

Texas Supreme Court: Necessity & Prior Use Easements

Texas Surveyors Association
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Wilson Cribbs + Goren

“...Ah, you can't always get what you want, no, no, baby
You can't always get what you want, you can't now, now
You can't always get what you want
But if you try sometimes you just might find
You just might find that you
*You get what you **need**, oh yeah*
Ah yeah, do that”

Source: [LyricFind](#)

Songwriters: Keith Richards / Mick Jagger

You Can't Always Get What You Want lyrics © Abkco Music Inc.

Hamrick v. Ward (Tex. 2014)

Justice Guzman Redefined Tx. Easement Law:

Necessity Easements vs. Prior Use Easements

- Implied easements created when unified ownership is severed
- *Strict/continuing necessity* for Necessity Easements
(substantial burdens)
- *Reasonable necessity* at severance for Prior Use Easements
(lesser burdens)

Necessity Easement

1. *unity of ownership*

2. *access is a necessity*

a. *not a convenience*

b. *historical necessity (at severance)*

c. *continuing, present necessity*

- *Automatically terminates when necessity ceases*
- *Rationale: productive use of landlocked parcels*
- *Almost exclusively access*

Prior Use Easement

1. unity of ownership;

2. use was open and apparent BOTH at severance, and at most recent purchase

(i.e., Bonafide Purchaser for Value without Notice status defeats)

1. use was continuous to severance

2. necessary to the use of the dominant estate:

a. strict necessity if Grantor reservations

b. possibly only reasonable necessity for Grantee grants (not decided)

- *Rationale:* Implied intent. “the law reads into the instrument that which the circumstances show both grantor and grantee must have intended....There is a presumption that parties contracting for property do so “with a view to the condition of the property as it actually was at the time of the transaction””
- NA to access, ONLY “lesser improvements...constructed over, under, or upon one parcel of land for the convenient use and enjoyment of another contiguous parcel by the owner of both...[which is] open and usable and permanent in its character.”

Necessity Easements include:

- "implied easement by necessity"
Koonce v. J.E. Brite Estate (Tex. 1984)
- "easement of necessity"
"way of necessity"
"implied reservation of a right of way by necessity"
Othen v. Rosier (Tex. 1950)
- "right of way by necessity"
Bains v. Parker (Tex. 1944)
- "way of necessity"
Alley v. Carleton (1867).

Prior Use Easements include:

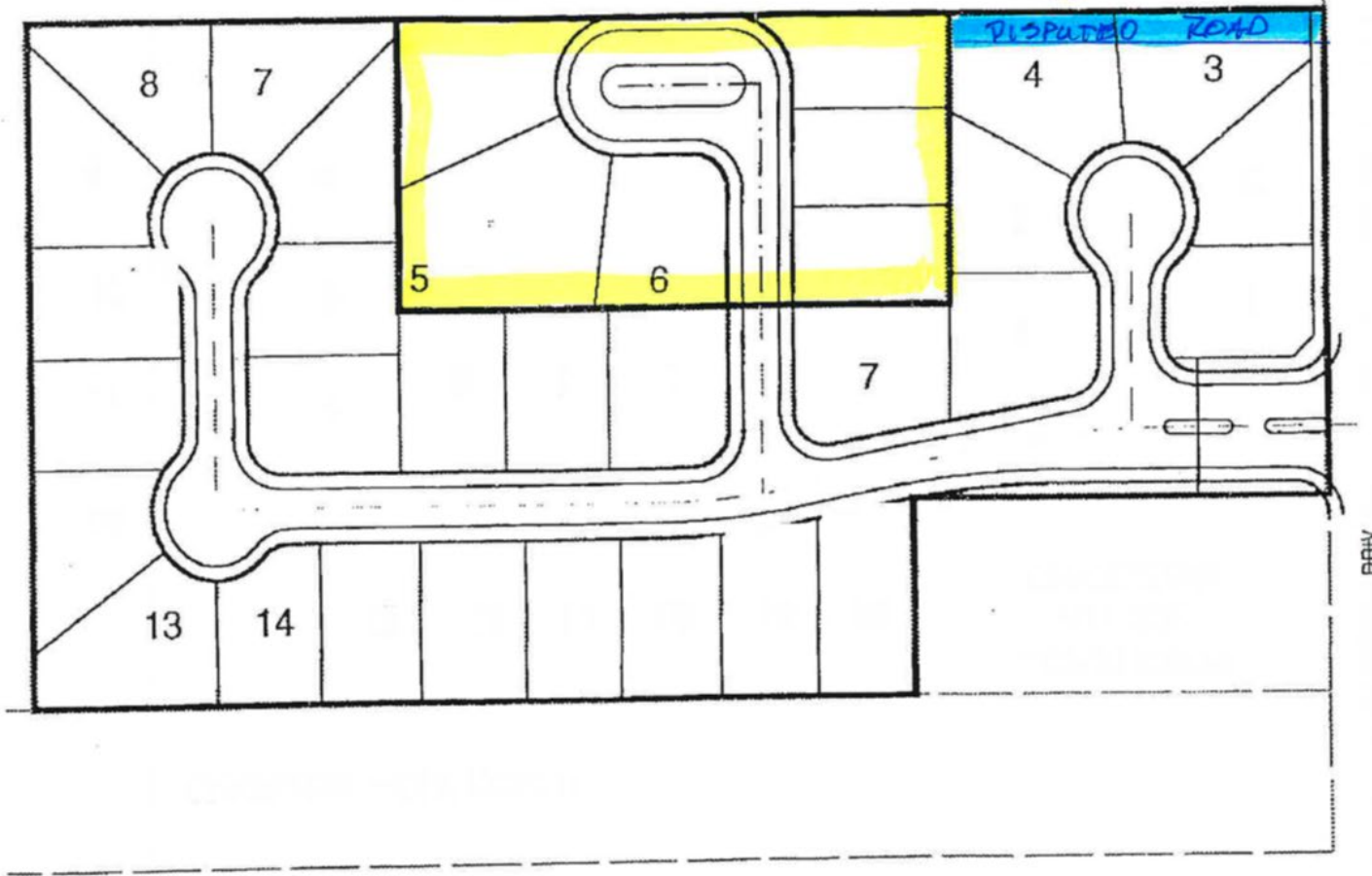
- "implied easement appurtenant"
Drye v. Eagle Rock Ranch, Inc. (Tex. 1962)
- "easement by implication"
Bickler v. Bickler (Tex. 1966)
- "quasi-easement"
Ulbricht v. Friedsam (Tex. 1959)

Other Types of Easements:

Staley Family Partnership v. Stiles (Tex. 2016)

- Express easements (written and recorded, which may be on a plat)
- Prescriptive easements (10 yrs open, adverse use)
- Easements by estoppel (affirmative representation by land owner, with user reliance)

Developer's
AGE Original Plan
M.S Gomez disagreed
and 5



JUSTICE GUZMAN....

“This case presents the Court with an opportunity to **provide clarity in an area of property law that has lacked clarity for some time: implied easements.**

For over 125 years, we have distinguished between

implied easements by way of necessity

(... **"necessity easements"**) and

implied easements by prior use

(... **"prior use easements"**).

Today, we clarify that the necessity easement is the legal doctrine applicable to claims of landowners asserting implied easements for roadway access to their landlocked, previously unified parcel.”

Elements of a Necessity Easement:

“(1) unity of ownership of the alleged dominant and servient estates prior to severance;

(2) the claimed access is a necessity and not a mere convenience; and

(3) the necessity existed at the time the two estates were severed....

As this analysis makes clear, a party seeking a necessity easement must prove both

a historical necessity (that the way was necessary at the time of severance) and

a continuing, present necessity for the way in question.”

Elements of a Prior Use Easement:

- “(1) unity of ownership of the alleged dominant and servient estates prior to severance;*
- (2) the use of the claimed easement was open and apparent at the time of severance;*
- (3) the use was continuous, so the parties must have intended that its use pass by grant; and*
- (4) the use must be necessary to the use of the dominant estate.*

[cites to Drye v. Eagle Rock Ranch (Tex. 1962)]

Because the actual intent of the parties at the time of severance is often elusive, these factors effectively serve as a proxy for the contracting parties' intent.

It is worth noting that we have elevated the proof of necessity for a subset of prior use easement cases.

...to establish a prior use easement implied by reservation, a party must demonstrate strict necessity with respect to the easement claimed.

But, with respect to a prior use easement implied by grant, some ambiguity remains as to whether a party must demonstrate strict necessity or reasonable necessity for a party to succeed...we need not reach this question.”

“We have used the prior use easement doctrine to assess situations such as

use of a stairwell in an adjacent building

grazing cattle

recreational use of adjoining property

...a part[ition] wall

a drain or aqueduct

a water [gas] or sewer line into the granted estate

a drain from the land

light and air

lateral support

water”

***Staley Family Partnership, Ltd. v. Stiles* (Tex. 2016)**

Expands on *Hamrick*

- “Necessity” means necessary at severance to access *a public road*, and ceases to exist if the easement cannot provide such access
- This case turns on the time of relevant severance,
 - Trial Court said **1876**
 - Court of Appeals/Supreme Court said **1866**
- Rationale for necessity easements: the productive use of landlocked property. This claimed easement did not do so, since it did not provide access to the public road

Recent Caselaw- citing *Hamrick/Staley* on Necessity Easements

Jentsch v. Lake Road Welding Co. (Tex. App.—El Paso 2014)

Union Pac. R.R. Co., v. Seber, (Tex. App.—Houston [14th Dist.] 2015)

Lester v. Conway, (Tex. App.—San Antonio 2016)

Davis v. Garrett, (Tex. App.—Beaumont 2017)

Redburn v. City of Victoria, (5th Cir. 2018)

Clearpoint Crossing Property Owners' Association v. Chambers, (Tex. App.—Houston [1st Dist.] 2018)

Pisarski v. Hong Bui, (Tex. App.—Amarillo 2018)

Capps v. Known and Unknown Heirs of Foster, (Tex. App.—Waco 2019)

Federal National Mortgage Association v. Moore, (W. D. Tex. 2019)

Trujillo Enterprises, Ltd. v. Davies, (Tex. App.—El Paso 2019)

Gordon v. Demmon, (Tex. App.—Amarillo 2019)

Townsend v. Hindes, (Tex. App.—San Antonio 2020)

Couch v. Avila Aguilar, (Tex. App. —Fort Worth 2021)

STR, LLC v. White, (Tex. App.—Austin 2024)

Endeavor Group, LLC v. Kongsberg Power Products Systems I, LLC, (Tex. App.—Beaumont 2024)

