1. Please provide an Analytical Overview of the Topic.

We continue our study of easements with two subtopics, assignability of easements and scope of easements. As an overview on the first subtopic, it is generally the case that all easements by definition are assignable, in that they are created “an easement in fee simple to A, her assigns and successors in title.” This language evidences the grantor’s intent to create an easement that runs with the land. When an easement is appurtenant, both the burden on the servient estate and the benefit on the dominant estate run to assignees and to successors in title of the original grantors and the original grantees. An issue of assignability arises when an easement is in gross, as it benefits a person and there is no dominant estate. Another issue concerning an easement in gross arises as to its subdivision that is the question of who many people as mean to enjoy the benefit of an assigned easement. Ultimately, this question goes to the intended scope of the easement. Another scope issue involves the extent of beneficial use and the extent of the burden on the servient estate.

2. When, if ever, is an easement in gross assignability?

Originally, an easement in gross was not transferable or assignable. Today, easements in gross are assignable if the original grantor and original grantee intended them to be, especially commercial easements. Some courts hold that recreational easements (for hunting, fishing, boating, and camping) are not assignable, unless expressly stated to the contrary.

3. When, if ever, is an easement (or a profit) subject to subdivision?

Subdividing the servient estate does not extinguish the easement. Subdividing the dominant estate does not extinguish the easement, unless the easement specifies. As to an easement in gross, if the easement is assignable, it can be subdivided. If the benefit of an easement in gross is meant to be divisible, it is expressly stated to be so.

4. How does one determine the scope of an easement, either appurtenant or in gross?

The scope on an easement may present numerous issues relative to the location of the benefit, enlargement of the benefit, the location of the burden, activity on the dominant estate, and activity on the servient estate. Whether the use of an easement constitutes an abuse (misuse) of the easement might be determined based upon the following factors: the express terms of the easement; the scope is a particular problem when the easement is created other than by grant, such as by
estoppel, implied reservation, prescription. It is generally held that when the
dominant estate is developed normally or reasonably, the easement can expand to
accommodate the expanded use. It is clear that unless the easement expressly
provides otherwise, its use does not permit the easement owner to install on the
easement aboveground or underground utilities, such as electrical lines and sewer
pipes. Of course, one could grant and often grants an easement for purpose of
providing utilities. The location of an easement is usually fixed by mutual
agreement. The general rule is that the servient estate owner cannot relocate the
easement without permission of the dominant estate owner. Prescriptive
easements are strictly limited in scope and cannot be expanded.

5. What is the procedural posture in Miller?

6. What are the legal issues in Miller?

7. What is the plaintiff seeking in Miller?

8. What legal rules and authority are recognized in the Miller?

9. What was a pivotal issue of fact in the Miller?

10. What is the ruling or decision in the Miller?

11. What is the court’s rationale in Miller?

12. What is the court’s application to the particular facts in Miller?

13. What is the procedural posture in Brown?

14. What are the legal issues in Brown?

15. What is the plaintiff seeking in Brown?

16. What legal rules and authority are recognized in the Brown?
17. What was a pivotal issue of fact in the Brown?

18. What is the ruling or decision in the Brown?

19. What is the court’s rationale in Brown?

20. What is the court’s application to the particular facts in Brown?