JULY 2025

Annotated California Bar Questions

Study edition | Original question pages with added highlights and reading pointers.

Practice first: attempt the clean question, then use the numbered notes and online sample responses to compare your reasoning. The full source packet is preserved, including its instructions and library.

Original, ungraded instructional commentary. Not official selected answers, scored student work, or a claim of attorney review.

July corrections: where applicable, the official source retains visible post-exam revision marks. The online text uses the corrected wording and dates.

Source: State Bar of California | 23 original pages, all retained.

Bar Exam Doctor | Published November 4, 2026

JULY 2025
ESSAY QUESTIONS 1, 2, AND 3

California Bar Examination

Answer all 3 questions; each question is designed to be answered in one (1) hour.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the resolution of the issues raised by the call of the question.

Unless a question expressly asks you to use California law, you should answer according to legal theories and principles of general application.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

QUESTION 1

In 2020, Grandma died, leaving a valid will. The will created two trusts, the Farm Trust and the Ancestry Trust, and divided her residuary estate equally between them. The will stated, “Should either trust fail, for any reason, all assets of the failed trust should be given to the children of my granddaughter Betty.”

1 The Farm Trust left Grandma’s large farm to the City for the general benefit of the City. The trust stated Grandma preferred that the farm be used in perpetuity as an active organic-certified farm, on which no chemical pesticides were to be used. Bank was named as trustee of the Farm Trust.

The Ancestry Trust directed the trustee to distribute all income from the trust annually in equal shares to Tom, Betty, and Carol, Grandma’s grandchildren. Tom was named as trustee of the Ancestry Trust.

In 2023, Betty’s only child, Darcy, was born.

In January 2024, for reasons beyond Bank’s control, Grandma’s farm lost its organic certification but continued to operate as a farm. As a result of this loss of certification, Bank intends to allow City to use pesticides on the farm.

3 In March 2024, Tom unexpectedly incurred a large debt for medical expenses. As trustee, Tom wrote a check from the assets of the Ancestry Trust to pay off the debt. Tom planned
2 to repay the Trust but was unable to before he died a few months later. A successor trustee was not named.

In January 2025, Betty petitioned the court to dissolve both the Farm and the Ancestry Trusts and to order Tom’s estate to repay the Ancestry Trust the money he took to pay off his medical debt. Bank, Carol, and Tom’s estate have objected to Betty’s petition.

A. Should the court grant Betty’s petition to dissolve the Farm Trust? Discuss.

B. Should the court grant Betty’s petition to dissolve the Ancestry Trust? Discuss.

C. Should the court order Tom’s estate to repay the Ancestry Trust? Discuss.

READING POINTERS

1 Interpret the restriction

A preference may be precatory. Loss of certification does not by itself establish failure of the charitable trust.

2 Vacancy is not failure

Separate appointment of a successor from termination of the trust.

3 Trustee loyalty

A personal emergency and an intent to repay do not authorize use of trust assets.

QUESTION 2

1 Ollie owns a field which he rented to the Pelicans, a soccer team, for a soccer game against another team, the Jaguars. On the afternoon before the day of the game, Ollie checked the field for dangerous conditions. He found nothing. He did not examine the field again before the game.

2 Barry is the coach for the Pelicans. During the game, Barry became frustrated by the Jaguars' rough play. He therefore instructed Kate, a Pelicans player, to play more roughly. Barry knew that Kate was a very aggressive player. Barry had done this once before, and Kate started a fight with a player from the opposing team.

As Barry expected, Kate began playing very aggressively. Eventually, she knocked down a player from the Jaguars, Yvonne. When Yvonne fell, she broke her arm and badly cut her hand on broken glass lying on the field. The referee stopped play to call a foul.

While play was stopped, Yvonne asked Kate, "Why are you being such a jerk?" Kate responded by punching Yvonne. Yvonne pushed Kate, who fell and suffered some minor bruises. Yvonne suffered no further injury.

1. Could Yvonne successfully sue Ollie or Barry, or both, in negligence for her broken arm and cut hand? Discuss.

2. Could Yvonne successfully sue Kate for battery? Could Kate successfully sue Yvonne for battery? Discuss.

3 3. If Yvonne recovers only from Ollie and Barry in negligence, how would her damages be apportioned between Ollie and Barry? Discuss.

READING POINTERS

1 Inspection and timing

Ask whether another inspection was reasonable and whether it would have discovered the glass.

2 Foreseeability

The earlier fight makes the coaching instruction more significant than ordinary encouragement.

3 Keep injuries separate

The glass explains the cut, not the broken arm. Analyze overlapping harm only after identifying causation.

QUESTION 3

Ann, Bob, and Claire pooled their resources and opened a retail shoe store called ABC Shoes. They each provided initial operating capital, took an active role in day-to-day operations, and agreed to split any profits equally.

Two months later, Delta Bank (Delta) loaned ABC Shoes $30,000 for additional marketing expenses. Ann signed the loan papers as “Ann, for ABC Shoes.”

1 Three months later, ABC Shoes was validly incorporated as “ABC Incorporated” (ABC Inc.) with Ann as president, Bob as secretary, and Claire as treasurer. Ann, Bob, and Claire were also directors of the corporation and its sole shareholders. The board
3 adopted bylaws and regularly held meetings thereafter.

2 In the following six months, Ann, with the approval of Bob and Claire, borrowed $40,000 for business expansion from Echo Bank (Echo). Ann signed the note as "ABC Inc. by Ann, President." That same month, Ann, without consulting Bob or Claire, entered a contract with Big Shoe Co. to buy $50,000 of inventory. Ann again signed the contract as "ABC Inc. by Ann, President." ABC Inc. then hired Fred to work in the store and occasionally pick up inventory. While driving to pick up inventory one day, Fred negligently injured Peter, a pedestrian who was walking in a crosswalk. Peter filed a lawsuit for personal injuries.

One year after opening ABC, the business ceased operations due to low demand and an economic recession. Money is still owed to Delta, Echo, and Big Shoe Co.

Who is liable for each of the following items:

a. The Delta loan? Discuss.

b. The Echo loan? Discuss.

c. The Big Shoe Co. contract? Discuss.

d. Damages for Peter’s injuries? Discuss.

READING POINTERS

1 **Build a timeline**

Incorporation does not erase the partnership debt incurred earlier.

2 **Authority has two audiences**

Distinguish internal permission from the supplier’s reasonable understanding of presidential authority.

3 **Use the protective facts**

Formalities and a recession weigh against treating business failure as automatic veil piercing.

JULY 2025
ESSAY QUESTIONS 4 AND 5

California Bar Examination

Answer both questions; each question is designed to be answered in one (1) hour. Also included in this session is a Performance Test question, comprised of two separate booklets, which is designed to be answered in 90 minutes.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

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Note:

This document contains a revised version of essay question 4, with the change clearly marked in red. The revision was identified after the administration of the exam and is being published to ensure accuracy and to serve as a study aid. Please review the question below carefully.

QUESTION 4

For 20 years, the number of primary care physicians in State A has declined, adversely affecting the health of those living in low-income and rural communities. To address this problem, the State A legislature enacted a statute creating a Physician Retention Program (PRP) at each of its State's medical schools. The statute authorizes both a tuition waiver and an annual payment of $10,000 to State A residents who apply to and are admitted into the PRP. In exchange, the PRP participant agrees to work in a targeted low-income or rural community for the first five years after graduation. PRP participants who do not keep their full five-year commitment are required to repay State A for their waived tuition and PRP payments based on the number of months actually worked in low-income and rural communities. The statute does not authorize these incentives for out-of-state residents until they have established residency by living in State A for one year.

2

The statute also establishes factors for admission into the PRP, including the applicant's undergraduate grade point average, work experience, and race. A further factor is whether the applicant was raised in a targeted low-income or rural community or has lived in such a community for three or more years, on the assumption that such an applicant is more likely to remain there.

1

Doug has been admitted as a first-year student in a State A medical school. He has lived his entire life in a wealthy community in State B. After Doug's PRP application was denied, he brought suit in Federal Court in State A.

How should the Federal Court rule on Doug's claims that the PRP statute is unconstitutional under:

1. The Due Process Clause of the Fourteenth Amendment? Discuss.

2. The Equal Protection Clause of the Fourteenth Amendment? Discuss.

READING POINTERS

1 Use strict scrutiny

A racial factor requires a different analysis from community experience or economic criteria.

2 Residence versus duration

Distinguish being a resident from waiting a year after becoming one.

1

3. The Privileges ~~and~~or Immunities Clause of the Fourteenth Amendment? Discuss.

4. The Privileges and Immunities Clause of Article IV, Section 2? Discuss.

READING POINTERS

1 **Read the corrected question**

The Fourteenth Amendment clause says “Privileges or Immunities”; Article IV says “Privileges and Immunities.”

QUESTION 5

As Dan drove home from work, he was blinded by the sun and could not see. At that moment, a five-year-old child ran into the street to retrieve her ball. The child was struck by Dan's car and died. The county prosecutor's office charged Dan with intentional homicide. The judge appointed Linda as Dan's lawyer. Linda is an experienced criminal defense attorney and thinks all her clients should go to trial. 1

Prosecutor Pat offered to settle the case. If Dan pled guilty to voluntary manslaughter, Pat would recommend a sentence of five years in prison. Dan was depressed over the child's death and told Linda that he wanted to plead guilty. Against Dan's wishes, Linda moved for a continuance to allow her time to have an expert examine the dangerousness of the roadway and the angle of the sun where Dan struck the child. The judge denied Linda's motion for a continuance. Linda asked to be relieved as counsel. The judge granted Linda's motion and relieved her as counsel of record. Without further inquiry, the judge allowed Dan to plead guilty. 2

After Dan pled guilty, Pat received an accident report concluding that the angle of the sun created an especially dangerous hazard on the day of the collision. Because Dan had already pled guilty, Pat did not produce this report to Linda, nor did he share it with the judge. At sentencing, Pat argued that the evidence of Dan's guilt was consistent with an intentional act. The judge rejected the plea bargain and sentenced Dan to the maximum term of 11 years in prison. 3

1. What ethical violations, if any, has Linda committed? Discuss.

   Answer according to California and ABA Authorities.

2. What ethical violations, if any, has Pat committed? Discuss.

   Answer according to California and ABA Authorities.

3. Did the judge properly:
   a. accept Dan's guilty plea? Discuss.
   b. sentence Dan? Discuss.

   Answer according to California Law.

READING POINTERS

1 Client controls the plea

Counsel advises; a personal policy favoring trial cannot replace the client's informed decision.

2 Separate judicial duties

Withdrawal permission is not a valid waiver of counsel or a sufficient plea colloquy.

3 Disclosure continues

Mitigating evidence remains important at sentencing; a completed plea is not the end of professional duties.

July 2025

California Bar Examination

Performance Test

INSTRUCTIONS AND FILE

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Note:

This document contains a revised version of the Performance Test question, with changes clearly marked in red. The revisions were identified after the administration of the exam and is being published to ensure accuracy and to serve as a study aid. Please review the question below carefully.

TATE v. TATE

Instructions .....

FILE

Memorandum to Applicant from Roberta Rhodes .....

Memorandum re. Interview with Joan Tate .....

Memorandum from Kerry Owens .....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

PERFORMANCE TEST INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem.

2. The problem is set in the fictional State of Columbia, one of the United States. In Columbia, the intermediate appellate court is the Court of Appeal and the highest court is the Supreme Court.

3. You will have two sets of materials with which to work: a File and a Library.

4. The File consists of source documents containing all the facts of the case. The first document in the File is a memorandum containing the directions for the task you are to complete. The other documents in the File contain information about your case and may include some facts that are not relevant. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or supervising attorney's version of events may be incomplete or unreliable. Applicants are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.

5. The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant to the assigned lawyering task. The cases, statutes, regulations, or rules may be real, modified, or written solely for the purpose of this performance test. If any of them appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references. Applicants are expected to extract from the Library the legal principles necessary to analyze the problem and perform the task.

6. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

7. This performance test is designed to be completed in 90 minutes. Although there are no restrictions or parameters on how you apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response before you begin writing it. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.

8. Do not include your actual name or any other identifying information anywhere in the work product required by the task memorandum.

9. Your performance test answer will be graded on its responsiveness to and compliance with directions regarding the task you are to complete, as well as on its content, thoroughness, and organization.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

The Rhodes Law Firm
43 Whitehall Lane
Sparta, Columbia

MEMORANDUM

TO: Applicant
FROM: Roberta Rhodes
DATE: July 29, 2025
RE: Advice on a Partition Action for Joan Tate

Joan Tate has recently asked for our help acquiring sole ownership of a piece of real property that she owns as a cotenant together with two cousins, Frank Tate and Crystal Tate. She has asked them to sell her their interests as cotenants to her, so that she can develop the property for commercial purposes.

Her cousins have refused. They want to continue to use the property as a residence. They have also told her that, if a sale does happen, they will ask that the property be divided into three separate parcels. Finally, Crystal has said that, if the property is sold, she wants to be paid back for her contributions to the property.

Ms. Tate has asked us two questions:

1) Can she force a sale of the entire property, or will she be forced to divide the property into three parcels?

2) Will Crystal Tate be able to recover the full amount of her contributions to the property?

1 Please prepare a letter to Ms. Tate giving advice about these questions under Columbia's partition statute. Make sure to address each question separately. In your discussion, identify both the strengths and potential weaknesses of the client's prospective claim. Integrate the facts into your advice. Use legal terminology only when necessary. Write in a way that someone unfamiliar with legal concepts will be able to understand.

READING POINTERS

1 Use a client letter

Address both requested questions in ordinary language, with strengths and weaknesses.

The Rhodes Law Firm
43 Whitehall Lane
Sparta, Columbia

MEMORANDUM

TO: File
FROM: Roberta Rhodes
DATE: July 22, 2025~~July 29, 2018~~
RE: Interview with Joan Tate

I met with Joan Tate in our offices today. This memorandum summarizes our conversation. This interview deals with a potential lawsuit against individuals who share Ms. Tate's last name. So, I will refer to all prospective litigants by their first names.

Joan Tate is a 52-year-old resident of Sparta whom I have met several times before. She owns a series of craft stores that cater to the tourist trade and to students at the University in Sparta. She has a reputation for being a successful businessperson and an active participant in various charities.

Joan holds an ownership interest as a cotenant in a piece of real estate located in an area zoned for both commercial and residential use. The specific address is 23 Corinth Road. The property consists of a house on a roughly one-acre parcel of land in an area that until recently was primarily residential. As Sparta has grown, more and more houses along Corinth Road have been converted to commercial enterprises. Joan described the area as one suited to smaller businesses such as clothing stores, gift shops, and bookstores.

The house sits at the corner of Corinth Road and Sykes Street. It occupies a little less than one-third of the overall parcel and has an adjacent garage. The rest of the land includes a one-third-acre wooded area at the back of the house, abutting Sykes Street. It also includes a one-third-acre parcel of open land next to the house, on Corinth Road.

The property is owned by Joan and her two cousins, Frank Tate and Crystal Tate. The three cousins received their cotenancies directly from their grandfather. His death occurred about 10 years ago, when all three cousins were adults. Crystal Tate took occupancy of the house shortly after his death and has lived there continuously since then.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Joan says that the cousins have never been close. As a result, she knows relatively little about any one of them. What she knows comes from a series of interactions she had with them recently about the property.

About a month ago, Joan heard that Crystal was planning to move out of the house. Joan called Crystal and learned that Crystal's husband had been promoted and would be transferred to a different city within the next six months. Crystal said that she would rent out the house as a residence after she moves.

This gave Joan an idea. She toured the neighborhood, talked with several nearby store owners, and consulted with a real estate agent. She became convinced that the house offered business opportunities that would offer a much higher rate of return, either as professional office space or as high-end retail.

Joan met with Frank and Crystal to make her proposal. Both rejected the idea out of hand. They said that the house had been in the family as a residence for decades and that it was inappropriate to use it for anything else. In fact, Frank said that, if he had to, he would move his family into the house to keep Joan from "commercializing" it. If Joan forced the issue, Frank and Crystal said they would rather divide the property into three separate parcels.

The conversation ended after Crystal pointed out that she had paid about $40,000 in taxes, maintenance, and repairs over the years. Crystal also said that she paid $20,000 to build the garage. Crystal's parting words to Joan were, "You never paid a cent."

Joan now believes that her cousins will reject any effort on her part to buy them out. Still, she believes that this is an opportunity that she cannot pass up. She respects her cousins' attachment to the house, but now that Crystal's family is moving, this is the right time to shift it to a more profitable use.

Joan has heard about the possibility of forcing a sale using a partition action. She wants to buy the whole property and does not want to divide it into parcels. She accepts that Crystal has made all of those payments and wants to know whether Crystal can recover them in addition to her share of the property.

I told her that we would investigate further and write her a letter with our advice.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

MEMORANDUM

TO: Joan Tate File
FROM: Kerry Owens
DATE: July 28, 2025~~July 29, 2022~~
RE: Results of Investigation into Partition of Corinth Road Property

I was asked to investigate several matters relating to a potential partition action involving the property at 23 Corinth Road in Sparta.

Ownership Interests

The property is currently owned by Joan Tate, Frank Tate, and Crystal Tate as cotenants. Both the land records and Probate Court records indicate that they received their interests through the will of their grandfather, Simon Tate, upon his death 10 years ago. There have been no liens or mortgage deeds on the property since then.

Occupancy, Possession, and Residence

A review of the city's tax records indicates that Crystal Tate has paid the property taxes for the last 10 years. Crystal Tate has listed 23 Corinth Road as her residential address since her grandfather's death 10 years ago.

The total property tax that Crystal has paid over the last 10 years is $30,000. The property has been assessed for residential purposes during that time. Its appraised value has not increased for the last five years.

Fair Market Value

You asked me to estimate the value of the property both as a whole and after division into three parcels. I consulted with the real estate agent mentioned by Ms. Tate in her interview with Roberta Rhodes and with several other agents whom we have used as experts in the past. The following numbers reflect a consensus of their views.

As a Single Parcel: The property has a current fair market value of approximately $600,000. This figure accounts for the fact that the house sits in a neighborhood that includes both residential and commercial uses.

As Separate Parcels: I confirmed that the property could readily be divided into three separate parcels: one parcel on the corner of Corinth Road and Sykes Street that includes

READING POINTERS

1 Compare the right totals

The separate parcels total $450,000. Explain the $150,000 loss rather than just quoting three values.

the house and the garage; a wooded area in back of the house abutting Sykes Street; and open land next to the house on Corinth Road. The house occupies a somewhat smaller area than the two other parcels, which are each roughly equal in size.

The value of the parcel with the house and garage comes to roughly $200,000. The combined value of the other two parcels together totals $250,000: $130,000 for the open land next to the house; $120,000 for the wooded lot abutting Sykes Street. The total of the values of the three separate parcels would thus come to approximately $450,000.

Cost of Repairs and Improvements

1 Beyond confirming the addition of the garage by Crystal Tate eight years ago, I have no way of cross-checking the $60,000 figure offered by Crystal Tate. Property taxes for those years come to roughly $30,000; and it seems reasonable to think that she invested an additional $10,000 in repairs and maintenance during this time. My consultants indicate that the garage would have cost an additional $20,000. As a result, the $60,000 total quoted by Crystal seems accurate.

READING POINTERS

1 **Separate expense categories**

Necessary expenses and unilateral improvements receive different treatment.

July 2025

California Bar Examination

Performance Test

LIBRARY

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

TATE v. TATE

LIBRARY

Mahone v. Donnelly
Colum. Supreme Ct. (2011) .....

Boyd v. Boyd
Colum. Court of Appeal (1994) .....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Mahone v. Donnelly
Columbia Supreme Court (2011)

This is an appeal from an order directing the partition by sale of 5.7 acres in Liberty County known as the River Farm. Brittany Mahone and Sean Donnelly Jr. own interests as cotenants. The trial court ruled that physical division of the property was not possible and, after affording Mahone the option to buy out Donnelly's interest, ordered the sale of the property. Mahone appealed; we affirm.

The River Farm was acquired by Brittany Mahone's grandfather, Thomas Mahone, who purchased the land. Thomas Mahone left the property to his two surviving children as cotenants, who shared the use of the property as a vacation property. Each child wrote a will transferring their interest to their surviving children. Brittany Mahone received her share from her father and continued to use it as vacation property.

Sean Donnelly purchased his share from the other grandchild, with the purpose of developing the entire property as resort property. Brittany Mahone objected to the development and refused Donnelly's offer to buy her out. Donnelly then filed this partition action.

At trial, Mahone presented testimony from a real estate agent that the River Farm could readily be divided into two parcels of land: one smaller parcel that fronted on the road and included the house, the other a larger parcel that included the river and consisted largely of undeveloped woodland. This testimony assigned roughly equal monetary values to the larger and the smaller parcels, if sold in their current state of development.

In her own testimony, Mahone stated her desire to keep the smaller parcel and testified to the importance of the house and surrounding land to her and her family, given its connection to her grandfather and his descendants. On cross-examination, she acknowledged that she would not agree to provide road access to the larger parcel if Donnelly sought to develop it. She also stated that she could not afford to buy Donnelly's interest from him.

Donnelly offered testimony from a real estate agent and a developer that specialized in developing resort properties. These two witnesses offered their opinions that, sold as a single parcel and used for development, the River Farm would have nearly three times the total value of the separate parcels proposed by Mahone. They stated that, if the larger parcel did not include a right of way to the road fronting the larger parcel, the value of the larger parcel would be relatively small, given the lack of ready access to road frontage in any other direction. Donnelly acknowledged on cross-examination that if the court ordered

READING POINTERS

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a judicial sale of the property, he intended to purchase the entire property at that sale.

In Columbia, if cotenants cannot agree on how to divide their co-owned property, one cotenant has the right to file a partition action to compel a division of the property (Columbia Partition Code section 1020). According to the statute, the trial court must order a physical division of the property, unless "physical division would result in economic harm to the parties or is otherwise impracticable" (*Id*. section 1025).

This provision creates a rebuttable presumption in favor of physical division, which may be rebutted in at least two ways. First, the presumption may be overcome by proof that any one parcel out of the divided property would have little to no economic value, (*Timmons v. Warnes,* Columbia Court of Appeal (2002)). Second, the presumption may be overcome by proof that the market value of the property as a whole would be significantly larger than the total value of all parcels after division. Stated differently, proof that the value of the land as a whole would be diminished by division into separate parcels would rebut the presumption (*Quick v. Scartz,* Columbia Court of Appeal (2008)).

Our courts have also addressed the role of sentiment and familial attachment in partition cases. The cases recognize that individuals and families can develop a strong attachment to land on which a family resides and which has been received by inheritance. These considerations support an order for physical division, especially where family members continue to use some or all of the land as a primary residence. However, "while sentimental considerations should have great weight, especially in the preservation of a home, considerations of economic value should be the determining factor" (*Id*.).

In this case, the trial court did not abuse its discretion in ordering the sale and the division of the proceeds equally between the parties. Sufficient evidence existed to support the trial court's finding that, sold as one parcel, the River Farm would have significantly greater value than the total value of the separate parcels if physically divided. Credible testimony existed that the value of the larger, undeveloped parcel would have slight value, especially in light of Mahone's expressed unwillingness to provide a right of way. Finally, without questioning Mahone's testimony about her family's attachment to the house and land, her family does not use the house as a primary residence. Even if it did, the trial court acted within its discretion in according greater weight to the economic advantages of selling the property as one parcel.

For all the foregoing reasons, we affirm.

READING POINTERS

1 Use the controlling comparison

Mahone recognizes family attachment but makes the economic showing decisive when established.

Boyd v. Boyd
Columbia Court of Appeal (1994)

Plaintiff, Douglas Boyd, brought this action to partition real estate held by himself and his sister, Patricia Boyd, as tenants in common. The real estate consists of a dwelling and four acres of land in Oceanside, Columbia (the Oceanside property). During the partition action, Patricia sought to be reimbursed for expenditures she made for maintaining the property while living there for seven years before the court divided the proceeds from the sale of the property. The trial court granted her request. Douglas appealed this decision. We affirm.

The parties' mother, Florence Boyd, owned the Oceanside property, having inherited it from her husband in 1979. Until 1982, Florence Boyd lived in the property alone. In 1982, her health began to decline, and Patricia Boyd moved into the property to help her mother and to reduce her living expenses after her divorce the year before. Douglas Boyd continued to live in California and did not contribute to the upkeep of the house or land.

In 1984, Florence Boyd executed a will that left Patricia Boyd a small sum "in recognition of her services to me" and that left the Oceanside property to Patricia and Douglas Boyd as cotenants. She left the balance of her estate, roughly $50,000, to charity. Florence Boyd died in 1985. Patricia remained in the property and continued to work in Oceanside. Douglas stayed in California. He and his sister spoke infrequently. He continued to make no contributions to the property.

In 1992, Douglas Boyd experienced several financial setbacks. He asked his sister to buy him out of the cotenancy for the price of $200,000, half of the property's fair market value. Patricia could not afford to do so; she refused. Douglas then filed this partition action. After an independent appraisal, the trial court confirmed a fair market value of $400,000. Patricia offered uncontested evidence that she had spent $25,000 to maintain the house between 1975 and 1992. She also offered that she had expended $5,000 on the construction of a tool shed at the back of the house. The court combined these two amounts and ordered that Patricia receive one half of that total from the proceeds of sale, before dividing the balance equally between the parties. On appeal, Douglas contended that this order was in error.

At common law, a cotenant who paid more than her share of the costs of maintaining the co-owned property could bring an action for contribution from the other cotenants. Where one cotenant assumes all of these costs, that cotenant could bring an action against the other cotenants for the amount by which those costs exceeded the tenant's share. This common law principle rests on the equitable doctrine of contribution between joint obligors

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

(*Pomeroy v. Kent,* Columbia Supreme Court (1906)). All cotenants share equally in the obligation to maintain the property they own. If one cotenant bears the full costs, the others can be compelled to contribute their share of those costs.

Nothing in the current Columbia partition statute alters this principle. To be sure, the language of the statute makes no explicit provision for deducting those costs from the proceeds of a forced sale: "The court shall order the proceeds of the sale to be divided among the several claimants in proportion to their respective interests after deducting the expenses of the proceedings" (Columbia Partition Code, section 1044). However, the statute also provides that the court "may frame its proceeding and order so as to meet the exigency of the case" (*Id.*, section 1050). Our cases have consistently noted that the trial court has the equitable power to satisfy one cotenant's right of contribution from other cotenants by deducting costs before dividing the remaining proceeds of sale.

1 Patricia Boyd proved that she had expended $25,000 to maintain the property between 1985 and 1992. All of these costs fall within the categories of expenditures previously approved by the courts of this state: for costs of routine maintenance, s*ee Frome v. Snopes* (Columbia Supreme Court (1957)) (deduction for costs of termite removal); for real estate taxes, *Jarndyce v. Sutpen* (Columbia Supreme Court (1966)) (deduction for share of real estate taxes); and for storm and other catastrophic damage to the house, *Trillian v. Trillian* (Columbia Court of Appeal (1989)) (deduction for damage caused by forest fire).

Patricia is not, however, entitled to the entire $25,000. A cotenant seeking contribution may only obtain credit for the share of the total costs that the other cotenants should have borne. In this case, Patricia Boyd concedes that she and her brother have equal shares as cotenants. She has an obligation as cotenant to bear half of the total costs of maintaining the property. She may seek contribution from her brother only for his half of those costs.

The same cannot be said of the $5,000 she spent on the tool shed. Our cases have consistently held that a cotenant who makes improvements to the property cannot recover the costs of the improvements through contribution. These improvements serve only to add to the value of the property, from which the cotenant receives a share in the event of a later sale.

Remanded for recalculation of Patricia's share consistent with this opinion.

READING POINTERS

1 Avoid double counting

Contribution covers amounts paid for other owners. Do not make Crystal reimburse part of her own credit.