

An organic farm was conveyed to a married couple by a deed that created a cotenancy in equal shares with the right of survivorship.

The husband later informed the wife that he intended to convey his "undivided one-half interest in the farm" to his sister. The wife objected to the conveyance, but the husband nevertheless conveyed his interest in the farm to the sister by deed. The husband has since died.

In an action between the sister and the wife to determine title to the farm, who will prevail?

- A. The sister, because the husband and the wife had a tenancy in common.
- B. The sister, because the wife knew of the conveyance prior to the husband's death.
- C. The wife, because she is the sole owner of the farm.
- D. The wife, but only if the jurisdiction recognizes tenancies by the entirety.

### Explanation:

There are three types of concurrent estates (ie, cotenancies):

**Tenancy in common** – a tenancy in which each cotenant has a separate and possibly unequal interest in the property with **no** right of survivorship

**Joint tenancy** – a tenancy in which each cotenant has an undivided and equal interest in the property with the **right of survivorship**

**Tenancy by the entirety** – a **joint tenancy** between **married persons**

Here, the conveyance to the husband and the wife created a cotenancy in equal shares *with* the right of survivorship. Therefore, they received either a joint tenancy or a tenancy by the entirety—not a tenancy in common **(Choice A)**.

Joint tenancies and tenancies by the entirety are **not devisable** (by will) **or inheritable** (by intestate succession). And only a **joint tenancy** interest can be **conveyed during a tenant's lifetime** without the other tenant's consent. As a result, the outcome of this dispute depends on which tenancy the husband and the wife received:

joint tenancy – in which case the husband's lifetime conveyance to the sister would have severed the joint tenancy and created a *tenancy in common* between the sister and the wife *or*

tenancy by the entirety\* – in which case the conveyance to the sister would have failed, and the wife would have acquired *complete ownership* of the farm upon the husband's death

This means that the wife would be the sole owner of the farm, and therefore prevail, only *if* the husband and the wife had a tenancy by the entirety **(Choice C)**. Otherwise, the sister will prevail.

\*A tenancy by the entirety is recognized in about half of the jurisdictions.

**(Choice B)** The wife's *knowledge* has no effect on the validity of the husband's conveyance. But the wife's *consent* would matter if the husband and wife had received a tenancy by the entirety, since neither tenant could convey the property without the other's consent.

### Educational objective:

Both joint tenancies and tenancies by the entirety have survivorship rights, so they are not devisable or inheritable. But joint tenancies—unlike tenancies by the entirety—are transferrable during a tenant's lifetime without the other tenant's consent.

