

A brother and sister owned a large tract of land in fee simple as joint tenants with rights of survivorship. While the sister was on an extended safari in Kenya, the brother learned that there were very valuable coal deposits within the land, but he made no attempt to inform the sister. Thereupon, the brother conveyed his interest in the land to his wife, who immediately reconveyed that interest back to him. The common law joint tenancy is unmodified by statute.

Shortly thereafter, the brother was killed in an automobile accident. His will, which was duly probated, specifically devised his one-half interest in the land to his wife.

The sister then returned from Kenya and learned what had happened.

The sister brought an appropriate action against the wife, who claimed a one-half interest in the land, seeking a declaratory judgment that she, the sister, was the sole owner of the land.

In this action, who should prevail?

- A. The sister, because the brother breached his fiduciary duty as joint tenant.
- B. The sister, because the joint tenancy was reestablished by the wife's reconveyance to the brother.
- C. The wife, because the brother and sister were tenants in common at the time of the brother's death.
- D. The wife, because the brother's will severed the joint tenancy.

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**. Under the **common law** (and in most jurisdictions), the creation and continuation of a joint tenancy relies on the coexistence of **four unities** (PITT):

Possession – co-tenants share an equal right to possess or use the property

Interest – co-tenants each have an equal interest in the property

Time – property interests simultaneously vest in all co-tenants

Title – property interests received in same instrument of conveyance

If **any of these unities is lost**, then the noncomplying interest is **severed from the joint tenancy** and **becomes a tenancy in common**.

Here, a brother and sister owned land as joint tenants. When the brother conveyed his interest to his wife, the joint tenancy lost the unities of time (interests vested at different times) and title (interests received in different instruments). Therefore, the conveyed interest was severed from the joint tenancy and converted into a tenancy in common **(Choice D)**. The wife's immediate reconveyance to the brother did not reestablish the joint tenancy since the unities of time and title were still lost **(Choice B)**. Instead, the brother became tenants in common with his sister. And since the brother's interest was devised to his wife upon his death, the wife should prevail.

(Choice A) A fiduciary duty is a legal obligation to act in another's best interest. Joint tenants owe no such duty to each other.

Educational objective:

Under the common law, a joint tenancy must satisfy four unities: possession, interest, time, and title (PITT). If any of these unities is broken (eg, when a joint tenant conveys his/her interest), then the noncomplying interest is severed from the joint tenancy and converted to a tenancy in common.

References

20 Am. Jur. 2d Cotenancy and Joint Ownership § 5 (2020) (four unities of a joint tenancy).

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