

## Resulting Trust/Implied Trust

\*Apply when **Purchase Price** is discussed

2 types:

1. Voluntary transfers OR – ex, gift, present
  - a. Equity presumes B, the transferee, hold property on trust for A
2. Purchase money resulting trust
  - a. Purchased by A but registered in B's name → equity presumes B holds prop on trust for A
  - b. Purchased by A but puts in A and B's name → equity presumes B holds their legal share for A (no matter contributions)
  - c. Purchased by A and B but puts in B's name → equity presumes B hold legal title on trust for B and A in proportion of respective contributions
  - d. Purchased by A and B but unequal contributions and legal title in joint names → equity presumes hold shares as tenant in common in proportion to respective contributions

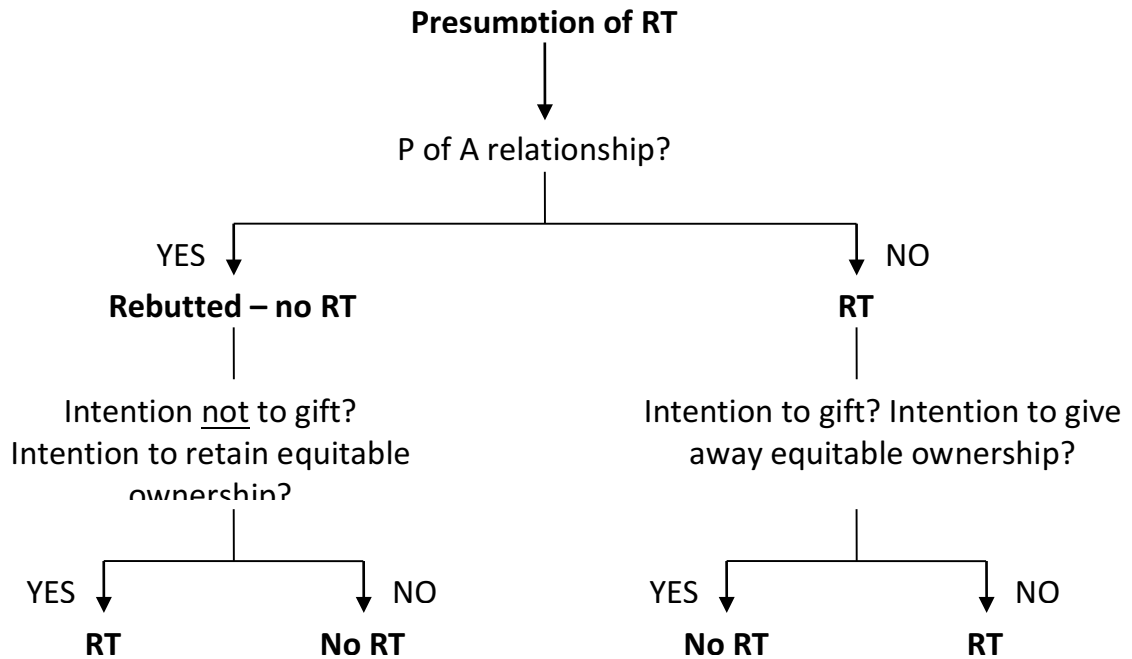
### Purchase money resulting trust

#### 1. What have the parties **contributed to purchase price (PP)** of land?

- What counts as contribution?
  - o Stamp duty, legal costs, bank charges, reg fees → essential costs
  - o YES – liability under a mortgage (*Caverley*)
  - o NO – **money paid after purchase** (eg, mortgage repayments – irrelevant 1 joint mortgagor paid off as C did in *Caverley* since shares under RT are fixed at time of purchase)
- Exception
  - o YES – **payments for building of a house** (*Cummins* – house erected within 6 months (covenant in mortgage). Wider the timeframe between purchase of land and construction, difficult it is to say should be considered part of PP)

#### 2. Is there a **presumption of resulting trust**?

- YES – if legal title **not held proportionate** to contributions made to PP of land
- Legal title presumed held on **RT** for those who provided PP **in shares proportionate to their contributions** (*Calverley*)
- Trust **dated at time of financial contributions** to PP



3. Is it rebutted by **presumption of advancement**?

- Applies to transfers from:
  - YES – husband → wife (**not de facto** – *Calverley*)
  - YES – father → child
  - YES – mother → child (*Nelson* – under family law act, both parents under legal obligation to provide for children)
  - NO – wife → husband (*Cummins*)
- If child is independent/adult – presumption weaker
- Result: presumption of RT rebutted, law presumes transferor intended to make a gift or loan to be repaid (beneficial interest/advancement)
- Intention is – **at or before** time of transfer/purchase

4. Is either presumption rebutted by evidence of **actual intention (AI)** at time of transfer or purchase?

- Presumption of RT rebutted if evidence of AI is to have **equitable ownership distributed** in that manner
  - Intention of parties to **hold land as JT** (*Cummins* – reg as JT, matrimonial relationship, land matrimonial home)
  - Intention both parties have **legal and equitable half-share** in property (*Muschinski* – JT, M provide PP and D restore cottage and build home, land transferred as tenants in common in equal shares)
- Presumption of A rebutted if evidence of AI **not to make a gift** (or loan)
  - Intention **actual** – expressed or inferred from words or conduct

- Onus on person seeking to rebut presumption