

At the time of his death last week, a man owned a small farm. By his duly probated will, drawn five years ago, the man did the following:

1. He devised the farm "to my farmhand for the life of my wife, then to my cousin."
2. He gave "all the rest, residue and remainder of my estate, both real and personal, to my friend."

At his death, the man was survived by a son (his sole heir), the farmhand, the cousin, and the friend. The wife had died a week before the man.

Who has title to the farm?

- A. The cousin, in fee simple.
- B. The farmhand for life, remainder to the cousin.
- C. The friend, in fee simple.
- D. The son, in fee simple.

Explanation:

Doctrines affecting conveyance by will

- Lapse** Causes devise to fail if beneficiary predeceases testator
- Ademption** Causes devise to fail by either:
- extinction – specifically devised property not owned by testator (or destroyed or fundamentally changed) at death
 - satisfaction – beneficiary received devised property (or other asset intended to satisfy devise) during testator's life
- Exoneration** Allows beneficiary of specifically devised real property to use estate's remaining assets to pay off any encumbrances on that property
- Abatement** Reduces devises that cannot be satisfied by assets remaining after testator's debts are paid
- Residuary devises abated first, followed by general & then specific devises

Lapse (ie, the failure of a gift of property under a will) normally occurs when the beneficiary dies before the testator dies. But when a will gives a **life estate pur autre vie**—ie, a **life estate** measured by the life of someone other than the life tenant—lapse occurs when either the life tenant *or* the **measuring life predeceases** the **testator**. The life tenant's (or other measuring life's) predecease affects only the life tenant's interest, however, so any **remainder interest** is **not defeated**.

Here, the man's will devised a life estate pur autre vie in the farm to the farmhand (measured by the wife's life) and a remainder to the cousin. Because the wife died *before* the man, the doctrine of lapse caused the devise to the farmhand to fail. But since the cousin's remainder interest was not defeated by the wife's death, the cousin has title to the farm in fee simple **(Choices B, C & D)**.

Educational objective:

When a will gives a life estate pur autre vie, the devise will lapse (ie, fail) if the life tenant or the measuring life dies before the testator. But the remainder interest, if any, will survive.

References

80 Am. Jur. 2d Wills § 1415 (2019) (death of life tenant before death of testator).

Restatement (Second) of Property: Donative Transfers § 34.6 (Am. Law Inst. 1992) (donee dies before donor).

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