

When a homeowner became ill, he properly executed a deed sufficient to convey his home to his nephew, who was then serving overseas in the military. Two persons signed as witnesses to qualify the deed for recording under an applicable statute. The homeowner handed the deed to his nephew's friend and said to her, "I want [the nephew] to have my home. Please take this deed for him." Shortly thereafter, the nephew's friend learned that the homeowner's death was imminent. One day before the homeowner's death, the nephew's friend recorded the deed. The nephew returned home shortly after the homeowner's death, learned about the deed, and took possession of the home. The homeowner had died intestate, leaving a daughter as his sole heir. When she asserted ownership of the home, the nephew brought an appropriate action against her to determine title. The law of the jurisdiction requires only two witnesses for a will to be properly executed.

If the court rules for the nephew and against the daughter, what will be the most likely explanation?

- A. The deed was delivered when the homeowner handed it to the nephew's friend.
- B. The delivery of the deed was accomplished by the recording of the deed.
- C. The homeowner's death consummated a valid gift causa mortis to the nephew.
- D. The homeowner's properly executed deed was effective as a testamentary document.

Explanation:

A **deed** is a legal instrument that **transfers ownership** of real property from the owner (grantor) to another (grantee). But to be effective, the deed must be:

delivered by the grantor – evidenced by the grantor's present intent to convey ownership to the grantee *and*

accepted by the grantee – presumed if the transfer is beneficial to the grantee.

Delivery is presumed when the deed has been recorded or is in the grantee's possession. **Delivery** also occurs when the deed is **physically handed** to the **grantee's agent**—ie, a third party acting on behalf of the grantee.

Here, the homeowner properly executed a deed conveying his home to the nephew. Since that transfer benefited the nephew, acceptance is presumed. Therefore, if the court rules in favor of the nephew, the most likely explanation is that the deed was delivered when the homeowner handed it to the nephew's friend (agent) and told her to take it on the nephew's behalf.

(Choice B) Recording a deed (ie, filing it in official land records) creates a presumption of delivery. But here, delivery occurred when the homeowner handed the deed to the nephew's friend, which happened before the deed was recorded.

(Choice C) A gift causa mortis (ie, deathbed gift) is a gift of *personal* property made in expectation of the grantor's imminent death. Here, the homeowner gifted *real* property (his home) to the nephew. And this gift was not made in expectation of imminent death since the homeowner's death became imminent *after* he delivered the deed.

(Choice D) A deed requires the grantor's present intent to convey ownership to the grantee—ie, the grantor must intend that title transfer immediately. And since a testamentary document (eg, a will or testament) only takes effect upon the testator's death (no intent to presently transfer), a deed cannot serve as a testamentary document.

Educational objective:

To effectively transfer an interest in real property, a deed must be (1) delivered by the grantor and (2) accepted by the grantee. The grantor can deliver the deed by handing it to the grantee's agent.

References

Restatement (Second) of Property: Donative Transfers § 32.3 (Am. Law Inst. 1992) (transfer relating to land).

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Presumptive delivery of a deed

Physical transfer
to grantee



Recording in
land records



Without conditions
to a third party



Grantee obtains
possession

