1. Please provide an Analytical Overview of the Topic.

We continue our study of easements conclude with the subtopic of termination of easements. Simply, when, if ever, do easements end? There are really three subtopics contained in this material. One is termination of estates generally (at least in one owner, where does it go next or is it totally extinguished?). The second is termination of easements (at least in one owner, where does it go next or is it totally extinguished?). And the third is what does it mean to abandon an easement and what legal effect, if any, is abandonment?

2. How are estates terminated, if ever?

Fee simple absolute freehold estates technically never end, but are merely transferred from one owner to another. Defeasible fee simple freehold estates are divested or may divest upon the occurrence of a triggering event and are following by some future interest. Leaseholds are terminated when the term ends and are transferred to some future interest holder (usually a reversion in the landlord). Present possessory interests and future interests might, under the doctrine of merger, terminate when they are owned by the same owner and become a fee simple absolute estate. One can, of course, lose their property ownership through the operation of adverse possession. Unlike personal property, real property cannot be “lost,” “mislaid,” or “abandoned.” And title to property can be transferred through sale (conveyance), gift (inter vivos), will (causa mortis), death (intestate succession), or adverse possession. Future interests that are subject to and violate the Rule Against Perpetuities are terminated by the RAP, and are transferred by operation of law to the next vested interest. The government can take (subject to compensation) one’s property by condemnation (exercise of eminent domain).

3. How are easements (and profits) terminated, if ever?

Easements (and profits) can be terminated in many ways (under varying circumstances). If they are created to last perpetually, such as in an easement in fee simple, they may last forever (theoretically). They may be expressly created to last for a limited period of time (an easement in leasehold) and will end when the term ends, by expiration. If they are created subject to a divesting condition (defeasible easement), they will or may terminate upon the occurrence of the triggering event. They terminate when the ownership of the dominant estate and the servient estate are in the same person (merger). Easements can be released by agreement, such as where the servient estate buys out the dominant estate’s interest in the easement. Such an agreement should be in writing, pursuant to the Statute of Frauds. Mere non-use by the dominant estate does not normally
terminate easements. The owner of an easement may lose it by adverse possession, where the servient estate interferes with the dominant estate owner’s use without action for trespass, and by estoppel. Easements created as future interests may be subject to and are invalid if they violate the Rule Against Perpetuities. An easement will terminate as to the servient estate if a successor in title, as a bona fide purchaser, takes without actual, constructive (public record) or inquiry notice of the easement. (Easements created by implication and prescription created added problems because they are not in writing and cannot be recorded.) An easement may be invalidated when the holder misuses it in a manner that cannot be corrected. An easement created by implication and necessity, when the necessity ends, so does the easement. Some jurisdictions find that a prescriptive easement ends by non-use of the easement owner. The government might terminate an easement by condemnation through the exercise of eminent domain.

4. Can an easement be terminated due to abandonment for non-use?

The text states that an easement may be terminated by abandonment (p. 735). This is too strong a statement. Non-use alone does not constitute abandonment. So when is a property interest in land abandoned? Can the fee simple owner of land terminate their owner (and their ownership liabilities such as paying taxes) by merely abandoning it?

5. What is the procedural posture in Preseault?

6. What are the legal issues in Preseault?

7. What is the plaintiff seeking in Preseault?

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

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

10. What is the ruling or decision in Preseault?

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

12. What is the court’s application to the particular facts in Preseault?
13. Is an easement ever terminated by mere nonuse?

14. What constitutes abandonment? Does it terminate easements? Terminate other property interests?

15. Where does an easement go after it is terminated? Does it matter?