

A woman died and in her duly probated will devised a tract of land to her son "for life" and then to "the heirs of his body in fee simple absolute." The son used the tract to secure a loan from a bank. When the son defaulted on the debt, the bank initiated foreclosure proceedings. A buyer acquired the tract at the foreclosure sale and promptly sold the tract to a friend. Both the buyer's deed and the friend's deed referenced the woman's will for the description of the parcel, and both deeds were promptly recorded.

Twenty years later, the son died intestate, leaving two children as his only heirs. The children have sued the friend, claiming ownership of the land under a 30-year marketable title act.

If common law rules have not been modified in the jurisdiction, who will likely prevail?

- A. The children, because the friend acquired the son's life estate, which terminated when the son died.
- B. The children, because the friend's deed referenced the woman's will, which served as a notice of claim under the marketable title act.
- C. The friend, because the children failed to record a notice of claim.
- D. The friend, because the friend acquired the son's interest in fee simple absolute.

Explanation:

Under the **common law**, the **Rule in Shelley's Case** applies when an instrument grants:

a **freehold estate** (eg, life estate) to a person *and*

a **remainder** to the **same person's heirs** or the heirs of that person's body.

When this occurs, that **person** is considered to hold **the freehold estate AND the remainder**, so the person's heirs take nothing under the granting instrument. And under the **doctrine of merger**, if there is no intervening interest, the freehold estate and the remainder merge so that the person takes in **fee simple absolute** (FSA).

Here, the woman's will devised a life estate to the son and the remainder to the heirs of his body. The son is therefore considered to hold the life estate *and* the remainder. Since there is no intervening interest (eg, had another life estate followed the son's life estate), the son's interests merged into an FSA that the buyer acquired at the foreclosure sale and subsequently conveyed to the friend. Therefore, the friend will likely prevail.

Had this jurisdiction abolished the Rule in Shelley's Case (as most others have done), the parties would have taken the freehold estate and remainder in accordance with the language in the deed. This means that the son would have received a life estate—subsequently acquired by the buyer and then the friend—that would have terminated upon the son's death. And the children would have received the remainder and therefore prevailed (**Choice A**).

(Choices B & C) Marketable title acts extinguish any title defects that have not been recorded within the statutory period (here, 30 years). Since the buyer's and friend's *recorded* deeds referenced the granting language from the woman's will, this likely satisfied the act's recording requirement. However, the children still have no claim to enforce.

Educational objective:

Under the Rule in Shelley's Case, an instrument that grants a freehold estate to a person and a remainder to that same person's heirs gives that person both interests. If there is no intervening interest, then the merger rule consolidates those interests into a fee simple absolute.

