Co-ownership

So what is the difference between JT and TIC?

- In a JT you own the whole of the land along with your fellow tenants
  - Each JT owns nothing as separate entity – all for one and one for all
- In TIC owns a proportionate interest in the land

JOINT TENANCY - DEFINITION & CHARACTERISTICS

- Own the whole of the land along with other JTs in equal shares. Own nothing as a separate entity.
- Do not have severable share or right to portion of it
- Denoted by right of survivorship – last man alive gets everything.
- Characterised by Four Unities – need all four for JT to exist
  - Unity of possession, interest, time and title

JT- UNITY OF POSSESSION

- Concurrent right to possess land with the other co-owners - All have equal possessory rights
- Need unity of possession for a JT or a TIC to exist (without it there is simply separate ownership)
- Possessory right is not exclusive and does not give the right to eject the other JT’s
- Co-owner who has "ousted" another co-owner from possession by forceable ejectment may have an action in trespass brought against them

JT: UNITY OF INTEREST

- Required that all JT have interests that are identical (e.g., everyone has 1/3 or ¼ or ½ interest)
- NOTE: does not have to equal 1
- EX: If A, B and C have a JT. If C severs the JT and sells their interest to A, there still exists a joint tenancy between A and B as they both have 1/3 interest.
- The other 1/3 held by A is held in TIC to the JT

JT: UNITY OF TITLE

- Requires all of the interests of the JT’s are conveyed under a single title – i.e. - From same document or via the same act
- For Example
  - A and B have a joint tenancy. B sells to C
  - Because unities of time and title have been broken, hold interest as TIC not JT

JT: UNITY OF TIME

- Requirement that each of the JT interests must be at the same time by the same event (the execution of the documents must be at the same point in time)

- If one co-owner receives his or her interest at a different point in time then JT cannot be constituted and it will become a TIC

RIGHT OF SURVIVORSHIP

- When one JT dies then the estate goes automatically to the other JT’s causing the survivors estate to be enlarged in equal proportions.
- When JT dies, his interest is extinguished and interest of surviving JT’s is enlarged

A JT cannot dispose of his interest in land as he wishes unless the JT is severed prior to the death of the JT

- S.65 Succession Act - Deaths deemed to be in order of seniority when order of death is uncertain (i.e. -- where they die simultaneously)

CREATION OF THE JT AT COMMON LAW

- Under CL, where there is no instrument indicating TIC, and the four unities are present, a JT is presumed.
  - Can be rebutted – where JT (instrument of transfer) has ‘Words of Severance’ (i.e. ‘share and share alike’ gives intention for TIC not JT), the JT is not created

CREATION IN EQUITY

- In Equity, where there is no express intention, equity presumes a TIC as it confers a greater degree of fairness and certainty.
- Aim of equity is to supplement CL, therefore will imply a TIC where:
  - unequal contribution to purchase price
  - mortgage- held as TIC by lenders

JOINT TENANCY – UNDER STATUTE

- Section 35 PLA - “Where two or more persons are entitled to the simultaneous enjoyment of land, shall be construed as made to all of them as TIC, and not as JT
- Section 36 PLA – if change from an equitable estate to a legal estate and there exists co-ownership then shall be held by them as tenants in common unless such persons otherwise agree.
- Section 36(2) LTA – PRESUMPTION OF TIC
- If the instrument does not show whether co-owners are to hold as TIC or as TC, the Registrar must register the title owners as TIC.

JOINT TENANCY – TERMINATION

- Occurs when a unity is destroyed
- Major ways for Severance:
  - Severance by alienation
  - Severance in equity
    - Unilateral
  - Corin v Patton
  - Severance by agreement

JOINT TENANCY – SEVERANCE BY ALIENATION

- Severed when a JT appoints himself as trustee of their undivided share

- Interest held by JT becomes an interest as trustee, therefore removes unity of title
- JT may execute a conveyance of the interest to himself, thus severing JT (title)

- Unilateral alienation by a JT can only sever JT if the alienation is effective at law (i.e. everything is done and JT is executed by proper deed or registered under TTS)
- Where the JT seeks to register transfer the JT has to give up the duplicate CT if any.
- Wright v Gibbons (three sister case where the two sisters wanted one sister not to be part of the JT anymore – these two sisters sold their interests to one another, but court held that a JT no longer existed between these two, the sale severed the JT)
  - Re-registration created different title, therefore unity of title severed

UNILATERAL SEVERANCE IN EQUITY (VERY IMPORTANT)

- JT alienates his share to third party by gift, but not effective in law
- Corin v Patton - Mr & Mrs P were JT’s of Torrens land in NSW. Mrs P, who was terminally ill, did not want Mr P to ‘take all’ as the surviving joint tenant. In particular, Mrs P wanted to ensure that her children would receive a share of the property following her death. Mrs P therefore executed three documents: (1) a memorandum of transfer of her interest to her Brother (“C”); (2) a deed stating that C (as trustee for Mrs P) held the land as TIC with Mr P; and (3) a will leaving her estate to her children in equal shares. The transfer was not registered prior to Mrs P’s death, and Mr P argued that he was entitled to the land since he was the sole surviving joint owner - Mr P argued that Mrs P had not effectively alienated her interest in the land (i.e. she hadn’t severed the JT, thus creating a tenancy in common capable of devolution under Mrs P’s will).
- The High Court held there was nothing to prevent the passing of an equitable interest to a donee if, in the circumstances, equity regarded the transaction as complete. The court ultimately decided that the circumstances of the case were such that equity did not regard the transaction as complete (Mrs P had not authorised the bank to release the certificate of title to her nominee).
  - Yes – Mason and McHugh – so long as donor does all he is required to do in law for the TF to be effected then JT will be severed – now reflected in s.200 of the PLA
  - No – Deane and Gaudron - only effective severance where everything has been done to effect the transfer including registration
  - Prevailing view – seems to be the M and M view

JOINT TENANCY - SEVERANCE BY AGREEMENT

- Agreement by all JTs is entered into, agreeing they all want to sever the JT and hold as TIC

OTHER WAYS TO SEVER:

- Severance following homicide:

LAND_103