

Two adjacent, two-story, commercial buildings were owned by a landlord. The first floors of both buildings were occupied by various retail establishments. The second floors were rented to various other tenants. Access to the second floor of each building was reached by a common stairway located entirely in Building 1. While the buildings were being used in this manner, the landlord sold Building 1 to a man by warranty deed that made no mention of any rights concerning the stairway. About two years later, the landlord sold Building 2 to a woman. The stairway continued to be used by the occupants of both buildings. The stairway became unsafe as a consequence of regular wear and tear. The woman entered the man's building and began the work of repairing the stairway. The man demanded that the woman discontinue the repair work and vacate the man's building. When the woman refused, the man brought an action to enjoin the woman from continuing the work.

For which party should judgment be entered?

- A. The man, because the woman has no rights in the stairway.
- B. The man, because the woman's rights in the stairway do not extend beyond the normal life of the existing structure.
- C. The woman, because she has a right to take whatever action is necessary to protect herself from possible tort liability to persons using the stairway.
- D. The woman, because she has an easement in the stairway and an implied right to keep the stairway in repair.

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** can be implied by an **existing prior use** when 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

Prior existing use – the owner used the servient estate to benefit the dominant estate (ie, a "quasi-easement")

Apparent and continuous – the prior use was discoverable by reasonable inspection and continued until the tract was severed

Reasonable necessity – continuance of the prior use is *reasonably* necessary to use the land

Here, the landlord owned both buildings before selling Building 1 to the man and later selling Building 2 to the woman (severance). The stairway in Building 1 had been used to access the second floor of Building 2 before the buildings were sold (prior existing use) and continued to be used by occupants of both buildings after those sales (apparent and continuous). And since the continued use of the stairway is reasonably necessary to use the second floor of Building 2 (reasonable necessity), the woman has an implied easement in the stairway (**Choice A**).

As the **easement holder**, the woman has the **sole duty to maintain*** the easement. Repairs must be made to avoid harm to the servient estate and to protect the servient owner (not the easement holder) from liability for harm to third parties (**Choice C**). As a result, the easement holder has the implied right to enter the servient estate to make necessary repairs—as the woman did here. Judgment should therefore be entered for her.

*However, if the easement is used by the easement holder and the servient owner, then repair costs will be apportioned between the parties based on their relative use.

(Choice B) An easement over a structure (eg, building) continues until that structure is destroyed by natural causes. And since Building 2 still exists, the woman's easement over the stairway remains in effect.

Educational objective:

An easement will be implied by prior use if (1) common ownership was severed, (2) the prior existing use was apparent and continued after severance, and (3) continuation of that use is reasonably necessary to use the land.

References

Restatement (Third) of Property: Servitudes § 2.12 (Am. Law Inst. 2000) (easement by prior use)

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