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?

Frank and Katherine Miller sought an injunction to prevent defendant from trespassing on the lands covered by the water, erecting structures, and granting bathing licenses. The trial court issued an injunction.

6. What are the legal issues in Miller?

1. What property rights in the lake, if any, did Frank possess?
2. Could Frank assign his easement interests, if any, to Rufus?
3. Could Rufus assign his easement interests, if any, to others?
4. Could Rufus’s easement interests, if any, be subdivided or divisible?
5. Termination of a partnership? Court did not explore. (p. 710)
6. Riparian rights? Court said these were not relevant. (p. 711)
7. Marital rights? Court did not explore. (p. 709)

7. What is the plaintiff seeking in Miller?

Plaintiffs seek to prevent the Lutherans from bathing in the lake. They contend that while boating and fishing were granted by deed to Frank Miller, no bathing rights were conveyed by that instrument. That the bathing rights were owned by Katherine Miller and that Frank could not have given Rufus any title to them.

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

1. Bathing easements might be created by prescription.
2. Such an easement is in gross, and is alienable and assignable.
3. Such an easement in gross is divisible, but to be exercised as one stock.

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

Did Frank acquire title to bathing rights other than by express grant? By prescription?

10. What is the ruling or decision in Miller?
There are enough facts to support an easement by prescription for bathing rights. (pp.711-12). That it is an easement in gross, can be assigned, and can be divisible, but that the intent of the grantor and the grantee was to exercise the easement as one stock (combined exploitation) and not to be further subdivided without the permission of the other.

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

An easement in gross is a property interest and can be assigned and divisible.

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

Plaintiff can prevent the defendants from exercising their bathing rights in the lake, as the estate of Rufus Miller could not solely transfer bathing rights to the Lutherans, as long as the estate of Frank C. Miller did not concur. What do the Lutherans do after this decision? What if Frank Miller refuses to cooperate with the licensing?

13. What is the procedural posture in Brown?

The trial court denied the injunction sought by plaintiff, and awarded plaintiff $1 and $1 to defendant. The court of appeals reversed. The Supreme Court reversed and reinstated the trial court’s denial of the injunction.

14. What are the legal issues in Brown?

To what extent, if any, can the holder of a private road easement traverse the servient estate to reach not only the original dominant estate, but also a subsequently acquired parcel when those two combined parcels are used in such a way that there is no increase in the burden on the servient estate?
1. Was the extension of the easement to parcel C a misuse of the easement?
2. Easement by necessity?
3. Easement by estoppel?
4. Does an injunction follow?

15. What is the plaintiff seeking in Brown?

The plaintiff(s) owners of the dominant estate sought an injunction to stop the defendant from preventing him from using the easement to benefit parcel C (see p. 717), remove obstructions, and damages. Defendant counterclaimed for an injunction and for damages.

16. What legal rules and authority are recognized in Brown?
1. General rule: an easement appurtenant to one parcel of land may not be extended by the owner of the dominant estate to other parcels owned by him, whether adjoining or distinct tracts, to which the easement is not appurtenant.
2. There may be an action for damages (but that was not appealed).
3. But an injunction is an equitable remedy, based on fairness.

17. **What was a pivotal issue of fact in Brown?**

The additional use did not excessively burden the servient estate.

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

There was an abuse of the easement, enough perhaps for damages, but not enough (in this particular case) for injunctive relief (for the servient estate to get an injunction). But the court found for the plaintiff to get an injunction to stop the servient owner’s interference.

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

Insufficient abuse.

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

Plaintiff entitled to use the easement, even though there was an abuse of the easement. The Supreme Court gave great deference to the trial court’s findings of facts.

21. **What about the dissent in Brown?**

Misuse is misuse and injunction is an appropriate remedy for misuse (servient estate should have the right to enjoin.)

22. **Can the plaintiff claim an easement by estoppel? By necessity?**

See reference to plaintiff’s expenditure of $11,000, p. 717.
See reference to dissenting justice’s comment on landlocked parcels and the use of condemnation, p. 721.

23. **What happens if after this case the plaintiff sells parcel C to C? Does C have a right of way over A’s land?**