

Resulting Trusts

- Arise where one person (the 'settlor') confers title to property to another person but retains beneficial (equitable) ownership of the property in whole or in part.
- Not imposed by law against the intentions of the settlor, but gives effect to his/ her **presumed intention**.
 - Must satisfy requirement of certainty of subject matter and object, but not certainty of intention (intention is presumed)
 - **Any presumption equity makes about a person's intention can be rebutted by evidence of actual intention.**
 - Including gifts *Russell v Perpetual Trustee*
- Statutory requirement of writing does not apply to RT *LOPA 1936 s29 (2)*.
- Two main circumstances in which are resulting trust will arise *Vandervell Trustees Ltd*

1. Automatic Resulting Trust

- Where there is incomplete disposition of a beneficial interest in property, remaining trust property is held on RT for the creator of the trust because it presumes the creator intended to receive any leftover beneficial interest.

2. Presumed Resulting Trust

- A makes voluntary payment to B, or pays wholly or in part for the purchase of property which is vested either in B alone, or in joint names of A and B. There is rebuttable presumption that A did not intend to make a gift to B and so money or property is held on trust for A if he/she is sole provider of the money or in the case of joint purchase by A and B, is shares proportionate to their contributions.

Automatic RT

- Four principal situations in which Automatic RT may arise:
 1. **Failure of express trust** *Vandervell*
 - Appointed trustee holds property on resulting trust for settlor or if settlor deceased, on RT for the settlor's personal representatives.
 - May fail because of uncertainty of subject-matter/ object, illegality¹, incomplete constitution, non-compliance with statutory formalities or because intended beneficiary dies prior to trust taking effect.
 2. **Failure to dispose of entire beneficial interest**
 - Intended trustee holds the undisposed property on RT for the settlor, or if settlor is deceased, the settlor's personal representatives.

¹¹ Equity looks at circumstances of case and the law that has been breached before determining where RT should apply; *Nelson v Nelson*

- I.e. man establishes a trust for payment of annuity to his widow for life, but makes no provision in the trust instrument for destination of the fund upon the widow's death. The trustee of the express trust holds the remaining capital of the fund on RT for man's personal representatives. RT in this context would not arise where contrary intention is expressed or can be inferred from terms of disposition.

3. Where purpose of a trust fails/ cannot be effected

- Beneficial interest in trust money/property can be construed as being held by intended trustee on RT for the settlor, or settlor's representatives.
- Doesn't impact where a court may apply property to another object as near as possible to the stated purpose, where property cannot effect settlor's original charitable purpose.

4. Where trust surplus exists after satisfaction of the purpose of a trust *Smith v Cooke*

- The unexpended money /property will revert to the donor or settlor under RT *Re Gillingham Bus Disaster Fund*.
 - Presumed that the settler/donor did not intend to part with his/her money/property absolutely, but only to the extent that his/her wishes as declared by declaration of trust are carried into effect.
 - This form of RT arises in 2 principal context:

1. Where amount subscribes to a public appeal for donations for a specific purpose exceeds that which is required for that purpose.

2. Where there is undistributed surplus upon dissolution of contributory fund.

○ Contribution to purchase price:

- Where purchase money is provided by two or more parties jointly and property put in name of one of the parties, equity will presume RT in favour of the other party *Chao v Chao*
- Where two or more persons contribute to purchase of property in unequal proportions and title in joint names, equity presumes the legal title is held on RT in proportions equivalent to proportion of contributions. *Calverley*
 - Contributions must go towards purchase price during/ immediately thereafter as to constitute part of transaction *The Ship v Euroceania*
 - Look at what was provided by parties at the date of purchase *Calverley*

- Onus on person asserting existence of trust *Elddin v Hamed*

▪ Joint tenancy = right of survivorship², c.f. tenancy in common³

Contribution	Not a contribution to purchase price
<ul style="list-style-type: none"> ➤ Payment of money to vendor <i>Field v Loh</i> ➤ Payments made to another party for purpose of paying part of purchase price also included <i>Brown v NSW</i> ➤ Incurring a mortgage liability to pay purchase price⁴ <i>Calverley</i> ➤ Legal fees, stamp duty, incidental costs associated with costs of acquisition <i>Currie v Hamilto</i> if prior to purchase ➤ Hire purchase agreement <i>McBride v Christie's</i>⁵ ➤ If property is purchased in stages/ developed as part of a single project of development <i>Trustee of the Property of Cummins v Cummins</i>⁶ 	<ul style="list-style-type: none"> ➤ Tiny contributions may be discounted as <i>de minimum</i>⁷ contribution <i>Yung v Yung</i>⁸ ➤ Mortgage repayments, if made by a party who incurred no mortgage liability at date of purchase <i>Tabill v Creswick</i> ➤ Money expended on improvements <i>Lyon v Howard</i>, upgrade or maintenance <i>Pettit v Pettit</i> to the property will not be considered as contributions, unless common intention or agreement is enforceable, or gives rise to estoppel <i>Patrick Jones v Catt</i>. ➤ Where purchase moneys have been provided as a loan <i>Melbourne Orthopaedic Group</i>. Onus of proving the money was as a loan and not a gift lies with person claiming it is a loan <i>Heydon v Perpetual Executors</i> ➤ Consideration for love and affection is not valuable consideration to give rise <i>Xiao Hui Ying</i> ➤ Payment of rent <i>Savage v Dunningham</i>⁹.

○ Rebuttal of Presumed RT

- May be rebutted in part or conditionally. I.e. admissible evidence may show an intention for a resulting trust to operate until occurrence of a specified event (i.e. death of

² If one dies, interest distributed equally amongst surviving tenants.

³ No right of survivorship. On death of a tenant, interest devolves via laws of succession.

⁴⁴ Beneficial interest of parties calculated on initial liability, not on bases of who made payments. However, there was no intention to both pay mortgage, it is open to the court to find no contribution made by 'passive' mortgagor *Thornton v Hyde*

⁵ If rental payments in an agreement go towards acquiring title, may constitute contribution to purchase price.

A painting was purchased by a family company using finance from a finance company under 'equipment lease'. Under the lease, family company would be owner of painting after all lease payments made. **HELD:** lease payments constituted as contribution and family company held painting on RT.

⁶ HC allowed amounts to be accounting for in RT where undeveloped land had been purchased and built upon.

⁷ Not worthy of equity intervention

⁸ \$400 contribution to house purchase ignored.

⁹ Claim made by 2 flatmates who made contributions to rent an apartment, where tenancy held by third flatmate. 2 flatmates claimed RT over leasehold. **HELD:** rent paid for use of an asset, not to acquire it = no RT.

transferor/transferee) in which case, the property must be dealt with pursuant to the express/inferred intention.

1. Evidence of contrary intention *Gabini v Gabini*

- If inconsistent with true intention, courts will not give effect to RT.
- **Admissible evidence** comprises of the acts and declarations of parties before or at the time of purchase *Calverley*, or so immediately thereafter transaction *Markoska v Markoska*.
 - Subsequent declarations admissible only as evidence against the party who made them.
 - Evidence of circumstances surrounding transfers is admissible, whether written or parole evidence *Sivritas*
 - Courts cannot impute to the parties an intention they didn't have.
 - Express trust/ express agreement inconsistent with the operation of the presumption/ documentary evidence that the transferor intended to divest himself/ herself of the beneficial interest.
 - Proof of a promise amounting to consideration may further rebut.

2. Presumption of advancement

- The relationship of the parties is such that the transferor has a natural obligation to provide for the transferee (subject to contrary intention).
- Transferor intended transfer to operate by way of advancement of gift.
- Onus on rebutting presumption lies on person asserting RT *Calverley*

i. Husband to wife *Kais v Turvey* (not including de-facto) *Calverley*

- Wife to husband does not attract presumption *Muschinski v Dodds*
 - Judicially criticised as anachronistic and not reflective of modern societal practices¹⁰. Judicial statements to the effect that the presumption is too entrenched in law to be easily discarded.

ii. Man to fiancée *Wirth v Wirth*

- If marriage does not occur, gift should be returned. If not, held on RT *Jenkins v Wynen*

¹⁰ Deane J in *Calverley v Green*

iii. Parent to child (includes illegitimate or adopted child, but not step-child, and not between siblings *Noack v Noack*)

- Not necessary for child to prove financial need for support *Callaghan*
- Applies to adult children *Brown v Brown*

iv. Loco parentis relationship (in the place of parent)

➤ **Do not raise presumption of advancement:**

- Provision of deposit by son for mother *McDermott v McDermott*
- Sister *Noack*
- Brother *McGregor v Nicol*
- Nephew *Russell v Scott*
- In-law *Knight v Biss*
- Step-child *Townsend v Townsend*
- Grandchild *Soar v Foster*

▪ Can rebut presumption (may be partial) by admissible evidence that no gift was intended.

- Onus lies on person alleging existence of RT.
- Admissible evidence
 - Instrument pursuant to which title is transferred
 - Acts and declarations of the parties before or at the time of the relevant transaction, or so immediately thereafter as to constitute a part of the transaction.
 - Subsequent acts/declaration only admissible against party who made them.
 - I.e. the transferor has reserved a life interest in the property, or that the transfer was motivated for reasons inconsistent with an intention to confer beneficial ownership, will rebut the presumption of advancement.
 - Mere retention of title documents to the property transferred is not of itself sufficient to rebut the presumption of advancement.