

CLASS OUTLINE 20 – ANSWERS

Problem 1a. (Class outline 20, 1a)

A, B, and C have a joint tenancy.

Problem 1b. (Class outline 20, 1b)

A, B, and C have a tenancy in common. (Note: The difference between common law and modern law here is only as to what is presumed if the grant does not say which form of tenancy is intended. Both tenancies are possible under common law and under modern law, and in most jurisdictions the characteristics of the two types of tenancies are the same.)

Problem 1c. (Class outline 20, 1c)

(a [common law]) A has severed the joint tenancy. X becomes a tenant in common with B and C who continue to have a joint tenancy. (b modern law) X becomes a tenant in common with B and C who continue to have a tenancy in common.

Problem 1d. (Class outline 20, 1d)

(a [common law]) X has a tenancy in common of 1/3 with B who has a 2/3 share. (b modern law) X has a tenancy in common of 1/3. B has a tenancy in common of 1/3. C's heirs or devisees have a tenancy in common of 1/3.

Problem 1e. (Class outline 20, 1e)

(both common law and modern law) A, B, and C&D together are each tenants in common of 1/3. C&D have a joint tenancy between them. There is not a large amount of authority for this result at common law, but the logic suggests that it should be possible. As between themselves C&D have observed all four unities, and the fact that together they only hold 1/3 of the property should make no difference. The converse does not seem to be possible either at common law or in modern law: A as a joint tenant of 1/3 with, B as a joint tenant of 1/3 with, C&D as tenants in common of 1/3. The problem would seem to be the unity of possession. A court would probably view it as the equivalent of attempting to create a joint tenancy where the shares were divided 1/3, 1/3, 1/6, and 1/6, which is clearly not possible. It might be possible to do this if a single artificial entity such as a corporation or a trust were created to represent the interests of C&D.

Problem 1f. (Class outline 20, 1f)

The Uniform Simultaneous Death Act (which, I believe, every state has, even if the state does not have the Uniform Probate Code) is designed to deal with the common situation where an inheritance pattern is dependent on who survived whom. Under the statute, as a general matter, if someone does not survive someone else by 120 hours, each of the two is treated as if s/he survived the other. That would make no sense in the case of joint tenancies, so the statute provides that the property is split, with half of it going to the heirs or devisees of the first tenant and half of it to the heirs or devisees of the second tenant.

Problem 3a. (Class outline 20, 3a)

At common law a conveyance of land to one's self had no effect. One cannot make a livery of seisin to someone who is already seised. That meant that a conveyance by the owner (A) to himself and another as joint tenants did not create a joint tenancy because the unity of time was violated. A already had the 1/2 that s/he sought to retain. The conveyance to B was at a different time, so only a tenancy in common resulted. If, however, A conveyed to an intermediary ('straw' person), who immediately reconveyed to A and B, the unity of time would not be violated, and so the conveyance was effective to create a joint tenancy.

Problem 3b. (Class outline 20, 3b)

As a general matter, modern statutes attempt to abolish the necessity of using the intermediary ('straw' person). Some of these statutes do not fully achieve this purpose, as the following examples from Wisconsin show.

Problem 4. (Class outline 20, 4)

At common law a conveyance to one's self was ineffective. Hence, the conveyance in the problem is ineffective to sever the joint tenancy. This situation is not covered by statute in any state of which I am aware. California has abolished the common-law requirement of a straw person by judicial decision, and other states have too.

Problem 6a. (Class outline 20, 6a)

What does this create at common law? A tenancy by the entirety.

What happens if one of them dies? In general, the property passes to the survivor.

What happens if they get a divorce? The tenancy is automatically converted into a tenancy in common.

There is more about the tenancy by the entirety in Outline class 21.