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establish the property rights of individuals in territories that are ceded or granted by a former sovereign. Property rights that vested prior to the cession of the land will be protected,²⁹ even if the United States claims the granted land for purposes of national defense.³⁰

■■■■ *Observation:* Because a treaty of cession usually protects complete title in real property existing at the time of cession by a foreign government,³¹ such title generally need not be presented for confirmation.³²

§ 4. Construction

In settling land claims involving the land of a superseded government, a court or tribunal is bound by the treaty under which the lands were ceded, international law, equitable principles, the decisions of the United States Supreme Court, and the laws, customs, and usages of the ceding nation.³³ An individual's rights in land granted by a foreign government are determined by the laws of the foreign government as they existed at the time of the grant of lands.³⁴ Any question as to restraints or restrictions upon the use of such land is, however, to be determined by the law of the state.³⁵

While the intention of the grantor is the paramount consideration in the

ing Co., 180 US 72, 45 L Ed 432, 21 S Ct 289; More v Steinbach, 127 US 70, 32 L Ed 51, 8 S Ct 1067; Scull v United States, 98 US 410, 98 Otto 410, 25 L Ed 164.

A decree of confirmation by a congressional court of private land claims is effectively a confirmation by Congress. Joseph v Catron, 13 NM 202, 81 P 439.

29. Carino v Insular Government of Philippine Islands, 212 US 449, 53 L Ed 594, 29 S Ct 334; Perrin v United States, 171 US 292, 43 L Ed 169, 18 S Ct 861; Cinque Bambini Partnership v State (Miss) 491 So 2d 508, cert gr 479 US 1084, 94 L Ed 2d 142, 107 S Ct 1284, motion den 481 US 1003, 95 L Ed 2d 197, 107 S Ct 1623 and motion gr 481 US 1067, 95 L Ed 2d 867, 107 S Ct 2458 and affd 484 US 469, 98 L Ed 2d 877, 108 S Ct 791, 18 ELR 20483, reh den 486 US 1018, 100 L Ed 2d 221, 108 S Ct 1760.

Inasmuch as California never acquired sovereign title to land that was the subject of a prior grant by the Mexican government, the public trust easement, which is an adjunct of sovereignty and a creature of United States and California law, never arose. City of Los Angeles v Venice Peninsula Properties (2nd Dist) 205 Cal App 3d 1522, 253 Cal Rptr 331, review den.

30. United States v Coronado Beach Co., 255 US 472, 65 L Ed 736, 41 S Ct 378 (holding that the United States, as the successor-in-interest to the Mexican government, acquired no right to use, without compensation, for national defense or security, the land within a Mexican grant that gave the grantee the right to enclose the land without prejudice to crossings, roads, and servitudes).

31. Tyler v Magwire, 84 US 253, 17 Wall 253, 21 L Ed 576; Dent v Emmeger, 81 US 308, 14 Wall 308, 20 L Ed 838.

32. Richardson v Ainsa, 218 US 289, 54 L Ed 1044, 31 S Ct 23; Ainsa v New Mexico & A. R. Co., 175 US 76, 44 L Ed 78, 20 S Ct 28.

33. Botiller v Dominguez, 130 US 238, 32 L Ed 926, 9 S Ct 525; United States v Castillero, 67 US 17, 2 Black 17, 17 L Ed 360.

34. Glover v McFaddin (CA5 Tex) 205 F2d 1, cert den 346 US 900, 98 L Ed 400, 74 S Ct 227, reh den 346 US 940, 98 L Ed 427, 74 S Ct 376 (discussing the right of aliens to inherit Mexican land that was absorbed into the Republic of Texas); State v Superior Oil Co. (Tex Civ App Corpus Christi) 526 SW2d 581, writ ref n r e (Apr 7, 1976) and reh of writ of error overr (May 5, 1976).

Title derived from Spanish or Mexican land grants is governed by the civil law. Kraft v Langford (Tex) 565 SW2d 223, reh of cause overr (May 10, 1978).

In considering the validity and effect of Mexican grants, Texas courts may consider the Mexican civil law as adopted by Texas. Heard v Refugio, 129 Tex 349, 103 SW2d 728.

It has been held, however, that a decree of a board of land commissioners confirming a Mexican grant was to be interpreted according to the common law in force in California at the time of the grant. Stewart v United States, 316 US 354, 86 L Ed 1529, 62 S Ct 1154.

35. Hart v Gould, 119 Cal App 2d 231, 259 P2d 49 (holding that a provision of a Mexican grant which prohibited the devise of the granted property for mortmain purposes was superseded

interpretation of a land grant of a superseded government,³⁶ the conduct of the government that succeeded to the territory may also be considered in order to determine the limits of an ambiguous grant of a predecessor government.³⁷ Doubt as to the location and extent of a grant's boundaries may also sometimes be resolved by proof of juridical possession.³⁸

If ambiguous, the land grant of a sovereign is strictly construed against the grantee.³⁹ A grant from a sovereign to a town will, however, be liberally construed to effect its object.⁴⁰

§ 5. Validity of title

The validity of a land claim arising under a grant of a superseded or predecessor government may depend upon—

- whether the lands were subject to disposition by the granting power.⁴¹
- whether the grant followed applicable law.⁴²
- the presentation of the claim within a specified period.⁴³
- sufficient evidence to support the claim of a grant.⁴⁴
- certainty as to the location or extent of the grant.⁴⁵

by the cession of the property to the United States and was void under the California Civil Code).

36. *Strong v Sunray DX Oil Co.* (Tex Civ App Corpus Christi) 448 SW2d 728, writ ref n r e (May 6, 1970) and reh'g of writ of error overr (Jul 15, 1970).

37. *Harris v O'Connor* (Tex Civ App) 185 SW2d 993, writ ref w o m.

As to the construction of deeds, generally, see 23 Am Jur 2d, Deeds §§ 221-239, 265, 285.

38. *Strong v Sunray DX Oil Co.* (Tex Civ App Corpus Christi) 448 SW2d 728, writ ref n r e (May 6, 1970) and reh'g of writ of error overr (Jul 15, 1970).

As to surveys and boundaries of public lands, generally, see § 14.

39. *In re Site for Hunts Point Sewage Treatment Works*, 281 App Div 315, 119 NYS2d 391, affd 3 NY2d 775, 164 NYS2d 31, 143 NE2d 789; *People v Foote*, 242 App Div 162, 273 NYS 567, app dismd 273 NY 629, 7 NE2d 728, cert den 302 US 760, 82 L Ed 588, 58 S Ct 367 and app dismd 273 NY 630, 7 NE2d 729.

40. *People v Foote*, 242 App Div 162, 273 NYS 567, app dismd 273 NY 629, 7 NE2d 728, cert den 302 US 760, 82 L Ed 588, 58 S Ct 367 and app dismd 273 NY 630, 7 NE2d 729.

Under the rule that a town grant will be construed in favor of a city, as the successor of a town, a patent to land in a rural area was not to be construed to imply that the Crown intended to grant a tideway to the patentee. *In re Site for Hunts Point Sewage Treatment Works*,

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281 App Div 315, 119 NYS2d 391, affd 3 NY2d 775, 164 NYS2d 31, 143 NE2d 789.

41. *Mobile v Emanuel & Gaines*, 42 US 95, 1 How 95, 11 L Ed 60.

42. *United States v Green*, 185 US 256, 46 L Ed 898, 22 S Ct 640 (holding that a land grant of a predecessor government will be only partly confirmed if the laws in force restricted the area of grants and limited the extent of the area confirmable); *United States v D'Aguires*, 68 US 311, 1 Wall 311, 17 L Ed 595 (holding that the area confirmed in a single grant could be limited by the colonization laws in force when the claimant petitioned for confirmation); *In re Robinson*, 49 Hawaii 429, 421 P2d 570, reh den 49 Hawaii 520, 421 P2d 585 and reh den 49 Hawaii 574, 423 P2d 437 (discussing the sufficiency of Royal Hawaiian patents based on land commission awards).

43. *United States v Title Ins. & Trust Co.*, 265 US 472, 68 L Ed 1110, 44 S Ct 621; *Cramer v United States*, 261 US 219, 67 L Ed 622, 43 S Ct 342 (superseded by statute on other grounds as stated in *United States v Dann* (CA9 Nev) 873 F2d 1189).

44. *Mobile Transp. Co. v Mobile*, 187 US 479, 47 L Ed 266, 23 S Ct 170; *Whitney v United States*, 181 US 104, 45 L Ed 771, 21 S Ct 565.

45. *Arivaca Land & Cattle Co. v United States*, 184 US 649, 46 L Ed 731, 22 S Ct 525; *Stoneroad v Stoneroad*, 158 US 240, 39 L Ed 966, 15 S Ct 822.

A grant by a predecessor government must identify the granted land. *Harris v O'Connor* (Tex Civ App) 185 SW2d 993, writ ref w o m.

—whether territory.⁴⁶

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§ 6. Effect

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46. *Foster v N L Ed 415 (ovr United States v 8 L Ed 604) and stated in Antolo US App DC 15f gio, 129 Tex 34 a Mexican grant of a river did no river).*

47. *Whitney v L Ed 771, 21 S U S 402, 45 L Ed v Workman, 68 705.*

48. *United St Wall 632, 20 L E 73 US 589, 6 W States v Pico, 64 464; United Stat 312, 16 L Ed 46;*

49. *Tiglaio v I pine Islands, 215 129; Ainsa v Un Ed 727, 22 S Ct 35 US 313, 10 P sufficed to show t as much as possil*

Neglecting to obtain juridical p the grantees' righ US 224, 10 Wall United States, 58 241, appeal after 15 L Ed 302.

50. *Meader v 442, 20 L Ed 184 tling of Mexican*