

## Property Exam 4

Oscar deeded his favorite property, Enchanted Island, to his favorite grand children, Alice and Brad as joint tenants with the right of survivorship. Brad fell on some financial trouble and had to deed his share of Enchanted Island to Crusty Creditor.

Crusty Creditor showed up on Enchanted Island one day and began a mining operation. Alice told Crusty she didn't want to mine Enchanted Island. "Too bad, so sad" was Crusty's response. Alice then asked for part of the profits from the mining. "Too bad, so sad," Crusty said again. "And by the way," added Crusty, I repaired the roof on the main house and put in a new swimming pool, so pay up!"

One day in a horrible mining accident Crusty was killed. Crusty left one heir, Debra. When Debra showed up to Enchanted Island to continue the mining operation, Alice had her forcibly removed and kicked off the island. "Crusty's dead so the entire island is mine!" Alice screamed as Alice's goons threw Debra into the sea.

What was the ownership interest of Alice and Brad? What about Alice and Crusty?

Was Crusty able to mine enchanted island?

Was Alice entitled to any of the mining profits?

Did Alice have to pay for repairs to the roof?

Did Alice have to pay for the new swimming pool?

After Crusty died was Alice justified in throwing Debra off the island?

Discuss.

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## **Example Answer:**

### **What was the ownership interest of Alice and Brad?**

#### Ownership Interest of Alice and Brad

Oscar deeded Enchanted Island to Alice and Brad as “joint tenants with the right of survivorship.”

This created a joint tenancy between Alice and Brad. In a joint tenancy, two or more people own a single, unified interest in property. Each joint tenant has a right of survivorship. That is, if there are two joint tenants, and one dies, the other becomes sole owner of the property. Each joint tenant is also entitled to occupy the entire premises. Finally since each joint tenants has an identical interest, they each proportionally own the same share.

Here Alice and Brad held a joint tenancy in the whole property.

### **What was the ownership interest of Alice and Crusty?**

#### Ownership of Alice and Crusty

When a joint tenant transfers his or her interest in a joint tenancy, the joint tenancy is severed and a tenancy in common is created. A tenancy in common is a form of ownership in which co-tenants each own a distinct, undivided interest in the property.

Here, after Brad transferred his interest to Crusty Creditor, Alice and Crusty held the property as tenants in common, each with a 50% undivided interest in Enchanted Island.

### **Was Crusty able to mine enchanted island?**

#### Mining Enchanted Island

In a tenancy in common each tenant has the right to enjoy and possess all portions of the property; no co-tenant has a right to exclusive possession of any part.

Here Crusty started mining enchanted Island. There is no evidence that Crusty kept Alice from accessing the mined portions or that Crusty was claiming exclusive possession of the mined portions. There is also no evidence that Crusty's mining acted to oust Alice from a portion of Enchanted Island.

Because each tenant in common has the right to enjoy and possess all portions of the property, Crusty would be able to mine enchanted Island.

### **Was Alice entitled to any of the mining profits?**

#### Mining Profits

Under the common law, each co-tenant has the right to retain profits from his or her own use of the property and does not need to share the profits with other co-tenants. However, a co-tenant does have a right to share in profits gained from exploitations of the land.

Here, Crusty was mining Enchanted Island. This would be a clear exploitation of the land. Because the common law recognized that resources in land are limited, Alice would be entitled to a share of the mining profits.

Because Alice owns a 50% undivided interest in the land and because Crusty was generating profits from the exploitation of the land, Alice would be entitled to 50% of the mining profits.

### **Did Alice have to pay for repairs to the roof?**

#### Repairs to Property

In a tenancy in common, a co-tenant who pays more than his or her pro-rata share of necessary repairs is entitled to contribution from the other co-tenants.

Here, the roof of the main house needed repairs and Crusty paid for 100% of the repairs. Crusty should have only had to pay his pro-rata share, i.e. 50%, of the roof repairs.

Under these facts, Alice would need to pay for her pro-rata share, i.e. 50%, of the roof repairs.

### **Did Alice have to pay for the new swimming pool?**

#### Improvements to Property

In an tenancy in common, a tenant has no right of contribution from the other tenants for improvements made to the property.

Here the installation of a swimming pool is not a repair, but an improvement to Enchanted Island.

Alice does not owe any may for the new swimming pool installed by Crusty.

### **After Crusty died was Alice justified in throwing Debra off the island?**

#### Ownership interest of Debra

As noted above, when Brad transferred his interest to Crusty the joint tenancy was severed and a tenancy in common was created between Alice and Crusty. Under a tenancy in common there is no right of survivorship and Crusty is free to make a testamentary transfer of his interest in Enchanted Island.

Here the facts state that Debra was Crusty's only heir. With the assumption that Crusty died intestate, Crusty's interest in the property would pass to Debra. Debra therefore held a 50% undivided interest in Enchanted Island after Crusty died.

As stated above, in a tenancy in common each tenant has the right to enjoy and possess all portions of the property and no co-tenant has a right to exclusive possession of any part.

Alice was therefore not justified in ousting Debra from Enchanted Island. Debra would be able to bring an action to regain possession of the property from Alice.