

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 14th FEBRUARY 2022
ANSWER TO BE TABLED ON MONDAY 21st FEBRUARY 2022**

Question

“Will H.M. Attorney General advise whether, under Jersey Law, the public can gain a right of way over land or a pathway that is in private ownership through continued use of that land or pathway and, if so, for what period of time (if any) the use must be continuous for that right of way to be gained; and will he further advise whether such a right of way would prevent any owner of the private land or pathway from subsequently sealing it off from the public?”

Answer

Under Jersey Law, a right of way cannot be acquired by continuous user/prescription. The Code of 1771 provides:

“Les personnes qui ont possédé un immeuble paisiblement, et sans interruption, quarante ans, ou au-delà, ne pourront être inquiétés, ni molestés à l’égard de la propriété dans la chose possédée, la possession quadraginaire donnant un droit parfait, et incontrovertible, selon l’ancienne Coûtume de l’Isle, excepté en matière de servitude, laquelle ne peut s’acquérir par la prescription, fût-elle Centenaire: mais dont on peut se libérer, ou acquérir la liberté par la prescription, c’est-à-dire, lorsque la servitude n’a point été exercée par quarante ans continuels.”

In translation:

“Persons who have been in peaceful possession of an immovable, without interruption, for 40 years or more shall not be challenged, or disturbed as regards title to that which they possess, forty years’ possession conferring a perfected and unchallengeable right, in accordance with the ancient Custom of the Island, except in relation to servitudes, title to which cannot be acquired by prescription, be it of 100 years: from which it is possible to be released, or to acquire release by prescription, that is to say, where the servitude has not been exercised for a continuous period of 40 years.”

Furthermore, there is also in Jersey customary law a basic presumption that all land is free from servitudes. The onus for proving the existence of a servitude rests upon the party asserting it. In the absence of a title, however, there can be no servitude: *nulle servitude sans titre* [no servitude without title].