

MEE Review (7.15)	Mixed MBE Review (7.15)
<p>Note – when call of q is asking for arguments. Maximize the facts to ping pong for both parties. Analysis is heavy for those!</p> <p>FRE: always start with if the statement/evidence is relevant!!</p> <p>Res. leases can contain terms that prohibit <i>transfer</i> or <u>assignment</u> w/o consent of the LL. LL must not unreasonably withhold consent w/o good cause.</p> <p>If a lease contains a clause that <u>restricts assign. w/o LL's consent</u>, if LL agrees to any, then all subsequent assign. are considered consented to (waiver).</p> <p>A <u>surrender</u> occurs where a T vacates the premises, and clearly indicates, in writing, of no return intent. Effect is to give LL options: reject the surrender + hold the T over, cont. charging T rent; or accept + treat the lease as ended. The LL must take steps (<u>duty</u>) to <u>mitigate</u> any loss arising from a surrender.</p> <p>if LL rejects surrender – 2 options: leave prop. property vacant + sue for all rent payable under the lease, or to re-let the prop. + sue the breaching T for deficiency. LL is at least required to make a reasonable GF effort to re-let.</p> <p><u>Joint tenancy</u> must take identical <i>interests</i> at same <i>time</i> by same <i>instrument</i> w/ same right to <i>possession</i>. Right of survivorship: Dead JT prop. interest auto goes to surviving JT in equal share. Req specific words for <i>right of survivorship</i> to be created + a general transfer to 2 people will instead be treated as a TIC.</p> <p>A T <u>by the entirety</u> is sp. type of co-T that exists between H+W when they hold prop. together – cannot be mortgaged or transferred w/o both pts consent.</p> <p>A JT w/ rts of survivorship can be terminated by an inter vivos transfer by 1pt. state w/ <u>title theory of mortg.</u>, the granting of one terminates JT + creates a TIC (bcus no longer unity of interest). Right of survivorship terminated. A <u>lien theory state</u>, the grant will not sever the JT and a severance will only occur on enforcement (cus lender did not take title, instead just has a lien)</p> <p><u>TIC:</u> unity of possession required only. Each TC is entitled to possess + control the whole prop. Equal rts to possess or use the prop – but no rt of survivorship</p> <p>Generally entry into a lease is not considered to be a transfer of an interest such that it causes a severance of a JT. The impact is similar to the effects of the grant of a mortg. in a lien theory jurisdiction. However, the lease can only attach to the interest that the granting JT has and therefore it is subject to be terminated by the operation of the right of survivorship on the JT's death.</p> <p>On the death of a TIC, his interest will pass through his will or by intestacy, rather than through operation of the right of survivorship. The heirs will take subject to any interests created in the prop. On his death, this would pass to his estate through his will or through intestacy and his heirs would take subject to the T's interest in the premises. The heirs would be the LL.</p>	<p>Crim Pro: If the police fail to inform the suspect of her Miranda rights, any incrim. statement obtained as the result of custodial interrogation generally may not be used against the S at a subseq. trial – even if D exculpatory. Rmbr **public safety exception.</p> <p>Crim Law: <u>battery</u>: contact is harmful if it alters P's body in any way, even if the alternation results in no other harm (eg, diff surgeon performing surgery from the one D consented).</p> <p>RP: back to <u>privity reqs for real covenants</u>: notice not required for successors in interest of land benefited by a real covenant. Persons who acquire land subject to a RC thru AP cannot enforce the covenant. Privity of estate makes a diff in cases involving covenants at law. Absence of privity of estate may mean that a successor to the covenanter won't be bound.</p> <p><u>covenant of W</u> protect grantee only against an eviction or disturbance, cus absence of title or encumbrance.</p> <p>Under <u>doctrine of equitable conversion</u>, the vendor has a personal prop. interest in the prop., between the signing of the K and the closing, in the form of the balance of the purchase price owed to him; the vendee is considered the beneficial owner of the (real) prop. (has equitable title and risk of loss)</p> <p>The one entitled to seller's real prop only gets a bare legal title, which she must convey to the purchaser when the purchaser performs his duty under the K, i.e., turns over the cash</p> <p><u>No earnest money deposit for LSK:</u> general K principle that an exchange of promises meets the consideration requirement applies to real estate Ks. Able has made a promise (to convey in return for the purchase price), and Baker has made a return promise (to pay the purchase price in return for title), so standard consideration requirements are easily satisfied. Where such a deposit is present it is merely a form of liquidated-damages clause.</p> <p>A <u>marketable title</u> is one that, viewed objectively, is free from reasonable doubt in both law and fact, and that the reasonable buyer would accept without fear of litigation. The conveyance of marketable title is an implied covenant in LSK. (However, the terms of the deed will control once the deed is conveyed and accepted; thus, if a quitclaim deed is conveyed, there will be no remaining obligation to provide marketable title.)</p> <p>In most cts, a <u>liquidated damages</u> clause is enforceable if it was a reasonable estimate (viewed either as of the time the K was made or at the time of suit) of the damages that the seller would likely incur if the buyer breached.</p> <p><u>Marshaling</u> is the ranking of assets in a certain order toward the payment of debts. The concept arises in equity, and means that where there are 2 creditors, with the senior one having 2 funds to satisfy his debt, that senior creditor must resort 1st to the fund which is not subject to demand of the junior creditor.</p> <p><u>Subrogation:</u> allows 3P who <u>fully pays off a sr mortgage</u> to take that senior mortgage's priority as long as 3P had no <u>actual</u> knowledge of jr interests.</p> <p>In order to be <u>valid, a deed</u> must identify the grantee(s) with reasonable precision. (eg, "leader" at churches is imprecise). Deed will be treated like it was never made.</p> <p>fact that the deed was recorded furnishes a strong presumption that delivery occurred (i.e., that the grantor intended the deed to take effect immediately, which is all that "delivery" means). Deed is usually presumed valid</p> <p><u>Gift causa mortis:</u> may only be made of personal prop.. and must be made in view of pending death from a state peril. (not enough giver was ill)</p>