

A pastor owned a vacant one-acre tract of land. Five years ago, he executed a deed conveying the land to "my church for the purpose of erecting a church building thereon." Three years ago, the pastor died, leaving his son as his sole heir at law. His duly probated will left "all my Estate, both real and personal, to my friend."

The church never constructed a church building on the land, and last month the church, for a valid consideration, conveyed the land to a real estate developer.

The real estate developer brought an appropriate action to quiet title against the son, the friend, and the church, and joined the appropriate state official. Such official asserted that a charitable trust was created that has not terminated.

In such action, who should the court find for?

- A. The friend.
- B. The real estate developer.
- C. The son.
- D. The state official.

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

Like fee simple absolutes (FSAs) and other freehold estates,* **defeasible fees** are ownership interests in land that last for an indeterminate duration. But unlike FSAs, defeasible fees may be terminated by the happening of a stated event. Defeasible fees are **limited by** specific **durational or conditional language** (eg, "so long as," "but if"). However, language that **limits only the purpose of the transfer** (eg, "for the purpose of") creates an **FSA**.

Here, the pastor conveyed the land "to my church *for the purpose of* erecting a church building thereon." This conveyance created an FSA—not a defeasible fee—so the fact that the church never constructed a church building on the land did not terminate its ownership interest in the land. Therefore, the church effectively conveyed the land to the real estate developer, and the real estate developer should win the action.

*To be categorized as a freehold (eg, life estates, estates in fee), an estate must be immobile (eg, land, fixtures) AND last for an indeterminate duration (eg, for the life of X). In contrast, a leasehold is an immobile estate that lasts for a limited duration (eg, 15 years).

(Choices A & C) Had the church's ownership interest in the land terminated and reverted back to the pastor, the friend—not the son—would own the land because the pastor's will left his entire estate to the friend.

(Choice D) A trust is an arrangement in which a trustee holds property at the request of another (settlor) for the benefit of a third party (beneficiary). A charitable trust is one created for a charitable purpose, and it is enforceable by the appropriate state official (ie,

the attorney general). But here, no trust was created since the church is the beneficiary *and* the holder of the property (no trustee).

Educational objective:

Defeasible fees are limited by specific durational or conditional language. Language that limits only the purpose of the transfer instead creates a fee simple absolute.

References

Restatement of Property § 44 cmt. m (Am. Law Inst. 1936) (discussing designated purpose of conveyance).

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