

An organic farm was conveyed to a married couple, a chef and a restaurant manager, by a deed that created a co-tenancy in equal shares with the right of survivorship.

The chef later informed the restaurant manager that he intended to convey his "undivided one-half interest in the farm" to his sister. The restaurant manager objected to the conveyance but the chef nevertheless conveyed his interest in the farm to the sister by deed. The chef has since died.

In an action between the sister and the restaurant manager to determine title to the farm, who will prevail?

- A. The restaurant manager, because she is the sole owner of the farm.
- B. The restaurant manager, but only if the jurisdiction recognizes tenancies by the entirety.
- C. The sister, because the chef and the restaurant manager had a tenancy in common.
- D. The sister, because the restaurant manager knew of the conveyance prior to the chef's death.

Explanation:

There are three types of concurrent estates (ie, cotenancies):

Tenancy in common – a tenancy in which each co-tenant has a separate and possibly unequal interest in the property with **no** right of survivorship

Joint tenancy – a tenancy in which each co-tenant has an undivided and equal interest in the property with the **right of survivorship**

Tenancy by the entirety – a **joint tenancy** between **married persons**

Here, the conveyance to the chef and restaurant manager created a co-tenancy in equal shares *with* the right of survivorship. Therefore, they received either a joint tenancy or a tenancy by the entirety—not a tenancy in common **(Choice C)**.

Joint tenancies and tenancies by the entirety are **not devisable** (by will) **or inheritable** (by intestate succession). And only a **joint tenancy** interest can be **conveyed during a tenant's lifetime** without the other tenant's consent. As a result, the outcome of this dispute depends on which tenancy the chef and restaurant manager received:

joint tenancy – in which case the chef's lifetime conveyance to the sister would have severed the joint tenancy and created a *tenancy in common* between the sister and restaurant manager *or*

tenancy by the entirety* – in which case the conveyance to the sister would have failed, and the restaurant manager would have acquired *complete ownership* of the farm upon the chef's death

This means that the restaurant manager would be the sole owner of the farm, and therefore prevail, only *if* the chef and restaurant manager had a tenancy by the entirety **(Choice A)**.

*A tenancy by the entirety is recognized in about half of the jurisdictions.

(Choice D) The restaurant manager's *knowledge* has no effect on the validity of the chef's conveyance. But the restaurant manager's *consent* would matter if the chef and restaurant manager had received a tenancy by the entirety, since neither tenant could convey the property without the other's consent.

Educational objective:

Both joint tenancies and tenancies by the entirety have survivorship rights, so they are not devisable or inheritable. But joint tenancies—unlike tenancies by the entirety—are transferrable during a tenant's lifetime without the other tenant's consent.

