WS4  Trusts of Land and Co-ownership

STEP 1: State: ‘This question involves the co-ownership of [insert name of property] by [insert names of purchasing parties]. When land is co-owned, it gives rise to a statutory trust of land (s.36 Law of Property Act 1925)’

STEP 2: Explain how the LEGAL TITLE to the land is held on the purchase of the property

s.1(6) LPA 1925: Legal title is ALWAYS held as a JOINT TENANCY

s.34(2) LPA 1925: a maximum of FOUR people may hold the legal estate jointly (first four on the deed)

But remember that a co-owner must be 18 in order to hold a legal estate in land

STEP 3: Explain how the EQUITABLE INTEREST in the land is held on the purchase of the property

Could be held either

- as a JOINT TENANCY:
  - co-owners have identical interests in the property, their interests being of non-defined portions;
  - cannot dispose of legal joint tenancy in will, joint tenancies will run on survivorship (Gould v Kemp); or

- as a TENANCY IN COMMON:
  - co-owners have separate, but as yet undivided shares in the property, each for a specific percentage ownership of the property;
  - a co-owner’s share can be disposed of in a will

Test: Apply 4 part test to determine which one:

1. Are the 4 UNITIES present? (“PITT” - Possession, Interest, Title, Time)
   - Unity of TIME: Did the co-owners acquire their interests in the property at the SAME TIME?
   - Unity of TITLE: Did the co-owners acquire their interests in the property under the SAME DOCUMENT?
Unity of INTEREST: Are the co-owners’ interests in the property of the SAME NATURE & DURATION?

Unity of POSSESSION: Are the co-owners each equally entitled to use and occupy the WHOLE PREMISES?
  - If ALL the unities are present, the equitable interest MAY be held as a JOINT TENANCY (proceed to tests 2, 3 and 4 to confirm)
  - If any one of the unities is MISSING, it CANNOT be held as a joint tenancy

2. Does the transfer document contain an EXPRESS STATEMENT as to how the equitable interest is held? → If it does, it is CONCLUSIVE (Goodman v Gallant)

3. Are there WORDS OF SEVERANCE in the transfer document? E.g. to be held ‘equally’/’in equal shares’ → If so, equitable interest will be held as TENANCY IN COMMON (Robertson v Fraser)

4. Does EQUITY PRESUME A TENANCY IN COMMON? Equity will do so where:
   - The buyers each contributed different amounts to the purchase price (Lake v Gibson)
   - The property was bought on behalf of a business

If still unclear after applying tests, the equitable interest will be held as a JOINT TENANCY

STEP 4: Discuss the effect of incidents/changing arrangements described (deaths, sales, mortgages etc) on the LEGAL TITLE

- Severance of the legal title is PROHIBITED (s.36(2) LPA 1925). Therefore, legal title will continue to be held as a JOINT TENANCY
- Under the RIGHT OF SURVIVORSHIP, on the death of a Trustee (one of the co-owners of the property), legal title passes to the other co-trustees

STEP 5: Discuss the effect of incidents/changing arrangements (deaths, sales, mortgages etc.) on the EQUITABLE INTEREST

The equitable interest may be SEVERED (i.e. ownership of the equitable interest as a joint tenancy ends, and co-owners become tenants in common, owning separate shares in the property), by:

1. NOTICE: To be effective, any severance by notice must comply with s.36(2) LPA:
   - Be in WRITING but need to
   - Showing CORRECT INTENTION: i.e. must show intention to sever immediately, and not at some later date (Harris v Goddard)
   - Correctly SERVED: notice will be correctly served if:
Notice is left at the last known abode/place of business of person to be served (s.196 (3) LPA 1925). (If delivered here, notice will be effective even if addressee does not actually ‘receive’ the notice - *Kinch v Bullard*).

Notice is sent by registered post to person to be served (s.196 (4) LPA 1925) (Effective even if not actually ‘received’, provided letter is not sent back undelivered - *Re 88 Berkeley Road*).

2. **ALIENATION**
   - Sale, gift, mortgage or bankruptcy
   - Any severance by alienation must be in compliance with s.53(1)(c) LPA 1925 – in signed writing

3. **MUTUAL AGREEMENT – OR – A COURSE OF DEALINGS**
   - Mutual agreement: Where joint tenants expressly agree to sever the equitable interest. E.g. *Burgess v Rawnsley*: oral agreement is sufficient to show the common intention necessary to sever a joint tenancy
   - A course of dealings: Where parties act in a way that suggests they intend the shares to be held as a tenancy in common. E.g. Where bought for business (*Morley v Bird*). This cannot be a mere unilateral statement by one party alone.

4. **HOMICIDE** (*Re K*)

N.B: when severance occurs, the owner of the severed part will hold on a tenancy in common basis, any other parties will remain joint tenants of the remainder.

**STEP 6: Conclude as to how both the legal title and the equitable interest are held (joint tenants or tenants in common), and in what proportions**

Remember that the legal estate cannot be held by one person as a ‘joint tenant’ – he/she will become the sole surviving owner of the legal estate.

**STEP 7: If question requires, explain how a DISPUTE BETWEEN TRUSTEES & BENEFICIARIES over whether to sell the property might be resolved**

Typical problem question scenario: As the sole surviving owner of the legal estate, the Trustee of land wishes to sell the property, against the wishes of one or more beneficiaries, who hold an equitable interest only in the property.

1. **State**: ‘Under s.36 LPA 1925, co-ownership of a property gives rise to a trust of land, and this is governed by *Trusts of Land and Appointment of Trustees Act 1996*’.
2. **s.6(1)** – Trustees of land have all the powers of an absolute owner of the land (i.e. they may sell or lease the property). But - in the exercise of these powers, Trustees must:
- have regard to rights of beneficiaries (**s.6(5)**); and
- consult beneficiaries and, so far as consistent with the general interest of the trust, give effect to the majority wishes (**s.11(1)**)

3. **s.14** – In the case of a dispute, either the Trustee of the land (legal owner) or the Beneficiary/ies (with an equitable interest) may apply to the court for a decision.
- In coming to this decision, the court will consider factors such as (**s.15**):
  - the purpose for which the property on trust is held (consider: does this purpose still exist?); and
  - the welfare of any minor who might be seeking to occupy the property as his home

4. **s.12** – Beneficiaries are entitled to occupy the land at any time provided (a) purposes of the trust are to make land available for his occupation and (b) land is held by the Trustees so as to be so available.
- **s.13** – Despite the provisions of **s.12**, Trustees may impose reasonable conditions on a Beneficiary in relation to this entitlement to occupy the land

**STEP 8: If question specifies: explain whether any potential BUYER WILL BE BOUND by the equitable interests that exist in the property**

- If 2 or more co-owners hold legal title (i.e. are Trustees): → as a buyer will be buying from at least 2 Trustees, he will be OVERREACHING the beneficiaries’ equitable interests under a trust of land, so he will take the land free of these interests.
- If there is just one sole surviving co-owner selling to the buyer → how the buyer will take for free depends on whether land is registered or unregistered:
  - **If land is REGISTERED:**
    Trust interests are an IARE, meaning a restriction may have been entered on the proprietorship register to alert a buyer
    - If a restriction has been registered: buyer must OVERREACH (**ss.2 and 27 LPA**) (see WS 2)
    - If NO restriction has been registered: buyer may assume land was previously held as a joint tenancy in equity and is therefore safe to buy.
    BUT – where an equitable interest under a trust is protected by a right under **Sch 3 Para 2 LRA** (is someone is in actual occupation?), this will elevate the trust interest to OVERRIDING STATUS (**Williams & Glyn’s Bank v Boland**). If this is the case, buyer must OVERREACH or be bound.
  - **If land is UNREGISTERED:**
    Trust interests are not registrable land charges, and thus cannot be registered on the Land Charges Register. To take the land free of the equitable interests, buyer must either OVERREACH (**ss.2 and 27 LPA**) or be EQUITY’S DARLING (see WS 2).