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.’

Advise.

**Suggested Answer**

This question only partly concerns maxims of equity because it raises issues mainly in regard to constructive trusts, particularly constructive trusts of the family home, dealt with in chapter 18. 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 requires a declaration of trust to be in writing. An oral declaration of a trust of land is void. 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. The case of *Lloyds v Rosset* [1991] 1 AC 107 states that direct financial contributions to the purchase of a house, would make the legal estate holder, here the husband, hold on trust for the wife. The money from her necklace might be enough: *Midland Bank v Cooke* [1995] 4 All ER 562. That same money might also give her a claim under resulting trust principles. In *Tinsley v Milligan* [1993] 3 All ER 65, the claimant had helped pay for the house, so she was entitled to a proportionate share. The wife here has an even stronger case, as her claim has no taint of illegality.

However, once you have acquired knowledge of how those two trusts work, combine your argument there with the maxim that equity looks to the substance and not the form. The couple probably had some sort of common intention that they would share ownership of
the house. In an appropriate case, that would outweigh the absence of legal formalities required by the Law of Property Act 1925.

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. Equity will not permit a statute to be used as an instrument of fraud. The husband will not get away with telling her that she has a claim to the house and then hiding behind the Law of Property Act, by saying that an oral promise relating to land is unenforceable: *Bannister v Bannister* [1948] 2 All ER 153.

Equity follows the law and must respect the Law of Property Act, but can make minor exceptions to the law to prevent “unconscionable” results in a case. An example of this, the doctrine of estoppel, can be seen in Chapter 6. As in *Southwell v Blackburn* [2014] EWCA Civ 1347, it is unlikely that the court would not grant the wife some sort of remedy, even if it is just financial compensation.