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**'INTRODUCTION TO THE LAW OF PROPERTY'**  
**UNIT CODE LL2015**

A person who dies without having made a will is said to have died intestate. The rules governing the devolution of his property are to be found in the Administration of Estate Act 1925, the main situation that will arise for this case is the situation where the deceased leaves behind children, and the property is divided amongst them.

Problem here is between the 2 parties, who have been in possession of a property, both of whom are legally entitled to it, with reference to the above, but only one is claiming beneficial interest. No problem would have occurred if both parties were present at the acquisition of the property, but only one was present during the acquisition. This problem lies in establishing the extent of those beneficial interests in the absence of any declaration.

In the **Law of Property Act 1925 S60 (3)** in voluntary conveyance a resulting trust for the grantors shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee. There is no longer an automatic presumption of resulting trust upon a voluntary conveyance simply because it has not been excluded; however there was a clear intention in **Hodgson v Marks**<sup>1</sup>, here the house was not to be conveyed for the benefit and use of Mr Evans, thus there was a resulting trust. **S. 118(1) of the Housing Act 1985** gives council tenant the right to purchase their home. S126 (1) provides the discount from the purchase price of the house via the qualifying status of the non legal owner is classified as purchase money. **Evan v Hayford**<sup>2</sup>, here it was held a qualifying reduction in the price of the house was clearly referable to the acquisition of the house and as such should be seen as purchase money.

In the absence of any declaration of trust, the parties respective beneficial interests of the property fail to be determined not by reference to any broad concept of justice, but by reference to the principle governing the creation or operation of resulting, implied or constructive trusts which by **s. 53(2) of the Law of Property Act 1925**. Nevertheless, the cases below illustrate the successfulness of the claimants under resulting, constructive trusts and proprietary estoppels and what remedy will they have under each head.

We need to look at the purchase money resulting trust; whether an intention arises from the purchase money we need to know what is sufficient to be regarded as purchase money and what time does the intention derived from money have to be in existence.

### **Debra**

The resulting trust gives effect to an intention presumed to have been formulated in the light of money contributions made in the context of purchase of land or property in the case of

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<sup>1</sup> [1971] Ch 892

<sup>2</sup> [1995] 2 FLR 511

**Cowcher v. Cowcher**<sup>3</sup> the court held that the presumption of a resulting trust rebutted by evidence of a donatives intent or gift, the argument was rejected.

During the time of the purchase, Debra agreed to have the mortgage taken in her name, at the time of the purchase there was clear intention to vary the formal interests acquired by the mortgage liability in the light of who was to actually pay the instalments than this intention was valid.

Underlying the general principle of the constructive trust, it can be said that the imposition of a constructive trust requires proof of three elements which are; common intention, detrimental reliance and unconscionable denial of rights, held in **Ogilvie v Ryan**<sup>4</sup>.

Fred and Debra made an oral agreement between each other, Fred paid her £60,000 to pay off the mortgage, Fred also agreed to transfer the property to Debra and said he will leave in his will that Debra will greater share of the property then Stan because of her support.

However, there might not be evidence to support finding of an oral agreement to share the house, then the court will rely on the conduct of the parties which shows Debra acted to her detriment in reliance on the verbal agreement that Debra would have interest in the property according to the above elements as held in **Lloyds Bank Plc v Rosset**<sup>5</sup>.

The difficulties are that express declaration of trust is enforceable only if evidence is signed in writing in accordance to **s. 53 (1) (b) of the Law of Property Act 1925**.

The court may still give effect to the agreement as to beneficial ownership, notwithstanding the absence of statutory formalities (**Gissing v Gissing**)<sup>6</sup> As a result Debra may still be entitled to beneficial rights of the property as she suffers from a detriment in reliance on that agreement and it is equitable fraud for Stan to have any title in the face of that agreement.

Three substantial elements needs to be demonstrated to success in her claim under proprietary estoppel (i) an assurance, (ii) change of position, (iii) detriment. For this reason Debra assured her position has changed by not going to Dubai for a new career and she relied on Fred's words. Debra's claim may be successful due to these facts. The doctrine of estoppel attaches significant broader range of contribution including domestic commitment and endeavour, also in the absence of express agreement would not generate a constructive trust as held in **Grand v Edwards**<sup>7</sup>.

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<sup>3</sup> [1972] 1 WLR 425

<sup>4</sup> [1976] 2 NSWLR 5040

<sup>5</sup> [1991] AC 107

<sup>6</sup> [1971] AC 886 at 905D

<sup>7</sup> AC 886 at 905D

### **Stan: The time of the intention**

We need to know the exact details of what the courts will accept that is purchase money.

The presumed intention must be at the time of the purchase thus only money provided at this point will suffice as held in **Pettit v Pettit**<sup>8</sup>, it would therefore seem that if Stan moved into the house of his father and the house was purchased sometime previously than the provision of mortgage instalments for example he will not count for the purchase money.

Evidence can also be used later in court that Stan was not present at the time the house was purchased; this was held in **Gissing v Gissing**<sup>9</sup>, held in exceptional cases that court may look at the conduct after purchase as evidence of an earlier intention.

In order for Stan to establish a resulting trust, he would have provided some or full purchase moment at the time of the purchase money of acquiring the property to have interest in the house under resulting trust. Consequently, domestic expenditure is not referable to the acquisition of the house. It was held in **Burns v Burns**<sup>10</sup> the basic principle is that equity follows the solid tug of money. Therefore, only those matters which are directly referable to the acquisition of the property will be classified as purchase money and hence give rise to the presumption of a resulting trust.

It was also held **Burns v Burns**<sup>11</sup> a contribution to the legal expenses/deposit, such items are a part of the purchase of the house and hence the court at purchase money. However in relation to legal expenses this is unlikely to be much help as this will only be for a small percentage of the overall cost of the house.

It occurs from Stan's case that, at the time of the acquisition of the house nothing occurred between the parties to raise equity between Stan and his father Fred, which would prevent Debra from denying Stan's claim. Stan provided no money for the purchase or liability in respect of the mortgage, held in **Bernard v Joseph**<sup>12</sup>. On the other hand, if someone is paying towards the acquisition of the house then it is presumed that they are to get an interest on return, held in **Dyer v Dyer**<sup>13</sup>, **statement by CB Eyer**:

*"A trust of a legal estate... results to the man who advances the purchase money; the reason for that is equity assumes bargains; it presumes that if someone is paying towards the acquisition of the house than it is presumed that they are to get an interest in return."*

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<sup>8</sup> [1970] A. C. 777

<sup>9</sup> [1971] AC 886 at 905D

<sup>10</sup> [1984] Ch 317

<sup>11</sup> [1984] Ch 317

<sup>12</sup> [1982] Ch 391

<sup>13</sup> (1788) 2 Cox 92 (30 ER 42)

Stan may expect to have some interest in the property but according to the above, this has to be at the time of the acquisition of the house. Nonetheless, Stan cannot claim behind of resulting trust under the above principles.

### **Conclusion**

From the above cases, it has been found that in order to establish resulting trust the claimant has to provide some direct contribution towards the acquisition of the property and at the time of acquiring the house. However, under constructive trust, the claimant does not have to provide any purchase money at the time of acquisition of the property as long the claimant provide some indirect contribution such as substantial improvement towards the house and installment payment of the mortgage and also if there is some common intention that the claimant has relied on her detriments.

The proprietary estoppel will arise in situation where there are some informal agreements and the claimant has been assured, reliance, and unconscionable disadvantage to have successful claim. However, the remedy or interest that claimant will claim for property is depending on contribution money which claimant had provided

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