

UNIT 3: COHABITATION AND CO-OWNERSHIP

Contents

- Cohabitation of the family home
- Routes to establishing a beneficial interest
- Express declarations of trust
- Implied trusts
- Resulting trusts
- Constructive trusts

UNIT 3: LEARNING OUTCOMES

- Identify key property law routes to establishing a beneficial interest in legal estates
- Explain the benefits of an express declaration
- Explain how a beneficial interest might be established via implied trusts
- Evaluate judicial decisions
- Apply the law to a factual scenarios to advise a client

ICEBREAKER: RECAPPING CO-OWNERSHIP

- Match the following terms introduced in unit 2 with their definitions

1) Joint tenancy

A) One party owns the entire legal and equitable estate. No trust exists.

2) Tenancy in common

B) The parties formally record the division of their interests following the statutory formalities

3) Express declaration

C) Each party owns the entire estate synchronously. Right to survivorship applies.

4) Absolute ownership

D) Formally recording all rights and interest associated with land

5) Registration

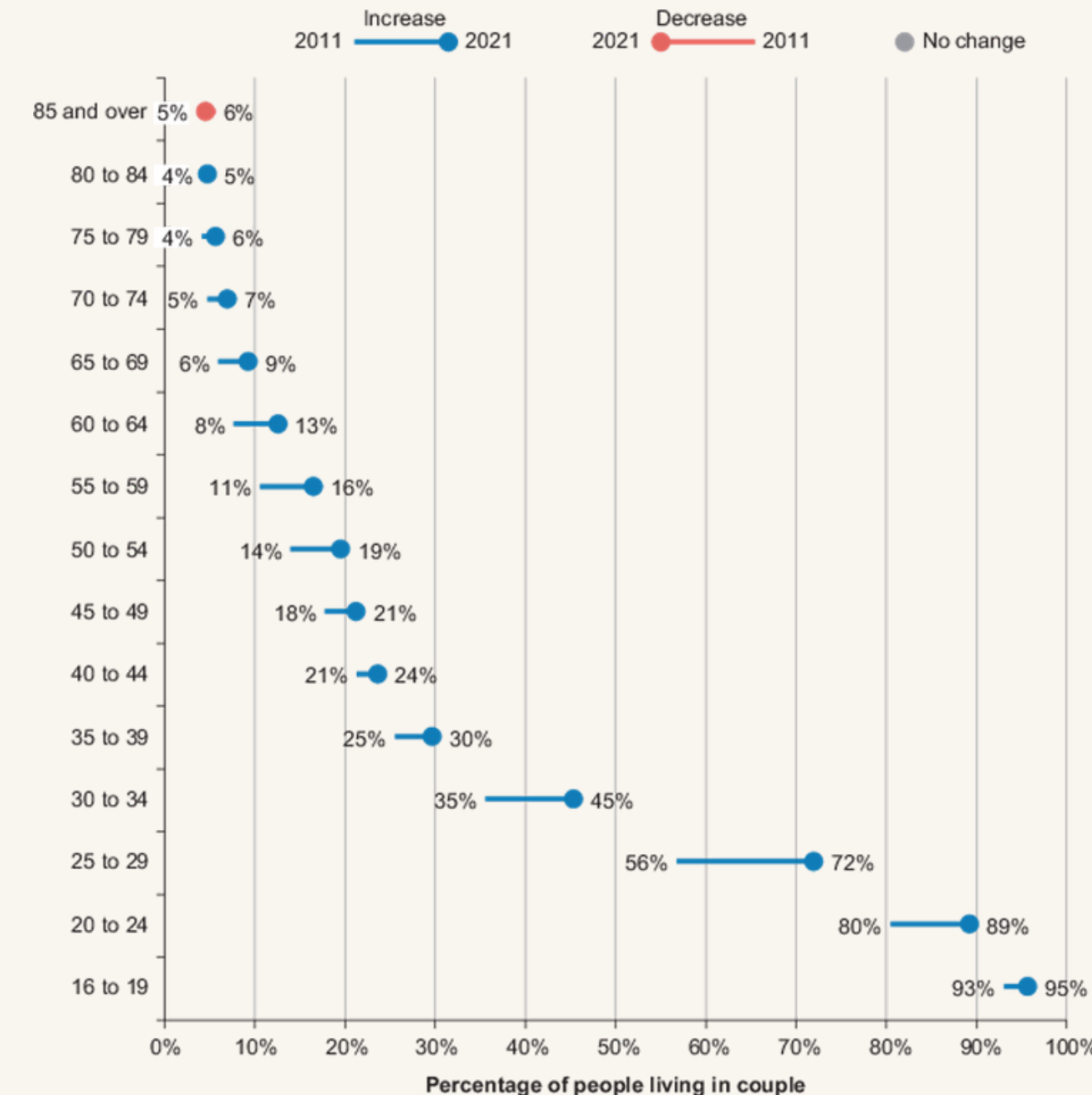
E) The parties own a divisible (quantifiable share). Right to survivorship does not apply.

INTRODUCING CO-OWNERSHIP

- Unit 2 introduced that estates in land (freehold and leasehold) can be co-owned
- When land is legally owned by more than one party, a trust is automatically created: with the parties usually (not always) holding the land for each others benefit
- Trusts involve divided ownership of the estate:
 - Ownership of legal estate: management of the estate
 - Ownership of the equitable estate: benefit from the estate
- Type of tenancy describes how ownership of the land is shared:
 - **Joint tenancy:** each party owns the entire estate synchronously, with right to survive + four unities
 - **Tenancy in common:** each party owns a quantifiable estate + unity of possession only
- The legal estate can only be held in joint tenancy.
- Parties can choose to hold the equitable estate as joint tenants or tenants in common. If held as joint tenants, they can sever at a later point, but not via a will.
- Ideal world: all parties would resolve how they own the beneficial interest when the property is transferred
- But this requires that the parties contemplated division at transfer. What happens if one party moves in later?

HOME OWNERSHIP IN ENGLAND AND WALES

- On the increase since 1980s - upward trend: c62.5% households own their own home (2021 census, ONS)
- Co-owners may be in various relationships: e.g. married, civil partners, same sex relationship - or they may just be friends/business partners.
- Percentage of unmarried cohabiting couples on the rise: 24.3% in 2021, cf 20.6% in 2011.
- Higher rate in younger populations
- There are occasions where the property might be owned by one person who lives in the property with their partner or with cohabitee(s).
- What happens if the relationship breaks down?



Proportion of cohabiting couples from 2011 to 2021 has increased across most ages (Source: ONS, 2023)

CO-OWNERSHIP OF FAMILY PROPERTY (1)

- For married or civil partner couples, who separate and wish to divide the family assets, family law solutions: in divorce or dissolution proceedings the family courts can make orders for distribution of property - and can entirely ignore who owns what in law and equity in making such orders
Matrimonial Causes Act 1973; Family Law Act 1996; Civil Partnership Act 2004
- However, the courts have no such powers for for non-married/non-civil partnership couples, cohabitees, or non-related co-owners (or in fact married couples/civil partners who do not divorce/dissolve)



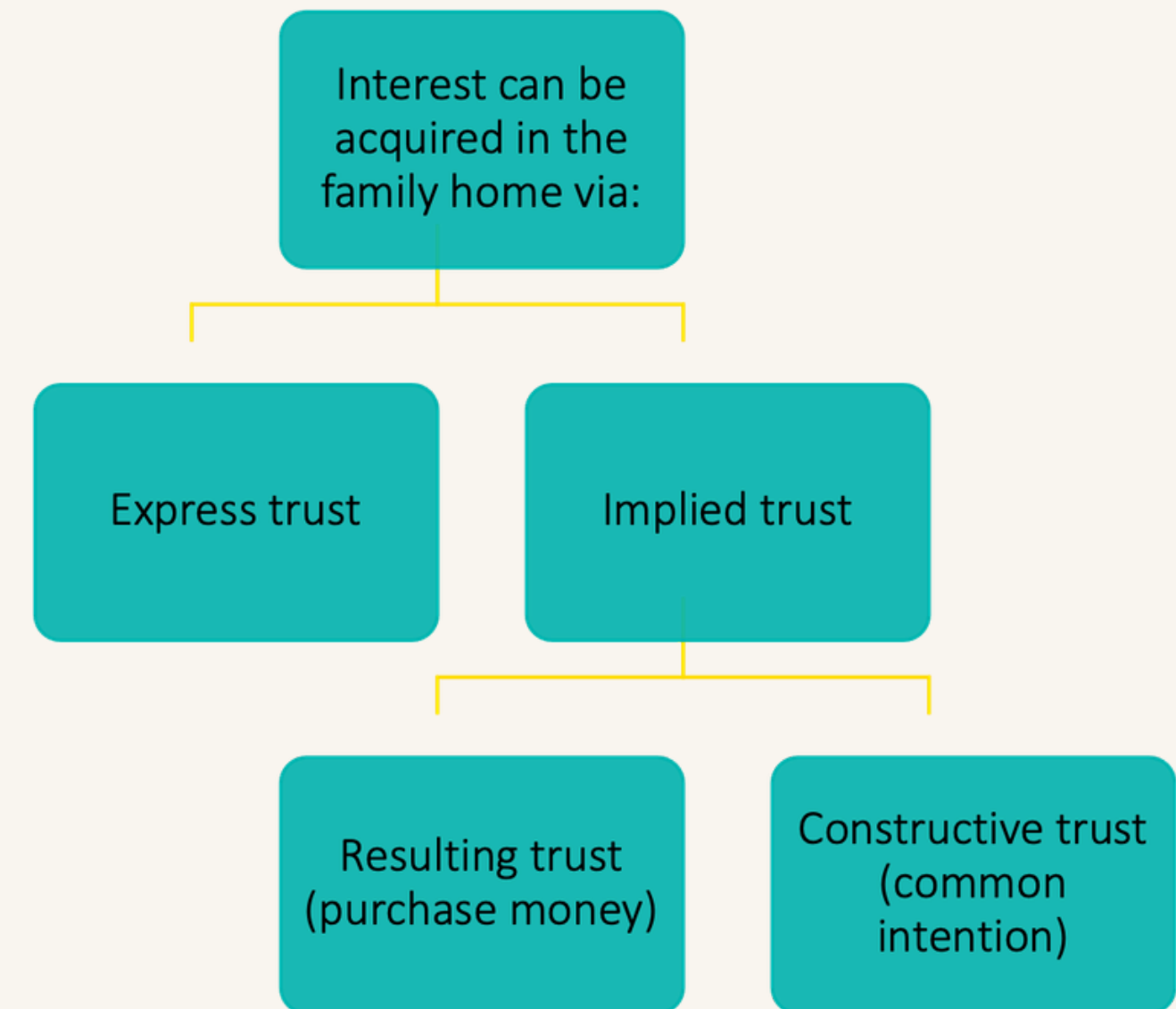
CO-OWNERSHIP OF THE FAMILY HOME (2)

- Unmarried cohabitants must turn to property/land law to determine distribution on separation.
- Where the parties have formally recorded the distribution, this will serve as conclusive evidence: *Goodman v Gallant* [1986] Fam 106
- But, if the parties have not recorded their interests, the parties may need to turn to other property law (trusts) mechanisms to resolve the distribution - especially problematic where one party moves in after purchase
- Until a family relationship breaks down, the parties may not have given a great deal of thought into distribution of their beneficial interest. So they may never have thought about:
 - Whether each party has a beneficial interest in the family home
 - How that interest is quantified



TRUSTS AND INTERESTS IN THE FAMILY HOME

- Various routes through which an interest in the family home can be acquired.
- Implied trusts are not easy to establish: typically involve expensive litigation
- Parties always well advised to agree distribution during relationship, via an express trust (conclusive)
- If no express trust, can seek to establish an interest via an implied trust
- Burden on claimant (person trying to establish an interest) to prove their case on balance of probabilities
- Starting point: judges assume equity follows law
- Difficult burden to overcome: weaker party
- In practice: parties advised to negotiate, and only instigate proceedings where benefit obtained will outweigh costs of litigation



EXPRESS DECLARATIONS

- Most effective way to safeguard interest, is for parties to record that interest formally
- The parties can expressly state their intention to share the interest in the property, creating an express trust.
- Oral agreement or unsigned written record is not sufficient for an express declaration of trust (though could be useful evidence of an implied trust)
- To be valid, formalities of **s53(1)(b) LPA 1925** must be followed: writing and signed by person(s) who can declare trust, or by will. s53(2) states that this section does not prevent implied trusts from being formed.
- Express trust may be formed at time of conveyance (TR1) or later
- Where an express trust exist it will **provide conclusive evidence**:
 - that the trust exists
 - and how the property is held (which tenancy) and in what shares
- Express trust can only be challenged if:
 - One or all of the co-owners can prove that they have agreed to vary the trust
 - The express trust is affected by proprietary estoppel
 - There is fraud, mistake or undue influence

EXPRESS DECLARATIONS

- Parties are most likely to agree distribution at early and harmonious stages of relationship
- Practitioners should encourage clients to determine how their beneficial interests should be held early: ideally when conveying the property
- Most commonly in express trusts, shares are fixed, but it is possible for the trust to allow for fixing at a later date, e.g. based on actual contributions. This may seem attractive, but can give rise to uncertainty - especially around what counts as a contribution
- Generally accepted as conclusive, but parties can vary at a later date by creating a new declaration of trust *Wallbank and Wallbank v Price* [2007] EWHC 3001 (Ch)
- Warren J in *Clarke v Meadus* [2010] EWHC 3117 (Ch) suggested that in theory where facts allow, a judge might look beyond the words of an express declaration, e.g. because circumstances evolved over time (as they do in implied trusts cases) or to find that an implied trust has subsequently been created. However, the courts have not yet been prepared to do so
- Mummery J was very clear that recent implied trusts case law has not opened the door for an implied trust to be inferred where an express trust exists: *Pankania v Chandegra* [2012] EWCA Civ 1438, [28]
- Parties may also consider a broader cohabitation agreement

ACTIVITY 1:

Working in pairs, answer the following questions:

1. What is the difference between legal ownership and beneficial ownership?
2. What is the main advantage of an express declaration of trust?
3. Which type of co-ownership includes the right of survivorship?
4. Why are disputes more common amongst cohabiting couples than married couples?
5. What formality is required for an express declaration of trust?

IMPLIED TRUSTS

- s53(2) confirms that the formality requirements for express trusts, do not prevent implied trusts of land from being established, despite them not meeting the formality requirements.
- Two routes to acquiring an interest via an implied trust:
 - resulting trust (typically contribution to purchase price)
 - constructive trust (common intention)
- In either type of implied trust, must differentiate between stages:
 - acquisition stage: where claimant needs to establish that they have a beneficial interest
 - quantification stage: deciding the share of each beneficiary
- Once party has established that they have acquired an interest in property, they can move on to prove the size of their share or ask the court to establish the size of their share
- Though the main focus of this unit's discussion is on separating couples: implied trusts have also been used in:
 - establishing an overriding interest: **LPA 1925, s7(1)(g)**
 - defence of possession: ***Williams & Glyn Bank Ltd v Boland* [1981] AC 487**
 - recovery proceedings: ***CPS v Piper and Piper* [2011] EWHC 3570**
 - divorcing couples when negotiating a fair settlement

RESULTING TRUSTS

- Traditionally, the main implied trust used to establish a claim was the resulting trust
- Typically arises where one party makes a direct financial contribution to the purchase of the property, but their name does not appear on the title deeds of the property as a co-owner
- Presumed that legal owner holds property on trust for person who advanced the purchase money:
Dyer v Dyer (1788) 2 Cox 92: equitable ownership of the property ‘results’ to those who contributed to the purchase price.
- in shares proportional to their contribution: *Lake v Gibson* (1729) 1Eq Cas Abr 290
- Nowadays, less commonly used in family home cases: displaced by constructive trust claims: *Stack v Dowden* [2007] UKHL 17
- Still relevant in:
 - investment/commercial cases: *Muschinski v Dodds* (1985) 160 CLR 583
 - contributions from wider family members (parents): *Laskar v Laskar* [2008] EWCA Civ 347

ELIGIBLE CONTRIBUTIONS

- Types of contribution that entitle a party who is not named on the title deeds to have a beneficial interest are:
 - cash contributions to purchase price or money raised by mortgage: *Burns v Burns* [1984] Ch 317.)
 - contribution to the deposit or the legal fees: *Midland Bank v Cooke* [1995] 4 All EN 562)
 - discount or reduction in purchase price (e.g. right to buy discount): *Springette v Defoe* [1992] 2 FLR 388; *Laskar v Laskar* [2008] EWCA Civ 347
- Rebuttable presumption: e.g. if it can be shown either:
 - that the money was provided for another purpose:
 - gift: *Fowkes v Pascoe* (1875) 10 Ch App 343
 - loan: *Sekhon v Alissa* [1989] 2 FLR 94
 - advancement: *Dyer v Dyer* (1788) 2 Cox 92
 - that an interest was intended in alternative shares: *Springette v Defoe* [1992] 2 FLR 388

CONTRIBUTIONS TO MORTGAGE PAYMENTS

- Conflicting treatment of contributions to mortgage payments by the courts, but now seems resolved:
 - ***Gissing v Gissing* [1971] AC 886**
 - contributing to mortgage payments will entitle the contributing parties to a beneficial interest in the property, even if their name was not on the title deeds
 - ***Curley v Parkes* [2004] EWCA Civ 1515**
 - a resulting trust in a property purchased.... can only arise at the time of purchase, implying that financial contributions made after that do not count towards the purchase price, thus would not entitle the person who made them to a beneficial interest in the property. Contributions to mortgage payments were treated as sums paid for the discharge of the mortgagor's obligations under the mortgage but are not part of the purchase price.
 - ***Laskar v Laskar* [2008] EWCA Civ 347**
 - mother and daughter purchasing a property together as an investment
 - mortgage instalments did constitute a contribution to the purchase price and that a resulting trust was established as a result
 - ***Stack v Dowden* [2007] UKHL 17**
 - mortgage instalments do constitute sufficient contribution

CONTRIBUTIONS TO HOUSEHOLD EXPENSES (1)

- Courts decided that contributing to family home improvements or household expenses does not give contributor a beneficial interest in family home.
- Mr and Mrs Pettitt purchased a property solely using wife's money and registered in her name.
- During his free time, Mr Pettitt contributed by redecorating and improving the property (lawn, walls).
- Mrs Pettitt initiated divorce proceedings, and husband claimed beneficial interest in property due to his contributions.
- This case pre-dates Matrimonial Causes Act 1973
- **Key Legal Question:** Whether the husband's improvement work entitle him to a beneficial interest in the property's sale proceeds?
- **Court of Appeal Decision:**
 - Husband not entitled to beneficial interest from temporary work because he had undertaken in his free time.
 - Improvements deemed temporary (ephemeral) and not permanent: Redecoration will only last for a few years and it would be unreasonable that a spouse should obtain a permanent interest in the house in return for making improvements of this character.
 - No shared intention between spouses regarding beneficial interest.
 - without agreement with wife or estoppel, no financial claim could be made by Mr Pettitt.
 - Husband's claim for beneficial interest fails; improvements were insufficient to establish interest in family home.

Key source: *Pettitt v Pettitt*
[1969] 2 All ER 385

CONTRIBUTIONS TO HOUSEHOLD EXPENSES (2)

- 1961: Plaintiff began a relationship with a married man (defendant): knowing marriage impossible.
- Plaintiff gave up work to care for their first child, while the defendant covered household expenses.
- Defendant bought family home using cash and a mortgage when expecting their second child.
- Plaintiff resumed employment in 1975: did not contribute to mortgage payments, but paid for redecoration and housekeeping.
- Defendant continued covering household expenses.
- 1980: Defendant left the relationship.
- Plaintiff sought declaration that house was held on a resulting trust for both, in shares decided by court.
- Following *Pettitt*, at first instance, judge ruled that the plaintiff was not entitled to a beneficial interest in the house.
- **Court of Appeal Decision:**
- Couple not married, so MCA 1973 did not apply
- Plaintiff did not contribute to purchase price and there was no agreement she would share beneficial interest: *prima facie* inference that defendant was absolute owner
- Only way for plaintiff to establish beneficial interest would be for court to infer from conduct common intent (constructive trust) or if there had been substantial contributions to the household expenses that could be related to the property's purchase
- Court cannot impute common intention from 17 years cohabitation
- Plaintiff's actions did not count as a substantial contribution to the household expenses

**Key source: *Burns v Burns*
[1984] Ch 317**

ACTIVITY 2: EVALUATING CASE LAW

- Evaluate the decisions reached in both *Pettitt v Pettitt* and *Burns v Burns*. Contrast the differences between these cases, is it right that the court concluded in both that neither party could establish a resulting trust in respect of their family homes?

MODERN RELEVANCE OF RESULTING TRUSTS

- Resulting trusts in context of family home now play a more reduced role
- For family homes seems to have given way for constructive trusts, but still relevant in non-domestic/family situations

Stack v Dowden [2007] UKHL 17, [2007] 2 AC 432

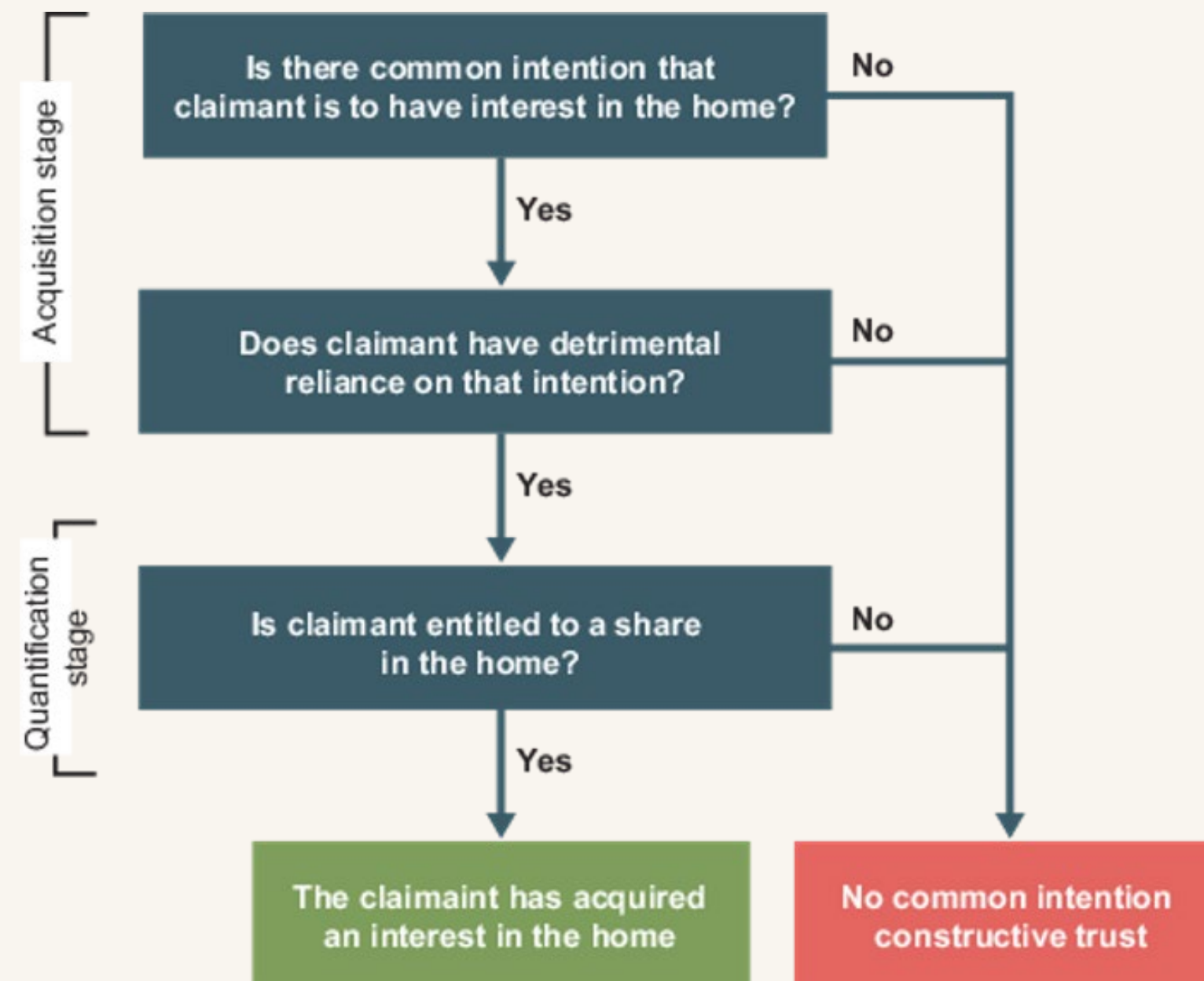
*“[That...Where a domestic property was conveyed into the joint names of cohabitants without any declaration of trust there was a prima facie case that both the legal and beneficial interests in the property were joint and equal; that the onus of proof lay upon any party seeking to establish that equity should not follow the law; ... that the law had **moved on from the presumption of a resulting trust and many more factors other than the parties’ respective financial contributions might be relevant to divining their true intentions**; and that when all relevant factors had been taken into account, cases in which the joint legal owners were to be taken to have intended that their beneficial interests should be different from their legal interests would be very unusual.”* (Lord Neuberger, para

Marr v Collie [2017] UKPC 17

“If what Baroness Hale [In Jones v Kernott] described as a ‘starting point’ (that joint legal ownership should signify joint beneficial ownership) is to be regarded as a presumption, is it in conflict with the presumption of a resulting trust where the parties have contributed unequally to the purchase of property in their joint names? A simplistic answer to that question might be that, if the property is purchased in joint names by parties in a domestic relationship the presumption of joint beneficial ownership applies but if bought in a wholly non-domestic situation it does not. In the latter case, it might be said that the resulting trust presumption obtains.” (Lord Kerr, para 53)

CONSTRUCTIVE TRUST

- Second type of implied trust (still being developed)
- Claimant can establish an interest in the family home by demonstrating two things:
 - The legal owner and the claimant (non-legal owner) **shared express or implied common intention** that the claimant would enjoy proprietary interest in the property; and
 - That the claimant **relied** on this common intention to their **detriment**.
- Two stages, but need to differentiate between cases of joint legal ownership and single legal ownership (different tests)
 - Identifying that a beneficial interest has been **acquired**
 - **Quantifying** that beneficial interest



What proportion of the property does the claimant own?
Court quantifies the beneficial share.

ACQUIRING AN INTEREST: JOINT LEGAL OWNERSHIP

- In cases where both parties are named as legal owners, they will usually have acquired an equitable interest on conveyance
- Equity follows the law: *prima facie* evidence that joint tenants at law are also joint tenants in equity: each party owns the entire equitable estate synchronously (severable on separation)
- Parties with legal ownership will have an interest automatically, unless it is shown that no beneficial interest was intended (i.e. acting as trustees only)
- If the parties are tenants in common (including on severance), equality is presumed unless they have agreed otherwise
- Any party who claims otherwise, bares the burden of proof



Key sources: *Stack v Dowden* [2007] UKHL 17; *Jones v Kernott* [2011] UKSC 53

ACQUIRING AN INTEREST: JOINT LEGAL OWNERSHIP

- Where the property is in joint ownership, but there is no express declaration of trust, following the *Stack* and *Kernott* decisions, judges will **no longer assume a resulting trust arises due to the parties' unequal contributions** to the purchase price in family home
- Judges will now presume equality between the parties, joint tenants in law and equity (or if already Tenants in common, held in equal shares).
- The UKSC held that this:
 - better reflects modern practices, acknowledging that intimate couples usually demonstrate a strong “emotional and economic commitment” when purchasing property as a joint enterprise, and
 - obviates the practical difficulty of having to consider all of the circumstances of the relationship (the “ups and downs of living together”) in order to determine what shares are appropriate.
- **Rebuttable by evidence that the parties formed a different common intention**, either at purchase or a later date (Baroness Hale recognised intentions may evolve), but will only usually happen exceptionally.



Key sources: *Stack v Dowden* [2007] UKHL 17; *Jones v Kernott* [2011] UKSC 53

ACQUIRING AN INTEREST: JOINT LEGAL OWNERSHIP

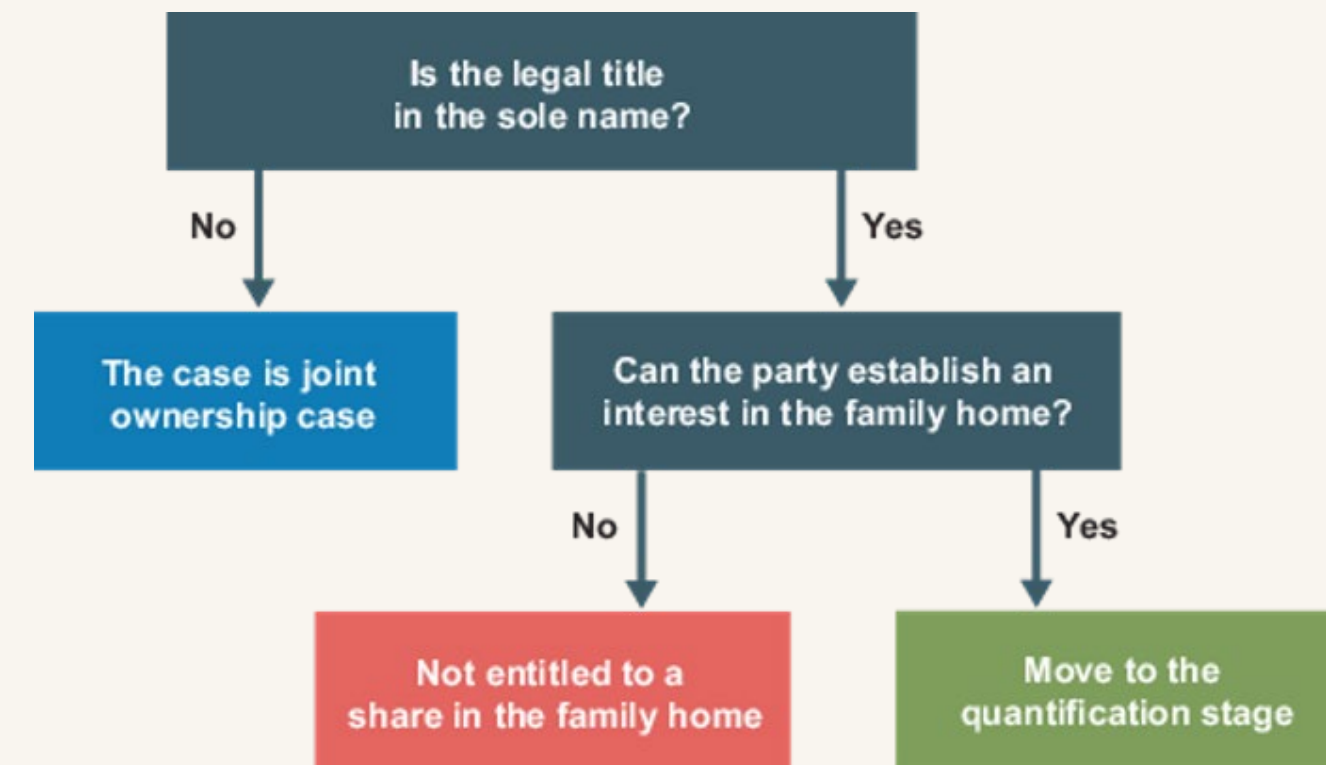
- Heavy burden to discharge, if seeking a different share: not to be embarked lightly and should only be pursued if gain will likely outweigh cost of litigation
- Various factors will be considered in deciding whether a different share split was intended, or if the parties' intentions had changed. These included (but not limited to) (Per Baroness Hale, in *Stack v Dowden* [2007] UKHL 17, para 70)
 - *Advice or discussions at the time of the transfer which cast light upon their intentions...;*
 - *the reasons why the home was acquired in their joint names;*
 - *the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys;*
 - *the purpose for which the home was acquired;*
 - *the nature of the parties' relationship;*
 - *whether they had children for whom they both had responsibility to provide a home;*
 - *how the purchase was financed, both initially and subsequently;*
 - *how the parties arranged their finances, whether separately or together or a bit of both;*
 - *how they discharged the outgoings on the property and their other household expenses...*
 - *...The parties' individual characters and personalities..."*



Key sources: *Stack v Dowden* [2007] UKHL 17; *Jones v Kernott* [2011] UKSC 53

ACQUIRING AN INTEREST: SOLE LEGAL OWNERSHIP

- In sole ownership cases, as equity follows the law, there is prima facie evidence that the sole legal owner is also the sole beneficial owner in equity. *Jones v Kernott* [2011] UKSC 53 at [10], [17], [51]
- Starting point is that the claimant has no interest
- Anyone claiming that they have beneficial interest in the property needs to establish an interest in the family home, before size of share considered



Where a property is registered in the sole legal name of one of the family members, the partner who is not the legal owner of the family home must establish that they have an interest in the property.

LLOYDS BANK V ROSSET [1991] 1AC 107 (FACTS)

- Mr and Mrs Rosset, purchased a derelict house to use as their family home, using money from the husband's family trust. The trustees required the property be registered in the husband's sole name.
- Mrs Rosset agreed with the understanding that she would still have a beneficial interest in the property, despite no legal title.
- The Rossets reached an agreement with the vendor to access the property and start renovation work before the sale was completed.
- Mrs Rosset oversaw the redecoration work and was present most of the time to do so.
- Unbeknown to Mrs Rosset, Mr Rosset took out a mortgage against the property. This loan money was used to contribute towards the purchase price, alongside the trust money, and for renovation work. The charge was registered on completion of the purchase.
- Mr Rosset left the home due to marital difficulties, while Mrs Rosset and their children remained in the property.
- When Mr Rosset failed to repay the bank, the bank sought possession of the property.
- Mrs Rosset defended against the possession claim, asserting that she had a beneficial interest in the property under a constructive trust.



Key source: *Lloyds Bank v Rosset* [1991] 1AC 107

LLOYDS BANK V ROSSET [1991] 1AC 107 (APPEAL)

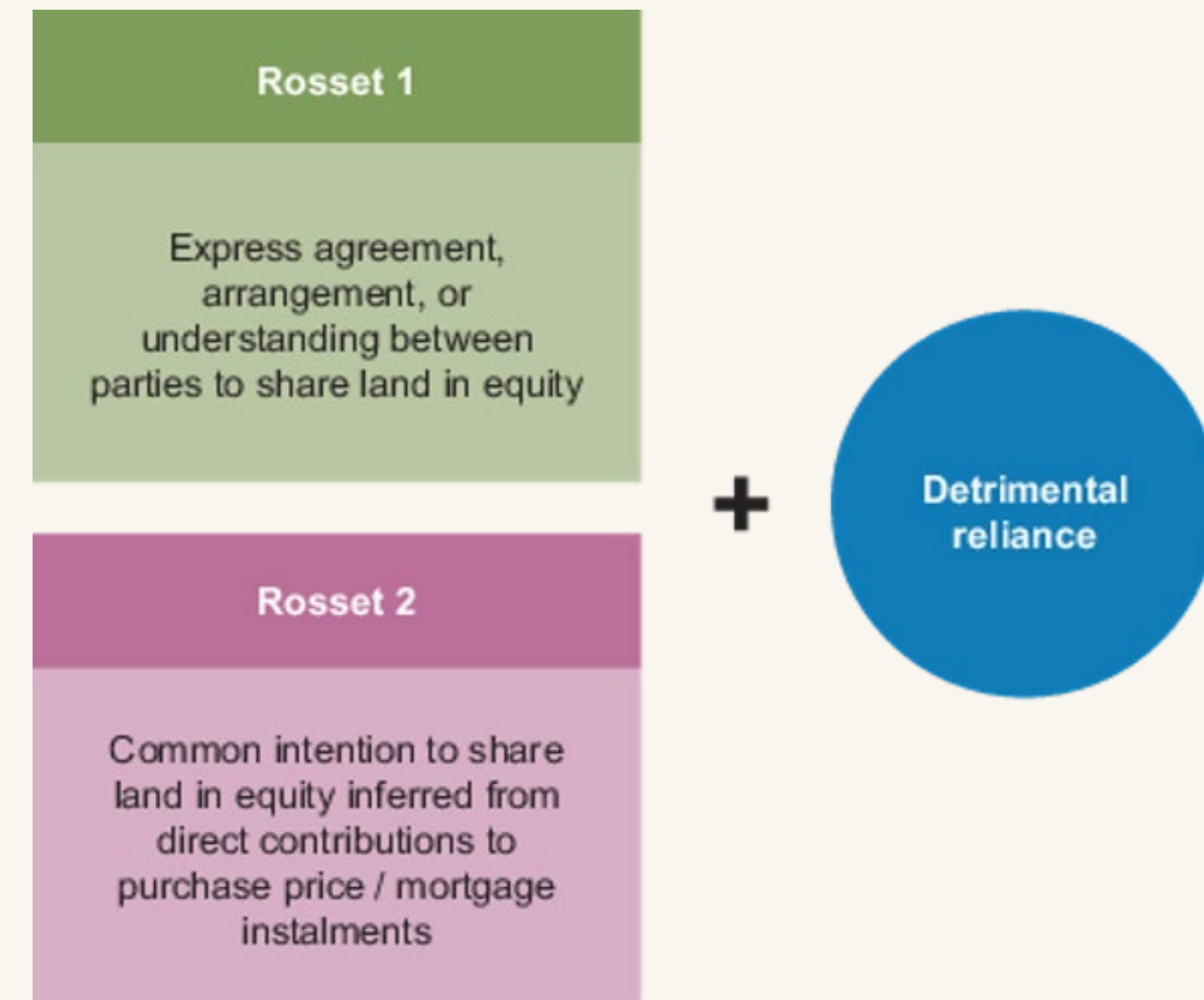
- The court in Lloyds Bank v Rosset needed to decide whether there was a common intention between the parties to create a constructive trust
- Lower court found that there was a common intention to create a constructive trust by virtue of the wife carrying out all the renovation work and that she acted to her detriment. But as she was not in actual occupation of the property at the time of executing the charge, her equitable interest did not override that of the bank.
- CA allowed the wife's appeal, :
 - the wife was present regularly at the property prior to the execution of the bank legal charges
 - the judge erred in reaching the decision that the presence of the builder in the property prior to completion was presence of an agent of the defendant.
- The Bank appealed to the House of Lords.



Key source: *Lloyds Bank v Rosset* [1991] 1AC 107

LLOYDS BANK V ROSSET [1991] 1AC 107 (DECISION)

- The House of Lords held:
 - For an interest in registered land to be protected, the actual occupation should take place; this should have been at the date of transfer, not the date of registration.
 - That the activities the wife carried out, redecoration and building work, before and up to the date of completion, were not sufficient to justify an inference of common intention to create a constructive trust. Any judge looking at such cases should have on their mind: was there **evidence of express discussion capable of establishing express agreement** or representation that the party, who is not the legal owner, to have interest in the property? **Conduct alone is not sufficient to establish such common intention.**
 - Otherwise, anything less than direct contribution to the purchase price by the non-owning party would suffice.



Key source: *Lloyds Bank v Rosset* [1991] 1AC 107

ACQUIRING AN INTEREST: SOLE LEGAL OWNERSHIP

- Since *Lloyds Bank v Rosset*, the HoL and UKSC have both revisited the law on constructive trusts in cases involving joint ownership (*Stack v Dowden* and *Jones v Kernott*).
- In both cases, their Lordships were **critical of *Rosset* as being dated**, advocating a more flexible approach accounting for the entire family situation, and beyond financial considerations alone.
- UKSC however **has not considered sole ownership cases**, thus these comments are obiter, and *Rosset* remains binding in sole owner cases.
- To establish an interest the court will (Per Chadwick LJ, *Oxley v Hiscock* [2004] 3 All ER 703 at 737):
 - consider whether there is evidence of, either:
 - a communicated common intention or agreement between the parties (**express common intention**) or
 - an agreement which can be inferred from the parties' conduct (**intention inferred from conduct**)
 - Where there is an agreement.... whether the non-legal owner has, **acted on reliance** of that agreement to his **detriment**.
 - (and then move on to consider)...quantification.

Key source: *Lloyds Bank v Rosset* [1991] 1AC 107

EXPRESS COMMON INTENTION: SOLE LEGAL OWNER

- The courts will require evidence of express discussions between the [parties].” *Rosset* at 132
 - Witness statements, including what was discussed and what was said “*however imperfectly remembered and imprecise their terms may have been.*” (most common evidence)
 - Recognising the high threshold, some flexibility has been shown in finding evidence of agreement:
 - “Don't worry about the future because when we are married it will be half yours anyway and I'll always look after you and [the boy].” *Hammond v Mitchell* [1992] 2 All ER 109 at 113
 - Discussions relating to providing a “secure home” *Savil v Goodall* [1994] 1 FCR 325 at 331
 - Excuses for not conveying into joint names can also provide sufficient evidence:
 - *Eves v Eves* [1975] 1 WLR 1338: but for her age the house would be in joint names
 - *Grant v Edwards* [1986] Ch 638: claimant told that transferring could prejudice her ongoing divorce

EXPRESS COMMON INTENTION: SOLE LEGAL OWNER

- The courts will require evidence of express discussions between the [parties]. *Rosset* at 132
- Any written records which may assist, or documentary records to show intention but usually do not exist
- Burden on claimant: harder to discharge in investment cases *Geary v Rankie* [2012] EWCA Civ 555, para 18
- Interpret words in same manner as other contractual disputes: *Marley v Rawlings* [2014] UKSC 2
- May be assisted by surrounding circumstances and events to weigh-up what was intended from words. Such facts may assist the court in interpreting. Some examples:
 - In the context of renovations: “this will benefit us both” *James v Thomas* [2007] EWCA Civ 1212 interpreted as they would both enjoy the property when improvements complete
 - conditional statements:
 - after we marry (*Ottey v Grundy* [2003] EWCA Civ 1176),
 - or after I die...you will be provided for (*James v Thomas*). neither sufficient to establish an interest unless the condition is fulfilled [estoppel may be more suitable remedy]
- In reality, each party will present conflicting accounts, and judges must determine on balance of probabilities

ACTIVITY 3: SCRUITINISING EVIDENCE

- Which factors might impact each party's credibility in giving evidence? i.e. how persuasive their account might be?

INFERRED COMMON INTENTION: SOLE LEGAL OWNER

- If there is no express agreement, a common intention can be inferred from the parties' conduct
- Judges are **generally reluctant** to infer common intention as a result of conduct alone, and only do so in limited circumstances: *Morris v Morris* [2008] EWCA Civ 257
- Where found, often serves as evidence of agreement and detrimental reliance: *Lightfoot v Lightfoot-Brown* [2005] EWCA Civ 201
- In *Rosset*: only contributions to purchase price or mortgage payments (at 133) would be sufficient conduct
- Following *Stack v Dowden*, advocate a more holistic approach
 - Financial contributions
 - Non-financial contributions
- **Not endorsed by the senior courts** (as *Rosset* is binding). However, shift in judicial attitudes, see that exceptionally some flexibility.

Key source: *Lloyds Bank v Rosset* [1991] 1AC 107

INFERRED COMMON INTENTION: FINANCIAL

- **Rosset**: non-legal owner can obtain an interest through directly contributing to the purchase price or mortgage payments
- Payments must be “referable to acquisition of the house” **Grant v Edwards [1986] 1Ch 638**
- However indirect financial contributions may be sufficient where they enable the legal owner to continue paying the mortgage instalments. **Le Foe v Le Foe [2002] 1FCR 107**
- A contribution through a right-to-buy discount would also likely be sufficient (as with resulting)
- As with resulting trusts: may be rebutted if can provide evidence, e.g. was a gift or loan. Documentary evidence to indicate intentions as to payments would assist courts.
- In cases involving parents and children: judges will usually infer that parents provided gift to purchase first family home and did not intend to acquire an interest **Abbott v Abbott [2007] UKPC 53**
 - Some parents have sought to recover on their children’s separation, by claiming an interest. In the absence of written records, usually won’t succeed to persuade the court that an interest or loan was intended.
- However, judges would likely consider:
 - the value of their contributions in relation to their wealth: **Aspden v Elvy [2012] EWHC 1387 (Ch)**
 - whether the parent(s) had made any other similar contributions, for example to their other children **Sekhona v Alissa [1989] Fam Law 355**

INFERRED COMMON INTENTION: NON-FINANCIAL

- Judges reluctant to infer an agreement on the basis of non-financial contributions, such as renovation and decoration works (even where substantial); contributions through managing the home; performing domestic duties and contributions to general household expenses and raising the family. Such contributions have traditionally been attributed as merely “*things...done for the benefit of the family without altering the title to the property*” or actions explicable by their “love and affection.” (Probert, 2001)
- Many senior judges recently have emphasised that the law has evolved since Rosset and queried whether it set the bar too high e.g. ***Stack v Dowden* [2007] UKHL 17, para 63**
- Remains disputed whether interest can be inferred from non-financial contributions, and if so what contributions would be sufficient.
- Cases are all decided on their facts, and likely only exceptional cases where the courts will infer common intention from non-financial conduct.
- Extent of contribution will likely be a relevant factor: for an interest to be inferred, court must be satisfied that the conduct is explicable on the basis that the party believed they were acquiring an interest in the property ***Morris v Morris* [2008] EWCA Civ 257**
- Differentiate between cases where non-legal owner’s commitment to a relationship or to benefit themselves e.g. where conduct provides a better standard of living or an income ***James v Thomas* [2007] EWCA Civ 1212**
- Evidence of the defendant’s dismissive or non-committal attitude could also assist the court by demonstrating that the defendant did not intend the claimant to have an interest in the property. ***Geary v Rankie* [2012] EWCA Civ 555, para 22**

INFERRED COMMON INTENTION: NON-FINANCIAL

- Post Jones v Kernott, increasing body of case law indicating alternative approach is emerging in sole owner cases.
- Number of cases where judges have undertaken a **broader inquiry and sought to infer an agreement** on the basis of the parties' "whole course of conduct in relation to the property." (Sloan, 2014)
- Counsel might therefore advocate that the court **should have regard to the whole circumstances of the parties' relationship with the property**, referring to the various factors identified in Stack (para 69) and adopt a more flexible approach (Pawlowski, 2012)
- If parties approached relationship as a joint enterprise, with both parties bringing to the relationship whatever assets they had for their mutual benefit and "doing what they could" in relation to the property, a court might be persuaded that, having regard to all the circumstances, a common intention to share the property's beneficial interest can be inferred.
- But, notably inconsistent practice post-Kernott: some courts prepared to show some flexibility, others have distinguished Kernott as being not-relevant to sole-owner cases, or being only relevant to quantification.
- It will be for the UKSC to decide on the future of *Rosset* - for not it continues to be the leading authority in sole-owner cases.

DETRIMENTAL RELIANCE: SOLE LEGAL OWNER

- Though recent judgements tended not to focus on this element, as well as finding evidence of common intention, the court must also show find that the non-legal owner has acted to their detriment on this common interest for a benefit to rise.

Smith v Bottomley and another [2013] EWCA Civ 953

- This could be evidenced in various ways (usually by same evidence which shows common intent). e.g.: changed their position in reliance of agreement *Geary v Rankine* [2012] EWCA Civ 555
- Acting to their detriment has been defined as conduct which the claimant “could not reasonably have been expected to embark unless...[they were]...to have an interest in the house.” *Grant v Edwards* [1986] 1Ch 638
- Must be shown that the agreement motivated the detrimental conduct
- Detriment does not need to be in relation to the property itself, but the claimant must persuade the court that the conduct related to the agreement - but for the expectation of an interest, they would not have pursued the conduct
- Difficult to prove detrimental reliance, particularly as must be referable to the common intention.
- Claims will not succeed if purely motivated by affection/commitment to relationship: *James v Thomas* [2007] EWCA Civ 1212
- Or simply desire to live in pleasant home/this house: *Walsh v Singh* [2009] EWHC 3219

DETRIMENTAL RELIANCE: SOLE LEGAL OWNER

Examples where detrimental reliance found

- Contributing towards the purchase price: *Pascoe v Turner* [1979] 1WLR 431
- household expenses/bills: *Cox v Jones* [2004] EWHC 1486 (Ch)
- home improvements: *Re Ali* [2012] EHC 2302
- or assuming responsibility for the mortgage: *Crossley v Crossley* [2005] EWC Civ 1581
- Done more than usually expected: *Eves v Eves* [1975] 3 All ER 768; *Grant v Edwards* [1986] Ch 638
- Engaged in work that would usually be paid: *Hammond v Mitchell* [1992] 2 All ER 109; *Cox v Jones* [2004] EWHC 1486 (Ch)
- Abandoning carer to raise family/emigrate: *Ungurian v Lesnoff* [1990] Ch 206

Examples where detrimental reliance not found

- making trivial sporadic payments: *Midland Bank Plc v Dobson* [1986] 1FLR 171
- performing ordinary domestic duties: *Lloyds Bank v Rosset* [1991] 1AC 107
- decorating: *Midland Bank Plc v Dobson* [1986] 1FLR 171
- carrying out general works: *Re Ali* [2012] EHC 2302 (Admin) at para 100; *Thomas v Fuller-Brown* [1988] 1FLR 237.
- Regardless of conduct, claim will fail unless it can be shown that the claimant acted because of agreement

QUANTIFICATION

- Object of the CT is to give effect to the parties' interests: primary search is to decide what parties intended
- If parties' intentions can be shown: the court must give effect to them, and cannot determine an alternative share, based on what it might consider fair (cf MCA)
- If parties purchase together, conveyancers should:
 - advise their clients as to the differences between joint tenancy and tenancy in common, and
 - encourage them to agree their beneficial interest
 - *Carlton v Goodman* [2002] EWCA Civ 545
- If conveyances do help their clients to agree this, such agreement will be registered on the TR1, under the section 'Declaration of trust' (this now recording may eventually reduce claims)
- If property is in joint names: starting point: equity follows law
- If one party wishes to show that a different division was intended, they need to show that the parties intended this - difficult to prove (burden on claimant)
- May be able to prove from their course of dealings, e.g. *Stack v Dowden*: rigidly separate financial dealings, so was possible to show intended an unequal division.
- Common pooling, makes it more difficult to dispute.
- 'Emotional and economic commitment to joint enterprise': *Jones v Kernott*, may give rise to presumption of equality
- Can change intention after conveyance, but this must be evidenced

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
 - in the first box, or
 - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to [Joint property ownership](#) and [practice guide 24: private trusts of land](#) for further guidance. These are both available on the GOV.UK website.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

10 Declaration of trust. The transferee is more than one person and

- ☐ they are to hold the property on trust for themselves as joint tenants
- ☐ they are to hold the property on trust for themselves as tenants in common in equal shares
- ☒ they are to hold the property on trust:

The tenants in common to hold the property on trust in an unequal shares as follows:

1. Mahmood Khan's share is 35%
2. Xanda Petrova's share is 65%

11 Additional provisions

Key sources: *Stack v Dowden* [2007] UKHL 17; *Jones v Kernott* [2011] UKSC 53

QUANTIFICATION

- In both single ownership and joint ownership cases, courts generally reluctant to find that the parties intended a division based on their respective financial contributions, starting point of assumed equality post *Stack* and *Kernott*.
- However, if evidence shows this is what parties had intended, this is what shall be established
- The nature of the parties' relationship may also influence the inference made.
***Gallarotti v Sebastianelli* [2012] EWCA Civ 865**
- If there is evidence that the parties indicated an alternative share, but it does not specify what shares, it will be for the court to decide what is appropriate.
 - “*considers fair having regard to the whole course of dealings...in relation to the property.*” ***Oxley v Hiscock* [2004] EWCA Civ 546**
- Fair share is not the same as fair share in matrimonial proceedings
- Joint owner cases: start with presumption of equality
- Single owner cases: do not start with presumption of equality, but based on relationship with the property



Key sources: *Stack v Dowden* [2007] UKHL 17; *Jones v Kernott* [2011] UKSC 53

ACTIVITY 4: ADVISING CLIENTS

- Alan bought a house in 2016, for £80,000, paying a 10% deposit himself and the balance being obtained by a mortgage from the Provident Building Society. The following year Alan started a relationship with Beryl, who continued working and helped Alan with the household expenses. Beryl ceased working when their daughter Chloe was born in 2020. In 2021 Alan was made redundant due to COVID and for the next two years Beryl worked part-time in order to assist with the mortgage payments. The couple have now separated and Alan has moved into a flat. Beryl is concerned as she believes that Alan may intend to sell the house and evict her.
- Advise Beryl as to any rights she may have in relation to the house

PROBLEM SOLVING: WHAT ARE WE ASSESSING?

- Advise X on.....
- Ability to:
 - identify legal issues presented by a set of facts
 - differentiate between those which require detailed analysis and those which can be dealt with concisely (but not overlooked)
 - identify and summarise the legal rules (authorities) relevant to the identified issues (including referencing skills) (**understanding**)
 - accurately explain how the legal rules apply to the facts (**application skills: analysis and critical reasoning**)
 - distinguish and follow authorities as appropriate
 - anticipate opposing arguments (and address them)
 - shape your points into a logical argument, leading to a clearly supported conclusion



How can you succeed in law problem solving?

IRAC: A TOOL TO SUCCEED WHE ADVISING

Event: the legal event for which you are advising (e.g. interest in family home). A single event usually has multiple IRACs (at least one paragraph each)

Issue: identify the legal issues you are considering; not a summary of facts but will arise from them. One issue per paragraph (no more). (one sentence)

Rule: explain the relevant legal rule (for the issue) in your own words with references. (usually more than one sentence, unless very straightforward)

Application: Explain how the rule applies to the facts of the question: this is the only place where you refer to facts (usually more than one sentence unless very straightforward). Evidence to show why.

Conclusion: briefly summarise the legal effect. Each issue will have a short conclusion, followed by an overall event conclusion. (one sentence)

IRAC: A BURGER MODEL

- It can be tempting to use IRAC stages as headings or have a separate paragraph for each element. There is no need to do this.
- IRAC is best used as a paragraph structure: with (at least) one sentence per element (more for rule and application).
- Make sure that each element of IRAC is present - state the legal Issue, explain the Rules, explain how the Rules relate to the facts, and give a mini-conclusion.
- Repeat as necessary. Build your burger!

Overview/Intro event

Issue 1

Rule 1

Application 1

Conclusion 1

Issue 2

Rule 2

Application 2

Conclusion 2

Overall summary



Don't forget to season your burger with references: adding salt and pepper is not optional.

PLANNING AN ANSWER WITH IRAC

Issue	Rule	Application	Conclusion

What will your issues be in a case involving establishing an equitable interest in family home?

IRAC: WORKED EXAMPLE

- Alan bought a house in 2016, for £80,000, paying a 10% deposit himself and the balance being obtained by a mortgage from the Provident Building Society. The following year Alan started a relationship with Beryl, who continued working and helped Alan with the household expenses. Beryl ceased working when their daughter Chloe was born in 2020. In 2021 Alan was made redundant due to COVID and for the next two years Beryl worked part-time in order to assist with the mortgage payments. The couple have now separated and Alan has moved into a flat. Beryl is concerned as she believes that Alan may intend to sell the house and evict her.
- Advise Beryl as to any rights she may have in relation to the house

- **Issue:** Whether there was a valid express declaration of trust in relation to the house.
- **Rule:** A valid express declaration of trust must be in writing and signed by the person able to declare such a trust (LPA 1925, s53(1)(b)). Where there is a valid express declaration of trust, it shall be conclusive as to beneficial ownership (*Goodman v Gallant* [1986] Fam 106).
- **Application:** No valid express declaration of trust is indicated. Alan does not appear to have recorded intentions as to division of beneficial interest in the property in a signed written document.
- **Conclusion:** Beryl cannot establish that she has a beneficial interest by virtue of an express declaration of trust.

In your answer you would write this up as a single paragraph. Not bullet points, and not with the bold headings - these are included for illustration.

IRAC: WRITTEN UP AS A PARAGRAPH

The first issue to advise Beryl upon is whether she can establish a beneficial interest in her family home, owned by Alan, via a valid express declaration of trust in relation to the house. A valid express declaration of trust must be in writing and signed by the person able to declare such a trust (LPA 1925, s53(1)(b)). Where there is a valid express declaration of trust, it shall be conclusive as to beneficial ownership (*Goodman v Gallant* [1986] Fam 106). The evidence supplied does not indicate existence of a valid express declaration of trust. Alan does not appear to have recorded intentions as to division of beneficial interest in the property in a signed written document. As such, Beryl cannot establish that she has a beneficial interest by virtue of an express declaration of trust.

As there was no valid express DT, you now move on to consider the next issue. Add a linking sentence to explain why you have chosen your next mechanism

UNIT 3: LEARNING OUTCOMES

- Identify key property law routes to establishing a beneficial interest in legal estates
- Explain the benefits of an express declaration
- Explain how a beneficial interest might be established via implied trusts
- Evaluate judicial decisions
- Apply the law to a factual scenarios to advise a client

RECAP

UNIT 3: READING MATERIALS

- You can draw on the following chapters of your textbooks to deepen your understanding of the topics discussed in this unit.
- Bevan (2022) chapter 2-3 and 5
- Dixon (2024), chapters 2-4

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.
 - Ali, Naveed (2019) Constructive trusts: Keeping up with the Jones. *Trusts and Estates Law and Tax Journal*, 204(Mar) 20-23.
 - Boyle, S. C. (2013) Keeping up with the neighbours 163 *NLJ* 14
 - Hayward, A. (2013) 'Stack v Dowden (2007); Jones v Kernott (2011) Finding a home for family property', in N.P. Gravells (ed.) *Landmark cases in land law*. Oxford: Hart Publishing, pp. 229-252.
 - Georgiou, A.Y.S. (2019), *Marr v Collie: The Ballooning of the Common Intention Constructive Trust*. *The Modern Law Review*, 82: 145-158. <https://doi.org/10.1111/1468-2230.12392>
 - Gardner, S. (2013) *Problems in Family Property* 72 *CLJ* 301
 - Greer, S and Pawlowski, M (2010) *Constructive Trusts and the Homemaker* 22 *Denning LJ* 35
 - Kershaw, M (2012) *In your own words* *NLJ* 1026
 - Lee, J (2012) "And the waters began to subside": imputing intention under Jones v Kernott 5 *Conv.* 421
 - Lees, K (2012) *Geary v Rankine: money isn't everything* 5 *Conv* 412
 - Lawson, A (1996) *The things we do for love: detrimental reliance in the family home* 16 *Legal Studies* 218 at 224
 - Mee, J (2012) *Jones v Kernott: inferring and imputing intention in Essex* *CONVPL* 167
 - ONS (2023) *People's living arrangements in England and Wales: Census 2021*. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/livingarrangementsofpeopleinenglandandwales/census2021> (Accessed: 21 May 2023).
 - Pawlowski, M. (2012) *Imputed Intention and joint ownership - a return to common sense: Jones v Kernott* *CONVPL* 149
 - Sloan, B (2014) *Keeping up with the Jones case: establishing constructive trusts in 'sole legal owner' scenarios* *Legal Studies* (Early View) DOI: 10.1111/lest.12052 (accessed 11th August 2014)