

A woman who owned a house executed a deed purporting to convey the house to her son and his wife. The language of the deed was sufficient to create a common law joint tenancy with right of survivorship, which is unmodified by statute in the jurisdiction. The woman mailed the deed to the son with a letter saying: "Because I intend you and your wife to have my house after my death, I am enclosing a deed to the house. However, I intend to live in the house for the rest of my life, so don't record the deed until I die. The deed will be effective at my death."

The son put the deed in his desk. The wife discovered the deed and recorded it without the son's knowledge. Subsequently, the son and the wife separated, and the wife, without telling anyone, conveyed her interest in the house to a friend who immediately reconveyed it to the wife.

The woman learned that the son and the wife had separated and also learned what had happened to the deed to the house. The woman then brought an appropriate action against the son and the wife to obtain a declaration that the woman was still the owner of the house and an order canceling of record the woman's deed and the subsequent deeds.

If the court determines that the woman owns the house in fee simple, what will be the likely explanation?

- A. The deed was not delivered.
- B. The wife's conduct entitles the woman to equitable relief.
- C. The woman expressly reserved a life estate.
- D. The woman received no consideration for her deed.

Explanation:

Presumed delivery of deed

Physical delivery (eg, by hand or mail)

Recording

Unconditional delivery to agent

Grantee obtains possession of deed

A **deed** is a legal instrument that **transfers an interest** in real property from the owner (grantor) to another (grantee) once it has been:

delivered – evidenced by the **grantor's intent to presently transfer an interest** to the grantee, even if the interest itself is a future interest (ie, the possessory rights transfer later) *and*

accepted – presumed if the transfer benefits the grantee.

Recording a deed (ie, depositing it in official land records) creates a **presumption of delivery**. But this presumption can be **rebutted** by evidence that the grantor did not intend to presently transfer an interest to the grantee—eg, if the **transfer was contingent upon a future event**.

Here, delivery is presumed since the wife recorded the deed. But that presumption can be rebutted since the woman mailed the deed with a letter explaining that she only wanted the son and wife to have her house *after* her death (transfer contingent upon future event). Therefore, the court will likely determine that the woman owns the house in fee simple because the deed was not delivered.

(Choice B) A court may grant an injured party equitable relief (eg, rescinding or reforming a deed) to prevent unjust enrichment of a wrongdoer when other remedies are insufficient. Here, the wife was likely a wrongdoer since she recorded and conveyed the deed without the son's knowledge. But the court can hold that the woman owns the property since the deed was not delivered (sufficient remedy), so equitable relief is not needed.

(Choice C) A life estate is a possessory interest in land that is limited in duration by a life (eg, "to A for life"). Here, the woman attempted to reserve a life estate in her letter—not in the deed. But had she reserved a life estate in the deed, she would not own the home in fee simple since her ownership interest would terminate upon her death.

(Choice D) Consideration (eg, monetary payment) is not needed to create a **valid deed** or to effectively transfer a property interest to another.

Educational objective:

To transfer an interest in real property, a deed must be delivered (and accepted). Delivery occurs when the grantor intends to presently transfer an interest to the grantee. Therefore, delivery is ineffective if the transfer is contingent upon a future event.

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