

A newly married couple goes out for an evening meal at La Tasca. Then after much champagne to celebrate the husband's promotion at work, he announces to his wife that he wishes to take out a mortgage to buy a house with the aid of a loan obtained from a bank or another lender so that they can have a place of their own. She, being tipsy at that moment of the announcement, says to him 'Honey, that's great!' The husband responds that he still needs £1,000 to complete the deposit for the mortgage, and she, having no money, gleefully takes out her necklace and hands it to him saying 'Here! I have no money but that is worth £1200.' After the purchase of the house and moving in, problems start. One day, after an argument he says to her: 'Get out of my house, I don't want to see you ever again!,' whereupon she retorts: 'Fine, but what of my share in the house?' The husband looks truly puzzled, saying 'what *share*? It is *my* house. I alone paid for it. Surely, we have no agreement that you'll have any share in the house. Or did we? We did not write anything down to that effect. Happily we are both lawyers and you know what section 53 of the Law of Property Act 1925 says about registering an interest in property.'

### **Suggested Answer**

This question only partly concerns maxims of equity because it raises issues mainly in regard to constructive trusts, which we will deal with later. However, this kind of question highlights how equitable maxims can aid the application of other substantive law to cases.

Clearly, the wife in this question (let us call her La Tasca wife) has breached the formal requirements under section 53(1)(b) LPA 1925 which renders void an oral declaration of a trust of land. La Tasca wife here has not conformed to the legal requirements and hence may have her action defeated under the common law rules. However, she is able to rely on equity to argue that the husband is a constructive trustee for her interest in the property. To succeed she will need to demonstrate the existence of certain facts or circumstances that cannot be appreciated here without a knowledge of the law dealing with constructive and resulting trusts. However, once you have acquired knowledge of how those two trusts work, combine your argument there with the maxim that equity looks at intention and not form. The form is that the woman manifests her desire to acquire an interest in the property in writing; but she failed in this; the intention is that she clearly intended to have an interest in the property. This is what she has to prove. And if she could establish that she was misled by her husband—for instance if she did ask for an agreement in writing but he waived it—then another maxim would prevent the husband from profiting from his own fraud or wrongdoing depending on the scenario. It would also help her case if she has done other things, after the purchase of the house, such that enable her husband to carry on with the payment of the mortgage if the house is bought with the benefit of a loan from a bank.