Co-Ownership

There are two types of co-ownership:

1. the joint tenancy
2. the tenancy in common

S1(6) Law of Property Act 1926 provides that only the joint tenancy exists at law, but equity does recognise that co-owners may be either joint tenants or tenants in common.

In any co-ownership situation, a trust will arise. The legal joint tenants will be trustees, holding the property on trust for beneficiaries who will be either joint tenants or tenants in common in equity.

You need to consider the position in law and in equity separately.

Joint Tenancy

• Joint tenants are not regarded as having shares in the land but as together owning the whole estate - i.e. they are not separate owners, but an inseparable group owner. None of them can identify an individual share as belonging to him/her.

• The right of survivorship applies to the joint tenancy - no one joint tenant owns an identifiable share in the property, so no one joint tenant can deal with the property by, for example, leaving it to another person by will.

It is possible to sever a joint tenancy and convert it into a tenancy in common at equity. However, if the joint tenancy is still in existence at the death of a joint tenant, the surviving joint tenant will inherit the property irrespective of the terms of the will.

• A joint tenancy will not exist unless four requirements, known as the four unities, are satisfied:
  
  1. **time** - the interests of all co-owners should be acquired at the same time.
  2. **title** - all co-owners acquired their title by the same means, i.e. all from the same document
  3. **interest** - the interest of all the co-owners must also be identical. Each interest must be of the same duration and the same nature and extent (e.g. if A had a life interest, and the other a fee simple - they cannot be joint tenants).
  4. **possession** - the co-owners must be equally entitled to the possession of the whole land
If a unity ceases to exist, the tenancy will become a tenancy in common automatically, (e.g. A, B and C are joint tenants. A transfers his equitable interest to X, and unity of title is destroyed - X is a tenant in common with B and C, but B and C continue to be joint tenants as between themselves. If A transfers his equitable interest to B, B would become a tenant in common as to that 1/3rd share but would continue to be a joint tenant with C as to the remaining 2/3rd shares.

The Tenancy in Common

- Each tenant in common owns a specific share in the property - it is undivided, meaning that it is tied up in the property until the property is disposed of. They may be equal or unequal shares, for example to reflect unequal contributions to the purchase price.
- The right of survivorship does not apply. This means that each tenant in common is entitled to a notional share of the property (e.g. a half, quarter, etc) and can dispose of his own share which may be inherited by will or on intestacy.
- The only unity which is essential is the unity of possession:
  1. possession - the co-owners must be equally entitled to the possession of the whole land

If the unity of possession does not exist there is no co-ownership at all.

Creation

Registered Land

- Form TR1 contains a declaration of trust indicating whether the transferees are to hold the property on trust for themselves as joint tenants or as tenants in common in equal shares.
- If declaration of trust in Form TR1 is not completed, equity generally follows the law (i.e. if it is a joint tenancy in law, it will be in equity) - but in certain circumstances it will not, and will presume a tenancy in common where there are:
  1. unequal contributions - each co-owner is presumed as having a share in the property proportional to his contribution (Lake v Gibson) - though this will not apply to "domestic property", such as a family home, which gives rise to the presumption of a joint tenancy (Stack v Dowden).
  2. partnership property - where co-ownership is of a commercial character, it is presumed to be a tenancy in common - and the burden of proving a contrary intention to rebut the presumption will lie on the party who alleges a joint tenancy (Re Fuller's Contract).
  3. Estate or interest granted to secure a loan - When two or more people lend money secured by a mortgage, equity presumes that they hold the estate they receive by way of security as tenants in common (Morley v Bird)
The presumptions are based on the intention of the parties and can be rebutted if there is evidence of actual intention - for example, to be joint tenants.

**Legal Estate in One Name**

Co-ownership also arises where land is conveyed to one person only but another contributed to the purchase price, because equity imposes a resulting or constructive trust on the owner.

**Lloyds Bank v Rosset** provides that:

1. Where a non-owner makes a direct financial contribution to the purchase price or deposit or payment of the mortgage, they will acquire a beneficial interest in the property.

2. Where there is express agreement to share beneficial ownership and an act of detrimental reliance by the non-owner, they will acquire a beneficial interest in the property (e.g. indirect contributions, such as carrying out improvements to the house, will suffice).

3. Where there is no express agreement, an intention to share can only be inferred where direct financial contributions are

**Legal Estate in Two or More Persons**

**Section 1(6) LPA1925** and **s36(2)** provide that there can only be a joint tenancy at law - it cannot be severed so as to create a tenancy in common at law.

**Section 34(2)** and **36(1) LPA 1925** provide that there cannot be more than four owners of a legal estate. Where there are more than four (e.g. A,B,C,D,E and F), the legal joint tenants will be the first four of full age named in the conveyance (A,B,C,D) - and they will hold it as joint tenants on trust for all six of them - as joint tenants or tenants in common in equity (which will depend on the presence of the four unities).

**Legal Estate Vested in One Person**

**Section 34 and 36** only apply if land is expressly conveyed to two or more persons. Where co-ownership arises by implication under a constructive or resulting trust where the legal estate is in one name but the beneficial interest is held by two or more - a trust of land is implied governed by **TOLATA 1996** is implied.

**Severance**

Severance cannot occur in law, as to sever a joint tenancy would create a legal tenancy in common - which is prohibited by s34(1) LPA 1925. Severance in equity of a tenancy in common is possible, but can only occur *inter vivos* (i.e. it cannot occur by will and where the joint tenant dies without severing the joint tenancy during his lifetime, the rule of survivorship applies).

**Section 36(2)** provides that severance can be effected by:

1. **Notice in Writing** - There is no prescribed form of notice, but it is essential that it contains a clear expression of intention to sever the joint tenancy. The notice must be served on all the joint tenants, by leaving
it at/posting it to their last known address by post (s196(3) LPA 1925, Kinch v Bullard). Once it has been served it will be effective and ill sever the joint tenancy, even if the co-owner does not in fact receive it (Re 88 Berkeley Road NW9) - and even where the party severing the tenancy changes their mind and prevents the notice from reaching them (Kinch v Bullard).

2. Preserved methods of severance existing prior to 1926 (s36(2) LPA 1925):

- **An act operating on his own share** -
  
  Disposing of one's own interest in such a way as to sever it from the joint property (e.g. selling it, as this has the effect of destroying one of the four unities essential to a joint tenancy, "title"). In equity severance occurs as soon as there is an enforceable contract to sell and the change of equitable ownership is enough to destroy the unities. (Williams v Hensman).

A legal estate cannot be severed, so even where the joint tenant disposes of the beneficial interest he continues to hold the legal estate as a trustee and can only cease to be a trustee by releasing his interest to his fellow joint tenants or by retiring from the trust. (Trustees Act 1925, s39).

- **Mutual agreement** -
  
  Severance can be effect by the agreement of all the joint tenants. It may be express or inferred from conduct (Burges v Rawnsley) - even by an unenforceable oral agreement to sever (i.e. it was not legally enforceable because there was no written evidence).

- **Mutual course of dealing** -
  
  For example, negotiations which although not concluded indicate a common intention to sever the joint tenancy (Burgess v Rawnsley).

3. **Forfeiture**

If one tenant kills the other, the right of survivorship cannot operate bcause this would allow the killer to benefit from his or her criminal act (Estate of Hall).

Where severance occurs, that joint tenant becomes a tenant in common and is entitled to an equal share in the property - irrespective of the original contributions of the joint tenants to the purchase price (Goodman v Gallant). Where there is no express provision about how the beneficial interest is held (joint tenancy or tenant in common) and severance occurs - it is presumed that the beneficial interest is a joint tenancy and the original contributors will be entitled to an equal share in the property, but this presumption may be displaced by a joint owner by demonstrating an intention to own the property in unequal shares (i.e. as a tenancy in common, not as beneficial joint tenants, Stack v Dowden)

**Disputes between Co-Owners**

Section 14 permits an application to the court by any trustee or beneficiary relating to the exercise of the trustee’s functions (powers or duties) or declaring the nature and extent of a beneficiary’s beneficial interest. The