

UNIT 7: IMPLIED TRUSTS



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UNIT 7: LEARNING OUTCOMES

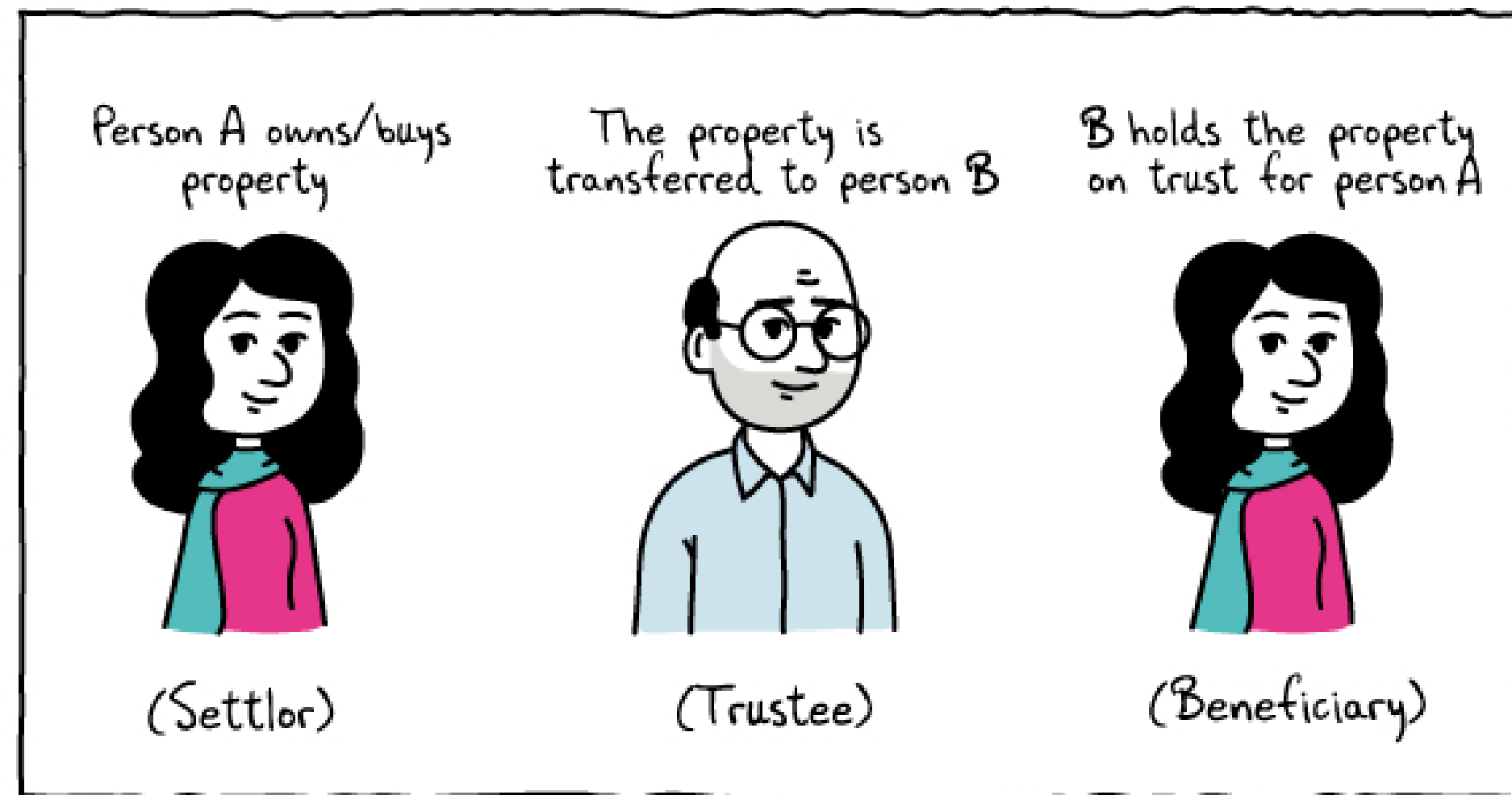
- Explain the law relating to resulting trusts and its presumptions
- Explain the availability of constructive trusts
- Summarise the theoretical underpinnings relating to constructive trusts
- Apply knowledge to SQE questions
- Design SQE questions

IMPLIED TRUSTS

- This module has largely focused on express trusts, i.e. those consciously created by settlors
- Trusts can also be created by implication, sometimes by the courts in order to remedy a situation
 - sometimes referred to as trusts by operation of law
 - because settlor doesn't direct their creation
- Range of scenarios where this may occur. Core principles are the same, but development of practice specific may differ depending on type of case
 - e.g. family home (see land law)
- Implied trusts:
 - Resulting trusts
 - Constructive trusts

RESULTING TRUSTS

- Resulting trusts are implied where a person transfers property to another in circumstances where it is unclear who owns the beneficial interest.
- Equitable title 'results' (returns) back to its true or initial owner who attempted to transfer the property to another person
- In certain circumstances, while the legal title to the property is transferred from A to B, the equitable title results back to A, and thus B holds the property on trust for A.



PRESUMED RESULTING TRUSTS

- Presumed resulting trust simply adds that property results due to a legal presumption about the usual intentions of the property owner
- Presumptions are common in law: designed for legal convenience, but can usually be rebutted
- Starting point for a court: a party can adduce evidence to rebut the presumption and show that, in fact, the owner held a different intention.
- The basic presumption is that:
 - equity presumes people do not act entirely altruistically
 - equity expects people to act selfishly.



PRESUMED RESULTING TRUSTS (2)

- What this means for the law of equity is twofold:
 - Where a party transfers property to another person, **it is presumed that they intend for that person to hold the property on trust for them** (i.e. that they retain the beneficial interest). This could equally be said to be a presumption against the transfer being a gift.
 - Where a party contributes money toward purchasing something in someone else's name, it is presumed that they **intend to obtain an equitable interest in the property**.

ILLUSTRATION: RT PRESUMPTION

- Faisal is the father of Aaliyah. Faisal is getting older and struggles with the stairs in his home. Aaliyah purchases a specially-adapted bungalow for Faisal. The flat is registered in Faisal's name.
- Faisal is the legal owner (Registration documents)
- But money came from Aaliyah: usual presumption in equity would appear to be that she intended to **retain an equitable interest in the property** – in other words, Faisal holds it on trust for her.

ILLUSTRATION: ADVANCEMENT

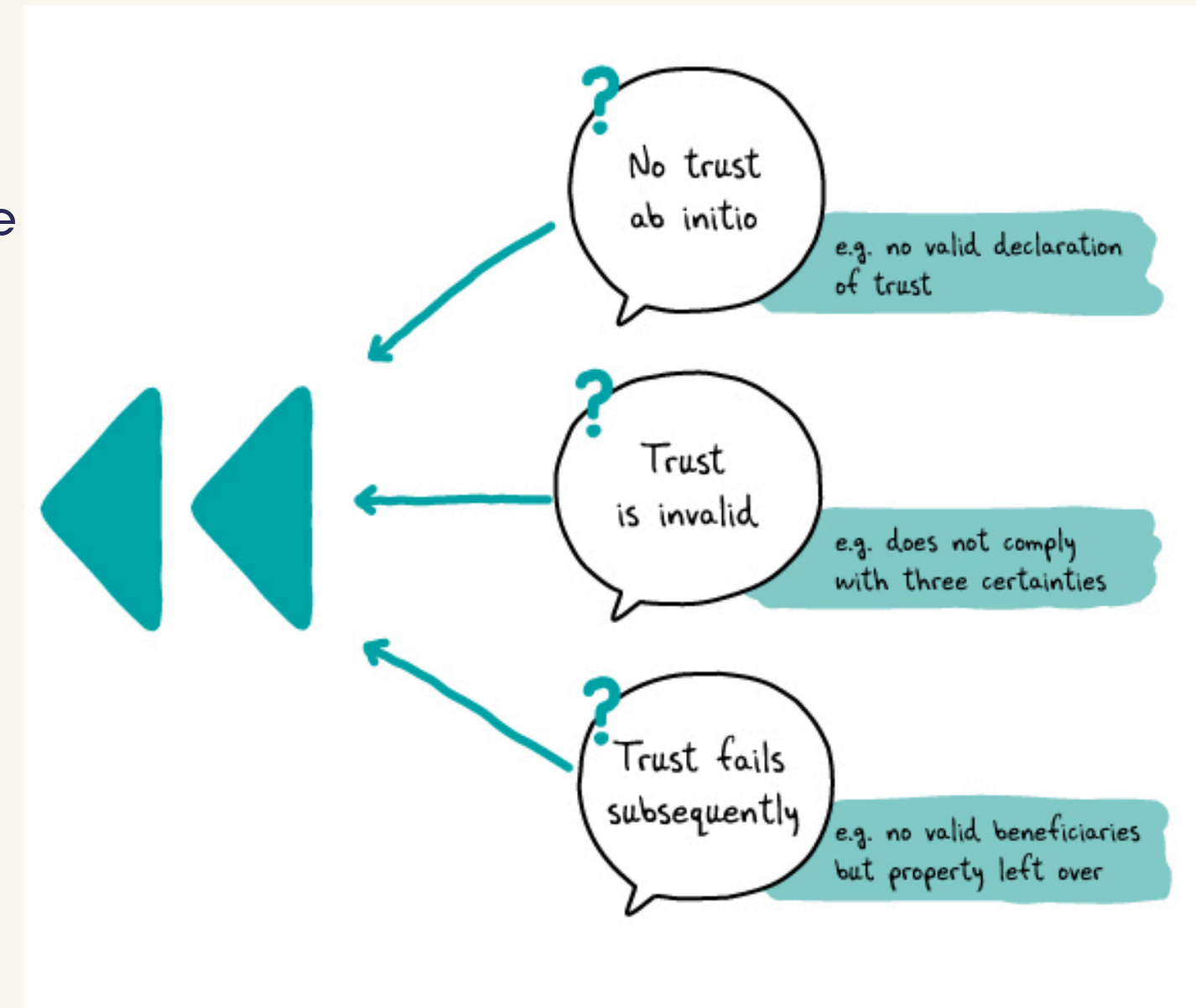
- Same facts: but this time Faisal is the one who buys a property for Aaliyah. Aaliyah is purchasing a flat and has agreed a price of £200,000. Faisal contributes the full £200,000 purchase price. The flat is registered in Aaliyah's name.
- It would seem odd that Faisal's actions are presumed to create a relatively complex legal structure (a trust) rather than simply being a generous gift from a parent to a child
- Equity agrees: second presumption – **presumption of advancement**
 - Applies where the transferor (the person transferring the property) has some level of responsibility for the transferee (the person gaining legal title to the property)
 - This reverses the usual presumption, so in this instance it would be presumed that the transfer **was** a gift – i.e. that Faisal did not intend to retain an equitable interest in the property.

AUTOMATIC RESULTING TRUSTS

- 'Automatic' resulting trusts: considered to arise 'automatically'
- Created independently of any intention (express or presumed) of the owner
- To understand why automatic resulting trusts exist, need to recall the general principle underpinning property law: 'Nature abhors a vacuum' (Aristotle (384–322 BCE))
 - Applies to a wide range of context
 - Property must have an owner
 - *Bona vacantia*: first created by Roman law, operates to ensure that ownerless property passes, ultimately, to the Crown.

AUTOMATIC RESULTING TRUSTS

- When we transfer property we must think about legal and equitable ownership. Sometimes, settlor might transfer legal title, but not be clear on equitable ownership
- Could trigger an automatic resulting trust in limited circumstances (see diagram).
 - In all these circumstances settlor no longer has legal title, but not clear what happened with equitable title
 - Mee (2017) has argued: the interest of a beneficiary under a resulting trust is a very different legal interest to the complete ownership of property in both law and equity:
 - not same as what they previously held – lost
 - instead gained right to insist that the trustee should sue anyone who interferes with the property and
 - force trustee to transfer the property to whomever the claimant chooses.



AUTOMATIC RESULTING TRUSTS

- Cannot say that at the point the settlor gives away their legal title, they retain the equitable title.
- Equitable title has also passed
- Unconscionable for it to pass to the trustee
 - equity looks to the intent rather than the form
 - and the whole point of these transfers is that the settlor wants to pass the legal title on the grounds that it is held on trust for another – otherwise, they would simply make an outright gift of the property.
 - Yet, in these situations that beneficial interest has also failed to pass to the intended beneficiary.
- Back to idea of vacuum and void: if the law abhors a vacuum, and equity exists, partly, to fill gaps in the law, then equity must be able to produce a solution: ***Vandervell v Inland Revenue Commissioners*** [1967] 2 AC 291 (HL) 329 – cannot remain in air
- Solution: equity uses the automatic resulting trust (gap filling trust).
- fill the gaps in the ownership of the beneficial interest created by imperfect or failed attempts to create express trusts: actual operation straightforward (as diagram)

REBUTTING PRESUMPTIONS

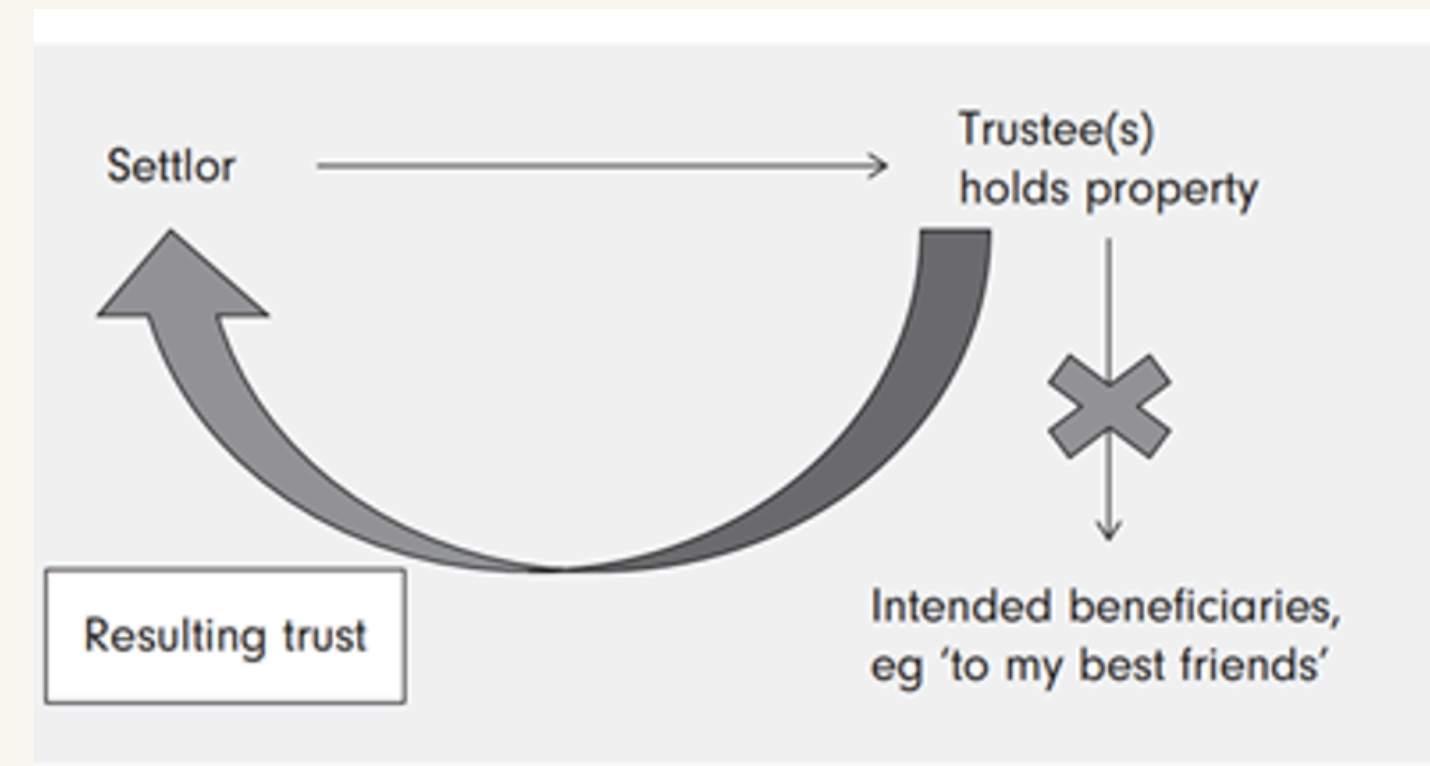
- It is important to remember that the presumptions of resulting trust and advancement are merely presumptions.
- They can be rebutted.
- Their main role is to allocate the evidential burden of proof, identifying who has to prove what.
- They are a starting point for the court.
- The presumptions hold good only pending facts to the contrary.

NOT COMPLETELY DISPOSED

- Resulting trusts can arise when the beneficial interest is not completely disposed
- When property is transferred to a third party with the intention that an express trust be created, but something goes wrong that prevents the express trust taking effect, then a resulting trust is implied in favour of the settlor.
- The resulting trust vests the beneficial title back into the name of the settlor.

RESULTING TRUST WHEN EXPRESS TRUST FAILS

- A resulting trust arises where...
 - the settlor transfers property to trustees on trust; but
 - the anticipated trust does not dispose of all or part of the equitable interest, because the declared trust is void or does not exhaust the trust fund.
- Some examples where the private express trust would fail:
 - there is a gap in the beneficial ownership because there is no beneficiary who attains a vested interest
 - the attempted trust lacks certainty of objects (such as a trust for 'my best friends')
 - the attempted trust does not define the beneficial interests with sufficient certainty
 - the attempted trust offends the rules against perpetuity



RESULTING TRUST WHEN EXPRESS TRUST FAILS

- **Example: failure of certainty of objects**

- James appoints Kamila a trustee of £250,000 for the benefit of Laura should she reach the age of 25 years. Laura dies when she is aged 22 years. As Laura did not satisfy the condition of reaching the age of 25 years, her beneficial interest never vested.
- The beneficial interest must vest in someone, so a resulting trust arises by operation of law to vest the beneficial interest back in the name of James (the settlor).

- **Example 2:**

- Example – Paul appoints Quentin a trustee of £250,000 to give ‘a decent amount to Ruby and the rest to Sylvia’. This attempted trust does not define the beneficial interests with sufficient certainty. What is meant by a ‘decent amount’?
- The attempted trust therefore fails for lack of certain subject-matter, and the equitable title results back to Paul

ACTIVITY 1: CREATE AN SQE QUESTION

- In pairs, create an SQE style question on resulting trust. Have a short scenario, question and produce 5 SBA answers.

CONSTRUCTIVE TRUST

- Also created by law rather than expressly by settlor
- No justification that trust is in some way representing a presumed or latent intention of the settlor (as for RT)
- CTs are constructed by law (Common intention and detrimental reliance – Land Law Lectures)
- Theoretic underpinnings of CT source of academic debate:
 - ***Eves v Eves* [1975] 1 WLR 1338 (CA) 1341** – Lord Denning argued for a wide and generous principle, based on a broad interpretation of doing justice in individual cases: equity will help out wherever and whenever needed.
 - ***Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669. Lord Browne-Wilkinson:** Equity operates on the conscience of the owner of the legal interest. In the case of a trust, the conscience of the legal owner requires him to carry out the purposes for which the property was vested in him (express or implied trust) or which the law imposes on him by reason of his unconscionable conduct (constructive trust).
 - ***Cobbe v Yeoman's Row* [2008] UKHL 55.** Lord Scott: It is impossible to prescribe exhaustively the circumstances sufficient to create a constructive trust but it is possible to recognise particular factual circumstances that will do so and also to recognise other factual circumstances that will not.

INSTITUTIONAL CONSTRUCTIVE TRUST

- Orthodox mode of constructive trusts (Virgo, 2020)
- Arises automatically: operation of law in certain circumstances
- No judicial discretion: if falls under one category, then established, all court does is recognise that fact (at moment occur)
- can gain priority over any interests acquired by third parties in the trust property during the period between the creation of the trust and its recognition by the court.
- Settled/established categories, very fact-sensitive:
 - Pallant v Morgan [1953] Ch 43

PALLANT V MORGAN

- Both parties wanted to purchase the same land at an auction.
- Pallant agreed not to bid, allowing Morgan to secure the land at a lower price. In return, Morgan would transfer part of the land to Mr Pallant for payment.
- After winning the auction, Morgan refused to transfer the agreed portion of the land to Pallant.
- Court found: An agreement existed but lacked the certainty required to form a legally binding contract (e.g., no fixed price for the land). Specific performance could not be granted due to the absence of a contract.
- The court deemed it unconscionable for Morgan to keep all the land, likening it to fraud.
- Morgan was held to hold the land on a constructive trust for both himself and Pallant, reflecting their agreement.

PALLANT V MORGAN

- According to Pallant v Morgan an institutional constructive trust will arise when:
 - A and B make an arrangement (falling short of a binding contract) prior to either one acquiring property;
 - The arrangement states A will purchase the property and that if A does so, B will also acquire some form of interest in it;
 - B does something in reliance on this agreement, such as refrain from bidding on the property, which is detrimental to B and/or advantageous to A;
 - It would be unconscionable for A to retain the full interest in the property as a result.

Key sources:

Pallant v Morgan [1953] Ch 43

LIDL CASE (1) SHOULD CT APPLY?

- Opening supermarket in Brentwood
- Agents identified suitable property: industrial estate
- Generator Developments also identified the same property as having potential for residential development
- Sellers of land knew both companies interested, suggested joint bid
- They did: after revised offer accepted, Lidl and Generator began to negotiate an agreement, setting out how joint venture would work. Several drafts, but all contained the following terms:
 - Lidl would buy the property and it would be registered in Lidl's name
 - Generator would obtain planning permission
 - Lidl would then sell the property to Generator, who would build the supermarket store and flats on the land and rent the store to Lidl
 - these draft agreements were 'subject to contract'.
- Exchanged contracts February 2014: Purchased property £6.8m Lidl's name
- Both before and after the purchase, companies continued to try and negotiate their joint venture agreement but failed to agree
- At the end of April 2014, Lidl withdrew from negotiations.
- Three months later, Generator began proceedings, claiming a constructive trust per *Pallant v Morgan*.

Key sources: Generator Developments Ltd v Lidl UK GmbH [2018] EWCA Civ 396

LIDL CASE (2)

- Claim dismissed: at CA Lewison LJ
 - This was a case of commercial parties, advised by lawyers, working at arms' length towards the conclusion of an agreement for a purely commercial enterprise – the terms of which were never agreed. Even at the last, the parties remained far apart on many terms.
 - The phrase 'subject to contract' appeared repeatedly in the draft heads of terms, demonstrating that both Generator and Lidl knew they were taking the commercial risk that one or other of them might back out of the proposed transaction.
 - By saying these negotiations were 'subject to contract', Generator was impliedly saying that until and unless a binding contract was agreed, there was no agreement between it and Lidl.
 - Generator knew there was an ongoing risk that Lidl might do a deal with a different developer

LIDL CASE (3)

- Claim dismissed: at CA Lewison LJ.... (cont.)
 - Generator tried to use a lock-out agreement to protect themselves from Lidl doing such a deal elsewhere, showing that they did not rely on the negotiations but this mechanism instead.
 - Lidl's board had not approved the joint venture.
 - Generator sought to expressly reserve the right not to proceed and, in that instance, to have no liability to indemnify Lidl against any part of the purchase price – a clear signal that no agency was created.
 - At first instance there was no finding that Generator relied on any assurance or expectation that it would acquire an interest in land.
 - Given both parties had expressly reserved rights to not proceed in all their suggested documents as part of negotiations, it could not be unconscionable for Lidl to act in exactly this way

LIDL CASE (4)

- In respect of the basis of CT:
 - The application of the principles underpinning the Pallant v Morgan equity, in so far as they rest on the doctrine of common intention constructive trust, operate quite differently in a commercial context from the way in which they operate in a domestic context. The principles as expounded by Chadwick LJ are firmly based on the supposed congruence between the principles of proprietary estoppel [an equitable doctrine in land law] and the doctrine of common intention constructive trust. But we have seen from Cobbe that the House of Lords firmly denied the applicability of proprietary estoppel in a commercial case like this one where each party knows that they are not legally bound. In this case, as in Cobbe, there can have been no expectation on either side that the parties were legally bound to each other.
- Lord Briggs suggested, when speaking extra-judicially in 2018, that cases like Lidl suggested that 'Perhaps another airing in the Supreme Court is due' (Briggs, 2018)

REMEDIAL CONSTRUCTIVE TRUST

- Debated area
- Idea of a constructive trust created as a form of remedy, rather than being created by operation of law
- Gardner (2011): while the debate usually distinguishes between institutional and remedial constructive trusts, both of those terms can be defined in a number of ways.

Meaning 1	Meaning 2	Meaning 3
Act as a remedy because forces trustee to transfer property	Act as a remedy because forces trustee to transfer property	Act as a remedy because forces trustee to transfer property
Where certain key facts are present, trust arises automatically	Where certain key facts are present, trust arises at the discretion of the court	Trust arises entirely at the discretion of the court
Trust operates retrospectively from moment it arose	Trust operates retrospectively from moment it arose, if the court orders	Trust operates retrospectively from moment it arose, if the court orders

REMEDIAL CONSTRUCTIVE TRUST

- Meaning 1: narrowest
 - excludes court discretion
 - criticised on grounds not conceptually certain
 - overlaps considerably with institutional CT
- Meaning 3: widest
 - allows court to impose CT in any circumstances, e.g. as indicated by Lord Denning in Eves
 - Heavily criticised by subsequent decisions
 - Lord Neuberger (2014):
 - There is much to be said for the notion of a remedial constructive trust displays equity at its flexible flabby worst. I will seek to show, at least arguably, that it is unprincipled, incoherent and impractical, that it renders the law unpredictable, that it is an affront to the common law view of property rights and interests, that it involves the court usurping the role of the legislature, and, as if that were not enough, that the development of the remedial constructive trust is largely unnecessary. Apart from that, it's a pretty good concept.
 - remedial constructive trust in its more extreme form seems unlikely to enter English and Welsh law in the near future

ACTIVITY 2: SBA IMPLIED TRUSTS (SBA) 1

A man bought shares in a company. His son's name was listed as the owner of the shares in the company's register of members. The son was aged 25 years. On the same day as the purchase took place, the son emailed the man to say, 'Hi Dad. When I get the share documents, I will send these over to you as agreed. As we also agreed, if any dividends are paid on these shares, I will forward those on to you as well.'

A year later, the man instructed a solicitor to draw up a will for him. He said that the value of the shares had doubled over the last year and that he wanted to leave them to his wife.

Does the man have a beneficial interest in the shares?

- A. Yes, because he paid for the shares.
- B. Yes, because the email from the son a year ago is sufficient to rebut the presumption of advancement that would have otherwise applied.
- C. Yes, because the fact that he instructed a solicitor to draft a will leaving the shares to the wife is sufficient to rebut the presumption of advancement that would have otherwise applied.
- D. No, because the presumption of advancement applies and can never be rebutted.
- E. No, because his name is not listed in the company's register of members.

ACTIVITY 2: SBA IMPLIED TRUSTS (SBA) 2

Three years ago, an estate agent sent a letter, enclosing a cheque for £10,000, to a paramedic that said, 'As agreed, cash this cheque and give most of it to your daughter and then the rest to your son when they reach the age of 21 years'. The daughter was then aged 18 years and the son was aged 12 years. The paramedic cashed the cheque. The daughter has now reached the age of 21 years and has found the letter. She wants the paramedic to transfer at least a half share of the money to her (she has not discussed this with her brother). The estate agent has recently fallen out with the paramedic and has written to the paramedic demanding that she return the money to him.

Must the paramedic return the money to the estate agent?

- A Yes, because whilst the estate agent tried to create a trust in favour of the paramedic's children, that trust failed due to uncertain intention.
- B Yes, because whilst the estate agent tried to create a trust in favour of the paramedic's children, that trust failed due to uncertain subject-matter.
- C Yes, because whilst the estate agent tried to create a trust in favour of the paramedic's children, the trust offended the relevant perpetuity rules.
- D No, because the daughter has reached the age of 21 years and her entitlement to the money has vested.
- E No, because the estate agent created a valid trust. Given that the declaration of trust did not specify the shares that each child would get, the law presumes that each child gets an equal share.

ACTIVITY 2: SBA IMPLIED TRUSTS (SBA) 3

A son owned a house. His father came to live with him four years ago. Two years ago, the son and his wife separated. The son was worried that his wife might divorce him and was worried about what that might mean for the house. He therefore transferred the house into the father's sole name. No money exchanged hands between father and son. The son and wife have now reconciled and no divorce proceedings are ongoing. Throughout the past four years, the father and son welcomed paying lodgers into the house. The money from these lodgers was only ever paid to the son. The father has recently died and, in his valid will, left the house to his daughter.

Which of the following statements best describes why the son has a beneficial interest in the house?

- A The son has a beneficial interest because he continued to live in the house.
- B The son has a beneficial interest because a presumption of resulting trust arose in the son's favour that has not been rebutted on the facts.
- C The son has a beneficial interest because a presumption of advancement arose in the son's favour that has not been rebutted on the facts.
- D The son has a beneficial interest because a resulting trust can be inferred on the facts.
- E The son has a beneficial interest because a presumption of advancement arose in the father's favour but this has been rebutted on the facts.

UNIT 7: LEARNING OUTCOMES

- Explain the law relating to resulting trusts and its presumptions
- Explain the availability of constructive trusts
- Summarise the theoretical underpinnings relating to constructive trusts
- Apply knowledge to SQE questions
- Design SQE questions

RECAP

UNIT 7: READING MATERIALS

- You can draw on the following chapters of your textbooks to deepen your understanding of the topics discussed in this unit.
 - Watt (2023) chapter 5 and 8
 - Ramjohn and Bray (2024), chapter 7, 8 and 9
 - Barr and Pearce (2022) chapters 9 and 10

EXPLORING FURTHER

- You may find the following sources of interest to you in exploring the topics discussed in this unit further. You are not expected to read these to pass the module, they are provided should you wish to explore the topics further.
 - Briggs, M. (2018) Equity in business [Speech]. The Denning Society Lecture, Lincoln's Inn, London. 14 November. Available at: <https://www.supremecourt.uk/docs/speech-181108.pdf> (Accessed: 12 November 2022).
 - Etherton, T. (2008) 'Constructive trusts: a new model for equity and unjust enrichment', Cambridge Law Journal, 67(2), pp. 265–287.
 - Glister, J. (2010) 'Section 199 of the Equality Act 2010: how not to abolish the presumption of advancement', The Modern Law Review, 73, pp. 807–823.
 - Mee, J. (2017) 'The past, present, and future of resulting trusts', Current Legal Problems, 70(1), pp. 189–225.
 - Neuberger, D. (2014) The remedial constructive trust: fact or fiction [Speech]. Banking Services and Finance Law Association Conference, Queenstown, New Zealand. 10 August. Available at: <https://www.supremecourt.uk/docs/speech-140810.pdf> (Accessed: 12 November 2022).