

A man owned a large tract of land that had frontage on a public highway. The land had no access to any other road.

Fifteen years ago, the man conveyed the rear half of the land to a woman and at the same time conveyed an express easement to the woman that provided access from her land across his retained land to the public highway.

The woman used the easement until she reconveyed the land back to the man 10 years ago. The deed to the man made no reference to the easement.

Five years ago, the man again conveyed the rear half of the land, this time to an investor in a deed that made no reference to any easement to the public highway.

Recently, the man told the investor that he could no longer cross the man's land for access to the public highway. A neighbor has told the investor that he can use her land for access to another public road "for a price."

The investor has sued the man for the right to cross the man's land to the public highway.

For whom will the court likely decide?

- A. The investor, because an easement will be implied.
- B. The investor, because the man is estopped by his grant of an easement to the woman.
- C. The man, because the express easement was terminated by the reconveyance.
- D. The man, because the investor can reasonably acquire another means of access to a public road.

Explanation:

The man conveyed an easement to the woman that allowed her to cross his land to access a public highway. That **easement terminated** when the **dominant estate** (woman's tract) and **servient estate** (man's tract) **merged** into the hands of **one owner** after the woman conveyed her tract back to the man (**Choices B & C**). And though the man subsequently conveyed the rear half of his lot to the investor, a terminated easement is not re-created merely by re-severing the land into two parcels.

Additionally, the investor did not receive an easement by express grant because his deed made no reference to any easement to the public highway. But an **easement by necessity** will be **implied** if two 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)

Here, the man owned both tracts (unity of estates) before he conveyed the back half to the investor (severance). And since the rear tract has no access to a public highway or any other road, an easement over the man's tract is absolutely necessary for the investor to use and enjoy his tract. Therefore, an easement will be implied and the court will likely decide for the investor.

(Choice D) The ability to create alternative access to a landlocked parcel by purchase of an easement over a neighbor's land does not defeat the creation of an easement by necessity.

Educational objective:

An easement by necessity is implied if (1) there was a unity of estates, (2) common ownership was severed, and (3) an easement is *absolutely* necessary to use and enjoy the land.

References

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

Restatement (Third) of Property: Servitudes § 7.5 (Am. Law Inst. 2000) (termination of easement by merger).

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Easement creation and termination

