Problems on Recording Statutes

*Consider the following deeds to Blackacre. In the following deeds, "→" means a transfer for valuable consideration; "⇒" means the transfer was made without consideration (*i.e.*, though a devise, intestate succession, or an* inter vivos *transfer (gift)).*[†]

At the end of the following series of deeds, who owns Blackacre under –

- *the North Carolina statute (Supp. 160)?*
- *the California statute (CB 436)?*
- *the Florida statute (CB 436)?*
- *the Oregon statute (Supp. 156)?*

Do NOT rely on the descriptions of the statutes as notice or race-notice or race; look at the actual language of the statutes themselves.

1. **2021: O → A.** **A records.**
2025: O → B. **B doesn't record.**

In any of the states, A wins.

The common law. First, note that A would win under the common law rule: after O sold Blackacre to A, O had nothing left to convey, so B got nothing. The only way that B might ever prevail over A under the common law would be by adverse possession. For example, maybe A never moved in. Then O sold the property to B in 2025, and B moved in. If the statute of limitations were 10 years, and B satisfied all the requirements of adverse possession, then B would gain ownership in 2034.

Of course, B would have an action against **O** as of 2025, but that may not be satisfactory to B for two reasons. First, a judgment against O may be impossible to obtain (say because O cannot be located) or meaningless (if O has gone bankrupt, for example). Second, even if a judgment can be obtained against O for return of the purchase money and associated damages, it may be that B simply wants Blackacre, not the money.

The recording statutes. Given that A would win out over B under the common law – meaning A could, for example, successfully bring an action in 2025 to eject B – the question is then whether the recording statute would dictate a different result. As is shown below, none of the recording statutes divests A, the first purchaser, where A has immediately recorded. Since the recording statutes don't apply, the common law rule does, and as noted A wins under the common law. The result makes sense in terms of the underlying policy: to give people in A's position an incentive to record immediately. That way, if O tries to sell the land twice, people in B's position should be able to find the earlier deed to A and avoid being defrauded.

[†] "Consideration" here refers to something of value that is given in exchange for the grant of the property interest. Typically it would be money, though it could be something else (like forgiveness of a debt).

A would win in Florida. The statute provides that "no conveyance," including O's conveyance to A, "shall be good" against "subsequent purchasers for a valuable consideration and with notice" [*i*.e., BFPs][1] **unless** the same (meaning A's deed) is recorded. A's deed **is** recorded"; therefore, the statute does not invalidate A's deed, and the first-in-time rule applies. Note that it doesn't matter in this example whether or not B is a BFP; the point is that by recording, A has protected himself, so that even if B had no actual notice of the deed, A would still be protected.

A would win in California. The statute provides that "[e]very .conveyance of real property" "is void as against any subsequent purchaser . . . in good faith and for a valuable consideration from the same vendor" — "whose conveyance is first duly recorded." In this case, A's deed is not void as against B, even if B is a BFP, because B's deed *isn't* the "first duly recorded"; *A's* deed is the first duly recorded.

A would win in North Carolina. The statute provides that "no conveyance of land," including O → A, "shall be valid" as against "purchasers for a valuable consideration," such as B, "but from the time of registration." Here, A has registered — or recorded (it's the same for our purposes) — his deed. Thus, the statute doesn't invalidate A's deed, and A prevails.

A would win in Oregon. The statute provides that "every conveyance [or] deed … which is not recorded as provided by law" "is void as against any subsequent purchaser in good faith and for valuable consideration …" We could stop right here and see that A wins, because A's deed is missing an essential element needed to trigger the statute: it is not the case that A's deed was "not recorded as provided by law." The common law approach then kicks in and A wins. You would want to notice, though, in reading the statute that if A had not recorded, there's a second element needed for the statute to invalidate A's interest: it would need to be the case that B's "conveyance [or] deed …is first filed for record." You should be able to see how this would be important to the result in number 4.

For each of the following hypotheticals, you should go through the exercise of relating your conclusion (or argument, where the answer isn't clear) as specifically as possible to the language of the four statutes. Only by attempting to work through the language yourself will you learn how to read statutes of this sort. Since you have a detailed explication of the Oregon statute, these notes will cover only Florida, California, and North Carolina.

[1] Strictly speaking, it is inaccurate to use "BFP" to cover the entire preceding phrase. "Bona fide purchaser" simply means the person took by a written instrument ("purchaser") and was without notice or reason to know, or was in good faith ("bona fide"). Thus the phrase "bona fide purchaser" says nothing about value consideration. Still, it's fine to use BFP to mean that the individual "paid valuable consideration and had no notice or reason to know," as is common. Referring to a BFP in this context is a convenient way to avoid having to use a lengthy phrase, but keep in mind that notice and value are distinct aspects.

Two additional notes about recording statutes:

(a) In the above hypothetical, B didn't record. Does that fact make B lose automatically, without going through the analysis above? No. Nothing in any of the recording statutes provides that a deed is invalid simply because it is not recorded. The same is true if it's A who didn't record. This has long been the rule. *See Earle v. Fiske*, 103 Mass. 491 (1870) ("A deed duly signed, sealed and delivered is sufficient, as between the original parties to it, to transfer the whole title of the grantor to the grantee, though the instrument of conveyance may not have been acknowledged or recorded. The title passes by the deed, and not by the registration.").

(b) What about interests not covered by the recording statute? What about a long-term lease? Consider the following:

7/1/25: $L_1 \rightarrow$ T (1 year) (warehouse). T doesn't record.
10/1/25: $L_1 \rightarrow L_2$ (sale of the warehouse). L_2 doesn't record. L_2 unaware of the lease.

Under the common law, T can occupy the warehouse for the remainder of the lease (so long as T pays rent, now to L_2, and complies with other lease terms). All L_1 could convey to L_2 as of 10/1/2025 was ownership subject to the remaining nine months of the lease.

Does the Florida statute change this result? First, the statute does apply to the lease. The statute refers to a "lease for a term of one year or longer" as one of the interests that, if unrecorded, are void against a subsequent BFP. The lease was for "one year." A lease of one year falls within the category of "one year or longer." That makes this situation like the hypothetical in number 4. T's unrecorded lease is void against "subsequent purchasers for a valuable consideration and with notice." *If* that latter phrase accurately describes L_2, then L_2 is not bound by the lease. For a complete answer, though, you'd need to consider two other matters. First, was L_2 on inquiry notice? *Waldorff* might well suggest that L_2 was. That would mean L_2 isn't a subsequent BFP. Second, if this were a residential lease (which it is not – it's a warehouse) you might need to consider whether there is some other statute designed to protect residential tenants.

Does the California statute change the common law result? Here is where you could easily go wrong if you say, "nope, California has a race-notice statute and L_2 didn't record, so the statute doesn't protect L_2 against the unrecorded lease – whereas because Florida has a notice statute, T's lease could be void if L_2 wasn't on inquiry notice." You've gotten the outcome right but for the wrong reasons. You always need to consider the precise text of the particular statute.

- The Florida statute makes a "lease for a term of one year or longer" subject to the strictures of the recording statute. That's why T's lease might be in jeopardy.
- But California makes "a lease for a term *not exceeding one year*" exempt from the recording statute ("Every conveyance … other than a lease for a term not exceeding one year" "is void …"). A lease of one year falls within the exempt category of a lease "not exceeding one year." Since it's not covered by the statute, then the common law approach applies, and all L_1 had to convey to L_2 was a warehouse burdened by a lease.

With that set of facts, you'd at least get the outcome right (but for the wrong reason) if you just categorized the statute and guessed. Suppose, though, the facts were this:

7/1/25: $L_1 \rightarrow$ T (1 year)(warehouse). T doesn't record.
10/1/25: $L_1 \rightarrow L_2$ (sale of the warehouse). L_2 records. L_2 unaware of the lease.

If you said, "L_2 wins because T's lease was unrecorded and L_2 was a subsequent BFP who recorded first – California has a race-notice statute after all" you'd be wrong (even assuming that L_2 was not on inquiry notice). You'd be wrong because a one-year lease isn't subject to the California recording statute (in contrast to Florida's). Thus the common law approach still applies, and T wins.

One final point – there will be other interests that aren't subject to the statute. For example, adverse possession is not typically subject to the recording statutes. More important, any recording statute is going to list (typically at the beginning) the kinds of interests that are expected to be recorded, and which may be put at risk under the statute if they are not.

On this general question – what interests are subject to the statute – see CB 434.

2. 2021: O $\rightarrow$ A. A doesn't record.
2025: O $\rightarrow$ B. B records. B knows nothing of the O $\rightarrow$ A conveyance.

B wins under Florida's statute. A's *unrecorded* deed is not good against "subsequent purchasers for a valuable consideration and without notice." (To put it more laboriously, no conveyance (the O $\rightarrow$ A deed) shall be valid against "subsequent purchasers for a valuable consideration and without notice" (B) unless "the same" (the O $\rightarrow$ A deed) be recorded, which it was not.) B paid for the property, and did not have actual notice of the deed to A. Nor did B have constructive notice of the deed to A, precisely because it was unrecorded. Consider what happens if you vary the facts: (a) Suppose B did in fact happen to know of the O $\rightarrow$ A deed. She would lose under the Florida statute. (b) What if B had not recorded? It wouldn't matter under the Florida statute; she would still prevail over A. That's why it's called a notice statute. (She would have to worry, however, about being displaced by a later BFP, so it would still make sense for her to record.)

B wins under the California statute. A's deed is "void as against any subsequent purchaser . . . of the same property . . . in good faith and for a valuable consideration, whose conveyance is first duly recorded." B is a subsequent purchaser in good faith and for a valuable consideration, and B recorded before A. Suppose that B did know of the O $\rightarrow$ A deed. B would lose under the California statute That is, A's unrecorded deed would be "void" only against a "subsequent purchaser" in good faith who recorded first; B recorded first, but if B knew about the O $\rightarrow$ A deed, B would not be "in good faith." The "good faith" or "*bona fide*" aspect of the test refers to what B knows or should've known about A's deed.

B wins under the North Carolina statute. It provides that A's deed is valid against "purchasers for a valuable consideration from the donor" only "from the time of registration."

Since A hasn't recorded, A can't prevail over B. B, in contrast, can prevail over A because her deed is valid against others from the time she recorded her deed. Even if A were to get around to recording his deed in late 2025 (after B had bought the property and recorded the deed), A would lose out because he would not be the first to record. Suppose, by the way, that B did know of the O → A deed. It would make no difference under the North Carolina statute. You would still say that A's conveyance could be valid as against "purchasers for a valuable consideration" *only* "from the time of registration," which hasn't yet happened in A's case. It's for that reason that we call North Carolina's statute a race statute: nothing turns on notice.

3. 2021: O → A. A doesn't record.
2025: O ⇒ B. B records. B in fact knows nothing of the O → A conveyance.

A wins out under the Florida statute. No unrecorded conveyance (O→A) shall be valid against any "subsequent purchaser[s] for a valuable consideration and without notice." Does that latter phrase describe B? B may be "without notice." But is B a "subsequent purchaser[s] for a valuable consideration"? No. B got it for free (see the key at Supp. 166A above). Therefore the statute does not invalidate A's interest as against B; and under the common law, A wins.

A also wins out under the California statute. A's deed would be "void as against any subsequent purchaser . . . in good faith and for a valuable consideration, whose conveyance is first duly recorded." B recorded before A and did not know of the deed to A, but B is not a purchaser for valuable consideration.

Note that if A is living on the property, B might be said to have inquiry notice of the O → A grant. How would that affect the analysis under the preceding statutes?

Although the North Carolina statute is usually called a "race" statute, timing isn't necessarily everything under it. By one account, A would appear to win out. The statute makes A's interest void only against other "purchasers *for a valuable consideration*" who record first. To simplify: At first reading, it might appear that the statute says that the O → A deed would not be valid to pass an interest against another purchaser but from the time of registration. Actually, though, it doesn't say "purchaser," but "purchaser[] for a valuable consideration." B doesn't qualify on that ground. (Purchaser simply means someone who takes by a written instrument, not someone who buys it; that is why the phrase "purchaser for a valuable consideration" is not redundant.)

On the other hand, as noted in the comments on number 4 below, the North Carolina statute doesn't have the word "subsequent" in it, unlike California and Florida. So there's no reason why you couldn't analyze it this way: "No conveyance" (O → B) is valid against a purchaser for valuable consideration (which A clearly is) but from the time it (the O → B deed) was registered. Or, to put it differently, the deed to B is valid as against a purchaser for valuable consideration from the time at which it was registered, though not earlier. Since B's deed is registered, it's valid against A.

Which of these two readings should prevail? The second one is in a general way more consistent with the idea of a race statute, since B wins under it by recording first. But if

being first to record is all that matters, why include the reference to "purchasers for a valuable consideration"?

After he became a Justice of the North Carolina Supreme Court, Henry Groves Connor, the state legislator who sponsored the 1885 Act on which North Carolina's statute is based wrote that the statute:

> applies only to deeds, contracts to convey, and leases of land. The statute is directed to the protection of creditors and purchasers for value. The evil which [the statute] was intended to remedy was the uncertainty of title to real estate caused by persons withholding deeds, contracts, etc., based upon a valuable consideration, from the public records. This evil could not exist in regard to wills, as the devisee [is] not a purchaser for value, but [takes] as donee or volunteer.[2]

What does this remark suggest? Note that he said that the statute applies to "deeds, contracts to convey, and leases of land," but that the evil to which the statute was addressed did not include wills. If the recording statute simply does not apply to wills, then it would matter whether the "⇒" symbol in the problem signifies a will or a gift. If the former – if we read the problem as "O [the testator] ⇒ B" – the statute would not apply, and we would go by the common law first-in-time approach, in which case A wins. Note how strange that might seem: A wins in a state with a race statute, even though A did not record and B did.

Note, though, that Justice Connor's remark ambiguous. One way to see this is that Justice Connor also talks about people "withholding deeds, contracts, etc." A deed can effect a transfer of a gift, or a transfer by a sale. The 2025 transaction, "O [still alive] ⇒ B" could be an *inter vivos* gift, not a will, and would be accomplished by a deed from O to B. So did he mean the statute applied only to deeds in case of transfers for value, but not to deeds that effectuate a gift, and not to wills?

Another way to see the ambiguity is to consider Justice Connor's underlying account of what the law was intended to accomplish. He seems to say that:

(1) the law was intended to protect purchasers for value, and
(2) the law was intended to address the problem of people causing uncertainty in land title by not recording a deed based on valuable consideration.

If in applying the statute we are guided by (1), *B* shouldn't be protected, because whether the transfer in 2025 was a gift or a testamentary disposition, it was for free – *i.e.*, not based on valuable consideration. If in applying the statute we are guided by (2), however, *A* shouldn't be protected, because A caused a problem with the land records by failing to record.

One way to reconcile these different accounts of the statute's purpose would to be question whether A "caused uncertainty" in the title in the relevant sense. Did A cause B any uncertainty? Maybe not. An individual who receives land for free (whether by gift or devise) is not going to do a title search before deciding whether to accept it (why look a gift horse in the mouth?); since B does not rely on the absence of a record of the deed to A, there is no

[2] Bell v. Crouch, 43 S.E. 911, 912 (N.C. 1903) (quoted in Charles Szypszak, *North Carolina's Real Estate Recording Laws: The Ghost of 1885*, 28 N.C. CENTRAL L.J. 199, 210 (2012)).

practical sense in which A caused B any uncertainty. This would suggest that A should win.

It does seem from the history of the statute that a typical example of the problem the legislature had in mind was a landowner borrowing from a lender, who did not record the mortgage; then the landowner borrowed from another lender who was unaware of the prior encumbrance. This, too, strongly suggests that the interpretation that has A winning and B losing is the correct one, since B did not act in reliance on the apparent absence of any prior conveyance of an interest.

4. **2021: O → A.** **A doesn't record.**
2025: O → B. **B doesn't record. B knows nothing of the O → A conveyance.**

B wins out under the Florida statute. A's unrecorded deed is not valid against "subsequent purchasers for a valuable consideration and without notice." B's own failure to record is irrelevant.

A wins out under the California statute. That statute makes his interest void only against "any subsequent purchaser . . . of the same property . . . in good faith and for a valuable consideration, . . . *whose conveyance is first duly recorded*." B has not recorded yet. Since the statute doesn't invalidate A's interest, A wins out under the common law.

It is harder to infer from the language of the statute who wins in North Carolina where neither A nor B has yet recorded. One could read the statute to provide that A's *unrecorded* deed will be valid against subsequent "purchasers for a valuable consideration" *only* from the date that A registers his title. Since A hasn't yet registered his title by recording it, A's deed would be invalid against B's deed. Note, however, that the word "subsequent" doesn't appear in this statute. Thus A could argue that B's deed can be valid to pass title as against A only "from the time of registration" of B's deed, which hasn't happened yet. Thus the statute invalidates B's interest. One way to view this is that since the statute doesn't pick a winner and – given that it's a race statute – it might make the most sense to view it as not applying when neither party has recorded. In that case one falls back on the common law first-in-time rule, and A wins out. If subsequently A records before B does, then A will still win out. If B gets around to recording before A does, then at that point B will win out.

5. **2021: O → A.** **A doesn't record.**
2024: O → B. **B doesn't record. B knows nothing of the O → A conveyance.**
2025: **A records.**

A would argue that the statute protects him because he did, after all, record — even if it was two years after the conveyance, and a year after B innocently purchased the property. A's argument would be that the statute invalidates his deed as against a subsequent BFP like B only if A's deed is not recorded. A might argue that unless there's something in the statute that deems it unrecorded if it's not recorded before a later purchaser acquires it, the court should follow the plain language of the statute, treat his as "recorded," and conclude that his recorded deed is protected.

B would argue that A's *unrecorded* deed was not valid against "subsequent purchasers for a valuable consideration and without notice." The problem, B would say, is that A just recorded too late under this statute. Why would it be too late? The purpose of all of these statutes is to penalize to some degree those who don't record their deeds. Has A "recorded" in any meaningful sense? Clearly, he has not recorded in a way that gives notice to B; if B did a title search in 2024 before buying the property, she would have found no evidence of the 2021 O →A deed.

In terms of the purpose of the recording statute, B has a strong argument, and – while one would need to check the caselaw to be sure – B would probably win. But that conclusion is subject to one caveat: is there something in Chapter 695 ("Record of Conveyances of Real Estate") that would determine this issue? That might be suggested by the phrase in § 695.01, "recorded according to the law." There's nothing, however, that clearly addresses this situation. For example, Fla. Stat. § 695.11 provides that instruments are deemed to be recorded at the time the clerk's office assigns a unique recording number. But this doesn't add much to the analysis, since it's clear that A recorded after B purchased the land; the question is what impact that sequence has. (You are not responsible, by the way, for being familiar with anything in the Chapter 695 besides the excerpt from § 695.01(1) at CB 436.)

A wins out in California. That statute makes A's unrecorded deed void only against "any subsequent purchaser . . . of the same property, . . . in good faith and for a valuable consideration, . . . *whose conveyance is first duly recorded*." B is a BFP, but not one "whose conveyance is first duly recorded." Thus, the statute doesn't invalidate A's interest, and A wins out under the common law. By recording in 2025, A has made certain that B will never prevail over him. It will never be possible for B to claim that she was a subsequent BFP whose conveyance was first duly recorded.

A wins out under the North Carolina statute. A's deed could be valid against "purchasers for a valuable consideration," but only from the date that A registers his title. By recording in 2025, A has made his title valid as against B's.

6. **2021: O → A. A doesn't record or take possession.**
2024: O → B. B records. B knows nothing of the O → A conveyance.
2025: B → C. C was the lawyer who drew up the O → A deed. C records.

Note that the dispute is now between A and C. Make sure in hypotheticals like these that you first identify who the contending parties are. Both O and B have conveyed away whatever interest they may have had. No court is going to find that either O or B somehow owns the property in those circumstances. It's purely a question of whether A or C wins out.

C wins out under all the statutes. Why would C win under a notice statute or a race-notice statute, either of which would seem to require that C be a bona fide purchaser? Note that C is not a BFP: he knew about the prior conveyance to A. The answer is that C wins under the **shelter doctrine**. The "shelter doctrine" is described at CB 435. The doctrine works as follows: B got a good title from O. (If you do not understand why, see the preceding

examples.) Having acquired a good title, B can now convey it to C even if C does not himself qualify for protection under the recording act. C would not qualify for protection under a notice or race-notice statute because C knew about the O → A deed. (*Optional*: How would you judge C's behavior as a lawyer under the Model Rules of Professional Conduct, Rule 1.9 (Duties to Former Clients)?)[3]

Why have the shelter doctrine? The usual reason given is that without the shelter doctrine, B might find it difficult or impossible to sell her property. The O → A deed, for example, might become notorious if O's fraudulent ways were generally exposed and there were a widely publicized scandal. That would then mean that everyone would know about the O → A deed, and it would be hard for anyone to be a purchaser "without notice" of A's claim.

In this hypothetical, you should note, C does not need to rely upon the shelter doctrine to prevail as against A under North Carolina's race statute. Why not? Because A's conveyance is not "valid to pass any property interest as against . . . purchasers for a valuable consideration from the donor . . . but from the time of registration." The deed to A cannot prevail over the deed to C because A did not record before C.

7. **2021: O → A. A doesn't record or take possession.**
2024: O → B. B records. B knows nothing of the O → A conveyance.
2025: B → O. O records.

The preceding example (number 6) might lead you to believe that O would win out under the shelter doctrine. Most courts would make an **exception to the shelter doctrine** under these circumstances. Otherwise, O would have sold the land twice, and bought it back once, ending up with both Blackacre *and* A's purchase money. (B is not harmed because O paid B to get the property back.)

Note also that this exception might suggest an argument you could make in number 6 on behalf of A, depending on the facts. If C was acting on O's behalf, you could in effect say that C was O's agent, and should fall under this exception to the shelter doctrine.

8. **2021: X → O. O records.**
2024: O → A. A records, but the clerk's office mistakenly records the deed in the grantor index under "D" instead of "O."
2025: O → B. B records. B knew nothing of the earlier conveyance to A.

The dispute here is between A and B; both X and O have conveyed away whatever interest they may have had. This is the problem of **mis-indexed deeds**. A would claim that he is first in time and therefore prevails under the common law, unless the recording statute provides otherwise. A would argue that a subsequent purchaser could prevail over A under a notice statute such as Florida's only if A had failed to record his deed, and here, he did

[3] Available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_9_duties_of_former_clients.html

record it. A would argue that his deed could be invalidated under a race-notice statute such as California's only if B were a subsequent BFP *who recorded before A*, which B did not do.

B, however, would have arguments of her own. B would claim that A's deed was not "recorded," in this sense: there is no way that she could have ever found the deed to A by a reasonable search of the title records.

Before purchasing from O, B would first want to know where O got the title from. So B would check O under the grantee index, and find the X → O deed. (She would then continue on in the grantee index, looking up X, etc., all the way up to the sovereign.)

Then, working her way back down the chain of title, B would end up checking to see whether O had conveyed the property to anyone since acquiring it in 2021. B would not, of course, find the O → A deed, because that deed was misindexed in the grantor index under **D**. Why should B check the *D* index for 2021-2025 (or any other index besides the part of the *O* index that covers the period from 2021-2025)?

How could one resolve a question like this? It's clearly a problem in which both A and B are innocent, and seem to have done about everything they could've done. The courts are divided on the issue. Apart from any statute that might apply, B may have a slightly stronger argument here. That is, B could argue that A was in a better position to prevent O from carrying out his fraudulent scheme; A at least could have gone to the court a few days after recording to see if the deed had been indexed properly. A, being the "cheapest cost avoider," should be the one to bear the cost here so that others in his position will check the records out in the future.

9. **2008: X → O. O records.**
2010: O → A. A does not record.
2021: O → B. B knows of the 2010 O → A deed. B records.
2024: A records the 2010 O → A deed.
2025: B → C. C has no actual knowledge of the O → A deed.

The dispute here is between A and C. X, O, and B have all conveyed away whatever interest they may have had. Once again, this hypothetical raises the question of what constitutes "recording" — here when A "**records too late**". That is, there is no way that C would find the O → A deed by a reasonably limited title search. He would look B up in the grantee index, and find the 2021 O → B deed. Then he would look O up in the grantee index and find the 2008 X → O deed. Then C would look up O in the 2008-2021 grantor indexes to see if O conveyed away his interest before executing the 2021 O → B deed that C had found in the title search. In attempting to see whether O had in fact conveyed away the property before selling it to B, C would probably look only in the grantor indexes for the period 2008-2021. If so, C would not find the 2010 O → A deed, because it was not recorded until 2024, at which point it would be indexed. C would then conclude that B had good title. (Why would C not look in the later indexes? It's not hard to see how burdensome the search would become, if for every deed you found in the chain of title, including

older ones, you had to search the indexes for all subsequent years to find a deed like +the one 2010 deed recorded in 2024. (Note that the O → A deed would be recorded in the indexes for the time at which it was received for recordation -- *i.e.*, 2024.)

Even though there seem to be good reasons for holding for C (see the explanation to number 5), the courts are divided on this issue. Some would hold for A as against C. A's deed is recorded, and (as pointed out in number 1 above), the recording statutes generally invalidate a prior *unrecorded* deed against subsequent purchasers who fulfill the statutory requirements.

Others would hold that C wins, on the ground that C could not reasonably be expected to search for conveyances by O that were recorded *after* the deed to B. Holding that way would mean that each step along the way, you'd have to check the grantor indexes all the way to the present, which would vastly increase the burdens in title searching. And, after all, isn't it within A's power to do something here? A could have recorded immediately. In effect, then, some courts treat the O → A deed as "unrecorded."

For numbers 9 and 10, review CB 443-444.

10. 2010: O → A. A records.
2021: X → O. O records.
2025: O → B. B doesn't know of the 2010 O → A deed. B records.

The dispute here is between A and B; both X and O have conveyed away whatever interests they may have had. Here the problem is that A "**recorded too early**." To see what would happen here, you need to know about the doctrine of **estoppel by deed.** Suppose O give A a deed purporting to convey Blackacre, even though O doesn't in fact own Blackacre. Then later, O buys Blacakcre from X. Under the doctrine of estoppel by deed, O will be estopped from denying A's ownership.[4] And A would have had good title as against O even after

[4] There is an exception to estoppel by deed. The doctrine of estoppel by deed would likely not apply if the deed (O→A) was a quitclaim deed.

Recall the description of warranties in a deed (CB 390-391). As mentioned in class, all you need to know is this: Broadly speaking, there are two kinds of deeds. The first is a warranty deed, in which the grantor warrants that she actually owns what she purports to convey (present covenants) and promises to defend the title and make things right if that turns out not to be the case (future covenants). (Warranty deeds can be subdivided: into general warranty deeds and specialty warranty deeds. In general warranty deeds, the grantor warrants as to the particular condition of the title, and is responsible for defects that arose either before the grantor herself owned the property and defects that arose while she owned it. Special warranty deeds cover only defects that arose during the grantor's ownership of the property.)

The second is a quitclaim deed. There are no warranties; the grantor just conveys whatever interest, if any, the grantor may have in the property. (Keep in mind, by the way, that the warranty/quitclaim issue applies only to the state of the title. It's entirely irrelevant to questions about the condition of the property, which are covered by caveat emptor or duty to disclose.) [*Footnote continues on next page*]

the 2021 conveyance. (All the doctrine means is that if someone like O purports to sell land he doesn't in fact own, the moment that O does acquire title to the land from the true owner, he is "estopped" to deny the buyer's (A's) title. The reasons for the doctrine should be obvious.) The question here is whether A's title could be divested by the subsequent deed from O to B in 2025. A would argue that any recording statute could invalidate his interest against a subsequent BFP only if A's deed were not recorded (or not recorded first, depending on the statute). His deed, he would argue, was recorded immediately, in 2010. B would argue, in contrast, that the 2010 deed was not "recorded" because no reasonable title search would reveal that deed: why should B have to check to see whether O ever conveyed the property *before he got title to it*? Most but not all courts would agree with B. Aside from the fact that there's not much that B could do, consider that A really should've wondered, in 2010, how O could be selling him the property. After all, if A had done a proper title search in 2010 when he bought the land, he would've been unable to find a deed conveying the property to O, because in fact there was no such deed at the time.

But would this ever happen in real life? Of course. There is no crazy thing leading to legal complications that hasn't happened somewhere, sometime. *See* Sabo v. Horvath, 559 P.2d 1038 (Alaska 1976) (no need to read it unless you're curious).

It should be obvious now why there would be an exception to estoppel by deed for quit-claim deeds. Since O did not warrant anything to A, including O's ownership, the court would not hold O estopped from denying A's ownership once X conveyed to O.