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Resulting Trust

Arises by presumption of law in favour of the settlor or settlor's representatives.

Summary

Resulting Trust

- Presumed RT (purchase money) situation
- RT regarding contributions **to the acquisition cost** of real property
- the presumption is that each party **holds the beneficial interest in the proportion** to that which they contributed **to the purchase price of the property**
 - **if the parties are jointly and severally liable for a mortgage, then 50% of the mortgage amount is treated as each party's contribution to the purchase price**
 - **but repayments of the mortgage are not relevant to the interests under the RT**
- IF someone has made a statement that they have equal shares regardless of what they contributed, the person who is relying on this statement will need to rebut the presumption to give effect to it.

Rebut:

The presumption of RT is rebutted/overruled by

- Evidence of **actual** intention:
 - IF someone (P1) has made a statement **to the other party** (P2) that the other party (P2) may have **an equal interest in the property** regardless of what that **other party (P2) contributed or the time/stages in which it was contributed**, this statement will rebut the presumption of RT and give effect **to the interest of P2 expressed in the statement.**
- presumption of advancement (certain categories there is a presumed presumption of advancement)
 - which categories give rise to the presumption?
 - also the category of 'loco parentis'

If it is rebutted, there is no RT:

- **the equitable interests will be held according to the actual intention or presumption of advancement**

Constructive Trust

- ***Muschinski***
- ***Baumgartner***
- ***Swettenham v Wild***
- CT exists according to contributions (not just monetary), even including child care and mortgage repayments
 - this would be an institutional CT rather than a remedial, meaning it existed at the time the circumstances arose rather than through a court order.

Types: Automatic & Presumed RT

Presumed: purchase of property in name of another (third party): where there is nothing to indicate an intention that that person should take the property beneficially.

- A resulting trust will be presumed where property is purchased and the legal title to it is vested in someone other than the person who provided the purchase money