

PROPERTY PRACTICE QUESTIONS

QUESTION 20

Gerry W. Beyer

Governor Preston E. Smith Regents Professor of Law



Topic: Real Property

Sub-topics: Water

Type: Essay

Difficulty: Moderate

Time: 45 minutes

Knight owns a parcel of land which is located on the side of the mountain in a jurisdiction that has adopted the Riparian System approach. Bennett also owns a parcel of land on the same slope of the mountain, and her parcel is located below that of Knight. Knight has owned his land almost thirty years longer than Bennett. Running along both properties is the Caprock River. Both properties are within the watershed of the river.

For as long as he has owned the property, Knight used the water from the river to irrigate his large fields growing various crops. After Bennett bought her lot and built a house, Bennett started using the water from the river for domestic purposes. Soon after Bennett purchased her lot, Knight acquired another lot, adjacent to his first lot, but not adjacent to the river. Knight started using the river for irrigating his non-riparian lot as well. Because of Knight's massive irrigation on his two lots, Bennett soon noticed that the flow in the river was insufficient to satisfy even her domestic use needs.

As the area experienced frequent rainfalls, Bennett, who did not want her land to be flooded, built a concrete wall along her property line between her and Knight's lots. As a result, the surface water often became stagnant on Knight's land causing uncontrollable erosion and fostering a large mosquito population.

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Soon after purchasing her lot, Bennett discovered that there was quality percolating water under her land. Bennett started pumping, bottling, and selling the water to many stores in the area. However, in the process of doing so, Bennett also depleted Knight's land, which apparently had percolating underground water as well.

Frustrated by the decreased river flow, Bennett brings a suit against Knight. Knight also brings a suit against Bennett for not allowing his surface water to flow freely and for depleting his underground water reservoir. The jurisdiction where these suits are brought has adopted the Natural Flow approach for the surface water and the Rule of Capture approach for the underground water. Although the jurisdiction follows the Riparian System approach, also discuss what would be the result if the jurisdiction followed a Prior Appropriation approach. Discuss all pertinent issues and possible outcomes of the case.