

PROPERTY B

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TOPIC 1: EQUITABLE INTERESTS ARISING BY OPERATION OF LAW

- Separation of legal and equitable ownership
- *Express trust: s53*
 - (1) (a) *No interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorized in writing, or by will, or by operation of law;*
 - (b) *A declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;*
 - (2) *This section shall not affect the creation or operation of resulting, implied or constructive trusts.*

RESULTING TRUSTS

RT is someone is going to get an equitable interest in property as a result of a presumption.

Presumption can arise when:

- X confers legal title upon Z (as a gift) BUT equity presumes that X did not intend to transfer all of the equitable interest to Z
Outcome: Z holds the legal title to the property as trustee for X who has the equitable interest in the property
- X buys property and put's it into Z's name without any consideration – gratuitous purchase.
Outcome: equity assumes it is intended that Z holds the property on trust for X
- X and Y use both their names for a property purchase but Y gave no consideration.
Outcome: Equity presumes that X intends Y to hold their share on trust for X.
- Same as above but 30% is provided by X and 70% by Y
Outcome: Equity presumes that the parties intended X to hold the property on trust for X and Y in proportion to their respective contributions – Y is 70% X is 30%

Rebutting the presumption:

- Contrary intention – if the intention was for a gift rather than a trust, onus is on the defendant to prove. It needs to be **before** the transfer rather than after. Intention must be actual and can be express or inferred from words or conduct and onus is on person seeking to rebut the presumption (defendant).
- Presumption of advancement – applies to particular relationships

| Presumption of gift | No presumption |
|--|---|
| <ul style="list-style-type: none"> • Husband to wife • Fiancé (male) to fiancée • Parent to child | <ul style="list-style-type: none"> • Wife to husband • De facto relationships |

Purchase price

- \$\$ and/or liabilities assumed for the purposes of purchasing the property
 - May include stamp duty, registration fees, legal costs & bank charges
- Assumption that liability under a mortgage is included as purchase price. Joint mortgage equates to a joint purchase of the property
- Shares under RT are fixed at time of purchase, no payment after are included

Calverley v Green*: *C and G bought a home in joint names (de facto couple), C paid a deposit of 9250 and balance of 18000 as a joint mortgage. C made all mortgage repayments.*

Result is that it is not relevant for RT since payments were after the purchase. A matter of accounting between them separately – no impact on who owned the property in the context of a RT. RT is proportionate to amount contributed

Cummins v Cummins: *Mr & Mrs C jointly bought vacant land & were registered as joint tenants (jointly registered on the legal title). Contributions to purchase price were Mrs C: 76% Mr C: 24%. Joint mortgage to bank for \$8000 to fund house construction – covenant to complete construction within 6 months. Mr C declared bankrupt years later and avoided tax. Issues – is it RT, what is the PP*

Held the PP was land + construction in this deal because it was in the contract and the covenant.

Furthermore, the RT rebuttal can be looked through contrary intention – after the purchase. Mr and Mrs C had conducted themselves on the understanding that they were joint owners in law & equity.

Presumption of RT rebutted by this evidence since he intended for it to be jointly held – only transferred property for avoiding tax. No reason for equity to intervene.

Factors: can be accidental who pays how much/more, conduct of the parties, matrimonial home rather than business property, legal advice of solicitor (how do you want to own the property, etc), the 8000 were jointly borrowed and joint proceeds in an account for building the property.

Presumption arising from Cummins is that a married couple contributing to the purchase of a matrimonial home can create equal title despite the proportion contributed and who holds the legal title.

CONSTRUCTIVE TRUSTS

Equity may hold that a person has acquired an equitable interest in property to prevent the holder of the legal title from relying on that legal title in an **unconscionable** manner (denying someone else of that interest). Historically, made for women to gain title in the property.

COMMON INTENTION CONSTRUCTIVE TRUST

Ogilvie v Ryan*: *Mr Ogilvie suggested to Mrs Ryan that he would buy a house for them both to live in. She would take care of him for the rest of his life and on his death the house would be hers. O purchased the house. R cared for O for the remaining 2 years of his life. On his death, the will gave her no interest.*

Holland J looked at the principles and involvement of constructive trust. R was supposed to have interest in the property and there was intention for the house to be given (life interest). There was detrimental reliance of personal service and it would be unconscionable to defeat her interest in the property. Consider the effects of whether the interest was defeated and if it would be unconscionable.

Categories:

1. X transfers property to Y with the intention that Y holds it as a trust for X
2. Y owns property and has value increase by direct or indirect financial or other contributions by X on common understanding that X would have beneficial interest in property. E.g. Eaves v Eaves, wife contributed to the property by putting in labor.

Elements:

- Actual common intention - that claimant was to have a beneficial interest in the property, express or implied from conduct as a matter of fact (not imputed), can be before or after
- Detrimental reliance – material disadvantage of some kind, has to be because of the promise
- Unconscionable - deny the oral agreement and defeat the beneficial interest that was promised

CONSTRUCTIVE TRUST IN ABSENCE OF COMMON INTENTION

Muschinski v Dodds: *M&D bought land registered in both names as tenants in equal shares. M gave 90% of PP. Intention was to establish an arts & crafts shop on the property. D would restore the existing cottage and build a home. Relationship ended before the works were done (D did not adhere to his end of the bargain). M sought declaration that their interests were held as tenants in common in proportion to their contributions rather than in equal shares. Dean J***

Not a resulting trust because evidence on intention that D would have equal contribution. M's payment was for purpose of a joint venture and it was frustrated at neither party's fault. M's contributions would not otherwise have been made for D's benefit "equity will not permit [D] to assert or retain the benefit of the relevant property to the extent that it would be unconscionable for him so to do." Deane treated this as a business relationship *it was both business/loving. Partnership model – you got amount of proportion contributed. No equitable interest existed before this court order.

Elements:

1. Resembles a joint venture
2. Frustrated
3. Defaulted/given through no one at fault

Baumgartner v Baumgartner*: *De facto couple. Mr B bought land to build a home. Mr B provided the purchase price and had a loan. They pooled their earnings to cover mortgage, repayments, household expenses.*

Mr B – told friend that building society will not accept both names, they were not married, and there is no need for both our names because he said it is both their house. He intended to put the house in her name after getting married. Ms B claimed an equitable interest in the property when relationship ended.

Common pool of earnings = \$89,000. Mr B ~ 55% Ms B ~ 45%. (any joint endeavor or personal)

Constructive trust of no intention can be found. There were pooled earnings for the purpose of the joint relationship and Mr B's assertion he had sole title to the property was unconscionable. Equity would impose upon him a CT to hold the legal title on trust for himself and Ms B in shares 55/45 (based on their respective contributions to the pool, including allowance for her income lost – 3 months)