Chapter 3
Nonpossessory Interests in Real Estate

Good fences make good neighbors.
Robert Frost

Nonpossessory land interests are those that give their holders certain definite and clear-cut rights that always fall short of possession of the land. These nonpossessory interests might be labeled privileges, liberties, or advantages. Nonpossessory interests give their holders some right of entry or use of the land of another. This chapter explains the creation and extent of these nonpossessory interests.

EASEMENTS

An easement is a liberty, privilege, or advantage in another’s property. It is nonpossessory but may be valid for perpetuity. There are many different types of easements and methods for their creation, as covered in the sections that follow.
Types of Easements: Appurtenant v. Easements in Gross

An easement appurtenant is one attaching to or benefiting a particular tract of land. The purpose of an easement appurtenant is to benefit a landowner.

For example, refer to Figure 3.1 and suppose both landowners C and A need access to the street that runs parallel to B’s property. The dark strip represents the appurtenant easements held by C and A in B’s land and C in A’s land that give them access and benefit them in the use and possession of their land.

In contrast, an easement in gross is not created to benefit any landowner with respect to a particular tract of land; rather, it belongs to the holders regardless of whether any adjacent property is owned. Generally, public utilities hold easements in gross through residential property (in the back six or eight feet of the lots, for example) so that telephone, electrical, and water lines can be connected to all parcels of the property. At common law, easements in gross were not transferable, but in most states they are now transferable if they are commercial in nature.

Types of Easements: Affirmative v. Negative Easements

The situation diagrammed in Figure 3.1 is an example of an affirmative easement, which means that the owner of the easement right can use another’s land (the land subject to the easement). In Figure 3.1, A and C have an affirmative easement in B’s property. Likewise, C has an affirmative easement in A’s property.

A negative easement is one in which the holders of the easements prevent other property owners from use of their property in a particular way or prevent particular acts by other landowners; for example, an easement restricting the building heights on adjoining property. These negative easements, often called scenic easements, can have a possible twofold tax advantage. First, the taxpayer/landowner can perhaps take a charitable contribution deduction. For example, a business might grant a neighboring church a negative easement that prevents the blockage of sunlight from the church’s stained glass windows. The business can take the value reduction this easement causes in its property as a charitable contribution deduction. Second, the taxpayer/landowner’s property

![Figure 3.1 Easement Appurtenant](image-url)
taxes can be reduced by the decrease in value brought about by the easement restrictions. An easement that prevents the shading of solar panels (as discussed in Chapter 2) is an example of a negative easement.

Another type of negative easement that has been used extensively over the past few years is the conservation easement. This is an easement granted by a landowner who owns land that possesses historical, cultural, or architectural significance. These landowners grant negative easements that will prevent them from tearing down buildings on the property so as to preserve their significance for the community. In many cases, again, these easements can be treated as charitable donations. These forms of easements are being used more and more as governments lack funds to buy or condemn the property. Private landowners are thus able to accomplish the goal of conservation without the costs being borne by governments and taxpayers.

Recently, conservation easements have been used to preserve farmlands in those areas where development would otherwise force farmers, due to increased property taxes, to abandon their land to further development. The farmers grant to their communities negative conservation easements, often referred to as purchase and development rights (PDR) contracts, in which they agree to limit their land uses. In exchange, the communities give the farmers reduced taxes for the promise to preserve their land as natural farmland. The result is a solution to encroaching development as well as to the high taxes faced in agricultural production.

The Parties: Dominant v. Servient Estates

In an easement relationship, the property owned by the easement holder is called the dominant tenement or dominant estate, and the property through which the easement runs is called the servient tenement or servient estate. In Figure 3.1, B holds the servient estate for dominant tenants A and C. Since C also has an easement through A’s property, A is also a servient estate to C’s dominant estate.

For each of the following, determine what type of easement (affirmative, negative, appurtenant, gross) is being created and who will hold the dominant and servient estates:

a. Angela holds an easement that prevents Bill from planting willow trees. (Angela and Bill are adjoining landowners, and Angela obtained the easement because she felt the roots of willow trees would harm her in-ground swimming pool.)

b. Community Cable has just placed television wires along the back wall lines of several neighbors’ lots in a new subdivision. The landowners object—they allege a trespass has occurred.

c. Oscar owns a passive-solar home (dependent upon window sunlight for heat), and Oscar’s neighbor has agreed not to plant trees or shrubs or construct walls on the boundary he shares with Oscar to prevent obstruction.

d. Nordstrom, the retail store, has its name placed on the top of the public parking garage (owned by the city of Scottsdale, Az) located next to its store.

Consider 3.1

Creation of Easements

EASEMENTS BY EXPRESS GRANT OR EXPRESS RESERVATION

An easement by express grant or express reservation is one in which the parties actually draw up papers as if transferring an interest in land. Since an easement
is a land interest, creation of express easements must comply with all requirements in the state for the conveyance of land interests.

Most states require the conveyance of a land interest to be in writing. Whether an easement is created by express grant or express reservation depends on the physical layout of the land transferred: The two contrasting physical setups for easements are illustrated in Figure 3.2. In both situations, A was the original owner of the full parcel that contained an access route to the street that runs parallel to the tract. In the express grant situation, A retains that portion of the parcel with the access route and must therefore convey to B an easement by express grant. In the express reservation situation, A conveys that portion of the parcel with the access route and must therefore grant himself an easement by express reservation.

The same easement is involved in both circumstances, but the method of acquisition is different. In the deed transferring title to the property conveyed, A would either grant or convey the portion of the parcel B has purchased and would also include a grant to B of the easement for ingress or egress or, in the second circumstances, would reserve that ingress and egress for himself when B is granted title to the land with that access.

An express easement need not arise solely in the circumstances of land partition. It may be executed alone without the division or transfer of title to property. For example, a solar easement may be drafted and executed between two neighbors who already own their adjoining parcels of land.

**FIGURE 3.2** *Express Grant and Express Reservation Easement*

Practical Tip
In creating easements, the parties should be cautious in wording the easement language. The following suggestions should be kept in mind:
1. Accurately describe the location, length, and width of the easement.
2. Describe the intended use of the easement. Is it for a right-of-way? Is it for ingress and egress?
3. Are there limitations on the use of the easement? Is it residential or commercial?
4. Who is responsible for maintenance of the easement?
5. Describe any limitations. For example, “Until the construction of the highway along the southern boundary of the property is completed.”
In 1960, the Martins, who owned a large tract of land with some waterfront portions near the Gulf of Mexico, sold to James and Doris Baynes a portion of that tract. The Baynes told the Martins that they could not afford waterfront property, so the Martins sold them a portion of their land that did not front the water and agreed to provide them with an easement. The deed for the transfer contained the following language:

An easement not to exceed 25 feet in width and extending 260 feet east of lot herein conveyed to a roadway leading to the Gulf of Mexico.

The Martins then sold the remaining portions of their land to Richard Haston and Tannin, Inc. Haston’s deed contained language nearly identical to that in the Baynes’ deed. Tannin, Inc., owned the portion of the original tract through which both Haston and the Bayneses walked for beach access. Tannin claimed the easement through his property was for access to a road and not the beach.

What should the parties have done to clarify the grant? Do you feel the language indicates an intent for access to the Gulf of Mexico? What impact do the easements held by Haston and the Bayneses have on Tannin’s plans for development of the waterfront property? Tannin, Inc. v. Haston, 690 So.2d 398 (Ct. Civ. App. Ala. 1997)

EASEMENTS BY IMPLICATION

An easement by implication is one arising from necessity. Suppose, for example, that in the express grant of Figure 3.2, B’s property is landlocked and that crossing A’s parcel is B’s only method of ingress and egress. Suppose further that in the conveyance from A to B, no provision or express grant was made in the deed to provide B with an easement. To prevent B from having to hold title to a worthless piece of inaccessible property, the doctrine of easement by implication was developed and may be used to assist B in the landlocked predicament.

In order to establish that an easement exists by implication, several factors must be present. First, there must have been unity of ownership between the two tracts prior to the partition and sale. In this case there was unity of ownership, since A owned the entire parcel prior to the division. Second, there must have been a quasi easement at the time of the sole ownership of the parcel. A quasi easement is an access route used by the landowner when the land was not yet divided. Figure 3.2 indicates that A used the road as a means of access, and so a quasi easement existed. The term quasi is used because landowners cannot hold an easement in their own property. Third, the prior quasi easement must have been apparent and used continuously. This requirement is satisfied in the figure and is easily satisfied in most access cases because the road or path is visible. However, visibility is not required to meet the apparent standard in most jurisdictions. For example, sewer-line accesses, although not visible, have been held to be apparent because of their need in property use. Although not shown in the figure, continuous use can probably be assumed in most access cases where, as here, the roadway is the only means of access. Continuous use is normal use and does not require use every day.

The final requirement for an easement by implication is to establish that requiring the dominant estate to obtain access any other way would require unreasonable expense. In Figure 3.2, B’s landlocked circumstances would indicate that the access through just one parcel is the least expensive and least troublesome method of obtaining access.
Easements by implication can arise in either grant or reservation cases so that there are both easements by grant implication and easements by reservation implication. The following case involves a factual question of whether an easement by implication exists.

Granite Properties Limited Partnership v. Manns
512 N.E.2d 1230 (Ill. 1987)

Facts
Granite Properties Limited Partnership (Granite/plain-tiff) owned all of the parcels shown in the diagram below. Between 1963 and 1982, Granite conveyed certain of the parcels, and, in 1982, parcel B was conveyed to Larry Manns and others (defendants). The present status of the parcels is as follows:

- Parcel A contains a shopping center (built in 1967 and currently owned by Granite). To the north of the shopping center is an asphalt parking lot with 191 feet of frontage on Bethalto Drive.
- Parcel B is undeveloped and is owned by the defendants.
- Parcel C contains five four-family apartment buildings (owned by a third party).
- Parcel D contains a health club (owned by a third party).
- Parcel E contains the Chateau des Fleurs Apartments (owned by Granite).

The rear of the shopping center is used for deliveries, trash storage and removal, and utilities repair. To gain access to the rear of the shopping center for these purposes, trucks use a gravel driveway that runs along the lot line between parcel A and parcel B. A second driveway (noted in diagram), located to the east of the shopping center on parcel D, enables the trucks to circle the shopping center and deliver to the stores, including Save-a-Lot Grocery, without having to turn around in the limited space behind the stores. The trucks can thus make a convenient entrance, delivery stop, and exit.

The two pictured driveways existed before Manns purchased the property, and he saw them during an inspection of the land prior to his purchase. There are no references to the driveways in any of the deeds relating to the parcels.

Robert Mehann, owner of the Save-a-Lot grocery store located in the shopping center, testified on direct examination that groceries, which are delivered to the rear of the store, are loaded by forklift on a concrete pad poured for that purpose. Mehann indicated that there are large, double-steel doors in the back of the store to accommodate items that will not fit through the front door. Mehann testified that semitrailer trucks make deliveries to the rear of the grocery store four days a week, with as many as two or three such trucks arriving daily. An average of 10 to 12 trucks a day, including semitrailer trucks, make deliveries to the grocery store. Mehann further explained that because the area behind the Save-a-Lot building extends only 50 feet to the rear property line, it would be difficult, if not impossible, for a semitrailer truck to turn around in the back and exit the same way it came in. In response to a question as to whether it would be feasible to have trucks make front-door deliveries, Mehann suggested that such deliveries would be very disruptive; pallets that would not fit through the front door would have to be broken down into parts, requiring extra work, and there would not be adequate space in the front of the store to do such work during business hours. Mehann admitted that he had not investigated the cost of installing a front door that would be big enough for pallets of groceries to be brought in by forklift. There would not be enough space to manipulate the forklift around the front of the store, although it could be run between the shelves of food to the back of the store.

Darrell Layman, a partner for Granite, testified that, although it was very difficult, he had seen semitrailer trucks exit the same way they came in. Layman also...
acknowledged that he had not investigated the cost of expanding the size of the front doors of the building. He also claimed it “would seem impossible” for him to put in any kind of a hallway or passageway that would allow equipment to bring supplies into the store from the front. Layman explained that the delivery trucks follow no set schedule and, therefore, their presence may overlap at times. He stated that he had seen as many as four or five delivery trucks backed up. Layman opined that there was “no way” the trucks could back up and turn around when there were multiple trucks present.

Granite claimed an easement by implication for the shopping center and the parcel E apartment complex. The trial court found an easement by implication for the apartment complex but denied such for the shopping center. Granite appealed. The appellate court affirmed the apartment complex easement and also reversed the trial court’s ruling on the shopping center easement and found that one also existed by implication there. Manns appealed.

Judicial Opinion

Ryan, Justice. The plaintiff contends in this court that it acquired, by implied reservation, easements over the driveways which provide access to the rear of the shopping center located on parcel A and to the parking lot of the apartment complex situated on parcel E. Plaintiff alleges that parcels A, B and E were held in common ownership by the plaintiff and its predecessors in title until 1982, at which time the defendants received a warranty deed to parcel B; that the driveways in question were apparent and obvious, permanent, and subject to continuous, uninterrupted, and actual use by the plaintiff and its predecessors in title until the time of severance of unity of ownership; and that the driveways are highly convenient and reasonably necessary for the beneficial use and enjoyment of the shopping center and the apartment complex. Therefore, the plaintiff maintains that, upon severance of unity of title, the defendants took parcel B subject to the servitudes then existing, as the parties are presumed to convey with reference to the existing conditions of the property.

We note at the outset that the attempt here is to establish easements by implied reservation rather than by implied grant. Illinois may be said to follow the generally accepted view recognizing the implication of easements in favor of a grantor as well as a grantee.

On the merits, the crucial issue is whether, in conveying that portion of its property now owned by the defendants (parcel B), the plaintiff retained easements by implication over the driveways in question.

The easement implied from a prior or existing use, often characterized as a “quasi-easement,” arises when an owner of an entire tract of land or two or more adjoining parcels, after employing a part thereof so that one part of the tract or one parcel derives from another a benefit or advantage of an apparent, continuous, and permanent nature, conveys or transfers part of the property without mention being made of these incidental uses. In the absence of an expressed agreement to the contrary, the conveyance or transfer imparts a grant of property with all the benefits and burdens which existed at the time of the conveyance of the transfer, even though such grant is not reserved or specified in the deed.

The Restatement [of Property] describes a doctrine creating easements “by implication from the circumstances under which the conveyance was made.” This implication “arises as an inference of the intention of those making a conveyance.” The Restatement operates on the basis of eight “important circumstances” from which the inference of intention can be drawn: whether the claimant is the conveyor or the conveyee; the terms of the conveyance; the consideration given for it; whether the claim is made against a simultaneous conveyee; the extent of necessity of the easement to the claimant; whether reciprocal benefits result to the conveyor and the conveyee; the manner in which the land was used prior to its conveyance; and the extent to which the manner of prior use was or might have been known to the parties. These eight factors vary in their importance and relevance according to whether the claimed easement originates out of necessity or for another reason.

In applying the Restatement’s eight important circumstances to the present case, the fact that the driveways in question had been used by the plaintiff or its predecessors in title since the 1960s, when the respective properties were developed; that the driveways were permanent in character, being either rock or gravel covered; and that the defendants were aware of the driveways’ prior uses before they purchased parcel B would tend to support an inference that the parties intended easements upon severance of the parcels in question.

[The] defendants, nevertheless, argue that there are two factors which overwhelmingly detract from the implication of an easement: That the claimant is the conveyor and that the claimed easement can hardly be described as “necessary” to the beneficial use of the plaintiff’s properties. Relying on the principle that a grantor should not be permitted to derogate from his own grant, the defendants urge this court to refuse to imply an easement in favor of a grantor unless the claimed easement is absolutely necessary to the beneficial use and enjoyment of the land retained by the grantor. The defendants further urge this court not to cast an unreasonable burden over their land through imposition of easements by implication where, as here, available alternatives affording reasonable means of ingress to and egress from the shopping center and apartment complex allegedly exist.

While the degree of necessity required to reserve an easement by implication in favor of the conveyor is
greater than that required in the case of a conveyee, even in the case of the conveyor, the implication from necessity will be aided by a previous use made apparent by the physical adaptation of the premises to it.

The requirement that the quasi-easement must have been “important for the enjoyment of the conveyed quasi-dominant [or quasi-servient] parcel” is highly elastic. Some courts say that the use must be one which is “reasonably necessary to the enjoyment of the [conveyed or retained] land.” Others demand a use which is necessary for the beneficial, convenient, comfortable or reasonable enjoyment of such land.

Notwithstanding their difference in use of terminology, the authorities agree that the degree or extent of necessity required to create an easement by implication differs in both meaning and significance depending upon the existence of proof of prior use. Hence, given the strong evidence of the plaintiff’s prior use of the driveways in question and the defendants’ knowledge thereof, we must agree with the appellate court majority that the evidence in this case was sufficient to fulfill the elastic necessity requirement.

The evidence, moreover, regarding the difficulty of making deliveries to the front of the shopping center was sufficient to demonstrate the unreasonableness of such an alternative measure.

**Affirmed.**

### Case Questions
1. Who originally owned all the parcels of land?
2. How was each parcel used?
3. Could delivery trucks use an alternate means of access to the shopping center?
4. Did the buyers know of the use of the driveway by the trucks?
5. Were the driveways mentioned in any of the deeds?
6. What eight factors does the court examine as “important circumstances” in deciding the case?
7. Does the standard of proof differ if there is a claim for an easement by implied reservation as opposed to one implied by grant?
8. Does the court use a standard of absolute necessity?

---

**EASEMENTS BY NECESSITY**

An easement by necessity is one that can arise solely on the basis of necessity, and the requirements of prior use need not be established. However, this type of easement lasts only so long as the necessity continues, whereas an easement by implication may go on in perpetuity. In some states, condemnation procedures are available to assist landowners who need to obtain access to their property. In other states, an easement is automatically given when landlocked property is transferred.¹

In Figure 3.1, B’s circumstances could be changed to require an easement by necessity if the properties were surrounded by water. Then A’s only method of access to the street would be through B’s land, unless and until a bridge or causeway to B’s land was constructed.

Some states have begun to follow doctrines on easements by implication and necessity that are less complex. For example, in *Carter v. County of Hanover*, 496 S.E.2d 42 (Va. 1998), the court found that without any deed restrictions, the “grantor of property conveys everything that is necessary for the beneficial use and enjoyment of the property.”

Christine and Steve Mallock buried their son in a burial plot purchased at Southern Memorial Park, Inc. Each year the Mallocks conducted a memorial service for their son at his burial plot. On the seventh anniversary of their son’s death, the Mallocks went to their son’s grave at 11:00 A.M. for the annual service, which

---

¹. Fla.Stat. § 704.01; see also Prestatement of Property § 476 and Colo. Const. art. II § 14. Other states may not have a statute or condemnation procedures but follow strong public policy in favor of an easement. *Big Sky Hidden Village Owners Ass’n v. Hidden Village, Inc.*, 915 P.2d 845 (Mont. 1996).
generally took 30 minutes. When they arrived they discovered that a tent and chairs set up for funeral services on the plot next to their son’s grave were actually resting on his gravesite. The Mallocks asked Southern’s management if the tent and chairs could be moved until they could conduct their service. The managers refused, and the Mallocks went ahead with their ceremony, cutting it to five minutes, after they moved the chairs and tents by themselves.

Southern’s managers called the police and had the Mallocks evicted. Southern claims the Mallocks had no rights on the property except for the grave. Their deed for the plot does not award an easement for access. Do the Mallocks have the right to access to the gravesite? Mallock v. Southern Memorial Park, Inc., 561 So.2d 330 (Fla. Ct. App. 1990)

At one time, the parcels shown in the diagram below were owned by Harry Borst, who built the garage and used it for his car.

In 1947, Hunt purchased plot 1; in 1951, the Zimmermans purchased plot 2. Hunt had leased the garage from Borst until the sale to the Zimmermans in 1951. Hunt tried to rent the garage from the Zimmermans but was refused. The Zimmermans used the driveway on the Hunts’ land to gain access to the garage. After numerous disputes and gates, the Zimmermans brought suit to stop the Hunts from blocking the driveway. The Zimmermans claim that they have an easement because there is no other way to use the garage. There is no mention in the deeds of any driveway or easement. Do the Zimmermans have an easement? Hunt v. Zimmerman, 216 N.E.2d 854 (Ind. Ct. App. 1966)

EASEMENTS BY PRESCRIPTION

Obtaining an easement by prescription is somewhat similar to obtaining title to property through adverse possession. However, the term *adverse possession* (discussed in Chapter 13) is inappropriate for easements because easements are non-possessory land interests. Several elements must be established before an easement by prescription is created:

1. *The easement must be used for the appropriate prescriptive period.* The prescriptive period will vary from state to state but generally corresponds to the state’s adverse possession period, which ranges from five to 20 years throughout the United States.
2. *The use of the easement must be adverse (not permissive).* If the landowner has given the prescriptive taker an oral license of passage, such use is permissive and will not qualify for prescription. The permissive use must be mutually agreed upon—a landowner’s posting of a permission sign will not prevent prescriptive rights.
3. *The use of the easement must be open and notorious.* In most states, this requirement means that the prescriptive taker must use the property in such a way that a
landowner would, under ordinary circumstances, be aware of the use. Because actual knowledge of use is not required, landowners who do not periodically inspect their property run the risk of having a prescriptive use accumulate.

4. The use of the easement must be continuous and exclusive. This requirement forces the prescriptive user to confine use to a particular area. The user is required to use the same strip of land or access route consistently.\(^2\)

A prescriptive claim can be based only on the user’s use and not on use by others. An exception is the rule of tacking, which permits those in privity of contract (buyers and sellers) and those who inherit title to land to add their use to that of the seller or deceased in making up the prescriptive period. For example, a father using an easement for five years and then passing his property to his son by will also passes his five years of prescriptive use of the easement.

To prevent a prescriptive taking, the landowner may take several steps, most of which are recognized by the majority of states. Written protest is one method of interrupting the prescriptive period, as is physical interruption (for example, the use of a gate). Perhaps court-obtained injunctive relief is the best alternative, because such action provides the landowners with full records for establishing a cutoff of the prescriptive period. The following case deals with multiple issues in a claim of an easement by prescription.

**Carnahan v. Moriah Property Owners Association, Inc.**

716 N.E.2d 437 (Ind. 1999)

**Facts**

Prior to 1972, Charles and Julia Drewry owned a 22-acre lake and the surrounding property. In November, 1972, Donald and Joyce Carnahan purchased a one-acre lot from the Drewrys and the purchase included a portion of the lake bed. The Carnahans used the lake for recreational activity including ice skating, fishing, swimming, and the use of various watercraft on the lake. In the spring of 1973, the Carnahans placed a houseboat on the lake and lived on it intermittently until 1976 when they finished building their lakeside home on their lot. They used a ski boat on the lake until 1986 and wave runners and jet skis through the summer of 1993.

In 1984, the Carnahans purchased an adjacent one-acre plot, one-fifth of which was bed in the lake. Subsequent to this purchase the lake and adjoining lands were surveyed and platted into lots for subdivision additions to Lake County. In 1987, the Carnahans acquired another adjacent lot of 1.2 acres, one-eighth of which was lake bed. With their original purchase and the two subsequent ones, the Carnahans owned over half an acre or 2.5% of the 22-acre lake bed.

In 1991, the Moriah Property Owner’s Association (Moriah) obtained the property rights to the majority of the lake bed including nearly all the water suitable for use by watercraft. Moriah then prepared restrictive covenants that were rules for use of the lake. One rule was “No motors are allowed on the lake except electric trolling motors powered by no more than two 12-volt batteries.”

When the Carnahans received a copy of the new restrictions, they filed suit to establish their prescriptive easement in the lake. They also alleged interference with their real property, easement, and riparian rights. Moriah counter-claimed that the Carnahans’ use of the lake was a threat to adults and children who swam there.

---

2. The Restatement (Third) of Property (Servitudes) has four theories listed for granting prescriptive easements: (1) sufficiently long use can lead to entitlement; (2) use to perfect a flawed title meets the requirements; (3) long-term use is evidence of a right lost that must be restored; and (4) prescriptive claims arise and can exist but must be advanced within a limited time frame.
The trial court ruled that the Carnahans had a prescriptive easement but found that the restrictive covenants were valid. The court of appeals agreed that there was a prescriptive easement but reversed on the restrictive covenant validity. Moriah appealed.

Judicial Opinion

Sullivan, Justice. Prescriptive easements are not favored in the law, and in Indiana, the party claiming one must meet "stringent requirements." . . .

Adverse use has been defined as a "use of the property as the owner himself would exercise, disregarding the claims of others entirely, asking permission from no one, and using the property under a claim of right." The concept of adversity was developed in the context of establishing use rights over static paths or roads that crossed the property of adjoining landowners. The Court of Appeals affirmed the trial court's conclusion as to adversity by citing a prototypical path or road case for the proposition that "an unexplained use for 20 years is presumed to be adverse and sufficient to establish title by prescriptive easement."

We agree with the reasoning in the Mitchell, Fleck, and Reder decisions that "an unexplained use for 20 years" of an obvious path or road for ingress and egress over the lands of another creates a rebuttable presumption that a use was adverse. However, we are unwilling to recognize such a presumption in favor of a party trying to establish a prescriptive easement for the recreational use of a body of water. This is because recreational use (especially of a body of water) is of a very different character from use of a path or road or ingress and egress over land. Recreational use (especially of water which leaves no tell-tale path or road) seems to us likely to be permissive in accordance with the widely held view in Indiana that if the owner of one land "sees his neighbor also making use of it, under circumstances that in no way injures the land or interferes with the landowner's own use of it, it does not justify the inference that he is yielding to his neighbor's claim of right or that his neighbor is asserting any right; it signifies only that he is permitting his neighbor to use the land."

We thus conclude that claimants seeking to establish an easement based on the "recreational" use of another's property must make a special showing that those activities were in fact adverse; they will not be indulged a presumption to that effect.

Because the facts involve a conveyance of the servient estate during and near the end of the 20-year prescriptive period, we focus on the relationship between the Carnahans and the Drewrys, which comprised over 18 years of the relevant period.

The trial court's findings do not address whether the Carnahans' recreational use of the lake was adverse to the Drewrys. They only track the Carnahans' periodic change in the use of recreational equipment over the years. Therefore, the findings of fact do not support the court's conclusion that the Carnahans' recreational activities constituted the "adverse seasonal use of Lake Julia."

On the other hand, the record does contain ample evidence supporting the inference that the Carnahans' use of the lake was both non-confrontational and permissive in recognition of the Drewry's authority as title holders to a majority of the lake bed. For example, Mr. Carnahan testified that Mr. Drewry "would wave" to them as they anchored their houseboat in "plain sight of his house," but that they kept the houseboat "in the middle" as opposed to the "south side of the lake" so as not "to bother anybody." When asked why they retired their ski boat in 1986, Mr. Carnahan responded that they "didn't want to tick off the neighbors." There are other examples of the Carnahans' non-adversarial use of the Lake, such as Mr. Carnahan's statement that it had " been under his driving force that if people were on the lake fishing, the Carnahans stayed off," and Mrs. Carnahan's statement that "if there are children in the lake, we are either not out there or we are at the opposite end."

We find the evidence establishes that the Carnahans' use of Lake Julia was not adverse and was insufficient to overcome the special showing required with respect to establishing a recreational easement. The Carnahans were engaged in a nonconsumptive, leisurely use of Lake Julia which neither diminished nor adversely altered the quantity or quality of the water. We recognized that the law did not require an affirmative act of hostility of [sic] the part of the Carnahans; nevertheless, we conclude that their occasional, recreational use was not inconsistent with the Drewry's title as majority owners of the property underlying Lake Julia. We also note that the Carnahans' use of the lake was clearly distinguishable from De Rose's adversarial use of Center Lake at issue in Sanders. ("De Rose anchored his boats for hours under a claim of right . . . in defiance of Sanders's protest and request to depart, . . . while asserting that Sanders did not own the land so covered with water and had no right to exercise any control over the same . . ."). Accordingly, as a matter of law the trial court's judgment was not sustained in its findings nor on the record on the basis that the Carnahans established a prescriptive easement.

We reverse the trial court's finding that the Carnahans had established a prescriptive easement.

Case Questions
1. What did the Carnahans own and when did they own it?
2. How did the Carnahans use the lake and how much did they use?
3. Was there adverse use by the Carnahans?
4. Does the court find there is an easement by prescription?
Would putting up a gate and posting a “No Trespassers” sign for two years be enough to stop an easement by prescription? *Kessinger v. Matulevich*, 925 P.2d 864 (Mont. 1996)

The Zuni Indians, as part of their religion, make a periodic pilgrimage at the time of the summer solstice, on foot or horseback, from their reservation in northwest New Mexico to the mountain area the tribe calls Kohlu/wala:wa, which is in northeast Arizona. The Zuni believe Kohlu/wala:wa is their place of origin, the basis for their religious life, and the home of their dead. The pilgrimage has occurred since the fifteenth century.

The pilgrimage crossed over the rather large landholdings of Earl Platt. In 1985, Mr. Platt declared that he was going to prohibit the Zuni from crossing his lands during their pilgrimage. The United States government intervened in the dispute on behalf of the Zuni. A woman from St. Johns, Arizona (located in the northeast part of the state), has testified that she remembers watching the pilgrimage as a girl in 1938. Can Mr. Platt stop the Zuni? Do the Zuni have any rights? *U.S. on Behalf of Zuni Tribe of New Mexico v. Platt*, 730 F.Supp. 318 (D. Ariz. 1990)

**Scope and Extent of Easements**

The extent of permissive use of an easement is determined according to the type of easement. If an express easement has been created, determining the extent of the easement is simply a task of interpretation of the deed or contract granting the easement. A court must undertake this task of interpretation and will employ the rule of reason in executing its task. The rule of reason prohibits a court from imposing unreasonable burdens when the parties have expressed their desires and intentions in general terms. Under the rule of reason, a court cannot impose a strained construction on the language used by the parties.

For example, if the parties expressly provide for an easement across servient land in a definite location, then the court may not impose a different route for the easement upon the parties. On the other hand, an express easement for a pipeline that does not specify depth can be interpreted to permit the dominant estate holder to move the pipe to a greater depth because of technological changes and necessities. Likewise, the grant of an easement to use a beach “for the purpose of boating, bathing, fishing, or other recreation” does not include the right to use the beach for the purpose of commercial boat rental. An easement for “foot passage” will not be expanded to permit vehicles, but an easement for “the right to pass” may be properly interpreted to permit vehicular traffic.

The extent, location, and use of a prescriptive easement is determined according to the type of use made during the prescriptive period. For example, a prescriptive right acquired through foot use does not include the right of vehicular use, and a vehicular private prescriptive use does not include an expansion to commercial use.

The task of determining the extent, use, and location of easements is perhaps the most difficult in easements by implication. With this type of easement, an assumption is made that the parties would recognize the normal development of the dominant estate. Normal development is defined according to the initial use of the property. For example, if the dominant estate is used for residential purposes, it is within the normal development that such land may be subdivided for numerous residences. However, it is not within the normal development for the

http://

Visit Alaska's Division of Mining, Land, and Water to view proposed regulations for public easements at: [http://www.dnr.state.ak.us/land/11aac51.htm](http://www.dnr.state.ak.us/land/11aac51.htm).
property to be used as a commercial rock bed with the accompanying use of large trucks. The use of an easement by implication cannot be expanded to benefit properties other than the dominant estate.

However, all types of easements may be enlarged in their scope through prescription. For example, an easement “for the purpose of transporting milk to a factory” may be used for all purposes for a prescriptive period and thus expand to a general easement. All elements of prescription must be present for the prescriptive period for the expansion of an easement through prescriptive use.

The following case illustrates some of the difficulties encountered in determining the scope and extent of an easement.

**Wetmore v. Ladies of Lorretto, Wheaton**

220 N.E.2d 491 (Ill. 1966)

**Facts**

Since 1928, Wetmore (plaintiff/appellee) and his family have owned an 80-acre parcel of land near Wheaton, Illinois. In 1946, Wetmore sold 10 acres of the land to the Ladies of Lorretto (Ladies/defendants/appellants), a convent and a nonprofit corporation. The diagram below depicts the location of the parcels of property involved.

The Ladies improved the parcel with a large mansion house, swimming pool, sunken gardens, and various outbuildings. Because the 10-acre parcel was landlocked, Wetmore granted to the Ladies an express easement across the remainder of the tract to the east. The easement was an existing driveway that ran in front of Wetmore’s house.

Wetmore negotiated the sale of the 40-acre tract (as shown) to the Ladies in 1957. The Ladies had originally wished to purchase a 33-foot strip for a road to Orchard Drive, but Wetmore would agree only to the sale of the entire tract. Wetmore asked the Ladies to give up a small strip near Hawthorne Lane and they declined; however, they stated that when their new 33-foot road was built, they would direct their traffic to that road.

Prior to the road’s completion in 1960, relations between Wetmore and the Ladies deteriorated substantially. Throughout the 1950s, the Ladies conducted kindergarten and music classes on the 10-acre tract. The result was that 40 to 50 vehicles and pedestrian traffic passed by Wetmore’s house daily. Occasionally, the Ladies had picnics, parties, and garden parties, which resulted in hundreds of cars passing by Wetmore’s house in a single day.

After their road was completed in 1960, the Ladies made verbal requests and sent out maps and directions asking that Wetmore’s driveway not be used. Traffic on the driveway was reduced to five vehicles per day.

Still unsatisfied, Wetmore hired a deputy to turn back vehicles, and at times, Wetmore had confrontations with the Ladies and visitors, which frightened these parties. On one of Wetmore’s complaining visits to the convent, the sheriff had to be called to have him removed.

Wetmore installed a gate with a bell and alarm on the driveway to alert him to those using it.

In 1962, the Ladies built a House of Studies partially on the 10-acre tract and partially on the 40-acre tract (see diagram). This new building and its purpose of holding classes caused an increase in traffic.

Wetmore objected to use of the driveway for the House of Studies on the grounds that it was an unintended
expansion of the easement for use by the 40-acre tract. The Ladies alleged they had an implied easement for both tracts. The trial court found for Wetmore and issued an injunction against the Ladies, and the Ladies appealed.

Judicial Opinion

Davis, Justice. The essential elements of an easement by implication are: (1) The existence of a single tract of land so arranged that one portion of it derives a benefit from the other, the division thereof by a single owner into two or more parcels, and the separation of title; (2) before the separation occurs the use must have been long, continued, obvious or manifest, to a degree which shows permanency; and (3) the use of the claimed easement must be essential to the beneficial enjoyment of the parcel to be benefitted.

We believe that the first two requirements are clearly present in this case. The plaintiff owned the entire 80 acre tract in 1946, and after the conveyance to the defendant of the 10 acre tract, still owned the 70 acre tract, which he severed in 1957. At the time of the conveyance of the 10 acre tract to the defendant in 1946, there was a well-defined roadway—extending from the north where the driveway was located—over which an express easement had been granted, within and along the east side of the 10 acre tract to its south edge, where a corner of the 40 acre tract adjoined.

The roadway was surfaced with some semi-permanent material, was clearly visible, and had been long and continuously used.

We do not believe, however, that the third requirement—that the easement be essential to the beneficial enjoyment of the land—is present.

Where alternative means of access to property are available without passing over the lands of another and the use of such means does not result in an unreasonable burden, courts should exercise due continence in implying and imposing a burden over the lands of another. The land conveyed to the defendant gave it direct access to a public road. Under such circumstances an easement by implication was not sanctioned.

The plaintiff obtained an injunction preventing the continued use of the express easement appurtenant to the 10-acre tract by reason of its use for the benefit of the nondominant 40-acre tract. The defendant contends that not every extension of the use of an easement to an additional tract is a misuse, and that it is only where the extension materially changes the burden on the servient estate, either as to the type of use or the amount, that there is a misuse.

We do not understand that to be the law. If an easement is appurtenant to one tract of land, any extension thereof to another tract of land is a misuse.

While the erection of the House of Studies building on part of the 40 acre tract results in a technical misuse of the easement granted appurtenant to the 10 acre tract, such trivial and inconsequential misuse neither justifies the issuance of an injunction restraining defendant’s right to use the easement expressly granted, nor warrants the authorization granted to plaintiff to close Hawthorne Lane as a means of access to defendant’s property.

Defendant is entitled, however, in view of plaintiff’s past conduct, to an injunction restraining the plaintiff and his agents from wrongful entry upon defendant’s property and from interfering with defendant’s proper use of the express easement.

Reversed.

Case Questions

1. Who originally owned all of the land in question?
2. Had the Hawthorne driveway been in use at that time?
3. What types of activities were conducted by the Ladies of Lorretto on their property?
4. How much traffic was there on the Hawthorne driveway prior to the construction of the 33-foot road? How much traffic was there after the road construction?
5. What actions did Wetmore take to inhibit the use of the Hawthorne driveway?
6. Where was the House of Studies built? Why is its location critical?
7. Who won at the trial court level? What relief was awarded the prevailing party?
8. What type of easement exists according to the appellate court?
9. Did access for the House of Studies constitute an impermissible use of the easement?
10. Who wins at the appellate level? What did the court give as a remedy?

Rights and Obligations of Estate Holders in an Easement

Each of the parties in an easement relationship has certain legal responsibilities and rights. It is the responsibility of the easement owner (dominant estate) to keep the easement on the servient estate in repair. This responsibility of repair exists
even though the servient estate owner is responsible for damages or the state of disrepair in the easement. The easement owner has the right to enter the servient land for purposes of repair. Furthermore, the easement owner may improve the easement with pavement or gravel when the easement is a right of passage.

The owners of servient estates have the right to use their property in any way not interfering with the dominant holder’s use of the easement. For example, the servient owner may grant more than one easement to more than one party.

Servient estate owners may also construct fences along the easement and install gates so long as there is no interference with the easement owner’s use of the easement.

The dominant estate has the right to transfer an easement. An easement is transferred along with the dominant estate even though it is not specifically mentioned in the deed. An “all other appurtenances” clause serves to transfer an easement. Likewise, a servient estate is sold subject to any prior-acquired easements.

**Termination of Easements**

The termination or extinguishment of an easement may be accomplished in several different ways depending on the type of easement involved. An easement is terminated when there is one owner for the dominant and servient estates or when the nonpossessory and possessory interests become united in one owner.

As discussed earlier, an easement by necessity is terminated when the necessity terminates.

All easements can be terminated through abandonment. Abandonment occurs through prescriptive nonuse. Two elements are required to establish abandonment: (1) the easement owner must possess the intent to abandon; and (2) the intent to abandon must be accompanied by conduct indicating the intent to terminate. For example, the owner of a railroad easement who removes the tracks and destroys the shipping factory using the railway has manifested the intent to abandon through conduct. Permitting an easement to fall into a state of disrepair may constitute sufficient conduct manifesting an intent to abandon. For example, allowing an irrigation ditch to become inoperable is an example of disrepair indicating intent to abandon.

All easements may be terminated if the servient owner successfully prevents the dominant holder’s use of the easement for the required prescriptive period. Thus an easement may be created and terminated through prescription.

Some easements are created for a specific time or purpose and are terminated upon the expiration of time or elimination of purpose. For example, a right-of-way given so long as the dominant land is used for a stable would terminate if the land becomes used for other purposes.

An easement may be terminated through estoppel. This occurs when the servient owner, believing there has been abandonment, constructs improvements over the easement in reliance upon the abandonment. The idea supporting this theory of termination is that the easement owner should notify the servient landowner that such improvements interfere with the easement. If the easement owner were not required to object, then the servient landowner would make costly changes only to have them eliminated after completion. Estoppel requires prompt action to minimize expense.
PROFITS

A profit (or profit a prendre) is an easement plus the right of removal. A profit gives the holder the right not only of access to another’s land, but also to remove oil, minerals, water, or some other part of the real property. (See Chapter 2 for more discussion of oil and gas rights.) A profit is not the same as the ownership of subsurface rights because such ownership is exclusive and unlimited. More than one party can hold a profit in a piece of property, and a profit can be limited by the types of minerals that may be taken, or the time allowed for taking.

A profit is not the sale of personal property, because the landowner does not sever the mineral or soil—the profit owner does. For example, the right to remove coal is a profit, whereas the right to buy coal after removal is the sale of personal property.

A profit can be appurtenant, as in the right to remove water for use on an adjoining tract; or it can be in gross, as when an oil company that owns no property in the area is given the right to remove oil from a particular parcel.

Apart from these definitional differences, the creation, rights, and obligations of the parties in a profit a prendre relationship are governed by the same principles of law discussed in the easement portion of this chapter.

One of the most frequently used profits is one for timber. Timber is considered a part of the real estate but can be severed through the award of a profit in the timber. Under the Uniform Commercial Code (UCC) (as adopted in most states), a contract for the sale of timber to be removed by the buyer is considered a contract for the sale of goods, but it is important to understand that title to the timber does not pass to the buyer unless and until it is identified or removed from the land.

LICENSES

A license is a right to use land in the possession of another, but it passes no land interest and does not alter or transfer property. A license only makes certain conduct on another’s land lawful, such as hunting, fishing, or simply being on the property.

A licensee holds a privilege, and that privilege may be revoked at any time by the landowner. A license may be created by an oral agreement, since it is not an interest in land. If the parties attempt to create an easement by oral agreement, a license results.

In 1974, Beaufort County (the County) leased property located at the Hilton Head Airport to Hilton Head Air Service (Air Service). Air Service has operated an aviation business on the leased premises, providing services to the flying public such as maintenance and repair of aircraft. Air Service has also allowed rental car companies to operate on its leased premises.

In May 1979, the County and Air Service entered into a 25-year lease agreement. The lease agreement provided that the county would develop the airport according to a Master Plan Study accepted by the Federal Aviation Administration (FAA). A dispute arose regarding the presence of the rental car companies, which were not specifically or generally authorized by the plan. Air Service claims it can have the rental car companies removed at any time because there are no leases, many of their agreements are oral, and they hold only a license. Is Air Service correct in its characterization of the agreements with the car rental companies?

*Hilton Head Air Service v. Beaufort County*, 418 S.E.2d 849 (S.C. 1992)
Covenants

A covenant is a restriction placed in a deed that is, in effect, a nonpossessory interest in land. Covenants serve to restrict or control some aspect of the use of the land. The common law rule with respect to such covenants is that they are enforceable against the grantor and grantee but not against any subsequent transferees. For example, a covenant in a grant of land for a railway requiring the construction of a depot and station would be enforceable against the grantee but not against subsequent transferees. For this reason, covenants are not effective in enforcing residential use restrictions. However, equitable servitudes may provide a solution. Equitable servitudes are restrictions on building and the use of land. These restrictions are enforceable against subsequent transferees in the restricted areas.

The recognition of equitable servitudes results from the need of residential home buyers for assurance that areas will remain residential and at a certain quality and level. These zoning laws are also helpful in restricting land use. Zoning laws are discussed at length in Chapter 18, and covenants and equitable servitudes are discussed in Chapter 21.

Cautions and Conclusions

If all persons involved in real estate transactions were knowledgeable and cautious enough to provide for easements, much of the discussion and many of the quoted cases in this chapter would be unnecessary. In applying the tools and risks described in this chapter, those involved in a sale transaction should answer the following questions:

1. Is the property accessible or is it landlocked?
2. If the property is accessible, where is the access and who owns it?
3. If the property is landlocked, how can access be obtained?
4. Where is the access route (or where should it be) located?
5. How large an access route is necessary?
6. What types of uses can be made of the access route?
7. Is the access route recorded in any of the land records?
8. Will the deed in the transaction provide for an easement?
9. What parties are using the property, why, when, and for how long?
10. Who will be responsible for maintenance?

If buyers, sellers, agents, brokers, and financiers would take the time to check land records and physically inspect the property involved, many of the expensive easement litigations noted in this chapter could be avoided. The cases used in this chapter demonstrate the types of strong feelings and reactions that can result from misunderstandings on property use. This expensive hostility might be avoided by determining answers to the previous 10 questions.
Key Terms

easement, 46  
easement appurtenant, 47  
easement in gross, 47  
affirmative easement, 47  
negative easement, 47  
conservation easement, 48  
dominant tenement (estate), 48  
servient tenement (estate), 48  
easement by express grant, 48  
easement by express reservation, 48  
easement by implication, 50  
quasi easement, 50  
easement by necessity, 53  
prescription, 54  
rule of reason, 57  
profit, 61  
profit a prendre, 61  
Uniform Commercial Code (UCC), 61  
license, 61  
covenant, 62  
equitable servitudes, 62

Chapter Problems

1. Charlotte Minogue and John Monette are sister and brother. Each inherited a home from their father through his last will and testament. Charlotte inherited her father’s actual residence at 90 Hawthorne Avenue in Albany, New York. John inherited the contiguous parcel located at 88 Hawthorne Avenue.

   A blacktop driveway, approximately 10 feet wide, runs between the two houses. A survey in 1988 showed the driveway to be located on John’s property. A concrete cinder-block garage is located at the rear of Charlotte’s two-family home. The driveway had provided access for her father to the garage and to Charlotte and her tenants until John blocked such use in 1988.

   Charlotte filed suit seeking a declaration of easement for ingress and egress over the driveway. Is she entitled to one? What theory could she use? What type of easement might she have? *Minogue v. Monette,* 551 N.Y.S.2d 427 (1990)

2. Alfonso owned a tract of land depicted in the diagram below. He could no longer afford the property taxes and decided to sell the western half of the property to Billy. In the deed, no mention was made of the access road on Alfonso’s eastern half. Billy wishes to use the access road, but Alfonso refuses. The highway on the eastern side goes directly to town (three miles). The highway on the western side is a major travel route with the nearest exit 25 miles away.

   a. Does Billy have a right to use the access road?
   b. Suppose Alfonso had told Billy he could use the access road. Would the result be different?
   c. Suppose Alfonso had told Billy he could use the access road; then Alfonso transferred the property to Sam; and Sam refused Billy’s request to continue using the access road. What would be the result?

3. Rachael owns a small tract of land in Idaho but lives in Boston. Rachael’s Idahoan neighbor, Big Bob, has been using a path on Rachael’s tract of land to transport his potatoes for 15 years. Rachael has not visited the property for 16 years but has paid taxes on it. Everyone in the area knows of Big Bob’s use of Rachael’s land. Upon discovery of Big Bob’s use, Rachael wishes to know her rights.

   a. What are Rachael’s rights?
   b. Suppose Rachael discovered the problem after three years and put up a fence with a locking gate, which Big Bob then kicked down to continue his use. What would be the result?
   c. Suppose Rachael discovered the problem after three years and put up a sign that read: “No trespassing. Keep out. This means you, Big Bob.” What would be the result?
   d. Suppose Rachael discovered the problem after three years and wrote Big Bob a note (sent certified mail) that read, “Please feel free to use my adjoining property, Big Bob.” What would be the result?
   e. Suppose Big Bob increased the size of his dam and the pond behind it (both located on his property) and flooded Rachael’s property several times each year for 32 years. Does Big Bob have any rights in Rachael’s property as a result? *Chittenden v. Waterbury Center Community Church,* 726 A.2d 20 (Vt. 1998).
4. American University acquired a parcel of land (Lot 806) from Aetna Life Insurance Company. The university was given a Declaration of Easement and Agreement that provided that the grantor: 

conveys to the owners from time to time of [Lot 806 and their] tenants, occupants, guests and business invites, a nonexclusive easement for vehicular parking of not less than 236 automobiles on the parking areas located from time to time upon [Lot 807].

New owners of Lot 807 decided to regulate parking and limit the number of spaces available to American University. Can a private agreement like this or regulations change the terms and scope of an easement? Burka v. Aetna Life Ins. Co., 945 F.Supp. 313 (D.D.C. 1996)

5. In 1962, Temco sold property located at 900 South Wakefield Street to Harvey and Rosabelle Wynn. The purchase contract contains the following provision: “use of apartment swimming pool to be available to purchaser and his family.” The Wynn's were told that subsequent purchasers of their property would also have use of the swimming pool, which is located in an apartment complex next to the Wynn's home. No reference to use of the swimming pool was made in the Wynn's deed.

In 1969, the Bunns purchased the Wynn's home. The Bunns were told of their right to use the pool but upon moving in were denied access. The Bunns insisted on access but were still denied. They filed suit against the owner of Temco, Offutt, seeking a declaration of the easement rights. Do the Bunns have easement rights? Bunn v. Offutt, 222 S.E.2d 522 (Va. 1976)

6. Sylvia Tenn owns a six-story building that has air conditioners in the windows. 889 Associates, Ltd., is planning to construct a 12-story building next to Tenn's building. The result will be that Tenn's window air conditioners will no longer be effective. Tenn claims that she has had the air conditioners for more than 20 years and that she has acquired a prescriptive easement for the air conditioners. Is she correct? Tenn v. 889 Associates, Ltd., 500 A.2d 366 (N.H. 1985)

7. Pacific Theatres and Supply Company, Limited, acquired title to a lot in Waikiki near Seaside and Kalakaua Avenue. The lot deed also provided: 

TOGETHER with the perpetual right of ingress and egress over the 10-foot strip of land on the Western side of Lot 2-B.

Consolidated Amusement bought Pacific's lot and has operated a movie theater there since 1936. Waikiki Business Plaza acquired title to an adjacent lot and planned to construct the Plaza Building and set up vendors' booths in the area. Before the vendors began business and during building construction, Consolidated and the Plaza agreed to allow a “pedestrian passageway” for Plaza activities when the Plaza commenced commercial business with the various booths. Consolidated maintains the booths interfere with its easement for theater patrons. Plaza claims that a small passageway is sufficient. Who is correct? Can the easement be reduced by agreement? Waikiki Business Consolidated Amusement v. Plaza, 719 P.2d 1119 (Haw. 1986)

8. Asa E. Phillips owned property in Seal Harbor, Maine. His deed included a 20-foot right-of-way over property owned by Kate Gregg and W. Layton Stewart. The right-of-way had long been reduced to a five-foot wide footpath and was largely overgrown with trees. Gregg and Stewart had placed gates and warning signs along the path to discourage Phillips's use. Phillips brought suit for an injunction to prevent Gregg and Stewart from interfering with his use of his right-of-way. Gregg and Stewart claimed he had abandoned his easement through nonuse. Who is correct? How should the court determine abandonment? Phillips v. Gregg, 628 A.2d 151 (Me. 1993)

9. Paul Atkinson purchased land from Donald Mentzel that included an easement across Mentzel's land so that Atkinson could have access to his garage. Atkinson wished to install telephone cable along the easement so that he could more fully use his garage. At the time of the conveyance the Atkinson property did not have utility service. The easement was described as a right-of-way and including the following:

The purpose of this easement is to provide access from Lake Shore Drive to the following described real estate and shall allow access for all uses of said property other than retail sales.

Should Atkinson be permitted to install the telephone cable along the easement? Atkinson v. Mentzel, 566 N.W.2d 158 (Wis. App. 1997)

10. The Freeds and Margaret Sterner are owners of adjacent lots. Mrs. Sterner has used a driveway across the Freedes' land for access to her garage. The driveway has been there since 1957, when the Freedes' and Mrs. Sterner's lots were owned by a Mr. William Weaver as one parcel. In 1988, the Freedes erected a barrier and Mrs. Sterner could no longer use the driveway. Does Mrs. Sterner have any rights? Does she have an easement? If so, what type? Sterner v. Freed, 570 A.2d 1079 (Pa. 1990)
Internet Activities

1. For more information on easements that affect residential purchases in the state of Oregon, go to: http://www.teleport.com/~garski/easement.htm.
2. For more information on conservation easements, go to:
   - http://www.mtlandreliance.com
   - http://www.allianceforamerica.org
   - http://www.r6.fws.gov/pfw/r6pfw8b.htm
   - http://www.mnland.org/easement.htm
   - http://www.epa.gov/safewater/dwsrf/ffland.html
3. For information on utility easements in residential property go to: http://www.homeadvisor.msn.com/dl/highlight/qa/5020.asp.
4. For information on easements in rural property, go to: http://www.tetranet.net/~triad/tipsbook.htm.