

Law of property essay sample



EXERCISE ONE

In case of Jane the relationship with Ahmed was akin to that of marriage. The tests that the judges applied in *Nutting v Southern Housing Group Ltd* each apply to Jane, that is she and Ahmed had set up home together, the relationship was emotional and of mutual lifetime commitment. (Adviceguide 2006)

That Jane moved to Leeds was evidence enough that it was clear to the world that she was interested in permanent relationships and not temporary. She has foregone her career options; she has paid 25, 000 pounds for an extension. If the relationship is considered to be akin to marriage then the judge may award half the property to Jane. That is 175, 000 pounds this would be fair in light of the career loss that she has incurred, the extensive gardening, redesigning of the interior, central heating cost and the 25, 000 pounds for an extension.

(Gary Webber 2006)

(Under s17 of the Housing Act 1988)

“ In my judgment the relationship, to come within the subsection, cannot have a single (or even a simple) definition. Human relationships are too complex and varied for that to be the case. There are, however, indicia. I have chosen to put them by questions, which must be answered in the affirmative, as follows:

(a) Have the parties openly set up home together?

(b) Is the relationship an emotional one of mutual lifetime commitment

rather than simply one of convenience, friendship, companionship or the living together of lovers?

(c) Is the relationship one, which has been presented to the outside world openly and unequivocally so that society considers it to be of permanent intent the words till death us do part being apposite?

(d) Do the parties have a common life together, both domestically (in relation to the household) and externally (in relation to family and friends)?

On appeal Evans-Lombe J upheld the judges decision that the relationship was not sufficient but stated that the test should be formulated slightly differently:

I return to the Recorder's four tests. Having regard to the authorities it does not seem to me, with respect, that the fact that question (a) can be answered in the affirmative is indicative of a spousal relationship. That answer could have been given in relation to students sharing lodgings. The Recorder himself did not treat an affirmative answer to question (d) as being so indicative. I agree with him. Without a lifetime commitment at least at some point in the relationship there is no sufficient similarity to marriage.

There are many ways in which a marriage relationship can be described but it seems to me that the test prescribed by the Recorder at paragraph (b) subject to the qualification in paragraph (c), that the relationship must be openly and unequivocally displayed to the outside world, is an entirely adequate test and one which is consistent with the authorities.

The Recorder concluded that Mr Nutting had failed to demonstrate that his relationship with Mr Roberts displayed a sufficient commitment to

permanence to meet the test. In my judgment on the findings of fact which the Recorder made he was entitled to arrive at that conclusion. It follows that I would dismiss this appeal. (para 17). *Nutting v Southern Housing Group Ltd* [2004] EWHC 2982 (Ch).” (Gary Webber 2006)

There is considerable change in the nature of the law that point to treating couples living together in a fair manner. If the court decides to treat Jane and Ahmed as civil partners, still it would give a similar judgment. (The Law Society 2006)

“ The Civil Partnership Act 2004 came into force on 5 December 2005. This has led to a large number of amendments to various statutes including many property statutes (see s81 and Schedule 8). For example, s17 of the Housing Act 1988 is amended so as to allow civil partners as well as spouses to succeed to assured tenancies.

Further s17(4) which previously only provided that: For the purposes of this section, a person who was living with the tenant as his or her wife or husband shall be treated as the tenant’s spouse is amended so that persons living together as if they were civil partners are also now entitled to succeed. This gives statutory effect to the House of Lords decision in *Ghaidan v Mendoza* . *Civil Partnership Act 2004 (Commencement No. 2) Order 2005 (SI No. 3175)* (Gary Webber 2006)

(Law On The Web 2006)

“ Unmarried woman wins share of former partner’s home

Date: 27 May 2004

Source: Divorce-Online Ltd

A judge has awarded a woman a £100, 000 share of her former partner's home even though the couple were not married and she made no financial contribution to the mortgage.

Elayne Oxley, 51, shared a home in Kent with Allan Hiscock, 54, for 16 years before she claimed a share of the property when he ended the relationship.

In a complex 50-page judgment Lord Justice Chadwick ruled that Ms Oxley is entitled to a 40 per cent share of Mr Hiscock's £232, 000 home in Hartley, near Dartford.

Ms Oxley told the court that although she had not paid the mortgage she had contributed towards food and utility bills. She hailed the ruling a victory for unmarried women.

“ Women who live with their partners assume they are protected but the law doesn't recognise the term ‘ common-law wife’. My case will prevent other women enduring the anguish I have been put through,” she said.

Family law experts were more cautious. Nigel Shepherd, a spokesman for the Family Solicitors Law Association, said: “ The case does not alter the fact that you do not get an entitlement to a property owned by your partner simply by virtue of living with them. There is still no such thing as a common-law marriage.” But he added: “ Although not a landmark decision as such, the judgment clarifies the approach to be taken in this type of case and represents a more generous and fairer interpretation of what remains an extremely complex area of law.”

Ms Oxley was working with social services when she met Mr Hiscock, an engineer at Dartford power station. “ I wanted to be married to him but he didn’t want to for tax reasons,” she said. Mr Shepherd said the case showed that there was a real need for a change in the law reflecting the rights of unmarried couples who lived together”. (Law On The Web 2006)

In case of Rachel and Tom as the house is in London and in the sole name of Tom. Even though Rachel and Tom started staying together, Rachel was not displaced by the arrangement.(Legal Basics – Property 2005)The supervision of renovation work in the house and subsidy on housekeeping can be part of their living together arrangement.(Resolution 2005)

Even though Rachel was looking forward to a happy life with Tom, marriage is not mentioned. A mutual emotional life forever does not seem to be obvious. Also even though Rachel’s parents paid 10, 000 pounds, there is no evidence that their relationship was “ presented to the outside world openly and unequivocally” (Gary Webber 2006) in this case the court will only reward Rachel the value of the 12 mortgage payments that she made along with the 10, 000 pounds she paid initially to her.

(Law On The Web 2006)

More and more couples now live together without getting married, but, no matter how long the relationship, the law still effectively treats them as separate individuals with no rights or liabilities to each other if the relationship ends (unless they are same sex couples who have entered into a formal civil partnership).

This has some far reaching consequences for such couples (of whatever sex or combination of sexes), particularly in relation to their home (most people's biggest asset). The majority of couples fail to consider this until after the relationship has ended.

Unlike married couples, unmarried couples have no basic rights to their partner's property or to maintenance if they split up. Basically what is his is his, what is hers is hers, and what is jointly-owned needs to be divided. (Law On The Web 2006)

In case of Rachel and Tom their relationship is not likely to be treated as akin to marriage and the courts will order that Tom pay back the 10, 000 pounds plus the value of the 12 mortgage payments. (Times Online 2006)

There is a qualitative difference between the two cases in case of Jane and Ahmed the evidence is sufficient that the court will treat is as a relationship close to that of husband and wife and award Jane a right in the house. On the other hand in case of Rachel and Tom the relationship is more akin to a live in relationship for companionship that is not similar to marriage and so both of them will be treated as separate entities and awarded the properties according to ownership.

References:

Adviceguide (2006) *Living Together - Your Rights* Retrieved from: www.adviceguide.org.uk on August 27, 2006.

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Law On The Web (2006) *Living Together Retrieved* from <http://www.lawontheweb.co.uk/intro.htm> on August 27, 2006.

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The Law Society (2006) *The Myth Of Common Law Wife* . Retrieved from: <http://www.divorce.co.uk/hottopics/articles/cohabitants.htm> on August 27, 2006.

Case laws seen:

Leadenhall Residential 2 Ltd v Sterling [2001] EWCA Civ 1011; [2002] 1 WLR 499

Uratemp Ventures Ltd v Collins [2001] UKHL 43; [2001] 3 WLR 806 (House of Lords).

London Borough of Merton v Richards [2005] EWCA Civ 639.

R (on the application of Lester) v London Rent Assessment Committee [2003] EWCA Civ 319; [2003] 1 WLR 1449.

Sumeghovo v McMahon [2002] EWCA Civ 1581; [2003] HLR 26.

Coltrane v Day [2003] EWCA Civ 342; [2003] 1 WLR 1379; [2003] 30 EG 146

North British Housing Association Limited v Matthews; London and Quadrant Housing Limited v Morgan [2004] EWCA Civ 1736.

Etherington v Burt [2004] EWHC 95 (QB).

Knowsley Housing Trust v Revell; Helena Housing Ltd v Curtis [2003] EWCA Civ 496; *Solicitors Journal*, 25 April 2003, p 474.

The research strategy used for electronic research was to first look for property based laws and cases on the Internet. This was repeated with narrowing down the search only to UK based laws and cases. Next the laws related to living in relationship were explored and the common codes and cases relating to living in and property law in the UK were checked. Of these those property laws and cases that were related to UK and pertaining to living in or similar relationships were checked for similarities with the cases. The relevant points were included as references and the most pertinent cases have been quoted in the answer.

EXERCISE TWO

The agreement between Raj and Joyce is one of tenancy. In particular, this agreement falls into the category of Assured Shorthold Tenancy Agreement. This agreement usually provides terms for eviction following the breach or the completion of the agreed term. In case of Raj, the agreement very clearly states that if the apartment is not kept in good condition, or, the fixtures in it are not kept in running condition, or the license fee (rent), or any part of it, is unpaid for 21 days, Raj can terminate the agreement. In other words evict Joyce. In case of an Assured Shorthold Tenancy Agreement the agreement should be for an agreed term and for a minimum of six months. The agreement between Raj and Joyce is for a period of four years. (Landlord Tenant Law 2006)

This is for a fixed period of time and so it is an Assured Shorthold Tenancy Agreement. Moreover, the agreement does not allow Raj to terminate the tenancy early except for non-payment of rent or other breach of contractual agreement. The other contractual agreement in case of Raj is “ If the apartment is not kept in repair, or, the installations therein not kept in proper working order, or the license fee, or any part thereof, be unpaid for 21 days, the licensor can terminate this agreement”.

An important clause of the Assured Shorthold Tenancy Agreement is that the landlord will get back the custody of the premises after the completion of the fixed period of time. If the agreement between Raj and Joyce completes the period of four years time, Joyce can be evicted from Raj’s property. (Shelter 2006) Assured Shorthold Tenancy Agreement can be renewed after the four years have elapsed and then it will be known as contractual periodic tenancy or fixed term tenancy.

There are some other distinguishing features that show that the agreement between Raj and Joyce is an Assured Shorthold Tenancy Agreement. (Advice Guide 2006) The total annual rent is does not exceed 25, 000 pounds. In this case it is 7, 200 pounds. In addition, the agreement is not being signed with a company (Landlord-Law 2006). This agreement would not have been an Assured Shorthold Tenancy Agreement if this were a holiday letting.

Finally, the agreement between Joyce and Raj has the ingredients of an Assured Shorthold Tenancy Agreement, that is has tenant's obligations listed out like keeping the apartment in good repair, the obligation to pay rent by a particular date, allowing the landlord access to the apartment for weekly checking etc. It does not specify the obligations of Raj, but that is not mandatory.

Legally the agreement between Raj and Joyce is Assured Shorthold Tenancy Agreement under the Housing Act, commonly known as the residential tenancy act. (Letting-Landlords. Co. UK 2006) This contract has become popular because it allows the landlord to charge the market rent to the tenant. This agreement protects the right of Raj, and also Joyce's legal rights. What the agreement does not mention is that if Joyce violates any of the conditions of the agreement, she will have to be served a two-month notice for eviction. This agreement specifies the rights of Raj and limits the rights of the Joyce.

Is this agreement a licensing agreement? No. Even though the agreement between Raj and Joyce includes conditions like “ The licensee shall vacate the apartment, each and every Sunday morning between the hours of 9 am

and 11 am, in order that the licensor can clean the apartment and check on the general condition of the same. And if the apartment is not kept in repair, or, the installations therein not kept in proper working order, or the licence fee, or any part thereof, be unpaid for 21 days, the licensor can terminate this agreement.” The local authorities have not included these terms.

Licensing agreement relates to the seven parts of the Housing Act 2004, under these provisions relate to social housing.

(Housing Act 2004, 2006)

“ The Act includes new powers for local authorities to deal with substandard dwellings, a new requirement to licence houses in multiple occupation and a power to licence private landlords and to take over the management of private rented accommodation in certain cases. There are also changes to the right to buy and other rights of tenants in the social rented sector. As to private rentals, new provisions dealing with tenants deposits enforceable by preventing landlords from recovering possession from an assured shorthold tenant if the landlord fails to comply with the new requirements. New measures too for mobile home occupiers and on the owner-occupier front, the much-criticised new home information packs” (Housing Act 2004, 2006)

In case of the agreement between Raj and Joyce there is no involvement of a local authority. In addition, even though Raj has out of consideration for Joyce accepted her as a tenant, this is not an agreement that is governed by the Housing Act 2004. There is no evidence that the area in which Raj’s property is located is an area of low demand in which the government has found it necessary to intervene.

(Housing Act 2004, 2006)

“ According to the government there is evidence that low house prices in areas of low demand have resulted in an influx of

.. unprofessional landlords purchasing properties to rent. These people frequently show no interest in managing their properties properly, often letting to anti-social tenants who cause a range of problems. This, in turn, can create misery for the local community and cause further destabilisation of these areas..

And so LHAs now have a discretion to license all private landlords in a designated area in order to ensuring that a minimum standard of management is met. However, approval of the Secretary of State must be sought after local consultation and the LHA will have to show that such a selective licensing scheme will be co-ordinated with an authority’s wider strategies to deal with anti-social behaviour and regeneration in the area.”

(Housing Act 2004, 2006)

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The strategy for electronic research has been to research what constitutes licensing agreements in the context of the property law in UK. After noting what was licensing, I checked what constituted a tenancy agreement in the context of the UK law. After this I checked electronically what types of tenancy agreements were normally made in accordance to the UK property law. Then it was a matter of matching the terms of agreement between Raj and Joyce and the different types of tenancy agreements. I also tried to match the terms of their agreement and the circumstances of Joyce with the required norms of licensing.

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