

A landowner executed an instrument in the proper form of a deed, purporting to convey his land to a friend. The landowner handed the instrument to the friend, saying, "This is yours, but please do not record it until after I am dead. Otherwise, it will cause me no end of trouble with my relatives." Two days later, the landowner asked the friend to return the deed to him because he had decided that he should devise the land to the friend by will rather than by deed. The friend said that he would destroy the deed and a day or so later falsely told the landowner that the deed had been destroyed. Six months ago, the landowner, who had never executed a will, died intestate, survived by a daughter as his sole heir. The day after the landowner's death, the friend recorded the deed from him. As soon as the daughter discovered this recording and the friend's claim to the land, she brought an appropriate action against the friend to quiet title to the land.

For whom should the court hold?

- A. The daughter, because the death of the landowner deprived the subsequent recording of any effect.
- B. The daughter, because the friend was dishonest in reporting that he had destroyed the deed.
- C. The friend, because the deed was delivered to him.
- D. The friend, because the deed was recorded by him.

### **Explanation:**

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

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

accepted – presumed when the transfer benefits the grantee.

Delivery is presumed if the grantor hands the deed to the grantee. This presumption can generally be rebutted by evidence that the grantor did not intend to presently transfer ownership. But evidence that the grantor gave the deed to the grantee subject to an **oral condition** is **inadmissible**, so that condition **cannot be enforced**.

Here, delivery is presumed since the landowner handed the deed to the friend. And that presumption is not rebuttable since evidence of the landowner's oral condition ("please do not record it until after I am dead") is inadmissible. Therefore, the condition is not enforceable, and the court should hold for the friend.

**(Choices A & D)** Recording a deed (ie, filing it in the official land records) after the grantor's death creates a presumption of delivery. But this presumption can be rebutted by evidence that the grantor did not deliver the deed during his/her life. Here, though the deed was not recorded until after the landowner's death, it was delivered during his life (when he handed it to the friend). Therefore, the land was effectively conveyed to the friend.

**(Choice B)** Once a deed has been delivered and accepted, the grantee owns the property and the transfer cannot be canceled (eg, by destroying the deed). Therefore, the friend's dishonesty in reporting that he had destroyed the deed is inconsequential.

### **Educational objective:**

A deed is delivered when the grantor intends to presently transfer ownership to the grantee (presumed when the deed is in the grantee's possession). Evidence that the grantor gave the deed to the grantee subject to an oral condition is inadmissible to rebut this presumption, and the condition is unenforceable.

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## Admissibility of evidence (transfer of deed)



Proof of delivery  
=  
Admissible



Written condition  
=  
Admissible



Oral condition  
≠  
Admissible