

A man owned in fee simple a lot in a properly approved subdivision, designed and zoned for industrial use. His friend owned the adjoining lot in the same subdivision. The plat of the subdivision was recorded as authorized by statute.

Twelve years ago, the man erected an industrial building wholly situated on his lot but with one wall along the boundary common with the friend's lot. The construction was done as authorized by a building permit that was validly obtained under applicable statutes, ordinances, and regulations. Further, the construction was regularly inspected and found in compliance with all building code requirements.

The friend's lot remained vacant until six months ago, when she began excavation pursuant to a building permit authorizing the erection of an industrial building situated on her lot but with one wall along the boundary common with the man's lot. The excavation caused subsidence of a portion of the man's lot that resulted in injury to his building. The excavation was not done negligently or with any malicious intent to injure.

In the jurisdiction, the time to acquire title by adverse possession or rights by prescription is 10 years.

The man has brought an appropriate action against the friend to recover damages resulting from the injuries to the building on his lot.

Who is likely to prevail?

- A. The friend, because both lots are urban land, as distinguished from rural land, so the man had the duty to protect any improvements on his lot.
- B. The friend, because the construction and use of her building were authorized by the applicable law.
- C. The man, because a right for support, appurtenant to his lot, had been acquired by adverse possession or prescription.
- D. The man, if the subsidence would have occurred without the weight of the building on his lot.

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 right to **lateral support** from all adjoining land. Therefore, an adjoining landowner who withdraws lateral support for land in a **natural state** is **strictly liable** for any **subsidence** (ie, cave-in, slippage) that occurs because of that withdrawal. But if the adjoining landowner withdraws lateral support for **improved land**—as seen with the man's industrial building—the adjoining landowner may be:

strictly liable if the landowner can show that damage to the land and improvements **would have occurred** in the **land's natural state** or

liable for negligence if the landowner cannot make such a showing.

Here, the friend's excavation was not done negligently or with any malicious intent to injure the man. This means that the man can only recover damages resulting from the injuries to his improved land if the friend is subject to strict liability. And if the man shows that the subsidence would have occurred without the weight of the building on his lot, he will likely prevail.

(Choice A) A possessor of land in an *urban* area has a duty to exercise reasonable care to prevent an unreasonable risk of harm arising from conditions on his/her land. Here, there is no evidence that the man (or the friend) breached this duty, so this principle would not affect the outcome of the lawsuit.

(Choice B) The fact that the construction and use of the friend's building were authorized by law helps show that the friend was not negligent, but it does not shield her from strict liability since it is imposed regardless of fault.

(Choice C) A landowner cannot acquire a right to lateral support by **adverse possession or prescription**. That is because there is no actual possession or use of the adjoining land to satisfy the elements of those claims.

Educational objective:

An adjoining landowner who withdraws lateral support for improved land is (1) strictly liable if the landowner can show that damage to the land and improvements would have occurred in the land's natural state or (2) liable for negligence if no such showing is made.

References

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

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