



Real Property

Class 11



Interests in Property - Easements

- **Types of Easements:**
 - **Affirmative:** A party has the right to a limited enjoyment of another's property
 - **Negative:** A party has the right to prevent the owner from using or enjoying the property in a certain manner.
- **Easement Appurtenant:**
 - An easement that is held by someone in the capacity of owner of a different parcel of land
 - Parcels involved in an easement appurtenant:
 - **Dominant Tenement** (the land that holds the easement)
 - **Servient Tenement** (the land that is subject to the easement)
- **Easement in Gross:**
 - An easement that is held by someone in his or her personal capacity
- **License:** (not an easement at all)
 - Permission granted by the property owner for another person to use that property; can usually be revoked at any time



Easements and Licenses – General Rules

- **Easement Appurtenant:**
 - **CANNOT** be transferred from one person to another unless the dominant tenement is transferred
 - Automatically goes to any buyer or grantee of the dominant tenement
 - Stays in Existence if the servient tenement is transferred (“burden and benefit run with the land”)
- **Easement in Gross:**
 - Generally cannot be transferred
 - If the easement is commercial, it can be transferred, as long as the scope will not be widened
 - Does run with the burdened land
- **Licenses:**
 - Can generally be revoked at any time.
 - Exceptions:
 - Intent
 - Consideration
 - Estoppel



Easements – Creation

- **Express Grant:** Giving over the easement by deed (must be in writing)
- **Express Reservation:** Reserving the interest when selling the property; also must be noted in the deed



Easements – Creation (cont.)

▪ Implication

a) Prior Use:

- 1) Part of a bigger parcel is sold
- 2) There is a continuous prior use by the owner that reasonably necessary for the use and enjoyment of the property
- 3) The prior use was continuous
- 4) The parties must have intended that the prior use should be allowed to continue after the transfer of the property
- 5) It must have been apparent to any observer that the use has been taking place (so the buyer should have known about it)

b) Necessity:

- Subdivision of property leaves one parcel that **NEEDS** an easement for access to something critical (e.g., a road)

▪ Prescription: Adverse Possession

- All elements the same as adverse possession **except for the exclusivity requirement**



QUIZ TIME!



Scope of Easements

- **Created Expressly:** Limited to whatever was expressed.
 - Unforeseeable changed circumstances can **expand the scope of an easement** to what is reasonable under the new circumstances
- **Created Through Implication:**
 - Limited to the required usage (or whatever the prior use was)
- **Created Through Prescription:**
 - Limited to actual usage that led the gaining the easement



Easements – Methods of Termination

- **Expiration** (if the easement was for a set time only)
- **Merger of Title**
 - If both parcels in an easement appurtenant ever **come to be owned by the same person**, the easement is extinguished
- **Release** by the holder (must be in writing)
- **Abandonment**
 - An action that shows a clear intent to stop using the easement permanently
- **Cessation of Purpose** (applies to **easement by necessity ONLY**)
 - The original necessity that caused the easement to be created becomes obsolete.
- **Destruction of the Servient Tenement**
 - (only through no fault of the owner of the servient tenement)
- **Prescription**
 - "reverse" adverse possession



Real Covenants

- Covenants "run" with the **burdened land** if
 - 1) the covenant is in writing
 - 2) the original intent was to have it run with the land
 - 3) the covenant "touches and concerns" the land
 - 4) **horizontal** and vertical privity
 - 5) actual or constructive **notice** to the buyer of the burdened land
- Covenants "run" with the **benefited land** if
 - 1) the covenant is in writing
 - 2) the original intent was to have it run with the land
 - 3) the covenant "touches and concerns the land"
 - 4) vertical privity
- Remedy for breach of covenant: **Monetary damages**



Equitable Servitudes

- Same as real covenants **except:**
 - The preferred **remedy** for violation of an equitable servitude is an **injunction for compliance**
 - No privity required for the servitude to run with the burdened land!
- Can be created by **implication** in a development built with a "**common plan or scheme**" that the buyer knew about or should have known about when the buyer bought the property affected by the servitude.

