California Bar Examination

Performance Test and Selected Answers

July 2025

The State Bar of California

OFFICE OF ADMISSIONS

PERFORMANCE TEST AND SELECTED ANSWERS

JULY 2025

CALIFORNIA BAR EXAMINATION

This publication contains the performance test from the July 2025 California Bar Examination and two selected answers.

The selected answers are not to be considered "model" or perfect answers. The answers were assigned high grades and were written by applicants who passed the examination after the First Read. They are reproduced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. These answers were written by actual applicants under time constraints without access to outside resources. As such, they do not always correctly identify or respond to all issues raised by the question, and they may contain some extraneous or incorrect information. The answers are published here with the consent of the authors.

CONTENTS

July 2025

California Bar Examination

Performance Test

INSTRUCTIONS AND FILE

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

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.

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.

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?

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.

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.

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.

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

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

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.

July 2025

California Bar Examination

Performance Test

LIBRARY

TATE v. TATE

LIBRARY

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

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

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

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.

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

(*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.

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.

PT: SELECTED ANSWER 1

Applicant
The Rhodes Law Firm
43 Whitehall Lane
Sparta, Columbia

Joan Tate

July 29, 2025

Re: Advice on Partition Action for 23 Corinth Road Property

Dear Ms. Tate:

I am writing with regard to your inquiry into acquiring sole ownership of the real property at 23 Corinth Road that you own as a co-tenant with your cousins, Frank Tate ("Frank") and Crystal Tate ("Crystal"). You have asked two questions regarding this property: (1) whether you can force a sale of the entire property (as opposed to being forced to divide the property into three parcels), and (2) whether Crystal will be able to recover the full amount of her contributions to the property. I have researched the matters and provided a brief summary below. In short, you will likely be able to force a sale of the entire property, and Crystal will be able to recover some, but not all, of the property.

I. Whether You Can Force a Sale of the Entire Property, or Whether You Will Be Forced to Divide the Property Into Three Parcels

Under Columbia law, if co-tenants cannot come to an agreement regarding how to divide their co-owned property, a co-tenant can file a partition action to divide the property. *See* Columbia Partition Code ("CPC") section 1020. A court is required to order a physical division of the property, unless such a division would result in economic harm to the parties or is otherwise impracticable. *See id.* section 1025. Thus, although there is a presumption in favor of a physical division, you can rebut this presumption and force a sale of the entire property in two alternative ways: (1) first, by showing that any one parcel out of the divided property would have little to no economic value, or (2) by showing that the market value of the property as a whole would be significantly larger than the total value of all parcels after division (i.e., by proof that the value of the land as a whole would be diminished by division into separate parcels). *See Mahone v. Donnelly* ("*Mahone*"); *Timmons v. Warnes; Quick v. Scartz*. I address both of these options below in turn. I also address the role that sentiment and family attachment to a property play in partition cases.

As further explained below, while your argument is not certain to win in court, there is a reasonable likelihood that you will prevail in your attempt to force a sale of the entire property rather than divide it into three parcels.

A. Showing That Any One Parcel Would Have Little to No Economic Value

In *Mahone*, a dispute existed between the plaintiff (Mahone) and her co-tenant (Donnelly) in which Donnelly sought to sell the land as a whole while Mahone wanted to partition the land into two parcels of roughly equivalent monetary value so that she could keep part of the land in her family. Because Mahone was unable to afford to buy out Donnelly's share, he brought a partition action. Mahone stated that if the land were physically partitioned, however, she would not agree to provide road access to the other parcel, which would be essentially landlocked, if Donnelly developed it as he intended to. Without this road access, Donnelly's parcel (which would be larger in size) would have a relatively small value, given the lack of ready access to a road in any direction. Ultimately, the court found that even though the land could be readily divided, it was proper to order the sale of the entire property and the division of the proceeds equally between the parties, in part because the value of the larger parcel would have slight value, particularly in light of Mahone's unwillingness to provide a right of way.

Here, like in *Mahone*, the property that you share as a co-tenant with Frank and Crystal can readily be divided into separate parcels (one parcel on the corner of Corinth Road and Sykes Street that includes the house and garage, a wooded area in the back of the house abutting Sykes Street, and open land next to the house on Corinth Road). However, unlike the case in *Mahone*, where the larger parcel would have a relatively small value if partitioned due to lack of access to a road, all three of the parcels on your property would have access to a road and would not be diminished in value accordingly. Further, an investigation found that if the property were divided, the first parcel with the house and garage would be worth $200,000, the second parcel of the wooded area would be worth $120,000, and the third open land parcel would be worth $130,000. Thus, it appears that significant value would remain for each of the parcels even if the land were divided.

You might argue that only one of the parcels would have the house on it and the others would be undeveloped, and thus that they would have little to no economic value. But this argument is not as strong as it could be, since (as just noted), there is still significant economic value (upwards of six figures) for each of the lots without the house and garage on it. Additionally, you may bring up the fact that given the recent conversion of properties in the area to more commercial enterprises, the property offers business opportunities that will offer a much higher rate of return. However, the fact that the property could have greater returns if it were converted does not change the fact that if the property is physically divided instead, the parcels will still have significant economic value. Therefore, you may not succeed in rebutting the presumption for physical partition on this ground.

B. Showing that the Market Value of the Property As a Whole Would be Diminished by Division Into Separate Parcels

In *Mahone*, testimony from a real estate agent and specialist developer established that, sold as a single parcel and used for development, the property would have nearly three times the total value of the separate parcels if the land were physically partitioned.

Therefore, the court found that there was sufficient evidence to conclude that the property would have significantly greater value if it was sold as one parcel than the total value of the separate parcels if physically divided.

In your case, an investigation into the property has indicated that if the property were sold as a single parcel, it could likely be sold for about $600,000. However, if the property were sold as separate parcels, they would be worth a combined total of about $450,000 (consisting of $200,000 for the parcel with the house and garage, $130,000 for the open land, and $120,000 for the wooded lot). Therefore, you will be able to show that the market value of the property as a whole will be diminished by approximately $150,000 if it is divided into separate parcels. However, your argument here is weaker than the argument presented in *Mahone*, since in that case the value of the property was diminished by three times, whereas your property value is only diminished by a fraction. However, $150,000 is still a significant drop in value, and a court might conclude the property would have significantly greater value if it were sold as one parcel.

Therefore, it is unclear whether you will ultimately prevail on this argument, but you appear to have a strong argument on the grounds that the market value as a whole would be diminished by division into separate parcels, and thus you may be able to rebut the presumption in favor of physical partition on this ground.

C. The Role of Sentiment & Family Attachment

The Columbia Supreme Court has stated that when individuals and families develop strong attachments to land on which a family resides and which has been received by inheritance, such attachments support an order for physical division (as opposed to a sale of the entire property). *See Mahone*. However, while these sentimental considerations have great weight, particularly in the preservation of a home, considerations of economic value are the determining factor for courts. See *Quick v. Scartz*.

In *Mahone*, Mahone inherited her interest in the land from her father and used it as a vacation property. She wanted to physically partition the land instead of selling the whole parcel because the house and surrounding land was highly important to her and her family, since her grandfather had originally bought it and she had inherited it from her father. However, the court found that Mahone's family does not use the house as its primary residence. But even if it did, a court could properly accord a greater weight to any economic advantages of selling the property as one parcel.

In this situation, similar to in *Mahone*, you and your co-tenants inherited this property from an ancestor (namely, your grandfather). Like the plaintiff in *Mahone*, Frank and Crystal have rejected the idea of converting the land to commercial uses, and have indicated a desire to keep the house in the family as a residence. However, unlike the plaintiff in *Mahone*, Crystal has actually been using the house on the property as her primary residence for the past ten years. In that way, Crystal's claim of sentiment and family attachment is even stronger than that of the plaintiff in *Mahone,* and thus weighs slightly more strongly against a sale of the entire parcel.

However, on the other hand, Crystal now intends to abandon that use of the house as she is planning to move and rent out the house to somebody outside the family. While Frank has expressed an intent to move into the house if you proceed in your plan and to make it his residence, he has not yet done so. He will also likely be unable to have the opportunity to do so if you are successful in your action to sell the property. Thus, his intent will likely not count for the purposes of determining whether the house is being used as a residence. For that reason, your case is similar to that in *Mahone*.

Crystal will likely argue that when she rents the house out, it will still be used as a residence. But even if the court affords any weight to someone outside the family using the house as a residence, as noted above, the court in *Mahone* found that even if the property was used as a residence, courts properly accord greater weight to economic advantages of selling the property as one parcel.

In sum, although Crystal and Frank have a strong sentimental attachment to the property, the fact that the house will no longer be used for residential purposes by one of them, along with the fact that courts focus more strongly on the economic factors, weigh in favor of your argument that the property should be sold as a single parcel rather than physically divided.

Conclusion

Although victory on this issue is not certain, you have a strong argument that a sale of the entire property should be forced on the ground that the value of the property would be diminished by partition.

II. Whether Crystal Will Be Able to Recover the Full Amount of Her Contributions to the Property

A co-tenant who pays more than their share of the costs of maintaining a co-owned property is able to bring an action for contribution for those costs from the other co-tenants. If one co-tenant assumes all of these costs, they can bring an action against the other co-tenants for the amount by which those costs exceeded the tenant's share. *See Boyd v. Boyd* ("*Boyd*"); *Pomeroy v. Kent*. Because all co-tenants share equally in the obligation to maintain the property they own, if one co-tenant bears the full costs, the others can be compelled to contribute their shares of those costs. *See Boyd*. Further, the Columbia Supreme Court has held that the CPC and cases in this jurisdiction support the idea that courts have equitable power to satisfy one co-tenant's right of contribution from other co-tenants by deducting costs before dividing the remaining proceeds of sale.

Reimbursement, however, is not ordered for all costs expended by a co-tenant in relation to the property. While costs of routine maintenance (such as costs of termite removal; *see Frome v. Snopes*), real estate taxes (*see Jarndyce v. Sutpen*), and for storm and other catastrophic damage to a property (such as damages caused by a forest fire; *see Trillian v. Trillian*) are subject to reimbursement by other co-tenants for their share, a co-tenant who makes improvements to a property cannot recover the costs of those improvements through contribution. *See Boyd*. Thus, below I provide an

analysis for each of the costs that Crystal bore, with a conclusion about whether each will be recoverable.

A. $40,000 in Taxes, Maintenance, and Repairs

In *Boyd*, one co-tenant (Patricia) was the sole occupant of the property at issue, while the other co-tenant (Douglas) lived in a different state. When Douglas filed a partition action after his sister refused to buy out his share of the co-tenancy because she could not afford to, the court determined that Patricia was entitled to reimbursement for Douglas's one-half share of the $25,000 that she spent to maintain the house during the co-tenancy, and for which Douglas had not contributed anything.

In this case, an investigation found that Crystal likely expended $30,000 on property taxes during the years that she was in exclusive possession of the property, and that it is reasonable to believe that she invested an additional $10,000 in repairs and maintenance during this time. Thus, her allegation that she spent $40,000 in taxes, maintenance, and repairs over the years, which neither you or Frank appear to have contributed to, appears credible. Unfortunately, as noted above, Columbia courts have found that the costs of routine maintenance and real estate taxes are subject to reimbursement by other co-tenants in an action for partition.

However, Crystal would not be entitled to full reimbursement of her costs. As in *Boyd*, where Patricia had to bear her share of the costs, Crystal will have to bear one-third of these costs because she is an equal one-third owner of the property (assuming that you are all equal one-third owners of the property). You will therefore be responsible for the other one-third, which will likely be taken out of any proceeds you receive as a result of a sale of the property. Frank will also be responsible for one-third of the costs, as the other equal share co-tenant. If you own the property in other proportions rather than equally, the costs will be divided according to those proportionate ownership shares.

B. $20,000 to Build A Garage on the Property

In *Boyd*, the court rejected Patricia's claim that she was entitled to contribution based on the fact that she expended $5,000 on the construction of a tool shed on the property, since the court considered it an improvement that only served to add to the value of the property, from which the co-tenant receives a share in the event of a later sale. *See Boyd*.

Here, an investigation found that Crystal did likely spend $20,000 on building the garage. However, a court will likely find this to be an improvement to the land for which the building co-tenant cannot recover, much like the shed that the co-tenant built in *Boyd*. Therefore, it is likely that Crystal will not be able to recover anything from you in contribution to the amount spent to build the garage.

Conclusion

In an action for partition, Crystal is likely to be able to recover two-thirds of the cost of the taxes, maintenance, and repairs, but she will be unable to recover any costs spent to build a garage on the property.

III. Conclusion

For the reasons stated above, (1) you have a strong argument in favor of forcing a sale of the entire property rather than dividing it into three parcels, and (2) Crystal will likely be able to recover only two-thirds of the $40,000 that she spent on taxes, maintenance, and repairs, but will not be able to recover any of the $20,000 spent on the garage.

Please do not hesitate to reach out if you have further questions, or if I can be of additional assistance.

Sincerely,

Applicant
The Rhodes Law Firm
o/b/o Roberta Rhodes

PT: SELECTED ANSWER 2

Date: July 29, 2025

Re: Advice on Partition Action

Dear Ms. Joan Tate,

I understand that you are wondering whether a court can force a sale of your entire Corinth Road property, which you share with your cousins Frank and Crystal, and whether Crystal will be able to recover the money she has expended in maintaining and improving the property. As I have outlined below, a court is likely to grant your request to force the sale of the entire Corinth Road property, but it will likely require some contributions from you for Crystal's costs over the years, but you will not be required to cover all of those costs.

I. A forced sale is possible because the value between the divided parcels and the whole parcel is significant.

In Columbia, if cotenants, like you, Frank, and Crystal, cannot agree on how to divide their co-owned property, one cotenant has the right to file a partition action to compel the court to divide the property into separate parcels. *See* Columbia Partition Code Sec. 1020; *Mahone.* Under the relevant partition statute in Columbia, 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." COC Sec. 1025; *Mahone.* This provision creates a presumption in favor of physical division, but someone seeking a forced sale, like you are, can challenge that presumption in a few ways. *Mahone.*

Accordingly, a court will be inclined to divide the Corinth Road property, unless you can show that a reason for a forced sale exists, as discussed below.

A. A divided Corinth Road property would have some value--more than little to no economic value--which may counsel against forced sale.

First, a challenger can provide proof that any one parcel out of the divided property would have little to no economic value to overcome a presumption in favor of division of the property. S*ee Timmons; Mahone.*

In one prior case in Columbia, a court found that dividing a parcel of land would provide one half, which was largely undeveloped, with only "slight value" because the developed half-owner would not grant the owner of the potential undeveloped half the ability to cross the land. *Mahone*. That weighed in favor of a forced sale rather than a division of the property. *Mahone*.

Here, a property appraiser found that the Corinth Road property could be divided into relatively equal-sized portions of land. First, the house and garage could be on 1/3 acre parcel, and that land would be worth $200,000. Second, the wooded area could be

another parcel of about 1/3 acre, and that would be worth about $120,000. And finally, the third 1/3-acre parcel would be the open land next to the house, valued at $130,000. Unlike the "slight value" property in *Mahone*, each of the property parcels would have more than "slight value," as they would all be worth more than $100,000. Although these parcels are worth different amounts--with the house worth significantly more than the wooded area or open land parcels--there is at least more than "slight" economic value in each parcel.

Accordingly, it would be difficult to show that a divided Corinth Road property would have little to no economic value, so this would not be the best path to overcome a division of the property.

B. The value of the land as a whole would be diminished if divided, which counsels in favor of a forced sale of the undivided Corinth Road property.

Second, to overcome a court's inclination towards dividing a property, a challenger can provide proof that the market value of the property as a whole would be significantly larger than the total value of all parcels after division, *see Quick; Mahone*. Put another way, the presumption in favor of division can be rebutted when the value of the land as a whole would be diminished by division into separate parcels. *Quick; Mahone*.

For example, in one of Columbia's prior cases, a court found that a forced sale was the proper path when the sale of a farm would have "significantly greater value" than the total value of multiple sub-parcels, added together, if divided. *Mahone*.

Here, as discussed above, the Corinth Road property could be readily divided into three separate parcels: (1) the house and garage, a 1/3-acre parcel worth $200,000; (2) the 1/3-acre wooded area abutting Sykes Street, worth $120,000; and (3) the 1/3-acre open land parcel next to the house, worth $130,000. So, the total economic value of three separate parcels would be approximately $450,000.

However, the appraiser we asked to investigate the Corinth Road Property also appraised the value of the entire one-acre parcel, if undivided. They found that the property has a current fair market value of approximately $600,000, accounting for the fact that the house sits in a neighborhood that includes both residential and commercial uses. Indeed, as Joan noted, the property offers business opportunities as a professional office space or as high-end retail in the area, which is zoned for both residential and commercial uses.

Like the property in *Mahone*, the difference in value between the three divided parcels and the one, undivided parcel is "significant." The difference is approximately $150,000: an amount greater than two of the smaller parcels' individual appraisal, at $130,000 and $120,000, respectively. A $150,000 difference offers an undivided parcel "significantly greater value," and accordingly, a court is likely to find that this factor weighs in favor of a forced sale, rather than a division of the Corinth Road Property.

C. Crystal and Frank's familial and sentimental attachment may be considered, but it is unlikely to outweigh the economic value of the undivided Corinth Road property.

As one might expect, individuals and families can develop a strong attachment to land on which a family resides and has been received by an inheritance. Accordingly, these attachments weigh in favor of an order for physical division, especially where family members continue to use some or all of the land as a primary residence. *Mahone*. However, "while sentimental considerations should have great weight, especially in the preservation of a home, considerations of economic value should be the determining factor." *Quick; Mahone.* In other words, while courts consider a family's sentimental attachment or use of the home as a primary residence, the primary factor is still the economic value, discussed above.

In *Mahone*, the court considered that one of the cotenants who shared ownership of a farm had used the home as a vacation property and had acquired the property by inheritance. *Mahone*. Although the court did not question or doubt the family's attachment to the house, ultimately the family's use of the home as a vacation residence undermined the court's consideration. The court went on to note that even if the family *did* use the property as their primary residence, the economic advantages of selling the undivided property in a forced sale outweighed any attachment.

Here, Crystal will likely argue that unlike the family in *Mahone*, she and her family have been continuously living in the Corinth Road house for the last ten years after she—along with you and Frank—inherited the property from your grandfather at the time of his passing. She, along with Frank, will likely emphasize that the house has been in the family for decades as a residence as evidence for why the court should not sale the property. Even if Crystal has been living there for ten years, the court is still likely to compare her family's residence there to the significant difference in economic value between an undivided property and three divided parcels: $150,000, described above. Because this difference in property value is so large, the court is likely to give Crystal's residence there less weight.

Perhaps even more persuasive to a court, Crystal has indicated that she and her family will be moving out of the home within the next six months and plan to rent the house as a residence. This fact weights against any finding of family attachment. Even if Frank plans to move into the house to prevent you from "commercializing it," there is no history of Frank using the property as his primary residence to weigh in favor of a division of the property.

Accordingly, even though Crystal has used the property as a primary residence in the past and Frank may plan to do so in the future, the significant difference in the value between the undivided Corinth Road property and the three 1/3-acre parcels is likely enough for the court to choose to force a sale of the whole property.

II. Recovery of the full amount of Crystal's contributions to the property is unlikely, because Crystal is responsible for her share of maintenance and any improvements.

Historically, a cotenant who paid more than her share of the costs of maintaining co-owned property could bring an action for contribution—or payments—from the other cotenants. *Boyd.* Where one cotenant paid all of these costs on their own, that cotenant could sue the other cotenants for the amount by which those costs exceeded the tenant's share. *Boyd*. This principle comes from the idea that people who own property jointly ("joint obligors") should share in costs equally ("the equitable doctrine of contribution"). *Pomeroy*. In sum, all cotenants share equally in the obligation to maintain the property they own. So, if one cotenant pays the full costs, the others can be compelled to contribute their share or division of those costs. *Boyd.*

Nothing in the Columbia partition statute changes this principle. *Boyd*. In Columbia, the statute regarding division of property or proceeds from a sale does not explicitly state that courts should or must deduct costs that have not been paid or shared from the proceeds of a forced sale. *Boyd*. The law states, "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." CPC Sec. 1044. This means that any earnings from the sale should be divided proportionally to each co-owner's interest after the court deducts the costs of the sale (such as attorneys and paperwork). But the statute also states that the court "may frame its proceeding and order so as to meet the exigency of the case," CPC Sec. 1050, thus providing the court with flexibility to address the individual facts of the property sale.

Columbia courts have consistently noted that a court can satisfy one cotenant's right of contribution or repayment from other cotenants by deducting costs before dividing the remaining proceeds of the sale. *Boyd.* Because Crystal requests payment for two types of costs—first, maintenance and second, the garage, as an improvement to the property—we will address each in turn.

A. Expenditures for maintenance can be recouped.

Expenditures that may be recouped include costs of routine maintenance, *Frome (*costs of termite removal), real estate taxes, *Jarndyce* (deduction for share of real estate taxes), and storm and other catastrophic damage to the house, *Trillian (*deduction for damage caused by forest fire). In such cases, though, a cotenant seeking contribution or repayment cannot be repaid for the entirety of their costs; the paying cotenant may only be repaid for the share of the total costs that the other cotenants should have borne, as co-owners of the property. *Boyd.*

To illustrate, in a prior Columbia case called *Boyd*, one co-owner paid $25,000 to maintain a house while she was living in it over a number of years. The court found that these maintenance costs were similar to those in other cases that covered routine maintenance, real estate taxes, and storm damage. As a result, the co-owner was entitled to *some* reimbursement. However, she co-owned the property with her brother in equal shares, so she was only able to gain repayment for half of the $25,000, which would have been her brother's share of the costs, because she "ha[d] an obligation as cotenant to bear half of the total costs of maintaining the property."

Here, Crystal claims $40,000 in costs for maintenance, including $30,000 in property

taxes and $10,000 estimated in repairs and maintenance. Like the maintenance in *Frome* and *Boyd*, the $10,000 in repairs and maintenance are available for repayment. And like the real estate taxes in *Jarndyce*, the $30,000 in property taxes are subject to repayment.

However, Crystal, as a cotenant, like the co-owner in *Boyd*, still has "an obligation...to bear [her share] of the total costs of maintaining the property." Because Crystal, Frank, and you co-own the Corinth Road property in equal shares, Crystal may recoup only 2/3 of the $40,000 in maintenance and property taxes, with you being responsible for 1/3 and Frank responsible for the other 1/3.

B. Expenditures for improvements may not be recouped.

Columbia courts have consistently held that a cotenant who makes improvements to the property cannot recover the costs of the improvements through contribution or repayment. Such improvements serve only to add value, which the cotenant receives a share in the event of a later sale. *Boyd*.

In *Boyd,* a co-owner sought repayment for a $5,000 addition of a tool shed to the back of her home. The court denied contribution for this addition, because it was an improvement to add value to the home rather than merely maintaining or repairing the home. *Boyd.*

Here, Crystal spent $20,000 to build a garage near the house on the Corinth Road property. This garage is likely similar to the tool shed in *Boyd*, because it is an additional, new structure adding value to the property, rather than simply maintaining or repairing what already exists on the land.

Crystal will likely argue that the appraiser said the appraised value of the property has not increased in the last five years, so any garage "improvement" did not contribute to any increased value. But Crystal added the garage to the property eight years ago, so any increased value due to the garage is likely included in the appraised $600,000 value for an undivided lot or $200,000 for the house-and-garage 1/3-acre lot.

Because the garage serves to improve the property rather than maintain or repair it, Crystal is unlikely to succeed if she asks a court to force you or Frank to contribute or repay her for the garage costs.

III. Conclusion

In sum, a court would likely agree with you to force a sale of the whole Corinth Road property. Although Crystal has spent approximately $60,000 on the property during the last ten years that she and her family have lived there, she will not be able to recover the full amount. You may have to repay her 1/3 of the $40,000 she spent on maintenance and property taxes, but you will not owe her anything for the $20,000 spent on the garage.

Please let us know if you have any additional questions, and we would be happy to provide our assistance and analysis.

Best regards,

Roberta Rhodes and Applicant