CALIFORNIA REAL PROPERTY ESSAY WORKSHOP

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CHAPTER 1: CALL OF THE QUESTION; APPROACHES; COMMON FACT PATTERNS; SUBSTANTIVE ISSUES

A. Call of the Question

- Tends to be very broad; not given a lot of guidance
- Read the fact pattern multiple times!

B. Ways to Approach Real Property Essays

- Chronologically—address the facts and the issues in the order presented.
- By Party—address each party's property interest separately.

C. Common Fact Patterns

1. **Landlord-Tenant**
2. **Covenants and Equitable Servitudes**
3. **Joint Tenancy**
4. **Easements**
5. **Ownership**
6. **Takings**

D. Substantive Issues: Ownership

1. **Present Estates**
   a. **Fee Simple Absolute—absolute ownership**
   b. **Fee Simple Determinable**
      - Ownership terminates if a condition occurs and passes automatically to grantor
      - Look for durational words: “as long as,” “until”
   c. **Fee Simple Subject to Condition Subsequent**
      - When the condition occurs, the grantor can exercise a right of reentry
      - Look for conditional words (“but if”) and words such as “right to re-enter”
   d. **Life Estate**—Ownership terminates upon the end of the measuring life
   e. **Restraint on Alienation**
      - A grantor can place a reasonable restraint on the grantee’s ability to freely transfer
      - Reasonable if the restraint only lasts for a specified period of time

- Unreasonable if restriction continues on indefinitely, if it applies to grantee's heirs, or if it applies in perpetuity
- Unreasonable restraints will be stricken from conveyance

Example 1: *Grantor conveys his estate as follows: "to A for long as he does not make any transfer of Greenacre. In the event of such a transfer, Greenacre shall automatically revert back to Grantor." This is likely an unreasonable restraint on alienation.*

2. Concurrent Estates

a. Tenants in Common

- Each tenant owns an undivided interest in the entire property
- This interest is freely devisable or transferable

b. Joint Tenancy with Right of Survivorship

- When one joint tenant dies, the interest goes to the other joint tenants
- Must have **express language** creating a joint tenancy
  - Must have four unities (possession, interest, time, title)

Exam Tip 1: The exam might expressly say that a joint tenancy has been created. Severance of an existing joint tenancy is a commonly tested issue.

c. Severance of Joint Tenancy

Example 2: *A and B are joint tenants with rights of survivorship. If A transfers his land to C, this severs the joint tenancy. C and B are tenants in common.*

- If one joint tenant conveys his interest, it severs (destroys) the joint tenancy and creates a tenancy in common.

Example 3: *A, B, and C are joint tenants with right of survivorship. A sells his interest to D, severing the joint tenancy. D is a tenant in common, but B and C are still joint tenants with each other. If B dies, her interest will go to C because C has a right of survivorship with B. C will own 2/3 and D will own 1/3 as tenants in common.*

d. Rights and Obligations of Cotenants

1) **Possession**—each cotenant has the right to possess the entire property

a) **Ouster**: A cotenant who is being denied access can bring a court action to regain access to the property

b) **Adverse Possession**: If one cotenant ousted the other, he can make a claim for adverse possession if he meets the requirements.

Example 4: *Cotenant A prevents Cotenant B from accessing the property. Cotenant A has ousted Cotenant B. If Cotenant B does not bring a court action, Cotenant A may be able to acquire the entire property by adverse possession (if she meets all of the requirements).*

2) **Rent**—a cotenant does not owe rent for his use of the property but must share rents received from a third party

3) **Operating Expenses**—a cotenant can generally collect expenses if he paid more than his share (taxes, mortgage payments) unless he is the only one in physical possession of the property, and the value of his use is equal or outweighs the overpayment.

4) **Repairs and Improvements**

- **Repairs**: A cotenant does not have a right to be reimbursed by other cotenants for repairs, even if necessary. However, the majority rule is that contribution for necessary repairs can be compelled in accounting or partition actions. In some jurisdictions, an action for contribution can be brought if notice was given.
    - When a third party is occupying the property, a cotenant who collects rent from the third party can subtract expenses for necessary repairs from the rent received before sharing the rent with other co-tenants.
- **Improvements**: Except in actions for accounting partition, a cotenant does not have a right to reimbursement for improvements.

CHAPTER 2: LANDLORD-TENANT AND LAND-SALES CONTRACTS

A. Landlord-Tenant

1. Types of Leaseholds

a. Tenancy for Years—created by express agreement for fixed period of time

b. Periodic Tenancy—repetitive, ongoing estate measured by set periods that automatically renew (i.e., month-to-month)

c. Tenancy at Will—parties must expressly agree, no fixed period of time, may be terminated by either party at any time

d. **Tenancy at Sufferance**—a tenant wrongfully holds over past the expiration of the lease, lasts until eviction or converts into a periodic tenancy

Example 5: *A landlord and a tenant enter a tenancy for years. At the end of the lease term, the tenant refuses to leave and refuses to pay rent. The tenant becomes a tenant at sufferance (i.e., holdover tenant). The landlord and the tenant later come to an agreement, and the tenant is allowed to remain on the premises on a month-to-month basis. This creates a periodic tenancy.*

2. Landlord and Tenant Duties

a. Tenant's Duties—pay rent, avoid waste, and make reasonable repairs

1) Withholding/Deduction of Rent

- If landlord breaches the covenant of quiet enjoyment
- If the landlord violates the implied warranty of habitability (residential only)

2) Waste—tenant cannot damage the property and must repair damages he causes

3) Failure to Pay Rent—landlord can sue for damages and eviction

4) Abandonment—if the tenant abandons the property, landlord can accept as an offer of surrender

5) Duty to Mitigate—landlord has a duty to try and re-lease the property to mitigate the damages

b. Landlord's Duties

1) Duty to Deliver Possession—landlord must deliver actual possession of premises to tenant

Example 6: *A prior tenant refuses to leave the premises when his lease is up. The new tenant can withhold rent until the prior tenant is removed and the landlord delivers actual possession of the apartment.*

2) Duty to Repair—landlord must repair damages under residential leases, unless the tenant caused the damages

c. Implied Warranty of Habitability

- Only applies to residential leases
- Landlord must maintain the property such that it is reasonably suited for residence
- Failing to comply with housing codes is a breach, especially violations related to health or safety

Exam Tip 2: Look for failure to provide heat, electricity, running water, or plumbing. These would render a property unfit for residential use.

- Tenant must give notice to the landlord and reasonable opportunity to repair

- If the landlord fails to make repairs, the tenant may:
  - Stay in the property and deduct rent until the repair occurs,
  - Stay in the property, pay for repairs, and deduct the cost from rent, or
  - Terminate the lease and move out

d. Covenant of Quiet Enjoyment

- Applies to residential and commercial leases
- The landlord cannot disrupt the tenant's possession or enjoyment of the property
- Landlord also has a duty to take action against other tenants' nuisance-like behavior and to control common areas

Exam Tip 3: Usually tested through constructive eviction.

e. Constructive Eviction

- Landlord substantially interferes with the tenant's use and enjoyment of the land,
- Tenant gives notice of the problem and reasonable time for the landlord to repair, but the landlord does not repair, and
- Tenant vacates the premises in a reasonable amount of time

Exam Tip 4: A landlord's breach of duty will often arise as a tenant's defense

3. Assignment/Sublease

a. Assignment—a transfer of the tenant's remaining lease to a new party

- Assignments are generally allowed, unless prohibited by the lease
- Assignee-tenants are liable to landlord for rent and covenants that run with the land because they are in privity of estate with landlord

b. Sublease—a transfer of a portion of the tenant's lease (less than the remainder of the lease)

- Sublessee-tenants are not liable to landlord for rent or covenants because they are not in privity of contract or privity of estate

c. Prohibition Clauses—clause in the lease prohibiting assignment or sublease

- If the lease prohibits only assignment, the tenant may still sublease
- If the tenant violates the prohibition, the landlord can terminate the lease
- Waiver—if the landlord accepts payment from the new tenant, he waives the right to enforce the prohibition clause
- Consent—some clauses allow assignment or sublease only with the landlord's consent, but the landlord can only withhold consent on a commercially reasonable ground

Example 7: *A tenant signs a lease stating that she can only assign her lease to another person with the permission of the landlord. The tenant finds a new job out of state and wishes to assign her lease to a friend, who is a lawyer. The*

landlord refuses to allow the assignment because he does not like lawyers and does not want to rent to one. This is not a commercially reasonable ground for withholding consent, so the tenant will be allowed to assign her lease..

B. The Land-Sales Contract

- A contract for the sale of real property is subject to the same requirements as other contracts (offer, acceptance, consideration, Statute of Frauds)

1. Implied Covenant of Marketable Title—implied covenant in all land-sales contracts promising that there are no encumbrances on the land

- Seller is not required to deliver marketable title until the day of closing
- If encumbrances not cured by closing, buyer can sue seller for breach of the implied covenant
- Merger—If buyer does not discovery encumbrance until after closing, buyer is not able to sue under this breach-of-contract theory because the land-sales contract and the deed have merged. Buyer must sue for breach of deed warranty.

CHAPTER 3: TITLES AND RECORDING ACTS

A. Titles

1. Adverse Possession

a. Continuous

- Seasonal or infrequent use may be sufficiently continuous if it is consistent with the type of property that is being possessed
- Tacking—an adverse possessor may tack on his predecessor's time in order to satisfy the statutory period if there is privity between successive possessors

b. Actual

c. Open and Notorious

- Possession must be such that a reasonable true owner would become aware of the claim; hidden uses not sufficient

d. Hostile—without the owner's permission and with intent to claim land as your own

e. Exclusive

Exam Tip 5: Look out for adverse possession in the context of a cotenancy.

Example 8: *A and B are cotenants, so each has the right to possession of the land. A excludes B from the land (ousted) and therefore has exclusive and hostile possession. The issue is whether A meets all the requirements for adverse possession.*

2. Deeds

a. Valid Deed Requirements

Must identify the property and the parties, must be signed, and must include words of transfer

b. Intent to Transfer a Valid Deed

1) **Transfer to grantee—**creates a presumption of intent to transfer

2) **Transfer to Third Party Agents**

If grantor gives deed to an independent third party for delivery to the grantee upon a condition, the deed will not be deemed delivered if the grantor reserves the right to take the deed back

If the grantor does not reserve the right to take the deed back, the grantor's intent to presently transfer the property is determined by the facts.

- If the grantor intended to presently transfer, he cannot void the gift later
- If the grantor did not intend to presently transfer, the transfer is not valid

3) **Testamentary Transfer**

If the grantor gives the deed to an independent third party for delivery upon the grantor's death, the grantor's intent to make a present transfer is determined by the facts.

- If the grantor intended to transfer only upon his death, it is not a present intent to transfer.
- Such a transfer is a testamentary transfer and must meet the requirements of a will (written, signed, witnesses).

B. Recording Acts

- A valid deed need not be recorded to convey good title. However, it is a good idea to record because it establishes priorities among conflicting claims.

Exam Tip 6: This issue will typically arise in a dispute about ownership or about priority among mortgages.

Example 9: *A sells land to B. A then sells the same land to C. B and C discover that they purchased the same land and dispute who has true ownership of it.*

Example 10: *A deeds an easement over his land to B. B does not record the easement. Later, A sells his land to C, who immediately records her deed. One year later, B records the easement.*

1. **Types of Statutes**

   a. **Notice Statute**—If a person purchases land without notice of a prior interest, the person will prevail in an ownership dispute against the prior interest

      - Example of a notice statute: "No prior 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."

        Example 11: *A sells land to B. B does not record his deed. A then sells the same land to C, who has no notice of B's ownership. C will prevail in a notice jurisdiction.*

   b. **Race Statute**—The first person to record their deed will prevail in an ownership dispute, regardless of knowledge.

      - Example of a race statute: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value unless the same be *first recorded* according to law."

        Example 12: *A sells land to B. B does not record his interest. A then sells the same land to C. C knows about A's earlier sale to B. C records her interest on Monday. B records his interest on Tuesday. C will prevail in a race jurisdiction.*

   c. **Race-Notice Statute**—If a person purchases land without notice of the prior interest, and records first, the person will prevail in an ownership dispute against the prior interest.

      - Example of a race-notice statute: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice who shall first record."

        Example 13: *A sells land to B. B does not record his interest. A then sells the same land to C, who has no notice of B's ownership. C records her interest on Monday. B records his interest on Tuesday. C will prevail in a race-notice jurisdiction.*

        Exam Tip 7: Recording acts also apply to mortgages for priority purposes.

2. **Bona Fide Purchaser (BFP)**

   - A BFP is a person who pays value for the property and takes it without notice of prior claims.
   - Notice and Race-Notice Statutes protect BFPs.
   - **Shelter rule—g**rantors who are protected by the recording act protect (or "shelter") their grantees who would otherwise be unprotected.

     Example 14: *A sells land to B. B does not record his interest. A then sells the same land to C, who has no notice of B's ownership. C records her interest on Monday. B records his interest on Tuesday. C later sells the land to D. D is sheltered under C's BFP status.*

- "Paid value" requires that the buyer actually purchase the land. Grantees who acquire title of property by gift, intestacy, or devise are *not* protected by the recording act against prior claims to the same property, even when those claims are not recorded.

3. Notice

a. Actual—Actual knowledge

b. Inquiry—Reasonable investigation would have disclosed prior claims

c. Constructive—Grantees are on notice of anything recorded in the chain of title

4. Types of Deeds

a. General warranty deed—guarantees that the grantor holds six covenants of title

- Present covenants: covenant of seisen, covenant of right to convey, covenant against encumbrances
- Future covenants: covenants of quiet enjoyment, warranty, and further assurances

b. Special warranty deed—contains same covenants as general warranty deed but only warrants against defects arising during the time the grantor had title

c. **Quitclaim deed**—no covenants

CHAPTER 4: RIGHTS IN LAND

A. Easements—the "right to use" land

- The dominant estate benefits from the easement
- The servient estate is burdened by the easement

1. Classification of Easement

- Appurtenant—attached to the land
- In Gross—specific to the person

2. Types of Easements

- Express Easement
- Easement by Necessity
- Easement by Implication
- Easement by Prescription

> ***Example 15:*** *A neighbor's dog repeatedly entered a man's property by crawling under a fence that separated their adjoining properties. As a result, the neighbor decided to cut a hole in the fence so that she could easily enter the man's property to retrieve her dog. She did so for 10 years and thereby obtained an easement by prescription.*

3. Transfer of Easement

- An easement appurtenant will usually continue after land is transferred.

4. Enforceability of Easement

> **Exam Tip 8:** Easements can be terminated in a number of ways. A highly testable way is through sale to a bona fide purchaser (a purchaser with no notice of the easement).

- If the purchaser of the servient (burdened) estate can show he is a bona fide purchaser, the easement will be terminated.

5. Scope of Easements

- Express easement – defined by written terms
- Easement by necessity – determined by extent of necessity
- Easement by implication – determined by existing quasi-easement
- Easement by prescription – limited to nature and extent of adverse use

6. Change in easement

- A change in the scope of an existing easement is tested under a reasonableness standard in light of the purpose of the easement

B. Covenants

- Covenants usually involve a promise to do or not do something in relation to land.

> ***Example 16:*** *A promises B that A will not build a restaurant on his neighboring lot because B wants to build a restaurant on her lot.*
>
> ***Example 17:*** *A owns a lot and leases it to Betty for 10 years. B promises to maintain hazard insurance on the property.*

1. Requirements for Covenant to "Run with the Land"

> **Exam Tip 9:** The facts will usually involve one of the owners selling their land to a new party. Determine whether the benefit or the burden run with the land.
>
> ***Example 18:*** *O owns Lots 1 & 2. O sells Lot 2 to B, who intends to open a restaurant. O promises to B that O will not open a restaurant on Lot 1.*

a. Writing—must comply with the Statute of Frauds to be enforceable as a real covenant

b. Intent—parties must intend for rights and duties to bind future owners of the land

> **Exam Tip 10:** Look for explicit language (e.g., "and his heirs and assigns") or implication from the totality of the document and circumstances.

c. Touch and Concern—person seeking enforcement must establish that the benefit or burden affects both the promisee and the promisor as owners of land and not merely personally.

d. Notice—only required for burden to run

- A purchaser without notice of a burdening covenant is not bound by it if protected by the recording act.

e. Horizontal Privity—only required for burden to run

- The original parties must have shared some interest other than the promise, such as grantor-grantee.

  Example 19: *A owned both parcels and sold one to B. The covenant was part of the sale to B.*

f. Vertical Privity

- Concerns the relationship between the original party and the successor party
- Burden: for the burden to run with the land, the owner must transfer the entire interest

  Example 20: *O owns a lot of land in fee simple absolute. O must convey a fee simple absolute in order for the burden to run.*

- Benefit: the benefit will run if the successor takes any portion of the original estate

2. Enforcement of Covenant

- If a covenant is violated, the injured party can sue for money damages.
- An equitable servitude is enforced by an injunction.

C. Equitable Servitudes

1. Requirements for Equitable Servitude to "Run with the Land"

- Writing
- Intent
- Touch and Concern
- Notice—only required for burden to run

CHAPTER 5: MORTGAGES; DEEDS OF TRUST; FORECLOSURE

Exam Tip 11: Mortgages and deeds of trust are treated very similarly on the exam.

A. Mortgages v. Deeds of Trust

1. **Mortgage**—an agreement that conveys a property interest in real property as security for an obligation

> ***Example 21:*** *A man conveys an interest in his vacation home to a bank in exchange for a loan. If the homeowner defaults on the loan, then the house could be sold at a public auction.*

- Lien Theory v. Title Theory
  - **Lien theory** (majority rule): mortgagor (borrower) is treated as the owner of the real property interest, and the mortgagee (lender) is treated as the holder of a lien on that interest
  - **Title theory** (minority rule): Mortgagee is treated as the owner of the real property interest, and the mortgagor possesses the right to regain ownership of the real property upon satisfaction of the obligation

2. **Deed of Trust**

- A writing grants an interest in property as security for an obligation, but the deed goes to a third party as a trustee
- If the homeowner defaults, then the deed of trust can be privately sold

3. **Purchase-Money Mortgage**

- Arises when the borrower uses the loan to purchase the mortgaged property.
- A purchase money mortgage has priority over mortgages and liens created by or that arose against the purchaser-mortgagor prior to the purchaser-mortgagor's acquisition of the property, whether or not recorded.

B. Foreclosure

- If the borrower fails to repay the loan, then the lender can foreclose upon the property
- Priority of interests:
  - The first mortgage generally gets priority over later mortgages (first in time, first in right)
  - Exception 1: A purchase money mortgage may take priority over non-purchase money mortgages.

> ***Example 22:*** *B buys his first home with a loan from Bank A and conveys a mortgage in that home to Bank A to secure the loan. Bank A does not record the mortgage. One year later, B takes a loan from Bank B to build a second story on his home and conveys another mortgage in the home to Bank B to secure the loan. Bank B immediately records the mortgage. One month later, A records its mortgage.*

Editorial Note 1: The lecturer misspeaks here. Whether Bank A has priority over Bank B will depend on the jurisdiction's recording act. The fact that

Bank A has a purchase-money mortgage means that Bank A will have super priority over liens that arose against *B prior to* B's acquisition of the property but not Bank B's mortgage.

- Exception 2: If a state recording act applies

  Example 23: *A grants a mortgage to Bank B and then to Bank C. In a race notice jurisdiction, if Bank C takes the mortgage without notice of the prior mortgage and records first, Bank C will have priority.*

CHAPTER 6: PRACTICE QUESTION: JULY 2008, QUESTION #5

Ann, Betty, and Celia purchased a 3-bedroom condominium unit in which they resided. Each paid one-third of the purchase price. They took title as "joint tenants, with right of survivorship."

After a dispute, Betty moved out. Ann and Celia then each executed a separate deed by which each conveyed her respective interest in the condominium unit to Ed. Each deed recited that the conveyance was "in fee, reserving a life estate to the grantor."

Ann recorded her deed and delivered the original deed to Ed. Celia also recorded her deed and left the original deed with Ann in a sealed envelope with written instructions: "This envelope contains papers that are to be delivered to me on demand or in the event of my death then to be delivered to Ed." Celia recorded the deed solely to protect her life estate interest. Ann, without Celia's knowledge or authorization, mailed a copy of Celia's deed to Ed.

Subsequently, Ann and Celia were killed in a car accident. Betty then moved back into the condominium unit. She rented out one bedroom to a tenant and used the other bedroom to run a computer business. Betty paid all costs of necessary repairs to maintain the unit.

Ed commenced an action against Betty, demanding a share of the rent she has collected. He also demanded that she pay rent for her use of the premises.

Betty cross-complained against Ed, demanding that he contribute for his share of the costs of necessary repairs to maintain the unit.

1. What are the property interests of Betty and Ed, if any, in the condominium unit? Discuss.

2. What relief, if any, may Ed obtain on his claims against Betty for past due rent for her use of the condominium unit and for a share of the rent paid by the tenant? Discuss.

3. What relief, if any, may Betty obtain on her claim against Ed for contribution for the costs of maintaining the condominium unit? Discuss.

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A. Issue Checklist

1. Property Interests of Betty (B) and Ed (E)

a. Joint Tenancy

1) Severance of Joint Tenancy

b. Valid Deed

c. Delivery and Recording of Deed

1) A's deed

2) C's deed

2. E's Relief Against B

a. Rent

b. Third Party Rents

3. B's Relief Against E

a. Repairs

B. Sample Answer

I. PROPERTY INTERESTS OF BETTY (B) AND ED (E)

Joint Tenancy

A joint tenancy exists when two or more individuals own property with the right of survivorship, meaning when one tenant dies the other tenant(s) receive their share of the property. Modern law calls for a clear expression of intent along with survivorship language. The joint tenancy must be created with each joint tenant having an equal right to possess the property, with each interest equal to the others, at the same time, and in the same instrument. These requirements are referred to as the four unities.

In this case, Ann (A), B, and Celia (C) purchased a three bedroom condominium together. They all paid an equal share and took title to the condominium as "joint tenants, with right of survivorship." The survivorship language they used when they took title makes it clear that they desired a joint tenancy. In addition, it appears that all four unities were satisfied since they all had an equal right to possess the property, they all had equal shares, and they took title at the same time through the same instrument. A, B, and C had a joint tenancy in the condominium.

Severance of Joint Tenancy

Joint tenants can convey all or part of their individual interests during their lifetimes to a third party, thereby severing the joint tenancy. Once a joint tenancy is transferred in this matter, the right of survivorship to that interest is destroyed and it is converted into a tenancy in common, meaning that each cotenant has an undivided interest in the property and can possess the whole. A conveyance by only one of more than two joint tenants does not destroy the joint tenancy between the remaining joint tenants.

In the case at hand, B moved out of the condominium after a dispute with A and C. Moving out does not sever the joint tenancy however so she maintained her interest in the property. Once B moved out, A and C each executed a separate deed and conveyed their interest in the condominium to E. Both of these two deeds described the conveyance as "in fee, reserving a life estate to the grantor." If valid, these deeds carve out life estates for A and C, meaning that they can possess the condominium for as long as they live. At A and C's death, their interests would go to E. As long as even one of the two deeds was valid, the joint tenancy would be severed. The joint tenancy would be converted into a tenancy in common with regards to each valid deed.

Valid Deed

To transfer a real property interest, the grantor must demonstrate the intent to make a present transfer of the interest and the grantee must accept the interest. In addition, pursuant to the Statute of Frauds, the transfer of a real property interest must be evidenced by a writing. In order for the joint tenancy to be severed, and for E to have any interest in the property, the deed from A and C must have been valid and successfully delivered to E.

Valid deeds abide by the Statute of Frauds and include all the necessary terms such as the grantor's signature, named grantee, words of transfer, and a description of property. Consideration is not required.

Here, the language describing the transfer of A and C's interest was clear. As long as A and C have signed the deeds, the condominium was adequately described in the deeds, and E was properly designated as the grantee, both deeds will be sufficiently valid.

Delivery and Recording of Deed

As stated above, and in addition to the deeds being valid, A and C would need to have an intent to transfer their interests in the property and E would have to accept the interests for there to be a valid transfer of their real property interests.

The grantor must, at the time of the transfer, intend to make a present transfer of a property interest to the grantee. Typically, this intent is manifested by delivery of the deed. Delivery may be completed by physically handing or mailing the deed to the grantee or the grantee's agent. Recording a deed is not required, but can be used to create a presumption of delivery. Intent can also be implied from the words and conduct of the grantor, such as when the grantor drafts and records a deed.

A's deed

A recorded her deed and delivered the original deed to E. This is sufficient to create an intent to transfer. A properly delivered her deed to E. E presumably accepted the interest in the condominium which created a valid delivery of the A's deed to E.

C's deed

C recorded her deed, but did not deliver it to E. C left her original deed in a sealed envelope with A and provided written instructions that stated "this envelope contains papers that are to be delivered to me on demand or in the event of my death then to be delivered to E." E will argue that since C recorded her deed there was a presumption of delivery. B will rebut and state that if C had wanted to deliver the deed to E, she would have. Instead she chose to leave the deed in a sealed envelope with her friend and provided explicit instructions on how to handle it. This points to C wanting to have the ability to revoke the deed should she change her mind. C recorded the deed solely to make sure her life estate was protected, not to create a valid delivery of the deed. E will argue that since the written instruction's stated to give him the deed at C's death, there was intent on C's behalf. This is not going to be successful though as the instruction are for future use and valid delivery requires present intent.

A copy of C's deed was mailed to E by A. E will show this to explain that there had been a delivery. Unfortunately for E, A mailed a copy of the deed, not the original. Additionally, A mailed the copy of the deed without C knowledge or approval. These facts clearly show that even though E obtained a copy of C's deed, it was not delivered with the present intent of C.

There was no valid delivery of C's deed to E. C will keep her interest as a joint tenant in the condominium with Betty.

As discussed above, when a joint tenancy is severed through conveyance of a joint tenant's interest, and there are more than two joint tenants to begin with, the joint tenancy is not severed as between the remaining joint tenants. A's interest in the condominium was severed by her deeding her interest to E. E will take A's one third interest in the condominium. C's interest was never conveyed to E so it will pass to B through the right of survivorship. Combined with her own one third interest, B will have two thirds interest in the condominium. B and E are now tenants in common.

II. E'S RELIEF AGAINST B

Rent

If there is no agreement to the contrary, each cotenant has the right to possess the whole property and is not required to pay rent to the other co-tenants for the value of her own use of the property, even when the other co-tenants do not make use of the property. Similarly, a cotenant is generally not required to share profits earned from the use of the property, such as from a business conducted on the property.

Here, E has demanded that B pay rent for her use of the condominium. This flies in the face of cotenant rights. B has a right to possess and use the whole of the condominium without having to pay her other co-tenants rent. E will argue that he is entitled to a share of the profits gained from B's computer business, which she is running from out of one of the bedrooms. E will again fail in this endeavor since B is allowed to use the property in the fashion of her choosing. B will not have to pay E rent for her use of the property or a share of her computer business profits.

Third Party Rents

However, a cotenant must account to other co-tenants for rent received from third parties. Third-party rents are divided up based on the ownership interest of each tenant. In this case B has rented out one of the bedrooms in the condominium to a tenant. E will be able to demand an accounting for his one third share of the rent paid to B by the third-party tenant.

III. B'S RELIEF AGAINST E

Repairs

A cotenant does not have a right to be reimbursed by other co-tenants for repairs made to the property, even when those repairs are necessary. That being said, the majority view is that contribution for necessary repairs can be compelled through an action for accounting or partition. In some jurisdictions, a cotenant may maintain a separate action for contribution as long as the other co-tenants have been notified of the need for the repairs.

When a third party is occupying the property, a cotenant who collects rent from the third party can subtract expenses for necessary repairs from the rent received before sharing the rent with other cotenants.

Here, B paid all costs of necessary repairs to maintain the unit. While she does not have a right to be reimbursed by E, she could file an action for accounting and compel E to pay his portion of the repair

costs. The facts do not indicate that E was ever notified of the needs for the repairs so it is unclear if B could maintain a separate action for contribution. B is fully within her rights to deduct E's share for the necessary repairs from the rent collected from the third-party tenant before she gives E his share of the rent collected.

[END OF HANDOUT]