

A father owned property in fee simple. The small house on the property was occupied, with the father's oral permission, rent-free by his son and the son's college classmate. The son was then 21 years old.

The father, by properly executed instrument, conveyed the property to "my beloved son, his heirs and assigns, upon the condition precedent that he earn a college degree by the time he reaches the age of 30. If, for any reason, he does not meet this condition, then the property shall become the sole property of my beloved daughter, her heirs and assigns." At the time of the conveyance, the son and his classmate attended a college located several blocks from the property. Neither had earned a college degree.

One week after the delivery of the deed to the son, he recorded the deed and immediately told the classmate that he was going to begin charging the classmate rent since "I am now your landlord." There is no applicable statute.

The son and the classmate did not reach agreement, and the son served the appropriate notice to terminate whatever tenancy the classmate had. The son then sought, in an appropriate action, to oust the classmate.

Who should prevail?

- A. The classmate, because he is a tenant of the father, not of the son.
- B. The classmate, because the father's permission to occupy preceded the father's conveyance to the son.
- C. The son, because the conveyance created a fee simple subject to divestment in the son.
- D. The son, because the father's conveyance terminated the classmate's tenancy.

Explanation:

A **tenancy at will**—a tenancy with no fixed term that can be created by express agreement or by implication if the tenant occupies the premises rent-free—generally continues until terminated by either the landlord or the tenant. A tenancy at will **terminates automatically** when the landlord **conveys a present interest** in the property to a third party. But when the landlord **conveys a future interest**, the tenancy **continues**. In that case, the **future interest holder** has **no right to terminate the tenancy**.

Here, the son and the classmate lived in the father's house rent-free (tenancy at will). The father then conveyed a property interest in the home to the son that could become possessory if he earned a college degree before age 30 (future interest). Therefore, that conveyance did not automatically terminate the classmate's tenancy, so the classmate was still the father's tenant **(Choice D)**. And since the son (future interest holder) had no right to terminate that tenancy, the classmate should prevail in the son's action to oust the classmate.

(Choice B) Although the father's permission to occupy the house preceded the conveyance, the son would prevail in his ouster action if the father had conveyed a *present* interest to the son (since that would have terminated the classmate's tenancy automatically). Therefore, the classmate should not prevail on this basis.

(Choice C) After the conveyance, the *father* had a fee simple subject to divestment—a present possessory interest that could be cut short upon the happening of a stated condition (ie, if the son graduated college before age 30). The son only had a future interest that could become possessory if that condition occurred.

Educational objective:

A tenancy at will can be terminated (1) by the landlord or the tenant or (2) automatically when the landlord conveys a *present* interest in the property to a third party. But when the landlord conveys a *future* interest, the tenancy continues, and the future interest holder has no right to terminate that tenancy.

References

Restatement (Second) of Prop.: Landlord & Tenant § 1.6 (Am. Law Inst. 1977) (tenancy at will).

Restatement (Second) of Prop.: Landlord & Tenant § 15.1 (Am. Law Inst. 1977) (termination of tenancy at will upon landlord's conveyance).

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Effect of landlord's conveyance on tenancy at will

