

Course Title: Law of Property
Course Code: LW2206
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In advising Benny's position of the interest over the said property ("the flat"), it is necessary to examine the relationship between Amy and Benny, because, "the flat" is at Amy's sole name. It is not arguable, Amy is the legal owner and subsequently withheld the legal title. Also, they are unmarried couple and started cohabiting lived at "the flat". Besides "the flat" was free of mortgage, in virtue of Amy's earned profits made from her investments. Thus, it is difficult for Benny to entitle as he wished at least a half share of "the flat". In analysis the proposition of legal authority, there are two limbs of recognised interest over "the flat", either legal interest or equitable interest.

Legal interest is binding upon to the whole world, all subsequent created legal or equitable interest. Admittedly, Benny did not have such legal interest (or estate). The legal interest (or estate) is enforced by the common law rules, as well defined at Section 2 of CPO¹ in statutory and creates into formalities (emphasis on 'form'). It means that "the flat" is to be disposed (i.e. transferred and created) its legal interest by assignment ("conveyancing document"). Must be in the form of a deed signed, sealed and delivered by the vendor (one hold legal title as legal owner) to effect a valid transfer of legal estate². Owing to Amy's sole name over "the flat", then Benny did not have such legal title.

Nevertheless, it could be unfair or unjust, whether Benny did not qualify his legal title to ignore his financial contribution at the past. Under the rule of equity may intervene to bring equitable remedies to recognise his equitable interest. It is derived from the equitable principle of "equity looks on that as done which ought to be done." The courts exercise their discretion to rectify the defects of common law rules to grant an order of specific performance to demand the property its entitled equitable right. Equity is only concerned with the substance. By way of recognised proprietary interest creates in prevailing of legal interest under equitable doctrine of estoppel³. At

¹ Section 2 of the CPO defines a "legal estate" including: (a) a term of years absolute in land; (b) the legal interest in any easement, right or privilege in or over land for an interest equivalent to 'a term of years absolute'; and (c) a legal charge.

² According to Section 4(1) of the CPO, the legal interest will only be recognised by the assignment in deed. Provides that "A legal estate in land may be created, extinguished or disposed of only by deed." Subsequently, s.19 of CPO, defined "deed" must be signed and delivered.

³ Because of the trust, the existence of the relationship between the legal owner (or so-called trustee) and beneficiary (or so-called equitable owner) is created in the eye of equity. In advance, the trustee owe the fiduciary duty to the beneficiary, in order to vest the obligation of management of property under the trust created, either expressed or implied. Under the doctrine of express and implied trust, the beneficiary/equitable owner is binding to all his/her assignees, in the condition of acquired notice of his/her equitable interest.

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statutory, equitable estate (or interest) is well defined in Section 2 of CPO⁴, to qualify an estate or interest does not meet with the requirement of Section 4(1) of CPO and subsequently created and disposal at Section 5(1)(a) of CPO⁵.

In possibility of existence in relationship between legal owner and beneficiary, so Benny's equitable interest could be created by way of an express trust followed Section 5(1)(b) of CPO⁶. Obviously, it is necessary to examine, whether Amy would authorise in disposition her beneficial interest to him under any written document. Unfortunately, Amy did not deliberately give Benny any express declaration either in writing or evidences in writing of oral declaration signed by Amy to transfer her legal title by operation of law to trust of interest over "the flat".

Under this circumstance, Benny would have to establish his equitable interest by ways of implied, resulting or constructive trust. For "resulting trust", divide s into two main categories as: (a) automatic resulting trust and (b) presumed resulting trust. Consequently, Amy did not proceed through any formal process to transfer ownership to Benny as intended trustee. Therefore, Benny is not favour to "automatic resulting trust", in order to acquire his beneficial interest.

Under doctrine of "presumed resulting trust" is to protect a person, who provides the purchase money of a property, but put in someone else's name. The person (money provider) shall have intended to acquire a beneficial interest over the property⁷. Admittedly, there are certain kinds of financial contributions to qualify Benny's beneficial interest as: (1) direct contribution towards the purchase price of property⁸ and (2) less direct contribution⁹.

⁴ Section 2 of CPO, provides that "any estate, interest charge in or over land which is not legal estate or a freehold."

⁵ Section 5(1)(a) of CPO stated: "No equitable interest in land can be created or disposed of except by writing signed by the person creating or disposing of the same, or by his agent thereunto lawfully authorised in writing or by will or by the operation of law."

⁶ Section 5(1)(b) of CPO stated: "A declaration of trust respecting land or any interest therein shall be manifested and proved in writing and signed by the person who is able to declare such trust or by his will."

⁷ Presumption of a resulting trust is on the assumption that "people who pay money normally expect to get something in return it." Followed the views of Spencer J in the judgment of Goodfriend v. Goodfriend [1972] that "assumes bargains, and not gifts."

⁸ Followed Tinsly v. Milligan {1993}, one of lesbian couple had effectively contributed half of the purchase price, in virtue of entitled to half share of property by way of resulting trust.

⁹ Followed Mildland Bank PLC v. Cooke [1995], the wife entitled under a resulting trust, in virtue of her half share to the amount of wedding gift contributed to purchase price of property.

As if Benny wishes to establish presumption to resulting trust, he ought to take the views to the followings: -

1. He requires taking views to what nature of relationship and circumstance between them. Because presumption of resulting trust will be rebutted due to transitional relationship that do not have the responsibilities owed by legal owners i.e. wife to her husband and unmarried partners. It is asserted that Amy bought “the flat”, but it was not their matrimonial home. Also, they are unmarried partners and only cohabited. Even though, there is presumption of advancement in between husband and wife, but it is still rebutted for unmarried couples at resulting trust.
2. He ought to consider, whether any direct/less direct financial contributions made by him to the purchase price of “the flat”. The answer is negative, because all of purchase price was totally come from Amy.
3. He did not pay for management fees and utility charges, even though he actually paid for these fees and charges, but were not related to purchase price¹⁰.
4. He did intend to pay rent to Amy at the past, but Amy denied. He was being a tenant to possess his occupation, even though he actually paid rent.
5. He wished to claim at least a half share. It is clearly that it is pure arithmetics¹¹ to establish equitable shares of ownership by way of resulting trust. He is successful to amount of entitled shares, depends on his actually financial contribution in proportion to the purchase price. It is realistic that he is impossible to claim half share, just merely rely on resulting trust.

Alternatively, Benny can rely on the constructive trust to retain his rights over “the flat”. If there is inducement created by Amy, either express agreement or inferring from conduct to create an intention (i.e. common intention)¹² to share ownership by

¹⁰ Followed Burns v. Burns [1984], Mrs. B one of cohabited partner only used her earnings to pay for rates, telephone bills and various items of furniture to serve as her contribution. When Mrs. B separated in 1980, she claimed her share of the house. The Court of Appeal held that Mrs. B had not made any direct contribution to the purchase price, so did not entitle to any interest by way of a resulting trust.

¹¹ The courts are only giving effect to any contribution made by the contributor. For example, the claimant in Tinsley v. Milligan, she entitled a half share for her exactly contribution. But, the claimant entitled to a 6.74% of equitable share in Midland Bank PLC v. Cooke, because her contribution was only £550 to the purchase price. Sometime, it is difficult for the court to assess the extent of contribution with exact precision, where the contribution was made by way of assistance with mortgage repayments. It is practical approach that Lord Reid in Gissing v. Gissing [1971], stated the comments: “.....where (the contributor) does not make direct payments towards the purchase, it is less easy to evaluate her share. If her payment are direct, she gets a share proportionate to what she has paid, otherwise there must be a more rough and ready evaluation. I agree that this does not mean that she would as a rule get a half share....There will be many others where a fair estimate might be a tenth or a quarter or something even more than a half.”

¹² “Common intention” is the intention of the owner and the non-owner that non-owner would be

way of constructive trust. Also, he was suffered to his detriment in some way by contributing to the purchase of property. Then, constructive trust can so operate to redress the limitation of financial contribution to provide remedies for wife or unmarried partner contributed in non-financial activities, i.e. doing housework or staying at home to look after children to give up employment. Nevertheless, he still requires in satisfaction of the following conditions/requirements as:

1. A very clear evidential burden requires establishing an express common intention that is expressly articulated between the parties to share the ownership of property¹³.
2. If there is no evidence of an express intention, but an intention to share could be inferred from the party's conduct¹⁴.
3. The claimant is relied on party's conduct that the existence of detriment is so important¹⁵.
4. The conduct itself is taken into account in assessing detriment, which is not only

entitled to a share of equitable ownership of property. In *Gissing v. Gissing* [1970], Lord Diplock explained the judgment and stated: "...The picture presented by the evidence is one of husband and wife retaining their separate proprietary interests in the property whether real or personal purchase with their separate savings and is inconsistent with any common intention at the time of the purchase of matrimonial home that the wife, who neither then nor thereafter contributed anything to its purchase price or assumed any liability for it, should nevertheless be entitled to a beneficial interest in it." In *Lloyd's Bank PLC v. Rosset* [1991], Lord Bridge established a common intention under two distinct circumstances either express intention or inferred intention. He delivered his comments on the ground that "I cannot help thinking that the judge in the instant case would not fallen into error if he had kept clearly in mind the distinction between the effect of evidence on the one hand which was capable of establishing an express agreement....and evidence on the other hand of conduct alone as a basis for an inference of the necessary common intention."

¹³ "Express intention", where there was evidence of an express intention that was expressly articulated between the parties that they were to share the ownership of property. *Lloyd's Bank PLC v. Rosset* [1991], Lord Bridge emphasised that very clear evidence was required to established an express common intention. *Eves v. Eves* [1975], the claimant did a great deal of work to improve dirty and poor condition of house, decorated and broken up concrete in garden and did more than many wives would do. Eventually, the Court of Appeal held that the claimant should entitled to equitable ownership by way of constructive trust. Because there was evidential burden that the owner told the claimant that only reason why had not been put in their joint names, when the claimant was too young.

¹⁴ "Inferred intention", where there was no evidence of an express intention, but an intention to share could be inferred from the conduct of the parties. Lord Diplock, in his judgment of *Gissing v. Gissing* [1970] stated: "...And he will be held so to have conducted himself if by his words or conduct he has induced the [beneficiary] to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."

¹⁵ The Court of Appeal took an intensive view to the position of detriment in *Grant v. Edwards* [1986], the claimant moved her position with the owner that she would be entitled to share of the house, even though her contributions could be regarded as indirect financial contributions to the mortgage instalments. Also, the House of Lord, *Browne-Wilkinson V-C* took a more liberal and expansive view: "Once it has been shown that there was a common intention that the claimant should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties is, in my judgment, sufficient detriment to qualify. The act done not have to be referable to the house...."

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“de minimis” amounted to financial contributions¹⁶.

5. Clearly, the exceptional conducts apart from traditional domestic activities will give rise to an inference of common intention as (a) substantial contribution to purchase price¹⁷, and (b) non-financial contribution¹⁸, i.e. housekeeping expense as indirect contribution to enable mortgage to be paid.
6. Without express common intention, the courts have been engaged into a creative assessment of the party's desire, especially no clear evidence.

It is inferred from given facts that Amy did not intend or had ever told Benny to make such assurance to hold “the flat” in their joint names as co-owned by them. Without evidential burden of ultimately express common intention, he can only rely on “party's conduct” in reliance of detriment suffered. Actually, he used up his saving to pay for redecoration of bathroom, but this kind of contribution shall be regarded as “non-financial contribution”. Admittedly, it might be “de minimis” in common sense. Particularly, he gave up his full time job as a chef at Peninsular Hotel, in order to look after their son. In principle, this kind of detriment is also “non-financial contribution” required the courts to draw a creative assessment. Notwithstanding this, the courts cannot possible to do such assessment in without of contribution to the purchase price, because “the flat” was free of mortgage.

Did Benny have further assistance in absence of common intention and contribution to the purchase price by way of constructive trust? The equitable doctrine of proprietary estoppel¹⁹, is possible to redress his remedy to ascertain his position, who

¹⁶In *Lloyd's Bank v. Rosset* [1991], the House of Lords held that the claimant's conduct was not capable to operate an inference of a common intention. Lord Bridge commented: “...the monetary value of Mrs. Rosset's work, expressed as a contribution to a property acquired at a cost exceeding GBP70,000, must have been so trifling, as to be almost de minimis.”

¹⁷ In *Lloyd's Bank v. Rosset* [1991], Lord Bridge explained why House of Lords took in such view that only substantial contribution to the purchase price regarded as sufficient conduct to infer a common intention as: “...there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation, direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of the mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do.”

¹⁸ In *Midland Bank v. Cooke*, Waite LJ explained in his judgment: “....That scrutiny will not confine itself to a limited range of acts of direct contribution of the sort that are needed to found a beneficial interest in the first place. It will also take into consideration all conduct which throws light on the question what shares were intended.”

¹⁹ Under this doctrine operates where legal owner, knowingly encourage non-owner to his/her belief that non-owner will enjoy some right or benefit over the property. So, non-owner than acts to his

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has made the form of sacrifices, especially non-financial nature, e.g. raising his son and giving up his future employment prospects. Under this doctrine operates where Amy knowingly encourage Benny to his belief acted to his detriment in reliance upon that he will enjoy some right or benefit over the property.

In facts, if Benny wishes to establish a proprietary estoppel in his favour, the following must be proved :-

- (a) there must have been a representation or promise,
- (b) he must have acted to his detriment, and
- (c) his detrimental conduct must have been undertaken in reliance on the representation or promise.

In addition, the form of representation must have been proved in either an active representation²⁰ or passive representation²¹.

There are several scenarios, the representee's (non-owner) conduct may be recognised as constituted sufficient detriment or change of position to establish an estoppel equity as :-

1. If the representee uses his/her money to improve the representor's property, provided that the expenditure is incurred in reliance upon the representation²².
2. If the representee use his/her money improving or changing his own land in reliance on a representation made by the representor of entitlement to the representor's land²³.
3. A representee will have acted to his/her detriment if he/she purchase new land on

detriment in reliance upon non-owner's belief that non-owner will enjoy some right or benefit over legal owner's property. The leading authority on proprietary estoppel is the House of Lords decision in *Ramsden v. Dyson* [1866].

²⁰ "Active representation", by way of word or conduct of legal owner leads the claimant in expectation of enjoyment some entitlement of property, *Pascoe v. Turner* [1979], *Inwards v. Baker* [1965] and *Griffiths v. Williams* [1977].

²¹ "Passive representation", when the owner stands by and does nothing to correct the non-owner of mistaken expectation that he/she is or will become entitled some interests over the property, *Ramsden v. Dyson* [1866].

²² *Pascoe v. Turner* [1979], the owner told non-owner that she should not worry as the house and everything in it would be hers. *Inwards v. Baker* [1965], the father's statement gave rise to the son's expectation that he would be allowed to remain in the bungalow for his lifetime.

²³ *Rochdale Canal Co. v. King* [1853], the representee built a mill on his land after applying to the canal company to draw water from their canal for his steam engines and observing the acquiescence (in other words, passive representation) of the canal company when he was laying the pipes for that purpose. The court held that the canal company were not entitled to an injunction restraining the representee from drawing water.

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- the basis of a representation made by the representor²⁴.
4. A representee who acts to his/her personal disadvantage or changes his/her conduct without any financial detriment, in reliance on a representation, will be entitled by proprietary estoppel. But, it is still arguable this subject matter²⁵.
 5. Any detriment suffered by the non-owner is arisen from any countervailing benefit. He/She has received from the legal owner²⁶.

In this regard, Benny made non-monetary sacrifices in the interest of their cohabited relationship and child-rearing their son, Sonny. Then, he gave up his employment prospect, a job offer from a five-star hotel in Baghdad, in order to stay with them to look after his family. He also acted in reliance upon Amy's representation (Amy told Benny: I'll love you forever. What 's mine is yours). Because in the presence of detrimental reliance in constituted sufficient detriment or changed of position can be established an estoppel equity. Also, the causal connection has established from their motive of love and affection. However, doctrine of proprietary estoppel is still faced with a lot of problems. It is arguable that the judicial presumptions are seemed without principled justification and convincing authority.

In advance, Benny's gender-role can be possible to give rise the benefits to reduce the danger of judicial assumption, likewise, a male claimant is not expected in the position to stay at home to undertake such non-financial domestic activities as work in home or in child-rearing. It is good in position of burden proof. Nevertheless, Benny does succeed to establish his proprietary estoppel in his favour, but the remedy granted by the court may well be less extensive than under the constructive trust over the property. Instead of half share claimed by Benny, the possible remedies may be

²⁴ Salvation Army Trustees Co. Ltd. V. West Yorkshire Metropolitan Country Council [1981], the Salvation Army purchased a new site to build a replacement hall. West Yorkshire Metropolitan Country Council represented to the Salvation Army that it would be requiring their new site for their road widening scheme. The Salvation Army were later informed that the scheme would not be adopted for some years. The court held that even though there was no binding contract for the sale of site, the Salvation Army were entitled to an equity.

²⁵ Coombes v. Smith, the court held that the claimant's conduct in rearing children and housework etc were insufficient to establish an estoppel equity. But, in Greasley v. Cooke [1980], the claimant was a maid over many years and become the lover of the son of the family. She worked in home and took care of her lover's mentally disabled sister. She was assured on a number of occasions that she would remain living in the house for the rest of her life. The Court of Appeal held that she had acted to her detriment to care for the family and failure to secure herself in leaving the house to obtain alternative employment. So, she was in favour of estoppel equity to remain in the house, rent-free as she wished to do so.

²⁶ Watts v. Story [1984], the Court of Appeal held that the claimant, who had given up his tenancy in Leeds to move into his grandmother's home in Nottinghamshire. When the claimant moved to the Islan

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granted i.e. monetary compensation or given a licence to occupy for a limited period.

Finally, equity may intervene to enforce certain kinds of informal agreements. Those relevant equitable doctrines already disclosed i.e. resulting trust, constructive trust and proprietary estoppel. There are still two kinds of remedies, i.e. part performance²⁷ to redress limitation of oral contract and Walsh v. Lonsdale²⁸ for inadequate legal formalities of agreement of interest in land. In the absence of any oral agreement or contract or inadequate legal formalities had been created between Amy and Benny. So it not successful to operate these two kinds of remedies to redress Benny's claim of half share.

I, (Ip Kim Man and student's no. 88122570) declare that 1,963 in total number of words used in my coursework assignment, excluding footnotes and this declaration, does not exceed 2,000.

of Wight and as a result gave up any prospects of employment in Leeds, had suffered no detriment.

²⁷ The doctrine of part performance will only apply where there is a concluded binding oral contract between parties. In addition, there must be clear evidence, whether oral or otherwise in related of the existence of a contract with certain and definite terms. So, this kind of oral contract is only enforceable in equity and must be capable of specific performance.

²⁸ The rule in Walsh v. Lonsdale, is to apply in creation or disposition of an interest in land, where inadequate legal. The effect of the rule in Walsh v. Lonsdale is "An agreement for a lease is as good as a lease provided specific performance is available." An equitable interest arising under the doctrine of Walsh v. Lonsdale will be supported by an instrument that must be registered under the Land Registration Ordinance in order to preserve its priority in the same way as a deed that creates a legal estate.