6, 350 A.3d 1061 (2026). [§ 5:11]

South Dakota. The Supreme Court held that the right of ingress and egress from an abutting highway is subject to reasonable regulations in the public interest and for the promotion of public convenience and necessity. In this case, the loss of shorter access route to section line street due to closure of intersection was not a substantial impairment of access requiring compensation. *State by and through Department of Transportation v. Gustafson*, 2026 SD 8, 32 N.W.3d 390 (S.D. 2026). [§ 2:7]

Texas. The Court of Appeals held that privity of estate arises between an assignee of a lessee's entire interest in a lease and the original lessor. An assignment creating privity of estate occurs when a lessee executes an instrument conveying his or her entire estate and interest under the lease to a subsequent lessee so that the original lessee retains no reversionary interest in the lease whatsoever. *Evans Resources, L.P. v. Petroplex Energy, Inc.*, 732 S.W.3d 620 (Tex. App. Eastland 2026). [§ 3:107]