

A man owned a tract of land in fee simple. By warranty deed he conveyed the land to his brother for life "and from and after the death of my brother to my sister, her heirs and assigns."

Subsequently the sister died, devising all of her estate to a friend. The sister was survived by a daughter, her sole heir-at-law.

Shortly thereafter the brother died, survived by the man, the friend, and the daughter.

Title to the land now is in whom?

- A. Either the man or the daughter, depending upon whether the destructibility of contingent remainders is recognized in the applicable jurisdiction.
- B. The daughter, because she is the sister's heir.
- C. The friend, because the vested remainder in the sister was transmitted by her will.
- D. The man, because the contingent remainder never vested and the man's reversion was entitled to possession immediately upon the brother's death.

Explanation:

A **life estate** is a present possessory estate that terminates upon the death of an individual. This estate is **followed by** either a reversion (if retained by the grantor) or a **remainder** (if created in a grantee). Remainders are fully transferable inter vivos, devisable by will, and descendible by inheritance. This is true in most jurisdictions* regardless of whether the remainder is:

vested – not subject to any conditions precedent AND held by an **identifiable living person** (eg, "then to my sister, her heirs and assigns") *or*

contingent – is subject to an express condition precedent (other than the natural termination of the prior estate) OR held by an **unknown or unborn person** (eg, "then to my neighbor, but only if...").

Here, the man conveyed his fee simple estate to his brother for life, which then passed to his sister *unconditionally* when the brother died. The sister's *vested* remainder was devisable, so it passed to the friend after the sister died—leaving no interest in the property for the daughter to inherit **(Choice B)**. Therefore, title to the land is now in the friend.

*At common law and in a minority of jurisdictions, contingent remainders cannot be transferred inter vivos.

(Choice A) The doctrine of destructibility of contingent remainders provides that a remainder will be destroyed if it has not vested at the time the preceding interest ends. Here, the sister's remainder was vested, so this doctrine does not apply.

(Choice D) Had the sister received a *contingent* remainder that had not vested by the time the preceding estate (brother's life estate) had terminated, the grantor's (man's) reversion would have become immediately possessory upon the brother's death.

Educational objective:

Remainders are either vested (ie, not subject to conditions precedent and held by an identifiable living person) OR contingent (ie, subject to conditions precedent or held by an unknown or unborn person). Both are transferrable, devisable, and descendible.

References

Restatement of Property §§ 162, 164–65 (Am. Law Inst. 1936) (transferability of remainders).

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Chain of title

