

A landowner's driveway separated her property from that of her neighbor. Although the neighbor could access his property from the other side, he also wanted the ability to enter his property on the side that ran parallel to the driveway. He asked the landowner for permission to do so, and the landowner granted the neighbor an easement to use her driveway in order to access his property for a period of 20 years. Two years later, the landowner decided to build a fence at the entrance to the driveway. After it was built, the landowner locked the fence and did not give a key to the neighbor despite his requests for one. Twelve years later, the landowner took the fence down. The neighbor attempted to use the driveway, but the landowner prevented him from doing so, claiming that he no longer had the right to use it.

The period of time to acquire rights by prescription in the jurisdiction is 10 years.

Does the neighbor still have the right to use the landowner's driveway?

- A. No, because the easement was terminated by estoppel.
- B. No, because the landowner prevented the neighbor from using the easement for the prescriptive period.
- C. Yes, because the neighbor did not act in an affirmative way to show a clear intent to relinquish his easement right.
- D. Yes, because the neighbor was granted an easement for a term of years, which has not expired.

Explanation:

Ways to terminate easements

Destruction – servient estate condemned or destroyed by natural forces

Abandonment - dominant estate abandons easement

Merger - dominant & servient estates united in common ownership

Prescription - servient owner prevents use for prescriptive period

Estoppel - dominant owner estopped from asserting easement

Release - express release in writing satisfying statute of frauds

Mnemonic: **DAMPER**

An **easement** is a nonpossessory right to make specific, limited use of another's land (servient estate). Just as an easement can be [created by prescription](#), an easement can be **terminated by prescription**. This requires the servient-estate owner to act in a manner inconsistent with the continued existence of the easement. The prescriptive activity must be **hostile and adverse** to the easement holder (nonpermissive), **open and notorious** (visible), and **continued without interruption** for the statutory period.

Here, the landowner (servient-estate owner) granted the neighbor an easement to use her driveway. Without the neighbor's permission, the landowner later built a fence at the entrance to the driveway, locked the fence, and refused to give the neighbor a key. And since the landowner continuously maintained the fence for longer than the 10-year statutory period, the neighbor's easement was terminated by prescription. Therefore, the neighbor does *not* still have a right to use the driveway.

(Choice A) An easement may be terminated by estoppel if the servient-estate owner changes position to his/her detriment in reliance on the easement holder's statements or conduct indicating that the easement has been abandoned (not seen here).

(Choice C) An easement may be terminated by abandonment if the easement holder acts in a manner that shows a clear intent to relinquish his easement right. Here, the neighbor did nothing to abandon the easement, but it was still terminated by prescription.

(Choice D) An easement granted for a term of years (here, 20 years) can be terminated prior to its expiration in the same manner as any other easement. So had the neighbor's easement not been terminated by prescription, it would have continued until the end of the 20-year term.

Educational objective:

Terminating an easement by prescription requires the servient-estate owner to act in a manner inconsistent with the continued existence of the easement. That prescriptive

activity must be hostile and adverse, open and notorious, and continued without interruption for the statutory period.

References

Restatement (Third) of Property: Servitudes § 7.7 (Am. Law Inst. 2000) (termination of an easement by prescription).

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