

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, title and time**

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 1/4 or 1/2 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 all the four unities still exist, however, the JT only totals 2/3's of the land
- 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 IT (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 56(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: