

Apparent inconsistency: between two decisions in the above 2 cases resulted in:

Grigsby v Melville [1973] 1 All ER 385: parties were owners of 2 adjoining properties & defendant claimed a right to f storage in cellar beneath his neighbours house. Brightman J: might well be not inconsistency- not aware of how much coal was stored nor whether the landlord was prevented from using his shed. 'to some extent a problem of this sort may be one of degree

London & Blenheim Estates Ltd v Ladbroke Retail Park [1992]: court rejected claim by D that he had a right to park up to six cars on the plaintiff's land on weekdays between 8.30am and 6pm. Court considered that extensive right would leave the plaintiff without any reasonable use of his land, whether for parking or otherwise. Confirmed a more limited nature of storage and parking easements

Summary:

Registered land:

Legal E & profits created expressly i.e. by deed are registrable dispositions.

LE, pORIFTS, & Equit'e which are overriding before 13 oct 2003, remain overriding

New Equitable Easements & profits are now minor interests

Only new legal E & profits that can be overding are those created:

Implied

Implied grant - Wheeldon v Burrows or S.62(1)

By prescription Sch 3 para 3, LRA 2002

Un reg land: Le binds all 3rd parties

Equi'E Interests must bind purchasers who have notice of them and will bind those automatically.

Creation of easments:

Expressly:

Legal- deed

Equitable- written agree't

Implied reservation in a conveyance:

Necessity: access to a land locked land

Common intention- Wong v Beaumont Property Trust (1931)

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3. CREATION OF EASEMENTS

3.1 Express creation

can happen with or without a sale of part

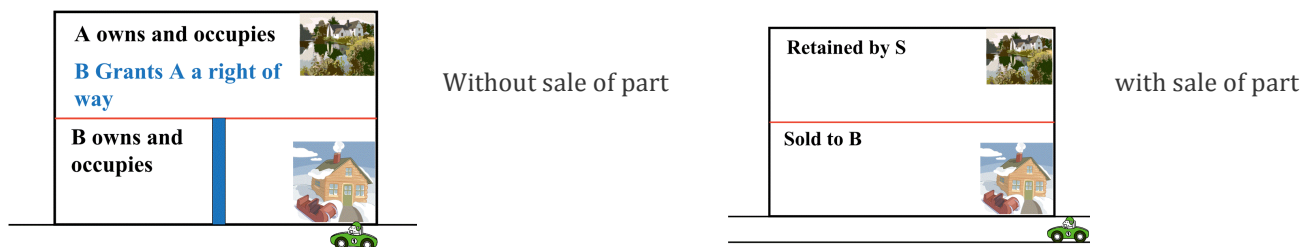
Distinction between Grant and reservation

Important for express creation of easements and implied creation on a sale of part

Methods of creation:

3 ways in which a LEGAL easement can be created:

- Expressly in a Deed (check transfer/ conv')
- Implied into the transfer deed on a "Sale of Part"
- Prescription (20+ years user & satisfying various conditions)



Distinction between grant and reservation

Grant

- Benefits land sold to buyer and
- Burdens sellers retained land

Need to show that land was meant to be used in a particular way and that the parties must have intended there be a right so that it can be so used.

It is not enough that the subject matter of the grant.....should be intended to be used in a manner which may or may not involve this definite and particular use.' Lord Parker Pwllbach

Cory v Davies [1923]

A owned freehold of 1-3 Stag Close

A granted lease of no 1 to H in March, no 2 to J in April and no 3 to D in May

Each lease included the portion of the drive immediately in front of the house

At each end of the drive is a gate

None of the leases contained an express grant or reservation of an easement over the drive

H has locked the gate to stop others using the drive

Held – clear in the way the development carried out that it was expected that the tenant of each house would be able to obtain access from either end of the drive

Implied grant to give effect to the common intention of the parties

Stafford v Lee [1992] 65 P & CR 172: court accepted that it was appropriate to infer an easement to give effect to the intention of the original parties, but that it could be done in which the parties intended that the dominant land should be used in some definite and particular way.

3.2.3 Wheeldon v. Burrows ('continuous and apparent'; 'necessary to the reasonable enjoyment of the land sold'; and 'in use by the owner at the time of sale')

'on the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed there will pass to the grantee all those continuous and apparent easements (by which I mean quasi-easements), or in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted.' Thesiger LJ in Wheeldon v Burrows [1879]

Wheeler v JJ Saunders [1996]: in such a situation the owner sells that part of his land which is benefitted and retains the land which is burdened, the purchaser may acquire an easement over the land retained by the vendor.

3 elements to the rule:

- a. continuous and apparent
- b. 'necessary to the reasonable enjoyment' of the land sold, and;
- c. in use by the owner at the time of the sale.

If satisfied: then a grant of a legal easement is implied into the transfer of the portion of the land that is sold.

W v B judgement appears contradictory in places and 2 possible interpretation

Ford v Metropolitan and Metropolitan District Railway (1886)

Quasi easement being used at time of sale of part

Use of QE continuous and apparent

Easement is necessary for reasonable enjoyment of land sold

Continuous and apparent?

Ward v Kirkland [1967]

Ungoed-Thomas – requires some feature to be present on the servient tenement which would be apparent on an inspection. Each requirement applied in a diff type of easement, positive easement being required to be continuous and apparent, whilst negative easements must be shown to be necessary to the reasonable enjoyment of the property.

The feature must be on that has a degree of permanence eg drains or path

NB continuous = not 24/7 us.

3.2.4 LPA 1925, s.62:

'A conveyance of land shall be deemed to convey, with the land all privileges, easements, rights appertaining to the land at the time of conveyance.

Operates by importing certain words into the conveyance, it has the effect of making an express, not implied, grant of the easement or profit (Gregg v Richards) 1926

2 effects:

- Passes benefit of an existing right to Buyer on sale of whole (word saving)
- "Magic Effect" - Creates new easements: Automatically converts existing licences, etc. to easements!