

CLASS OUTLINE 21 – ANSWERS

Problem 2aa.

A has a fee simple, subject to B's inchoate dower. If A predeceases her, she will be entitled to have assigned to her a life estate in 1/3 of the land. Inchoate dower survives any attempt by A to convey the land, unless B consents.

Problem 2ab.

The vast majority of cases hold that the Married Women's Property Acts have no effect on common-law dower. Other changes in the inheritance patterns between married couples may affect common-law dower. Some of these changes were adopted at approximately the same time as the Married Women's Property Acts and are sometimes confused with them, but the two developments should be kept separate.

Problem 2ac.

There is no common-law dower in states that have community property. Whether this particular conveyance will serve to bring this property into the community depends on whether A acquired the property by 'onerous title' rather than by gift or inheritance. If the former (and the former is presumed), the property will be 'in the community'. The effect of this is similar to a common law tenancy in common so far as inheritance is concerned. A will have testamentary power over only a half of it.

Problem 2ba.

B acquires an estate *jure uxoris* over the property. This gives him the right to the rents and profits of the land during the marriage. If a child is born to the marriage, B acquires curtesy initiate, the right to possess the land for life if his wife predeceases him. If she does, curtesy initiate becomes curtesy consummate. Upon B's death, the land passes to A's heirs, to the extent that they are different from B's.

Problem 2bb.

The courts quickly came to the conclusion that the Married Women's Property Acts abolished the estate *jure uxoris*. Curtesy initiate became more like inchoate dower, more of an expectation than an estate. The Acts did not, however, abolish curtesy consummate. Other statutes, however, at approximately the same time did make changes in curtesy as they did in dower.

Problem 2bc.

There is no curtesy in the community property system. Hence, in a community property regime the effect of the conveyance is the same as it was in Problem 2ac.

Problem 3.

Dower and curtesy do not attach to lands held in joint tenancy, because for either estate to arise the spouse has to hold the land in a form of tenure which would allow the issue of the marriage, if any, to inherit it.

Problem 4.

A life estate is not subject to dower or curtesy because it is not an estate of inheritance. If A is a woman, however, C has an estate *jure uxoris* at common law. This estate is abolished by the Married Women's Property Acts. B's vested remainder is not subject to either dower or curtesy because the spouse has to be seised of the land in order for dower or curtesy to attach.

Problem 5. A and B have a tenancy by the entirety. A has the right to rents and profits of the land during the marriage, which right he can convey. Whether A can convey what is, in effect, a contingent remainder if he survives his wife is a bit unclear as a matter of common law. What he cannot do is convey the wife's right of survivorship unless she consents. B, on the other hand, cannot convey any interest in the land during the marriage without A's permission. Hence, D in the problem acquires no interest at common law.

Under the Married Women's Property Acts the courts were faced with a dilemma. A majority (though it took some time in some jurisdictions) held that the estate was basically incompatible with the Acts. A substantial minority, however, held that it survived the Acts. Such states eventually also came to hold that the rents and profits of land held in this way belonged to both husband and wife. So far as conveyance was concerned, some courts equalized the power of both husband and wife by holding that neither could convey without the consent of the other; others equalized it by holding that each could convey his/her 1/2 of the rents and profits and a contingent remainder in the whole, contingent on the conveyor's surviving his/her spouse.

The states that allowed the conveyance tended to be those which were traditionally favorable to creditors. If a debtor has the power to convey, then a creditor may force the debtor to satisfy the debt out of property that the debtor has the power to convey. The states that did not allow the conveyance without the spouse's consent tended to be those which were traditionally favorable to debtors. In those states creditors could not satisfy a debt out of entirety property unless both spouses had incurred the debt.