

1. **Carly and James want to buy a house together. James suggests to Carly that, because she is going through an unpleasant divorce, the house should be registered in James' sole name. Carly agrees. The couple move into the house and, while James is out at work, Carly completely landscapes the garden. She also redecorates a number of rooms. Some years later, their relationship breaks down. James tells Carly that, because her name is not on the land register and she has only contributed to household expenses, she has no interest in the house. Advise Carly.**

Following *Stack v Dowden* [2007] UKHL 17, the starting point for the court in determining the beneficial ownership of the property is the Land Register. As James is the sole legal owner, the presumption is that he is also the sole equitable owner. However, Carly may well be able to rebut this presumption by adducing evidence to the contrary.

Carly has not made any direct financial contribution to the purchase price of the property, and so does not have an interest under a resulting trust. Household contributions will not suffice to establish such an interest.

However, it looks as though Carly may have an equitable interest under a constructive trust. She needs to adduce evidence of an express common intention and detriment (*Lloyds Bank v Rosset*). The discussions with James may be sufficient to demonstrate that there was a common intention to share the property in equity (see *Eves v Eves*, *Grant v Edwards*). Carly has also acted to her detriment landscaping the garden and redecorating the rooms.

See 9.5.3 for more detail.

2. **Yasmeen and Bobby decide to buy a house together. The house is registered in Yasmeen's sole name. The house costs £100,000. Yasmeen contributes £75,000 and Bobby contributes £25,000. Bobby stays at home, and looks after the house and children, while Yasmeen goes to work. Some years later, their relationship breaks down. Advise Bobby.**

Although Yasmeen is the sole legal owner, Bobby would have an equitable interest under a resulting trust, as he has made a direct financial contribution to the purchase price of the property. Under a resulting trust, his share would be calculated in mathematical proportion to his contribution (25%). However, he would also have an interest under an inferred common intention constructive trust (see, *Lloyds Bank v Rosset*). In deciding his share of the property, the court could look at the whole course of dealings between the parties (*Midland Bank v Cooke*).

In the very recent case of *Stack v Dowden*, the House of Lords offered an approach to quantification of shares which involved a number of different factors for the court to consider, including children of the parties and the nature of the couple's relationship and financial arrangements. However, it appears that the key factor in the court's reasoning in this case was still the amount that each party had contributed to the purchase of the property.

See 9.5.6 and especially the case close up on *Stack v Dowden*.

3. **Gemma and Tash, who are sisters, buy a house together. They register it in joint names. Tash pays 70 per cent of the purchase price of the property. The remaining 30 per cent is funded by a mortgage acquired in joint names. Other than the house, the sisters have completely separate financial affairs and have no other assets in joint names. After a few years, the girls decide to sell the house. Unfortunately, they do not agree as to how the proceeds should be divided. Tash claims that she is entitled to 70 per cent of the property, because that is what she originally contributed. Gemma says that they are either beneficial joint tenants or tenants in common with equal shares. Advise Gemma and Tash.**

Stack v Dowden established that the starting point for the court in ascertaining the beneficial ownership of the property is the presumption that the equitable interests in the land follow the legal interests.

The initial presumption would then be that as the two sisters own the property as joint tenants in law, they also own it as joint tenants in equity. This presumption would not easily be displaced, according to Baroness Hale. This is what Gemma is essentially arguing.

If Tash is claiming otherwise, then she must persuade the court and rebut the presumption. However, Baroness Hale warned that it would not be rebutted simply by evidence that the parties had made different initial contributions to the purchase price of the property.

The court would look at a number of factors, including the purpose of the purchase and the nature of the parties' relationship. Given that the girls are sisters rather than romantic partners, it is possible that the court might accept that they did not want to own the property as joint tenants in equity, as this would have precluded them from leaving their share of the property by will.

See 9.5.6 and also Chapter 8 for more on joint tenancy and tenancy in common.

4. **Sisco and Dylan have been living together for three years, in a house owned solely by Sisco. Although Sisco paid for most of the purchase price of the property, Dylan has taken a year off work to renovate it completely. He has also used his own money to build a small extension at the back of the house. Sisco and Dylan have now separated and Dylan is claiming a beneficial interest in the property. Advise Dylan under current law and explain to him how the Law Commission's proposals, if accepted, would affect his situation.**

Under the current law, Dylan would have to establish an interest in the property under a resulting or constructive trust. He did not make a contribution to the acquisition of the property, nor does there seem to be any evidence of express discussions about the beneficial ownership of the property between the parties, and

so it is unlikely that he could establish an interest under a resulting or common intention constructive trust.

An equitable interest can be acquired at some point after the initial purchase of the property. However, even Dylan's contribution to the building of the extension will not entitle him to an interest in the property unless the court decides that it is evidence of a common intention to share the beneficial ownership of the property, rather than a simple intention to improve the couple's enjoyment of the property. (Note too Lord Neuberger's suggestion in *Stack v Dowden* that a substantial financial contribution to significant home improvements may allow the court to infer that it was agreed that the parties should share beneficial ownership).

The Law Commission's proposals would probably apply to the couple, provided that they had not opted out of the scheme, as they had been cohabiting for three years. The Law Commission have not suggested a definite qualification period but suggestions of between 2 and 5 years have been made.

Dylan would then need to show that during the relationship, he had suffered economic disadvantage, or that Sisco had acquired an economic benefit, from the relationship. Clearly, Sisco has gained from Dylan's hard work. Equally, Dylan would probably have suffered financially because he had taken a year off work to renovate the property. It is likely that Dylan would be awarded something under the Law Commission's proposed scheme. This need not be an equitable interest in the property but could be, for example, a lump sum payment to reflect the work that he has done.

See 9.8