

MBE Overview: Real Property

NOTE: Approximately one-fifth of the Real Property questions on the MBE will be based on each of the categories I through V.

I. Ownership of real property

II. Rights in real property

III. Real estate contracts

IV. Mortgages and Security Devices

V. Titles



MBE Overview: Real Property

I. Ownership of real property

A. Present estates and future interests

1. Present estates

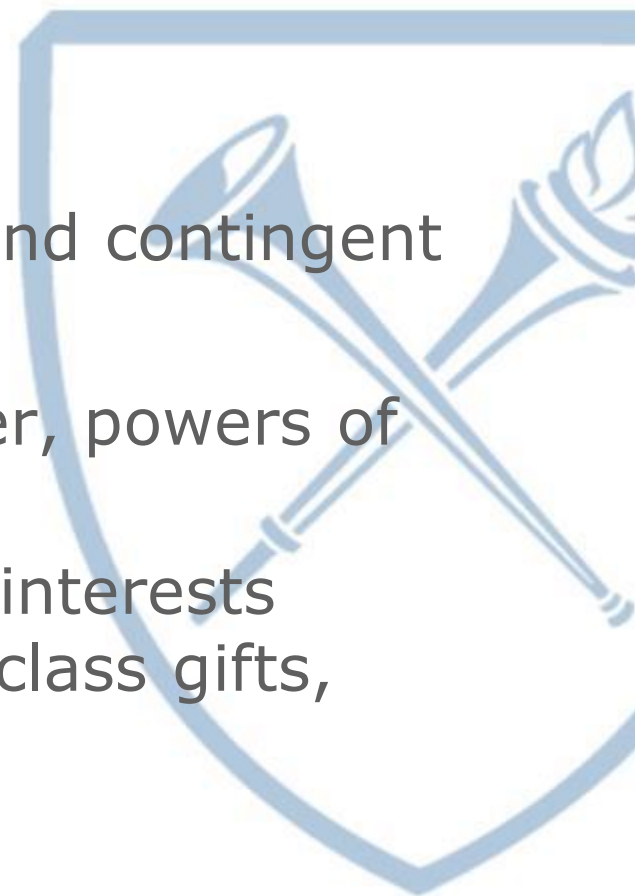
- a. Fees simple
- b. Defeasible fees simple
- c. Life estates



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2. Future interests

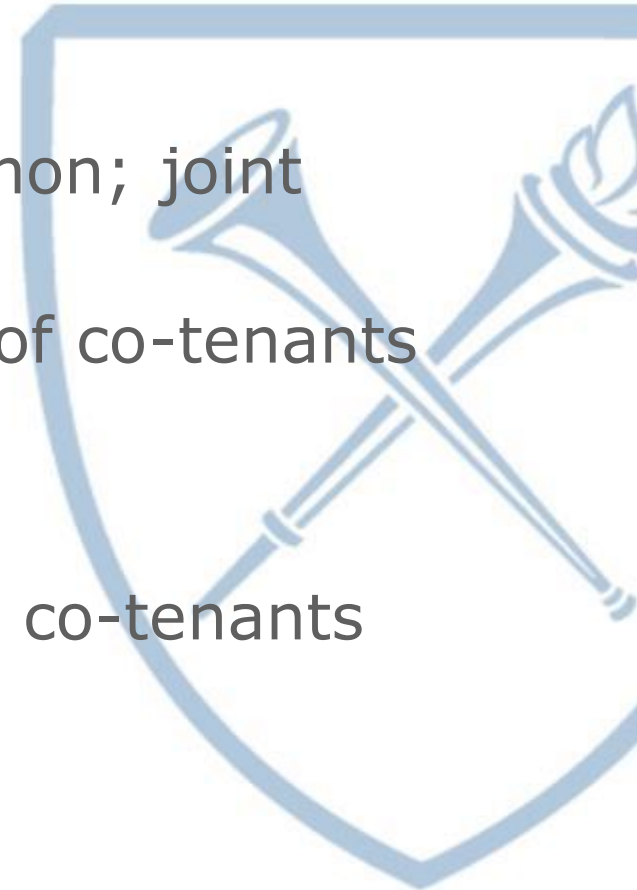
1. Reversions
2. Remainders, vested and contingent
3. Executory interests
4. Possibilities of reverter, powers of termination
5. Rules affecting these interests (including survivorship, class gifts, waste, and cy pres)



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B. Co-tenancy

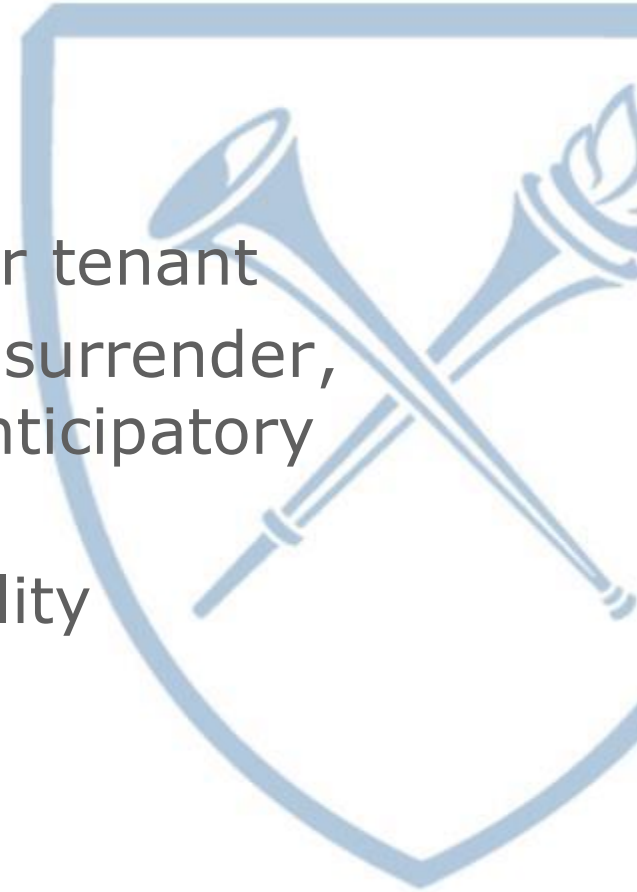
1. Types: tenancy in common; joint tenancy
2. Rights and obligations of co-tenants
 - a. Partition
 - b. Severance
 - c. Relations among co-tenants



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C. Landlord-tenant law

1. Types of tenancies
2. Possession and rent
3. Transfers by landlord or tenant
4. Termination (including surrender, mitigation of damages, anticipatory breach, security deposits)
5. Habitability and suitability



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D. Special problems

1. Rule Against Perpetuities: common law rule and statutory reforms
2. Alienability, descendibility, and devisability of present and future interests
3. Fair housing/discrimination
4. Conflicts of laws related to disputes involving real property

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II. Rights in real property

A. Restrictive covenants

1. Nature and type
2. Creation
3. Scope
4. Transfer
5. Termination
6. Property owners' associations and common interest ownership communities



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- B. Easements, profits, and licenses
 - 1. Nature and type
 - 2. Methods of creation
 - a. Express
 - b. Implied
 - c. Prescription
 - 3. Scope and apportionment
 - 4. Transfer
 - 5. Termination



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C. Fixtures

D. Zoning (fundamentals other than regulatory taking)

1. Zoning laws
2. Protection of pre-existing property rights
3. Rezoning and other zoning changes

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III. Real estate contracts

- A. Real estate brokerage
- B. Creation and construction
 1. Statute of frauds and exceptions
 2. Essential terms
 3. Time for performance
 4. Remedies for breach
- C. Marketability of title
- D. Equitable conversion (including risk of loss)
- E. Options and rights of first refusal
- F. Fitness and suitability
- G. Merger



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IV. Mortgages/security devices

A. Types of security devices

1. Mortgages (including deeds of trust)
 - a. In general
 - b. Purchase money mortgages
 - c. Future advance mortgages
2. Installment land contracts
3. Absolute deeds as security



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B. Security relationships

1. Necessity and nature of obligation
2. Mortgage theories: title, lien, and intermediate
3. Rights and duties prior to foreclosure
4. Right to redeem and clogging equity of redemption

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C. Transfers

1. By mortgagor

a. Assumption and transfer “subject to”

b. Rights and obligations

c. Application of subrogation and suretyship principles

d. Restrictions on transfer (including due-on-sale clauses)

2. By mortgagee



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D. Discharge of the mortgage

1. Payment (including prepayment)
2. Deed in lieu of foreclosure

E. Foreclosure

1. Types
2. Acceleration
3. Parties to the proceeding
4. Deficiency and surplus
5. Redemption after foreclosure



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V. Titles

A. Adverse possession

B. Transfer by deed

1. Requirements for deed

2. Types of deed (including covenants for title)

3. Drafting, review, and negotiation of closing documents

4. Persons authorized to execute documents



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- C. Transfer by operation of law and by will
 - 1. In general
 - 2. Ademption
 - 3. Exoneration
 - 4. Lapse



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D. Title assurance systems

1. Recording acts

a. Types

b. Indexes

c. Chain of title

d. Hidden risks (e.g. undelivered or forged deed)

2. Title insurance

E. Special problems (including estoppel by deed and judgment and tax liens)

