

## Here the Trust Act means Trust Act 1973 (QLD)

### Issue 1

*the issues is to whether A can claim an interest in B's house on the basis of a resulting trust or failed joint endeavour.*

**OR**

**\*\*Will (B mother is dead)**

*The house legal name is in the name of XX. The issue here is what can A(child) can do about it about that XX can force what a clearly a legal right on the property. If A(child) can establish that there is a trust back in favour of B(Mother ) then the property goes back to her state and A(child) will get it.*

**Or**

**\*\*Business**

*issue is whether A has an action against B on the basis of a resulting trust or failed joint endeavour arising out of the money advanced to him by her which was used to XXX (purchase the house)*

In this question we should consider below matters:

First look at legal consequences. Who owns the property and so on...

- 1- Have any direct contributions been made to the purchase price? **This will enable to determine if a resulting trust is presumed and to what extent**
- 2- If a resulting trust arises, is there a contrary intention in the transferor or does a presumption of advancement arise?
- 3- Have any financial or non-financial contributions been made, **though not contributions to the purchase price, so as to justify the imposition of an equitable remedy on the basis of a failed joint endeavour**
- 4- What is appropriate remedy to meet the justice of the case

**First step-** First we will analyse who gets what from the property in question

**\*\*Tenancy in common**

( for example: A dad, B Mum, C child 1 have a house in the three of them. A abd B dies. A in his will passed his estate to D (child 2 before marriage to B)

Tenancies in common contain no right of survivorship, so at law the interests that will pass *through A's will to D are her father's one-third interest in the house. Similarly C will receive B's one-third interest, leaving him with a two-thirds interest at common law.*

However, it is open to equity to adjust the beneficial interests of the parties and whatever interests equity believes were beneficially owned by A at the time of his death will pass to D, via A's will. Similarly, any beneficial interests held by B will pass to C, via her will.

- 1- **\*\*Resulting trust**

*A may attempt to establish that he/she has an interest in B's property on the basis of a resulting trust.*

Or

**\*\*Will (B mother is dead)**

*Here if we can establish that there is a resulting trust back in B's favour (mother who is dead), then the property will go back to her estate and will be divided between her children.*

Resulting trusts arise by operation of law and are based upon the presumed or implied intentions of the settlor. Where the legal ownership of property does not accurately reflect the direct contributions to the purchase of that property, then the equity presumed that a resulting trust arises in favour of the purchaser or purchasers in the proportions to which they contributed to the purchase money: *Calverley v Green at 246-7 per Gibbs CJ.*

Only direct contributions to the purchase price are considered relevant for the purposes of this doctrine. The purchase price is the direct cost of acquisition, for example the amount of money paid to the vendor, and includes both deposit money, balance settlement money and the legal obligation to pay a mortgage if any: *Calverley v Green*. Other costs necessarily incurred in the acquisition, including legal fees, stamp duty and costs of borrowing, will also count as contributions towards the purchase price: *Currie v Hamilton*.

**\*\*Subsequent mortgage payments, improvement or furniture**

The purchase price does not include subsequent mortgage payments, improvement to the property or expenditure on furniture and fitting.

**\*\*Man paid more than women**

In *Calverley v Green* the court held that the parties' entitlement was two third to one third in favour of male where he paid a third of the purchase price as a deposit and undertook an equal mortgage obligation for the balance with his female partner.

**\*\*A did not pay the purchase price**

*In this case there is no evidence that A made contributions to the purchase price, so no presumption of resulting trust arises. Here, no entitlement in the property will arise on account of a resulting trust.*

Or

**\*\*B paid the proportion of purchase price**

*In this case, there is evidence that B's money was used (as a contribution or to purchase the house) toward the purchase price: she paid deposit of (\$XXX) and half of the balance purchase price (\$XXX): *Calverley v Green*. A presumption of resulting trust in proportion to B's contributions to the purchase price will therefore arise. There is a presumption (equity will presume) that a resulting trust back in the favour of the person who provided the asset will arise and the other person holds the property in her favour in a resulting trust.*

Or

**\*\*B paid the whole purchase price**

*Here, B paid the whole purchase price of the property. There is a presumption (equity will presume) that a resulting trust back in the favour of B who provided the purchase price will arise in the property and the other person (A) holds the property in her favour in a resulting trust for B. Therefore, the house goes back to B's estate (B is dead)*

**UNLESS there is contrary intention or a presumption of advancement arises**

## 2-**\*\*Rebutting presumption**

A presumption of resulting trust can be rebutted by contrary intention/evidence or overridden by the presumption of advancement. The onus is on the party denying the presumption to prove some contrary intention.

**Presumption of advancement** is that if you have obligation to look after someone, therefore instead of presumption of resulting trust, there is presumption that it is a gift.

### **\*\*\*Contrary intention**

#### **\*\*Contrary intention that it is gift – (female contributed the whole price)**

In *Muschinski v Dodds*, where the female contributed the most of the purchase price, the court found no resulting trust was presumed because a contrary intention was shown namely that the woman wanted to show her faith in the man for his future contribution to the project.

*It is likely a similar outcome would arise in this case on the evidence regarding B's Contribution*

*Or*

*In this case there is no evidence of contrary intention, for example, that money advanced for the XXX (extension of the house) was intended as a gift to B.*

#### **\*\* Contrary intention - Nephew and uncle (Bank account)**

In *Russell v Scott*, the nephew helped out the aunt and they opened a joint bank account. Family argued that if she supplied account money, then there must be resulting trust back in favour of her. The court said no there were plenty of evidence that was her intention was that he takes over everything

*Here, if there is any evidence that A's intention was for B to have the assets, then the presumption of resulting trust will overcome and B is not holding the property on resulting trust for A*

### **\*\*Presumption of advancement**

#### **\*\* child to parent**

There is no presumption of advancement arises from in a case of a transfer from child to parent: *Nelson v Nelson*

*In this case there is no evidence of contrary intention, for example, that money advanced for the XXX (extension of the house) was intended as a gift to B.*

#### **\*\*Husband to wife**

A presumption of advancement can be relied upon by the wife of a married partner. It is presumed that the husband intended to benefit the wife.

*Therefore, B's(Wife) interest is not held on resulting trust and the legal title stays with her.*

**\*\*Wife for her husband**

There is no presumption of advancement in favour of B(Husband) that will override the presumption of resulting trust. There is No presumption of advancement arises where a wife makes a purchase in the name of the husband.

*Here there is no resulting trust in favour of the husband*

**\*\* Partner male to De facto partner female**

There is no presumption of advancement in favour of B(de facto) that will override the presumption of resulting trust. She is a de facto partner and, as such, no presumption of advancement can be raised in her favour: *Calverley v Green*. Her legal interest will therefore be considered to have always been held by her on resulting trust for A.

*There does not appear to be any evidence of A's actual intention to rebut this presumption. The beneficial interest therefore belonged to A and passes to C(child) in his will.*

*Or*

*In this case there is evidence that A's (man) money was used as a contribution towards the purchase price; however, although no presumption of advancement arises in cases where money is advanced by a de facto partner to another (*Calverley v Green*), the evidence is clear that A intended that her money be taken as a gift. The onus is on the party denying the resulting trust to prove some contrary intention, such as a gift or a loan.*

**\*\*parent for his child**

Here, a countervailing presumption of advancement arises as the money was advanced by a parent in favour of a child, which includes a **mother** makes a payment in favour of an adult child: *Nelson v Nelson*

*A presumption of advancement can be successfully raised in C's (child) favour. It matters not that the child was born out of wedlock: *National Executors & Agency Co of Australasia Ltd v Fenn [1924] SASR 470*. Therefore, C's(child) interest is not held on resulting trust and legal title stays with him.*

### **Constructive trust**

*A may also attempt to establish that he/she has an interest in B's property on the basis of a constructive trust arising out of a failed joint endeavour.*

*Although the title to the house is registered in B's name, the court may adjust the beneficial ownership of the property by imposing a constructive trust.*

Constructive trusts arise by operation of law and are imposed by the court irrespective of the intention of the parties. A constructive trust may be imposed where it would be contrary to established equitable principle for the legal owner to deny the beneficial interest claimed by another. It is usually based on unconscionability or estoppel *Muschinski v Dodds*.

In the case of ownership disputes, the equitable principle that has been applied by way of analogy is that which restores to a party's contributions which he or she has made to a joint endeavour which fails, when the contributions have been made in circumstances in which it was not intended that the other party should enjoy them: *Muschinski v Dodds*; *Baumgartner v Baumgartner*

**\*\*Mother and daughter**

The principles have also been applied in cases involving the breakdown of mother and daughter relationship: *Kriezis v Kriezis*

**\*\*Father and daughter**

The principles have also been applied in cases involving the breakdown of father and daughter relationships: *Sweetenham v Wild*

**\*\*Mother and son**

The principles have also been applied in cases involving the breakdown of mother and son relationship: *Hill v Hill*

In determining the equitable entitlement, the contributions that the court can take into account are both financial and non-financial, including 'support, home-making and family care':

*Muschinski v Dodds*; *Baumgartner v Baumgartner*

**\*\*Commercial relationship (husband and wife did an investment property**

In *Muschinski v Dodds* the couple purchased land for erecting a new residence) the woman paid 91% and the man paid 9%. The property had increased in value. The court considered inequitable for Mr. Dodds to retain one-half of the surplus. Each party was entitled to an interest in the property equalled their contributions and to half of the residue or profit of sale. The project was partly commercial and if it was entirely personal it would be different

**\*\*Personal relationship**

*Baumgartner v Baumgartner* involved an entirely personal relationship. The mortgage was in man's name and he had made lump sum payment, but living expenses and mortgage payment came from the pool fund contributed 44 percent to the male and 45 percent to female. The wife had no financial contribution when she was on maternity leave. The court held that starting point is equity favours equality; however this may have to be adjusted where contributions were sufficiently unequal to cause injustice. It was found that 55 to 45% was not sufficiently equal and therefore that was how the parties interest should be held in including the increased value. The court also undertook further adjustment of the lump sum that was paid by male, mortgage payment made solely by him after separation. The woman was given the benefit of a period when she was not working for the birth of the child.

*In relation to quantifying the parties' respective entitlements, these facts seem more like a Baumgartner v Baumgartner situation (because is entirely personal) than a Muschinski v Dodds situation, so in the absence of other evidence as to proportionate contributions the house would be held as to \$100,000 (A) and \$400,000 (B) in the event that a constructive trust was awarded.*