

# Table of Contents

## CHAPTER 1. NATURE OF EASEMENTS

- § 1:1 “Easement” defined
- § 1:2 Easements distinguished from natural rights
- § 1:3 Easements compared to licenses in land
- § 1:4 —Fundamental difference
- § 1:5 —Intent of parties
- § 1:6 — —Easement cases
- § 1:7 — —License cases
- § 1:8 —Cautionary comments
- § 1:9 Easements contrasted with profits à prendre—“Profit” defined
- § 1:10 —Identifying profits
- § 1:11 — —Nature of item to be removed
- § 1:12 — — —Water, fish, and game
- § 1:13 — — —Fruit and timber
- § 1:14 — —Mislabeling profits
- § 1:15 —Duration and utilization of profits
- § 1:16 —Nonexclusive/exclusive profits
- § 1:17 —Transferability of profits
- § 1:18 —Abandonment of profits
- § 1:19 —Prescriptive profits
- § 1:20 Easements distinguished from leases
- § 1:21 Easements compared to fee simple estates
- § 1:22 —Grant of “right-of-way”
- § 1:23 —Grant of land for specified purpose
- § 1:24 — —Right-of-way or roadway
- § 1:25 — —Church, park, or school
- § 1:26 — —Cemetery plot
- § 1:27 — —Railway or railroad
- § 1:28 —Grant of exclusive use
- § 1:29 Easements differentiated from real covenants

## CHAPTER 2. CLASSIFICATION OF EASEMENTS

- § 2:1 Appurtenant/in gross dichotomy—Easement appurtenant defined
- § 2:2 —Easement in gross defined
- § 2:3 —Distinguishing easements appurtenant from easements in gross
- § 2:4 —Character not altered by subsequent events

- § 2:5 Servient and dominant estates
- § 2:6 —Geographic relationship of servient and dominant estates
- § 2:7 —Building as servient or dominant estate
- § 2:8 —Expanding dominant estate
- § 2:9 —Servient and dominant estates less than fee simple
- § 2:10 Affirmative/negative distinction

### **CHAPTER 3. CREATION OF EASEMENTS BY EXPRESS PROVISION**

- § 3:1 Statute of frauds—Easement grant or reservation
- § 3:2 —Contract to create easement
- § 3:3 Equitable doctrine of part performance
- § 3:4 Persons who may create easement
- § 3:5 Express grant
- § 3:6 Express reservation or exception—Background
- § 3:7 —Reservation/exception distinction
- § 3:8 —Use of “subject to” language
- § 3:9 Reservation or exception in favor of third party
- § 3:10 Express dedication
- § 3:11 Attempting to obtain easement in one’s own land

### **CHAPTER 4. CREATION OF EASEMENTS BY IMPLICATION**

- § 4:1 Background and classification—General principles
- § 4:2 —Distinguishing between easements of necessity and easements implied from quasi-easements
- § 4:3 —Restatement of Property’s approach
- § 4:4 —Other forms of implied easements
- § 4:5 Easements of necessity—Underlying theories
- § 4:6 —Requirements
- § 4:7 — —Common ownership
- § 4:8 — —Severance
- § 4:9 — —Necessity at severance
- § 4:10 — — —Degree of necessity
- § 4:11 — — —Existence at severance
- § 4:12 — —Continuing necessity
- § 4:13 —Easement of necessity negated by expression of intent that no such servitude be implied
- § 4:14 —Statutory ways of necessity
- § 4:15 Easements implied from quasi-easements—Underlying theory
- § 4:16 —Requirements
- § 4:17 — —Common ownership
- § 4:18 — —Apparent and continuous prior use (quasi-easement)

## TABLE OF CONTENTS

- § 4:19 — — — Apparent use
- § 4:20 — — — Continuous use
- § 4:21 — — — Severance
- § 4:22 — — — Necessity at severance
- § 4:23 — — — Evidence of actual intent
- § 4:24 — — — Deed provision that appurtenances pass with fee
- § 4:25 — — — Indication that easement is not intended
- § 4:26 — — — Special-purpose implied easements
- § 4:27 — — — Lateral support
- § 4:28 — — — Party walls
- § 4:29 — — — Light and air
- § 4:30 Easements implied from deed descriptions
- § 4:31 Easements implied from reference to plat
- § 4:32 — — — Adequacy of plat reference
- § 4:33 — — — Identification of streets and other common areas on plat
- § 4:34 — — — Extent of easement implied from plat reference
- § 4:35 Implied dedication
- § 4:36 — — — Establishing landowner's intent
- § 4:37 — — — Significance of public use
- § 4:38 — — — Implied dedication based solely on public use
- § 4:39 — — — Public use as evidence of landowner's intent
- § 4:40 — — — Implied acceptance
- § 4:41 — — — Beach access

## **CHAPTER 5. CREATION OF EASEMENTS BY PRESCRIPTION**

- § 5:1 Background
- § 5:2 General principles—Required elements
- § 5:3 — — — Burden of proof
- § 5:4 — — — Nature of prescriptive easements and profits
- § 5:5 — — — No prescriptive easements against government
- § 5:6 — — — Prescriptive easements over public utility property
- § 5:7 — — — Special statutes on acquisition of prescriptive easements
- § 5:8 Adverse use—“Adversity” defined
- § 5:9 — — — Adverse use compared to permissive use
- § 5:10 — — — Significance of claimant's intent
- § 5:11 — — — Restatement (Third) of Property's approach to use under “imperfectly created” easement
- § 5:12 — — — Adverse use must be limited to specific area
- § 5:13 Open and notorious use
- § 5:14 Continuous and uninterrupted use
- § 5:15 — — — Continuous use
- § 5:16 — — — Uninterrupted use
- § 5:17 Period of prescription

- § 5:18 —Disability provisions
- § 5:19 —Tacking
- § 5:20 —Effect of common ownership
- § 5:21 —Effect of leasing servient estate
- § 5:22 —Effect of transfer of servient estate
- § 5:23 Exclusive use
- § 5:24 Knowledge and acquiescence
- § 5:25 Acquisition by public—Underlying theory
- § 5:26 —Public prescriptive easements in roads
- § 5:27 —Public prescriptive easements for recreation
- § 5:28 —Acquisition by municipalities
- § 5:29 —Acquisition by states
- § 5:30 Special-purpose prescriptive easements—Light and air
- § 5:31 —Enlarged lateral support
- § 5:32 —Common passageways
- § 5:33 —Party walls
- § 5:34 —Encroachments
- § 5:35 —Avigation
- § 5:36 —Private nuisance
- § 5:37 —Water rights
- § 5:38 —Bridges

## **CHAPTER 6. CREATION OF EASEMENTS BY ESTOPPEL, CUSTOM, PUBLIC TRUST, CONDEMNATION, OR EQUITY**

- § 6:1 Easements by estoppel
- § 6:2 Easements derived from custom
- § 6:3 Easements derived from public trust
- § 6:4 Easements created by condemnation—Formal condemnation
- § 6:5 —Inverse condemnation
- § 6:6 —Condemnation by private entities
- § 6:7 Equitable easements

## **CHAPTER 7. LOCATION AND DIMENSIONS OF EASEMENTS**

- § 7:1 Introduction
- § 7:2 Location and dimensions of express easements
- § 7:3 —Easements not subject to precise location
- § 7:4 —Location or dimensions omitted or inadequately described
- § 7:5 — —Designation by parties
- § 7:6 — —Designation by court
- § 7:7 —Practical impact of floating easements
- § 7:8 —Grants of multiple floating easements

## TABLE OF CONTENTS

- § 7:9 —Designation of area for easement does not necessarily represent easement boundaries
- § 7:10 Location and dimensions of easements created by implication—Easements of necessity
- § 7:11 —Easements implied from quasi-easements
- § 7:12 Location and dimensions of prescriptive easements
- § 7:13 Relocation—General rule
- § 7:14 —Express right to relocate
- § 7:15 —Relocation by mutual consent
- § 7:16 —Special cases of relocation absent mutual consent
- § 7:17 —Approaches of Restatement (Third) of Property and Uniform Easement Relocation Act
- § 7:18 Change in dimensions

## **CHAPTER 8. UTILIZATION AND MAINTENANCE OF EASEMENTS**

- § 8:1 Introduction
- § 8:2 Utilization—Express easements—Generally
- § 8:3 — —Easement holder entitled to reasonable use
- § 8:4 — —General right-of-way
- § 8:5 — —Fiber optic cables in rights-of-way
- § 8:6 — —Riparian rights
- § 8:7 —Easements created by implication—Easements of necessity
- § 8:8 — —Easements implied from quasi-easements
- § 8:9 — —Easements by implied dedication
- § 8:10 — —Easements implied from deed descriptions
- § 8:11 — —Easements implied from reference to a plat
- § 8:12 —Prescriptive easements
- § 8:13 Change or increase in utilization—Easement holder may not overburden servient estate
- § 8:14 —Use for nondominant land
- § 8:15 —Subdivision of dominant estate
- § 8:16 —Use enlarged by prescription
- § 8:17 —Servient estate owner’s remedies for overburden—Equitable relief
- § 8:18 — —Damages
- § 8:19 — —Extinguishment of easement
- § 8:20 Use of easement area by servient owner—Rights in general
- § 8:21 —Servient owner’s interference with enjoyment of easement
- § 8:22 — —Structures and other objects
- § 8:23 — —Parked vehicles
- § 8:24 — —Substantial increase in use by servient owner
- § 8:25 — —Gates
- § 8:26 — — —Unlocked gates; Express easements

- § 8:27 — — —Unlocked gates; Easements created by implication or prescription
- § 8:28 — — —Locked gates
- § 8:29 — — —Fences
- § 8:30 — — —Speed bumps and barricades
- § 8:31 —Special issues involving transmission line easements
- § 8:32 —Easement holder's remedies for interference by servient owner
- § 8:33 Interference with easement by third parties
- § 8:34 Concurrent use of servient estate by two or more easement holders
- § 8:35 —Easements in common
- § 8:36 —Successive or different easements over same servient estate
- § 8:37 Repair, maintenance, and improvements—Rights and duties in general
- § 8:38 —Right to enter servient estate
- § 8:39 —Improvements
- § 8:40 Use of party walls
- § 8:41 —Right to support
- § 8:42 —Alterations and repairs
- § 8:43 —Other use of party walls

## **CHAPTER 9. TRANSFERABILITY OF EASEMENTS**

- § 9:1 Transfer of easements appurtenant—In general
- § 9:2 —Attempting to transfer easement appurtenant separate from dominant estate
- § 9:3 Division of easements appurtenant
- § 9:4 Transfer of easements in gross
- § 9:5 —Commercial/noncommercial dichotomy
- § 9:6 —Significance of parties' intentions
- § 9:7 —Statutory developments
- § 9:8 —Profits in gross
- § 9:9 Division of easements in gross
- § 9:10 Involuntary transfers of dominant estates—Tax sale
- § 9:11 —Mortgage foreclosure sale

## **CHAPTER 10. TERMINATION OF EASEMENTS**

- § 10:1 Duration in general
- § 10:2 Express limitations on duration
- § 10:3 —Defeasible easements
- § 10:4 —Easements for life of designated person or building
- § 10:5 —Easements for specified term
- § 10:6 —Easements at will

## TABLE OF CONTENTS

- § 10:7 Inherent limitations on duration
- § 10:8 —Easements created for particular purpose; cessation of purpose
- § 10:9 —Easements of necessity; end of necessity
- § 10:10 —Destruction of building serving as servient or dominant estate
- § 10:11 — —Building as servient estate—Destruction by natural forces
- § 10:12 — — —Voluntary destruction by servient owner
- § 10:13 — —Building as dominant estate
- § 10:14 —Destruction of party wall
- § 10:15 —Expiration of servient or dominant estate less than fee simple
- § 10:16 —Death of holder of noncommercial easement in gross
- § 10:17 Release
- § 10:18 Abandonment—General principles
- § 10:19 —Nonuse
- § 10:20 —Affirmative conduct by easement holder
- § 10:21 Termination by estoppel—Basic concept
- § 10:22 —Application of doctrine
- § 10:23 —Partial extinguishment and temporary suspension
- § 10:24 —Compared to abandonment
- § 10:25 Termination by prescription
- § 10:26 Extinguishment by misuse
- § 10:27 Merger—Basic concept
- § 10:28 —Application to estates other than fee simple
- § 10:29 —Application to estates concurrently owned
- § 10:30 —Merger of contract into deed
- § 10:31 Sale of servient estate to bona fide purchaser without notice
- § 10:32 —Express easements
- § 10:33 —Easements created by implication—Easements implied from quasi-easements
- § 10:34 — —Easements of necessity
- § 10:35 — —Other types of easements created by implication
- § 10:36 —Prescriptive easements
- § 10:37 —Easements by estoppel
- § 10:38 Tax sale of servient estate
- § 10:39 —Effect on appurtenant easements
- § 10:40 —Effect on easements in gross
- § 10:41 Mortgage foreclosure sale of servient estate
- § 10:42 Condemnation of servient estate or of easement itself

## CHAPTER 11. LICENSES IN LAND

- § 11:1 General characteristics
- § 11:2 Creation

- § 11:3 Scope
- § 11:4 Assignability
- § 11:5 Protection against third parties and licensor
- § 11:6 Revocation by licensor—General principles
- § 11:7 —So-called irrevocable licenses
- § 11:8 — —Licenses coupled with an interest
- § 11:9 — —Expenditures in reliance on license
- § 11:10 Termination by means other than revocation

## **CHAPTER 12. EVOLVING AND PROSPECTIVE ISSUES**

- § 12:1 Introduction
- § 12:2 Conservation easements
- § 12:3 Historic preservation easements
- § 12:4 Solar energy easements
- § 12:5 Beach access easements
- § 12:6 Wind easements
- § 12:7 Cable television easements
- § 12:8 Nature trail easements
- § 12:9 Imposition or alteration of easements by governmental action—Easements imposed as condition of building permit
- § 12:10 —Easements imposed by legislation
- § 12:11 —Easements imposed or altered by judicial decision
- § 12:12 Environmental concerns of easement holders
- § 12:13 Environmental control easements

### **Table of Cases**

### **Index**