

## Property Exam 5

Orson owns the Hills a large tract of land. Orson divides the Hills into two parcels, Hilltop and Hillside. Orson sells Hilltop to Alex. Hilltop is landlocked and the only way to get to the main road is through Hillside. Alex asks Orson how he is suppose to get to the road. "Just go through Hillside," Orson said, "you have my permission." So Alex started using a dirt road through Hillside to get from Hilltop to the main road.

Orson then sells Hillside to Mike. Alex introduces himself to Mike and tells him that there is no way to get to and from Hilltop without going through Hillside. "That should be OK," said Mike, "I think." For a couple of weeks Alex continued to use the dirt road through Hillside to access Hilltop.

Mike then stopped Alex one day. "Hey Alex," said Mike, "I hereby formally revoke anything I might have said before about you using this dirt road."

This angered Alex, so he went to Hilltop and built a giant building which shot up into the sky and blocked all light from reaching Hillside. This angered Mike as he was thinking about farming on Hillside and now he couldn't because Hillside got no sunlight. Mike then decided to mine hillside. He mined it so aggressively that Hilltop started slipping which caused the giant building on Hilltop to crack its foundation. This caused Mike to laugh-- oh he had a good belly laugh.

Does Alex have any right to use the dirt road through Hillside to get to Hilltop?

Does Mike have any right to force the building on Hilltop lowered?

Does Alex have any right to stop Mike's mining operation?

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## **Example Answer:**

### **Does Alex have any right to use the dirt road through Hillside to get to Hilltop?**

#### Agreement between Alex and Mike

Does Alex's agreement with Mike give Alex the right to continue to use the dirt road?

An oral agreement to use the land of another creates a licensee between the grantor and the grantee.

Here Mike gave Alex permission to use the dirt road orally, thus he created a license between himself and Alex.

Unlike an easement, a license is revocable at any time. When Mike told Alex he could no longer use the dirt road this was a revoking of the license.

Because the license was revoked, Alex's agreement with Mike no longer gives Alex the right to continue to use the dirt road.

#### Easement created by implication

Has an easement by implication been created giving Alex the right to use the dirt road?

An easement is a privilege to use the land of another. An easement by implication is created when three requirements are met: (1) land must be divided by one owner into multiple parcels; (2) the use for which the easement is claimed must have existed prior to the severance; and (3) the easement must be necessary to the enjoyment of the property.

Here Orson divided the Hills into two parcels, Hilltop and Hillside; the dirt road existed prior to the severance; and use of the dirt road is necessary to the enjoyment of the property. Based on these facts an easement by implication was created when Orson sold Hilltop to Alex.

The fact that Orson later sold Hillside to Mike would not affect the already created easement through Hillside. When the title to the servient estate is transferred, the burden of the easement remains with the property. Here, Orson sold the servient estate, i.e. the estate which has given an access easement, to Mike. The easement created "runs with the land" and is enforceable by Alex against Mike.

Based on these facts, an easement by implication was created when Orson sold Hilltop to Alex and the easement stayed with the servient Hillside estate when Hillside was sold to Mike.

### Easement created necessity

If for whatever reason an easement by implication was not created, has an easement by necessity been created giving Alex the right to use the dirt road?

As stated above, an easement is a privilege to use the land of another. An easement by necessity is created when two parcels are so situated that an easement over one is necessary to the enjoyment of the other.

Here the facts tell us that Hilltop is landlocked and the only way to get to Hilltop is the dirt road through Hillside. Since there is no way to access Hilltop without the creation of an easement, an easement is necessary for the enjoyment (or even use) of Hilltop.

Under these facts an easement by necessity would have been created allowing access to Hilltop by use of the dirt road.

### **Does Mike have any right to force the building on Hilltop lowered?**

#### Height of Alex's building

Under the common law, there was no limit on the height of buildings. Because the facts do not indicate a zoning ordinance changing this fact, there is no restriction on the height of Alex's buildings.

The fact that the tall building blocks sunlight on Hillside is irrelevant -- at common law an owner generally has no right to sunlight.

Mike does not have any right to force the building on Hilltop lowered.

### **Does Alex have any right to stop Mike's mining operation?**

#### Mining operations

Landowners have the right to have their land supported by adjacent land, limiting excavation of an adjacent parcel.

Here, Alex has lost the lateral support of his land due to Mike's mining. Alex can therefore stop (or possibly even reverse) Mike's mining operations.