**The Nature and Effect of a "Release" from a Joint Tenancy**

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**Introduction**

It is surprising how little legal literature exists on this particular topic. A trawl of the leading land law textbooks by the writers revealed only one relatively brief reference to the topic of release in the context of a joint tenancy of land.[[1]](#footnote-1) The reason for this may be partly historical. Prior to 1926, the mechanism by which a joint tenant could extinguish his interest under a joint tenancy of the legal estate was by a deed of release. As we know, a joint tenant holds an undivided share of the land (in the sense that he is seized of the whole of the land) so before 1926 it was not possible for one co-owner to convey his interest to another by means of a grant. The only means by which this could be done was by a release. Indeed, prior to 1926, any attempted grant was construed as a release.[[2]](#footnote-2)

The ability of two or more joint tenants to convey their legal interest in any property to another joint tenant is now placed on a statutory footing by virtue of s.72(4) of the Law of Property Act 1925. Interestingly, the power of a joint tenant to release his interest to the other joint tenants has also been preserved under s.36(2) of the Law of Property Act 1925, which states:

"No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants."

The effect of this provision is that**,** whilst severance of a joint tenancy of a legal estate is not permissible, a joint tenant may still *release* his legal estate or equitable interest (or both) to the other joint tenants. In this connection, a release resembles a conveyance, but perhaps is better understood as an extinguishment of an interest given that the whole estate is already vested in each joint tenant under the joint tenancy.[[3]](#footnote-3) A release also differs from a surrender in that it benefits only the person in whose favour it is made. Thus, if A, B and C are beneficial joint tenants and A releases his beneficial interest to B, B alone acquires A's one-third share as equitable tenant in common. B remains joint tenant with C as to the other two-thirds.[[4]](#footnote-4) By contrast, a *tenant in common* cannot release his share to the other tenants; instead, he will have to assign his equitable interest in writing to the other tenants complying with s.53(1)(c) of the 1925 Act.

**Does a release amount to a disposition?**

In *Burton v Camden London Borough* Council,*[[5]](#footnote-5)* a joint secure tenant of a three bedroom flat claimed that a deed of release was effective to transfer the legal estate of her former flatmate to her, notwithstanding the statutory bar on assignment under s.91(1) of the Housing Act 1985. The operative part of the deed consisted of a single clause, in these terms:

"Jan Theresa Hannawin hereby releases her legal and beneficial interest under this joint secure tenancy to Susan Patricia Burton who accepts the same to hold pursuant to this deed of release as the sole secure tenant of the dwelling with effect from the date hereof."

The majority of the House of Lords held that, although the deed executed by the parties had been described as a release, the object of the deed had been to transfer the legal estate in the tenancy from the joint tenants to one of them alone. Accordingly, notwithstanding the label which had been applied to it, the deed operated as an assignment and was prohibited by 1985 Act.[[6]](#footnote-6) Lord Nicholls stated:[[7]](#footnote-7)

"In the present case the transaction sought to be carried through was that the tenancy should become vested in Miss Burton alone, and that Miss Hannawin should give up to Miss Burton her right to live in the flat. Whatever precise form of words was chosen, this transaction would ordinarily be regarded as a transfer of Miss Hannawin's rights in the flat to Miss Burton. Miss Hannawin was passing over her interest to Miss Burton. As a matter of conveyancing this transfer could be achieved by one of two means: either by a deed of assignment ("Miss Burton and Miss Hannawin hereby assign the tenancy to Miss Burton") or by a deed of release ("Miss Hannawin hereby releases her estate and interest in the property to Miss Burton"). Each would achieve the same result. In each case the legal estate in the tenancy, formerly held by the two of them, would become vested in one of them. It cannot be that section 91(1) bites or not according to which of these two conveyancing modes is used. That would make no sense."

And Lord Millett (albeit in a dissenting speech) stated:[[8]](#footnote-8)

"A purported assignment of the interest of one joint tenant to the other joint tenant does not constitute an assignment, because each of the joint tenants is already the owner of the whole. The so-called assignor has no separate interest of his own which is capable of being transferred to the other and which the other does not already own. None of this, of course, applies to a tenant in common, because he has a separate and distinct interest of his own which he can assign either to a third party or to his co- owner. Before 1926, therefore, one joint tenant could not assign his interest to the other. But he could achieve much the same result by releasing his interest."

Similarly, in *Hudson v Hathway*,[[9]](#footnote-9) the claimant and the defendant, who were in a relationship but not married, bought a home in joint names with no declaration of trust. On acquisition of the house, the parties were joint tenants both in law and in equity. The relationship subsequently ended and the claimant moved out, whilst the defendant stayed in the property with their two sons. In two emails, the claimant stated in regard to the house that he wanted "none of the proceeds", urged the defendant to "take it" and said that he had "no interest whatsoever in the house". Both emails were subscribed with the claimant's first name. The Court of Appeal held that a release of an equitable interest in property by one joint tenant to the other joint tenant under s.36(2) of the 1925 Act was capable of being a "disposition" of an interest in land or an equitable interest within the meaning of s.53(1)(a) or (c) of the 1925 Act, provided that, in accordance with the formal requirements of section 53(1)(a) and (c), the disposition was in writing and signed by the relevant person. In the instant case, the claimant's emails were sufficient in point of form to amount to a release of his equitable interest in the house, since they evinced a clear intention to divest himself of that interest immediately and amounted to a signed disposition in writing within the meaning of section 53(1)(c) of the 1925 Act.

**Does a release give rise to a severance of the joint tenancy?**

The notion that a release has the effect of severing a joint tenancy is well-established. In Bacon's *Abridgement of the Law*,[[10]](#footnote-10) there appears the following passage: "the proper conveyance by one joint tenant to another and what will most effectually sever the joint tenancy is a release . . ." In *Wallbank v Price*,[[11]](#footnote-11) the parties, Martin and Susan Wallbank, held a house as beneficial joint tenants. Susan left the house when their marriage broke down in 1998. On 31 August 1998, she signed a handwritten document in the following terms:

“I Susan Joan Wallbank have voluntarily agreed to vacate the above premises and also to forfeit any monies or profit in any way connected with this property, and by signing this declaration I revoke any rights in the disposal of the above property. The only exception to this is that my daughters Jaime and Lynsey Wallbank should receive my half share of the property on its disposal or at the discretion of my husband Martin Harry Wallbank.”

Lewison J held that the document indicated that Susan intended to give up her beneficial interest in the property. Although the essence of a joint tenancy in equity was that each joint tenant held the whole of the beneficial interest jointly and held nothing separately, the statement that she had a "half share" to be dealt with was inconsistent with the continuing existence of a joint tenancy in equity. Moreover, the creation of a half share was the inevitable consequence of the severance of the joint tenancy in equity where there were two joint tenants. His Lordship stated:[[12]](#footnote-12)

The declaration is in writing and signed by both Mr Wallbank and Mrs Price. If, therefore, it purports to be a declaration of trust or a disposition of an equitable interest it satisfies the formal requirements of section 53(1) (b) and (c) of the Law of Property Act 1925."

And later in his judgment, his Lordship stated:[[13]](#footnote-13)

"The orthodox way by which one joint tenant confers rights on another joint tenant is not by grant or conveyance but by release . . . Fairly read, I conclude that in principle [Susan] intended to give up her beneficial interest in the property. If the declaration had stopped at that point it would have taken effect as a release in favour of Mr Wallbank. But the legal estate remained vested in both Mr Wallbank and [Susan] and consequently the release affected the beneficial interest alone."

"The creation of a 'half share' is the inevitable consequence of the severance of a joint tenancy in equity where there are two joint tenants. Since there was no temporal limitation on Mr Wallbank’s exercise of discretion, it seems to me that the declaration must be construed as having immediate effect. The declaration was signed not only by [Susan] but by Mr Wallbank as well. In my judgment it amounts to an agreement between the two joint tenants. I consider therefore that the joint tenancy in equity was severed."

However, the declaration did not create an immediately vested interest in the two daughters. The correct interpretation was that their share would not vest until either the property was disposed of, or Martin exercised a discretion in their favour. In the interim, the property belonged to him as a result of the release contained in the first part of the declaration. On his death intestate, it passed together with his own half share to the two daughters. Accordingly, he was ordered to execute such documents as were necessary to transfer legal title to them.

**What formality is required for a release?**

This will depend, of course, on the subject-matter of the release. If A holds a joint tenancy of the legal estate in land, a deed of release will be required in order to comply with s.52(1) of the 1925 Act which provides that a deed is necessary for the purpose of conveying a legal interest in land.[[14]](#footnote-14) It is noteworthy, in this connection, that in *Burton* a deed of release was used for the transfer of the legal estate in the joint secure tenancy held by the parties. Indeed, this would appear to be the only means by which a joint tenant can extinguish his interest under a joint tenancy of a legal estate in favour of his other joint tenants given that severance of a legal joint tenancy (so as to create a tenancy in common) is expressly prohibited under s.36(2) of the 1925 Act. By contrast, as we have seen, two or more joint tenants may convey (as opposed to release) their legal interest to another joint tenant by virtue of s.72(4) of the 1925 Act.

If, on the other hand, A holds a joint tenancy of an equitable interest in land, the release must be in writing complying with s.53(1)(a) and (c) of the 1925 Act. Thus, in *Hudson*, as we have seen, the release of an equitable interest in property by one joint tenant to the other joint tenant under s.36(2) of the 1925 Act was capable of being a disposition of an equitable interest in land provided that, in accordance with the formal requirements of s.53(1), it was in writing and signed by the relevant person. Significantly, the electronic exchange of emails was held sufficient for this purpose.

If A holds a joint tenancy of *both* the legal estate and equitable interest, the deed of release will operate to extinguish both titles simultaneously. In this connection, s.53(1)(c) of the 1925 Act will not apply as the equitable interest is subsumed within the legal title.[[15]](#footnote-15)

Alternatively, if A jointly owns legal title to personal property (for example, a car or furniture), the release will, it is submitted, be valid if a deed of gift is used or A has the intention to give the property coupled with delivery of possession of the chattel to B.[[16]](#footnote-16) Thus, for example, if A holds a joint savings account with B, A will release his interest in the joint savings to B by simply complying with whatever internal process is required by the bank.

**Conclusion**

There is no doubt that the mechanism of a release remains a useful means by which a joint tenant of a legal estate may unilaterally extinguish his legal interest in favour of the other joint tenants despite holding an undivided share in the land. Significantly, neither a grant nor severance is open to him given these methods are expressly prohibited by virtue of the 1925 Act. Moreover, no particular form of words is required for a release.[[17]](#footnote-17) In *Burton*, as we have seen, the words used were "hereby releases [the] legal and beneficial interest under this joint tenancy". In *Hudson*, in two emails, the claimant stated in regard to the house that he wanted "none of the proceeds", urged the defendant to "take it" and said that he had "no interest whatsoever in the house". Both emails contained the claimant's first name. In *Wallbank*, the release was to be found in a handwritten document stating that the outgoing partner had "voluntarily agreed to vacate the above premises and also to forfeit any monies or profit in any way connected with this property" and, by signing the declaration, she intended to "revoke any rights in the disposal of the above property".

Less significant, however, is the power of an equitable joint tenant to release his interest given that he may do so by more conventional means involving a severance of the joint tenancy in equity under s.36(2). Other methods of severance may also be open to him, namely, (1) an act operating on his own share; (2) mutual agreement; or (3) any course of dealing sufficient to indicate that the interests of all joint tenants are mutually treated as constituting a tenancy in common.[[18]](#footnote-18) Nevertheless, the importance of a release in this context should not be underestimated given the decision in *Hudson*, where the use of informal words were held to give rise to a valid release despite the absence of a formal severance of the joint tenancy. To this extent, the device of a release, albeit in limited circumstances, continues to have a useful role to play in modern co-ownership law.

A tenant in common, on the other hand, cannot release his share to the other tenants; instead, he will have to assign his equitable interest in writing to the other tenants complying with s.53(1)(c). In this connection, the concept of a release is confined to joint tenancies only.

1. See, Megarry & Wade, *The Law of Real Property*, (10th ed., 2024), pp. 553-554. [↑](#footnote-ref-1)
2. Prior to 1926, such a grant was inoperative but took effect as a release: *Eustace v Scawen* (1624) Co Jac 696; *Chester v Williams* (1670) Wms Saund 96. Interestingly, any purported disclaimer to which the other joint tenants are parties will also be construed as a release: *Re Schar* [1951] Ch 280. [↑](#footnote-ref-2)
3. See, Williams, *Principles of the Law of Real Property*, (24th ed., 1926), at p. 200: " . . . this release operates rather as an extinguishment of right than as a conveyance; for the whole estate is already supposed to be vested in each joint tenant, as well as his own proportion." [↑](#footnote-ref-3)
4. See, Megarry & Wade, *The Law of Real Property*, (10th ed., 2024), pp. 553-554. [↑](#footnote-ref-4)
5. [2002] 2 AC 399. [↑](#footnote-ref-5)
6. If the object of the release is a transfer of the legal estate under a lease by one or more joint tenants to the other(s), the landlord's consent will be required under the terms of the lease containing a qualified covenant against assignment. In *Burton v Camden London Borough Council* [2000] 2 AC 399, the Council would not agree to the transfer, so a deed of release was prepared to try and resolve this difficulty. In the result, the deed of release was held by the majority of the House of Lords to operate as a purported assignment and, hence, contravened s.91(1) of the Housing Act 1985. [↑](#footnote-ref-6)
7. [2002] 2 AC 399, at 405. [↑](#footnote-ref-7)
8. *Ibid*, at 408. [↑](#footnote-ref-8)
9. [2023] KB 345. [↑](#footnote-ref-9)
10. [1740] Vol. III, at p. 206. [↑](#footnote-ref-10)
11. [2007] EWHC 3001 (Ch). See further, J. Brown, "Interpreting 'DIY' Documents: Severance, Release, Trusts, Certainty, Vesting and Undue Influence", (2008) 72 Conv. 336. [↑](#footnote-ref-11)
12. [2007] EWHC 3001 (Ch, at [46]. [↑](#footnote-ref-12)
13. *Ibid*, at [47] and [49], respectively. [↑](#footnote-ref-13)
14. Section 52(1) of the Law of Property Act 1925 states: "All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed." In order for the release to have effect in relation to registered land, an application to HM Land Registry will be required in order to pass the legal title. If the land is unregistered, the release may well trigger an application for first registration. The same principle will apply to the release of shares requiring an amendment to the company's share register. [↑](#footnote-ref-14)
15. See, *Vandervell v IRC* [1967] 2 AC 291, (beneficiary of a bare trust entitled to direct the trustee to transfer the legal title to the trust property and there was no need for a separate disposition to transfer the equitable title). [↑](#footnote-ref-15)
16. See, *Re Cole* [1964] Ch 175, where Pearson LJ stated, at 191: "it has been established that oral words of gift, or even written words of gift not embodied in a deed or will, are not sufficient to make an effective gift unless there has been or is delivery of possession to the donee." [↑](#footnote-ref-16)
17. See, *William Brandt's Sons & Co v Dunlop Rubber Co L*td [1905] AC 454, at 462: "It may be couched in the language of command. It may be a courteous request. It may assume the form of mere permission", per Lord Macnaghten. [↑](#footnote-ref-17)
18. *Williams v Hensman* (1861) 1 J & H 546, at 557-558; 70 ER 862, at 867. [↑](#footnote-ref-18)