1. Are resulting trusts based on the intention of the parties?

**Suggested Answer**

See 8.3. and 8.1 *Westdeutsche Landesbank v Islington* [1996] AC 669 asserted that all resulting trusts rested on the common intention of the parties. It is important to realise that “intention” is meant in a specialised sense. The settlors might never have thought about what they were doing, but if they had, this is what they would have intended. The older *Vandervell v IRC* [1974] Ch. 269, asserted that there were two types of resulting trust, “Presumed” which did depend upon intention and “Automatic” which did not. An attempt to combine the two theories has been made by Lord Millett and writers like Chambers, who stress the practical aspects of how a resulting trust might work. It returns property to the original owner. ‘Quistclose Trusts’ are a good example of this.


2. Do the presumptions of resulting trust and advancement still serve a useful purpose?

**Suggested Answer**

See 8.4, 11.5 and 11.6. The presumption that voluntary transfer to another creates a resulting trust, back for the original owner was revived by the Supreme Court in *Prest v Petrodel* [2013] 3 WLR 1, as it seemed to achieve a just outcome in that case. It is important to remember that the presumption only operates if there is no evidence of the parties’ true intention to displace it. This can be seen in *Prest*, where Mr Prest refused to explain his property transactions. In *Prest* and in older cases, such as *Fowkes v Pascoe* (1874-1875) LR 10 Ch. App. 343 the courts are very ready to accept evidence to displace the presumption. The same could be said with the presumption of advancement, particularly as English cases only accept that fathers, not mothers, have a duty to maintain. Purchase in the name of another still fits with modern ideas, but has become partially fused with constructive trusts and probably no longer applies in the context of property shared by cohabitants: *Stack v Dowden* [2007] 2 All ER 929. The presumption of advancement was to be abolished by the Equality Act 2010, because of concerns about treating husbands and wives equally. This will also remove the presumption of advancement between fathers and children. It might have been better to keep this part of the presumption of advancement to gifts from mothers to their children, as happens in some other common law jurisdictions. The relevant sections of the Equality Act have yet to be implemented.

FURTHER READING: Shah and Hitchens ‘Fresh Prest juice; the consequences of the Supreme Court’s landmark decision.’ (2014) 20 Trusts and Trustees 627 J Brightwell ‘Good Riddance to the Presumption of Advancement’ [2010] Trusts and Trustees 627.

3. Should evidence of an illegal purpose be considered by the courts?
Suggested Answer
See 8.7. As seen in 2 above evidence is very important in resulting trust cases to rebut the presumptions. If the evidence discloses an illegal purpose, it cannot be admitted and then the presumptions have to apply.

The House of Lords tried to modernise the law in *Tinsley v Milligan* [1994] 1 AC 340, by saying that evidence of an illegal purpose had to be considered, but the illegality had to be the basis of the person’s claim for it to be relevant. The decision is a difficult one and has caused problems in subsequent cases such as *Tribe v Tribe* [1996] Ch. 107. For instance, does *Tinsley* apply to the presumption of advancement? This problem was evaded by deciding that Mr Tribe senior had withdrawn from his illegal purpose and so could put forward evidence of his real reason for transferring property to his son. This approach was followed in *Patel v Mirza* [2014] EWCA Civ 1047.

Evidence of an illegal purpose could be considered, when the claimant voluntarily withdrew from it, as in *Tribe* and also when the purpose could no longer be carried out, as in *Patel*. The Law Commission has suggested reforming the law, so that generally “illegality” should be ignored, except in extreme cases. Parliament has not legislated upon these recommendations.