

I. EQUITABLE INTERESTS ARISING BY OPERATION OF LAW

Express trusts

- Must be evidenced in writing s 53A PLA
- Does not affect:
 - Creation or operation of resulting, implied or constructive trusts (s 53(2)); or
 - By operation of law (s 53(1)(a))

Trust by operation of law

- E.g. contract for the sale of an interest in land (Lysaght v Edwards)

Resulting trusts

Arise when **legal title** is transferred to someone who **is not intended** to be the beneficial owner.

- Need not be in writing: s 53(2) PLA
- Equity presumes that the transferor intended for some or all of the equitable title to be retained by themselves
- When to assess the presence of this trust: **at the time of purchase/transfer, so only facts in the lead up to purchase/transfer are relevant, and not contributions after the purchase (Cummins)**
- Equity makes the presumption because it presumes that people do not intend to give things away; presumes that people prefer the bargain, so will not give things away without retaining beneficial ownership

Voluntary transfer resulting trusts: where A transfers B property for no consideration, equity presumes that A intends B to hold the property on trust for A/A intends to retain beneficial ownership.

- The presumption can be rebutted by:
 - Presumption of advancement
 - Evidence of contrary intention
- If there is a resulting trust consider:
 - Would illegality prevent the parties from being rewarded?
 - What is the appropriate remedy?

Purchase price resulting trust: Where A contributes x% of the purchase price, there is a presumption that A intends to keep x% of the property even though B is the registered title holder

- Arises when the actual contributions to the purchase price of property are not reflected in the legal title
- A person's beneficial interest is determined solely by their direct, financial contribution to the purchase price

- ‘actual contributions’ made up of:
 - Payment towards purchase of property
 - Includes unavoidable costs that are part of purchase price (stamp duty, registration fee)
 - Assuming liability under mortgage (**Caverley**)
 - Not mortgage repayments made post-purchase (**Caverley**)
- The presumption can be rebutted by:
 - Presumption of advancement
 - Evidence of contrary intention
- Conclusion: is there a resulting trust, and if so to what percentage?

Presumption of advancement

- When particular classes of relationship are involved, the PoA will displace the presumption of RT, such that it is presumed that the donor did intend the property as a gift/that there is no RT (transferee is presumed to take beneficial title).
- Operates where property was transferred from:
 - Parent to child (**Boumelhem**)
 - Husband to wife
 - Male fiancé to female fiancé
 - Not in the de facto relationship context (**Caverley v Green**)
 - Not from wife to husband (**Cummins v Cummins**)
- Presumption of advancement can be rebutted by evidence of contrary intention
 - This question is assessed by reference to conduct and evidence relevant to parties’ objective intentions at the time of transfer
 - Onus rests on B (the transferee) to adduce evidence that A intended B to have beneficial ownership
 - Evidence must be of actual intentions of the parties to pass a beneficial interest (e.g. gift or loan to be repaid), that can be gleaned from words or conduct
 - The words/conduct **must be contemporaneous with the purchase**: at or before the time of purchase, or so immediately thereafter as to constitute a part of the transaction
 - Where there are two purchasers, look at the intentions of both A and B (**Caverley**). If no common intention can be found, B probably fails to rebut the presumption

A new presumption - **Cummins v Cummins**:

- The court introduced a new rebuttable presumption: where a married couple contribute to the matrimonial home, regardless of how it is registered and the amounts contributed by each, equity presumes that they are intended to hold equal shares at equity
- This approach should be confined to its facts; only use it when given a married couple and

matrimonial home. Otherwise apply general resulting trust principles

Calverley v Green (1984)

Purchase price resulting trust case

Facts:

- Mr Calverley and Ms Green, a defacto couple, purchased a home as joint tenants.
- Mr Calverley contributed \$9,250 of his own funds. The rest (\$18,000) was provided from a joint mortgage (both liable for half of the mortgage).
- Mr Calverley made all the mortgage repayments and Ms Green paid the bulk of the household expenses
- Ms Green sought to rely on the legal joint title.

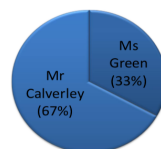
Issue: Are mortgage repayments regarded as contributions to purchase price? And did a RT arise?

Held:

- RT arose based on unequal contributions to the purchase price (notionally not 50/50 under equity). Presumed RT in proportion to what they contributed.
- No evidence of contrary intention of Mr C to Mrs G.
- No presumption of advancement applies because they were not married (de-facto couple).
- Liability under mortgage is considered contribution to PP, shares under RT were fixed at the time of purchase (when the mortgage was taken out by both) and not affected by who repays the amount under mortgage.
- Although at law both at JT. At equity it is presumed RT due to unequal contributions to PP



Joint tenants
(at law)



Tenants in common
(in equity)

Trustees of the Property of Cummins (A Bankrupt) v Cummins (2006)

Facts:

- Mrs Cummins contributed approximately 76% of the purchase price with Mr Cummins providing the balance (24%)
- Registered as joint tenants
- Built a home on the land which was financed by joint finances
- Mr Cummins was subsequently declared bankrupt.
- Mrs C argued they were beneficially entitled to property to the contribution to PP (PP resulting trust). Therefore, she was entitled to 76% of the house over debt collectors.