

A landowner granted an exclusive easement to a farmer to grow wheat for commercial use on a portion of the landowner's land for a period of 10 years. The easement made no mention of the transferability of the easement. For five years, the farmer grew wheat on the land. In year six of the easement, the farmer apportioned one-half of the easement to a rancher for grazing his cattle and the other half of the easement to a horticulturist for growing sunflowers. Unhappy with this arrangement, the landowner filed an action in court to invalidate the apportionment of the easement that he originally granted to the farmer.

Which of the following is the landowner's strongest argument that the apportionment of the easement is invalid?

- A. Easements that are for commercial use are not transferable.
- B. The burden of the easement did not automatically transfer with the land when the easement was transferred by the farmer.
- C. The exclusive easement was apportioned without the landowner's consent.
- D. The rancher and the horticulturist did not use the land in the same way as the farmer.

Explanation:

Distinctions between easements

Type	Appurtenant	Benefits easement holder's land Benefit & burden automatically transfer when land is conveyed
	In gross	Benefits easement holder personally Burden (not benefit) automatically transfers when land is conveyed
Purpose	Affirmative	Allows easement holder to do something on servient estate
	Negative	Restricts servient-estate owner's lawful use of servient estate
Creation	Express	Created by parties in writing that satisfies statute of frauds
	Irrevocable license	License becomes irrevocable due to estoppel or coupling with another servitude
	Implied	Implied by law due to necessity (easement by necessity) Implied by fact due to prior use (easement by implication)
	By prescription	Adversely acquired through OCAN —open/notorious, actual, continuous & nonpermissive use

Easements are either appurtenant (for the benefit of another parcel of land) OR in gross (for the benefit of the easement holder personally—as seen here). Traditionally, the benefit of an **easement in gross** could not be **transferred**, but most courts now allow transfer if the easement is for **commercial use** or if the parties intended it to be transferable. Whether the easement can also be **apportioned** (ie, divided up) turns on whether it is:

nonexclusive – in which case the easement *cannot* be divided among multiple transferees *or*
exclusive – in which case the easement generally *can* be divided among multiple transferees.
However, the apportionment of an **exclusive easement in gross** is subject to the "**one stock**" rule. Under this rule, the collective use that the transferees can make of the easement is **limited to the use** that the **transferor made of the easement** (ie, the transferor's "stock").

Here, the farmer's easement in gross was transferable because it gave him the right to grow wheat for *commercial* use, and it could be apportioned because it was *exclusive* to him (**Choice A**). Therefore, the landowner's strongest argument that the apportionment is invalid is that the rancher and the horticulturist did not use the land in the same way as the farmer (ie, to grow wheat).

(Choice B) The burden of an easement in gross automatically transfers when the land burdened by the easement (ie, the servient estate) is transferred. But this is irrelevant since the land in question was never transferred.

(Choice C) The servient-estate owner's consent is not required to apportion an exclusive easement.

Educational objective:

When an exclusive easement in gross is apportioned (ie, divided up), the "one stock" rule applies. This rule limits the collective use that the transferees can make of the easement to the use that the transferor made of the easement (ie, the transferor's "stock").

References

Miller v. Lutheran Conference & Camp Ass'n, 200 A. 646, 651–52 (Pa. Super. Ct. 1938)
(explaining that the one-stock rule applies to the division of profits or easements in gross).

25 Am. Jur. 2d Easements and Licenses § 79 (transferability of easement in gross).

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