

Chapter 35: Housing

I. Federal Case Law and Statutes

The Homestead Act of 1862 (1862) 12 Stat. 392 (1862), repealed by Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1785

Summary of Facts and Issues: The federal Homestead Act of 1862 gave any person over the age of 21 or a head of household, who was or intended to be a citizen, the opportunity to claim ownership of 100 acres of land. To own the land, the homesteader had to live there for five years and make improvements to the property.

Impact of the Law: The Act was a federal land policy that promised landownership to its citizens and was central to westward colonization over and against sovereign territorial claims of indigenous peoples. Since African Americans were not granted citizenship status until 1868, most homesteaders were white.¹

Civil Rights Act of 1866 (CRA) (1866) 42 U.S.C. § 1981

Summary of Facts and Issues: The Civil Rights Act of 1866 guaranteed all citizens, regardless of race, the same rights to purchase, hold, and convey real property as was enjoyed by whites, but it did not prevent private agreements prohibiting African Americans and other non-white groups from owning homes in particular areas.

Impact of the Law: While the Act was one of the first attempts at remedying the grossly inferior legal and social status of African Americans during the Reconstruction period after the Civil War, the Act did not dismantle the system of residential racial segregation following the Civil War. The gaps in the Act's coverage meant that through private agreements and other actions, neighborhoods would remain segregated for several generations. Even after segregation was declared unconstitutional, neighborhoods, and consequently schools and other public facilities had not been integrated, and a disproportionate amount of public resources had flowed into white neighborhoods, cementing segregation in fact even where it did not exist in law.

Jones v. Jones (1914) 234 U.S. 615

Summary of Facts and Issues: When a freed African American man died without a will in Tennessee, his widow claimed she inherited his property pursuant to a state law.² The deceased's brother challenged this, contending the land passed to the deceased's siblings (who were also born enslaved), as his heirs at law.³ The Supreme Court relied on pre-Civil War precedents to hold that, "slaves [] were not within the meaning and effect of the statutes of

¹ CITE where discussed in first 13 chapters. If necessary, can cite to https://www.pbs.org/race/000_About/002_04-background-03-02.htm.

² *Jones v. Jones* (1914) 234 U.S. 615, 616.

³ *Ibid.*

descent, and no descent from or through a slave was possible except as provided by some special statute.”⁴ Since Tennessee had only conferred the right to inherit upon children of formerly enslaved persons, and not collateral descendants (siblings), the Supreme Court held that siblings were not heirs at law capable of inheriting real estate, and that the Fourteenth Amendment did not prohibit a state from denying inheritance to formerly enslaved persons.⁵

Impact of the Ruling: Even though Mr. Jones acquired the land after he had been emancipated, the U.S. Supreme Court held that statute did not violate the Equal Protection Clause, despite limiting the rights of his formerly-enslaved collateral descendants to inherit. This case made it more difficult for African American people to acquire and retain wealth through property ownership.

Subsequent History: Although in 1919 Tennessee amended the statute to allow inheritance for collateral descendants of enslaved persons,⁶ this case is still cited in a secondary source about inheritance for the proposition that the right to inherit property can be abridged by the legislature.⁷

***Buchanan v. Warley* (1917) 245 U.S. 60**

Summary of Facts and Issues: A Louisville, Kentucky ordinance limited the use of a residence by persons of one race if the majority of residences on the block were already inhabited by persons of another race—with the aim of enforcing residential segregation.⁸ The effect was to limit the ability of African American people to buy houses on majority-white residential blocks, and vice-versa.⁹ When an African American purchaser no longer wanted to complete a house sale because, due to the ordinance, they would not be able to occupy the house due to their race, the seller brought suit to force the sale.¹⁰

Impact of the Ruling: The U.S. Supreme Court held the ordinance violated the Fourteenth Amendment because it violated the property rights of the seller to dispose of their property as they chose based on the race of the purchaser.¹¹ While the Court reiterated that some mandatory segregation of the races was permitted under the Fourteenth Amendment, as interpreted by *Plessy v. Ferguson*, the Court held that government impositions on the right to own, use, and dispose of property violated the protections in the Fourteenth Amendment, in part because it impacted the property rights of *white* sellers.¹²

⁴ *Id.* at 617.

⁵ *Id.* at 617-619.

⁶ T.C.A. Section 310-303 (1919).

⁷ See 79 Am. Jur. 2d Wills § 144.

⁸ *Buchanan v. Warley* (1917) 245 U.S. 60, 70-71.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Id.* at 81-82.

¹² *Id.* at 79-80.

***Corrigan v. Buckley* (1926) 271 U.S. 323**

Summary of Facts and Issues: A group of property owners in Washington, D.C., entered into a contract (called a “racially restrictive covenant”) agreeing not to sell their property to African Americans.¹³ Later, one of the property owners sold their land to an African American, and another property owner sued to block the sale.¹⁴ The Supreme Court held that because restrictive covenants arose from agreements between private individuals, rather than state actors, the Court did not have jurisdiction, since the Fifth and Fourteenth Amendments only protected individuals from actions of the government.¹⁵ The Court rejected an argument that the judicial enforcement of such covenants was state action because the issue had not been raised below.¹⁶ This case is different from the above-discussed *Buchanan v. Warley*, where the Court was reviewing a municipality’s ordinance – government action – prohibiting the sale of land based on the race of the purchaser.¹⁷

Impact of the Ruling: Private individuals were allowed to enter into contracts limiting the disposition of their property using racially restrictive covenants, allowing for individuals to practice racial discrimination without violating the Fifth, Thirteenth, or Fourteenth Amendments. Approval of racially restrictive covenants – and their enforcement in court – allowed for continued and increased racial segregation and the severe limitation of property rights and wealth for African Americans.¹⁸

***Hurd v. Hodge* (1948) 334 U.S. 24**

Summary of Facts and Issues: White property owners of a group of houses in Washington D.C. subject to a racially restrictive covenant sued to reverse the sale of properties within the covenant to African Americans.¹⁹ The Supreme Court held that *court enforcement* of such racially restrictive covenants violated section 1 of the Civil Rights Act of 1866, codified at 8 U.S.C. § 42, which provided that all citizens have the same right to sell property regardless of race.²⁰ The Court did not overrule *Corrigan v. Buckley*, holding that such private restrictive agreements are not invalidated as long as they are achieved through voluntary adherence, but held that judicial enforcement was government action that violated federal law and public policy.²¹ The Court held it need not reach whether the action also violated the Fifth Amendment since it could resolve the case on statutory grounds.²² Justice Frankfurter concurred, stating that court action enforcing the covenant would violate the Constitution.²³

¹³ *Corrigan v. Buckley* (1926) 271 U.S. 323, 327.

¹⁴ *Id.* at 327-28.

¹⁵ *Id.* at 330-31.

¹⁶ *Id.* at 331-32.

¹⁸ Chapter 5, Housing Segregation at pp 182-184 [discussing the harms from use of racially restrictive covenants].

¹⁹ *Hurd v. Hodge* (1948) 334 U.S. 24, 26-27.

²⁰ *Id.* at 34-36.

²¹ *Id.* at 28-29.

²² *Id.* at 30.

²³ *Id.* at 36.

Impact of the Ruling: The Court’s decision prohibited judicial enforcement of racially restrictive covenants in federal territories, including Washington D.C., but held the voluntary use of such covenants was acceptable. Additionally, the majority decided the case based on statutory rather than constitutional grounds, potentially allowing a future Congress to undermine the case with a repeal or amendment of the federal statute.

***Shelley v. Kraemer* (1948) 334 U.S. 1**

Summary of Facts and Issues: Certain landowners in St. Louis, Missouri entered into a racially restrictive covenant to prevent the sale of certain parcels of land to African Americans, and in 1945 brought suit to prevent the sale of a specific property to an African American owner.²⁴ The Court did not repudiate *Corrigan v. Buckley*’s holding that racially restrictive covenants, as agreements between private property owners, did not raise constitutional issues.²⁵ Still, the Court held that judicial enforcement of such agreements constituted state action, and prevented enforcement of the racially restrictive covenant under the Fourteenth Amendment’s Equal Protection Clause.²⁶

Impact of the Ruling: While the Court did not prohibit racially restrictive covenants as such, it expanded the view of state action covered by the Fourteenth Amendment to encompass judicial enforcement of such covenants in state courts, building on *Hurd v. Hodge*’s previous prohibition applicable to federal territories, making them no longer enforceable in court to prohibit sale of property to African Americans nationwide. The case did not, however, make any impact on the then-developing practice of redlining, which depended upon the granting of mortgages by the federal government rather than the practice of imposing racially restrictive covenants.

***Reitman v. Mulkey* (1967) 387 U.S. 369**

Summary of Facts and Issues: In 1964, California voters passed Proposition 14, which added article I, section 26 to the California Constitution, and prohibited the State from denying, limiting, or abridging, “directly or indirectly, the right of any person, who is willing or desires to sell, lease, or rent any part of his real property, to decline to sell, lease, or rent such property to such person or persons as he, in his absolute discretion, chooses.”²⁷ This in practice overturned state laws prohibiting racial discrimination in the sale and lease of residential housing, and the case arose out of two consolidated cases where persons refused to rent to or attempted to evict tenants due to their race.²⁸ The U.S. Supreme Court upheld the decision of the California Supreme Court finding section 26 unconstitutional because it involved the State in racial discrimination in the housing market.²⁹ Section 26 “was legislative action ‘which authorized private discrimination’ and made the State ‘at least a partner in the instant act of discrimination’”³⁰ While rejecting the notion that a state was required to have a statute prohibiting racial

²⁴ *Shelley v. Kraemer* (1948) 334 U.S. 1, 4-6. This is a consolidated opinion that also disposes of a similar case arising out of Michigan, *McGee v. Sipes*.

²⁵ *Shelley*, 334 U.S. at 8-9.

²⁶ *Id.* at 19-21.

²⁷ *Reitman v. Mulkey* (1967) 387 U.S. 369, 370-71.

²⁸ *Id.* at 372.

²⁹ *Id.* at 375.

³⁰ *Ibid.*

discrimination in the housing market, the Court held section 26 went beyond this and “constitutionalized the private right to discriminate,” in a way that significantly involved the State in private racial discrimination contrary to the Fourteenth Amendment.³¹ For a more in-depth discussion of Proposition 14 or the California Supreme Court case, see the discussion later in this Chapter, at page [REDACTED].

Impact of the Ruling: The Court expanded the notion of state action here to allow for the repudiation of an amendment that “constitutionalized” the private right to discriminate on racial grounds in housing.³² The case reinstated state fair housing laws, including the Unruh Act, and allowed their continued expansion in the State.

Subsequent History: The Supreme Court distinguished the holding of *Reitman* in *Schuette v. Coalition to Defend Affirmative Action, Integration, and Immigrant Rights*, which upheld the State of Michigan’s constitutional amendment prohibiting affirmative action.³³ The Court emphasized that the amendment in *Reitman* expressly authorized and constitutionalized the private right to discriminate, which significantly encouraged the involvement of the State in private racial discriminations.³⁴ In contrast, the Court held that a voter-approved constitutional amendment banning affirmative action did “did not address or prevent injury caused on account of race,” but rather allowed voters to “determine whether a policy of race-based preferences should be continued.”³⁵

Jones v. Alfred H. Mayer Co. (1968) 392 U.S. 409

Summary of Facts and Issues: African Americans filed a lawsuit after the respondents refused to sell them a home in Missouri due to their race.³⁶ Petitioners alleged the refusal violated 42 U.S.C. § 1982, which provides all citizens the same right “as is enjoyed by white citizens [] to inherit, purchase, lease, sell, hold, and convey real and personal property.”³⁷ The lower courts rejected the claim, holding the statute applied only to state action and did not reach private refusals to sell, but the Supreme Court reversed, holding that section 1982 “bars all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment.”³⁸ The Court held that Congress has the power under the Thirteenth Amendment to “rationally determine what are the badges and incidents of slavery, and the authority to translate that determination into effective legislation,” and protection of the right to purchase property clearly fell within this authority.³⁹

³¹ *Id.* at 376.

³² *Ibid.*

³³ *Schuette v. Coal. to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN), et al.* (2014) 572 U.S. 291.

³⁴ *Id.* at 303-04.

³⁵ *Id.* at 311.

³⁶ *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409, 412.

³⁷ *Ibid.*

³⁸ *Id.* at 413.

³⁹ *Id.* at 440-41.

Impact of the Ruling: The Court provided a broad view of the power of Congress to pass statutes under the purview of the Thirteenth Amendment directed at eliminating the “badges and incidents of slavery,” particularly as related to fundamental rights that are the essence of civil freedom, like purchasing property.⁴⁰ But the Court reiterated that the statute (and its decision) did not reach beyond racial discrimination, did not extend to advertising or other representations indicating discriminatory preferences, did not address provision of services or facilities in connection with the sale or rental of the dwelling, did not refer to discrimination in financing arrangements or brokerage services, and did not empower a federal administrative agency to assist or provide for intervention by the Attorney General.⁴¹ The federal Fair Housing Act of 1968, discussed below, prohibited several of the types of discrimination that were not specifically outlawed by section 1982.

***Village of Arlington Heights v. Metropolitan Housing Development Corp.* (1977) 429 U.S. 252**

Summary of Facts and Issues: Housing developer applied to Village for the rezoning of a 15-acre parcel from single-family to multiple-family zoning, in order to build townhouse units for low- and moderate-income tenants.⁴² The Village refused, and the developer sued, alleging the denial was racially discriminatory and that it violated the Fourteenth Amendment and the Fair Housing Act of 1968.⁴³ The Supreme Court upheld the denial, holding that showing a state action had a racially discriminatory impact was not enough to demonstrate a violation of the Fourteenth Amendment.⁴⁴ Instead, proof of racially discriminatory intent or purpose as a motivating factor for the decision is required to show a violation of the Equal Protection Clause, and it did not find such proof in this case.⁴⁵

Impact of the Ruling: The Court set out several factors for consideration in determining whether there is proof that a racially discriminatory purpose was a motivating factor for a challenged action, including: extreme disproportionate impact, the absence of justification, historical background of the action, departure from normal procedural standards, and departures from typically applied substantive rules.⁴⁶ The Court’s standard here foreclosed equal protection claims based only on discriminatory impact, and set a high standard of proof for any claims to demonstrate the requisite discriminatory intent.

***Gladstone Realtors v. Village of Bellwood* (1978) 441 U.S. 91**

Summary of Facts and Issues: The Village of Bellwood and several white and African American residents thereof sued two real estate brokerage firms, alleging the brokers were engaging in racial “steering,” directing prospective home buyers interested in equivalent properties to different areas according to their race, in violation of the Fair Housing Act of 1968.⁴⁷ Village of Bellwood alleged it had standing to sue because it has “been injured by having

⁴⁰ *Ibid.*

⁴¹ *Id.* at 413-14.

⁴² *Vill. of Arlington Heights v. Metropolitan Hous. Dev. Corp.* (1977) 429 U.S. 252, 254.

⁴³ *Ibid.*

⁴⁴ *Id.* at 264-66, 270-71.

⁴⁵ *Id.* at 266.

⁴⁶ *Id.* at 265-67.

⁴⁷ *Gladstone Realtors v. Village of Bellwood* (1979) 441 U.S. 91, 93-94.

[its] housing market . . . wrongfully and illegally manipulated to the economic and social detriment of the citizens of [the] village,” and that the individual respondents “have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society.”⁴⁸

Impact of the Ruling: The Supreme Court held that standing under the Fair Housing Act is as broad as allowed under Article III of the constitution, and was broad enough to encompass the plaintiffs here and the injuries alleged.⁴⁹ This allowed municipalities and African Americans to challenge discriminatory real estate practices undertaken by private parties.

***City of Memphis v. Greene* (1981) 451 U.S. 100**

Summary of Facts and Issues: Pursuant to the request of white residents, the City of Memphis closed the northern end of a street in a predominantly white neighborhood, thereby restricting access to and through the neighborhood by those living immediately to the north, in a predominantly African American neighborhood.⁵⁰ African American residents of the northern neighborhood sued, alleging the closure denied them of benefits of property given to white residents in violation of 42 U.S. C. § 1982 and the Thirteenth and Fourteenth Amendments.⁵¹

Impact of the Ruling: The Court first determined there was no evidence of discriminatory intent in the closure decision, and thus, plaintiffs could not sustain a Fourteenth Amendment Equal Protection Claim.⁵² The Court then held that the closure did not show African American property owners would be refused a similar accommodation, that the value of African American property would be depreciated, nor that it restricted access to African American homes, and thus plaintiffs did not demonstrate an injury within the reach of 42 U.S.C. § 1982.⁵³ Finally, the Court held plaintiffs could not sustain a claim under the Thirteenth Amendment because the inconvenience of needing to use a different street, though it fell mainly on African American residents, was a function of “where they live and where they regularly drive—not a function of their race,” and despite the potential disparate impact on a segregated neighborhood, this type of municipal action did not rise to the level of a badge or incident of slavery that would violate the Thirteenth Amendment.⁵⁴

II. State Case Law and Statutes

***Williams v. Young* (1861) 17 Cal. 403**

Summary of Facts and Issues: Mrs. Young, a “Mulatto,” or mixed-race, person and widow of Mr. Young, sought to defend against her ejection from the Williams’ property by using state

⁴⁸ *Id.* at 95.

⁴⁹ *Id.* at 109, 111, 115.

⁵⁰ *City of Memphis v. Greene* (1981) 451 U.S. 100, 102-03.

⁵¹ *Id.* at 105-06.

⁵² *Id.* at 119.

⁵³ *Id.* at 123-24.

⁵⁴ *Id.* at 128.

homesteading as a defense. Prior to Mr. Young's death, the Youngs purchased the property from Mr. Williams but had not finished paying the entire price. After Mr. Williams passed, his wife tried to eject Mrs. Young from the property, claiming that the homestead defense did not apply to Mulattos, and that she had a sheriff's deed to and a lien on the property.

Impact of the Ruling: The Court held that since Ms. Young did not abandon the homestead, she could not be ejected from the home since the lien on the property was not enforceable, the title and right of possession remaining with Ms. Young until the sale of the property settled. In this case, the California Supreme Court held that the Homestead Act applied to African Americans and Mulattos.

Article I, section 17 of the California Constitution of 1879 (1879) Cal. Const. of 1879 art. I § 17

Summary of Facts and Issues: With regard to housing and property ownership, California's second, and current, Constitution declares: "Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this state, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native-born citizens."

Impact of the Law: In 1879, citizenship expanded to include people of African descent who were deemed eligible to become citizens of the United States. However, both white and non-white foreigners who could not naturalize and/or establish state residency did not have property rights.

Unruh Civil Rights Act (1959) Civil Code section 51

Summary of Facts and Issues: The Unruh Civil Rights Act declares that all persons in California are free and equal, and no matter their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language or immigration status, all are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Impact of the Law: As a result of the Unruh Civil Rights Act enacted in 1959, California business establishments, including those providing housing and public accommodations, could no longer engage in unlawful discrimination by refusing to lease or rent to African Americans. This Act has been interpreted by the courts to prohibit arbitrary discrimination by business establishments. Further, by enacting remedial provisions to the Act through Civil Code section 52, including allowing for actual and punitive damages in cases of housing discrimination violations, the Legislature created a true enforcement mechanism for individuals to seek redress for discrimination.

Seaborn Burks v. Poppy Construction Company (1962) 57 Cal.2d 463

Summary of Facts and Issues: An African American couple brought an action for damages and injunctive relief alleging discrimination with respect to the sale of a house in a tract. The first cause of action was based on the Unruh Civil Rights Act (Civ. Code, §§ 51, 52), which prohibits discrimination in "business establishments," specifically housing, and the second was based on the Hawkins Act (former Health Saf. Code, §§ 35700-35741) which relates to discrimination in "publicly assisted housing accommodations."

Impact of the Ruling: This case represents the first California Supreme Court case interpreting the Unruh Civil Rights Act. The Court held that the defendant building developers, who were responsible for sales of publicly assisted houses on a tract of land, were in violation of both the Unruh and Hawkins Acts.

Lee v. O'Hara (1962) 57 Cal.2d 476

Summary of Facts and Issues: Defendant real estate brokers refused to rent the premises to plaintiff solely because of his race. The real estate brokers argued that because they were acting as agents on behalf of property owners, they required consent by all parties to rent to plaintiff, who was African American. Since such consent was not proven, they could not be accused of denying services to plaintiff on the basis of race.

Impact of the Ruling: The court held that the Unruh Civil Rights Act applies to real estate brokers when acting in their professional capacity. As such, they were prohibited from racially discriminating against protected classes in real estate transactions, even if purportedly acting pursuant to the instructions of their clients.

California Fair Housing Act (The Rumford Fair Housing Act) (1963) Cal. Gov. Code, § 12900 (formerly Health & Safety Code § 35700 et seq.)

Summary of Facts and Issues: The California Fair Employment and Housing Act, part of which was previously known as the Rumford Fair Housing Act, extended housing discrimination prohibitions to housing generally and for the first time afforded an administrative remedy for housing discrimination. Specifically, the Act prohibited racial discrimination in the sale or rental of any private dwelling containing more than four units, enforceable by a specially designated state commission.

Impact of the Law: The California Fair Employment and Housing Act along with the Unruh Civil Rights Act, represented the move for fair housing legislation at the state and local levels across the nation. These state civil rights laws predated the federal civil rights laws of the 1960s that prohibited discrimination in employment and housing.

Proposition 14 (1964) Formerly Article I, Section 26 of the California Constitution

Summary of Facts and Issues: This proposition repealed the Rumford Fair Housing Act by adding a state constitutional right for persons to refuse to sell, lease, or rent residential properties to other persons on the basis of race. The ballot referendum was designed to repeal state and local housing discrimination laws. It passed in November 1964 with over 65 percent of the vote. As such, housing discrimination on the basis of race became constitutionally protected.

Impact of the Proposition: After its passage, the right to discriminate in housing on the basis of race was enshrined in the California constitution and those practicing racial discrimination could invoke express constitutional authority with respect to their residential property. Proposition 14 was overturned by the California Supreme Court (discussed immediately below) in *Mulkey v. Reitman* (1966) 64 Cal.2d 529, a decision which was upheld by the United States Supreme Court (discussed above, at p. [REDACTED]).

Mulkey v. Reitman (1966) 64 Cal.2d 529

Summary of Facts and Issues: The defendant owners refused to rent any of their unoccupied and available apartments to an African American couple or any other African Americans, claiming a constitutional right to do so pursuant to Proposition 14, discussed above.

Impact of the Ruling: Finding a violation of equal protection under the Fourteenth Amendment to the United States Constitution, the California Supreme Court overturned Proposition 14, striking down the California constitutional provision that prohibited the state from restricting a property owner or landlord's right to refuse to sell or rent to qualified citizens on the basis of race.⁵⁵

Stearns v. Fair Employment Practice Com (1971) 6 Cal.3d 205

Summary of Facts and Issues: Ernest Cooper, an African American man, attempted to rent an apartment from Val Stearns. Mr. Stearns required him to submit to a credit check before Mr. Cooper could rent the apartment. Three hours later, Mr. Stearns rented the same apartment to a white person, soliciting an immediate deposit without requiring a credit check, offering the white person occupancy as soon as the apartment could be cleaned. The Fair Employment Practices

⁵⁵ See also *Grogan v. Meyer* (1966) 64 Cal.2d 875, where plaintiff, an African American, sought to rent an apartment in a four-unit apartment building, but was denied due to the landlord's general policy of denying African Americans the opportunity to occupy property owned or managed by him. Citing *Mulkey v. Reitman*, the California Supreme Court reversed the judgment by the San Francisco Municipal Court, concluding that Proposition 14 infringes upon the equal protection clause of the Fourteenth Amendment. See also *Prendergast v. Snyder* (1966) 64 Cal.2d 877, where plaintiff Ms. Prendergast, a white woman, rented an apartment in defendant's seven-unit dwelling. Thereafter, she married Mr. Prendergast, an African American, and he moved into his wife's apartment. Defendant then purported to terminate their tenancy claiming that it was his claimed right "(1) to select with whom he would associate with in the continuing relationship of landlord and tenant and in the relationship of neighbors under the same roof, and (2) to acquire, use, enjoy and dispose of his property in any manner he may choose which is not prohibited by statute, ordinance or other legislation." The California Supreme Court held that the defendant's actions were illegal, citing *Mulkey v. Reitman*. See also *Hill v. Miller* (1966) 64 Cal.2d 757.

Commission (FEPC) found that Mr. Stearns discriminated against Mr. Cooper and Mr. Stearns challenged the FEPC's decision.

Impact of the Ruling: The California Supreme Court affirmed the lower court's ruling that the landlord discriminated by erecting a bureaucratic barrier to Mr. Cooper's occupancy of the apartment that had not been similarly instituted for the white man. Since such a procedure could be used to completely discourage or delay an African American applicant until an eligible white applicant could be found to fill the vacancy, the Court concluded that Mr. Stearn's behavior constituted housing discrimination.

Walnut Creek Manor v. Fair Employment & Housing Com. (1991) 54 Cal.3d 245

Summary of Facts and Issues: Robert Cannon, an unmarried African American man, filed a housing discrimination complaint with the California Department of Fair Employment and Housing against the Walnut Creek Manor, on the grounds of discrimination on the basis of his race and marital status. Mr. Cannon was placed on a waiting list for the 418-unit apartment complex, and was told to check back every six months as the waiting period was one to one and a half years. More than two years later, it was shown that the rental manager made no attempt to offer Mr. Cannon available apartments, but did call other non-African American applicants who applied after him. It was additionally shown that after the rental manager met Mr. Cannon, she designated him as an undesirable tenant, but after the Department commenced its investigation, she altered the code rating to desirable. Other acts of discrimination were also considered by the court, including the rental manager renting 32 apartments to non-African American applicants after Mr. Cannon's complaint. After the California Fair Employment and Housing Commission – which at the time administratively adjudicated housing discrimination claims – determined Walnut Creek Manor violated California fair housing laws, the court of appeal affirmed, authorizing the commission to award unlimited compensatory damages for housing discrimination, but found that the commission's award of general compensatory for emotional distress violated the judicial powers clause.

Impact of the Ruling: The California Supreme Court held that the rental manager's refusal to rent to Mr. Cannon because of his race constituted one violation of the Fair Employment and Housing Act (FEHA). For the purpose of authorized remedies, the court determined that multiple acts of discrimination against the same complainant on the same unlawful basis establishes only one unlawful practice. As such, the FEHA authorized only one act of punitive damages award for this type of discriminatory conduct.