

A woman duly executed a will under which she devised her farm to her nephew and bequeathed the residue of her estate to her niece.

For 12 years after executing her will, the woman lived on her farm. Then she sold it and used the sale proceeds to purchase a home in the city, in which she lived until she died, never having changed her will.

Following the admission of the will to probate, both the nephew and the niece claimed ownership of the home. There is no applicable statute.

Who is the owner of the home?

- A. The nephew, because of the doctrine of ademption.
- B. The nephew, because of the doctrine of equitable estoppel.
- C. The niece, because of the doctrine of lapse.
- D. The niece, because she is the residuary legatee.

Explanation:

Classification of devises

(conveyance by will)

Type	Definition	Examples
Specific	Devise of specifically identified asset	"my farm to my nephew"
General	Devise (often of money) payable from general assets of estate	"\$2,000 to my daughter" "one-half of my estate to my son"
Demonstrative	Devise primarily payable from designated source, but secondarily payable from general assets	"\$2,000 to my daughter out of my bank account"
Residuary	Devise of all property not disposed of by specific, general, or demonstrative devise	"all of the remainder of my estate to my niece"

The woman (testator) specifically devised her farm to the nephew (devisee). She later sold that farm and used the proceeds to purchase a home. But the nephew is *not* entitled to that home because of the **doctrine of ademption**, which causes a **devise to fail** in two circumstances:

Ademption by extinction – when the *specifically* devised asset is not owned by the testator (or is destroyed or fundamentally changed) at the time of death (as seen here)

Ademption by satisfaction – when the devisee received the devised asset (or some other asset intended to satisfy the devise) during the testator's life (not applicable here)

As a result, the **devisee takes nothing** unless the will expressly states otherwise. So, when a specifically devised asset (eg, the farm) is sold during the testator's lifetime, the sale proceeds—and any assets later acquired with those proceeds (eg, the home)—become **part of the general estate**. The general estate is then distributed in accordance with the remainder of the will. And since the woman's will bequeathed the residue of her estate to the niece, the niece owns the home as the residuary legatee (**Choice A**).

(Choice B) The doctrine of equitable estoppel bars a party from asserting a material fact that is inconsistent with a prior representation upon which another party detrimentally relied. But this doctrine does not apply here since no party has asserted contradictory facts.

(Choice C) The doctrine of lapse causes any type of devise to fail when the devisee *dies* before the testator. But since the nephew and niece (devisees) *survived* the woman (testator), neither devise will fail under this doctrine.

Educational objective:

Specific devises are adeemed by extinction when the devised asset is not owned by the testator (or is destroyed or fundamentally changed) upon death. And any type of devise is adeemed by satisfaction when the devised asset or a substituted asset is given during the testator's life. The devised asset will then join the general estate.

References

80 Am. Jur. 2d Wills § 1444 (2018) (doctrine of ademption).

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