

### **Co-ownership essay**

In order to advise these parties effectively we need to look at the situation they have found themselves in. The first thing to consider when assessing this question is the nature of the ownership of the cottage as it stands when the purchasers bought the property. We are told that the cottage was purchased in the name of both Julian and Dick and they are the legal owners of the property as it is they who are named on the legal documents they. Co- ownership is described as being the forms ownership in which two or more persons are simultaneously entitled in possession to an interest or interests in the same property. There are four types of co-ownership but the one which we are concerned with here is joint tenancy. Joint tenancy is said to be the form of co-ownership in which each 'joint tenant' is said to be wholly entitled to the whole of the interest or estate. It is an essential feature of joint tenancy that the 'four unities' must be present before a joint tenancy can be said to exist. The four unities comprise of possession (each tenant is as much entitled to possession as another), interest, (each joint tenant is wholly entitled to the whole), title (each tenant must derive his title from the same document) and time (each tenant vests in the interest at the same time).

As established by the Law of Property Act 1925 s1(6) the only type of co-ownership that exists at law (the others exist in equity) is a joint tenancy and in accordance with this Julian and Dick are therefore more properly termed the legal joint tenants of the property. In this particular question we are told that all the cousins all contributed equally to the purchase price of the house and this deems that they all have an interest in the property, even though their names are not on the legal title. The only way this interest can be recognised is in equity through a trust. We are told here that during the conveyance, a trust of land was set up which expressly stated that Julian and Dick would hold the property on trust for themselves and the other three cousins as joint tenants. This therefore means that no one joint tenant holds any distinct share in the co owned estate, but is, with the other joint tenants, invested in the total interest in the land, one collective entity.

This is the situation as it stands at the date of purchase, all the joint tenants allowing their family member Great Aunt Edna to live in the house until she dies. The first problem we must look at which changes this situation is the sale of Georgina's equitable interest to Dick. Georgina wants to sell the land to another joint tenant, but for her to extract this value of her interest in the land she has to effectively sever her interest in the land as a joint tenant. This process is called severance and can occur in many different forms. In this instance the means of severance that Georgina acts upon is the common law method of severance by conduct. In this case the very action of Georgina accepting the money from Dick in return for her interest implies that she wishes to separate her interest in the property from the joint tenancy. This effectively eradicates her interest in the property as if she was never there; she now holds no interest at all. The idea of severance by conduct is seen in *Williams v Hensman*<sup>1</sup> a joint tenancy will be severed by "an act of any one of the persons interested operating upon his own share", and although this seems to not adhere to the rule that joint tenants do not have individual shares it is probably better to say that the person acts *as if* they had an individual piece and was severing their part of the interest. This situation with regards to Dick on the other hand, is that he increases his interest in the

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<sup>1</sup> [1861] 1 John & H 546, 70 ER 862

property and is now a tenant in common of a fifth share on top of his interest in the remaining four-fifths of the joint tenancy (at law).

We then hear of the next important point is that Julian wishes to realise the value of his interest in the house and posts a letter to his cousins to this effect. A reminder here that Julian holds the legal joint tenancy with Dick and that under the Law of Property Act 1925 s.36(2) “No severance of a joint tenancy of the legal estate so as to create a tenancy in common of land shall be permissible”. This means that the only way Julian can easily realise the money in his interest is not to try to sell his legal ownership/interest but to sell to one of the other cousins his equitable interest in the house. In order to sell his equitable interest he firstly needs to sever his interest, he can achieve this through written notice, see LPA 1925 s. 36(2). We are told in the problem that Julian writes a letter to his cousins, this may or may not be seen as written severance. A problem with this method of severance is that it has been argued that the statute only permits written severance where both the legal and equitable titles are identical and held by the same persons, so for example A and B have legal interests and equitable interest then could provide written notice for effective severance. If we are to follow this then in this case they are not identical titles and this would mean that Julian’s severance was not effective. However in common law we find a solution, in *Burgess v Rawnsley*<sup>2</sup> this theory has been discounted and severance by written notice is available to tenants of properties whose legal and equitable titles are not identical.

Another problem would seem to be that even though there seems to be written notice more details would be required to understand for certain if the letter he wrote was effective under the LPA 1925. We are told Julian posted the letter to “his cousins” does this mean specifically some of his cousins or all his cousins with whom he shares the joint tenancy perhaps even the letter is only referring to Anna and Dick with whom he later meets up together with. To be effective severance the notice must be given to *all* the other tenants. The letter does not appear in the question problem so we can only go on the basis of the wording and language that is used. We are told Julian says he needed to “realise the value” to help purchase a house for “himself and his wife when they married”. Does this mean he wants to sever his interest now with immediate effect upon the interest, or when he gets married to obtain extra money? It is hard to tell but for there to be effective severance under this statute the letter must expressly state that he intends to sever the interest and that he intends the letter to be having immediate effect. We see an example in common law where in *Harris v Goddard*<sup>3</sup>, which only mentioning an intention of severance does not mean severance necessarily took place. I feel however it is better to assume for the purpose of this question the Julian was able to sever his interest immediately upon the intention shown in the letter. This means the ownership of the property has again converted into another shape. Julian is still a legal joint tenant, but through severing his interest is no longer an equitable joint tenant of the whole, but a tenant in common of a fifth share.

The next step in the chain is when Julian arranges to meet with Anne and Dick with the intention of selling one of them his share. I feel it is important here to turn our attention upon the letter he sent, for if it was found to be ineffective in severing

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<sup>2</sup> [1975] Ch 429, CA

<sup>3</sup> [1983] 1 WLR 1203, CA

Julian's interest it could then be said that by arranging the meeting to discuss "his share" coupled with Anne's agreement to purchase his share Julian effectively severed his interest through conduct. However, this argument does not always seem to run consistently through common law for it has been shown through cases such as *Gore and Snell v Carpenter*<sup>4</sup> where it was decided that as negotiations, by their very nature, are not always definite no definite intention to sever should be concluded. However contrary to this idea Lord Denning suggests in the case of *Burgess v Rawnsley*<sup>5</sup> that in spite of no firm agreement being reached between the parties their mere participation in negotiations for the sale of a share in a co-owned house amounted to a "course of dealing" that demonstrated sufficient intent to sever. In this case we will take it to be the truth that Julian was able to sever his equitable interest (however it does not pass to any one, it disappears as if it was never there) in the land through the letter and combined with intention to sever but as we discussed above cannot sever his legal title. Because he has severed but not sold his equitable interest to another joint tenant he has become a tenant in common for the equitable interest.

On the death of both Dick and Anne ownership can be seen to change yet again. Both are joint tenants (although Dick holds another interest but we will come to that later) of the cottage and as joint tenants are subject to the principle of survivorship. This principle is an inherent characteristic between co-owners in a joint tenancy and states that if a joint tenant dies then his interest in the land is absorbed into the interests of the remaining joint tenants. On the death of any one joint tenant the entire co-owned estates survives to the remaining joint tenants/s. A single joint tenant has no individual "share" in the land and as such has no share to pass on through his will; it is as if he had never existed. Due to this fact Dick's interest as legal joint tenant effectively vanishes leaving Julian the sole legal owner, and neither Anne nor Dick can pass on their interest in the joint tenancy to whoever stated in their wills, it is simply encompassed by the interests of the other equitable joint tenants. So here we have a situation where Tim is the only remaining joint tenant and so he becomes the sole joint tenant. He is said to be the surviving joint tenant, in the old adage winner takes all, but this is not totally accurate for there are still other interests in the land so he will become a tenant in common. Dick was also in possession of a fifth share of the tenancy in common upon his death, which he received from Georgina when she left for Australia. The principle of survivorship we saw in joint tenancy does not apply in tenancies in common. This means that Dick's will is adhered to and we are told that he left all his property to Georgina. So therefore this interest passes back to her.

The question is asking us to advise these parties as to the ownership of the cottage. The final ownership I feel is as follows; Julian is the sole legal owner of the property and holds it on trust for himself and Georgina who both have a one fifth share and Tim who has a three-fifths share and all are tenants in common. If Julian therefore was to sell the property to release the capital then it should be divided in such a way.

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<sup>4</sup> (1990) 60 P & CR 456

<sup>5</sup> [1975] Ch 429, CA