Revision Box Questions: Guidance for approach

Revision Box Chapter 8

1. Explain why trusts law has become so significant in determining questions of disputed home ownership.

As the materials explain, outside the very narrow confines of relationship breakdown amongst married parties or ones in a civil partnership, there is no statutory framework of property entitlements and there is a very weak cultural tradition of coming to formal agreement about the ownership of a home during the lifetime of a relationship. The courts are left to make determinations ex-post, often between parties whose relationships have broken down, or where another party- commonly a lender- is looking to claim the property following default on mortgage repayments. Equity becomes involved for two reasons: firstly beneficial ownership of the home is that which is valuable (legal title relates for formal entitlement), and where a claimant has no legal rights to a home, their claim can only be one in equity. As for why trusts law, implied trusts have traditionally been applied in response to these situations, apart from a brief period of judicial favour for proprietary estoppel, where following Stack v Dowden (2007), favour for trusts has been restored. There is plenty of scope for applying express trusts here, with this strongly supported in conveyancing practice, but this remains uncommon, and implied trusts are able to fill the breach through their ability to avoid formality requirements for declarations of trusts of land set out in s 53(1)(b) Law of Property Act 1925.

2. Explain why the resulting trust might actually be a very limited way of establishing a proprietary interest in a shared home for someone without legal title, using the theoretical basis for this type of implied trust to do so.

Resulting trusts can only apply to property which once belonged to a claimant, and then they are limited to arithmetical value of that passed to another in respect of a shared home (or a proportion of the overall value reflecting this). Constructive trusts have their basis in conduct which would make it unconscionable for the legal owner to deny the interests of the claimant and are not dependent on the claimant’s financial contributions in order to arise, and don’t have the same quantification limitations as those associated with resulting trusts, and overall thus provide a more flexible solution.

3. Explain the restrictions placed on the use of constructive trusts in establishing a beneficial interest that can be seen embodied in Lloyds Bank v Rosset [1991] AC 107.

Following a period of concern about the lack of principled application of constructive trusts in resolving disputed home ownership, this seminal House of Lords’ decision is authority that constructive trusts can only be applied to meet the needs of justice in this context where: there is an express agreement between the parties of a common intention that beneficial ownership of the property is to be shared by them; or where in absence of an express agreement to this effect, the parties’ common intention to share ownership of the property can be inferred from their conduct (in terms of the contributions made by them).
4. What does the Supreme Court decision in Jones v Kernott [2011] UKSC 53 say about establishing an interest for:

(a) those who hold joint legal title to a home?

This endorses the position set out in Stack v Dowden, that holding legal title jointly means that both parties also own the house in equity, with the presumption being that sharing in equity is equal to mirror the position at law.

(b) the situation in which a claimant is not the home’s legal owner?

This acknowledges that there is a different starting point for claimants who are not legal owners, and that this requires a common intention to share ownership being found- in other words, this appears to endorse the basic position of Rosset.