Concurrent Interests Cont’d

- *Harms v. Sprague* – mortgages
- *Delfino v. Vealencis* – partition in kind v. partition by sale
- *Spiller v. Mackereth* – sharing the benefits and burdens

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**Harms v. Sprague,**
1473 N.E.2d 930 (Ill. 1984), Casebook p. 285

- Does the mortgage destroy the unities?
  - Title Theory
  - Lien Theory
- Did the mortgage survive as a lien on one-half of the estate after John’s death?
- Section 20-19 of the Probate Act
**Harms v. Sprague cont’d**

**Risk of Lien Not Surviving**

- Institutional lenders
  - Joinder
  - Severance
- Individual lenders (such as the Simmonses)
- Lien creditor
  - Foreclosure/partition by judicial sale

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**Partition in Kind v. Partition by Sale**

- Sale should be ordered when—
  - physical attributes of land make partitioning impractical **AND**
  - the interests of the parties would be better served by sale.
- Party desiring sale bears burden of proof.
**Delfino v. Vealencis cont’d**

**Trial Court’s Findings of Fact**

1. Approval of subdivision would be difficult if garbage business remained.
2. Lots would not sell or would sell for less if garbage business remained.
3. Three lots proposed for subdivision would need to be consolidated.
4. Extension of roads would be routed through one of the lots proposed for subdivision.

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**Spiller v. Mackereth,** 334 So. 2d 859 (Ala. 1976), Casebook p. 300.

**The Benefits and Burdens of Co-Ownership**

- When must a co-tenant pay rent?
  - Ouster defined
  - Evidence of ouster
- Majority Rule v. Minority Rule
  - Advantages
  - Disadvantages