

A woman entered a hospital to undergo surgery and feared that she might not survive. She instructed her lawyer by telephone to prepare a deed conveying her property, a large tract of undeveloped land, as a gift to her nephew who lived in a distant state. Her instructions were followed, and, prior to her surgery, she executed a document in a form sufficient to constitute a deed of conveyance. The deed was recorded by the lawyer promptly and properly as she instructed him to do. The recorded deed was returned to the lawyer by the land record office. The woman, in fact, recovered from her surgery and the lawyer returned the recorded deed to her.

Before the woman or the lawyer thought to inform the nephew of the conveyance, the nephew was killed in an auto accident. The nephew's will left all of his estate to a satanic religious cult. The woman was very upset at the prospect of the cult acquiring the property.

The local taxing authority assessed the next real property tax bill on the property to the nephew's estate.

The woman brought an appropriate action against the nephew's estate and the cult to set aside the conveyance to the nephew.

If the woman loses, what will be the likely reason?

- A. Delivery of the deed is presumed from the recording of the deed.
- B. Disappointing the nephew's devisee would violate the religious freedom provisions of the First Amendment to the Constitution.
- C. The gift of the property was inter vivos rather than causa mortis.
- D. The showing of the nephew's estate as the owner of the property on the tax rolls supplied what otherwise would be a missing essential element for a valid conveyance.

### **Explanation:**

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

**delivered** – **presumed** when the deed (1) has been **recorded**—ie, filed in the official land records—or (2) is in the grantee's physical possession *and*

**accepted** – presumed when the transfer benefits the grantee.

Once these requirements are met, the grantee owns the property and the transfer cannot be canceled—even if the land record office later returns the deed to the grantor.

Here, delivery of the deed to the nephew is presumed since the woman's lawyer (agent) recorded it as instructed. And though the nephew never learned of the deed, his acceptance is presumed since the conveyance benefited him. As a result, ownership of the property transferred to the nephew and was unaffected by the land record office's return of the recorded deed. Therefore, the woman will likely lose her action to set aside the conveyance.

**(Choice B)** The religious freedom provisions of the First Amendment protect persons from government action—not private individuals (as seen here). Therefore, disappointing the satanic cult by setting aside the conveyance would not violate protected religious freedoms—even if the woman had asked the court to do so because she disapproved of satanism.

**(Choice C)** An inter vivos gift is an irrevocable gift of land or personal property given during the grantor's life. A causa mortis gift is a revocable gift of personal property given in expectations of the grantor's imminent death. Therefore, though the woman gifted the land when she feared that she might not survive surgery, that gift could only be inter vivos. And since that inter vivos gift only became irrevocable when it was delivered and accepted, the woman will lose because the deed was delivered (and presumably accepted) when it was recorded.

**(Choice D)** A conveyance by deed is valid once there is delivery and acceptance. Whether the nephew's estate appeared as the owner of the property on the tax rolls is irrelevant.

### **Educational objective:**

A deed transfers ownership of real property once it is delivered (presumed when it has been recorded) and accepted (presumed when the transfer benefits the grantee). After this occurs, the transfer is irrevocable.

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