

A husband and wife acquired land as common law joint tenants with right of survivorship. One year later, without his wife's knowledge, the husband executed a will devising his interest in the land to his best friend. The husband subsequently died.

Is the wife now the sole owner of the land?

- A. No, because a joint tenant has the unilateral right to end a joint tenancy without the consent of the other joint tenant.
- B. No, because the wife's interest in the husband's undivided 50% ownership in the land adeemed.
- C. Yes, because of the doctrine of after-acquired title, or estoppel by deed.
- D. Yes, because the devise to the friend did not sever 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**. The right of survivorship means that a joint tenant's **interest disappears upon his/her death** and the **remaining joint tenants' interests** automatically expand to **absorb it**. As a result, although a joint tenant can sever the joint tenancy by conveying his/her interest to another during life (thereby creating a tenancy in common), a joint tenant **cannot devise** his/her interest at death.

Here, the husband and wife were joint tenants with the right of survivorship. Therefore, the husband could not sever the joint tenancy by devising his interest to his best friend. And since the husband and wife's joint tenancy remained intact, the wife absorbed his interest and became the sole owner of the land upon his death.

**(Choice A)** A tenant can unilaterally end a joint tenancy without the other tenant's consent. But this only occurs when a joint tenancy interest is conveyed during a tenant's lifetime, since a joint tenancy interest cannot be devised upon death.

**(Choice B)** Ademption is the failure of a gift under a will, often because the testator no longer owns that gift when he/she dies. Here, the best friend's interest in the land (not the wife's) adeemed because the husband's joint tenancy interest disappeared upon his death. Therefore, the husband had no interest to devise to his friend.

**(Choice C)** The doctrine of after-acquired title (ie, estoppel by deed) applies when a testator acquires title to devised property *after* executing a will. In that case, the property passes under the will so long as the testator still owns the property when he/she dies. This doctrine does not apply here since the husband (testator) owned the land *before* he attempted to devise it to the best friend.

### Educational objective:

A joint tenancy includes the right of survivorship, so a joint tenant's interest disappears upon his/her death and the remaining joint tenants' interests automatically expand to absorb it. As a result, a joint tenancy interest cannot be devised.

### References

20 Am. Jur. 2d Cotenancy and Joint Ownership § 22 (2018) (severance of joint tenancy).

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## Joint tenancy with right of survivorship

