



2026

SURVEYORS'
Conference

Easements and Rights of Way

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EASEMENT

A limited non-possessory interest
in the land of another

EASEMENT

An easement is "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose."

Stanton v. Lackawanna Energy, Ltd., 886 A.2d 667, 676 n.7 (Pa. 2005).[6]

RIGHT-OF-WAY

- Originally the term “Right of Way” indicated a Right of Easement.
- More specifically, an **easement for passage purposes** (hence “right of way”) such as for a railroad, pipelines, pedestrians, vehicles, aqueducts, etc.

RIGHT-OF-WAY

- However, “Right of Way” also came to mean the land burdened
- In the context of “the land burdened” a right of way **may be owned in fee, or something less**

RIGHT-OF-WAY

A right-of-way is an easement and is usually the term used to describe the easement itself or the strip of land which is occupied for the easement.

25 Am. Jur. 2d Easements & Licenses, §§ 1 and 8.

RIGHT-OF-WAY

A right of way may be defined generally, to be a right to pass over the land of another. It may be a private way or a public way. It may belong to one or several persons, or to the entire community.

Poole v. Greer, 65 A. 767, 22 Del. 220, 6 Penne. 220, 1907

RIGHT-OF-WAY

There appears to be considerable conflict in the cases as to the construction of deeds purporting to convey land, where there is also a reference to a right of way.

Some of the conflict may arise by virtue of the twofold meaning of the term "right of way," as referring both to land and to a right of passage.

Maberry v. Gueths, 777 P. 2d 1285 - Mont: Supreme Court 1989

ESTATES CREATED BY EASEMENTS

- The Dominant Estate (Tenement)
- The Servient Estate (Tenement)

ESTATES CREATED BY EASEMENTS

With regard to easements, the owner of the dominant estate owns the easement rights and the owner of the servient state owns the land over which the easement extends.

McNaughton Properties, LP v. Barr, 981 A. 2d 222 - Pa: Superior Court 2009 FN 1

EASEMENTS IN GROSS AND APPURTENANT EASEMENTS

Two types of easements, generally speaking, exist; easements appurtenant to the properties at issue, and easements in gross.

Coker v. Walker, Del: Court of Chancery 2013

EASEMENTS APPURTENANT

An Appurtenant Easement attaches to the land and can benefit broad groups or "the general public."

It creates **both** a dominant and a servient estate.

EASEMENTS APPURTENANT

Where ... an easement is appurtenant, it runs with the land designated as the dominant tenement, which is the land benefitted by the easement.

PERROTTE v. Singer, Pa: Superior Court 2025

EASEMENTS APPURTENANT-Transfer

Many cases recognize that where an easement is annexed as an appurtenance to land by an express or implied grant or reservation ..., or by prescription, it passes with a transfer of the land although not specifically mentioned in the instrument of transfer.

Brady v. Yodanza, 425 A. 2d 726 - Pa: Supreme Court
1981

EASEMENTS IN GROSS

- An Easement in Gross attaches to a person or persons
- Creates a servient estate, but not a dominant estate.

EASEMENTS IN GROSS

"[a]n easement in gross is a mere personal interest in, or right to use the land of another."

"An `easement in gross' benefits a particular entity rather than a particular piece of land.

An `easement in gross' is an easement with a servient estate but no dominant estate."

Jones v. PINE CREEK HILLS LLC, Pa: Superior Court
2024

EASEMENTS IN GROSS - Transfer

An easement in gross "is generally held to be nonassignable[,] unless it is made assignable by the instrument creating it."

("There does not seem to be any reason why the law should prohibit the assignment of an easement in gross if the parties to its creation evidence their intention to make it assignable.")

Jones v. PINE CREEK HILLS LLC, Pa: Superior Court
2024

EASEMENTS IN GROSS

Since an easement in gross is personal to the grantee, as a general matter it dies with the grantee...

Coker v. Walker, Del: Court of Chancery 2013

AFFIRMATIVE and NEGATIVE EASEMENTS

Easements may be classed as affirmative or negative.

Bennett v. Charles Corp., 226 SE 2d 559 - W Va:
Supreme Court of Appeals 1976

AFFIRMATIVE EASEMENT

Obligates a landowner to permit or allow certain use of his property by another

For Example:

- Ingress/Egress
- Utilities

NEGATIVE EASEMENT

Obligates a landowner to **refrain** from making certain use(s) of his property, which will serve or offer some benefit to the owner of the dominant estate.

For example:

- Air and Light
- Historic
- Conservation
- Setbacks
- Archaeological

NEGATIVE EASEMENT

"An easement is a liberty, privilege or advantage which one may have in the lands of another without profit It may be merely negative and may be created by a covenant or agreement not to use land in a certain way. . . ."

Thatcher's Drug Store v. Consolidated, 636 A. 2d 156 - Pa: Supreme Court 1994

LICENSE

Generally revocable
or
for a specific time period

LICENSE

Licenses are often compared to easements. In general, a license is a mere personal or revocable privilege to perform an act or series of acts on the land of another, which conveys no interest or estate.

A license is distinguishable from an easement because it is usually created orally, *id.*, is revocable at the will of the licensor, ... and is automatically revoked by the sale of the burdened property.

Moore v. Bishop, Pa: Superior Court 2024

LICENSE vs. EASEMENT

An unrecorded easement is a license and does not run with the land or bind subsequent purchasers without notice.

Continental Tele. Co. of the West v. Blazzard 149 Ariz. 1, 5-6, 716 P.2d 62, 66-67 (App. 1986)

LICENSE vs. EASEMENT

[A] license may become irrevocable under the rules of estoppel and in those circumstances it is similar to an easement.

The Pennsylvania Supreme Court adopted the equitable doctrine of irrevocable license in the mid-nineteenth century stating that "a license to do something on the licensor's land when followed by the expenditure of money on the faith of it, is irrevocable, and is to be treated as a binding contract."

Moore v. Bishop, Pa: Superior Court 2024

CREATING EASEMENTS

An easement may be created by express agreement in compliance with the Statute of Frauds, or by implication, necessity, or prescription.

Morning Call, Inc. v. Bell Atlantic-Pennsylvania, Inc.,
761 A. 2d 139 - Pa: Superior Court 2000

CREATING WRITTEN EASEMENTS

Express Easements

- Created by virtue of an instrument of conveyance or a mortgage
- Given by grant or reservation
 - The dominant estate should be identified in the document creating an appurtenant easement
- Dedication
- By Reference* [implied easement in PA]
- Condemnation (public or private)

CREATING WRITTEN EASEMENTS

Express Grant

[E]asements may be created by an express grant.

To ascertain the nature of the easement created by an express grant we determine the intention of the parties ascertained from the language of the instrument.

Jones v. Jones, Pa: Superior Court 2025

CREATING WRITTEN EASEMENTS

Reservation

A reservation ... occurs where the granting clause conveys the totality of the land described, but reserves to the grantor one or more of the rights that would comprise a fee simple absolute.

Hinojos v. Lohmann, 182 P. 3d 692 - Colo: Court of Appeals, 1st Div. 2008

CREATING WRITTEN EASEMENTS

Reservation

More recently, our supreme court recognized the grantor's right to reserve for his or her use an easement over land conveyed, and noted that the grantor must disclose his or her intent to do so by the words he or she uses.

Southall v. Humbert, 685 A. 2d 574 - Pa: Superior Court 1996

CREATING WRITTEN EASEMENTS

Dedication

A dedication has been defined as the donation of land or the creation of an easement for public use.

See *Black's Law Dictionary* 442 (8th ed. 2004)

CREATING WRITTEN EASEMENTS

Dedication

Dedication of land results when a landowner offers property for public use and it is accepted by or in behalf of the public and the dedication largely depends on the intention of the owner of the land. There must be an offer and an acceptance.... When the dedication is by a public entity, no separate acceptance is necessary.

Coffin v. Old Orchard Dev. Corp., 408 Pa. 487 - Pa: Supreme Court 1962

CREATING WRITTEN EASEMENTS

Dedication

A street becomes public when it is (1) dedicated to public use and (2) accepted by the municipality: where lots are sold as part of a subdivision plan submitted to a governing body, the implication arises that the streets are dedicated to public use.

Leininger v. Trapizona, 645 A. 2d 437 - Pa:
Commonwealth Court 1994

CREATING WRITTEN EASEMENTS

Dedication

In many jurisdictions, a statutory dedication conveys a fee interest to the public.

Kiely v. Graves, 271 P. 3d 226 - Wash: Supreme Court 2012 [citing Illinois and Mississippi cases]

CREATING WRITTEN EASEMENTS

Dedication

However, in other jurisdictions a statutory dedication may confer no further right than a mere easement.

Kiely v. Graves, 271 P. 3d 226 - Wash: Supreme Court 2012 [citing New York, Oklahoma, Montana and Utah cases]

CREATING WRITTEN EASEMENTS

Dedication

Where a street called for a boundary in a deed is not a highway nor dedicated to public use, the grantee does not take title in fee to the center of it, but by implication acquires an easement, or right of way, over the lands.

Smith v. Dailey, Pa: Superior Court 2022

CREATING WRITTEN EASEMENTS

Condemnation

- Regulated by statute
- In some states, right of way taken through condemnation can only be acquired as easement, not in fee
- Eminent domain can generally be exercised only by qualified public utilities, railroads and governmental entities.

CREATING WRITTEN EASEMENTS

Recordation requirements

- An unrecorded easement does not give notice therefore cannot affect third parties (e.g. subsequent buyers)
- An unrecorded easement is essentially the same as a license agreement between the two parties to the agreement

CREATING WRITTEN EASEMENTS

Recordation requirements

A purchaser of land who has no notice either actual or constructive, of an easement in such land in favor of third persons is free from the burden of such easement.

See 28 C.J.S., *Easements*, §§ 49, 50

UNWRITTEN EASEMENTS

- Implied Easement (By Prior Use)
- [Implied] Easement by Necessity
- Implied (common law) Dedication
- Easement by Estoppel
- Implied Easement by map reference
- Prescriptive Easement

Implied Easement [by prior use]

To establish an easement by implication upon **severance of title**, a party must establish:

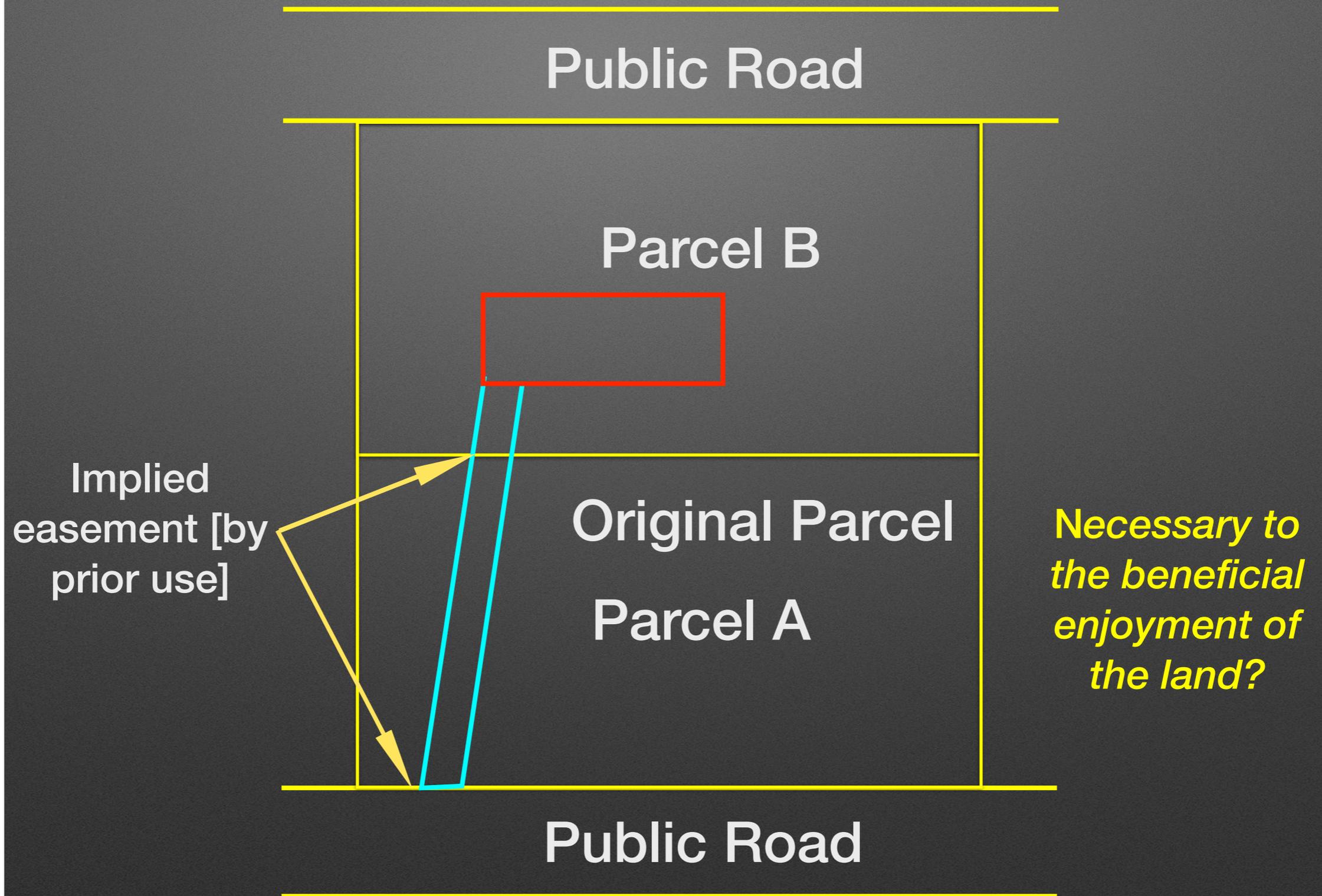
- (1) a separation of title;
- (2) prior to the separation, the use giving rise to the easement was "so long continued, and so obvious or manifest, as to show that it was meant to be permanent";
- (3) the easement is "necessary to the beneficial enjoyment of the land granted or retained[;]" and

Implied Easement [by prior use]

(4) "the servitude shall be continuous and self-acting, as distinguished from discontinuous and used only from time to time."

Roman v. 4020 MECHANICSVILLE ROAD, LLC,
Pa: Superior Court 2025

Implied Easement by Prior Use



[Implied] Easement by Necessity

The three fundamental requirements for an easement by necessity to arise are the following:

- 1) The titles to the alleged dominant and servient properties must have been held by one person.
- 2) This unity of title must have been severed by a conveyance of one of the tracts.

[Implied] Easement by Necessity

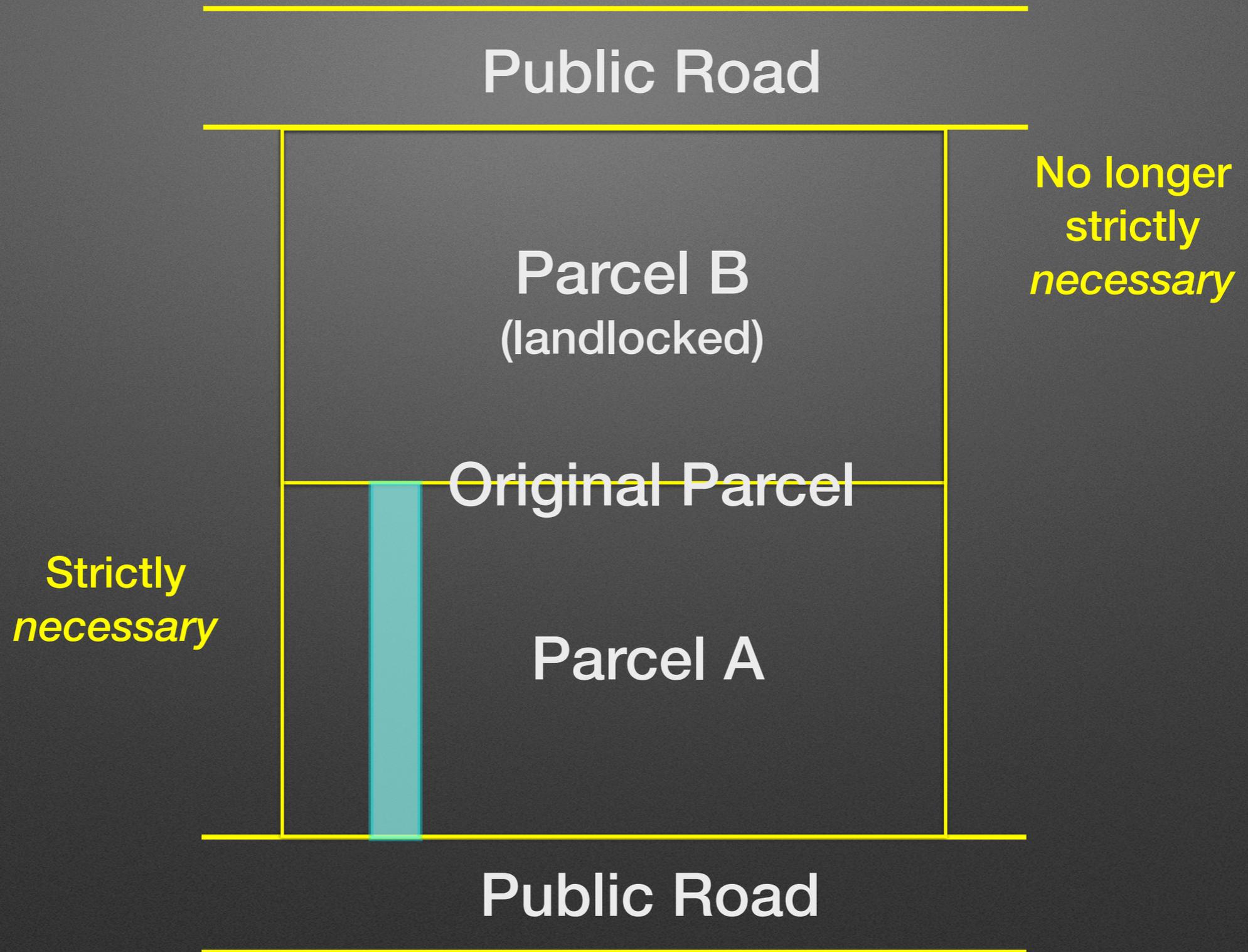
3) The easement must be necessary in order for the owner of the dominant tenement to use his land, with the necessity existing both at the time of the severance of title and at the time of the exercise of the easement.

An easement by necessity is always of strict necessity.

An easement by necessity never exists as a mere matter of convenience.

Phillippi v. Knotter, 748 A. 2d 757 - Pa: Superior Court 2000

Implied Easement by Necessity



Implied Easement by Necessity Generally

An easement by necessity will **not** be implied "if the claimant can obtain a means of access to his land **at reasonable expense**" or...

Implied Easement by Necessity Generally

... “if the claimant has another mode of access to his land, **however inconvenient**, either by another way over his own land or by a right of way over the land of another.”

25 Am. Jur. 2d Easements and Licenses §§39, 42, 43
(1996)

Implied (Common Law) Dedication

[A] common law dedication is the setting apart of lands for public use; it rests on public convenience and is based on public policy and good faith.

26 C.J.S. Dedication § 2

Implied (Common Law) Dedication

The owner's intent need not be express.

"The owner's intention to dedicate land to the public may be manifested by his acquiescence in its use by the public, and dedication of the property may result from such acquiescence, provided the use is of the necessary character and duration."

See 23 Am.Jur.2d Dedication § 34 (1983)

Implied (Common Law) Dedication

"Where a lot of land is conveyed and the deed makes reference to a plan upon which the lot is laid out which, in turn, calls for a certain street thereon, this constitutes a dedication of the use of the street to the enjoyment of the purchaser as a public way though not yet opened and the map or plan becomes a material and essential part of the conveyance and has the same effect as if incorporated therein.

Implied (Common Law) Dedication

We expressed no requirement that the plan be recorded and we indicated that recordation was not necessary by ruling incorporation by reference makes the plot plan part of the deed.

Reed v. Reese, 374 A. 2d 665 - Pa: Supreme Court
1976

Implied (Common Law) Dedication

"A defective statutory dedication may operate as a common-law dedication, and a valid common-law dedication will prevail over an invalid statutory dedication."

Poznic v. Porter County Development Corp., 779 NE 2d 1185 - Ind: Court of Appeals 2002

Easement by Estoppel (Equitable easement)

An easement by estoppel— traditionally considered an irrevocable license in Pennsylvania— will arise when a landowner permits a use of property under circumstances suggesting that the permission will not be revoked, and the user changes his or her position in reasonable reliance on that permission.

Easement by Estoppel (Equitable easement)

The permission does not need to be express, but may be inferred through the owner's acquiescence in an open and obvious use of the land.

Moore v. Bishop, Pa: Superior Court 2024

Easement by Estoppel (Equitable easement)

The rule "is founded on the policy of preventing injustice."

Lobato v. Taylor, 71 P. 3d 938 - Colo: Supreme Court 2002.

Implied Easement by Map Reference

An easement by reference to a map or plat is not an express easement but, rather, an easement by implication.

Potis v. Coon, 496 A. 2d 1188 - Pa: Supreme Court
1985

Implied Easement by Map Reference

If the public has not accepted the offer to dedicate the street to public use within 21 years after the dedication, then the public's right to accept the offer is foreclosed under the Act of 1889, *see* 36 P.S. § 1961.

Implied Easement by Map Reference

However, the individual's property right in the dedicated street is a private contractual right resulting as a legal consequence from the implied covenant under which the grantee purchased, and, as such, is not affected by the failure of the municipality to act upon the dedication; therefore, even though public rights in the street are lost, private easements are left unaffected unless surrendered.

Potis v. Coon, 496 A. 2d 1188 - Pa: Supreme Court
1985

Prescriptive Easement

A prescriptive easement is a right to use another's property which is not inconsistent with the owner's rights and which is acquired by a use that is open, notorious, and uninterrupted for a period of twenty-one (21) years.

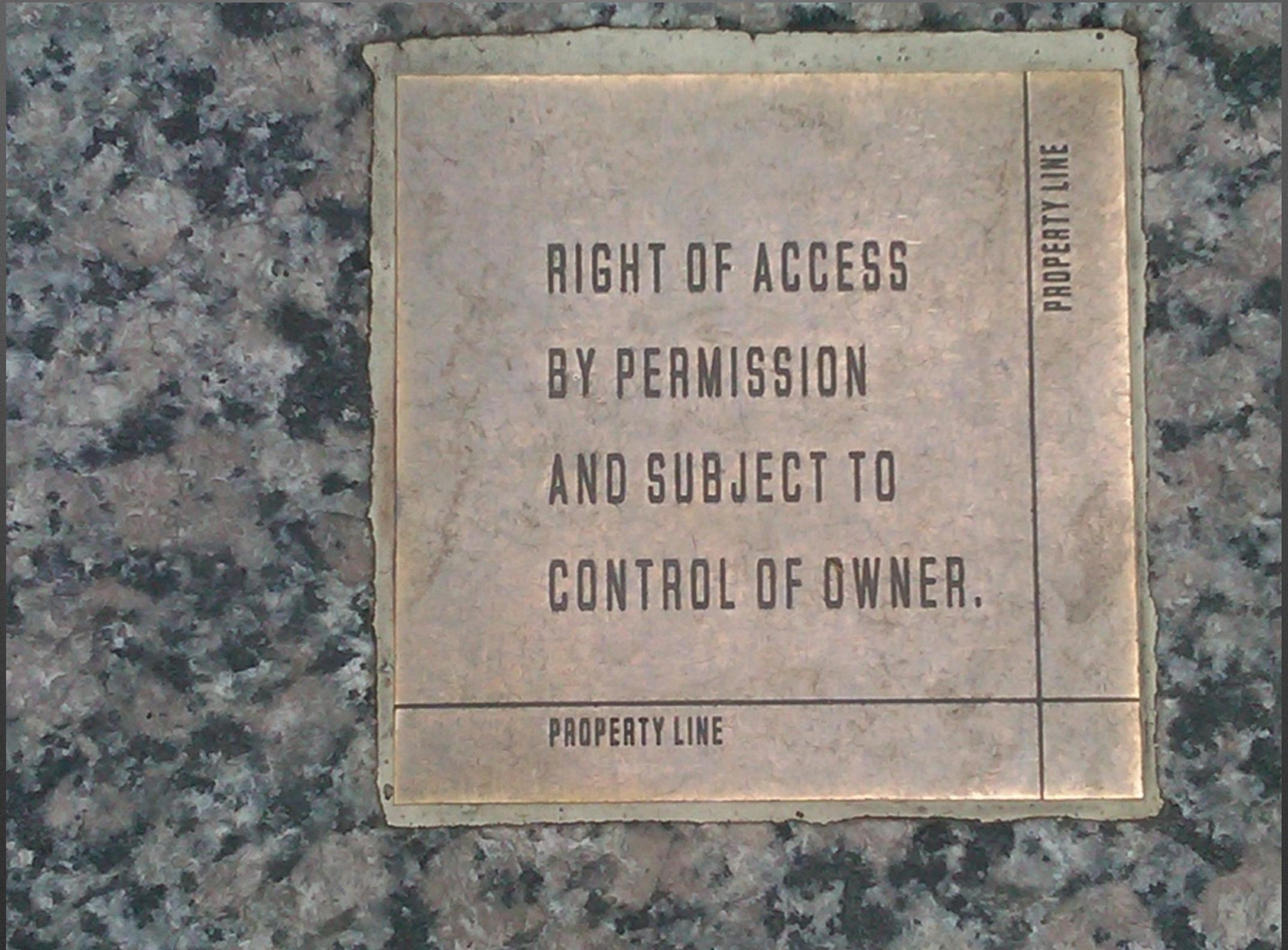
Soderberg v. Weisel, 687 A. 2d 839 - Pa: Superior Court 1997

Prescriptive Easement

An easement by prescription ... is created by adverse, open, continuous, notorious, and uninterrupted use of land for the prescriptive period — in Pennsylvania, twenty-one years.

Bodman v. Bodman, 456 Pa. 412 - Pa: Supreme Court
1974

Prescriptive Easement



Prescriptive Easement

**“RIGHT TO PASS BY PERMISSION
AND SUBJECT TO CONTROL OF OWNER”
(SECTION 1008 CIVIL CODE)**

**“NO SKATEBOARDING
ALLOWED ON PROPERTY”**

“NO SOLICITING”

SCOPE OF A WRITTEN EASEMENT

In ascertaining the scope of an easement created by an express grant, the intention of the parties to the grant must be advanced.

"Such intention [of the parties] is determined by a fair interpretation and construction of the grant and may be shown by the words employed construed with reference to the attending circumstances known to the parties at the time the grant was made."

Lease v. Doll, 403 A. 2d 558 - Pa: Supreme Court 1979

SCOPE OF WRITTEN EASEMENTS

~ “Exclusive Easements” ~

An `exclusive easement' is an unusual interest in land; it has been said to amount almost to a conveyance of the fee.

2 Thompson on Real Property (1980), § 426, at 654-655.

SCOPE OF WRITTEN EASEMENTS

~ “Exclusive Easements” ~

Pennsylvania law does not establish that the use of the term `exclusive easement' is sufficient as a matter of law to grant an easement which excludes the servient estate[.]”

Esposito v. THE ASSOCIATION OF PROPERTY OWNERS OF THE HIDEOUT, INC., Pa: Superior Court 2024

MAINTENANCE OF AN EASEMENT

Ordinarily, the owner of a servient estate is under no obligation to repair or maintain an easement.

Many courts, however, apportion the expense of maintaining a driveway or right-of-way between dominant and servient owners **when both use the easement.**

Apportionment is commonly based on the relative extent of usage.

Baker v. Hines, 406 SW 3d 21 - Ky: Court of Appeals 2013 [internal citations omitted]

MAINTENANCE OF AN EASEMENT

In *Borgel v. Hoffman*, 219 Pa.Super. 260, 280 A.2d 608 (1971), this Court held that where multiple owners of property which abutted a private driveway extending between two rows of houses enjoyed an easement over the driveway in common with other abutting owners, each owner, *in the absence of an agreement to the contrary*, was responsible for the maintenance and repair of only that portion of the driveway abutting or located on his land.

Mscisz v. Russell, 487 A. 2d 839 - Pa: Supreme Court 1984

MAINTENANCE OF AN EASEMENT

In equity, those entitled to use land subject to an easement jointly have obligations for maintenance proportional to their use.

SANDIE, LLC v. PLANTATIONS OWNERS ASSOCIATION, INC., Del: Court of Chancery 2012

OVERBURDENING AN EASEMENT

- The USE of the easement
- The NATURE of that use

OVERBURDENING AN EASEMENT

The court further noted that evidence tending to support a finding that an easement is being overburdened includes:

- "(1) decreased property value;
- (2) increased noise and traffic or interference with the servient owner's peace and enjoyment of the land; and
- (3) physical damage to the servient estate.

Green v. Templin, Del: Court of Chancery 2010

OVERBURDENING AN EASEMENT

[W]hile grantors, *i.e.*, owners of the servient estate, retain the right to use the premises, their use "must be exercised in a manner consistent with the existing easement[; t]hey may use it as they choose but may not interfere with the proper and reasonable use by [the grantees] of their dominant right."

TOWAMENCIN SUMNEYTOWN PIKE, LLC AND WAWA, INC. v. PHILADELPHIA SUBURBAN DEVELOPMENT CORPORATION, Superior Court of Pennsylvania, 2022

OVERBURDENING AN EASEMENT

Where the width of an easement is unambiguously specified in the grant, the grantee is obviously restricted to that width even if it is insufficient for his purposes and enjoyment.

Zettlemyer v. TRANSCONTINENTAL GAS, 657 A. 2d 920 - Pa: Supreme Court 1995

INTERFERING WITH AN EASEMENT

What constitutes unreasonable interference on the part of the servient owner depends upon the owner and his desired use, as well as the disadvantage to the owner of the easement.

Soderberg v. Weisel, 687 A. 2d 839 - Pa: Superior Court 1997

INTERFERING WITH AN EASEMENT

[W]here an easement has been created but no occasion has arisen for its use, the owner of the servient tenement may fence his land and such use will not be deemed adverse to the existence of the easement until such time as...

INTERFERING WITH AN EASEMENT

- (1) the need for the right of way arises,
- (2) a demand is made by the owner of the dominant tenement that the easement be opened and
- (3) the owner of the servient tenement refuses to do so.

Cited in *Vandeleigh Industries v. STORAGE PARTNERS*, 901 A. 2d 91 - Del: Supreme Court 2006

RELOCATING AN EASEMENT

It is generally true that easements may not be modified, changed, altered, or relocated without the consent of both the dominant and servient estates.

However, there is no *per se* prohibition against a landowner relocating a prescriptive easement unless such action completely denies the easement holder the intended use of the original easement.

Soderberg v. Weisel, 687 A. 2d 839 - Pa: Superior Court 1997

BALANCING RIGHTS OF DOMINANT & SERVIENT ESTATES

The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both.

Hill v. Carolina Power & Light Co., 204 S.C. 83, 96, 28 S.E.2d 545, 549 (1943)

TERMINATION/EXTINGUISHMENT

Written Means

Easements are terminated or extinguished by:

- (1) Merger of Title or
- (2) by an instrument having that stated purpose:
 - Release
 - Vacation
 - Abandonment
- (3) By the terms of the document

TERMINATION/EXTINGUISHMENT

Unwritten means

- (4) Cessation of purpose
- (5) Impossibility of Use
- (6) Non-User/Intent to Abandon
- (7) Cessation of the Necessity
- (8) Adverse Possession
- (9) In certain circumstances...
 - (a) Mortgage Foreclosure
 - (b) Tax Sale

Extinguishment of Easements

Extinguishment of an easement can be found where there is: (1) a cessation of necessity; (2) a merger of title, possession and enjoyment of the dominant and servient tenements; or (3) an abandonment of the easement.

Moser v. Nocito, 41 Pa. D. & C. 3d 82 - Pa: Court of Common Pleas 1984

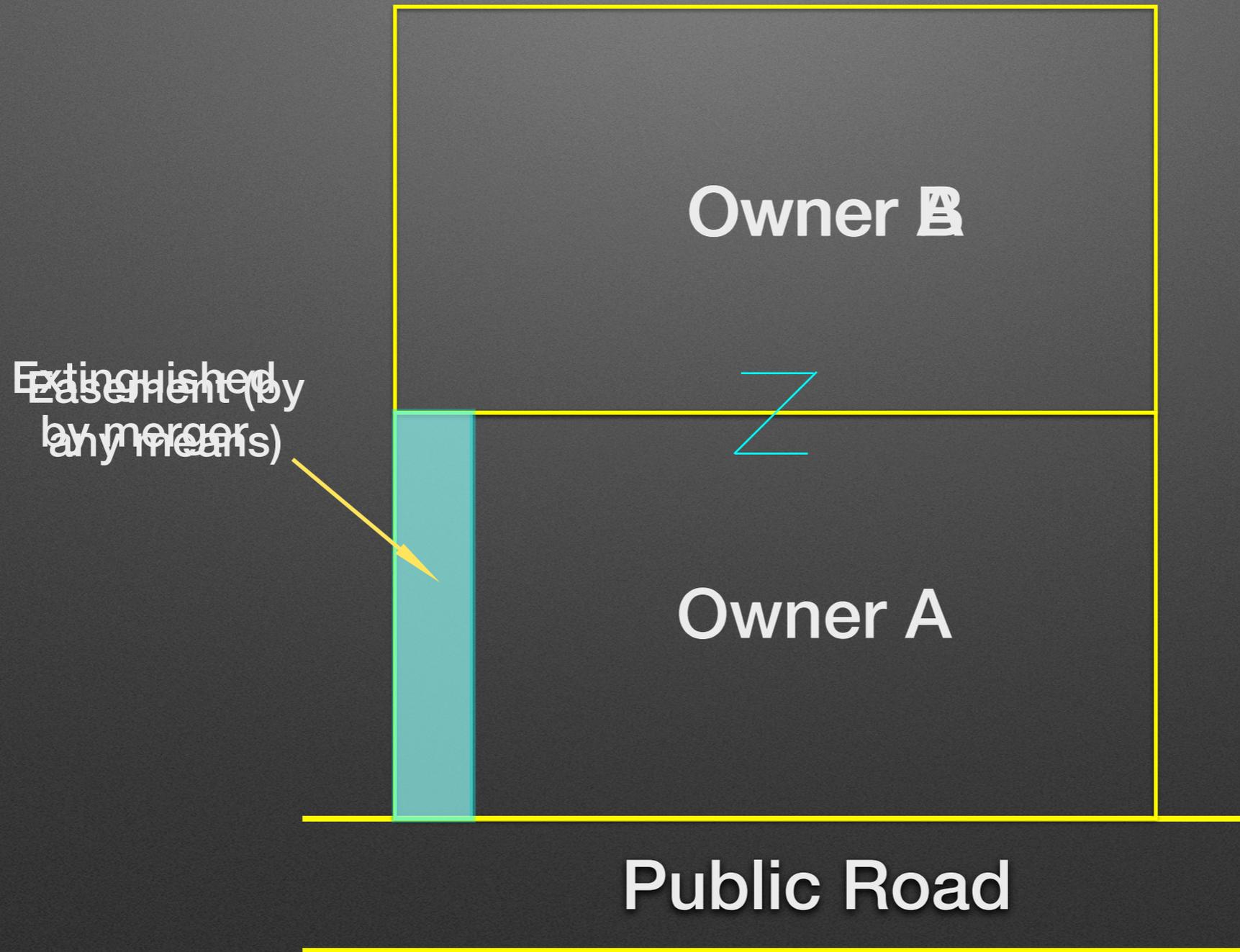
EASEMENTS ON ONE'S OWN LAND

“Merger of Title”

[W]here [the] owner of [the] servient tenement acquires title to the dominant tenement for the benefit of which easement was created such merger of title extinguishes easement since people cannot have an easement over their own land.

CARHEN ENTERPRISES, LLC v. CELLINI STUDIOS, LLC, Pa: Superior Court 2025 citing *Obringer v. Minnotte Bros.*, 352 Pa. 188, 42 A.2d 413 (1945)

Merger of Title Doctrine



EASEMENTS ON ONE'S OWN LAND

“Merger of Title”

The rationale ... is "to avoid nonsensical easements—where they are without doubt unnecessary because the owner owns the estate.”

Hamilton Court, LLC v. East Olympic, LP, 215 Cal. App. 4th 501 - Cal: Court of Appeal, 2nd Appellate (2013)

EASEMENTS ON ONE'S OWN LAND

“Merger of Title”

Once a right-of-way has been extinguished by merger, it [can]not be re-created by the mere subsequent separation of the parcels.

Capital Candy, 135 Vt. at 16, 369 A.2d at 1365

EASEMENTS ON ONE'S OWN LAND

“Merger of Title”

Where right-of-way is extinguished [by merger], it can only be recreated by a proper new grant or reservation.

Capital Candy, 135 Vt. at 16, 369 A.2d at 1365

TERMINATION/EXTINGUISHMENT

Release

"The owner of an easement has an interest in the land of another. Therefore, the owner of the easement may end the easement by releasing it to the servient owner."

SHUBH HOTELS DETROIT, LLC v. WELLS OPERATING PARTNERSHIP, LP, Mich: Court of Appeals 2008

TERMINATION/EXTINGUISHMENT

Condemnation

An easement may be condemned and acquired by eminent domain, in which case it would also be extinguished.

TERMINATION/EXTINGUISHMENT

Vacation

An official action by the appropriate authorities that releases the public's interest in a dedicated public easement.

TERMINATION/EXTINGUISHMENT

Terms of the document

Generally, easements determinable upon condition are of two types:

- (1) those that end upon the happening of a condition and
- (2) those that can be ended if the grantee fails to comply with conditions subsequent.

Cadwallader v. Scovanner, 178 Ohio App. 3d 26 - Ohio: Court of Appeals, 12th Appellate Dist. 2008.

TERMINATION/EXTINGUISHMENT

Terms of the document

An easement may be determinable.
The language ... [of the grant of easement],
which includes the words "so long as"
establishes that the easement was intended to
be a qualified easement determinable upon the
happening of a particular event.

Indiana Broadcasting Corp. v. Star Stations, 388 NE
2d 568 - Ind: Court of Appeals, 4th Dist. 1979

TERMINATION/EXTINGUISHMENT

By unwritten means

- (4) Misuse of easement
- (5) Cessation of purpose
 - Extinguishment of the dominant estate
 - Cessation of the Necessity
- (6) Non-User/Intent to Abandon
- (7) Impossibility of Use
- (8) Adverse Possession
- (9) Estoppel
- (10) In certain circumstances...
 - (a) Mortgage Foreclosure
 - (b) Tax Sale

TERMINATION/EXTINGUISHMENT

Dominant Owner's Misuse

Ohio cases recognize that termination of an easement may be an appropriate remedy when the owner of the easement abuses or misuses easement rights.

Walbridge v. Carroll, 184 Ohio App. 3d 355 - Ohio: Court of Appeals, 6th Appellate Dist. 2009.

TERMINATION/EXTINGUISHMENT

Cessation of purpose

An easement may be extinguished when the purpose for which it originally was created no longer exists and there is no reason for its continued existence.

Green v. Templin, Del: Court of Chancery 2010

TERMINATION/EXTINGUISHMENT

Cessation of Necessity

“[A]n easement by necessity is extinguished when the necessity from which it resulted ceases to exist.”

Phillippi v. Knotter, 748 A. 2d 757 - Pa: Superior Court
2000

TERMINATION/EXTINGUISHMENT

Non-use and intent to abandon

In *Hatcher v. Chesner*, supra, this Court found an intent to abandon an easement where the owner of the dominant tenement and his predecessors in title had taken affirmative acts which obstructed the use of the easement to a material extent.

Piper v. Mowris, 351 A. 2d 635 - Pa: Supreme Court
1976

TERMINATION/EXTINGUISHMENT

Non-use and intent to abandon

Our law is clear that "[m]ere nonuser does not constitute abandonment; there must be an intention to abandon, together with `external' acts by which such intention is carried into effect; ordinarily this raises a question of fact to be determined by a jury."

Lawson v. Simonsen, 417 A. 2d 155 - Pa: Supreme Court 1980

TERMINATION/EXTINGUISHMENT

Non-use and intent to abandon; Adverse Possession

[W]here an easement is created by deed, Pennsylvania has required not only intent to abandon by the dominant tenement, but adverse possession by the servient tenement as well. . . .¹¹

Thus the Pennsylvania courts look not only to the actions and intentions of the dominant tenement with which the Restatement limits its consideration, but also to the *intentions and actions* of the servient tenement as well.

Hatcher v. Chesner, 422 Pa. 138 - Pa: Supreme Court 1966

TERMINATION/EXTINGUISHMENT

Adverse Possession, Impossibility of Use, Obstruction

In order for the servient tenement to establish abandonment "Pennsylvania law requires that there be a showing of intent of the owner of the dominant tenement to abandon the easement, coupled with either

- (1) adverse possession by the owner of the servient tenement; or
- (2) affirmative acts by the owner of the easement that renders the use of the easement impossible; or

TERMINATION/EXTINGUISHMENT

Adverse Possession, Impossibility of Use, Obstruction

(3) obstruction of the easement by the owner of the easement in a manner that is inconsistent with its further enjoyment."

Piper v. Mowris, 351 A. 2d 635 - Pa: Supreme Court
1976

TERMINATION/EXTINGUISHMENT

Adverse possession

[T]he court held that such an easement may be extinguished by adverse possession, stating that to "claim title by adverse possession, one must prove actual, visible, notorious, exclusive and distinct, hostile and continuous use for 21 years.

Estojak v. Mazsa, 562 A. 2d 271 - Pa: Supreme Court 1989

TERMINATION/EXTINGUISHMENT

Estoppel

An easement may be terminated by estoppel resulting from conduct of the owner of the easement.

Whenever action is taken by the owner of the servient estate inconsistent with the continued existence of the easement and if such action is taken in reasonable reliance upon the conduct of the owner of the dominant estate, and the servient owner may be damaged by the restoration of the easement an estoppel exists.

Picconi v. Carlin, 123 A. 2d 87 - NJ: Superior Court, Law Div. 1956

TERMINATION/EXTINGUISHMENT

Mortgage foreclosure

- If easement is subordinate to a prior lien
- How to prevent?
- Contact lender; ask for a subordination agreement
- Lender may require the consideration paid for easement be applied to the borrower's account in exchange for the agreement

REVERSIONARY RIGHTS

The rights held by the dominant estate revert to the servient estate when the easement is extinguished.

REVERSIONARY RIGHTS

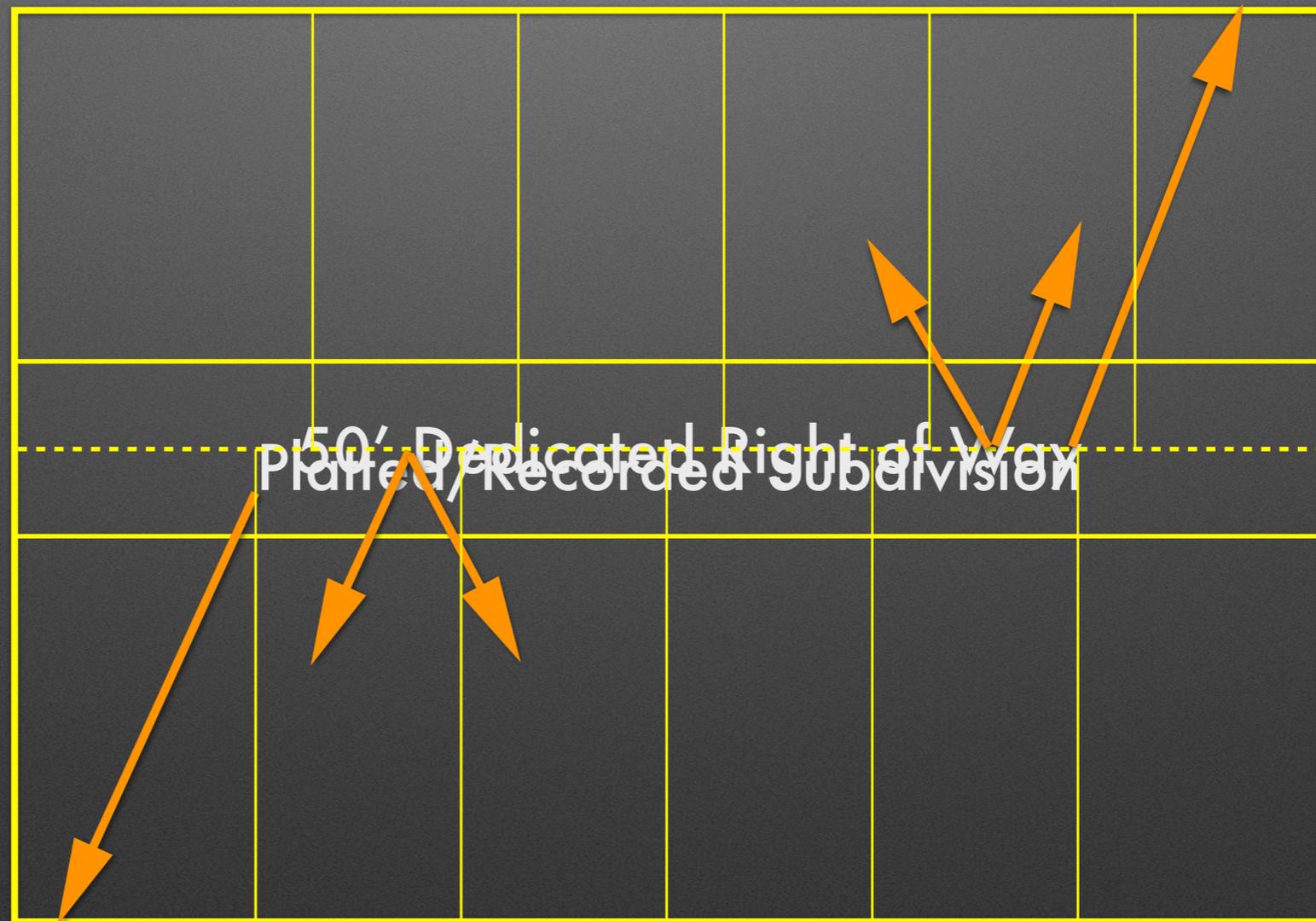
If the dedication was merely a grant of easement, underlying fee remains attached to the property out of which the dedication was made.

Upon vacation, the reversionary rights (being those rights represented by the easement) belong to that property.

REVERSIONARY RIGHTS

If a dedication was a fee dedication, a state statute or local ordinance will often dictate the disposition of the real estate upon vacation.

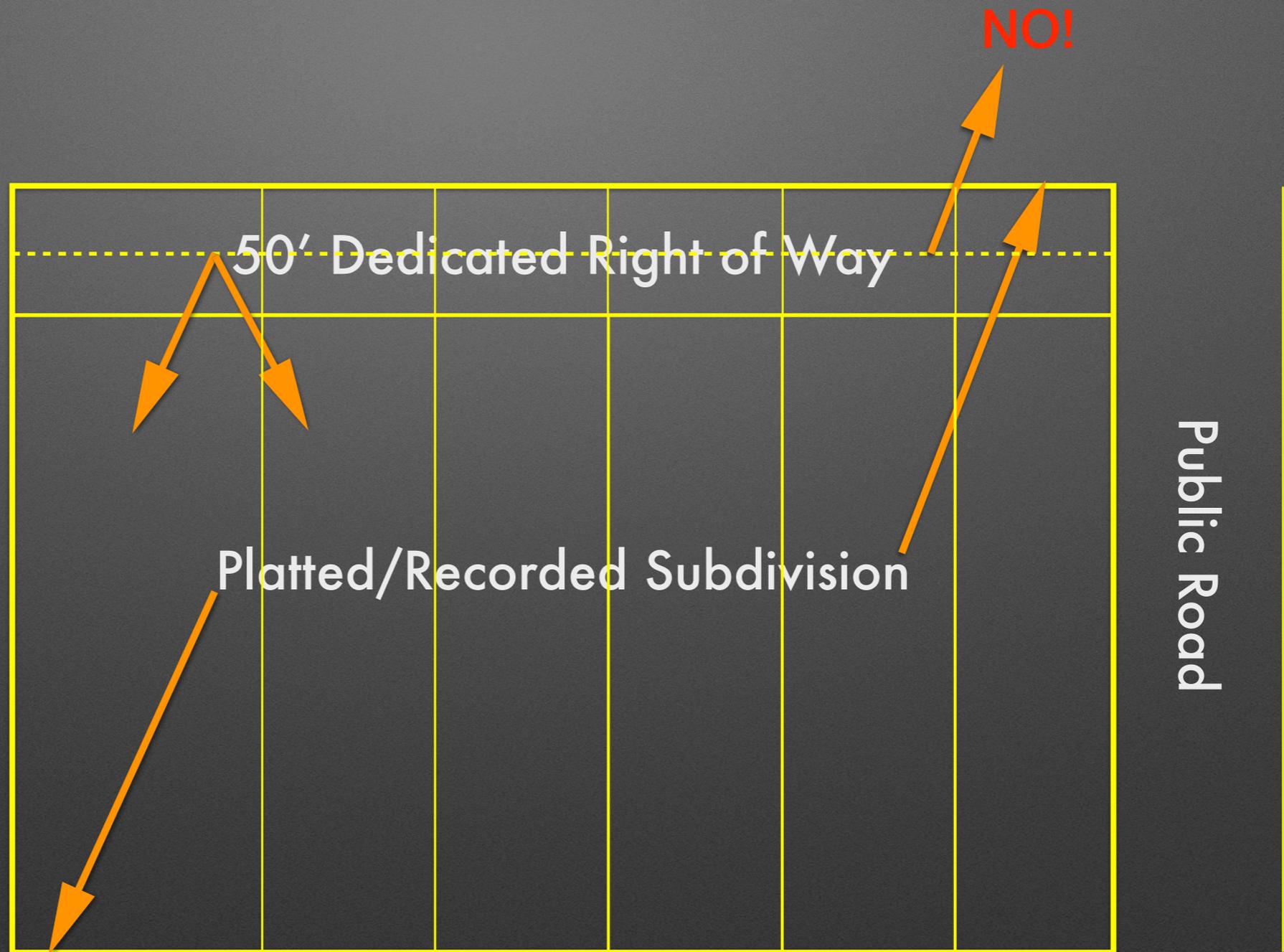
REVERSIONARY RIGHTS



REVERSIONARY RIGHTS

Reversionary rights along a public street are not necessarily divided down the center of the street.

REVERSIONARY RIGHTS



Rails to Trails and Reversionary Rights

Moody v. Allegheny Valley Land Trust, 976 A. 2d 484 - Pa: Supreme Court 2009

While the United States Supreme Court has determined that it is possible for a railbanking to result in a taking....., see *Preseault v. ICC*, 494 U.S. 1, 8, 110 S.Ct. 914, 108 L.Ed.2d 1 (1990), the Court nonetheless upheld the National Act and stated that when determining the breadth of an easement, courts should look to state law, as "[s]tate law generally governs the disposition of reversionary interests."

Rails to Trails and Reversionary Rights

Moody v. Allegheny Valley Land Trust, 976 A. 2d 484 - Pa: Supreme Court 2009

In determining whether a railbanking had effected a taking in light of the United States Supreme Court's earlier decision, the Federal Circuit looked first to whether the rail operator's interest was fee simple or an easement; second, to whether the easements' terms were "limited to use for railroad purposes, or did they include future use as public recreational trails;" and third, to whether the easements had been extinguished by abandonment.

Rails to Trails and Reversionary Rights

Moody v. Allegheny Valley Land Trust, 976 A. 2d 484 - Pa: Supreme Court 2009

The language of [the Preseault] opinion implies that an easement's terms can either limit the easement to railroad purposes, or explicitly include future use as public recreational trails, but we note these two alternatives are not exclusive. . . .

[O]ne determinative issue is whether "the terms of the easements [were] limited to use for railroad purposes, *or* ... include[d] future use as public recreational trails") (emphasis added).

Rails to Trails and Reversionary Rights

Moody v. Allegheny Valley Land Trust, 976 A. 2d 484 - Pa: Supreme Court 2009

The deed that created the easement at issue here referred to it as a "right of way," and contained the following habendum clause: "To have and to hold the said rights and privileges to the use of [Conrail],[5] so long as the same shall be required for the use and purposes of said Road, in as full, perfect and ample a manner as may be necessarily required for the purposes hereby intended."

Rails to Trails and Reversionary Rights

Moody v. Allegheny Valley Land Trust, 976 A. 2d 484 - Pa: Supreme Court 2009

The plain language of the deed's *habendum* clause refers to the right-of-way over Appellants' land as a "Road."

It is this property interest in the "Road" that Conrail conveyed to the AVLT.

A road is "[a]n open, generally public way for the passage of vehicles, people, and animals," "[t]he surface of a road; a roadbed," "[a] course or path," or "a railroad."

Rails to Trails and Reversionary Rights

Moody v. Allegheny Valley Land Trust, 976 A. 2d 484 - Pa: Supreme Court 2009

By the plain language of the deed's *habendum* clause, there is no reason to confine our understanding of the easement grant as allowing rail service, but not preservation for future rail service.

Rails to Trails and Reversionary Rights

Moody v. Allegheny Valley Land Trust, 976 A. 2d 484 - Pa: Supreme Court 2009

Fundamentally, the deed and its *habendum* clause create an easement to allow travel through the servient estates.

Subsequent holders of the easement may not transgress its boundaries, but they do not transgress the use for which it was granted when they use it for hiking and biking.

Interim trail use is consistent with the terms of the easement grant."

SESSION EVALUATION



[HTTPS://WWW.SURVEYMONKEY.COM/R/PSLS2026EVAL](https://www.surveymonkey.com/r/PSLS2026EVAL)

Questions?

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