

EQUITY LAW SEMESTER 1 2019

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Topic 1: Resulting Trusts

A typology of Trusts

- Express trust (based on actual intention to create a trust)
 - ⇒ In words (written or spoken)
 - ⇒ Trusts over lands or buildings must be in writing
- Resulting trust (implied by operation of law)
- Constructive trust (implied by operation of law)

Nature of Resulting Trusts

A “resulting” or “implied” trust is a trust which arises by presumption of law in favour of the settlor or the settlor’s representatives – Jacobs’ Law of Trusts in Australia 7th ed, Heydon and Leeming, ch 12, p 234-5

If the settlor has died, then the resulting trust goes to whoever inherits from that person

Resulting trusts arise by operation of law and are passed on the presumed or implied intentions of the settlor. Resulting trusts do not depend on the intention of their creator, rather they arise from the opposite – the lack of an intention to benefit another. This is most relevant for resulting trusts which are imposed by law in relation to a benefit. Resulting trusts come into existence from the date of the circumstances giving rise to its presumption. Once a presumption of resulting trust has arisen, which has not been rebutted by evidence of actual intention or displaced by the presumption of advancement, the trust is considered to be in existence. Resulting trusts are not subject to the writing requirements of the LPA 1936 s29(2).

Two Types of Resulting Trusts

1. Non-disposal of beneficial interest
 - ⇒ Settlor transfers property to trustees but does not dispose of whole or part of the beneficial interest
 - ⇒ Someone tries to create a trust but ends up retaining part of the beneficial interest
 - ▶ Eg. express trust that fails for lack of formalities - haven't effectively parted with the beneficial interests
2. Purchase of property in name of another
 - ⇒ Purchaser directs property to be transferred into name of a third person and there is nothing to indicate an intention that that person should take the property beneficially
 - ⇒ Someone buys land or buildings and registers it in the name of someone else
 - ▶ Often in these situations there may be a de facto relationship who have a living arrangement when either one party has paid for the property or they have both partially paid but it is in one name.
 - ▶ Upon the breakdown of the marriage one party tries to contest they are the only owner of the property

In these situations – law presumes the settlor or purchaser intended to retain the beneficial interests which has not been disposed of

Instead A has the money and pays the purchaser for the property and puts it in the name of B
If B is meant to take beneficiary then this will work

If it appears from A transfer that B is intended to hold on trusts – that is decisive

If it appears that B is intended to take beneficially – again decisive

But in other cases – **rebuttable presumption that B holds on a resulting trust for A (Presumption can be overturned with inconsistent evidence)**

- ⇒ The property is carried to B
- ⇒ But there is an absence of consideration or presumption of advancement (volunteer) (overrules any resulting trust)
- ⇒ B is presumed to hold the entire interest on trust
- ⇒ B holds the beneficial interest for A absolutely

Automatic RT - 'undisposed beneficial interest situation' categories:

1. Failure of express trust – trust is void or unenforceable

- ⇒ If an express trust fails, the trustee holds the property on trust for the settlor
- ⇒ Trust is void – uncertainty, perpetuity (interest in a property must vest for a certain time) or illegality
- ⇒ Trust is unenforceable – failure to fulfil statutory formality requirements (Writing Requirement in the Law of Property Act.)
- ⇒ Intended beneficiary dies before testator or disclaims interest

2. Failure to state/set out trusts or dispose of all the beneficial interest

- ⇒ “to a on trust” without stating what the trust is or to identify beneficiaries:
- ⇒ Trustee holds the property on trust for the settlor
- ⇒ If you don't identify the beneficiaries then there will be a resulting trust
- ⇒ Failure to dispose of entire beneficial interest – settlor disposes only part of the estate to named beneficiaries:
- ⇒ Residue held on trust by trustee on trust for the settlor or personal representatives
- ⇒ If you only identified part of the property, the rest will be returned to you through a resulting trust
- ⇒ Generally will be a clause to avoid this

3. Property conveyed for a specific purpose that fails

- ⇒ Trustee holds the property on trust for the settlor
- ⇒ If money lent for specific purpose which fails or it becomes impossible to apply the money for that purpose – money will be held by trustee on trust for the lender
- ⇒ Eg, to pay a dividend – Barclays Bank Limited v Quistclose Investments Ltd [1970] AC 567; [1968] 3 All ER 561
- ⇒ Loan by lender to company for purpose of paying dividend which became impossible due to liquidation of company – money held on trust for lender and does not become part of the pool of assets available for other creditors

4. Property is conveyed to trustees for a purpose which is fulfilled (i.e., there is a surplus after the purposes of the trust have been fulfilled)

- ⇒ **General rule – subject to contrary intention, a resulting trust for the surplus arises in favour of the donors/subscribers**

Examples – public appeal for donations for a specific purpose

Undistributed surplus of a fund established by subscription for the benefit of particular individuals may be held on resulting trust for subscribers upon the death of the intended beneficiaries: re Trusts

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General Structure:

1. Who is bringing the claim?

- And against who
- Also state the likely remedy they will seek

Example:

...LOOK TO FACTS is bringing a claim against...LOOK TO FACTS for...TYPE OF ACTION. The will likely be seeking...TYPE OF REMEDY to remedy the detriment suffered.

2. Any co-ownership issues?

3. Is the party claiming a right under a resulting trust?

- Volunteer situation or unequal contributions to purchase price
- Can the RT be rebutted?
 - i. Actual intention
 - ii. Presumption of advancement
 1. Can this be rebutted?
- What are the respective interests?
- Will a CT be awarded?

4. Is the party bringing an action for breach of a fiduciary duty?

- Is it a nominate category?
- Is it an adhoc category?
 - i. Argued by analysis
- Are the indicia satisfied?
- Has there been a breach?
 - i. No profit rule
 - ii. No conflict rule
- Is there a defence?
 - i. Fully informed consent
- What remedy is available?

5. Could the plaintiff have an avenue for equitable estoppel?

- Could they bring an action under contract law?
- Proprietary or promissory?
- Elements?

- Remedies?
- Would a CT be awarded?

6. Could an action be brought for unconscionable bargains?

- Amadio criteria:
 - i. Special disadvantage?
 - ii. Knowledge?
 - iii. Unconscionable transaction?
- Any defences?
- Relief?

7. Will a constructive trust be sought by the plaintiff?

- 4 main scenarios:
 - i. Breach of a fiduciary duty
 - ii. Render a third part liable
 - iii. Where a RT has failed
 - iv. Pursuant to an estoppel

8. Consider the doctrine of laches

- Laches ([Lamshed v Lamshed \(1963\) 109 CLR 440](#)) - unreasonable amount of time taken to seek remedy than what is equitable - you must act within a reasonable time

9. What remedies are available?

10. Are any maxims applicable?

- Look to bulk notes

Resulting Trust Process:

ISSUE SPOTTING:

- ▶ Will be told if an express trust has failed and why – don't need to know this
- ▶ PRESUMED RESULTING TRUST - A provides money which is used to purchase land, and the land is placed in B's name (B has legal title, whereas A has provided all the purchase money – sometimes both A and B will both contribute but the contribution of the parties is unequal)
 - IF A PROVIDES MONEY AND PUTS IN B'S NAME THEN B HOLDS ON RT FOR A



1. What are the circumstances giving rise to a resulting trust?

Two types of resulting trusts: *Megarry J in Re Vandervell's Trusts (No 2) 1974 1 All ER 47*

⇒ Automatic

⇒ Presumed:

- Where title does not reflect contributions to purchase price

State: *Megarry J in Re Vandervell's Trusts (No 2)* is authority that there are two types of resulting trusts; automatic and presumed.

2. Will a presumed resulting trust arise?

Where the legal ownership of property does not accurately reflect the direct contributions to the purchase of that property, it is presumed that a resulting trust arises in favour of the purchaser, or the purchasers in the proportions to which they contributed to the purchase –

Calvery v Green

ON FACTS EXAMINE: which party holds what legal title in the property. THEN, which party made what contributions to the purchase of the property. HENCE, if the legal beneficial ownership does not reflect the contributions, the difference will be held on resulting trust for the contributor!

- 2 situations where it will arise: *Yard v Yardoo Pty Ltd [2006]*

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1) Volunteer situation: Where a person pays the purchase price of property and causes it to be transferred to another or to another and himself jointly, the property is presumed to be held by the transferee or transferees upon trust for the person who provided the purchase money.¹ Deane J at 266.

⇒ The beneficial title to the property is held by the parties in proportion to their contributions to the purchase price (legal title is held in accordance with what the documentation says; but the equitable title is held in the proportion to which the parties contributed to the purchase price of that property)

- Where purchaser pays entire price – *Napier v Public Tree*
- Where funds deposited unequally into a shared bank account – *Russell v Scott*

⇒ For title purchased by multiple parties and held by one – *Chao v Chao (No 3)*

⇒ Example to demonstrate this:

- If A buys a house and pays the purchase price (\$200,000) - the legal title is transferred to A and B as tenants in common in equal shares (1/2 each to A and B as reflected by legal title).
- Because A paid the whole purchase price; the equitable title is held solely by A. **Another way of saying this is that B holds his half interest in that house, as a tenant in common, on resulting trust for A.**
- Presumption of resulting trust has the effect of adjusting the beneficial title, so it reflects the parties' contribution to the purchase price.
- When the property is sold, it gives A entitlement to ALL the proceeds of sale - practical consequence

	Person A	Person B
Purchase Price	\$200,000	\$0
Legal Title (tenants in common in equal shares)	1/2	1/2
Equitable Title	Wholly held by A	-

2) Unequal contribution of purchase money: 'when two or more person advance the purchase price of property in different shares, it is presumed that the person or persons to whom the legal title is transferred holds or hold the

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property upon resulting trust in favour of those who provided the purchase price in the shares in which they provided it' – Deane J at 267;

⇒ Two or more people contribute the purchase price, but the contributions aren't the same; equitable proportions are held in terms of the proportions the parties made.

- Where multiple parties contribute unequal amounts but share title jointly – *Calvery v Green* (1984) 155 CLR 242
- Where purchase money has been provided by two or more parties jointly, and the property is put into the names of one of the parties, equity will presume a resulting trust in favour of the other party or parties – *Calvery v Green* (1984) 155 CLR 242
- Must have been a direct contribution to the purchase price – LOOK TO NEXT STEP

⇒ **NOTE:** equity presumes a joint tenancy when all contributions are equal because 'equity follows the law' and the common law presumes co-owners are joint tenants unless they specifically state they are tenants in common (*Morley v Bird*)

But, equity presumes a joint tenancy when there are unequal contributions (*Calverly at 246-7*).

State: Where the legal ownership of property does not accurately reflect the direct contributions to the purchase of that property, equity will presume a resulting trust in favour of the purchaser (*Calvery v Green*).

State: A presumed resulting trust can arise in two circumstances per *Yard v Yardoo Pty Ltd* [2006].

State: Here the... (STATE WHICH TYPE OF RESULTING TRUST) is likely to apply as...(STATE WHETHER ONE PARTY HAS CONTRIBUTED SOLELY OR WHETHER THERE HAVE BEEN UNEQUAL CONTRIBUTIONS). LOOK TO WHICH CALVERY DEFINITION IS RELEVANT AND QUOTE SECTION 266 OR 267)

3. What are the interests/contributions?