

ANSWER TO QUESTION NO. 7

(a) Betty is the sole owner of the cottage because she and Abel acquired the cottage as a tenancy in the entirety, and, upon Abel's death, joint ownership interest transferred to Betty alone under the right of survivorship. Under the common law, a tenancy in the entirety was created when a validly married couple took property as joint tenants and shared the unities of time, title, interest, and possession. *Budwit v Herr*, 339 Mich 265, 272 (1954). With the enactment of MCL 565.49, Michigan eliminated the unities of time and title. Under Michigan law, the deed of conveyance to a married couple must explicitly state if the parties intend to create a separate type of estate rather than a tenancy in the entirety. *DeYoung v Mesler*, 373 Mich 499, 502-504 (1964). The deed to Abel and Betty indicated only that the property was conveyed to them "jointly as husband and wife." Therefore, Abel and Betty clearly acquired a tenancy in the entirety. Under a tenancy in the entirety, each party has an indivisible interest in the whole property. *Rogers v Rogers*, 136 Mich App 125, 134 (1984). A tenancy in the entirety may only be terminated by (1) the death of a spouse, (2) divorce, (3) mutual assent or (4) execution on a security lien by a joint creditor of both the husband and wife.

The judgment of divorce had not yet entered when Abel died. Therefore, the tenancy in the entirety was not dissolved by divorce. However, the tenancy in the entirety *did* terminate when Abel died. At that time, Betty took sole title to the property through the right of survivorship. This right provides that in the event that one spouse dies during the course of the marriage, the surviving spouse automatically takes fee simple ownership in the entire property.

The quit-claim deed to Lolita did not divest Betty of her ownership interest. As a tenant in the entirety, Abel did not have a separate or individual property interest that he could lawfully transfer to Lolita without Betty's assent. *Rogers, supra*, 136 Mich App at 134-135. A quit-claim deed only passes "the estate which the grantor could lawfully convey by a deed of bargain and sale." MCL 565.3. As Abel could not lawfully transfer his interest in the tenancy in the entirety, the quit-claim deed transferred no property interest to Lolita.

(b) As Betty has the sole ownership interest in the cottage, she may eject Lolita consistent with the provisions of their lease agreement. The lease agreement allows either party to terminate

the lease by giving 60 days notice. This is consistent with MCL 554.134(1), which allows a party to terminate a periodic lease with at least one month notice. In the event that Lolita refuses to leave after 60 days, Betty will have to look to the court for relief; she will have to file summary proceedings to evict Lolita as a holdover tenant. MCL 600.5714(1) (c) (I).

(c) Carl may not execute the mortgage against the cottage. Betty did not sign the mortgage agreement in relation to the cottage, which is property held as a tenancy in the entirety. A tenant by the entirety may not unilaterally dispose of, or otherwise encumber the property; both tenants must act together to jointly encumber a tenancy by the entirety. *Berman v State Land Office Bd.*, 308 Mich 143, 144 (1944). Thus, Abel could not lawfully unilaterally encumber the property. Further, "land held by husband and wife as tenants by entirety is not subject to levy under execution on judgment rendered against either husband or wife alone." *Sanford v Bertrau*, 204 Mich 244, 247 (1918). Therefore, Carl has no action against Betty.