

840.40 EASEMENT - REASONABLENESS OF SCOPE REQUIREMENT.

The (*state number*) issue reads:

“Is the scope of the plaintiff’s use of the easement reasonable?”

On this issue, the burden of proof is on the plaintiff. This means that the plaintiff must prove that the use of the easement is reasonable in scope.¹

The reasonable use and enjoyment of an easement is to be determined in light of the situation of the property at the time of the severance and the surrounding circumstances.²

As to the (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the use of the easement is reasonable in scope, then it would be your duty to answer the issue “Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the defendant.

1. See *Benson v. Prevost*, 277 N.C. App. 405, 413, 861 S.E.2d 343, 349 (2021). If the conveyance does not state the scope of the easement, then a reasonable use scope is implied. *Swaim v. Simpson*, 120 N.C. App. 863, 864, 463 S.E.2d 785, 786-87 (1995).

2. *Shingleton v. State*, 260 N.C. 451, 457, 133 S.E.2d 183, 187 (1963) (this is a question of fact for the jury to decide).