

# A self employed lifestyle coach law land property essay

Law



**ASSIGN  
BUSTER**

Stan is a self-employed lifestyle coach. His income is sporadic, but when he does earn, he often pays money into the account from which the mortgage instalments are debited. In addition, he transforms a spare room in Roberta's house into a luxurious Jacuzzi, with mood lighting and rainforest sound effects. He pays for the materials out of his savings, and undertakes all of the work himself. Roberta pays all of the utilities bills out of her account. A few years later, Roberta decides to buy a second house, as a 'buy-to-let' investment. She pays for the house outright from her own savings. The property is transferred to Roberta and Stan as 'joint legal tenants'. Stan undertakes some modifications in the second house, to get it ready for renting out. No discussions take place regarding the ownership of the second house. The house is successfully let, and the rents paid into Roberta's bank account. Time passes, and things begin to turn a little sour between Roberta and Stan. Unfortunately, it gets to the point where Stan decides to leave Roberta's house. They agree that he should move into the second house, now that the current lease has come to an end. Stan moves in. He pays no rent, although he does pay for all of the outgoings and bills arising in relation to the second house. A few months later, Roberta tells Stan that he should consider the second house his, but that he must give up any claim to the first house. Stan says that he will consider it, but that he should really speak to his lawyer before making any firm decision. However, he does not get around to doing this. Eventually, Roberta meets Tyrone, and falls in love once more. Tyrone moves into the first house with her. Tortured by his imagination, picturing Roberta and Tyrone together in the Jacuzzi he had built, Stan tells Roberta that he wants the first house sold, and the proceeds

of sale divided equally between him and her. Advise Stan. 2000

wordsANSWERThe given problem relates to issues regarding property, investment, occupation of the property, investment and related trust. An assessment of the relevant laws along with assessment of facts would endeavour to reach a constructive advice for Stan. The enactment of the Land Registration Act 2002 which came into force on October 13, 2003 implemented the Law Commission report titled ' Land Registration of the Twenty-First Century: A Conveyancing Revolution'.<sup>[1]</sup>The Law Commission's Report No 271 paved the way for the Land Registration Act.<sup>[2]</sup>In this modern world, land has become the major economic factors as all human activities either socio-political or regional, or economical have been based on land. This revolutionised land registration for the first time with the electronic data base system. The Act is based upon the ' Mirror' principle as per which all the titles, interests and rights to the registered land should be reflected in its records.<sup>[3]</sup>The official recording of something refers to the registration process. In other words, registration denotes to official recording of authentic information. Registration bestows more rights and it allows a protective clothing to the ownership or right in the item which is being registered. Government also has the duty to protect people's property against unlawful interference and the Government also has the duty to safeguard the citizens from illegality. Hence, the requirement of registration emanates from the Government. The local Register Office is in charge of safeguarding the records of title to various properties. This job is done by the local Land Registry Office in UK with regard to titles in lands. The local Land Registry keeps records of ownership titles to freedhold lands or leasehold properties

for leases which exceed the seven years term. The very purpose of registering a land under the electronic system can be justified by analysing the words of HM Land Registry itself as follows:" Registration establishes proof of ownership and produces an easy-to-read document reflecting the contents of all the paper title deeds. This simplifies conveyancing, making transactions easier and potentially less costly for all involved. All title information is kept on Land Registry's database, reducing the need to store old and often unclear deeds. The register can be viewed quickly and securely online. There is no better way to safeguard ownership of land and property than by registering your title with us. State-backed registration gives you greater security of title, providing you with better protection against claims of adverse possession"[4]As per the very objective of the Bill as explained in Para 1. 4, dealings with land could not remain unaffected by the general development of electronic commerce. It also recognised that there was a legitimate public expectation that the change to an electronically based system for dealings with land as that would produce clear and demonstrable benefits. Under section 29 LRA 2002, a purchaser is bound by notices which appear on the register and any overriding interests listed under Schedule 3 LRA 2002 and these interests can be easily investigated by the interested parties. There are some binding overriding interests which do not appear on the register so the purchaser won't be able to find out and trusts are kept off the title in order to simplify the transfer and they hide behind the curtain. But these overriding interests can be easily traceable by any ordinary individual interested or concerned in the land and title thereof. Actual occupation has caused considerable concerns to the purchaser. Person who

is in actual occupation at the time of the disposition may have equitable interest in the property as stated in *Abbey National BS v Cann and Williams & Glyn's Bank Ltd v Boland*. However provided the purchaser satisfied the conditions under Para 2 Schedule 3 he may be protected. A trust is a relationship whereby a property is held by one party for the benefit of another and a settlor creates a trust to transfer his property to a trustee who holds that trust property for the benefit of the beneficiaries which is known as *cestui que use*. The trustee must hold the trust property above and beyond his own interests and for the benefit of the beneficiaries. This is known as the "fiduciary duty of loyalty". A breach of this duty would be considered a conflict of interest and any gains would revert back into a constructive trust. The court may require the trustee to reimburse all gains by such self-dealing. If the trustee acted honestly and with the permission of the beneficiaries, and for their best interest then the court may award a generous "quantum meruit" or "what he had earned" payment for his services as confirmed in the given case of *Boardman v Phipps*.<sup>[5]</sup> This payment or restitution is based on equity and good conscience in the absence of a clear contract where works were done by the defendant under an un-performable implied agreement. Other leading case on this issue was *Sumpter v Hedges*.<sup>[6]</sup> But under no circumstances the profits would be allowed to be kept as that would view the trust responsibilities in a relaxed manner. The pioneering case in this issue was the case of *Keech v Sandford*.<sup>[7]</sup> In this case, Lord King LC strongly emphasised on a non-relaxed stance about trust and fiduciary loyalty. But exclusions of liability may be included in trust deeds as long as the trustee acts honestly, in good faith and for the

benefit of the beneficiary as confirmed in the case of *Armitage v Nurse*.

[8] Claims under tracing can be defended if 'change of position' takes place or where the defendant has received property and giving it back would change his personal circumstances.[9] But any bad faith on the part of the defendant will invalidate the defence. Any act of illegality will also nullify this defence. Leading case: *Barros Mattos v MacDaniels Ltd*. [10] There is also the defence of 'estoppel by representation' where the claimant made some false representations to him which eventually acted upon to his detriment. *National Westminster Bank plc v Somer International*. [11] The general rule in registered conveyancing denotes that that all interests and rights over a piece of land must be on the register entry for that land. But the overriding interests are the exception to this requirement. Overriding interests does not have to be registered to bind any new owner. In a landmark case *Williams & Glyn Bank v Boland*, [12] a wife was successful in claiming an overriding interest in a property that her husband had mortgaged to support a business. She did not have a legal interest in the property but she had made substantial contributions to the purchase. She was also in actual occupation of the property. Her overriding interest was upheld against the bank's efforts to take possession. These overriding interests in the property are not easily traceable. Stan had invested in Roberta's property with the intentions of a family life formation. He spend in building and paying mortgages to the property as well. Though he did not help by the property, yet he kept paying for its up keeping as well. Stan also left the property voluntarily but he was also in actual occupation as well. He was not a tenant and a registered leaseholder. The LR Act 2002 does not ignore the 'Curtain' principle totally

as it allows certain equitable interests to remain hidden. The Act does not alter the fundamentals of overreaching. The Act does uphold the legal owner as the absolute owner subject only to the restrictions placed on the register (s. 23 of the LRA 2002) and this supports the overreaching mechanism where there are required two minimum legal owners.[13] Hence, it can be concluded that the Land Registration Act 2002 has been far more accurate and comprehensive in reflecting records in relation to lands, yet, the Act also makes reservations which do not uphold the 'Mirror' principle fully but those exceptions are to be accepted for exceptional justifications as well. As per the 2002 Act, proprietors must ensure that their addresses for service at HM Land Registry are maintained and updated regularly. Any change of their address must be informed to the Land Registry as soon as possible. This keeps the registered owners or proprietors traceable for any practical purposes. According to s. 29 of the Act: a person acquiring an interest under a registrable disposition for valuable consideration and having been registered successfully as owner of the interest, takes it subject to only: an entry on the register, primarily a Notice in the charges register unregistered interests which override interests excepted from the effects of registration and if the estate is a lease, to burdens incidental to the lease. Any restriction on the proprietorship register prevents the registration of a disposition unless duly addressed. This is the appropriate way of alerting a purchaser of the existence of an equitable family interest which arises under a trust of land. A restriction does not protect the priority of that interest, nor any right of occupation – it notifies the purchaser of the interest. According to s. 32 of the Act: " A notice is an entry on the charges register in respect of

a burden of an interest affecting a registered estate or charge." According to s. 33, the following interests cannot be protected by a notice: the interest of a beneficiary under a trust of land a lease granted for less than three years restrictive covenants in a lease and certain other minor property rights. In all cases, these interests are protected against a purchaser by other means. According to s. 34, all other interests may be protected by a notice. Examples include: equitable easements freehold restrictive covenant equitable leases estate contracts, including options to purchase and rights of pre-emption. Stan obviously has overriding and also family constructive interests in the property as he had made the investments with family purposes. He should create a notice with the local registry against any possible sales. He is thus most likely to be protected of his very difficult and traceable interests as he did not even make payments directly to the mortgaging company's bank account. He did not have any lease title to the second property, hence, mere tenancy does not give him any right as per section 33 mentioned above. But he should send a section 29 notice based on his equitable interests as per section 34 as well regarding both the properties. His rights should be protected in the same way as above mentioned Williams & Glyn Bank v Boland,[14]. The good situation is Roberta does not deny his contributions and therefore she has good intentions. Roberta cannot be expected to make unjust financial gains as well. As it is very difficult to trace the total amount invested by Stan, the amounts should be traced as much as possible and the rest should be assessed on the basis of Boardman v Phipps for quantum meruit for generous rewards for Stan. The question of damages does not come as against tracing Roberta will be able



to defend herself by claiming honesty. Therefore, Stan's personal disliking against Tyrone is irrelevant in law and if Roberta can pay him for the investment or if accepts the second house to be equal to the amount he invested then the need for selling the first house to realise the proceeds his money is irrelevant. If he accepts the second house then he should proceed to have the title registered as well.