

I. INTRODUCTION TO NON-POSSESSORY INTERESTS IN LAND

1. Introduction to non-possessory interests

corporeal vs. incorporeal hereditaments

iura in re sua vs. *iura in re aliena* (“rights in his own thing vs. rights in the thing of another”)

the questions on p. 894:

- a. Any legal effect?
- b. Changed conditions, changed use
- c. Abandonment
- d. Conveyance, succession
- e. Appurtenance vs. in gross
- f. Residual rights
- g. Eminent domain

2. Labels dictate results

- a. right in the land of another vs. estate
- b. easement vs. covenant
 - i. driveway easement as easement
 - ii. as covenant
- c. affirmative vs. negative
- d. appurtenant vs. in gross/dominant vs. servient
- e. burden vs. benefit

easements { affirmative
negative

negative } covenants
affirmative }

Vocabulary for Non-Possessory Interests that are 'In Gross'



Tract of
Land

In gross
Benefit
Affirmative / Negative Easement
Negative / Affirmative Covenant

In gross
Burden
Affirmative / Negative Easement
Negative / Affirmative Covenant

Vocabulary for Non-Possessory Interests that are 'Appurtenant'



Tract of
Land
A

Tract of
Land
B

Appurtenant
Dominant tenement
Benefit
Affirmative / Negative Easement
Negative / Affirmative Covenant

Appurtenant
Servient tenement
Burden
Affirmative / Negative Easement
Negative / Affirmative Covenant

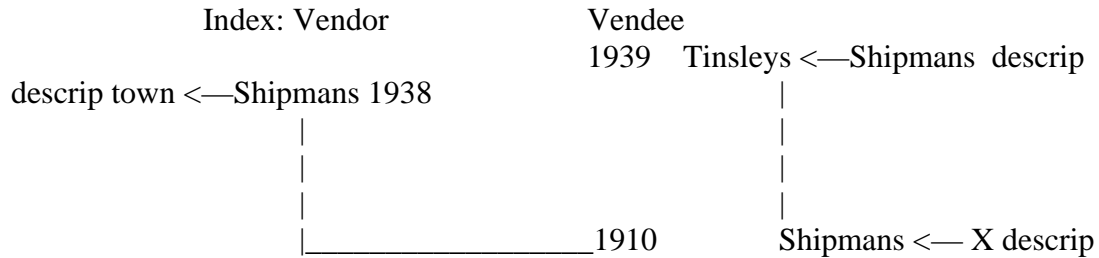
There have been, at least historically, doubts as to whether interests that fill all of these boxes could be created. Be that as it may be, this is what they are called if they can be created.

II. EASEMENTS

1. *Waldrop*—the court holds that this is an easement. What kind of an easement?

a. what difference would this have made if covenant?

i. notice



ii. changed conditions

b. why is this an easement? What does the language say?

“It is understood and agreed that the party of the second part is purchasing the property hereinabove described for use as a dumping ground for garbage, waste, trash, refuse, and other materials and products which the party of the second part desires to dispose of. And as a part of this conveyance the parties of the first part do hereby grant and convey unto the said party of the second part, its successors and assigns, the right without limit as to time and quantity, to use the lands hereinabove described as a dumping ground for the Town of Brevard for garbage, waste, trash, refuse and other materials and products of any and every kind which the said party of the second part desires to dispose of by dumping on the said lands and burning or leaving thereon, and the said parties of the first part do hereby release, discharge, waive and convey unto the said party of the second part, its successors or assigns, any or all rights of action, either legal or equitable which they have or ever might or may have by reason of any action of the party of the second part in using the lands hereinabove described as dumping ground for the Town of Brevard, or by reason of any fumes, odors, vapors, smoke or other discharges into the atmosphere by reason of such location and use of a dumping ground on the lands hereinabove described.

“The agreements and waiver hereinabove set out shall be covenants running with the remainder of the lands owned by the parties of the first part, and binding on the said parties as the owners of said lands, and their heirs and assigns, and anyone claiming under them, or any of them, as owners or occupants thereof.”

2. *Cox*

a. changed conditions—1945 \$8600; 1960 \$250 K; c. 3000%

b. the scope consequences of appurtenance

c. why presume appurtenance

d. why width of road controlling but not use?

e. why not tell the parties what they really want to know?

3. *Petersen*—Mr. Friedman at Michigan

- a. what kind of easement is it? | labeling game
- b. why is there an issue? | good draftsmanship
- c. what diff. would it have made if it had been a fee estate? a cov?
 - i. building
 - ii. damages
 - iii. injunction
 - iv. eminent domain
- d. who's the plaintiff?