CHAPTER 3
Types of Property Interests

DISCUSSION QUESTIONS

1. List and define the three major types of property.
   • Real property - land and buildings;
   • Tangible property - property that is not realty and may be touched such as cars, clothing, and jewelry; and
   • Intangible property - property that cannot truly be touched such as stocks, bonds, patents, and copyrights.

2. List at least three types of property ownership.
   Fee simple, tenancy in common, joint tenancy, tenancy by the entirety, community property, life estates, usufructs, and term interests.

3. Define fee simple property ownership.
   Fee simple is the complete individual ownership of property with all rights associated with outright ownership, such as the right to use, sell, gift, convey, or bequeath.

4. Discuss what happens when a person dies owning property fee simple.
   When someone dies owning property fee simple, the property passes to the decedent’s heir(s) through the probate process by direction of the will or state intestacy law. The fair market value of the property is included in the owner’s gross estate for federal estate tax purposes.

5. Define tenancy in common.
   Tenancy in common is a joint interest in property between two or more related or unrelated persons called tenants in common.

6. Discuss what happens at the death of a tenant in common.
   When someone dies owning property tenancy in common, the decedent’s interest will pass through the probate process for retitling per the direction of the will or state intestacy laws. The decedent’s interest is included in his federal gross estate at the fair market value as of his date of death or the alternate valuation date, if elected.
7. **Can a tenancy in common be partitioned?** If so, how?
   Yes, a tenancy in common can be partitioned. If all of the tenants in common agree, the property can be divided according to the interest of each tenant in common. If all tenants in common do not agree to sever, a court can grant the partition.

8. **Discuss the consequences of two people owning property as a tenancy in common with equal interests, but one contributes 70% to the initial purchase price.**
   If two people purchase property as a tenancy in common with equal interests, and one contributes 70% of the purchase price, the tenant in common contributing 70% has made a gift of 20% to the other tenant in common.

9. **Define joint tenancy.**
   Joint tenancy is an interest in property held by two or more related or unrelated persons called joint tenants. Each person holds an undivided, equal interest in the whole property. The right of survivorship is normally implied.

10. **Define right of survivorship.**
    Right of survivorship means that at the death of one joint tenant, the decedent's interest is transferred to the other joint tenants.

11. **Can a joint tenancy be partitioned?**
    Yes, a joint tenancy can be partitioned with or without the consent of the other joint tenants.

12. **Discuss the contribution rule and how it affects inclusion in the decedent's gross estate.**
    The contribution rule states that at a joint tenant's death, his executor does not necessarily include the value of his proportion of ownership, but includes the value in proportion to the joint tenant's original and subsequent (if any) contributions.

13. **Define community property.**
    Community property is a regime, derived from Spanish law, in which married individuals own an equal undivided interest in all property accumulated, utilizing either spouse's earnings, during their marriage.

14. **List three common ways to own separate property in a community-property state.**
    Separate property may be acquired prior to marriage, acquired by gift during marriage, or acquired by inheritance during marriage.

15. **Which states recognize community property?**
    Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin all have a community property presumption. Alaska allows individuals to elect community property status. Puerto Rico, a commonwealth, is also a community property jurisdiction.
16. Discuss what happens at the death of the first spouse to die when property is held as community property.
At the death of the first spouse to die, the decedent’s half of the community property will pass through the probate process for retitling per the direction of the will or the state intestacy law. The decedent’s half of the community property is also included in the decedent’s gross estate and will receive a step-to fair market value. The surviving spouse’s basis in her half of the community property also receives a step-to fair market value at the death of the first spouse.

17. How can a married couple convert community property into separate property when property is held as community property?
To convert community property to separate property, one spouse must gift his half interest in the property to the other spouse. After this gift, the donee spouse will own the property as separate property.

18. Discuss the implications when a married couple moves from a community-property state to a common law (separate property) state.
When a married couple moves from a community property state to a common law (separate property) state, property acquired before the move that is community property generally retains its community property status.

19. What is quasi-community property?
Quasi-community property is a property type recognized by a few community property states relating to property owned by people who move into community property states from common law (separate property) states. The quasi-community property is property that would have been community property had the couple been living in the community property state at the time of acquisition. Quasi-community property is treated just like community property at the death of the first spouse to die, or at the time of divorce. Before either one of these occurrences, the quasi-community property is treated as separate property.

A life estate is an interest in property that ceases upon the death of the owner of the life estate.

A usufruct is a Louisiana device that provides the holder with the right to use property and/or the right to income from a particular property.

22. Who is a remainderman?
A remainderman is the person who receives the property at the end of a life estate, usufruct, or term interest.

23. Define interest for term.
An interest for term is an interest for a specified number of years.
1. Twenty-two years ago, James and Kevin began dating, and 19 years ago, they began living together. Last year, James inherited over $9,000,000 from his grandfather. He wants to ensure that if he dies first, Kevin will be taken care of for the rest of his life. Despite your insistence, James does not have a will, and you have advised him previously that state intestacy laws do not protect same-sex partners. Which of the following asset ownership options would fulfill James’ goal of transferring assets to Kevin at his death?

   a. Community property.
   b. Tenancy in common with each other.
   c. Joint tenancy with rights of survivorship.
   d. Tenancy by the entirety.

   The correct answer is c.

   When one owner dies owning property held as a joint tenancy with the right of survivorship, his interest is transferred to the other remaining property owners. In this case, if James and Kevin own property JTWROS, Kevin will inherit James’ interest in the property if James dies first. When property is owned JTWROS, the property does not pass through probate and the transfer is automatic at death. Kevin and James cannot own property via community property or tenancy by the entirety as they are not a married couple. Tenancy in common does not have an automatic survivorship feature and would not accomplish James’ and Kevin’s goals.

2. Jim has been married to Rebecca for six years. They are about to buy their first home and have come to you with some questions that they have regarding titling of the home. In your explanation of the different property ownership arrangements, which of the following titling structures can only be entered into by spouses?

   a. Tenancy by the entirety.
   b. Tenancy in common.
   c. Joint tenancy with rights of survivorship.
   d. Fee simple.

   The correct answer is a.

   Of the property ownerships listed, tenancy by the entirety is the only one limited to married couples.

3. Which of the following statements regarding joint tenancy with rights of survivorship is correct?

   a. Each tenant may bequeath their interest in the property at their death.
   b. Joint tenancy with rights of survivorship is the same as community property.
   c. Only spouses can establish joint tenancies.
   d. Each tenant under a joint tenancy with rights of survivorship has an undivided interest in the property.
The correct answer is d. Only answer d is a correct statement. Answer a is incorrect because a joint tenant in a JTWROS can transfer his interest during life, but at death the interest is automatically transferred to the surviving tenants. Answer b is incorrect because JTWROS is not the same as community property. Community property can only be entered into between married couples and does not provide an automatic right of survivorship. Answer c is incorrect because anyone can own property JTWROS, and at the death of one joint tenant, his interest will transfer automatically to the surviving joint tenants.

4. Which of the following statements regarding joint tenancy with rights of survivorship is not correct?
   a. At the death of a joint tenant, his interest in the property will transfer to the beneficiary listed in his will.
   b. Property owned JTWROS transfers by operation of law.
   c. Each tenant owns the same fractional share in the property.
   d. During his life, each joint tenant has the right to sever his interest in the property without consent.

The correct answer is a.
Answer a is the only incorrect statement because the property will pass to the surviving tenants by operation of law, without regard to any provisions contained in a will.

5. Which of the following statements regarding community property is not correct?
   a. If one spouse inherits property during the marriage, that property is generally not considered community property.
   b. Assets acquired by either spouse before marriage generally become community property upon their marriage.
   c. Community property assets are included in probate.
   d. If one spouse utilizes his paycheck from work performed during the marriage to purchase property, the property is community property.

The correct answer is b.
Answer b is the only incorrect statement because assets acquired before marriage remain separate property.

6. Of the following types of ownership, which is available for married couples?
   1. Tenancy by the entirety.
   2. Tenancy in common.
   3. JTWROS.
   4. Tenants by marriage.
      a. 1 only.
      b. 1 and 3.
      c. 1, 2, and 3.
      d. 1, 2, 3, and 4.
CHAPTER 3: TYPES OF PROPERTY INTERESTS

The correct answer is c. Of the property types listed, tenancy by the entirety is an ownership form exclusive to married couples. Tenants in common and JTWROS are available to anyone, including married couples. Tenants by marriage is not a form of property ownership.

7. At the death of either partner, a same-sex couple would like to ensure that all property, insurance policies, and retirement plans transfer to the surviving partner. Which of the following will NOT accomplish the couple’s goal?

a. Each partner is listed as the beneficiary of the other partner’s life insurance policy.
b. Each partner is listed as the beneficiary of the other partner’s qualified pension plan.
c. Each partner is a joint tenant in all of the couple’s property owned joint tenancy with rights of survivorship.
d. State intestacy laws.

The correct answer is d. State intestacy laws usually do not provide for asset transfers to non-related parties, including the surviving partner in a same-sex couple. The designated beneficiary of a life insurance policy will receive the proceeds of the life insurance policy by state contract law. The designated beneficiary of a qualified pension plan will also receive the assets by state contract law. A joint tenant of property held JTWROS will also receive the decedent joint tenant’s interest per the state contract law.

8. Kim and Tommy have lived in Arizona since their marriage. Kim received an inheritance from her father during their marriage. Kim and Tommy are moving to Massachusetts for a new job and have some questions regarding their move to a common law (separate property) state from a community-property state. Which of the following statements is correct?

a. When a couple moves from a community-property state to a common law (separate property) state, separate property will generally remain separate property.
b. When a couple moves from a common law (separate property) state to a community-property state, separate property will generally become community property.
c. Community property avoids probate at the death of the first spouse and automatically passes to the surviving spouse by operation of law.
d. To get the step-to fair market value in basis at the death of the first spouse, a couple who lives in a common law (separate property) state can elect to treat their separate property as community property.

The correct answer is a. Answer a is the only correct statement. When a couple moves from a community property state to a common law (separate property) state, separate property will generally remain separate property. Answer b is incorrect because separate property does not generally become community property when a married couple moves from a common law state to a community property state. Answer c is incorrect because community property may be disposed of by will and does not automatically pass to the surviving spouse by operation of law. Finally, answer d is incorrect because couples living in common law states cannot elect community property treatment at the death of the first spouse in order to get a step-up in basis.
9. Dara has owned 100% of the stock of Dara's Baked Goods, a corporation, for 22 years. In the current year, she gifted 50% of the business to her daughter, Sheila, who lives in California with her husband. Sheila does not work at the business and reinvests any income back in the company. With respect to the transfer of the business interest, which of the following statements is correct?

   a. Sheila's 50% interest in Dara's Baked Goods is community property, owned equally by Sheila and her husband.
   b. If Sheila's husband dies tomorrow, both his share of Dara's Baked Goods and Sheila's share of Dara's Baked Goods would receive a step-to fair market value in basis.
   c. Sheila owns 50% of Dara's Baked Goods outright, and the interest will not be considered community property.
   d. If Sheila dies tomorrow, the executor of her estate would include 25% of the value of Dara's Baked Goods in her gross estate.

   The correct answer is c.
   Answer c is correct because gifted property is generally considered separate property. Answer a is incorrect because gifted property is generally considered separate property unless Sheila elected to treat the property as community property, or commingled the assets. In this case, Sheila does not commingle the assets and the problem does not mention that she elected community property status over the assets. Answer b is incorrect because Sheila's interest in Dara's Baked Goods will not be included in her husband's gross estate. Separate property is only included in the gross estate of the separate property owner. Because the interest is not in her husband's gross estate, it does not receive a step-to fair market value. Answer d is incorrect because if Sheila dies tomorrow she must include 100% of the value of all of her assets owned as separate property (thus 50% of Dara's Baked Goods).

10. If Paula died with the following property interests, which would not be included in her probate estate?

   a. Community property.
   b. Property held tenants in common.
   c. Property held as tenant by the entirety.
   d. Property owned fee simple.

   The correct answer is c.
   All except option c are included in a decedent's probate estate. Property held as tenants by the entirety is not included in the decedent's probate estate as it transfers by law, rather than by will.

11. Which of the following statements regarding joint tenancy is correct?

   a. Joint tenancies may only be established between spouses.
   b. Tenancy by the entirety is a special form of joint tenancy only available to residents of Louisiana.
   c. Joint tenancies can only be severed with the permission of a court.
   d. Each joint tenant in a joint tenancy has an undivided, equal interest in the property.

   The correct answer is d.
   Each joint tenant in a joint tenancy owns an equal, undivided interest in the property. Answer a is false because joint tenancies can be established by any persons, related or unrelated. Answer b is false because tenancy by the entirety is available in other states. Answer c is false because joint tenancies can be partitioned at the request of one joint tenant. Court approval is not required to sever a joint tenancy.
12. Which of the following is/are considered real property?

1. Stocks.
2. Automobile.
3. House.
4. Land held for investment.
   a. 3 only.
   b. 1 and 2.
   c. 3 and 4.
   d. 1, 2 and 3.

The correct answer is c.
Real property is land and buildings. The nature of the property in the hands of the owner (investment, personal, inventory) does not affect the type of property. Stocks are intangible and automobiles are tangible.

13. Which of the following is/are considered tangible property?

1. Stocks.
2. Automobile.
3. Rental house.
4. Land.
   a. 2 only.
   b. 1 and 2.
   c. 3 and 4.
   d. 1, 2, 3, and 4.

The correct answer is a.
Tangible property is property that may be touched and is not realty. An automobile is tangible property. Stocks are intangible property. A rental house and land are realty.

14. Which of the following is/are considered intangible property?

1. Stocks.
2. Patents.
4. Land held for investment.
   a. 4 only.
   b. 1 and 2.
   c. 2 and 4.
   d. 1, 2, and 3.

The correct answer is d.
Realty is not intangible property. Stocks, bonds, patents, and copyrights are common examples of intangible property. Land held for investment is real property.
15. Which of the following statements regarding fee simple ownership is not true?

a. Fee simple ownership is the complete individual ownership of property with all rights associated with outright ownership.
b. Property owned as fee simple passes through probate at the death of the owner.
c. Property owned as fee simple is excluded from the federal gross estate of the owner.
d. Fee simple ownership allows the owner to use, sell, gift, alienate, convey or bequeath the property without others' approval.

The correct answer is c.
The question asked what is NOT true regarding property owned as fee simple. Property owned as fee simple is included in the gross estate of the decedent. All of the other statements regarding property owned fee simple are true.

16. Erica has come to you for estate planning advice. She has been in a long-term relationship with Judy. Because Erica's family is not aware of the relationship between Judy and Erica, Erica is concerned that at her death, Judy will be overlooked by Erica's family. Of the following recommendations, which would you least likely recommend to fulfill Erica's goal of transferring assets to Judy at Erica's death?

a. Transfer the ownership of Erica's real estate investments into Tenancy by the Entirety.
b. Name Judy as the beneficiary of Erica's retirement plan.
c. Advise Erica against creating a will, specifically bequeathing her property to Judy.
d. Name Judy as the beneficiary of Erica's life insurance policy.

The correct answer is a.
As Erica's financial planner, you would not advise her to transfer the ownership of her property to a tenancy by the entirety as it is an ownership option only available to married individuals. You would advise Erica to name Judy as the beneficiary of her retirement plans and life insurance policies as the beneficiary designation would ensure payment of the proceeds to Judy without the delay of probate and challenges to the will. Advising Erica to create a will and specifically bequeathing assets to Judy would fulfill Erica's goal of transferring her assets to Judy, but it also allows for Erica's family to challenge the will. A challenge to the will may create delays, increase the costs of estate administration, and potentially could cause the assets to be distributed to someone other than Judy.

17. Three years ago, brothers Darren and Andy, purchased real property and titled it as joint tenancy with right of survivorship. At the time of the purchase, Darren did not have any cash, so Andy paid the $50,000 purchase price himself. Over the next five years, Darren and Andy allocated the income and expenses of the property equally, and luckily for them the value of the property increased to $350,000. If Andy dies this year, how much will his executor include in his federal gross estate as the value of this real property?

a. $50,000.
b. $175,000.
c. $300,000.
d. $350,000.
The correct answer is d.
The contribution rule applies to property owned as a joint tenancy with right of survivorship. Because Darren did not contribute any amount towards the original purchase price of the property, Andy’s executor must include the full fair market value of the property in Andy’s gross estate for federal estate tax purposes.

18. Three years ago, Jack and Mary, having been married for 3 years, agreed to purchase some real property and titled it as joint tenants with right of survivorship. At the time of the purchase, Mary did not have any cash, so Jack paid the $50,000 purchase price himself. Over the next five years, Jack and Mary allocated the income and expenses of the property equally, and luckily for them the value of the property increased to $350,000. If Jack dies this year, how much will his executor include in his federal gross estate as the value of this real property?
   a. $50,000.
   b. $175,000.
   c. $300,000.
   d. $350,000.
The correct answer is b.
When a married couple owns property joint tenancy with right of survivorship, there is an automatic assumption that each spouse contributed 50% to the original purchase price. In this case, the contribution rule will deem that each would include 50% of the value of the property in the decedent’s federal gross estate. At Jack’s death, his executor will include 50% of the value of the property or $175,000 (50% x $350,000) in Jack’s federal gross estate.

19. Mike travels quite often and wants his daughter to have access to his checking account while he is out of town. For this reason, on October 3, 2008, Mike deposited $100,000 in a checking account. Several years passed and Mike used the funds for normal living expenses, but his daughter never accessed any of the funds. Recently, on May 2 of this year, Mike’s daughter needed an extra $35,000 to purchase the car of her dreams so she made a withdrawal from the account with full intentions of reimbursing the account. At what date has Mike made a gift to his daughter?
   c. May 2 of this year.
   d. May 31 of this year.
The correct answer is c.
In the situation of a joint interest in a bank account, the contributing joint account owner is not deemed to have made a gift until the non-contributing joint account owner makes a withdrawal for his own benefit. In this case, Mike’s daughter did not make a withdrawal until May 2 of this year.
20. Timmy and Bryan agree to purchase a condo at the beach for $200,000 as tenants in common. Bryan will contribute $150,000 of the price, and Timmy will contribute the remaining $50,000. They have agreed to split all income and expenses at 75%/25%, the same as their ownership percentages. What is the gift from Bryan to Timmy for the year relating to this property?

   a. $0.
   b. $50,000.
   c. $150,000.
   d. $200,000.

The correct answer is a. Bryan is not deemed to have made a gift to Timmy relating to this property because they have contributed amounts equal to their ownership percentages. When the property is owned tenancy in common, a gift occurs if one tenant in common owns a greater proportional share than his pro rata contribution. In this case, Timmy and Bryan contributed amounts equal to their proportional share.