

Institution: University of Greenwich
Unit of Assessment: (UoA 20) – Law
Title of case study: Property law and trusts
<p>1. Summary of the impact</p> <p>Professor Mark Pawlowski's published work has changed legal practice and influenced law reform and policy in several fields of property law and equity and trusts. The key beneficiary of his work is the practising legal profession. His work has:</p> <ol style="list-style-type: none"> 1. Changed practices in relation to mutual wills 2. Influenced a change in advice given to clients purchasing a property in joint names 3. Enhanced professional practice in land law, landlord and tenant and trusts law 4. Informed and stimulated practitioner debate in several specialist areas 5. Promoted general public and professional awareness of landlord and tenant issues and property-law matters.
<p>2. Underpinning research</p> <p>English law is changing all the time and busy legal practitioners sometimes provide advice to clients, or information to courts, in ignorance of the latest decisions. Pawlowski has uncovered many areas of law relating to land, property and landlord and tenant, where change has gone unnoticed.</p> <p>For example, Pawlowski and Brown's research [3.4] on mutual wills examined the implications of the current law and, in particular, the decision in <i>Healey v Brown</i> [2002] WTLR 849, that where the subject of the mutual wills is land and property, the will is not enough; there needs to be a separate contractual document. The research looked at the current use of such wills, identifying the reasons for their unpopularity and highlighting the practical consequences of ignoring the <i>Healey</i> ruling. A questionnaire was sent to a sample of 200 probate solicitors throughout England and Wales in 2011, selected from senior probate practitioners found on the Law Society website, grouped evenly amongst five different regions in the UK. The research revealed the absence of any reference to the <i>Healey</i> decision in 81 per cent of responses, and therefore the likelihood that practitioners are not aware of the decision and, in particular, the importance of complying with the Law of Property (Miscellaneous Provisions) Act 1989 when drafting mutual wills which refer specifically to land.</p> <p>A second study [3.5] by Pawlowski and Brown involved empirical research into the consequences of applying the "presumption of equality" in joint ownership cases and whether an express declaration of trust is conclusive of the parties' beneficial shares in the family home. A questionnaire was sent to 200 conveyancing solicitors throughout England and Wales in 2012. The research revealed that a high proportion of clients (33 per cent) were not informed that the presumption of equality will apply regardless of the actual proportions in which they have contributed to the purchase price unless they make an express declaration of trust. Moreover, 48 per cent of clients were not made aware of the potential for enlarging their notional shares by virtue of post-acquisition improvements to the property or subsequent (significant) contributions to mortgage instalments, irrespective of whether they have a declaration of trust.</p> <p>Pawlowski made a detailed study [3.6] of the Court of Appeal decision in <i>Reichman v Beveridge</i></p>

[2006] EWCA Civ 1659. The decision rejected the notion that a landlord has a contractual right to terminate a tenancy for repudiatory breach and to claim “loss of bargain” damages based on a tenant’s fundamental breach. The research found that the decision may have been flawed, given that a number of English decisions were not cited to the Court at the hearing, and that the recovery of loss of bargain damages in the leasehold context is not so out of step with English law principles as to justify its rejection out of hand.

3. References to the research (REF1 submitted staff in **bold**, **REF2 Output)

3.1 **Pawlowski, M.** (2011). Informal variation of express trusts. *The Conveyancer and Property Lawyer*, (3), 245–254. Retrieved from <http://gala.gre.ac.uk/id/eprint/6581>

3.2 **Pawlowski, M.** (2011). Joint ownership and the family home. *Property Law Review*, 1, 68–73. Retrieved from <http://gala.gre.ac.uk/4766/>

3.3 **Pawlowski, M., & Grout, N. (2012). Common intention and unconscionability: A comparative study of English and Australian constructive trusts. *Family Law Review*, 2(3), 164–180. Retrieved from <http://gala.gre.ac.uk/8408/>

3.4 **Pawlowski, M., & Brown, J.** (2012). Problems with mutual wills-a study of probate practice. *Conveyancer and Property Lawyer*, 76(6), 467–483. Retrieved from <http://gala.gre.ac.uk/id/eprint/9431>

3.5 **Pawlowski, M., & Brown, J.** (2013). Joint purchasers and the presumption of joint beneficial ownership-a matter of informed choice? *Trust Law International*, 27(1), 3–17. Retrieved from <http://gala.gre.ac.uk/9695/>

3.6 **Pawlowski, M.** (2010). Tenant abandonment-damages for loss of future rent. *Law Quarterly Review*, 126, 361–365. Retrieved from <http://gala.gre.ac.uk/3534/>

4. Details of the impact

Every day the law expands as new decisions are made and huge amounts of information are generated via new technology. Practitioners are not always sufficiently informed on how more recent decisions have changed the law, leading to poor advice to clients and resultant frustration and misery which could have been avoided. Pawlowski’s research and interventions have helped the judiciary and practising legal profession to catch up on important changes, and influenced reform of law and legal policy to meet the changed circumstances.

Impact 1: Change in practice regarding mutual wills

Mutual wills are used by couples to determine what happens to their home after they both die. If they are not advised that the wills cannot be enforced, they can neither guarantee that their wishes will be respected by the other if they die first, or protect the beneficiary from challenge. The research found that mutual wills are not popular but when used, the potential for problems is significant. The findings were disseminated to those solicitors who participated in the project: positive feedback was returned, indicating a new awareness of the *Healey* decision and the importance of using a separate contractual document signed by both parties complying with the Law of Property (Miscellaneous Provisions) Act 1925. This has avoided the potential for mutual wills to be declared void by the courts for lack of legal formality.

Impact 2: Change in advice given to clients purchasing a house in joint names

People who buy a home in joint names and then need to sell and split the proceeds, face financial disappointment if the law regards their share as less than they expect. But this is exactly what has

been happening. Pawlowski and Brown were able to provide valuable recommendations on the importance of using express declarations of trust, and of making clients aware that the amount they contribute to mortgage repayments, and invest in capital improvements, can affect their share, despite the presumption of equality and the terms of a declaration of trust. In feedback, a significant number of solicitors indicated a change in the advice given to clients. The research has also added to pressure to reform Land Registry practice, making completion of the “declaration of trust” (Panel 10) in the TR1/FR1/TP1 form mandatory. The Law Society and Land Registry issued a joint practice note in January 2013 on joint ownership and the desirability of recording owners’ intentions at the time of purchase using a declaration of trust.

Impact 3: Informed and stimulated judicial debate

The case commentary on “Tenant Abandonment – Damages for Loss of Future Rent” in the *Law Quarterly Review* [3.6] was a highly critical piece on an important Court of Appeal ruling in *Reichman v Beveridge* (2006), identifying a number of English cases not cited to the Court and suggesting that, if they had, a different conclusion on the law may have been reached. Its impact on the legal community is evidenced by a response from one of the Lord Justices of Appeal involved, stating that he was “very interested to find that there were English cases on the point that were not cited to us” and suggesting that the Court may have reached a different conclusion had it been aware of them.

Impact 4: Promoted awareness of landlord and tenant, land law and trusts within the legal profession

Pawlowski’s publications are regularly cited on leading online research tools. He currently has 260 entries on *Lawtel* (<http://www.lawtel.com>), over 540 publications listed on *Westlaw* (<http://www.westlaw.co.uk>) and 198 entries in the online Lexis Library (<http://www.lexisnexis.co.uk>). His publications have been cited in many leading practitioner textbooks on land law, such as Professor Gray’s *Elements of Land Law*, (OUP) and *Maudsley and Burns, Land Law, Cases and Materials*, (OUP), as well as the leading works on trusts law, in particular, *Hanbury and Martin’s Modern Equity*, (Thomson, Sweet & Maxwell). Pawlowski leads a high profile editorial team of practitioners as General Editor of *Landlord and Tenant Review* which provides a valuable forum for his published work and has global reach throughout the common law world. Pawlowski is also Legal Commentator for Lexis-Nexis UK Legal News Analysis, which has a wide practitioner audience.

Impact 5: Promoted public awareness of landlord and tenant and property law

The impact of Pawlowski’s book, *Leasing Commercial Premises*, on general public awareness of landlord and tenant law continues to today. Commissioned in 1999, it comprises a concise outline of the law relating to commercial lettings. It was reprinted by Estates Gazette Publishing in 2002 and is still very popular amongst readers within the legal profession and the public generally. Pawlowski has also been interviewed on property law-related matters for several television programmes, such as *Sky Business Hour* and *BBC Inside Out*, and featured in newspapers such as the *Guardian* and *Independent*.

5. Sources to corroborate the impact

“Thank you very much for the copy article which provides a comprehensive review on this subject. No, I wasn’t aware of *Healey* so it has been a profitable and useful read for me! I am bound to say I will try to advise clients away from the mutual will, having read the article, even more than before because of the practical problems in the implementation and monitoring of such wills.” (email, 17 January 2013, Hansell Wilkes & Co, Solicitors).

“My firm has for some years, particularly when dealing with unmarried purchasers, encouraged clients to enter into a declaration of trust . . . Your quotation of Ward LJ in *Carlton v Goodman* (2002) is a repetition of what many judges have said in many cases. They ought to try sitting at my desk and persuading people to do what is clearly sensible . . .” (letter, dated 30 April 2013, Alfred Truman, Solicitors).

Research on “Joint Ownership and the Family Home”, *Property Law Review*, (2011), Vol. 1/1, pp. 68-73, was well-received at the launch of this new journal. An email (on 16 March 2011) from one of the editors in Australia stated that: “the journal was launched last Tuesday by Sir Anthony Mason, former Chief Justice of the High Court of Australia who mentioned your case note approvingly in his speech.”

The research on “Joint Purchasers and the Presumption of Joint Tenancy – A Matter of Informed Choice?”, *Trust Law International*, (2013), was commented on by the General Editor of the *Conveyancer and Property Lawyer*, as being “a useful and interesting piece of empirical research and the data is important”, (email, 4 January 2013).

The research entitled “Tenant Abandonment – Damages for Loss of Future Rent”, *Law Quarterly Review*, (2010), Vol. 126, pp. 361-365, has received a response (received on 22 November 2010) from a Lord Justice of Appeal stating that he was “very interested to find that there were English cases on the point that were not cited to us.”