1. Please provide an Analytical Overview of the Topic.

Continuing to build on the prior lecture on the nature and some issues of co-ownership of property, this reading analyzes the rights and liabilities among co or concurrent owners, including certain remedies when that relationship breaks down such as the right to partition, the right of contribution, and the right to an accounting.

2. Generally, what are a cotenant’s rights and burdens relative to other co-tenants?

Each is entitled to possession of the entire parcel of land yet he cannot exercise that possession without coming into conflict with the reciprocal right of his fellow cotenant. John Cribbert. (Is this really accurate?) Each cotenant has the privilege (was not the right?) to transform a concurrent estate into estates held in severalty (unless agreement to the contrary). Cotenants share, either by agreement or by rules of property law, benefits and burdens during their co-ownership.

3. What benefits and burdens (obligations) do cotenants share? And how do cotenants enforce their interest against one another?

Their benefits and burdens (obligations) to one another can be (and often is) defined by contract, with the normal contractual remedies for nonperformance. If there is no contract (written or implied, if the contract is silent in pertinent parts), then property rules apply. The courts are available (compare divorce in a tenancy by the entirety, or not generally available in partnership law) to resolve some disputes between cotenants. This is through either an action for contribution, an action for an accounting (equitable proceeding, p. 309) or a partition (in kind or by sale). And of course, a cotenant has the right to sever a joint tenancy.

4. What about the area of rent, can a cotenant seek rent from a fellow cotenant? What if the cotenant rents to a third party, is the other cotenant entitled to a share in that rent?

According to the reading, one might conclude that one cotenant (in possession) is not liable to pay the other cotenant rent (not in possession), even when the cotenant in possession has exclusive possession to the property. That is unless the cotenant not in possession can establish that there has been an “ouster” of his possession by the tenant in possession. See Spiller, p. 300. What constitutes an ouster? Is a demand for rent and shared possession enough? Does the changing of locks enough?
As to sharing rents received from a third party, the non-leasing cotenant is entitled to an accounting (information as to the arrangement) but is only entitled to his fair share of the rent. If the third party is not interfering with the non-leasing cotenant’s possessory interests, it is possible that the leasing cotenant does not have to share the rent.

5. Are cotenants fiduciaries to one another?

If cotenants were fiduciaries to one another (such as partners in a partnership), they would have an ongoing obligation to protect each other from each’s self-interested behavior (and a duty to disclose self-dealings, and other duties.) Generally, merely as cotenants, they are not fiduciaries, and therefore can act in their own self interests and not necessarily in the interest of their other cotenants. (For example, in Spiller, one cotenant’s interest in selling out the property might negatively impact the other cotenant’s livelihood.) But if there is a special relationship of trust and confidence (such as with family members), some courts have found a fiduciary relationship and hence fiduciary duties between cotenants.

6. Can one cotenant lease the entire co-owned property to a third party without the other cotenant’s permission? Can a cotenant cancel a lease made by one cotenant with a third party?

See Swartzbaugh, p. 303. Also, does leasing equal severance of a joint tenancy? A cotenant’s lease of exclusive possession to a third party without the permission of the other cotenant is not void. The complaining cotenant can seek an ouster or partition (although the partition would not terminate the lease). (Beware that this was as martial property.)

7. Is a cotenant who pays expenses for the co-owned property entitled to contribution from another cotenant?

It would appear that there is no easy answer. If the expenses were no more than the cotenant’s share, then no. And if the expenses were paid by a cotenant in sole possession, then no contribution if value of use exceeds the payments. But if the cotenant not in sole possession, pays more than his share, he may seek payment from the other through an action for contribution, accounting, and by partition.

8. Can a cotenant who pays for repairs expenses get reimbursed for those repair expenses?

Apparently, there is no affirmative right to contribution for payment of necessary repair expenses. But in partition or an accounting, a payment cotenant might get credit for paying for necessary repairs.
9. Can a cotenant who pays for improvements of the property get reimbursed for those improvements?

An improving cotenant is not entitled to reimbursement in an action for contribution, accounting, or partition. But in an action for partition, a cotenant’s activities to increase value of the property may receive credit for the increased value (if any) but not for the actual cost or expenditure.

10. What are some other rights and liabilities does a cotenant have?

In addition to those discussed in the textbook, as to non-cotenant third parties, each cotenant enjoys all the rights and privileges as any owner does, such as right to exclude, lease, sue for intrusions, etc. And, of course, cotenants have all the liability that comes with ownership, such as mortgage payments (if applicable), property taxes, tort liability, etc.

11. Does a cotenant have the right to partition co-owned property and in kind or by sale?

Each and every cotenant has the right to end a cotenancy, unless prohibited by agreement, or the terms of the grant. (A cotenant by the entity can only get a partition through divorce. But when married couples own in joint tenancy or by as tenants in common, they can seek partition like any other cotenant.) The right of partition is an equitable action that will allow, usually by state statute, a cotenant to end the cotenancy, either in kind or by sale (beware that the “sale” may include by auction; there may also be no market or buyers for the attempted sale). Most co-owned property is apparently partitioned by sale, because that is usually the will of the cotenants. But when one cotenant does not agree to a partition by sale, court must decide whether sale is preferable to in kind partition. See Delfino (in kind receives preference over by sale). What should be the consideration, a benefit to one owner might be a detriment to the other. Should it be merely economics, ArkLand, p. 298. (Cf Johnson, and Gay). Can you see that in either approach, there may be inequities? (In kind, is one cotenant guaranteed the parcel they desire? By sale, should the tax effects on each cotenant matter?)

12. Are there any social justice issues relative to partition of cotenancies?

In instances where present ownership may have descended to multiple owners, such as family owned farm land by African Americans in the South (but this problem is not unique to African-American families, but anyone similarly situated), when one “heir” sells out to a developer, the other heirs may not receive the full value of the property. See note 3, p. 299. Is the issue the lost of ownership or the loss of value? Should the court require a guaranteed price on sale? Should developers be required to share their projected profits with former owners?
13. **What other legal areas are related to the topic of co-ownership or concurrent ownership?**

Clearly, legal areas related to co-ownership are those of marital interests (during marriage, upon divorce, upon the death of one spouse, community property, p. 310), those of domestic partners (both heterosexual, outside of marriage, and same sex, within and outside of legal protection, p. 344), and common interests communities (condominiums and cooperative, p. 798). Also, see partnership law for comparison and related issues.