

PROPERTY

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CLASS 23(A): EASEMENTS

Class Outline

1. Easements as servitudes
2. Types of easements
3. Creation of easements
4. Misuse of easements

Approaches to the Law of Neighbors

- Tort (nuisance)
- Modification of property rights (easements)
- Contracts running with the land (covenants)
- Regulation (zoning)

Servitudes

- Easements
- Covenants

Easements

An easement carves out a particular use of a piece of property and transfers control over that use to someone other than owner of the property:

- Dominant tenement is the land/interest whose owner/holder is benefited by the easement (the beneficiary of the carve out)
- Servient tenement is the land/interests burdened in favor of the dominant tenement (the land from which the interest is carved)
- Negative easement requires servient owner to desist from engaging in certain activities or uses on the servient property.
- Affirmative easement permits owner of dominant estate to make some use of the servient property.
- Appurtenant easement: benefits a dominant tenement owner qua owner; when the dominant tenement is sold, it runs with the dominant tenement; i.e. it is attached to the land, not the owner! (*in rem*)
- In gross easement: benefits a person regardless of ownership (e.g. bathing right, or right to walk across Blackacre) (runs with servient tenement)

Creation of Easements

1. The “right” way: by written document (deed).
 - Statute of Frauds applies.

2. By prescription
 - Like adverse possession, only creates an adverse right of use (rather than possession)
 - Today, requires lack of permission

3. By implication (implied easement from prior existing use)
 - Former unity of ownership
 - At the time of the severance of the estates one part of the land was being used in favor of another part (quasi-easement)
 - The use is apparent, continuous, and reasonably necessary to the enjoyment of the quasi-dominant tract.

Creation of Easements (cont.)

4. By necessity

- Former unity of ownership
- Severance of title to land held by one owner
- Strict necessity at the time of the severance (not mere convenience)

5. By equitable estoppel

- Giving of an express license to use property
- Reasonable expenditure of money or labor in reliance on the license
- Circumstances indicate that revocation would be unjust

An easement may end on its own terms, or by:

1. Merger/unification (complete unity required; no revival)
2. By contract (release; Statute of Frauds, but estoppel possible)
3. Estoppel
4. Prescription
5. Necessity (when necessity ends)
6. Condemnation
7. Destruction of servient estate
8. Abandonment (requires an affirmative act, *not mere* words or nonuse, from which one can infer the intent not to maintain ownership of the easement)

Holbrook v. Taylor

