

A landowner conveyed his land by quitclaim deed to his daughter and son "as joint tenants in fee simple." The language of the deed was sufficient to create a common law joint tenancy with right of survivorship, which is unmodified by statute.

The daughter then duly executed a will devising her interest in the land to a friend. Then the son duly executed a will devising his interest in the land to a cousin.

The son died, and later the daughter died. Neither had ever married. The daughter's friend and the cousin survived.

After both wills have been duly probated, who owns what interest in the land?

- A. The cousin owns the fee simple.
- B. The daughter's friend and the cousin own equal shares as joint tenants with right of survivorship.
- C. The daughter's friend and the cousin own equal shares as tenants in common.
- D. The daughter's friend owns the fee simple.

Explanation:

A **joint tenancy** is a type of **concurrent estate** in which each co-tenant has an undivided and equal interest in the property with the **right of survivorship**. The right of survivorship means that a joint tenant's **interest disappears upon his/her death** and the **remaining joint tenants' interests** automatically expand to **absorb it**. Therefore, a joint tenant has no interest to devise upon death.

Here, the daughter and the son were joint tenants in fee simple. Although they executed wills attempting to devise their joint tenancy interests to others, they could not do so because of their right of survivorship. But the joint tenancy disappeared when the son died, and the daughter automatically acquired the entire property in fee simple. As a result, her fee simple interest passed to the friend under her will when she died.

(Choice A) Since the son was a joint tenant and died first, his property interest was acquired by the daughter. As a result, the son had no interest to devise to his cousin under a will.

(Choice B) Under the common law and in most jurisdictions, a joint tenancy with right of survivorship entails **four unities**. This includes unity of title, which requires joint tenants to receive their interests in the same instrument of conveyance. Since the friend and the cousin received their purported interests in *separate* wills, they could not acquire joint tenancy interests.

(Choice C) A lifetime transfer of a joint tenant's interest severs that interest from the joint tenancy, and it becomes a tenancy-in-common ownership interest. Therefore, the friend and cousin would have owned equal shares of the property as tenants in common had the daughter and son conveyed their interests when they were alive instead of attempting to devise them at death.

Educational objective:

A joint tenant's interest disappears upon his/her death and the remaining joint tenants' interests automatically expand to absorb it (ie, right of survivorship). Therefore, a joint tenancy interest cannot be devised.

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Joint tenancy with right of survivorship

