

(b) The 'purchase money' situation.

This situation arises where legal ownership does not reflect the monetary contributions each party makes to the purchase of the land. This is if the legal title suggests that someone has taken title to land, who did not make any contribution to the purchase of it, it was not intended that that person be conferred a benefit in that way.

Example 1:

- Only (A) contributed to the purchase of a fee simple interest in land, but only (B) becomes the registered proprietor. Equity will presume that the parties intended that (B) hold their interest entirely on trust for (A) considering (A) paid for the entire property.
- Why is this different to the voluntary transfer situation?
 - The 'voluntary transfer' situation involves a voluntary transfer, imagine Gina holds the fee simple interest in Black acre and transfer it voluntarily by way of gift to Matthew. But in this 'purchase money' situation a new party, Nick is transferring the fee simple interest in Black acre to Gina (who provided the purchase price), but (B) goes onto the title.

Example 2:

- Only (A) contributes to the purchase of a fee simple interest in land, but (A) and (B), both become registered proprietors. Equity presumes that the parties intended that (B) hold their share of the interest entirely on resulting trust for (A).

Example 3:

- (A) and (B) both contribute to the purchase of a fee simple interest in land, but only (B) becomes registered proprietor. Equity presumes that the parties intended that (B) hold their share of the interest on resulting trust for (A) in proportion to their respective contributions.

Example 4:

- (A) contributes 80% to the purchase of a fee simple interest in land, whilst (B) contributes 20% but both become registered as joint tenants (entitlements at law of joint tenants would mean that they each have a 50/50 share in the property).
- Equity will presume in this situation that the parties intended to hold their share of the interest on resulting trust for themselves as tenants in common, and in defined shares proportionate to their contributions (so, 80/20).

Rebutting the presumption of resulting trust (Calverley v Green (1984)):

- Equity's presumptions about there being no intention to confer a benefit are just a default position. This means they can be 'rebutted' by evidence of facts about the transaction in question.
- The presumption can be dislodged or overcome by evidence of contrary intention.

Evidentiary propositions:

1. Contrary evidence of what, and as at when?
 - Contrary evidence must be of contrary intention (i.e., intention to make a gift, or confer a benefit).
 - It can only be from before, or at the time of the transaction.

2. Who bears burden (or onus) of proof?

- The party who is disadvantaged by the presumption, is the party who bears the onus of rebutting the presumption.

3. Where more than one person contributes to the land's purchase? (only applies to situations like example 4)

- In order for the party disadvantaged by equity's presumption to successfully rebut it, they must adduce evidence of a contrary common intention – an intention that (A) and (B) commonly shared.

Calverley v Green (1984):

Facts:

- Calverley paid the \$9,000 deposit, and both of them borrowed the remaining \$18,000 because no bank was willing to loan only him the \$18,000. The loan was secured by a mortgage that the lender took over the property. Under the mortgage agreement, they jointly assumed liability to pay the lender the sum that was borrowed. This meant the lender could pursue either of them for repayment if they defaulted on their repayments. However, only Calverley made subsequent mortgage repayments. They separated.
- Ms Green was relying on her position in law (50/50 as joint tenants), Mr C relying on his position in equity (he believed he was entitled to the entire property because he paid the entire thing). Ms Green has been disadvantaged (she would need to rebut the presumption) here because she has gone down from 50% (which is what the law is saying she is entitled to), down to 33% which is what equity is entitled to.

Held:

- Given that 2/3 of the purchase money had been borrowed from the bank, and Ms G had assumed liability under the mortgage agreement to which the remaining \$18,000 (rest of deposit) was lent, she had made a 1/3 contribution to the purchase money. If the bank had allowed him to borrow the money without Ms G also signing the mortgage agreement, she would get nothing.
- The HC ultimately concluded that Ms Green had contributed to the purchase price of the property and as a result, the HC clarified that the assumption of liability under a mortgage agreement counts as a contribution to the purchase price, even if the person never makes any repayments.
- Mortgage liability as contribution:

Equity says: unless your contribution is "part of the price to get the property in the first place," no PRT.

The (counter) presumption of advancement:

- Where the relationship between the transacting parties (A) and (B) is of a certain kind, equity will not make an ordinary presumption of resulting trust.
- In this case, equity will make exact opposite of its usual presumption – it will presume that (A) did intend their act of generosity or conferral of a benefit on (B).
- The presumption of advancement is made as much in the voluntary 'transfer situation' as in the 'purchase money' situation.

Certain categories where the court will make a counter presumption of advancement, instead of RT: