

# Severance and Termination

## Class 3.2

Severance and Termination

—

### Agenda

1. Rights and Obligations of Co-owners
  2. Severance
  3. Termination
- 

### Rights/Obligations of Co-owners

**Main idea:** common law leaves a great deal of discretion to co-owners to create rules or norms for the governance of their shared property, but provides a few basic rules about mutual rights and obligations:

- Ouster
- Accounting
- Waste
- Equitable Accounting

KEY POINT: law leaves much of the governance of shared property up to the co-owners to work out in practice. They need to work this out with norms, or perhaps by contract etc (e.g. rental agreement in Sorensen)

Based on idea of UNITY OF POSSESSION = possession of the whole property (even party with a minimal share, e.g. 1/100th)

So, in general, co-owners do not have to pay each other compensation (such as rent, etc) for using the land in a “reasonable” way

Obviously raises some problems if there are conflicting land uses (e.g. bird watching and forestry)

RULES:

- Ouster: actions that amount to expelling or threatening to expel the other; could also occur where land-uses conflict to such a degree as to make possession intolerable to one or the other
  - Accounting (e.g. Statute of Anne): receiving benefits not proportional to one's share (e.g. third party renting)
  - Waste: e.g., here, malicious destruction of property or acts that would unreasonably diminish value of property
  - Equitable accounting= Accounting where partition and sale: when court orders an end to the co-ownership, may be accounting of joint liabilities, expenditures for reasonable upkeep of property, insurance, etc = broad equitable jurisdiction
- 

## Severance

Three possible ways to sever a joint tenancy (*Burgess v Rawnsley*):

- Unilateral Act
- Mutual Agreement
- Course of Dealing

Sorensen - FACTS:

- spouses hold land as JTs during marriage
- spouses separate, and execute a settlement agreement that arranges for Marrian Sorensen to lease former husband's portion of matrimonial home for life
- son with disability that Marrian wants to provide for: Marrian gets cancer, creates trust of home for son and starts partition action, but dies before action is completed

Three ways to sever (Denning in *Burgess v Rawnsley*):

- UNILATERAL ACT by a JT disposing of interest in such manner as to sever their interest from the joint property
- MUTUAL AGREEMENT between JTs
- COURSE OF DEALING indicating that interests of all were mutually treated as a TIC

—

Which, if any, of the following in *Sorensen* sufficed to sever the joint tenancy?

- Settlement agreement (/w lease and mortgage) between Marrian Sorensen and her former spouse
- Trust deed in favour of Marrian Sorensen's son
- Execution of Marrian Sorensen's will
- Commencement of a partition action by Marrian Sorensen (interrupted by her death)

Court's findings...

Course of dealing (key question: does affect RoS?):

- Lease for life would end at death of leasee, therefore doesn't interfere with RoS (different for lease for term of yrs, which may break unity of possession)
- Mortgage would not sever for same reason, i.e. doesn't affect RoS
- Execution of the will - general rule is that RoS takes precedence over a will, i.e. operates before will takes effect

Unilateral Act:

- Action for partition (unilateral act, but was never completed)
- Marrian unilaterally DECLARED that creating the trust severed JT, but no evidence that came to attention of husband ... unilateral declaration alone is not enough to sever the LEGAL title

BUT, even though creation of trust was insufficient unilateral act to sever the LEGAL RoS, the PRESUMPTION OF ADVANCEMENT operates (negates presumption of resulting trust to Marrian alone) to vest BENEFICIAL shared interest in son

This equitable TRANSFER to the son is sufficient to sever the equitable JT

RESULT: court finds that declaration of trust by Marrian severed the EQUITABLE title between Marrian and her former husband.

So, result is that husband holds legal fee simple absolute to the lots, on trust for himself and his son as beneficial owners and TICs

—

## Example

A, B and C hold title as joint tenants. A sells her interest to D. What is the state of title?

B and C hold title as JTs

D holds title as TIC with B&C

If B dies, C takes B's share by RoS and then C and D are TICs

---

## Termination

1. Agreement
2. Partition Order

Note — TERMINATION IS DIFFERENT than severance (where one co-owner sells their share to third party - they get out, but doesn't end co-ownership ... JT converts to TIC)

Basically two options for termination:

- Agreement (to partition or sale)
- Apply for a court ordered partition

KEY QUESTION re partition: under what circumstances should one of the co-owners be authorized to "exit" the relationship and thereby end that relationship altogether?

E.g. I hold a 1/100th interest in a piece of land and I apply to have the land partitioned, irrespective of the costs this might impose on others or their wishes.

Law today has taken a very liberal approach to questions of exit — in Greenbanktree, court authorized partition irrespective of the size/proportion of the co-owner's share seek partition

Minority owners would only be prevented from forcing a partition where it amounts to "malicious, oppressive or vexatious conduct"

ASK: is this a fair result?:

Proprietary freedom (owners should be able to "disentangle" themselves)

Potential for abuse: e.g. Kentucky story, coal companies acquiring a small ownership share, then forcing a partition sale of the land gives minority co-owners very strong negotiating position (i.e. "holdout" problems)