

An aunt owned a large parcel of vacant land in fee simple and executed a deed purporting to convey the land to her nephew. She told her nephew, who was then 19, about the deed and said that she would give it to him when he reached 21 and had received his undergraduate college degree. Shortly afterward the nephew searched his aunt's desk, found and removed the deed, and recorded it.

A month later, the nephew executed an instrument in the proper form of a warranty deed purporting to convey the land to his fiancée. He delivered the deed to his fiancée, pointing out that the deed recited that it was given in exchange for "\$1 and other good and valuable consideration," and that to make it valid his fiancée must pay him \$1. The fiancée, impressed and grateful, did so. Together, they went to the recording office and recorded the deed. The fiancée assumed that the nephew had owned the land and knew nothing about the nephew's dealing with his aunt. Neither the aunt's deed to the nephew nor the nephew's deed to the fiancée said anything about any conditions.

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."

Two years passed. The nephew turned 21, then graduated from college. At the graduation party, the aunt was chatting with the fiancée and for the first time learned the foregoing facts.

The age of majority in the jurisdiction is 18 years.

If the aunt brings an appropriate action against the fiancée to quiet title to the land, who will prevail?

- A. The aunt, because her deed to the nephew was not delivered.
- B. The aunt, because her nephew's deed to his fiancée before the nephew satisfied the aunt's conditions was void, as the fiancée had paid only nominal consideration.
- C. The fiancée, because the deed to her was recorded.
- D. The fiancée, because the nephew has satisfied the aunt's oral conditions.

### Explanation:

A **deed** is a legal instrument that **transfers ownership** of real property from the grantor (old owner) to a grantee (new owner) once it has been:

**delivered** – evidenced by the **grantor's intent to presently convey** ownership to the grantee (ie, **conditional deliveries are ineffective**) *and* accepted – presumed when the transfer is beneficial to the grantee.

Delivery is presumed if the deed is **recorded** (ie, filed in official land records). But this **presumption can be rebutted** by evidence that the grantor did not intend to presently transfer ownership. And if a deed is not delivered (and accepted), it is void and conveys no interest—not even to a bona fide purchaser.

Here, the nephew and fiancée recorded the deed (presumed delivery). But that presumption is rebuttable since the aunt had placed the deed in a drawer and told the nephew it would be his when he reached 21 and graduated (conditional delivery). Since she did not intend to *presently* transfer ownership to the nephew, the deed was not delivered and conveyed no interest to the nephew. Therefore, his subsequent conveyance to the fiancée was ineffective (even though she was a bona fide purchaser), and the aunt will prevail.

**(Choice B)** The deed is void because it was never delivered. But had the aunt delivered the deed, the nephew could have conveyed his interest in the property before it became possessory—ie, before he satisfied the aunt's conditions. And the fiancée's payment of only nominal consideration (\$1) would have been inconsequential since consideration is not required to convey property through a deed.

**(Choice C)** Although the deed from the nephew to the fiancée was recorded, he had no property interest to convey to her since the aunt's prior deed had not been delivered to him. Therefore, ownership never transferred to the nephew or the fiancée.

**(Choice D)** Although the nephew met the aunt's oral conditions (he turned 21 and graduated from college), the deed was never delivered. Therefore, the nephew had no property interest to give the fiancée.

### Educational objective:

A deed transfers ownership of real property once it is delivered (when the grantor has an intent to presently convey ownership) and accepted (presumed when the transfer is beneficial to the grantee). An undelivered or unaccepted deed is void and conveys no property interest to the grantee.

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