

A woman owned land in fee simple absolute. The woman conveyed the land to a friend "for life," and when the friend died the land was to go to the woman's neighbor "and her heirs."

The neighbor died and in her duly probated will devised her entire estate to a local charity. If she had died intestate, her daughter would have been her only heir.

One year after the neighbor died, her daughter executed a quitclaim deed conveying any interest she might have in the land to the woman's friend.

The common law Rule Against Perpetuities is unmodified in the jurisdiction. There are no other applicable statutes.

Who has what interest in the land?

- A. The friend has a fee simple absolute, because his life estate merged with the remainder conveyed to him by the daughter.
- B. The friend has a life estate and the charity has a vested remainder, because the neighbor's interest was devisable.
- C. The friend has a life estate and the daughter has a vested remainder, because the deed from the woman created an interest in the neighbor's heirs.
- D. The friend has a life estate and the woman has a reversion, because the neighbor's remainder was void under the Rule Against Perpetuities.

## Explanation:

A life estate is a present possessory interest in real property that terminates upon the death of an individual. The future-interest holder acquires possession of the estate when that death occurs. If the future interest is held by someone other than the grantor, it is called a **remainder**. Remainders are fully **transferable** inter vivos, **devisable** by will, and **descendible** by inheritance. This is true in most jurisdictions\* **regardless of whether** the remainder is:

**vested – not subject to any condition precedent** AND held by an **identifiable living person** (eg, "then to my neighbor and her heirs") *or*

**contingent** – subject to some condition precedent (other than the natural termination of the prior estate) OR held by an unknown or unborn person (eg, "then to my neighbor, but only if...").

Here, the woman conveyed a life estate in the land to her friend, which would go to her neighbor *unconditionally* when the friend died. The neighbor's vested remainder was devisable, so it passed to the charity under the terms of her duly probated will. Therefore, the friend (who is still living) has a life estate, and the charity has a vested remainder that will become possessory when the friend dies.

\*At common law and in a minority of jurisdictions, contingent remainders cannot be transferred inter vivos.

**(Choices A & C)** The woman's deed conveyed a remainder interest to the neighbor "and her heirs." These [words of limitation](#) indicate that the neighbor's remainder interest is a fee simple absolute (FSA). But they do not create an ownership interest in the neighbor's heirs. Therefore, the daughter (neighbor's only heir) did not have any interest in the land to convey to the friend, and he never acquired an FSA.

**(Choice D)** The Rule Against Perpetuities applies only to future interests that may vest more than 21 years after the death of some relevant person alive when the interest was created—not to this vested remainder.

## Educational objective:

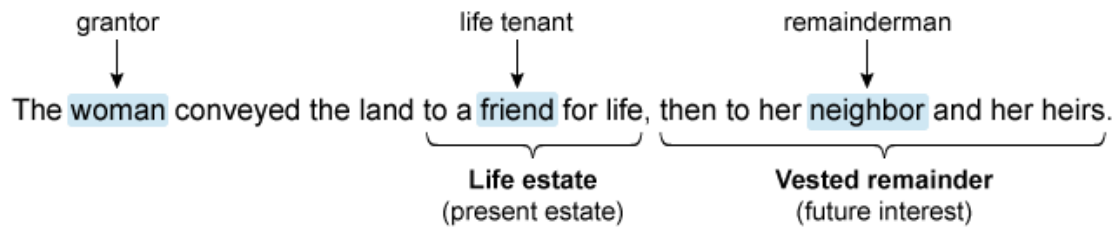
Remainders are either vested (ie, not subject to conditions precedent and held by an identifiable living person) OR contingent (ie, subject to conditions precedent or held by an unknown or unborn person). Both are transferrable, devisable, and descendible.

## References

Restatement (Third) of Property: Wills & Other Donative Transfers § 25.2 cmt. f (Am. Law Inst. 2011) (alienability, divisibility, and inheritability of future interests).

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