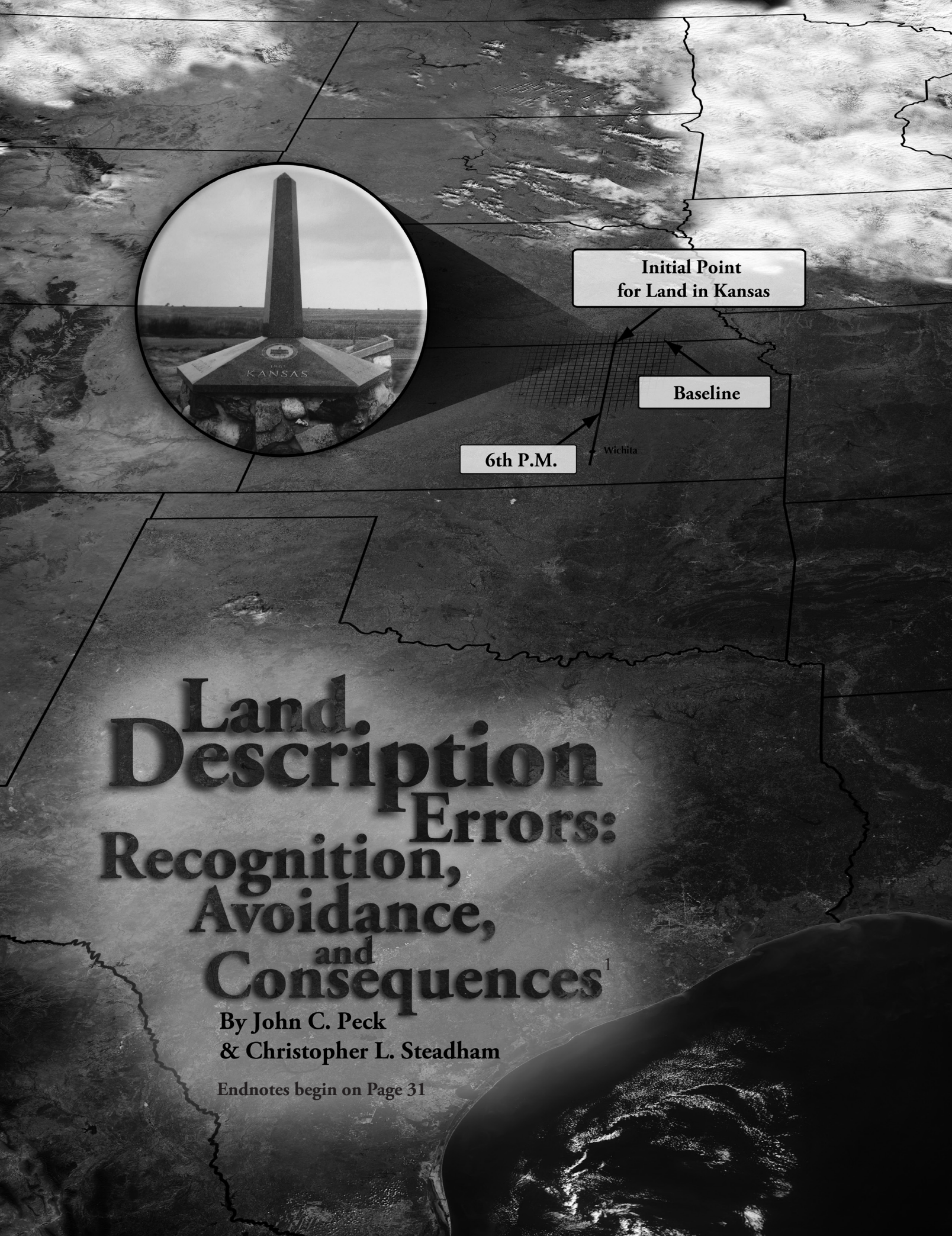

Land Description Errors: Recognition, Avoidance, and Consequences[1]

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I. Introduction

The legal description of a parcel of land is an important element in a real estate transaction. The land sales contract, mortgage, and deed are the three obvious places a description appears. Descriptions also appear in correspondence, real estate brokerage listing contracts, leases, options, puts, rights of first refusal, auction advertisements, subordination agreements, oil and gas leases, water rights documents, appraisals, lawsuit pleadings and judgments, divorce settlement agreements, mechanic's lien notices, and legal notices in newspapers. Transactions involving personal property must also contain accurate descriptions of the property, but one element involved in real estate that distinguishes it from personal property is the fact that real estate does not move,[2] and each land parcel sits next to neighboring parcels. A mistake in the description of one parcel might leave a strip between the two parcels or might create an encroachment.

Legal description errors are common[3] and can cause serious problems for buyers, sellers, mortgagors and mortgagees, optionors and optionees, condemnors and condemnees, title insurance companies, abstractors, and others. Ultimately it can become a problem as well for the lawyer who makes a mistake in a land description. Even judges make errors writing opinions about errors in legal descriptions. In *Cities Service Oil Co. v. Dunlap et al.*,[4] a federal case from Texas that went to the U.S. Supreme Court and involved an apparently valuable strip of land, the federal appeals court from Texas made at least five errors in the opinion itself – e.g., misstating chains for yards, making errors in distance measurements, and misstating lot numbers.

Land lawyers must understand legal descriptions in order to read, check, and draw legal descriptions in legal documents. Lawyers in other areas of practice need to know when to call in a land lawyer or surveyor with expertise in reading and drawing legal descriptions. We say lawyers need to know how to "read, check, and draw" legal descriptions, not to "write" or "draft" them. Kansas statutes on rules governing the establishing and practicing of the technical professions, including land surveying, appear to limit the drafting of "original descriptions of real property for conveyance or recording" to licensed land surveyors.[5] Although these statutes are not entirely clear on this limitation,[6] the question of the lawyer's versus the land surveyor's rights in the arena of drafting land descriptions is not the focus of this article, but could be in another article.

The purpose of this article is to provide some information to help avoid these errors. We first give a brief overview and review of the standard methods of describing land. The article then presents information about how and where land description errors occur. To demonstrate the consequences of making these errors, we summarize several cases on errors in land descriptions and include issues raised in the area of a lawyer's professional responsibility. Lastly, we make several simple and modest suggestions for ways to avoid the errors and their consequences. This article is not meant to be a treatise on surveying or land description methods. Perusing some classic texts[7] reveals how complicated these surveys can be. We hope this article will serve as a beginning point for a new land lawyer and a review for an experienced lawyer.

II. Land Description Methods[8]

We briefly present four land description methods[9] used by surveyors and lawyers — metes and bounds, the U.S. Government Survey System (sometimes referred to as the Rectangular Survey System), the angular or surveyor's method, and the plat reference — but leave it up to the reader who needs more information to obtain it elsewhere. Depending on geographical location within the United States, a combination of these methods may occur in one land description. For example, a description of a parcel of land in Kansas or Nebraska could employ metes and bounds, U.S. Government Survey, and the angular methods.

A. Metes and Bounds[10]

This method, used often in the states of the original colonies, is much like the way a person would informally direct another person to trace the boundaries around a parcel of land. The person would be told where to start at a point and then where to go, point by point, with a series of "calls" or operating commands to trace the entire parcel. From a point of beginning, the person goes from various "monuments" (either natural monuments like trees, or artificial monuments like iron rods) around the perimeter and back to the beginning point. A call typically contains distances and directions. Sometimes a call contains an "adjoiner," which is a boundary of an adjacent land owner or of a river or road. Typically, the description contains a general location in the region (e.g., "approximately two miles west of Batesville, Va.") and ends with an approximate area notation, in acres or square feet.

The area described should "close," i.e., all of the calls should take one from the point of beginning around the tract and end at the point of beginning, with no missing lines. If it does not close there is a problem, unless the description is meant to be two-dimensional, like a line (e.g., the centerline of a pipeline easement).

B. U.S. Government Survey

Much of the United States lying west of the original 13 colonies, except Texas, is covered by the U.S. Government Survey. To understand this system, one must have an understanding of "meridians" and "base lines," as these are the framework upon which the system is built. A "meridian" normally refers to a north-south line passing through the North and South Geographic Poles. A "base line" is a line that runs straight east and west. Throughout the country, there are principal meridians and base lines that intersect them (depending on one's reference material, there are from 35 to 37 principal meridians in the United States).

The Kansas reference point is located near Belleville at the intersection of the "6th Principal Meridian" (6th P.M.) and its base line, the Kansas-Nebraska border. The point at this intersection, the so-called "initial point," controls legal descriptions in Kansas and Nebraska, as well as parts of Colorado, Wyoming, and South Dakota. *See* the cover page.

For each principal meridian and base line in the country, township lines are run east and west and six miles apart, both north and south of the base line, forming 6-mile-wide strips of land running east and west throughout the area being surveyed, referred to as "townships." Range lines are run north and south and six miles apart, both east and west of the prin-

cipal meridian, forming 6-mile-wide strips of land running north and south throughout the area being surveyed, referred to as "ranges." The resulting 6-by-6-mile squares are sometimes referred to as "townships" or "congressional townships." Because all land in Kansas is south of the base line (i.e., the Kansas-Nebraska border), the first township south of the base line is designated as Township 1 South, the next township as Township 2 South, etc. There are 35 townships in Kansas extending to the Oklahoma border. Likewise, ranges are numbered east and west of the 6th P.M. (i.e., Range 1 East, or Range 2 East, etc., or Range 1 West, or Range 2 West, etc.). There are 25 ranges east and between 41 and 43 ranges west of the 6th P.M. in Kansas, depending on location.

Each 6-mile square township in Kansas has both a "township" designation running south of the 6th P.M., and a "range" designation running either east or west of the 6th P.M. Townships to the south and east of the 6th P.M., for example, are numbered as Township 1 South, Range 1 East; Township 2 South, Range 2 East, etc. Townships to the south and west are numbered as Township 1 South, Range 1 West; Township 2 South, Range 2 West, etc. Figure 1 shows a close-up of the 6th P.M. and township numbering in townships in the vicinity of the 6th P.M.

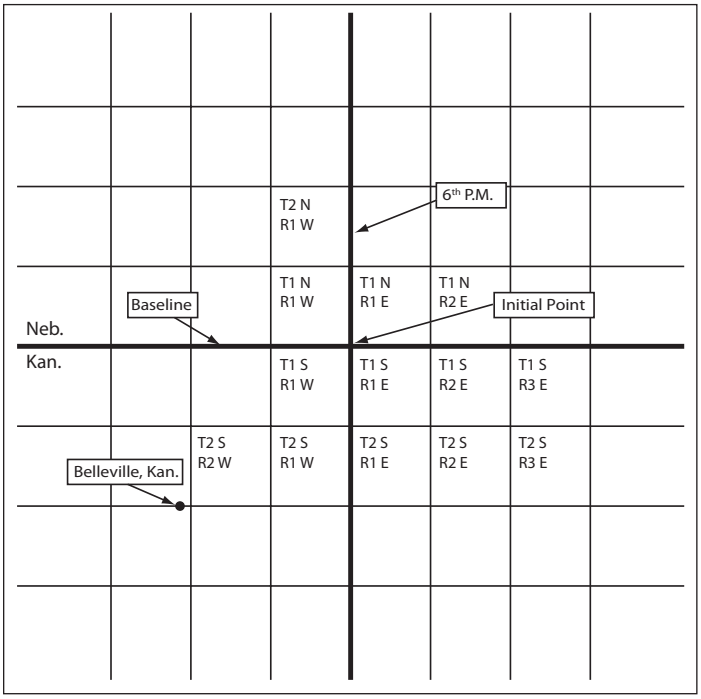

Fig. 1 Townships in the Vicinity of the 6th P.M.

The location of the 6th P.M. was not chosen as a logical point, like "the intersection of the 100th Meridian and the Kansas-Nebraska Border." According to an article in the January 1937 Kansas Abstracter magazine,[11] the surveying team was instructed to take their horses, wagons, and surveying instruments and proceed west from the Missouri River along the Kansas-Nebraska border, to construct earthen mounds every few miles, to go west until they "struck the desert," and then to go "one full day's march into the desert and establish the Sixth Principal Meridian."[12] Which they did. Based on these instructions, today one would imagine that the 6th P.M. should be located in, say, Utah, but, instead, it runs north and south through Kansas and is generally located straight north of Wichita (it runs along Meridian Street in Wichita to approximately one mile west of Solomon, Kan.) and today can definitely be pinpointed as having a longitude of 97 degrees, 27 minutes west of the Greenwich Meridian.

Old maps show the "Great American Desert" to start at about the 100th Meridian.[13] A marble obelisk monument to the establishment of the 6th P.M. was erected near the site and dedicated on June 11, 1987. *See* the cover page.

Townships contain roughly 36 square miles. They are six miles on a side, divided into 36 "sections," which measure one mile by one mile. Political townships are different, but often have boundaries that coincide with the surveyed township. Sections are numbered internally starting in the northeastern-most section, running west 1 through 6, then down and back east 7 through 12, and then down and west again, etc., with Section 36 being in the southeastern-most corner of the township. *See* Figure 2.

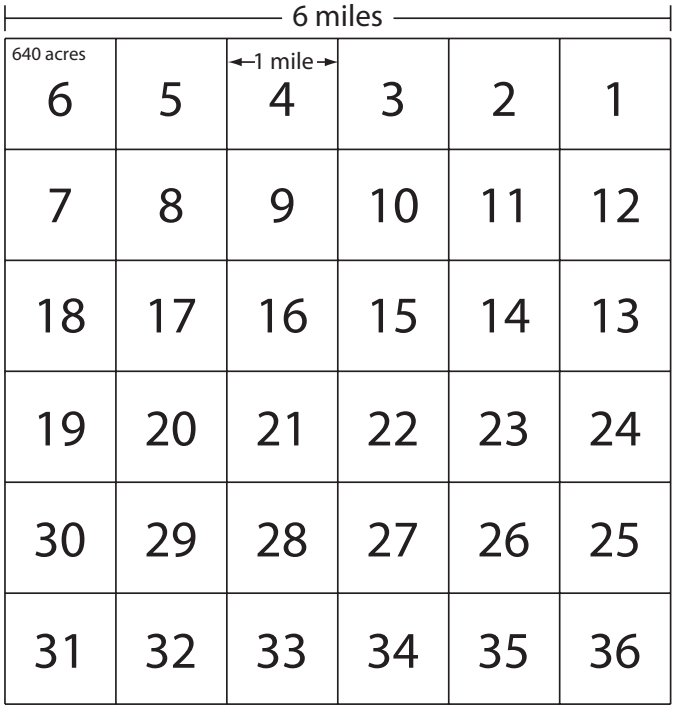

Fig. 2 Townships, Numbering of Sections

Each section (1 mile by 1 mile) contains 640 acres. Sections are divided into four quarter sections (often abbreviated NW 1/4 or NW/4, NE 1/4 or NE/4, etc.) each containing 160 acres. Quarters may be further divided into halves of quarters or quarter quarters, or quarter quarter quarters. The following are examples: E/2 of the NW/4; E 35 acres of the N/2 SW/4 (imply "of the" between the N/2 and the SW/4); NW/4 SW/4 SW/4 SE/4. *See* Figure 3.

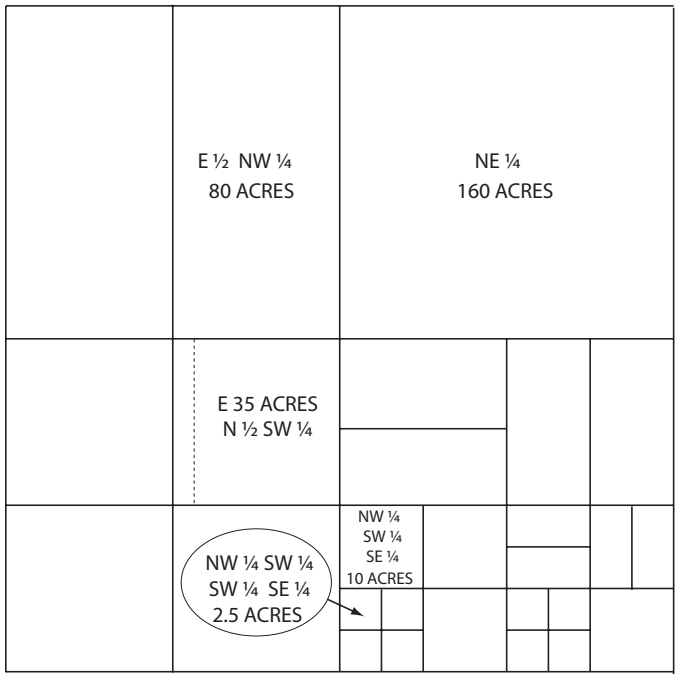

Fig. 3 Fractional Parts of a Section

The early surveyors understood that the earth's curvature presented problems. While lines running east and west may be parallel, lines running north and south converge and ultimately meet at the North and South Poles. The system created "correction sections" on the north and west tiers of each township. While the other interior 25 sections are reasonably true (i.e., one mile by one mile), the "correction sections" contain the errors necessitated by the convergence problem. These sections have "government lots," which generally contain slightly less than 40 acres. *See* Figure 4.

Another type of government lot is found along rivers and streams where the surveyors had to "meander" the lines. *See* Figure 4. A third type of lot is found in the subdivided land of cities and counties in the plat reference system, described below.

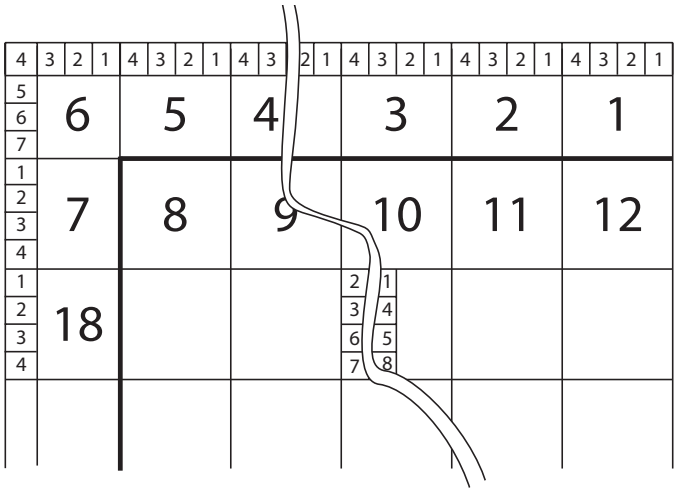

Fig. 4 Government Lots for Correction Lines and Meandering of Rivers

C. Surveyor's or Angular Description

This method employs angles deviating east or west from a line running either north or south from the point of reference, coupled with a distance, to reach the next point. An example is "thence North 37 degrees 46 minutes 57 seconds East 657.3 feet." *See* Figure 5. The method usually uses angles of less than 90 degrees, but larger angles are sometimes seen: S 118 degrees East 438.3 feet.

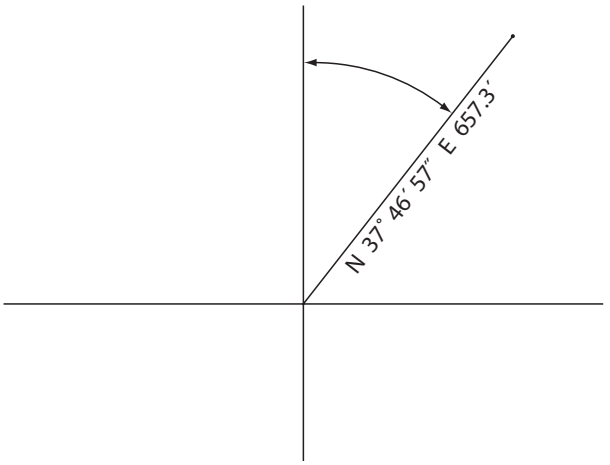

Fig. 5 Surveyor's or Angular Description

The lawyer drawing such lines can envision the beginning point of each line having superimposed on it a circle with its 360 degrees. Each degree is divided into 60 minutes, and each minute is divided into 60 seconds. Sophisticated surveying instruments can read these small measurements, but the typical protractor used by the lawyer in the office would be accurate only to about half a degree. Using a 0.5 mm lead pencil, however, the lawyer can draw the line quite accurately. The line S 47 degrees 42 minutes 01 seconds would be a line tending to 48 degrees. A one-degree deviation of a 700-foot long line on a sheet of paper being drawn to a scale where one inch equals 660 feet would only be about 0.02 inches long on the drawing. In the field, however, that deviation is more than 12 feet long. So it is important and meaningful in the field, but not so important in a rough drawing done for a client by a lawyer.

D. Plat Reference

The Plat Reference method is used for original town sites or undeveloped land in or near a city, or in a county, when the land is "platted"– i.e., streets, blocks, lots, etc., are first developed and produced as a drawing in the office by a land surveyor, civil engineer, or developer. The developer presents the plat for approval to city or county planning officials and then to the appropriate governmental body for approval. Once the plat is approved and the land surveyed and staked to show the location of the lots and blocks,[14] the developer sells the tracts of land using the plat reference of the land description, no longer the U.S. Government Survey. In the corner of the plat, however, will be a description of the outside perimeter of the entire platted area, setting the land within the U.S. Government Survey system. An example of a plat reference description would be "Lot 3 and the North 10 feet of Lot 4, Block 2, Athletic Court Addition to the City of Lawrence, Douglas County, Kansas." *See* Figure 6.

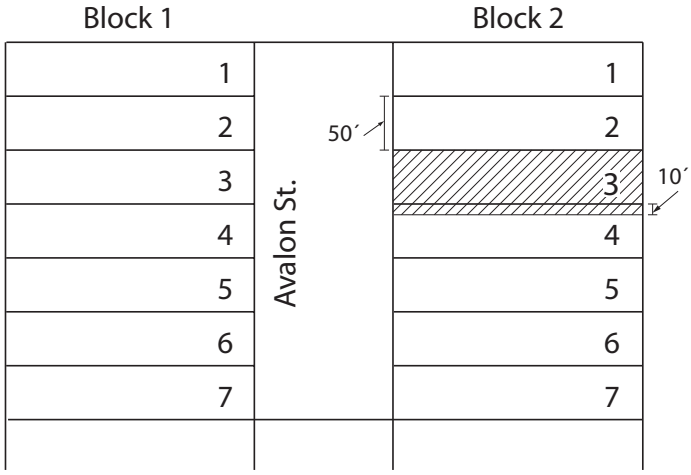

Fig. 6 Plat Reference

E. Miscellaneous Points

1. Lines measured horizontally

Distances in a land description are horizontal distances, not distances on a slope. A line going up a hill with a 6 percent slope, for example, would measure 1,729.4 feet on the horizontal and 1,732.5 feet on the slope.

2. Curved lines

Curved lines appear in nature on rivers and streams, and they are used in designs for highways in the country and streets in towns and subdivisions. Curved lines on rivers or lakes are surveyed by "meandering" the curve, i.e., by making a series of very short straight lines that approximate the curve.[15] Curved lines for highways and in subdivision plats, however, are created first on paper or the computer by the surveyor, land planner, or engineer, and then taken to the field to be laid out.[16] To understand curves, one must review terms and concepts learned in high school geometry – terms such as tangent, point of tangency, chord, radius, length of curve, and central angle. In a nutshell, a curve is an arc of a circle that has a radius and central angle. The beginning and end points of a curve are tangent to straight lines or other curves. The central angle, i.e., the angle formed by the radii of the arc at the points of tangency, determines the extent of curvature: the larger the central angle, the shorter the radii and the "rounder" the curve; the smaller the central angle, the longer the radii and the "flatter" the curve.

Without understanding these terms and their use by surveyors and engineers in drawing curves, the lawyer cannot detect errors. A lawyer would not be expected to see small errors, but a lawyer who understands the concepts could spot obvious errors, such as mistakes in the central angle or in arc or chord distance.

3. Tools of the trade

A good tool chest for a lawyer required to draw legal descriptions would include a fine-tipped mechanical pencil (preferably 0.5 mm diameter lead); a ruler marked off in tenths of inches (not fourths, as is more common with rulers); grid paper; a calculator; colored pencils for shading different areas; stencils of numbers for overlaying section numbers and of small shapes (squares, triangle, and circles) for showing locations of various things, such as wells, cities, etc.; "French curves" (plastic templates for drawing lines of various curvatures); and maps. Prior to the Internet, hard copy maps were available from various sources, such as the Kansas Department of Transportation (KDOT). The KDOT still sells such maps, but the KDOT Web site[17] is an excellent source for obtaining county maps that include section, township, and range designations; roads, both major and minor; and other detail, such as rivers, streams, reservoirs, and federal and state lands.

4. A suggested method of drawing descriptions

A lawyer is not a surveyor or engineering draftsperson and is not expected to draw land descriptions with the perfection required of those other professionals. However, a lawyer can enhance an opinion letter or report by including drawings of land descriptions to show locations of easements and other items of interest. The following is one method of drawing a description.

Use grid paper containing an 8-by-8-inch square that is divided into 64 1-inch squares, if possible. Create a standard form on the word processor for reuse. If the paper is divided finer than one inch, it should be divided into units divisible by 10, such as 10 units, 20 units, or five units – but not four. Select a scale that is appropriate for the land description. For example, for the grid paper suggested above, the entire grid could represent one section, which is one mile (5,280 feet) on a side. Or, it could represent four sections, which means that the top of the grid would be two miles. Or, each small square could represent a section. In any case, once one decides the scale, then one should write down within one square the distance across the square. If the entire square, 8 inches on a side, is to be one mile on a side, the top side would be 5,280 feet long and each square would represent 660 feet (5,280/8 = 660). If the entire square is to be two miles on a side, or 10,560 feet, each 1-inch square would be 1,320 feet on a side (10,560/8 = 1,320). If one is dealing with a description that is not part of a section of land, one might choose some other scale, such as 1 inch equals 50 feet or 1 inch equals 175 feet. Whatever is chosen, the scale should be written on the page so it can be referred to for all lines drawn.

Any line in the land description can now be easily drawn using the chosen scale, the ruler with the 6-inch side that divides inches into tenths, and a calculator. Using the first example above, where one square, i.e., one inch, is 660' across, assume that the length of the line given in the land description is 837.6 feet. Divide 837.6 by 660 to get a line 1.27 inches long. This line can be drawn almost exactly by marking out with your ruler a line that is between 1.2 and 1.3 inches long. If the scale was 1,320 feet to the inch, then a line 837.6 feet long would be 0.63 inches long. If the scale was 50 feet to the inch, the line would be 16.75 inches long, which would be too long for the page. If the scale was 175 feet to the inch, then a line 837.6 feet long would be 4.79 inches long. Using conventional measurements such as 660 feet/inch or 1,320 feet/inch is helpful.

5. Some typical quantities and conversions

For distance measure: one rod equals 16.5 feet; one chain equals four rods or 66 feet; one chain also equals 100 links. A pole can mean a distance of varying length depending on locality; it can mean a rod; or it can mean an area measurement of a square rod.[18] For area measure: one acre equals 43,560

square feet (which can be understood as a square roughly 208+ feet by 208+ feet, or roughly the size of a football field). For volume of water for water rights: one acre feet (one foot of water depth on an acre) equals 325,861 gallons.

III. Types of Errors and Their Recognition

A. Types of errors

Land description errors can occur in many forms. We briefly discuss the following types of errors: informal descriptions; ambiguous descriptions; metes and bounds descriptions with missing calls; U.S. Government Survey descriptions with misstated sections or parts of sections or with wrong township designations; descriptions that are correct in and of themselves, but are not the parcels intended by the parties; and errors in descriptions of platted land. But, there are other types of errors as well.[19]

1. Informal descriptions

Of the many variations of informal descriptions appearing in cases,[20] we select one – the use of a street address rather than a full legal description in a contract or other document.[21] The Statute of Frauds requires that land sale contracts be in writing, be signed by the person against whom the contract is being enforced, and contain sufficient information to identify the subject matter of the transaction.[22] Requiring a full legal description rather than a mere street address could be justified in a sale of a platted lot in a city that, for example, is divided into quarters and where the same street address could conceivably exist in two or more quarters. In Washington, D.C., for example, 1508 16th Street is a valid address in both Washington, D.C., NW, and Washington, D.C., SW. Another justification is that a mere street address may not indicate ownership of adjacent parts of a neighbor's platted lot in addition to the primary lot on which a house or other building is situated.

Yet the general rule is that "a designation of real estate by street number appears to be at least prima facie sufficient where the state and municipality (or the town) are specified in the writing."[23] The state of Washington is an exception to the rule, however. In *Martin v. Seigel*,[24] in a real estate sales contract the parties described the parcel as "real property: at 309 E. Mercer ... in the City of Seattle, County of King, State of Washington." The buyer sued for specific performance when the seller backed out, and the seller defended on the Statute of Frauds, claiming more specificity was required.[25] The court agreed, holding that to be enforceable under the Statute of Frauds in Washington, the land sales contract for platted property must include a legal description containing the lot, block, city, county, and state, in this case "Lot 1 and the North 10' of Lot 2, Block 32, Pontius Addition to Seattle, King County, Washington."

Like most other states, Kansas appears to follow the more lenient rule of allowing extrinsic evidence to show that the street address in the contract matches the platted reference description of the parcel owned by the seller and intended by the seller to be sold. The critical element seems to be that the property must be able to be identified clearly from the contract and other evidence. In the 1923 Kansas case of *King v. Stephens*,[26] for example, a son (King) had signed an installment contract in Lawrence to purchase "the house located at 418 Elm Street, owned by Mary L. Stephens [his mother]." At the time of her death Mary was the legal owner of the house. The administrator challenged the contract as being "so ambiguous and uncertain in its terms"[27] as to be unenforceable. The Kansas Supreme Court reversed the trial court and upheld the contract, because "there was not the slightest uncertainty as to what property was covered by the contract."[28] Even without the name of the city, county, and state, in the contract, extrinsic evidence showed that this was the only property owned by the decedent and the place where she had reserved a room for herself.

On the other hand, the Court did not uphold a contract in *Ross v. Allen*.[29] In that case, not only had the seller not signed the contract, but the memorandum had failed to indicate any state, county, or city. In addition, the language "for property number 617 and 619 Delaware street, block 74, city proper" was not even clear that it was real estate being sold and not personal property.

2. Ambiguous descriptions

One test of the clarity and correctness of a land description is whether it can be drawn into a geometric shape. The land description in a 2004 Illinois case was "approximately five hundred (500) feet of river frontage ... located in Calhoun County, on the right descending bank of the Illinois River, just below Hardin, Ill. (approximately mile 20)." In *Westpoint Marine v. Prange*,[30] the court held the description inadequate when the lessee in a 25-year lease attempted to exercise a right of first refusal to purchase the leased premises – this, despite the fact that the parties had performed under the lease for six years before the right of first refusal was triggered by an offer to purchase from a third party. Both the lessee and the lessor knew what land was being used by the lessee, but this fact did not persuade the court's majority.

Another example of an ambiguous description is "[a]ll that tract ... of land lying ... in 3rd district and second section of said county, 2 acres of land, of lot No. 1101 ..., on the east side of Orange and Roswell Road, near the center of said lot." The Georgia Supreme Court in *Bruce v. Strickland*[31] held that this deed description, on which petitioner had relied in seeking to enjoin defendant from trespassing, was too indefinite to identify the land, thus precluding the action in trespass.

3. Errors in metes and bounds description: Missing calls

As stated above, a drawing of the land tract based on a description must close. A common cause of a failure of a description to close is a missing call. The following is a description found in a legal notice in the Lawrence Journal World[32] for a determination of descent lawsuit: "Beginning 1320 feet North of the Southwest corner of the Northeast Quarter ... thence North 330 feet; thence South 330 feet; thence West 660 feet to the point of beginning ..." A drawing of this legal description would be a backwards "L," not a rectangle measuring 330 feet by 660 feet, as intended. Missing was the second call "thence East 660 feet."

Another case involving the omission of one side of a rectangle was *State v. City of La Porte*,[33] a 1965 Texas Supreme Court case. The description read: "Beginning at a point where

the South right-of-way line of Spencer Highway intersects the center line of the ... R.R. right-of-way. THENCE ... [westerly] ... along the South right-of-way line of Spencer Highway to a point for corner in the East line of the W.M. Jones Survey, A-482; THENCE westerly along the South line of the W.M. Jones Survey A-482 to a point in the East right-of-way line of Red Bluff road for a corner ..." A call was missing between the two lines heading westerly, a call for a line running south a distance of 1 1/3 miles.

4. U.S. government survey errors

U.S. government survey errors come in many forms. In *City of Leawood v. City of Overland Park*,[34] the phrase "of the Southeast quarter" was omitted in a description that should have read "all ... the Southwest quarter of the Southeast quarter of Section 10 ..." Figure 7 shows drawings of the correct and the incorrect figures. In *Thayer v. Knote*,[35] a journal entry in a mortgage foreclosure action misdescribed the land as the "N.E. 1/4 of section 29, township 29, range 5 E." The land actually covered by mortgage was the S.E. 1/4 of Section 29. The clerk's order of sale and the sheriff's deed also used the mistaken description. Another type of error occurs when insufficient information is provided in the deed. The description "A Forty (40) acre tract in the Northeast Quarter (NE/4) of Section Five (5) ..."[36] needs to specify which 40-acre tract in the northeast quarter the grantor is conveying (e.g., "the northwest quarter of the northeast quarter"or if necessary a metes and bounds description of the 40-acre tract).

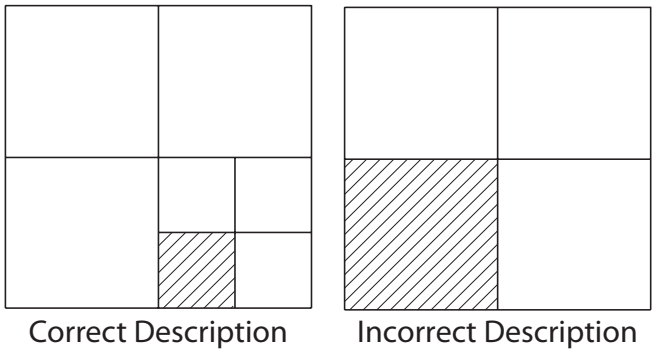

Fig. 7 *Leawood v. Overland Park*. Description Error

Some mistakes appearing to the untrained eye as minor mistakes can in fact make a big difference. For example, the petition for annexation in *City of Lenexa v. City of Olathe*,[37] located the tract in "Township 13." The ordinance for annexation said "Township 14." The land described in the petition was located six miles north of the land described in the ordinance.

5. Accurate description in and of itself (clear and containing no patent errors), but larger, smaller, or different tract than intended

In a 1990 case from Arizona, *Hill-Shafer Partnership v. Chilson Family Trust*,[38] the contract described a larger piece of land than the parties had bargained for. In *Whorley v. Koss*,[39] the land described in the sales contract included some land not owned by the seller, and it excluded land owned by seller intended to be sold. In a 2005 Ohio case, *Werts v. Penn*,[40] the parties intended that the seller's rental property be sold. The land described in the contract, however, was the seller's residence. In *Nilson-Newey & Co. v. Ballou*,[41] a 1988 case arising in California, less land than intended was described in a land sales contract. A Kentucky case in 1971 dealt with a description that was "erroneous in that it covers more area than the sellers owned, and the house plaintiffs thought they were buying is not on the property they bought but is on property belonging to [someone else] ..."[42]

In an old Iowa case,[43] the correct description for land in a mortgage was "the S 1/2 and the W 1/2 of the N 1/2 of the S.E. 1/4 of section 25." In a special execution, the court clerk mistakenly described the tract as the "S 1/2 of the W 1/2 of the N 1/2 of the S.E. 1/4 of section 25." Figure 8 shows the difference between the correct and incorrect versions. In *City of Leawood v. City of Overland Park*,[44] the description in a publication notice left out the bracketed language in the following description: "All that part of the Southwest quarter [of the Southeast quarter] of Section 10, Township 14 South, Range 25 East, Johnson County, Kansas." Figure 7 shows the difference.

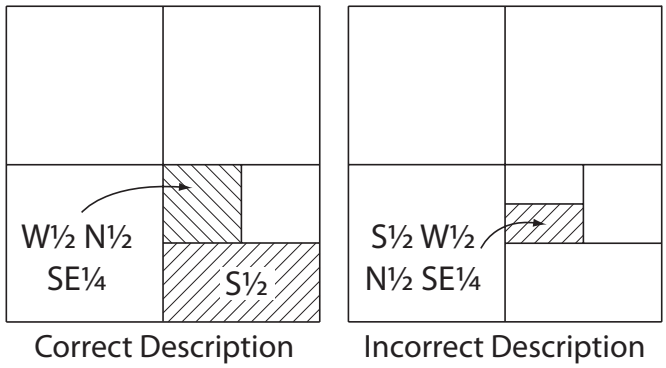

Fig. 8 *Latimer v. Jones*
Correct: S 1/2 and the W 1/2 of the N 1/2 of the SE 1/4; Incorrect (the one used): S 1/2 of the W 1/2 of the N 1/2 of the SE 1/4

6. Plat reference errors

Three types of errors arise with plat references. First, the description itself may be wrong on its face. In the 2004 Colorado case of *Guaranty Bank & Trust Co. v. LaSalle Nat'l Bank Ass'n*,[45] the mistaken description in the deed of trust was "Lot 29, Castle Pines Filing 1-A, County of Douglas, State of Colorado." The correct description was "Lot 29, Block 4, Castle Pines Filing 1A, County of Douglas, State of Colorado."[46]

A second error is to use a street address rather than a complete plat description. Such informal descriptions, as shown above in the *Martin v. Siegel*[47] case, may in some cases be found to violate the Statute of Frauds.

A third error is the use of an inaccurate metes and bounds description when a plat description is the correct one under the circumstances. An example is a 1999 New Mexico case, *Selby v. Roggow,*[48] which involved a legal malpractice claim resulting from a mortgage foreclosure. When one bank refused to renew a mortgage, the developer obtained a mortgage from a new lender, which also agreed to pay off the old mortgage. But the new mortgage "contained the same metes and bounds description as the ... [original] ... mortgage, even though the property had been subdivided and some of the lots in question had been previously sold to third parties."[49] On the other

hand, the note and the loan worksheet described the property as "51 lots, VALLEY GARDENS SUBDIVISION. LOT 1 Block 3 IMPROVED HOUSE." In foreclosing, the bank used the metes and bounds description even though the description was inaccurate and included "more property than the security interest actually possessed by the Bank."[50] This error was not really an error *per se* with the plat description; the error lay in not using the plat description, which led to describing more land than was actually owned by the mortgagor.

B. Judicial canons and aids of construction

Some types of errors apparently arise commonly enough in cases that over time courts have developed "canons of construction" as aids in decision making. In their book "Principles of the Law of Property," Cribbet and Johnson list 10 such canons.[51] For example, "[t]he construction prevails which is most favorable to the grantee, i.e., the language of the deed is construed against the grantor."[52] That rule follows the parallel rule from contract law that an ambiguity is construed against the draftsperson of the contract.[53] A canon for ambiguities in metes and bounds descriptions is "[m]onuments control distances and courses; courses control distances; and quantity is the least reliable guide of all."[54] The canon "a description, insufficient in itself, may be made certain through incorporation by reference" can be illustrated by a description that refers to "the Jones Place." Another deed on record would be used to help describe "the Jones Place" with a proper legal description.

Another important canon listed by Cribbet and Johnson is "[w]hen a tract of land is bound by a monument which has width, such as a highway or stream, the boundary line extends to the center, provided the grantor owns that far, unless the deed manifests an intention to the contrary."[55] Take, for example, a description that reads in part "from point A north to Mill Creek; thence southeasterly along Mill Creek approximately 750 feet to point B; thence south 500 feet to point C ..." The question is whether the described land be construed to include part of the bed of the stream, or just to the edge of the stream as the description seems to intend. Application of the canon would result in including the bed of the stream to the middle of the stream. This would be the case in Kansas for land adjoining non-navigable streams, because riparian owners own the beds of non-navigable streams.[56] If the stream described were the Kansas River (a navigable river, the bed of which is owned by the state) and not Mill Creek, the riparian owner would not own the bed and the canon would not apply. The intent of the canon is to preclude nonintentional retaining of strips of land in the deed grantor that would then pass to heirs of the grantor on the grantor's death.

The last canon listed by Cribbet and Johnson is that a deed includes an appurtenance to a tract even though it is not specifically mentioned in the deed. Appurtenances would include easements over access roads across adjoining property, physical structures, and water rights.[57]

Still other general rules of construction and approaches show up in cases. For example, in the 1965 Texas case, *State v. City of LaPort*,[58] the court made a presumption that a boundary line between two points is a straight line. This presumption would not always hold. An example is a description that reads "thence to the east right-of-way of the AT&SF R.R., thence southwesterly along and parallel with the said right of way to a point 600' west of the point of beginning, thence ..." The railroad right-of-way may either be a straight line or a curve, which the description itself does not make clear. The *LaPort* case also showed an important method of reading some descriptions: it ran the lines in reverse. This technique is sometimes required because some information is left out of some calls, which requires reading the description in reverse to draw it.

IV. Consequences of Errors

Legal description errors can produce problems for the various parties and entities involved in real estate transactions. We list and comment briefly on some of these below.

A. Problems for buyers, sellers, and other parties directly concerned with real estate matters and transactions

1. Buyers and sellers, deeds

In the 2008 Illinois case *Wheeler-Dealer Ltd. v. Christ*,[59] the sales contract described property as the "east 165 feet of Lot 4" while the deed conveyed all of lot 4 (roughly 50' north and south by 220' east and west). The east part of the lot contained a metal garage, the west part an advertising sign. The buyer had purchased the property at auction. Claiming mutual mistake, the plaintiff seller sought to reform the deed. The defendant buyer denied that there was a mutual mistake and that the parties had intended to sell less than the entire lot. The seller's lawyer admitted to making a drafting mistake. The lower court's decision for the defendant was affirmed on appeal. The person seeking reformation must show by clear and convincing evidence that the parties agreed on the description alleged. A mutual mistake is one in which the mistake is common to both parties. Here, there was no mutual mistake because the buyer never intended to purchase less than the entire tract.

In a 2007 Iowa case, *Orr v. Mortvedt*,[60] neighbors owning land on a lake disputed their boundary. Both neighbors had obtained deeds from a common grantor, the original owner of the entire tract, after a survey. Orr sued to quiet title to a strip along the lake. Mortvedt counterclaimed requesting reformation of their deed, claiming Mortvedt owned the strip. The survey had a notation with a dotted line showing "edge of water," and the deed to Mortvedt from the seller had described the land in part as "including all land west and north of [the] water." The court held that the deed could not be reformed except as between the original parties to the deed and those that have notice of relevant facts. Here, a reasonable person would conclude from the Mortvedt's deed and the survey that the Mortvedt's boundary did not extend to the water's edge, and thus no deed reformation was allowed.

2. Parties to land sales contract

In *Whorley v. Koss*,[61] plaintiff sellers owned 2,400 acres in one county in Montana, which they desired to sell. The land described in the sales contract included some land not owned by seller and excluded land owned by seller intended to be sold. The plaintiffs sued to reform the contract. The court found mutual mistake and permitted the contract to be reformed.

As indicated above[62] in *Martin v. Seigel*, the state of Washington allowed a seller to get out of a contract due to the Statute of Frauds, when the parties had used a street address rather than a plat reference description in a land sales contract.

3. Mortgagees and mortgagors

An example of a mortgage claimed to be invalid due to a land description error is found in a 2004 Colorado case, *Guaranty Bank & Trust Co. v. LaSalle Nat'l Bank Ass'n.*[63] The deed of trust read "Lot 29, Castle Pines Filing 1-A, County of Douglas, State of Colorado," thereby leaving out "Block 4" in the plat description. The court ruled that the description had given constructive notice despite the error, in part because in the subdivision there was only one "Lot 29."

4. Cities

State v. City of La Porte,[64] involved a Texas city's attempt to annex land through an ordinance that contained a land description that left out a call for a north-south line of approximately 1 1/3 miles in length. The court refused to employ rules of construction (running the calls in reverse, and presuming that the boundary line between two points is a straight line) to correct the problem, and held that the attempted annexation was void.

In *City of Lenexa v. City of Olathe*,[65] a petition for annexation described land as being in Township 13; the published ordinance for annexation described the land as being in Township 14. Another city challenged the annexation in part due to this mistake. The court noted that publication notice is important in annexation because it is intended to advise the public. This mistake was "no ordinary typographical error"[66] – the public had no way of knowing of the error because the city could have annexed land in Township 14. The annexation was voided as were others that occurred thereafter because the subsequent annexations thus did not cover land adjoining the city.

In *City of Leawood v. City of Overland Park*,[67] one city challenged the annexation by another city. The description in the publication notice had left out the bracketed language in the following description: "All that part of the Southwest quarter [of the Southeast quarter] of Section 10, Township 14 South, Range 25 East, Johnson County, Kansas." *See* Figure 7. While the court observed that the tract was not properly annexed due to the mistake in the publication notice, the challenging city had no standing to object.

5. Other parties and situations[68]

It is not uncommon to find legal description errors in divorce cases, either when the property being divided between the litigants is described or when there is no description at all. Title Standard 8.2 of the Kansas Bar Association[69] implies that to transfer title, the decree and the property settlement agreement, if there is one, must include a legal description. Failure to provide a legal description requires a *nunc pro tunc* order.

Deeds transferring title to trusts are also commonly found to contain legal descriptions of real estate previously conveyed by the grantors, which can result in clouds on title and errors in indexing in county records and offices.

Land description errors also find their way into bankruptcy cases. Often losses are involved with no opportunity to fix the problem.[70]

B. Problems for lawyers

Lawyers making land description errors may be subject to claims for either malpractice or professional ethics violations, or both. The cases discussed below have varying results on liability, but the fact that the cases have even been brought should serve as warning to lawyers working with land descriptions.

1. Potential malpractice case examples

A 2005 Ohio case, *Werts v. Penn*,[71] involved a seller who had provided the lawyer with a land description of rental property seller wanted to sell, along with a sample contract containing the description of the seller's residence. The lawyer prepared a land sales contract for the seller, but the lawyer's secretary used the description for the seller's residence, not the description of the rental land intended to be sold. Quiet title actions were required to cure the defect, costing the seller $2,500. The seller sued the lawyer for malpractice. The court stated that to establish malpractice, a plaintiff must show there was a duty owed by the attorney to the plaintiff, there was a breach of the duty in failing to conform to the standard required by law, and there was a causal connection between the conduct and the resulting damage. Here, the fact that the seller had provided both descriptions and that the lawyer's secretary had typed the wrong description did not absolve the lawyer of negligence, as lawyers are responsible for their secretaries. There was an issue of whether the seller had merely instructed the lawyer to insert the land description provided by seller to complete the land contract. The case was ultimately reversed in favor of the lawyer, because the seller had failed to present expert testimony on the standard of care required to determine whether the lawyer had a duty to confirm the property description.

In *Nilson-Newey & Co. v. Ballou*,[72] a California buyer hired a lawyer to do title work for the purchase of 700 acres of land for $250,000. The lawyer's title opinion stated that the land description was inaccurate and that it was therefore impossible to determine acreage without a survey. The actual purchase resulted in the buyer receiving only 363 acres. The buyer sued the lawyer for malpractice. The court found that the lawyer had either ignored or concealed the acreage problem and held the lawyer liable in negligence for damages of $375,000. The lawyer violated the lawyer's professional obligation to his client. An exculpation clause is of no avail to a lawyer who has reasonable grounds to suspect the actual existence of defects not mentioned in the opinion letter, because the average layman is not familiar with land descriptions. If the lawyer is put on notice of a defect, it is the lawyer's duty to investigate.

In the *Selby v. Roggow* case mentioned above,[73] a New Mexico lawyer was sued for malpractice in a case in which the lawyer had represented the mortgagor in a mortgage foreclosure action. The mortgagee's petition had stated that the original mortgage had erroneously described more land than was intended to be covered by the mortgage. The lawyer worked with the mortgagee to revise the description in the foreclosure action to the proper one. But the mortgagor then sued the lawyer in malpractice, claiming the lawyer should have counterclaimed against the mortgagee in the foreclosure action to avoid the mortgage action entirely, due to the error. The court held that an inaccurate description in a mortgage does not automatically invalidate the instrument, if there are rules of construction permitting the ascertaining of the proper

description. The counterclaim would have failed, and therefore there was no valid legal malpractice claim.

An old Iowa case also cited above, *Latimer v. Jones*,[74] involved the mistake shown in Figure 8. The correct description for the land in a mortgage was "the S 1/2 and the W 1/2 of the N 1/2 of the S.E. 1/4 of section 25." In a special execution, however, the court clerk had mistakenly described the tract as the "S 1/2 of the W 1/2 of the N 1/2 of the S.E. 1/4 of section 25." The attorney for the mortgagee in the mortgage foreclosure action had used the correct description in the petition. While this was not a direct attorney malpractice case, the court in dicta stated that the attorney would not be liable for not being aware of the clerk's mistake.

Finally, in the case from Kentucky mentioned above, *Owen v. Neely*,[75] the plaintiff buyers sued their lawyer in malpractice for giving a report certifying clear and merchantable title to property. The legal description to which the report referred (the survey description) differed from the description contained in the record (the record description), which was the correct description for the contract. The survey description referred to land that was larger in size than the record description. The survey description contained more land than the sellers owned, and it did not contain land on which the house sat that the buyers were buying; that house sat on the neighbor's property. The plaintiffs relied on the lawyer's certification of title, paid $7,500 for the property, improved the property to the extent of $2,034, and sustained other damages. The lawyer had qualified the certificate by stating that it was "subject to any information that would be revealed by an accurate survey ... and subject to any information that would be revealed by a personal inspection of the premises."[76] The trial court sustained the lawyer's motion for summary judgment. The appeals court reversed for additional fact finding. The court stated that "a lawyer may protect himself by reservations and disclaimers expressly set forth in a certificate of title, but only if he has no reasonable grounds to suspect the actual existence of defects not mentioned. The average layman is not familiar with and ordinarily does not understand legal descriptions, and if his lawyer, accidentally or otherwise, receives information that should reasonably put him on notice of a defect we think it is his duty to investigate or report it to his client."[77]

2. Potential code of professional responsibility violations

In addition to facing malpractice actions, a lawyer making a mistake in a land description faces potential violations of the Code of Professional Responsibility: Rule 1.1 on competence, Rule 1.2 on scope of responsibility, and Rule 5.3 on overseeing nonlawyer assistants. These rules read as follows:

Rule 1.1: "Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

Rule 1.2: "Scope of Representation: * * * (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

Rule 5.3: "Responsibility Regarding Nonlawyer Assistants: With respect to a nonlawyer employed ... by ... a lawyer * * * (c) a lawyer shall be responsible for conduct of such a person that would be in violation of the rules of professional conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved ..."

Unlike a Canadian rule[78] that expressly requires the lawyer dealing with title insurance to make sure the "legal description is correct,"[79] our rules do not speak directly to the problem. But in a number of cases, lawyers were found to have violated the rules when they made mistakes in land descriptions.

One example is *In the Matter of Wilkes.*[80] A South Carolina lawyer was disbarred for numerous ethics violations, including incompetence for doing a number of things wrong. The lawyer had filed a deed with an erroneous property description and had allowed a nonlawyer assistant to file a similar erroneous deed. In another South Carolina case, *In re Addison*,[81] a lawyer was charged with nine violations of professional ethics, including one in which the lawyer had incorrectly described land and conveyed all of a complainant's property instead of a smaller tract intended. In another violation, the lawyer had drafted a mortgage that did not include property intended. The lawyer was disbarred for incompetence and for failure to oversee a nonlawyer employee adequately.

In *In re Kagele*,[82] a lawyer in the state of Washington was charged with numerous ethics violations. One alleged violation was that the lawyer had filed a complaint for a client against a neighbor that had contained an incomplete or inaccurate legal description regarding an easement in dispute, which resulted in preventing the client from using a driveway. The state suspended the lawyer for one year for some other violations and reprimanded him for violating the competence rule because of the inaccurate description.

3. Problems for surveyors

Surveyors can also be liable for professional malpractice. In a 1975 Colorado case, *Doyle v. Linn*,[83] the plaintiff land owner contracted with the defendant surveyor to conduct a boundary line survey. Relying on the survey, the plaintiff built a house. Later the United States sued for trespass on the basis that the house had been built on national forest land. The plaintiff had to move the house at a cost of more than $14,000. The plaintiff successfully sued the surveyor for negligence.

Cornforth v. Larsen,[84] a 2002 case from Colorado, involved a developer who sued a surveyor for a defective survey of a 600-acre tract to prepare for the platting of a subdivision. The court held the surveyor liable for the error and would not permit the surveyor to assert a statute of repose defense.

Similarly, in the 1969 Illinois case *Rozny v. Marnul*,[85] the defendant surveyor had prepared a survey for a developer who had sold the lot to a builder. The builder constructed a house, after which the surveyor then did a "plat of survey" showing the location of the building. The plaintiff purchased the land from the builder. The plaintiff relied on the recorded plat of survey in constructing a garage, which when finished encroached on the adjacent lot. The plaintiff sued the surveyor for the $13,350 it cost to remove the garage. The court held for plaintiff, stating that a third party can hold a surveyor liable on an inaccurate survey when the surveyor knows that his representations will be relied on by a limited group and when they are so relied upon.

But three Missouri cases illustrate various defenses available to surveyors. In the 1992 case, *Pasta House Co. v. Williams*,[86] the plaintiff landowner had contracted with the defendant to survey land. The plaintiff's building subsequently constructed based on the survey was found to encroach on the building set-back line, causing plaintiff to remove part of the building. The plaintiff sued the surveyor, who testified that the plaintiff had told him not to worry about the set-back line because "the line was going to be moved forward."[87] The court held that there was no negligence because the defendant had completed the work in accordance with the contract.

In a 1991 case, *Gipson v. Slagle*,[88] the plaintiffs' neighbor had hired the defendant surveyor to survey their boundary. The surveyor made a mistake. The plaintiffs relied on the mistaken survey and removed trees and a retaining wall. When the plaintiff sued the surveyor, the court dismissed the case on the basis that plaintiffs, having no contractual privity with the surveyor, were not within the class of protected persons intended to be protected by the statutes involving standards for surveyors.

And, in *Baublit v. Barr & Riddle Eng'g Co. Inc.*,[89] the plaintiff landowners sued a surveyor for making a mistake in a survey that ended up costing the landowners the loss of a water well. But the landowners had not contracted with the defendant surveyor for the survey. The court stated that privity of contract is a general requirement to sue a surveyor, but that there are many exceptions to the rule. One exception is that the surveyor may be liable for negligent misrepresentation if the surveyor "should have reasonably known that the complaining party would rely on the survey."[90] Here, the plaintiffs did not show to the court's satisfaction that the plaintiffs had relied on the defendant's survey. In addition, the statute of limitations barred the claim.

V. Avoidance of Errors

Avoiding errors requires first that the lawyer know the land description methods, as well as some of the legal rules found in the cases described above. For example, regardless of the rule in a state as to use of a street address in the land sales contract, a prudent lawyer given a chance to help draft the contract should include the proper legal description rather than a street address. This practice not only obviates the potential Statute of Frauds claim, but it also provides information about ownership of partial lots.

Other suggestions for avoiding problems: Use good drawing tools; practice reading and drawing land descriptions (replace crossword and Sudoku puzzles with land description problems); take pride in your work product; befriend a good surveyor to have on call for difficult issues; attempt to spot obvious errors; carefully read and draw descriptions; hire and train good personnel; once your confidence and competence level is up, you can begin to add your drawings to client memos; and, finally, proofread, proofread, proofread. Lastly, a suggestion for lawyers is to have the local title company prepare an informational title insurance commitment to confirm legal descriptions as well as current ownership, tax, lien, and incumbrance information.[91]

VI. Conclusion

Real estate lawyers should know the various land description methods in order to read and check them, and to make drawings. Knowing these methods will help the lawyer avoid errors that can lead to problems for all the parties involved, including the lawyer. The ability to draw a sketch of the land that is the subject matter of the transaction, and view it pictorially on paper, aids not only the client, but also the lawyer, in fully understanding the deal. ■

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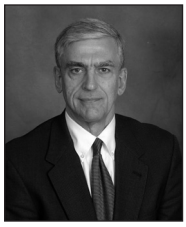

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ENDNOTES

1. Thanks to Sara Stieben, University of Kansas School of Law graduate, May 2008, for her valuable research in preparing this outline. Thanks also to Roy Worthington and Todd Sheppard of Charlson & Wilson, Bonded Abstracters Inc., Manhattan, for their helpful substantive comments, insights, and criticisms, and to Richard Seaton of Seaton, Seaton & Gillespie LLP, Manhattan, and a member of the *Journal of the Kansas Bar Association* Board of Editors, for his helpful edit. This article is based in part on a Recent Developments in the CLE program given by Professor Peck at the KU Law School on May 29, 2008.

2. The Civil Law system divides property into "movable property" and "immovable property," much as the Common Law divides property into "personal property" and "real property." *See* N. Stephan Kinsella, *A Civil to Common Law Dictionary*, 54 La. L. Rev. 1265 (1994).

3. Professor Peck has found legal description errors in newspaper legal notices, which he uses as examples in his land transactions class. He also readily admits routinely making such errors himself, in class and out.

Leonard Hall, a lawyer with the City of Olathe Legal Department for more than 28 years, estimates that on average "approximately 5 to 15 percent of ... surveys or documents [being provided to the Land Department to be inserted in the deed or easement documents] contain errors in the legal descriptions ... In one project, we found errors in the legal description on 20 percent of the tracts being submitted for land acquisition. ... ." These descriptions are "usually, but not always" reviewed by numerous people. Hall attributes some of the problems to over-reliance on computers. When Hall once asked an engineering firm to "sit down and plot out the legal description by hand to determine if the legal description is correct, the reply was that the computer cannot be wrong." E-mail from Leonard Hall to John C. Peck, Oct. 29, 2008, 10:55 a.m., quoted with permission of the sender, Leonard Hall.

4. 100 F.2d 294 (5th C.A. 1938), *rev'd* 308 U.S. 208, 60 S. Ct. 201, 84 L. Ed. 196 (1939) (hereinafter *Cities Services*). The later court of appeals opinion is found at 115 F.2d 720 (1940).

5. *See* K.S.A. 74-7001 *et seq*., especially -7001(a), -7003(j), -7003(k), -7034, -7035, and -7036.

6. If, for example, a farmer owns the entire section 5, can the farmer or the farmer's lawyer draft a deed that purports to convey the NW/4 of Section 5, the NW/4 of the SW/4 of Section 5, or even successively smaller fractional parts of the section without hiring a land surveyor to describe that tract? It may depend on what points in the section the original land surveyor established. If just the outside four corners, one could argue that the statutory restriction would prohibit them from doing so. According to the book Clark on Surveying and Boundaries, 7th ed., ch.10, "Subdivision of Sections," §§ 10.03 – 10.05, (hereinafter Clark) Congress authorized the division of sections into quarter-quarter sections (40 acres) in an act in 1832. The publication *Instructions to the Surveyors General of Public Lands of the United States for those Surveying Districts Established in and Since the Year 1850* (1855) (reprinted by the Kansas Society of Land Surveyors, 1996) (hereinafter Instructions), at 6, states that "[t]he half quarter section boundary is not marked in the field, but is regarded by the law as a point intermediate between the half mile or quarter section corners." If those corners are in fact established in a section, it would seem that a lawyer could legally draft a legal description of a quarter-quarter section without having a new survey. Any smaller fractional part would seem to require a surveyor's description, and any irregular part of these units would definitely require a surveyor's description. An attorney general's opinion conforms with the latter view, but not necessarily with the former view. The opinion in 93 Op. Att'y Gen. Kan. 57, at 2-3 (April 26, 1993), stated that there is a difference between a "fractional division" (one that is divided fractionally, like the NW/4 of the SW/4) and a "measured division" (one where markers are referenced and distances noted). A farmer or the farmer's lawyer could prepare a deed to convey a fractional part, but not a measured part. The opinion's example was a quarter-quarter section, but it did not expressly limit the size of the fractional part to which the rule would apply.

There seems to be no annotated Kansas cases on the issue, but there are at least three other attorney general opinions besides the one cited in the previous paragraph: 78 Op. Att'y Gen. Kan. 59, at 2 (Feb. 8, 1978) ("'original description,' as that term relates to any particular parcel of land, is that description which first delineates that parcel in detail, in contrast to pre-existing descriptions of larger areas of which the specified parcel is a part ..."; 82 Op. Att'y Gen. Kan. 118, at 2 (June 2, 1982) (one must be "professionally qualified as well as hold a license ... from the Board of Technical Professions in order to practice any of the technical professions ... Therefore, other than the exceptions found in K.S.A. 74-7034 and -7035, land surveyors are exclusively authorized to prepare original descriptions of real property for conveyance or recording"); 83 Op. Att'y Gen. Kan. 42, at 1-2 (March 21, 1983) (brokers are permitted to prepare a legal description for, say "all of Lot 18, and the west 10 feet of Lot 17," in a certain platted subdivision situated in the city of Salina, because the subdivision plat itself is an "original description," so a description of a lot and a part of a lot does not constitute an original description).

For the interested reader, a text used by surveyors is Gurdon H. Wattles, Writing Legal Descriptions in Conjunction with Survey Boundary Control (Wattles Publications 1979).

7. *See, e.g.*, Clark, *supra* note 6.

8. For general reference material, see the following: Clark, *supra* note 6; "Instructions," *supra* note 6; Daniel R. Suchy, "The Public Land Survey System in Kansas," KGS, Pub. Info. Circ. (PIC) 20, online at http://www.kgs.ku.edu/Publications/pic20/pic20_1.html; and "Fundamentals of Land Measurement," published by Chicago Title Insurance Co., an excellent booklet on surveying and land description methods, which is available to purchase online at http://www.insurance-pennsylvania.com/books/Insurance-10905-Meryl+Thomas-Creator-sr-1.html.

9. At least three other methods are used. First, a "description by fractional part" might say "the northwest 1/4 of my farm." But such a description is ambiguous because it requires knowledge of what "my farm" is and it is not clear exactly what the "northwest 1/4" represents, especially if the farm is not a square or rectangle. *See* Curtis J. Berger, Quintin Johnstone & Marshall Tracht, Land Transfer and Finance, Cases and Materials, 5th ed., at 374 (Wolters Kluwer, 2007). Second, the "plane coordinate" method uses "a reference to a conceptual grid of lines running north and south, east and west, from ... several stations." *Id.* at 377. A third method is shown in a legal notice in the Lawrence Journal World. In a 1983 legal notice of a rezoning request, the method described the parcel with a series of calls that directed the reader to follow the boundaries as if the person were in the field: for example, "beginning at point A, thence north 100' to point B; thence on a deflection to the right of 105 degrees for a distance of 555 feet; thence on a deflection to the left of 38 degrees, 47 minutes for a distance of 1,295.3 feet ... ." This one differs from the surveyor's method, described in the text below. In the method used in this legal notice, the reader starts at a point and pretends to walk the first course; then, continuing to face along that line, the reader turns in the direction of the next call, here 105 degrees to the right, and then walks the distance of 555 feet on that line; then from the line of that direction, the reader turns to the left 38 degrees, 47 minutes and walks 1,295.3', etc.

10. Some people would classify the surveyor's or angular method described below as a type of the metes and bounds description.

11. Grant Mitchell (Newton, Kan.), *The Sixth Principal Meridian*, The Kansas Abstracter, vol. 11, No. 1, January 1937, at 3, 6-7. Thanks to Roy Worthington of Charlson & Wilson, Bonded Abstractors Inc., Manhattan for sending this reference many years ago.

12. The Kansas Abstracter, *id*. at 6-7.

13. The appellation "The Great American Desert" can apparently be attributed to Stephen H. Long, whom the United States commissioned in 1819 to gather information on the land between the Mississippi River and the Rocky Mountains. His map included "The Great American Desert" across what is now known as the Great Plains. He called this land "unfit for cultivation ... and uninhabitable by people depending upon agriculture for their habitation." Stanley K. Schultz & William T. Tishler, American History 102, Civil War to the Present, Topic 3, p. 2 (online at http://us.history.wisc.edu/hist102/weblect/lec03/03_preamble.htm.)

14. The corner of each platted lot is typically identified by an iron bar or rod driven in the ground.

15. "The surveyor is at times required to run meander lines either in making a new survey or in retracing an earlier one. A meander line is a line run by the government for the purpose of defining the sinuosities of the shore or bank of a body of water in order to ascertain the acreage of land that is to be disposed of or sold by the government." Clark, *supra* note 6, ch. 13, § 13.01, at 339.

16. An excellent reference in the form of a simple diagram showing a number of curves joined together, along with symbols and terminology for reading curves, is found at Curtis M. Brown, Donald A. Wilson, and Walter G. Robillard, Brown's Boundary Control and Legal Principles, 4th Ed., Section 6.10, at 107 (John Wiley & Sons Inc. 1995). A good narrative description along with figures and diagrams can be found online at http://books.google.com/books?id=zWEOAAAAYAAJ&pg=PA151&lpg=PA151&dq=surveying+curved+lines&source=bl&ots=RKO7PtibV3&sig=prrD1_0nopTM_sXC30HaNcbPtBQ&hl=en&sa=X&oi=book_result&resnum=4&ct=result#PPA156,M1.

17. *See* http://www.ksdot.org/maps.asp. Click "county maps" and then "pdf file" format. The county map can be enlarged up to 6,400 percent to obtain great detail, and the enlarged portion can be printed or saved as a separate document.

18. Webster's Third New International Dictionary, Vol. 2, at 1753 (1966).

19. *See*, *e.g.*, W.W. Allen, Annotation, *Sufficiency of description or designation of land in contract or memorandum of sale, under statute of frauds*, 23 A.L.R. 2d 6 (1952).

20. Informal descriptions come in many different forms, such as by popular name, ownership, occupancy, source of title, general location, distinguishing features including size or acreage, or adjoining land. For a discussion of other types of informal descriptions, *see id*.

21. Professor Casner notes that while many informal land descriptions including street addresses "may be good anyhow where land is thus described," "it is subject to ... objections ..." Casner, American Law of Property, § 12.104 (1952).

22. K.S.A. 33-106; Restatement 2d Contracts, §§ 110, 125-129.

23. W.W. Allen, Annotation, *Sufficiency of description or designation of land in contract or memorandum of sale, under statute of frauds*, 23 A.L.R. 2d 6, Part II, § 15 (1952).

24. 35 Wash. 2d 223, 212 P.2d 107 (1949).

25. *See* Restatement of Contracts, 2d, § 131, which states that "... a contract within the Statute of Frauds is enforceable if it is evidenced by any writing, signed by ... the party to be charged, which (a) reasonably identifies the subject matter of the contract ... and (c) states with reasonable certainty the essential terms of the unperformed promises in the contract."

26. 113 Kan. 558, 215 P. 311 (1923).

27. *Id*. at 560.

28. *Id*. at 561.

29. 45 Kan. 231, 25 P. 570, 10 L.R.A. 835 (1891).

30. 349 Ill. App. 3d 1010, 812 N.E.2d 1016 (2004).

31. 201 Ga. 526, 40 S.E.2d 386 (1946).

32. Lawrence Journal World, June 11, 1983.

33. 386 S.W.2d 782 (Tex. 1965).

34. 245 Kan. 283, 777 P.2d 830 (1989).

35. 59 Kan. 181, 52 P. 433 (1898).

36. Thanks to Roy Worthington of Charlson & Wilson, Manhattan, for this description from a warranty deed. E-mail from Roy Worthington to John C. Peck, Jan. 29, 2009, at 1:49 p.m. Similar problems occurred in *Rogers v. Lippy*, 99 Wash. 312, 169 P. 858 (1918) ("my stock ranch located in sections 9, 17, and 21, township 3 south, range 13 east, Sweetgrass county, Mont." – the ranch might have comprised the entire three sections or only parts of those sections), and in *Martinson v. Cruikshank*, 3 Wash. 2d 565, 101 P.2d 604 (1940) ("160 Acres, more or less, in Section 2, Township 13 N, Range 2 East").

37. 233 Kan. 159, 660 P.2d 1368 (1983).

38. 165 Ariz. 469, 799 P.2d 810 (1990). The seller owned two tracts north of Butler Avenue and one tract south of Butler Avenue. The original intention of the parties was to include in the sale the two tracts north of Butler Avenue, and the buyer's offer described those two tracts. But the seller's counteroffer described instead only one tract north and the tract south of Butler Avenue, the combination of which was not only different than the land in the offer, but was 1.9 acres larger than the two tracts north of Butler Avenue. The buyer "accepted" seller's counteroffer. Seller later sought to correct the legal description, and buyer sought specific performance. The trial court's decision to rescind the contract was upheld by the Arizona Supreme Court.

39. 122 Mont. 446, 206 P.2d 809 (1949).

40. 164 Ohio App. 3d 505, 842 N.E.2d 1102 (App. Ct. 2005).

41. 839 F.2d 1171 (6th C.A. 1988).

42. *Owen v. Neely*, 471 S.W.2d 705, 707, 59 A.L.R. 3d 1171 (Ky. Ct. App. 1971).

43. *Latimer v. Jones*, 55 Iowa 503, 8 N.W. 327 (1881).

44. 245 Kan. 283, 777 P.2d 830 (1989) (*see supra* note 34).

45. 111 P.3d 521 (Colo. App. 2004).

46. The court held that the description had given constructive notice, despite the error.

47. *See supra* Section III. A.1, at note 24.

48. 126 N.M. 766, 975 P.2d 379 (N.M. App. 1999).

49. *Id*. at 383.

50. *Id*.

51. J. Cribbet & C. Johnson, Principles of the Law of Property, (3d ed. 1989), at 210-212 (hereinafter Principles).

52. *Id*. at 210.

53. Restatement 2d Contracts, § 206.

54. Principles, *supra* note 51 at 210. *See Cities Services*, *supra* note 4, for application of this canon.

55. *Id*. In support of this canon, the authors cite the Kansas case of *Bowers v. Atchison, T. & SF. Ry. Co*., 119 Kan. 202, 237 P. 913, 42 A.L.R. 228 (1925).

56. *Kansas ex rel. Meek v. Hays*, 246 Kan. 99, 785 P.2d 1356 (1990).

57. K.S.A. 82a-701(g) provides the same rule in respect to water rights: a water right "passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other disposal, or by inheritance." *See* John C. Peck, 2009 Kansas Annual Survey, v. XX, ch. 30, "Water Law" (Kansas Bar Association), at 366 for a discussion of an amendment to this section in 2009 S.B. 64; *see also* John C. Peck, *Title and Related Considerations in Conveying Kansas Water Rights*, 66 J. Kan. Bar Ass'n 38, 41-44 (Nov. 1997), available online at http://hdl.handle.net/1808/1106, for a discusion of the section prior to the 2009 amendment.

58. 386 S.W.2d 782 (Tex. 1965), cited in text at note 33, *supra*.

59. 379 Ill. App. 3d 864, 885 N.E.2d 350 (2008).

60. 735 N.W.2d 610 (Ia. 2007).

61. 206 P.2d 809 (Mont. 1949), cited in note 39, *supra*.

62. *See* text at note 24, *supra*.

63. 111 P.3d 521 (Colo. App. 2004), cited at note 45, *supra*.

64. 386 S.W.2d 782 (Tex. 1965), cited at note 33, *supra*.

65. 660 P.2d 1368 (Kan. 1983), cited at note 37, *supra*.

66. *Id.* at 1373.

67. 777 P.2d 830 (Kan. 1989), cited at notes 34 and 44, *supra*.

68. Thanks to Roy Worthington and Todd Sheppard of Charlson & Wilson, Bonded Abstracters Inc., of Manhattan, for the material presented in this section. E-mail from Roy Worthington to John C. Peck dated Saturday, Dec. 13, 2008, at 2:06 p.m.; e-mails from Todd Sheppard to Roy Worthington dated Thursday, Dec. 4, 2008, at 12:58 p.m. and 1:35 p.m.

69. Kansas Title Standards, 7th ed., Kansas Bar Association (2005), Section 8.2 "No Legal Description in the Divorce Decree – What Requirement?"

70. "Often real estate attorneys, bankers, and agents figure that if there is a little typo, well we can fix that and refile everything or an affidavit, but as [some bankruptcy] case[s] show when it comes up to a bankruptcy court trying to allocate assets among multiple creditors the results can be harsh." *See supra* note 68, Sheppard's 1:35 p.m. e-mail, citing *In re Colon*, 376 B.R. 22 (Bankr. Kan. 2007) (bankruptcy trustee, as a BFP, was not put on constructive notice of a defective legal description contained in a mortgage and not required to take the steps a title insurance company would take). The Tenth Circuit, however, reversed. *See In re Colon*, 563 F.3d 1171 (10th C.A. 2009). *See also In re Easter*, 367 B.R. 608 (Bankr. S.D. Ohio 2007) (street address in mortgage did not put Trustee on notice of a potential encumbrance such that he lost his status as a bona fide purchaser).

71. 842 N.E.2d 1102 (Ohio App. 2005), also cited at note 40, *supra*.

72. 839 F.2d 1171 (6th C.A. 1988), cited at note 41, *supra*.

73. 975 P.2d 379 (N.M. App. 1999), cited at note 48, *supra*.

74. 8 N.W. 327 (Ia. 1881), cited at note 43, *supra*.

75. 471 S.W.2d 705, 59 A.L.R. 3d 1171 (Ky. Ct. App. 1971), cited above in note 42, *supra*.

76. *Id.* at 707.
77. *Id.* at 708.
78. This rule is found in a publication from the Law Society of Upper Canada, titled "Residential Real Estate Transaction Practice Guidelines." It is located online at http://rc.lsuc.on.ca/jsp/residential RealEstate/.
79. The Guidelines state that "lawyers should follow [the Guidelines] when acting for clients in residential real estate transactions." Under the heading of Title Insurance, the Guidelines state: "The lawyer should review the draft title insurance policy or binder/commitment, to ensure the following: * * * Is the legal description correct? Since only the lands described are insured, there may be off-site lands that should be included in the description, so that easements or rights-of-way located on other properties, but benefitting the subject property, and encroachments from the subject property onto other lands, will be covered by the insurance." Canada's Rule 2.01, a rule similar to our Rule 1.1, also requires the lawyer to be competent.
80. 359 S.C. 540, 598 S.E.2d 272 (2004).
81. 363 S.C. 516, 611 S.E.2d 914 (2005).
82. 149 Wash. 2d 793, 72 P.3d 1067 (2003).
83. 37 Colo. App. 214, 547 P.2d 257 (Colo. App. 1975).
84. 49 P.3d 346 (Colo. 2002).
85. 43 Ill. 2d 54, 250 N.E.2d 656 (1969).
86. 833 S.W.2d 460 (Mo. App. E.D. 1992).
87. *Id.* at 461.
88. 820 S.W.2d 595 (Mo. App. W.D. 1991).
89. 768 S.W.2d 233 (Mo. App. W.D. 1989).
90. *Id.* at 236.
91. Suggested by Roy Worthington. *See* note 36, *supra*.