

TOPIC 9: Co-Ownership

1 What is Co-Ownership?

- Only applies to Land
- Refers to **multiplicity** of ownership over **single estate**
- Basic feature: **each co-owner has an equal right to possession over entirety of land (co-own the same interest)**
 - Distinguish: Ownership of different interests e.g. life estate and remainder
 - Distinguish: Trustee/Beneficiary Relationship

Perfect exam answer outline:

- 1 person paid more both entered into mortgage transaction; both registered
- Effect of registration
- Co-ownership
- S 30(2) deeming provision
- 1 person died
- Equity may operate because different financial contributions

1. Joint Tenancy

- A form of co-ownership that must satisfy pre-requisites and must be specifically created
- Joint Tenants are all **seised of the whole**.
 - Each joint tenant is severally possessed of an undivided interest
 - ***'A thorough and intimate union of interest and possession'*: Dixon J in *Wright v Gibbons***
- **Right of Survivorship** applies:
 - If one person dies, the other automatically retains the whole ownership
 - Cf Tenancy in Common where 50/50 split if one dies

Must establish 4 unities:

- 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. (See Topic 10)

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 JT must be identical in nature, extent and duration
3. **Unity of Title:** The interest held by each JT must derive from the same document and the same act
4. **Unity of Time:** Each JT must acquire their interest at the same time

Right of Survivorship:

- The right of survivorship is an inherent aspect of the joint tenancy
- **Meaning:** Where one JT dies, remaining 'inherent' his/her share
 - 'Freeing interest of deceased JT from control' rather than an enlargement' as all JT seised of whole
- Corporations cannot own land due to survivorship principle
 - This now altered by **s 28 PLA** – allows a body corporate to own land as a joint tenant in the same way as individuals. S 28(2) specifically allows right of survivorship to apply so that property devolves to other joint tenant in body corporate
- **Forfeiture Rule (where JT murders other JT)** – The right of survivorship is subject to a public policy rule known as the 'forfeiture rule'
 - No JT 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
 - **See Re Stone**

2. Tenancy in Common

- Tenancy in common is another form of co-ownership
- It is the 'base' form of co-ownership
- No need for four unities – only **need to establish unity of possession**: reflects the portion each person put in to the property
 - All co-owners have a right to possession
 - Cf Trusts (beneficiary has equitable interest; equitable estate no possession which is legal estate) and future interests (only one person has possession)
- If not a joint tenancy AND unity of possession then MUST be a tenancy in common

2 Creation of Co-Ownership

- Where base requirement of 4 unities exist – can create either JT OR tenancy in common
- Focus: Intention of the parties

Presumption under Common Law and TLA: Joint Tenancy

- **MUST** have 4 unities
- 1. **Statutory Presumption: TLA s 30(2) deems 2 or more registered joint proprietors of land to hold as joint tenants.**
 - Will only apply where Torrens **and** where registered
- 2. **Common law presumption:** Where no express or implied words as to severance of the whole

Words of severance:

- **Words of severance:** Words which indicate an intention to create proportionate ownership
 - E.g. 'divide', 'amongst', 'respectively'
 - 'Participate': ***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': ***Robertson v Fraser****
- Where parties clearly **intend** tenancy in common: ***Public Trustee v Pfeifle***
 - Property division agreement.
 - 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.

Under Equity:

- Only applies to particular instances where unfair to presume joint tenancy.
 - E.g. Purchase Money Resulting Trust
- Parties registered but not set out what type of co-ownership; ***each party provided a different financial contribution*** – presumption is PMRT
- **Three 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

- Might not apply to certain relationship between the parties: Presumption of advancement (e.g. parent purchasing for child)

Unequal Contributions: *Delehunt v Carmody*

- **Rule:**
- **Rationale:**

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 Ms D to vacate.
- D argued joint tenancy – right of survivorship

Held –

- Equity follows the law
- Ordinary, an equal contribution will not raise presumptive application of a resulting trust in equity and in this respect, equal contributions should be distinguished from unequal contributions
- The equitable jurisdiction will ordinarily only be activated and a presumptive resulting trust imposed where the parties have contributed **unequally**
- The doctrines of equity should not be inflexible and should follow the law (i.e.
- Presumptive resulting trust justifiable even though the parties had contributed in equal shares

Factors relevant to Tenancy in Common: *Malayan Credit* [1986]

- **Rule:** Other factors other than just purchase money in unequal shares may amount to Tenancy in Common

Facts –

- Tenants entering into a commercial lease arrangement.
- Occupying 38% and 62% respectively.
- Separate property bills paid.

Issue –

- 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
- Relevant factors –
 - **Lease was to serve separate purposes**
 - **Proper division of space**
 - **Meticulous measurement of areas**
 - **Fees paid in unequal shares**
 - **Commercial context**
- “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.”

Restrictive Approach to Married Couple: *Trustee Cummins* (2006) HC

- Rule:

Facts –

- Cummins was a prominent barrister who had not paid income tax for his whole life.
- Became bankrupt from tax debts and his estate was administered to the Appellants [Trustees of the Property of Cummins] as trustees.
- Prior to this, Cummins had transferred his joint tenancy in land to his wife, the Respondent
- The Respondent argued that even in the case that the transfer of the joint-tenancy failed, she held the majority of the property because she originally paid for most of it, and thus her husband's share in the joint tenancy is held on a resulting trust for her.

Issue –

- The Appellants sought a declaration that Cummins' transfer to the Respondent was void against them in bankruptcy.
- Also, any presumption of a resulting trust was rebutted, as Cummins clearly intended to hold the land as a joint tenant with the Respondent.

- The core issue was whether title had vested with the Respondent under a resulting trust, or whether Cummins remained a joint tenant, and rebutted the presumption of advancement.

Held –

- The attempt to sever the joint tenancy and transfer the property to the Respondent was in violation of s 121 of the Bankruptcy Act and therefore void.
- Usually, unequal contribution does indeed mean that a resulting trust will arise as per *Calverley v Green*.
- When 2 people have purchased in unequal shares and the property is in joint names, there is a presumption that they hold the property in proportions in which they contributed.
- However, when its a **husband and wife**, the contributions are less relevant and instead it can be assumed that each are a joint-tenant (owning equal share) rather than tenants in common (each owning as per their contribution).
- Cummins saw himself as joint tenant (and only tried to change for the purposes of avoiding tax).
- There is no reason here why equity should intervene (with a resulting trust) to disturb the legal title shown in the registry (i.e. that they are both joint-tenants).
- *'There is no occasion for equity to fasten upon the registered interest held by the joint tenants a trust obligation representing differently proportionate interests as tenants in common. The subsistence of the matrimonial relationship...supports the choice of joint tenancy with the prospect of survivorship...'*
- The Appellant trustees were successful

Broader Approach to Unequal Contribution to Couple: *Stack v Dowden*

- **Rule:** In the ordinary domestic case where there are joint legal owners there will be a **heavy burden** in establishing to the court's satisfaction that **an intention to keep a sort of balance-sheet of contributions actually existed, or should be inferred, or imputed to the parties**
- **Rationale:**

Facts –

- Parties unmarried but lived together for many years and had 4 children
- Family home was 190,000 pounds
- 128,813 from D and 65,025 from loan to both parties (one endowment policy only in D's name)