1. Please provide an Analytical Overview of the Topic.

We continue our study of servitudes, specifically understanding the relationship between a license and an easement, as well as the nature of an implied easement.

2. What is a mere or pure license? What are some examples of a license?

A license is an oral or written permission given by the occupant of land allowing the licensee to do some act that otherwise would be a trespass. When a neighbor is allowed to pass onto or across another’s property, it is a license. When you purchase a ticket to the movie theatre or park a car in a parking lot, it is a license. Licenses are often for consideration, but may be gratuitous; they are usually revocable by their grantor. There are also licenses in personal property such as in computer software.

3. How would you compare a license, an easement, with a bailment or a lease?

A license and an easement are non-possessory interests in land, for a temporary “use.” A bailment temporarily transfers possession for some purpose. And a lease is a possessory interest in land for some period of time often for years. These distinctions are often important in reevaluating liability in car parking lot cases.

4. Are all licenses revocable?

Licenses are commonly revocable at the will of the grantor. But when a license is coupled with an interest, such an investment in the construction of a neighbor’s swimming pool, it is irrevocable. Or may be implied by the granting of a profit, an irrevocable license to enter the land. Or a license may be irrevocable under the rules of estoppel (where it would be unfair to treat it otherwise, usually based on a reliance).

5. How does a license compare to an easement?

A mere license is a contractual right and does not run with the land. A license coupled with an interest is considered a quasi-easement, and is a property interest (runs with the land, to benefit and burden successors in title), and according to the Restatement of Property is an easement. The textbook states that “an easement is not (revocable)” on p. 677. This may not be although accurate as an easement may be created not to be transferable and may be conditional (which makes it look like it is revocable). An easement might be an “exclusive” easement which means that its use is limited only to the recipient.
6. What is an easement by estoppel?

Where an easement is not created in the normal manner, that is by express deed, it still might be created by estoppel as an exception to the Stature of Frauds. Such as when it is accompanied by an investment in improvements either to the servient estate or to other land of the investor, similar to a license coupled with an interest.

7. What is the scope and terms of an easement by estoppel?

Restatement, the expectations will define the scope and terms of the easement, based upon reasonable expectations.

8. What might be wrong with an easement by estoppel?

When the servient estate revokes permission, should the court issue an injunction to damages to the injured party, if that party did not pay anything for the easement? Such as when a servient estate allows usage and sees the dominant estate improve their own property in reliance of a temporary right of way.

9. What is the topic of the Holbrook case?

Easement by estoppel and by prescription.

10. What is an easement by prescription?

An easement by prescription is an easement created by operation of the statute of limitations and adverse possession.

11. Who is the plaintiff and what is the plaintiff seeking?

Taylor is seeking to force the defendant to remove a steel cable across the right of way and is seeking to have the court recognize its easement (right of way) over Holbrook’s land either by estoppel or by prescription, and right against defendant’s interference with use thereof.

12. Who is the defendant and what do the defendant want?

Holbrook is seeking to have the court reject the creation of an easement, allow the obstruction of the right of way, and/or to force plaintiffs to pay for the right of way.

13. What is the procedural posture of the Holbrook case?
The lower court determined that a right to the use of the roadway by prescription was not established, but it had been established by estoppel. The Supreme Court affirmed.

14. What are the legal issues raised in the Holbrook case?

Easement by estoppel, and easement by prescription. Specifically, can an easement by prescription follow acquisience?

15. What legal rules and authority are recognized in the Holbrook case?

An easement may be created by express written grant, by implication, by prescription, or by estoppel. By prescription if claimant claims title has openly, peaceably, continuously, and under a claim of right adverse to the owner of the soil, and with his knowledge and acquiescence, used a way over the land of another for as much as 15 years.

If a licensee expends money in connection with his entry upon the land of another, he does so at his peril… yet it is the established rule in this state that where a license is not a bare, naked right of entry, but includes the right to erect structures and acquire an interest in the land in the nature of an easement by the construction of improvements thereon, the licensor may not revoke the license and restore his premises to their former condition after the licensee has exercised the privilege given by the license and erected the improvements at considerable expense. The test is permission and reliance to make substantial improvements, makes the license irrevocable.

16. What was a pivotal issue of fact in the Holbrook case?

Whether the license/easement was granted by permission of the landowner. Apparently, the landowner said yes, but thought it was revocable. The user thought it was adverse but would succeed by prescription. The court found that permission had been provided

17. Whose property must be improved to establish an easement by estoppel?

Apparently, either, but certainly the dominant estate as in Holbrook. The key is detrimental reliance.

18. What is the ruling or decision in the Holbrook case?

Easement by estoppel, and that defendant must remove the obstruction.

19. By what authority does the Court change the rule of law?

Prior court decisions.
20. What is the Court’s reason or rationale for changing the rule of law in this case?

The court does not articulate a rationale, other than the test in Lashley.

21. What should be the rationale for the decision in Holbrook?

Detrimental reliance, fairness, and equity.

22. What is the court’s application to the particular facts in Holbrook?

The court found actual consent and substantial improvements in the dominant estate and in the servient estate.

23. What problems survive this decision?

Dominant easement owner obtains an easement at no cost. Who will be legally liable if a visitor to the dominant estate is injured on the right of way? And does the dominant estate have any obligation to maintain the right of way?

24. In the future, what advice would you give a potential servient estate owner concerning easement by estoppel?

Be virulent and do not give permission to cross unless you want to run the risk of creating without compensation an easement.

25. Does the rule in Shepard cut both ways?

The Shepard court apparently finds for an easement by estoppel, but the same rationale could support not finding one.

26. What approach do the New York law and the court in Henry take?

If the easement fails to comply with the Statute of Frauds, e.g. is not in writing, then it is not irrevocable.

27. What is the topic of the Van Sandt case?

Easement by implied reservation or easement by prescription.

28. What is an easement by implication?

Easements by implication are created (by law) based upon the grantor’s and grantee’s presumed intent. Will be created only if an express easement could have been created. Two types, easement by necessity and a quasi-easement.
29. **Who is the plaintiff and what is the plaintiff seeking?**

Van Sandt sued to prevent defendant from running a sewer line across her property.

30. **Who is the defendant and what do the defendant want?**

Defendant responded that she had an implied easement and that there was an easement by prescription.

31. **What is the procedural posture of the Van Sandt case?**

Trial court for the defendant, plaintiff appeals. The Supreme Court of Kansas affirmed.

32. **What are the legal issues raised in the Van Sandt case?**

What is needed legally to find an implied easement or a quasi-easement? Is necessity required? Was a plaintiff a bona fide purchaser without notice of the easement?

33. **What legal rules and authority are recognized in the Van Sandt case?**

Restatement on factors determining implication of easements, p. 686.

34. **What was a pivotal issue of fact in the Van Sandt case?**

That the sewer line was obvious or “apparent” even if it was not visible.

35. **What is the ruling or decision in the Van Sandt case?**

An easement by implication, and with notice.

36. **By what authority does the Court rule in this case?**

Restatement.

37. **In the future, what advice would you give a potential servient estate owner concerning easement by implication?**

Be aware that you will take subject to apparent easements.

38. **What is meant by an easement implied from a prior existing use?**
These are quasi-easements and are implied to protect the probably expectations of the grantor and grantee that the existing use will continue after the transfer, such as in the Van Sandt case.

39. **What is an easement by necessity?**

Implied easements that when at the time of severance, there is a necessity and the court finds that an easement was implied, such as in Othen.

40. **What happens when the dominant and servient estates come under the same ownership?**

The easement is extinguished altogether. If the estates are severed in the future, a new easement (by implication) must be created.