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Easements I : HANDOUT

I. Introduction: 5 Minutes

a. Definition: An Easement is an interest in real property. *Henry v. Malen*, 263 A.D.2d 698 (3rd Dept. 1999)

i. "…an easement presupposes two distinct tenements, one dominant, the other servient." *Loch Sheldrake Associates Inc. v. Evans*, 306 N.Y. 297 (1954)

b. As compared to other rights and interests in Real Property

i. Licenses: not an interest in real property, personal to the holder, not assignable and are of limited duration. *Henry, Supra.*

1. "A license is a privilege, not a right, sometimes called an easement in gross." *Loch Sheldrake Asso. Inc., Supra*

2. A "Franchise" is a type of license. *New York Telephone Co., v. State,* 67 A.D.2d 745 (1979); *American Rapid Telegraph Co., v. Hess*, 125 N.Y. 641 (1891).

3. "Licenses to do a particular act do not in any degree trench upon the policy of the law which requires that bargains respecting the title or interest in real estate, shall be by deed or in writing. **They amount to nothing more than an excuse for the act, which would otherwise be a trespass**. *Davis v. Townsend*, 10 Barb. 333 (1851). (emphasis mine).

ii. Covenants: an agreement or promise to do or not to do something. They can be personal or can run with the land (See *Haldeman v. Teicholz*, 197 A.D.2d 223 (3d Dept., 1994)

1. "Restrictive Covenants are commonly categorized as negative easements." *Witter v. Taggart*, 78 NY 2d 234 (1991) "They restrain landowners from making otherwise lawful uses of their property." *Id*.

2. Enforceable between:

a. Grantor and Grantee,

b. Grantee and Grantee where there was a Common Grantor who made identical covenants part of a plan or scheme of development, (exception to the Stranger to the Deed rule)

i. "The long-accepted rule in this State holds that a deed with a reservation or exception by the grantor in favor of a third party, a so-called "stranger to the deed", does not create a valid interest in favor of that third party." *Estate of Thompson v. Wade*, 69 N.Y.2d 570 (1987)

c. Adjacent landowners who have mutual covenants. *Haldeman, Supra.*

3. Examples:

a. "(1) A covenant not to suffer any manufactory, business industries, or stores upon the premises, but to use them for residential purposes only; (2) a covenant not to suffer any saloon, restaurant, hotel, boarding house, or tenement house, with a repetition of the statement that the use shall be residential; (3) a covenant not at any time to sell or subdivide the premises in lots or plots having a less area than one-half acre…" *Bristol v. Woodward,* 251 NY 275 (1929).

b. "no docks, buildings, or other structures [or trees or plants] shall be erected [or grown]" on the grantor's (Lawrance's) retained servient lands to the south "which shall obstruct or interfere with the outlook or view from the [dominant] premises" over the Winganhauppauge Creek. *Witter, Supra.*

c. "The deed conveying the parcels contained three restrictive covenants which, *inter alia,* restricted the use of the subject property to "residential purposes only" and was to be improved "only by a single family residential dwelling together with normal accessory structures" *Irish v. Besten*, 158 A.D.2d 867 (3d Dept 1990).

iii. Profit: the right to take a product from the land. *Loch Sheldrake Asso. Inc., Supra.*

1. Examples: to take water from a pond, to take lumber or trees from the land.

a. "[The] deed, in plain words of common use reserved from the conveyance, the 'right and privilege' of damming the lake and its outlet, of impounding its waters 'and raising and drawing the same',

subject to two conditions only, that is, that the waters should not be drawn lower than the lake's natural low-water mark or raised higher than its natural high-water mark." *Loch, Sheldrake Asso., Inc. Supra.*

2. A profit may also constitute an appurtenant easement where there is a dominant and servient estate. *Loch Sheldrake Asso. Inc., Supra.*

II. Types of Easements: 15 Minutes

a. Rights of Ways: the right to pass over the land of another for a particular purpose, usually means physical access over land.

i. Ingress (a right to enter), Egress (a right to exit) and Regress (a right to re-enter).

1. Moreover, where an easement is created by express grant and its sole purpose is to provide ingress and egress, but it is not specifically defined or bounded, "the rule of construction is that the reservation refers to such right of way as is necessary and convenient for the purpose for which it was created" (internal citations omitted), and includes "any reasonable use to which it may be devoted, provided the use is lawful and is one contemplated by the grant" (*citations omitted*). *Mandia v. King Lumber & Plywood Co.*, 179 A.D.2d 150 (2d Dept 1992).

i. To draw water, obtain water, lay pipes, or to access a body of water

2. "a right to take water from a distant source might, by other and appropriate kinds of verbiage, be so granted as to be appurtenant to specific lands separated from the source of supply." *Cady v. Springfield Water Works Co.*, 134 N.Y. 118

3. "a true easement… to run a pipe through the Le Roy lands to carry the waters from the Divines' lake to the Divines' mill lot." *Loch, Sheldrake Asso., Inc. Supra.*

ii. Utilities

iii. All lawful purposes

b. Appurtenant Easements:

i. Appurtenant means: a benefit attached to the property, including rights of way, power lines, waterways, pipes, any other element that benefits the property in some way.

ii. An easement is not a personal right of the landowner but is an appurtenance to the land benefitted by it (the dominant estate). It is inseparable from the land and a grant of the land carries with it the grant of the easement. *Will v. Gates*, 89 NY2d 778 (1997). "An appurtenant easement attaches to and passes with the dominant estate. (internal citations omitted) There is no requirement that the dominant and servient estates be contiguous." *Reis v. Maynard,* 170 Ad2d 992 (4th Dept. 1991).

iii. Example: "A non-exclusive easement for ingress, egress and regress, in common with others, over the right of way shown on said Filed Map No. 32 for all ordinary access by foot or by vehicle between the above described premises and Route 9D." *Will, Supra.*

iv. Runs with the Land, sometimes even says that it does.

c. Easements in Gross: are licenses, personal, non-assignable, non-inheritable, expire upon the death of the holder, sometimes called "Personal Easements".

i. Examples:

1. "This easement, however, retained by the Terrys must be in gross and, therefore, is neither assignable nor inheritable, since at the time of the transfer the Terrys were no longer possessed of any dominant estate to which an easement appurtenant could attach." *Gross v. Cizausk*, 53 AD2d 969 (3d Dept 1976).
2. "the Santacroses were granted an easement over the strip 'for their personal individual use only', which was 'not to run with the land'." *Gross, Supra*

ii. Burial Plots:

1. "While the purchaser of a cemetery lot does not acquire a title thereto in fee simple, he becomes possessed of a property right therein which the law protects from invasion. He has an easement for burial purposes therein, in accordance with the usual custom prevailing in the locality, and this privilege carries with it the right to erect tombstones and monuments in memory of the deceased, and to protect them from injury and spoliation*." Oatka Cemetery Association Inc. v. Cazeau,* 242 AD 415 (4th Dept 1934).
2. "It has been decided many times, and frequently asserted by text writers, that the heirs of a decedent at whose grave a monument has been erected, or the person

who rightfully erected it, can recover damages from one who wrongfully injures or removes it, or by an injunction may restrain one who without right, threatens to injure or remove it, and this though the title to the ground wherein the grave is, be not in the plaintiff but in another." *Mitchell v. Thorne*, 134 N.Y. 536 (1892).

iii. Conservation Easements:

"Conservation easement" means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in section 49-0301 of this title, provided that no such easement shall be acquired or held by the state which is subject to the provisions of article fourteen of the constitution." Environmental Conservation Law §49-0303 (1)

§ 49-0305. Conservation easements; certain common law rules not applicable

1. A conservation easement may be created or conveyed only by an instrument which complies with the requirements of *section 5-703 of the general obligations law* and which is subscribed by the grantee. It shall be of perpetual duration unless otherwise provided in such instrument.
…
5. A conservation easement may be enforced in law or equity by its grantor, holder or by a public body or any not-for-profit conservation organization designated in the easement as having a third party enforcement right, and is enforceable against the owner of the burdened property. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any conservation easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce a conservation easement that:
(a) **It is not appurtenant to an interest in real property;**
(b) It can be or has been assigned to another holder;
(c) It is not of a character that has been recognized traditionally at common law;
(d) It imposes a negative burden;
(e) It imposes affirmative obligations upon the owner of any interest in the burdened property, or upon the holder;
(f) The benefit does not touch or concern real property; or
(g) There is no privity of estate or of contract.

d. Affirmative and Negative Easements aka Affirmative and Negative Covenants

i. Negative Easement:

1. "A negative easement is one which restrains a landowner from making certain use of his land which he might otherwise have lawfully done but for that restriction *(Trustees of Columbia Coll. v Lynch, 70 NY 440*). …If established expressly, a negative easement must comply with the requisites of the Statute of Frauds." *Huggins v. Castle Estates, Inc*. 36 NY 2d 427 (1975).

   a. Statute of Frauds: Basically a rule that says that a contract (lease, agreement, promise, undertaking) incapable of being fully preformed within one year of its creation must be in writing. Recognizes that verbal contracts are enforceable, if they are capable of being fully preformed within a year.

i. General Obligations Law §5-701 Agreements Required to be in writing.; and

ii. General Obligations Law §5-703 Conveyances and Contracts concerning Real Property **must be in writing.**

2. Examples:

a. Residential purposes only, *Huggins, Supra*

b. "The restrictive covenant at issue provides that "[a]ny dock, pier or land projection constructed in or over the lake shall be no closer than [15] feet from the adjoining property line, and no such structure shall be built with sides." *Ford v. Rifenburg*, 94 AD3d 1285 (3rd Dept., 2012)

ii. Affirmative Easement:

1. "It has long been the rule in this State, and it finds expression in the leading case of *Miller v. Clary (210 N.Y. 127*), that "a covenant to do an affirmative act, as distinguished from [one] merely negative in effect, does not run with the land so as to charge the burden of performance on a subsequent grantee." *Nicholson v. 300 Broadway Realty Corp*. 7 N.Y. 2d 240 (1959).

a. Exceptions:

i. "The burden of affirmative covenants may be enforced against subsequent holders of the originally burdened land whenever it appears that (1) the original covenantor and covenantee intended such a result, (2) there has been a continuous succession of conveyances between the original covenantor and the party now sought to be burdened and (3) the covenant touches or concerns the land to a substantial degree." *Nicholson, Supra*.

2. Examples:

a. "Said party of the first part shall keep said wheel in said mill in good condition and operate the same economically and construct and maintain said shaft of proper dimensions to the west line of said lot, affording said party of the second part a good connection therewith at his west line." Miller v. Clary 210 N.Y. 127 (1913) the Court held: "In that view, the covenant to construct and maintain the shaft was the personal undertaking of the original grantor and does not run with the land or create an equitable liability on the part of the defendants." Id.

b. "to furnish steam heat" to the building on his property and "to furnish and maintain all necessary steam pipes and return pipes for that purpose" *Nicholson Supra.* The Court held the covenant touched and concerned the land to a substantial degree and was enforceable. Id.

III. Creation and Existence of Easements: 50 Minutes Total

a. **Express Easements**: 10 Minutes: Express or Expressly used in a legal context means "in writing." Express Easement means there is some writing/document/deed/agreement that states exactly what the easement or understanding is between the parties.

i. Grantor and Grantee

1. Signed, Sealed and Delivered.
2. General Obligations Law § 5-703. Conveyances and contracts concerning real property required to be in writing

   1. **An estate or interest in real property**, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real property, or in any manner relating thereto, **cannot be created**, granted, assigned, surrendered or declared, **unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating**, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing….

3. An example of "by operation of law" when there are joint tenants with a right of survivorship or tenants by the entirety and one of the tenants dies, the property/interest is conveyed by operation of law to the surviving tenant without the need for a separate deed.
4. "Subscribed by the person creating" = signed and acknowledged. In contracts the term "Signed by the party to be charged" is sometimes used instead.
5. Example: *McColgan v. Brewer*, 84 A.D. 3d 1573 (3d Dept 2011)

   "The right-of-way agreements provided, in relevant part, that the owner of the property "does hereby grant, release and convey unto [Klepeis] a perpetual and unobstructed right-of-way and easement 50 feet in width over said premises[,which] shall at all times hereafter be kept open and unobstructed as a highway for the use and benefit of the properties owned by the parties hereto, as

well as other parties, and the owners and occupants thereof, as a means of ingress and egress, by foot or vehicle."

Here, Klepeis is the only grantee in the agreements and Kelley's involvement is limited to that of a grantor of a right-of-way over her own property. As neither Kelley nor her successors in interest were grantees with respect to the right-of-way agreements with the other landowners, such agreements do not benefit the landlocked portion of plaintiff's
property as a matter of law.

6. Document conveying an interest in real property must have:
    a. "a specific grantor,
    b. a specific grantee,
    c. a proper designation of the property,
    d. a recital of the consideration, and….
    e. operative words….
    f. [be] acknowledged before delivery, and
    g. its execution and delivery [must be] attested by a subscribing witness." *Cohen v. Cohen* 188 A.D. 933(2d Dept 1919).

ii. <u>Written Instrument</u>

1. Will
    a. In *Cohen v. Cohen, Supra,* a husband tried to convey property to his wife by a letter, the Court said not a proper conveyance because it lacked the elements above.
    b. "Every estate in property may be devised or bequeathed." Estates Powers and Trusts Law (EPTL) § 3-1.2 What property may be dispose of by will.
2. Agreement
    a. Easement Agreement →Temporary, Permanent, for a period of years.
3. Deed (grant or reservation)
    a. Grant: Easement rights can be granted by a Grantor to the Grantee within the deed
        i. "Together with an easement …."

b. Reservation: Easement rights can be retained by the Grantor over lands conveyed

   i. "A reservation creates a new right out of the subject of the grant, and is originated by the conveyance." *Mitchell v. Thorne*, 134 N.Y. 536 (1892)

   ii. "subject to an easement reserved for the grantor…"

c. Exception: An Easement can be excluded from a conveyance.

   i. "By an exception some portion of the subject of the grant is excluded from the conveyance, and the title to the part so excepted remains in the grantor by virtue of his original title." *Mitchell*, *Supra*.

d. Cannot grant an easement to yourself over your own lands

   i. An individual cannot grant or have an easement over land they own "because all the uses of an easement are fully comprehended in the general right of ownership." *Will v. Gates,* 89 NY2d 778 (1997). There is no servient or dominant estate, they have merged by the unity of title in a common owner. *Id.* at 784.

e. Cannot create an easement over lands you do not own/Cannot reserve an easement over lands you no longer own.

   i. "…having already conveyed the annex parcel, he could not "reserve " in the deed to defendant's predecessor-in-interest an easement appurtenant to the annex parcel for the benefit of plaintiff's predecessor-in-interest." *Estate of Thomas v. Wade*, 60 N.Y.2d 570 (1987).

f. Cannot create an easement in favor of a third party, not a party to the deed.

i. "A party cannot reserve an easement over another's property in favor of a third party who is not a party to the agreement." *McColgan, Supra*.

g. The appurtenance clause in deeds: "Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises…"

i. "The rule of the common law on this subject is well settled. The principle is, that where the owner of two tenements sells one of them, or the owner of an entire estate sells a portion, the purchaser takes the tenement, or portion sold, with all the benefits and burdens which appear, at the time of the sale, to belong to it, as between it and the property which the vendor retains. This is one of the recognized modes by which an easement or servitude is created. No easement exists so long as there is a unity of ownership, because the owner of the whole may, at any time, rëarrange the qualities of the several parts. But the moment a severance occurs, by the sale of a part, the right of the owner to redistribute the properties of the respective portions ceases; and easements or servitudes are created, corresponding to the benefits and burdens mutually existing at the time of the sale. This is not a rule for the benefit of purchasers only, but is entirely reciprocal. Hence, if, instead of a benefit conferred, a burden has been imposed upon the portion sold, the purchaser, provided the marks of this burden are open and visible, takes the property with the servitude upon it. The parties are presumed to contract in reference to the condition of the property at the time of the sale, and neither has a right, by altering arrangements then openly existing, to change materially the relative value of the respective parts." *Lampman v. Milks*, 21 N.Y. 505 (1860)

ii. "An easement appurtenant occurs when the easement (1) is conveyed in writing, (2) is subscribed by the creator, and (3) burdens the servient estate for the benefit of the dominant estate (*internal citations omitted)*. The easement passes to

subsequent owners of the dominant estate through appurtenance clauses, even if it is not specifically mentioned in the deed. (citations omitted)" *Djoganopolous v. Polkes*, 95 A.D.3d 933 (2d Dept 2012).

b. **Implied Easements:** 25 Minutes: Not created by a deed/document/writing but are implied from the circumstances. All types require there be a common grantor between the alleged dominant estate and alleged servient estate for an easement to be implied across the servient estate.
    i. Former public highway
        1. Common Grantor bounds property along the centerlines of a public street or otherwise uses Public Hwy in description
        2. Common Grantor owns the bed of the public road
        3. Common Grantor impliedly has granted his grantees a private easement of access underlying the public highway
        4. When or if the Public Highway is abandoned or discontinued, the private easements of access which were impliedly or expressly granted allow for the perpetual enjoyment of the road for the grantee and his successors.
            a. "private easement of access arises in order to insure that a grantee or his successors in title are not deprived of the use of the right of way existing at the time title (to the lot) was acquired." *Kent v. Dutton,* 122 AD2d 558 (4th Dept. 1986)
        5. "That private easements may be appurtenant to the property abutting upon a public highway must be conceded. These easements of the abutting landowner are in addition to such as he possesses as one of the public, to whose use the property has been subjected. They are independent of the public easement and, whether arising through express or implied grant, are as indestructible, in their nature, by the acts of the public authorities, or of the grantor of the premises, as is the estate, which is the subject of the grant." *Holloway v. Southmayd*. 139 N.Y. 390 (1893).

ii. Pre-existing use

1. "Unity and subsequent separation of title,
2. the claimed easement must have, prior to separation, been so long continued and obvious as to show it was intended to be permanent, and
3. the use must have been necessary to the beneficial enjoyment of the dominant estate at the time of the conveyance." *Four S. Realty Co. v. Dynko,* 210 A.D.2d 622 (3d Dept 1994).
    a. "The necessity required for an implied easement based upon preexisting use is only reasonable necessity, in contrast to the absolute necessity required to establish an implied easement by necessity." *Id.*

iii. Necessity

1. "….that there was a unity and subsequent separation of title, and
2. that at the time of severance an **easement** over defendant's property was **absolutely** necessary." *Stock v. Ostrander*, 233 A.D.2d 816 (3d Dept .1996).
3. "As to the second element, plaintiffs adduced proof that, upon severance, their parcel became landlocked by other properties with no access to a public highway due to the nature of the surrounding terrain, except via the dirt road across the lands owned by Ostrander, defendant's predecessor in title. Thus, the **easement** was **absolutely** necessary." *Stock, Supra*
4. "To establish an easement by necessity, plaintiff must, by clear and convincing evidence, show that its property was at one time titled under the same deed as defendants' and, when severed, plaintiff's parcel became landlocked." *Lew Beach co. v. Carlson,* 77 A.D.3d. 1127 (3d Dept., 2010).
5. "…access to their property by a navigable waterway would defeat their entitlement to easements by necessity." *Foti v. Noftseir*, 72 A.D.3d. 1605 (4th Dept., 2010).

iv. Paper Streets

1. "It is well settled that " 'when property is described in a conveyance with reference to a subdivision map showing streets abutting on the lot conveyed, easements in the private streets appurtenant to the lot generally pass with the grant' " (*citations omittied*). Nonetheless, whether an implied easement was in fact created depends on the intention of the parties at the time of the conveyance (*citations omitted*). This requires proof that the deed from the original

subdividing grantor referred to the subdivision map or the abutting paper street (*citations omitted*). *DeRuscio v. Jackson*, 164 A.D.2d 684 (3d Dept., 1991).

2. Although the intention of the grantor is to be determined in light of all the circumstances, the most important indicators of the grantor's intent are the appearance of the subdivision map and the language of the original deeds. *Fischer v. Liebman*, 137 A.D.2d 485 (2d Dept., 1988).
3. "The record demonstrates that the intent of the parties' common grantor was to provide a right of passage from the subject lots to the *east* (ultimately leading to a main road) with no intent, express or implied, to provide a right of passage along the paper road to the *west.* TO BE SURE, MAPS FROM 1900 and 1915 do clearly depict a right-of-way (i.e., the paper road) on the southern border of approximately 70 specifically enumerated "cottage lots," including the lots at issue here. The record reveals, however, that this paper road was never opened. Instead, the route entailing "the road to Onchiota" was used by owners of lot 108 and all lots to its east to gain access to the main road (*see* n. 2, *supra*). Indeed, as of 1900 and for the next 80 years, no public road even existed to the west. It was not until 1980 that a public road (Tebbutt Road) was opened to the west of these lots." *Busch v. Harrington,* 63 A.D.3d 1333 (3d Dept., 2009).
4. Subdivision maps have to be filed with the County Clerk. Town Law 279; Village Law §7-732; General Cities Law §34.

c. **Prescriptive or by use**: 15 Minutes
   i. Prescription is similar to adverse possession, it has the same common law elements, however prescription results in an easement rather than title to land.
   ii. The statutory period is 10 years. (used to be 20). Civil Practice Law and Rules (CPLR) §212(a) Possession necessary to recover real property
   iii. "In other words, as 'the enjoyment of easements lies in use rather than in possession', the only physical conduct necessary for their acquisition by prescription is 'making use' of a portion of another's land, (citations omitted), and one claiming a right of way by prescription is not required to prove that the way was enclosed, cultivated or improved. In short, the prescribed statutory manifestations of adverse possession as one court wrote

about section 372 of the Code of Civil Procedure, the predecessor of section 40 can have 'no application to the case of an easement, as of passage. *DiLeo v. Pecksto Holding Corp.,* 304 N.Y.505 (1952).

iv. "However, not every use of another's land gives rise to an easement. It is also requisite that the use be adverse, open and notorious, continuous and uninterrupted for the prescriptive period."

v. "…this court has consistently held, 'Under ordinary circumstances, an open, notorious, uninterrupted, and undisputed use of a right of way is presumed to be adverse under claim of right and casts the burden upon the owner of the servient tenement to show that the user was by license' *DiLeo Supra.*

vi. But where the use is not inconsistent with the rights of the owner and the general public, in the absence of some decisive act on the part of the claimants, indicating a use separate and exclusive from the general use, that presumption will not apply…. Common use negates the concept of a presumption in favor of an individual, and the use of a [right of way with members of the general public militates against the establishment of an easement by prescription, because the use is not adverse. *Hassinger v. Kline*, 110 Misc. 2d. 147 (Sup. Ct. Rockland Co., 1981).

vii. "Seasonal use of the roadway will not prevent plaintiff from establishing a prescriptive easement, as long as such use was continuous and uninterrupted and commensurate with appropriate existing seasonal uses." *Miller v. Rau*, 193 A.D.2d. 868 (3d Dept., 1993).

viii. "…proof of an exclusive, continuous, uninterrupted, open and notorious user under a claim of right with the knowledge and acquiescence of the owners of the servient tenement for a period of upwards of twenty years, authorizes the presumption of a grant of the interest so exercised and enjoyed." *Nicholls v. Wentworth*, 100 N.Y. 455 (1885).

IV. Location and Width of Easements: 20 Minutes

a. Generally

i. By agreement

1. "Where a right-of-way is granted over a stated width and does not state the express purpose for which it is given, the circumstances of the case will determine "whether the reference is to the width of the way or is merely descriptive of the property over which the grantee must have such a way as may be reasonably necessary" *Serbalik v. Gray,* 268 A.D.2d 926 (3d Dept. 2000).

2. "Plaintiff's property is landlocked by defendant's property resulting in both deeds specifying that plaintiff holds "a right of way two rods (33 feet) wide along the shore of the aforesaid swamp to the highway"…. Upon our review, we

find that the presently constituted driveway, measuring 12 feet at its widest and 9 feet 8 inches at its narrowest point, has provided and continues to provide a reasonable and convenient means of ingress and egress, fulfilling the purpose for which it was created." *Serbalik Supra.*

3. In this case, the trial court properly concluded that the easement contained in the plaintiffs' deed, providing for "ingress and egress over a 30-foot right of way" over a portion of the defendant's property should be limited to the 12-foot paved roadway, since the plaintiffs failed to establish that roadway was inadequate for the expressly stated purpose intended by the grantee in creating the easement. *Minogue v. Kaufman*, 124 A.D. 2d 791 (2d Dept. 1986).
4. "Here, it is undisputed that defendants obtained an easement of ingress and egress by prescription. Contrary to plaintiff's argument, the judgment awarding that easement expressly defined it by reference to a survey map showing the precise path of the easement in detail, including exact distances and courses and with reference to monuments, adjacent properties, highwater lines and other landmarks." *Estate Court, LLC v. Schnell,* 49 A.D.3d 1076 (3d Dept., 2008).

ii. Practical Location or existing way

1. "[o]nce an easement is definitively located, by grant or by use, its location cannot be changed by either party unilaterally" *Clayton v. Whitton,* 233 A.D.2d 828.
2. In *Lewis v. Young, supra*, the Court concluded that a deed conveyed to the easement holder containing the right to "the perpetual use, in common with others, of [the burdened landowner's] main driveway, running in a generally southwesterly direction"(*id.* at 446, 682 N.Y.S.2d 657, 705 N.E.2d 649 [emphasis omitted]) did not establish a fixed location, such as would be shown by, for example, a specific metes and bounds description (*see generally Green v. Blum,* 13 A.D.3d 1037, 1038, 786 N.Y.S.2d 839 [2004]). Instead, the Court held that the "provision manifests an intention to grant a right of passage over the driveway-wherever located-so long as it meets the general directional sweep of the existing driveway" *Chekijian v. Mans*, 34 AD3d 1029 (3d Dept 2006)

iii. Width of Easement

1. No width stated =" Necessary and convenient for the purpose for which it was created." *Mandia Supra*.
2. Width used during the prescriptive period