

## Property Exam 8

Julian owned a farm in a quiet town. Julian conveyed the farm, “to Kenneth for life, remainder to Kenneth’s heirs.”

Kenneth moved into the farm, but after a short time farming, Kenneth decided the quiet was too much. Kenneth conveyed the farm to Lucas and the heirs of his body.

Lucas then divided the farm into two parcels, South Farm and North Farm. Lucas conveyed North Farm to his favorite charity and he conveyed South Farm to his only son Marco, “for life, remainder to Marco’s heirs.”

Marco left South Farm to “Nicholas and his heirs upon condition that South Farm is used as a vineyard.

A few years later Marco found out that Nicholas was not using South Farm as a vineyard anymore, but didn’t do anything.

What estate did Kenneth receive from Julian? What estate did Kenneth’s heirs receive from Julian?

What estate did Lucas receive from Kenneth?

What estate did the charity receive from Lucas?

What estate did Marco receive from Lucas?

What estate did Nicholas receive from Marco?

Who currently owns South Farm?

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### **Example Answer:**

#### **What estate did Kenneth receive from Julian? What estate did Kenneth's heirs receive from Julian?**

Julian conveyed the farm, "to Kenneth for life remainder to Kenneth's heirs."

Kenneth receives a fee simple absolute under the rule in Shelly's Case. This rule states that if a person holds a life estate with the remainder conveyed to the person's heirs, the two estates merge and the person holds a fee simple absolute.

Because Kenneth's life estate merged with the remainder estate Kenneth received a fee simple absolute. Kenneth's heirs did not receive any interest from Julian.

#### **What estate did Lucas receive from Kenneth?**

Kenneth conveyed the farm to Lucas and the heirs of his body.

Lucas holds a fee tail in the farm. A fee tail restricts the transfer of property to within the family line. Any attempt to convey property outside of the family result in a reversion to Kenneth and his heirs.

Lucas received a fee tail estate from Kenneth.

#### **What estate did the charity receive from Lucas?**

Lucas attempted to convey North Farm to his favorite charity.

Because Lucas holds a fee tail estate and this was an attempt to convey the property outside of Lucas' family line, North Farm would revert to Kenneth, or if Kenneth had passed, to Kenneth's heirs.

Because Lucas could not convey the farm to the charity, the charity did not receive any estate from Lucas.

#### **What estate did Marco receive from Lucas?**

Lucas conveyed South Farm to his only son Marco, "for life, remainder to Marco's heirs."

This conveyance is identical to the conveyance between Julian and Kenneth and has the same outcome. Marco receives a fee simple absolute under the rule in Shelly's Case.

As stated above, this rule states that if a person holds a life estate with the remainder conveyed to the person's heirs, the two estates merge and the person holds a fee simple absolute.

Because Marco's life estate merged with the remainder estate Marco received a fee simple absolute.

### **What estate did Nicholas receive from Marco?**

Marco left South Farm to "Nicholas and his heirs upon condition that South Farm is used as a vineyard.

These facts create an estate in fee simple subject to condition subsequent. In an estate with a condition subsequent, the grantor may reenter and retake property if condition fails, i.e. if South Farm is not used as a vineyard, Marco may retake the property.

Nicholas has a fee simple subject to condition subsequent in South Farm.

### **Who currently owns South Farm?**

Nicholas currently owns South Farm. Although Marco currently has the right to retake South Farm, that right is not automatic. Marco must actively retake the property.

Here the facts tell us Marco is not taking action to retake the property. The property, therefore, continues to remain in possession of Nicholas.