

In the most recent deed in the chain of title to a tract of land, a man conveyed the land as follows: "To my niece and her heirs and assigns in fee simple until my niece's daughter marries, and then to my niece's daughter and her heirs and assigns in fee simple."

There is no applicable statute, and the common law Rule Against Perpetuities has not been modified in the jurisdiction.

Which of the following is the most accurate statement concerning the title to the land?

- A. The niece has a defeasible fee simple determinable and the daughter has an executory interest.
- B. The niece has a fee simple and the daughter has no interest, because after the grant of a fee simple there can be no gift over.
- C. The niece has a fee simple and the daughter has no interest, because she might not marry within 21 years after the date of the deed.
- D. The niece has a life estate and the daughter has a contingent remainder.

## Explanation:

### Fee simple estates

Type		Language	Future interest
Indefeasible	<b>Fee simple absolute</b>	"To A" "To A and his heirs"	None
Defeasible	<b>Fee simple determinable</b>	Durational "so long as" "during" "until"	<i>Grantor's</i> possibility of reverter <i>Third party's</i>
	<b>Fee simple subject to condition subsequent</b>	Conditional "but if" "provided that" "unless"	executory interest <b>(fee simple subject to executory limitation)</b> <i>Grantor's</i> right of entry

**Defeasible fees** are fee simple estates that may be terminated by the occurrence of a stated event. One type of defeasible fee is a **fee simple determinable** (FSD), which is created with **durational language** (eg, "to my niece *until* my niece's daughter marries"). The **future interest** that follows an FSD is either:

a **possibility of reverter** – in which case, the estate automatically reverts back to the **grantor** when the stated event occurs (presumed if not expressly stated) *or*

an **executory interest** – in which case, the estate automatically passes to a **third party** (grantee) when the stated event occurs (eg, "then to my niece's daughter").

Therefore, pursuant to the man's **conveyance**, the niece has a defeasible fee simple determinable and the daughter holds an executory interest **(Choices B & D)**.

**(Choice C)** The Rule Against Perpetuities (RAP) renders a future interest void if there is any possibility that it could vest more than 21 years after the death of some relevant person alive when the interest was created. But here, the daughter's executory interest does *not* violate RAP because she will marry (or not) within her own lifetime.

### Educational objective:

A fee simple determinable (FSD) is a type of defeasible fee that is created with durational language. FSDs can be followed by a *grantor's* possibility of reverter OR a *third party's* executory interest.

**References**

Restatement of Property §§ 44, 47 (Am. Law Inst. 1936) (discussing the fee simple determinable and fee simple determinable subject to executory limitation).

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