

A man conveyed the eastern half of a tract of vacant land to a woman by a warranty deed. The woman promptly recorded the deed. The land conveyed to the woman fronted on a public highway. The land retained by the man was landlocked.

One year later, the man died intestate, leaving a cousin as his only heir. The cousin visited the man's land for the first time and discovered that it had no access to a public highway. A neighbor who owned adjoining land fronting on the public highway offered to sell the cousin a right to cross the neighbor's land for access to the highway. Although the neighbor's price was reasonable, the cousin rejected the offer. The woman has refused to allow the cousin to cross her land for access to the public highway even though the woman's land is still vacant.

The cousin has sued the woman, seeking access across the woman's land to the public highway.

Who is likely to prevail?

- A. The cousin, based on necessity.
- B. The cousin, because the woman's land is still vacant.
- C. The woman, because the cousin could obtain an alternative access to the highway from the neighbor.
- D. The woman, because the man failed to reserve an easement in his deed to the woman.

## Explanation:

### Implied easements

Type	Elements
Necessity	Severance of common ownership <i>Strict</i> necessity for use & enjoyment of land
Existing prior use	Severance of common ownership Prior existing use Apparent & continuous <i>Reasonable</i> necessity for use & enjoyment of land

An **easement by necessity** will be implied if the following elements are met:

**Severance of common ownership** – the **dominant and servient** estates were a single tract of land, and the owner retained part of the tract and conveyed the rest to another

**Strict necessity** – the easement is *absolutely* necessary for the use and enjoyment of the land (eg, the dominant tract is landlocked and has no access to a public road)

This type of easement **runs with the land**, meaning that **subsequent owners** of the dominant and servient estates are **bound** by the easement.

Here, the man owned the entire tract before he conveyed the eastern half to the woman, thereby severing common ownership. Since the land retained by the man has no access to a public highway or any other road, an easement over the woman's land was absolutely necessary for the man to use and enjoy his land. Therefore, an easement will be implied based on necessity **(Choice D)**. And since the easement runs with the land, the cousin—who inherited the man's land—will likely prevail in his suit against the woman.

**(Choice B)** The fact that the woman's land is vacant rather than developed has no bearing on whether the cousin has the right to cross her land to reach the public highway.

**(Choice C)** The cousin's ability to obtain alternative access to the public highway by purchasing an easement over the neighbor's land does not extinguish his easement by necessity over the woman's land.

### Educational objective:

An easement by necessity will be implied if (1) the dominant and servient estates were once a single tract of land, and the owner retained part of the tract and conveyed the rest to another, and (2) the easement is absolutely necessary for the use and enjoyment of the land.

### References

Restatement (Third) of Property: Servitudes § 2.15 (Am. Law Inst. 2000) (easement by necessity).

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