

## 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.

## Answer A to Question 5

### Betty and Ed's Interests

Ann, Betty, and Celia originally took title to the condo as "joint tenants with right of survivorship." A joint tenancy is characterized by the four unities of time, title, possession, and interest, and expressly stating the right of survivorship. The title that they all took when purchasing the unit together satisfies the four unities (they all took by the same instrument, as joint tenants, paid 1/3 of the purchase price, and have the right to possess) and expressly states that a joint tenancy with a right to survivorship is created. Hence, A, B, and C all owned an undivided interest in the property, were entitled to possess it, and if any of them died, the survivors were entitled to succeed to the decedent's interest, unless they severed the joint tenancy.

### B's Interest

Joint tenants all have an equal right to possess the whole property, but they may choose not to exercise that right. B moved out after a dispute. Hence, although B is out of possession, that does not alter her interest or sever the joint tenancy as to her.

### E's Interest Taken from A

A conveyed her interest to E by a deed that conveyed to A a life estate followed by a remainder to E in fee simple. A recorded this deed and delivered to E. An inter vivos conveyance will sever a joint tenancy because it destroys the unities of time and title, resulting in the grantee holding as a tenant in common with the others. Hence, if A's conveyance was valid, A severed her 1/3 interest and gave it to E as a tenant in common. A deed is valid if it describes the interest conveyed and is validly delivered and accepted. Delivery is a matter of the grantor's intent. Recordation gives rise to presumption of intent to presently transfer an interest, and acceptance is generally presumed absent some action by the grantee to reject delivery. Here, by conveying her interest in the condominium unit to E in a deed that she recorded, A had the intent to transfer, and E received the deed and did not reject it. Hence, there was a valid delivery and acceptance and A's transfer of the remainder after her life estate to E was valid. When A died, Ed's remainder vested and he now has possession of his 1/3 interest as a tenant in common.

### E's or B's Interest Taken from C

C executed a deed like A did to give herself a life estate and the remainder to E. If this effectuated a valid inter vivos conveyance, then C's interest is also severed from the joint tenancy and C's 1/3 is held by C for life, remainder to E as a tenant in common with A's life estate, remainder to E, and B. If the inter vivos conveyance was invalid, however, then C's interest was not severed and C remained holding in joint tenancy with B up until C's death. In that case, B takes the entire 2/3 held by B and C in joint tenancy. The issue, then, is whether there was an inter vivos conveyance by C. If there was no effective conveyance, B takes as the survivorship of B and C, but if there was an effective inter vivos conveyance that severed the joint tenancy, E takes C's 1/3 upon C's death because C's death extinguishes C's life estate and the remainder vests.

A conveyance is valid if the deed accurately describes the property, is delivered and accepted.

The deed describes that E is to take the remainder in the condo (the condo is known and provides a good lead), presumably, so the deed itself describes enough to be effective if validly delivered. Delivery is a matter of grantor's intent. Here, it is unclear what C intended. When a party records a deed, intent to deliver is presumed, but here, C recorded solely to protect her life estate interest rather than to convey. However, C would have no need to protect her life estate interest if she did not intend to transfer the remainder to E, so a court might well infer that she intended the delivery to be immediately effective without conditions. Acceptance is presumed absent some action indicating rejection. When C received the deed from A, he did not reject it, so C would be deemed to have accepted, making the conveyance effective and severing the joint tenancy as between C and B. Hence, C will argue there was intent to deliver and so delivery and acceptance, making the inter vivos conveyance good. On the other hand, B will argue there was no intent because C merely recorded to keep her life estate and that A's act of sending the papers without C's consent could not create present intent to transfer, making the conveyance only meant to be a testamentary transfer which would fail because C has no interest to pass by will (joint tenancy interests are not devisable or descendible).

Further, C gave the deed to Ann with instructions that the papers were to be delivered to Ed on the event of her death, or returned to her on demand. This action evidences a different intent than a present transfer. A transfer of a deed to a third party for a donative transfer without instruction is generally deemed to be an effective delivery and present intent to transfer. But when the grantor gives to a third party rather than the grantee, written instructions not on the face of the deed itself are valid to create a conditional delivery. Further, if the grantor expressly reserves for herself the right to revoke, such a reservation of interest indicates lack of intent to presently transfer. Additionally, if there are instructions only to deliver upon death, that does not evidence present intent to transfer and instead evidences a will substitute. Here, C reserved a right to revoke. B will argue this evidences a lack of present intent to deliver. Further, C gave the deed to a third party (A) with instructions not to deliver until C's death. On these facts, B will argue that there was no present intent to deliver and only an intent to make a testamentary transfer because of the condition of delivery upon death (which is valid because, although not in the face of the deed, it was contained in instructions to a third party who was to deliver the deed upon happening of the condition). On the other hand, C will argue that once a donative transfer is made and delivered to a third party to deliver upon death, many jurisdictions consider this irrevocable (even if grantor tries to revoke) and therefore, effectuates a present transfer.

Ultimately, several actions indicate C's lack of intent to presently transfer an interest, such as her instructing A not to give the deed to E until her death. However, C did record the deed to preserve her life estate, indicating a present intent to at least have the remainder transferred to E, and E did receive the deed and accept it without instructions or conditions. Although it is close, a court will probably find that C intended

to make a present, inter vivos transfer; the recordation of the deed was sufficient evidence of intent, and that therefore E succeeds to C's 1/3 as the remainderman.

Hence, E owns A and C's 1/3, giving his 2/3 held as a tenant in common with B (if the court doesn't find intent to make an inter vivos transfer, however, then B will take as the survivor and will have 2/3 with C's 1/3 as tenants in common).

#### Ed's relief against Betty

Cotenants have a right to possession of the premises, and are not responsible to each other for rent. However, when a cotenant rents out the property to a third person, she must account for the rents to the other cotenants. Additionally, when a cotenant allows the property to earn profits from a third person, the cotenant must account.

Here, B was using one room for her own computer business, and rented out the other room to a tenant. B, as a 1/3 (or 2/3) owner of the condo as a tenant in common with E is entitled to use the property to run her own business, and is not responsible to E for rents. E might argue that use of the business creates profits, and a tenant is responsible to her cotenants for accounting for profits earned from third parties, but here, because any profits come to B as a result of her running her own business rather than allowing another third party to run a business out of the unit, she is not responsible to E for rents or profits for use of the room as an office.

On the other hand, B rented out one room to a tenant. Because that constitutes renting to a third party, B is liable to E to account for his share of the rents paid (either 1/3 or 2/3, depending on whether C's deed was delivered).

#### Betty's relief against Ed

An in possession cotenant has an obligation to keep the premises in good repair. The cotenant may not commit voluntary, permissive, or ameliorative waste. The cotenant is only entitled to contribution for repairs that are necessary if she notifies the other cotenants of the need for the repairs, and she is entitled to contribution for improvements only upon sale (and if the improvements decreased rather than increased the value of the property, she bears 100% of the loss).

Here, Betty is responsible for ensuring that necessary repairs were made so she was not liable for permissive waste, and she is entitled to contribution from E if the repairs were necessary and she notified him of the need for repairs in advance. Here, the repairs Betty made apparently were necessary, but it is unclear whether she notified E of the need to make them in advance. If she did, then E must contribute his share (either 1/3, or 2/3, as described above).

## Answer B to Question 5

### 1. Property Interests of Betty and Ed

Betty has 2/3 interest in the condominium as a tenant in common, and Ed has a 1/3 interest.

#### Joint Tenancy

Ann ("A"), Betty ("B"), and Celia ("C") originally purchased the condominium as "joint tenants" because they took title at the same time and by the same instrument as "joint tenants with rights of survivorship." The "four unities" appear to be present. A joint tenancy gives each tenant an undivided interest in the property with a right of survivorship, which means that if one of the other joint tenants dies, that tenant's interest automatically becomes part of the surviving tenants' interests.

The joint tenancy, however, may be severed when one of the tenants conveys her interest to another party. That other party then takes an interest in the property as a tenant in common.

#### Tenants in Common

While A and C were originally joint tenants, A and C severed the joint tenancy by conveying their interests in the condominium to Ed ("E"). Generally, when a joint tenant conveys her interest in a joint tenancy to another party, that other party takes the property as a tenant in common. In this case, however, E took the property as a remainderman.

#### Life Estates and Remainders

Both A and C reserved for themselves life estates in the condominium. They did this by deeding the property interest to E "in fee, reserving a life estate for the grantor." E now has a vested remainder in fee simple, and A and C have life estates. Therefore, while E has a property interest in the condominium, his interest does not become possessory until the death of A or C -- i.e., at the termination of their life estates.

#### Effect of Deaths of A and C

As noted above, when a joint tenant dies, the surviving joint tenants automatically take her interest. A joint tenancy interest may not be devised by will. E will argue that when A and C died, their life estates were terminated, and that E as the remainderman now has an undivided 2/3 interest in the condominium, while B has the other 1/3 interest.

However, because the attempted [conveyance] from C to E was ineffective (as discussed below), C did not sever the joint tenancy vis-à-vis B. As a result, when C died, her 1/3 interest automatically passed to B, the surviving joint. Thus, B has a 2/3 interest, and E only has a 1/3 interest.

#### Deed Formalities and Delivery

To be valid, a deed must be both (1) executed, and (2) delivered. If either requirement is not met, the property interest is not conveyed from the grantor to the grantee.

Delivery is generally regarded as solely a question of the grantor's intent. Courts have held that the delivery of a deed in which the grantor reserves a life estate is effective, even though the grantee's interest does not immediately become possessory.

In this case, A executed the deed, and both recorded and delivered the deed to E. Thus, the deed and conveyance from A to E is valid. C executed and recorded the deed. However, C did not physically deliver the deed to E. Instead, she left the original deed in an envelope with A.

Recording a deed creates a presumption of delivery. Thus, E may argue that by recording the deed, the delivery requirement is met. However, B will argue that the presumption in this case may be rebutted. While it is true C recorded the deed, she did this to protect her life estate interest, not to satisfy the delivery requirement. Furthermore, the deed was in a sealed envelope with written instructions, providing that the papers in the envelope be delivered to A on her request. These instructions suggest that C did not intend to deliver the deed to E. Instead, she wanted to have the power to take the deed back at any point during her life.

E will argue that the instructions also provided that in the event of C's death, the deed was to be delivered to E. The problem with this argument is that delivery is only effective if there is a present intent to deliver. An intent to deliver a deed in the future is not effective. Alternatively, E may argue that the written instructions are a last will and testament, devising C's property interest to E. However, there is no indication that the Statute of Wills has been complied with. Therefore, there was no delivery to E, and C retained her interest in the condominium at her death.

## **2. Relief Ed May Obtain for Past Rent Due and Rent by Tenant**

As a general rule, one cotenant does not have to share profits earned from the property with other cotenants, unless there is an agreement to the contrary. However, cotenants are obligated to share profits that they receive by renting the property to third parties.

In this case, B rented one bedroom to a third party, and used another bedroom to run a computer business. Because B rented the bedroom to a third party, E has a right to demand an accounting for his share of the profits earned from the third-party rent.

On the other hand, while B is using one of the bedrooms to run a computer business. E has no right to demand a share of the rent for the use of the bedroom as a business office. This is true even though B is clearly saving money by not having to lease commercial space from someone else. B is also not obligated to pay rent to E for her personal use of the condominium.

## **3. Relief Betty May Obtain for Contribution of Maintenance Costs**

Cotenants are required to make contributions for necessary repairs, taxes, and mortgage payments (if the cotenant signed the note). Cotenants are not required to make contributions for non-necessary repair or improvements, although there may be a right of reimbursement upon partition. In this case, B made necessary repairs to

maintain the unit. As a result, B is entitled to contribution from E for his share of the cost of repair.