

Property

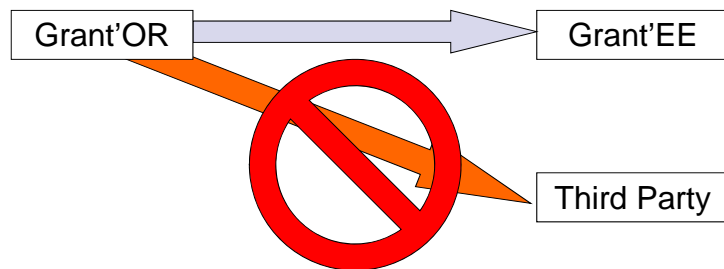
- Module 6
- Servitudes

Private Land Use Controls

- Servitude Categories
 - Major:
 - Easement
 - Covenant
 - Real Covenant
 - Equitable Servitude
 - Minor:
 - Profit
 - License
- Functional Description
 - A is given right to enter B's land (easement)
 - A is given right to enter B's land and take something of value (profit)
 - A is given the right to
 - enforce a restriction on the use of B's land
 - Require B to perform some act on B's land
 - Require B to pay money for the upkeep of specified facilities

Willard v. First Church . . . (Cal. 1972)

- Common law rule at issue



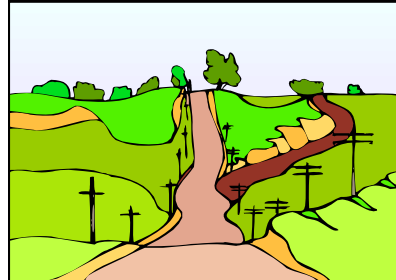
- Outcome and status of the c/l rule?

Notes on Easements

- A reservation is a regrant
 - O to A and her heirs, reserving an easement in O
- Types of easements
 - Appurtenant
 - In gross

Holbrook v. Taylor (Kentucky 1976)

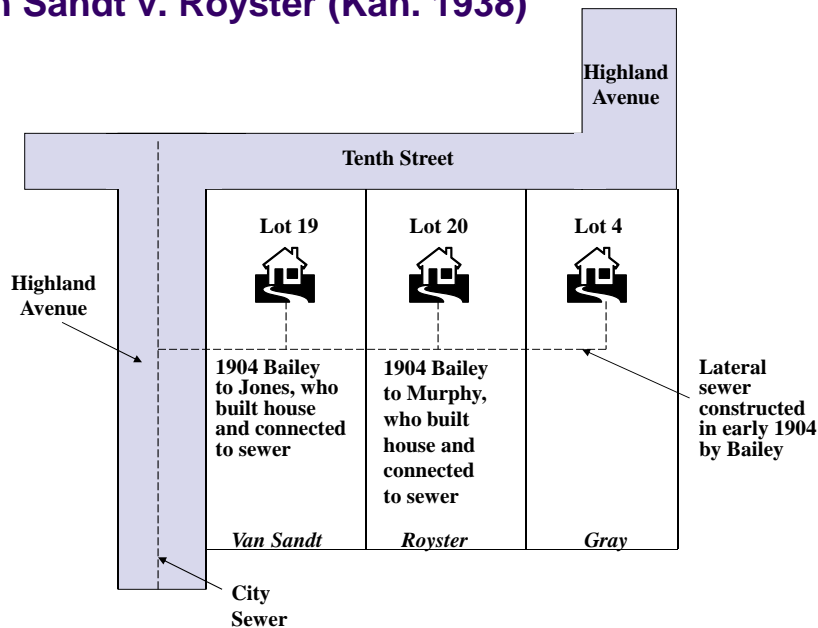
- Dispute
- Easement by prescription?
- Easement by estoppel?



Van Valkenburgh v. Lutz (N.Y. 1952)

Elements	Majority	Dissent
(1) Actually possess or occupy (§39) – use of the kind appropriate to the property, triggers owner's cause of action	Seems to find the uses insufficient	✓
Exclusive of others rights (§39) – exclusive entry and use	✓	✓
(2) Open and notorious – visible, sufficiently public to warn owner	✓	✓
(3) Claim of title (§§39-40) - claim of right, hostile, adverse, without owner's permission	Actions and admissions did not establish this	Established by acts, in particular extensive clearing and log/brush barrier
(4) Continuous uninterrupted occupation (§34) for statutory period (§34) – pattern of occupation of an actual owner	Times are long enough, but actions don't qualify	✓

Van Sandt v. Royster (Kan. 1938)



Property, Fall 2012, Prof. Greg R. Vetter

113

Van Sandt v. Royster (Kan. 1938)

- English courts view
 - Implied reservation
 - Implied grant
- Approach the Kansas Court adopts
 - Restatement Approach
 - Factors, comment and illustrations on page 800-01
- Outcome
- Types of easements – note 1, pg. 688

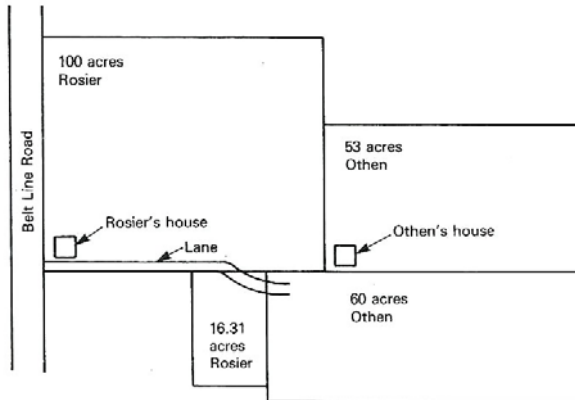
Property, Fall 2012, Prof. Greg R. Vetter

114

Othen v. Rosier (Texas 1950)

- 3 part test
 - Unity of ownership
 - Necessity, not mere convenience
 - Necessity existed at time of severance

- Othen's success in proving these elements?



100 acres conveyed by Hill in 1896.
 60 acres conveyed by Hill in 1897.
 53 acres and 16.31 acres conveyed by Hill in 1899.

Othen v. Rosier (Texas 1950)

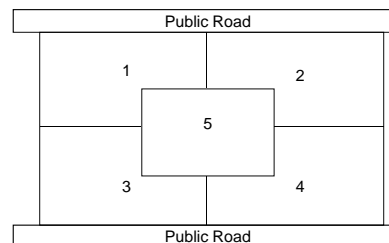
- Easement for Othen by prescription?

- Notes – Easement by Necessity

- 1

- 2., pg. 695

- 3 & 4



Notes – Easements by Prescription

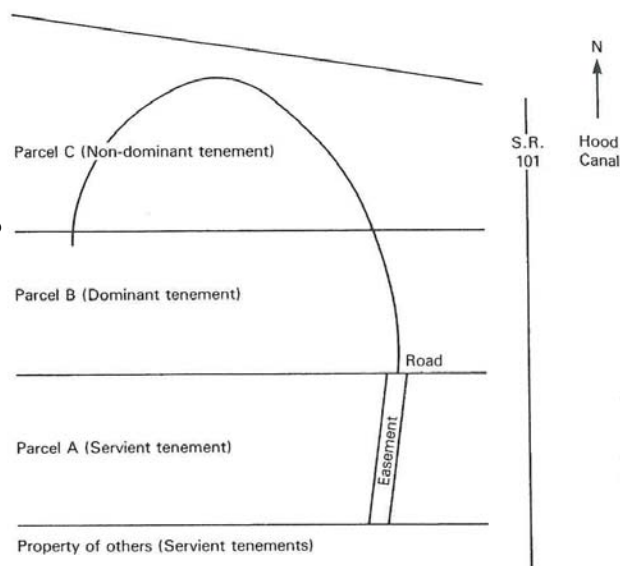
- How different / same as adverse possession?
- Requirement for exclusive use (pg. 699)?
 - Exclusivity for easements by prescription (“adverse using”) does not require a showing that only the claimant made use of the way, but that the claimant’s right to use the land does not depend on a like right in others



- Note 4, pg. 699

Brown v. Voss (Wash. 1986)

- Type of easement?
- Is the use for parcel C misuse of the easement?
- Implications and outcome
- Dissent

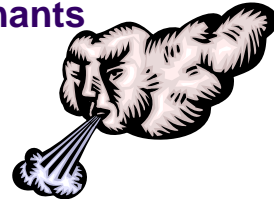


Notes to Brown v. Voss

- Note 2, pg. 724
 - Easement holder is entitled to use the servient estate in a manner reasonably necessary for convenient enjoyment of the servitude
 - Manner, frequency and intensity of the use may change over time to take advantage of developments in technology and to accommodate normal development of the dominant estate
 - Unless authorized by terms, holder is not entitled to cause unreasonable damage or interfere unreasonably with its enjoyment
- Notes 3 - 5

Negative Easements and Real Covenants

- Negative easements
 - Historical precursors to covenants
 - Types limited (see pg. 736)
 - At c/l: light, air, sublateral or adjacent support, water in artificial stream
- Covenants
 - Real covenant developed in America
 - Promise respecting the use of land that runs with the land at law
 - Benefit running to successors
 - Burden running to successors (more onerous test)
 - Horizontal and vertical privity



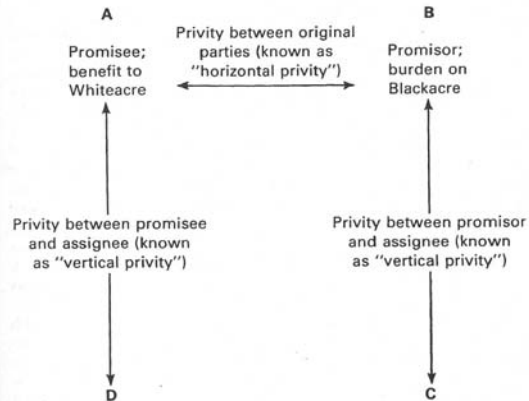
Real Covenants - Privity, Benefits and Burdens

- Horizontal privity requirement
 - Modern trend – not required
 - c/l – required for burden to run
- Note/problem 1, pg. 744



Real Covenants		
	Benefit	Burden
1. Formalities	Yes	Yes
2. Intent	Yes	Yes
3. Notice	No	Yes
4. Touch & Concern	Yes	Yes
5. Horiz.Privity	No	See above
6. Vert.Privity	Yes	Yes

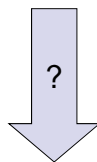
Property, Fall 2012, Prof. Greg R. Vetter



121

Equitable Servitudes – Tulk v. Moxhay

- Promises by Elms
 - Maintain Leicester Square garden
 - Do not build over/on the garden
 - Allow Leicester Square inhabitants, upon payment, to have admission to the garden



- Moxhay

Equitable Servitudes		
	Benefit	Burden
1. Formalities	Yes	Yes
2. Intent	Yes	Yes
3. Notice	No	Yes*
4. Touch & Concern	Yes	Yes
5. Horiz.Privity	No	No
6. Vert.Privity	No	No

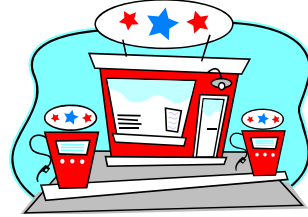
<http://www.earthcam.com/uk/england/leicester/>

Property, Fall 2012, Prof. Greg R. Vetter

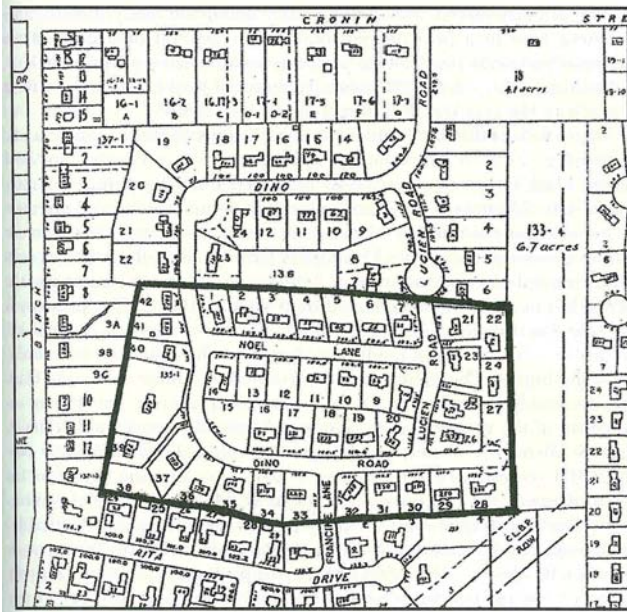
122

Sanborn v. McLean (Mich. 1925)

- Casebook Section is entitled "Creation of Covenants"
 - Implied reciprocal servitude
 - Here, an Implied reciprocal negative servitude
 - OR
 - Reciprocal negative easement
 - As the court calls it
- Dispute
 - State of McLean's title?
- Common plan or scheme?
 - Common owner
 - Also incorporates concepts of (1) formalities, (2) intent, and the (4) touch and concern requirement from the previous list of elements for equitable servitudes
- Notice?
 - Actual?
 - Constructive?
 - Inquiry?



Delfino v. Vealencis (Conn. 1980)

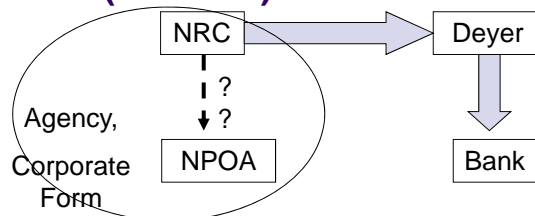


Neponsit (NPOA) v. "Bank" (NY 1938)

- T&C
 - Affect the quality or value of the property or its owner's interest in it
 - This requirement ensures that purely personal obligations unrelated to the ownership of the relevant estate are not enforced as property rights
 - Neponsit mentions that often a covenant to pay money is purely personal
 - Normally, covenants with a direct physical effect on the property touch and concern it
- Neponsit emphasizes that it is a facts and circumstances inquiry
 - NY holding to a general sort of inclination that affirmative covenants are likely to not T&C
- Even with new "test" – a question of degree
 - Lots have easements to use common areas
 - Thus, burden of paying the cost can be tied to the lot which enjoys the benefit

Neponsit (NPOA) v. "Bank" (NY 1938)

- What is the issue with respect to the privity requirement?
- How does the court get around it?



Real Covenants		
	Benefit	Burden
1. Formalities	Yes	Yes
2. Intent	Yes	Yes
3. Notice	No	Yes
4. Touch & Concern	Yes	Yes
5. Horiz.Privity	No	??
6. Vert.Privity	Yes	Yes