

Two siblings, a brother and sister, own adjoining lots in the central portion of a city. Each of their lots had an office building. The sister decided to raze the existing building on her lot and erect a building of greater height. No statute or ordinance applies to prevent her from doing so and she has received all governmental approvals required to pursue her project.

After the sister had torn down the existing building, she proceeded to excavate deeper. She used shoring that met all local, state, and federal safety regulations, and the shoring was placed in accordance with those standards.

The brother notified the sister that cracks were developing in the building situated on his lot. The sister took the view that any subsidence suffered by the brother was due to the weight of his building, and correctly asserted that none would have occurred had the brother's soil been in its natural state. The sister continued to excavate.

The building on the brother's lot did suffer extensive damage, requiring the expenditure of \$750,000 to remedy the defects.

Which of the following is the best comment concerning the brother's action to recover damages from the sister?

- A. Once land is improved with a building, the owner cannot invoke the common law right of lateral support.
- B. The sister cannot be held liable simply upon proof that support was removed, but may be held liable if negligence is proved.
- C. The sister is liable because she removed necessary support for the brother's lot.
- D. The sister's only obligation was to satisfy all local, state, and federal safety regulations.

Explanation:

Withdrawal of lateral & subjacent support

	Natural state	Improved
Lateral	Strictly liable for damage to adjacent land caused by	If damage to land & improvements would have occurred in land's natural state, strictly
Subjacent	subsidence	liable If not, liable if negligent

Landowners have a common law duty to provide **lateral support** to maintain adjacent land in its natural state—even if that land has been improved **(Choice A)**. As a result, a landowner who **withdraws lateral support** from improved land is **strictly liable** for any resulting **subsidence** to the adjacent land if that harm would have occurred had the land been **in its natural state**. If not, the landowner is only liable if the withdrawal was **negligent**.

Here, the brother is only entitled to the amount of lateral support needed to maintain his lot in its *natural* state—ie, without the weight of his building. Since his building would *not* have been damaged had his soil been in its natural state, the sister cannot be held strictly liable for removing support **(Choice C)**. However, she can still be held liable if negligence is proved.

(Choice D) The sister was obligated to satisfy all applicable local, state, and federal safety regulations—but she was *also* obligated to provide lateral support to the brother's adjacent lot. If she failed to use reasonable care to provide such support, then she can be liable for negligence.

Educational objective:

A landowner must provide lateral support to maintain adjacent land in its natural state—even if that land is improved. If the landowner removes lateral support, strict liability is imposed if the resulting harm would have occurred had the land been in its natural state. Otherwise, negligence liability is imposed.

References

Restatement (Second) of Torts §§ 817–18 (Am. Law Inst. 1979) (withdrawal of lateral support).

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