



# Real Property

Class 6



# Facts Common to all Concurrent Ownerships

- The property is **shared**, not split along geographical lines
- Each party owns a **present interest** in the property
- Each party shares a **right to possess the entire property**
- A conveyance to two people comes with a **reputable presumption that they will take the property as partners and share it equally**
- **Partition** (where allowed):
  1. **By sale**: selling the property and splitting the proceeds
  2. **In kind**: physically dividing the property (preferred method unless impractical)



# Facts Common to all Concurrent Ownerships (cont.)

- Rights of Co-Tenants
  - Each has the right to use the full property without having to pay rent to the other
  - Right to not be "ousted" by the other party (physically or constructively)
  - If one tenant wrongfully ousts the other, the ousted party can collect rent to that time period
  - If one tenant rents out the property, there's a split in jurisdictions as to whether the rent must be shared



# Tenancy in Common

- "Least" of the co-tenancies
- Can exist in three or more people as well as in two
- A conveyance to two people **generally creates a tenancy-in-common unless stated otherwise**
- Each party has the **right to possess the whole property**
- The partners can own different percentages of the property
- Either party can **terminate** a tenancy-in-common at any time by **demanding a partition** or by simply **selling his or her share to a third party**.
- The tenants can have **different estates** in the property
  - e.g., One may have a fee simple absolute in her share while the other has a life estate in his.



# Joint Tenancy

- Can only be created **expressly**
- Can exist in more than two people as long as the other elements are met
- **Same as the tenancy-in-common in all aspects** (e.g., can be broken up by a sale etc.), **EXCEPT**
  - The joint tenancy comes with a "**right of survivorship**"; When one joint tenant dies, the other takes over his or her share
- Thus, property owned in a joint tenancy cannot be devised (given) by a will by either party
- Joint tenancy requires the "four unities"
  1. **Time:** Both parties must have received the property at the same time
  2. **Title:** Both parties must have received the property via the same written instrument
  3. **Interest:** Both parties must own the same estate in the property
  4. **Possession:** Each must have a full and equal right to possess the property

## Joint Bank Account



# Tenancy by the Entirety

## ■ Creation

- Can only exist between husband and wife
- Any conveyance to husband and wife together presumptively creates a tenancy by the entirety unless expressed otherwise
- Requires the same four unities as the joint tenancy

## ■ Rules

- Same rules as a joint tenancy (i.e., right of survivorship) PLUS
- Cannot be transferred by one spouse to a third party without the other's consent
- Exception (some states) for mortgages

## ■ Termination

- Mortgage foreclosure on the share of one spouse (in the states that allow a share to be mortgaged)

## ■ Divorce



# QUIZ TIME!



# Community Property

- Only relevant in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin
  - Alaska is an elective community property state
- **General Principal: Everything acquired by husband or wife during marriage is presumed to belong one half to each spouse.**
- **Included in the community property rule:**
  - Income earned by either spouse
  - **Gift** given to both spouses during marriage by a third party
- **Not included in the community property rule:**
  - Property brought into the marriage by one spouse
  - Property acquired during the marriage by a gift or inheritance from a third party
  - Property acquired during the marriage by using resources that were not community property

