

A man owned an oceanfront cottage. A woman owned land across the street that did not have direct ocean access. For \$10,000, the man executed a deed titled "Grant of Pedestrian Right-of-Way" to the woman and "her heirs and assigns" over a designated strip of his land between the street and the ocean. The deed was never recorded.

Several years later, the woman sold her land. The woman made no mention of the easement, and the buyer had no actual notice of it. After the buyer took possession of the land, neighbors informed her about the pedestrian easement over the man's land, but when the buyer attempted to use the easement, the man informed her that it was no longer available and constructed a chain-link fence to block the way. The buyer promptly sued the man to establish her right to use the easement.

Who will likely prevail?

- A. The buyer, because the easement was appurtenant to her land. (48%)
- B. The buyer, because the man received \$10,000. (6%)
- C. The man, because the buyer purchased the land without notice. (11%)
- D. The man, because the easement was an easement in gross personal to the woman who previously owned the land. (34%)

Correct

48% Answered correctly

52 secs Time Spent

2023 Version

Explanation:

Distinctions between easements

Type	Appurtenant	Benefits easement holder's land Benefit & burden automatically transfer when land is conveyed
	In gross	Benefits easement holder personally Burden (not benefit) automatically transfers when land is conveyed
Purpose	Affirmative	Allows easement holder to do something on servient estate
	Negative	Restricts servient-estate owner's lawful use of servient estate
Creation	Express	Created by parties in writing that satisfies statute of frauds
	Irrevocable license	License becomes irrevocable due to estoppel or coupling with another servitude
	Implied	Implied by law due to necessity (easement by necessity) Implied by fact due to prior use (easement by implication)
	By prescription	Adversely acquired through OCAN —open/notorious, actual, continuous & nonpermissive use

Easements are either **appurtenant (benefits the land)** OR in **gross (benefits the easement holder personally)**. Easements are **presumed to be appurtenant** unless there are clear facts to the contrary—eg, if the easement would benefit the original easement holder more than his/her successors in interest. Here, the woman and "her heirs and assigns" received an easement over the man's land, which indicates that the easement benefits her successors—not just the woman personally. Therefore, she received an easement appurtenant **(Choice D)**.

An easement appurtenant is **transferred with the land** to which it relates. Consequently, the benefit is transferred automatically with the transfer of the dominant estate (ie, the land *benefited* by the easement), and the burden likewise is transferred automatically with the transfer of the servient estate (ie, the land *burdened* by the easement). The woman's easement therefore transferred automatically to the buyer, so the buyer will likely prevail in a suit against the man to establish her right to use the easement.

(Choice B) Consideration is not needed to grant an easement, so the fact that the man received \$10,000 in exchange for granting the woman an easement is irrelevant.

(Choice C) The buyer did not need to have **notice** of the appurtenant easement because it automatically transferred to the buyer when she purchased the woman's dominant estate.

Educational objective:

Easements are presumed to be appurtenant (ie, benefit the land) unless there are clear facts to the contrary. An easement appurtenant is transferred with the land to which it relates, so the benefit is transferred automatically with the dominant estate and the burden is transferred automatically with the servient estate.

References

Restatement (Third) of Property: Servitudes § 4.5 (Am. Law Inst. 2000) (distinguishing easements appurtenant from easements in gross).

Restatement (Third) of Property: Servitudes §§ 4.6–4.7 (Am. Law Inst. 2000) (discussing the transfer of an easement with the transfer of the dominant and servient estates).

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