

A man owned a parcel of land in fee simple. Five years ago, he conveyed the parcel by deed "to my daughter until she graduates from college, and then to my son in fee simple if he turns 21." The daughter has just graduated from college. The son is only 18 years old.

Who is entitled to possession of the land?

- A. The daughter, because she is entitled to possession until her interest is divested by the son's shifting executory interest.
- B. The man, because his fee simple interest has not yet been divested by the son's shifting executory interest.
- C. The man, because his fee simple interest has not yet been divested by the son's springing executory interest.
- D. The son, because his remainder vested when the daughter graduated from college.

Explanation:

Fee simple estates

Type		Language	Future interest
Indefeasible	Fee simple absolute	"To A" "To A and his heirs"	None
Defeasible	Fee simple determinable	Durational "so long as" "during" "until"	<i>Grantor's</i> possibility of reverter <i>Third party's</i>
	Fee simple subject to condition subsequent	Conditional "but if" "provided that" "unless"	executory interest (fee simple subject to executory limitation) <i>Grantor's</i> right of entry

A **defeasible fee simple estate** is an ownership interest that may last for an indeterminate duration but is limited by specific durational or conditional language (see table above). There are three types of defeasible fees:

Fee simple determinable (FSD) – terminates automatically upon the happening of the stated event, then ownership **returns to the grantor**

Fee simple subject to a condition subsequent (FSSCS) – upon the occurrence of a specific condition, the **grantor** has the **right to terminate** the estate

Fee simple subject to an executory limitation (FSSEL) – upon the occurrence of the stated event or condition, title **passes to a third party** (ie, someone other than the grantor or the holder of the present fee)

Here, the man conveyed the parcel to his daughter *until* she graduated from college. This durational language ("until") means that the daughter received an FSD or FSSEL. The deed then states that, upon her college graduation, the parcel will go to the son if he turns 21. Since title will pass to the son (third party), the daughter received an FSSEL and the son holds an executory interest.

There are two types of **executory interests**:

Shifting – divests the grantee's estate, such that the estate **shifts from the grantee** to the executory-interest holder

Springing – divests the grantor's estate, such that the estate *springs from the grantor* to the executory-interest holder

Here, the daughter's interest was divested when she graduated from college (**Choice A**). But since the son is not yet 21, the estate reverted back to the man (grantor).^{*} This means that the man currently holds an FSD in the parcel—and is therefore entitled to possession—until the son meets the condition of turning 21. Once he turns 21, the parcel will spring from the man to the son, who holds a springing executory interest (**Choices B & D**).

^{*}Had the son been at least 21 when the daughter graduated from college, the estate would have shifted (not sprung) to the son upon her graduation.

Educational objective:

A *shifting* executory interest arises when title shifts from the *grantee* to a third party, while a *springing* executory interest arises when title springs from the *grantor* to a third party.

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