Six years ago, the owner of an estate in fee simple executed and delivered to his nephew an instrument in the proper form of a warranty deed, purporting to convey his estate to "my nephew and his heirs." At that time, the nephew was a widower who had one child, a daughter.

Three years ago, the nephew executed and delivered to his neighbor an instrument in the proper form of a warranty deed, purporting to convey the estate to "my neighbor." The nephew's daughter did not join in the deed. The neighbor was, and still is, unmarried and childless.

The only possibly applicable statute in the jurisdiction states that any deed will be construed to convey the grantor's entire estate, unless expressly limited.

Last month, the nephew died, never having remarried. His daughter is his only heir.

Who is the owner of the estate?

A. The daughter and neighbor as joint tenants, because both survived the nephew.
B. The daughter and neighbor as tenants in common of equal shares.
C. The daughter, because the nephew's death ended the neighbor's life estate pur autre vie.
D. The neighbor in fee simple pursuant to the nephew's deed.

Explanation:

Ownership in real property is transferred from a grantor (current owner) to a grantee (new owner) through a conveying instrument like a will or deed. A conveying instrument usually contains both:

words of purchase – identifying the new owner (eg, "to my nephew") *and*
words of limitation – identifying the type of estate being conveyed (eg, "and his heirs").

"**And his/her heirs**" are **words of limitation** traditionally used to transfer a **fee simple absolute** (FSA or fee simple)—the most common and broadest form of property ownership. However, these words of limitation are not required since an FSA is presumed by law when no such words are used. And since an FSA conveys title without any conditions, limitations, or accompanying future interests, **no ownership interest** is created **in the grantee's heirs**.

Here, the owner of an FSA conveyed his interest to his nephew by warranty deed. Since the deed used the words of limitation "and his heirs," it conveyed an FSA to the nephew (but created no ownership interest in the daughter/heir). The nephew then conveyed his interest to his neighbor by a warranty deed that lacked words of limitation. Therefore, the neighbor received an FSA and owns the estate without any conditions or limitations.

(Choices A & B) Joint tenancy and tenancy in common are two types of concurrent estates. Concurrent estates are created only when a conveying instrument identifies two or more persons as grantees (not seen here).

(Choice C) A life estate pur autre vie is an ownership interest that lasts for the duration of the life of someone other than the grantee. It is transferred when a conveying instrument states "to A" (words of purchase) "for the life of B" (words of limitation). Since the nephew's warranty deed to the neighbor contained no such language, the neighbor did not receive a life estate pur autre vie.

Educational objective:

A fee simple absolute is the broadest form of property ownership and is transferred when the conveying instrument's words of limitation state "and his/her heirs" OR when no words of limitation are used.

References

Restatement (First) of Property § 14 (Am. Law Inst. 1979) (types of fee simple estates).

Restatement (First) of Property § 15 (Am. Law Inst. 1979) (estate in fee simple absolute).

Restatement (First) of Property § 39 (Am. Law Inst. 1979) (presumption of fee simple absolute).

Conveying fee simple absolute