

A woman owned two adjacent parcels, Lot 1 and Lot 2. Lot 1 fronts on a poor unpaved public road, while Lot 2 fronts a paved major highway. Fifteen years ago, the woman conveyed Lot 1 to her son "together with a right-of-way 25 feet wide over the east side of Lot 2 to [the major highway]." At that time, Lot 1 was improved with a 10-unit motel.

Ten years ago, the woman died. Her will devised Lot 2 "to my son for life, remainder to my daughter." Five years ago, the son executed an instrument in the proper form of a deed, purporting to convey Lot 1 and Lot 2 to his friend in fee simple. The friend then enlarged the motel to 12 units. Six months ago, the son died and the daughter took possession of Lot 2. She brought an appropriate action to enjoin the friend from using the right-of-way.

In this action, who should prevail?

- A. The daughter, because merger extinguished the easement.
- B. The daughter, because the friend has overburdened the easement.
- C. The friend, because he has an easement by necessity.
- D. The friend, because he has the easement granted by the woman to the son.

Explanation:

An easement is generally **terminated** by merger when the **dominant and servient** estates are united in common ownership. But **merger does not occur**—and the **easement does not terminate**—if there are any **future interests** (or other outstanding interests) in either estate. If there is a future interest, use of the easement is **suspended until** the future-interest holder becomes **entitled to possession**.

Here, the woman conveyed Lot 1 (dominant estate) to her son, together with an easement to cross Lot 2 (servient estate) to access the highway. When the woman died, her will devised Lot 2 to her son for life, remainder to her daughter. Because the daughter had a future interest entitling her to possession of Lot 2 once the son dies, the easement was suspended during the son's lifetime—not terminated **(Choice A)**.

The son then purported to convey Lots 1 and 2 to the friend in fee simple. But since the son had only a **life estate** in Lot 2, that is all he could convey to the friend. So when the son died, the daughter's future interest vested and she became entitled to possession of Lot 2. At that time, the easement over Lot 2 became active. And since the friend owns Lot 1 in fee simple, he now holds the easement.

(Choice B) Normal development of the dominant estate—including a change in the intensity or frequency of use—does not overburden the servient estate. Therefore, the friend did not overburden the easement by increasing the motel from 10 to 12 units.

(Choice C) An **easement by necessity** only arises when the easement is *strictly* necessary for the use and enjoyment of property—eg, when property cannot be accessed by a public road (not seen here).

Educational objective:

An easement cannot be terminated by merger if there are any future interests (or other outstanding interests) in the dominant or servient estate. Where there is a future interest, use of the easement is suspended until the future-interest holder becomes entitled to possession.

References

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

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Easement (over Lot 2)

