Joint Tenancy & Real Property: Issues in Estate Planning and Litigation

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Overview:

Joint Tenancy and Real Property …

- When A Trust Will Arise
- Risks
- Probate Avoidance
- Efficient Estate Planning and Tax Considerations

When Does a Trust Arise IN A LAND JOINT TENANCY?

By operation of law:

THE RESULTING TRUST

- A resulting trust arises when title to property is in one party's name, but that party, because he […] gave no value for the property, is under an obligation to return it to the original title owner: *Pecore v Pecore,* 2007 SCC 17 at para. 20.

By operation of law:

THE RESULTING TRUST

- Also referred to as a "**voluntary transfer resulting trust**" and arises because the transferor lacked donative intent. Therefore the title holder has an equitable obligation to hold the property for the benefit of the transferor: *Dunnison Estate v Dunnison,* 2017 SKCA 40 at paras. 19, 21.

By operation of law:

THE RESULTING TRUST

"[…] it is widely accepted that the underlying notion of the resulting trust is that **it is imposed "to return property to the person who gave it** and is entitled to it beneficially, from someone else who has title to it. Thus, **the beneficial interest 'results' (jumps back) to the true owner**": *Kerr v Baranow,* 2011 SCC 10 at para. 16.

- Generally, a resulting trust is accompanied by a rebuttable presumption of law, and a general rule:

  > When a transfer is challenged, the presumption allocates the legal burden of proof. The onus is on the transferee (who paid no consideration) to demonstrate that a gift was intended.

- This is so because equity presumes bargains, not gifts.
- See *Pecore* at para. 24.

THE RESULTING TRUST & LAND IN SASKATCHEWAN

- Two lines of cases in Saskatchewan, prior to *Dunnison*:
  - Presumption of resulting trust applies to land joint tenancies when gratuitous transfer
  - Indefeasibility of title is a full answer (no presumption of resulting trust)

- As will be discussed, the SKCA in *Dunnison* landed on middle ground. But, risks of litigation remain.

THE RESULTING TRUST & LAND IN SASKATCHEWAN

- Key Features:
  - transfer of title for no consideration (transferee receives title, but did not pay the transferor)
    - Parent to adult child as part of estate plan
  - a beneficial transfer is presumed, NOT a resulting trust. In other words, a gift is presumed (*Dunnison*)

THE RESULTING TRUST & LAND IN SASKATCHEWAN

Exception:

Presumption of advancement (ie. gift) to MINOR child: *Pecore* at para 40.

RESULTING TRUSTS IN LAND

- Saskatchewan's approach:
  - The challenger of title must prove that a gift was not intended; in essence, it is a gift that is presumed: *Dunnison* at para 91.

Risks of LAND TRANSFERS INTO Joint Tenancy: CASE LAW EXAMPLES

AREA OF RISK

Adverse Claims (Litigation)

Saskatchewan's Unique Jurisprudence

(pre- and post-*Dunnison*)

Joint Tenancies...

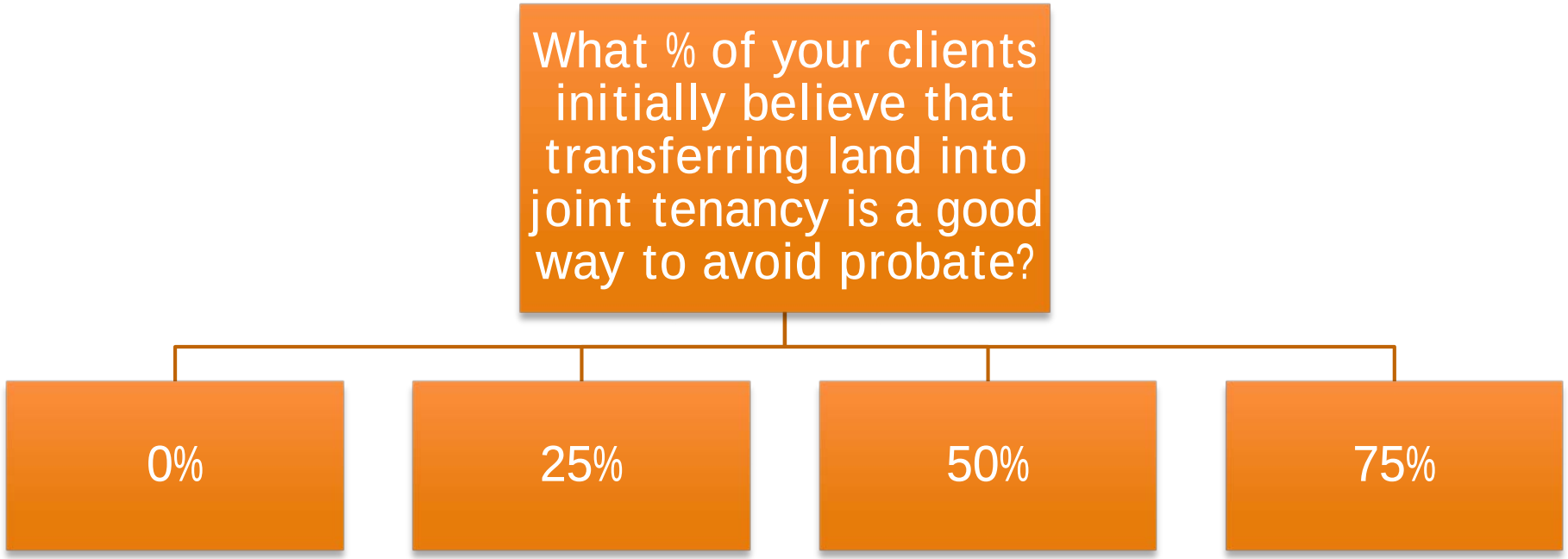
- What happens when parties do not properly document a relationship, or even when they do?
- What happens when parties act contrary to the written documents?
- What happens when documents are inconsistent?

ONLINE SOURCES FOR THE GENERAL PUBLIC…

https://www.nolo.com/legal-encyclopedia/free-books/avoid-probate-book/chapter6-3.html

“Joint tenancy is unquestionably the most popular probate-avoidance device around. And why not? Property owned in joint tenancy automatically passes, without probate, to the surviving owner(s) when one owner dies. Setting up a joint tenancy is easy, and it doesn't cost a penny.”

Poll Question:



Lyell Estate v Lyell, 2013 SKQB 330

Facts:

- Grandmother transferred title to her condo into joint tenancy with granddaughter.
- Years later, grandmother prepared a Will: granddaughter was not to inherit the condo upon her death.
- Upon grandmother's death, the executor sought an order of the Court that the granddaughter held title to the condo in trust for the estate.

Lyell Estate v Lyell, 2013 SKQB 330

“The Supreme Court of Canada in *Pecore* [...] clarified the law with respect to gratuitous transfers of title to a joint beneficiary. Where the transfer is made for no consideration, the onus is placed on the transferee to demonstrate a gift was intended. The transferee must rebut the presumption of resulting trust, which is the general rule for gratuitous transfers. [...] The evidence required to rebut the presumption of resulting trust is evidence of the transferor's contrary intention on the balance of probabilities”: para 12.

Lyell Estate v Lyell, 2013 SKQB 330

HELD:

- The granddaughter rebutted the presumption of resulting trust; the Court was satisfied that the grandmother had intended gift.

Lyell Estate v Lyell, 2013 SKQB 330

RISKS THAT MATERIALIZED:

- Transferor regretted the transfer to joint tenancy; wanted the property to belong to her estate upon her death.
- Complex court proceedings were required.
- Significant expense would have been incurred
- Dispute involving the estate materialized.
- Did not obtain the return of title.

Thorsteinson Estate v Olson, 2014 SKQB 237

Facts:

- Relationship akin to parent (transferor) and adult child (transferee).
- Transfer of 9 parcels into joint tenancy (with right of survivorship).
- *Deed of gift*
- Transferor, at age 83, commenced court action to remove transferee from title; denied intention to make a gift.

Thorsteinson Estate v Olson, 2014 SKQB 237

- Transferor died almost 5 years later, before trial.
- Estate continued the action.
- TRIAL JUDGE: Transferor had clear intention to make a gift; could not be retracted.

Thorsteinson Estate v Olson, 2014 SKQB 237

- Deed said:
  - WITNESSETH that the said Grantor for and in consideration of the assistance which the Grantee has provided to the Grantor both financially and personally and also for estate planning purposes, the said Grantor hath given, granted and conveyed, an undivided one-half interest …
- Looks like gift!

Thorsteinson Estate v Olson, 2014 SKQB 237

- 103 […]it can be stated **with confidence** that the doctrine of resulting trust is inapplicable where the impugned transfer of land has been registered in Saskatchewan's land titles system
- If wrong, and presumption of resulting trust applied, a gift was proven in any event.

Thorsteinson Estate v Olson, **2016 SKCA 134**

- Decision was upheld

- Court appears to conclude that the *presumption* of resulting trust **did apply** to gratuitous transfers of real property in Saskatchewan…

Thorsteinson Estate v Olson, **2016 SKCA 134:**

"In this case, the trial judge did not turn her mind to the question of whether a presumption of resulting trust existed until after she had found Marjorie intended to gift the land to William. Nevertheless, she correctly identified *Pecore* as the leading authority with respect to resulting trusts and determined that a presumption of resulting trust arose in the circumstances [...] **She found, however, William had presented evidence that Marjorie intended to gift the land to him and, accordingly, the presumption was rebutted**. [...] In my view, the trial judge did not err in fact or in law in her analysis of the application of the presumption of resulting trust": para 27.

Thorsteinson Estate v Olson

RISKS THAT MATERIALIZED FOR THE TRANSFEROR:

- Transferor regretted the transfer to joint tenancy; wanted title transferred back to her.
- Complex court proceedings were required.
- Significant expense would have been incurred.
- Many years of dispute without resolution before the transferor died.
- Did not obtain the return of title.

Savorn Estate v Williams, 2015 SKQB 280
(before *Olson* appeal decision was released)

FACTS:

- Mother transferred title to real property into joint tenancy with daughter.
- Years later, with son's help, mother prepared a new will stating her intention that the real property owned jointly with daughter was to be property of her estate.
- Upon mother's death mother, litigation ensued regarding the ownership of, among other things, the jointly owned real property.

Savorn Estate v Williams, 2015 SKQB 280

COURT:

- Relied on *Pecore:*

"Here, the presumption of a resulting trust means that it falls to [daughter] to prove that [mother] intended to gift the rights in the [real property] […]. If she does not, the assets will be treated as part of [mother's] estate and will be distributed according to the operative will": para 18.

Savorn Estate v Williams, 2015 SKQB 280

HELD:

- daughter rebutted the presumption; the Court was satisfied that a gift was intended.

Savorn Estate v Williams, 2015 SKQB 280

RISKS THAT MATERIALIZED:

- Complex court proceedings were required.
- Significant expense would have been incurred.
- Many years of dispute.

Schramm v Schramm, 2017 SKQB 212

Facts:

- Mother (transferor) and son (transferee).
- Gratuitous transfer; *Declaration of Bare Trust.*
- After years of dispute, mother commenced court proceedings (at age 84) seeking an order directing that 5 quarters of farmland registered as joint tenants be transferred back to her sole name.

Schramm v Schramm, 2017 SKQB 212

- Declaration of trust:

  The transfers being carried out were acknowledged as being for estate planning purposes only and were not intended to confer any immediate or current benefit upon me, nor any current rights of ownership.

- Looks like no gift!

Schramm v Schramm, 2017 SKQB 212

"[…] The Trust Declaration clearly and expressly states that the transfer into joint tenancy was for estate planning purposes only and was not intended to confer any immediate or current benefit upon Richard. […] **Richard specifically acknowledges that even though the titles would be held jointly, he would hold the apparent ownership interest in trust for Marie during her lifetime**. He acknowledges that Marie is the sole beneficial owner of the land and is entitled to the benefits and profits accruing from the land":para 89.

Schramm v Schramm, 2017 SKQB 212

- Son alleged the trust declaration was superseded by oral agreement.

HELD:

- Court ordered that title to all lands, except for the home quarter (upon which the son had made improvements), be transferred back to the mother.

Schramm v Schramm, 2017 SKQB 212

RISKS THAT MATERIALIZED FOR THE TRANSFEROR:

- Transferor regretted the transfer to joint tenancy; wanted title transferred back to her.
- Complex court proceedings were required.
- Significant expense was incurred.
- Many years of dispute.
- Not all titles were to be returned.

LANDMARK DECISION:
Dunnison Estate v Dunnison, 2017 SKCA 40

Result:

- resolved conflicting line of cases;
- resulting trusts may exist notwithstanding indefeasibility of title provided in land titles legislation in Saskatchewan;
- **BUT** the presumption that typically accompanies the resulting trust does not apply in context of jointly held land.

LANDMARK DECISION:
Dunnison Estate v Dunnison, 2017 SKCA 40

Facts:

- Elderly mother transferred her cottage into the names of both of her sons, Douglas and Raymond, for no consideration.
- No Declaration of Trust, or Bare Trust/Agency Agreement.
- No Deed of Gift.
- Raymond later wanted to sell his interest in the cottage to Douglas.
- Mother became upset and claimed the transfer to joint tenancy was for her estate simplification only (she intended that her sons would share the cottage only upon her death, but not before).

LANDMARK DECISION:
Dunnison Estate v Dunnison, 2017 SKCA 40

- Mother had not reported any disposition of the cottage for tax purposes and she had always paid the municipal taxes, insurance and utilities with respect to the cottage.

  (These are indicators of beneficial ownership.)

LANDMARK DECISION:
Dunnison Estate v Dunnison, 2017 SKCA 40

- Mother demanded that Raymond transfer his interest in the cottage back to her.
- He refused.
- Mother changed her Will to remove him as a beneficiary.

NO GIFT TO MY SON, RAYMOND DALE DUNNISON:

I have not left any of my property to my son [...] because he takes the position that he owns an interest in my cottage property [...] despite my having told him and his lawyer that when I transferred the title of that property into the joint names of DOUGLAS, RAYMOND and me in 1996, that was done for estate simplification purposes only, and that it has never at any time been my intention that anyone owns any interest in that property other than me. RAYMOND does not own any beneficial interest in my cottage property and the bare legal interest he obtained when I added his name and DOUGLAS's name to my title is held by him for my estate.

LANDMARK DECISION:
Dunnison Estate v Dunnison, 2017 SKCA 40

- Mother died.
- Douglas, as the executor, brought an application seeking the court's opinion regarding whether a resulting trust or a gift was created by the mother's transfer to joint tenancy.
- Trial judge found that a resulting trust "is not available in the absence of a written agreement".

LANDMARK DECISION:
Dunnison Estate v Dunnison, 2017 SKCA 40

COURT OF APPEAL:

- voluntary transfer resulting trusts can exist with respect to land in Saskatchewan, ***without the presumption.***
- The presumption is incompatible with the concept of absolute transfer of land and the fact a certificate of title is conclusive evidence of ownership, as set out in our land titles legislation.

LANDMARK DECISION*:*
Dunnison Estate v Dunnison, 2017 SKCA 40

- Court of Appeal: distinguishes *Pecore* and other decisions from Supreme Court of Canada:

"This conclusion is not inconsistent with the Supreme Court of Canada's decisions in *Pecore*, *Madsen*, *Kerr* and *Nishi* as none of those cases considered whether there were legislative provisions that might affect the presumption of resulting trust": para 91.

LANDMARK DECISION*:*
Dunnison Estate v Dunnison, 2017 SKCA 40

- SKCA says the statute determines the result, unless the challenger of title can prove the transferor did not intend a gift at the time of transfer to joint tenancy: para 111.
- HELD: the evidence did not show that a resulting trust arose. In other words, Douglas (as challenger of title) did not satisfy the court, on balance of probabilities, that mother **did not intend a gift.**

LANDMARK DECISION:
Dunnison Estate v Dunnison, 2017 SKCA 40

RISKS THAT MATERIALIZED FOR THE TRANSFEROR:

- Transferor regretted the transfer to joint tenancy; wanted title transferred back to her.
- Complex court proceedings were required.
- Significant expense would have been incurred.
- Many years of dispute without resolution before the transferor died.
- Did not obtain the return of title.

LANDMARK DECISION: *Dunnison Estate v Dunnison*, 2017 SKCA 40

EFFECT:

- Challenger of title must prove that the transferor did not intend a gift, or intended a resulting trust…
  - What if there are no documents to express the transferor's intention for the transfer (aside from the Transfer Authorization)?
  - What if the transfer is inconsistent with previous documents of the transferor?
  - What if the challenger is a stranger to the transaction?
  - What if the challenger did not know of the transaction until the transferor died?

LANDMARK DECISION: *Dunnison Estate v Dunnison*, 2017 SKCA 40

- "As a general comment, clients would be well served if their lawyers ensured gratuitous transfers were memorialized by a deed of gift or a declaration of trust. A declaration of trust would allow a transferor to assert a trust in ways that do not compromise the essential tenets of our land titles legislation": para 114.

However…

Even when formal documents have been prepared by a lawyer, the risks associated with joint tenancy still arise:

- Deed of Gift in *Olson*, litigation ensued
- Declaration of Trust in *Schramm*, litigation ensued

Hilmoe v Hilmoe, 2017 SKQB 312

- Trial was prior to *Dunnison.*
- Decision was released after *Dunnison.*
- Case of inconsistent documents:
  - Will says life estate (looks like no gift).
  - Land titles say JT with survivorship (looks like gift).

Hilmoe v Hilmoe, 2017 SKQB 312

[6] On November 4, 2005, he and Dianne drove from their home in Cabri to Swift Current, where Wayne instructed the manager of the local branch of Mennonite Trust to prepare his last will and testament. The will, which he executed later that day, purported, *inter alia*, to provide Dianne with a life interest in the Farmland.

Hilmoe v Hilmoe, 2017 SKQB 312

> [7] The following January, Wayne arranged to travel with Dianne to the Land Titles office in Swift Current, where he obtained the authorizations and supporting documents necessary to add her as a joint registered owner to four of the five parcels of land at issue …

Hilmoe v Hilmoe, 2017 SKQB 312

- Husband's Will provided *second* wife with life interest in farmland; she was appointed as executor.
- Months later, he added wife as joint registered owner to the farmland with right of survivorship (contrary to Will - - unsophisticated probate planning).
  - Wife was instrumental in preparing transfer documents.
  - Husband did not tell anyone, including wife, that he had changed his mind from his Will and wanted her to be the absolute owner of the farmland upon his death.

Hilmoe v Hilmoe, 2017 SKQB 312

- Husband died; wife had title to five parcels of land registered in her name as sole surviving joint tenant.
- Adult children of husband (according to the Will, they were to inherit the lands upon the death of the wife) disputed the transfer was intended as a gift.
  - Was contrary to statements he had made to them, even after transfer of titles to joint tenancy.
- Held: Transfer of farmland to wife was a gift!

(under appeal; decision reserved)

Hilmoe v Hilmoe, 2017 SKQB 312

RISKS THAT MATERIALIZED:

- Complex court proceedings were required.
- Significant expense would have been incurred.
- Many years of dispute without resolution.
- Did not obtain the return of title (subject to the outcome of the appeal).

Stubbings v Stubbings, 2018 SKQB 8

- Father transferred condominium unit to himself and son jointly, with purported intention that son only benefit after father's death.
- Relationship deteriorated; father no longer wanted his son to inherit the property upon his death.
- At age 91, father sought an order that the condominium be sold, such sale to be effected by the father paying his son an amount ordered by the court.

Stubbings v Stubbings, 2018 SKQB 8

- Layh J:
  - Father gifted joint interest to the son, so son was not a mere bare trustee.
  - Could not rely on hindsight to change the character of the transaction.

Stubbings v Stubbings, 2018 SKQB 8

- Layh J:

"Reported cases suggest that this type of conflict are not particularly rare. A parent decides to gratuitously put a child's name on the title to real property, ostensibly for estate planning purposes to avoid probate fees. The parent later changes his mind and discovers that making a title joint with a child is easy to accomplish but difficult to undo": para 1.

Stubbings v Stubbings, 2018 SKQB 8

"[The father] surely rues heeding the advice he received when he placed the condominium title into joint names with [his son]. Parents choosing to simplify their estates and reduce probate costs by registering titles to real property in joint names with a child may provoke a range of results. Many times such a strategy works swimmingly well and valuable assets pass to beneficiaries without incident and at low cost. **But the practice is rife with pitfalls."**: para 13.

Stubbings v Stubbings, 2018 SKQB 8

"[...] transferring a principal residence **may interfere with capital gains exemption**; transferring any property **may make the property available to claims from a child's creditors** or spouse and hamstring a parent's control if a child disagrees with a parent's instruction or the child becomes incapacitated. **No parent should transfer property into joint names with a child without understanding these potential pitfalls. The law does not recognize regret as a ground for undoing a formal legal act**." (para 14)

Stubbings v Stubbings, 2018 SKQB 8

"The court will not provide a remedy to restore the earlier status of the title only because a transferor regrets having transferred title into joint names. **Avoiding probate fees has a cost: a loss of flexibility in altering one's estate plan**": para 18.

Stubbings v Stubbings, 2018 SKQB 8

HELD:

- Property (value of $295,000) was to be sold in lieu of partition.
- Father was to pay $147,500 into Court (one-half the value of the property), at which time title to the property would transfer to the father and these funds would be delivered to the son.

Stubbings v Stubbings, 2018 SKQB 8

RISKS THAT MATERIALIZED FOR THE TRANSFEROR:

- Transferor regretted the transfer to joint tenancy; wanted title transferred back to him.
- Complex court proceedings were required.
- Significant expense would have been incurred.
- Many years of dispute without resolution.
- Lost one-half the value of the property.

Academic commentary of the Saskatchewan approach that the presumption of resulting trusts does not apply to land…

Oosterhoff (8th ed) at p. 653:

The registration of land titles in western Canada is based on the Torrens registration system developed in Australia in the 19th century. **The statutory indefeasibility provisions are designed to provide greater certainty of title and greater protection for purchasers who acquire interests in land without fraud, but they do not prevent new equitable interests from arising on or after registration**.

- Ziff, “Resulting Trusts and Torrens Title”:
  - “In the case of *Thorsteinson v Olson* the Saskatchewan Court of Queen Bench held that the doctrine of resulting trust did not apply to transfers of land under that province's Land Titles Act. In doing so, it followed a series of Saskatchewan cases to the same effect. **My goal in this short commentary is to demonstrate that *Olson* and all of the cases upon which the Court relied are wrong**.”

Other provinces rely on the *presumption* of resulting trust in disputes over land joint tenancies…

> "As to the presumption of resulting trust, I am not prepared to find that it does not apply to land in Manitoba. Notwithstanding the learned and cogent reasons of the Saskatchewan Court of Appeal in *Dunnison Estate*, it is my opinion that once it is accepted that resulting trusts can exist despite the *RPA*'s certainty of title provisions, the intimately related presumption of resulting trust (which has its own legal history and rationale) cannot simply be hived off absent clear statutory or high court authority. I have seen no such authorities.[…]":
>
> *Hyczkewycz v Hupe*, 2017 MBQB 209 at para 144.

Other provinces rely on the *presumption* of resulting trust in disputes over land joint tenancies…

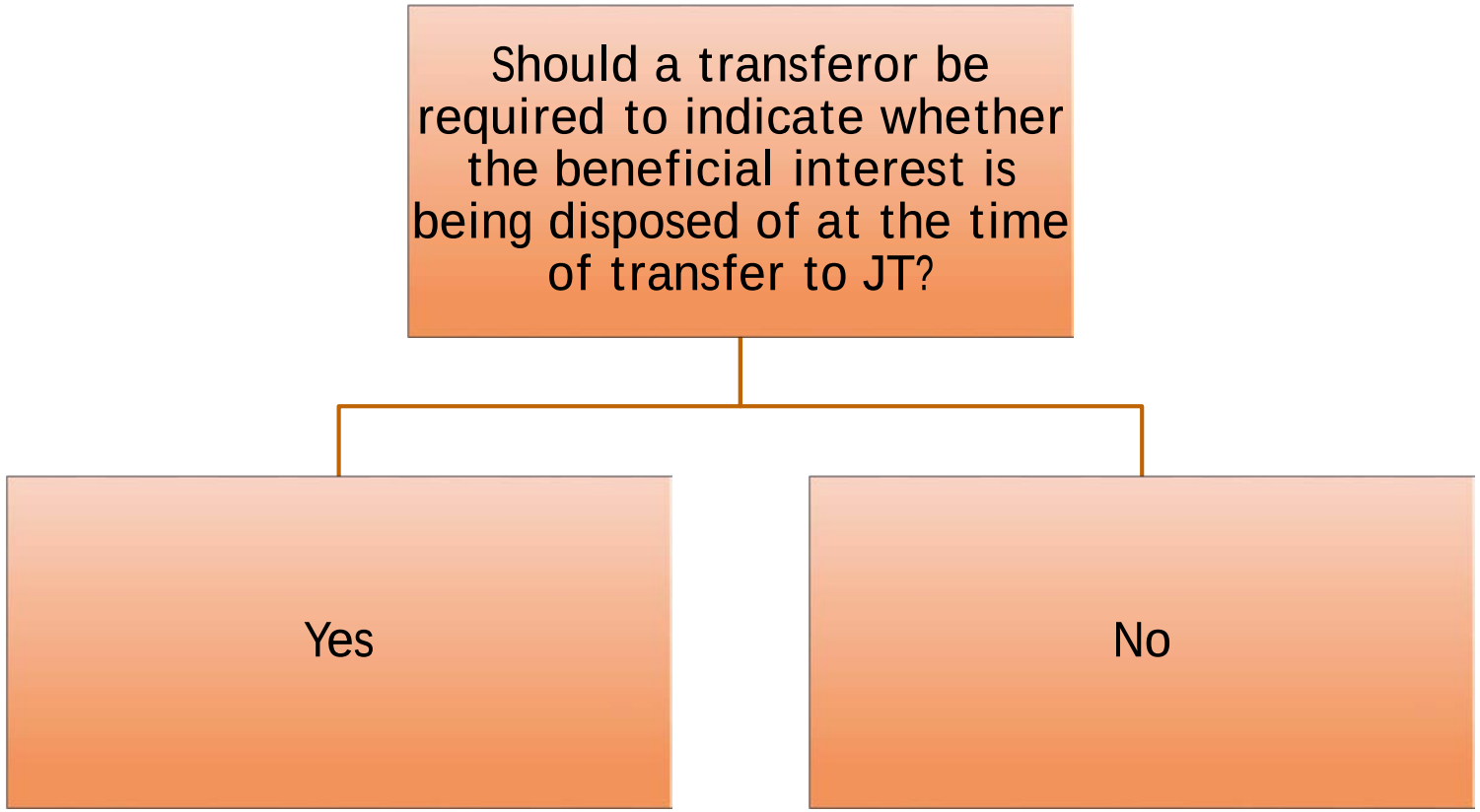
AB: *Bezuko v Supruniuk*, 2007 ABQB 204

BC: *Modonese v Delac Estate*, 2011 BCSC 82 (affirmed on appeal: 2011 BCCA 501)

MB: *Hyczkewycz v Hupe*, 2017 MBQB 209*; Simcoff v. Simcoff*, 2009 MBCA 80

ON: *Korman v Korman*, 2015 ONCA 578; *Reid Estate v Reid*, 2010 ONSC 2320

Poll Question:



Probate Avoidance and JOINT TENANCY…

Are Joint Tenancies, Wills and Probate Avoidance Reconcilable?

- Possibly
- Some loss of flexibility
- Knowledge and foresight about family dynamics

Are Joint Tenancies, Wills and Probate Avoidance Reconcilable?

- Best Practices
  - Bare Trust declaration at the time of transfer
  - Deed of Gift at the time of transfer
  - Update will to reflect intentions of parties

- **NO GUARANTEE RISKS WILL NOT MATERIALIZE!**

Is it worth it?

- Example:
  - Pay $3,000 in fees today to save $10,000 in the future?
  - Assume parent dies 10 years from date of ISC transfer
- You would have to earn 13% rate of return on that investment over the 10 years to match the savings
- Are the risks worth it?

Is it worth it?

- Even with proper estate planning, see *Schramm*
- Court application necessary, despite proper planning (with bare trust agreement)!

Is it worth it?

- Deemed disposition (taxable) of the portion of the property that is transferred to the new tenant.
- If a will provides multiple beneficiaries are to receive equal shares and one beneficiary receives additional jointly-held property, then joint property will not be factored into the estate distribution

Is it worth it?

- joint tenants are entitled to immediate access and use of jointly-held property
- all joint tenants must agree to the sale
- principal residence exemption will not be able to fully shelter the CG on a disposition, if the other JTs used the exemption on their own residences

Efficient Estate Planning and Tax Considerations …

Taxation of Capital Gains

- Gains on capital property are only half-taxed: ss. 38(a) of *Income Tax Act* (ITA)
- Definition of 248(1)“disposition”(e)
  - There is no disposition where there is no change in beneficial ownership
  - No disposition where property transferred back to settlor (2006-0174831E5) (e.g. bare trust)

What are some hallmarks of beneficial ownership?

CRA Folio S1-F3-C2:

- the right to possession
- the right to collect rents
- the right to call for the mortgaging of the property
- the right to transfer title by sale or by will
- the obligation to repair
- the obligation to pay property taxes

Taxation of Capital Gains

- No disposition where no transfer of beneficial ownership (2014-0553131E5)
- No disposition on transfer to bare trust (9418635)

Taxation of Capital Gains

- Situations where no gain may be triggered:
  - Guarantor (2008-0272121E5):
    - by putting the house in your name **you were simply acting as a guarantor to the lending institution** in respect of the mortgage. If your brother was the beneficial owner of the property during the period that it was registered in your name we are of the opinion that you would not have to report a capital gain from the sale of the property

Taxation of Capital Gains

- Situations where no gain may be triggered:
  - Ex-Spousal Protection (2008-0281841E5):
    - you purchased a home for your daughter in 2001. Your daughter has lived in it since the purchase. She has maintained the home and paid all of the expenses since that time. You contributed the down payment for the purchase of this property and **title was registered in your name to protect the property from your daughter's ex-spouse. The property's value has increased** since the property was purchased. **You now wish to transfer this home to your daughter** without generating a capital gain on the transfer.

Taxation of Capital Gains

- Situations where no gain may be triggered:
  - Ex-Spousal Protection (2008-0281841E5):
    - In other words, generally under the Act a disposition only occurs if there is a transfer of beneficial ownership. **Therefore, a taxpayer's mere transfer of title to a person who has beneficial ownership of the property is not a disposition for tax purposes that would trigger a capital gain in the taxpayer's hands**.

Taxation of Capital Gains

- Situations where no gain may be triggered:
  - Bare Trustee on Principal Residence (2010-0389041E5)
  - Exemption is still available
  - Beneficial ownership is key

Taxation of Capital Gains

- How are gains accounted for on death?
  - Deemed disposition of capital property (most real property): ss. 70(5) of ITA
  - Possibility of transferring property to a spouse: ss. 70(6) of ITA
  - Possibility of transferring farmland on death (ss. 70(9)) or while alive (ss. 73(3))

Taxation of Capital Gains

- Efficient transfers of farm property to kids
  - Use life-time capital gains exemption: s. 110.6 while alive in exchange for promissory note (payable over 10 years) forgivable on death
    - Avoids debt forgiveness rules in section 80
    - Avoids AMT potentially
    - Make sure not fully on demand
    - Make demands if kids misbehave
  - Possibility of transferring farmland while alive (ss. 73(3)) on rollover basis

Joint Tenancy & Real Property: Issues in Estate Planning and Litigation…

QUESTIONS?

THANK YOU

- This presentation is of a general nature only and is not exhaustive of all possible legal rights or remedies. In addition, laws may change over time and should be interpreted only in the context of particular circumstances such that these materials are not intended to be relied upon or taken as legal advice or opinion. Readers/viewers should consult a legal professional for specific advice in any particular situation.