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## Rights in Land

### 1. Judgment should be for

*Two adjacent, two-story, commercial buildings were owned by a businessman. 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 businessman sold Building 1 to a friend by warranty deed which made no mention of any rights concerning the stairway. About two years later the businessman sold Building 2 to a co-worker. 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 owner of Building 2 entered upon Building 1 and began the work of repairing the stairway. The owner of Building 1 demanded that the owner of Building 2 discontinue the repair work and vacate Building 1. When the owner of Building 2 refused, the owner of Building 1 brought an action to enjoin the owner of Building 2 from continuing the work.*

- The owner of Building 1, because the owner of Building 2 has no rights in the stairway
- The owner of Building 1, because the owner of Building 2's rights in the stairway do not extend beyond the normal life of the existing structure
- **The owner of Building 2, because he has an easement in the stairway and an implied right to keep the stairway in repair**
- The owner of Building 2, because he has a right to take whatever action is necessary to protect himself from possible tort liability to persons using the stairway

Note:

*C is correct. The facts indicate that the second floor of Building 2 is only accessible by using the stairway in Building 1. As such, the owner of Building 2 has an implied easement by necessity.*

*A is incorrect. The holder of an easement has the right to enter the land to make repairs to that easement.*

*B is incorrect. This answer choice is irrelevant to the facts presented; the question does not indicate that the normal life of the existing buildings has expired.*

*D is incorrect. The owner of Building 2's rights with regard to the stairway are not unlimited (he may not "take whatever action is necessary").*

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## 2. If the son loses, it will be because

The period of time to acquire rights by prescription in the jurisdiction is 10 years. Last week the daughter commenced construction of a building on Lot 2 and blocked the driveway used by the son. The son has commenced an action against the daughter to restrain her from blocking the driveway from Main Street to the parking lot at the rear of Lot 1. Until last week, the son continuously used the driveway over Lot 2 to the son's parking lot in the rear of Lot 1. Eight years ago, the father conveyed Lot 2 to his daughter and, five years ago, the father conveyed Lot 1 to his son by a deed that recited "together with all the appurtenances." 15 years ago, the father leased Lot 1 to his son for 15 years. The son has continuously occupied Lot 1 since that time. 13 years ago, without his father's permission, the son began to use a driveway on Lot 2 as a better access between Main Street and the parking lot than the alley. A father owned two adjoining parcels known as Lot 1 and Lot 2. Both parcels fronted on Main Street and abutted a public alley in the rear. Lot 1 was improved with a commercial building that covered all of the Main Street frontage of Lot 1; there was a large parking lot on the rear of Lot 1 with access from the alley only.

- **The father owned both Lot 1 and Lot 2 until eight years ago**
- The son has access to the parking lot from the alley
- Mere use of an easement is not adverse possession
- No easement was mentioned in the deed from the father to his daughter

Note:

The holder of an easement has a right to use a tract of land (called a servient tenement) for a special purpose, but has no right to possess and enjoy the tract of land. The owner of the servient tenement continues to have the right of full possession and enjoyment of the land, subject only to the limitation that he cannot interfere with the right of special use created in the easement holder.

An easement appurtenant is one that benefits the dominant estate and "runs with the land" and so generally transfers automatically when the dominant estate is transferred. An appurtenant easement allows property owners to access land that is only accessible through a neighbor's land.

The basic ways of creating an easement are by express grant, implication, and prescription. An easement by express grant is one that is recorded and signed by the grantor and must comply with all the formalities of a deed. An easement by implication is created by operation of law rather than a written instrument. There are three types of easement by implication: (i) an intended easement based on a use that existed when the dominant and servient estates were severed; (ii) an easement implied from a recorded subdivision plan; and (iii) an easement by necessity. An easement by prescription is analogous to acquiring property by adverse possession. To acquire a prescriptive easement, the use must be open and notorious, adverse, and continuous and uninterrupted for the statutory period.

A is correct. This question requires you to understand not only types of easements but also the ways to create an easement. The driveway between Lots 1 and 2 is an easement appurtenant - one that benefits a specific piece of land. But the creation of an easement appurtenant requires two pieces of property: a dominant estate and a servient one.

In this case, the facts state that the father owned all of Lots 1 and 2 until he sold Lot 2 to his daughter eight years ago. Therefore, there has only been an easement appurtenant in existence for eight years (because there was no dominant or servient estate prior to that time). Although the son will argue that an easement was created by prescription as a result of his adverse, continuous, visible and unpermitted use of the driveway, that use only involved one piece of property until eight years ago. Because the time period to acquire rights by prescription in this jurisdiction is 10 years, the son's use would have to continue for two more years before it would create an easement appurtenant by prescription.

B is incorrect. While the question of whether a property has access to a road is an element to determining if an easement by necessity is created by implication, there is not an easement by necessity in these facts.

C is incorrect. While it is correct that use is only one element of adverse possession, this fact alone does not explain why the son loses.

D is incorrect. As explained above, an easement appurtenant allows property owners to access land that is only accessible through a neighbor's property and generally transfers automatically. However, this easement did not exist until after the daughter bought the land, so it cannot be the reason the son loses.

### 3. In this action, who should prevail?

10 years ago, the businessman died. His will devised Whiteacre "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 Blackacre and Whiteacre to a 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 Whiteacre. She brought an appropriate action to enjoin the friend from using the right-of-way. A businessman owned two adjacent parcels, Blackacre and Whiteacre. Blackacre fronts on a poor unpaved public road, while Whiteacre fronts on Route 20, a paved major highway. 15 years ago, the businessman conveyed to his son Blackacre "together with a right-of-way 25 feet wide over the east side of Whiteacre to Route 20." At that time, Blackacre was improved with a ten-unit motel.

- The daughter, because merger extinguished the easement
- The daughter, because the friend has overburdened the easement
- The friend, because he has an easement by necessity
- **The friend, because he has the easement granted by the businessman to the son**

Note:

The holder of an easement has a right to use a tract of land (called a servient tenement) for a special purpose, but has no right to possess and enjoy the tract of land. The owner of the servient tenement continues to have the right of full possession and enjoyment of the land, subject only to the limitation that he cannot interfere with the right of special use created in the easement holder.

An easement appurtenant is one that benefits the dominant estate and "runs with the land" and so generally transfers automatically when the dominant estate is transferred. An appurtenant easement allows property owners to access land that is only accessible through a neighbor's land.

Conversely, an easement in gross benefits an individual or a legal entity, rather than a dominant estate. The easement can be for personal use (for example, an easement to use a boat ramp) or commercial use (for example, an easement to a railroad company to build and maintain a rail line across the property). Historically, an easement in gross was neither assignable nor inheritable, but commercial easements are now freely transferable to a third party. They are divisible but must be exclusive (the original owner no longer uses it and exclusive to easement holder) and all holders of the easement must agree to divide. If subdivided, each subdivided parcel enjoys the easement.

The basic ways of creating an easement are by express grant, implication, and prescription. An easement by express grant is one that is recorded and signed by the grantor and must comply with all the formalities of a deed. An easement by prescription is similar to adverse possession. An easement by implication is created by operation of law rather than a written instrument. There are three types of easement by implication: (i) an intended easement based on a use that existed when the dominant and servient estates were severed; (ii) an easement implied from a recorded subdivision plan; and (iii) an easement by necessity.

An easement by necessity is created when the owner of a tract of land sells a part of the tract and by this division deprives one lot of access to a public road or utility line. When this happens, a right-of-way absolute necessity is created by implied grant over the lot with access to the public road or utility line.

An easement can be destroyed by merger. By definition, an easement is the right to use the lands of another for a special purpose. On this basis, the ownership of the easement and the servient tenement must be in different persons. If ownership of the two comes together in one person, the easement is extinguished. For the merger to be effective, complete unity is required. This means that the duration of the servient tenement must be equal to or longer than the duration of the dominant tenement with which it is combined. If complete unity is acquired, the easement is extinguished.

D is correct. As explained above, an easement appurtenant transfers automatically when the dominant estate is transferred. The easement granted by the businessman to the son transferred automatically at the sale of Blackacre to the friend.

A is incorrect. A merger only operates when the owner acquires both the dominant and servient estates. Here, no merger ever occurred because of the son's interest in Whiteacre. The son was the owner of Blackacre (as a result of the businessman's conveyance to him 15 years ago), but he was only a life tenant in Whiteacre. If the businessman had conveyed ownership of Blackacre AND Whiteacre to the son, then the unity of ownership in the two parcels would have constituted a merger and terminated the easement, but that is not what happened here.

B is incorrect. An easement can be extinguished by overuse or abuse. If some act is performed on either the dominant or servient tenement which is incompatible with the nature or exercise of the easement, the easement could be extinguished. Building new motel units does not overburden the easement, because the easement existed at the time the motel was created. Adding a few more rooms to the motel is not incompatible with the nature of the easement.

C is incorrect. As explained above, an easement by necessity is created when there is no other way to access a tract of land other than by creating an easement over another's property. An easement by necessity was not created here, because Blackacre could still be accessed by a road, albeit a poor, unpaved one.

**4. Which of the following is the best comment concerning the plaintiff's action to recover damages from the defendant?**

*The building on the plaintiff's lot did suffer extensive damage, requiring the expenditure of \$750,000 to remedy the defects. The plaintiff notified the defendant that cracks were developing in the building situated on the plaintiff's lot. The defendant took the view that any subsidence suffered by the plaintiff was due to the weight of the plaintiff's building, and correctly asserted that none would have occurred had the plaintiff's soil been in its natural state. The defendant continued to excavate. After the defendant had torn down the existing building, she proceeded to excavate deeper. The defendant used shoring that met all local, state, and federal safety regulations, and the shoring was placed in accordance with those standards. There is no applicable statute or ordinance (other than those dealing with various approvals for zoning, building, etc.). A plaintiff and a defendant own adjoining lots in the central portion of a city. Each of their lots had an office building. The defendant decided to raze the existing building on her lot and erect a building of greater height. The defendant had received all governmental approvals required to pursue her project.*

- The defendant is liable, because she removed necessary support for the plaintiff's lot
- **The defendant cannot be held liable simply upon proof that support was removed, but may be held liable if negligence is proved**
- Once land is improved with a building, the owner cannot invoke the common law right of lateral support
- The defendant's only obligation was to satisfy all local, state, and federal safety regulations

Note:

*Ownership of land carries with it the right to have the land supported in its natural state by adjoining land. This normally means a right to have one's land undisturbed by the withdrawal of support. If land is improved by buildings and an adjacent landowner's excavation causes the subsidence, the adjacent landowner will be strictly liable for damages to the land and buildings caused by the excavation, only if it is shown that the land would have collapsed in its natural state. Even if the land would not have collapsed in its natural state, the excavating landowner is liable for loss or damage to the land and buildings if his excavation is found to have been done negligently. Tort rules apply in the case of negligent excavation.*

*B is correct. The defendant received all correct governmental approval before beginning to tear down the building. To prevail, the plaintiff will need to prove that the excavation was done negligently because there is no evidence that the land would have collapsed in its natural state.*

*A is incorrect. Strict liability does not automatically apply when land is excavated. Only when the excavation directly causes the adjacent land to subside does strict liability attach.*

*C is incorrect. The right to lateral support does not extinguish when land is improved by buildings. Even though the plaintiff has a building on his own land, he still has the right to have his land undisturbed by the withdrawal of support.*

*D is incorrect. The defendant must provide sufficient lateral support to avoid collapse of the land in its natural state, regardless of any applicable regulations. Also, compliance with safety regulations will not preclude the plaintiff's claim if the defendant is found to have acted negligently during the excavation.*

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## 5. Which of the following is the most appropriate comment concerning this lawsuit?

Assume that no problems with subsidence or other misadventures occurred during construction of the defendant's new building. However, when it was completed, the plaintiff discovered that the shadow created by the new higher building placed her building in such deep shade that the ability to lease space was diminished, and the rent she could charge and the occupancy rate were substantially lower. Assume that these facts are proved in an appropriate action the plaintiff instituted against the defendant for all and any relief available. There is no applicable statute or ordinance (other than those dealing with various approvals for zoning, building, etc.). A plaintiff and a defendant own adjoining lots in the central portion of a city. Each of their lots had an office building. The defendant decided to raze the existing building on her lot and erect a building of greater height. The defendant had received all governmental approvals required to pursue her project.

- The plaintiff is entitled to a mandatory injunction requiring the defendant to restore conditions to those existing with the prior building insofar as the shadow is concerned
- The court should award permanent damages, in lieu of an injunction, equal to the present value of all rents lost and loss on rents for the reasonable life of the building
- The court should award damages for losses suffered to the date of trial and leave open recovery of future damages
- **Judgment should be for the defendant, because the plaintiff has no cause of action**

Note:

*D is correct. While landowners possess a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view. As such, the plaintiff has no legal basis for a cause of action against the defendant.*

*A is incorrect. The plaintiff has no right to an injunction because there is nothing guaranteeing the plaintiff rights to the sunlight, fresh air, or view.*

*B is incorrect. A non-specific performance remedy is also inappropriate here. Again, the plaintiff has no right to the sunlight, fresh air, or view.*

*C is incorrect. Damages are inappropriate here because the plaintiff has no rights to the sky.*

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## 6. If the nephew prevails, it will be because

The nephew brought an appropriate action to enjoin the man from using Blackacre for filling station purposes. The businessman then conveyed Blackacre to a man, who knew about the businessman's covenant prohibiting the filling station use but nonetheless completed the transaction when he noted that no such covenant was contained in the businessman's deed to him. The man began to construct a filling station on Blackacre. The gas company owner constructed and operated a filling station on Whiteacre and then conveyed Whiteacre to his nephew, who continued the filling station use. The deed did not refer to the restrictive covenant and was promptly and properly recorded. A businessman who owned Blackacre and Whiteacre, two adjoining parcels, conveyed Whiteacre to a gas company owner and covenanted in the deed to the gas company owner that when he, the businessman, sold Blackacre he would impose restrictive covenants to prohibit uses that would compete with the filling station that the gas company owner intended to construct and operate on Whiteacre. The deed was not recorded.

- **The man had actual knowledge of the covenant to impose restrictions**
- The man is bound by the covenant because of the doctrine of negative reciprocal covenants
- Business-related restrictive covenants are favored in the law
- The man has constructive notice of the possibility of the covenant resulting from circumstances

Note:

*A is correct. This question deals with an equitable servitude. There are three elements that must be met for an equitable servitude to run with the land, including (i) intent for it to run with the land; (ii) actual, inquiry or record notice; and (iii) the covenant "touches and concerns" the land. Importantly, a covenant not to compete is considered a covenant that "touches and concerns" the land.*

*Because the facts indicate that the man had notice of the covenant to impose restrictions, the covenant will run with the land. Additionally, keep in mind the difference between an equitable servitude and a real covenant. If money damages are sought, you should consider it a possible real covenant. If an injunction is sought, consider whether you are dealing with an equitable servitude.*

*B is incorrect. The doctrine of negative reciprocal covenants only applies in cases where there is a common scheme, such as housing developments, where the developer accidentally left out an express covenant. The court then implies such a covenant for all the lots.*

*C is incorrect. This is an inaccurate statement of law.*

*D is incorrect. Constructive notice would not make a negative implied covenant legally enforceable.*

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## 7. The most likely result in this action is that the court will hold for

The businesswoman brought an appropriate action to terminate the easement. Last year, as permitted by the applicable zoning ordinance, the religious group constructed a 200-bed nursing home and a parking lot on Blackacre, using all of Blackacre that was available for such development. The nursing home was very successful, and on Sundays visitors to the nursing home overflowed the parking facilities on Blackacre and parked all along the driveway from early in the morning through the evening hours. After two Sundays of the resulting congestion and inconvenience, the businesswoman erected a barrier across the driveway on Sundays preventing any use of the driveway by anyone seeking access to Blackacre. The religious group objected. Blackacre is a large tract of land owned by a religious group. On Blackacre, the religious group erected a large residential building where its members reside. Blackacre is surrounded by rural residential properties and its only access to a public way is afforded by an easement over a strip of land 30 feet wide. The easement was granted to the religious group by deed from a businesswoman, the owner of one of the adjacent residential properties. The religious group built a driveway on the strip, and the easement was used for 20 years without incident or objection.

- The businesswoman, because the religious group excessively expanded the use of the dominant tenement
- The businesswoman, because the parking on the driveway exceeded the scope of the easement
- **The religious group, because expanded use of the easement does not terminate the easement**
- The religious group, because the businesswoman's use of self-help denies her the right to equitable relief

Note:

The holder of an easement has a right to use a tract of land (called a servient tenement) for a special purpose, but has no right to possess and enjoy the tract of land. The owner of the servient tenement continues to have the right of full possession and enjoyment of the land, subject only to the limitation that he cannot interfere with the right of special use created in the easement holder.

The basic ways of creating an easement are by express grant, implication, and prescription. An easement by express grant is one that is recorded and signed by the grantor and must comply with all the formalities of a deed. An easement by implication is created by operation of law rather than a written instrument.

An easement, like any property interest, may be created to last in perpetuity or for a limited amount of time. Unless the terms of an easement state otherwise, it is assumed that the easement is permanent and that it will be used for the reasonable development of the dominant estate.

C is correct. In this case, the religious group is a religious organization with a large number of members living on Blackacre. Although the nursing home has increased use of the easement on one day of the week, such use (increased traffic to a religious group's facility on a Sunday) will not terminate the easement. Where the holder of the dominant estate misuses an easement by excessive use, the servient holder's proper remedy will be an injunction against further misuses or damages, not forfeiture of the easement.

A is incorrect. The remedy for increased or overuse of an easement is not termination of the easement. The businesswoman can seek damages or an injunction for the overuse of the easement, but she cannot terminate it.

B is incorrect. As explained above, damages or an injunction is the proper remedy for overuse of an easement.

D is incorrect. Self-help, in the sense of a legal doctrine, refers to individuals' implementation of their rights without resorting to legal writ or consultation of higher authority. In states where self-help is available, it will not interfere with a plaintiff's right to equitable relief.

## 8. The court should decide for

Last year, the buyer conveyed the back 40 acres to a doctor. They had discussed the right-of-way over the owner's land to the road, but the buyer's deed to the doctor made no mention of it. The doctor began to use the right-of-way as the buyer had, but the owner sued to enjoin such use by the doctor. An owner owned 80 acres of land, fronting on a town road. Two years ago, the owner sold to a buyer the back 40 acres. The 40 acres sold to the buyer did not adjoin any public road. The owner's deed to the buyer expressly granted a right-of-way over a specified strip of the owner's retained 40 acres, so the buyer could reach the town road. The deed was promptly and properly recorded.

- The doctor, because he has an easement by implication
- **The doctor, because the easement appurtenant passed to him as a result of the buyer's deed to him**
- The owner, because the buyer's easement in gross was not transferable
- The owner, because the buyer's deed failed expressly to transfer the right-of-way to the doctor

Note:

*The holder of an easement has a right to use a tract of land (called a servient tenement) for a special purpose, but has no right to possess and enjoy the tract of land. The owner of the servient tenement continues to have the right of full possession and enjoyment of the land, subject only to the limitation that he cannot interfere with the right of special use created in the easement holder.*

*An easement appurtenant is one that benefits the dominant estate and "runs with the land" and so generally transfers automatically when the dominant estate is transferred. An appurtenant easement allows property owners to access land that is only accessible through a neighbor's land.*

*Conversely, an easement in gross benefits an individual or a legal entity, rather than a dominant estate. The easement can be for personal use (for example, an easement to use a boat ramp) or commercial use (for example, an easement to a railroad company to build and maintain a rail line across the property). Historically, an easement in gross was neither assignable nor inheritable, but commercial easements are now freely transferable to a third party. They are divisible but must be exclusive (the original owner no longer uses it and exclusive to easement holder) and all holders of the easement must agree to divide. If subdivided, each subdivided parcel enjoys the easement.*

*The basic ways of creating an easement are by express grant, implication, and prescription. An easement by express grant is one that is recorded and signed by the grantor and must comply with all the formalities of a deed. An easement by prescription is similar to adverse possession. An easement by implication is created by operation of law rather than a written instrument. There are three types of easement by implication: (i) an intended easement based on a use that existed when the dominant and servient estates were severed; (ii) an easement implied from a recorded subdivision plan; and (iii) an easement by necessity.*

*B is correct. The easement described in the facts is an easement appurtenant - one that benefits a specific piece of land. An easement appurtenant will automatically run with the land, and after being recorded for the first time does not need to be re-identified in any deeds accompanying later conveyances.*

*A is incorrect. An easement by necessity is a type of easement by implication that is created when the owner of a tract of land sells a part of the tract and by this division deprives one lot of access to a public road or utility line. When this happens, a right-of-way absolute necessity is created by implied grant over the lot with access to the public road or utility line. If there had not been an express easement, there would have been an easement by necessity created by the facts in this scenario. However, because an express easement was created, there is no need to find an easement by necessity.*

*C is incorrect. An easement appurtenant was created here, not an easement in gross.*

*D is incorrect. An easement appurtenant automatically transfers when the dominant tenement is transferred.*

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## 9. If judgment is for the businessman, it will be because

The friend expended \$3,500 on the retaining wall. Then he obtained all of the original deeds in the chain from the owner to him. Shortly thereafter, the friend discovered the covenant in the owner's deed to the veterinarian. He demanded that the businessman pay \$1,750, and when the businessman refused, the friend instituted an appropriate action to recover that sum from the businessman. In such action, the businessman asserted all defenses available to him. Lot 2 is now owned by a businessman, who took by intestate succession from the owner, now dead. The deed from the owner to the veterinarian was never recorded. All other deeds were promptly and properly recorded. All conveyances by deeds were for a consideration equal to fair market value. There is no statute that applies to any aspect of the problems presented except a recording act and a statute providing for acquisition of title after 10 years of adverse possession. The veterinarian conveyed Lot 1 in fee simple to a woman by warranty deed in usual and regular form. The deed omitted any reference to the retaining wall or any covenant. 50 years after the owner's conveyance to the veterinarian, the woman conveyed Lot 1 in fee simple to her friend by warranty deed in usual form; this deed omitted any reference to the retaining wall or the covenant. "Grantor, for himself, his heirs and assigns, does covenant and agree that any reasonable expense incurred by grantee, his heirs and assigns, as the result of having to repair the retaining wall presently situated on Lot 1 at the common boundary with Lot 2, shall be reimbursed one-half the costs of repairs; and by this provision the parties intend a covenant running with the land." An owner owned in fee simple two adjoining lots, Lot 1 and 2. He conveyed in fee simple Lot 1 to a veterinarian. The deed was in usual form of a warranty deed with the following provision inserted in the appropriate place:

- The friend is barred by adverse possession
- The veterinarian's deed from the owner was never recorded
- The friend did not know about the covenant until after he had incurred the expenses and, hence, could not have relied on it
- **The friend's expenditures were not proved to be reasonable and customary**

Note:

The key to understanding this question is the call. The question asks you to analyze why the court would rule for the businessman. This is essentially a hypothetical, asking you IF the court did something, WHY did they do it. To tackle a question like this, you have to look at all the answer choices and decide which scenario would make the hypothetical situation occur.

A real covenant is a written promise to either do something on the land (like maintain a fence, or cut the grass) OR a promise NOT to do something on the land (like build commercial buildings). Real covenants "run with the land," so subsequent owners of the property can enforce them or be burdened by them. However, not all real covenants are able to run with the land. There are four elements that must be met for a covenant to run with the land at law: (i) intent that it runs with the land; (ii) notice; (iii) "touch and concern" of the covenant to the land; and (iv) privity of estate.

For intent to be present, the parties must have intended that successors in interest be bound by the terms of the covenant. This intent can be inferred from circumstances surrounding the creation of the covenant, or actual language in the conveyance itself. In common law jurisdictions, a purchaser of land that was subject to a covenant takes the land burdened by the covenant. It does not matter whether the purchaser had notice of the covenant prior to purchasing. However, in recording statute jurisdictions, if the covenant is not recorded, a bona fide purchaser who has no notice of the covenant and records their own deed will take possession of the land free of the covenant.

To touch and concern the land, the covenant must have an effect that makes the land itself more useful or valuable to the benefitted party. Performance of the burden must diminish the rights, privileges, or powers of the landowner in order to run.

Finally, horizontal and vertical privity must be present for the covenant to run. Horizontal privity exists when, at the time the promisor entered into the covenant with the promisee, the two shared some interest in the land independent of the covenant. Vertical privity exists when the successor in interest to the covenanting party holds the entire durational interest held by the covenantor at the time they made the covenant.

D is correct. In this question's fact pattern, the covenant is expressly stated that it is intended to run with the land, so the intent requirement is fulfilled. The businessman is not a bona fide purchaser because he inherited the land, so notice is not required for the covenant to run. The inheritance also establishes privity between the parties. Finally, it touches and concerns the land, because it serves to make the land more useful or valuable. Because all the requirements for the covenant to run with the land are met, the covenant will run with the land.

The covenant in this question states that the grantee and his heirs shall be reimbursed for half of the REASONABLE cost of repairs for a retaining wall that is a common boundary between Lots 1 and 2. The key piece of information in this covenant is that the repairs must be a reasonable cost. This question asks you why the businessman would be successful in an action against him by the friend who owned Lot 1 for half of the \$3,500 the friend paid to repair the retaining wall. Only this answer provides a reason why the businessman would be successful: because a court could find that \$3,500 was not reasonable to repair a retaining wall.

A is incorrect. Adverse possession allows for an adverse possessor to gain title to a property by being in continuous, hostile, open, notorious, actual, and exclusive possession of a property. The fact pattern in this question does not present any party gaining title through adverse possession, so it is incorrect.

B is incorrect. A recording act is a statute regulating the recording of deeds and other interests in property. Recording is irrelevant in this question because the businessman was not a bona fide purchaser of the lot. He inherited the land, so he could not be a bona fide purchaser, and only bona fide purchasers are protected by recording acts.

C is incorrect. As explained above, a covenant is enforceable when it runs with the land. Thus, reliance is irrelevant to determining if a covenant can be enforced.



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## 10. The court should

The plaintiff brought an appropriate action against the defendant to enjoin the construction in order to eliminate the shadow problem and for damages. The plaintiff presented uncontroverted evidence that her evaluation as to the impact of the shadow on the fair rental value of her building was correct. There is no statute or ordinance (other than the building and zoning ordinances) that is applicable to the issues before the court. As the defendant's new building was in the course of construction, the plaintiff realized that the shadows it would create would place her (the plaintiff's) building in such deep shade that the rent she could charge for space in her building would be substantially reduced. Last year the defendant decided to demolish the low-rise office building on her parcel and to erect a new high-rise office building of substantially greater height on the parcel as permitted by the zoning and building ordinances. She secured all the governmental approvals necessary to pursue her project. A plaintiff and a defendant own adjacent parcels of land. On each of their parcels was a low-rise office building. The two office buildings were of the same height.

- Grant to the plaintiff the requested injunction
- Award the plaintiff damages measured by the loss of rental value, but not an injunction
- Grant judgment for the defendant, because she had secured all the necessary governmental approvals for the new building
- **Grant judgment for the defendant, because the plaintiff has no legal right to have sunshine continue to reach the windows of her building**

Note:

A real covenant is a written promise to either do something on the land (like maintain a fence, or cut the grass) OR a promise NOT to do something on the land (like build commercial buildings). Real covenants "run with the land," so subsequent owners of the property can enforce them or be burdened by them.

An equitable servitude is a covenant that, regardless of whether it runs with the land at law, equity will enforce against the assignees of the burdened land who have notice of the covenant.

D is correct. While landowners possess a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view.

A is incorrect. This is the equitable remedy for a covenant or servitude that has been violated. These facts do not show that a covenant or servitude for solar rights has been created, so this answer is incorrect.

B is incorrect. There is no legal right for the plaintiff to recover damages under these facts.

C is incorrect. While judgment should go for the defendant, this answer is incorrect. The fact that the defendant had all necessary approvals would not preclude liability from attaching if there had been a covenant or servitude that protected the plaintiff's solar rights.

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