

## Property Exam 1

Brandi was in a café when she ran into Amanda.

“Hi Brandi,” said Amanda, “do you want to sell me Blackacre?”

Brandi grabbed a napkin and wrote, “Brandi to sell Blackacre to Amanda for \$500,000.” Both Brandi and Amanda signed the napkin.

Unknown to Amanda, Brandi, didn’t actually own Blackacre. About a week later, Amanda gave Brandi a check for \$500,000 and Brandi gave Amanda a quit claim deed for Blackacre. Amanda was going on vacation for a few weeks and did not have time to record her quitclaim deed so she left it at Blackacre.

While Amanda was on vacation, Brandi had a great idea. She could sell Blackacre again (even though she did not own it) and make even more money. Brandi spoke with Dana who expressed an interest in buying Blackacre. Dana goes to Blackacre to inspect the property and finds an unrecorded copy of the quitclaim deed between Brandi and Amanda. Dana agrees to purchase Blackacre from Brandi for \$550,000. Dana hands Brandi \$550,000 which she just happened to have in her purse and Brandi gave Dana a quitclaim deed. Dana promptly records the quitclaim deed.

Brandi decided she had better actually buy Blackacre. Brandi contacted Cindy, the true owner of Blackacre. Brandi was able to buy Blackacre from Cindy for \$450,000. Cindy gave Brandi a quit claim deed in exchange for the purchase price and Brandi recorded her quit claim deed.

1. Is the contract between Amanda and Brandi valid?
  2. As between Dana and Amanda, if the state where Blackacre is has a “race” recording statute, who has the superior claim to Blackacre? What if the state has a “notice” recording statute? What if the state had a “race-notice” recording statute?
-

### **Example Answer:**

#### **Is the contract between Amanda and Brandi valid?**

##### Contract between Amanda and Brandi

Under the statute of frauds, a contract for the sale of land must be in writing. The contract must also contain a description of the property and the sales price which are the minimum sufficient essential contract terms.

Here, although it was only on a napkin, the contract between Brandi and Amanda was in writing. The contract also contained the essential contract terms of price (\$500,000) and property description (Blackacre).

If, for whatever reason, a court was to find that there was not a sufficient writing to satisfy the statute of frauds, a contract would still exist between Amanda and Brandi. An exception to the statute of frauds is part performance. Under the facts given we not only have part performance we have full performance. Here Amanda provided Brandi \$500,000 and Brandi gave Amanda a quitclaim deed to the property.

Under the facts given, there does exist a valid contract between Amanda and Brandi for the sale of Blackacre.

#### **As between Dana and Amanda, if the state where Blackacre is has a “race” recording statute, who has the superior claim to Blackacre?**

##### Title to Blackacre under a “race” statute

Under a pure race statute, there is literally a race to the county recorder’s office. As between two purchasers of land, the first person to record a valid deed has title to the property regardless of whether he or she has notice of another conveyance.

Here Dana recorded her deed before Amanda. It is irrelevant that Dana knew of the earlier sale to Amanda.

The fact that at the time Brandi sold Blackacre when she did not own Blackacre is most likely not an issue. Under the doctrine of after acquired title if a grantor sells property he or she does not own to a buyer, but later acquires title to the property, the property automatically transfers to the buyer. Here Brandi did acquire title to Blackacre and recorded the deed evidencing the title transfer. Under these facts, the title would automatically transfer to Dana.

Under a “race” statute, Dana would hold the title to Blackacre.

### **What if the state has a “notice” recording statute?**

#### Title to Blackacre under a “notice” statute

A notice statute provides that an unrecorded instrument is invalid against any subsequent purchaser without notice, regardless of whether the subsequent purchaser records prior to the first purchaser.

Here Dana had actual knowledge of Amanda’s unrecorded quitclaim deed. Amanda’s unrecorded deed is therefore valid against Dana’s subsequently obtained deed.

Under a notice statute, as between Amanda and Dana, Amanda would hold title to the property.

### **What if the state has a “race-notice” recording statute?**

#### Title to Blackacre under a “race-notice” statute

A race-notice statute protects the subsequent purchaser only if he or she meets two requirements: (1) he or she records before the earlier purchaser records; and (2) he or she takes without notice of the earlier conveyance.

Here Dana did record before Amanda, but Dana had notice of the earlier conveyance to Amanda when she purchased the property from Brandi.

Under a race-notice statute, as between Amanda and Dana, Amanda would hold title to the property as Dana had actual knowledge of the earlier conveyance to Amanda.

As stated above, the fact that at the time Brandi sold Blackacre when she did not own Blackacre is most likely not an issue. Under the doctrine of after acquired title if a grantor sells property he or she does not own to a buyer, but later acquires title to the property, the property automatically transfers to the buyer. Here Brandi did acquire title to Blackacre and record the deed evidencing the title transfer. Under these facts, the title would automatically transfer to Amanda.