

A couple owned a tract of land called Lot 1. An old road ran through Lot 1 from the abutting public highway, which the couple used to haul wood from Lot 1. Without the couple's permission and with no initial right, their neighbor—the owner of Lot 2, which adjoined Lot 1—traveled over the old road for a period of 15 years to obtain access to Lot 2, although Lot 2 abutted another public road. Occasionally, the neighbor made repairs to the old road.

The period of time to acquire rights by prescription in the jurisdiction is 10 years.

After the expiration of 15 years, the couple conveyed a portion of Lot 1 to a friend. The deed included the following clause: "together with the right to pass and repass at all times and for all purposes over the old road." The friend built a house fronting on the old road.

The road was severely damaged by a spring flood, and the friend made substantial repairs to the road. The friend asked the neighbor and the couple to contribute one-third each to the cost of repairing the flood damage. They both refused, and the friend brought an appropriate action to compel contribution from the couple and the neighbor.

What is the likely outcome of this action?

- A. The friend will lose as to both defendants.
- B. The friend will win as to both defendants.
- C. The friend will win as to the couple, but lose as to the neighbor.
- D. The friend will win as to the neighbor, but lose as to the couple.

## Explanation:

### Repairing & maintaining easement

<b>Duty to repair &amp; maintain</b>	Easement holder must repair & maintain easement to extent necessary to: <ul style="list-style-type: none"><li>prevent unreasonable interference with enjoyment of servient estate</li><li>protect servient-estate owner from liability to third parties</li></ul>
<b>Duty to contribute</b>	Other easement holders and/or servient-estate owner who share easement must contribute to reasonable costs of repairs & maintenance

The **duty to repair and maintain** an easement falls on the **easement holder**\*—not the **servient-estate** owner (unless the parties agree otherwise). However, the servient-estate owner has a **duty to contribute** to the reasonable costs of repairs and maintenance **if** he/she **also uses the easement**. The same applies to other easement holders who share the use of the easement.

Here, the couple (servient-estate owner) conveyed an easement to the friend that allowed the friend to use the old road on their land. But the couple also used the road to haul wood. And the neighbor obtained a **prescriptive easement** to use the road by openly and continuously using the road for 15 years without the couple's permission. As a result, the couple and the neighbor were obligated to contribute to the costs incurred by the friend in repairing the road. Therefore, the friend will likely win against *both* in his action to compel contribution (**Choices A, C & D**).

\*This obligation also extends to repair and maintenance of portions of the servient estate and improvements used to enjoy the easement, so long as they are within the easement holder's control.

### Educational objective:

An easement holder has a duty to repair and maintain the easement. If the easement is shared by other easement holders or the servient-estate owner, those parties are obligated to contribute to the reasonable costs of repairs and maintenance.

### References

Restatement (Third) of Property: Servitudes § 4.13 (Am. Law Inst. 2000) (duty to repair and maintain easement).

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