

# PROPERTY PRACTICE QUESTIONS

ANSWER 20

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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.

## **Bennett v. Knight (River flow reduction)**

- Both Knight and Bennett's originally owned land is riparian because both lots are located alongside the Caprock River and are in the Caprock River's watershed
- **Can Knight use the river to water his newly acquired non-riparian lot at all?**
  - *Source of title*
    - After-acquired non-riparian land does not become riparian by the virtue of the fact that it is adjacent to a previously owned riparian land
      - If the jurisdiction follows the Source of Title approach, than Bennett would win without even discussing any other issues pertinent to the Riparian System jurisdiction
  - *Unity of title*
    - After-acquired non-riparian land becomes riparian by the virtue of attachment to previously owned riparian lot
      - If the jurisdiction follows this approach, then the courts would allow Knight to use the river to water his newly acquired lot, provided the other conditions for riparian use are satisfied

- **Analysis under the Riparian System** (provided the court applied the Unity of Title approach)
  - ***Absolute rights***
    - if the water is being used for domestic purposes, the riparian land owner has an absolute right to use it regardless of what effect such use has on the flow
      - Bennett has an absolute right to use the water from the river because she is using it for domestic purposes
  - ***Correlative Rights***
    - **Natural Flow – Common Law Approach – Minority View**
      - Cannot impact the flow in any way unless the use is for domestic purposes (which would be an absolute right)
        - The courts will probably find that irrigation does not constitute use for domestic purposes
    - If the jurisdiction follows the Natural Flow approach to the Correlative Rights, Knight will be held liable because he used the water for non-domestic purpose and reduced the flow in the process
    - **Reasonable Use Approach – Majority View**
      - A riparian land owner has a right to reasonable use and prevention of the unreasonable use by others
      - Factors the courts consider in applying the Reasonable Use approach:
        - ***Purpose of use***
          - Irrigation of fields (beneficial)
        - ***Suitability of the watercourse***
          - River, seems suitable for irrigation
        - ***Social value of use***
          - Fields with growing crops are generally socially valuable
        - ***How much harm is done to the lower riparians?***

- A lot of harm is done to the lower riparian.  
Cannot even satisfy her needs for domestic use
- *How easy would it be to avoid the harm caused to the lower riparians?*
  - Not very easy, upper riparian would need to find another irrigation source for his new field
- *Can the lower riparian compromise by agreeing that the lower and the upper riparian will both consume less water?*
  - Perhaps, but it would mostly be the upper riparian who would need to use less water
- *Would it be just to have the upper riparians bear the cost?*
  - It would be if the upper riparian was making a lot of money from selling his crops. On the facts in this problem it is not clear
  - The courts could go either way after balancing the factors above
- **What if the jurisdiction followed the Prior Appropriation System?**
  - In the prior appropriation system the right to use the water is acquired by prior use
  - Because Knight had used the water for 30 years before Bennett started using the water, Knight would have a right to continue using as much water as he needed without regard for Bennett's needs
    - In many states, Knight would have had to apply for a permit before Bennett in order to have higher priority

**Knight v. Bennett (Violation of the Natural Flow Rule for the Surface Water)**

- **Natural Servitude Rule – Civil Law Rule – Natural Flow Rule**

- Every property owner must let the surface water *flow naturally* and if necessary allow the neighbor's surface water to flow over their land
  - Bennett interfered with the natural flow of the surface water off of Knight's land by building a concrete wall
    - This directly violates the Natural Flow Rule
- **Reasonableness exception** – if the interference with the natural flow is *reasonable*, then the property owner is not held liable
- Courts will probably find that Bennett's building a concrete wall solely to prevent surface water flow from Knight's land is unreasonable, and Bennett will be held liable to Knight
  - *NOTE: Texas follows Natural Flow approach*

**Knight v. Bennett (percolating water drainage)**

- **Rule of Capture** – The surface owner owns all the water he or she extracts
  - It does not matter if in the process of doing so the surface owner depletes the neighbor's reservoir as long as the capturer is not wasting water on purpose to deplete the neighbor
    - Bennett was selling the captured water, she was not wasting it
- Because the jurisdiction follows the Rule of Capture approach, and Bennett is not maliciously wasting the water captured from Knight's reservoirs, the courts will likely find that Bennett is not liable to Knight

*NOTE: Texas follows Rule of Capture approach for percolating water unless the land is located in a special conservation district.*