

Fifteen years ago, a man who owned vacant land granted an easement over that land, by deed of gift, to his neighbor for use as a shortcut to her cabin. The deed was silent concerning the easement's location; however, the neighbor used a 15-foot strip along the west side of the man's land.

Last year, the neighbor's cabin was destroyed by fire. The neighbor rebuilt the cabin in a new location, as required by the local building code, and now wants to access the cabin from the east side of the man's land. The neighbor has told the man that she plans to relocate the easement on the east side of his land at her expense. The man has told the neighbor that the easement cannot be relocated. The man's land remains vacant.

Does the man have the right to stop the neighbor from relocating the easement?

- A. No, because the location of the easement was not fixed in the original grant.
- B. No, because the neighbor would not have asked to relocate the easement if her cabin had not been destroyed by fire.
- C. Yes, because the grant of the easement was by deed of gift and without consideration.
- D. Yes, because the neighbor's use of the easement on the west fixed the location of the easement.

Incorrect

Correct answer D

Collecting Statistics

02 mins, 44 secsTime Spent

2023Version

## Explanation:

### Distinctions between easements

<b>Type</b>	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
<b>Purpose</b>	Affirmative	Allows easement holder to do something on servient estate
	Negative	Restricts servient-estate owner's lawful use of servient estate
<b>Creation</b>	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 <b>OCAN</b> —open/notorious, actual, continuous & nonpermissive use

An **easement** is a right held by one person (dominant-estate owner) to make specific, limited use of land owned by another (servient-estate owner). Most easements are **expressly created** in a writing that satisfies the statute of frauds. The **scope** of an express easement is first defined **by its terms**. But if the **location** of the easement is **not specified**, then the **servient-estate owner may fix** the easement to a reasonable location.

Here, the easement over the man's land (servient estate) was expressly created in a deed that was silent as to the easement's location (**Choice A**). However, the man reasonably set the easement's location based on the neighbor's 14-year use of a 15-foot strip on the west side of the man's land. As a result, the man has the right to stop the neighbor from relocating the easement.

**(Choice B)** It is irrelevant that the neighbor asked to relocate the easement only because her cabin was destroyed by fire. The location of the easement was set by the neighbor's 14-year use of the easement on the west side of the man's land.

**(Choice C)** An express easement may be made by a deed of gift and without consideration.

### Educational objective:

The scope of an express easement is defined in the first instance by its terms. But if the location of the easement is not specified, then the servient-estate owner may fix the easement to a reasonable location.

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