

Eight years ago, a farmer, prior to moving to a distant city, conveyed his farm to his son by a quitclaim deed. The son paid no consideration. The son, who was 19 years old, without formal education, and without experience in business, took possession of the farm and operated the farm but neglected to record his deed. Subsequently, the farmer conveyed the farm to a friend by warranty deed. The friend, a substantial land and timber promoter, paid valuable consideration for the deed to him. He was unaware of the son's possession, his quitclaim deed, or his relationship to the farmer. The friend promptly and properly recorded his deed and began removing timber from the land. Immediately upon learning of the friend's actions, the son recorded his deed and brought an appropriate action to enjoin the friend from removing the timber and to quiet title in the son.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

In this action, should the friend prevail?

- A. No, because the equities favor the son.
- B. No, because the son's possession charged the friend with notice.
- C. Yes, because a warranty deed for valuable consideration takes priority over a quitclaim deed without consideration.
- D. Yes, because the farmer's subsequent conveyance to the friend revoked the gift to the son.

Explanation:

Recording acts are used to evaluate the priority of competing property interests. In a **notice jurisdiction** (as seen here), a **bona fide purchaser's** (BFP's) property interest has priority over an earlier property interest if the BFP **lacked notice**.

Here, the farmer gifted his farm to his son. The farmer then sold the farm to his friend. The friend was unaware of the son's prior interest when he purchased the farm (no actual notice), and the son had not recorded his deed at that time (no record notice). But since the son possessed and operated the farm, the friend was charged with inquiry notice of the son's prior interest. Therefore, the son's interest has priority and the friend will not prevail in the quiet title action.

(Choice A) The equities (ie, fairness factors) may favor the son since he was only 19 years old, lacked a formal education, and had no experience in acquiring property. But this information is irrelevant in determining whether his interest or the friend's has priority.

(Choice C) In a notice jurisdiction, a warranty deed for valuable consideration (eg, the friend's deed) only has priority over an earlier quitclaim deed without consideration (eg, the son's deed) if the recipient of the warranty deed lacked notice. Here, the friend had inquiry notice of the son's interest, so the friend will not prevail.

(Choice D) A gift of land is effective once it has been delivered by the grantor and accepted by the grantee (eg, the son). The grantor's subsequent conveyance of the land to a third party (eg, the friend) does *not* revoke the prior gift. Therefore, the friend will not prevail on this basis.

Educational objective:

In a notice jurisdiction, a bona fide purchaser without notice of an earlier property interest will prevail. Inquiry notice exists if a buyer knows, or should know, of circumstances that would prompt a reasonable person to investigate (eg, visible use of the property).

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Actual notice



Record notice



Inquiry notice

