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## **Titles**

### **1. If the landowner loses, it will be because**

*The landowner brought an appropriate action against the nephew's estate and the cult to set aside the conveyance to the nephew. The local taxing authority assessed the next real property tax bill on Blackacre to the nephew's estate. Before the landowner 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 landowner was very upset at the prospect of the cult's acquiring Blackacre. A landowner entered a hospital to undergo surgery and feared that she might not survive. She instructed her lawyer by telephone to prepare a deed conveying Blackacre, 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 landowner, in fact, recovered from her surgery and the lawyer returned the recorded deed to her.*

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

Note:

*D is correct. The only requirements that must be met for a conveyance of land to be valid (and thereby transfer legal title in that land from one party to another) are execution and delivery of the deed. The execution requirement is satisfied as long as the deed is signed by the party to be charged (the seller or transferor). Delivery of a deed is established by a proven intent to pass title, even if the title document was never physically given to the grantee. The grantee's acceptance of the deed will be presumed, unless the grantee explicitly rejects it. In this case, the facts indicate that the landowner signed the deed and clearly intended for it to be delivered to her nephew, as evidenced by its recording and the instructions to the attorney. The fact that the nephew did not physically possess the deed before his death is irrelevant in determining whether the transfer was valid. The nephew did not reject the transfer, so acceptance is presumed.*

*A is incorrect. The fact that the transfer occurred inter vivos is irrelevant to whether the deed was delivered and accepted.*

*B is incorrect. Neither essential element of a valid conveyance is missing.*

*C is incorrect. This answer is a red herring - none of the satanic cult's religious freedoms are violated by invalidating the conveyance.*

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## 2. The court should decide for

The bank sued the buyer to establish that its mortgage was good against Greenacre. The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record." There is no provision for a grace period, and there is no other relevant statutory provision. The gentleman conveyed Greenacre to a buyer for a valuable consideration on January 11. The bank did not know of this, nor did the buyer know of the mortgage to the bank, until both discovered the facts on January 23, the day on which the buyer recorded the gentleman's deed. A gentleman owned Greenacre in fee simple of record on January 10. On that day, a bank loaned the gentleman \$50,000 and the gentleman mortgaged Greenacre to the bank as security for the loan. The mortgage was recorded on January 18.

- The buyer, because he paid valuable consideration without notice before the bank recorded its mortgage
- The buyer, because the bank's delay in recording means that it is estopped from asserting its priority in time
- **The bank, because the buyer did not record his deed before the bank's mortgage was recorded**
- The bank, because after the mortgage to the bank, the gentleman's deed to the buyer was necessarily subject to its mortgage

Note:

At common law, in nearly all cases, priority was given to the grantee who received the property first. However, statutes known as recording acts require a grantee to make some sort of recording so as to give notice to the world that title to certain property has already been conveyed, to put subsequent grantees or purchasers on notice. Recording the deed is not essential to make it valid, but a grantee could lose out possession to a subsequent bona fide purchaser (BFP). A subsequent BFP is one who gives valuable consideration and has no notice of the prior instrument.

The vast majority of states in the United States employ a system of recording legal instruments that affect the title of real estate as the exclusive means for publicly documenting land titles and interests. There are three major types of recording acts classified as notice, race-notice, and race statutes.

Under a notice statute, a subsequent BFP (i.e., a person who gives valuable consideration and has no notice of the prior instrument) prevails over a prior grantee who failed to record. The important fact under a notice statute is that the subsequent purchaser had no actual or constructive notice at the time of the conveyance.

Under a race-notice statute, a subsequent BFP is protected only if she records before the prior grantee. The operative words in a race-notice statute are "without notice" and "first recorded."

Under a pure race statute, whoever records first wins. Actual notice is irrelevant.

C is correct. The recording act quoted in this question is a race-notice act. To prevail under a race-notice act, a party must be a BFP who: (i) was the first to record their deed (won the race); who also (ii) acquired the land without notice of earlier purchasers. In this case, the first BFP to record its deed was the bank, and it did so without notice of the gentleman's conveyance to the buyer.

A is incorrect. This is a race-notice jurisdiction, and the buyer lost the race to record. Under a race-notice statute, a subsequent BFP is protected only if she records before the prior grantee. The operative words in a race-notice statute are "without notice" and "first recorded."

B is incorrect. There is no time limit on the race - if you are the first to record then you win, regardless of how long it took you to do so. Under a pure race statute, whoever records first wins. Actual notice is irrelevant.

D is incorrect. If the mortgagor sells the property and conveys a deed, a grantee takes subject to the mortgage, which remains on the land. Often the grantee signs an assumption agreement, promising to pay the mortgage loan. If she does so, she becomes primarily liable to the lender, while the original mortgagor becomes secondarily liable as a surety. However, the mortgagee may opt to sue either the grantee or the original mortgagor on the debt. If the mortgagee and grantee modify the obligation, the original mortgagor is completely discharged from liability. The bank will prevail under the recording act even if the buyer's deed is not subject to the bank's mortgage.

### 3. The buyer consulted his lawyer, who properly advised that, in an appropriate action, the buyer would probably obtain title to

*The period of time to acquire title by adverse possession in the jurisdiction is 15 years. Now, the buyer has had his property surveyed and the title checked and has learned the facts. 20 years ago, the buyer planted a row of evergreens in the vicinity of the opposite (east) boundary of Blackacre and erected a fence just beyond the evergreens to the east. In fact both the trees and the fence were placed on Greenacre, owned by a neighbor, which bordered the east boundary of Blackacre. The buyer was unsure of the exact boundary, and placed the trees and the fence in order to establish his rights up to the fence. The fence is located 10 feet within Greenacre. 25 years ago, a seller conveyed Blackacre to a buyer by a warranty deed. The seller at that time also executed and delivered an instrument in the proper form of a deed, purporting to convey Whiteacre to the buyer. The seller thought she had title to Whiteacre but did not; therefore, no title passed by virtue of the Whiteacre deed. Whiteacre consisted of three acres of brushland adjoining the west boundary of Blackacre. The buyer has occasionally hunted rabbits on Whiteacre, but less often than annually. No one else came on Whiteacre except occasional rabbit hunters.*

- Whiteacre but not the 10-foot strip of Greenacre
- **The 10-foot strip of Greenacre but not to Whiteacre**
- Both Whiteacre and the 10-foot strip of Greenacre
- Neither Whiteacre nor the 10-foot strip of Greenacre

Note:

*Title to real property may be acquired by adverse possession. Gaining title by adverse possession results from the operation of the statute of limitations for ejectment. If the owner does not, within the statutory time frame, take legal action to eject a possessor who adversely claims to own the property, the owner is thereafter barred from bringing suit for ejectment. Moreover, title to the property will vest in the adverse possessor.*

*To establish title by adverse possession, the possessor must show the following:*

*Actual possession of the land: This requirement is designed to give the true owner notice that a trespass is occurring. As a general rule, the adverse possessor will gain title only to the land she actually occupies. Exclusive possession of the land: Exclusive, in this context, means that the possessor is not sharing with the true owner or the public at large. Open and notorious possession: Possession is open and notorious when it is the kind of use the usual owner would make of the land. The adverse possessor's occupation must be sufficiently apparent to put the true owner on notice that a trespass is occurring. Hostile: The possessor's occupation of the property must be adverse. This means that the possessor does not have the true owner's permission to be on the land. The state of mind of the possessor is irrelevant. By the majority view, it does not matter whether the possessor believes she is on her own land, someone else's, or has no idea who owns the land. Continuous possession: The adverse claimant's possession must be continuous throughout the statutory period. Continuous possession only requires the normal degree of occupancy and use that the average owner of the property would do. Notably, an action to quiet title is not a requirement for adverse possession. Bringing an action to quiet title is usually more of a practical situation that would happen in real life so the possessor can show and say she has valid title. However, it does not factor into whether title was established through adverse possession on the MBE.*

*B is correct. Color of title as to Whiteacre is irrelevant, as the buyer has not fulfilled the other elements of adverse possession. The buyer has, however, obtained possession of the 10-foot strip of Greenacre by erecting a fence (exclusive) and planting trees (open and notorious), without permission (hostile), and maintaining his actual possession continuously for the 15-year statutory period. Thus, the buyer is entitled to possess the 10-foot strip of Greenacre he has gained by adverse possession but has not gained any interest in Whiteacre.*

*A is incorrect. The buyer has not acquired Whiteacre because he has failed to exclude others from the property (i.e. the hunters) and has not maintained possession continuously or openly (visiting the land less often than annually). The buyer needs to meet all the elements of adverse possession in order to gain any sort of rights over Whiteacre.*

*C is incorrect. The buyer has not sufficiently proven the elements of adverse possession as to any portion of Whiteacre but has obtained possession of the strip of Greenacre.*

*D is incorrect. As explained above, the buyer has gained possession of the strip of Greenacre after meeting adverse possession requirements for the required statutory time period.*

#### 4. Title to Blackacre is now in

*There is no statute dealing with conveyances to dead persons. Shortly thereafter, the mother learned that the best friend (her son) had been killed in an accident at sea one week before the delivery of the deed. The best friend's will, which has now been duly probated, leaves his entire estate to First Church. His mother is the sole heir-at-law of the best friend. At a time when the best friend was serving overseas with the United States Navy, the owner decided to sell Blackacre and spoke to his best friend's mother. Before the best friend sailed, he had arranged for his mother to become a joint owner of his various bank accounts so that she would be able to pay his bills when he was gone. When she heard from the owner, the best friend's mother took the necessary funds from the best friend's account and paid the owner \$20,000, the fair market value of Blackacre. The owner executed and delivered to the best friend's mother a deed in the proper form purporting to convey Blackacre to the best friend. The mother promptly and properly recorded the deed. The owner of Blackacre had promised his best friend that, if at any time the owner decided to sell his summer cottage property known as Blackacre, he would give his best friend the opportunity to purchase Blackacre.*

- First Church
- The best friend's mother
- The owner free and clear
- **The owner, subject to a lien to secure \$20,000 to the best friend's estate**

Note:

*Transfer of title to an interest in real property occasionally occurs through operation of law, but in most circumstances, the transfer can be accomplished only by a deed that satisfies various formalities required by statute.*

*A valid deed needs (i) to be in writing and signed by the grantor; (ii) unambiguously identify the land; (iii) adequately identify the parties; and (iv) evidence an intention to transfer the property. In order for a deed to be valid, it must correctly identify the parties, and it is void if it fails to do so. If the grantee listed on the deed is dead at the time the deed is delivered, the deed is deemed not to identify the parties correctly, and therefore to be void. A deed to a dead person does not convey good title and is void.*

*D is correct. In this case, the facts tell us that the best friend died a week before delivery of the deed, thus the transaction was incomplete while he was alive. The fact that the owner and the best friend's mother were unaware of the best friend's death is irrelevant. Also irrelevant to the question is whether the mother accepted delivery of the deed. The mother was acting as an agent of the best friend, and never intended to possess Blackacre, so she could not have accepted delivery of Blackacre.*

*A is incorrect. As explained above, deeds must be in writing, signed by the grantor, and adequately identify the parties and the land. Here, no title passed to the best friend and therefore could not have passed on to the beneficiaries of his estate.*

*B is incorrect. As explained above, the best friend never had title, because he died before the deed was conveyed to him. However, even if he had been alive at the time of conveyance so that the deed could have validly given him title to Blackacre, the mother still would not have an interest in Blackacre. The best friend's will left all of his property to the church.*

*C is incorrect. Even though the transaction was void, the owner cannot keep the consideration that has already been paid.*

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## 5. In such action, judgment should be for

The only evidence introduced consisted of the chain of title under which the owner held, the probated will, the recorded deed, the fact that no person knew about the deed except the owner and his lawyer, and the conversation the owner had with his lawyer described above. The owner died suddenly and unexpectedly a week later, leaving a will that bequeathed and devised his entire estate to a friend. After probate of the will became final and the administration on the owner's estate was closed, the friend instituted an appropriate action to quiet title to Blueacre and properly served as defendant each Protestant church situated in the county. A landowner owned Blueacre, a valuable tract of land located in York County. The owner executed a document in the form of a warranty deed of Blueacre, which was regular in all respects except that the only language designating the grantees in each of the granting and *habendum* clauses was: "The leaders of all the Protestant Churches in York County." The instrument was acknowledged as required by statute and promptly and properly recorded. The owner told his lawyer, but no one else, that he had made the conveyance as he did because he abhorred sectarianism in the Protestant movement and because he thought that the leaders would devote the asset to lessening sectarianism.

- **The friend, because there is inadequate identification of the grantees in the deed**
- The friend, because the state of the evidence would not support a finding of delivery of the deed
- The defendants, because a deed is *prima facie* valid until rebutted
- The defendants, because recording established *prima facie* delivery until rebutted

Note:

The transfer process happens by way of deed. A property deed is a formal, legal document that transfers one person or entity's rights of ownership to another individual or entity. The deed is the official "proof of transfer" for real estate, which can include land on its own or land that has a house or other building on it.

Every deed should contain the following information:

An indication that it is a deed  
A description of the property involved  
The signature of the individual or entity that is transferring the property  
Data regarding who is taking title to the property  
As deeds do not require much information, the document itself is often very short. However, the document may also contain additional information such as the conditions or assurances that go along with the transfer. Each deed must also be validly delivered to the individual taking ownership of the property. In most situations, it should also be filed with the appropriate authority as well. Every real property transfer will require the use of some type of deed. It is important to use the legal description of the property for the deed so that it can be recorded accurately.

A is correct. A deed must unambiguously identify the land and the parties to transfer title. A grant to "the leaders of all the Protestant Churches in York County" is simply too broad and vague to adequately identify the intended grantees. Therefore, the deed will not transfer title, and the friend will take Blueacre under the will.

B is incorrect. A deed is not effective to transfer an interest in realty unless it has been delivered. Physical transfer of a deed is not required for a valid delivery. Delivery refers to the intent of the grantor to transfer the interest. Delivery is presumed if the deed is recorded.

C is incorrect. No deed is valid unless it contains the information discussed above. A deed will only be considered valid if it complies with the requisite formalities.

D is incorrect. Although recording does establish a presumption of delivery, the deed is still invalid because it failed to unambiguously identify the grantees.

**6. In an appropriate action by the buyer to enforce the restrictive covenants against the businessman's 95-acre tract, if the businessman wins it will be because**

*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." However, shortly thereafter, the owner conveyed the remaining 95 acres to a businessman for \$100,000 by a deed that made no mention of any restrictive covenants in the buyer's deed. The businessman now proposes to build an industrial park which would violate such restrictive covenants if they are applicable. Blackacre was a tract of 100 acres retained by the owner after he had developed the adjoining 400 acres as a residential subdivision. The owner had effectively imposed restrictive covenants on each lot in the 400 acres. A buyer offered the owner a good price for a five-acre tract located in a corner of Blackacre far away from the existing 400-acre residential subdivision. The owner conveyed the five-acre tract to the buyer and imposed the same restrictive covenants on the five-acre tract as he had imposed on the lots in the adjoining 400 acres. The owner further covenanted that when he sold the remaining 95 acres of Blackacre he would impose the same restrictive covenants in the deed or deeds for the 95 acres. The owner's conveyance to the buyer was promptly and properly recorded.*

- **The deed imposing the restrictions was not in the chain of title for the 95 acres when the businessman bought them**
- The disparity in acreage means that the covenant can only be personal to the owner
- Negative reciprocal covenants are not generally recognized
- A covenant to impose restrictions is an illegal restraint on alienation

Note:

*A is correct. The recording act quoted in the facts of this question is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded the deed without notice of earlier purchasers. When the businessman purchased the 95-acre portion of Blackacre, a title search on those 95 acres would not have revealed any deeds including a residential subdivision restriction. While the owner may have promised the buyer he would include such restrictions in the deeds for subsequent sales of Blackacre, he did not do so. Because the businessman purchased Blackacre without notice of any restrictive covenants affecting that land, no such covenants can be enforced against him.*

*B is incorrect. This choice is factually incorrect, there is no such rule.*

*C is incorrect. This is an incorrect statement of law.*

*D is incorrect. Covenants and equitable servitudes may be used to place restrictions on other's land.*

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## 7. If the lender is unsuccessful, it will be because

The lender joined both the owner and the buyer in an appropriate action to foreclose the judgment lien against Blackacre. The recording act has no provision for a grace period. The two pertinent statutes in the jurisdiction provide the following: 1) any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered; and 2) 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. An owner conveyed Blackacre to a buyer by a warranty deed. The buyer recorded the deed four days later. After the conveyance but prior to the buyer's recording of the deed, a lender properly filed a judgment against the owner.

- The owner's warranty of title to the buyer defeats the lender's claim
- **The lender is not a purchaser for value**
- Any deed is superior to a judgment lien
- Four days is not an unreasonable delay in recording a deed

Note:

At common law, in nearly all cases, priority was given to the grantee who received the property first. However, statutes known as recording acts require a grantee to make some sort of recording so as to give notice to the world that title to certain property has already been conveyed, to put subsequent grantees or purchasers on notice. Recording the deed is not essential to make it valid, but a grantee could lose out possession to a subsequent bona fide purchaser. A subsequent bona fide purchaser ("BFP") is one who gives valuable consideration and has no notice of the prior instrument.

The vast majority of states in the United States employ a system of recording legal instruments that affect the title of real estate as the exclusive means for publicly documenting land titles and interests. There are three major types of recording acts classified as notice, race-notice, and race statutes.

Under a notice statute, a subsequent BFP (i.e., a person who gives valuable consideration and has no notice of the prior instrument) prevails over a prior grantee who failed to record. The important fact under a notice statute is that the subsequent purchaser had no actual or constructive notice at the time of the conveyance.

Under a race-notice statute, a subsequent BFP is protected only if she records before the prior grantee. The operative words in a race-notice statute are "without notice" and "first recorded."

Under a pure race statute, whoever records first wins. Actual notice is irrelevant.

A judgment lien is a court ruling that gives a creditor the right to take possession of a debtor's real property if the debtor fails to fulfill his or her contractual obligations. A judgment lien may be made against an individual or business and allows the creditor to access the debtor's business, personal property, and real estate, among other assets, to pay the judgment. A plaintiff who obtains a monetary judgment is described as a "judgment creditor," while the defendant becomes a "judgment debtor."

The majority rule states that a plaintiff who obtains a judgment lien under this kind of statute is not protected by any recording acts from a prior unrecorded conveyance made by the defendant. This is because a plaintiff is not a BFP because he did not pay value for the judgment, or the judgment attaches only to property owned by the defendant, and not the property the defendant has previously conveyed away, even if that conveyance was not recorded.

B is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a BFP who had no actual or constructive knowledge of the prior conveyance. To be a BFP, a party must give value for their interest in the land. In this case, the lender's interest arises from a judgment lien against the owner rather than payment of valuable consideration. Therefore, the lender is not protected by the recording statute. Because the buyer is protected by the statute, the owner no longer holds an interest in Blackacre, and there is no property for the lien to attach to.

A is incorrect. Under a notice statute, the lender will prevail over the buyer, assuming the lender is a BFP (a purchaser for value) because the buyer is a grantee who failed to record before the judgment lien was properly filed.

C is incorrect. A judgment lien is a court ruling that gives a creditor the right to take possession of a debtor's real property if the debtor fails to fulfill his or her contractual obligations. A judgment lien may be made against an individual or business and allows the creditor to access the debtor's business, personal property, and real estate, among other assets, to pay the judgment. A deed is not always superior to a judgment lien.

D is incorrect. All recording acts require that the deed is promptly recorded. The definition of "prompt" does not necessarily mean that time is of the essence, however. This is a correct statement but is irrelevant to why the lender will be unsuccessful.

## 8. In this action, the buyer should

**"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."** Immediately upon learning of the buyer's actions, the son recorded his deed and brought an appropriate action to enjoin the buyer from removing the timber and to quiet title. The recording act of the jurisdiction provides: Eight years ago, a doctor, prior to moving to a distant city, conveyed Blackacre, an isolated farm, to his son by a quitclaim deed. His son paid no consideration. The son, who was 19 years old, without formal education, and without experience in business, took possession of Blackacre and operated the farm but neglected to record his deed. Subsequently, the doctor conveyed Blackacre to a buyer by warranty deed. The buyer, 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 doctor. The buyer promptly and properly recorded his deed and began removing timber from the land.

- Prevail, because a warranty deed for valuable consideration takes priority over a quitclaim deed without consideration
- Prevail, because the doctor's subsequent conveyance to the buyer revoked the gift to the son
- **Lose, because the son's possession charged the buyer with notice**
- Lose, because the equities favor the son

Note:

At common law, in nearly all cases, priority was given to the grantee who received the property first. However, statutes known as recording acts require a grantee to make some sort of recording so as to give notice to the world that title to certain property has already been conveyed, to put subsequent grantees or purchasers on notice. Recording the deed is not essential to make it valid, but a grantee could lose out possession to a subsequent bona fide purchaser. A subsequent bona fide purchaser ("BFP") is one who gives valuable consideration and has no notice of the prior instrument.

There are three types of recording acts: notice, race-notice, and race statutes. Under a NOTICE statute, a subsequent BFP prevails over a prior grantee who failed to record. The most important fact under a notice statute is that the subsequent BFP had no actual OR constructive notice at the time they purchased the property. Under a RACE-NOTICE statute, a subsequent BFP is protected only if they record before the prior grantee, without notice of the prior instrument. This gives an inducement to record quickly to reduce questions of title. Under a RACE statute, whoever records first wins, and actual notice of a prior grantee is irrelevant.

C is correct. The recording statute identified in the facts is a notice act. Generally, under inquiry notice, if a grantee is aware of facts or circumstances that would lead a reasonable person to inquire further, she is charged with constructive knowledge of all the facts a reasonable investigation would have disclosed. In this case, the facts state that the buyer was "unaware of the son's possession." The buyer, however, is charged with inquiry notice by virtue of the fact that the son's possession and use of the land was open and notorious. Further, a majority of jurisdictions charge a grantee with knowledge of whatever she would have discovered by an inspection of the property. Under this theory, the buyer's notice prevents him from being protected by the recording statute.

A is incorrect. This is not true. What is important under the statute is whether the buyer qualifies as a BFP, not what type of deed was executed. The type of deed is only relevant to determine which kind of protection it offers to the grantee.

B is incorrect. This fact pattern does not deal with a gift situation. Even though the son paid no valuable consideration for the land, there is no indication that the doctor intended to make the land a gift to his son.

D is incorrect. It is a very subjective response. Whether the equities favor the son is not a question that can be answered by the simple facts of the fact pattern.

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*Last year, the man died, and his son succeeded him as the owner of Blackacre. The son became aware of the facts, demanded that the agency stop using Blackacre for the piling of waste, and, when the agency refused his demand, brought an appropriate action to enjoin any such use of Blackacre in the future. The time for acquiring title by adverse possession in the jurisdiction is 10 years. During the past 12 years, some of the trucks bringing waste to the agency facility have dumped their loads so that the piles of waste extend from Whiteacre onto a portion of Blackacre. However, prior to the four-week period during each calendar year when the agency facility is closed for inspection and repairs, the waste piles are reduced to minimal levels so that during each of the four-week closures no waste was, in fact, piled on Blackacre. Neither the man nor any representative of the agency knew the facts about the relation of the boundary line to the waste piles. A man owned Blackacre, a tract of undeveloped land. Blackacre abuts Whiteacre, a tract of land owned by the state's governmental energy agency. At Whiteacre, the agency has operated a waste-to-electricity recycling facility for 12 years. Blackacre and Whiteacre are in a remote area and Whiteacre is the only developed parcel of real estate within a ten-mile radius. The boundary line between Blackacre and Whiteacre had never been surveyed or marked on the face of the earth.*

- Note:  
A is correct. To obtain land through adverse possession, for the length of the statutory period a party must: (i) have actual physical possession or occupancy of the land; (ii) maintain that possession continuously and without interruption; (iii) exclude others from possession; (iv) have "hostile" possession (be there without permission); and (v) maintain "open and notorious" possession.&nbsp;bsp;

*Regarding the "hostile" element, the majority view holds that it does not matter whether the possessor believes he is on his own land, knows he is trespassing on someone else's land, or has no idea who owns the land. In this case, the agency had actual physical possession of the land beneath the waste piles, maintained that possession continuously for 12 years, excluded the man and his son from using that area of land, did so without permission (even though it was unaware of the boundary line), and did so openly (as the piles were large and were not concealed).&nbsp;*

*Continuous possession only requires the degree of occupancy and use that the average owner would make of the property. Although the agency took the waste out of Blackacre for four weeks each year, it is not enough to defeat continuous possession. Blackacre is an undeveloped lot, and a four-week break once a year is not under the degree of current occupancy and use typical for this property.*

*B is incorrect. Failure to discover the presence of a trespasser does not constitute consent to that trespasser's use of the land.*

*C is incorrect. Without an exercise of eminent domain by the government, the son's rights do not automatically become subordinate to it.*

*D is incorrect. The state never exercised its eminent domain powers. In an eminent domain matter, a governmental entity seeks to acquire an interest in a citizen's private property. The government expropriates the land through a condemnation decree, which transfers title from the citizen to the government entity doing the condemning. The condemnation must be for a legitimate public purpose, and the citizen must receive just compensation for the private property.*

## 10. In this action, the judgment should be for

At the closing, the buyer declined to accept the title of the financier on the ground that the customer's judgment lien encumbered the title he would receive and rendered it unmarketable. The financier brought an appropriate action against the buyer for specific performance of the contract and joined the customer as a party. There are no other relevant statutory provisions. The recording act of the jurisdiction authorizes recording of contracts and also 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." Thereafter, but before the date scheduled for the closing, an old customer obtained and properly filed a final judgment against the financier in the amount of \$1 million in a personal injury suit. A statute in the jurisdiction provides: "Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." The buyer decided to protect his interest and promptly and properly recorded the contract. A financier was the owner of Greenacre, a large tract of land. The financier entered into a binding written contract with a buyer for the sale and purchase of Greenacre for \$125,000. The contract required the financier to convey marketable record title.

- The financier, because in equity a purchaser takes free of judgment liens
- **The financier, because the contract had been recorded**
- The buyer, because the financier cannot benefit from the buyer's action in recording the contract
- The buyer, because the statute creating judgment liens takes precedence over the recording act

Note:

The vast majority of states in the United States employ a system of recording legal instruments that affect the title of real estate as the exclusive means for publicly documenting land titles and interests. There are three major types of recording acts classified as notice, race-notice, and race statutes.

Under a notice statute, a subsequent bona fide purchaser (i.e., a person who gives valuable consideration and has no notice of the prior instrument) prevails over a prior grantee who failed to record. The important fact under a notice statute is that the subsequent purchaser had no actual or constructive notice at the time of the conveyance.

Under a race-notice statute, a subsequent BFP is protected only if she records before the prior grantee. The operative words in a race-notice statute are "without notice" and "first recorded." Under a pure race statute, whoever records first wins. Actual notice is irrelevant.

Only BFPs are entitled to prevail against a prior transferee under notice and race-notice statutes. To attain this status, a person must satisfy three requirements: (i) be a purchaser; (ii) taking without notice of the prior instrument; and (iii) pay valuable consideration. If these requirements are not met, the person is not protected by the recording acts.

A judgment lien is a court ruling that gives a creditor the right to take possession of a debtor's real property if the debtor fails to fulfill his or her contractual obligations. A judgment lien may be made against an individual or business and allows the creditor to access the debtor's business, personal property and real estate, among other assets, to pay the judgment. A plaintiff who obtains a monetary judgment is described as a "judgment creditor," while the defendant becomes a "judgment debtor."

The majority rule states that a plaintiff who obtains a judgment lien under this kind of statute is not protected by any recording acts from a prior unrecorded conveyance made by the defendant. This is because a plaintiff is not a BFP because he did not pay value for the judgment, or the judgment attaches only to property owned by the defendant, and not the property the defendant has previously conveyed away, even if that conveyance was not recorded.

B is correct. The recording act identified in the facts is a notice statute. In this case, the jurisdiction authorizes the recording of contracts, and the buyer chose to record his contract. Here, the buyer recorded his interest, so the customer had constructive notice of the prior instrument. Therefore, the customer is not a BFP and will not prevail over the buyer's interest. Because the buyer will be able to receive marketable title from the financier at the time of closing, the financier's request for specific performance will be granted.

A is incorrect. As explained above, the majority rule is that a plaintiff who obtains a judgment lien is not protected by recording acts from a prior unrecorded conveyance. However, if the judgment lien attached to the land before the contract had been formed, the purchaser would have taken subject to the lien.

C is incorrect. The financier will be able to complete the transaction because the buyer will be able to receive good title, but the financier will still be responsible for the customer's judgment.

D is incorrect. Recording act statutes determine whether or not a judgment lien takes precedence over a BFP.