

Thirty years ago, a landowner conveyed land by warranty deed to a church (a charity) "so long as the land herein conveyed is used as the site for the principal religious edifice maintained by said church."

Twenty years ago, the landowner died intestate, survived by a single heir.

One year ago, the church dissolved and its church building situated on the land was demolished.

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

In an appropriate action, the landowner's heir and the attorney general, who is the appropriate official to assert public interests in charitable trusts, contest the right to the land.

In this action, who will prevail?

- A. The attorney general, because cy pres should be applied to devote the land to religious purposes to carry out the charitable intent of the landowner.
- B. The attorney general, because the landowner's attempt to restrict the church's fee simple violated the common law Rule Against Perpetuities.
- C. The landowner's heir, as successor to the landowner's possibility of reverter.
- D. The landowner's heir, because a charity cannot convey assets donated to it.

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

Defeasible fees are fee simple estates that automatically terminate 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, "so long as"). An FSD is followed by either:

a **possibility of reverter** – when the estate automatically **reverts back to the grantor** upon the happening of the specified event (presumed if not expressly stated) *or*

an **executory interest** – when the estate automatically **passes to a third party** upon the happening of the specified event (must be expressly stated).

Here, the landowner **conveyed** the church an FSD followed by the landowner's possibility of reverter. When the landowner died, his possibility of reverter was inherited by his sole heir. So when the church dissolved and its principal religious edifice (ie, the church building) was demolished, title automatically reverted to the landowner's heir. Therefore, the heir will prevail.

(Choice A) When a charitable trust no longer serves the purpose for which it was created, courts can use the cy pres doctrine to redirect the trust to a similar charity or purpose. However, this doctrine does not apply when the conveyance includes a possibility of reverter (as seen here) or otherwise dictates what should happen when the assets for the trust are no longer used.

(Choice B) Under the Rule Against Perpetuities, **specific future interests** are void if there is any possibility that the interest will not vest within 21 years after the end of all lives in

being at the creation of the interest. But this rule does *not* apply to future interests held by the grantor (eg, a possibility of reverter) OR charitable trusts.

(Choice D) A charity *can* convey assets donated to it.

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.

References

Restatement of Property § 44 (Am. Law Inst. 1936) (fee simple determinable).

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