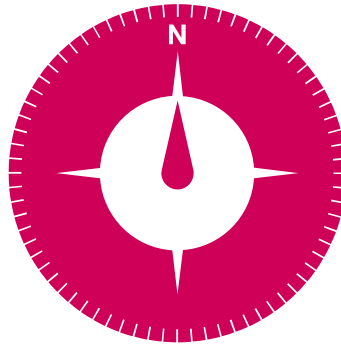


RICS CONFERENCE: ESSENTIAL UPDATE



Go further

EASEMENTS



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9 October 2018

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UNDERSTANDING EASEMENTS: AN INTRODUCTION



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What we will cover:



- Characteristics
- Creation
- Termination
- Different types of easements
- Examples of disputes
- Remedies



WHY ARE EASEMENTS IMPORTANT?



An easement is a right benefitting land which is exercisable over other land

- Over 65% of freehold titles in England and Wales are affected by one or more easements
- Without the existence of easements, some landowners would be unable to enjoy their properties



CHARACTERISTICS & CREATION



CHARACTERISTICS

- ✓ Dominant and servient tenements
- ✓ Must be different owners
- ✓ Must accommodate the dominant tenement
- ✓ Right capable of forming a grant of easement

CREATION

- Express grant
- Implied grant
- Long user
- Statute



EXPRESS GRANT



- Owner of a parcel of land formally grants a right to the owner of another parcel of land
- Usually when land is severed - earliest conveyance is essential
- Can be by separate deed later
- Should specify:
 - ✓ Extent, frequency, dimensions, mode of user, any limits or conditions
- Strong & difficult to vary – most secure and clear for both dominant & servient owners
- Construction / interpretation is judicial matter
- Language, circumstances, layout



LONG USER PRESUMED GRANT



A right of way by prescription can arise in the following ways:

- Common law
- Doctrine of lost modern grant
- Statute - Prescription Act 1832

Components

- 20 years
- Without permission, without force & without secrecy
- Action within one year of interruption for the Prescription Act claim
- Evidence based
 - Witness statements
 - Historic photographs
 - Layout of the land



IMPLICATION



Creation

- Necessity
- Common intention
- Rule in Wheeldon v Burrows
- S62 Law of Property Act 1925

Risks of implied easements

Can unexpectedly limit the use of land & lead to dispute

- ✓ careful conveyancing
- ✓ expressly set out agreed easements
- ✓ expressly exclude or limit to what s62 applies
- ✓ expressly state the parties do not intend to create any new easements
- ✓ mechanism for future grant and dispute resolution procedure



TERMINATION



- Express release
- Unity of title
- Expiry if the grant has limitation / expiry date or conditions
- Abandonment – RARE
- Statute - Land Registration Act 2002



TYPES OF EASEMENT



Not a closed class or absolute list. Anything can be an easement which is legal and where there is a capable grantor and grantee and where the right is sufficiently definite.

- right of way
- right to take support
- right to light
- right to park
- rights of drainage, maintenance & repair
- fishing rights
- right to use recreational facilities

NO RIGHT TO A VIEW!

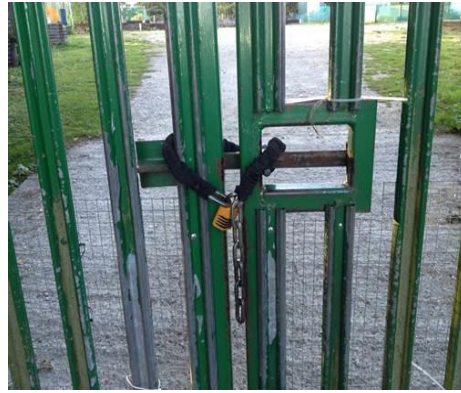


CASE STUDY – EXPRESS GRANT



Plan 1

- A sells pink land to B.
- ROW on foot over path 6ft wide as is coloured yellow on plan for the period where the pink land is used for the purpose of a sports ground
- A installs locked gate and re-surfaces path to 5ft only. B wants to bring team minibus to the field.
- Does B have claim? Can B deviate the route?
- Is the position different if the lock was a key code which B is given?



CASE STUDY: THOUGHTS



- Substantial interference - is the exercise of the right of way more difficult than previously?
- Gates – not a substantial interference in principle, but dominant user must have access
- Excessive user of right of way beyond grant not permitted – so no minibus
- Deviation
 - Dominant user has right to deviate the route in order to get around the substantial interference
 - Servient owner does not have the right to force the dominant user to deviate unless by consent or the grant permits



CASE STUDY 2 - RIGHT TO LIGHT



R owns residential property in Brighton. Developer X purchases the land next to R for mixed-use development. R is worried about the reduction of light into his living room as a result. R took legal advice late and only began action when X was some way along development. R produced evidence he had to use electric lights or move closer to the window where he would be overlooked by development X.

- Is R entitled to an injunction?
- Can X take calculated risk and continue building with the aim of paying off R?
- Is the cost to X relevant?

Regan v Paul Properties Ltd [2006] EWCA Civ 1391

HKRUK II (CHC) V Heaney (2010) EWHC 2245



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CASE STUDY 2 – AN ALTERNATIVE



R is instead a firm of solicitors. Their interest is different to Mr R in scenario 2 – purely financial. They were concerned that the value of their building was reduced as a result of X development. X tries to discuss and had invited input from Solicitors R before the work. R had ignored and simply rebutted attempts to reconcile. R then applies for an injunction.

- Contrast in behaviour is important
- Commercial offices largely lit by artificial light anyway
- Enjoyment of natural light less relevant

Midtown Ltd v City of London Real Property Company Ltd [2005] EWHC 33



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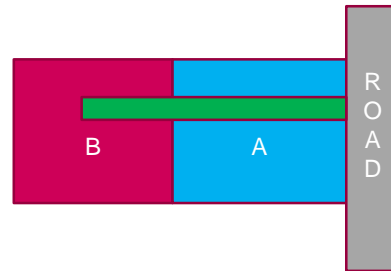
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CASE STUDY 3 - IMPLICATION



A sells to B. A grants express rights of way on foot and with vehicles. The transfer is silent on drainage and other services, although all pipes and cables were in place and in use before the sale to B. Both A and B are less than 20 years old.

- Can A block services for B?
- Can A require B to contribute to maintenance?



REMEDIES



INJUNCTION

- Discretionary
- Interim and/or final
- Mandatory or prohibitory
- Breach is contempt of court

DAMAGES

- In lieu of injunction
- Loss actually suffered
- Often requires expert evidence
- Defendant should not gamble on court awarding instead of injunction
- But see *Coventry & ors v Lawrence* [2014] UKSC 13



QUESTIONS?



Amy Johnston is an Associate Solicitor at DWF LLP, practising exclusively in property litigation. She represents clients facing all aspects of property disputes, usually between residential owners.

She is experienced in acting in complex multi-track and High Court matters, in addition to undertaking mediation and other alternative dispute resolution at all stages of litigation.

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