

## Answers to end of chapter Q&A

### **Question 1: Assess the role afforded to the settlor's intention in the creation of express, resulting and constructive trusts**

This question requires you to consider the key way in which the categories of trust discussed in this chapter are differentiated from each other; the role of the settlor's intent in their creation. In part 1, we have outlined the different roles attributed to the settlor's intent in the creation of each type of trust. To answer the question, a good starting point is the extract from Snell's Equity in part 1. However, we have considered the role of intent throughout the chapter in our discussion of the individual types of trust and to assess its role you need to take that discussion into account. In part 2, we noted the debate as to whether a trust the settlor intends to create, but which does not comply with statutory formalities for trusts of land should still be classified as express; a point of significance to the debate as to the classification of trusts arising under *Rochefoucauld v Boustead* [1897] 1 Ch 196 discussed in part 4.3.2. In part 3 we considered the two different views on the role of intent in the creation of resulting trusts.

### **Question 2: Would the following situations, each concerning the purchase of an investment property, give rise to a presumption of resulting trust or a presumption of advancement?**

- a. The property is purchased in the joint names of Mr and Mrs X with the purchase money provided by Mr X
- b. The property is purchased in the joint names of Mr and Mrs X with the purchase money provided by Mrs X
- c. The property is purchased in the joint names of Mr Y and his son with the purchase money provided by Mr Y
- d. The property is purchased in the joint names of Mr Y and his son with the purchase money provided by the son.

#### **Do your answers yield a logical result?**

To answer this question you should review the discussion of the purchase money resulting trust in part 3.1. As we have seen in that part, this type of resulting trust arises where a person contributes to the purchase of land in another person's name as equity presumes that a gift was not intended. However, in some circumstances, due to the relationship between the parties, no presumption of trust is drawn and instead, through the presumption of advancement or gift (discussed in part 3.1.1) it is presumed that a gift was intended. We have seen that the relationships to which the presumption of advancement applies reflect those in which, in the early twentieth century, there was believed to be a moral obligation of support. In modern times, the values on which the presumptions are drawn can appear outdated. The four examples given in this question are intended to highlight some of the apparent anomalies that may arise and, by doing so, lead you to question the logic of the results.

- The presumption of advancement applies where a husband purchases property in his wife's name; but not when a wife purchases property in her husband's name. Hence, in (a) it would be presumed that Mr X intended a gift for his wife

and the title would be held on trust for Mr and Mrs X. In (b) however, equity would not presume that Mrs X intended to make a gift to her husband. The presumption of resulting trust would apply and Mr and Mrs X would hold title on trust for Mrs X as the sole beneficiary. It should be noted, however, that the operation of the presumption of advancement between husband and wife has received particular criticism: see the extract from *Pettitt v Pettitt* [1970] AC 777 in part 3.1.1. As a result, it would require little evidence in (a) for Mr X to rebut the presumption and for the title to be held on trust for him as sole beneficiary in that situation.

- The presumption of advancement applies where a father purchases property in his son's name; but not where a son purchases property in his father's name. Hence, (c) and (d) yield analogous results to (a) and (b). In (c), the property would be held by Mr Y and his son on trust for both of them; in (d) the property would be held by Mr Y and his son on trust for the son as sole beneficiary.

It is important to note that the property in these examples is described as “an investment property”. If the property was being purchased as the parties' home, then very different considerations would apply. Ownership of the home is now determined by the common intention constructive trust rather than the resulting trust. This type of constructive trust is the topic of chapter 18. Once you have read chapter 18 you may find it useful to return to this question and consider how ownership of the property in these four situations would be decided if the property had been purchased as the parties' home.

**Question 3: What is the nature of the unconscionable or fraudulent conduct that triggers the imposition of the constructive trust under the doctrine in *Rochefoucauld v Boustead*? Compare and contrast this with the conduct required for a trust under the *Pallant v Morgan* equity.**

To answer this question you should review the constructive trusts discussed in parts 4 and 5. We have noted in part 4 that unconscionability is the common thread that ties together all trusts classified as constructive. The concept of equitable fraud is synonymous with unconscionability (see part 4.3.1). However, unconscionability does not exist as a concept at large; the combination of elements required for the imposition of a constructive trust in each application of the doctrine collectively establishes conduct considered to be unconscionable. This question highlights this point by focusing your attention on the nature of the unconscionable conduct that triggers the creation of a constructive trust in two specific doctrines.

*Rochefoucauld v Boustead* is considered in part 4.2. We have seen in part 4.3.1 that the conduct that triggers the trust is a transferee's attempt to deny an express trust (that is unenforceable for non-compliance with formalities) pursuant to which land was transferred in order to keep land for his or her own benefit. The *Pallant v Morgan* trust is discussed in part 5 and the nature of the unconscionability in the doctrine is analysed in part 5.2. As with *Rochefoucauld v Boustead*, the trust arises where the trustee reneges on an agreement pursuant to which land has been acquired. However, it must also be shown that the beneficiary relied on the agreement. We have seen that the distinctive feature of the trust (and of the nature of the conduct classified as unconscionable) is that the reliance need not be to the beneficiary's detriment; it is sufficient that it confers an

advantage on the trustee. The point of similarity between the doctrines raises a question as to whether they can be rationalised under a broader principle. In the extract in part 4.1 McFarlane suggests that they form part of a general principle imposing a constructive trust in cases of “receipt after a promise”; a view which we assessed in part 4.6.

**Question 4: In a three party case within the doctrine in *Rochefoucauld v Boustead*, should the constructive trust arise in favour of A (the transferor) or B (the intended beneficiary)?**

This question concerns a key debate in the operation of the doctrine in *Rochefoucauld v Boustead*. We have seen in part 4.3 that the doctrine was first applied in a two party case where land was transferred pursuant to a trust in favour of the transferor, but has been extended to three party cases (discussed in part 4.4) where the trust is in favour of a third party to the transfer. The opposing views as to whether the trust in three party cases should be imposed in favour of the transferor or intended beneficiary are highlighted in the extracts from Youdan, Feltham and Hopkins in part 4.4.1.