

HOUSING AND THE LAW: LESSON 5: HANDOUT 1**SHELLEY V. KRAEMER ET UX. MCGHEE ET UX. V. SIPES ET AL.¹**

Supreme Court of the United States

Decided on May 3, 1948

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Introduction and legal issue

These cases in Missouri and Michigan dealt with the issue of private agreements called **restrictive covenants** and whether state courts could **enforce** these. Restrictive covenants are property agreements or contracts that are meant to restrict specific actions of those buying and selling property. **Racial covenants** exclude people of color from owning or living on the property. The Supreme Court of the United States had to decide whether a state could enforce a private restrictive covenant or if this enforcement was **unconstitutional**. The Court had to examine whether the enforcement was **state action**, which is when the government's actions violate someone's constitutional rights. This requirement does not typically apply to private actors and their behavior.

Facts of the CaseMissouri

In 1911, a white neighborhood in St. Louis, Missouri, adopted a racially restrictive covenant that prevented African American and Asian American families from purchasing a house in the neighborhood. Thirty out of a total 39 property owners signed the agreement. This covenant blocked families from moving in based on their race:

“ . . . the said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that it shall be a condition all the time and whether recited and referred to as [*sic*] not in subsequent conveyances and shall attach to the land as a condition precedent to the sale of the same, that hereafter no part of said property or any portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race.”

In 1945, a Black couple named J.D. and Ethel Lee Shelley bought a house in the neighborhood through the help of their pastor, who secured the house using a white woman's name. The Shelleys had migrated from Mississippi a few years earlier and had saved their money to buy a home.²

¹ *et ux.* means “and wife” while *et al.* means “and others.” This case summary is interpreted based on <https://www.loc.gov/item/usrep334001/>.

² Abigail Perkiss, *Making Good Neighbors: Civil Rights, Liberalism, and Integration in Postwar* (Ithaca: Cornell University Press, 2017).

Louis Kraemer, who lived in the neighborhood, sued to enforce the covenant so that the Shelleys would not be able to live in the neighborhood. The **trial court** denied this request, finding that (a) the Shelleys were unaware of the covenant before buying a house and that (b) the agreement had never become final, because there were nine members of the neighborhood who had not signed. The state Supreme Court of Missouri reversed the decision and ruled that the agreement was effective and that enforcing it would not violate the constitutional rights of the Shelleys, since it dealt with a private agreement. The state of Missouri would allow the enforcement of the restrictive covenant.

Michigan

In 1934, Benjamin Sipes and his wife created a contract that prevented anyone who was not white from living on their property in Detroit, Michigan:

“This property shall not be used or occupied by any person or persons except those of the Caucasian race...”

In 1944, Orsel and Minnie McGhee, a Black couple, were able to get the title to the property and began living there. The next year, the Sipes family sued and the trial court ruled that the McGhees could not live on the property, forcing them to move within 90 days. The state Supreme Court of Michigan **affirmed**, or upheld, the covenant, claiming that the Fourteenth Amendment had not been violated because it was a private agreement.

Both state Supreme Courts (Missouri and Michigan) upheld the restrictive covenants. The Shelleys and the McGhees claimed that the restrictive covenants violated their rights guaranteed by the **Fourteenth Amendment**. The case was sent to the Supreme Court of the United States, which then had to determine whether the state could legally enforce the restrictive covenants.

Court Decision and Reasoning

The Supreme Court decided **unanimously** that the Fourteenth Amendment had been violated. However, it concluded that even though private agreements discriminated based on a person’s race, these covenants alone did not violate the Constitution as long as they were enforced on a voluntary basis by private individuals. This would not involve state action.

However, as soon as the state courts became involved, the rules changed:

“But here there was more. These are cases in which the purposes of the agreements were secured only by **judicial enforcement** by state courts of the restrictive terms of the agreements. The **respondents** urge that judicial enforcement of private agreements does not amount to state action...”

The Court claimed that when the state courts acted in their official capacities to enforce these private agreements, their actions became actions of the State, which violated the **state action doctrine**. The state Supreme Courts of Missouri and Michigan represented bodies of the government and their enforcement of the covenants was unconstitutional:

“...It has been recognized that the action of state courts in enforcing a substantive common law rule formulated by those courts, may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process...”

The Court concluded that the **petitioners**, the Shelleys and McGhees, would have been able to live on the properties had the state courts not intervened:

“We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes. The owners of the properties were willing sellers, and contracts of sale were accordingly consummated. It is clear that, but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint.”

Furthermore, these were not cases in which the state courts had simply refused to act, allowing private individuals to discriminate on their own terms. Instead, the states used governmental power to actively prevent the Shelleys and McGhees, based completely on race, from enjoying their equal rights under the law to own property:

“These are not cases, as has been suggested, in which the States have merely abstained from action, leaving private individuals free to impose such discriminations as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell. The difference between judicial enforcement and nonenforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.”

The Court ruled that the states had denied the Shelleys and McGhees **equal protection** of the laws. The Fourteenth Amendment specifically protected the rights to own property, regardless of race or color. Therefore, the action of the state courts was declared unconstitutional. In these cases, racially restrictive covenants enforced by the state could not stand.



Shelley Family. Source: The Copeland Collection, Retrieved from "Shelley v. Kraemer 70 Years Later by Talking with Family Who Changed History," St. Louis Public Radio, <https://news.stpublicradio.org/post/we-live-here-revisits-shelley-v-kraemer-70-years-later-talking-family-who-changed-history#stream/0>

Notes

1. This decision was considered a **landmark decision** because it was the first to strike down racially restrictive covenants. This decision would open opportunities for some Black families to move into previously all-white neighborhoods. However, this ruling did not end residential segregation. Many other tactics were used to exclude Black families and other people of color from renting or owning property. Resistance from white property owners continued.
2. The case's decision would also serve as **precedent** in later cases over private v. state action and would continue to influence the fight against Jim Crow. For example, in *Peterson v. City of Greenville* (1963), 10 Black students in South Carolina were arrested under a local trespass law for conducting a sit-in at a store's lunch counter. The Court referred to the *Shelley* case when it struck down the trespass conviction, saying that the local law had forced the store owner to act against the students in enforcing segregation in the restaurant.

3. Three judges excused themselves from participating in the decision because they owned properties that included restrictive covenants.