

PROPERTY PRACTICE QUESTIONS

ANSWER 16

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Caveat: The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

Ann v. Gary

Express Easement

- Gary does not have an express easement to use Ann's land, because the fact pattern does not state that Gary's easement was included in the deed.

Easement by Implication

- For an easement to qualify as an easement by implication, the servient and dominant tenements must have been in *common ownership* at the time we infer intent of the easement.
 - Nothing in the fact pattern indicates that the parcels were in common ownership.
 - Therefore, it is not an easement by implication.

Prescriptive Easement (Texas)

- *Open and notorious*
 - *Open*

- Gary's use was open and obvious because there were several dirt roads that led from Gary's property cutting through Ann's and leading to the highway.
- *Notorious (without permission)*
 - Gary's use was without permission because Ann mercilessly yelled at him every time she saw him cut through her property.
- ***Adverse to the owner's claim of right***
 - Gary's use was adverse to Ann's claim of right because it devalued her property.
- ***Exclusive even of the true owner***
 - Ann did not use the part of her property that Gary used because she had a better access to the highway.
 - The fact pattern does not tell us if anyone else used that part of the property.
- ***Uninterrupted Use***
 - Use must be consistent.
 - Gary consistently used Ann's property twice a month when he visited his daughter.
- ***Continuous Use***
 - Texas statutory period is 10 years.
 - The fact pattern tells us that Gary used the road for over 14 years.
- **Conclusion:** Because all the elements for prescriptive use are met, Gary had a prescriptive easement.

Gary's Abandonment of his Prescriptive Easement

- For an easement to be abandoned, there must be an *oral release* followed by *extended non-use* or some other conduct that shows an *intent to abandon*.
 - NOT mere non-use
- Gary never gave an oral release or engaged in any other conduct demonstrating an intent to abandon.
- Gary's actions in regard to his easement amount to mere non-use.

- Because mere non-use is insufficient to show an intent to abandon, Gary did not abandon his prescriptive easement which he had acquired by 14 years of continuous use of Ann's land.

Scope of Gary's Easement

- Scope of a prescriptive easement is determined by the standard of reasonableness.
- Is it reasonable for Gary to use several dirt roads on Ann's property to get to a highway?
 - The courts will probably decide that the current scope of Gary's easement is not reasonable and limit his use to one dirt road only.

Gary's Cross-Claim – Servient Tenant's Use of Easement

- Servient tenant can enjoy his or her property but cannot interfere with the dominant tenant's use.
 - Gary had a valid prescriptive easement and Ann interfered with his use of the easement by building concrete walls.
- Because the servient tenant is not allowed to interfere with the dominant tenant's use of his easement, Gary will most likely prevail on his cross-claim.