As real estate lawyers, we sometimes find ourselves using legal principles without really understanding what we are doing. The Doctrine of After-Acquired Title (hereafter Doctrine) is an example. This presentation seeks to answer the following questions:

1. **What is the Doctrine?**
2. **What is the source of law of the Doctrine?**
3. **How the Doctrine is applied?**

### I. The Doctrine defined.

The most common formulation of the Doctrine can be expressed as follows:

1. Smith owns a ½ interest in Black Acre.
2. Smith conveys all of Black Acre to Jones by warranty deed.
3. Smith subsequently receives the other ½ interest.
4. Smith’s subsequently received ½ interest in Black Acre is considered to have passed to Jones immediately upon receiving it.
5. Smith is estopped from claiming an interest in Black Acre.

Patton and Palomar state:

If, at the time of a conveyance, a grantor does not own all or part of the interest that the grantor purports to convey, but the grantor later acquires the interest that was the subject of the earlier conveyance, the grantor may be estopped from denying the claim of the grantee to the after-acquired title. Thus, if grantor purports to convey fee simple title in Black Acre to a grantee prior to having acquired that title, but later acquires fee simple title, the grantor then may be estopped from asserting a claim of title superior to grantee's claim to Black Acre. It is said that the title inures immediately for the benefit of the prior grantee. As
between grantor and grantee, it is as if their conveyance had occurred after the grantor had acquired title to the conveyed land.\(^1\)

The goal of this material is to summarize the Doctrine in Iowa.

An interesting thought experiment is to imagine the world without the Doctrine. We could easily have a legal system in which a conveyance where only a partial interest is conveyed would be necessarily remedied by a subsequent conveyance once the grantor received it. Thus, Jones would need to pursue Smith for the missing \(\frac{1}{2}\) interest. Smith might decide that she doesn’t want to convey the remaining \(\frac{1}{2}\) interest to Jones. The Doctrine serves to estop Smith from asserting any interest superior to that of Jones. When Smith receives the balance of the bundle of sticks, they immediate inure (\textit{i.e.}, transfer) to Jones. This is actually quite fantastic – almost “spooky” – if you consider what is happening.\(^2\)

II. The source of the Doctrine: Iowa Code § 557.4.

Iowa Code Chapter 557 (Real Property in General) is important for real estate lawyers although you may not refer to it often. For example, § 557.3 provides “Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used.” Thus, when a lender acquires a property through a sheriff’s sale after a foreclosure, they convey all of the interest, including the judgment lien stick, in the conveyance. A separate release is not needed because that stick is presumed to be conveyed. Note that § 557.15(2) establishes that a conveyance to a married couple is presumed to be a joint tenancy and subsection (3), that “[a]n order of annulment, dissolution, or separate maintenance entered pursuant to section 598.21 is a muniment of title to the real property described, and severs a joint


\footnote{2}{In 1947, Albert Einstein said, “I cannot seriously believe in quantum theory because . . . physics should represent a reality in time and space, free from spooky action at a distance.” Bruce Rosenblum & Fred Kuttner, Quantum Enigma: Physics Encounters Consciousness 3 (Oxford University Press) (2d ed. 2011) (an excellent introduction to quantum physics).}

Doctrine of After-Acquired Title, p. 2
tenancy with rights of survivorship and creates a tenancy in common in equal shares, unless otherwise provided in the order.” Very important concepts for title examiners.

The Doctrine of After-Acquired Title has been codified at Iowa Code § 557.4:

Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee. But if the spouse of such grantor joins in such conveyance for the purpose of relinquishing dower or homestead only, and subsequently acquires an interest therein as above defined, it shall not be held to inure to the benefit of the grantee.

The Doctrine has long been codified in Iowa. Section 2210 of the Iowa Code (1860) states: “Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee.”

Two terms to review as we approach this. First, “inure” means “to take effect; to come into use <the settlement proceeds must inure to the benefit of the widow and children>.” Thus, the after-acquired title takes effect or comes into the use of the grantee. Second, the case law relies heavily on the concept of estoppel – “A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true.” For example, “If, at the time of a conveyance, a grantor does not own all or part of the interest that the grantor purports to convey, but the grantor later acquires the interest that was the subject of the earlier conveyance, the grantor may be estopped from denying the claim of the grantee to the after-acquired title.” “The doctrine of after-acquired property is often referred to as a form of estoppel by deed.”

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4 Id. at 589.
5 § 219. After-acquired title, 1 Patton and Palomar on Land Titles § 219 (3d ed.).
6 Id. at n.1.

Doctrine of After-Acquired Title, p. 3
Note that the deed in question must otherwise be valid. A defective deed is not remedied by the application of the Doctrine.\(^7\)

Also, observe that the statute does not limit the type of deed. Rather than presume that the legislature was intentionally broad in using “deed” and was capable of limiting the scope of the Doctrine to only warranty deeds, the Iowa Supreme Court has wrestled with whether the Doctrine should equally apply to quit claim deeds. One can speculate how a Court more informed by textualism would analyze these cases.

III. How the Doctrine is applied.

A. Deeds without a warranty of title.

A deed need not contain a warranty of title in order to satisfy the Doctrine. Bisby v. Walker, 169 N.W. 467 (Iowa 1918). In Bisby, a mortgagor gave mortgages that “contained a covenant that she was lawfully seised of the premises, that they were free from encumbrance, that she had good right and lawful authority to sell and convey the same; that is the covenants ordinarily to be found in a warranty deed.”\(^8\) However, the mortgagor only had a contingent remainder interest. The Court acknowledged a split of authorities on the application of the Doctrine in such situations, but held that the grantor or mortgagor is estopped from denying that “such an estate was passed to his vendee [or mortgagee], although the deed contains no covenant of warranty at all.”\(^9\) The opinion goes on to state that “still the operation and effect of the instrument will be binding upon the grantor and those claiming under him, in respect to the estate thus described, as if a formal covenant to that effect had been inserted; at least, so far as to estop them from ever afterwards denying that he was seised of the particular estate at the time of the conveyance.”\(^10\)

Bisby is consistent with Pring v. Swarm, 157 N.W. 734 (Iowa 1916), decided two years before. Pring involves a quit claim deed where the grantor had only a 2/3 interest but she believed at the time she had a fee simple interest. The issue was whether the Doctrine would apply in the instance of a quit claim deed. The Court held:

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\(^7\) 23 AM. JUR. 2D Deeds § 280 (2021).

\(^8\) Bisby v. Walker, 169 N.W. 467, 468 (Iowa 1918).

\(^9\) Id. at 469 (citations omitted).

\(^10\) Id. (citations omitted) (emphasis added).

Doctrine of After-Acquired Title, p. 4
It is true that Mrs. Pring agreed to convey by a good and sufficient quitclaim deed, and as a general rule such sale and conveyance will not operate to pass a subsequently acquired title of the grantor or to make him liable to the grantee for any loss arising to the grantee because of an outstanding title in a third person. But it is also held that this principle is applicable only to a quitclaim deed in the strict and proper sense of that species of conveyance, and that, if the deed bears upon its face evidence that the grantor intended to convey and the grantee expected to become invested with an estate of a particular description of quality, and that the bargain had proceeded upon such footing between the parties, then, although it may not contain covenants of title, still the legal operation and effect of the instrument will be as binding upon the grantor and those claiming under him with respect to the estate thus described as if a formal covenant to that effect had been inserted; at least so far as to estop them from ever afterwards denying that he was seised of the particular estate at the time of the conveyances.11

Thus, Iowa does not have a per se bar against quit claim deeds or special warranty deeds being given effect by the Doctrine.12 It is a fact question. This position is consistent with C.J.S., which notes: “The general rule is that a quitclaim deed will not estop the grantor to set up a title subsequently acquired by the grantor, and that, under such a deed, a title subsequently acquired by the grantor will not inure to the benefit of the grantee or the grantee's successors.” However:

The rule applies where the deed is in the usual form of a quitclaim deed and does not contain any special recitals, provisions, or covenants which may serve to pass an after-acquired title. It applies only to a quitclaim deed in the strict and proper sense of that species of conveyance and, notwithstanding that a deed is in the form of, or designated as, a quitclaim deed, it may estop the grantor to set up a title subsequently acquired by him or her. Therefore, the grantor is estopped to assert a subsequently acquired title where the deed discloses an intention to convey more than the grantor's present interest or estate, as where it discloses an intention to convey the land or property itself rather than merely the grantor's right, title, or interest therein, or where it shows an intention that a title or interest subsequently acquired by the grantor shall pass thereunder. If the deed bears on its face evidence that the grantor intended to convey, and the grantee expected to

11 Pring v. Swarm, 157 N.W. 734, 736–37 (Iowa 1916) (emphasis added) (citations omitted). See Rogers v. Hussey, 36 Iowa 664, 667-68 (Iowa 1873) (“On the 29th of September, 1862, B. F. Allen conveyed said property to Warren Hussey. This deed, though a quit-claim, vested in Hussey the interest of Allen, which we have already seen was an indefeasible estate, and inured immediately to the benefit of Stewart, Hussey's grantee.”) Thank you to our friend David Hanson for pointing out Rogers.

12 See 23 AM. JUR. 2D Deeds § 284 (2021) (noting a split in the courts as to how special warranty deeds are treated as to after-acquired title).

Doctrine of After-Acquired Title, p. 5
become invested with, an estate of a particular description or quality, and that the bargain had proceeded on such footing between the parties, it will estop the grantor to assert an after-acquired title which is within the estate purported to be conveyed.\textsuperscript{13}

We are now able to analyze the post from August 13, 2018 on the ISBA Real Estate Listserv from our friend Mike Gabor:

1. Deutsche Bank takes title with sheriff’s deed.
2. Deutsche Bank conveys by special warranty deed to FNMA.
3. Deutsche Bank (not in title) conveys by special warranty deed to new buyers (although FNMA arguably still in title). More than 10 years ago.
4. FNMA conveys by quit claim deed to Deutsche Bank.

Did/does new Buyer have good title at the time of this series of transfers?

The fact that Deutsche Bank conveyed by special warranty deed rather than a warranty deed is not dispositive. Based on \textit{Bisby} and \textit{Pring}, we would need to evaluate the deed from Deutsche Bank to the new buyers to determine whether there were sufficient covenants to qualify under the Doctrine. As a side note, the fact that FNMA used a quit claim deed is not a problem because it had fee simple title at that point.

\textbf{B. Where the grantor’s after-acquired title comes from the grantee, the Doctrine does not apply.}

In \textit{Sorenson v. Wright}, 268 N.W.2d 203 (Iowa 1978), a grantee conveyed to grantor an undivided 1/3 interest in 120 acres of Woodbury County farm land where the grantor only had a 1/9 interest to grantee.

The doctrine rests on the premise that when a deed recites or affirms that the grantor is seized of a particular estate which the deed purports to convey, the grantor will thereafter be estopped to deny that such an estate passed to his grantee. Therefore, if he subsequently acquires the title which he previously purported to convey, it immediately inures to the benefit of his grantee. He cannot be heard to say he did not have that title at the time of his conveyance.

\begin{itemize}
  \item \textsuperscript{13} 31 C.J.S \textit{Estoppel and Waiver} § 28 (2021); 23 AM. JUR. 2D \textit{Deeds} § 284 (2021) (The Doctrine of After-Acquired Title and Quit Claim Deeds).
\end{itemize}
This principle, both at common law and under statutes, is not without exception. *One exception exists when the after-acquired interest comes from the earlier grantee. The reason for this exception is that no basis for estoppel is present in that situation.* It is not inconsistent for the original grantor to accept from the grantee the same interest he earlier purported to convey. His acceptance does not constitute a denial of the title he conveyed to the grantee.

The exception is stated in 4 Tiffany, Real Property § 1233 at 1115-16 (Third Ed.1975), as follows:

> The doctrine that a grantor is estopped to assert an after-acquired title applies only when such assertion would involve a denial that the conveyance passed the interest or estate which it purported to pass. Consequently the grantor may freely assert a title subsequently acquired by him from the grantee either by voluntary conveyance, judicial or execution sale, adverse possession, tax sale, or otherwise. *In such a case the grantor asserts, not that the conveyance failed to pass the interest which it purported to pass, but merely that, after such interests had, by the conveyance, become vested in the grantee, it was divested out of him and vested in the grantor.*

Another way of restating this is that the defect in the conveyance from the grantor is not remedied by a subsequent conveyance from the grantee to the grantor: giving what you do not have does not satisfy § 557.4.

**C. Deeds held in escrow.**

How do we think about deeds held in escrow where there are subsequent conveyances between the grantor and grantee and then back to grantor? This addressed in *In re Clary’s Estate*, 155 N.W. 282 (Iowa 1915).

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14 *Sorenson v. Wright*, 268 N.W.2d 203, 205 (Iowa 1978) (emphasis added). See *Nicodemus v. Young*, 57 N.W. 906 (Iowa 1894) (holding that where a grantor gave a defective deed to grantee, but subsequently received title, the title inures to the grantee). *See also* 23 AM. JUR. 2D Deeds § 280 (2021) (“Generally, if the grantor subsequently acquires a title, which the grantor has purported to convey, *from other than the grantee or one claiming under or deriving title from the grantee*, it makes no difference, in respect to the application of the after-acquired title rule, how the grantor acquires the belated title, whether through enforcement of a mortgage, enforcement of a vendor's lien, by purchase on foreclosure of a tax lien, or on an execution sale to satisfy a judgment.”) (emphasis added).

Doctrine of After-Acquired Title, p. 7
The case involved the following three deeds for a lot in Waverly:

1) On February 9, 1907, Mary Clary executed a warranty deed, whereby she conveyed the real estate in question to Emma Clary McCoy; that said deed was left in escrow with one Hazlett, to be delivered by him after the death of Mary Clary, . . .

2) On February 26, 1907, Mary Clary executed and delivered a warranty deed to Emma Clary McCoy and her husband for the same real estate, and the same was recorded May 8, 1907, and was so executed, delivered and recorded during the lifetime of Mary Clary.

3) On November 25, 1907, Emma Clary McCoy and M. J. McCoy, her husband, executed and delivered a warranty deed to Mary Clary, without reservations, of the above-described premises, which was duly filed on November 29, 1907, and in the lifetime of said Mary Clary.

4) [The deed held in escrow] was delivered to said Emma after the death of the grantor, and was filed for record April 22, 1909; that this deed contained a clause whereby the grantor reserved unto herself the possession, use, rents, and profits of the above-described real estate during the term of her natural life.\(^\text{15}\)

What was the effect of the subsequent deed from escrow? Was the real estate in Mary’s estate or was title in Emma and her husband? The Court held that under the Doctrine, any interest Emma had from the escrow deed would have inured to Mary by virtue of the November 25, 1907 deed. Thus, title vested in Mary’s estate.

D. Improvements on the property not owned by the grantor at the time of the conveyance.

In \textit{Schiltz v. Ferguson}, 231 N.W. 358 (Iowa 1930), the grantor conveyed what is now 2816 Beaver Ave., Des Moines (presently Christopher’s Restaurant) to the grantee by warranty deed without reservation for the building located on the property; however, the grantor did not own the building. (Oops!) The grantor subsequently acquired title to the building, which then inured to the grantee by virtue of the Doctrine.\(^\text{16}\)

\(^{15}\) \textit{In re Clary’s Estate}, 155 N.W. 282, 282 (Iowa 1915).

\(^{16}\) \textit{Schiltz v. Ferguson}, 231 N.W. 358, 358 (Iowa 1930).
E. Mortgages.

In *Whitley v. Johnson*, 113 N.W. 550 (Iowa 1907), a party gave a mortgage while having only a remainder interest. The question in this case was whether the Doctrine applies to mortgages such that the mortgage encumbered the entire property once the party with the life estate died. The Court held that Doctrine applies to mortgages in the same way it applies to deeds.\(^\text{17}\) The Court held: “And it may be conceded that in equity the rule will not be given application to defeat the proven contract agreement of the parties, either as made in express terms or to be fairly implied from the circumstances under which the instrument of conveyance was made.”\(^\text{18}\)

F. Rights of intervening judgment creditors.

A judgment lien attaches immediately upon a judgment debtor taking title to real estate.\(^\text{19}\) However, do judgment liens attach in the context of a Doctrine situation? A law review article from 1957 poses the questions as follows:

Fact situation number one: *A* has no title. *A* attempts to convey to *B*. Judgment is entered against *A*. *A* acquires title to the land purported to convey to *B*. Query: Does the after-acquired title pass to *B* free of, or subject to the judgment lien? If has been held that *B* gets the title free of the judgment lien.

Fact situation number two: *A* has no title. Judgment is rendered against *A*. *A* attempts to convey to *B*. Then *A* acquires title to the land in question. Query: Does the after-acquired title pass to *B* free of, or subject to, the judgment lien? There is a split of authority. Some cases have held that *B*’s title is subject to the judgment lien; others have held that *B*’s title is free of the judgment lien. The better view would seem to be that *B*’s title is subject to the judgment lien, for it does not seem that, by reason of the grantor’s lack of title at the time of the purported conveyance, the grantee should profit at the expense of the judgment creditors.\(^\text{20}\)

To begin to answer this question, one must first determine whether the Doctrine is now based on legal or equitable doctrines. Because the title flows to the grantee (*B*) by inurement, without the involvement of the Court, this would seem to allow the title to

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\(^{17}\) *Whitley v. Johnson*, 113 N.W. 550, 551-52 (Iowa 1907); *Bisby v. Walker*, 169 N.W. 467 (Iowa 1918).

\(^{18}\) Id. at 551.

\(^{19}\) Iowa Code § 624.23(1).


Doctrine of After-Acquired Title, p. 9
pass free of the judgment lien in the first scenario. There is no opportunity for the judgment lien to attach. This approaches a “spooky” quality.

As to the second scenario, the inurement once again appears to defeat the judgment lien. Specifically, when the real estate passes to the grantor (A), the interest immediately inures to the grantee (B). It is not a matter of weighing the equities of the parties, but of applying the principle of inurement.

A slight change to the second scenario. A has a ½ interest in the real estate and then a judgment is rendered against A. A conveys to B subject to the judgment lien against the ½ interest. No dispute. When A acquires the balance of the title, the after-acquired ½ interest inures to B free of the judgment lien. Again, not a question of fairness but one of principle.

The easier path is to know the “how” without understanding the “why” in the law. We are always busy. However, it is critical for lawyers to understand the “why.” The Doctrine of After-Acquired Title is unusual (spooky?) both for the way real estate interests are transferred by inurement and for the development of the case law in a manner that is not concerned with the “plain meaning” of the statute. A greater understanding of the Doctrine will increase its use in resolving title objections and surface issues for appellate courts that will enhance our understanding.