Chapter 8: Beneficial interests in the family home: a case study

1) ‘The House of Lords’ decision in Stack v Dowden [2007] has triggered a number of reactions from commentators in relation to its likely import and lasting significance. While the precise scope and impact of Stack remains to be seen, claims which are being made in some quarters that it will liberalise the requirements set down by Lord Bridge in Lloyds Bank v Rosset [1991] for establishing an equitable interest in a shared home are unfounded’. Discuss.


Brief guidance notes:

Both these questions are set around the law relating to equitable ownership of homes. Some introduction to the development of the modern position, the traditional high watermark being Lloyds Bank v Rosset [1991], and how Rosset has been interpreted subsequently, will be necessary before highlighting the importance of the House of Lords’ decision in Stack v Dowden [2007] as the leading authority. Both questions follow the thesis of the textbook that in many ways Stack has clarified a number of issues left unanswered in the aftermath of Rosset (such as the question of ‘trust or estoppel’; the position of indirect financial contributions in relation to quantification; and capital improvements in relation to quantification and apparently in relation to establishing a proprietary interest in equity), but it has also left other things still to be resolved. Key questions left unresolved by Stack included the status of non-financial contributions even as far as quantification is concerned—crucially, for this question, whether any liberalisation of Rosset requirements for actually establishing a proprietary interest in a property legally belonging to another has occurred. This was considered obiter in Stack and has been seized upon by some commentators. In this light, there must be consideration of these matters, in the light of Stack and also subsequent cases of Abbott and also the Court of Appeal decisions in James v Thomas and Parris v Williams both from [2008].
3) “One could hardly have a clearer example of a couple who had agreed to share everything equally: the profits of his business while it prospered, the risk of indebtedness suffered through its failure; the upbringing of their children; the rewards of her own career as a teacher; and most relevantly, a home into which he had put his savings and to which she was to give over the benefit of the maintenance and improvement contribution. When to all that is added the fact (still an important one) that this was a couple who had chosen to introduce into their relationship the additional commitment which marriage involves, the conclusion becomes inescapable that their presumed intention was to share the beneficial interest in the property in equal shares” (Per Waite LJ Midland Bank v Cooke [1995] 4 All ER 562, at 576).

Discuss the views being expressed in this judgement, explaining their significance in light of leading case law and current policy initiatives.

**Brief guidance notes:**

This question is set around the law relating to equitable ownership of homes, and some introduction into the development of the modern position, the traditional high watermark being Lloyds Bank v Rosset [1991], and how Rosset has been interpreted subsequently, will be necessary. This will require a careful mix of scope and detail, because it is actually seeking to draw out the points at which the two distinctive categories of case as identified in Rosset appeared to be moving closer together over a decade prior to the landmark House of Lords’ decision in Stack v Dowden [2007] (with much of this building on the Court of Appeal decision in Oxley v Hiscock [2004]). Indeed notwithstanding Cooke’s age, it remains a very significant touchstone for the law’s development during 2004-2008 and the praise and controversy this has invited in equal measure, and the response will need to identify where these respective views are to be found.

4) ‘The favour shown for the constructive trust in determining interests in disputed home ownership in Stack v Dowden [2007] is regrettable given that Lord Bridge’s invitation to apply proprietary estoppel in Lloyds Bank v Rosset [1991] had been taken up by a number of authorities subsequently, notably Oxley v Hiscock [2004]. Proprietary estoppel remains a mechanism for giving effect to agreement and representation which is not only effective, but one which is also fairer’.

Discuss the views being expressed in this statement, making an assessment of their validity.
Brief guidance notes:

This question, like the previous one, comes from the broad setting of the import of Rosset, and an introduction which reflects the law’s development in this area will be needed to set the scene. This should be ‘economical’ and brief, and very quickly there is the need to clarify that this is actually a question which requires explanation of how and where the idea of agreement being given effect to by way of trust or estoppel actually hails from (perhaps also noting at this stage the hypothesis of ‘blurring’ distinction being drawn between category 1 and category 2 cases). Thereafter account must be taken of the courts’ favour for proprietary estoppel evidenced from c. 2000-2007 with the high watermark being Oxley v Hiscock [2004], closely in conjunction with analysing how the constructive trust and proprietary estoppel are mechanisms for giving effect to agreement, with similarities and differences, and coming to an assessment of whether estoppel really is a more effective and fairer mechanism than the trust, bearing in mind the reasonings given for refocusing on the trust in Stack v Dowden [2007], and ultimately considering whether the demise of estoppel indicated by Stack is a move to be welcomed or is instead a regrettable development.

5) ‘Once the province of sole legal owners v non-legal owners, Stack v Dowden [2007] shows that disputed home ownership is now arising between parties who both own their property at law, and in time the case law will come to reflect this.’

Discuss.

Brief guidance notes:

This question has its starting point the way in which, as the textbook (and also the question itself) suggests that disputed home ownership and the role of equity therein has traditionally had as its premise a claimant who is not an owner of the home ‘at law’ seeking to establish that s/he nevertheless has a proprietary interest in the home. It also insinuates that this will change on account that Stack v Dowden itself involved a dispute as to the size of shares in equity between a couple who both owned their home at law, and the changing demographics of home ownership suggest that more homes are co-owned at law. Notwithstanding the changing nature of (legal) home ownership, the judgment in Stack suggests that the position is actually more settled than this might suggest. Stack suggested
that where there is joint legal ownership that the presumption was that 
shares in equity would mirror equal legal ownership- an application of the 
maxim ‘equity follows the law’, and an illustration of how a key role of 
equity is to support legal rights. This question requires assessment of the 
proposition that Stack is authority that a claimant who wishes to rebut the 
 presumption of shared equal equitable ownership is under an extremely 
heavy burden to do so. This burden was discharged in Stack, but 
subsequently Fowler v Barron [2008] and most recently Jones v Kernott 
[2010] consolidate how difficult it would be to argue the subsistence of 
unequal shares in equity, and reinforced the view taken in Stack that it 
(Stack) was in fact an “exceptional case”.

6) ‘Notwithstanding the publicity generated by the Law Commission’s work on 
reforming the law relating to cohabitation (manifested in the Consultation and 
Report respectively from 2006 and 2007), it is perhaps not surprising reform now 
seems unlikely. This is because even before taking the changing political context 
into consideration, it was never obvious that what was proposed by the Law 
Commission would deliver any more ‘justice’ than can currently be achieved 
through recourse to the courts’.

Discuss.

Brief Guidance notes:

This is of course a question which requires engagement with the Law 
Commission’s work on cohabitation dating from 2005-7, and so requires an 
understanding of what the “cohabitation project” was seeking to achieve, 
and how the fruits of the consultation period have sought to reflect this in 
terms of policy recommendations. It also requires understanding of the 
then New Labour Government’s response to the recommendations, before 
the political change brought about by the 2010 General Election. This 
provides the setting for engaging with the approach currently taken by the 
courts so as to determine whether the Law Commission’s proposed 
‘statutory scheme’ (explaining why this would not have been universally 
applicable in any case) provides a workable alternative to judicial 
approaches (which the Law Commission has repeatedly suggested have 
consistently resulted in injustice), and one which has demonstrable 
advantages over the current practices of the courts. The former 
‘workability’ considerations require reference to the potential applicability 
and ‘reach’ of the proposed scheme, through reference to eligibility criteria 
and ‘opting out’ facility. The latter ‘comparative advantage’ point requires 
an analysis of the way in which whatever the precise import of the House of 
Lords’ ruling in Stack v Dowden [2007], questions of quantification are at
their most liberalized and claimant-friendly ever. In this respect ORC materials consider the view that in many cases thus the advantages of the statutory scheme are not immediately obvious. Also of relevance is the view that the scheme might have had most clear application for claimants who find it difficult to ‘establish’ an interest in a home belonging to another, which appears to remain governed by the requirements in *Rosset* [1991].