

A man died, leaving a will that devised his land to "my wife for life, remainder to my son and the heirs of his body. But if my son dies without children, then the land shall go to my nephew." Subsequently the wife died, devising all of her estate to the son. The son then sold the land to a neighbor. The son died shortly thereafter, survived only by a daughter. The daughter has now brought an appropriate action to quiet title against the neighbor and the nephew.

The common law Rule Against Perpetuities is unmodified in the jurisdiction, and the fee tail has been abolished by statute.

In this action, who will likely prevail?

- A. The daughter, because the son's conveyance to the neighbor extinguished the nephew's interest.
- B. The neighbor, because the son held the land in fee simple absolute.
- C. The nephew, because he held the remainder following the son's interest.
- D. The nephew, because the language in the man's will did not create an interest in the son.

Explanation:

There are three types of freehold estates, all of which can be held as a present interest or future interest:

Fee simple – lasts for an indefinite and potentially infinite duration (eg, "to A and his heirs")

Fee tail – lasts until the **original grantee's lineage dies out** (eg, "to A and the **heirs of his body**")

Life estate – terminates upon the death of an individual serving as the governing life (eg, "to A for life")

Fee tails were once commonly used to pass land from generation to generation through a series of life estates in the original grantee's heirs. Today, the fee tail has been **abolished by statute** in nearly every jurisdiction—including this one.* As a result, these jurisdictions typically **interpret the fee tail** as giving the first grantee a **fee simple absolute**, which has no corresponding future interest due to its indefinite duration.

Here, the man devised the son a fee tail that became possessory when the mother's life estate terminated upon her death (**Choice D**). Since this jurisdiction likely interprets the fee tail as a fee simple absolute, neither the daughter nor the nephew held a future interest in the estate (**Choices A & C**). And when the son sold the land to the neighbor, the neighbor acquired the son's fee simple absolute. Therefore, the neighbor will likely prevail in this quiet title action.

*In jurisdictions that still recognize the fee tail, the fee-tail holder can eliminate the fee tail (ie, disentail) by conveying that interest in fee simple absolute to a third party, who then acquires the property in fee simple absolute.

Educational objective:

Nearly every jurisdiction has abolished the fee tail, and a conveyance of this estate is commonly interpreted as giving the first grantee a fee simple absolute.

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