

Implied trust of the home

Express = need evidence in writing S.53 (1) (b) LPA 1925

Implied = no need of writing S.53 (2) LPA 1925

Resulting trusts

Usually involves a contribution to the initial cost of the home and it is whole in the name of another person. Equity does not presume an outright gift but rather that the person who gave the money wanted to retain a beneficial interest in the property. **Bull V Bull**, mother and son bought a house and put it in the sole name of the son. When he got married his wife wanted to kick out the mother in law. The court held that they were tenants in common behind a statutory trust for sale.

The share of the interest is usually the proportion in which they contributed to the value of the house

Cowcher V Cowcher = Mrs. paid one third of the price of the house and later paid for some of the instalments the husband paid for the rest. When they divorced the wife asked for half but the court gave her only a third.

Tinsley V Milligan = Later mortgage payments can be taken into account in a resulting trust if they could have been anticipated at the outset

Constructive trusts

It is based on common intention of the parties to share the properties. In **Lloyds Bank Plc V Rosset** Lord Bridge says that the intention can either be

1. Express, based on evidence of express discussion
2. Inferred from conduct

1. Express agreement

Lloyds Bank Plc V Rosset
Clough V Killey

Abstract: It was declared that (a) C held a property on trust for sale and that the net proceeds of the sale on trust were to be 75 per cent to C and 25 per cent to K; (b) K to be appointed an additional trustee; (c) the sale of the property was ordered; (d) C was ordered to pay the second and third plaintiffs, WS and RS, GBP 6,223 plus interest, and (e) costs be awarded against C. C appealed against the award to WS and RS. K cross-appealed claiming a 50 per cent share. The judge had found that C and K were to have set up home in a farm. So that C could obtain a mortgage, K had signed a disclaimer on the understanding that she and C would marry and occupy the property together. The property included a cottage which, when renovated, was to be sold to WS and RS who were K's parents. K gave evidence that she had paid GBP 12,500 into C's bank account and had spent GBP 5,343 on the home. K had also been heavily involved in restoration work on the property. The relationship having broken down, K commenced the instant proceedings claiming a joint beneficial interest in the property having acted on a common intention to her detriment. The property had a current market value of between GBP 140,000 and 150,000. WS and RS claimed that they had spent GBP 6,223 on fixtures and fittings for the cottage which was to be offset against the eventual purchase price and that the sale had been frustrated when C demanded too high a price.

Summary: Held, allowing the appeal and the cross-appeal, that (1) there was evidence that K had acted to her detriment and the judge had accepted K's evidence that the express common intention between the parties was that there should have been a joint interest. There was a constructive trust although the case could have been equally well argued on the basis of proprietary estoppel. C should not be allowed to resile from his promise of equal shares, whether or not the common intention had been formed after the acquisition, and K should have a 50 per cent share of the net proceeds, *Grant v Edwards* [1986] Ch. 638, *Lloyds Bank Plc v Rosset* [1991] 1 A.C. 107 and *Gissing v Gissing* [1971] A.C. 886 followed. Given the express common intention, it was not appropriate to adopt a broad brush approach, assessing

K's share on the basis of her labour and actual contribution *Eves v Eves*, distinguished, and (2) the judge rejected the frustration argument, but found for WS and RS on a restitutionary basis they had not pleaded, that C had been unjustly enriched. The expenditure had been incurred voluntarily for their own purposes and they had repudiated the agreement to buy the cottage when the relationship between C and K appeared to have broken down. The cottage could have been purchased and then resold if WS and RS had not wanted to live in it themselves.

Detrimental reliance

The person asserting the claim must show that he has done something to his detriment (per Lord Bridge)

Gissing V Gissing

Eves V Eves = the man told the woman that the only reason the house was being put only in his name was that she was under 21. In reliance of that she had two children, redecorated parts of the house and did heavy works (she demolished a garden shed). She was awarded a quarter shares in the proceeds for sale.

Gran v Edwards = the man bought the property in his name and that of his brother and told the woman that he did so just because she was divorcing from her husband and it could have affected it if she had her name on a property with another man. The man paid the deposit and the mortgage and the woman paid to keep the home. The court entitled her to half of the share.

2. Inferred common intention

In *Gissing* Lord Diplock said that common intention is what a reasonable man would infer from conduct.

No beneficial interest

In absence of an agreement, expressed or implied, indirect contribution will not avail the woman claim for a share in the property. The following types of conduct will not infer an acquisition of an interest:

❖ Improvements to the home.

Pezz v Pezz = the house was in the sole name of the wife, the husband claimed a share in the proceed for sale when they divorced. The wife paid for it but the husband claimed beneficial interest for helping with redecoration of the house and the garden. The court held that:

- There was no presumption of advancement
- There was agreement that he should acquire a beneficial interest, it was a gift to his wife.

Mussey V Palmer = the wife paid for an extension to the house and the court decided she had a beneficial interest, although they could not agree whether it was a resulting of a constructive trust.

Thomas V Fuller-Brown = a woman carried out substantial works to the man's house, she had no beneficial interest.

❖ General works around the home

Lloyds Bank Plc V Rosset = the man bought the house with his money in his own name. Unknown to his wife he borrowed money from the bank to pay for improvements. The wife supervised the works. The man became insolvent and the bank wanted to sell the house, the wife wanted a share. The court said no, it is normal for a wife to supervise the works in her husband house.

❖ Contributing with her income to other expenses in the household.

Gissing V Gissing = home was in husband sole name, he also paid the mortgage with his money. She paid for herself, their son and some furniture. When he left she claimed a beneficial interest, but she failed because there was no common intention at the time of the acquisition of the house that she should have had a beneficial interest.

Burns V Burns = Fox LJ Made an obiter comment that if the woman makes a substantial contribution even indirectly it could make her acquire a beneficial interest. In the case Mrs Burns had done no contribution so she did not have a beneficial interest.

❖ Raising the family

Shares in the proceeds of sale

Resulting trust= proportion to the contribution made before the purchase price, later instalments don't count.

Constructive trust=it is inferred by conduct.

Cowcher V Cowcher = the share of her interest was unaffected by the later instalments is just the intention at the time when the property is purchased that counts.

Abstract: Rights of property between husband and wife are in principle the same as between strangers; they do not alter on the break-up of a marriage. Per curiam: It is desirable that solicitors dealing with the purchase of a matrimonial home should invariably enquire of the spouses as to their intentions regarding beneficial ownership. H and W bought a house for GBP 12,000 in 1963. The house was conveyed to H alone. It was agreed that W should be treated as having provided the GBP 4,000 which was paid in cash. The remaining GBP 8,000 was borrowed by a loan secured by a mortgage of the house and of a with-profits endowment policy for GBP 8,000 on H's life, which was written for the benefit of W under the Married Women's Property 1882 subject to the charge for GBP 8,000. W paid some instalments when H was unable to do so. The marriage was dissolved in 1971 and W claimed a half share in the house; H contended that she was entitled only to one-third.

Summary: Held, (1) that the effect of the payment of instalments by W was not to alter the beneficial interests but to make H liable to account for those payments to W when the proceeds of sale were divided; (2) that no unequivocal evidence could be found of an intention that the beneficial interests should be different from the proportions in which the purchase money had been advanced: accordingly W was entitled to one-third only of the proceeds.

Springette V Defoe = when the property was bought in joint names and no mention was made about the beneficial interest the court inferred that the share corresponded to the proportion in which they contributed.

Drake V Whipp = an initial resulting trust can be displaced by an express common intention of a constructive trust. An unmarried couple bought a bungalow for conversion, the woman overall contributed with 19%. The court of Appeal emphasized that assessing the share is very different in resulting trusts from constructive trusts. In resulting trust it is the proportion of the contribution in constructive trust it is inferred by conduct.

Clough V Killey = if there is an express agreement as to the size of the share then the contribution does not matter.

Gissing V Gissing = if there is nothing expressed the court should try also to infer from conduct.

Midland Bank plc V Cooke = the size of the share can be inferred from conduct. Mrs. Cooke contributed 6.47% to the purchase of the family home; the rest was put by the husband. The trial judge gave the wife the proportion she paid, but the court of Appeal took the view that they were a couple who wanted to share everything and they divided the beneficial interest evenly.

Pett v Pett

Abstract: The [Married Women's Property Act 1882 s. 17](#) is purely procedural; it does not confer on the court an unfettered discretion to override existing rights in property, or to apply any notion of family assets not to be found in English law in determining disputes as to title or possession after a marriage has broken down. Such issues involve questions of social policy which should be dealt with by Parliament. The legal title to H and W's former matrimonial

home was in W alone. H had not paid any money towards its purchase but he had redecorated and improved the home, thus enhancing its value. Following a divorce H issued proceedings under s. 17 claiming an interest in the proceeds of sale of the home.

Summary: Held, allowing W's appeal, (1) that s. 17 was merely procedural, and (2) that in the absence of any agreement or estoppel to the contrary W was absolutely entitled to the home or the proceeds of its sale.

Gissing v Gissing

Abstract: Where the matrimonial home was conveyed into the name of one spouse only and there was no agreement or understanding or expression of intention that the other spouse, though she had contributed, should have a beneficial interest therein, the law of trust would apply to resolve the entitlement of each spouse. The respondent made no direct contribution towards the purchase of the matrimonial home. She, however, spent her own money on furniture, improvement of the lawn and the family's clothes. The parties got married in 1935, purchased the house in 1951 and the respondent obtained a decree absolute in 1966.

Summary: Held, that it was not possible to draw an inference that there was any common intention that the respondent should have any beneficial interest in the matrimonial home.

Eves v Eves

Abstract: Where a man leads a woman, to whom he is not married, to believe that she is to have an interest in a house which he has purchased, and the parties maintain and use it for their joint benefit, the court will find a constructive trust in favour of the woman that the house is held partly for her benefit. P, a woman under 21, and D started living together in 1968, and in 1969 they had a child. D bought a house for them to live in, telling P that he would have had it transferred into their joint names, had she been over twenty- one. At the trial he admitted that her age was merely an excuse. The house was dilapidated and P did a great deal of heavy work improving it. They had another child, but in 1972, D married another woman. In 1973 P was compelled to leave the house with the children because of threats of violence. She applied for a share in the house.

Summary: Held, P had been led to believe that she was to have a share in the house, part of the bargain being the work she had done in improving it, and the court made a declaration that D held the house on trust as to one- quarter in her favour.

Tinsley v Milligan

Abstract: Even where title to property has been acquired in a course of illegal conduct, a claimant to an interest in it may still seek to assert his claim, so long as he does not plead, or rely on, an illegality. Two parties purchased a house in the sole name of one, but on the understanding that they were both joint beneficial owners of the property. The purpose of the purchase was to perpetrate a social security fraud. When the parties fell out, P, in whose name the house was registered, asserted her right to sole ownership of the property. The other counterclaimed that she had an equitable right in it. This was allowed by the court, and P appealed.

Summary: Held, dismissing the appeal, that despite the fact that the property had been acquired for fraudulent purposes, the equitable right of the claimant would stand.

Reform

Law commission discussion paper "Sharing Homes" says that the share will be based both on direct and indirect contribution, so the money given at the beginning and the contribution to the household expenses, without looking at inferred intention. This obviously creates certainty. So in cases like **Burns V Burns** where one person pays the bills and the other the mortgage the court can infer that the person paying the bills intended to acquire a share in the property. In the recent case of *Le Foe V Le Foe* the judge said that the fact that one paid the mortgage and the other for the day-to-day expenses was just an arbitrary way of allocating expenses.

Constructive trust and proprietary estoppel ??