

SCAFFOLD 6

CO-OWNERSHIP

Use when: *two or more people own land together.*

Determine type

- *(Joint Tenant (JT) or Tenant In Common (TIC)),*
- *survivorship,*
- *severance/termination, and rights/obligations.*

▶ RED FLAGS — SCAN SCENARIO FIRST | Match trigger → go to that section only

▶ JT LANGUAGE	"jointly" / "as joint tenants" / "to A and B" (silent) on Torrens → JT presumed under s 100(1) RPA
▶ TIC LANGUAGE	"in equal shares" / "equally" / "one-half interest each" / "to be divided" / old system silent → TIC under s 26(1) CA
▶ SEVERANCE	"sold their share" / "mortgaged interest" / "charged share" / "declared bankrupt" / "notice in writing" / "course of dealing" / "acted inconsistently with JT"
▶ SURVIVORSHIP	co-owner has DIED → right of survivorship → was JT or TIC? Has JT been severed first?
▶ UNEQUAL CONTRIBUTIONS	A paid more than B → equity presumes TIC (Delehunt v Carmody; Calverley v Green)
▶ DOMESTIC/MARITAL	husband & wife / de facto couple → <u>equity presumes JT</u> even with unequal contributions (Cummins)
▶ BUSINESS PARTNERS	partners / commercial purchase / investment → <u>equity presumes TIC</u> (Lake v Craddock; Bathurst CC v PWC)
▶ TRUSTEES/MORTGAGEES	hold as trustees / mortgagees → JT at law AND equity regardless (s 26(2) CA exception)

APPLICATION FLOWCHART — CO-OWNERSHIP

Follow top → bottom. Skip a box only where its skip-rule says so.

START — Two or more people own land together

Identify the property and each co-owner. Then work the issues raised by the facts.



ISSUE 1: TYPE — JT or TIC? (NEVER SKIP)

Step 1 express words → Step 2 statute (Torrens s 100(1) RPA = JT | Old system s 26(1) CA = TIC) → Step 3 four unities (only if old system & silent) → Step 4 EQUITY (always: contributions / relationship).



STEP 4 EQUITY can OVERRIDE law

Domestic/marital → JT in equity even if unequal (Cummins) | Business → TIC (Lake v Craddock) | Unequal contributions → TIC (Calverley v Green; Delehunt v Carmody).



ISSUE 2: SURVIVORSHIP (only if a co-owner has DIED)

JT and NOT severed → survivor takes the whole automatically | TIC or severed → deceased's share passes by will / intestacy.



ISSUE 3: SEVERANCE / TERMINATION (only if a dispute about ending it)

Alienation (sale/mortgage of share) | mutual agreement | course of dealing (Williams v Hensman). Sale/partition under s 66G CA.



ISSUE 4: RIGHTS & OBLIGATIONS (SELECT ALL raised)

Ouster (Wiseman v Simpson) | occupation fee (Forgeard v Shanahan) | improvements (Brickwood v Young) | rent (Henderson v Eason) | outgoings (Leigh v Dickeson).



CONCLUDE

State the legal AND equitable position, and the consequence on the facts.

STEP 0 — MASTER NAVIGATOR |

Scan facts → circle → go to those Issues only

▶ SEE IN FACTS...	TRIGGERED ISSUE	→ GO TO	SKIP WHEN
Always — two+ people own land	Issue 1: Type (JT or TIC)	Issue 1 — NEVER SKIP	Never skip
A co-owner has DIED	Issue 2: Right of Survivorship	Issue 2	No death in facts
JT may be severed / dispute over sale or partition	Issue 3: Severance/Termination	Issue 3	No dispute about ending arrangement
Possession / rent / improvements / outgoings	Issue 4: Rights & Obligations	Issue 4	Not raised in facts

ISSUE 1 — TYPE OF CO-OWNERSHIP (JT or TIC?) |

Work through STEPS

● WORK THROUGH ALL in order — **do not skip any row**; all apply

Work through ALL 4 Steps in order.

Stop at first clear answer — BUT **ALWAYS** complete Step 4 (Equity).

Equity can override law.

STEP 1 — EXPRESS TERMS IN THE DOCUMENT (Legal Interest) |

SELECT ONE

🔍 FACT SCAN — find these words/phrases in the scenario before writing

- ▶ EXACT WORDS in deed/transfer: "jointly" / "as joint tenants" → **JT express**
- ▶ EXACT WORDS: "in equal shares" / "equally" / "one-half interest to each" / "to be divided" → **TIC express**
- ▶ **SILENT** on type → go to **Step 2**

🔍 FACT TRIGGER

🔥 WRITE THIS

EXPRESS — Joint Tenancy stated

Express words override statute

The deed/contract expressly states **[insert wording — e.g., "to A and B as joint tenants"]**. At law, **[X]** and **[Y]** hold the property as JOINT TENANTS. Express words prevail over all statutory presumptions. The statutory presumptions in s 26 CA and s 100 RPA are displaced.

→ **NEXT:** → Skip Steps 2 and 3. Go directly to **Step 4 (Equity)**.

EXPRESS — Tenancy in Common stated

Express words override statute

The deed/contract expressly states **[insert wording — e.g., "in equal shares" / "as to A one-half and B one-half"]**. At law, **[X]** and **[Y]** hold the property as TENANTS IN COMMON in **[equal / proportionate]** shares. The statutory presumptions are displaced.

→ **NEXT:** → Skip Steps 2 and 3. Go directly to **Step 4 (Equity)**.

SILENT — no express terms in document

The document is silent on the type of co-ownership. The applicable legislative presumption must be determined.

→ **NEXT:** → Continue to **Step 2**.

STEP 2 — LEGISLATION: s 26 CA or s 100 RPA (Legal Interest) |

SELECT ONE

🔍 FACT SCAN — find these words/phrases in the scenario before writing

- ▶ **TORRENS:** "registered" / "Certificate of Title" / "lot [X] DP [Y]" → s 100(1) RPA → JT presumed
- ▶ **OLD SYSTEM:** "deeds" / "chain of title" / "General Register of Deeds" / no Certificate of Title → s 26(1) CA → TIC presumed
- ▶ **TRUSTEES or MORTGAGEES** → s 26(2) CA exception → JT regardless

🔍 FACT TRIGGER

📌 WRITE THIS

TORRENS —

registered land (s 100(1) RPA)

Hircock v Windsor Homes

As the property is Torrens title and no contrary intention is expressed in the Register, s 100(1) of the Real Property Act 1900 (NSW) presumes the co-owners hold as JOINT TENANTS at law (*Hircock v Windsor Homes*).

The Register shows [X] and [Y] as registered proprietors with no statement of separate shares.

→ **NEXT:** → Go to **Step 4 (Equity)**.

[If Register states shares expressly → state them, go to **Step 4**.]

OLD SYSTEM —

not registered (s 26(1) CA)

As the property is old system land and the instrument does not expressly create a joint tenancy, s 26(1) of the Conveyancing Act 1919 (NSW) presumes the co-owners hold as TENANTS IN COMMON at law. Note: s 26(2) CA excepts trustees, executors, administrators, and mortgagees — they hold as joint tenants.

→ **NEXT:** → If instrument truly silent AND old system → **Step 3**.

Otherwise → **Step 4**.

TRUSTEES or MORTGAGEES —

s 26(2) CA exception

The co-owners hold the property as **[trustees / mortgagees]**. Section 26(2) CA expressly provides that s 26(1) does NOT apply to trustees, executors, administrators, or mortgagees. They hold as JOINT TENANTS at law regardless of any contrary presumption.

→ **NEXT:** → Go to **Step 4 (Equity)**.

SCAFFOLD 8

POSSESSORY INTERESTS

— FINDERS · BAILMENT · TORTS

Use when: a Q asks **who has the right to keep / possess a found item**, or whether **goods held by another must be returned**, or what action lies to **recover a chattel**.

WHICH PART AM I IN? — top-level navigator

PART A — FINDERS : Q asks who is entitled to a found item (finder vs occupier/landowner vs employer). → run Q1–Q5.

PART B — BAILMENT : goods were handed to / left with another (storage, hire, loan, parking, carriage). → is there a bailment, what type, whose duties, was there a breach.

PART C — PROPRIETARY TORTS / REMEDIES : you have decided WHO has the possessory right — now pick the cause of action to recover the chattel or damages (trespass / conversion / detinue / negligence / action on the case). Standing turns on possession.

PART A — FINDERS (POSSESSORY INTERESTS)

Work through ALL Questions in order.

▶ RED FLAGS — SCAN SCENARIO FIRST match trigger → go to that section	
▶ FINDER LIKELY WINS	Lost item • found on surface • PUBLIC place • occupier NOT manifesting control • finder lawfully present • NOT in course of employment • tried to return
▶ FINDER LOSES	Attached / buried in land • residential / private land • finder is TRESPASSER • found IN COURSE OF employment • finder did NOT try to return
▶ ABANDONED?	Left on street / bin openly • 'free' sign • true owner clearly discarded → full rights to finder
▶ EMPLOYEE?	Security guard / receptionist / lost-property manager finds item → employer wins police officer walking street finds item → employee wins
▶ MISLAID?	Intentionally left and forgotten (e.g. bag left on counter) → occupier may hold for owner

🗺️ APPLICATION FLOWCHART — FINDERS / POSSESSORY INTERESTS

Follow top → bottom. Skip a box only where its skip-rule says so.

WHICH PART?

A — who keeps a found item | B — goods handed to/left with another (bailment) | C — which action to recover the chattel (trespass/conversion/detinue).



Q1: LOST, MISLAID or ABANDONED?

Lost = accidental (finder usually wins) | Misland = placed & forgotten (occupier may hold) | Abandoned = clearly discarded (finder may take full title: Re Jigrose).



Q2: WHERE FOUND?

Public, occupier no control → finder (Parker; Bridges v Hawkesworth) | Residential → occupier control presumed (Flack) | Attached/buried → landowner (Sharman; Waverley v Fletcher).



Q3: LAWFULLY PRESENT?

Lawful presence strengthens finder (Parker). Trespasser / dishonest → loses (Waverley v Fletcher; Hibbert v McKiernan) → END for finder.



Q4: EMPLOYEE in course of duties?

Core duty to find/manage items → employer wins. Merely incidental → employee wins. Not an employee → skip.



Q5: REASONABLE STEPS to return? (NEVER SKIP)

Finder must take reasonable steps to find the true owner (Parker v British Airways Board).



THEN: Part C — remedy

Standing turns on possession: trespass to goods | conversion | detinue | negligence.

STEP 0 — MASTER NAVIGATOR

(scan facts → circle → go to those Questions only)

▶ SEE IN FACTS...	TRIGGERED ISSUE	→ GO TO	SKIP WHEN
Item found — any scenario	Q1 Lost / Misland / Abandoned?	Q1 always	Never skip Q1
Public place / shop / lounge	Q2 Where found?	Q2 Public option	Private land → Q2 Private
Buried / attached to land	Q2 Attached to land	Q2 Attached option	Surface item only
Trespasser / dishonest	Q3 Lawfully present?	Q3 No → occupier	Finder clearly lawful

▶ SEE IN FACTS...	TRIGGERED ISSUE	→ GO TO	SKIP WHEN
finder		wins	
Finder is an employee	Q4 Employee?	Q4 if employee	Not an employee
Did finder try to return?	Q5 Reasonable steps	Q5 always	Never skip Q5

📖 OPENING LAW — **write this:**

A finder of a lost item has possessory rights against everyone except the true owner or a person with a stronger legal claim (*Armory v Delamirie* (1722); *Bridges v Hawkesworth*).

Possession requires (1) factual control (*corpus*) over the object; AND (2) an intention to possess (*animus possidendi*) (*Button v Cooper*).

The key distinctions are:

LOST — accidental misplacement (finder usually wins);

MISLAID — intentionally placed and forgotten (occupier may hold for owner);

ABANDONED — true owner clearly and unequivocally gave up ownership (finder may acquire full rights: *Re Jigrose*; *Moffat v Kazana*).

In every case the finder must take reasonable steps to return the item to the true owner (*Parker v British Airways Board*).

QUESTION 1 — Is the item LOST, MISLAID, or ABANDONED?

● **SELECT ONE option only** — choose the row matching your facts, write that script, skip the rest

Look at how the item came to be where it was found. Choose ONE row.

🔍 **FACT SCAN** — find these words / phrases in the scenario before writing

- ▶ **LOST**: 'dropped', 'fell from pocket', accidental, no evidence of deliberate placement
- ▶ **MISLAID**: 'left on counter', 'placed on seat', 'put down and forgot' — intentional act + forgot
- ▶ **ABANDONED**: 'thrown in bin', 'left with free sign', 'discarded' — large item left openly, no ID

🔍 FACT TRIGGER	📌 WRITE THIS
LOST — accidental, no deliberate placement <i>Armory v Delamirie</i> ; <i>Bridges v Hawkesworth</i>	The item is most likely LOST — accidentally misplaced with no evidence of deliberate abandonment or intentional placement. Under <i>Armory v Delamirie</i>, a finder of a lost item acquires possessory rights against all persons except the true owner. On the facts, [describe how the item came to be where found — e.g. the ring was found lying on the floor of the shopping centre, with no indication it had been deliberately placed]. This indicates accidental loss. ✓ IF SATISFIED: finder has prima facie possessory rights. → Continue to Q2 (location).

🔍 FACT TRIGGER	📝 WRITE THIS
MISLAID — intentionally placed, forgotten <i>Parker v British Airways Board</i>	The item appears MISLAID — intentionally left and subsequently forgotten. The occupier of [location / name] may have a stronger claim than the finder, as the occupier is best placed to hold the item pending the owner's return. On the facts, [describe — e.g. the handbag was left on the café counter, suggesting a deliberate placing followed by forgetting]. ✗ IF NOT LOST: occupier may have the stronger claim. → Continue to Q2 to confirm.
ABANDONED — owner clearly gave up ownership <i>Re Jigrose; Moffat v Kazana</i>	Abandonment requires a clear and unequivocal intention to permanently discard the item (<i>Re Jigrose; Moffat v Kazana</i>). Whether abandonment is made out is a question of fact — it may depend on the value, size, location and surrounding circumstances. Here, [describe facts showing clear intent to discard — e.g. the TV was left on the footpath beside a bin with a 'free' sign]. The owner has relinquished all rights by clear and unequivocal conduct. ✓ IF SATISFIED: finder may acquire FULL possessory title. → Still check Q3 (lawful presence) and Q5 (reasonable steps).

💡 **EXAMPLE — telling LOST / MISLAID / ABANDONED apart**

LOST → A \$50 note is found lying on the floor of a shopping-centre walkway. It was dropped accidentally, with nothing to show it was put there deliberately. This is *lost* — the finder takes possessory rights against all but the true owner (cf *Bridges v Hawkesworth*).

MISLAID → A handbag is found hanging on the back of a chair in a café, plainly placed there and then forgotten. This is *mislaid* — the deliberate placing points to the café occupier being better placed to hold it for the owner.

ABANDONED → A worn-out armchair is left on the nature strip with a 'FREE — TAKE ME' sign. The owner has clearly and unequivocally given up ownership, so this is *abandoned* — the finder can acquire full title (*Re Jigrose*). Note value/size matter: a diamond ring on a public toilet floor is far less likely to be treated as abandoned than an old sofa on the kerb.

● **SELECT ONE option only — choose the row matching your facts, write that script, skip the rest**

Choose the ONE row matching where the item was found.

🔍 **FACT SCAN — find these words / phrases in the scenario before writing**

- ▶ **PUBLIC** / open access: shopping centre, airport lounge, shop floor, public park → usually finder wins
- ▶ **RESIDENTIAL** / exclusively occupied private land: home, backyard, private office → occupier wins (control presumed)
- ▶ **PRIVATE non-residential**: commercial premises, car park, garden, private club → need manifest intention to control
- ▶ **ATTACHED / BURIED**: 'embedded in soil', 'fixed to wall', 'dug up' → occupier / landowner wins
- ▶ **SURFACE unattached**: lying on floor / ground, not embedded → finder usually wins

QUESTION 2 – WHERE WAS IT FOUND

 FACT TRIGGER	 WRITE THIS
PUBLIC PLACE — occupier has NOT manifested control <i>Parker v British Airways Board</i> ; <i>Bridges v Hawkesworth</i>	The item was found in [e.g. the airport departure lounge / the shop floor / the public concourse] — a place open to the public. In <i>Parker v British Airways Board</i>, Donaldson LJ held that a finder in a public place prevails over the occupier unless the occupier has manifested an intention to exercise control over the building AND the things which may be upon or in it. In <i>Bridges v Hawkesworth</i>, the finder of banknotes on a shop floor won. Here there is [no / insufficient] evidence that [occupier] manifested such an intention — [no lost-property policy / no signage / no systematic collection]. ✓ IF SATISFIED: finder wins (subject to Q3–Q5). → Continue.
RESIDENTIAL / PRIVATE land — control PRESUMED <i>National Crime Authority v Flack</i>	The item was found on [residential / exclusively occupied private premises]. On such land an intention to control items found there is PRESUMED — the occupier need not even know of the item's existence (<i>National Crime Authority v Flack</i>; money hidden in a mattress in the occupier's home → occupier had the better right). Here [occupier] occupied [premises] exclusively, so control is presumed. ✗ IF SO: occupier wins over finder. → Still check Q3 in case the finder was also an employee.
PRIVATE non-residential — occupier must show MANIFEST intention <i>Parker v British Airways Board</i> (principle)	The item was found on [commercial premises / private car park / members' club]. For non-residential private land the occupier does NOT automatically prevail — they must show a manifest intention to control both the land and the things upon or in it (<i>Parker</i>). [IF manifested — formal lost-property policy / signage / systematic collection: occupier prevails. IF NOT: the finder has the stronger claim.] → Apply whichever outcome the facts support; continue to Q3.
ATTACHED TO / BURIED IN LAND <i>South Staffordshire Water Co v Sharman</i> ; <i>Elwes v Brigg Gas Co</i> ; <i>Waverley BC v Fletcher</i>	The item was [embedded in / buried in / attached to] the land. Items embedded in or attached to land belong to the landowner or occupier regardless of who finds them, whether buried in soil or fixed to a structure. <i>South Staffordshire Water Co v Sharman</i> (rings at the bottom of a pool → landowner); <i>Elwes v Brigg Gas Co</i> (prehistoric boat buried under leased land → freeholder); <i>Waverley BC v Fletcher</i> (medieval brooch dug up in a public park → council). ✗ IF SO: occupier / landowner wins — regardless of where found or whether a public place. → END HERE for finder on this item.
SURFACE ITEM — unattached, lying on floor / ground <i>Parker v British Airways Board</i>	The item was on the surface, unattached to the land. As an unattached surface item the finder's rights are generally stronger than the occupier's, unless the occupier shows a clear manifest intention to control items found there (<i>Parker</i>). On the facts, [e.g. the bracelet lay on the supermarket aisle floor, unattached to any structure]. ✓ IF SATISFIED: finder has the stronger claim (subject to Q3–Q5). → Continue.

 EXAMPLE — location decides it: surface-in-public vs private vs attached

PUBLIC, no control → A bracelet on the floor of an airport lounge: the occupier controlled who could *enter* the lounge but showed no intention to control *items* left in it, so the finder won (*Parker v British Airways Board*).

RESIDENTIAL, control presumed → Cash hidden in a mattress inside a person's home: control over items on exclusively-occupied residential land is presumed even if the occupier never knew the cash was there, so the occupier had the better right (*National Crime Authority v Flack*).

ATTACHED / BURIED → A medieval brooch dug up ~22 cm below a public park: an item in or attached to land goes to the landowner regardless of who finds it (*Waverley BC v Fletcher*); likewise rings at the bottom of a pool (*South Staffordshire v Sharman*).

 SELECT ONE option only — choose the row matching your facts, write that script, skip the rest

One row only — was the finder invited / permitted, or trespassing?

 FACT SCAN — find these words / phrases in the scenario before writing

- **LAWFUL**: invited, member of the public, shopper, ticket-holder, employee permitted to be there
- **TRESPASSER**: 'broke in', 'climbed fence', 'no permission', 'not authorised to be there'
- **DISHONEST INTENT**: 'planned to take something', knew it was not theirs and concealed it

