

A developer entered into a valid written contract to purchase a large tract of land from a contractor for its fair market value of \$500,000. The contract was assignable by the developer. The developer duly notified the contractor to convey title to her and her business partner whom the developer had not seen for many years.

When the developer learned that the business partner would have to sign certain documents in connection with the closing, she prevailed upon her brother to attend the closing and pretend to be the business partner. The developer and the brother attended the closing, and the contractor executed an instrument in the proper form of a deed purporting to convey the land to the developer and the business partner as tenants in common. The brother pretended that he was the business partner, and he signed the business partner's name to all the required documents. The developer provided the entire \$500,000 consideration for the transaction. The deed was promptly and properly recorded.

Unknown to the developer or her brother, the business partner had died several months before the closing. The business partner's will, which was duly probated, devised "All my real estate to my nephew" and the residue of his estate to the developer.

The developer and nephew have been unable to agree as to the status or disposition of the land. The nephew brought an appropriate action against the contractor and the developer to quiet legal title to an undivided one-half interest in the land.

In whom should the court hold that legal title to the land has vested?

- A. All in the contractor.
- B. All in the developer.
- C. One-half in the developer and one-half in the contractor.
- D. One-half in the developer and one-half in the nephew.

Explanation:

Deed requirements

Requirements	Valid	Invalid
Written & signed by grantor	Any written instrument signed by grantor	Oral (except permissible gift) Signed only by grantee
Identifies grantor & grantee	Separate grantor & grantee (except concurrent estates) Identifiable by name or description	Ambiguous/unidentifiable grantee(s) Nonexistent grantee
Identifies land	Identifiable by reasonable certainty—eg: Government survey Metes & bounds Street, lot, house number	Ambiguous description (but extrinsic evidence admissible) Undefined part of larger parcel
Includes words of transfer	"Convey" "Transfer" "Grant" "Sell"	"Lease" "Rent" "License"

A **tenancy in common** is a concurrent ownership interest in land where each co-tenant has a separate share of the property but an equal right to possess the whole property (ie, separate but undivided interests). Co-tenants can receive this interest under a deed, but that **deed is only valid if it:**

is in writing and signed by the grantor

unambiguously identifies the grantor and **grantee**

unambiguously describes the land *and*

includes words of transfer.

A deed that names a **nonexistent co-tenant is void** as to that co-tenant. Therefore, the **grantor** retains the nonexistent co-tenant's interest and **becomes tenants in common** with the **other co-tenant(s)** named in the deed.

Here, the contractor attempted to deed land to the business partner and developer as tenants in common. But since the business partner had died several months earlier (and was therefore a nonexistent co-tenant), the portion of the deed naming him as grantee is void. Therefore, the court should hold that the contractor (the grantor) and the developer (other co-tenant) each have one-half interests in the land as tenants in common (**Choices A & B**).

(Choice D) Although the business partner devised his property to the nephew, the business partner had already died when the contractor attempted to deed him the land. Therefore, the deed did not convey the business partner an interest in the land that could pass to the nephew.

Educational objective:

When a tenancy in common is deeded to a nonexistent (eg, deceased) co-tenant, the deed is void as to that co-tenant and the grantor retains the co-tenant's interest. As a result, a tenancy in common forms between the grantor and the other co-tenant(s) named in the deed.

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