



Legal Education
Society of Alberta

62097.00

8th Annual Law & Practice Update

Calgary, Alberta

Chair

Todd Munday

Wood & Munday LLP

Bonnyville, Alberta

Faculty

Hon. Judge A.A. Fradsham

Provincial Court of Alberta

Calgary, Alberta

Roger S. Hofer QC

Neuman Thompson

Edmonton, Alberta

Elizabeth Aspinall

Law Society of Alberta

Calgary, Alberta

Pam L. Bell

Bell and Stock Family Law LLP

Calgary, Alberta

Jonathan F. Griffith

Dunphy Best Blocksom LLP

Calgary, Alberta

Nolan B. Johnson

Huckvale LLP

Lethbridge, Alberta

LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2018, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2018. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

ISBN-10: 1-55093-6972
ISBN-13: 978-1-55093-697-1

Current Trends in Real Property Law

8th Annual Law & Practice Update

Prepared by:

Nolan B. Johnson
Huckvale LLP
Lethbridge, Alberta

Co-written by:

Allan DenBok
Huckvale LLP
Lethbridge, Alberta

For presentation in:

Calgary, Alberta – October 5, 2018

CURRENT TRENDS IN REAL PROPERTY LAW

Introduction	2
Joint Tenancy.....	2
<i>Pohl v Midtal</i> , 2017 ABQB 711.....	2
<i>Sirois v Andrews</i> , 2017 ABQB 263.....	4
Dower.....	6
<i>Estate of Johnson, Rick Allen (Re)</i> , 2017 ABQB 399.....	6
Adverse Possession	7
<i>Koziey Estate (Re)</i> , 2017 ABQB 597.....	7
Construction of Agreements.....	9
<i>Lutheran Church Canada (Re)</i> , 2017 ABQB 307	9
Lease.....	12
<i>Paskal Holdings Inc. v Loedeman</i> , 2017 ABCA 29.....	12
Title Insurance.....	15
Western Law Societies' Conveyance Protocol (Protocol)	17

INTRODUCTION

This paper by no means attempts to canvas all relevant case law relating to real property in the Province of Alberta. Rather, the intent is to highlight some interesting recent cases, the issues and facts involved and how they may or may not apply to the daily practice of a lawyer who deals with conveyancing matters.

JOINT TENANCY

Pohl v Midtal, 2017 ABQB 711

Issue:

Where a child is added as a joint tenant to real property by a parent as a gift, can the gift include an irrevocable right of survivorship?

Facts:

James Gordon Midtal (“Gordon”) and Vivian L. Midtal (“Vivian”) were married in 1974. Vivian had five children by her first husband who predeceased her. Gordon owned 6 quarter sections of land at the time of marriage, and transferred all six into joint tenancy with Vivian at the time of marriage. Vivian had one child Melva who continued in the farming profession with her husband Dennis.

In June 2004, Gordon and Vivian added Melva as joint tenant to the title to the home quarter, and added Bryce (another child of Vivian) as joint tenant to the other remaining quarters owned by Gordon and Vivian. At the same time, Vivian made a will leaving her estate to Gordon, and if he predeceased her, the residue passed to her other three children, excluding Bryce and Melva.

Gordon became Vivian’s attorney in 2007, and transferred the quarter section held jointly between Gordon, Vivian and Bryce to Bryce solely in 2010. Gordon also made a will in 2010 in which he left his estate to Vivian’s three other children, noting that he had “provided for [Melva and Bryce] ... during my lifetime”¹. Vivian was required to move to a long-term care facility and in 2012 the relationship between Gordon, Melva and Dennis deteriorated. In September 2012 Gordon commenced an action on his behalf, and as attorney for Vivian, claiming that a resulting trust arose from the transfer of the joint interest in the Home Quarter to Melva in June 2004. This action was

¹ at Para 13.