20
SUCCESSIVE OWNERSHIP

CENTRAL ISSUES

1. Successive ownership arises under a trust in which the beneficiaries are entitled to possession in succession, rather than concurrently. While it retains practical significance, successive ownership has been superseded by co-ownership in social and economic importance.
2. Central to successive ownership is the existence of a life estate—that is, a period of ownership of land measured by the life of the beneficiary entitled in possession. The life estate is commercially unattractive and other devices can be used to confer rights of ownership or occupation for life.
3. Successive interest trusts can be created in the same way as other trusts of land. Those created after the commencement of the Trusts of Land and Appointment of Trustees Act 1996 are regulated by that Act.

1 INTRODUCTION

In Chapter 13, we examined the regulation of co-ownership, arising where two or more people are concurrently entitled to legal or beneficial title to land. We saw that the defining characteristic of co-ownership is *unity of possession*: each co-owner is concurrently entitled to possession of the whole of the land. Successive ownership arises where two or more people are entitled to possession of land in succession to each other, rather than concurrently: for example, where land is held on trust for A for life and thereafter for B. In such a case, A alone is entitled to possession of the land for his or her life (the nature of A's 'life interest' is considered in section 4 of this chapter) and, on A's death, B's interest comes into possession. Successive ownership necessarily arises under a trust of the legal estate with A and B's interests arising in equity. Therefore, this chapter is concerned with successive *beneficial* ownership.

Beyond its own practical significance, an understanding of the operation of successive ownership enhances our appreciation of the concept of ownership of an estate in land (discussed in Chapter 5). It is the recognition, through the doctrine of estates, that ownership can be divided by periods of time that makes it possible to divide ownership of land successively. Further, successive ownership provides a useful bridge between Part D of the book, with its focus on the home and Part F of this book, in which we consider leases. This is because some of the arrangements for ownership of land that would previously have been achieved through successive ownership of an estate may now be achieved through leasehold arrangements, as illustrated by *Ingram v Inland Revenue Commissioners*.[1] In that case, Lady Ingram wished to make a gift of her land during her lifetime to avoid inheritance tax, whilst simultaneously securing her own occupation until her death. Lifetime occupation could be secured through a lease or through successive beneficial ownership, but the former alone protected the estate from inheritance tax.[2]

2 THE SIGNIFICANCE OF SUCCESSIVE OWNERSHIP

Historically, the regulation of successive ownership was an important feature of land law. At its core, lay the family 'strict settlement' within which the forms of successive ownership (considered in section 3 below) were

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[1] [1999] 1 AC 293.
[2] Ibid, at 300. The effect of the decision was subsequently reversed by statute. For discussion of this, see Lee, 'Inheritance Tax: An Equitable Tax No Longer—Time for Abolition?' [2007] LS 678, 686.

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used in combination to keep land within the family for generation after generation.[3]

As Simpson explains, the rules governing settlements were developed by lawyers with conflicting desires to create a market in land to buy, but then retain that land within the family.[4] Additionally, however, the family settlement provided an important means of protecting women at a time of legal subservience. While the social and legal environments in which successive ownership and co-ownership have flourished are very different, in this respect alone, there is some parallel between their legal histories.

Simpson, *A History of the Land Law* (2nd edn, 1986, p 209)

Many settlements of property were created on the occasion of a marriage between dynastic families, and here what was needed was compromise between the interests of the families concerned. Given the legal subservience of women, the bride's family required of property law some security both for their daughter and for her children and grandchildren. This could only be achieved if the husband's rights over the family land were in some degree restricted, so that the landed endowment of the family would pass down to the next generation. Indeed the whole history of settlements can only be made intelligible if we remember that although the family as such was not treated as a legal entity by the common law, which dealt only in individual property rights, landed society did nevertheless view property as ultimately belonging to the family in some moral sense, and the legal system reflected this.

The historical significance of the strict settlement appears beyond doubt even though, as Simpson acknowledges, its precise effects remain uncertain.

Simpson, *A History of the Land Law* (2nd edn, 1986, p 239)

The strict settlement, by perpetuating and consolidating the wealth and power of the wealthy families, and by preserving their estates intact through the years, had an immense effect upon the social and political life of the country until very recent times. Precisely what effect is somewhat controversial. The settlement was the legal regime of the landed interest, powerful in both national and local political life; there is inevitably a problem in saying whether the legal institution was cause or effect of the political and social phenomenon. Death duties have in this century brought about the destruction of the social structure which the strict settlement enshrined, though the institution still lingers on.

As regards fiscal regulation, 'death duties' have been replaced by inheritance tax, which has retained disadvantageous treatment for successive interests. In particular, on the death of a lifetime beneficiary, inheritance tax is calculated on the basis that he or she was entitled to the entire estate.[5]

The decline in the significance of the strict settlement is mirrored by the growth of -co-ownership. In modern law, co-ownership has superseded the strict settlement both in its social and economic importance. Despite the decline of the strict settlement, other instances of successive ownership remain of practical significance. A simple instance may arise in which, on the death of a sole owner, a home is left on trust for the deceased's spouse for life and thereafter to the couples' children.

3 FORMS OF SUCCESSIVE OWNERSHIP

Since the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA 1996) came into force on 1 January

[3] A simplified example of a typical strict settlement is outlined by Simpson, *A History of the Land Law* (2nd edn, 1986) pp 236–7.
[4] Ibid, p 209.
[5] Inheritance Tax Act 1984, s 49.

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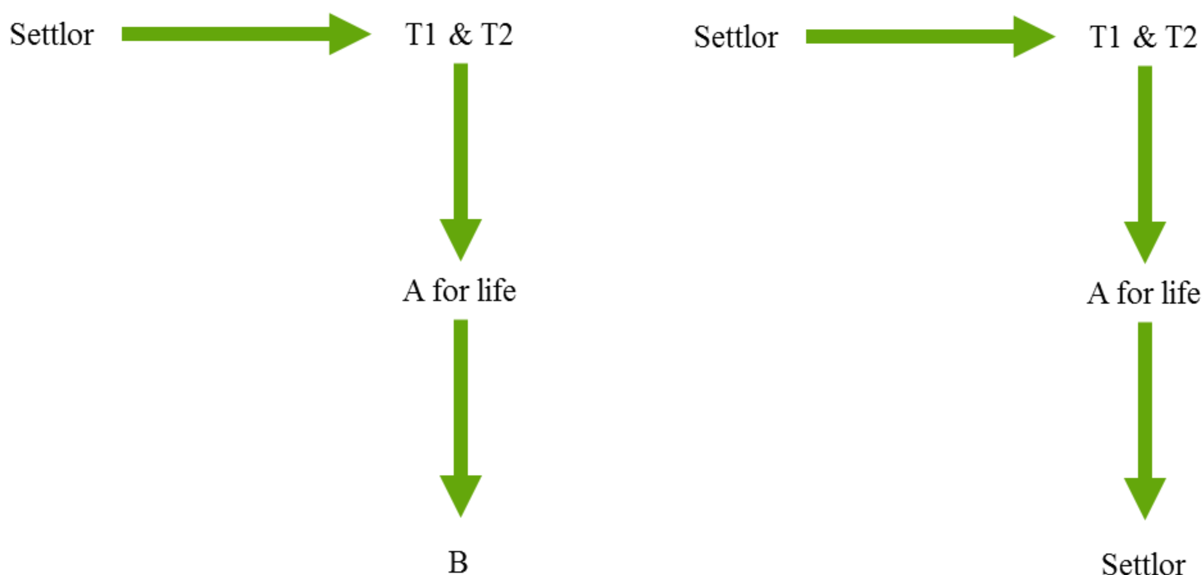
1997, trusts of successive interests take two principal forms: firstly, a legal estate in land may be held on trust for A for life, remainder to B; secondly, a legal estate may be held on trust for A for life and then revert back to the settlor of the trust (see Figure 20.1).

Figure 20.1 Successive interests in remainder and in reversion



In both examples, the trustees hold legal title as legal joint tenants.[6] A and B (in the first example), or A and the settlor (in the second example), have successive interests. In both examples, A has a life estate (or life interest) in possession. In the first, on A's death, the freehold estate is held on trust for B, who is described during A's life as having an interest 'in remainder'. This form of trust may be used, for example, on the settlor's death, to provide for his or her spouse for life and thereafter for their child.

In the second example, on A's death, the trust returns the freehold estate to the settlor. During A's life, the settlor is described as having an interest 'in reversion', because the estate will revert or return back to the settlor on A's death. Such a trust may be used, for example, to provide housing for an elderly relative.

In each example, on A's death, B's interest 'in remainder', or the settlor's interest 'in reversion', becomes an interest 'in possession'.

Numerous variations on these basic examples are possible. Hence, the settlor may declare him or herself trustee of the trust and the number of trustees may vary, subject to the maximum number of four legal owners.[7] The successive interests of A and B (or of A and the settlor) may be combined with co-ownership of their respective estates. For example, adapting the first example, the freehold estate may be held on trust for A and X for their lives (ending on the death of the longest surviving), with remainder to B and Y. More than one life estate may be granted in succession before the remainder or reversion. Hence, in a different variation of our first example, a settlor may create a trust for A (his or her child) for life, then to B (A's child) before granting the remainder to C. But attempts to use successive interests in this way to keep land within generations of a family are likely to fall foul of the rule against perpetuities.

[6] Legal title is vested in the trustees under the scheme of regulation provided by the Trusts of Land and Appointment of Trustees Act 1996, which is examined in section 6 below. As has been seen in Chapter 17, section 2, legal co-owners are necessarily joint tenants.
[7] Trustee Act 1925, s 34(2). This provision is discussed in Chapter 17, section 2.

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3.1 THE RULE AGAINST PERPETUITIES

The rule against perpetuities places a limit on the period of time within which a future interest in property may vest or take effect, from the time of the disposition creating the interest. The rule is borne from an ongoing battle between settlors, who wish to continue to exercise control of their property from beyond the grave, and courts keen to ensure alienation of land.

Megarry and Wade: The Law of Real Property (8th edn, eds Harpum et al, 2012, [9-012])

It has commonly been the ambition of landowners to dictate to posterity how their land is to devolve in the future, and so to fetter the powers of alienation of those to whom they may give it. It has always been the purpose of the courts, as a matter of public policy, to confine such settlements within narrow limits and to frustrate them when they attempt to reach too far into the future.

A full discussion of the rule against perpetuities, which applies both to trusts of land and those of personal property, lies beyond the scope of this book and the following text is confined to providing a brief account.[8]

As a result of consecutive legislative reforms, which operate only prospectively, there are now three distinct sets of perpetuity rules. The set of rules that apply is generally dependent on the date that the instrument creating the successive interest comes into effect or, in the case of wills, the date the will is executed. The Perpetuities and Accumulations Act 2009, which came into force on 6 April 2010, provides a single perpetuity period of 125 years. This period applies irrespective of any other period being given in the instrument.[9] The rule operates on a 'wait and see' basis (adopted by previous legislation) so that if an interest 'might not become vested until too remote a time' it is treated as valid unless and until it becomes void for failing to vest within 125 years.[10] The Act is based on recommendations made by the Law Commission that were published in 1998.[11] It represents a considerable simplification of the previous two sets of rules, both of which revolved around the identity of 'lives in being'. The relevant lives in being must be living or conceived at the time that the instrument takes effect. The settlor may identify them, in the absence of which they are determined by rules. The operation of the previous perpetuities rules was outlined by the Law Commission in making its recommendations for reform.

Law Commission Report No 251, *The Rules Against Perpetuities and Excessive Accumulations* (1998)

The rule against perpetuities has to be stated in two parts. For dispositions made before the 1964 Act came into force on 16 July 1964, the rule is as follows—

1. A future interest in any type of property will be void from the date that the instrument which attempts to create it takes effect, if there is any possibility that the interest *may* vest or commence outside the perpetuity period.
2. For these purposes, the perpetuity period consists of one or more lives in being plus a period of 21 years and, where relevant, a period of gestation.

Where an instrument creates a future interest after 15 July 1964—

1. that interest will only be void where it *must* vest or take effect (if at all) outside the perpetuity period;

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[8] A full account is provided in *Megarry and Wade: The Law of Real Property* (8th edn, Harpum et al, 2012), [9-012]–[9-136]; *Cheshire and Burn's Modern Law of Real Property* (18th edn, eds Burn and Cartwright, 2011) ch 15.

[9] Perpetuities and Accumulations Act 2009, s 5.

[10] Perpetuities and Accumulations Act 2009, s 7.

[11] Law Commission Report No 251, *The Rules Against Perpetuities and Excessive Accumulations* (1998).

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2. it is therefore necessary to "wait and see", if need be for the whole perpetuity period, to determine whether the interest is valid; and
3. an alternative perpetuity period of up to 80 years may be employed instead of a life in being plus 21 years [. . .]

3.2 ENTAILED INTERESTS

A third form of successive ownership is the 'entailed interest'. The TOLATA 1996 prohibits the creation of new entailed interests, although those in existence remain unaffected by that Act.[12]

The entailed interest is an estate in land that passes successively through direct lineal descendants. It represents the clearest attempt to keep land tied up for future generations. In this respect, its chief advantage over the creation of successive life interests is that the entail lies outside the scope of the rule against perpetuities. In its most traditional form, the entailed interest follows the primogeniture principles, passing from eldest surviving son to eldest surviving son, passing to the eldest surviving daughter only where there is no male heir. Variations may limit the estate to the male or female line.

4 THE NATURE OF THE LIFE ESTATE

Central to successive ownership is the existence of a life estate. As has been seen in Chapter 5, an estate denotes the period of time for which rights of ownership are enjoyed in relation to land. A life estate therefore denotes a period of ownership measured by the life of the party entitled in possession. A life estate can exist only in equity and is given effect under a trust of the legal title.[13] Since the coming into force of the 1996 Act, the trust is a trust of land, and the rights and duties of the trustees and beneficiaries are governed by the terms of that Act. These have been discussed in Chapter 13 and their specific application to successive ownership trusts is highlighted in section 6 below.

The limited nature and uncertain duration of the life estate impact both the rights of the beneficiary and the commercial value of the estate. The nature of a life estate can be understood by analogy with a trust of money. If trustees hold £100,000 on trust for A for life, remainder to B, then A and B's rights are located respectively in the income generated from the fund (A) and the capital sum on A's death (B). In essence, the same distinction between income and capital denotes the respective rights of A and B where the trust consists of land. A alone is entitled in possession of the land (akin to the income) for his or her life. A's right to possession may be enjoyed through physical occupation, or through receipt of rents and profits generated from the land. If the land is sold, then A is entitled to the income generated from the proceeds of sale. The land (the capital) or the proceeds of sale of the land must, however, be preserved for B. A's life estate is a property right, with which A is free to deal in the same way as any other estate in land: for example, A can sell his or her life estate, transfer it as a gift, or use it as security for a loan. Practically, however, the uncertain duration of the estate imposes a limit on its commercial value. Where a life estate is sold or transferred to a third party, the purchaser or transferee is described as holding an estate *pur autre vie* (for the life of another).

McCaffery compares the rights of the holder of a life estate with those of the holder of the freehold by reference to six incidents of ownership identified by Pound. (The numbers listed in the extract below refer to the six rights of ownership listed by Pound.)

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[12] Trusts of Land and Appointment of Trustees Act 1996, Sch 1, para 5. Whether the provision does, in fact, prevent the creation of new entailed interests is doubted by Pascoe, 'Solicitors: Be Bold: Create Entailed Interests' [2001] Conv 396.

[13] Law of Property Act 1925, s 1(1), provides that only the freehold and leasehold estates are capable of existing at law. By virtue of s 1(3), all other estates formerly capable of existing at law must now be equitable interests. This provision is discussed in Chapter 5, section 3.3.

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McCaffery, 'Must We Have a Right to Waste?' in *New Essays in the Legal and Political Theory of Property* (ed Munzer, 2001, p 79)

Most of the six rights readily extend to a life estate owner, or to any other present interest of limited duration. A life estate holder can possess the property (1), exclude others from it (2), dispose of her life estate (3), use the property (4), and enjoy its fruits or profits (5). One can think of these as the present-oriented rights of ownership, for they use or affect the present interest.

A fee simple absolute adds but two powers to the life estate. One is the power to direct where the property is to go on the termination of the life estate: that is, a *jus disponendi* (3) as to the remainder, or future, interest. Two is the *jus abutendi* or right of waste (6). We could add a third difference—the right to sell or alienate the entire estate in fee simple absolute. But although the ability to sell the whole property is of immense practical importance, it is entailed in the rights set out above. One can sell what one has. A life estate owner already has the *jus disponendi* as to her life estate. What she lacks is the right of disposition as to the remainder, which, when combined with what it is that she does have, would give her a right of disposing of the whole.

This all follows from the fact that the fee simple absolute owner owns the remainder interest, but the life estate holder does not. The *jus disponendi* as to the whole and the *jus abutendi* are rights that affect the remainder interest as well as the present one—one can think of them as the future-oriented rights of ownership. Under a life estate conception of ownership, the property holder cannot waste the property or direct where the remainder is to go.

One of the key differences between the estates therefore consists in what McCaffery refers to as the 'right to waste'. The purpose of McCaffery's essay is to encourage a rethinking of ownership in which a life estate is seen as an attractive form.[14] In this respect, he argues that a right to waste should not be recognized.[15] As McCaffery notes,[16] waste is usually understood in the negative, as a doctrine *against* waste. Waste generally denotes an act or omission that affects the value of the freehold (negatively or positively), or changes the nature of the land.[17] Historically, waste determined the rights of the holder of a life estate, together with the relationship between him or her and the holder of the interest in remainder or reversion. The holder of a life estate would be liable to the holder of the estate in remainder or reversion for some types of waste (for example, conduct that reduces the value of the land), but not others (including permissive waste, resulting from an omission to keep the land in good repair).[18]

In modern law, the provisions of the TOLATA 1996 govern the relationship between the parties. The broad powers of management conferred on trustees appear effectively to preclude resort to the law of waste.[19]

5 THE CREATION OF SUCCESSIVE INTERESTS

Successive interests take effect under a trust and can be created in the same way as any other trust of land. Hence, a successive ownership trust can be created expressly through compliance with s 53(1)(b) of the Law of Property Act 1925 (LPA 1925), which requires the declaration of trust to be evidenced in writing, signed by the settlor, or through a validly executed will. Successive interest trusts may also arise impliedly: for example, through a common intention constructive trust of the type that we have considered in Chapter 12 in relation to co-ownership.

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[14] McCaffery, 'Must We Have a Right to Waste?' in *New Essays in the Legal and Political Theory of Property* (ed Munzer, 2001) pp 78–9.

[15] Ibid, p 105.

[16] Ibid, p 84.

[17] McCaffery's own concept of waste is broader: ibid, p 77.

[18] A brief summary is provided by Smith, *Plural Ownership* (2004) p 20.

[19] Ibid, pp 20–1.

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As we have seen in Chapter 12, the elements of the common intention trust are a common intention to share beneficial ownership, coupled with detrimental reliance on the part of the claimant. In most cases, the agreement to share will reflect an intention to co-own the home, but, exceptionally, an agreement will be consistent with successive ownership.

Ungurian v Lesnoff [1990] Ch 206

Facts: At the time that the relevant facts took place, Poland was under Communist rule. Mrs Lesnoff, a Polish national, gave up her Polish nationality, a flat in Poland in which she could have remained in occupation for her life, and her career, to move to London to live with Mr Ungurian. The couple lived in a house, registered in Mr Ungurian's sole name, together with Mrs Lesnoff's sons and one of Mr Ungurian's sons, Paul. During the course of the parties' four-year relationship, Mrs Lesnoff carried out considerable improvements to the property. On the breakdown of the relationship, Mrs Lesnoff argued that the house was held on trust for her or, at the least, that she was entitled to remain in occupation for her life.

Vinelott J

At 223–4

In summary, therefore, I am not satisfied that the house was bought by Mr. Ungurian with the intention that it would belong to Mrs. Lesnoff, either immediately or when she gave up her flat in Poland and obtained permission to live permanently abroad; but I am satisfied that it was bought with the common intention that Mrs. Lesnoff would be entitled to live there with her children, sharing it with Mr. Ungurian when he was in England, and with any of his children who were here for the purpose of being educated. I am satisfied that Mrs. Lesnoff went through with this plan, initiated in Beirut and later elaborated, in the expectation that Mr. Ungurian would provide her with a secure home and that she burnt her boats by giving up her flat in Wraclow in the belief that he had done so. The question is whether these facts, and the work subsequently done by Mrs. Lesnoff, give rise, either to a constructive trust under which Mrs. Lesnoff became entitled to a beneficial interest in the house, or to a licence to reside, or to an estoppel preventing Mr. Ungurian from denying her right to reside in the house [. . .]

In my judgment, the inference to be drawn from the circumstances in which the property was purchased and the subsequent conduct of the parties—the intention to be attributed to them—is that Mrs. Lesnoff was to have the right to reside in the house during her life. It would be to that extent her house, and although the expectation was that Mr. Ungurian would live there with her when he was in England, and that Paul, and possibly in due course his younger son also, would be accommodated there while they were being educated, that result would flow from the continued relationship between Mrs. Lesnoff and Mr. Ungurian and would be dependent on it. It must be borne in mind that Mr. Ungurian was a man of considerable means with flats in Beirut, Amman and Switzerland. He was providing a house as a home for a woman much younger than himself who would be likely to survive him. I do not think that full effect would be given to this common intention by inferring no more than an irrevocable licence to occupy the house. I think the legal consequences which flow from the intention to be imputed to the parties was that Mr. Ungurian held the house on trust to permit Mrs. Lesnoff to reside in it during her life unless and until Mr. Ungurian, with her consent, sold the property and bought another residence for her in substitution for it.

The factual background to *Ungurian v Lesnoff* is unusual. The extreme lengths required of Mrs Lesnoff to be able to leave Poland during the time of Communist rule highlighted her particular need for security of accommodation. The case also illustrates that there are different ways in which occupation for life can be given effect. Vinelott J notes the possibility of finding a constructive trust, a licence, or a claim to estoppel. As

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regards estoppel, if Vinelott J were to have found that Mr Ungurian was estopped from denying Mrs Lesnoff a right to reside, he would then have had a discretion as to the appropriate remedy to award in satisfaction of the claim.[20] The remedy could take the form, for example, of a licence or a trust. Lifetime occupation may also be given effect through the grant of a lease, with provision for the lease to be terminated on an individual's death.[21]

Prior to the TOLATA 1996, the informal creation of a life estate gave rise to a trust governed by the Settled Land Act 1925. Such a trust was imposed in *Ungurian v Lesnoff*. The effect of the Settled Land Act 1925 is considered in section 6 below. It is sufficient to note that it conferred upon the holder of the life estate greater powers of management over the land than may have been appropriate.[22] The TOLATA 1996 has superseded that legislation. That Act removes the difficulties encountered under the Settled Land Act 1925 and the informal creation of a successive ownership trust is therefore less problematic. But the question still arises whether a life estate, licence, or lease is the most appropriate means of securing occupation for life. As Table 20.1 shows, each differs as regards the method of creation and the extent of security conferred on the occupier.

[20] The nature of the courts' discretion is considered in Chapter 10.

[21] A lease 'for life' is not itself valid, because a lease must have a fixed maximum duration. This requirement is considered in Chapter 22.

[22] A full discussion of the debate surrounding the application of the Settled Land Act 1925 to life occupancy is now largely of historical interest. Useful discussions of *Ungurian v Lesnoff* [1990] Ch 206 that highlight the issues are provided by Hill, 'The Settled Land Act 1925: Unresolved Problems' (1991) 107 LQR 596, 596–600, and Sparkes, 'Beneficial Interest or Licence for Life' [1990] Conv 223. For discussion of the earlier case law, see Hornby, 'Tenancy or Life or Licence' (1977) 93 LQR 561.

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Table 20.1 Legal mechanisms to provide occupation and/or ownership of land for life

	Life estate	**Licence to occupy for life**	**Lease determinable on death**
Legal status	Proprietary estate— equitable, given effect under trust	Personal	Proprietary—legal or equitable
Duration	Life	Life	Fixed term, with provision for determination by freeholder (landlord) on tenant's death
Creation	Express trust (during settlor's lifetime or by will) Implied trust, e.g. constructive trust	No specific formality requirements	Legal—dependent on duration of fixed term, but likely to require deed and registration (Law of Property Act 1925, ss 52 and 54; Land Registration Act 2002, s 4)Equitable—through existence of valid contract to create a lease, in compliance with Law of Property (Miscellaneous Provisions) Act 1989, s 2, *see discussion of lease formalities in Chapter 19, section 3*
Enforcement against third parties	Overreached on sale if requirements of overreaching are met. Possible enforcement only if not overreached: • registered land—possible protection as an overriding interest within Land Registration Act 2002, Sch 3, para 2 • unregistered land— doctrine of notice	Not enforceable against third parties, but note possible imposition of constructive trust on sale, *see Chapter 7*	Registered land—dependent on duration of fixed term, but possible entry as Land Registry notice (Land Registration Act 2002, ss 32 and 33(b)), or protection as an overriding interest within Land Registration Act 2002, Sch 3, paras 1 and 2 Unregistered land—legal lease binds all purchasers; equitable lease, an estate contract governed by Land Charges Act 1972, Class C(iv), *see Chapter 16 and the online chapter on unregistered land*
	See Chapters 16, 17, and the online chapter on unregistered land		
Principal source of regulation	Trusts of Land and Appointment of Trustees Act 1996, *see Chapter 13 and section 6 below*	Personal agreement	Terms of lease/implied covenants, *see Chapter 21*

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6 REGULATION OF SUCCESSIVE OWNERSHIP

Prior to the TOLATA 1996, trusts involving successive ownership were generally regulated by the Settled Land Act 1925. That Act applied to all instances of successive ownership (whether created through an express trust or arising informally through, for example, a constructive trust)[23] unless the trust was expressly created as a trust for sale.[24] One of the key aims of the 1996 Act was to provide a single scheme of regulation for all trusts of land, including both co-ownership and successive ownership trusts.[25] The scheme of regulation under the Settled Land Act 1925 differed from the trust for sale as regards the *location* of the legal title and powers of management over the land.[26] In a trust for sale—and, now, under a trust of land—legal title is vested in the trustees, who exercise powers of management. Under the Settled Land Act 1925, legal title and the powers of management were vested in the 'tenant for life'—that is, the beneficiary currently entitled in possession.[27] The trustees of the settlement exercised specific functions (including executing a deed of discharge on the termination of the settlement), received and held capital moneys on sale, and played a general supervisory role.[28]

This scheme of regulation was subject to specific criticism for the position of the tenant for life.

Law Commission Report No 181, *Transfer of Land: Trusts of Land* (1989, [1.3], citing Law Commission Working Paper No 94, *Trusts of Land*, 1985, [3.16])

Conflict of interest

It has been suggested that there is an inherent conflict involved in the position of the tenant for life. The legal estate and all the powers of dealing with it are vested in him and under s.16 of the Settled Land Act 1925 he is a trustee. Yet he is, at the same time, the principal beneficiary. While it is quite usual for a trustee to be a beneficiary, given the lack of any other restraints on the tenant's powers, the conflict may become real. It seems that where there is a conflict of interests, the tenant of life is not treated like an ordinary trustee. It has been held that the court will not intervene if the tenant for life allows the estate to become derelict, but only if there is evidence that he has refused to exercise his powers. Thus the remaindermen may inherit an estate much diminished in value and have no remedy. Similarly the interests of the remaindermen may be adversely affected by a sale of the settled land at a low price. Again, they may have no effective remedy as they may not discover the sale until years after it took place and, even if they could establish a breach of trust, the tenant for life may be dead and his estate not worth suing. While it is clear that the courts, recognising the risks arising from conflicts of interest, usually make the purchase of trust property by a trustee virtually impossible, in one case where the tenant for life purchased the settled land without the proper procedure being adopted, the sale was simply allowed to stand.

Successive ownership trusts created on or after the commencement of the TOLATA 1996 are trusts of land and are within the scheme of regulation provided by that Act.[29] Successive ownership trusts that were in existence on the date of commencement of that Act, and which were governed by the Settled Land Act 1925 at that time,

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[23] The application of the Settled Land Act 1925 to informal trusts was controversial, because it circumvented the strict formality requirements otherwise specified in s 4 of the Act. But *Ungurian v Lesnoff* [1990] Ch 206 is one of a number of cases in which the Act was applied to an informally created settlement. For further discussion of this point, see the literature listed at fn 22 above.

[24] Settled Land Act 1925, s 1(1) and (7).

[25] Law Commission Report No 181, *Transfer of Land: Trusts of Land* (1989), [1.4].

[26] The content of the powers was the same, because trustees for sale were conferred with the same -powers of management as a tenant for life in relation to land held on trust: Law of Property Act 1925, s 28(1) (repealed by the Trusts of Land and Appointment of Trustees Act 1996).

[27] Settled Land Act 1925, s 19(1). Where the beneficiary was a minor, the powers of management were vested in other persons by s 26.

[28] For a full list of the functions of trustees of the settlement, see *Megarry and Wade* (2012), [A-092].

[29] Trusts of Land and Appointment of Trustees Act 1996, s 1(2)(a) and (3).

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remain regulated by the 1925 Act.[30] Hence the 1925 Act has not been repealed, but it is in the process of being phased out.

The scheme of regulation provided under the 1996 Act has been examined in Chapter 13 in the context of co-ownership trusts. It has been seen that the Act confers certain powers on the trustees as regards the management and sale of the land, and confers rights on the beneficiaries. A full discussion of the trustees' powers and the beneficiaries' rights is provided in Chapter 13, sections 5.2 and 5.3; in this chapter, it is necessary only to outline how these powers and rights apply in the specific context of successive ownership.

Under the 1996 Act, the legal title and powers of management are vested in the trustees of land. This removes the conflict of interest for the beneficiary entitled in possession created by the Settled Land Act 1925. As we have seen in Chapter 13, section 5.2, trustees of land are vested with '*all the powers of an absolute owner*'. These powers must be exercised with regard to the rights of the beneficiaries (s 6(5) of the 1996 Act) and in a manner that is consistent with any other enactment or rule of law or equity (s 6(6)). The settlor of an express trust may also impose limitations on the trustees' powers.[31]

The courts have not yet considered the application of these provisions in the context of successive ownership. It is suggested that difficulties may arise in applying the general limitations on trustees' powers in the context of successive owners: what 'rights' are enjoyed by beneficiaries whose interest is in remainder or reversion? We have seen, in Chapter 13, section 5.3, that the 1996 Act confers two key rights on beneficiaries: a right to be consulted by the trustees, and a right to occupy the trust land. These rights are conferred on those beneficiaries who are '*beneficially entitled to an interest in possession in the land*'.[32] Hence, these rights are limited to the holder(s) of the life estate in possession, to the exclusion of those whose interest is in reversion or remainder. The rights of beneficiaries to which the trustees must have regard in the exercise of their powers by virtue of s 6(5) are not necessarily confined to the rights conferred by the Act.[33] There is, however, no clear source of rights outside of the 1996 Act, beyond any specific rights that may be conferred by the settlor of an express trust. Beneficiaries with an interest in remainder or reversion may have to rely on the general equitable duties imposed on trustees, to which the trustees must have regard through s 6(6), in order to safeguard their interest.

We have seen, in Chapter 13, section 5.4, that disputes relating to the exercise of powers by trustees may be referred to the court on an application under s 14 of the 1996 Act. An application may be made (amongst others) by '*any person who* [. . .] *has an interest in property subject to a trust of land*'. This provision is not confined to parties with an interest in possession. Therefore, a beneficiary with an interest in remainder or reversion may bring an application to court under s 14: for example, this would enable such a beneficiary to bring an action to challenge a decision by the trustees to sell the land. But it remains open to question how much emphasis the courts will place on the wishes of a beneficiary with an interest in remainder or reversion. Although not exhaustive of the factors that may be taken into account by the court, s 15(3) directs the court to consider the wishes of beneficiaries with an interest in possession.

QUESTIONS

1. Compare and contrast successive ownership and concurrent ownership. While both take effect under a trust regulated by the Trusts of Land and Appointment of Trustees Act 1996, what differences may remain in the

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[30] Successive ownership trusts expressly created as a trust for sale prior to the commencement of the 1996 Act, like all express trusts for sale, became trusts of land on 1 January 1997: Trusts of Land and Appointment of Trustees Act 1996, s 1(2)(b).

[31] Ibid, s 8.

[32] Ibid, ss 11(1)(a) and 12(1). (The right to be consulted is further limited by s 11(1)(a) to beneficiaries of full age.)

[33] See the annotation to ibid, s 6(5), by Kenny and Kenny, in *Current Law Statutes* (1997). The annotation suggests that the 'rights' referred to would include those conferred by the settlor of the trust. This implicitly accepts that the rights of the beneficiaries to which the trustees are to have regard are not confined to those conferred by the Act.

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application of that Act to each type of trust?

2. When might it be appropriate to confer: (i) a life estate; (ii) a licence to occupy; and (iii) a lease determinable on death?

FURTHER READING

Burn and Cartwright (eds), *Cheshire and Burn's Modern Law of Real Property* (18th edn, Oxford: OUP, 2011, ch 15)

Law Commission Report No 251, *The Rules Against Perpetuities and Excessive Accumulations* (1998)

McCaffery, 'Must We Have a Right to Waste?' in *New Essays in the Legal and Political Theory of Property* (ed Munzer, Cambridge: CUP, 2001)

Simpson, *A History of the Land Law* (2nd edn, Oxford: OUP, 1986)

Smith, *Plural Ownership* (Oxford: OUP, 2004, ch 2)

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