


BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

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**MEETING OF THE LAND SURVEYING TECHNICAL ADVISORY COMMITTEE
OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS**

Board for Professional Engineers, Land Surveyors, and Geologists
2535 Capitol Oaks Drive
Third Floor Conference Room
Sacramento, California, 95833
(916) 263-2222

Friday, July 6, 2012, 9:30 A.M.

LAND SURVEYING TECHNICAL ADVISORY COMMITTEE

| | |
|------------------------|---|
| Members: | Michael S. Butcher, PLS; Michael B. Emmons, PLS; Paul J. Enneking, PLS; Mr. William Hofferber Jr., P.L.S.; Mr. Frank Demling, P.L.S. |
| Board Liaisons: | Patrick J. Tami, PLS; Michael Trujillo |
| Staff Liaisons: | Raymond L. Mathe, PLS; Celina Calderone |

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|--|-----|
| 1. Roll Call | 2 |
| 2. Public Comment | 3 |
| 3. Approval of LS TAC Minutes, March 16, 2012 (Possible Action) | 4 |
| 4. Discussion and Possible Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762 (Possible Action) | 10 |
| 5. Discussion and Possible Recommendation Board Rule 425(c) and (d) Regarding Criteria for Responsible Training (Possible Action) | 95 |
| 6. Review selected Board actions from June 28-29, 2012 Board Meeting (If necessary) | 99 |
| 7. Update on April Professional Surveyor Exam; New Application Process for FE, FS and State Exam; and New Application and Testing Fees. (No Action Required) | 100 |
| 8. Election of Chairman and Vice-Chairman for 2012/2013 | 101 |
| 9. Develop Proposed 2012/2013 LSTAC Workplan (Possible Action) | 102 |
| 10. Date of Next TAC Meeting – October 5, 2012 | 103 |
| 11. Other Business Not Requiring Committee Action | 104 |
| 12. Adjourn | 105 |

LSTAC Meeting
July 6, 2012
Agenda (Cont.)

1. Roll Call

3. Approval of LS TAC Minutes, April 22, 2011 (Possible Action)

Moved: _____ Second: _____

Comments: _____

DRAFT

**MEETING OF THE LAND SURVEYING TECHNICAL ADVISORY COMMITTEE
OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

**Board for Professional Engineers, Land Surveyors, and Geologists
2535 Capitol Oaks Drive
Third Floor Conference Room
Sacramento, California, 95833
(916) 263-2222**

Friday, March 16, 2012, 1:00 P.M.

TAC Members Present: Michael S. Butcher, PLS; Michael B. Emmons, PLS;
Paul J. Enneking, PLS

TAC Members Absent:

Board Liaisons Present: Patrick J. Tami, PLS

Board Liaisons Absent: Michael Trujillo

Board Staff Present: Ric Moore, (Executive Officer); Raymond L. Mathe, PLS;
Nancy Eissler (Enforcement Manager); Celina Calderone
(Board Liaison); Tiffany Criswell (Enforcement Analyst);

1. Roll Call to Establish a Quorum

The meeting was called to order by Michael S. Butcher at 1:10 p.m. Roll call was taken, and a quorum was established.

2. Public Comment

No report given

3. Approval of LS TAC Minutes, April 22, 2011

Mr. Butcher indicated that under, Discussion and Possible Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762, JPPC should be clarified to indicate Orange County JPPC.

In addition, under the Discussion and Possible Recommendation Regarding the Definition of "Establish" as it relates to Business and Professions Code Section 8762, where it is referenced that Mr. Tami suggests use words in 8726(c) should show that it was Mr. Butcher who suggested language.

Mr. Enneking referenced notes from prior TAC meeting in which he indicated Mr. Moore was to have a discussion with Mr. Duke regarding rescinding his prior opinion relating to Item number 6, Discussion and Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762.

MOTION: Mr. Enneking and Mr. Butcher moved to approve minutes

VOTE: Motion carried

4. **Discussion and Possible Recommendation Regarding the Definition of “Establish” as it relates to Business and Professions Code Section 8762**

Mr. Butcher spoke to CLSA’s representative and it was indicated that it will be in the April 13 amendment to the omnibus bill. He added that ACEC was in support. The bill will be SB 1576 as indicated by Legislative Advocates. Mr. Tami suggested speaking to CEAC as it may impact their operations.

5. **Discussion and Possible Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762**

Mr. Butcher indicated that this discussion revolves around a letter from 1998 from Mr. Duke. Mr. Emmons shared an editorial comment in that he believes this opinion is not correct. Mr. Butcher confirmed that the monumentation of an easement requires the filing of a record of survey and that he does not believe it is mandatory by what he interprets. An easement is a right and by setting a monument on the easement you are not mandated to file. His opinion is that if a monument is set, you must file. He would like to see if a monument is set on an easement that a record of survey is mandatory and would like to explore language to do so.

Mr. Tami asked if there is public protection that needs to take place. If someone sets a physical feature with their tag and number to depict the lines of an easement that it is important for public protection that it is included in a public record. Mr. Butcher expressed that it would be a benefit to the public that if a monument is set that it should be filed. Mr. Moore indicated if you are having anything physically out there that references a document that affects a title, somehow the public should be aware of it. He added that it is possible that it should not be all inclusive or mandatory that an easement is marked because it is not always necessary that easements be marked in the field. Mr. Mathe suggested another view, subdivision map act, 66426.5, discusses conveyances to agencies as being not part of the subdivision map act. It is considered a right of way.

Mr. Butcher stated that a transfer of property or right of way would not require you to file a record of survey in a deed or other instrument of title. If you perform a field survey, he believes that you can practice land surveying and you should file, relating to land boundaries and property lines. It is not clear that it is mandatory but believes it should be. Most of these cases are on easements and sees the value in making it mandatory in certain circumstances as it is not necessary to monument everyone and is not required in every case. We need to establish if we need to mandate and if so, is a corner record or record of survey sufficient. Corner records are being abused and there should be more records of survey. Mr. Enneking sees this as a case of professional practice opinion as he does believe in certain situations where the public would be protected.

Mr. Emmons indicated that many government agencies do not file the appropriate records such as a right of way; it would be good to regulate.

Mr. Moore suggested amending 8765 which explains when a record of survey is not required, possibly including language that would provide leeway to not be an all-inclusive situation.

Mr. Mathe stated that 8726, surveying of easements fall into the practice however it may not necessarily carry over to 8762.

Mr. Butcher indicated that it would be beneficial to know the legislative intent.

Ms. Eissler added that with legal opinions and interpretations, it usually starts with plain English reading, standard dictionary definitions of words and if there are still questions then you go into legislative intent which can be broad. She does not believe it would hurt to ask Mr. Duke to review again. If his opinion is the same he can expand on it to address the issues raised.

Mr. Woolley who wrote the letter indicated that in Black's Law dictionary defines easement as property. He believes it is clear when an easement is property and it indicates property lines. There is a distinct difference between boundary and property lines and they are not the same. Public record perpetuates for history and public protection. There is more litigation over easements than fee lines. Agencies in Southern California file records of survey on all.

Mr. Butcher stated that he agreed with the benefit however is not sure if current law requires it but believe it should.

Mr. Woolley added that an easement is considered property. 8762(b) includes property lines and believes monumentation is secondary.

Mr. Enneking suggested asking Mr. Duke to revisit this issue and define property as it relates to easement and the legislative intent and boundary.

6. **Discussion and Possible Recommendation as it relates to Business and Professions Code Section 8741(a)**

Mr. Butcher indicated CLSA is sponsoring. He explained that it was proposed to remove the exemption for EITs and Civil PE's. ACEC agreed that EITs should be removed and the civil PE's will continue to have the exemption. This will be added to the April 13 SB 1576 amendment.

7. **Discussion and Possible Recommendation as it relates to Business and Professions Code Sections 8742(b), 8773(a), and 8773(b)**

Mr. Butcher indicated that CLSA proposed to update title of BLM manual. Language was worked out with legislative counsel.

8. **Discussion and Possible Recommendation as it relates to Subdivision Map Act Sections 66442 and 66450**

Mr. Butcher CLSA Proposal removing expiration date requirement on stamp or seal.

9. **Review of Board Rule 425 for Possible Revision**

Mr. Moore indicated when reviewing applications to qualify for licensure he refers to this regulation and believes the applicant does also. His concern is that he is

not aware how long this regulation has been in its current form and would like the TAC to review to determine whether or not it needs to be updated as it affects how applications are reviewed.

Mr. Tami asked whether or not checking of field notes is considered field or office work. It is possible that items need to be updated due to new technology.

The Board has previous rulemaking file that the TAC could review however, Mr. Enneking is not sure if history is needed to ensure that the rule is current.

Mr. Moore would like TAC members to review and discuss at a future meeting and is asking for guidance and possible making adjustments or revisions as needed.

10. **Review selected Board actions from March 8-9, 2012 Board Meeting**

Mr. Moore provided information that currently the applicants apply for the EIT/LSIT on a self-certifying, one page application. There are changes to the administration of these examinations by NCEES. Commencing January 1, 2014, these examinations will be computer based. There will be open windows on a quarterly basis of testing nationally and possibly internationally. NCEES has proposed that the Board may want to consider how applicants are approved for this examination process. One of the proposals is for every one approval the Board has; the applicant can sit up to three times. If the candidate fails, the candidate can register with NCEES and sit again in the next window without Board approval. These examinations can only be taken one time per window. Results would be provided within five to ten days. Staff proposed to the Board to change the middle part of the process, and have the applicants register with NCEES, take the examination, and once they pass, they would then apply with the Board. This would reduce the impact on workload.

Mr. Tami explained exam security stating the reason why there will be an initial delay in results is that data is being collected to learn how fast a question is answered and the times it is revisited and other statistical data. The data collected will help equate the questions such as content and difficulty for a more comprehensive item bank. He elaborated on the security by indicating that each candidate must empty their pockets, and each will have a locker and each person will be uniquely identified.

Mr. Moore indicated the Land Surveying examination will be offered for the first time using computer based testing on April 23, 2012. There are approximately 403 approved applicants and about 340 currently scheduled. There have been some technical anomalies in scheduling that are being resolved with the computer based testing provider. Examinations are being offered in Oregon and Nevada as well.

11. **Closed Session – Examination Procedures and Results, Review of Applications and Investigations, and Administrative Adjudication (As Needed) [Pursuant to Government Code sections 11126(c)(1), 11126(c)(2), and 11126(c)(3)]**

No report given

12. **Open Session to Announce the Results of Closed Session**

No report given

13. **Date of Next TAC Meeting – July 20, 2012**

The next TAC meeting is scheduled for Friday, July 20, 2012. Time will be determined by agenda.

Discussion will include monument and easement and Board Rule 425.

14. **Other Business Not Requiring Committee Action**

Mr. Moore indicated that there are many issues recently brought to CLSA and the Board's attention regarding enforcement cases that have been opened surrounding 8771(b). Larry Kereszt, enforcement analyst, has been assigned to handle any cases pertaining to 8771(b) and to work on cases relating to unlicensed activity.

Mr. Moore added that a legislative/regulation committee was established among staff to ensure that legislative and regulation functions and knowledge is handled by more than one person internally and externally. Staff includes Larry Kereszt, Jeff Alameida, and Joanne Arnold.

Outreach will be administered by Brooke Phayer.

Mr. Tami informed the TAC that the Board is now accepting credit card renewals.

The Board Newsletter will be distributed in the coming week.

15. **Adjourn**

Meeting adjourned at 3:03 p.m.

PUBLIC PRESENT

David Woolley

Roger Hanlin

4. Discussion and Possible Recommendation Regarding Monumenting an Easement as it relates to Business and Professions Code Section 8762 (Possible Action)

March 18, 2011

Mr. Ric Moore, PLS
Land Surveyor Consultant
Board For Professional Engineers And Land Surveyors
2535 Capitol Oaks Drive, Suite 300
Sacramento, California, 95833-2944

Subject: Reconsideration of the Monumentation of an Easement and Record of Survey Filing Requirements Memorandum Dated January 16th, 1998 by Mr. Gary Duke, Staff Counsel (Exhibit 1).

Mr. Moore:

The above mentioned Memorandum asked and answered the following questions:

Question:

Does the monumentation of an easement require the filing of a Record of Survey?

Conclusion:

The monumentation of an easement does not require the filing of a Record of Survey.

We are in agreement with Mr. Duke's assessment of the code up to the last paragraph on page 3, which states:

Although monumenting of an easement clearly falls within the restricted practice of land surveying, such monumentation does not trigger the mandatory Record of Survey filing requirements of the Business and Professions Code section 8762. Although an easement is an interest in real property, the mandatory Record of Survey filing requirements are only applicable to a "survey relating to land boundaries or property lines." It is noteworthy that the term "easement" is not specifically referenced in Section 8762. This contrasts with the inclusion of the term in the list of activities identified in subdivision (c) of Section 8726 for purposes of defining land surveying. The subsection employs the terms "property line or boundary" as well as "easement" and "right of way". Consequently, if the Legislature intended to include the monumentation of an easement in the mandatory filing requirements of 8762, it would have employed that term as it did in defining the practice of land surveying in 8726. Consequently, the monumentation of an easement does not likely fall within the meaning of either "land boundaries or property lines" as those terms are used in [the] Business and Professions Code section 8762.

Reconsideration of the Monumentation of an Easement and Record of Survey Filing Requirements Memorandum Dated January 16th, 1998 by Mr. Gary Duke, Staff Counsel (Exhibit 1).

Page 2 of 3

As stated, Section 8762 (b) makes specific reference to “land boundaries or property lines”. The terms, as applied, represent the fact that boundaries and property lines are synonymous. Neither term is exclusive to the fee ownership of real property. If the Legislature had intended to limit the Record of Survey to fee ownership it would have employed the term “fee” ownership within the statute and would have determined the need to differentiate between a boundary and a property line.

Referring to mandatory Record of Survey filing requirements under Section 8762 (b) (5), it reads “...any parcel described in any deed or other instrument of title recorded...”. An easement is an “instrument of title recorded” and is often included as a parcel of a deed. Again, if the Legislature had intended this to be exclusive to fee owned property lines the referenced section would not have included “instrument of title recorded”.

Referring to Section 8765, Record of Survey Not Required, subsection (d) states a Record of Survey is not required when a survey “is a retracement of lines shown on a subdivision map, official map or a record of survey, where no material discrepancy with those records are found...”. If the Legislature had intended to exclude easements, it could have done so by stating “is a retracement of [fee] lines shown on a subdivision map...”.

As a public welfare issue, an easement being the right to a use, or uses, over the property of another, thus burdening the fee owner, is likely to generate more contention between tenements than fee ownership lines. When a surveyor is asked to locate the boundary limits of an easement it would be for the use and/or construction of improvements, either within the easement, or adjacent to the easement. Improvements located by a subsequent surveyor and found to be outside of the written easement could result in complex and expensive litigation for a conforming easement. In the event the original surveyor had filed a Record of Survey documenting evidence (which may no longer be available) and the subsequent establishment of the easement differs in location (i.e. materially alternate positions of lines or points, material evidence or physical change or material discrepancy with the information contained in any subdivision map...) there would be traceable provenance and litigation based on land surveying differences, might be avoided.

A land surveyor is charged with determining land title boundaries, encroachments and encumbrances.¹ A land surveyor is responsible for uncovering an encroachment², easement³ or disputed boundary location, for uncovering unresolved conflicts between two surveys and for identifying ambiguous documents in chain of title for a particular property. Encroachments, the basis for many lawsuits, are not limited to fee ownership parcels, an encroachment may exist into an easement area. This is regularly evidenced by homeowners who allow trees to grow into a utility easement and are charged with removal costs. When a member of the public requests an easement to be delineated with markers or monuments, it is with a specific purpose in mind. These members of the public should be able to rely on these monuments in the construction of improvements or use of the land for several generations of ownership. In the event the field surveying establishment

¹ Encumbrances are defined by statute as “taxes, assessments, and all liens upon real property.” California Civil Code § 1114. Any right to, or interest in, land which may subsist in another to diminution of its value, but consist with the passing of the fee by conveyance. *Black's Law Dictionary*, Second Edition (1990).

² Encroach. To enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude. To gain or intrude unlawfully upon the lands, property, or authority of another. *Black's Law Dictionary*, Second Edition (1990).

³ An easement is an interest in the land of another, which entitles the owner of the easement to a limited use or enjoyment of the other's land. Witkin, 6 *Summary of California Law, Real Property* (9th ed. 1987) § 434, pg. 614 (citing Rest., Property § 450).

Reconsideration of the Monumentation of an Easement and Record of Survey Filing Requirements Memorandum Dated January 16th, 1998 by Mr. Gary Duke, Staff Counsel (Exhibit 1).

Page 3 of 3

records are not filed publicly, the owners are dependant upon maintenance and hand delivery of such records, which is contrary to our existing filing laws that have been in place since 1891.

In conclusion, we ask that the Board for Professional Engineers and Land Surveyors request the staff counsel to review and rescind the opinion issued January 16th, 1998. We respectfully ask the Board to reissue a new opinion restating that a Record of Survey is required when establishing and/or monumenting an easement.

There are surveyors who have relied on the previously issued opinion and the Board should consider issuing clemency from prosecution for establishment and monumentation of easements between January 16th, 1998 and the date of the reissue.

STATE OF CALIFORNIA

Memorandum

JAN 21 9 15 24 83

To: HOWARD BRUNNER, PLS
Land Surveyor Consultant
Board of Registration for Professional Engineers
and Land Surveyors

Date: January 16, 1998

Telephone: (916) 445-4216
CNET: 8-485-4216
FAX: (916) 323-0971

From: Department of Consumer Affairs
Legal Office

Subject: Monumentation of an Easement and Record of Survey Filing Requirements

This is in response to your request for an opinion regarding the applicability of the Professional Land Surveyors' Act in the above referenced matter. I regret the press of business has prevented a more prompt response. Specifically, you posed the following question:

Question

Does the monumentation of an easement require the filing of a Record of Survey?

Conclusion

The monumentation of an easement does not require the filing of a Record of Survey.

Analysis

The Professional Land Surveyors' Act regulates the practice of land surveying in this state by restricting the practice of land surveying to those persons qualified and licensed to engaged in that profession. (Bus. & Prof. Code § 8725.)

The practice of land surveying is defined at Business and Professions Code section 8726 as follows:

"A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

- (a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil

engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of mathematics or photogrammetry.

(c) **Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.**[Emphasis added.]

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this code).

(e) **By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point.** [Emphasis added.]

(f) Geodetic or cadastral surveying. As used in this chapter, geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of points, monuments, or stations for use in the practice of land surveying or for stating the position of geodetic control points, monuments, or stations by California Coordinate System coordinates.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title "land surveyor" or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(l) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f),

HOWARD BRUNNER

January 16, 1998

Page 3

(k), and (l).

Any department or agency of the state or any city, county, or city and county which has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying."

The extent to which a person is engaged in any of the activities delineated in Business and Professions Code section 8726 determines whether or not they are required to hold a professional land surveyor license. In the present circumstance, subdivisions (c) and (e) of Section 8726, appear to be applicable. In relevant part, an "easement" is defined to be an interest in land permitting "a right of use over the property of an other" according to Black's Law Dictionary (1979).

The monumenting of an easement involves the practice of land surveying to the extent that a person "[l]ocates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries." (Bus. & Prof. Code § 8726(c).) Or, in the alternative, the monumenting of an easement constitutes the practice of land surveying to the extent that the setting of permanent markers or monuments for an easement involves the "use of the principles of land surveying" in determining the position for any "monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point. (Bus. & Prof. Code 8726(e).)

Although the monumenting of an easement clearly falls within the restricted practice of land surveying, such monumentation does not trigger the mandatory Record of Survey filing requirements of Business and Professions Code section 8762. Although an easement is an interest in real property, the mandatory Record of Survey filing requirements are only applicable to a "survey relating to land boundaries or property lines." It is noteworthy that the term "easement" is not specifically referenced in Section 8762. This contrasts with the inclusion of that term in the list of activities identified in subdivision (c) of Section 8726 for purposes of defining land surveying. That subsection employs the terms "property line or boundary" as well as "easement" and "right-of-way." Consequently, if the Legislature intended to include the monumentation of an easement in the mandatory filing requirements of 8762, it would have

HOWARD BRUNNER

January 16, 1998

Page 4

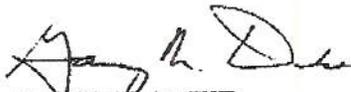
employed that term as it did in defining the practice of land surveying, in 8726. Consequently, the monumentation of an easement does not likely fall within the meaning of either "land boundaries or property lines" as those terms are used in Business and Professions Code section 8762.

I trust this is responsive to your request.

DERRY L. KNIGHT

Deputy Director

Legal Affairs



By GARY W. DUKE
Staff Counsel



A Legal Opinion on the Monumentation of Easements

by Lisa D. Herzog

*A Legal Opinion Addressing the Gary Duke January 16, 1998
Memorandum to Howard Brunner Concerning the Monumentation of
an Easement and Record of Survey Filing Requirements*

Compiled and Submitted by David E. Woolley
April 4, 2012

April 4, 2012

SENT VIA EMAIL AND U.S. MAIL

Mr. Ray Mathe
Senior Registrar Land Surveyor
Board for Professional Engineers, Land Surveyor, and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833-2944

RE: *Follow-up to March 16, 2012 Land Surveying Technical Advisory Committee (LSTAC) Meeting- Requirement to File Record of Survey in Conjunction with the Monumentation and Establishment of Easements*

Dear Mr. Mathe:

I spoke with the Board's Executive Officer, Mr. Ric Moore, regarding the proper protocol to route this letter and attached report to the members of the LSTAC Committee. He recommended that I forward my letter and report to you and he assured me that you would route them to all necessary parties.

I attended last week's LSTAC meeting where the Committee attempted, but again failed for a second time, to address the January 16, 1998 letter of Gary Duke ("Duke Letter"). This Duke Letter incorrectly states a record of survey is not required when a land surveyor monuments easements. I am extremely disappointed by the LSTAC, the Board and most particularly Mr. Duke's inaction, for over 15 months, in addressing the Duke Letter's contents and incorrect conclusions. As such, I am requesting that Mr. Duke be replaced with a qualified real property attorney familiar with land surveying for any future Board issued position papers.

Mr. Mathe, you have only begun your tenure with the Board and; therefore, you are excluded from my rebuke. I find it patently offensive to witness an organization charged with public protection that has caused irreparable harm to the public by way of the errant opinions contained in the Duke Letter. Once the errors in this Letter were correctly challenged by me, no priority was placed on either correcting the Duke Letter by amendment or on the reparations that will become necessary.

I give recognition to Mr. Emmons reasoned response and correct summary that the Duke Letter's conclusions were incorrect and that "although he [Mr. Emmons] may not like it" Mr. Emmons concluded that a record of survey is indeed required for easements. By way of background, Mr. Emmons is a former County Surveyor. Mr. Emmons likely recalls that, in 1998, the County Engineers Association of California (presumably the Land Use group comprised of County Surveyors) disagreed with the opinions expressed in the Duke Letter.

1. My Critique of the Duke Letter:

As I restated in the Public Comment Section of the most recent LSTAC meeting, I wrote a letter challenging the Duke Letter. From my perspective, the analysis that I performed did not receive the Committee's consideration. Instead, I repeatedly heard (in last year's meeting and in this year's meeting) the three Committee members state they're not attorneys and presumably should rely on Mr. Duke's Letter. The instant matter does not require an attorney's opinion to be qualified and/or accepted. I was given the distinct impression that Mr. Duke's (actually an employment attorney) opinion was beyond reproach by a Committee of Land Surveyors discussing land surveying statutes. This projected inferiority complex is hogwash. If the LSTAC is too meek to offer well reasoned, researched written opinions they should be replaced or the LSTAC disbanded.

I disagree with this approach to the Duke Letter. I offer the following points and opinions in interpreting the relevant statutes:

- The LSTAC has the authority and the ability to read the applicable plain language of a statute and apply meaning to the words (as commonly used) sufficiently to determine the meaning of the statute.
- The LSTAC should acknowledge that their meetings are not a priority to Mr. Duke, and therefore, the Committee must provide their own analysis and conclusions for which they are qualified. Mr. Duke has been unwilling to schedule time to attend one three (3) hour meeting per year. He missed this year's meeting completely. Furthermore, Mr. Duke was late to last year's meeting and, to make matters worse, he arrived late and excused himself before the meeting was concluded. Conveniently, he left before the issue of the Duke Letter was addressed in the Committee's published agenda.
- Due to the LSTAC's paralysis on this issue, and because of the reasons stated by the Committee in last year's and again in last week's meetings, I have hired an attorney, Lisa Herzog¹, to research and provide a written opinion addressing the concerns expressed by the Committee as well as the validity of the Duke Letter's opinions.
- The LSTAC is not tasked with "liking" or "disliking" their own process. A response to the Duke Letter should have been researched and prepared by the Committee. I am discouraged that, in the time between last year's meeting and this year's meeting (11 months), the Committee did not prepare any written analysis.

¹ Ms. Herzog has been a member of the California State Bar since 1997, practices in the areas of business litigation and transactions, writes extensively about complex financial and real property issues and teaches Business Law at the Pepperdine University, Graziadio Graduate School of Business and Management in Malibu California.

2. Lisa Herzog Was Asked To Review and Comment On the Duke Letter:

I asked Ms. Herzog to complete the definitive research that has seemingly paralyzed the Board and the LSTAC Committee for the past 15 months. Specifically, Ms. Herzog researched the following:

- What are the legal definitions of property (real and personal), land and easements as referenced in Black's Law Dictionary, California statutes and California case law.
- What are the meanings of California Business and Professions Code §§ 8726, 8762 and 8765 when read together as a whole. What is the legislative history for these Code sections.
- How should statutes and Acts be construed pursuant to the California Code of Civil Procedure.²
- What is the state of current valid California case law specifically addressing real property, the status of easements and whether easements require the filing of a record of survey

Easements are real property defined by property lines – these points are clearly shown in California statutes and case law. Nevertheless, I asked Ms. Herzog to include this information in her report.

3. My Recommendations:

By virtue of a line by line evaluation of the Duke Letter, I conclude that Mr. Duke is no oracle of knowledge as to the reading of statutes contained within the Professional Land Surveyor's Act, the California Civil Code, and California case law as these sources pertain to the definitions of real property and easements. Mr. Duke's Letter and its opinions have damaged the public and still have not been corrected – a further disservice to the public and to all California Licensed Land Surveyors.

Moving forward, this Board must promote the message to California Licensed Land Surveyors that (1) the Duke Letter's conclusions are wrong; and (2) a record of survey is required when establishing and/or monumenting easements when any of the elements stated in Business and Professions Code §8762 (b) (1-5) are encountered.

² The Legislature creates statutes with the express purpose of protecting the public. Statutes can be challenged and the legislative intent/interpretation can be determined by the Court, guided by reading the statute as a harmonious whole (with its separate parts being interpreted with their broader statutory context that furthers statutory purpose). Courts rely on the "plain meaning rule" which states that if the language of the statute is clear, the reader does not need to go outside the statute's plain meaning to ascertain the statute's meaning. Courts will seldom look at the legislature's intent unless there is a "clear statement" of intent negating the statute's plain language. In this context, I find it ridiculous that the LSTAC wants to look at the legislative history or the legislative intent to evaluate the statutes in question in the Duke Letter.

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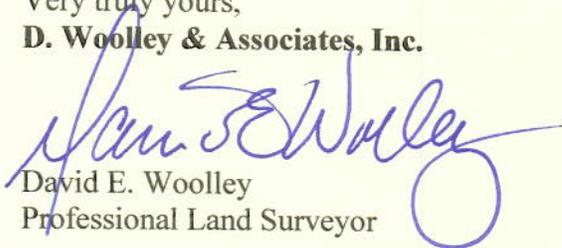
I recommend that the Board immediately issue a correction letter from the Board disavowing the opinions contained in the Duke Letter and specifically stating that a record of survey is required when establishing and/or monumenting easements when any of the elements stated in Business and Professions Code §8762 (b) (1-5) are encountered. This correction letter should also state specific examples (i.e. ALTA land title surveys, construction staking within an easement etc.).³

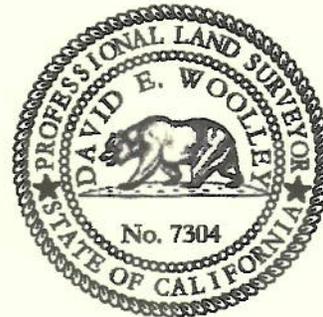
Additionally, I believe Mr. Duke personally owes the land surveyors and our Board, as well as the public, a written apology for his incorrect conclusions and for not correcting them in a timely fashion. Unfortunately, there is no way Mr. Duke can undo the damage he has caused the public, even if his career were to extend another 50 years.

Furthermore, the LSTAC has five seats available, nevertheless, the Committee continues to consist of only three members. If any one of those three members cannot attend the meeting due to unexpected circumstances, there is no quorum, making the entire process a further waste of time and resources. I am requesting the Board fill the LSTAC seats or disband the Committee and its annual meetings in their entirety.

Ms. Herzog's letter to me is attached for your review. Please contact me with any questions or comments and to let me know your plan of action regarding these important issues. I would appreciate a response at least two weeks before our next meeting in July 2012.

Very truly yours,
D. Woolley & Associates, Inc.


David E. Woolley
Professional Land Surveyor



³ I caution the Board from including long term leases in this correction letter. My own research may have uncovered a flaw in my previous analysis regarding easements with long term leases. Ms. Herzog was not asked to opine about this sub-point. I will conduct my own further analysis on this issue.

March 23, 2012

SENT VIA EMAIL AND PERSONAL DELIVERY

David E. Woolley
D. Woolley & Associates
2832 Walnut Avenue, Suite A
Tustin, California 92780

RE: *Requirement to File Record of Survey in Conjunction with Easements*

Dear Dave:

This letter will serve as a follow up to the Memorandum of Gary Duke dated January 16, 1998 giving his legal opinion as to whether the monumentation of an easement requires the filing of a record of survey. In Mr. Duke's legal opinion, this monumentation of an easement does not require the filing of a record of survey. You asked me to research this topic and give my opinion regarding this issue.

I disagree with Mr. Duke's opinion as detailed below. After reviewing relevant statutes, legal definitions and case law, it is my opinion that relevant California statutes require the filing of a record of survey showing the monumentation of an easement in the same way as it is required for other property rights pursuant to Cal. Business & Prof. Code § 8762, et al. Set forth below is the step by step analysis and reasoning for my conclusion.

1. **How is property defined? Is an easement considered property? Yes an easement is considered property and a property right.**

Property is defined as "that which is peculiar or proper to any person; that which belongs exclusively to one." *Black's Law Dictionary* (6th ed. 1992) pg. 1216. Property is defined by California statute as "the ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others." California Civil Code § 654. See **Exhibit A**.

"It [property] extends to every species of valuable right and interest, and includes real and personal property, **easements**, franchises, and incorporeal hereditaments, and includes every invasion of one' property rights by actionable wrong."

Black's Law Dictionary (6th ed. 1992) pg. 1216.

From these authorities, it is clear that the law considers an easement to be property. Furthermore, a **property right** is defined as “a generic term which refers to any type of right to specific property whether it is personal or real property, tangible or intangible.” *Black’s Law Dictionary* (6th ed. 1992) pg. 1218.

2. **What types of property exist under the law? – Real property and personal property.**

There are two kinds of property – **real property and personal property**. “Property is either: real or immovable; or, personal or movable.” *Black’s Law Dictionary* (6th ed. 1992) pg. 1217 (citing California Civil Code § 657). See also **Exhibit B**, copy of Cal. Civil Code § 658.

- a. **Real property** is defined as “land, and generally whatever is erected or growing upon or affixed to land. Also rights issuing out of, annexed to, and exercisable within or about land.” *Black’s Law Dictionary* (6th ed. 1992) pg. 1218. Real property includes not only land but also things firmly attached to or embedded in land. Mallor, Barnes, Bowers & Langvardt, *Business Law – The Ethical, Global, and E-Commerce Environment* (McGraw-Hill 14th ed. 2010) pg. 613. Buildings and other permanent structures thus are considered real property and the owner of a tract of real property also owns the air above it, the minerals below its surface, and any trees or other vegetation growing on the property. *Id.*
- b. **Personal property** is defined as “in a broad and general sense, everything that is the subject of ownership, not coming under the denomination of real estate.” *Black’s Law Dictionary* (6th ed. 1992) pg. 1217.

3. **Does the legal definition of land include easements? Yes.**

“In the most general sense, comprehends any ground, soil or earth whatsoever; including fields, meadows, pastures, woods, moors, waters, marshes and rock.” *Black’s Law Dictionary* (6th ed. 1992) pg. 877.

“In its more literal sense, “land” denotes the quantity and character of the interest or estate which a person may own in land.” *Black’s Law Dictionary* (6th ed. 1992) pg. 877.

“**Land**” may include any estate or interest in lands, either legal or equitable, as well as **easements** and incorporeal hereditaments.” *Black’s Law Dictionary* (6th ed. 1992) pg.

877. The words “real property” are coextensive with lands, tenements and hereditaments. Cal. Civil Code § 14.

4. **Are the terms “land” and “real property” used interchangeable? Yes.**

“The term “land” may be used interchangeably with “property”; it may include anything that may be classed as real estate or real property.” *Black’s Law Dictionary* (6th ed. 1992) pg. 877.

5. **What is the legal definition of an “easement”?**

An **easement** is defined as “a right of use over the property of another. . . . A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner . . . An interest in land in and over which it is to be enjoyed, and is distinguishable from a “license” which merely confers personal privilege to do some act on the land.” *Black’s Law Dictionary* (6th ed. 1992) pg. 509.

Easements may be acquired by grant, reservation, prescription or implication (easement by prior use or easement by necessity). Mallor, Barnes, Bowers & Langvardt, *Business Law – The Ethical, Global, and E-Commerce Environment* (McGraw-Hill 14th ed. 2010) pg. 619-620.

A transfer of real property passes all easements attached thereto unless expressly excepted by terms of the deed. *Bartholomae Corp. v. W.B. Scott Inv. Co.* (1953) 119 Cal. App. 2d 41. See also California Civil Code § 1104 (what easements pass with property); California Civil Code § 801 (servitudes attached to land – called easements). See **Exhibits C and D.**

ANALYSIS:

An easement is considered to be a real property right that transfers with the real property unless it is expressly excepted by the terms of a deed. We know that litigation can result from misunderstandings about whether easements exist and where they exist. Therefore, it is in the public’s best interest, as a matter of public policy, that easements are accurately depicted on survey maps upon completion of a field survey and, when discrepancies arise, it is equally important that surveyors file records of survey in the

same way that they would to denote any other property right such as boundary lines.¹ This commitment to file a record of survey is consistent with previous Board opinions relating to the establishment of points or boundary or property lines by field survey. The monumentation of points or lines (boundary or property) requires the filing of a record (either corner record or record of survey). The type of record is dependent upon the nature of the line established. Lines which appear on any subdivision map, official map, or record of survey previously recorded or filed may be suitable for a surveyor to file a corner record. In other instances, the monumentation of a point or line (boundary or property) may be ineligible for filing a corner record and may strictly require the filing of a record of survey. The establishment (by field survey) of a property line or boundary line, whether monumented or not, which demonstrates any of the elements described in California Bus. & Prof. Code § 8762 (b) (1-5) will required the mandatory filing of a record of survey.

California Business and Professions Code § 8726 states in relevant part:

“A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

- (c) Locates, relocates, establishes, reestablishes, or retraces any **property line or boundary of any parcel of land, right-of-way, easement, or alignments of those lines or boundaries.**

¹ A **boundary** is defined as “every separation, natural or artificial, which marks the confines or line of division of two contiguous properties. Limits or marks of enclosure if possession be without title, or the boundaries or limits stated in title deed if possession be under a title.” Black’s Law Dictionary (6th ed. 1992) pg. 186.

- a. **Natural Boundary** – “Any formation or product of nature which may serve to define and fix one or more of the lines inclosing an estate or piece of property.” Black’s Law Dictionary (6th ed. 1992) pg. 186.
- b. **Private Boundary** – “An artificial boundary set up to mark the beginning or direction of a boundary line.” Black’s Law Dictionary (6th ed. 1992) pg. 186.
- c. **Public Boundary** – “A natural boundary; a natural object or landmark used as a boundary or as a beginning point for a boundary line.” Black’s Law Dictionary (6th ed. 1992) pg. 186.

- (e) By the use of the principles of land surveying, determines the position for any monument or reference point which marks a **property line, boundary**, or corner, or sets, resets, or replaces any monument or reference point.”

[emphasis added] See **Exhibit E**.

It is clear that subsection (c) of Section 8726 first calls out property lines and/or boundaries of any parcel of land **including the property lines** for rights-of-way, **easements** or alignments. In Section 8726(e), when discussing the determination of the position of any monument which marks a property line, boundary, etc., it is clear that the property line or boundary includes those lines for easements. Easements are real property rights. Subsection (e) simply doesn't list out all of the types of property rights because it has already done so in subsection (c) to include easements. There is no need to list easements again in subsection (e). This would be redundant.

California Business & Professions Code § 8762 is part of the same Professional Land Surveyors Act as Section 8726. The sections of any “Act” are to be read together. Pursuant to California Civil Code § 13:

“Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or **are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.**”

[emphasis added]. See also *Ransome-Crummey v. Woodhams* (1916) 29 Cal. App. 356 (stating word or phrase given a particular scope or meaning in one part or portion of law is to be given the same scope and meaning in other parts or portions of law); *Wallace v. Payne* (1925) 197 Cal. 539 (stating that in the interpretation of particular words, phrases or clauses in statute or constitution, entire substance of the instrument or that portion thereof which as relation to subject matter under review should be looked at, to determine the scope and purpose of the particular provision of which such words, phrases, or clauses form a part); *Carter v. Stevens* (1931) 211 Cal. 281 (stating that words of a statute must be given meaning that is germane to the subject matter of the legislation and consistent with rational deductions, rather than meaning that would create absurdity); *Johnstone v. Richardson* (1951) 103 Cal. App. 2d 41 (stating that words used in a statute must be construed in context, keeping in mind the nature and purpose of the statute).

Each section builds upon the others. For examples, definitions found in early sections of a particular act are not repeated again and again in other sections. This would be

inefficient, redundant and confusing. Instead, any particular Act is to be read as a whole, drawing on definitions from earlier sections to interpret later sections.

California Business & Professions Code § 8762(b) states in relevant part:

“Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer **shall** file with the county surveyor in the county in which the field survey was made a record of the survey relating to **land boundaries or property lines**, if the field survey discloses any of the following:

- (1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map of survey record maintained by the Bureau of Land Management of the United States.
- (2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey . . .
- (3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points . . .
- (4) The establishment of one or more points or lines not shown on any subdivision map . . .
- (5) Points or lines set during the performance of a field survey .

.. “

See **Exhibit F**.

Requiring a record of survey for these discrepancies or the establishment by field survey regarding property lines or land boundaries includes the property lines or boundaries of the property rights of an easement. Because Section 8726(c) states that “**property line or boundary**” includes those for easements, Section 8726 (e) need not redundantly repeat that property lines or boundaries include those for easements. Similarly, the reference to land boundaries or property lines in Section 8762 is also meant to include easements as defined earlier in Section 8726(c). Once defined, it is simply not necessary to list all the types of property lines or boundaries to be included – easements are clearly listed in Section 8726(c). The Act is meant to be read as a whole. Additionally, Section 8765 (record of survey is not required) **does not** mention or exempt easements from the record of survey requirement. If the California Legislature had intended to exclude

easements from the mandatory filing requirements of Section 8762, the Legislature would have listed easements as excluded in Section 8765. Section 8765 is silent to any such exemption. See Exhibit G.²

Furthermore, since the intention of the record of survey is to (1) put the public and future owners on notice of all boundaries and property lines established by field survey; (2) memorialize the public's reasonable reliance on a land surveyor's established and/or monumented property lines or boundary lines; (3) preserve evidence relating to boundary lines or property lines and; (4) acknowledge that easements are important real property rights defined by, in relation to and composed of property lines, it does not make logical sense that the legislature would have intentionally excluded easements in Section 8762. Why would they do so? This defeats the objective of Section 8762.

Please contact me if you like any further research or analysis on this topic.

Very truly yours,



Lisa D. Herzog
Attorney/Writer/Editor
Harbinger Analytics Group

LDH:lh

Enclosures

² Similarly, Section 8726(c) states "locates, relocates, establishes, reestablishes, or retraces any property or boundary . . ." Section 8762(b)(4) states "the establishment of one or more points or lines . . ." In this case "establishment" is used to encompass "locates, relocates, establishes, reestablishes or retraces. . ." Again, this is consistent with the principles stated in California Civil Code § 13.

10 of 191 DOCUMENTS

DEERING'S CALIFORNIA CODES ANNOTATED
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*** This document is current with urgency legislation through Chapter 8 of the 2012 Session. ***

CIVIL CODE

Division 2. Property
Part 1. Property in General
Title 1. Nature of Property

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Civ Code § 654 (2012)

§ 654. "Property defined"

The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

HISTORY:

Enacted 1872.

NOTES:

Historical Derivation:

Field's Draft NY CC § 159.

Cross References:

"Real property": CC §§ 14, 658.

"Property": CC § 14.

Property as being either real or immovable, or personal or movable: CC § 657.

"Real Property": CC § 658.

Personal property: CC §§ 663, 953 et seq.

"Owner": CC § 669.

"Property," as used in Code of Civil Procedure, as including both real and personal property: CCP § 17.

"Property," as used in Penal Code, as including both real and personal property: Pen C § 7.

Meaning of "property" for purposes of taxation: Cal Const Art XIII §§ 1, 3; Rev & Tax C § 103.

Collateral References:

12 Witkin Summary (10th ed) Real Property § 127.

13 Witkin Summary (10th ed) Personal Property § 1.
Miller & Starr, Cal Real Estate 3d §§ 11:95, 17:1, 17:2.

Law Review Articles:

Right of prior possessor as property. 1 Cal LR 483.
Thief's title. 11 Cal LR 259.
Status of "things." 28 Cal LR 421.
The California Resale Royalty Act: Droit de [not so] Suite. 38 Hast Const LQ 387.
Land burdens in California. 4 S Cal LR 115.
Ownership of clouds. 1 Stan LR 43.
Babies on Ice: The Legal Status of Frozen Embryos Involved in Custody Disputes During Divorce. 21 Whittier LR 695.

Attorney General's Opinions:

Where right to possession is not in vendee, under the contract, he does not possess sufficient interest in land to qualify him for veteran's exemption with respect thereto. 30 Ops. Cal. Atty. Gen. 201.

Hierarchy Notes:

Div. 2 Note
Div. 2, Pt. 1 Note
Div. 2, Pt. 1, Tit. 1 Note

NOTES OF DECISIONS

1. Generally 2. Construction 3. Property Defined 4. Ownership 5. Incidents of Ownership 6. Presumption of Ownership 7. Property Generally 8. Animals 9. Mining Claims 10. Public Lands 11. Contracts--Debts 12. Easements 13. Right To Practice Profession 14. Licenses 15. Particular Actions

1. Generally

Essential element of individual property is legal right to exclude others from enjoying it; if property is private, right of exclusion may be absolute, but if property is affected with public interest, right of exclusion is qualified. *Desny v. Wilder* (1956) 46 Cal 2d 715, 299 P2d 257, 1956 Cal LEXIS 226.

State law controls in determining nature of legal interests and rights which taxpayer has in property or income sought to be reached under federal revenue acts, while said acts designate what interests or rights shall be taxed. *Flitcroft v. Commissioner* (1964, 9th Cir) 328 F2d 449, 1964 US App LEXIS 6211.

The establishment of title by the resolution of factual, as opposed to legal, questions does not create undesirable uncertainty as to the ownership of real property, since trial courts and juries must frequently make such resolutions determinative of title. *Gerhard v. Stephens* (1968) 68 Cal 2d 864, 69 Cal Rptr 612, 442 P2d 692, 1968 Cal LEXIS 212.

The right to retain property already in possession is as sacred as the right to recover it, when dispossessed. *Mihans v. Municipal Court* (1970, Cal App 1st Dist) 7 Cal App 3d 479, 87 Cal Rptr 17, 1970 Cal App LEXIS 2181.

2. Construction

Section merely recites the common law. *In re Estate of Stanford* (1899) 126 Cal 112, 58 P 462, 1899 Cal LEXIS 685.

3. Property Defined

A thing of which there may be ownership is called property. *San Pedro, L. A. & S. L. R. Co. v. Los Angeles* (1919) 180 Cal 18, 179 P 393, 1919 Cal LEXIS 437.

The term "property" includes every species of estate, real and personal, and everything which one person can own and transfer to another. It extends to every species of right and interest capable of being enjoyed as such upon which it is practicable to place a money value. As applied to lands, the term comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract--those which are executory as well as those which are executed. *Yuba River Power Co. v. Nevada Irrigation Dist.* (1929) 207 Cal 521, 279 P 128, 1929 Cal LEXIS 524.

In the statutory definition of "residence district," referring to "property" along a highway occupied by a specified number of buildings, the word "property" is used in the sense of "real property." *Adrian v. Guyette* (1936, Cal App) 14 Cal App 2d 493, 58 P2d 988, 1936 Cal App LEXIS 901.

The word "property" in its broad sense includes that which is subject to ownership by one to the exclusion of others. *Adrian v. Guyette* (1936, Cal App) 14 Cal App 2d 493, 58 P2d 988, 1936 Cal App LEXIS 901.

Meaning to be given to "property" depends on sense in which it is used, as gathered from context and nature of things it is intended to refer to and include. *Franklin v. Franklin* (1945, Cal App) 67 Cal App 2d 717, 155 P2d 637, 1945 Cal App LEXIS 1200.

The construction of the word "property" depends on the context with which it is used, and it signifies any valuable right or interest protected by law. *Downing v. Municipal Court of San Francisco* (1948, Cal App) 88 Cal App 2d 345, 198 P2d 923, 1948 Cal App LEXIS 1473.

While the word "property" in its most general sense is broad enough to include everything, tangible and intangible, which may be the subject of ownership, its meaning may be restricted by the context of a particular statute or writing in which it is used. *Bogan v. Wiley* (1949, Cal App) 90 Cal App 2d 288, 202 P2d 824, 1949 Cal App LEXIS 975.

"Property" is a word of very broad meaning and when used without qualification, may reasonably be construed to include obligations, rights and other intangibles, as well as physical things. *United States v. Graham* (1951, SD Cal) 96 F Supp 318, 1951 US Dist LEXIS 2440, *aff'd California v. United States* (1952, CA9 Cal) 195 F2d 530, 1952 US App LEXIS 4236.

Generally, "property" is used as referring to thing of which there may be ownership. *Bady v. Detwiler* (1954, Cal App) 127 Cal App 2d 321, 273 P2d 941, 1954 Cal App LEXIS 1343.

"Property" is a generic word, and when unqualified it is sufficiently comprehensive to include every species of estate, both real and personal, whether choate or inchoate. *Bady v. Detwiler* (1954, Cal App) 127 Cal App 2d 321, 273 P2d 941, 1954 Cal App LEXIS 1343.

A person who has the right to use a credit has ownership of this right within the meaning of CC § 654 (defining ownership of a thing), which is therefore a property right. The word "property" may be properly used to signify any valuable right or interest protected by law. *Estate of Fowler* (1982, Cal App 2d Dist) 130 Cal App 3d 831, 182 Cal Rptr 64, 1982 Cal App LEXIS 1437.

4. Ownership

The term "owner" includes any person having a claim or interest in real property, though less than a fee. *Higgins v. San Diego* (1901) 131 Cal 294, 63 P 470, 1901 Cal LEXIS 1124; *Vieux v. Vieux* (1926, Cal App) 80 Cal App 222, 251 P 640, 1926 Cal App LEXIS 72.

Ownership is the right of a person to possess and use a thing to the exclusion of others. *Lane v. Whitaker* (1942, Cal App) 50 Cal App 2d 327, 123 P2d 53, 1942 Cal App LEXIS 933.

Owner of personal property cannot ordinarily be divested of title without his consent. *Karageris v. Karageris* (1956, Cal App 3d Dist) 145 Cal App 2d 556, 302 P2d 850, 1956 Cal App LEXIS 1375.

No one can generally be divested of his property in invitum, where there is not clear warrant of law therefor. *Karageris v. Karageris* (1956, Cal App 3d Dist) 145 Cal App 2d 556, 302 P2d 850, 1956 Cal App LEXIS 1375.

Possession of property right acquired secretly or by false assertion or unknowingly surrendered by owner does not deprive him of ownership. *Karageris v. Karageris* (1956, Cal App 3d Dist) 145 Cal App 2d 556, 302 P2d 850, 1956 Cal App LEXIS 1375.

Person cannot acquire property by his own crime, and title to personal property fraudulently or feloniously obtained does not pass to wrongdoer, where wrongful act is crime at common law; and where property has been obtained from owner by such act, his unqualified ownership is not changed, and he may peaceably take it in whose hands he may find it. *Karageris v. Karageris* (1956, Cal App 3d Dist) 145 Cal App 2d 556, 302 P2d 850, 1956 Cal App LEXIS 1375.

5. Incidents of Ownership

The testamentary power is not an essential incident to property, and depriving the husband of such power with reference to the community estate did not take away from him any right of property. *Spreckels v. Spreckels* (1897) 116 Cal 339, 48 P 228, 1897 Cal LEXIS 549.

Possession may exist entirely apart from ownership, and ownership may be had of a thing not in owner's possession. *People v. McKinney* (1935, Cal App) 9 Cal App 2d 523, 50 P2d 827, 1935 Cal App LEXIS 1180.

6. Presumption of Ownership

A presumption of ownership, like all presumptions, is evidence. *Lane v. Whitaker* (1942, Cal App) 50 Cal App 2d 327, 123 P2d 53, 1942 Cal App LEXIS 933.

The presumption of ownership which arises from possession embraces the equitable as well as the legal title. *Lane v. Whitaker* (1942, Cal App) 50 Cal App 2d 327, 123 P2d 53, 1942 Cal App LEXIS 933.

7. Property Generally

While it may be illegal to own or possess slot machines, there does exist certain rights in individuals who may possess such contraband article as against anyone other than the state, and while his right to possession is by law very limited, he has certain claims and powers not possessed by any other which invest in him something real and tangible. *People v. Walker* (1939, Cal App) 33 Cal App 2d 18, 90 P2d 854, 1939 Cal App LEXIS 181.

The government could pursue a taxpayer's lawsuits against a town for depressing property values through illegal zoning. The suits were chosen in action amounting to personal property subject to a federal tax lien. *United States v. Stonehill* (1996, 9th Cir Cal) 83 F3d 1156, 1996 US App LEXIS 11463, cert den *Stonehill v. United States* (1996) 519 US 992, 117 S Ct 480, 136 L Ed 2d 375, 1996 US LEXIS 6983.

8. Animals

Dogs are property, for the malicious destruction or injury of which an action for damages will lie. *Johnson v. McConnell* (1889) 80 Cal 545, 22 P 219, 1889 Cal LEXIS 956.

A dog or other domestic animal is property. *People v. Fimbres* (1930, Cal App Dep't Super Ct) 107 Cal App 778, 107 Cal App 4th Supp 778, 288 P 19, 1930 Cal App LEXIS 9.

9. Mining Claims

The interest of a miner in his mining claim is property. *McKeon v. Bisbee* (1858) 9 Cal 137, 1858 Cal LEXIS 81; *State v. Moore* (1859) 12 Cal 56, 1859 Cal LEXIS 5.

Persons claiming and in the possession of mining claims upon public lands are, as to all except the United States, owners of the same, having a vested right of property founded on their possession and appropriation of the land containing the mine. *Hughes v. Devlin* (1863) 23 Cal 501, 23 Cal 502, 1863 Cal LEXIS 309.

10. Public Lands

The possession by a citizen of, and his possessory right in, the public lands for mining, agricultural, or other purposes constitute a species of property recognized by law. *People by McCullough v. Shearer* (1866) 30 Cal 645, 1866 Cal LEXIS 148.

11. Contracts--Debts

A solvent debt is property. *People v. Eddy* (1872) 43 Cal 331, 1872 Cal LEXIS 81.

Contract between doctor and hospital is property where it not only is demise of leasehold but also grants doctor sole and exclusive privilege of doing all laboratory and pathology work in and for hospital for term of agreement. *Straus v. North Hollywood Hospital, Inc.* (1957, Cal App 2d Dist) 150 Cal App 2d 306, 309 P2d 541, 1957 Cal App LEXIS 2166.

12. Easements

Servitudes in gross, being properties, are assignable. *Fudickar v. East Riverside Irrigation Dist.* (1895) 109 Cal 29, 41 P 1024, 1895 Cal LEXIS 909.

While at common law servitudes merely in gross were not assignable, **Civil Code** has swept away the rule; §§ 654, 802, declare such servitudes to be property, and under § 1044 every species of property, except mere possibility not coupled with any interest, may be transferred. *Collier v. Oelke* (1962, Cal App 4th Dist) 202 Cal App 2d 843, 21 Cal Rptr 140, 1962 Cal App LEXIS 2550.

13. Right To Practice Profession

The right to practice a profession is a vested property right. *Hewitt v. State Board of Medical Examiners* (1906) 148 Cal 590, 84 P 39, 1906 Cal LEXIS 341; *Suckow v. Alderson* (1920) 182 Cal 247, 187 P 965, 1920 Cal LEXIS 512; *Laisne v. California State Board of Optometry* (1942) 19 Cal 2d 831, 123 P2d 457, 1942 Cal LEXIS 412.

Right of person to practice profession for which he has prepared himself is property of the very highest character. *Cavassa v. Off* (1929) 206 Cal 307, 274 P 523, 1929 Cal LEXIS 598.

A physician's patient may not properly be regarded as the subject of "ownership," nor may his right to seek and obtain treatment from a licensed physician of his own choice be denied him in order to protect the "property rights" of any competing physician or clinic, and, while unfair competition between physicians may properly be enjoined and damages may be awarded to compensate for any injury inflicted by the wrongful conduct of an offending practitioner, the injunctive order must not be so drawn as to impinge upon the paramount right of the patient to obtain the services of the physician of his choice. *Jones v. Fakehany* (1968, Cal App 2d Dist) 261 Cal App 2d 298, 67 Cal Rptr 810, 1968 Cal App LEXIS 1745.

14. Licenses

On-sale liquor license is property within 26 USCS 3670, and is subject to lien for federal taxes. *Golden v. State* (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

General on-sale liquor license is property within meaning of this section and § 655. *Golden v. State* (1955, Cal App 1st Dist) 133 Cal App 2d 640, 285 P2d 49, 1955 Cal App LEXIS 1675.

15. Particular Actions

A trademark or design used as a sign is property and therefore susceptible of private ownership and entitles the owner thereof to its use to the exclusion of others. *Hall v. Holstrom* (1930, Cal App) 106 Cal App 563, 289 P 668, 1930 Cal App LEXIS 692.

Air, like the sea, is by its nature incapable of private ownership except insofar as one may actually use it. *Hinman v. Pacific Air Transport* (1936, 9th Cir Cal) 84 F2d 755, 1936 US App LEXIS 4601, cert den *Hinman v. Pacific Air Transport* (1937) 300 US 654, 57 S Ct 431, 81 L Ed 865, 1937 US LEXIS 142.

Wherever one has sustained an injury to his "estate," whether in being or expectant, as distinguished from injury to his person, such injury was injury to "property" within meaning of that word in former Prob C § 574. *Hunt v. Authier* (1946) 28 Cal 2d 288, 169 P2d 913, 1946 Cal LEXIS 211, 171 ALR 1379.

Cause of action in favor of person who is injured by negligent acts of another is property. *Finley v. Winkler* (1950, Cal App Dep't Super Ct) 99 Cal App 2d Supp 887, 222 P2d 345, 1950 Cal App LEXIS 1801.

10 of 165 DOCUMENTS

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CIVIL CODE

Division 2. Property
Part 1. Property in General
Title 1. Nature of Property

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Civ Code § 658 (2012)

§ 658. Definition of real property; Severance by agreement

Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;

4. That which is immovable by law; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this code regulating the sales of goods.

HISTORY:

Enacted 1872. Amended Stats 1931 ch 1070 § 4.

NOTES:

Amendments:

1931 Amendment:

Added "; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this code regulating the sales of goods" in subd (4).

Historical Derivation:

Field's Draft NY CC § 163.

Cross References:

"Real property": CC § 14.

Land: CC § 659.

Fixtures: CC §§ 660 et seq.

Severance of fixtures by agreement: CC § 660.

Appurtenances: CC § 662.

Meaning of "real property," as used in Penal Code: Pen C § 7.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 369 "Mobilehomes and Mobilehome Parks," ch 503, "Sales: Secured Transactions".

Cal. Legal Forms, (Matthew Bender(R)) §§ 23.264, 25A.11, 27.18, 30A.110, 30D.10, 34B.200, 34C.242, 36A.220, 47.30, 49.120, 73.13.

Cal. Points & Authorities (Matthew Bender(R)) ch 51 "Conversion" § 51.21.

Cal. Points & Authorities (Matthew Bender(R)) ch 51 "Conversion" § 51.26.

Cal. Points & Authorities (Matthew Bender(R)) ch 238 "Venue" § 238.72.

4 Witkin Summary (10th ed) Sales § 26.

13 Witkin Summary (10th ed) Personal Property §§ 90, 92, 93, 97.

Cal Jur 3d (Rev) Eminent Domain § 112.

Miller & Starr, Cal Real Estate 3d §§ 17:3, 17:6, 17:19, 17:30-17:32, 17:37.

Forms:

Suggested forms all set out below, following notes of decisions.

Law Review Articles:

Property rights to geothermal resources (Part Two). 6 Ecology LQ 481.

The California Resale Royalty Act: Droit de [not so] Suite. 38 Hast Const LQ 387.

Oil and gas royalties as interests in land. 9 LA Bar B 137.

Competing security interests in fixtures. 42 LA Bar B 403.

Fixtures in California. 26 SCLR 21.

Attorney General's Opinions:

Sales of buildings, or other structures, to be removed or severed by the buyer as sales of real property, notwithstanding this section, in view of UCC § 2107. 51 Ops. Cal. Atty. Gen. 175.

Annotations:

Rights and liabilities with respect to natural gas reduced to possession and subsequently stored in natural reservoir. 94 ALR2d 543.

Hierarchy Notes:

Div. 2 Note

Div. 2, Pt. 1 Note

Div. 2, Pt. 1, Tit. 1 Note

NOTES OF DECISIONS

1. Generally 2. Construction 3. Definitions 4. Severance by Agreement 5. Water 6. Fixtures 7. Crops 8. Trees 9. Plants 10. Interest in Leases and Royalties 11. Particular Subjects

1. Generally

Real property includes land and whatever is erected, growing thereon or affixed thereto. *Kindig v. Palos Verdes Homes Asso.* (1939, Cal App) 33 Cal App 2d 349, 91 P2d 645, 1939 Cal App LEXIS 231.

Substances that may be taken from land are part of realty until severed and brought under control, and when this is done, they are personal property and subject to sale as such. *Santa Clara Sand & Gravel Co. v. State Bd. of Equalization* (1964, Cal App 1st Dist) 225 Cal App 2d 676, 37 Cal Rptr 506, 1964 Cal App LEXIS 1418.

A Pit River Indian was properly charged with and convicted of unlawful possession of deer taken during closed season in violation of F & G C § 2002, even though he was apprehended on lands within the aboriginal territory of his tribe and the state did not demonstrate that the regulation violated met applicable federal standards, where the sufficiency of the evidence to establish the violation was not disputed, where the tribe's aboriginal right to occupy their native territory had been extinguished, and where the federal government's course of conduct with respect to the lands of the tribe, culminating in congressional payment of compensation for the lands, unquestionably established that extinguishment of the Pit River Indian title was absolute and unconditional. Hunting and fishing rights are an incident of the right of occupancy, an incident of aboriginal title, and when the tribe's Indian title was extinguished, so too, under the law, were the tribe's aboriginal hunting rights. Thus, the state was not required by law to make any special showing to justify application of its hunting regulations to the Indians within their aboriginal territory. *In re Wilson* (1981) 30 Cal 3d 21, 177 Cal Rptr 336, 634 P2d 363, 1981 Cal LEXIS 175.

Indian title connotes only a permissive right to occupy land, fee title to the land resting with the United States government. The Indian right of occupancy is a mere possessory interest, not a property right. The interest is incapable of alienation absent federal authorization and it may be extinguished by the federal government at any time. Until extinguished, such right of occupancy carries with it full use of the land. *In re Wilson* (1981) 30 Cal 3d 21, 177 Cal Rptr 336, 634 P2d 363, 1981 Cal LEXIS 175.

2. Construction

This section and CC § 662 do not limit incorporeal hereditaments to those only which are appurtenant to a dominant tenement. *Callahan v. Martin* (1935) 3 Cal 2d 110, 43 P2d 788, 1935 Cal LEXIS 404, 101 ALR 871; *Balestra v. Button* (1942, Cal App) 54 Cal App 2d 192, 128 P2d 816, 1942 Cal App LEXIS 339.

This section does not attempt to enumerate the various estates which may exist in land, of which an incorporeal hereditament in gross is one. *Callahan v. Martin* (1935) 3 Cal 2d 110, 43 P2d 788, 1935 Cal LEXIS 404, 101 ALR 871; *Balestra v. Button* (1942, Cal App) 54 Cal App 2d 192, 128 P2d 816, 1942 Cal App LEXIS 339.

3. Definitions

"Real estate" is synonymous with "real property." *Dabney v. Edwards* (1935) 5 Cal 2d 1, 53 P2d 962, 1935 Cal LEXIS 617, 103 ALR 822.

Phrases "real estate" and "real property" are synonymous. *Santa Barbara v. Maher* (1938, Cal App) 25 Cal App 2d 325, 77 P2d 306, 1938 Cal App LEXIS 813.

Term "land" is synonymous with "real property." *Southern Pacific Co. v. County of Riverside* (1939, Cal App) 35 Cal App 2d 380, 95 P2d 688, 1939 Cal App LEXIS 430.

Under CC §§ 658 and 659, gas and oil should be included in the definition of real property. *Cox v. United States* (1976, 9th Cir Cal) 537 F2d 1066, 1976 US App LEXIS 8528.

4. Severance by Agreement

As to those claiming under or by reason of contract of sale, standing timber purchased separately from land for purpose of severance is personal property. *Palmer v. Wahler* (1955, Cal App 3d Dist) 133 Cal App 2d 705, 285 P2d 8, 1955 Cal App LEXIS 1692; *Ascherman v. McKee* (1956, Cal App 3d Dist) 143 Cal App 2d 277, 299 P2d 367, 1956 Cal App LEXIS 1598.

Under CC §§ 658 and 660, standing timber purchased separately from the land under a contract for severance thereby becomes personalty for all purposes depending on the contract of purchase. *Sloan v. Hiatt* (1966, Cal App 1st Dist) 245 Cal App 2d 926, 54 Cal Rptr 351, 1966 Cal App LEXIS 1536.

Where, by agreement between a landowner and his tenant, improvements on the land are the property of the tenant, such improvements, even if buildings or homes, lose their nature as real property and become the personal property of the tenant. *People ex rel. Thain v. Palo Alto* (1969, Cal App 1st Dist) 273 Cal App 2d 400, 78 Cal Rptr 240, 1969 Cal App LEXIS 2179.

5. Water

The United States Homestead Law prohibits an agreement to sell land, or any part thereof or timber thereon, but sale of an undivided portion of water flowing and the right of way to convey the water by ditch or otherwise across lands is not prohibited or against public policy. *Mt. Carmel Fruit Co. v. Webster* (1903) 140 Cal 183, 73 P 826, 1903 Cal LEXIS 572.

A visible act of possession accompanied by work upon public lands and avowed intent gives a conditional right to the future use of water, prior to its actual use, the condition being that thereafter the work is diligently continued to completion and the water then diverted and applied to a useful purpose. Upon this performance the title to the water would become complete and perfect. The right would be clearly a property right and being incidental and appurtenant to land, it would be real property. The right exists against third parties but not against the United States. *Inyo Consol. Water Co. v. Jess* (1911) 161 Cal 516, 119 P 934, 1911 Cal LEXIS 459; *Silver Lake Power & Irrigation Co. v. Los Angeles* (1917) 176 Cal 96, 167 P 697, 1917 Cal LEXIS 478.

Water in its natural state is part of land, but it may become personalty by being severed from realty; when sold for domestic use and delivered by means of pipes to premises, the pipes are fixtures and part of realty. *Copeland v. Fairview Land & Water Co.* (1913) 165 Cal 148, 131 P 119, 1913 Cal LEXIS 403.

Right to water to be used for irrigation is right in real property. *Schimmel v. Martin* (1923) 190 Cal 429, 213 P 33, 1923 Cal LEXIS 546.

Right of public utility engaged in sale and distribution of water to inhabitants of two counties for irrigation and domestic uses to have given quantity of water of designated stream flowing through its canal is real property. *Sutter-Butte Canal Co. v. Great Western Power Co.* (1924, Cal App) 65 Cal App 597, 224 P 768, 1924 Cal App LEXIS 572.

Water for irrigation, while in ditches and reservoirs, is generally considered as realty and appurtenant to land. *San Juan Gold Co. v. San Juan Ridge Mut. Water Asso.* (1939, Cal App) 34 Cal App 2d 159, 93 P2d 582, 1939 Cal App LEXIS 95.

6. Fixtures

Buildings on land, such as a house and a barn, are presumed, as a matter of common knowledge, to be permanently resting upon the land, and to be part thereof. *Las Animas & San Joaquin Land Co. v. Fatjo* (1908, Cal App) 9 Cal App 318, 99 P 393, 1908 Cal App LEXIS 129; *Los Angeles v. Howard* (1937, Cal App) 23 Cal App 2d 624, 73 P2d 1234, 1937 Cal App LEXIS 710.

Pipe lines and the easements therefor are real estate. Where pipes are laid in real estate for the purpose of carrying water to the lands to which they extend, the pipes while imbedded in the soil constitute real property both before the water is carried therein and after the use for that purpose has ceased. *Robinson v. Glendale* (1920) 182 Cal 211, 187 P 741, 1920 Cal LEXIS 507.

Camp houses and a pump house of an oil company are fixtures, as are also tanks and oil wells. *Big Sespe Oil Co. v. Cochran* (1921, 9th Cir Cal) 276 F 216, 1921 US App LEXIS 2063.

Question of whether building has been affixed to and has become part of realty is one of fact and is dependent upon peculiar circumstances of each case. *Alderman v. Baggett* (1933, Cal App) 134 Cal App 501, 25 P2d 532, 1933 Cal App LEXIS 202.

7. Crops

As between vendor and vendee, growing crop is part of realty, and offer to purchase land is offer to include the un-gathered crop as going with the land. *Wilson v. White* (1911) 161 Cal 453, 119 P 895, 1911 Cal LEXIS 449.

Growing crops are part of the realty, and remain a part as long as unsevered or not agreed to be severed and pass to the grantee under deed, unless reserved in writing. *List v. Sandell* (1941, Cal App) 42 Cal App 2d 505, 109 P2d 376, 1941 Cal App LEXIS 1282.

General rule that growing crops remain part of realty and pass to grantee under deed unless reserved by grantor governs the rights of purchaser of realty only with respect to title of growing crops. *Silveira v. Ohm* (1949) 33 Cal 2d 272, 201 P2d 387, 1949 Cal LEXIS 192.

Since growing crops are subject to absolute sale, they are subject to reservation on the sale of the land. *Smith v. Baker* (1950, Cal App) 95 Cal App 2d 877, 214 P2d 94, 1950 Cal App LEXIS 1052.

Though for some purposes growing crops are regarded as part of realty on which they grow, for other purposes they are regarded a personalty. *Carey v. Glenco Citrus Products* (1965, Cal App 4th Dist) 235 Cal App 2d 572, 45 Cal Rptr 365, 1965 Cal App LEXIS 958.

Sale of growing crops that are agreed to be severed under contract of sale cease to be part of realty on which they grow and become personalty; under these circumstances, in substance, constructive severance of crop from realty occurs. *Carey v. Glenco Citrus Products* (1965, Cal App 4th Dist) 235 Cal App 2d 572, 45 Cal Rptr 365, 1965 Cal App LEXIS 958.

8. Trees

Standing timber is real property. The exception of timber from land conveyed is real property and constitutes an estate of inheritance. *Sears v. Ackerman* (1903) 138 Cal 583, 72 P 171, 1903 Cal LEXIS 729.

Standing timber is real estate and the title thereto can be transferred and held by somebody who is not the owner of the land. *Peterson v. Gibbs* (1905) 147 Cal 1, 81 P 121, 1905 Cal LEXIS 351.

Timber is part and parcel of the real property. *Hill v. Oxnard* (1920, Cal App) 46 Cal App 624, 189 P 825, 1920 Cal App LEXIS 742; *McKeever v. Locke-Paddon Co.* (1922, Cal App) 58 Cal App 51, 207 P 1040, 1922 Cal App LEXIS 138.

Injuries to trees by unauthorized acts of directors of drainage district in digging ditch is injury to real property upon which they are growing. *Newberry v. Evans* (1926, Cal App) 76 Cal App 492, 245 P 227, 1926 Cal App LEXIS 511.

Trees grown on land are part of realty. *Los Angeles v. Hughes* (1927) 202 Cal 731, 262 P 737, 1927 Cal LEXIS 418, overruled *County of Los Angeles v. Faus* (1957) 48 Cal 2d 672, 312 P2d 680, 1957 Cal LEXIS 219.

As to those claiming under or by reason of contract of sale, standing timber purchased separately from land for purpose of severance is personal property. *Palmer v. Wahler* (1955, Cal App 3d Dist) 133 Cal App 2d 705, 285 P2d 8, 1955 Cal App LEXIS 1692.

Trial court properly held that defendants' rights under contract providing for extension of 10-year term within which standing timber and fallen logs could be removed expired where 10 years had passed and defendants had failed to comply with option to extend term for three years by removal of approximately 75 percent of timber before end of 10-year period. *Drewry v. Welch* (1965, Cal App 1st Dist) 236 Cal App 2d 159, 46 Cal Rptr 65, 1965 Cal App LEXIS 814.

Subdivision 4 of this section and § 660, concerning sale of things attached to land being governed by provisions regulating sales of goods, do not require determination that title, under sales contract for timber, passed before its re-

removal from land where contract extended right to fell and remove timber beyond fixed period only if buyers felled approximately certain percent of timber within fixed period. *Drewry v. Welch* (1965, Cal App 1st Dist) 236 Cal App 2d 159, 46 Cal Rptr 65, 1965 Cal App LEXIS 814.

Though growing timber may be treated as goods in sales contract, title to timber does not pass ipso facto unless contract shows that to be parties' intention. *Drewry v. Welch* (1965, Cal App 1st Dist) 236 Cal App 2d 159, 46 Cal Rptr 65, 1965 Cal App LEXIS 814.

The assignees of a grantee of a timber grant, by conceding that their ownership of the timber was subject to their right to remove it within a certain number of years and that if they could not remove the timber within that time the same would revert to the landowners, effectively precluded themselves and any of their successors from ever making any "perpetuity claim." *Mailliard v. Willow Creek Ranch Co.* (1969, Cal App 1st Dist) 273 Cal App 2d 370, 78 Cal Rptr 139, 1969 Cal App LEXIS 2176.

9. Plants

Plants grown on land are part of realty. *Los Angeles v. Hughes* (1927) 202 Cal 731, 262 P 737, 1927 Cal LEXIS 418, overruled *County of Los Angeles v. Faus* (1957) 48 Cal 2d 672, 312 P2d 680, 1957 Cal LEXIS 219.

Where vendor of realty does not make written reservation to grow nursery stock when realty is conveyed, nursery stock passes with realty. *Sweet v. Watson's Nursery* (1939, Cal App) 33 Cal App 2d 699, 92 P2d 812, 1939 Cal App LEXIS 294.

Although asparagus plants on lands taken by eminent domain do not come within CCP § 1248b, under which certain equipment is deemed part of condemned realty, the plants are a part of the realty under CC §§ 658, 660, defining real property and land. *People ex rel. Dept. of Water Resources v. Gianni* (1972, Cal App 1st Dist) 29 Cal App 3d 151, 105 Cal Rptr 248, 1972 Cal App LEXIS 682.

Transferee of all rights to grapes, grapevines, and related patents from a purchaser of land on which the grapes were being grown won a declaratory judgment that a partner of the prior owner acted wrongly in removing vines from the land and replanting them on the partner's own land after the sales agreement had been finalized but before transfer of the land because, under California law, vines planted on real property are fixtures that pass to a purchaser with the fee of that land pursuant to CC §§ 658 and 660. Thus, because there was no evidence that the parties to the original sale signed an explicit severance agreement, the vines passed with the land as a matter of law. *Sun Pac. Farming Coop., Inc. v. Sun World Int'l* (2006, ED Cal) 2006 US Dist LEXIS 40712.

10. Interest in Leases and Royalties

An oil lease creates a vested right in property, even if not accompanied by actual physical possession of the deposit of gas and oil. *Jones v. Pier* (1932, Cal App) 124 Cal App 444, 12 P2d 646, 1932 Cal App LEXIS 760.

The reservation or sale of interest in royalties or rentals of oil lands creates in purchaser right incident to land itself, which cannot be defeated by the act of the landowner without the consent of the purchaser. *Beam v. Dugan* (1933, Cal App) 132 Cal App 546, 23 P2d 58, 1933 Cal App LEXIS 346.

The rights of a lessee on oil lands are a case of a profit a prendre in gross, which vests in the lessee an incorporeal hereditament, a chattel real if for years, or real estate if for perpetuity. *Callahan v. Martin* (1935) 3 Cal 2d 110, 43 P2d 788, 1935 Cal LEXIS 404, 101 ALR 871.

Landowner's royalty or percentage under an oil lease is interest in real property. *Weiner v. Mullaney* (1943, Cal App) 59 Cal App 2d 620, 140 P2d 704, 1943 Cal App LEXIS 363.

Oil and gas lease for term of years and so long as oil shall be produced in paying quantities is interest or estate in real property in nature of profit a prendre, incorporeal hereditament. *McGreevy v. Constitution Life Ins. Co.* (1965, Cal App 5th Dist) 238 Cal App 2d 364, 47 Cal Rptr 711, 1965 Cal App LEXIS 1149.

The nature of possessory rights in oil and gas are not determined by the estate from which they were carved, but by what the owner has after the conveyance is made; thus, it is entirely consistent to treat a leasehold interest in oil and gas rights in the same manner as a reservation of ownership of the same rights for a term of years, and a landowner who conveys all of his right, title and interest in and to his land, reserving only an interest in oil and gas for a term of years, retains rights which parallel the rights granted to a lessee under an oil and gas lease; and both a leasehold interest for a

term of years, and a reservation or grant by deed for a term of years are possessory interests in real property and chattels real. *Picchi v. Montgomery* (1968, Cal App 5th Dist) 261 Cal App 2d 246, 67 Cal Rptr 880, 1968 Cal App LEXIS 1740.

11. Particular Subjects

An assignment of term for years is governed by rules of sale of personal property; as to quantity caveat emptor is rule, but seller impliedly warrants title; if such warranty is breached buyer may recover purchase money. *Jeffers v. Easton, Eldridge & Co.* (1896) 113 Cal 345, 45 P 680, 1896 Cal LEXIS 792.

The easement in gross or appurtenant to cross land of another with poles and lines to transmit messages and maintain lines includes poles and wires; poles and wires are real property. *Balestra v. Button* (1942, Cal App) 54 Cal App 2d 192, 128 P2d 816, 1942 Cal App LEXIS 339.

Abutting owner has two kinds of rights in highway, public right which he enjoys with all other citizens, and certain private rights which arise from his ownership of property contiguous to highway and which are not common to the public generally. *People v. Ricciardi* (1943) 23 Cal 2d 390, 144 P2d 799, 1943 Cal LEXIS 260.

Finding that sale of borrow was not of real property but of tangible personal property was supported by evidence that vendee bought dirt severed from land by vendor and that quantity for which payment was to be made was measured by amount delivered by trucks selected by vendor. *Santa Clara Sand & Gravel Co. v. State Bd. of Equalization* (1964, Cal App 1st Dist) 225 Cal App 2d 676, 37 Cal Rptr 506, 1964 Cal App LEXIS 1418.

SUGGESTED FORMS

Provision To Reserve Right to Growing Crops in Agreement for Sale of Real Property

22 of 85 DOCUMENTS

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CIVIL CODE
Division 2. Property
Part 4. Acquisition of Property
Title 4. Transfer
Chapter 2. Transfer of Real Property
Article 2. Effect of Transfer

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Civ Code § **1104** (2012)

§ 1104. What easements pass with property

A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

HISTORY:

Enacted Stats 1872.

NOTES:

Historical Derivation:

Field's Draft NY CC § 488.

Cross References:

Transfer carries easements: CC § 801.

Transfer of a thing carries its incidents: CC §§ 1084, 3540.

Creation and enforcement of easements by ordinance: Gov C §§ 65870 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 240 "Easements".

12 Witkin Summary (10th ed) Real Property §§ 392, 393, 397, 406, 414, 420.

Cal Jur 3d (Rev) Easements and Licenses in Real Property §§ 13, 21, 36.

Miller & Starr, Cal Real Estate 3d §§ 15:6, 15:20, 15:22, 15:24, 15:51, 15:57.

Cal. Legal Forms, (Matthew Bender(R)) §§ 28A.14, 28A.22, 28A.130, 28A.200, 34C.233.

Law Review Articles:

Grant of easement as bar to recovery in eminent domain proceeding for damage incidental to use. 19 Cal 626.
 Implied grant of noncontinuous easement. 1 Cal LR 275.
 Easements by implication. 14 Cal LR 294.
 Action by grantee against grantor for breach of restrictive covenant. 29 Cal LR 85.
 Limitations on analogies between adverse user and adverse possession. 32 Cal LR 438.
 Easement draftsmanship. 38 Cal LR 426.
 Land burdens in California. 4 S Cal LR 115.
 Easement by implication in driveway. 11 S Cal LR 379.
 Apparent easements. 13 S Cal LR 525.
 Requirement for quasi easement or easement by implication. 25 S Cal LR 376.
 Transfer of easement from viewpoint of title insurer. 15 St BJ 50.
 Grants of easement by implication from viewpoint of title insurer. 15 St BJ 90.
 Ownership of clouds. 1 Stan LR 43.

Annotations:

Conveyance of lot with reference to map or plat as giving purchaser rights in indicated streets, alleys, or areas not abutting his lot. 7 ALR2d 607.
 Foreclosure of mortgage or trust deed as affecting easement claimed in, over, or under property. 46 ALR2d 1197.
 Reservation or exception in deed in favor of stranger. 88 ALR2d 1199.
 Right of owners of parcels into which dominant tenement is or will be divided to use right of way. 10 ALR3d 960.
 Conveyance of "right of way," in connection with conveyance of another tract, as passing fee or easement. 89 ALR3d 767.

Hierarchy Notes:

Div. 2, Pt. 4 Note
 Div. 2, Pt. 4, Tit. 4 Note
 Div. 2, Pt. 4, Tit. 4, Ch. 2 Note
 Div. 2, Pt. 4, Tit. 4, Ch. 2, Art. 2 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Easements & Rights of Way

NOTES OF DECISIONS

1. Generally 2. Construction 3. Easements Passing 4. Easements by Implication 5. Form of Conveyance 6. Right of Ingress and Egress 7. Rights of Way 8. Use of Stairway 9. Water Rights 10. Water Rights--Particular Actions 11. Springs--Particular Actions 12. Sewers 13. Light and Air 14. Particular Actions 15. Procedure 16. Burden of Proof 17. Findings

1. Generally

A grant, bargain, and sale deed, containing no limitation, exception, or reservation, operates to extinguish all easements which the grantor then possessed over the land conveyed for the benefit of other land owned by him. *Taylor v. Avila* (1917) 175 Cal 203, 165 P 533, 1917 Cal LEXIS 652.

Nothing passes by the word "appurtenances" except such rights or privileges as are strictly necessary and essential to the proper enjoyment of the estate granted, and a mere convenience is not sufficient to create such a right or easement. *Von Rohr v. Neely* (1946, Cal App) 76 Cal App 2d 713, 173 P2d 828, 1946 Cal App LEXIS 773.

Where the sole use of property is as a right of way, the user will ripen into an easement, and it is only where there is some additional type of user or other action, which will give notice that the claim is to be more than a right of way, that the use may ripen into a fee title; hence, a deed from a previous user of a right of way does not constitute color of title to a fee. *People v. Ocean Shore R., Inc.* (1948) 32 Cal 2d 406, 196 P2d 570, 1948 Cal LEXIS 233, 6 ALR2d 1179.

Where an owner of the entire estate of real property sells a portion of it, the purchaser takes the portion with all the benefits and burdens that at the time of the sale belong to it, as between it and the property which the grantor retains. *Dixon v. Eastown Realty Co.* (1951, Cal App) 105 Cal App 2d 260, 233 P2d 138, 1951 Cal App LEXIS 1459; *Zeller v. Browne* (1956, Cal App 2d Dist) 143 Cal App 2d 191, 299 P2d 315, 1956 Cal App LEXIS 1589.

Where owner divides his land into parcels and sells, there is implied grant of all obviously used easements, and these carry secondary easements such as right to repair, but there is no implied duty on owner of servient tenement to maintain and repair right of way. *Bailey v. Superior Court of Shasta County* (1956, Cal App 3d Dist) 142 Cal App 2d 47, 297 P2d 795, 1956 Cal App LEXIS 1945.

When owner of tract sells part of tract, purchaser takes his tenement as between it and land retained by grantor with all benefits and burdens that, at time of sale, appear to belong to land granted. *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624.

If an easement is in use and is open and apparent, the subsequent purchaser of the fee is put on notice, and he takes subject to the easement. *Kosich v. Braz* (1967, Cal App 1st Dist) 247 Cal App 2d 737, 56 Cal Rptr 52, 1967 Cal App LEXIS 1730.

Under Civ Code, § 1104, a transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

When the owner of two parcels sells one of them, or the owner of an entire estate sells a portion, the purchaser takes the parcel or portion sold with all the benefits and burdens which appear, at the time of sale, to belong to it, as between it and the property which the seller retains. *Glass v. Gulf Oil Corp.* (1970, Cal App 1st Dist) 12 Cal App 3d 412, 96 Cal Rptr 902, 1970 Cal App LEXIS 1640.

2. Construction

This section is not limited by § 801. *Jersey Farm Co. v. Atlanta Realty Co.* (1912) 164 Cal 412, 129 P 593, 1912 Cal LEXIS 361.

This section must be read with § 806, and also in the light of the common-law rules governing easements by implication. *Fristoe v. Drapeau* (1950) 35 Cal 2d 5, 215 P2d 729, 1950 Cal LEXIS 304.

The factors enumerated in this section are not exclusive of other possible factors which may have a bearing in ascertaining the extent of an easement created by implication. *Fristoe v. Drapeau* (1950) 35 Cal 2d 5, 215 P2d 729, 1950 Cal LEXIS 304.

Section 820, relating to a tenant's rights in property other than such as are given him by his lease, is not inconsistent with the rule that a lease of a part of a building passes with it, as an incident thereto, everything necessarily used with or reasonably necessary to the enjoyment of the part it demised, but must be read in connection with other sections defining things incidental or pertinent to land and relating to the transfer of such things. (§§ 662, 1084, 3540, and this section.) *Owsley v. Hamner* (1951) 36 Cal 2d 710, 227 P2d 263, 1951 Cal LEXIS 220, 24 ALR2d 112.

Although CC § 1104, provides only for an implied easement in favor of a grantee, California also recognizes an easement by implied reservation, the result being that a purchaser may take not only the obvious benefits but also the obvious burdens. *Horowitz v. Noble* (1978, Cal App 1st Dist) 79 Cal App 3d 120, 144 Cal Rptr 710, 1978 Cal App LEXIS 1373.

3. Easements Passing

A transfer of real property passes all easements attached thereto unless expressly excepted by terms of the deed. *Bartholomae Corp. v. W. B. Scott Inv. Co.* (1953, Cal App) 119 Cal App 2d 41, 259 P2d 28, 1953 Cal App LEXIS 1175.

Where easement is appurtenant to land conveyed, easement will pass with land without specific mention. *St. Louis v. De Bon* (1962, Cal App 1st Dist) 204 Cal App 2d 464, 22 Cal Rptr 443, 1962 Cal App LEXIS 2265.

Where easement is appurtenant to parcel of land, transfer of portions of parcel to various owners operates to partition easement. *Leggio v. Haggerty* (1965, Cal App 5th Dist) 231 Cal App 2d 873, 42 Cal Rptr 400, 1965 Cal App LEXIS 1577.

The purpose of the doctrine of implied easement is to give effect to the intentions of the parties, as shown by all of the facts and circumstances of the case. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

4. Easements by Implication

When the owner of lands divides his property into two parts, granting away one of them, he includes in his grant, by implication, all such easements in the remaining parts as are necessary for the reasonable enjoyment of the parts which he grants, in the form assumed at the time of the transfer. *Cave v. Crafts* (1878) 53 Cal 135, 1878 Cal LEXIS 96; *Anaheim Union Water Co. v. Ashcroft* (1908) 153 Cal 152, 94 P 613, 1908 Cal LEXIS 430; *Oliver v. Burnett* (1909, Cal App) 10 Cal App 403, 102 P 223, 1909 Cal App LEXIS 221; *Jersey Farm Co. v. Atlanta Realty Co.* (1912) 164 Cal 412, 129 P 593, 1912 Cal LEXIS 361; *Rodemeyer v. Meger* (1916, Cal App) 30 Cal App 514, 158 P 1047, 1916 Cal App LEXIS 139; *Grimmesey v. Kirtlan* (1928) 93 Cal App 658, 270 P 243, 1928 Cal App LEXIS 818; *Griffin v. Parker* (1932, Cal App) 124 Cal App 701, 13 P2d 403, 1932 Cal App LEXIS 916; *Navarro v. Paulley* (1944) 66 Cal App 2d 827, 153 P2d 397, 1944 Cal App LEXIS 1252.

Rule of easements created by implied grants applies to city lots as well as to rural property. *Fischer v. Hendler* (1942, Cal App) 49 Cal App 2d 319, 121 P2d 792, 1942 Cal App LEXIS 811.

To convey easement by implication, it must appear that use which is appurtenant to land was open, obvious, apparent, continuous and necessary at time prior to severance of property. *Simon Newman Co. v. Sanches* (1945, Cal App) 69 Cal App 2d 432, 159 P2d 81, 1945 Cal App LEXIS 677.

Although prior use of property is one of circumstances to be considered, easements of access can be implied in situations in which there was no prior use. *Day v. Robison* (1955, Cal App 1st Dist) 131 Cal App 2d 622, 281 P2d 13, 1955 Cal App LEXIS 2102.

Purpose of doctrine of implied easements is to give effect to actual intent of parties as shown by all facts and circumstances. *Day v. Robison* (1955, Cal App 1st Dist) 131 Cal App 2d 622, 281 P2d 13, 1955 Cal App LEXIS 2102; *Peet v. Schurter* (1956, Cal App 2d Dist) 142 Cal App 2d 237, 298 P2d 142, 1956 Cal App LEXIS 1972; *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

To sustain easement by implication, parties' intent to create such easement must clearly appear. *Peet v. Schurter* (1956, Cal App 2d Dist) 142 Cal App 2d 237, 298 P2d 142, 1956 Cal App LEXIS 1972.

Strict necessity does not have to exist to create easement by implication; all that is needed is reasonable necessity, and it is not required that claimed easement be only means of access. *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624.

To establish easement by implication on severance of unity of ownership in estate, it must be shown that there has been separation of title, that prior thereto, use on which claim of easement is based was so long continued and obvious as to show intention of permanency, and that easement is reasonably necessary to beneficial enjoyment of land granted. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Lessees of store building did not obtain implied easement in parking area to rear of store where disputed area was not reasonably necessary to enjoyment of leased premises and it did not appear from written lease or from testimony of one of predecessor-owners of property that parties intended that disputed area be used by lessees. *Froome v. Drollinger* (1962, Cal App 2d Dist) 201 Cal App 2d 90, 19 Cal Rptr 891, 1962 Cal App LEXIS 2568.

Purpose of doctrine of implied easements is to give effect to actual intent of parties as shown by all facts and circumstances. *County of Los Angeles v. Bartlett* (1962, Cal App 2d Dist) 203 Cal App 2d 523, 21 Cal Rptr 776, 1962 Cal App LEXIS 2390.

Law does not require that easement by implication be absolutely necessary; it is sufficient if easement is reasonably necessary for beneficial enjoyment of property for which easement is implied. *McCarty v. Walton* (1963, Cal App 3d Dist) 212 Cal App 2d 39, 27 Cal Rptr 792, 1963 Cal App LEXIS 2812.

When owner of tract sells part of tract, purchaser takes his tenement, as between it and land retained by grantor, with all of benefits and burdens that, at time of sale, appear to belong to land granted. *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

To establish easement by implication, there must be something on servient estate that is either visible or in nature of permanent artificial structure. *People v. Bowers* (1964, Cal App 1st Dist) 226 Cal App 2d 463, 38 Cal Rptr 238, 1964 Cal App LEXIS 1298.

When prescriptive easement is acquired by owner of dominant estate, easement becomes incident of land and, unless expressly excepted by terms of subsequent grants, is transferred to successive owners of dominant tenement. (CC § 1104.) *Guerra v. Packard* (1965, Cal App 1st Dist) 236 Cal App 2d 272, 46 Cal Rptr 25, 1965 Cal App LEXIS 823.

The factors essential to the creation of an easement by implied grant are a separation of the title; before the separation takes place the use which gives rise to the easement shall have been so long continued and so obvious as to show that it was intended to be permanent; and the easement shall be reasonably necessary to the beneficial enjoyment of the land granted. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

In a quiet title action, the trial court properly found that real property purchased by plaintiff was subject to an access easement that arose by implication in favor of a prior purchaser of adjoining property from the same grantor, where plaintiff was well aware of the existence of the road in question, having used it herself. Though she had not traveled its full length, she knew it was passable and was thus put on notice an easement existed as a servitude on the property she was buying. The implied easement or quasi-easement authorized by CC § 1104 is reciprocal; hence, if a burden has been imposed on a parcel of land sold, the purchaser, provided the marks of the burden are open and visible, takes the property with the servitude on it. *Kytasty v. Godwin* (1980, Cal App 4th Dist) 102 Cal App 3d 762, 162 Cal Rptr 556, 1980 Cal App LEXIS 1526.

Grocery store tenant's contention that its use of parking spaces for storage purposes was permissible under an implied easement theory was untenable, as there was no preexisting use to give rise to any implied easement. *Muzzi v. Bel Air Mart* (2009, 3d Dist) 171 Cal App 4th 456, 89 Cal Rptr 3d 632, 2009 Cal App LEXIS 198.

Substantial evidence supported an implied easement; however, in determining the extent of that easement pursuant to CC §§ 806, 1104, the trial court erred in finding that it was exclusive. The easement was not limited to the previous minimal use of the water, but both parties were entitled to reasonable residential use of the water. *Thorstrom v. Thorstrom* (2011, 1st Dist) 2011 Cal App LEXIS 845.

5. Form of Conveyance

Where the owner of several parcels of land so adapts them that one derives a benefit from the other, a sale of one is made with an implied understanding that the burdens and advantages shall continue as before the separation, even if the transferor does not mention such incidental burdens. *Cheda v. Bodkin* (1916) 173 Cal 7, 158 P 1025, 1916 Cal LEXIS 352.

Quasi easements ripen into easements upon their severance under the terms of a will. *Cheda v. Bodkin* (1916) 173 Cal 7, 158 P 1025, 1916 Cal LEXIS 352.

A deed of trust conveys an easement as effectively as a grant deed. *A. Hamburger & Sons, Inc. v. Lemboeck* (1937, Cal App) 20 Cal App 2d 565, 67 P2d 380, 1937 Cal App LEXIS 844.

Where an easement is apparent and continuous, it will pass as appurtenant without the use of the word "appurtenances," otherwise the grantor must use sufficient language to create the easement de novo. *Swarzwald v. Cooley* (1940, Cal App) 39 Cal App 2d 306, 103 P2d 580, 1940 Cal App LEXIS 398.

Quitclaims of easement appurtenant to owner of servient estate by owners of portions of dominant estate extinguished easement only as to benefits shared in easement by owners giving deeds. *Leggio v. Haggerty* (1965, Cal App 5th Dist) 231 Cal App 2d 873, 42 Cal Rptr 400, 1965 Cal App LEXIS 1577.

Although the benefit of an appurtenant easement attaches only to the land of the easement holder, while an easement in gross runs in favor of the person specified in the grant, territorial restrictions are not necessarily absent simply because the parties have limited the use and enjoyment of the easement to a number of specified persons. Such restrictions may be directly relevant to the matter of the scope and extent of permitted use. *Buchler v. Oregon-Washington Plywood Corp.* (1976) 17 Cal 3d 520, 131 Cal Rptr 394, 551 P2d 1226, 1976 Cal LEXIS 302.

6. Right of Ingress and Egress

Sale of lot of land with reference to map showing lot as bordering on street, before recordation of map which was subsequently recorded, creates easement in favor of purchaser of lot as against parcel of land shown on map as street. *Eltinge v. Santos* (1915) 171 Cal 278, 152 P 915, 1915 Cal LEXIS 623.

Where an easement in gross was created "until such time as the extension of a certain road is completed," and the community did not complete such road nor intend to do so, such easement became appurtenant to the land. *Eastman v. Piper* (1924, Cal App) 68 Cal App 554, 229 P 1002, 1924 Cal App LEXIS 345.

Where owner conveys portion of tract over which there ran road which had been used openly, visibly and continuously for ingress and egress between part retained and highway, implied or quasi easement appurtenant to latter portion is created. *Rosebrook v. Utz* (1941, Cal App) 45 Cal App 2d 726, 114 P2d 715, 1941 Cal App LEXIS 1538.

Where an easement in a roadway over private property was originally acquired for the purpose of using it for access to a farm and home, a right to an increased burden thereon by adverse user was not established by evidence of a subsequent unauthorized use of the roadway to reach a nudist colony and pleasure resort established on the ranch as commercial enterprises. *Bartholomew v. Staheli* (1948, Cal App) 86 Cal App 2d 844, 195 P2d 824, 1948 Cal App LEXIS 1698.

The evidence supported a finding that passageways and a patio appurtenant to a leased store were reasonably necessary to the beneficial enjoyment of the store, where the physical arrangement had existed throughout twenty years of the duration of the lease; where the elimination of the ways and the patio would lessen the value of the leased premises by 40 per cent; where the display windows fronting on the ways and patios had a merchandising value, half of which would be lost if the through passages were cut off; and where the trial court viewed the premises thus observing the physical arrangement. *Owsley v. Hamner* (1951) 36 Cal 2d 710, 227 P2d 263, 1951 Cal LEXIS 220, 24 ALR2d 112.

Whether a grantee acquires an easement of ingress and egress by implication over the lands of his grantor depends on all the circumstances and the intention of the parties at the time the conveyance is made. *Kaynor v. Fisch* (1951, Cal App) 103 Cal App 2d 832, 230 P2d 418, 1951 Cal App LEXIS 1246.

A finding that purchasers of realty near one end of horseshoe road terminating at both ends on highway were entitled to travel road from end to end, notwithstanding such an easement may not have been necessary to ingress and egress, is sustained by evidence that seller who owned all land through which road passed represented to purchasers that they would receive such an easement as part of purchase. *Gagnon v. Adamson* (1953, Cal App) 122 Cal App 2d 253, 264 P2d 620, 1953 Cal App LEXIS 1480.

Way of necessity exists only in case of strict necessity, that is, when claimed way constitutes only access to claimant's property. *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624.

Where right of ingress and egress over and across land of another is personal, right cannot pass to another save by specific assignment. *St. Louis v. De Bon* (1962, Cal App 1st Dist) 204 Cal App 2d 464, 22 Cal Rptr 443, 1962 Cal App LEXIS 2265.

Whether grantee of portion of grantor's land acquires from grantor easement of ingress and egress by implication depends on parties' intent and circumstances at time of conveyance. *McCarty v. Walton* (1963, Cal App 3d Dist) 212 Cal App 2d 39, 27 Cal Rptr 792, 1963 Cal App LEXIS 2812.

7. Rights of Way

Where the parties had knowledge of an implied right of way, or such right of way is apparent, a quasi easement exists. *Nay v. Bernard* (1919, Cal App) 40 Cal App 364, 180 P 827, 1919 Cal App LEXIS 30.

Where an owner conveyed land by deed, a long established right of way passed with the conveyance as appurtenant to the land. *Vargas v. Maderos* (1923) 191 Cal 1, 214 P 849, 1923 Cal LEXIS 404.

Easement as right of way is incident to land and passes with it unless expressly excepted by terms of conveyance. *Lemos v. Farmin* (1932, Cal App) 128 Cal App 195, 17 P2d 148, 1932 Cal App LEXIS 227.

Though part of areaway fronting garages built on rear of grantor's lot was being used for driveway at time of grant to plaintiff including perpetual right of way for driveway purposes over rear eight feet of grantor's adjoining lot, way of necessity over areaway no longer existed after garages were removed. *Irvin v. Petitfils* (1941, Cal App) 44 Cal App 2d 496, 112 P2d 688, 1941 Cal App LEXIS 1022.

Where a conveyance by deed specifically referred to the recorded map of the tract of which the land was a part, and the map depicted the roadway adjacent to the land, the effect was to convey also a private right of way and easement appurtenant to such land over the entire width of the road. *Severo v. Pacheco* (1946, Cal App) 75 Cal App 2d 30, 170 P2d 40, 1946 Cal App LEXIS 1200.

A driveway adjoining leased store premises was a necessary part of the leasehold passing by the lease and not merely a convenient mode of access for deliverymen, where the lease designated a transfer of interest "together with appurtenances," this portion of the land had been used by a former lessor, and such lessor told the lessee that he could use the driveway. *Ng v. Warren* (1947, Cal App) 79 Cal App 2d 54, 179 P2d 41, 1947 Cal App LEXIS 793.

Right of way over another's land by virtue of necessity is not established merely because access by such means is more convenient than other means reasonably available. *Orr v. Kirk* (1950, Cal App) 100 Cal App 2d 678, 224 P2d 71, 1950 Cal App LEXIS 1275.

Title to lot sold by reference to subdivision map embraces easement to use all of streets disclosed on such map. *Hocking v. Title Ins. & Trust Co.* (1951) 37 Cal 2d 644, 234 P2d 625, 1951 Cal LEXIS 319, 40 ALR2d 1238.

Way of necessity exists only in case of strict necessity, that is, where claimed way constitutes only access to claimant's property. *Tarr v. Watkins* (1960, Cal App 2d Dist) 180 Cal App 2d 362, 4 Cal Rptr 293, 1960 Cal App LEXIS 2349.

In an action to enjoin use of a road and for damages for its excessive use by defendants in conducting their logging operations on adjacent property, it appeared that defendants' use of the road was proper and did not constitute a trespass, where the original deed by which such adjacent property and the timber rights thereon were granted also expressly granted a right of way for ingress and egress over the road, where the language of the deed indicated that the grantor contemplated its assignment and permitted the use of the road by subsequent grantees, and where defendants' use of the road was fully authorized under logging agreement with the present owner. *Franceschi v. Kuntz* (1967, Cal App 1st Dist) 253 Cal App 2d 1041, 61 Cal Rptr 810, 1967 Cal App LEXIS 2437.

8. Use of Stairway

Where a conveyance was made, the right to use a stairway as well as such other incidental rights as were necessary for the full enjoyment of a servitude imposed by a reservation in the deed passed to the grantee. *Gardner v. San Gabriel Valley Bank* (1907, Cal App) 7 Cal App 106, 93 P 900, 1907 Cal App LEXIS 39.

Purchaser of lot acquires easement by implied grant to use a walk and stairway leading to adjoining lot where such easement is reasonably necessary for enjoyment of property conveyed. *Zeller v. Browne* (1956, Cal App 2d Dist) 143 Cal App 2d 191, 299 P2d 315, 1956 Cal App LEXIS 1589.

9. Water Rights

Deed of grant, bargain, and sale, which contains no reservations, conveys all water rights or riparian rights appurtenant thereto. *Rianda v. Watsonville Water & Light Co.* (1907) 152 Cal 523, 93 P 79, 1907 Cal LEXIS 379.

Where deeds are sufficient to preserve to grantee riparian right of water conveyed, and to make it parcel thereof, it passes as such in all subsequent conveyances of such land. *Strong v. Baldwin* (1908) 154 Cal 150, 97 P 178, 1908 Cal LEXIS 314.

Deed conveying part of tract of riparian land without any reservation whatever in conveyance of riparian rights operates to convey rights incident to portion transferred as at time of conveyance, though grantor is engaged in openly and visibly diverting water at point below such land. *Holmes v. Nay* (1921) 186 Cal 231, 199 P 325, 1921 Cal LEXIS 433.

Right to waters of stream pass with grant of land, not necessarily as easement or appurtenance, but as parcel of land itself. *San Francisco v. County of Alameda* (1936) 5 Cal 2d 243, 54 P2d 462, 1936 Cal LEXIS 388.

The language of a deed to plaintiffs' predecessor in interest was sufficient to create a right in plaintiffs and others similarly situated to use river beaches within a residential tract for recreational purposes, where the deed indicated a direct, present transfer of such easement, and where, although the location was not specified, it was clear that a reference in the instrument to "the riverfront" was limited to beaches within the tract, there being no evidence that grantor owned any other property, and a right of way to and from the beaches would necessarily be implied from the grant of the beach easement. *Ames v. Prodon* (1967, Cal App 1st Dist) 252 Cal App 2d 94, 60 Cal Rptr 183, 1967 Cal App LEXIS 1487.

10. Water Rights--Particular Actions

Where owner of tract of land develops source of water by pumping and subdivides tract into lots and connects each lot with supply by suitable ditches and irrigates them, and later sells two lots, with appurtenances, deed reserving to grantor right to maintain ditches then in use to carry water to said lots and other lots in subdivisions and all rights of way thereon, right to have water delivered to lots on payment of required charge becomes appurtenant to lots and owner of them is entitled to have water delivered so long as source holds out. *Franscioni v. Soledad Land & Water Co.* (1915) 170 Cal 221, 149 P 161, 1915 Cal LEXIS 388.

Where owner of tract of land, part of which is riparian and part nonriparian to lake, granted "all and singular the water and riparian rights and water-rights and privileges of every kind and description" and later conveyed land to another party, who thereupon made appropriation of water from lake to irrigate portion of such land, successor in interest of grantee of such water rights was entitled to waters of lake as against subsequent grantee of land claiming riparian rights. *Duckworth v. Watsonville Water & Light Co.* (1915) 170 Cal 425, 150 P 58, 1915 Cal LEXIS 417.

Discharge of water: Where at the time of the division of a tract of land a right existed to discharge water in a certain way from the upper land to the lower land, a conveyance to the purchaser of the lower land carried with it a reservation of a servitude by implication. *Kallenburg v. Long* (1919, Cal App) 39 Cal App 731, 179 P 730, 1919 Cal App LEXIS 225.

Where owner of large tract of land with developed water system and water supply thereon sold portion thereof to another and at same time, by written agreement, agreed to furnish latter with water at specified price, and both parties to deed and contract understood and intended that grantee should acquire with his land right to water, grantee has been conveyed right that is enforceable against grantor's successor in interest. *Relovich v. Stuart* (1931) 211 Cal 422, 295 P 819, 1931 Cal LEXIS 716.

Where a water system was constructed and used for the benefit of land and for furnishing domestic water, a trustee's deed to a grantee on foreclosure sale passed the water rights as appurtenant to the land, although a considerable part of the system was constructed after the deed of trust had been executed. *Harper v. Buckles* (1937, Cal App) 19 Cal App 2d 481, 65 P2d 947, 1937 Cal App LEXIS 459.

Where a clause in a deed reserved "for reservoir purposes all land which at high water is covered with water," the purported right was a mere license. *Massetti v. Madera Canal & Irrigation Co.* (1937, Cal App) 20 Cal App 2d 708, 68 P2d 260, 1937 Cal App LEXIS 868.

Open, obvious ditch, maintained for many years to irrigate uniformly entire tract from which parcels have been sold and conveyed, may be benefited or burdened, by implied easement, as appurtenant to each parcel for necessary correla-

tive irrigation purposes in favor of grantor or grantee. *Simon Newman Co. v. Sanches* (1945, Cal App) 69 Cal App 2d 432, 159 P2d 81, 1945 Cal App LEXIS 677.

In action to enjoin defendant's unauthorized use of plaintiff's land or facilities to assist in draining defendant's land, record was barren of any evidence to indicate that there was pre-existing drainage system for artificial water which was continued under agreement or that it was contemplated that such use was to be made of irrigation system. *Hall v. Burrows* (1953, Cal App) 121 Cal App 2d 194, 262 P2d 869, 1953 Cal App LEXIS 1332.

Finding that grantors, on selling south half of lot to plaintiffs' predecessors in title, advised grantees that they would be permitted to have temporary use of water main on north half of such lot, is supported by one grantor's testimony that he told one grantee, prior to sale to him, that until war was over, a water meter could not be put on avenue adjoining such lot, and that grantee could have temporary use of pipe and meter on grantor's land until water was available on avenue. *Peet v. Schurter* (1956, Cal App 2d Dist) 142 Cal App 2d 237, 298 P2d 142, 1956 Cal App LEXIS 1972.

There was support for finding that dominant estate for easement appurtenant for water rights was 1,000-acre tract, which grantee of easement conveyed with water rights first time they were transferred by reference to deed creating them, and where original creating rights was mentioned in all three subsequent conveyances of tract during eight-year period following first transfer. *Leggio v. Haggerty* (1965, Cal App 5th Dist) 231 Cal App 2d 873, 42 Cal Rptr 400, 1965 Cal App LEXIS 1577.

An implied easement may arise in connection with a grant of lands noncontiguous to the easement or the dominant tenement. Thus the implication of an easement for a domestic water supply through a pipeline is commanded where it was undoubtedly the intention of the parties when lands noncontiguous to the easement, the dominant tenement, or the source of the water were separated, to preserve the previously existing water rights thereon. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

11. Springs--Particular Actions

Fact that land to which springs of water were conveyed by appropriation was at time unsurveyed public land did not prevent water from becoming appurtenant thereto, so as to pass by deed of possessory right to land with its appurtenances. *Ely v. Ferguson* (1891) 91 Cal 187, 27 P 587, 1891 Cal LEXIS 1069.

Where springs were only tributaries of certain creek, and ditch was taken therefrom leading to that creek, and another ditch was taken out of creek to lands on which water was used, quitclaim deed of such ditches by owner of interest therein transferred his rights in waters of springs. *Williams v. Harter* (1898) 121 Cal 47, 53 P 405, 1898 Cal LEXIS 850.

Where a spring had been used for 30 years prior to a partition for the purposes of watering cattle and domestic uses, after a partial sale of the land the purchaser acquired the right to use the spring on the adjoining ground, when it was shown that previous tenants used the spring exclusively on the parcel transferred. *Greene v. Fickert* (1942, Cal App) 49 Cal App 2d 511, 122 P2d 93, 1942 Cal App LEXIS 841.

Where a grant passed title to part of an estate an easement to use a spring in the grantor's possession passed with it. *Greene v. Fickert* (1942, Cal App) 49 Cal App 2d 511, 122 P2d 93, 1942 Cal App LEXIS 841.

12. Sewers

Where an owner of lots constructed a private sewer from his dwelling upon one of them across two other lots owned by him to a street sewer, he created a quasi easement on the two other lots for the benefit of the residence lot; upon severance by devise of the other two lots to his widow, she took them with the burden imposed by her devisor and an easement for the benefit of the residence lot was created. *Jones v. Sanders* (1903) 138 Cal 405, 71 P 506, 1903 Cal LEXIS 691; *Cheda v. Bodkin* (1916) 173 Cal 7, 158 P 1025, 1916 Cal LEXIS 352.

Where defendants were given permit to lay sewer pipe across lot later purchased by plaintiffs, but not to connect it to sewer pipe on that lot, and defendants could extend their pipe to main sewer at nominal cost, and maintenance of sewer across said lot was necessity to defendants, they were granted easement to maintain sewer across lot but not to connect same with plaintiffs' sewer. *Frederick v. Louis* (1935, Cal App) 10 Cal App 2d 649, 52 P2d 533, 1935 Cal App LEXIS 1480.

13. Light and Air

Easements for light can be transferred as appurtenances with the land. *Kennedy v. Burnap* (1898) 120 Cal 488, 52 P 843, 1898 Cal LEXIS 795.

There is no grant of a right to air and light from any length of continuous enjoyment or from the mere conveyance of a house with windows overlooking the land of the grantor. *Clark v. Mountain States Life Ins. Co.* (1934, Cal App) 1 Cal App 2d 301, 36 P2d 848, 1934 Cal App LEXIS 1269.

There are no implied easements for light and air where the grantor conveys his property which adjoins that over which the easement is claimed. *Owsley v. Hamner* (1951) 36 Cal 2d 710, 227 P2d 263, 1951 Cal LEXIS 220, 24 ALR2d 112.

Where the lessee of a store has established an implied easement appurtenant in a patio, based on factors other than light and air, which easement prevents the lessor from making proposed alterations, the findings and the portion of the judgment referring to light and air may be treated as surplus action. *Owsley v. Hamner* (1951) 36 Cal 2d 710, 227 P2d 263, 1951 Cal LEXIS 220, 24 ALR2d 112.

14. Particular Actions

Sale of land by map or with reference to streets thereon is sale not merely for price named but for further consideration that streets and public grounds designated on map shall be opened to purchaser and to any subsequent purchasers, and purchaser takes not merely grantor's interest in land described in deed, but as appurtenant to it and easement in streets and public grounds named, with ample covenant that subsequent purchasers shall be entitled to same right. *Day v. Robison* (1955, Cal App 1st Dist) 131 Cal App 2d 622, 281 P2d 13, 1955 Cal App LEXIS 2102.

Easement appurtenant to lot follows ownership of lot in whomsoever's hands same may come. *Whitson v. Goudeseune* (1955, Cal App 2d Dist) 137 Cal App 2d 445, 290 P2d 590, 1955 Cal App LEXIS 1205.

Right to use land as easement appurtenant to dominant tenement passes with servient tenement, and recorded documents affecting servient tenement which are outside chain of title of dominant tenement are not constructive notice to holder or purchaser of latter tenement. *Wool v. Scott* (1956, Cal App 1st Dist) 140 Cal App 2d 835, 296 P2d 17, 1956 Cal App LEXIS 2329.

Where owner of two tenements sells one of them or owner of entire estate sells portion of it, purchaser takes tenement or portion sold with all benefits and burdens that appear at time of sale to belong to it, as between it and property which vendor retains. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Though no easements exist so long as unity of possession remains because owner of whole estate may at any time rearrange quality of several servitudes, on severance by sale of part, right of owner to redistribute ceases, and easements or servitudes are created corresponding to benefits or burdens existing at time of sale. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Where it affirmatively appeared from evidence that, from time parties as partners first acquired range land until they divided it by flip of coin some five years later and erected boundary fence the following year, both plaintiff and defendant and their invitees and guests had hunted entire range land and during portion of that time had jointly leased out deer hunting rights on commercial basis, and that, until plaintiff partner won toss of coin and knew that northern portion would be his, his interest was that party who received other portion should likewise receive unlimited right of way over private access road from northern to southern portion, and where both parcels and deeded right of way over road continued to be used for deer hunting for some four years after partnership dissolution, after which plaintiff complained that "these people coming across interfered with the hunting on" his own parcel after partition, and for that reason tardily sought to have court write into deed which he had prepared limitations on use of his former partner which he asserted were discussed but were omitted from deed, provisions of this section should apply in favor of defendant to end that he be permitted to continue full use of right of way in manner it was used before partition of the property. *Laux v. Freed* (1960) 53 Cal 2d 512, 2 Cal Rptr 265, 348 P2d 873, 1960 Cal LEXIS 231.

The principle that "A transfer of real property passes all easements attached thereto," and its application is not limited to list of servitudes and corresponding easements enumerated in § 801, since easements encompassed within this section embrace every burden which by virtue of manner of use has been imposed on portion of estate not granted in favor of portion granted. *Laux v. Freed* (1960) 53 Cal 2d 512, 2 Cal Rptr 265, 348 P2d 873, 1960 Cal LEXIS 231.

To state a cause of action for enforcement of an easement, the complaint must allege that the plaintiff is the owner of a described right of way or other easement over defendant's land, and that such easement is appurtenant to plaintiff's land. *Ames v. Prodon* (1967, Cal App 1st Dist) 252 Cal App 2d 94, 60 Cal Rptr 183, 1967 Cal App LEXIS 1487.

The provisions in three separate recorded leases by which the owner leased to one lessee three contiguous parcels of land all of which constituted an entire larger tract created easements in the owner as to each parcel where the leases one and all provided that "the presently existing parking area adjacent to the leased premises and the entrance thereto shall at all times during the term of this lease and any extension thereof be for use in common by lessee and lessor and any lessees or tenants of any part of the larger parcel of land of which lessor is the record owner and of which the herein described premises constitute a part," an easement being an interest in land in the possession of another. *Renden v. Geneva Dev. Corp.* (1967, Cal App 2d Dist) 253 Cal App 2d 578, 61 Cal Rptr 463, 1967 Cal App LEXIS 2381.

By a single deed purporting to convey a complete possessory estate in fugacious minerals, which, however, in law conveyed an unlimited profit a prendre therein, and to incidentally convey a complete possessory estate in nonfugacious minerals which conveyed corporeal real property in fee simple, the grantors did not intend to convey two different types of estate in the same instrument, and conveyed a profit a prendre in the nonfugacious minerals as well, where they were primarily concerned with transferring the oil and gas by reason of then extant oil boom in the area. *Gerhard v. Stephens* (1968) 68 Cal 2d 864, 69 Cal Rptr 612, 442 P2d 692, 1968 Cal LEXIS 212.

15. Procedure

Injunction will issue to restrain owner of property, originally part of subdivision project, from interfering with equitable easement in subdivision of lot owners to use recreational facilities on property, which easement they acquired through purchase of their lots in reliance on representations of original subdivider that recreational area would be maintained as such. *Bradley v. Frazier Park Playgrounds, Inc.* (1952, Cal App) 110 Cal App 2d 436, 242 P2d 958, 1952 Cal App LEXIS 1551.

Intent of grantor and grantee that grantee who purchases portion of grantor's land shall acquire easement of ingress and egress and whether such easement is created by implication are questions of fact for determination of court. *McCarty v. Walton* (1963, Cal App 3d Dist) 212 Cal App 2d 39, 27 Cal Rptr 792, 1963 Cal App LEXIS 2812.

Presumption that grant of way of necessity arises from transaction is one of fact, and whether grant is to be implied depends on terms of deed and facts of case; implication will not be made where it is shown that parties did not intend such grant. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

In an action for an injunction to restrain appellants from interfering with respondent's use of an easement for ingress and egress to a lot owned by respondents, the mere fact that respondents had other means of ingress and egress to the property does not necessarily determine their rights to an enlargement of the easement, where the other means of ingress and egress are difficult and hazardous. *Kosich v. Braz* (1967, Cal App 1st Dist) 247 Cal App 2d 737, 56 Cal Rptr 52, 1967 Cal App LEXIS 1730.

Where it is sought to have it decreed that real property of a person is subject to a use or easement in favor of another, the property affected must be described in the pleadings with such certainty as to enable the party against whom the claim is made to definitely know exactly what portion of his property is so claimed. *Ames v. Prodon* (1967, Cal App 1st Dist) 252 Cal App 2d 94, 60 Cal Rptr 183, 1967 Cal App LEXIS 1487.

In an action by plaintiffs on their own behalf and on behalf of all others, except defendant, who owned property within a named subdivision, the complaint sufficiently identified the land of defendant allegedly affected by the easement plaintiffs sought to enforce, where the alignment of the parties and reference in the complaint to riverfront property within the subdivision necessitated the implication that all riverfront property owned by defendant within the tract was alleged to be subject to the easement. Identifying the tract by its descriptive name (the name of the subdivision) was an adequate description (Civ Code, § 1092). *Ames v. Prodon* (1967, Cal App 1st Dist) 252 Cal App 2d 94, 60 Cal Rptr 183, 1967 Cal App LEXIS 1487.

16. Burden of Proof

In an action to establish a right of way implied in a grant of land, it was necessary to allege and prove that such way was appurtenant to the land, in use by the grantor at the time of the grant, the only means of ingress and egress available

to the grantee, and necessary to the beneficial use of the grantee's land. *Beem v. Reichman* (1918, Cal App) 36 Cal App 258, 171 P 972, 1918 Cal App LEXIS 478.

The burden of proof is upon the claimant to establish the existence of a roadway at the time of his predecessor's purchase of at least one of the parcels. *Schudel v. Hertz* (1932, Cal App) 125 Cal App 564, 13 P2d 1008, 1932 Cal App LEXIS 682.

17. Findings

Finding that "at the time of their purchase the defendants had actual notice of facts and circumstances sufficient to put them on inquiry as to said pipeline and rights of defendants," if supported by evidence, was sufficient without further statement of facts that gave rise to notice. *Johnson v. Cella* (1953, Cal App) 122 Cal App 2d 72, 264 P2d 98, 1953 Cal App LEXIS 1453.

Finding that there was no implied easement for ingress and egress over defendants' land to plaintiff's land was supported by inference that plaintiff knew at time of purchase of his lot from his predecessor in title that permitted uses were temporary and by express agreement. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

In action brought to establish right of way by necessity, court's findings that parties to sale intended to exclude any right of way over land retained by grantor and that no possible physical basis existed at time of sale for easement to any public road over land retained were substantially supported by evidence that grantor had never had a right of way from any of land to public road and could at no time reach road other than by crossing intervening land owned by others. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

Findings, based on substantial evidence, that parties to sale of land never contemplated right of way over land retained by grantor and that there was as physical fact no access to public road over retained land compel conclusion that no right of way was created by necessity over retained land. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

The trial court's finding that the present owners of the servient tenement had constructive notice of an easement for a domestic water supply from a lake through a pipeline and thence to noncontiguous lands owned by others was supported by evidence that when they were negotiating to purchase the servient tenement they were aware that their vendor did not own the water supply or pipeline easement, and that he therefore purchased the same and conveyed them with the servient tenement, such facts being sufficient to put the purchasers on inquiry as to the rights of others in the water system and supply. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

In an action to establish an implied easement in favor of a dominant tenement, the trial court's finding that the only source of water for the dominant tenement was a lake on the servient tenement and that the lake source with conduits therefor across the servient tenement was reasonably necessary for the use and enjoyment of the dominant tenement was fully supported by the evidence where it appeared that while no wells had been drilled on the dominant tenement, efforts made to drill wells and to find water on property in the same vicinity had failed; that when a prior owner of the servient tenement needed a greater supply of water it acquired the lake and easement on the dominant tenement and made improvements for the purpose of impounding water; from all of which the court could infer that the lake was the most reliable source of a steady supply of water for the dominant tenement. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

9 of 85 DOCUMENTS

Deering's California Codes Annotated
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*** This document is current with urgency legislation through Chapter 8 of the 2012 Session. ***

CIVIL CODE

Division 2. Property
Part 2. Real or Immovable Property
Title 2. Estates in Real Property
Chapter 3. Servitudes

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Civ Code § 801 (2012)

§ 801. Servitudes attached to land

The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right-of-way;
5. The right of taking water, wood, minerals, and other things;
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial;
18. The right of receiving sunlight upon or over land as specified in Section 801.5.

HISTORY:

Enacted 1872. Amended Stats 1978 ch 1154 § 4.

NOTES:

Editor's Notes

For discussion of Stats 1901 ch 157, which purported to revise the **Civil Code** but was held unconstitutional and subsequently repealed, see the Editor's Notes following CC § 4.

Amendments:

1978 Amendment:

Added subd 18.

Historical Derivation:

Field's Draft NY CC § 245.

Cross References:

Servitudes not attached to land: CC § 802.

Extinguishment of easement: CC § 811.

Recordation of notice of consent to use land: CC § 813.

Coterminous owners, rights and duties: CC §§ 832, 841.

Maintenance of right of way: CC § 845.

How title by prescription acquired: CC § 1007.

Easements passing with property: CC § **1104**.

Time of commencing action for recovery of real property: CCP §§ 318, 319.

What constitutes adverse possession: CCP § 325.

When easement subject to be taken for public use: CCP §§ 1240.110 et seq.

Flow of water: Corp C § 14452.

Grant of easement over state property: Gov C § 14666.

Creation and enforcement of easements by ordinance: Gov C §§ 65870 et seq.

Vacation of easement by county: H & S C § 5400.

Dedication of easement by guardian or conservator: Prob C § 2556.

Effect and recordation of vacation order: Sts & H C §§ 8325, 8350, 8351.

Vacation of easements: Sts & H C §§ 8330.5, 8335, 8336.

Vacation of easements: Sts & H C §§ 8336, 8351, 8355.

Reservation of easements by city: Sts & H C § 8340.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 11 "Adjoining Landowners," ch 240, "Easements," ch 266, "Fences".

Cal. Legal Forms, (Matthew Bender(R)) §§ 28A.11, 28A.13, 28A.14, 28A.18, 28A.22, 28A.201, 28A.212, 28A.215, 34E.200.

12 Witkin Summary (10th ed) Real Property §§ 383, 384, 385, 387, 406.

Cal Jur 3d (Rev) Easements and Licenses in Real Property §§ 4, 7-9, 11, 21, Estates § 7.

Miller & Starr, Cal Real Estate 3d §§ 14:26, 14:37, 15:1, 15:6, 15:10, 15:11, 22:10, 22:11, 24:10.

Law Review Articles:

Let the sun shine in: Another look at the easement for light and air. 11 Bev Hills BJ 26.

Shared uses of land--easements. 2 Bev Hills BJ No 5, P 14.

Nature of right to take water from pipes. 5 Cal LR 340.

Review of Selected 1978 California Legislation. 10 Pacific LJ 478.

Water Rights as Property in Tulare v. United States. 38 McGeorge LR 461.

Land burdens in California. 3 S Cal LR 141, 4 S Cal LR 115.

Subsequently enacted ordinance as part of party-wall agreement. 5 S Cal LR 62.

Nature of profit a prende estate generally used by oil industry. 9 S Cal LR 302.

Equitable land burdens. 10 S Cal LR 281.

Nuisance damages as alternative to compensation of land use restrictions in eminent domain; categorizing of land restriction as compensable property interest. 47 S Cal LR 1005.

Toward a unified concept of servitudes. 55 S Cal LR 1177.

Toward a modern law of servitudes. 55 S Cal LR 1261.

Title insurer's viewpoint of easements. 15 St BJ 28.

Lateral support. 6 Stan LR 104.

Annotations:

Right of riparian owner to continuation of periodic and seasonal overflows from stream. 20 ALR2d 656.

Right created by private grant or reservation to hunt or fish on another's land. 49 ALR2d 1395.

Easement by prescription in artificial drains, pipes or sewers. 55 ALR2d 1144.

Rights of fishing, boating, bathing, or the like in inland lakes. 57 ALR2d 569.

Relative rights as between municipality and abutting landowners, to minerals, oil and gas underlying streets, alleys, or parks. 62 ALR2d 1311.

Acquisition of right of way by prescription as affected by change of location or deviation during prescriptive period. 80 ALR2d 1095.

Party walls and party-wall agreements as affecting marketability of title. 81 ALR2d 1020.

Right of owners of parcels into which dominant tenement is or will be divided to use right of way. 10 ALR3d 960.

Right to maintain gate or fence across right of way. 52 ALR3d 9.

Tacking as applied to prescriptive easements. 72 ALR3d 648.

Way of necessity over another's land, where a means of access does exist, but is claimed to be inadequate, inconvenient, difficult, or costly. 10 ALR4th 447.

Way of necessity where only part of land is inaccessible. 10 ALR4th 500.

Location of easement of way created by grant which does not specify location. 24 ALR4th 1053.

Hierarchy Notes:

Div. 2 Note

Div. 2, Pt. 2, Tit. 2 Note

Div. 2, Pt. 2, Tit. 2, Ch. 3 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Easements & Rights of Way

NOTES OF DECISIONS

1. Generally 2. Construction 3. Definition of Easement 4. License Distinguished 5. --Profit A Prendre Distinguished 6. Easement as Interest in Land 7. In Gross or Appurtenant 8. Creation Generally 9. Necessity for Dominant and Servient Tenement 10. Prescriptive Easements 11. Easements by Contract 12. Easements by Grant 13. Easements by Implication 14. Implication from Intent of Parties 15. Rights of Way Generally 16. Rights of Way Defined 17. Rights of Way--Particular Actions 18. Way of Necessity 19. Amount of Necessity Required 20. Light and Air 21. Land Abutting on Street, Highway, Etc. 22. Right of Ingress and Egress 23. Right of Reasonable View 24. Abandonment of Public Street 25. Compensation for Impairment 26. Lateral Support 27. Taking Water, Wood, Minerals, Etc. 28. Water Servitudes 29. Water Pollution 30. Receiving and Discharging Water 31. Continuous Flow of Water 32. Equitable Servitudes Generally 33. Equitable Servitudes Requirements 34. Equitable Servitudes--Particular Actions 35. Pleading 36. Burden of Proof and Presumptions 37. Evidence 38. Verdict 39. Appellate Review

1. Generally

The principle embodied in § 1104 that "A transfer of real property passes all easements attached thereto," and its application are not limited to list of servitudes and corresponding easements enumerated in this section, since easements encompassed within § 1104 embrace every burden which by virtue of manner of use has been imposed on portion of estate not granted in favor of portion granted. *Laux v. Freed* (1960) 53 Cal 2d 512, 2 Cal Rptr 265, 348 P2d 873, 1960 Cal LEXIS 231.

In construing instrument conveying easement, rules applicable to construction of deeds generally apply. *Kerr v. Brede* (1960, Cal App 3d Dist) 180 Cal App 2d 149, 4 Cal Rptr 443, 1960 Cal App LEXIS 2323.

Generally, everything that belongs to demised premises or is used with or appurtenant to them, and is reasonably essential to their enjoyment, passes as incident to them unless specifically reserved. *Froomer v. Drollinger* (1962, Cal App 2d Dist) 201 Cal App 2d 90, 19 Cal Rptr 891, 1962 Cal App LEXIS 2568.

A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised, whereas an easement is a servitude, and when it is abandoned it does not "revert," it is merely extinguished; thus, where a deed conveyed an easement in fee simple to a grantee, and the granting clause included a grant of "the reversion and reversions," the grantee did not obtain title to the land by reversion upon the abandonment of the easement by a successor grantee. *Johnson v. Ocean Shore Railroad Co.* (1971, Cal App 1st Dist) 16 Cal App 3d 429, 94 Cal Rptr 68, 1971 Cal App LEXIS 1597.

Deed to a railroad company conveyed a fee interest, not merely an easement. References to a "right-of-way" did not create a presumption that an easement was intended but simply described the purpose to which the land would be put by the railroad company. *Severns v. Union Pacific Railroad Co.* (2002, Cal App 2d Dist) 101 Cal App 4th 1209, 125 Cal Rptr 2d 100, 2002 Cal App LEXIS 4614, rehearing denied (2002, Cal App 2d Dist) 102 Cal App 4th 655d, 2002 Cal App LEXIS 4718.

2. Construction

This section merely enumerates and defines the different kinds of easements which may be appurtenant to land; and does not prescribe or regulate the manner of acquiring them. *McDaniel v. Cummings* (1890) 83 Cal 515, 23 P 795, 1890 Cal LEXIS 719.

The servitudes enumerated are real servitudes imposed for the benefit of the estate to which the right belongs, and resting upon the estate on which the obligation is imposed. *Painter v. Pasadena Land & Water Co.* (1891) 91 Cal 74, 27 P 539, 1891 Cal LEXIS 1050.

This section declares the servitudes which may attach to other lands which are then called easements. *Los Angeles Terminal Land Co. v. Muir* (1902) 136 Cal 36, 68 P 308, 1902 Cal LEXIS 649; *Stockton Gas & Electric Co. v. San Joaquin County* (1905) 148 Cal 313, 83 P 54, 1905 Cal LEXIS 681; *Beem v. Reichman* (1918, Cal App) 36 Cal App 258, 171 P 972, 1918 Cal App LEXIS 478.

By its specification of certain kinds of servitudes that may be attached to land for the benefit of the dominant tenement this section does not purport to designate all such servitudes. *Jersey Farm Co. v. Atlanta Realty Co.* (1912) 164 Cal 412, 129 P 593, 1912 Cal LEXIS 361; *Wright v. Best* (1942) 19 Cal 2d 368, 121 P2d 702, 1942 Cal LEXIS 372.

Although a permanent structure is not mentioned in the enumerated easements in CC § 801, that list is not exhaustive, and an easement between private parties that authorized the construction of a garage on the easement was permissible. *Blackmore v. Powell* (2007, Cal App 2d Dist) 150 Cal App 4th 1593, 59 Cal Rptr 3d 527, 2007 Cal App LEXIS 805.

3. Definition of Easement

Easement is restriction on rights of owner of servient tenement. *Anderson v. Southern California Edison Co.* (1926, Cal App) 77 Cal App 328, 246 P 559, 1926 Cal App LEXIS 293.

An easement is generally defined as interest in land created by grant or agreement, express or implied, which confers a right on the owner thereof to some profit, benefit, dominion or lawful use out of or over the estate of another. *Mosier v. Mead* (1955) 45 Cal 2d 629, 290 P2d 495, 1955 Cal LEXIS 351.

An easement is right that subjects land or tenement to some service for use of other land or tenement belonging to another owner, involving primarily the privilege of doing certain act on, or to detriment of, former; it is privilege without profit that owner of one tenement has right to enjoy in respect of that tenement in or over tenement of another person, by reason whereof latter is obliged to suffer or refrain from doing something on his own tenement for advantage of former. *Bates v. Terry* (1961, Cal App 2d Dist) 194 Cal App 2d 137, 14 Cal Rptr 829, 1961 Cal App LEXIS 1798.

Easement, unlike license, creates incorporeal interest in land and is generally defined as interest in land created by grant or agreement, express or implied, that confers right to some profit, benefit, dominion, or lawful use out of or over another's estate. *Guerra v. Packard* (1965, Cal App 1st Dist) 236 Cal App 2d 272, 46 Cal Rptr 25, 1965 Cal App LEXIS 823.

An easement is an incorporeal right entitling its owner to use or enjoy another's land. *Frahm v. Briggs* (1970, Cal App 2d Dist) 12 Cal App 3d 441, 90 Cal Rptr 725, 1970 Cal App LEXIS 1641.

4. License Distinguished

Easement, unlike license, creates interest in land--an incorporeal interest. *Eastman v. Piper* (1924, Cal App) 68 Cal App 554, 229 P 1002, 1924 Cal App LEXIS 345.

Words "easement" and "license" have been used indiscriminately, and in interpreting document in that regard courts look to intent of parties rather than to words which they have used. *Fisher v. General Petroleum Corp.* (1954, Cal App) 123 Cal App 2d 770, 267 P2d 841, 1954 Cal App LEXIS 1256.

License in respect to real estate is authority to do particular act, or series of acts, on another's land without possessing estate in it. *Guerra v. Packard* (1965, Cal App 1st Dist) 236 Cal App 2d 272, 46 Cal Rptr 25, 1965 Cal App LEXIS 823.

5. --Profit A Prendre Distinguished

Profit a prendre is interest in land itself and creates covenant running with land, as distinguished from mere personal obligation of owner of property. *Santa Clara Sand & Gravel Co. v. State Bd. of Equalization* (1964, Cal App 1st Dist) 225 Cal App 2d 676, 37 Cal Rptr 506, 1964 Cal App LEXIS 1418.

Easement as distinguished from profit a prendre is interest in land in possession of another which creates limited interest. It is primarily privilege of doing of certain act on another's property. *Sehle v. Producing Properties, Inc.* (1964, Cal App 4th Dist) 230 Cal App 2d 430, 41 Cal Rptr 136, 1964 Cal App LEXIS 888.

Profits a prendre and easements cannot be differentiated in terms of the legal consequences stemming from ownership. *Gerhard v. Stephens* (1968) 68 Cal 2d 864, 69 Cal Rptr 612, 442 P2d 692, 1968 Cal LEXIS 212.

6. Easement as Interest in Land

Easement may be freehold or chattel real, according to its duration, and is in either case interest in real property. *Crowell v. Riverside* (1938, Cal App) 26 Cal App 2d 566, 80 P2d 120, 1938 Cal App LEXIS 1081.

Easement is interest in land of another, but such interest carries only right to use land and does not carry fee. *Lyons v. Schwartz* (1940, Cal App) 40 Cal App 2d 60, 104 P2d 383, 1940 Cal App LEXIS 66.

Easement creates interest in lands, incorporeal interest in servient estate, and it is not controlled by principles governing equitable servitudes and restrictive covenants. *Elliott v. McCombs* (1941) 17 Cal 2d 23, 109 P2d 329, 1941 Cal LEXIS 243.

Easement implies interest in land in and over which it is to be enjoyed. *Nelson v. Robinson* (1941, Cal App) 47 Cal App 2d 520, 118 P2d 350, 1941 Cal App LEXIS 1199; *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624.

Easement is incorporeal hereditament in servient estate. *Westlake v. Silva* (1942, Cal App) 49 Cal App 2d 476, 121 P2d 872, 1942 Cal App LEXIS 834; *Hayward v. Mohr* (1958, Cal App 1st Dist) 160 Cal App 2d 427, 325 P2d 209, 1958 Cal App LEXIS 2135.

Easement is interest in land of another, incorporeal right which entitles owner to use or enjoy other's land. *Moots v. Kasten* (1949, Cal App) 90 Cal App 2d 734, 203 P2d 537, 1949 Cal App LEXIS 1039.

Easement over land is real property. *County of Los Angeles v. Wright* (1951, Cal App) 107 Cal App 2d 235, 236 P2d 892, 1951 Cal App LEXIS 1887.

Easement is incorporeal interest imposed on corporeal property, conveying no right to participation in profits arising from such property. *Hayward v. Mohr* (1958, Cal App 1st Dist) 160 Cal App 2d 427, 325 P2d 209, 1958 Cal App LEXIS 2135.

Though easement is interest in land for creation of which compliance with statute of frauds is requisite, it is not estate in land. *Hayward v. Mohr* (1958, Cal App 1st Dist) 160 Cal App 2d 427, 325 P2d 209, 1958 Cal App LEXIS 2135.

Whenever right to easement is, in its nature, appropriate and useful adjunct of land owned by grantee of easement and there is nothing to show that parties intended easement to be mere personal right, easement will be held to be appurtenant and not in gross. *Leggio v. Haggerty* (1965, Cal App 5th Dist) 231 Cal App 2d 873, 42 Cal Rptr 400, 1965 Cal App LEXIS 1577.

An easement is an interest in land created by grant or agreement, express or implied, which confers on its owners a right to some profit or benefit, dominion, or lawful use out of or over the estate of another. *Costa Mesa Union School Dist. v. Security First Nat'l Bank* (1967, Cal App 4th Dist) 254 Cal App 2d 4, 62 Cal Rptr 113, 1967 Cal App LEXIS 1361.

7. In Gross or Appurtenant

Servitude cannot exist in gross, but must be appurtenant to other benefited property. *Martin v. Ray* (1946, Cal App) 76 Cal App 2d 471, 173 P2d 573, 1946 Cal App LEXIS 736; *Chandler v. Smith* (1959, Cal App 3d Dist) 170 Cal App 2d 118, 338 P2d 522, 1959 Cal App LEXIS 2178.

Easement appurtenant to lot follows ownership of lot in whomsoever's hands same may come. *Whitson v. Goudeseune* (1955, Cal App 2d Dist) 137 Cal App 2d 445, 290 P2d 590, 1955 Cal App LEXIS 1205.

Intended easement will never be construed as personal when it may fairly be construed as appurtenant. *St. Louis v. De Bon* (1962, Cal App 1st Dist) 204 Cal App 2d 464, 22 Cal Rptr 443, 1962 Cal App LEXIS 2265; *Leggio v. Haggerty* (1965, Cal App 5th Dist) 231 Cal App 2d 873, 42 Cal Rptr 400, 1965 Cal App LEXIS 1577; *Smith v. Hill* (1965, Cal App 4th Dist) 237 Cal App 2d 374, 47 Cal Rptr 49, 1965 Cal App LEXIS 1264.

An easement may be appurtenant although the deed does not expressly declare it to be so, and the law favors such an interpretation. *Continental Baking Co. v. Katz* (1968) 68 Cal 2d 512, 67 Cal Rptr 761, 439 P2d 889, 1968 Cal LEXIS 286.

When the language of a deed is ambiguous, and it does not clearly appear whether the easement was intended to be in gross or appurtenant to land, it is never construed as personal when it may fairly be construed as appurtenant to some other estate. *Continental Baking Co. v. Katz* (1968) 68 Cal 2d 512, 67 Cal Rptr 761, 439 P2d 889, 1968 Cal LEXIS 286.

8. Creation Generally

Easement can only be created by deed of grant, or by prescription. *Pinheiro v. Bettencourt* (1911, Cal App) 17 Cal App 111, 118 P 941, 1911 Cal App LEXIS 112.

Easement can be created only by grant, either express or implied from necessity, estoppel, or long enjoyment amounting to prescription presupposing grant. *Muzio v. Erickson* (1919, Cal App) 41 Cal App 413, 182 P 974, 1919 Cal App LEXIS 370.

9. Necessity for Dominant and Servient Tenement

Two tenements are necessary to the creation of an easement appurtenant, a dominant one in favor of which the obligation exists, and a servient one upon which the obligation rests. *Wright v. Best* (1942) 19 Cal 2d 368, 121 P2d 702, 1942 Cal LEXIS 372.

In order that restrictive covenants have force, not only as between original parties, but as between such lot owners and other lot owners, it must appear that their insertion in deed by original grantor was, in effect, creation of what amounts to servitude, to burden of which lot was subjected as servient tenement, and to benefit of which remainder of tract was entitled as dominant tenement. *Martin v. Ray* (1946, Cal App) 76 Cal App 2d 471, 173 P2d 573, 1946 Cal App LEXIS 736.

Where restrictions imposed by deeds as to parcel of land run only to original grantor or subdivider and his assigns, they do not run to other owners of property in tract not designated or described in said deeds. *Martin v. Ray* (1946, Cal App) 76 Cal App 2d 471, 173 P2d 573, 1946 Cal App LEXIS 736.

Easement appurtenant attaches to land of owner of easement. *Moots v. Kasten* (1949, Cal App) 90 Cal App 2d 734, 203 P2d 537, 1949 Cal App LEXIS 1039.

To grant easement, it is necessary to describe both the land to be subjected to use and the use to which it is to be subjected. *Glendora v. Faus* (1957, Cal App 2d Dist) 148 Cal App 2d 920, 307 P2d 976, 1957 Cal App LEXIS 2454.

Where property owner granted to company opening up subdivision easement for sewer purposes and, under terms of agreement, received therefor right to make connections to sewer without any connection charge or sewer rental, such right of free sewer connection and rental was not itself easement, since easement granted to company, though interest in land, was not itself either land or estate in land and could not act as servient tenement for claimed easement of free service. *Hayward v. Mohr* (1958, Cal App 1st Dist) 160 Cal App 2d 427, 325 P2d 209, 1958 Cal App LEXIS 2135.

Though no easements exist so long as unity of possession remains because owner of whole estate may at any time rearrange quality of several servitudes, on severance by sale of part, right of owner to redistribute ceases, and easements or servitudes are created corresponding to benefits or burdens existing at time of sale. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Where deed establishes certain restrictions but fails to designate or identify dominant tenement, subsequent purchaser cannot be charged with recorded knowledge that original grantor had retained other lands to be benefited by covenant and is entitled to construe covenant as imposing no servitude on land but as creating mere personal burden

adhering exclusively to original covenantor. *Chandler v. Smith* (1959, Cal App 3d Dist) 170 Cal App 2d 118, 338 P2d 522, 1959 Cal App LEXIS 2178.

10. Prescriptive Easements

One may not acquire an easement by prescription to maintain a public nuisance, and there can be no prescriptive right to pollute a stream to the detriment of the public. *Smallpage v. Turlock Irrigation Dist.* (1938, Cal App) 26 Cal App 2d 538, 79 P2d 752, 1938 Cal App LEXIS 1078.

11. Easements by Contract

While easements are generally acquired by grant or prescription, they may be acquired by contract, where from nature of subject matter it is evident that parties intended that privileges designed for permanent use of property should form incident of principal contract. *Weller v. Brown* (1911) 160 Cal 515, 117 P 517, 1911 Cal LEXIS 541.

Easement may be created by executed oral agreement. *Rose v. Peters* (1943, Cal App) 59 Cal App 2d 833, 139 P2d 983, 1943 Cal App LEXIS 389.

Where parties desire to create mutual rights in real property of character of equitable servitudes, they must express their intention in written instruments exchanged between them that constitute final expression of their understanding. *Anderson v. Pacific Ave. Inv. Co.* (1962, Cal App 3d Dist) 201 Cal App 2d 260, 19 Cal Rptr 829, 1962 Cal App LEXIS 2589, overruled in part *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal 4th 345, 47 Cal Rptr 2d 898, 906 P2d 1314, 1995 Cal LEXIS 7352.

Provisions of instrument purporting to create mutual equitable servitudes in real property will be strictly construed; any doubt as to meaning of such provisions will be resolved in favor of free use of property. *Anderson v. Pacific Ave. Inv. Co.* (1962, Cal App 3d Dist) 201 Cal App 2d 260, 19 Cal Rptr 829, 1962 Cal App LEXIS 2589, overruled in part *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal 4th 345, 47 Cal Rptr 2d 898, 906 P2d 1314, 1995 Cal LEXIS 7352.

12. Easements by Grant

No intention to convey exclusive easement can be imputed to owner of servient tenement in absence of clear indication of such intention. *Pasadena v. California--Michigan Land & Water Co.* (1941) 17 Cal 2d 576, 110 P2d 983, 1941 Cal LEXIS 290.

Rules applicable to construction of deeds apply to instruments conveying easements. *County of Los Angeles v. Wright* (1951, Cal App) 107 Cal App 2d 235, 236 P2d 892, 1951 Cal App LEXIS 1887.

Express grant of easement for use which could be made legal by obtaining sanction of specified state agency, such as construction and maintenance of levee with permission of State Reclamation Board, would not be a grant for illegal purpose. *Mosier v. Mead* (1955) 45 Cal 2d 629, 290 P2d 495, 1955 Cal LEXIS 351.

Because of rule that words of conveyance are to be construed more strictly against grantor than against grantee, court will be more circumspect in its approach to decreeing easement by reservation in favor of grantor than it will be for grantee. *Jordan v. Henck* (1958, Cal App 4th Dist) 166 Cal App 2d 321, 333 P2d 117, 1958 Cal App LEXIS 1405.

Reservation in dedication of land to county for public highway purposes of " ... the right to construct, install or place in, under or upon said road any pipe, pipelines, pole, pole lines, wire, conduit or any other form of installation for transportation or transmission of power or of telephonic or telegraphic messages or communications ... " was effective to reserve easement for purpose of installing and maintaining water pipes. *Wofford Heights Associates v. County of Kern* (1963, Cal App 5th Dist) 219 Cal App 2d 34, 32 Cal Rptr 870, 1963 Cal App LEXIS 2338.

A lease of land, one of a series of three leases of lands constituting in all a larger parcel, created an easement for parking thereon in favor of dominant tenements, the subject of the other two leases, for although the lease of the servient tenement referred to a presently existing parking area adjacent to the "leased premises," the three leases must be read together and the conclusion reached that the term "leased premises" in fact referred to the larger parcel, the subject of the three leases, to which the servient tenement was adjacent. *Renden v. Geneva Dev. Corp.* (1967, Cal App 2d Dist) 253 Cal App 2d 578, 61 Cal Rptr 463, 1967 Cal App LEXIS 2381.

13. Easements by Implication

Although prior use of property is one of circumstances to be considered, easements of access can be implied in situations in which there was no prior use. *Day v. Robison* (1955, Cal App 1st Dist) 131 Cal App 2d 622, 281 P2d 13, 1955 Cal App LEXIS 2102.

Generally, one of elements of grant by implication is that before separation of title use that gives rise to easement must have been so long continued and so obvious as to show that it was meant to be permanent, but such long continued use is not absolute requirement, since purpose of doctrine of implied easements is to give effect to actual intent of parties as shown by all facts and circumstances. *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624.

To establish easement by implication on severance of unity of ownership in estate, it must be shown that there has been separation of title, that prior thereto, use on which claim of easement is based was so long continued and obvious as to show intention of permanency, and that easement is reasonably necessary to beneficial enjoyment of land granted. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Implication of easement can only be made in connection with conveyance. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Where implied grant of easement could only have occurred at time of severance of land from common owner by conveyance, but at practically same time grantor and grantee entered into separate agreement covering same subject matter as claimed easement, this was sufficient, notwithstanding other elements of implied easement being present, to support finding that there was no intent to grant easement. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Finding that there was no implied easement for ingress and egress over defendants' land to plaintiff's land was supported by inference that plaintiff knew at time of purchase of his lot from his predecessor in title that permitted uses were temporary and by express agreement. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Implied easement comes into existence where there is severance of one parcel from another and parties are silent as to use of one of severed parcels by other. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Easements by implication are not favored. *Jordan v. Henck* (1958, Cal App 4th Dist) 166 Cal App 2d 321, 333 P2d 117, 1958 Cal App LEXIS 1405.

Attendant on, and recognized as appendage of, rule with respect to creation of easement by implication where owner of land divides it into two parts and grants away one of them, is question of "necessity for reasonable enjoyment," which is one of fact to be decided by trial court when all evidence is presented in case. *Jordan v. Henck* (1958, Cal App 4th Dist) 166 Cal App 2d 321, 333 P2d 117, 1958 Cal App LEXIS 1405.

The factors essential to the creation of an easement by implied grant are a separation of the title; before the separation takes place the use which gives rise to the easement shall have been so long continued and so obvious as to show that it was intended to be permanent; and the easement shall be reasonably necessary to the beneficial enjoyment of the land granted. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

14. Implication from Intent of Parties

Whether easement arises by implication depends on intent of parties and court will take into consideration circumstances attending transaction, particular situation of parties and state of thing granted. *Mosier v. Mead* (1955) 45 Cal 2d 629, 290 P2d 495, 1955 Cal LEXIS 351.

Purpose of doctrine of implied easements is to give effect to actual intent of parties as shown by all facts and circumstances. *Day v. Robison* (1955, Cal App 1st Dist) 131 Cal App 2d 622, 281 P2d 13, 1955 Cal App LEXIS 2102; *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761; *Jordan v. Henck* (1958, Cal App 4th Dist) 166 Cal App 2d 321, 333 P2d 117, 1958 Cal App LEXIS 1405.

Whether or not there is implied easement depends on intent. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

No implied easement can come into effect when rights of parties are being determined by contract. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Where parties are not silent and express their intentions in written agreement, law may not imply easement. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Purpose of doctrine of implied easements is to give effect to parties' actual intent as shown by all facts and circumstances. *Froomer v. Drollinger* (1962, Cal App 2d Dist) 201 Cal App 2d 90, 19 Cal Rptr 891, 1962 Cal App LEXIS 2568.

Law never imposes implied easement or easement by necessity contrary to parties' express intent. *County of Los Angeles v. Bartlett* (1962, Cal App 2d Dist) 203 Cal App 2d 523, 21 Cal Rptr 776, 1962 Cal App LEXIS 2390.

Implication of easement by necessity is based on parties' inferred intent, which is to be determined from terms of instrument and circumstances surrounding transaction. *County of Los Angeles v. Bartlett* (1962, Cal App 2d Dist) 203 Cal App 2d 523, 21 Cal Rptr 776, 1962 Cal App LEXIS 2390.

The purpose of the doctrine of implied easement is to give effect to the intentions of the parties, as shown by all of the facts and circumstances of the case. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

15. Rights of Way Generally

Right of way expressly granted for limited period or on contingency or condition is just as firmly vested for time being as would be leasehold. *Taylor v. Ballard* (1919, Cal App) 41 Cal App 232, 182 P 464, 1919 Cal App LEXIS 406.

Rights of way are classified as easements. *Anderson v. Willson* (1920, Cal App) 48 Cal App 289, 191 P 1016, 1920 Cal App LEXIS 349; *Parks v. Gates* (1921) 186 Cal 151, 199 P 40, 1921 Cal LEXIS 423; *Smallpage v. Turlock Irrigation Dist.* (1938, Cal App) 26 Cal App 2d 538, 79 P2d 752, 1938 Cal App LEXIS 1078; *Balestra v. Button* (1942, Cal App) 54 Cal App 2d 192, 128 P2d 816, 1942 Cal App LEXIS 339.

Right of way is primarily a privilege to pass over another's land; it does not exist as natural right, but must be created by grant or by its equivalent. *Highland Realty Co. v. San Rafael* (1956) 46 Cal 2d 669, 298 P2d 15, 1956 Cal LEXIS 221.

Right of way may be appurtenant to land though servient tenement is not adjacent to dominant, and though it does not appear what grantee's rights over intervening land, if any, may be. *Jensen v. Ritter* (1960, Cal App 3d Dist) 185 Cal App 2d 473, 8 Cal Rptr 263, 1960 Cal App LEXIS 1528.

Grant in broad terms of easement for road purposes creates general right of way capable of use in connection with dominant tenement for all reasonable purposes. *Wall v. Rudolph* (1961, Cal App 2d Dist) 198 Cal App 2d 684, 18 Cal Rptr 123, 1961 Cal App LEXIS 2594.

"Driveway" is path leading from garage or house to street, used especially by automobiles; while driveways are commonly used for multifarious additional purposes, including general maintenance and access functions, law is jealous of claim of easement and of extent of rights claimed under instrument granting easement. *Dolske v. Gormley* (1962) 58 Cal 2d 513, 25 Cal Rptr 270, 375 P2d 174, 1962 Cal LEXIS 282.

Easements of way may be either appurtenant or in gross (Civ Code, § 801, subd 4, § 802, subd 5) and where by grant, the extent thereof is determined by the terms of the grant (Civ Code, § 806) which is to be interpreted in like manner with contracts in general (Civ Code, § 1066). *Continental Baking Co. v. Katz* (1968) 68 Cal 2d 512, 67 Cal Rptr 761, 439 P2d 889, 1968 Cal LEXIS 286.

Unlike a private easement, the use rights of a public right-of-way are vested equally in each and every member of the public; therefore, the court rejected property owners' argument that a private corporation should have been denied use of the right-of-way to install a natural gas pipeline because the corporation was a private company rather than a public utility; the corporation's status as a private corporation no more disqualified it from access to the underground portion of the right-of-way than it would justify excluding the corporation's trucks from using the aboveground

right-of-way. *Bello v. ABA Energy Corp.* (2004, Cal App 1st Dist) 121 Cal App 4th 301, 16 Cal Rptr 3d 818, 2004 Cal App LEXIS 1266.

16. Rights of Way Defined

Principal distinction between easement and right of way in gross, is, that in first there is, and in second there is not, dominant tenement. *Wagner v. Hanna* (1869) 38 Cal 111, 1869 Cal LEXIS 121.

Right of way is privilege of passage over land of another with implied right under such circumstances, to make such changes in surface of land as are necessary to make it available for travel in convenient manner. *Ballard v. Titus* (1910) 157 Cal 673, 110 P 118, 1910 Cal LEXIS 312; *White v. Walsh* (1951, Cal App) 105 Cal App 2d 828, 234 P2d 276, 1951 Cal App LEXIS 1553.

Words "right of way" may refer to land owned in unlimited fee by owner of road or railroad passing over it, or may be used to denote an easement. *Glendora v. Faus* (1957, Cal App 2d Dist) 148 Cal App 2d 920, 307 P2d 976, 1957 Cal App LEXIS 2454.

Right to cross over lands of another is easement, and if this right is enjoyed with, and used for benefit of, certain premises in such manner as to be adjunct of land, it is appurtenant easement. *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624.

At common law, "right of way" is defined as the privilege of passing over another's land in some particular line, but the term is frequently interpreted to mean not only such right of passage but also the strip of land itself, without regard to the quality of the estate or interest, and, when so used, the term is merely descriptive of the purpose for which the strip of land is to be used. *Miro v. Superior Court* (1970, Cal App 4th Dist) 5 Cal App 3d 87, 84 Cal Rptr 874, 1970 Cal App LEXIS 1418.

17. Rights of Way--Particular Actions

A right of way when applied to railroads, canals, and similar instrumentalities is susceptible of a two-fold significance. It is used indiscriminately to describe, not only the easement, but as well the strip of land itself that is occupied for such use. *Anderson v. Willson* (1920, Cal App) 48 Cal App 289, 191 P 1016, 1920 Cal App LEXIS 349.

Whether in any particular case the words right of way for a canal mean a mere easement in the land of another for the use of a canal or the strip of land over which the canal runs is purely a question of intention; and the sense in which the words are employed by the contracting parties in any given case will depend upon their intention as disclosed by the language of their contract, aided, when proper, by reference to the attending circumstances. *Anderson v. Willson* (1920, Cal App) 48 Cal App 289, 191 P 1016, 1920 Cal App LEXIS 349.

A direct grant of a "right of way" for a road carries with it only an easement in the land, and nothing passes but what is necessary for its reasonable and proper enjoyment. *Parks v. Gates* (1921) 186 Cal 151, 199 P 40, 1921 Cal LEXIS 423; *Smallpage v. Turlock Irrigation Dist.* (1938, Cal App) 26 Cal App 2d 538, 79 P2d 752, 1938 Cal App LEXIS 1078.

Evidence that during negotiations for sale of lot by defendant to plaintiff, and as part of consideration, defendant agreed that plaintiff should have use of certain trail across his land sufficiently supported finding that plaintiffs were owners of easement of right of way over trail. *Douglas v. Lewin* (1933, Cal App) 131 Cal App 159, 20 P2d 959, 1933 Cal App LEXIS 782.

Grant to railroad of right of way "upon, over, and along a strip of land" conveys only easement and not underlying land. *Highland Realty Co. v. San Rafael* (1956) 46 Cal 2d 669, 298 P2d 15, 1956 Cal LEXIS 221.

An easement involves primarily the privilege of doing a certain act on, or to the detriment of, another's property. *Wright v. Best* (1942) 19 Cal 2d 368, 121 P2d 702, 1942 Cal LEXIS 372.

Grant of right to use hall or stairway of building constitutes easement but confers no interest in soil which will survive destruction of building without fault of owner thereof. *Rothschild v. Wolf* (1942) 20 Cal 2d 17, 123 P2d 483, 1942 Cal LEXIS 239, 154 ALR 75.

Right to cross land of another with poles and wires and to maintain telephone line thereon is real property; and it is easement appurtenant to land where it is in its nature appropriate and useful adjunct thereto, and where there is nothing

indicating contrary intention of parties. *Balestra v. Button* (1942, Cal App) 54 Cal App 2d 192, 128 P2d 816, 1942 Cal App LEXIS 339.

Agreement whereby petroleum corporation grants gas company "right of way and easement" to lay pipeline across premises of petroleum corporation subject to conditions set forth in agreement created not easement, but mere license. *Fisher v. General Petroleum Corp.* (1954, Cal App) 123 Cal App 2d 770, 267 P2d 841, 1954 Cal App LEXIS 1256.

Grant to railroad company of right of way is generally construed as conveying easement over land described rather than fee title to land. *Ocean S. R. Co. v. Doelger* (1954, Cal App) 127 Cal App 2d 392, 274 P2d 23, 1954 Cal App LEXIS 1353.

While "right of way" may mean land on which it exists, in grant to railroad it means only easement, not land granted. *Ocean S. R. Co. v. Doelger* (1954, Cal App) 127 Cal App 2d 392, 274 P2d 23, 1954 Cal App LEXIS 1353.

State or county may in proper exercise of police power do many things which are not compensable to abutting property owner, such as constructing traffic island, placing dividing strips which deprive abutter of direct access to opposite side of highway, painting double white lines on highway, or designating entire street as one-way street. *People ex rel. Department of Public Works v. Russell* (1957) 48 Cal 2d 189, 309 P2d 10, 1957 Cal LEXIS 177.

Lessee of realty who maintained thereon two sumps into which he invited oil companies to dump oil field wastes for charge did not have right of way easement in roads across other lands with respect to second sump where land on which it was located was never dominant tenement with respect to any of property subject to right of way in question. *Wall v. Rudolph* (1961, Cal App 2d Dist) 198 Cal App 2d 684, 18 Cal Rptr 123, 1961 Cal App LEXIS 2594.

The owner of a strip of land in a residential tract was not entitled to use it as a "way of necessity" to two parcels it owned outside the tract, where the owner's predecessor in title, who owned all of the property involved, had no "way of necessity" until he "landlocked" himself by the sale of the balance of the parcel in which the strip of land was located, and where the claimed way of necessity was not created by the entity against whom it was asserted, nor by its assignor. *Lincoln Sav. & Loan Assn. v. Riviera Estates Assn.* (1970, Cal App 2d Dist) 7 Cal App 3d 449, 87 Cal Rptr 150, 1970 Cal App LEXIS 2178.

In theory, the physical assets of a water system could be located wholly on easements and rights-of-way upon lands owned by someone other than the owner of the water system. *Security Pac. Nat. Bank v. City of San Diego* (1971, Cal App 4th Dist) 19 Cal App 3d 421, 97 Cal Rptr 61, 1971 Cal App LEXIS 1295.

18. Way of Necessity

A way of necessity is derived from the law and depends solely on the situation and boundaries of the land to which it is claimed to be appurtenant as they existed at the time of conveyance, resting in necessity and not in convenience. *Beem v. Reichman* (1918, Cal App) 36 Cal App 258, 171 P 972, 1918 Cal App LEXIS 478.

Way of necessity arises from necessity alone and continues only so long as necessity exists. *Smith v. Skrbek* (1945, Cal App) 71 Cal App 2d 351, 162 P2d 674, 1945 Cal App LEXIS 897.

Claim of easement by necessity is ordinarily inconsistent with claim of prescriptive right to use private roadway. *Smith v. Skrbek* (1945, Cal App) 71 Cal App 2d 351, 162 P2d 674, 1945 Cal App LEXIS 897.

Easement by necessity arises by operation of law, when grantor conveys land that is completely shut off from access to any road by land retained by grantor or by land of grantor and that of stranger. *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624; *Tarr v. Watkins* (1960, Cal App 2d Dist) 180 Cal App 2d 362, 4 Cal Rptr 293, 1960 Cal App LEXIS 2349; *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983; *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

Easement that provides only means of access to property will, ordinarily, be considered as being appurtenant thereto. *People ex rel. Department of Public Works v. Logan* (1961, Cal App 5th Dist) 198 Cal App 2d 581, 17 Cal Rptr 674, 1961 Cal App LEXIS 2579.

Way of necessity, as opposed to easement arising by implication from preexisting use, is not based on any preexisting use but on need for way across granted or reserved premises and rests on public policy, often thwarting intent of

grantor or grantee, that lands should not be rendered unfit for occupancy or other use by lack of access. *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

Questions respecting permanency, apparenacy, and continuity of servitude, of importance to implied easements, are inapplicable to typical ways of necessity, and it is immaterial in regard to ways of necessity whether grant is voluntary or involuntary by operation of law. *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

Right of way of necessity arises by operation of law when it is established that there is strict necessity for right of way, as when claimants' property is landlocked, and that dominant and servient tenements were under same ownership at time of conveyance giving rise to necessity. *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

If parcel conveyed and parcel retained by grantor are both landlocked, a way of necessity cannot arise, because basic reason for its creation, to permit communication with outside world, is not present. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

Way of necessity persists only so long as there is necessity for it and is eliminated on later creation of legally usable means of access. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

19. Amount of Necessity Required

Evidence supported finding that defendants were entitled to way of necessity over plaintiff's land, where evidence relating to defendants' ownership of other land over which they might have access to public highway was map negating that ownership, and where evidence of circumstances surrounding defendants' acquisition of their land gave rise to inference that they did not acquire and did not have right to ingress and egress over such land. *Rozelle v. Watts* (1951, Cal App) 106 Cal App 2d 185, 234 P2d 724, 1951 Cal App LEXIS 1730.

If road bounding grantee's property gives access to outside world, no easement of necessity can arise, it being immaterial that claimed way on grantor's land would give grantee more convenient access. *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624.

Way of necessity exists only in case of strict necessity, that is, when claimed way constitutes only access to claimant's property. *Marin County Hospital Dist. v. Cicurel* (1957, Cal App 1st Dist) 154 Cal App 2d 294, 316 P2d 32, 1957 Cal App LEXIS 1624.

Strict necessity is not element of implied easement by severance of tenements; all that is needed is that it be proved that claimed easement is reasonably necessary to beneficial enjoyment of land granted. *Warfield v. Basich* (1958, Cal App 1st Dist) 161 Cal App 2d 493, 326 P2d 942, 1958 Cal App LEXIS 1761.

Way of necessity exists only in case of strict necessity, that is, where claimed way constitutes only access to claimant's property. *Tarr v. Watkins* (1960, Cal App 2d Dist) 180 Cal App 2d 362, 4 Cal Rptr 293, 1960 Cal App LEXIS 2349; *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

If road bounding grantee's property gives access to outside world, no easement of necessity can arise, it being immaterial that claimed way on grantor's land would give grantee more convenient access. *Tarr v. Watkins* (1960, Cal App 2d Dist) 180 Cal App 2d 362, 4 Cal Rptr 293, 1960 Cal App LEXIS 2349.

To be easement by necessity, route must in fact be only possible means of access; test is one of strict necessity and fact that another way is too steep, too narrow, or that other or like difficulties exist does not alter rule unless such difficulties cannot be overcome and it appears that claimant of easement by necessity has, in fact, no other way. *Zunino v. Gabriel* (1960, Cal App 1st Dist) 182 Cal App 2d 613, 6 Cal Rptr 514, 1960 Cal App LEXIS 2153, 80 ALR2d 1088.

Mere use of route for convenience does not give rise to easement by necessity. *Zunino v. Gabriel* (1960, Cal App 1st Dist) 182 Cal App 2d 613, 6 Cal Rptr 514, 1960 Cal App LEXIS 2153, 80 ALR2d 1088.

Right of way from necessity cannot be established without showing of strict necessity. *County of Los Angeles v. Bartlett* (1962, Cal App 2d Dist) 203 Cal App 2d 523, 21 Cal Rptr 776, 1962 Cal App LEXIS 2390.

Strict necessity does not have to exist to create easement by implication; all that is needed is reasonable necessity, and it is not required that claimed easement be only means of access. *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

20. Light and Air

An easement of light and air can be acquired in this state only by express grant, and not by user nor implied grant. *Kennedy v. Burnap* (1898) 120 Cal 488, 52 P 843, 1898 Cal LEXIS 795.

Our statute states that light and air may be the subject of an easement, and that they may become appurtenant to land, but does not say when they arise. *Kennedy v. Burnap* (1898) 120 Cal 488, 52 P 843, 1898 Cal LEXIS 795.

Easements for light and air may be created by words of covenant as well as by words of grant. *Bryan v. Grosse* (1909) 155 Cal 132, 99 P 499, 1909 Cal LEXIS 403.

Agreement between coterminous lot owners that each would "give" certain frontage along their common boundary line "for the purpose of light," was properly construed to mean that space thus to be given by each of parties was to be left vacant to end that mutual easements of light for two parcels should exist in land thus left to be uncovered by any building. *Knoch v. Haizlip* (1912) 163 Cal 146, 124 P 998, 1912 Cal LEXIS 387.

Right to receive light and air, which may under CC § 801(8) of this section, be a servitude attached to land, is property right that can be created by instrument. *Mock v. Shulman* (1964, Cal App 2d Dist) 226 Cal App 2d 263, 38 Cal Rptr 39, 1964 Cal App LEXIS 1279.

A landowner has no easement over adjoining land for light and air in the absence of an express grant or covenant. *Katcher v. Home Sav. & Loan Asso.* (1966, Cal App 2d Dist) 245 Cal App 2d 425, 53 Cal Rptr 923, 1966 Cal App LEXIS 1481.

21. Land Abutting on Street, Highway, Etc.

Lots fronting on street have, as appurtenances thereto, certain private easements in street which are part of lots and are private property. *Williams v. Los Angeles R. Co.* (1907) 150 Cal 592, 89 P 330, 1907 Cal LEXIS 552; *Fitzgerald v. Smith* (1928, Cal App) 94 Cal App 480, 271 P 507, 1928 Cal App LEXIS 626.

Owner of property abutting on public street has property right in nature of easement in street which is appurtenant to his abutting property, and which is his private right, as distinguished from his right as member of public. *Bacich v. Board of Control* (1943) 23 Cal 2d 343, 144 P2d 818, 1943 Cal LEXIS 258; *People ex rel. Department of Public Works v. Russell* (1957) 48 Cal 2d 189, 309 P2d 10, 1957 Cal LEXIS 177.

Rights of owner of property abutting highway to use that highway, to have access thereto, and to view therefrom are rights that are inherent in title to property itself and attach to any highway that abuts or may abut the property. *People ex rel. Department of Public Works v. Lipari* (1963, Cal App 4th Dist) 213 Cal App 2d 485, 28 Cal Rptr 808, 1963 Cal App LEXIS 2756.

The abutting owner who owns to the center of the street may exercise any and all rights of dominion over his interest as are not inconsistent with the public easement in the street. *Berkeley v. Gordon* (1968, Cal App 1st Dist) 264 Cal App 2d 461, 70 Cal Rptr 716, 1968 Cal App LEXIS 2106.

22. Right of Ingress and Egress

Owner of lot abutting on public street has by reason of such ownership special easement in street for purpose of ingress and egress, which is property as fully as lot itself. *Cushing-Wetmore Co. v. Gray* (1907) 152 Cal 118, 92 P 70, 1907 Cal LEXIS 318.

Property which abutting owner has in street in front of his land is easement therein for purposes of ingress and egress, which attaches to lot, and in which he has right of property as fully as that which he has in lot itself. *Baldocchi v. Four Fifty Sutter Corp.* (1933, Cal App) 129 Cal App 383, 18 P2d 682, 1933 Cal App LEXIS 1157.

Owners of property abutting on street possess as matter of law not only right to use street in common with other members of public, but also private right or easement for purpose of ingress and egress to and from their property. *Rose v. State* (1942) 19 Cal 2d 713, 123 P2d 505, 1942 Cal LEXIS 404.

Where owner's land borders on highway and there appears to be no satisfactory reason why he cannot construct road to his buildings and orchard on his own land, roadway on property of adjoining owners is not way of necessity. *Smith v. Skrbek* (1945, Cal App) 71 Cal App 2d 351, 162 P2d 674, 1945 Cal App LEXIS 897.

Abutter's right of access to road extends to use of road for purposes of ingress and egress to his property by such modes of conveyance and travel as are appropriate to the highway and in such manner as is customary or reasonable. *People ex rel. Department of Public Works v. Russell* (1957) 48 Cal 2d 189, 309 P2d 10, 1957 Cal LEXIS 177.

Right of access that landowner has to and from his property via abutting street is easement that includes his right that general public may use this means of access to and from his property. *McKinney v. Ruderman* (1962, Cal App 4th Dist) 203 Cal App 2d 109, 21 Cal Rptr 263, 1962 Cal App LEXIS 2340.

Owner of property that abuts on public street has, as incident of such ownership, right or easement of access which is separate and distinct from right of general public in and to street. *Stevenson v. Downey* (1962, Cal App 2d Dist) 205 Cal App 2d 585, 23 Cal Rptr 127, 1962 Cal App LEXIS 2168.

Extent of property owner's easement of access to his property is that which is reasonably required, considering all purposes to which property is adapted. *Goycoolea v. Los Angeles* (1962, Cal App 2d Dist) 207 Cal App 2d 729, 24 Cal Rptr 719, 1962 Cal App LEXIS 1961.

Urban landowner's easement of access in street on which his land abuts consists of right to get into street on which his land abuts and from there, in reasonable manner, to general system of public streets. *Breidert v. Southern Pacific Co.* (1964) 61 Cal 2d 659, 39 Cal Rptr 903, 394 P2d 719, 1964 Cal LEXIS 245.

23. Right of Reasonable View

Abutting owner of property on public highway has easement not only of light, air, and access but of reasonable view of his property from such public street. *Kitzman v. Newman* (1964, Cal App 2d Dist) 230 Cal App 2d 715, 41 Cal Rptr 182, 1964 Cal App LEXIS 927.

Owner of realty abutting public highway has easement of reasonable view of his property from highway and destruction or impairment of that view is destruction of valuable property right. *People ex rel. Department of Public Works v. Wasserman* (1966, Cal App 1st Dist) 240 Cal App 2d 716, 50 Cal Rptr 95, 1966 Cal App LEXIS 1404.

24. Abandonment of Public Street

Rights acquired by abutting owner, by grant or otherwise, to private easement in vacated public street are not affected, although public use ceases on vacation of public street. *Neff v. Ernst* (1957) 48 Cal 2d 628, 311 P2d 849, 1957 Cal LEXIS 214.

On abandonment of public highway (other than city street), abutter's right to use it as member of public ceases, and he may not insist on continued use across property of other landowners. *Smith v. Ricker* (1964, Cal App 3d Dist) 226 Cal App 2d 96, 37 Cal Rptr 769, 1964 Cal App LEXIS 1258.

25. Compensation for Impairment

Owner of property abutting on public street of municipality possesses not only right to use street in common with all other members of public, but also private right or easement for purposes of ingress and egress to and from his or her property, which right may not be taken away or destroyed or substantially impaired or interfered with for public purposes without just compensation therefor. *McCandless v. Los Angeles* (1931) 214 Cal 67, 4 P2d 139, 1931 Cal LEXIS 393.

Owner of property abutting on public street has property right in street, in nature of easement appurtenant to his property, for ingress and egress to and from such property, or access over street to and from property, and compensation must be awarded to him for any substantial impairment of this right. *Goycoolea v. Los Angeles* (1962, Cal App 2d Dist) 207 Cal App 2d 729, 24 Cal Rptr 719, 1962 Cal App LEXIS 1961.

In determining whether landowner is entitled to compensation for impairment of his right of access to general system of public streets, destruction of access to next intersecting street in one direction constitutes significant factor, but it alone cannot justify recovery in absence of facts that disclose substantial impairment of access. *Breidert v. Southern Pacific Co.* (1964) 61 Cal 2d 659, 39 Cal Rptr 903, 394 P2d 719, 1964 Cal LEXIS 245.

Owner of land in rural community in unincorporated county area has right of access, by way of abutting street, to both general system of public streets and of public highways and is entitled to compensation for substantial impairment by county of such right of access. *Valenta v Los Angeles County* (1964) 61 Cal 2d 669, 39 Cal Rptr 909, 394 P2d 725, 1964 Cal LEXIS 246, disapproving holdings to contrary in *Levee Dist. No. 9 v Farmer* (1894) 101 Cal 178, 35 P 569, 1894 Cal LEXIS 1003, and *Swift v Board of Supervisors* (1911, 2nd Dist) 16 Cal App 72, 116 P 317, 1911 Cal App LEXIS 175.

Where easement of abutting property owner to reasonable view of his property from street is impaired by construction on adjoining property of building which extends into street so that persons traveling in one direction on street no longer have formerly existing view of his building, damage suffered is of permanent nature. *Kitzman v. Newman* (1964, Cal App 2d Dist) 230 Cal App 2d 715, 41 Cal Rptr 182, 1964 Cal App LEXIS 927.

A property owner abutting on a public street has a public right in it common with all other citizens, and a private right, which cannot be taken from him without just compensation, in the nature of an easement of ingress and egress to and from his property. *People ex rel. Dep't of Public Works v. Giumarra Vineyards Corp.* (1966, Cal App 5th Dist) 245 Cal App 2d 309, 53 Cal Rptr 902, 1966 Cal App LEXIS 1467.

An owner of property abutting upon a public street has a private property right of access, in the nature of an easement of ingress and egress, over the street to and from his property, and compensation must be given for an impairment of that right. *County of Santa Clara v. Curtner* (1966, Cal App 1st Dist) 245 Cal App 2d 730, 54 Cal Rptr 257, 1966 Cal App LEXIS 1515.

26. Lateral Support

This section includes in the enumeration of easements the right of receiving more than natural support from adjacent land. *Sargent v. Jaegling* (1927, Cal App) 83 Cal App 485, 256 P 1116, 1927 Cal App LEXIS 572.

The right of lateral support of land in its natural state is a natural one and is not an easement. *Sargent v. Jaegling* (1927, Cal App) 83 Cal App 485, 256 P 1116, 1927 Cal App LEXIS 572.

The right of lateral support of land in its natural state is not one of the easements or servitudes permitted or enumerated by §§ 801 and 802. *Sargent v. Jaegling* (1927, Cal App) 83 Cal App 485, 256 P 1116, 1927 Cal App LEXIS 572.

It is in accord with the common law that the right to the support of a building could be acquired by grant or prescription, but not the right to the support of land in its natural state. *Sargent v. Jaegling* (1927, Cal App) 83 Cal App 485, 256 P 1116, 1927 Cal App LEXIS 572.

27. Taking Water, Wood, Minerals, Etc.

The right and privilege to bore for, and extract, oil under a lease constitutes, for the term prescribed, a servitude on the land and a chattel real at common law. *Graciosa Oil Co. v. County of Santa Barbara* (1909) 155 Cal 140, 99 P 483, 1909 Cal LEXIS 405; *Stone v. Los Angeles* (1931, Cal App) 114 Cal App 192, 299 P 838, 1931 Cal App LEXIS 697; *Dabney v. Edwards* (1935) 5 Cal 2d 1, 53 P2d 962, 1935 Cal LEXIS 617, 103 ALR 822.

A property right or easement to take water for irrigation from the water system on the adjoining land retained by the grantor can be created for the benefit of the land conveyed. *Relovich v. Stuart* (1931) 211 Cal 422, 295 P 819, 1931 Cal LEXIS 716.

Easement is distinguishable from "profit a prendre" in that latter is interest or estate in land itself, and easement is right or interest without profit. *Richfield Oil Co. v. Hercules Gasoline Co.* (1931, Cal App) 112 Cal App 431, 297 P 73, 1931 Cal App LEXIS 1143.

This section lists servitudes upon land, which may be attached to other land as incidents or appurtenances, and which are then called easements, many of the common-law incorporeal hereditaments, including the right of taking wa-

ter, wood, minerals, and other things. *Callahan v. Martin* (1935) 3 Cal 2d 110, 43 P2d 788, 1935 Cal LEXIS 404, 101 ALR 871.

The right of taking minerals mentioned in this section is not an incorporeal hereditament which constitutes the subject of an oil lease, but is an easement attached to other land as an easement appurtenant. This section has to do with easements over a servient tenement to a dominant tenement. *Dabney v. Edwards* (1935) 5 Cal 2d 1, 53 P2d 962, 1935 Cal LEXIS 617, 103 ALR 822.

This section is not concerned in the case of oil and gas leases. *Dabney v. Edwards* (1935) 5 Cal 2d 1, 53 P2d 962, 1935 Cal LEXIS 617, 103 ALR 822.

Right to take gravel from land does not constitute easement; it is profit a prendre. *O'Connor v. United States* (1946, 9th Cir Cal) 155 F2d 425, 1946 US App LEXIS 2216.

A right of profit a prendre is a right to make some use of the soil of another, such as the right to mine minerals; the underlying principle is that it carries the right of entry and the right to remove and take from the land the designated products or profit; in addition, it includes the right to use such of the surface as is necessary and convenient for the exercise of profit. Such profit is similar to an easement in that it is an interest in land. *Costa Mesa Union School Dist. v. Security First Nat'l Bank* (1967, Cal App 4th Dist) 254 Cal App 2d 4, 62 Cal Rptr 113, 1967 Cal App LEXIS 1361.

A profit a prendre is an interest in real property in the nature of an incorporeal hereditament; whether unlimited as to duration or limited to a term of years, it is an estate in real property; if for a term of years, it is a chattel real, which is nevertheless an estate in real property, although not real property, or real estate; if unlimited in duration, it is a freehold interest, an estate in fee, and real property or real estate. *Atlantic Oil Co. v. County of Los Angeles* (1968) 69 Cal 2d 585, 72 Cal Rptr 886, 446 P2d 1006, 1968 Cal LEXIS 267.

The right to drill for and produce on, whether owned in fee or for a term, is profit a prendre, a right to remove a part of the substance of the land, and, as such, is an interest in real property in the nature of an incorporeal hereditament. *Picchi v. Montgomery* (1968, Cal App 5th Dist) 261 Cal App 2d 246, 67 Cal Rptr 880, 1968 Cal App LEXIS 1740.

28. Water Servitudes

Estate, created by conveyance to city of land within exterior lines of channel, subject to express condition that city should use premises for excavation and as drain only and for no other purposes, and with covenant on part of city that it would bulkhead sides of channel as soon as excavated and maintain such bulkhead at its own expense was not easement; it was conditional fee. *Martin v. Stockton* (1919, Cal App) 39 Cal App 552, 179 P 894, 1919 Cal App LEXIS 164.

Transfer of real property containing covenant to furnish water free to land conveyed creates easement in favor of grantee on land and on water system of grantor. *Newell v. Redondo Water Co.* (1921, Cal App) 55 Cal App 86, 202 P 914, 1921 Cal App LEXIS 74.

Claim that easement or quasi easement, with respect to steam and hot water, passed with transfer of premises to plaintiff's predecessor was negated by fact that use of steam and hot water was expressly leased for definite period of time. *Layne v. Bryant* (1930, Cal App) 108 Cal App 324, 291 P 615, 1930 Cal App LEXIS 316.

An appropriative water right constitutes an interest in realty. It can therefore appropriately serve as a servient estate to which an easement may be annexed. *Wright v. Best* (1942) 19 Cal 2d 368, 121 P2d 702, 1942 Cal LEXIS 372.

Any grant by the riparian owner which affects his water right necessarily burdens his land; accordingly it is logical to hold that such a grant creates an easement in the land. *Wright v. Best* (1942) 19 Cal 2d 368, 121 P2d 702, 1942 Cal LEXIS 372.

Agreement between adjoining landowners giving to each right to use portion of water produced by well on dividing line creates easement. *Porto v. Vosti* (1955, Cal App 1st Dist) 136 Cal App 2d 395, 288 P2d 618, 1955 Cal App LEXIS 1492.

Water right has neither physical form nor substance; it is more nearly correct to define it as legal interest or legal right giving rise to legal relationship. *San Bernardino Valley Municipal Water Dist. v. Meeks & Daley Water Co.* (1964, Cal App 4th Dist) 226 Cal App 2d 216, 38 Cal Rptr 51, 1964 Cal App LEXIS 1273.

As appropriative and prescriptive rights, water rights are usufructuary, that is, there is no right to particular water flowing in stream, only right to take from stream certain amount of flowing water, right that does not come into being until means of diverting and using it are completed. *San Bernardino Valley Municipal Water Dist. v. Meeks & Daley Water Co.* (1964, Cal App 4th Dist) 226 Cal App 2d 216, 38 Cal Rptr 51, 1964 Cal App LEXIS 1273.

Purely riparian right and right of owner whose lands overlie underground or percolating waters are not entirely analogous, and all incidents of one cannot, on account of physical considerations alone, apply to other. *Orange County Water Dist. v. Colton* (1964, Cal App 4th Dist) 226 Cal App 2d 642, 38 Cal Rptr 286, 1964 Cal App LEXIS 1323.

Where owners of different land holdings combined to purchase a separate parcel and to share the cost of the installation of a well thereon to supply water to their respective lands, the water right of each owner was an easement appurtenant to his own land separate from his common interest in the fee of the parcel, and the fact that each party owned a fee interest in both his separate dominant estate and in the servient estate did not extinguish the easements by merger, for the ownership interests in the two estates were not coextensive. *Hemmerling v. Tomlev, Inc.* (1967) 67 Cal 2d 572, 63 Cal Rptr 1, 432 P2d 697, 1967 Cal LEXIS 243.

The right to flood land or to store water thereon may be appurtenant to ownership of water, considered as real property. *Security Pac. Nat. Bank v. City of San Diego* (1971, Cal App 4th Dist) 19 Cal App 3d 421, 97 Cal Rptr 61, 1971 Cal App LEXIS 1295.

29. Water Pollution

An easement of pollution may be annexed to an appropriative water right. *Wright v. Best* (1942) 19 Cal 2d 368, 121 P2d 702, 1942 Cal LEXIS 372.

Where an easement of pollution was granted by contract, in the absence of a clear intention to the contrary, it will not be construed to be in favor of mines acquired after the date of the contract. *Wright v. Best* (1942) 19 Cal 2d 368, 121 P2d 702, 1942 Cal LEXIS 372.

An agreement between a mining company and the nonriparian owner of an appropriative water right, which grants a right to deposit in a stream tailings from the mine, does not create an easement in the nonriparian land since the granted privilege involves no use of the land or restriction of its use. *Wright v. Best* (1942) 19 Cal 2d 368, 121 P2d 702, 1942 Cal LEXIS 372.

30. Receiving and Discharging Water

Owner of upper or dominant estate has legal and natural easement or servitude in lower or servient estate to discharge all surface waters naturally falling or accumulating on his land, on or over land of servient owner in manner in which they would naturally flow from higher to lower level. *Le Brun v. Richards* (1930) 210 Cal 308, 291 P 825, 1930 Cal LEXIS 386, 72 ALR 336.

Right to flood another's land by seepage from irrigation ditch is easement--privilege without profit, which only one tenement has right to enjoy in respect to that tenement, in or over tenement of another person. *Nelson v. Robinson* (1941, Cal App) 47 Cal App 2d 520, 118 P2d 350, 1941 Cal App LEXIS 1199.

Upper riparian owner has right to have lower riparian owner receive surface water falling on upper owner's land and lower owner may not dam up channel so as to obstruct flow of waters across upper owner's land. *Wanders v. Nelson* (1950, Cal App) 98 Cal App 2d 267, 219 P2d 852, 1950 Cal App LEXIS 1838.

An implied easement may arise in connection with a grant of lands noncontiguous to the easement or the dominant tenement. Thus the implication of an easement for a domestic water supply through a pipeline is commanded where it was undoubtedly the intention of the parties when lands noncontiguous to the easement, the dominant tenement, or the source of the water were separated, to preserve the previously existing water rights thereon. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

Although the purchasers of a servient tenement did not have actual notice of an implied easement for a water supply from a lake through a pipeline and thence to noncontiguous lands, and although the facts apparent to them at the time of purchase were not sufficient to put them on notice of the rights of the owners of the dominant tenement, the purchasers' good faith could not destroy rights of the dominant tenement implied in prior grants separating the dominant

and servient tenements. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

In an action to establish an implied easement in favor of a dominant tenement, the trial court's finding that the only source of water for the dominant tenement was a lake on the servient tenement and that the lake source with conduits therefor across the servient tenement was reasonably necessary for the use and enjoyment of the dominant tenement was fully supported by the evidence where it appeared that while no wells had been drilled on the dominant tenement, efforts made to drill wells and to find water on property in the same vicinity had failed; that when a prior owner of the servient tenement needed a greater supply of water it acquired the lake and easement on the dominant tenement and made improvements for the purpose of impounding water; from all of which the court could infer that the lake was the most reliable source of a steady supply of water for the dominant tenement. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

31. Continuous Flow of Water

A conveyance by deed of the right to draw from grantor's supply for the purpose of supplying grantee with water passed an easement which at the time of grantee's conveying the land to a sub-grantee was an appurtenant easement, since the water was used with the land for its benefit. *Farmer v. Ukiah Water Co.* (1880) 56 Cal 11, 1880 Cal LEXIS 343.

"The right of having water flow without diminution or disturbance of any kind" includes the right to have a natural watercourse flow, subject to such diminution as results necessarily from a reasonable use by a superior riparian proprietor. *Lux v. Haggin* (1886) 69 Cal 255, 10 P 674, 1886 Cal LEXIS 666.

A servitude within the prohibition of the statute of frauds is not granted where a lower proprietor licenses the upper to divert water which would flow to the lands of the licensor, but he is estopped from asserting his right to it. *Lux v. Haggin* (1886) 69 Cal 255, 10 P 674, 1886 Cal LEXIS 666.

Where land was sold by a corporation which is the owner of a water system, and whose by-laws provided that the water should be supplied to the lands which it sold, to be used thereon, and after the sale water was always supplied to such land for use thereon, the right to the use of such water was a right appurtenant to the land. *Graham v. Pasadena Land & Water Co.* (1908) 152 Cal 596, 93 P 498, 1908 Cal LEXIS 534.

32. Equitable Servitudes Generally

Equitable easements were unknown to the common law and are not among those enumerated by the code. *Werner v. Graham* (1919) 181 Cal 174, 183 P 945, 1919 Cal LEXIS 338; *Young v. Cramer* (1940) 38 CA2d 64, 100 P2d 523, 1940 Cal App LEXIS 608.

Covenants restricting the use of a parcel of land for the benefit of another create servitudes known as equitable easements. *Werner v. Graham* (1919) 181 Cal 174, 183 P 945, 1919 Cal LEXIS 338; *Young v. Cramer* (1940) 38 CA2d 64, 100 P2d 523, 1940 Cal App LEXIS 608.

Although covenant does not run with land, it may be enforceable in equity against transferee of covenantor who takes with knowledge of its terms under circumstances that would make it inequitable to permit him to avoid restrictions. *Chandler v. Smith* (1959, Cal App 3d Dist) 170 Cal App 2d 118, 338 P2d 522, 1959 Cal App LEXIS 2178.

Mutual equitable servitudes, imposed by restrictions in deeds to various lots in subdivision, spring into existence at time lot is conveyed, as between it and the lots still retained by owner of the subdivision; benefit and burden of restrictions thus imposed on retained lots will pass as incident of ownership each time one of retained lots is conveyed. *Anderson v. Pacific Ave. Inv. Co.* (1962, Cal App 3d Dist) 201 Cal App 2d 260, 19 Cal Rptr 829, 1962 Cal App LEXIS 2589, overruled in part *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal 4th 345, 47 Cal Rptr 2d 898, 906 P2d 1314, 1995 Cal LEXIS 7352.

33. Equitable Servitudes Requirements

To create equitable servitude in grant of lands in large area it is essential that there be general scheme of restriction sufficiently uniform in character to indicate unmistakably designated and adopted plan throughout, common to all purchasers of lots, and restrictions must not only appear in one deed, but in all deeds and must expressly declare that such

restrictions are for benefit of and run with all other lots in designated area. *Moe v. Gier* (1931, Cal App) 116 Cal App 403, 2 P2d 852, 1931 Cal App LEXIS 474.

Equitable servitude in deed must contain proper expression of intention to create equitable easement, that is, reference to common plan of restriction or indication of agreement between grantor and grantee that conveyed lot is to be taken subject to some such plan, and some designation or description of what is essential factor, namely, dominant tenement. *Wing v. Forest Lawn Cemetery Asso.* (1940) 15 Cal 2d 472, 101 P2d 1099, 1940 Cal LEXIS 235, 130 ALR 120.

Before covenant may give rise to or be enforced as equitable servitude or easement, deed or other instrument by which it is created must describe with particularity dominant tenement which is to be benefited by restriction placed on property of grantee. *Martin v. Ray* (1946, Cal App) 76 Cal App 2d 471, 173 P2d 573, 1946 Cal App LEXIS 736.

34. Equitable Servitudes--Particular Actions

A covenant restricting the use of a lot to yachting purposes does not create an easement in favor of other lands of the plaintiff. *Los Angeles Terminal Land Co. v. Muir* (1902) 136 Cal 36, 68 P 308, 1902 Cal LEXIS 649.

The owner of property, originally part of a subdivision project, may be restrained from interfering with an equitable easement in subdivision lot owners to use recreational facilities on the property, which easement they acquired through purchase of their lots in reliance on representations of the original subdivider that the recreational area would be maintained as such, especially where the owner of the area and his predecessors knew or should have known of the representations and reliance thereon. *Bradley v. Frazier Park Playgrounds, Inc.* (1952, Cal App) 110 Cal App 2d 436, 242 P2d 958, 1952 Cal App LEXIS 1551.

Though owners of realty, at time they subdivided their property, filed for record a map showing subdivision and recorded declaration of restrictions, unquestionably had in mind that they would convey various lots subject to proposed equitable servitudes thereby evidenced, such servitudes would not exist until and unless they made conveyances containing provisions for equitable servitudes either by direct expression in deeds or by reference to recorded declarations of restrictions or other effective means of creating such servitudes. *Murry v. Lovell* (1955, Cal App 3d Dist) 132 Cal App 2d 30, 281 P2d 316, 1955 Cal App LEXIS 2154, overruled in part *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal 4th 345, 47 Cal Rptr 2d 898, 906 P2d 1314, 1995 Cal LEXIS 7352.

Mutual equitable servitude based on restrictions imposed for benefit of all lots in subdivided tract spring into existence as between lot conveyed and balance of lots at time of first conveyance, and as each conveyance follows, burden and benefit imposed by preceding conveyances pass as incidents of ownership, with similar restrictions being created by conveyance as between lot conveyed and lots retained by grantor. *Murry v. Lovell* (1955, Cal App 3d Dist) 132 Cal App 2d 30, 281 P2d 316, 1955 Cal App LEXIS 2154, overruled in part *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal 4th 345, 47 Cal Rptr 2d 898, 906 P2d 1314, 1995 Cal LEXIS 7352.

When owner of subdivided tract conveys various parcels in tract by deeds imposing restrictions on each parcel as part of general plan of restrictions common to all parcels and designed for their common benefit, mutual equitable servitudes are thereby created in favor of each parcel as against all others. *Murry v. Lovell* (1955, Cal App 3d Dist) 132 Cal App 2d 30, 281 P2d 316, 1955 Cal App LEXIS 2154, overruled in part *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal 4th 345, 47 Cal Rptr 2d 898, 906 P2d 1314, 1995 Cal LEXIS 7352.

Where parcels in subdivided tract are conveyed by deeds that impose restrictions on each parcel as part of general plan of restrictions common to and for mutual benefit of all parcels, mutual equitable servitudes are created in favor of each parcel as against all others. *Anderson v. Pacific Ave. Inv. Co.* (1962, Cal App 3d Dist) 201 Cal App 2d 260, 19 Cal Rptr 829, 1962 Cal App LEXIS 2589, overruled in part *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal 4th 345, 47 Cal Rptr 2d 898, 906 P2d 1314, 1995 Cal LEXIS 7352.

Where, subsequent to conveyance, grantor and grantee sign instrument entitled "Amendment to Condition and Restriction," which recites that grantor owns all lots except one in certain subdivision, that grantee owns one lot in same subdivision, and that grantor imposed restrictions on all lots in recorded declaration and plan of restrictions of subdivision, and instrument contains agreement that restrictions with respect to lots are amended to reduce size of buildings to be erected, parties agree only to restriction as to size of buildings; in absence of express agreement, no other restrictions in nature of equitable servitudes can be created. *Anderson v. Pacific Ave. Inv. Co.* (1962, Cal App 3d Dist) 201 Cal App 2d 260, 19 Cal Rptr 829, 1962 Cal App LEXIS 2589, overruled in part *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal 4th 345, 47 Cal Rptr 2d 898, 906 P2d 1314, 1995 Cal LEXIS 7352.

Where deed conveyed lot for single family residence purposes only and specifically provided that restriction applied only to property described and that such restriction might or might not be imposed by grantor on any other lot in tract, restriction was not for benefit of any other lot and was not intended to and did not create mutual easement or servitude. *Shields v. Bank of America Nat'l Trust & Sav. Asso.* (1964, Cal App 2d Dist) 225 Cal App 2d 330, 37 Cal Rptr 360, 1964 Cal App LEXIS 1381.

35. Pleading

Law does not favor grant of easements by implication, but effect must be given parties' intent as shown by facts and circumstances, and complaint is sufficient against demurrer where it alleges that original owner of tract of land in mapping and recording subdivision intended to dedicate a "park" and create an easement appurtenant to adjacent land, that "park" was so used to time of suit, and that plaintiff now owns such adjacent land and easement. *Wool v. Scott* (1956, Cal App 1st Dist) 140 Cal App 2d 835, 296 P2d 17, 1956 Cal App LEXIS 2329.

36. Burden of Proof and Presumptions

Burden of proving all elements essential to establish title is on party claiming easement. *O'Dea v. County of San Mateo* (1956, Cal App 1st Dist) 139 Cal App 2d 659, 294 P2d 171, 1956 Cal App LEXIS 2156.

Where it is claimed that way of necessity is extinguished by owner's acquisition of new means of access, burden of proof is on parties making such claim to show by acceptable evidence that new means of access was in fact acquired. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

Presumption that grant of way of necessity arises from transaction is one of fact, and whether grant is to be implied depends on terms of deed and facts of case; implication will not be made where it is shown that parties did not intend such grant. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

37. Evidence

If language is clear and explicit in conveyance of easement, there is no occasion for use of parol evidence to show nature and extent of rights acquired. *Kerr v. Brede* (1960, Cal App 3d Dist) 180 Cal App 2d 149, 4 Cal Rptr 443, 1960 Cal App LEXIS 2323.

When it is not clear whether easement was intended to be in gross or appurtenant to land, evidence other than document creating easement is admissible to determine nature of easement and to establish dominant tenement. *St. Louis v. De Bon* (1962, Cal App 1st Dist) 204 Cal App 2d 464, 22 Cal Rptr 443, 1962 Cal App LEXIS 2265.

When deed transferring easement does not expressly declare easement to be appurtenant, or when language of deed is ambiguous and it does not clearly appear whether easement was intended to be in gross or appurtenant to land, evidence other than deed is admissible to determine nature of easement and to establish dominant tenement. *Leggio v. Haggerty* (1965, Cal App 5th Dist) 231 Cal App 2d 873, 42 Cal Rptr 400, 1965 Cal App LEXIS 1577.

38. Verdict

There was no indication that jury misunderstood meaning of word "appurtenant" or that easement should have been held to be appurtenant to plaintiffs' land where jury was instructed as to difference between easement in gross and easement appurtenant, plaintiffs themselves submitted rendered instructions, and verdict specifically stated that easement was not appurtenant to any lands. *Le Deit v. Ehlert* (1962, Cal App 1st Dist) 205 Cal App 2d 154, 22 Cal Rptr 747, 1962 Cal App LEXIS 2117.

Verdict extending use of prescriptive easement to plaintiffs' families and nonpaying guests was not improper where verdict could only be reasonably construed as creating easement in gross, jury specifically stating that easement was not appurtenant to any land, and where plaintiffs, in using easement in question over period of many years, had been accompanied by friends or relatives. *Le Deit v. Ehlert* (1962, Cal App 1st Dist) 205 Cal App 2d 154, 22 Cal Rptr 747, 1962 Cal App LEXIS 2117.

Judgment extending use of easement to plaintiffs' "families," rather than to singular "family" as used in verdict did not extend easement to inheritable right where question of inheritance was concluded by determination that right to the easement was limited to plaintiffs personally, words "families" and "family" being too vague and ill-defined to affect

such decision. *Le Deit v. Ehlert* (1962, Cal App 1st Dist) 205 Cal App 2d 154, 22 Cal Rptr 747, 1962 Cal App LEXIS 2117.

General statement in verdict defining easement was properly clarified in judgment providing more technical description of easement and defendants failed to prove error where there was nothing in evidence indicating that route described in judgment was incorrect. *Le Deit v. Ehlert* (1962, Cal App 1st Dist) 205 Cal App 2d 154, 22 Cal Rptr 747, 1962 Cal App LEXIS 2117.

Judgment stating "that plaintiffs ... are granted temporary right of way of necessity" to terminate when plaintiffs' parcel "is no longer landlocked ... " determined plaintiffs' rights to rest on claim to right of way of necessity, not easement by implication based on pre-existing use. *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

Findings, based on uncontradicted evidence, that both defendants' and plaintiffs' parcels were under common ownership of plaintiffs prior to conveyance of defendants' parcel to them, that plaintiffs' parcel became landlocked as result of such conveyance, that plaintiffs would have no means of access to their parcel unless given right of way over defendants' land, were sufficient to support declaratory judgment granting plaintiffs' right of way of necessity over defendants' parcel. *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

Findings to effect that parties to conveyance intended that grantors should have temporary right of way over grantees' land were not necessary to support judgment granting grantors right of way of necessity over grantees' land could be disregarded as surplusage. *Reese v. Borghi* (1963, Cal App 1st Dist) 216 Cal App 2d 324, 30 Cal Rptr 868, 1963 Cal App LEXIS 2023, superseded by statute as stated in *Murphy v. Burch* (2009) 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289, 2009 Cal. LEXIS 3983.

In action brought to establish right of way by necessity, court's findings that parties to sale intended to exclude any right of way over land retained by grantor and that no possible physical basis existed at time of sale for easement to any public road over land retained were substantially supported by evidence that grantor had never had right of way from any of land to a public road and could at no time reach road other than by crossing intervening land owned by others. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

Findings, based on substantial evidence, that parties to sale of land never contemplated right of way over land retained by grantor and that there was as a physical fact no access to public road over retained land compel conclusion that no right of way was created by necessity over retained land. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

There was support for finding that easement for water rights was easement appurtenant where all deeds transferring grantee's lands after conveyance of easement in 1898 up to 1921 mentioned easement. *Leggio v. Haggerty* (1965, Cal App 5th Dist) 231 Cal App 2d 873, 42 Cal Rptr 400, 1965 Cal App LEXIS 1577.

In action to recover one-half of costs of improving an easement owned by defendant running across plaintiffs' land, there was sufficient evidence to show that easement existed at time improvements were made where it appeared from defendant's acts and conduct, that defendant's officers believed that, in order to prevent written grant of easement to defendant from being nullified, only action defendant had to take was to express its intention to use easement, which it did, and that defendant, after bringing of action, filed declaration of election not to use easement, further indicating defendant's belief that easement existed. *McManus v. Sequoyah Land Associates* (1966, Cal App 1st Dist) 240 Cal App 2d 348, 49 Cal Rptr 592, 1966 Cal App LEXIS 1358, 20 ALR3d 1015.

The trial court's finding that the present owners of the servient tenement had constructive notice of an easement for a domestic water supply from a lake through a pipeline and thence to noncontiguous lands owned by others was supported by evidence that when they were negotiating to purchase the servient tenement they were aware that their vendor did not own the water supply or pipeline easement, and that he therefore purchased the same and conveyed them with the servient tenement, such facts being sufficient to put the purchasers on inquiry as to the rights of others in the water system and supply. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

39. Appellate Review

Appellate court will construe decree, ambiguous to extent that it quiets defendant's title to easement comprising irrigation ditch across plaintiff's land, as doing no more than adjudging that plaintiff is not to interfere with defendant's rights, rather than as purporting to exclude plaintiff from all uses of easement strip, including such use as would not interfere with defendant's rights. *Robinson v. Cuneo* (1955, Cal App 3d Dist) 137 Cal App 2d 573, 290 P2d 656, 1955 Cal App LEXIS 1226.

Appellate court will reverse decree insofar as it purports to adjudicate that defendant's rights in water transported by ditch across plaintiff's lands are superior to plaintiff's rights, where the only evidence related to use of water and ditch indicates that it has been a common use of appropriated water and never singly owned by anyone. *Robinson v. Cuneo* (1955, Cal App 3d Dist) 137 Cal App 2d 573, 290 P2d 656, 1955 Cal App LEXIS 1226.

In action to enjoin defendant's use of right-of-way over plaintiff's land for access to highway where sole issue in court was whether reservation in deed to plaintiff's predecessor created easement in gross or easement appurtenant, plaintiff could not for first time on appeal inject issue that defendant's right-of-way had been extinguished by language in deed whereby defendant acquired title to effect that defendant's grant was landlocked with no access to any highway. *St. Louis v. De Bon* (1962, Cal App 1st Dist) 204 Cal App 2d 464, 22 Cal Rptr 443, 1962 Cal App LEXIS 2265.

In action to restrain interference with plaintiffs' claimed easement, there was no error in fact that judgment provided for injunctive relief which was not specified in jury's verdict, since power of injunction does not fall within jury's province. *Le Deit v. Ehlert* (1962, Cal App 1st Dist) 205 Cal App 2d 154, 22 Cal Rptr 747, 1962 Cal App LEXIS 2117.

In action brought to establish right of way by necessity, court's finding that plaintiff had acquired new means of access to his property by extension of public road was insufficiently supported by evidence where road was not immediately contiguous to plaintiff's land and there was no legally sufficient evidence that road had been dedicated to public or, if there were such dedication, that road's right of way was contiguous to plaintiff's property, but reversal was not compelled where court had properly found that plaintiff had never acquired way of necessity across his grantor's retained property. *Daywalt v. Walker* (1963, Cal App 5th Dist) 217 Cal App 2d 669, 31 Cal Rptr 899, 1963 Cal App LEXIS 1955.

Where extrinsic evidence is received in interpretation of grant of easement, but there is no conflict in evidence, interpretation of instrument becomes question of law and appellate court is not bound by trial court's interpretation of it. *McManus v. Sequoyah Land Associates* (1966, Cal App 1st Dist) 240 Cal App 2d 348, 49 Cal Rptr 592, 1966 Cal App LEXIS 1358, 20 ALR3d 1015.

Where language of grant of easement is ambiguous, extrinsic evidence is admissible to determine its meaning. *McManus v. Sequoyah Land Associates* (1966, Cal App 1st Dist) 240 Cal App 2d 348, 49 Cal Rptr 592, 1966 Cal App LEXIS 1358, 20 ALR3d 1015.

Appellate court will accept or adhere to trial court's interpretation of extrinsic evidence properly received to aid in interpretation of grant of easement where extrinsic evidence is conflicting and conflicting inferences arise therefrom. *McManus v. Sequoyah Land Associates* (1966, Cal App 1st Dist) 240 Cal App 2d 348, 49 Cal Rptr 592, 1966 Cal App LEXIS 1358, 20 ALR3d 1015.

The trial court's determination that the use of an easement for a domestic supply of water from a lake through a pipeline and thence to noncontiguous lands, all originally held in common ownership, was so long continued and obvious as to show it was intended to be permanent would not be disturbed on appeal where, in determining the controlling use made before the separation of title, the court's finding that the water system was obvious, permanent, and functioning at such time was supported by substantial evidence. *Piazza v. Schaefer* (1967, Cal App 1st Dist) 255 Cal App 2d 328, 63 Cal Rptr 246, 1967 Cal App LEXIS 1278.

4 of 8 DOCUMENTS

Deering's California **Codes** Annotated
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*** This document is current with urgency legislation through Chapter 8 of the 2012 Session. ***

BUSINESS & PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 15. Land Surveyors
Article 3. Application of the Chapter

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal **Bus & Prof Code** § 8726 (2012)

§ 8726. "Land surveying"

A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or photogrammetry.

(c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government **Code**) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this **code**).

(e) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point.

(f) Geodetic or cadastral surveying. As used in this chapter, geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of fixed objects thereon or related thereto, geodetic control points, monuments, or stations for use in the practice of land surveying or for stating the position of fixed objects, geodetic control points, monuments, or stations by California Coordinate System coordinates.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title "land surveyor" or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(l) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f), (k), and (l).

(n) Renders a statement regarding the accuracy of maps or measured survey data.

Any department or agency of the state or any city, county, or city and county that has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.

HISTORY:

Added Stats 1939 ch 41 § 1. Amended Stats 1941 ch 834 § 1.5; Stats 1961 ch 2225 § 1; Stats 1983 ch 625 § 4, ch 760 § 4; Stats 1985 ch 670 § 1; Stats 1987 ch 805 § 3; Stats 1988 ch 817 § 1; Stats 1990 ch 1226 § 2 (AB 3395); Stats 1991 ch 350 § 1 (AB 427); Stats 1995 ch 579 § 2 (AB 1566), effective October 4, 1995, operative January 1, 1996; Stats 2006 ch 760 § 6 (SB 1849), effective January 1, 2007.

NOTES:

Amendments:

1941 Amendment:

Substituted the section for the former section which read: "Land surveying comprises all or any combination of the following practices:

"(a) The making of such observations and measurements as will determine the relative positions of points, areas, structures or natural objects on the earth's surface, or related thereto.

"(b) The surveying of areas:

"(1) For their correct determination and description and for conveyancing.

"(2) For the establishment or reestablishment of land boundaries.

"(3) For the platting of lands and subdivisions.

"(4) For the setting of reference or other monuments to perpetuate such observations, measurements and surveys."

1961 Amendment:

Added "or photogrammetry" in subd (d).

1983 Amendment:

(1) Amended subd (a) by substituting (a) "the" for "any property line or boundary of any parcel of land or any road, right-of-way, easement," after "retraces"; and (b) "Section 6731" for "Chapter 7, Division 3 of this code"; (2) added subs (b) and (c); (3) redesignated former subs (b) and (c) to be subs (d) and (e); (4) deleted former subd (d) which read: "(d) Determines the configuration or contour of the earth's surface or the position of fixed objects thereon or re-

lated thereto, by means of measuring lines and angles, and applying the principles of trigonometry or photogrammetry."; (5) added the comma after "resets" in subd (e); (6) redesignated former subds (e)-(i) to be subds (f)-(j); and (7) substituted "subdivisions (a), (b), (c), (d), (e), and (f)" for "subsections (a), (b), (c), (d) and (e)" in subd (g). (As amended by Stats 1983, ch 760, compared to the section as it read prior to 1983. This section was also amended by an earlier chapter, ch 625. See Gov C § 9605.)

1985 Amendment:

Added (1) ", including any person employed by the state or by a city, county, or city and county within the state," in the introductory clause; (2) the second sentence of subd (d); and (3) the second paragraph.

1987 Amendment:

In addition to making technical changes, added (1) subd (k); and (2) the last paragraph.

1988 Amendment:

(1) Added subd (k); and (2) redesignated former subd (k) to be subd (l).

1990 Amendment:

Added subd (m).

1991 Amendment:

(1) Made technical changes in subds (c) and (d); and (2) added subd (f).

1995 Amendment:

(1) Deleted "such" after "replaces any" in subd (e); (2) added the second sentence of subd (f); and (3) substituted "the" for "such" after "surveyor until" in the second paragraph.

2006 Amendment:

(1) Amended subd (b) by (a) substituting "above, on," for "thereon"; (b) substituting "below the surface" for "related thereto, by means"; and (c) substituting "the earth by" for "measuring lines and angles, and"; (2) amended subd (f) by (a) adding "fixed objects there on or related thereto, geodetic control" after "vertical positions of"; and (b) adding "fixed objects, " after "position of"; and (3) added subd (n).

Historical Derivation:

Stats 1933 ch 506 § 1a, as amended Stats 1935 ch 775 § 1.

Note

Stats 1988 ch 817 provides:

SEC. 3. Nothing contained in this act is intended to restrict the ability of a local agency to use nonlicensed persons to perform administrative or business activities related to land surveying.

SEC. 4. The amendment in Section 1 of this act is declaratory of existing law and is not intended to restrict the scope of practice of registered professional engineers within their respective scope of practice.

SEC. 5. The amendment in Section 1 of this act is declaratory of existing law and is not intended to restrict the practice of persons licensed to practice law in California, nor is it intended to be applicable to persons licensed pursuant to Part 6 (commencing with Section 12340) of Division 2 of the Insurance Code, nor to persons licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, so long as those persons engage in the respective practice of their profession, but who may coordinate work pursuant to subdivision (k) of Section 8726 of the Business and Professions Code.

Stats 1990 ch 1226 provides:

SEC. 3. The amendments made to Sections 6731, 6731.1 and 8726 by this act are intended to recognize a media change from a paper-based system to a computer-based system and are not intended to expand the regulated scope of practice of engineering or land surveying services.

The amendments to Sections 6731, 6731.1, and 8726 of the Business and Professions Code contained in this act are not intended to restrict the activities of an entity possessing a license or certificate under Chapter 1 (commencing with Section 12340) of Part 6 of Division 2 of the Insurance Code.

Stats 1995 ch 579 provides:

SECTION 1. This act shall be known and may be cited as the Omnibus Local Government Act of 1995.

The Legislature finds and declares that operating costs can be decreased by reducing the number of separate bills affecting related topics by consolidating these bills into a single measure. Therefore, in enacting this act, it is the intent of the Legislature to consolidate several minor, noncontroversial statutory changes relating to public agencies into a single measure.

SEC. 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 22. All sections of this except Sections 19 and 20 shall become operative January 1, 1996.

Cross References:

Photogrammetry: B & P C §§ 8775 et seq.

Rules for construing description of lands in conveyances: CCP § 2077.

Subdivision Map Act: Gov C §§ 66410 et seq.

Registered professional forester not authorized to practice land surveying: Pub Res C § 758.

Collateral References:

Cal. Legal Forms, (Matthew Bender(R)) §§ 28B.01, 28B.22, 30C.01, 30C.10.

Forms:

Suggested forms are set out below, following notes of decisions.

Attorney General's Opinions:

Preparation of maps, whether by aerial or ground photogrammetry, as constituting land surveying for which license is required. 16 Ops. Cal. Atty. Gen. 60.

Functions of surveying, mapping and computing carried on in connection with leveling agricultural crop land as not constituting practice of land surveying. 19 Ops. Cal. Atty. Gen. 55.

Photogrammetric mapping contracts as calling for activities within the scope of this section. 23 Ops. Cal. Atty. Gen. 86.

Improvement plans for a subdivision constituting design documents may not be signed by licensed land surveyor. 58 Ops. Cal. Atty. Gen. 430.

Hierarchy Notes:

Div. 3, Ch. 15 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Land Surveying

NOTES OF DECISIONS

1. Applicability

1. Applicability

Contract to furnish photogrammetry contour maps did not involve land surveying which could only be done by licensed surveyor or civil engineer, where, among other things, ground control work was exclusively for, an integral part of production of aerial photograph and photogrammetry. Hill v. Kirkwood (1958, Cal App 3d Dist) 161 Cal App 2d 346, 326 P2d 599, 1958 Cal App LEXIS 1740.

SUGGESTED FORMS

Contract of Employment of Land Surveyor--Location of Disputed Boundary Line

Contract of Employment of Land Surveyor--Provision--Surveyor To Utilize Original Government Surveys

Contract of Employment of Land Surveyor--Provision--Surveyor's Notice to, and Request for Assistance from, Parties

Contract of Employment of Land Surveyor--Provision--Preparation of Map by Land Surveyor

4 of 8 DOCUMENTS

Deering's California **Codes** Annotated
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BUSINESS & PROFESSIONS CODE
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Cal **Bus & Prof Code** § 8726 (2012)

§ 8726. "Land surveying"

A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or photogrammetry.

(c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government **Code**) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this **code**).

(e) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point.

(f) Geodetic or cadastral surveying. As used in this chapter, geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of fixed objects thereon or related thereto, geodetic control points, monuments, or stations for use in the practice of land surveying or for stating the position of fixed objects, geodetic control points, monuments, or stations by California Coordinate System coordinates.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title "land surveyor" or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(l) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f), (k), and (l).

(n) Renders a statement regarding the accuracy of maps or measured survey data.

Any department or agency of the state or any city, county, or city and county that has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.

HISTORY:

Added Stats 1939 ch 41 § 1. Amended Stats 1941 ch 834 § 1.5; Stats 1961 ch 2225 § 1; Stats 1983 ch 625 § 4, ch 760 § 4; Stats 1985 ch 670 § 1; Stats 1987 ch 805 § 3; Stats 1988 ch 817 § 1; Stats 1990 ch 1226 § 2 (AB 3395); Stats 1991 ch 350 § 1 (AB 427); Stats 1995 ch 579 § 2 (AB 1566), effective October 4, 1995, operative January 1, 1996; Stats 2006 ch 760 § 6 (SB 1849), effective January 1, 2007.

NOTES:

Amendments:

1941 Amendment:

Substituted the section for the former section which read: "Land surveying comprises all or any combination of the following practices:

"(a) The making of such observations and measurements as will determine the relative positions of points, areas, structures or natural objects on the earth's surface, or related thereto.

"(b) The surveying of areas:

"(1) For their correct determination and description and for conveyancing.

"(2) For the establishment or reestablishment of land boundaries.

"(3) For the platting of lands and subdivisions.

"(4) For the setting of reference or other monuments to perpetuate such observations, measurements and surveys."

1961 Amendment:

Added "or photogrammetry" in subd (d).

1983 Amendment:

(1) Amended subd (a) by substituting (a) "the" for "any property line or boundary of any parcel of land or any road, right-of-way, easement," after "retraces"; and (b) "Section 6731" for "Chapter 7, Division 3 of this code"; (2) added subs (b) and (c); (3) redesignated former subs (b) and (c) to be subs (d) and (e); (4) deleted former subd (d) which read: "(d) Determines the configuration or contour of the earth's surface or the position of fixed objects thereon or re-

lated thereto, by means of measuring lines and angles, and applying the principles of trigonometry or photogrammetry."; (5) added the comma after "resets" in subd (e); (6) redesignated former subds (e)-(i) to be subds (f)-(j); and (7) substituted "subdivisions (a), (b), (c), (d), (e), and (f)" for "subsections (a), (b), (c), (d) and (e)" in subd (g). (As amended by Stats 1983, ch 760, compared to the section as it read prior to 1983. This section was also amended by an earlier chapter, ch 625. See Gov C § 9605.)

1985 Amendment:

Added (1) ", including any person employed by the state or by a city, county, or city and county within the state," in the introductory clause; (2) the second sentence of subd (d); and (3) the second paragraph.

1987 Amendment:

In addition to making technical changes, added (1) subd (k); and (2) the last paragraph.

1988 Amendment:

(1) Added subd (k); and (2) redesignated former subd (k) to be subd (l).

1990 Amendment:

Added subd (m).

1991 Amendment:

(1) Made technical changes in subds (c) and (d); and (2) added subd (f).

1995 Amendment:

(1) Deleted "such" after "replaces any" in subd (e); (2) added the second sentence of subd (f); and (3) substituted "the" for "such" after "surveyor until" in the second paragraph.

2006 Amendment:

(1) Amended subd (b) by (a) substituting "above, on," for "thereon"; (b) substituting "below the surface" for "related thereto, by means"; and (c) substituting "the earth by" for "measuring lines and angles, and"; (2) amended subd (f) by (a) adding "fixed objects there on or related thereto, geodetic control" after "vertical positions of"; and (b) adding "fixed objects, " after "position of"; and (3) added subd (n).

Historical Derivation:

Stats 1933 ch 506 § 1a, as amended Stats 1935 ch 775 § 1.

Note

Stats 1988 ch 817 provides:

SEC. 3. Nothing contained in this act is intended to restrict the ability of a local agency to use nonlicensed persons to perform administrative or business activities related to land surveying.

SEC. 4. The amendment in Section 1 of this act is declaratory of existing law and is not intended to restrict the scope of practice of registered professional engineers within their respective scope of practice.

SEC. 5. The amendment in Section 1 of this act is declaratory of existing law and is not intended to restrict the practice of persons licensed to practice law in California, nor is it intended to be applicable to persons licensed pursuant to Part 6 (commencing with Section 12340) of Division 2 of the Insurance Code, nor to persons licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, so long as those persons engage in the respective practice of their profession, but who may coordinate work pursuant to subdivision (k) of Section 8726 of the Business and Professions Code.

Stats 1990 ch 1226 provides:

SEC. 3. The amendments made to Sections 6731, 6731.1 and 8726 by this act are intended to recognize a media change from a paper-based system to a computer-based system and are not intended to expand the regulated scope of practice of engineering or land surveying services.

The amendments to Sections 6731, 6731.1, and 8726 of the Business and Professions Code contained in this act are not intended to restrict the activities of an entity possessing a license or certificate under Chapter 1 (commencing with Section 12340) of Part 6 of Division 2 of the Insurance Code.

Stats 1995 ch 579 provides:

SECTION 1. This act shall be known and may be cited as the Omnibus Local Government Act of 1995.

The Legislature finds and declares that operating costs can be decreased by reducing the number of separate bills affecting related topics by consolidating these bills into a single measure. Therefore, in enacting this act, it is the intent of the Legislature to consolidate several minor, noncontroversial statutory changes relating to public agencies into a single measure.

SEC. 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 22. All sections of this except Sections 19 and 20 shall become operative January 1, 1996.

Cross References:

Photogrammetry: B & P C §§ 8775 et seq.

Rules for construing description of lands in conveyances: CCP § 2077.

Subdivision Map Act: Gov C §§ 66410 et seq.

Registered professional forester not authorized to practice land surveying: Pub Res C § 758.

Collateral References:

Cal. Legal Forms, (Matthew Bender(R)) §§ 28B.01, 28B.22, 30C.01, 30C.10.

Forms:

Suggested forms are set out below, following notes of decisions.

Attorney General's Opinions:

Preparation of maps, whether by aerial or ground photogrammetry, as constituting land surveying for which license is required. 16 Ops. Cal. Atty. Gen. 60.

Functions of surveying, mapping and computing carried on in connection with leveling agricultural crop land as not constituting practice of land surveying. 19 Ops. Cal. Atty. Gen. 55.

Photogrammetric mapping contracts as calling for activities within the scope of this section. 23 Ops. Cal. Atty. Gen. 86.

Improvement plans for a subdivision constituting design documents may not be signed by licensed land surveyor. 58 Ops. Cal. Atty. Gen. 430.

Hierarchy Notes:

Div. 3, Ch. 15 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Land Surveying

NOTES OF DECISIONS

1. Applicability

1. Applicability

Contract to furnish photogrammetry contour maps did not involve land surveying which could only be done by licensed surveyor or civil engineer, where, among other things, ground control work was exclusively for, an integral part of production of aerial photograph and photogrammetry. Hill v. Kirkwood (1958, Cal App 3d Dist) 161 Cal App 2d 346, 326 P2d 599, 1958 Cal App LEXIS 1740.

SUGGESTED FORMS

Contract of Employment of Land Surveyor--Location of Disputed Boundary Line

Contract of Employment of Land Surveyor--Provision--Surveyor To Utilize Original Government Surveys

Contract of Employment of Land Surveyor--Provision--Surveyor's Notice to, and Request for Assistance from, Parties

Contract of Employment of Land Surveyor--Provision--Preparation of Map by Land Surveyor

1 of 3 DOCUMENTS

Deering's California **Codes** Annotated
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BUSINESS & PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 15. Land Surveyors
Article 5. Surveying Practice

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal **Bus & Prof Code** § 8762 (2012)

§ **8762. Records of surveys; Filings**

(a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

(d)

(1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

(e) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.

(f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the date, the book or volume, and the page at which the record of survey is filed with the county recorder.

HISTORY:

Added Stats 1939 ch 41 § 1. Amended Stats 1939 ch 524 § 1; Stats 1941 ch 834 § 9; Stats 1949 ch 1028 § 7; Stats 1974 ch 1065 § 1; Stats 1980 ch 676 § 20; Stats 1983 ch 142 § 1; Stats 1984 ch 943 § 1; Stats 1994 ch 26 § 219 (AB 1807), effective March 30, 1994; Stats 1996 ch 872 § 2 (AB 3472); Stats 2000 ch 678 § 3 (SB 1563); Stats 2002 ch 1013 § 67 (SB 2026); Stats 2003 ch 607 § 39 (SB 1077).

NOTES:

Amendments:

1941 Amendment:

Substituted the section for the former section which read: "After making a survey in conformity with the practice of land surveying, the surveyor or civil engineer may file with the county surveyor in the county in which the survey was made, a record of such survey. Within one hundred eighty (180) days after the establishment of points or lines, the licensed land surveyor or registered civil engineer shall file with the county surveyor in the county in which the survey was made, a record of any such survey, relating to land boundaries or property lines:

"(a) Which is based in whole or in part on evidence not appearing on any map or record previously recorded or filed in the office of the county recorder, county clerk or municipal or county surveying department.

"(b) Which discloses a material discrepancy with the record so appearing or with the records of the General Land Office of the United States.

"(c) Which discloses evidence that, by reasonable analysis, might result in alternate positions of lines or points.

"Any record of survey filed with the county surveyor shall after being examined by him be filed with the county recorder."

1949 Amendment:

Substituted "Bureau of Land Management of the United States" for "General Land Office of the United States" at the end of subd (a).

1974 Amendment:

Added "or physical change" after "Material evidence" in subd (a).

1980, 1983 Amendments:

Routine **code** maintenance.

1984 Amendment:

(1) Amended the introductory clause of the second paragraph by (a) substituting "After making a survey in conformity with the practice of land surveying," for "Within 90 days after the establishment of points or lines"; (b) deleting the comma after "was made"; and (c) substituting "if the survey" for "which"; (2) amended subd (a) by substituting (a) "subdivision map, official map, or record of survey" for "map or record"; and (b) "or county surveying department, or map or survey record maintained by" for ", county clerk, municipal or county surveying department or in the records of"; (3) substituted subds (b), (c), and (d) for former subds (b), (c), and (d) which read: "(b) A material discrepancy with the record.

"(c) Evidence that, by reasonable analysis, might result in alternate positions of lines or points.

"(d) The establishment of one or more lines not shown on any such map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations."; (4) added subd (e); (5) added the third through fifth paragraphs; and (6) added the commas after "surveyor shall" and after "or her" in the last paragraph.

1994 Amendment:

The amendment made no change.

1996 Amendment:

(1) Added "field" before "survey" wherever it appears in the first and second paragraphs; (2) deleted "without trigonometric calculations" at the end of subd (d); and (3) amended subd (e) by (a) substituting "the performance of a filed survey" for "a survey" in the first paragraph; and (b) adding "field" before "survey" both times it appears in the second paragraph.

2000 Amendment:

(1) Added "properly" after "recorded or" in subd (d); (2) substituted "the time at which" for "such time as" in the first sentence of the fourth paragraph; and (3) added the sentence of the last paragraph.

2002 Amendment:

(1) Added subdivision designations (a) and (b); (2) substituted "licensed surveyor or licensed" for "surveyor or" in subd (a); (3) substituted "licensed" for "registered" after "land surveyor or" in the introductory clause of subd (b) and wherever it appears in subds (d) and (e); (4) redesignated former subds (a)-(e) to be subds (b)(1)-(b)(5); (5) added subdivision designations (c)-(f); and (6) added subd (g).

2003 Amendment:

(1) Amended subd (a) by adding (a) "Except as provided in subdivision (b),"; and (b) "field" after "in which the"; (2) added "Notwithstanding subdivision (a), in subd (b); (3) redesignated former subds (d) and (e) to be subds (d)(1) and (d)(2); (4) substituted "subdivision (c)" for "this section" in the first sentence of subd (d)(1); (5) redesignated former

subd (f) and (g) to be subds (e) and (f); and (6) substituted "with the county recorder" for "by the county surveyor" in the last sentence of subd (f).

Historical Derivation:

Stats 1933 ch 506 § 11.3, as added Stats 1935 ch 775 § 9.

Cross References:

Survey of lands divided by county line: Gov C § 27552.

Survey and preparation of final map after approval of tentative map: Gov C § 66456.

Collateral References:

Cal. Legal Forms, (Matthew Bender(R)) §§ 28B.01, 28B.22.

Attorney General's Opinions:

Land surveyor contracting for his services with the Federal Government as required to comply with this section. 3 Ops. Cal. Atty. Gen. 334.

Survey map filed with County Recorder pursuant hereto may show lines thereon which do not represent existing boundary or property lines. 18 Ops. Cal. Atty. Gen. 110.

Prohibition against recording record of survey until it has been filed with, and examined and approved by, county surveyor. 30 Ops. Cal. Atty. Gen. 119.

Filing date of record of survey. 34 Ops. Cal. Atty. Gen. 42.

City or county may not require field survey to be performed or record of survey to be filed for lot line adjustment which involves creation of new points or lines not shown on any subdivision map, official map, or record of survey, position of which are not ascertainable from inspection of subdivision map, official map, or record of survey without trigonometric calculations. 77 Ops. Cal. Atty. Gen. 231.

A city or county may not require a field survey to be performed or a record of survey to be filed for a lot line adjustment which involves the creating of new points or lines not shown on any subdivision map, official map, or record of survey, the position of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey without trigonometric calculations. 77 Ops. Cal. Atty. Gen.

Hierarchy Notes:

Div. 3, Ch. 15 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Land Surveying

NOTES OF DECISIONS

1. Generally

1. Generally

In a mandamus proceedings by surveyor to compel county surveyor and county recorder to accept record of survey of tract owned by petitioner's employer, court properly ruled that employer should be joined as petitioner if he desired to

have adjudication on question whether map of its property, prepared in accordance with Land Surveyors' Act should be filed for recordation. Thomasson v. Jones (1945, Cal App) 68 Cal App 2d 640, 157 P2d 655, 1945 Cal App LEXIS 811.

In a mandamus proceeding by surveyor to compel county surveyor and county recorder to accept record of survey of tract, petitioner, as mere employee of owner, has no direct interest in matter entitling him to relief. Thomasson v. Jones (1945, Cal App) 68 Cal App 2d 640, 157 P2d 655, 1945 Cal App LEXIS 811.

4 of 6 DOCUMENTS

Deering's California **Codes** Annotated
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BUSINESS & PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 15. Land Surveyors
Article 5. Surveying Practice

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal **Bus & Prof Code** § 8765 (2012)

§ 8765. When record of survey not required

A record of survey is not required of any survey:

(a) When it has been made by a public officer in his or her official capacity and a reproducible copy thereof, showing all data required by Section 8764, except the recorder's statement, has been filed with the county surveyor of the county in which the land is located. Any map so filed shall be indexed and kept available for public inspection.

(b) Made by the United States Bureau of Land Management.

(c) When a map is in preparation for recording or shall have been recorded under the provisions of the Subdivision Map Act.

(d) When the survey is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise location of property corners thereon, provided that a corner record is filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(e) When the survey is a survey of a mobilehome park interior lot as defined in Section 18210 of the Health and Safety **Code**, provided that no subdivision map, official map, or record of survey has been previously filed for the interior lot or no conversion to residential ownership has occurred pursuant to Section 66428.1 of the Government **Code**.

HISTORY:

Added Stats 1939 ch 41 § 1. Amended Stats 1941 ch 834 § 10.3; Stats 1959 ch 447 § 2; Stats 1974 ch 1065 § 3; Stats 1977 ch 576 § 1; Stats 1984 ch 943 § 4; Stats 1986 ch 229 § 20; Stats 1999 ch 608 § 1.5 (AB 1342).

NOTES:

Amendments:

1941 Amendment:

Substituted "map" for "record of survey" after "When a" at the beginning of subd (e).

1959 Amendment:

Amended subd (a) by (1) substituting "and a reproducible copy thereof, showing all data required by subdivisions (a), (b), (c), and (d) of Section 8764, has been filed with the county surveyor of the county in which the land is located" for "has been filed by him as a permanent record of his office and is available for public inspection" at the end of the first sentence; and (2) adding the second sentence.

1974 Amendment:

(1) Amended subd (a) by (a) substituting "Section 8764, except the recorder's certificate," for "subdivisions (a), (b), (c), and (d) of section 8764,"; and (b) deleting ", except that a record of survey shall not be required of a survey made by the United States Bureau of Land Management" at the end of the subdivision; and (2) substituted subd (b) for former subd (b) which read: "(b) When it is of a preliminary nature."

1977 Amendment:

Added subd (d).

1984 Amendment:

(1) Added "or her" after "officer in his" in subd (a); (2) amended the first sentence of subd (d) by substituting (a) ", official map, or a record of survey" for "or parcel map of record"; (b) "those" for "such" after "discrepancies with"; and (c) "or found to be of a different character than indicated by prior records" for "on such survey"; and (3) added the second sentence of subd (d).

1986 Amendment:

Substituted "statement" for "certificate" after "recorder's" in the first sentence of subd (a).

1999 Amendment:

Added subd (e).

Historical Derivation:

Stats 1933 ch 506 § 11.3, as added Stats 1935 ch 775 § 9.

Cross References:

Inspection of public records: Gov C §§ 6250 et seq.

Subdivision Map Act: Gov C §§ 66410 et seq.

"Subdivision": Gov C § 66424.

Collateral References:

Cal. Legal Forms, (Matthew Bender(R)) §§ 28B.01, 28B.22.

Attorney General's Opinions:

Record of survey map referred to in Subdivision Map Act is not same as that referred to in Land Surveyor's Act. 10 Ops. Cal. Atty. Gen. 7.

Hierarchy Notes:

Div. 3, Ch. 15 Note

LexisNexis 50 State Surveys, Legislation & Regulations

Land Surveying

5. Discussion and Possible Recommendation Board Rule 425(c) and (d) Regarding Criteria for Responsible Training (Possible Action)

Attachment B – Item 5

425. Experience Requirements - Professional Land Surveyors.

(a) An applicant for licensure as a professional land surveyor shall be granted credit towards the experience requirements contained in Sections 8741 and 8742 of the Code, for the following education curriculum:

- (1) Four (4) years experience credit for graduation from an approved land surveying curriculum.
- (2) Two (2) years experience credit for graduation from a non-approved land surveying curriculum.
- (3) Five (5) years of experience credit for graduation from an approved cooperative work-study land surveying curriculum.
- (4) One-half (1/2) year of education credit for each year of study completed in an approved land surveying curriculum that did not result in the awarding of a baccalaureate degree, except that the maximum of such experience shall be two (2) years. A year of study shall be at least 32 semester units or 48 quarter units, no less than 10 semester units or 15 quarter units of which shall be from classes clearly identified as being land surveying subjects.

“Life Experience Degrees” are not acceptable and will not be counted towards the education credit.

(b) All qualifying work experience in land surveying shall be performed under the responsible charge of a person legally authorized to practice land surveying. An applicant shall possess at least two years of actual responsible training experience in land surveying which shall involve at least four of the land surveying activities specified in subdivisions (a) - (g) and (k) - (n) of Section 8726 of the Code. Qualifying experience in activities specified in subdivision (a), (b), (m), and (n) of Section 8726 shall not exceed one year. Qualifying experience shall be computed on an actual time worked basis, but not to exceed forty hours per week.

(c) For purposes of Section 8742 of the Code, the term “responsible field training” experience may include, but is not limited to, the land surveying activities listed below. Under the responsible charge, direction, and review of a person legally authorized to practice land surveying, the applicant:

- (1) Determines field survey methods and procedures, including selection of accuracy standards.
- (2) Selects or verifies that the correct control monumentation is used to establish the designated survey datum(s) (horizontal and vertical) and selects on-the-ground locations for control monuments.
- (3) Determines the relevance of monuments and physical field evidence for the purpose of establishing boundary and property lines.
- (4) Reviews measurement observations for the determination of accuracy, completeness, and consistency.
- (5) Reviews field notes and records for application of proper field survey procedures.
- (6) Plans, performs, and reviews field checks and, based on such checks, determines if completed field surveys are accurate and sufficient.
- (7) Searches for boundary and control monuments; assists in analyzing field evidence for locating boundary points and lines; identifies and describes such evidence; compares record data to found physical evidence; compares record data to measured data; documents discrepancies;

assists in acquiring and documenting testimony regarding boundary locations; recommends boundary location and/or establishment; selects or verifies that the correct controlling monuments are used to locate or establish boundary points and lines; and prepares draft record documents.

(8) Coordinates the fieldwork necessary to prepare maps, plats, reports, descriptions, or other documents.

(9) Recommends when existing boundary monuments are to be replaced, selects the method(s) to be used for replacing and resetting monuments, and prepares field documentation of such work, including that necessary for Parcel Maps, Final Maps, Record of Survey Maps, and Corner Records.

(10) Functions as a party chief, chief of parties, or lead person in charge of field crew(s) in the performance of field surveys.

(11) Plans and performs field observations using Global Positioning System technology and determines if completed field surveys are accurate and sufficient in geodetic and land surveying applications.

(12) Performs surveys to facilitate the location or construction of infrastructure and fixed works of improvement.

The enumeration of the above tasks does not preclude the Board from awarding “responsible field training” credit for training of a similar character in other current or future land surveying activities not specifically enumerated herein. It is also understood that the listed tasks are only some of those that may be considered as responsible training, and that this list is not in any way intended to enumerate all of the tasks which may be performed by licensed Professional Land Surveyors.

(d) For purposes of Section 8742 of the Code, the term “responsible office training” experience may include, but is not limited to, the land surveying activities listed below. Under the responsible charge, direction, and review of a person authorized to practice land surveying, the applicant:

(1) Performs the planning and analysis necessary for the preparation of survey documents, such as Parcel Maps, Final Maps, Record of Survey Maps, Corner Records, legal descriptions, topographic maps, plat maps, lot line adjustments, annexations, and boundary line agreements.

(2) Reduces and evaluates field data.

(3) Develops procedures and systems for the collection, reduction, adjustment, and use of land surveying data.

(4) Prepares data to be used by field surveyors or field crews.

(5) Coordinates the processing of maps, plats, reports, descriptions, or other documents with local agencies, other licensed surveyors, or County Surveyors Offices.

(6) Coordinates the office work necessary to prepare maps, plats, reports, descriptions, or other documents.

(7) Coordinates survey and design efforts for improvement plans as required for sufficiency to enable proper location of improvements in the field.

(8) Researches public and private records to obtain survey and title data.

(9) Performs boundary analysis and determination using record descriptions, survey, and title data.

(10) Plans and coordinates the application of Global Positioning System technology for geodetic and land surveying applications.

(11) Plans, coordinates, performs, and reviews the entry of property boundary related geo-referenced data into an electronic database.

(12) Prepares topographic mapping utilizing photogrammetric methods.

The enumeration of the above tasks does not preclude the Board from awarding “responsible office training” credit for training of a similar character in other current or future land surveying activities not specifically enumerated herein. It is also understood that the listed tasks are only some of those that may be considered as responsible training, and that this list is not in any way intended to enumerate all of the tasks which may be performed by licensed professional land surveyors.

(e) Computation of qualifying experience for a license as a professional land surveyor shall be to the date of filing of the application, or it shall be to the final filing date announced for the examination if the application is filed within a period of thirty (30) days preceding the final filing date announced for such examination.

(f) An applicant for licensure as a land surveyor who holds a valid and unexpired license as a civil engineer is exempt from the application requirements of subdivisions (b), (c), and (d) of this section provided he or she submits sufficient documentation that he or she has a minimum of two years of actual broad based progressive experience in land surveying as required by Business and Professions Code Section 8742(a)(3).

LSTAC Meeting
July 6, 2012
Agenda (Cont.)

6. Review selected Board actions from June 28-29, 2012 Board Meeting (If necessary)

LSTAC Meeting
July 6, 2012
Agenda (Cont.)

7. Update on April Professional Surveyor Exam; New Application Process for FE, FS and State Exam; and New Application and Testing Fees. (No Action Required)

- 8. Election of Chairman and Vice-Chairman for 2012/2013

9. Develop Proposed 2012/2013 LSTAC Workplan (Possible Action)

LSTAC Meeting
July 6, 2012
Agenda (Cont.)

10. Date of Next TAC Meeting – October 5, 2012

11. Other Business Not Requiring Committee Action

12. Adjourn