

PROPERTY PRACTICE QUESTIONS

QUESTION 25A

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Topic: Real Property

Sub-topics: Easements, Covenants, Nuisance, Support, & Water

Type: Multiple Choice

Difficulty: Moderate

Time: 45 minutes

1. What are the five major elements of an easement?

2. The person with the right to use the easement is called the:

- A. Servient Tenant
- B. Dominant Tenement
- C. Servient Tenement
- D. Dominant Tenant
- E. None of the Above

3. An easement can be either affirmative or negative.

T / F

4. An appurtenant easement benefits the person, whereas the in gross easement benefits the property T / F
5. When a party has the right to enter the land, but also has the right to remove things from the property, this party most likely has a: (circle all that apply.)
- A. A License
 - B. A Profit
 - C. Merchants License
 - D. Profit a Prendre
 - E. Equitable Easement
6. Which of the following statements are most true of a license? (Circle all that apply)
- A. It is very weak, maybe not even an interest in land
 - B. It is revocable upon proper notice
 - C. A license is stronger than the profit
 - D. It is revocable at any time, for any reason
 - E. A license is similar to a prescriptive easement
7. Bart tells his neighbor Ann that she can drive over his land to reach the main highway. Which one of the following statements would most likely apply to this situation?
- A. This is an appurtenant easement
 - B. This is a real covenant.
 - C. This is a license.
 - D. This is an in gross easement.
8. Name 3 ways to create an easement.
- _____
- _____
- _____
9. The one major requirement of all easements by implication is that the party asserting the easement must prove that the land was in _____ at one time.
10. The categories of an easement by implication include:

- A. By Prior Use
- B. By Emergency
- C. By Necessity
- D. By Succession

11. Why is it so important to know whether a party is asserting an implied reservation, or an implied grant?

12. A negative easement cannot be created by prescription. T / F

13. In determining the existence of an implied easement by prior use, what are some of the factors that the courts consider in deciding whether the parties intended for the prior use to continue?

- A. Whether the use was permanent and continuous
- B. Whether the grantee used an easement without the grantor's permission
- C. Whether prior use was apparent or discoverable by reasonable inspection
- D. Whether the use was necessary and beneficial
- E. Whether the grantor told the grantee that she was granting her an easement

14. What are the Texas elements for the prescriptive easement?

15. Reservations to a third party were lawful at Common Law T / F

16. Which of the following are elements of an easement by custom: (Circle all that apply)

- A. It must be ancient

C. Merger

E. Prescriptive Easement

D. Estoppel

F. Release

30. Real covenants are assignable. T / F

31. What are the four elements of a real covenant?

32. Which of the following statements are most true of the touch and concern requirement of a valid real covenant? (Circle all that apply)

- A. The promise should make the benefited land less valuable and the burdened land more valuable
- B. The burden burdens the land, and not the landowner as an individual
- C. In Texas, both the benefit and burden must touch and concern the land
- D. In Texas only the benefit or the burden must touch and concern
- E. All of the above

33. Which of the following relationships would qualify as having mutual privity? (Circle all that apply)

- A. Landlord/Tenant
- B. Grantor/Grantee
- C. Joint Tenants
- D. Settlor-Trustee
- E. All of the above

34. At Common Law _____ was required to make a real covenant.

35. In Texas _____ is required to make a real covenant.

36. At modern law, which one of the following types of privity is needed to enforce a real covenant?

- A. Horizontal Privity

- B. Vertical Privity
- C. No Privity is needed for enforcement
- D. Mutual Privity
- E. Perpendicular Privity

37. What is the term of art used to describe a defective real covenant?

38. In the case of *Tulk v. Moxhay*, the court stated that in some cases _____ can be substituted for privity.

39. When a court construes a covenant by imposing limitations that are not expressly stated but are consistent with the purpose of the covenanting parties, the court is using the method of:

- A. Strict Construction
- B. The English Rule
- C. Broad Construction
- D. The American Rule

40. A real covenant can be terminated in some of the following ways:
(circle all that apply)

- A. Acquiescence
- B. Changed Conditions
- C. Unclean Hands
- D. Release
- E. Petition

41. The most important evidence a client could provide to persuade a court that a real covenant should be terminated based on a change in circumstances is that:

- A. The area around the client's neighborhood has significantly changed
- B. The person who originally sold the land was trying to prevent a certain use not intended by the client
- C. The growth of the area as a whole makes the real covenant impractical
- D. There have been significant changes in the client's neighborhood itself

42. Pam and John are neighbors. According to her deed, Pam has a right to use a driveway that abuts her land but is on John's property. Pam rarely uses the driveway. John recently made an addition to his home that interferes with Pam's use of the driveway. Pam has threatened to file suit. John told her that she has abandoned her easement. Is John correct? Yes / No

43. Darren and Alice are neighbors. Darren has three big dogs and Alice has three small children. Alice and Darren want to create a real covenant that would require Darren to build a solid 6 foot fence along his lot line. In return, the covenant would require Alice to maintain the fence. What would a Texas court most likely say about this real covenant?

- A. This real covenant is a valid real covenant because both the benefit and the burden touch and concern the land
- B. The real covenant is invalid because there is insufficient consideration
- C. The real covenant is a valid real covenant because Alice and Dan have vertical privity
- D. The real covenant is invalid because Alice and Dan do not have privity of estate

44. Explain briefly how Texas courts view the touch and concern element of a real covenant?

45. In Texas, the parties must have _____ privity to create an enforceable real covenant and _____ privity to enforce a covenant.

46. Which of the following statements are correct about a nuisance action? (Circle all that apply)

- A. A nuisance action requires physical interference with the plaintiff's property
- B. Nuisance is a strict liability concept
- C. Nuisance actions do not require damage, unlike trespass actions
- D. Courts balance several factors to determine whether a nuisance has occurred
- E. All of the above are correct statements

47. What are the five common factors a court will consider in a nuisance action?

48. Possible remedies in a nuisance action include:

- A. Money damages for past harm
- B. Injunction
- C. Money Damages for harm in the future
- D. Punitive Damages
- E. a and b
- F. a, b and c
- G. All of the above

49. In order to protect farmers, some states have passed _____
that prevent people who move in near a farm from claiming nuisance.

50. A person has a duty to provide lateral support to his neighbor's land in its natural condition. T / F

51. What are the two categories of nuisance?

52. Sam's property was damaged because Ben removed support for Sam's land by excavating his own property. Who will be liable for the damage caused to Sam's property?

- A. The person who owns the excavated land
- B. Ben
- C. Any person in the chain of title to that property
- D. The person who owns the excavated land so long as they had notice of the excavation
- E. Any of the above may be held liable

53. Jim owned a beautiful house on the slope of the mountain. Jim's neighbor, Allen, owned the house right above Jim's. Jim's predecessor in title had built a strong retaining wall to support Allen's house. After Jim bought the house, the wall began to deteriorate but Jim never did anything to maintain it. One day the wall practically collapsed due to a week of heavy rains, and this caused Allen's house to slide downward. Allen is now suing Jim. Which of the following outcomes is most likely:

- A. Jim will be found liable because he had notice of the condition
- B. Whoever originally built the retaining wall will be held liable because liability for building and maintaining artificial support structures is in gross
- C. Jim will be found liable because the duty to maintain artificial support runs with the land
- D. No one will be found liable because the collapse was a product of natural forces

54. _____ support refers to the land support from underneath.

55. Subjacent support law is largely based on which one of the following types of law:

- A. Property Law
- B. Codifications
- C. A Negligence Standard
- D. Government Regulation
- E. None of the above

56. What are the three types of water?

57. What is the term of art used to refer to the general rule regarding retention of surface water? _____

58. What are the approaches for handling surface water?: (Circle all that apply)

- A. The Servient Rule
- B. The Common Enemy Rule
- C. The Natural Servitude Rule
- D. The General Rule
- E. The Reasonable Use Rule

59. Under which approach to getting rid of the surface water would Y most likely prevail in the following fact pattern:

X and Y are neighbors. To prevent damage to his landscaping, X erects a concrete barrier between his yard and the yard of his neighbor Y. After a hard rain Y's yard fills with water, and cannot naturally drain causing his foundation to soak and shift. Y has filed suit against X.

60. In a reasonable use jurisdiction, what factors does the court consider to determine whether the use of the surface water was reasonable?
- A. Amount of harm
 - B. Foreseeability of harm
 - C. Motive
 - D. All of the above
61. What are the two other names used to describe the Natural Servitude Rule?
-
62. What are the two systems developed to determine the rights of the parties to water in watercourses?
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63. Which one of the following statements is most true of the Riparian System?
- A. A Riparian landowner can use the water in any amount and for any purpose, it is his absolute right
 - B. A non-riparian land owner has no rights to the water
 - C. Irrigation is a domestic use
 - D. Riparians are persons who have access to the water in a watercourse whether by proximity or by well or pump
 - E. None of the above are true statements
64. There are two approaches to handling the issue of _____ rights in the riparian system: the "natural flow approach" and the "reasonable use approach".
65. Under the natural flow approach in the riparian system, the neighboring riparian could not in any way impact the natural flow unless it was for an absolute right. T / F
66. Under the prior appropriation approach, the right to water used to be acquired by prior use. Today it depends on the priority in obtaining a governmental permit. T / F

67. States that have completely eliminated riparian rights are said to follow the _____.
68. In Texas Riparian rights coexist with prior appropriation rights. This means that Texas follows the _____ doctrine.
69. The source of title approach states that riparian land cannot be enlarged; i.e. if the land was not Riparian at the time of conveyance, it cannot become riparian merely by being annexed to riparian land. T / F
70. What are the two approaches used to determine whether or not riparian land can be enlarged?

71. Which of the following are types of groundwater: (Circle all that apply)
- A. Percolating water
 - B. Water in watercourses
 - C. Drainage water
 - D. Underground streams
72. What are the two approaches to percolating groundwater ownership? (Circle all that apply)
- A. Common Law Rule/Absolute Ownership Rule/English Rule
 - B. American Rule/Reasonable Use Rule
 - C. The California Rule
 - D. The Natural Servitude Rule
73. Under the American Rule the key factor is whether you have taken more than other people in your area in a similar situation. T / F
74. Texas follows the ownership in place theory for oil and gas. T / F
75. At common law a landowner owned his land from the center of the earth up to the sky. T / F
76. The doctrine of _____, recognized at common law, prevented others from blocking their neighbor's view of the sky.
77. Which of the following factors will a court consider in determining the reasonableness of the water use for co-relative rights in a jurisdiction following the reasonable use approach? (Circle all that apply)

- A. Economic value of the use
- B. Maliciousness of the use
- C. Purpose for which the water is used
- D. How long the person has been using the water
- E. Practicality of avoiding the harm