

Property

- Module 13
- Co-Ownership and Marital Property

Common Law Concurrent Interests

- Tenants in common
- Joint Tenants
 - Right of survivorship
 - Four unities (time, title, interest, possession)
- Judicial partition
- Tenancy by the entirety
 - Neither can defeat the right of survivorship
 - Neither have partition right

Concurrent Interests

- Tenancy in Common (sometimes simply “cotenancy”)
 - If a conveyance is made to more than one person without specifying what type of estate is intended, the modern presumption is that it is a tenancy in common.
 - Each tenant’s interest can pass by grant, devise, or descent.
 - Each tenant has a separate fractional but undivided interest in the whole, and accordingly each tenant has a right to possession of the whole.
 - Each cotenant’s interest is *fractional* insofar as it applies to money: income and expenses, proceeds of sale, etc. (with some complications)
 - Each cotenant’s interest is *undivided* in that the rights of ownership (possession, exclusion, use, etc.) apply to the *entire parcel*.

Concurrent Interests

- Rights and Duties of Cotenants
 - Right to Possession and Duty to Pay Rent
 - Ouster
 - *Martin v. Martin*
 - Contribution
 - Accounting
 - Repairs and Improvements
 - Waste

Martin v. Martin (Ky. Ct. App. 1994)

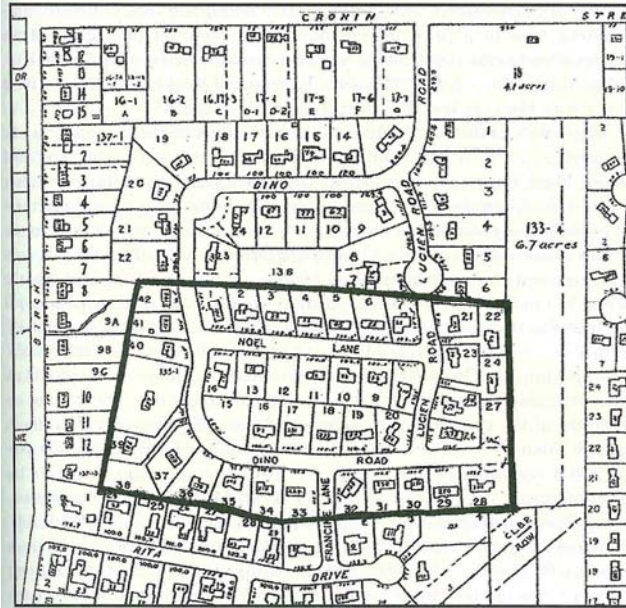


- Dispute?
- Rule for rent among co-tenants
- Ouster – malleable standard
 - not liable to pay rent absent ouster or agreement
- Ouster for rent among cotenants
 - Majority – need physical exclusion
 - Minority – allow “constructive” ouster

Delfino v. Vealencis (Conn. 1980)

- Dispute?
- Partition
 - Types?
- Partition by sale conditions
 - Physical attributes of the land are such that a partition in kind is impracticable or inequitable
 - Interests of owners better promoted by a sale

Delfino v. Vealencis (Conn. 1980)



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Concurrent Interests

● Joint Tenancy

● (a/k/a/ “Joint Tenancy with Right of Survivorship” or “JTWROS”)

- Each tenant owns the undivided whole of the property
- Upon the death of any one tenant, the undivided interest continues to be held by the surviving joint tenants; the deceased tenant’s interest ceases to exist (this is the right of survivorship)
- A JTWROS can only be created by explicit language indicating the intent to create a JTWROS, and only if the four “unities” are satisfied:
 - Time: all joint tenants must acquire their interest simultaneously
 - Title: all joint tenants must acquire their interest by the same instrument
 - Interest: all joint tenants must have equal undivided shares of equal duration
 - Possession: at the time the estate is created, each joint tenant must have a right to possession of the whole.
- Destruction of any one of the unities severs the joint tenancy as between the tenants who no longer share the unities, converting it to a tenancy in common.

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Concurrent Interests

● Joint Tenancy: Mechanics

● The Right of Survivorship

- Compare:
 - O conveys Blackacre “to A and B for their joint lives; remainder to the survivor.”
 - O conveys Blackacre “to A and B as joint tenants with the right of survivorship.”
- A then conveys “all my right, title, and interest in Blackacre to C and her heirs.”
What is the state of title if A predeceases B? If B predeceases A?
- Severance: Destruction of any one of the unities converts a joint tenancy to a tenancy in common

Concurrent Interests

● Joint Tenancy: Severance

● Unilateral Severance

- At common law: Required a “straw man”: a third party to serve as grantee of the severing joint tenant’s interest who would then convey that interest back to the severing tenant
- In modern law: A joint tenant may sever by unilaterally conveying her interest *to herself* (destroying the unities of time and title)
- Consider NY Real Property Law § 240-c:
“No [unilateral] severance of a joint tenancy ... shall terminate the right of survivorship of any non-severing joint tenant or tenants as to the severing tenant’s interest unless the deed or written instrument effecting the severance is recorded, prior to the death of the severing tenant, in the county where the real property is located.”

Why require a public record of unilateral severance?

Concurrent Interests

● Joint Tenancy: Severance

- Partial Severance:
 - Suppose O conveys Blackacre “to A, B, and C as joint tenants with the right of survivorship.” C then conveys “all my right, title, and interest in Blackacre to D and her heirs.” A then dies. C then dies. What is the state of title?

Concurrent Interests

● Joint Tenancy: Severance

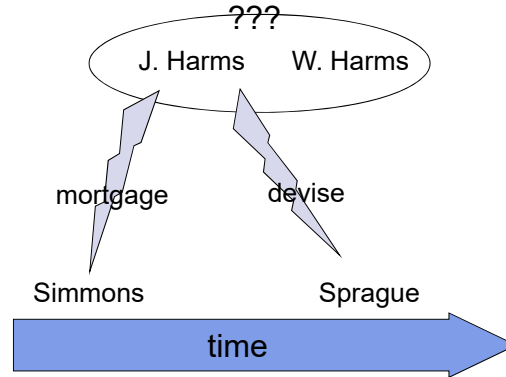
- What Else can Sever a Joint Tenancy?
 - A partition action (once a judgment or writ of partition is entered)
 - Intentional Homicide
 - A mortgage? *Harms v. Sprague*
 - Why not a will?

Harms v. Sprague (Illinois 1984)

- Dispute

- Issues

- Is J/T severed when less than all holders mortgage their interest?
- Does this mortgage survive the death of the mortgagor as a lien on the property?



- Characterization and effect of mortgage

- Options?
 - Lien theory versus title theory

Concurrent Interests

- Marital Interests:

- Tenancy by the Entirety
- Community Property

Concurrent Interests

● Community Property:

- Prevalent in Western States (most significantly California)
- Background principles:
 - Property acquired by spouses before they marry is their “separate” property
 - Most property acquired by either spouse during the marriage is “community” property.
- Each spouse has an undivided ½ interest in all community property
- Spouses may contract around community property rules (e.g., in a pre-nuptial agreement)

Concurrent Interests

● Tenancy by the Entirety

- A form of concurrent ownership available only to spouses
- Similar to Joint Tenancy in that it has a right to survivorship
- Dissimilar in that neither spouse may unilaterally sever; severance can only be by agreement or by divorce.
- Key issue: availability of entirety property in satisfaction of the debts of only one spouse.
 - Federal Tax Law: *U.S. v. Craft*
 - State Law: *Savada v. Endo*

US v. Craft (2002)

- Don Craft – no tax filings for 1979 to 1986
- Tax lien effect on entireties property
- Do the state-delineated rights qualify as ‘property’ or ‘rights to property’?
- What rights to property did Don Craft have as an entireties owner?

- Majority reasoning

- Dissent reasoning