

A man conveyed land by quitclaim deed as a gift to his cousin, who did not then record the deed or take possession of the land. Six months later, when the man was still in possession, he conveyed the land by quitclaim deed as a gift to a friend, who knew nothing of the deed to the cousin. The friend did not record his deed. The man then vacated the land, and the friend took possession.

The recording act of the jurisdiction provides as follows: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

Recently, the cousin learned about the friend's deed and possession, immediately recorded her deed, and sued the friend for possession and to quiet title. The friend then recorded his deed and raised all available defenses.

For whom is the court likely to decide?

- A. For the cousin, because she was first in time and the friend was not a purchaser.
- B. For the cousin, because the friend failed to first record.
- C. For the friend, because a subsequent good-faith donee has priority over a prior donee who fails to record.
- D. For the friend, because he was first in possession.

Explanation:

Priority of subsequent property interests

Recording act	Race	Interest holder who records first will prevail
	Notice	Subsequent bona fide purchaser (BFP) without notice of earlier interest will prevail
	Race-notice	Subsequent BFP who lacks notice of earlier interest & records first will prevail
Common law	First in time	Earlier interest holder will prevail over subsequent interest holders

A jurisdiction's **recording act** is typically used to determine priority among competing interests in the same property. But if the recording act **does not apply**, priority will be determined under the **common law "first-in-time" rule**, which gives **earlier property interests priority** over subsequent property interests.

This jurisdiction's recording act (a race-notice statute) only protects subsequent purchasers for value who lack notice of a competing claim and record first. Since the man *gifted* his land to the cousin and then to the friend (ie, they were not purchasers), the recording act does not apply. Instead, the dispute will be resolved under the "first-in-time" rule. And the court will likely find for the cousin because she received her property interest before the friend received his.

(Choice B) Had the friend been a purchaser for value, he would have needed to record his property interest first to protect it under the jurisdiction's race-notice act. But since the friend was a gift recipient, the recording act does not apply and the friend will not lose on this basis.

(Choice C) An earlier donee's property interest always has priority over a subsequent donee's interest in a race-notice jurisdiction. The fact that the subsequent donee was a good-faith donee (ie, had no notice of the prior donee's interest) is immaterial.

(Choice D) The common law "first-in-time" rule gives priority to whoever *acquires* the property interest first—not whoever takes *possession* first. So, the cousin (not the friend) will prevail because she was gifted the land first.

Educational objective:

Priority among competing interests in the same property is generally evaluated under the jurisdiction's recording act. But if the recording act does not apply, priority will be assessed under the common law "first-in-time" rule, which prioritizes earlier property interests over subsequent ones.

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