Resulting Trust

Presumed Resulting Trust

Presumptions

Presumption 1: 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: *Russell v Scott*

Presumption 2: A resulting trust will also be presumed if both parties paid for a property but their contributions are different; each party holds the legal estate in trust for themselves as TIC in shares proportionate to their contribution unless their contributions are equal: *Calverley v Green*

- In *Calverley v Green*, de facto couple bought the house and Mr Calverley provided 1/3 of the purchase price while the remaining 2/3 was raised by a joint mortgage. Court held that they are tenant in common in equity where Mr Calverley holds 2/3 (deposit+ mortgage) and Green holds 1/3 (mortgage) on trusts for themselves

Presumption 3: If a married couple have both advance money to purchase the property (equal shares or not), it will be presumed that they intended to be joint beneficial owners, regardless of whether the property is in the joint names or in the name of one: *Pettitt v Pettitt*

- In *Calverley v Green*, Mason and Brennan JJ stated that the presumption in *Pettitt v Pettitt* does not apply to de facto relationship

Presumption 4: Presumption of advancement: a presumption that the provider of the purchase money intended to make a gift of the equitable title to the holder of the legal title due to their relationship

- Husband transfers property to wife (*Trustees of Cummins v Cummins*)
- Father to child (*Brown v Brown*)
- Mother to child (*Nelson v Nelson*)
- De facto couples?
  - In *Calvery v Green*, Gibbs CJ held that presumption of advancement applies to de facto couples but Mason and Brennan JJ stated that it doesn't

<u>Voluntary Transfer</u>

- Where A transfers property to B voluntarily (no consideration), unless the transfer says otherwise, it is presumed that A had no intention to vest beneficial interest in B, such that B holds the property on resulting trust for A (*Re Vandervell's Trust No.2)*
- However s 44(1) of the *Conveyancing Act* states that 'no use shall be held to **r**esult merely from the absence of consideration in a conveyancing of land as to which no uses or trusts are therein declared'. In other words, no resulting trust is presumed for the gratuitous transfer of real property

Rebutting the Presumptions

- The presumption of resulting trust does no more than call for proof of an intention to confer beneficial ownership: *Russell v Scott*
  - In *Russell v Scott*, aunt and nephew has a joint account where aunt contributed all the money to the account. When she was alive, the presumption of the resulting trust exists where the nephew holds the money on trust for her aunt. However, the aunt's intention was clear that once she was dead, the nephew should benefit by having whatever should stand at the credit of the account. This true intention rebuts the presumed resulting trust when the aunt died.
  - In *Brown v Brown*, Mrs Brown bought a house paying half the purchase price where the other half was paid by the sons, who borrowed money on the security of a mortgage; house was registered in the son's name but Mrs Brown left the house to her daughter in her will
    - Presumed resulting trust: TIC in equity where son held Mrs Brown's proportion on resulting trust
    - Presumption of advancement?
      - It applies to mother and child BUT on facts, widowed mother of modest means using substantially the whole of her assets to contribute to the purchase of real estate points against an intention of advancement; also no moral obligation for Mrs Brown to provide for her sons at the expense of her estate
      - Presumption rebutted—a resulting trust exists
  - In *Cummins v Cummins*, husband contributed 23.7% and his wife contributed 76.3% of the purchasing price. Husband then transferred the property to his wife to avoid tax
    - HCA held that the transaction was void because purpose was to avoid tax
    - Presumed resulting trust: TIC in equity where they both hold proportion on resulting trust for themselves
    - BUT where a husband and a wife purchase a matrimonial property, it will generally be inferred that the property will be divided equally between them irrespective of the contributions that were made. Thus, since there were registered as JT, equity will not interfere with that JT by creating disproportionate shares reflecting their contribution

Resulting Trust and Illegality

- Court should not refuse to enforce equitable rights simply because they arose out of or were associated with an unlawful purpose unless:
  - The statute discloses an intention that those rights should be unenforceable in all circumstances
  - The seriousness of the unlawful conduct is not disproportionate to the sanction and the statute requires the imposition of the sanction to protect the its **objects or policies**
- So far as is possible, rights associated with or arising out of unlawful conduct should only be enforced on condition that the wrongdoer takes all lawful steps to overcome the consequences of that conduct: *Nelson v Nelson*
  - In *Nelson v Nelson*, woman put property in her children's name so as to obtain a subsidised war service loan at a reduced rate; relationship fallout and claim resulting trust. Court held that resulting trust will be granted if Mrs Nelson give back the benefit to the Commonwealth
  - In *Huang v Fu*, similar scenario but in the context of FIRB; need to pay back the proceeds before being able to claim the presumed resulting trust

Constructive Trust to Remedy Unconscionable/Unconscious Conduct

- Constructive trust in this form is a remedial institution which equity imposes regardless of actual or presumed agreement or intention to preclude the retention or assertion of beneficial ownership of property to the extent that such retention or assertion would be contrary to equitable principle: *Muschinski v Dodds*

(i) Unequal Contribution to Joint Endeavours

ASK YOURSELF WHETHER THERE WAS A **PRESUMED RESULTING TRUST** FIRST?

- STEP 1: do the parties' relationships akin to a joint venture?
  - **Test**: whether there is a common understanding or agreement that the funds advanced were to be applied for the purposes of the joint endeavour and that the return from them would take the from, not of repayment of capital contributed, but of a share in the proceeds of the joint endeavour was carried into fruition: *Muschinski v Dodds*
    - E.g. in *Muschinski*, a property was registered as JT but the wife contributed 10/11 of the purchase price. No presumed resulting trust as intention was for joint ownership but their relationship amounts to joint venture
    - E.g. in *Baumgartner*, a property was registered solely in the man's name but both husband and wife contributed to the mortgage and running of the household. TJ found that presumed resulting trust is rebutted. However the **pooling of earnings** indicates the wife's contribution is for the purpose of their joint relationship and their mutual security and benefit. Therefore there is a joint endeavour.
- STEP 2: Joint venture ended without attributable blame (generally satisfied in the case of divorce or relationship breakdown)
- STEP 3: Equity will not permit one party to assert or retain the benefit of property if it would be **unconscionable** for that party to do so: *Muschinski v Dodds*
  - **Test for unconscionable:** wrongful and undue advantage being taken by one party of a benefit derived at the expense of the other party in special circumstances of the unforeseen and premature collapse of a joint relationship or endeavour
    - E.g. in *Muschinski*, it was held that it would be unconscionable for the husband to retain half of the property as JT when the wife contributed 10/11 to the joint endeavours.
    - E.g. in *Baumgartner*, unconscionable for husband to claim full beneficial interest when mortgage repayments and upkeep paid out of joint earnings by husband and wife together.
- STEP 4: Effect of a constructive trust
  - Property was held by the parties (or party in the case of sole owner in *Baumgartner*) on constructive trust
  - However, note that Gibbs CJ argued that the half share held by the husband should be subject to a lien according to equitable accounting principle rather than imposing a constructive trust which is more in line to the approach in *Giumelli*

Further remarks:

- The principles originated from commercial partnerships and therefore extends to commercial arrangements (*Carson v Wood*)
- However, if there is a contract, the court will not override the provision in the contract (*Clancy v Salienta Pty Ltd*)
- In commercial arrangement. There is also likely to be an attributable blame

(ii) Common Intention: *Green v Green*

STEP 1: The parties must have formed a common intention as to the ownership of the beneficial interest in the identified property

- In *Green v Green*, the husband had repeatedly represented to his wife that it was his intention that she should receive some form of proprietary interests in the homes

STEP 2: The party claiming a beneficial interest showed that he/she acted to her detriment on faith of the relevant common intention

- In *Green v Green*, it was argued that the de facto wife moved from Thailand (detriment) in faith of that the husband's promise
- "Although one could argue that there was no detriment because the acts could be mutual love and affection, the wife's repeated raising of the ownership issue showed the importance of the houses to her and thus, an inference can be drawn that she did those things to her detriment relying on the intention. The burden is on the defendant to show that the wife did not do so"

STEP 3: it would be fraud to say that claimant had no beneficial interest in the property

STEP 4: Effect of constructive trustee

- P holding beneficial title to the property on constructive trust

Note: it is probably better to argue such cases through proprietary estoppel (see *Giumelli*)

(iii) Stolen Property

- Thief has possessory legal title to stolen property but beneficiary possessory title was held on constructive trust for the original owner. The original owner can trace the proceeds: *Black v S Freedman*
  - In *Black*, employee stole money from his employer and deposited some of it into his wife's bank account and purchased circular notes with the rest. Traceable (see Topic 9).
  - Voluntary third party who received the stolen funds will be liable to restore the original property or its traceable proceeds after receiving notice: *Heperu Pty Ltd v Belle*

(iv) Mistaken Payment

- Contrary to *Chase Mahattan Bank v Israel-British Bank*, the mere mistake in the payment does not generate a constructive trust: *Wambo Coal Pty Ltd v Ariff*
- A constructive trust will arise if (1) mistaken payee knew that it was a mistake (category (i)-(iv) of *Baden*) and (2) the money could still be identified at the time such knowledge was acquired (still holds the funds): *Wambo Coal Pty Ltd v Ariff*
  - In *Wambo,* the first wrongful payment was dissipated by the payee before he had knowledge and therefore no CT; however, the second payment, the payee knew that it was a mistake but still dissipated the money and thus, CT arises

(v) Remedial Constructive Trust

- Unlike the English Court, in *Muschinski*, Deane J recognised that constructive trust can be both institutional and remedial. However, the court in *Giumelli v Giumelli* stated that before a constructive trust is imposed, the court should first decide whether there is an appropriate equitable remedy which falls short of the imposition of a trust (e.g. equitable accounting and adjustments (see *Gibbs CJ* in *Muschinski*) or equitable proprietary estoppel in *Giumelli*.)