

Property

- Module 22
- Easements

Servitudes

- In general: Servitudes are rights or obligations that run with the land.
 - The benefit may be claimed/enforced by successors to the original beneficiary's property interest
 - The burden may be enforced against successors to the original obligor's property interest
- Historic categories:
 - Easements
 - Profits [à prendre]
 - Real Covenants
 - Equitable 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

Easements

● Easement Terminology:

- Benefits and Burdens
- Affirmative Easement vs. Negative Easement
- Easement Appurtenant vs. Easement In Gross
- Dominant Estate vs. Servient Estate
- Example 1: A, owner of Blackacre, has a right to cross Whiteacre, owned by B, to access a public road.
- Example 2: C has the right to enter onto Greenacre, owned by D, to hunt and fish in season.

Easements

- Terminology
- Creation
- Prescriptive Easements vs. Irrevocable Licenses
- Termination
- Public Trust Doctrine

Easements

- Creation of Easements
 - By Express Grant (Written Instrument)
 - By Implication
 - Easement Implied by Prior Existing Use
 - Easement Implied by Necessity (Way by Necessity)
 - By Prescription

Easements

● Easement by Express Grant

- The Statute of Frauds
- Grant and Reservation: The Common Law Rule Against Reservations to a Stranger to the Deed

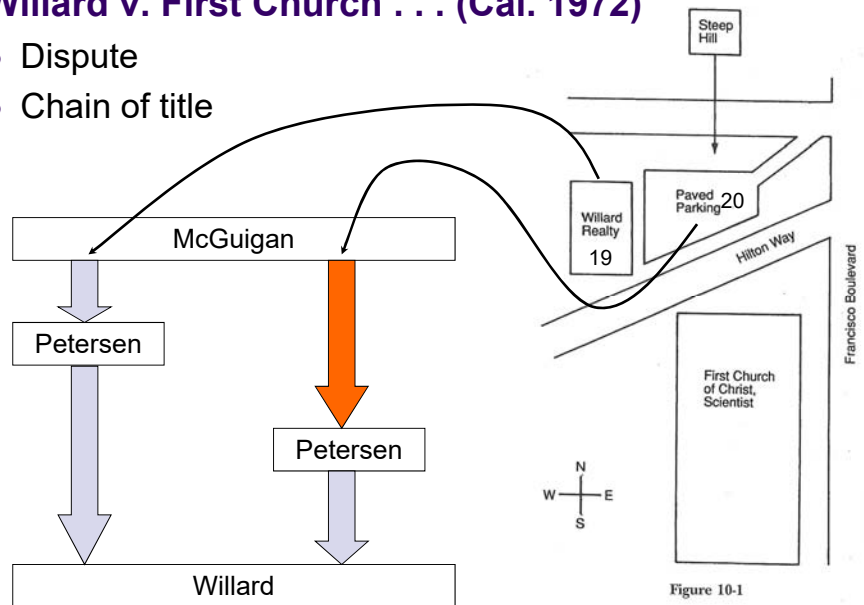
Easements

● Easement by Express Grant

- The Statute of Frauds
- The Common Law Rule Against Reservations to a Stranger to the Deed

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

- Dispute
- Chain of title



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

Genevieve McGuigan owned two abutting lots in Pacifica known as lots 19 and 20. There was a building on lot 19, and lot 20 was vacant. McGuigan was a member of the church, which was located across the street from her lots, and she permitted it to use lot 20 for parking during services. She sold lot 19 to one Petersen, who used the building as an office. He wanted to resell the lot, so he listed it with Willard, who is a realtor. Willard expressed an interest in purchasing both lots 19 and 20, and he and Petersen signed a deposit receipt for the sale of the two lots. Soon thereafter they entered into an escrow, into which Petersen delivered a deed for both lots in fee simple.

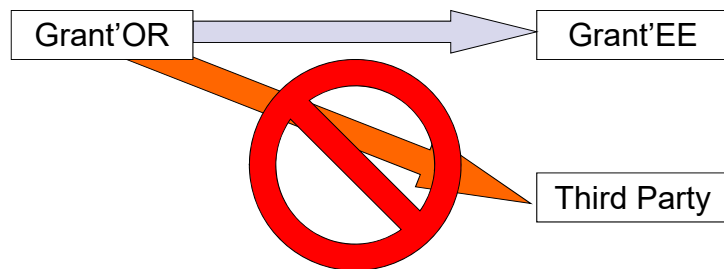
At the time he agreed to sell lot 20 to Willard, Petersen did not own it, so he approached McGuigan with an offer to purchase it. She was willing to sell the lot provided the church could continue to use it for parking. She therefore referred the matter to the church's attorney, who drew up a provision for the deed that stated the conveyance was "**subject to an easement for automobile parking during church hours for the benefit of the church on the property at the southwest corner of the intersection of Hilton Way and Francisco Boulevard ... such easement to run with the land only so long as the property for whose benefit the easement is given is used for church purposes.**" Once this clause was inserted in the deed, McGuigan sold the property to Petersen, and he recorded the deed.

Willard paid the agreed purchase price into the escrow and received Petersen's deed 10 days later. He then recorded this deed, which did not mention an easement for parking by the church. While Petersen did mention to Willard that the church would want to use lot 20 for parking, it does not appear that he told him of the easement clause contained in the deed he received from McGuigan.

Willard became aware of the easement clause several months after purchasing the property. He then commenced this action to quiet title against the church.

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

- Common law rule at issue

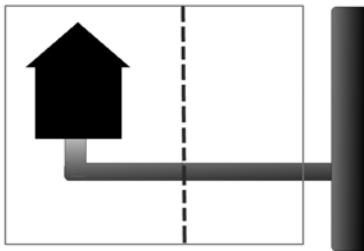


- Outcome and status of the c/l rule?

Easements

• Easement Implied by Prior Existing Use

- Scenario: A use is spread over separate lots carved out of a single parcel in which the use was once unified.

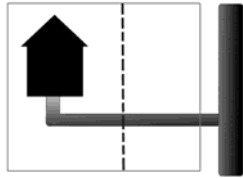


Easements

● Easement Implied by Prior Existing Use

- Elements:

1. Original common ownership of dominant and servient estates
2. The use of the servient portion of the common estate by the dominant portion was apparent and obvious, continuous, and permanent
3. The claimed easement is reasonably necessary and beneficial to the enjoyment of the dominant estate

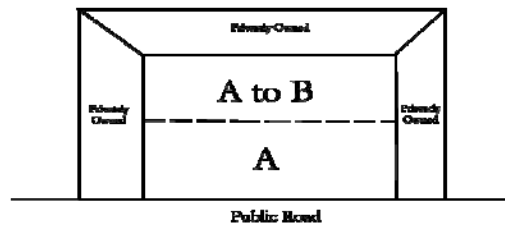


Implied reservation versus implied grant (pg. 878-879)

Easements

● Easement by Necessity

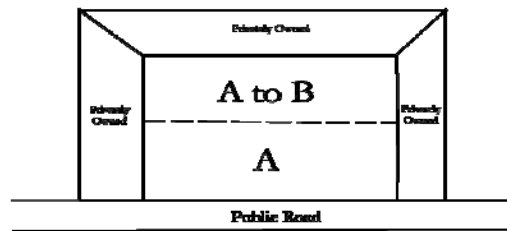
- Scenario: The dominant estate is separated from common ownership with the servient estate, leaving the dominant estate landlocked (i.e., with no means of access from public ways).



Easements

● Easement by Necessity

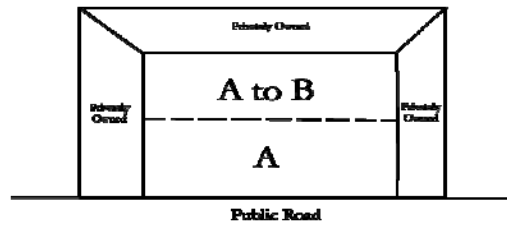
- Elements:
 - Original Common Ownership
 - Strict Necessity



Easements

● Easement by Necessity

- The Alternative: Private Condemnation



Easements

● Prescriptive Easements vs. Irrevocable Licenses

- Prescriptive Easements: *Felgenhauer v. Soni*
- Irrevocable Licenses: *Richardson v. Franc*

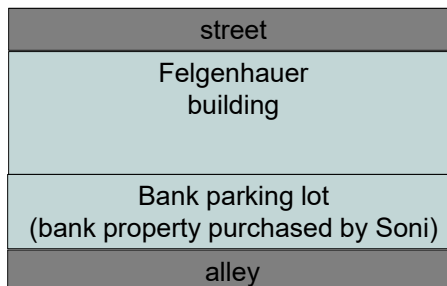
Felgenhauer v. Soni (Cal. App. 2004)

- Claim of right?
- “to establish a claim of right to a prescriptive easement, the claimant need not believe he or she is legally entitled to use of the easement”
- Status before and after fence and gate installed by the bank?

[T]he five elements of adverse possession:

Entry and possession that is

- (1) actual
- (2) exclusive
- (3) hostile or under claim of right
- (4) open and notorious, and
- (5) continuous for the statutory limitations period



Easements by Prescription

- How different / same as adverse possession?
- Requirement for exclusive use
 - 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

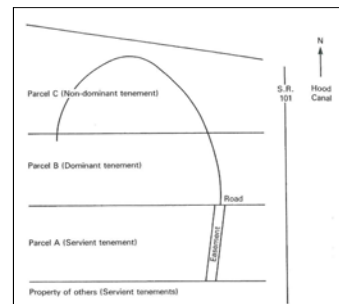
Richardson v. Franc (Cal. App. 2015)

- Access and utility easement over 2515 Laguna Vista Drive, the servient estate, owned by Franc at the time of the suit (respondents)
- Benefitted dominant estate: 2513 Laguna Vista Drive
- Issue is landscaping on the easement for utilities and access
- Several years into Franc’s ownership, he cut water and electrical lines supporting the landscaping
- What is necessary for the license to become irrevocable?

a license may become irrevocable when a landowner knowingly permits another to repeatedly perform acts on his or her land, and the licensee, in reasonable reliance on the continuation of the license, has expended time and a substantial amount of money on improvements with the licensor’s knowledge

Scope of easements . . .

- 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



Easements

● Transfer and Termination

- Transfer: Easements Appurtenant vs. Easements In Gross
- Termination: Merger

Easements

● Public Trust Doctrine: Public Rights of Use

- In General: *Lawrence v. Clark County*
- Expanding Scope: *Matthews v. Bay Head Imp. Ass'n*
[not assigned]