

PROPERTY II QUIZ: SERVITUDES

Prof. Bell

NOTE: Choose the one best answer to each question, applying the majority rule of property law. As on the MBE, you have 1.8 minutes/answer.

Question 1

Hill lived on a slope running down to a road. He ran a sanitary sewer line from his house to the road, where he connected it to the city's line. Hill then subdivided his property, creating another lot between his house and the street, and built a house there, which he connected to the sewer line. He sold the lot and house to Valley, reserving an easement so that Hill could drive across Valley's lot to the road but not mentioning the sewer line. Valley discovered that Hill's sewer line crossed his property only after the line backed up and flooded his basement. Valley brought suit against Hill for trespass. What result?

- (a) Hill has an easement by necessity.
- (b) Hill has an easement implied from a prior use.
- (c) Hill has an easement by estoppel.
- (d) Hill has an easement by prescription.

Question 2

Assume the same facts as in question 1, plus these: After Valley purchased the lot from Hill, the county built a new road along the border of Hill's property opposite Valley's lot, giving Hill direct access to a road. The easement allowing Hill to drive across Valley's lot

- (a) subsists regardless of its necessity.
- (b) subsists only if reasonably necessary.
- (c) terminates if Hill stops using it.
- (d) terminates if no longer strictly necessary.

Question 3

Alfred and Brenda owned neighboring parcels of land. They entered into a mutual agreement, which they duly recorded, promising that their properties would be used only for residential purposes. Alfred then leased his land to Carl, who used it for his car washing business. Brenda brought suit against Carl to enforce the agreement. What result?

- (a) Brenda loses because U.S. courts do not recognize negative easements against business uses.
- (b) Brenda loses because she is not in horizontal privity with Carl.
- (c) Brenda wins money damages for breach of a real covenant.
- (d) Brenda wins equitable relief for breach of an equitable servitude.

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Answer Key

Question 1

- (a) An easement by necessity requires strict necessity, which here the facts do not establish. Hill could use a septic tank or a sump pump, for instance.
- (b) **This is the best answer, by process of elimination if for no other reason. In fact, though, the facts are akin to those in *Van Sandt v. Royster*.**
- (c) There is no evidence of a license or other facts supporting estoppel.
- (d) There is no evidence of adverse use for the statutory period—a necessary element of prescription.

Question 2

- (a) **This is the best answer, as we have no reason to think that the easement, established via express agreement, has been extinguished.**
- (b) This is a requirement for implied—not express—easements.
- (c) Mere non-use is not enough to extinguish an easement; see p. 841.
- (d) This is a requirement for an easement by necessity—not an express easement.

Question 3

- (a) Though true, the claim is irrelevant because Brenda could enforce her rights via a covenant.
- (b) Historically, horizontal privity of estate was necessary for the burden of a real covenant to run, but not the benefit. Now, though, horizontal privity of estate is not required. See p. 851 (which, admittedly, could be a bit more clear about the current state of the law).
- (c) Because Carl has a lesser estate, the burden of the real covenant does not run. See p. 852.
- (d) **Is the best answer, though mostly because the other answers are plainly wrong. Even here, we would like to know more about whether or not Carl had notice.**