

EXAMINERS' ANALYSIS OF QUESTION NO. 2

1. Conveyance to Amos. Cooper owned five properties with his wife as tenants by the entirety. A tenancy by the entirety is a category of estate that is reserved solely for husbands and wives who jointly own property. The characteristics of this tenancy are that

. . . each spouse is considered to own the whole and, therefore, is entitled to the enjoyment of the entirety and to survivorship. When real property is so held as tenants by the entireties, neither spouse acting alone can alienate or encumber to a third person an interest in the fee of lands so held. Neither the husband nor the wife has an individual, separate interest in entireties property, and neither has an interest in such property which may be conveyed, encumbered or alienated without the consent of the other. *Rogers v Rogers*, 136 Mich App 125, 134 (1984).

Accordingly, Cooper had no legal authority to convey his interest in the property to Amos. Doris and Cooper's informal marital separation had no effect on the joint tenancy relationship between the two. A tenancy by the entirety may be terminated in only particular instances including by death or divorce under common law, (*Tkachik v Mandeville*, 487 Mich 38 (2010)) or statutorily "by a conveyance from either one to the other of his or her interest in the land so held." MCL 557.101. None of the contingencies include an informal separation of the couple. Therefore, Cooper's conveyance of the property to Amos is invalid.

2. Conveyance to Lydia. The facts state that Cooper and Kent held their joint real property as tenants in common.

Tenants in common are persons who hold land or other property by unity of possession. When two or more persons are entitled to land in such a manner that they have an undivided possession, but separate and distinct freeholds, they are tenants in common. Not only is the possession of one the possession of all, but the tenants respectively have the present right to enter upon the whole land, and upon every part of it,

and to occupy and enjoy the whole." [Merritt v Nickelson, 80 Mich App 663, 666 (1978)].

Accordingly, each tenant in common has the right to sell his own undivided interest in the real property without knowledge or permission of the other cotenant(s). *Albro v Allen*, 434 Mich 271, 282 (1990). Thus, Cooper's sale to Lydia of his interests in the properties that he shared jointly with Kent was valid.

3. Kent's Desire to Evict. Kent wishes to evict a month-to-month rental tenant from one of the properties that he owns. His stated reason for the eviction of wanting the property to rent to his daughter is legitimate. "A tenancy from month-to-month, which is to last for an uncertain duration, is a tenancy at will and is terminable at the desire of either party upon the tender of sufficient notice." *Frenchtown Villa v Meadors*, 117 Mich App 683, 688-689 (1982). According to MCL 554.134(1), an at will tenancy generally "may be terminated by either party by giving 1 month's notice to the other party."

Thus, Kent must first serve on the tenant a notice to quit to recover possession of the property which demands that the tenant move from the property at least 1 month from the date of service. If the tenant fails to move by that date, Kent may institute summary proceedings in the district court to secure a judgment of possession in his favor. MCL 600.5714(c)(iii). If a possession judgment is entered by the court, and the tenant fails to move by the date indicated in the judgment, Kent may seek an order of eviction from the court that can be executed by a court officer to remove the tenant's items from the property and restore possession to Kent. MCL 600.5741; 600.5744.