

Problems

1. Cicero grants Homer a life estate in Cicero's farm, and the property is to return to Cicero at Homer's death. Which of the following acts is considered waste? Why?
 - a. Homer removed timber from the property for the purpose of using the land to grow crops. He sells the timber for \$50,000.
 - b. Homer tears down the house on the farm.
 - c. Homer drills a new oil well and removes oil from the land.
 - d. Homer removes timber from a part of the farm that is unfit for agricultural purposes and uses the timber to repair a fence on the farm.
2. Bob and Carol, husband and wife, owned a farm as joint tenants, not as tenants by the entirety. Marital problems developed, and Bob and Carol separated. While they were separated, Bob deeded his interest in the farm to a friend, Alice. Later Bob and Carol were reconciled, and Bob signed a will leaving the farm to Carol. At Bob's death, who owns the farm? Why?
3. Adam had two sons, Cain and Abel. Adam wanted to deed a valuable farm to his sons as joint tenants, but he liked Abel nine times more than he liked Cain. Consequently, Adam worded the deed as follows: "To Cain, a one-tenth interest, and to Abel, a nine-tenths interest, as joint tenants with rights of survivorship." Abel later died of natural causes. Who owns the real estate now? Why?
4. Harry and Wilda, husband and wife, owned a car and a house. The title to the car was in Wilda's name, and the house was owned by Harry and Wilda as tenants by the entirety. One day while driving to the grocery store, Harry caused an automobile accident and seriously injured Macbeth. Macbeth sued Harry and Wilda for \$800,000 and claimed that he could take their house if their insurance failed to cover the damage award. Is Macbeth correct? Why or why not?
5. Two brothers, Barry and Harry, owned a farm as joint tenants. They farmed the land together for 30 years. On Barry's death, Harry took his deed to an attorney to have the title changed to his name only. The attorney advised Harry that there had been a mistake in the original deed and that Barry and Harry had owned the land as tenants in common rather than as joint tenants. Barry left no will; and his only heirs were Harry and two sisters, Lettie and Betty. There was a long-

standing feud between the brothers and sisters, who had not spoken to each other for years. Who owns the farm now?

6. Tex owned an apartment building and a blueberry farm. At Tex's death, the apartment and farm passed to Sheryl and Kim as tenants in common. Sheryl and Kim shared the rent from the apartment and the profits from the blueberry farm equally. One evening while driving to the farm to water the blueberries, Kim negligently struck Denny with her car. Is Sheryl liable for Denny's injuries? Why or why not?
7. Hilda, a widow, lives on a 500-acre farm worth \$500,000. She has one son, Jim. To avoid probate, Hilda has decided to deed the farm "to Hilda and Jim, as joint tenants with rights of survivorship and not as tenants in common." What potential problems might arise from this arrangement? Why?
8. Taylor and Marty, roommates at Big U, decide to build and run a large racquetball club after graduation. In starting this business, they consider the following forms: (1) corporation, (2) S corporation, (3) partnership, (4) limited partnership, (5) real estate investment trust, and (6) limited liability company. Which form would you recommend? What are the major problems with each form in this situation?
9. George Babbitt was a real estate developer. Whenever George started a new project, he formed one corporation to handle construction and another corporation to own the project. Beyond the development, each corporation had little or no assets. A creditor who is owed \$100,000 by one of George's corporations now sues George as an individual for the debt. On what theory would the suit be brought? How can George best defend the suit?
10. Should property owners be required to provide for their children after the owners die? In the states that apply the common law marital property rules and in all states using the community property system except Louisiana, there is freedom to will your property to virtually anyone, subject to possible claims by the surviving spouse. Moreover, joint tenancy and tenancy by

the entirety, held by husband and wife, allow the surviving spouse to gain ownership of the decedent's share to the exclusion of the children.

Under Louisiana law, due to its civil law roots in French and Spanish law, the inheritance laws are governed by a doctrine called "forced heirship." If the parents write wills, they must give their child(ren) a "forced portion" or "legitime." If a parent does not provide the forced portion in the will, children aged 23 and under as well as mentally and/or physically disabled children at any age can take one-fourth of the estate when there is one surviving child or one-half when there are two or more surviving children. The forced heirship doctrine provides that parents have a legal and moral responsibility to support and enrich their children. The age of 23 was selected primarily so that a child would have the resources to complete college. The disabled child exception was created so that parents would support the child, thereby relieving society of the burden. Parents in all states (including Louisiana) typically leave much of their property to their children anyway, but Louisiana is the only state in which parents are forced to do so.

Which system do you believe is more ethical? Should you be free to use your own judgment about who inherits your property, or should the law dictate who is to inherit it? Are there circumstances in which either system would have unethical outcomes? For example, what happens when a wealthy parent refuses to support a mentally disabled adult child, leaving it up to the taxpayers to pay the bills? Do all children deserve to inherit property? Louisiana law does provide that a parent can disinherit a child but generally only for extreme behavior such as attempted murder or physical attacks. Moreover, if the child and parent later reconcile, the grounds for the disinheritance are no longer applicable. Isn't a parent in the best position to decide whether the child deserves an inheritance without having to be victimized first by such behavior or should the law have a say on the issue?

Endnotes

1. J. Bennet, *Clinton Has Surgery to Reattach Tendon Torn in a Fall*, *New York Times* A-9 (March 15, 1997). Former President Clinton was a house guest at golf champion Greg Norman's Florida estate in Hobe Sound.

2. C. Moy... *Law of Real Property* 1-24
 (2nd ed...)
 3. T. Berg... *States in Land and Future*
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