

## **Easements by necessity and statutory easements in the United States of America**

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Access to a landlocked land doctrine is strongly connected with an ethical problem of choosing between freedom and coercion. It is a universal legal concept, so different legal systems adopt different approaches to resolve it. There are two institutions in the United States to solve this problems: easements of necessity, developed in American common law, and statutory easements, enacted by state legislatures.

The establishment of an easement of necessity involves the fulfillment of 4 conditions: 1) priority or common ownership of the tracts of land; 2) severance into two tracts; 3) necessity caused by severance; 4) continuing necessity after severance. The modern approaches to justification of easements implied by necessity are public policy against landlocked properties or the intent of the parties involved.

Statutory easements are developed by state legislatures. That means that they may not be found in all jurisdictions. For example, Texas and Michigan don't stipulate statutory easement law. It's stipulated by laws of such states as Florida, Alabama, Arkansas and etc., but they may actually differ from state to state. Statutory easements in different states common features are as follows: 1) necessity of the passage and 2) compensation to the owner of the servient land. However, they may vary in the degree of necessity. It can be strict or just reasonable. The strict standard requires an access to a property to be non-existent. The reasonable necessity degree requires a lesser strict standard, which means that the land parcel is not absolutely landlocked, but the access to it is overburdening or inconvenient, but it does not assure the claimant of the most direct or comfortable access. It must still be convenient for a servient landowner, so his land must not become useless and valueless. The court's aim is to find a route that will be convenient for the dominant tenant and not burdensome for the servient tenant.

Finally, the convenience of the passage is also a very important concern, because the right choice of the route helps to balance parties' interests. The American state legislatures usually choose to specify the maximum and minimum width of the easement, but some states, influenced by civil-law jurisdictions, prescribe that the route has to be the shortest as possible.

### **Источники и литература**

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