

Twenty years ago, a woman conveyed land to a city so long as the city used the land "for park purposes." The deed was promptly recorded.

Seventeen years ago, the city discontinued using the land as a park. Because the city needed additional parking for nearby city buildings, it paved the land and has used it as a parking lot ever since.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

Last year, the woman died intestate, leaving a son as her only heir. The son sued the city, claiming ownership of the land, but the court found against him.

What is the most likely explanation for the court's decision?

- A. The city acquired the land by adverse possession. (78%)
- B. The son's interest ended as a result of the changing needs of the city. (2%)
- C. The son's interest lapsed on the death of the woman. (4%)
- D. The woman retained no interest in the land after she conveyed it to the city. (14%)

Correct

78% Answered correctly

36 secs Time Spent

2023 Version

## Explanation:

### Acquiring title by adverse possession

Exclusive – physical presence on land not shared with owner

Continuous – presence is continuous & uninterrupted for statutory period

Hostile – possession is without owner's consent

Open, notorious & actual – possession is apparent or visible to reasonable owner

Mnemonic: **ECHO**

A **fee simple determinable** (FSD) is a present estate that is limited by specific durational language (eg, "so long as," "during," "until"). An FSD automatically terminates upon the happening of the stated event. If the conveyance does not state who will subsequently acquire the estate, then the grantor retains a future interest in the estate called a possibility of reverter. This means that the estate will automatically revert to the grantor or the grantor's successors upon the happening of the stated event.

Here, the woman conveyed land to a city *so long as* the city used the land "for park purposes," thereby giving the city an FSD. The woman did not state who would acquire the land if the stated event occurred (ie, if the land was no longer used for park purposes), so the woman retained a possibility of reverter (**Choice D**). Therefore, when the city stopped using the land as a park 17 years ago, its FSD automatically terminated and the land reverted to the woman.

However, the city remained on the land, which triggered an **adverse-possession claim**. This allows ownership of real property to transfer to a person who exercises **exclusive, continuous, hostile, and open** (ECHO) possession of another's property for a **specified period of time** (here, 10 years). The city satisfied these requirements when it paved the land after its FSD terminated and used the land as a parking lot without the woman's permission for 17 years. Therefore, adverse possession provides the most likely explanation for the court's finding against the son.

**(Choice B)** The city's changing needs are not a basis for the city to retain ownership of the land.

**(Choice C)** Lapse would have caused the devise to fail had the beneficiary under the will (son) died *before* the testator (woman)—not seen here.

### Educational objective:

Under the doctrine of adverse possession, ownership of real property is transferred to a person who exercises exclusive, continuous, hostile, and open (ECHO) possession of that property for a specified period of time.

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.