

## EXPRESS TRUST

- Created by:
  - Trust by transfer – I transfer my land to Tom to hold on trust for me
  - Declaration of Trust – I declare that henceforth I hold my land on trust for Tom
- Must be in writing: s 53(1) PLA
  - *Note:* section 54 does not affect the creation or operation of resulting, implied or constructive trusts

## RESULTING TRUSTS

### Purchase Money Resulting Trust

- *Example:*
  - A pays for property but it is purchased in the name of B; or in the names of A and B jointly. Equity **presumes** that A intended to retain beneficial interest
- Someone puts in most of the purchase money and registers the land in B's name; the court will say that B is holding the property on resulting trust on benefit for A (B is the trustee, A is the beneficiary)

### Unequal Contributions

- A, B and C buy land together
- A puts in 60%, B and C each put in 20%, and they have the vendor transfer to the three of them jointly
- IF the presumption of a resulting trust arises, A, B and C hold their joint legal title on trust for themselves as tenants in common in shares proportionate to their contribution

### Purchase Money Resulting Trust

- Only money used for the **purchase** of a property will be caught in the calculation of a resulting trust.
- Money put in **later** will be part of the calculation of a constructive trust, or potentially an estoppel claim

### Rebutting the presumption of a resulting trust

- Evidence of an action intention to pass beneficial interest (e.g. a gift or an advance to be repaid)
  - The intention is that of the **person making the contribution** at the **time of the transfer or purchase**
  - Intention must be actual, and can be express, or inferred from words or conduct
  - The onus is on the person **seeking to rebut the presumption**
  - *Example:*
    - Start with presumption that if A gave property to B, that property is held on trust for A
    - Then rebut if there is evidence of a **contrary** intention such as A intended it to be a gift
  - *Calverley v Green*
- Presumption of Advancement
  - In transfers from:
    - Husband to Wife (not de facto),
    - Parent to Child
    - Mother to Son
      - *Note this is an **exhaustive list***
  - The law presumes the transferor intended to make a gift (advancement)
  - *Nelson v Nelson*
  - *Example:*
    - A purchases property and transfers it to her son B
    - A becomes bankrupt, trustee for bankruptcy will look at the property in B's name and because A put in all the purchase money, they will see that B is holding the property on trust for A, therefore can sell it to recover losses

- This presumption of a resulting trust can be rebutted by the presumption of advancement
- Under advancement, A was intending to give the property to B as a gift, therefore A no longer has an interest in the property
- **However:** the presumption of advancement may still be rebutted if a **contrary intention** can be shown that the party who made the 'gift' still had a beneficial interest in the property
- *Calverley v Green*: Held no Resulting Trust as jointly listed on mortgage which contributed to equal shares
- *Cummins v Cummins* – Held, no Resulting Trust as contrary intention showed they intended to hold in half shares together in equity

## CONSTRUCTIVE TRUSTS

### Common Intention Constructive Trusts

- Recognise contributions made AFTER purchase
- Recognise acts done in reliance on representations about interest in property
- Do not need to be in writing: s 53(2) PLA
- *Example:*
  - Someone contributes to property after its purchase, but they are not on title
  - There needs to be some kind of **common intention** between parties that you are going to get some kind of interest in the property
  - E.g. A is RP of land with a house on it
  - A's new girlfriend B moves in, and B starts paying off all the utility bills and B also pays for some renovations on the property
  - A and B have discussions where B says I'm putting in all this money in the property, I want a share in it
  - A says don't worry, you'll have an interest in the property
  - B continues to pay and then A runs off with another person and leaves B with nothing
  - If there is a common intention that B gets a share in the property and puts in money relying on that common intention, it would be unfair to allow A to turn around and say B doesn't have an interest.
  - A is holding the property on trust for himself and B, and B gets whatever share she has contributed
  - *Ogilvie v Ryan*

### Elements of a Constructive Trust

1. Existence of an **actual common intention** that claimant was to have a beneficial interest in the property
2. Claimant has acted to his or her **detriment in reliance** on the common intention
3. It would be **unconscionable** in the circumstances for legal owner to deny the oral agreement and defeat the beneficial interest that was promised

The common intention has to refer to the person getting **some kind of interest in property**. Cannot be vague like saying something like "don't worry I'll look after you"

**Ogilvie v Ryan** is the authority for common intention constructive trust

### Remedial constructive trust

1. The parties intended to enter into a **joint endeavour or joint relationship**
2. **Pooling of resources** from purposes of the joint endeavour or contributions made for benefit of joint endeavour