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Bar Exam Attemp #3

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FROM NY BAR EXAM

In June 2000, Frank and his sister, Sue, took title to Greenacre, an undeveloped parcel of land located in Village, as joint tenants. Sue died in April 2006, without a will, survived by her daughter, Deb, her sole distributee. On July 27, 2006, Frank executed and delivered a deed conveying Greenacre to his children which stated "to Ann, Beth, and Carl, in equal shares."

On November 1, 2006, Deb wrote to Ann, Beth, and Carl claiming that she owns a one-half interest in Greenacre as Sue's only heir.

On December 1, 2006, Ann and Beth, without Carl's knowledge, entered into a contract to sell Greenacre to Paul for \$600,000. The contract provided for a down payment of \$60,000 and a set a closing date of March 1, 2007. The contract was silent as to risk of loss or condemnation.

On December 15, 2006, Village condemned a 10 foot strip of Greenacre, to widen a public road leading to a shopping mall owned by Ed, a local businessman. Village's condemnation decision was based upon a public study that found that increasing traffic congestion in the vicinity of the shopping mall posed a serious safety problem. The study recommended that the road leading to the mall be widened. Ed agreed to contribute \$100,000 to Village toward the construction costs, as his shopping mall would benefit from the widening the road. Several residents of Village objected to the condemnation on the ground that the expenditure of public money would confer a private benefit on Ed.

On February 15, 2007, as compensation for the condemnation, Village paid Ann, Beth and Carl the sum of \$75,000, the fair market value of the strip. Ann and Beth immediately notified Paul of the condemnation and the \$75,000 payment from the Village. Paul advised Ann and Beth that he would not close title under the contract, because of the condemnation. Ann and Beth told him that they intended to enforce the contract.

1. After Sue died and Frank converted Greenacre to Ann, Beth, and Carl, what respective right, title and interests, if any, did Ann, Beth, Carl and Deb have?
2. Was it lawful for Village to condemn the 10 foot strip of Greenacre?
3. How does the condemnation of the 10 foot strip affect the rights of Ann, Beth, and Paul under the December 1, 2006 contract?
4. Assuming that Ann, Beth and Paul close title under the December 1, 2006 contract, what respective right, title and interests, if any, will Paul and Carl have in Greenacre?

ANSWER

1. Ann, Beth, and Carl will take as tenants in common, while Deb will not take anything because the joint tenancy between Frank and Sue was transferred to Frank when Sue died.
2. Village's condemnation of 100 foot strap is justified because Eminent Domain's 5th Taking Clause allows such condemnation if it is in good faith involving private land for public use with just compensation.
3. The condemnation of the 10 foot strip is material, so Paul will be able to rescind the contract because in equitable conversion, under the Vendor Uniform Purchasing Act, the risk of loss transfers to the seller upon receipt of a document free of encumbrances.

4. Paul and Carl will be tenants in common since Ann, Beth, and Carl receive title from Frank as tenants in common.

1. Joint tenancy is created when the language states so: joint tenancy between A and B. One of the prevalent features of joint tenancy is the right of survivorship. Upon the death of one of the tenants, the estate transfers to the other tenant(s). Joint tenancy is created when there is a transfer from the deed at the same time, instrument, and percentage of ownership with an undivided right to possess the whole. The features of joint tenancy are alienability – transferability during life time no matter what the consequences are (that a tenant will lose his joint ownership status and will get a tenant in common). If there are two tenants, the joint tenancy will turn into tenancy in common. Devisible means a joint tenancy is transferable through a deed, and joint tenancy status derives from an instrument. Divisible means a joint tenancy is transferable through an estate. In comparison, tenancy in common is a default estate between joint tenancy and tenancy by the entirety. It is fully alienable with no consequences, fully devisible and divisible. No rights of survivorship feature.

In this case, the estate between Frank and Sue of joint tenants collapsed when Sue died and Frank as a surviving joint tenant inherited Sue's share per rights of survivorship. When Frank deeded Greenacre "to Ann, Beth, and Carl", A,B,C receive joint tenancy because it is a default estate, and there is no specific language to the contrary. Therefore, Frank inherited Sue's share, and A,B,C are tenants in common for the whole estate.

2. Eminent Domain is a 5th Amendment Taking Clause allows condemnation private land for public use for just compensation in good faith. In this case, Village condemned a 100 foot strip of A,B, and C's estate for the fair market value payment of \$75,000. The public reason for the condemnation is Ed's supermarket and narrow roads pose a serious safety problem due to increase traffic congestion. Therefore, the condemnation of the 10 foot strip is justifiable.

3. Under the equitable doctrine conversion, in common law in land sale contracts, the buyer keeps equitable title to the land while the seller keeps legal title to the land. The risk of loss stays with the buyer throughout the period of closing with a few examples for the seller destroys intentionally the property. In comparison, in NY, under the Uniform Vendor Risk Act, the risk of loss stays with the seller until the closing at which point the risk of loss transfers to the buyer together with a title.

Since the condemnation of the 10 foot strip is material, Paul can rescind the contract with Ann and Beth. The question becomes who bears the risk of loss. Under the common law, Ann and Beth would be liable to Paul for condemnation. New York follows Uniform Vendor Purchasing Act, and it is Paul who is bearing the risk of loss.

4. Ann, Beth, and Carl receive the title as tenants in common from Frank because there was no special language for joint tenancy. Ann and Beth transfer to Paul tenancy in common. Therefore, Carl and Paul will be tenants in common.