Six months ago, a man told his cousin that he would give her his farm as a gift on her next birthday. The cousin then entered into a valid written contract to sell the farm to an investor with the closing to take place "one week after [the cousin's] next birthday."

The man failed to convey the farm to the cousin on her birthday. One week after the cousin's birthday, on the intended closing date, the investor first learned of the cousin's inability to convey the farm because the man had breached his promise. The investor considered suing the cousin but realized that the cousin could not be compelled to convey the farm because it was still owned by the man.

Two weeks after the cousin's birthday, the man died. Under his valid will, the man devised the farm to the cousin. Within a week, the executor of the man's estate gave the cousin an executor's deed to the farm in compliance with state law. The investor promptly learned of this transfer and demanded that the cousin convey the farm to her. The cousin refused.

The investor sued the cousin for specific performance.

Who will likely prevail?

A. The cousin, because she received title by devise rather than by conveyance.

B. The cousin, because the contract to convey was not signed by the legal owner of the farm as of the date of the contract and was therefore void.

C. The investor, because the contract to convey merged into the executor's deed to the cousin.

D. The investor, because the contract to convey remained enforceable by her within a reasonable period of time after the proposed closing date.

Explanation:

The sale of real property typically comprises three parts:

Execution of the sales contract – the buyer promises to pay the purchase price in exchange for the seller's promise to deliver title

Executory period – the buyer can inspect the property, secure a loan, and review title documents; the seller can repair the property or correct imperfections in the title

Closing – the **seller formally transfers title** by delivering the deed to the buyer; the buyer pays the purchase price

A closing date is not an essential term of a land-sale contract, so the **seller's performance** is due **at or within a reasonable** time after the **closing date** unless time is of the essence. Time is of the essence when the contract or circumstances strongly suggest that the parties intended that the closing date be strictly enforced—not the case here. Therefore, the contract between the cousin and the investor was still enforceable when the cousin acquired title to the farm shortly after the proposed closing date, and the investor will likely prevail.

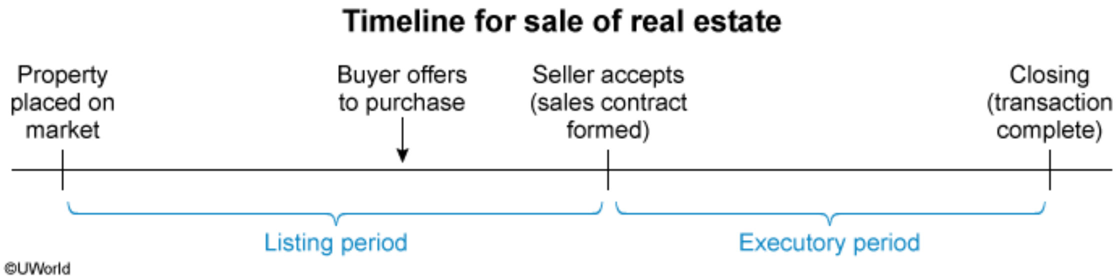
(Choice A) Since the cousin acquired title within a reasonable time after the proposed closing date, she was contractually obligated to transfer title to the investor. The method through which she received title (by devise or conveyance) is irrelevant.

(Choice B) The seller need not have title at the time the land-sale contract is executed since performance is not due until closing. As a result, the cousin could sign the contract with the investor even though she was not the legal owner of the farm at that time.

(Choice C) Under the merger rule, a land-sale contract merges into the deed of conveyance at the time of closing, so only the guarantees reflected in the deed remain. This means that the contract will merge into the cousin's deed (not the executor's deed) once the deed is conveyed.

Educational objective:

A seller need not transfer title until closing or a reasonable time thereafter unless time is of the essence—ie, if the contract or circumstances strongly suggest that the parties intended the closing date to be strictly enforced.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