

A seller owned a tract of land in fee simple. The seller executed an instrument in the proper form of a deed, purporting to convey the land to a buyer in fee simple. The instrument recited that the conveyance was in consideration of "\$5 cash in hand paid and for other good and valuable consideration." The seller handed the instrument to the buyer and the buyer promptly and properly recorded it.

Two months later, the seller brought an appropriate action against the buyer to cancel the instrument and to quiet title. In support, the seller proved that no money in fact had been paid by the buyer, notwithstanding the recitation, and that no other consideration of any kind had been supplied by the buyer.

In such action, should the seller prevail?

- A. No, because any remedy the seller might have had was lost when the instrument was recorded.
- B. No, because the validity of conveyance of land does not depend upon consideration being paid, whether recited or not.
- C. Yes, because recordation does not make a void instrument effective.
- D. Yes, because the recitation of consideration paid may be contradicted by parol evidence.

## Explanation:

### Transfer by deed

#### Essential deed components

Writing signed by grantor  
Identity of grantor & grantee  
Description of land  
Words of transfer

#### Delivery

Grantor's present intent to transfer title  
Presumed upon:  
physical delivery of deed  
recording  
unconditional delivery to agent  
grantee's possession of property/deed

#### Acceptance

Presumed when transfer benefits grantee

A plaintiff can bring a **quiet title action** to **establish his/her title to land** above all others (eg, by disputing the validity of a deed). A **deed** is an instrument used to convey an interest in real property from the owner (grantor) to another (grantee). The conveyance is **effective** once the deed is:

**delivered** by the grantor – presumed when the deed has been recorded or is in the grantee's possession *and*

**accepted** by the grantee – presumed when the conveyance is beneficial to the grantee.

The validity of the conveyance does **not depend upon consideration** (eg, payment for the property)—even if the deed states that consideration has been paid. However, the grantee may be liable for nonpayment.

Here, the seller properly executed a deed purporting to convey a tract of land to the buyer. The seller handed the deed to the buyer (delivery), who accepted and recorded it. And though the buyer never paid the "\$5 cash in hand" or other consideration recited in the deed, the validity of the conveyance did *not* depend upon consideration being paid. Therefore, the transfer to the buyer was effective, and the seller should not prevail in his quiet title action.

**(Choice A)** Recording a deed (ie, depositing it into the official land records) does not cure any defects in the conveyance. Therefore, no remedy the seller might have had was lost when the deed was recorded.

**(Choice C)** Recording a void deed—a legally invalid deed that cannot prove title (eg, a forged deed)—does not make the deed effective. But here, the deed was *not* void since it was properly executed, delivered, and accepted.

**(Choice D)** Parol evidence—extrinsic evidence offered to contradict or modify a document—is admissible to show that the consideration recited in a deed has not been paid. But while that evidence is relevant to the grantee's liability for nonpayment, it does not affect the validity of the conveyance since consideration is not required. Therefore, the seller will not prevail by contradicting the consideration recited in the deed.

**Educational objective:**

A deed effectively transfers an interest in real property when the deed is (1) delivered by the grantor and (2) accepted by the grantee. Consideration is not required, even when the deed states that consideration has been paid.

**References**

Restatement (Third) of Prop.: Wills & Other Donative Transfers § 6.3 (Am. Law Inst. 2003) (gifts of land).

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