



Easement Basics: A Primer on Easements in Oil and Gas Exploration and Production

O. Judson Scheaf

Emens, Kegler, Brown, Hill & Ritter

Columbus, Ohio

Synopsis

Table listing sections from § 3.01 to § 3.09 with corresponding page numbers, including sub-sections like 'Types of Easements in General' and 'Special Issues Involving Mineral Interests'.

§ 3.01. Introduction.

Once there has been a separation of the mineral estate from the surface estate, numerous issues arise in regard to the permissible uses of the surface estate for purposes of exploring mining, extracting, storing, transporting

or marketing minerals. Resolution of those issues may turn upon the law relating to easements. If anything should be derived from the sections that follow, it is that a mineral owner's reasonable anticipation of the scope of needed uses of the surface estate for recovery activity ought to be thought out, agreed to, and reduced to writing as part of the initial severance of the mineral estate from the surface estate. Otherwise, both the surface owner and the mineral owner might be unpleasantly surprised by the operation of the law relating to easements.

§ 3.02. Nature of Easements in General.

An easement is a non-possessory interest in the land of another that gives the holder¹ the right to use the land for a particular purpose.² An easement is not an estate in land, but is an interest in land such that the Statute of Frauds may be implicated when resolving questions relating to an easement.³ Land that is subject to an easement is referred to as the "servient" or "burdened" estate, whereas, land that is benefited by the existence of an easement on another parcel of property is referred to as the "dominant estate."

§ 3.03. Types of Easements In General.

[1] — Easements Appurtenant.

An easement appurtenant is created for the benefit of the dominant estate. One owner's land (the servient estate) is burdened for the benefit of the physical use of another's land (the dominant estate).⁴ It is usually

¹ W. Burby, *Handbook of the Law of Real Property* §23 (3d ed. 1965); Restatement of Property, §450 (1944); see also *Lichter v. Eastern Realty Co.*, 516 A.2d 1247, 1251 (Pa. 1986); *City of Hollywood v. Mohr*, 325 P.2d 209 (Pa. 1958); *Henry Bickel Co. v. Texas Gas Transmission Corp.*, 336 S.W.2d 345, 347-348 (Ky. 1960); *Weeks v. Texas Illinois Natural Gas Pipeline Co.*, 276 S.W.2d 321, 323 (Tex. 1955).

² *Restatement of Property*, § 450 (1944).

³ W. Va. Code § 36-1-3 (1994); K.R.S. § 371.010 (Michie 1994); 33 P.S. § 1 (1994); Tenn. Code Ann. § 29-2-101 (1994); O.R.C. Ann. 1335.04 (Anderson 1994); M.S.A. § 26.906 (1993).

⁴ *Thurston Enterprises v. Baldi*, 519 A.2d 297, 300 (N.H. 1986)(possessor of dominant estate grants the easement for another's use); *Egidi v. Town of Libertyville*, 621 N.E. 2d 615, 622 (Ill. 1993); *Powers v. Grenier Constr., Inc.*, 524 A.2d 667, 669 (Conn. 1987).