1. Please provide an Analytical Overview of the Topic.

The last set of readings had us concentrate on present possessory interests in land, called estates, followed by subsequent interests which are called future interests. This combination of interests are said to exist consecutively (one after the other). The next set of readings starting today covers a different set of relationships of ownership in land. These relationships involve co-ownership or concurrent interests in property (they can include co-ownership estates and co-ownership future interests).

2. What are the various types of common law concurrent interests in property?

There are five types of concurrent interests in property. The first (is of little importance) is coparceny, wherein in the system of primogeniture, when a decedent has no sons, only daughters, the daughters took as coparcenors (like tenants in common). The second is the tenancy in partnership and is appropriately covered in a course in partnership law. The next three are the focus of this material, the tenancy in common, the joint tenancy, and the tenancy by entirety.

These various types of co-ownership interests can be in any type of estate (life estate, fee simple, and defeasible fee), and any type of future interests (reversion, possibility of reverter, right of entry, vested remainder, contingent remainder, and executory interests), and leasehold interests (term of years, periodic, at will), both legal or equitable (in trust).

3. What is tenancy in common?

A tenancy in common is a form of co-ownership in which the two or more co-owners have separate but undivided interest in the property. Each tenant in common owns an undivided share of the whole estate. Each tenant in common interest is descendible and may be conveyed by deed or will. Each tenant in common can only transfer what interest they own, that is an interest of a tenant in common. Such that if A and B are tenants in common, A or B can transfer their individual interest to another person C so that the property would then be owned in A and C as tenants in common.

4. What is a joint tenancy?

A joint tenancy is a form of co-ownership in which two or more co-owners have a separate but undivided interest in the property. Each joint tenant owns an undivided whole of the entire estate. The major difference from a tenancy in common is that when a joint tenant dies, his/her interest is left to the ownership of the remaining joint tenant or tenants. The right of a surviving joint tenant to take
what a dying joint tenant has is called the right of survivorship. Such that if A and B are joint tenants, and A dies, then B takes the entire estate. (This would also work with more than two joint tenants, such as if A, B, and C own as joint tenants, and A dies, then B and C would continue to own as joint tenants.)

5. How are joint tenancies created?

Historically, joint tenancies could only be created with the existence of the four unities, of time (the joint tenant must acquire their interest at the same time), title (by the same instrument or deed, or adverse possession, never by intestate or inheritance), interest (equal, undivided, identical interest or duration), and possession (right of possession in the whole, although after creation one can give exclusive possession to the other).

At common law and today in many states, all four unities are still needed to create a joint tenancy. Some states, by statutes, abolish the four unities and provide that you may create a joint tenancy simply by stating explicitly the intent to do so. Such as “to A and B as joint tenants, with right of survivorship.”

Where one seeks to create a co-ownership interest in a state where the four unities are required or where not required but the grantor’s intent to create is ambiguous or unclear, and the grant does not comply with the requirements, the law will find in favor of the creation of a tenancy in common. Where the four unities are still required to create a joint tenancy and after one has been properly created, it is destroyed and converted into a tenancy in common if and when one of the four unities is changed. Such would be the case if there is a joint tenancy between A and B and A transfers by sale A’s interest. They result is that A and B own as tenants in common with no right of survivorship. It is said that the joint tenancy has been severed.

6. What is a tenancy by the entirety?

A tenancy by the entirety is a form of co-ownership in which a husband and wife (and in Hawaii, “reciprocal beneficiaries”, p. 276, fn 3) that is requires the four unities plus the unity of marriage. They hold the entire estate as if as one person. The surviving spouse has the right of survivorship, and neither can defeat the right of survivorship of the other by a conveyance to a third party. Only a conveyance in which both the husband and the wife participate is good. Divorce terminates a tenancy by the entirely and absent agreement or court decree to the contrary, the former husband and wife become tenants in common if they continue to own the property interest together following the divorce. Today, the tenancy by the entirety exists in fewer than half the states. For a case in which the tenancy by the entirety was a feature, see Sawada v. Endo, pp. 313-318. For a discussion of marital property law, including the rights of domestic partners, which is not covered in this semester’s course (and will not be covered on the final examination, see pp. 310-359).
7. What type of co-ownership interest is created if the grant is unclear or ambiguous (and fulfilling the requirements of a joint tenancy)?

Under the common law, historically, if a grant seeking to create a co-ownership interest in land was unclear or ambiguous, the law favored joint tenancies over tenancies in common.

Today, the reverse is true. The presumption favors a tenancy in common by statutes that state that a tenancy in common is created unless an intent to create a joint tenancy is expressly declared. Such as “to A and B as joint tenants and not as tenants in common.” “To A and B jointly” might not create one. Some states require an express provision for right of survivorship to create a joint tenancy, such as “to A and B as joint tenants with right of survivorship.” Hoover. But see a few states that hold that to include expressly a right of survivorship creates something else. Such as in Michigan, a grant “to A and B as joint tenants with right of survivorship” or “to A and B as joint tenants and to the survivor” creates a joint life estate in A and B, with a contingent remainder in the survivor. Albro. And too in Kentucky, Sanderson. p. 277, fn 4. And a few states have discontinued the joint tenancy altogether. p. 277.

When a conveyance is made to a husband and wife, the common law historically presumed an intention (unless expressly stated to the contrary) to create a tenancy by the entirety. The presumption still has considerable following today in those states that retain the tenancy by the entirely, although even where a tenancy by the entirety still exists, some states presume that a tenancy in common or a joint tenancy is created unless otherwise provided.

8. What can a co-tenant do if he or she cannot peaceably co-enjoy the property he or he co-owns?

Co-owners can always solve problems by mutual agreement. But if and when they cannot solve them by mutual agreement, any one of them (tenant in common or joint tenant) can bring an action for judicial partition. In a partition action, a court will either physically partition (divide) the tract of land into separately owned parts (such as 90 acres co-owned by A and B, could be judicially divided into 45 acres owned solely by A and 45 acres owned solely by B). A tenancy by the entirety can only be terminated by divorce or death of each spouse.

9. What is probate, why seek to avoid it, and how to avoid it?

Probate is the judicial supervision of the administration of the decedent’s property (estate) that passes to others at the decedent’s death. The probate court appoints an administrator or executor who collects the decedent’s assets, pays debts and taxes, and distributes or changes title in the property to the names recipients if by
will or intestate statute if no will. Probate is costly, administrators, lawyers, and court costs must be paid. And property title could be tied up for months.

Tenancy by the entirety (for married couples) and joint tenancy (for married couples and for non-married co-owners) are a popular and effective means of passing title from two or more people to the surviving person(s) without a will. (The history of the joint tenancy shows that was used to avoid taxation and to frustrate the system of primogeniture.) As such, a joint tenant cannot pass on any interest by will or through inheritance. Huff, p. 279.

The joint tenant arrangement can negatively affect an inattentive creditor. If a joint tenant (A) borrows money using their joint tenant interest as collateral (without the other joint tenant B’s permission), the creditor will lose all interest in the property if A dies before B. On the other hand, if B dies before A, then the creditor has the right against A’s fee simple interest as sole owner.

The joint tenancy interest retained by the surviving joint tenant is still subject to federal income taxation. See p. 279.

10. **What are the problems or issues of unequal shares in a co-ownership interest?**

   There is a question (issue) as to whether co-tenants can own unequal interests in the co-owned property interest. Tenants in common always could. Joint tenants historically could not (no unity of interest). Tenants in the entirety were presumed to be owned equally (but were and are subject to other policy considerations relative to marriage).

   Courts today have sometimes ignored the unity of interest requirement and have allowed with by different contribution or by intent of the owners, for a joint tenancy to exist even where there is unequal interests. Such as “to A, B, and C, as joint tenants and not as tenants in common with the following interests, A has 10%, B has 40%, and C has 50%.” (Beware that a court may find that when two or more persons own a business (not merely property) together, for the purpose of making a profit, the arrangement is not a co-ownership of property but rather is a partnership subject to personal sharing of profits and losses.) Moat and Jezo, p. 279.

11. **What are the issues, rules, authority, rationale for the severance of joint tenancies?**


12. **What are the issue, rules, authority, rationale for joint tenancy bank accounts?**

   See and prepare information on pp. 289-291.