

An individual owned land in fee simple. She executed a will, which devised the land "to my husband for life, and then to my daughter, but if my grandson graduates from college, to my grandson." At the time of the individual's death, her husband, daughter, and grandson are alive, and her grandson is in high school.

What interest in the land does the individual's grandson have?

- A. Contingent remainder.
- B. Power of termination.
- C. Shifting executory interest.
- D. Springing executory interest.

### Explanation:

An **executory interest** is a **future interest in a grantee** that generally cuts short, or divests, a prior estate upon the happening of a specified condition. There are two types of executory interests:

**Shifting** – divests an estate held by another grantee, such that the estate *shifts from one grantee* to another (the executory-interest holder)

**Springing** – divests an estate held by a grantor, such that the estate *springs from the grantor* to the executory-interest holder

Here, the grandson (grantee) has a future interest in the land because he is not entitled to immediate possession. Since his interest will cut short the daughter's (other grantee's) interest in the land if and when he graduates from college, the grandson has a *shifting* executory interest (**Choice D**).

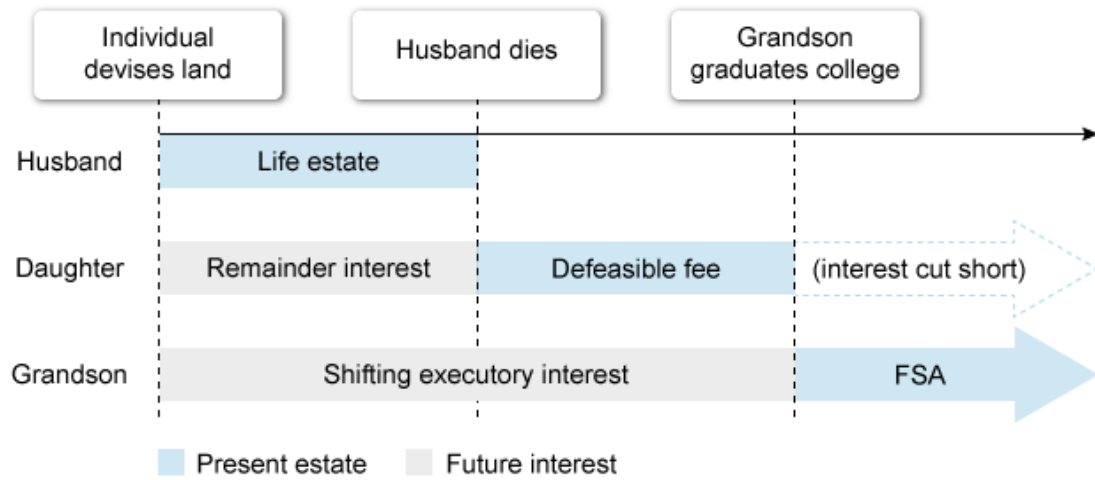
**(Choice A)** A *remainder* is a future interest created in a grantee that is capable of becoming a present possessory estate upon the natural expiration of a life estate or term of years.\* Here, the daughter (not the grandson) has a remainder interest that will become possessory as soon as the husband dies and his life estate naturally ends.

\*A remainder can also follow a fee tail, but this estate has been eliminated in most states.

**(Choice B)** A power of termination (ie, right of entry) is a future interest created in a *grantor*. It follows a fee simple subject to a condition subsequent and allows the grantor or his/her successor in interest to terminate the estate upon the happening of a specified condition. Here, the future interest in question belongs to the grandson—not the individual (grantor)—so it cannot be a power of termination.

### Educational objective:

A *shifting* executory interest divests an estate held by another *grantee*, such that the estate shifts from one grantee to another (the executory-interest holder). In contrast, a *springing* executory interest divests an estate held by a *grantor*, such that the estate springs from the grantor to the executory-interest holder.



**FSA** = Fee simple absolute.

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