EASEMENTS BY IMPLICATION

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Introduction

Here are four good "trick" questions to ask people:

1. Who caught the first pass Brett Favre threw as a Green Bay Packer?
2. Who was the last American League switch-hitter to be named league MVP?
2. What Hall of Famer did the New York Yankees release to make roster space for Babe Ruth when they bought him from the [no longer cursed] Red Sox?
3. How can one obtain the right to use real property without a writing (as required by the Statute of Frauds), and without possession or use for any set period of time (as required to establish adverse possession or a prescriptive easement)?

The answer to the fourth question is an implied easement, and the point of discussing these trick questions is to illustrate how unique implied easements are.

Implied easements occur where an owner of land separates it into two parcels, and the use of one parcel is required for the benefit of the other. Creation of easements through implication is not only an exception to the Statute of Frauds – which, of course, requires a writing to transfer an interest in real property – but also has the effect of modifying the legal description of two properties:

> It could be argued that no easement should ever be implied because this allows the creation of an interest in land without the writing demanded by the Statute of Frauds. However, the courts have consistently treated such easements as exceptions to the legislative ban and *have rationalized the result by interpreting the [legal] description of the land conveyed to include the easement as an appurtenance* [i.e., an appendage].[1]

[1] John E. Cribbet, PRINCIPLES OF THE LAW OF PROPERTY, 337-38 (2nd. Ed. 1975)[emphasis added].

Warning: **The Case Law on This Topic is Confusing!**

Before we discuss the nuts and bolts of implied easements, a word on the case law: As the courts have noted, the terms "quasi-easement" and "easement of necessity" are used interchangeably, at times, in the published and unpublished cases. There is a logical reason for this: The distinction between the two is not applicable to a majority of implied easement situations, a point that is discussed in detail below.

However, this usage makes reviewing the case law in order to determine whether a certain situation meets the required elements difficult. When you read these cases yourself, keep this in mind, and review several cases on the topic before deciding on an analogue or applying a rule of law.

I. Rationale of Implied Easements.

Implied easements occur where property is originally under common ownership, and some part of it is sold off, so that an easement – such as an easement of ingress and egress – is necessary for "beneficial enjoyment" of the property, but is not actually created by the parties. The court will infer that the easement exists, finding in the process that creation of the easement was what the parties *meant*, but *failed*, to do. What is being *implied*, then, is the *intention* to create an easement:

> Thus, A owns Black Acre and has a house and farm dwellings on the north half, with a clearly defined road across the south half to a major highway. There is also a highway to the north so that A could have access by that route, but the highway itself is a poor one and the hilly, rocky soil makes such a way difficult. A cannot be said to have an easement across the south half of his own land, but he does have a quasi-easement and the north half is quasi-dominant land, the south half quasi-servient, i.e. the facts showing interest in the nature of an easement. *If B buys the north half, he would undoubtedly expect to have the same access A had to the buildings. He should require A to make an express grant of such an easement across the retained half, but if the parties fail to do so, a Court will imply the easement by way of grant, unless the parties negative any intent to create such an interest*.[2]

[2] Cribbet, page 338 [emphasis added].

The Restatement of Property sets forth this principle as follows:

> *An easement created by implication arises as an inference of the intention of the parties to a conveyance of land*. The inference is drawn from the circumstances under which the conveyance was made rather than from the language of the conveyance. To draw an inference of intention from such circumstances, they must be or must be assumed to be within the knowledge of the parties. *The inference drawn represents an attempt to ascribe an intention to parties who had not thought or had not bothered to put the intention into words*, or perhaps more often, to parties who actually had formed no intention conscious to themselves. In the latter aspect, the implication approaches in fact, if not in theory, *crediting the parties with an intention which they did not have, but which they probably would have had had they actually foreseen what they might have foreseen* from information available at the time of the conveyance." [3]

In this situation, the court is kind of like the person who is in a parking lot, and sees that someone has parked their car, leaving their headlights on. Surely, the owner meant to turn the lights off, but forgot to. Now, if the lights aren't shut off, the owner won't be able to start the car later. So, one can infer the owner's intention and turn off the lights for them.

II. Types of Implied Easements: Quasi-Easements and Easements by Necessity.

The two types of implied easements are "quasi-easements" and "easements by necessity." One court has noted that the terms are often used "interchangeably," at least "in dicta."[4] And, at least one case has questioned whether this distinction is universally made, and noted that its relevance may be limited to the parties to the transaction in which the property was divided:

> The language in Bode *suggests a distinction, recognized by some jurisdictions and commentators, between implied easements and easements of necessity*. *See* Bode, 494 N.W.2d at 303-04 & n. 1. *However, any distinction in* Bode *was limited to the parties to the severing transaction*. "[W]hen a landowner conveys a portion of land that has no access * * * the owner of the purchased portion has a right of access across the retained lands of the grantor unless the conveying document explicitly disclaims any right of access." *Id.* at 303-04 (emphasis added); *accord Pine Tree Lumber Co. v. McKinley*, 83 Minn. 419, 420, 86 N.W. 414, 415 (1901) (defendant's grant to plaintiff of right to enter defendants land and remove pine "included whatever was reasonably necessary to make it effective" including right to construct and use logging road across land retained by defendant); 28A C.J.S. § 91a (easement by necessity for access may be claimed only by

[3] *Olson v. Mullen*, 68 N.W.2d 640, 646 (Minn. 1955) [emphasis added], citing to Restatement, Property, § 476, Comment a.
[4] *Bode v. Bode*, 494 N.W.2d 301, 304 (Minn.App.,1992)

immediate parties to transaction). *Compare* 4 Richard Powell & Patrick Rohan, *Powell on Real Property* § 34.07 (easement may be found despite many intervening conveyances); *Pencader Assoc., Inc. v. Glasgow Trust*, 446 A.2d 1097, 1100 (Del.Super.1982) (easement of necessity cannot be terminated by mere nonuse, remanding to determine fact issue of existence of easement of necessity 170 years after severance of property).[5]

A. Quasi Easement:

Quasi-easements occur where the easement location is determined by use prior to the time of the severance:

> The general rule may be expressed that where during the unity of title, an apparent and obvious, permanent, continuous and actual servitude or use is imposed on one part of an estate in favor of another, *which at the time of severance of unity is in use and is reasonably necessary for the fair enjoyment of the other*, then upon a severance of such unity of ownership there arises by implication of law a grant of the right to continue such use even though such grant is not reserved or specified in the deed.[6]

In a quasi-easement situation, the court is trying to keep an easement in place that already existed, in a practical manner, prior to the time the parcels were split:

> In holding that an implied easement in a quasi-easement situation exists the Court is trying to implement the intention of the parties.[7]

The name "quasi-easement" comes from the common law rule against having an easement against property one owns in fee simple.

> One cannot have an easement in his own property so when he uses one piece of his property for the purpose of serving another piece of his property, there is said to exist a quasi-easement.[8]

"Quasi" means "as if," or "analogous to."[9] If the owner of a parcel makes a use similar to an easement across his land, it's "as if" an easement existed.

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[5] *Lake George Park, L.L.C. v. IBM Mid America Employees*, 576 N.W.2d 463, 466 (Minn.App.,1998) [emphasis added; former emphasis deleted].
[6] Cribbet p. 338, *citing with approval to Deisenroth v. Dodge*, 7 Ill.2d 340, 346, 131 N.E.2d 17, 21 (1955).
[7] Ralph E. Boyer, SURVEY OF THE LAW OF PROPERTY 593-95 (3rd Ed. 1981).
[8] Boyer, p. 593.
[9] BLACK'S LAW DICTIONARY 1245 (6th. Ed., 1990).

B. **Easement by Necessity**:

An Easement by Necessity occurs where the easement did not exist at the time of the severance of title, but was necessary (at the time of severance) to the use of the property it serves.

> Easements may be implied by necessity *regardless of the prior use of the land*, although such prior use may also be involved in the facts….easements implied by necessity are based upon the presumed intention of the parties and the implication will not be invoked unless both the dominant and servient tracts were once under common ownership.[10]

III. Requirements to Create a Quasi-Easement.

A. Separation of Title

Separation of title occurs where both parcels – the one that will benefit from the easement, and the one that will be burdened by it – were originally owned by the same owner, who sells at least one of them. Note that an implied easement can be found even if there have been subsequent sales of the property:

> Regarding the first factor, the two parcels *were once owned by one party* and that common ownership was severed when Link conveyed the house to the Biseks.[11]

B. Continued and Apparent Use.

> [The] use which gives rise to the easement shall have been so long continued and apparent as to show that it was intended to be permanent.
>
> The quasi-easement must be apparent at the time of the conveyance.[12]

NOTE: For purposes of quasi-easements, "apparent" doesn't mean "visible;" rather, it means that the use can be discovered upon a reasonable inquiry, including the existence, for example, of a sewer line.

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[10] Boyer, p. 597.

[11] *Rosendahl v. Nelson*, 408 N.W.2d 609, 610 (Minn.App., 1987)

[12] Boyer, pp. 593-95

> The quasi-easement is continuous for the sewer pipe and the easement is permanently adapted to use in the service of White Acre. The quasi-easement is apparent in that a reasonably prudent investigation and inspection of the premises would have disclosed the existence of the quasi-easement. Finally, it is strictly necessary for the purposes of law which typically requires only that the use be reasonably necessary. Here, reasonably necessity is defined by the fact that the sewer pipe would have to be extended around the boundary line to be run to the main line which is a pretty heavy burden on the dominant parcel.[13]

C. The Use Must Be Necessary.

If the easement runs across the property owned by the seller, it must be reasonably necessary for the use of the property. If it is to run across the property to be owned by the buyer, in order to benefit the seller's property it must be strictly necessary; the common law disfavors grants of title that are less than fee simple (What's that mean in English? Remember that selling real property really means selling a bundle of rights. Courts want the seller to sell the whole bundle, and will bias towards finding that this has occurred).

> The quasi easement must be (a) "reasonably necessary" to the convenient enjoyment to the quasi-dominant tenement if that tract is the property conveyed to the grantee, and (b) "strictly necessary" to the enjoyment of the quasi-dominant tenement if that tract is retained by the grantor.[14]

Examples of Reasonable Necessity:

> In *Rosendahl v. Nelson* . . . an implied easement was granted for a driveway due to physical obstructions, a steep slope and a tree on the plaintiff's property. [15]

> In *Romachuk* an implied easement was granted for sewer drainage across defendant's adjacent property, though the easement was not mentioned in the deed. The court held there could be no serious dispute that the use of the drain pipe was reasonably necessary for the convenient and comfortable enjoyment of the property.[16]

D. All Are Three Factors Required In Each Case?

One quasi-easement case, *Rosendahl v. Nelson,* listed the above-referenced factors, then stated that "[e]xcept the necessity requirement, these factors are only aids in determining whether

[13] Boyer, p. 595.
[14] Boyer, pp. 593-95.
[15] *Clark v. Galaxy Apartments*, 427 N.W.2d 723. 726 (Minn.App. 1988).
[16] *Clark v. Galaxy Apartments*, 427 N.W.2d 723. 726 (Minn.App. 1988).

an implied easement existed."[17] However, previous common ownership supplies the rationale for the doctrine of implied easements:

> An easement by implication arises from the circumstances surrounding the dividing by the owner of a piece of land into two pieces and conveying one of the two pieces to another.[18]

Also, necessity is examined as of the time of separation of ownership. Therefore, it would appear that prior unity of title and necessity are both strictly required to establish an quasi-easement, but continued and apparent use is not.

IV. Requirements to Create an Easement By Necessity.

> There are four elements required for creation of an easement by necessity: 1) a common title at the time of the use of the easement; 2) a later separation of the properties; 3) the use which gives right to the easement must have been so long continued and so apparent as to show it was intended to be permanent; and 4) the easement or use must be necessary to the beneficial enjoyment of the land.[19]

A. Common Title and Separation of Title

This is the same as was the case for implied easements where a quasi-easement existed.

B. Continued and Apparent Use.

Unless the party claiming an implied easement is claiming against the person who was the owner at the time of severance, the use must be continuous and apparent as is the case with a quasi-easement:

> Appellant cites no Minnesota case where an easement of necessity was implied for the benefit of a party remote to the severing transaction without a showing of apparent and continued use. This court, as an error correcting court, is without authority to change the law.[20]

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[17] *Rosendahl*, 408 N.W.2d at 611.
[18] Boyer, p. 570.
[19] *Nunnelee v. Schuna*, 431 N.W.2d 144, 147 (Minn.App.,1988).
[20] *Lake George Park, L.L.C. v. IBM Mid America Employees*, 576 N.W.2d 463, 466 (Minn.App.,1998).

C. The Use Must Be Reasonably Necessary

"'Necessary' does not require that the use be indispensable; rather a reasonable necessity is sufficient. *Olson v. Mullen,* 244 Minn. 31, 68 N.W.2d 640, 647 (1955). The party attempting to establish the easement bears the burden of proving necessity. *Id.* The current inconvenience, or cost, involved with the property carries no weight in determining necessity, as *necessity at the time of severance governs*. *Niehaus,* 529 N.W.2d at 412."[21]

D. Are All Three Factors Required?

As is the case with quasi-easements, there is case law standing for the proposition that necessity is the only actual requirement:

> Except for the essential factor of necessity, the other elements are merely aids which are used to determine whether an implied easement exists.[22]

However, prior unified ownership would also appear to be necessary. The easement is inferred based on the parties intentions at the time of severance, and necessity is examined as of the of severance.

V. Duration of an Implied Easement

An implied easement is permanent, unless it is expressly released, or unless the title for the two parcels is joined again (in which case you have a quasi-easement!).

> An easement by implication, whether an implied grant in favor of the Grantee or an implied reservation in favor of the Grantor, is a true easement having permanence of duration and should be distinguished from a way of necessity which is only as long as the necessity continues. [23]

What happens if the necessity ceases to exist? It doesn't matter. Remember, the analysis of necessity is made as of the time of separation of title:

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[21] *Pederson v. Smith*, 2000 WL 821682 (Minn.App. 2000) [emphasis added].
[22] *Barnes v. Cowgill*, 1989 WL 145414, Minn.App.,1989. *citing Olson v. Mullen*, 68 N.W.2d 640, 647 (Minn, 1955).
[23] Boyer, p. 597.

> The district court's factual finding, that appellants could access the property by boat or by land with neighbors' permission or over their culvert when the water is low, is supported by the evidence. But this finding does not support the court's conclusion that this evidence was insufficient to establish an implied easement by necessity because appellants had other modes of accessing the property. *The correct analysis is as of the time of severance, and the court instead analyzed current necessity*.[24]

Note, however, that if the easement was granted under the *Bode* exception discussed above, that it will cease to exist when the necessity ceases to exist:

> 'An easement by necessity lasts only as long as the necessity' and ceases when the owner of the dominant estate obtains a permanent right of public access to his or her property.[25]

VI. Location of Easement

A. Quasi-Easement:

Because of the requirement of apparency, referenced above, the location is that location which was used when the easement was a quasi-easement.

B. Easement Implied from Necessity:

Usually, this is determined by the apparent prior use, which would be the same standard applied for a quasi-easement. However, where it is the owner who made severance that is attempting to establish the easement, the owner of the land over which the easement is to run selects the location of the easement. If that owner fails to do so, then the user of the easement gets to choose:

> Where there is no agreement, the location of the easement is established in this manner: 'When no prior use of the way has been made, and the same is to be located for the first time, the owner of the land over which the same is to pass has the right to choose it, provided he does so in a reasonable manner, having due regard to the rights and interests of the owner of the dominant estate. But, if the owner of the land fail to select such way when requested, the party who has the right thereto may select a suitable route for the same, having due regard to the convenience of the owner of the servient estate."[26]

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[24] *Pederson v. Smith* 2000 WL 821682 (Minn.App. 2000).
[25] *Holmes v. DeGrote*, 2000 WL 1146745, (Minn.App.,2000) citing to *Bode*, 494 N.W.2d at 304.
[26] *Bode v. Bode*, 494 N.W.2d 301, 304-05 (Minn.App. 1992), *quoting from McMillan v. McKee,* 129 Tenn. 39, 164 S.W. 1197, 1198 (Tenn.1914); *accord Ritchey v. Welsh*, 149 Ind. 214, 48 N.E. 1031, 1033 (Ind.1898); *Oliver v. Ernul*, 277 N.C. 591, 178 S.E.2d 393 (1971).

Even where the user of the easement gets to select its location, the easement does have to be on the land of the parcel previously owned in common:

> Under the common law, an easement by necessity must be located on the retained land of the grantor and nowhere else.[27]

VII. Uses For Which Implied Easements May be Created.

Basically, the use can be of any type – including, for example, lateral support of land[28]-- with narrow exceptions:

> While most types of easements….may be created by implication, easements for light and air cannot arise in this country, either by implication or prescription. They can be created only by express agreement. [29]

There is an exception to this exception, however: One does have an implied easement for light and air on *public streets;* in fact, there is a constitutional right to ownership of easements of this type. This can give rise to a takings case:

> An owner of property abutting a public street has implied easements of light, air, and view over the street. *Haeussler v. Braun*, 314 N.W.2d 4, 7 (Minn.1981). These easements are "property" within the meaning of the Minnesota Constitution. *Castor v. City of Minneapolis*, 429 N.W.2d 244, 245 (Minn.1988). But an owner's property interest is subservient to the public easement in the street. *Haeussler*, 314 N.W.2d at 7. When a property owner's implied easement is obstructed by an improper use of the public easement, a taking can be found. *Id*., at 8.[30]

Remember the requirement of necessity, however.

VIII. Exceptions to the Doctrine

When the parties indicate in writing at the time of severance of ownership that the parties do not intend to create an easement, the courts will not infer an easement later:

> Where a land owner conveys a portion of land that is landlocked and has no access to the road, the owner of the purchased portion has a right to access across

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[27] *Bode v. Bode*, 494 N.W.2d 301, 304-05 (Minn.App. 1992), *citing with approval to Ritchey v. Welsh*, 149 Ind. at ____, 48 N.E. at 1033.
[28] *Swedish-American Nat. Bank of Minneapolis v. Connecticut Mut. Life Ins. Co.*, 83 Minn. 377, 86 N.W. 420 (Minn., 1901).
[29] Cribbet, page 339
[30] *Kooiker v. City of Coon Rapids*, 1998 WL 40502 (Minn.App., 1998).

> the retained lands of the Grantor unless the conveying document explicitly provides that they will not. [31]

IX. Implied Easements Distinguished from Adverse Possession or Easement by Prescription.

Significantly, while possession or use must be maintained for a minimum statutory period in order for said possession or use to give rise to a claim of adverse possession, no such minimum period is required to establish an implied easement.

> In any event, this question of fact, length of use, is not essential to the creation of the easement and therefore not material for purposes of the summary judgment motion. [32]

X. Practice Tip: Join All Necessary Parties.

Especially where you are claiming an easement by necessity, be sure to join all necessary parties. For example: Say you are attempting to claim that your client, owner of Parcel A, needs an easement across Parcel B in order to reach a highway. The owner of Parcel B may defend on the basis that an alternate easement is available over Parcel C. Obviously, you will want to include the owner of that parcel as a defendant:

> The trial court found appellants have not openly and notoriously used an easement across parcel "A" in favor of "E." Further, there has been no long, apparent nor continued use of an easement across "A" in favor of "E" for all relevant time periods at issue. The trial court further concluded that owners of adjacent lands over which a road easement could be prescribed were not joined in the action, and that these parties were "necessary for a fair and complete resolution of the plaintiffs' claim for an easement by necessity." We agree. The record demonstrates that at least one survey indicated an easement across parcel "F" which is located immediately east of the appellants' parcel and the owners of parcel "F" are not parties to this lawsuit.[33]

XI. Conclusion.

Remember to analyze whether an implied easement exists using the three following factors:

1) Common title at the time of the use of the easement, and later, severance of title;

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[31] *Bode v. Bode* 494 NW 2nd 301, 304 (Minn.App. 1992)
[32] *Clark v. Galaxy Apartments*, 427 N.W.2d 723, 726 (Minn.App.1988).
[33] *Nunnelee v. Schuna*, 431 N.W.2d 144, 147 (Minn.App.,1988).

2) A use which is apparent and continuing so as to show it was intended to be permanent; and

3) The use is necessary to the beneficial enjoyment of the land.

Remember also that the "apparent and continuing use" factor is not strictly required. And, remember that necessity is determined at the time of the easement.

Apply these factors, and you will have a good working knowledge of implied easements, the answer to a great law trivia question.

EXHIBIT A: COMPLAINT FOR IMPLIED EASEMENT (AND OTHER ASSOCIATED RELIEF)

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF [COUNTY	[DISTRICT] JUDICIAL DISTRICT CASE TYPE: _____
[Plaintiffs]	Court File No. _____
	COMPLAINT
Plaintiffs,	
v.	
[Defendants]	
Defendants.	

Come now the Plaintiffs; and for their Complaint against the above-named defendants, state and allege as follows:

I. GENERAL ALLEGATIONS

1. Plaintiffs own real property located within the County of [County], State of Minnesota, legally described on Exhibit A attached hereto and made a part hereof ("Plaintiffs' Property").

2. Defendants ("Defendants") have title of record to property directly adjoining Plaintiffs' Property to the south, legally described on Exhibit B attached hereto and made a part hereof ("Defendants' Property").

3. Both Plaintiffs' Property and Defendants' Property previously belonged to [Prior Owner], and said properties constituted a unified larger parcel ("Original Parcel").

4. In or about 1976, Prior Owner split the Original Parcel into the parcels known herein as Plaintiffs' Property and Defendants' Property, conveyed Plaintiffs' Property to [Plaintiff's Predecessor], and kept Defendants' Property for themselves.

5. Existent at that time on Plaintiffs' Property was a farmhouse that was constructed in the 1800s and has been in place for over 100 years.

6. The driveway for the house located upon Plaintiffs' Property actually followed a field division line and crosses over the northern boundary line of Defendants' Property as legally described before meeting with Road; and, this driveway has remained in its original location ("Driveway Parcel") for over 100 years. See Exhibit C, attached hereto and incorporated by reference herein.

7. Access to Plaintiffs' Property is dependent on the use of the Driveway Parcel; Plaintiffs' Property is bordered on its other sides by a ditch, trees, a ravine, and property owned by other private individuals, including Defendants, through which access is impracticable and unreasonable.

8. In or about 1979 Defendants bought Defendants' Property from [Defendant's Predecessor].

9. In or about July, 2000 Defendants placed heavy farm equipment on the Driveway Parcel, blocking the driveway located thereon.

10. In or about August, 2000 Defendants smashed the window of a pick-up truck belonging to Plaintiff.

II. COUNT ONE: ADVERSE POSSESSION

11. Come now the Plaintiffs who state the following for Count One of their Complaint against Defendants and incorporate by reference paragraphs 1-10 of their Complaint as if set forth fully herein.

12. Plaintiffs bring this action pursuant to the Declaratory Judgment Act, Minnesota Statutes Section 559.01 et seq., seeking a declaratory judgment resolving adverse interests in real property.

13. Plaintiffs, together with their predecessors in interest have maintained open, continuous, exclusive, adverse, and notorious possession of the Driveway Parcel for a period in excess of the 15 years required by Minnesota Statutes Section 541.02.

14. Therefore, Plaintiffs seek to be declared the owner of the Driveway Parcel in fee simple under the doctrine of adverse possession.

III. COUNT TWO: PRESCRIPTIVE EASEMENT

15. Come now the Plaintiffs, who state the following for Count Two of their Complaint against Defendants, and incorporate by reference paragraphs 1-14 of their Complaint as if set forth fully herein.

16. Plaintiffs bring this action pursuant to the Declaratory Judgment Act, Minnesota Statutes Section 559.01 et seq., seeking a declaratory judgment resolving adverse interests in real property.

17. Plaintiff Trusts have established a prescriptive easement according to the requisite period set forth in Minnesota Statutes Section 541.02; and, therefore, Plaintiff Trusts seek the declaration of a prescriptive easement over said Driveway Parcel in favor of Plaintiffs' Parcel.

IV. COUNT THREE: IMPLIED EASEMENT

18. Come now the Plaintiffs who state the following for Count Three of their Complaint against Defendants and incorporate by reference paragraphs 1-17 of their Complaint as if set forth fully herein.

19. Plaintiffs bring this action pursuant to the Declaratory Judgment Act, Minnesota Statutes Section 559.01 et seq., seeking a declaratory judgment resolving adverse interests in real property.

20. As was set forth with more particularity above, at the time the [Plaintiff's Predecessor] owned the Original Parcel, they imposed a permanent and obvious servitude on what was later to become the Defendants' Property in favor of Plaintiffs' Property by creating the driveway as it exists today, running across the Driveway Parcel.

21. Further, at the time the Plaintiffs' Property was split out of the Original Parcel, said driveway was in use and was necessary for the fair enjoyment of the Plaintiffs' Property, to which said use is beneficial.

22. At the present time, use of the Driveway Parcel remains necessary for the enjoyment of Plaintiffs' Property.

23. Therefore, an implied easement has been created for the benefit of Plaintiffs' Property across the Driveway Parcel; and Plaintiff Trusts seek the judicial declaration of said easement.

V. COUNT FOUR: TRESPASS

24. Come now the Plaintiffs, who state the following for Count Four of their Complaint against Defendants, and incorporate by reference paragraphs 1-23 of their Complaint as if set forth fully herein.

25. As a direct and proximate result of Defendants' moving of farm equipment and machinery upon the Driveway Parcel after Plaintiff Trusts owned same under the doctrine of adverse possession, Plaintiff Trusts have suffered a trespass, and are entitled to damages for same.

VI. COUNT FIVE: TRESPASS TO CHATTELS

26. Come now the Plaintiffs, who state the following for Count Five of their Complaint against Defendants, and incorporate by reference paragraphs 1-25 of their Complaint as if set forth fully herein.

27. As a direct and proximate result of Defendants having vandalized Plaintiffs' pick-up truck, said Plaintiff has suffered a trespass to chattels and is entitled to compensation for same.

WHEREFORE, Plaintiffs pray that this Court enter judgment for Plaintiffs, and against Defendants, to wit:

1) For declaratory judgment establishing that Plaintiffs own the Driveway Parcel according to the doctrine of adverse possession;
2) In the alternative, for declaratory judgment establishing that an easement by prescription across the Driveway Parcel is established in favor of Plaintiffs' Property and against Defendants' Property;
3) In the alternative, for declaratory judgment establishing that an implied easement has been created across Defendants' Property in favor of Plaintiffs' Property;
4) For damages as are just and reasonable on the premises for trespass in favor of Plaintiffs and against Defendants;
5) For judgment for Plaintiffs and against Defendants for damages as are just and reasonable on the premises for a trespass to chattels; and
6) For all other relief just and proper in the premises, including an award of Plaintiffs' reasonable costs and attorneys' fees.

THOMAS B. OLSON & ASSOCIATES, P.A.

Dated: _____, 2003

By: _____

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Edina, Minnesota 55387-1023
(952) 224-3644 extn. 3
Attorney for Plaintiffs

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ACKNOWLEDGMENT PURSUANT TO MINNESOTA STATUTES §549.21

The undersigned hereby acknowledges that costs, disbursements and reasonable attorneys' fees and witness' fees may be awarded to the opposing party or parties pursuant to Minnesota Statutes §549.21. As by statute made and provided in the action to which this notice is appended.

Dated: _____

_____
Scott M. Lucas

EXHIBIT A

PLAINTIFFS' PROPERTY

LEGAL DESCRIPTION

EXHIBIT B

DEFENDANTS' PROPERTY

LEGAL DESCRIPTION

EXHIBIT C

DRIVEWAY PARCEL

LEGAL DESCRIPTION