

# Marital Interests



# Marital Interests

- After Death of Spouse



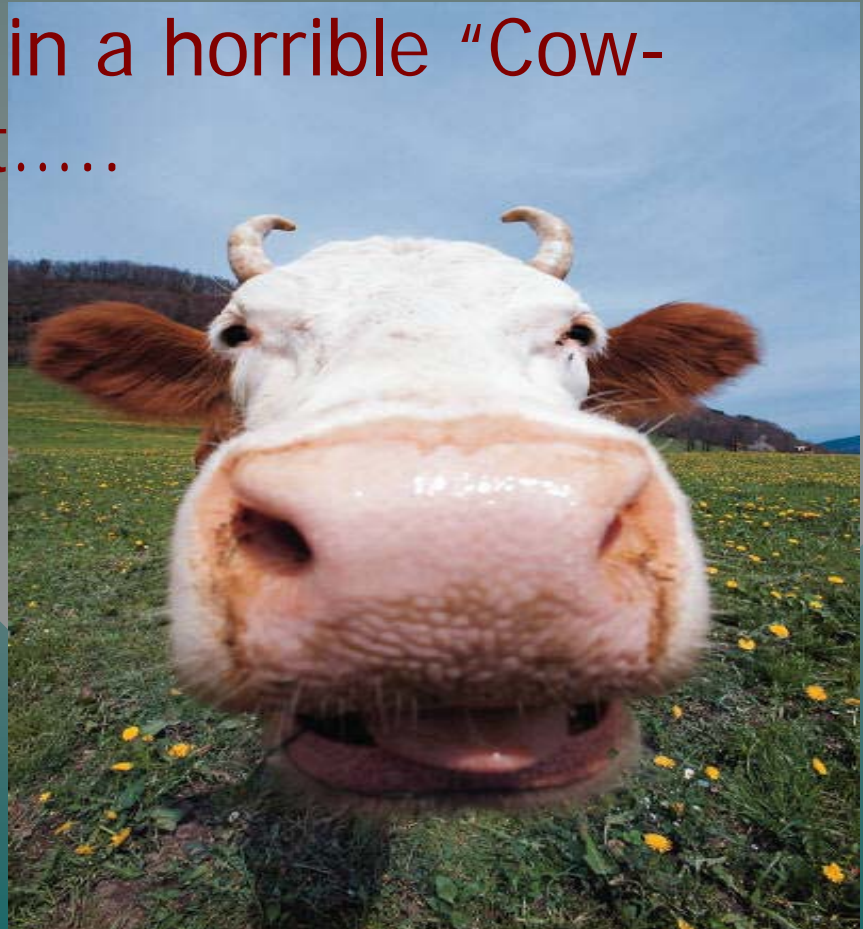
# Property Owned Before Marriage

- Annabelle buys Blackacre with winnings from the South Carolina Lottery
- Annabelle marries Billy Bob
  - ...after a romantic weekend at the South of the Border resort and theme park where they purchased more lottery tickets....
- Property is vested in ??????????

# Property Owned Before Marriage

- Annabelle dies in a horrible "Cow-tipping" incident.....

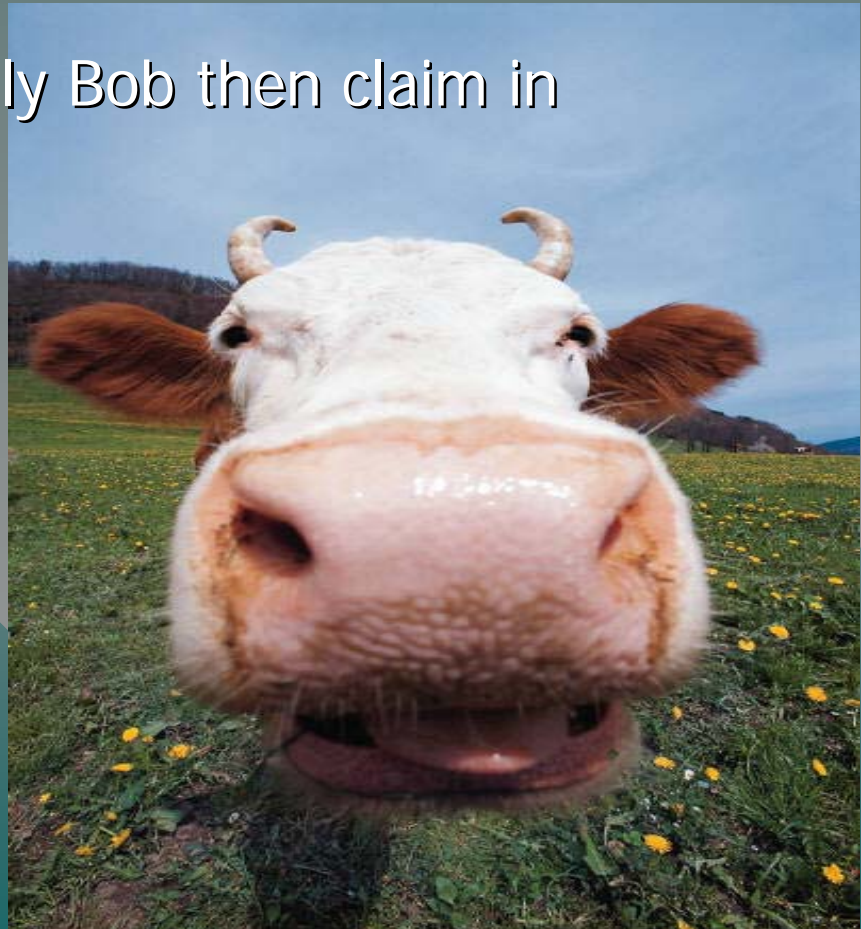
- What Interest may Billy Bob then claim in Blackacre???



# Property Owned Before Marriage

• What Interest may Billy Bob then claim in Blackacre???

- Elective Life Estate in 1/3 of Blackacre (NCGS 29-30)
- Intestate Share (1/6 to all of Blackacre depending on number of children)
- Elective Share Taken against the Will of the Decedent (NCGS 30-1 OR NCGS 30-3.1 depending on date of death)



# Property Acquired During the Marriage

- Buna Mae marries Clyde in a nice ceremony at the Conetoe Drive-Thru Wedding Chapel
  - They prosper in their hog farming operation and buy Rosy Acres sometime after marriage.....
  
- Rosy Acres is vested in ????????????

# Property Acquired During the Marriage

- Rosy Acres is vested in Buna Mae and Clyde as **Tenants by the Entireties**

- **But then....**

# Property Acquired During the Marriage

- Clyde is trampled by a sow pig named Lucinda as she headed for the trough





# Property Acquired During the Marriage

- Clyde is trampled by a sow pig named Lucinda as she headed for the trough

- By operation of law, fee title is vested in Buna Mae (right of survivorship)

- BUT we will talk later about judgments, liens and tax liens...



# Marital Interests

- After Death of Spouse
- Severing the Marital Interest

# Severing the Marital Interest

- The Prenuptial Agreement



# Severing the Marital Interest

- The Prenuptial Agreement
  - Pursuant to NCGS 52B-4, parties to a pre-nup may contract (in writing, signed by both parties) with respect to:
    - 1. Rights of each to property whenever acquired or located
    - 2. Right to buy, sell, mortgage, lease, transfer or otherwise manage or control property.
    - 3. Disposition of property upon separation, marital dissolution, death

# Severing the Marital Interest

- The Prenuptial Agreement
- The Separation Agreement

# Severing the Marital Interest

- The Separation Agreement
  - Any married couple may execute a separation agreement
  - Must be in writing, acknowledged before a notary
  - Need not be recorded to be valid (but recording is helpful)
  - Sep. Agmnts do not CONVEY property unless they include the min. requirements of a deed.
    - Sep. Agmnts therefore, generally do not sever Tenancy by the Entireties
  - Sep. Agmnts can prevent the attachment of the statutory marital interest for property acquired during marriage.

# Severing the Marital Interest

- The Prenuptial Agreement
- The Separation Agreement
- Agreements During Marriage

# Severing the Marital Interest

- Agreements During Marriage
  - NCGS 52-10 - agreements signed by BOTH parties, under seal, acknowledged before a notary and in recordable form can determine marital rights
  - Should be recorded
  - The Quitclaim Deed - generally not signed by BOTH parties - Does it work?????

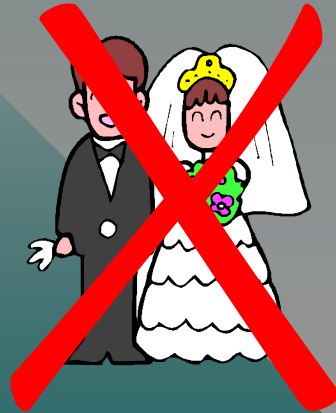


# Severing the Marital Interest

- The Prenuptial Agreement
- The Separation Agreement
- Agreements During Marriage
- Final Divorce Decree

# Severing the Marital Interest

- Final Divorce Decree
  - Marital interests terminate upon the final divorce decree.
  - Tenancy by the Entireties becomes a Tenancy in Common (w/o right of survivorship) upon divorce.



# Marital Interests

- After Death of Spouse
- Severing the Marital Interest
- Judgments, Liens & Tax Liens

# Judgments, Liens & Taxes

- Entireties Property

- Until recently, the rule had always been that judgments and liens (even tax liens with their “super priority”) against one spouse did not attach to entireties property.
  - “Lands held by husband and wife as tenants by the entirety are not subject to levy under execution on a judgment rendered against either the husband or the wife alone” 188 N.C. 200
- U.S. v. Craft, 535 U.S. 274. Federal tax liens “attach” to husband’s interest in entireties property
- State Tax Liens. Presumably, the rule in NC is still that such liens do not attach to entireties property.