

# PROPERTY PRACTICE QUESTIONS

## QUESTION 16

**Gerry W. Beyer**

*Governor Preston E. Smith Regents Professor of Law*



**Topic: Real Property**

**Sub-topics: Easements**

**Type: Essay**

**Difficulty: Easy**

**Time: 30 minutes**

Ann and Gary were neighbors in the rural area of College Station. Their ten acre lots were adjacent to each other. Gary always cut through a far corner of Ann's property to get to his daughter's house in another town. His daughter had three kids and Gary enjoyed spending time with his grandchildren. Gary went to see his daughter approximately twice a month.

Ann has caught Gary using her property a couple of times and yelled at him mercilessly. Gary paid no attention to Ann's frustration and continued to cut through her lot. In fact, he used Ann's property so much, that now there are several identifiable dirt roads from Gary's lot cutting through Ann's and leading to a highway. Ann herself never needed to use that corner of her property because she had a better access to the same highway.

Gary continued cutting through Ann's land for over 14 years, until he had to spend three months out of town for work-related purposes. After Gary came back, he decided it was time to go visit his daughter. As he was about to cut through Ann's land, he noticed that he could no longer do so, because Ann had built concrete walls across all the roads that he had used in the past. When she saw Gary, Ann yelled that she had filed a suit

against him and that he was never to cut through her property again. In her petition Ann alleged the following causes of actions against Gary:

1. That Gary had no express easement and therefore had no right to use Ann's property.
2. In the alternative, if Gary did have an easement, that he abandoned it when he went out of town for three months.
3. In the alternative, if Gary had an easement and it did not terminate, that Gary was using a lot more space than was necessary to get to the road (he could be content with one dirt road and did not need several).

Gary cross-claimed, stating that Ann was not allowed to interfere with his use of the easement.

Consider each of the issues presented and decide what the probable outcome will be.