

An owner of land devised the land to a specific university "for the purpose of conducting field research for the improvement of agricultural products and for no other purpose." The owner devised all of her other real property interests to her granddaughter. The owner's only heir was her son. Later, the university decided to build a science classroom on the land even though using the land for the enumerated purpose was still practicable. The owner's granddaughter, asserting ownership of the land, sought to evict the university from the land.

There is no applicable statute, and the common law Rule Against Perpetuities is unmodified in the jurisdiction.

If the court rules in favor of the university, what is the most likely reason?

- A. The *cy pres* doctrine applies to the university's current use of the land.
- B. The granddaughter's executory interest in the land is void under the Rule Against Perpetuities.
- C. The owner's son, not the granddaughter, is the proper plaintiff to seek eviction.
- D. The university owns the land in fee simple absolute because the devise did not include conditional or durational language.

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

Like a fee simple absolute (FSA), a **defeasible fee** is ownership of potentially infinite duration. But unlike an FSA, a defeasible fee can be terminated by the occurrence of a stated event. Defeasible fees are **limited by** specific **durational or conditional language** (eg, "so long as," "but if"). However, language that **limits only the purpose of the transfer** (eg, "for the purpose of") creates an **FSA**.

Here, the owner's devise did not include conditional or durational language. Instead, the owner devised the land to the university "for *the purpose* of conducting field research for the improvement of agricultural products and for no other purpose." This conveyance created an FSA—not a defeasible fee—so the university is free to do with the land as it sees fit (eg, build a science classroom thereon). For that reason, the court will most likely rule in favor of the university.

(Choice A) The *cy pres* doctrine allows courts to reform the conveyance of a *future* interest—not the university's *present* interest—to come as close as possible to the transferor's intent while preventing it from violating the Rule Against Perpetuities.* Additionally, this doctrine only applies to a charitable gift or trust when the charitable objective is or later becomes impossible or impracticable to fulfill (not seen here).

(Choices B & C) The owner's conveyance created an FSA, which has no associated executory interest or other future interest. As a result, neither the son nor the granddaughter has an interest in the land. But had the owner conveyed a defeasible fee and retained the associated future interest, the granddaughter (not the son) would hold that

future interest. That is because the owner left all of her other real property interests to the granddaughter.

*The Rule Against Perpetuities (RAP) does not apply to future interests held by the grantor. Therefore, had the granddaughter succeeded to a future interest held by the owner (eg, possibility of reverter), it would not be subject to RAP.

Educational objective:

Defeasible fees are limited by specific durational or conditional language (eg, "so long as," "but if"). Language that limits only the purpose of the transfer creates a fee simple absolute.

References

Restatement of Property § 44 cmt. m (Am. Law Inst. 1936) (discussing designated purpose of conveyance).

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