

A grantor conveyed a commercial property to a friend "so long as alcoholic beverages are not sold on the property, and if alcoholic beverages are sold on the property, the estate is to end at once." The friend took possession of the property.

Four years later, the friend opened a tavern that sold alcoholic beverages on the property. Six months after the opening, while the friend continued to operate the tavern, the municipality in which the property is located validly condemned the property.

There are no applicable statutes.

To whom should the condemnation proceeds be paid?

- A. To the friend and the grantor in equal shares, because they both had an interest in the property. (2%)
- B. To the friend, because he was in possession on the date of the condemnation. (14%)
- C. To the friend, because the limitation is an invalid restraint on the sale of alcohol. (1%)
- D. To the grantor, because the friend's estate had ended. (81%)

Correct

81% Answered correctly

46 secs Time Spent

2023 Version

Explanation:

Fee simple estates

Type		Language	Future interest
Indefeasible	Fee simple absolute	"To A" "To A and his heirs"	None
Defeasible	Fee simple determinable	Durational "so long as" "during" "until"	<i>Grantor's</i> possibility of reverter <i>Third party's</i>
	Fee simple subject to condition subsequent	Conditional "but if" "provided that" "unless"	executory interest (fee simple subject to executory limitation) <i>Grantor's</i> right of entry

A defeasible fee is an ownership interest in real property that has the potential to last forever but can be cut short if a specified event or condition occurs. One type of defeasible fee is a **fee simple determinable** (FSD), which is created with **durational language**—eg, "to my friend **so long as** alcoholic beverages are not sold on the property." The future interest that follows an FSD is either:

a **possibility of reverter** – in which case, the estate automatically **reverts back to the grantor** when the specified event occurs *or*

an **executory interest** – in which case, the estate automatically **passes to a third party** when the stated event occurs.

When a grantor's **conveyance does not state** who will acquire the property upon the occurrence of the defeasible event, a **possibility of reverter is presumed**.

Here, the grantor's conveyance did not specify who would acquire the property upon the occurrence of the defeasible event—ie, selling alcoholic beverages on the property. As a result, the friend's FSD was followed by a possibility of reverter. This means that the property automatically reverted to the grantor when the friend's FSD ended upon the opening of a tavern that sold alcoholic beverages on the property **(Choice A)**. And since the grantor owned the property on the date of condemnation, he should receive the condemnation proceeds.

(Choice B) Condemnation is the taking of land for public use that, under the Fifth Amendment, entitles the *owner* of the adversely affected property to compensation. Therefore, the friend's mere *possession* of the property on the date of the condemnation does not entitle him to compensation.

(Choice C) The limitation contained in the deed, prohibiting the sale of alcohol, is a valid restraint on use and is not against public policy.

Educational objective:

A fee simple determinable is a defeasible fee created with durational language. Unless otherwise stated, it is presumed that the estate will automatically revert back to the grantor if the terminating event or condition occurs.

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