

By deed, a landowner conveyed land to a charity "on the condition that the land be used as a wildlife refuge, and if not, the landowner and his heirs may enter and terminate the estate hereby created." The following year the landowner died. His sister was his sole heir. By will, the landowner devised "all of my real property interests to my friend." One year after the landowner's death, the sister, by quitclaim deed, conveyed any interest she had in the land to a developer. Two years after the landowner's death, the landowner's sister died. Her sole heir was her husband. Recently, three years after the landowner's death, the charity ceased to use the land as a wildlife refuge.

Who may properly bring an action against the charity to recover fee simple ownership of the land?

- A. The developer.
- B. The landowner's friend.
- C. The sister's husband.
- D. No one.

### Explanation:

A **fee simple subject to a condition subsequent** (FSSCS) is created through specific conditional language, such as "but if" or "on the condition that." Upon the **occurrence of the condition**, the **grantor** (or his/her successor in interest) has the right to **enter and terminate the estate if** the grantor **explicitly retained this right of entry\*** in the conveyance. In most jurisdictions, the right of entry is freely alienable during life and fully **transferable** upon death—ie, **devisable** by will, or if not devised, **descendible** through intestate succession.

Here, the landowner conveyed an FSSCS to the charity and retained a right of entry that could be exercised if the land was no longer used as a wildlife refuge. The landowner then devised all of his real property interests—including the right of entry—to his friend. And since the charity recently ceased to use the land as a wildlife refuge, the friend can exercise the right of entry and bring an action to recover ownership of the land **(Choice D)**.

\*This right is also known as the "power of termination" or the "right of reentry."

**(Choices A & C)** The landowner devised all of his real property interests to the friend, leaving no interest in the land for the sister to inherit upon his death. Because the sister had no interest in the land to convey to the developer by quitclaim deed or for her husband to inherit upon her death, neither of them may bring an action to recover ownership of the land from the charity.

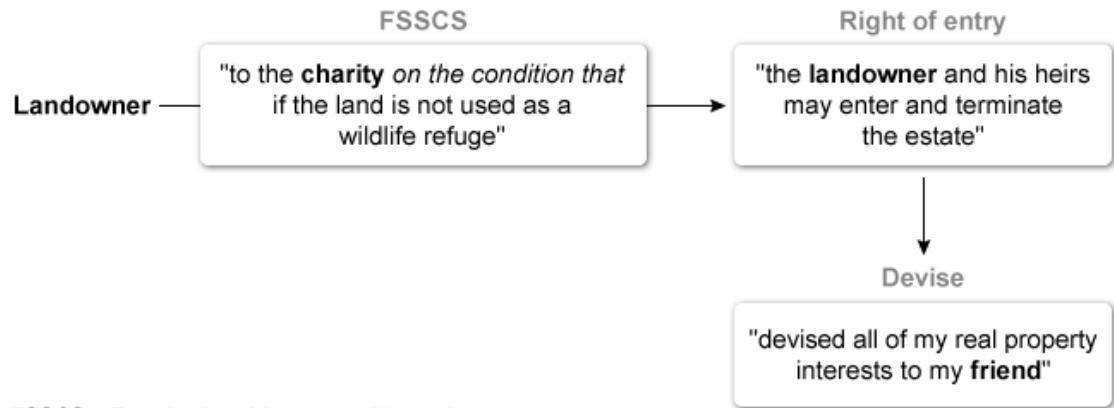
### Educational objective:

The grantor of a fee simple subject to a condition subsequent can explicitly retain a right of entry, which allows the grantor (or his/her successor in interest) to enter and terminate the estate if the stated condition occurs. This right is freely alienable during life, and it is devisable by will or descendible through intestate succession upon death.

### References

Restatement (First) of Property § 45 (Am. Law Inst. 1936) (fee simple subject to a condition subsequent).

Restatement (First) of Property § 155 (Am. Law Inst. 1936) (power of termination or right of entry).



**FSSCS** = Fee simple subject to condition subsequent.