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Easements II Timed Outline 10am-11:30am (90 minutes)

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. License, Franchise, Covenant, Profit

c. Public or Private

II. Use of Easements: 15 minutes

a. Rights of the Parties

i. Owner of the Land: Servient Estate Holder

1. "A landowner owes a duty to another on his land to keep it in a reasonably safe condition, considering all of the circumstances including the purpose of the person's presence and the likelihood of injury." *Macey v. Truman*, 70 N.Y.2d 918 (1987).
2. "..the rule articulated in *Basso v. Miller,* 40 N.Y.2d 233, 241, 386 N.Y.S.2d 564, 352 N.E.2d 868 [1976]. There, abolishing the distinctions among trespassers, licensees and invitees, we held that New York landowners owe people on their property a duty of reasonable care under the circumstances to maintain their property in a safe condition." *Tagle v. Jakob*, 97 NY2d 165 (2001).
3. The right: "to have the natural condition of the terrain preserved, as nearly as possible" (49 NY Jur 2d, Easements §128) and "to insist that the easement enjoyed shall remain substantially as it was at the time it accrued, regardless of whether benefit or damage will result from a proposed change." *Lopez v. Adams*, 69 A.D.3d 1162 (3d Dept 2010).
4. Cannot interfere with the use of the easement by the easement holder

a. "…as the owner of the land, has the right to use it in any way that he sees fit, provided he does not unreasonably interfere with the rights of the plaintiff. All that is required of him is that he shall not so contract the alley-way, either vertically or laterally, as to deprive the plaintiff of

a reasonable and convenient use of the right of passing to and fro." *Grafton v. Moir,* 130 N.Y. 465 (1892).

b. "Ordinarily, a servient owner has no duty to maintain an **easement** to which its property is subject. Indeed, a servient owner has a "passive" duty to *refrain* from interfering with the rights of the dominant owner." *Tagle v. Jakob*, 97 NY2d 165 (2001)

5. Landowner can:

a. "a landowner burdened by an express easement of ingress and egress may narrow it, cover it over, gate it or fence it off, so long as the easement holder's right of passage is not impaired." *Lewis v. Young,* 92 NY2d 443 (1998)

6. Landowner may:

a. "In the absence of a demonstrated intent to provide otherwise, a landowner, consonant with the beneficial use and development of its property, can move that right of way, so long as the landowner bears the expense of the relocation, and so long as the change does not frustrate the parties' intent or object in creating the right of way, does not increase the burden on the easement holder, and does not significantly lessen the utility of the right of way". *Lewis Supra*

b. Unilateral relocation by landowner only when the easement is not fixed in location or in other words is undefined.

c. 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).

d. "speed bumps" may have "unlawfully interfered with the plaintiff's right to utilize the easement." *J.C. Tarr Q.P.R.T. v. Delsener*, 70 A.D.3d 774 (2d Dept., 2010).

ii. Owner of the Easement: Dominant Estate Holder

1. " 'A right of way along a private road belonging to another person does not give the [easement holder] a right that the road shall be in no respect altered or the width decreased, for his right is merely a right to pass with the convenience to which he has been accustomed.' " *Grafton, Supra.*
2. "One does not possess or occupy an easement or any other incorporeal right. An easement derives from use, and its owner gains merely a limited use or enjoyment of the servient land." *Di Leo v Pecksto Holding Corp. 304 NY 505 (1952).*
3. Can maintain, but cannot improve the easement
    a. In light of the defendants' flagrant abuse of their rights under the easement, we find that the trial court did not err in requiring the defendants to restore the roadbed to its prior condition." *Mandia v. King Lumber Co.,* (Where the Lumber company had widened the ROW to 50 feet and paved it.)
4. Cannot overburden the easement
    a. Easement Holder is not permitted to: "materially increase the burden of the servient estate[s] or impose new and additional burdens on the servient estate[s]" *Solow v Liebman,* 175 AD2d 121 (2d Dept 1991).
    b. "However, the record further establishes, as the trial court found, that the plaintiffs impermissibly expanded the dimensions of the easement beyond the 10-foot width that existed in 2001 and erected a gate and a fence on the defendants' property. Therefore, the plaintiffs must remove the gate and the fence, and they must further restore the area beyond the 10-foot width of the easement to its original condition. *Vitiello v. Merwin*, 87 A.D.3d. 632 (2d Dept., 2011).
    c. However:
        i. "Where the nature and extent of the use of the easement is, as here, unrestricted, the use by the dominant tenement might, of

course, be enlarged or changed." *McCullough v. Broad Exchange Co.*, 101 AD 566 (1st Dept., 1905)[easement for "the mutual advantage of all the property" partitioned and conveyed the open area "shall be forever left as an open space, and shall be unencumbered by any erections, except such walks as now cross the same, for the purpose of giving light and air and ingress and egress from all the premises herein described; said open spaces as they now exist shall be maintained in good order and kept in good condition at the joint and equal expense of all the parties hereto."]

ii. The issue in McCollough was bringing in coal over the easement to use in a building that was partially on the dominant tenement and partially not.

d. Cannot install utilities, park vehicles or plant trees along a roadway in the easement area, if the easement is for ingress and egress.

i. "The easement here specifically granted plaintiffs the right of ingress and egress. While plaintiffs argue that the fence and landscaping on the western side of the driveway impede their ability to use the easement to the fullest extent because it prohibits parking along the side of the driveway, Supreme Court correctly determined that parking was not a proper use of the easement." *Sambrook v. Sierocki*, 53 AD3d 817 (3d Dept., 2008).

ii. "We further agree with the trial court that nothing in the language of the grant suggests that the plaintiffs had a broad right to use the entire 30-foot parcel for another purpose such as landscaping the strips of grass surrounding the roadway on either side." *Minogue v. Kaufman*, 124 AD2d 791 (2d Dept 1986)

5. Cannot use the Easement to benefit parcels other than the Dominant parcel. (no piggy-backing an easement)

a. "In any event, "the owner of the dominant tenement may not subject the servient tenement to servitude or use in connection with other premises to which the easement is not appurtenant (*Williams v. James,* L.R. 2 C.P. 577)" *Hunt v. Pole Bridge Hunting Club, Inc*., 219 A.D.2d 618 (2d Dept., 1995).

6. The dominant estate holder can use the easement as can his agents, servants, employees and invitees.
7. If the easement is "in common with others" then the easement is not exclusive and the holder must not impair the rights of the other easement holders or try to preclude other easement holders' use

a. "A private individual, engaged in improving streets for the benefit or convenience of his own property, cannot cut down the grade of an existing street to the detriment of an abutting owner. If the cutting of the grade impairs the abutting owner's right of access to his property, his consent is necessary under such circumstances, as he may resist a projected improvement by his neighbor which he could not resist if undertaken by the public authorities. A party cannot impair his neighbor's easement in a street and force what he calls a benefit upon him against his will." *Cunningham v. Fitzgerald*, 138 N.Y.165 (1893).

b. "A co-owner of an easement in common, including easements of way held in common, must not interfere with the reasonable use of the easement by his or her co-owners, or make alterations that will render the easement appreciably less convenient and useful to any one of the cotenants." *Butts v. Moreno*, 24 Misc.3d 1230(A) (Sup. Ct. Kings Co., 2009).

1. Liable for injuries that occur during maintenance of the easement.

c. "Here, the injury resulted not from any unsafe condition defendant [landowner] left uncorrected on his land, but as a direct result of the course plaintiff and his companions decided to pursue in attempting to dislodge the marked tree. Under these circumstances, the law imposed no duty on defendant as landowner to protect plaintiff from the

> unfortunate consequences of his own actions. Nor, in the absence of some showing that defendant's conduct in designating an area of his land for cutting and in marking the trees was causally related to the accident, can he be held liable to plaintiff on the theory that his conduct was negligent." *Macey, Supra.*

b. Maintenance, Repairs & Improvements

   i. Maintenance and Repairs

      1. Servient Estate Holder has no duty to maintain the roadway/easement for the Dominant Estate Holder

      2. "Supreme Court correctly found that defendants' right to use the road for access included the right to carry out work as necessary to reasonably permit the passage of vehicles and, in so doing, to "not only remove impediments but supply deficiencies in order to construct [or repair] a suitable road. (internal citations omitted) However, defendants' rights to make lawful and reasonable use of their easements were limited to those actions "necessary to effectuate the express purpose of its easement" *Lopez v. Adams,* 69 A.D.3d 1162 (3d Dept 2010).

      3. "As the dominant owners, defendants are responsible for maintaining and repairing the roadway and, in the absence of an agreement to do so, plaintiffs are not obligated to make repairs or contribute to their cost." *Lopez Supra* citing to *Tagle Supra*.

   ii. Improvements

      1. The servient landowner has the right: "to insist that the easement enjoyed shall remain substantially as it was at the time it accrued, regardless of whether benefit or damage will result from a proposed change." *Lopez v. Adams*, 69 A.D.3d 1162 (3d Dept 2010).

      2. Once the Easement is established, it cannot be improved beyond that condition.

c. Alteration and Relocation of the Easement

   i. "In the absence of a demonstrated intent to provide otherwise, a landowner, consonant with the beneficial use and development of its property, can move that right of way, so long as the landowner bears the expense of the relocation, and so long as the change does not frustrate the parties' intent or object in creating the right of way, does not increase the

burden on the easement holder, and does not significantly lessen the utility of the right of way". *Lewis Supra*

ii. As noted in *Lewis v. Young, supra*, relocation is not appropriate for even an undefined easement when it frustrates the purpose of the easement's creation, increases the easement holder's burden or "significantly lessen[s] the utility of the right of way"(*id.* at 452, 682 N.Y.S.2d 657, 705 N.E.2d 649). *Chekijian v. Mans*, 34 AD3d 1029 (3d Dept 2006).

iii. " Indeed, Vilardo's construction on lot 15 appears to preclude relocation of the right-of-way to any other part of lot 15, and Vilardo does not seek to relocate the right-of-way over lot 15 but, rather, to eliminate it altogether. The Moores have demonstrated that they and plaintiffs were granted a right-of-way for passage to their lots over lot 15 and that, consistent with the intent of the common grantors, it be located without obstructions where it existed in 1985." *Judd v. Vilardo*, 57 A.D.3d 1127 (3d Dept 2008)

iv. "Where, as here, there is merely a general reference to an existing road, without more, an intent for a fixed location of the easement is not inferred." *Sullivan v. Woods,* 2010 WL 653096 (3d Dept 2010).

v. "a fixed location, such as would be shown by, for example, a specific metes and bounds description." *Chekijian Supra*

III. Inference with Easements: 10 minutes

a. Obstructions and Encroachments

i. "…and even where a right of way was granted over certain roads marked on a plan, and one was described there as forty feet wide, it was held that the grantee was entitled to only a reasonable enjoyment of a right of way, and that such reasonable enjoyment was not interfered with by the erection of a portico, which extended a short distance into the road, so as to reduce it at that point to somewhat less than forty feet.' *Grafton Supra* Citing Clifford v. Hoare, L. R. 9 C. P. 362; Hutton v. Hamboro, 2 Fost. & F. 218

b. Gates and Fences

i. "The only kind of gate which can fail to interfere with defendant's right [to the **free and unobstructed use** of the said private road or lane from the said Boston Road or Main Street to the shore of Long Island Sound, aforesaid, for passage of horses and vehicles of every kind and for all other lawful purposes] is one which not only remains unlocked but which is perpetually kept open. Such a gate is useless for any purpose." *Missionary Society of Salesian Congregation v. Evrotas,* 256 N.Y.86 (1931)

ii. "The plight of these plaintiffs, confronted by gates which must be opened and closed upon entering or leaving Peekskill Hollow Road, together with the additional burden of walking or driving through the lot populated by defendant's animals, with the responsibility of preventing the straying of those animals on to a heavily travelled public highway when the gates are opened, is readily seen." *Sprogis v. Silleck*, 223 N.Y.S. 2d 979 (Sup. Ct. Putnam Co., 1961).

iii. "The plaintiff's right of passage must be enforced, but it must also be enforced in such manner as will give him a reasonably full enjoyment of his right and at the same time cause no undue burden upon the defendant in the beneficial use of his land. It appears in the testimony, and was found by the trial court, that many trespassers had used this passage from time to time, and that it ran through woodland in which at times cattle were turned out. It likewise appears that at various times, since 1842, gates were maintained over this passage, although in the course of years some of these gates had fallen into decay. Although the plaintiff had owned his land since 1902, he seems not to have been aware that he had any right of passage over the defendant's land until some time in 1911. I am of opinion that the disposition of this question by the trial court was reasonable and within its discretion, and I do not recommend any interference with it." (permitting defendant to lock the gates). *Blydenburgh v. Ely* 161 A.D.91 (2d Dept 1914).

IV. Transfer of Easements: 30 minutes

a. Easements in Gross

i. Are not transferable, assignable or inheritable.

b. Appurtenant Easements

i. Transfer of Dominant Estate

1. "New York adheres to the majority rule that a grantor cannot create an easement benefiting land not owned by the grantor (*see Matter of Estate of Thomson v Wade, 69 NY2d 570, 573)*. For an easement by grant to be effective, the dominant and servient properties must have a common grantor (*see Lechtenstein v P.E.F. Enters., 189 AD2d 858, 859)*. If the common grantor conveys both the dominant and servient properties, the easement must be provided for in the deed to the dominant property and in the deed conveying the servient property (*see Matter of Estate of Thomson v Wade, supra*). Here, the common grantor did just that, on the same day. Accordingly, the easement by grant was properly created." *Sam Development LLC v. Dean* 292 AD2d 585 (2nd Dept, 2002).

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

ii. Division of Dominant Estate

1. "The easement is not extinguished by subdivision for any portion of the land to which it applies so long as no additional burden is imposed upon the servient estate by such use, even if the resulting dominant and servient estates are not contiguous." *Djoganopolous, Supra*

iii. Reserved Easements

1. Reserved easements in gross for the grantor
2. Reserved easements create a dominant parcel in those lands retained by the Common Grantor over the lands conveyed to the grantee (servient parcel).
    a. "Thus, an existing easement appurtenant will pass to the grantee of a dominant estate even if the deed does not expressly refer to the easement." *Will v. Gates,* 89 N.Y.2d 778 (1997).
3. Owners of a servient estate are bound by constructive or inquiry notice of easements which appear in deeds or other instruments of conveyance in their property's direct chain of title. *Djoganopolous, Supra* citing to *Witter v. Taggart* 78 N.Y.2d 234 (1991).

c. Transfers subject to Easements

i. Record Notice

1. There is an easement or restriction recorded in the direct chain of title to the property.
    a. The guiding principle for determining the ultimate binding effect of a restrictive covenant is that "[i]n the absence of actual notice before or at the time of * * *purchase or of other exceptional circumstances, an owner of land is only bound by restrictions if they appear in some deed of record in the conveyance to [that owner] or [that owner's] direct predecessors in title." *Witter v. Taggart* 78 N.Y.2d 234 (1991).
    b. "…the owner of the servient estate will be bound by the subject encumbrance only if it is recorded in his or her chain of title." *Terwilliger v. VanSteenburg,* 33 A.D.3d 1111 (3d Dept 2006).

c. "a deed conveyed by a common grantor to a dominant landowner does *not* form part of the chain of title to the servient land retained by the common grantor" *Witter v. Taggart, supra* at 239,

ii. Constructive or Inquiry Notice

1. Something in the Record exists to tip off a potential purchaser that there may be an easement or restriction on the property

a. "Subject to easements of record"

b. Recorded map showing an easement or restriction on the land to be purchased.

c. "The principle of equity is well established that a purchaser of land is chargeable with notice, by implication, of every fact affecting the title, which would be discovered by an examination of the deeds or other muniment of title of his vendor, and of every fact, as to which the purchaser, with reasonable prudence or diligence, ought to become acquainted. If there is sufficient contained in any deed or record which a prudent purchaser ought to examine, to induce an inquiry in the mind of an intelligent person, he is chargeable with knowledge or notice of the facts so contained." *The Cambridge Valley Bank v. Delano*, 48 N.Y. 326 (1872) [regarding a mortgage]

iii. Actual Notice

1. Something the potential purchaser sees on the property tips them off that there may be an easement or restriction on the property, for example, personally observing power lines, a roadway etc.

2. Potential purchaser knows there is an easement or restriction on the property via some other means, for example, is shown a map by the grantor prior to purchase. *Graham v. Beermunder,* 93 A.D.2d 254 (2d Dept 1983).[where grantor gave the potential purchasers a map of the development which was not filed in the county clerk's office]

iv. Common Plan or Scheme

1. "However, equity may provide plaintiffs a remedy provided they show: (1) that their parcels and the parcel owned by defendants are part of a general scheme or

plan of development (*Korn v. Campbell, supra*); and (2) that, at the time defendants purchased the property, they had notice, actual or constructive, of the common scheme or plan (*Steinmann v. Silverman, supra*). Upon such proof "the covenant is enforceable by any grantee as against any other upon the theory that there is a mutuality of covenant and consideration which binds each, and gives to each the appropriate remedy. Such covenants are entered into by the grantees for their mutual protection and benefit, and the consideration therefore lies in the fact that the diminution in the value of a lot burdened with restrictions is partly or wholly offset by the enhancement in its value due to similar restrictions upon all the other lots in the same tract" (*Korn v. Campbell, supra,* 192 N.Y. p. 495, 85 N.E. 687)." *Graham v. Beermunder,* 93 A.D.2d 254 (2d Dept 1983).

2. "In sum, we find that the evidence clearly and definitely shows that Guernsey Hill, Section II, is a common scheme or plan of development. We are persuaded of this by the following set of circumstances: (1) when Guernsey subdivided his property, naming it "Guernsey Hill, Section II", he had a map prepared and filed with the Town Planning Board; (2) the presence in almost all the deeds of the same nine restrictions, designed to insure a uniformity of appearance in an estate-like atmosphere; (3) the inclusion in the deed to the last grantee, defendants, of the covenants despite the fact that the grantor no longer retained an interest in any of the property; (4) the use of the phrase "running with the land", indicating that the covenant at issue was not personal to the grantor and, under the circumstances, implying that the other vendees were to have a right of enforcement; and (5) the fact that when defendants purchased the property, Guernsey gave them a copy of the map and informed them that all the parcels depicted were subject to the same restrictions. This latter aspect also serves to satisfy the notice to defendants which must be proven to allow plaintiffs' equitable relief. Defendants have not offered any evidence which would cast sufficient doubt on the issue so as to require a trial, and, therefore, summary judgment is warranted." *Graham, Supra.*

V. Extinguishment of Easements: 30 minutes

a. Rule:

i. An easement acquired by grant "remains as inviolate as the fee favored by the grant, unless conveyed, abandoned, condemned or lost through prescription" *Gerbig v. Zumpano,* 7 N.Y.2d 327 (1960).

b. Adverse Possession

i. "As with any adverse possession claim, the party seeking to extinguish the easement must establish that the use of the easement has been adverse to the owner of the easement, under a claim of right, open and notorious, exclusive and continuous for a period of 10 years." *Spiegel v. Ferraro,* 73 N.Y.2d 622 (1989)

ii. "Thus "an easement may be lost by adverse possession if the owner or possessor of the servient estate claims to own it free from the private right of another, and excludes the owner of the easement, who acquiesces in the exclusion for [the prescriptive period]" *Spiegel Supra.*

iii. "While plaintiff and her family used the easement to hike, take nature walks and cross-country ski, and while they also planted and mowed near it, such uses were not inconsistent with the easement itself or adverse to Majkut (defendant's predecessor in interest during the relevant 10-year time period). In other words, these uses did not constitute a use of the easement to the exclusion of all others nor did they in any way interfere with Majkut's use and enjoyment of the easement. Moreover, plaintiff did not submit proof that she installed some type of physical barrier or obstruction to prevent others, particularly Majkut, from using the easement during the entire prescriptive period." *Gold v. DiCerbo,* 41 A.D.3d 1051 (3d Dept. 2007).

iv. Exception: Paper Streets and unlocated easements

1. "A narrow exception to this general rule has evolved with regard to the extinguishment of easements that have not been definitively located through use. In *Smyles v Hastings* (22 NY 217, 224), we held that an easement that was not so definitively located through use and which lead to a "wild and unoccupied" parcel, was not extinguished by adverse possession because the owner of the easement had had no occasion to assert the right of way during part of the prescriptive period. Relying on *Smyles,* the Appellate Division has held that such "paper" easements may not be extinguished by adverse possession absent a

demand by the owner that the easement be opened and a refusal by the party in adverse possession. *Spiegel Supra.*

c. Abandonment
    i. Public Highway Easement
        1. Nonuse by the pubic and non-maintenance by the public authorities for 6 years. NY High Law §205
    ii. Private Easement
        1. Nonuse alone does not extinguish a private easement
        2. Must be an intent to abandon and an overt act in furtherance of the intention to abandon the easement.
            a. "[N]onuser alone, no matter how long continued, can never in and of itself extinguish an easement created by grant ... In order to prove an abandonment it is necessary to establish both an intention to abandon and also some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the easement ... [A]cts evincing an intention to abandon must be unequivocal." *Gerbig v. Zumpano,* 7 N.Y.2d 327 (1960).
            b. The "burden to show abandonment of an easement by grant is a heavy one." *Chapman v. Vondorpp,* 256 A.D.2d 297 (2d Dept 1998).
            c. EXAMPLES OF INTENT TO ABANDON:
                i. "The easement in question was for many years prior to plaintiffs' acquiring title blocked at one end by the use of a garden, and, indeed, plaintiffs' own title survey noted specifically that it apparently was not in use. Accordingly, plaintiffs were on notice that the twenty-foot easement was of questionable validity, notwithstanding a declaration of easement filed prior to their acquiring the property and the recitation of the easement in their deed. It is also pertinent that plaintiffs have ingress and egress to the main street via another easement." *DeCaesare v. Feldmeier*, 184 N.Y.220 (1st Dept 1992)
                ii. "The use of an alternate route of access while permitting the unimpeded growth of trees to obstruct the right-of-way for several decades may be indicative of an intent to abandon the

easement." *Chapman v. Vondorpp*, 256 A.D.2d 297 (2d Dept., 1998).

d. Conveyance

i. Merger of Title

1. When the Servient and Dominant Estates are united in ownership, the easement across the servient portion is extinguished

a. "The merger doctrine proceeds from a recognition that a person cannot have an easement in his or her own land because all the uses of an easement are fully comprehended in the general right of ownership (internal citations omitted). Consequently, when the dominant and servient estates become vested in one person, the easement terminates. At that point, the easement no longer serves a purpose and the owner may freely use the servient estate as its owner." *Will v. Gates,* 89 N.Y.2d 778 (1997).

b. "Where, however, only a portion of the dominant or servient estate is acquired, there is no complete unity of title and there remain other dominant owners whose rights are inviolate. The easement rights of these owners cannot be extinguished by a conveyance to which they are not a party. An easement ceases to exist by virtue of a merger only when there is a unity of title of all the dominant and servient estates." *Will, Supra.*

ii. Agreement of all parties benefited by the easement

1. Agreements relating to real property have to be in writing and recorded = effective to extinguish an easement.
2. Has to include every dominant estate holder

iii. To a Bona Fide Purchaser for Value who has no actual or constructive notice of the easement.

1. "A grantor may effectively extinguish or terminate a covenant when, as here, the grantor conveys retained servient land to a bona fide purchaser who takes title without actual or constructive notice of the covenant because the grantor and dominant owner failed to record the covenant in the servient land's chain of title." *Witter Supra*.

2. "Although we share the concern expressed in the dissent that this rule is contrary to the purpose of the recording act in that it essentially permits a common grantor to convey more title than he or she has retained, we are constrained by the detailed analysis in *Witter v. Taggart,supra*, which we find to be controlling." *Terwilliger v. VanSteenburg Supra.*
3. Exception:
    a. "..a narrow exception to this rule has been carved out in counties where a "block and lot" indexing system is used." *Terwilliger, Supra.*

e. Eminent Domain
    i. Extinguishes all rights in and to the property condemned, including any easements
        1. "When defendant (New York State) takes property through eminent domain, it takes in fee simple absolute and extinguishes all easements." *Thomas Gang Inc. v. State*, 19 A.D.3d. 861 (3d Dept 2005).
    ii. Tax sales do not extinguish easements

f. "Once extinguished, an easement is gone forever and cannot be revived" *Sam Development LLC v. Dean* 292 AD2d 585 (2nd Dept, 2002) quoting (*Stilbell Realty Corp. v Cullen, 43 AD2d 966, 967)*.