

MLL325 – Land Law

Exam Notes and
Cases

Topic 9 – Co-Ownership: Rights and Duties

What is Co-Ownership?

Definition: Each co-owner has an equal right to possession over entirety of land.

- Only applies to Land
- Refers to multiplicity of ownership over single estate

What is Joint Tenancy

Definition: A form of co-ownership that must satisfy pre-requisites and must be specifically created.

- Must establish 4 unities or no joint tenancy
- Joint Tenants are all seised of the whole.
- Each joint tenant is severally possessed of an undivided interest.

Wright v Gibbons: 'a thorough and intimate union of interest and possession'.

Note: Right of Survivorship applies.

Four Unities

1. **Unity of Possession:** A feature of all forms of co-ownership. Each co-owner is entitled to possession. No co-owner is liable for trespass.
2. **Unity of Interest:** The interest held by each joint tenant must be identical in nature, extent and duration:
3. **Unity of Title:** The interest held by each joint tenant must derive from the same document and the same act:
4. **Unity of Time:** Each joint tenant must acquire their interest at the same time.

Important

- The four unities MUST exist if a joint tenancy is to be created.
- If the four unities existed when the joint tenancy was created but one or more have subsequently been removed – this will 'sever' joint tenancy.

Right of Survivorship

Section 28(2): allows right of survivorship to apply so that property devolves to other joint tenant in body corporate.

- Corporations cannot own land due to survivorship principle
- Altered s28 PLA – allows a body corporate to own land as a joint tenant in the same way as individuals.

Forfeiture Rule: The right of survivorship is subject to a public policy rule known as the 'forfeiture rule':

- No joint tenant can benefit from killing another
- Where this occurs, right of survivorship applies but jt holds enlarged portion on constructive trust for benefit of deceased estate

Tenancy in Common

Consider: If not a joint tenancy AND unity of possession then MUST be a tenancy in common.

- Another form of co-ownership
- It is the 'base' form of co-ownership

Note: No need for four unities – only need to establish unity of possession

Creation of Co-Ownership

Important: Where base requirement of 4 unities exist – can create either JT OR tenancy in common.

- Focus on Intention.
- First consider express words in deed of conveyance or transfer.
- If no express reference: implied words ie words of severance which indicate an intention to create proportionate will ALWAYS imply a tenancy in common

Words of Severance: words indicating intention to divide. Examples: 'amongst', 'respectively'.

Robertson v Fraser: 'Anything which in the slightest degree indicates an intention to divide the property must be held to abrogate the idea of a joint tenancy.'

Creation of Co-Ownership: Common Law

Common Law: Where no express or implied words – presumptions will operate.

Presumption: Joint Tenancy.

Rationale: Historical – easier to collect feudal dues from joint tenants

- Investigation of title easier if a joint tenancy
- Common Law Presumption *ONLY* apply where not rebutted by express or implied words of severance

Public Trustee v Pfeifle

Facts

- Property division agreement.
- What form of co-ownership did parties intend? Common law presumption of jt held by Ormiston J to be rebutted because of the reference to 'one half interest.'
- Natural meaning given to words.
- Comprehensive overview of creation of joint tenancy under common law and tenancy in common in equity

Held: It is inappropriate to create a joint tenancy and the totality of the rights of each joint tenant by a limitation or gift granting to each a moiety or half (or other share or interest. A limitation or gift of that kind, or indeed any transaction in those terms which purports to bring into existence concurrent interests in land or other property, is consistent only with the creation of a tenancy in common."

Creation of Co-Ownership: Statute

Statutory Presumption: TLA s30(2) deems 2 or more registered joint proprietors of land to hold as joint tenants.

- Will only apply where Torrens and where registered.
- The exact meaning of the 'joint proprietors' examined in Aoun Investments.

Creation in Equity

Established Situations

1. Unequal contribution to purchase price, mortgagee purchase or partnership purchase
2. Mortgagees/Business partners: investment objectives
3. Other circumstances where beneficial entitlement intended.

Important Information

- Only applies to particular instances where unfair to presume joint tenancy.
- Operates in equity via the imposition of a trust so that joint tenants at law but beneficial entitlement is held in a different capacity
- Primarily arises over commercial relationships where investment purpose suggests a proportionate share to be fairer

Unequal Contributions

Delehunt v Carmody

Facts

- C and D contributed equally to deposit and purchase price of house – agreement to hold equal shares.
- No indication of co-ownership. C died intestate and Mrs C (ex-wife) granted property and ordered D to vacate. D argued joint tenancy – right of survivorship.

Held

- Noted that resulting trust existed: Legal title in C's name but C and D contributed equally. If unequal shares then T in C per *Calverley v Green*. But if equal shares equity presumes a joint tenancy (but slight circumstances may rebut this)
- BUT s26 rebuts this presumption so that they hold as tenants in common despite beneficial presumption of joint tenants.

Other Circumstances where Beneficial Entitlement Intended

Case: Malayan Credit

Facts

- Tenants entering into a commercial lease arrangement. Occupying 38% and 62% respectively. Separate property bills paid. Was it a jt or a tenancy in common.

Held

- Tenancy in Common – equity can apply where grantees hold the premises for their several business purposes.
- “In the opinion of their Lordships, the payment of rent and service charge in unequal shares, the payment of the stamp duty and the survey fee in unequal shares, and the unequal contributions to the deposit payable under the terms of the lease which was to be outstanding for the whole period of the lease, are comparable to the payment of purchase money in unequal shares. All the circumstances point decisively to the inference that the parties took the premises in equity as tenants in common in unequal shares.”