

A man owned a lakefront home in a gated community with a pier where he docked his boat. His neighbor, whose home did not have a pier, told him that she was interested in purchasing a boat but that she had nowhere to dock it except for the community clubhouse. The clubhouse was located at the other end of the gated community far from the neighbor's home. However, the man told the neighbor that she could use his pier to dock her boat, and as a result, the neighbor purchased a boat knowing that she could dock it close to home. For the next 11 years, the neighbor used the man's pier to dock her boat. During this time, the neighbor also paid for the pier to be rebuilt due to corrosion. Thereafter, the man told the neighbor that she could only use the pier if she paid a monthly fee of \$600. When the neighbor refused to pay the fee, the man built a fence around the pier and refused to give the neighbor a key to unlock the fence.

The statutory period for acquiring rights by prescription in the jurisdiction is 10 years.

Does the neighbor have the right to use the man's pier to dock her boat?

- A. No, because the easement was not in a writing that satisfied the statute of frauds.
- B. No, because the neighbor could have docked her boat at the community clubhouse.
- C. Yes, because the neighbor detrimentally relied on the man's permission to use the pier.
- D. Yes, because the neighbor's use of the pier was continuous, actual, and open.

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

An **easement** is a right held by one person to make specific, limited use of land owned by another. The land that is subject to the easement is the servient estate, while the land that benefits from the easement is the dominant estate.

Most easements are expressly created in a writing that satisfies the statute of frauds, but they also can be created by other methods—including **estoppel**. An easement by estoppel arises from **good-faith, reasonable, detrimental reliance** on the servient-estate owner's **permission** to make a limited use of his/her land.*

Here, the man (servient-estate owner) gave the neighbor (dominant-estate owner) permission to use his pier to dock her boat. The neighbor reasonably relied on that permission to her detriment by purchasing a boat, having no reason to believe that the permission would be revoked. She even paid for the man's pier to be rebuilt due to corrosion. Therefore, the neighbor obtained an easement by estoppel, giving her the right to use the man's pier.

*An easement by estoppel can also be characterized as an irrevocable license.

(Choice A) While a valid easement can be expressly created by a writing that satisfies the statute of frauds, it can also be created by other means (here, by estoppel).

(Choice B) The neighbor's ability to dock her boat at the community clubhouse has no bearing on her right to use the man's pier. Although she would be inconvenienced if she had to use the community clubhouse, this does not create an easement by necessity on the man's pier. Such an easement can be implied only when property is rendered virtually useless (typically from being landlocked) without an easement across the neighboring property.

(Choices D) Although the neighbor openly and continuously used the pier for more than the 10-year statutory period, that use was with the man's permission. This negates the hostile (nonpermissive) use required to establish an easement by prescription.

Educational objective:

An easement by estoppel is created through good-faith, reasonable, detrimental reliance on the servient-estate owner's permission to make a limited use of his/her land.

References

Restatement (Third) of Property: Servitudes § 2.10 (Am. Law Inst. 2000) (servitudes created by estoppel).