

The owner of a tract of land executed a deed purporting to convey the land "to my brother for life, then to my nephew in fee simple." The brother began to manage the land, which is valuable income-producing real estate. The brother collected all rents and paid all expenses, including real estate taxes. The nephew did not object, and this state of affairs continued until the brother executed a deed purporting to convey the land to his girlfriend five years later. The nephew asserted his right to ownership of the land. The girlfriend also asserted her ownership and said that if the nephew had any rights, he was obligated to pay real estate taxes even though the brother had paid them in the past. Income from the land is ample to cover expenses, including real estate taxes.

In an appropriate action to determine the rights of the parties, what should the court decide?

- A. The brother's purported deed forfeited his life estate, so the nephew owns the land in fee simple.
- B. The girlfriend owns an estate for her life, is entitled to all income, and must pay real estate taxes; the nephew owns the remainder interest.
- C. The girlfriend owns an estate for the life of the brother and is entitled to all income; the nephew owns the remainder interest and must pay real estate taxes.
- D. The girlfriend owns an estate for the life of the brother, is entitled to all income, and must pay real estate taxes; the nephew owns the remainder interest.

Explanation:

A **life estate** is a **present possessory interest** that terminates on the death of an individual. A life estate is **freely transferable** but becomes a **life estate pur autre vie** since it is measured by the life of someone other than the current life tenant. The **future interest** that follows a life estate is either a **reversion** (if held by the grantor) or a **remainder** (if created in a grantee). It will become a possessory interest when the life estate terminates.

Here, the owner conveyed a life estate to the brother ("to my brother for life") and the nephew received a remainder in fee simple ("then to my nephew") **(Choice A)**. The brother then conveyed his present possessory interest to the girlfriend, who received a life estate pur autre vie measured by the brother's life **(Choice B)**.

As the current life tenant, the girlfriend has a **right to all income** received from the property. But she also has a **duty to pay current charges** that become due during the tenancy—including real estate taxes. As a result, the court should decide the rights of the parties accordingly **(Choice C)**.

Educational objective:

A life estate is a freely transferable present interest in land that terminates on the death of an individual and is followed by a reversionary or remainder interest. The life tenant is entitled to all income received from the land but must pay current charges on the land (eg, real estate taxes).

References

Restatement of Property §§ 129–130 (Am. Law Inst. 1936) (duty to pay current charges).

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