

**Constructive Trusts  
operating in Personal and  
Commercial Disputes**

**clerkroom**

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## Constructive Trusts operating in Personal and Commercial Disputes

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If you have a dispute about the beneficial interests in property whether such property is held for personal domestic purposes or business reasons, the law on constructive trusts applies in equal measure.

It is surprising how the operation of a constructive trust can arise. The authorities on constructive trusts go back a long way but took a turn in the cases of *Pettit v Pettit* [1970] AC 777 and *Gissing v Gissing* [1971] AC 886. In those cases it was held that if the claimant was able to point to evidence of an agreement or a common intention, in relation to the sharing the beneficial interest in real property, then an implied trust will arise in those circumstances. Such an agreement may be either express, (oral or otherwise), or may be inferred from conduct.

The case of *Stack v Dowden* [2007] UKHL established the principle that a transfer of property into joint names creates a presumption of the parties holding property on trust for themselves. However, cases in this area are often very difficult due to the subtleties and niceties of family and business relationships. *Stack* shows that such a presumption may easily be rebutted by a failure to evidence a common intention/understanding even if property is held jointly.

A recent case I have been instructed on reveals how the operation of a constructive trust may operate in properties shared between family members for the purpose of a business arrangements as well as domestic arrangements. Essentially, if you can point to good evidence of a common intention/agreement, (such agreement does not necessarily have to take the form of a contract in law although it has been said that it should be equivalent to such), then such common intention/understanding/agreement will override how the shares in the property are formerly registered and held pursuant to the Law of Property Act 1925, which requires a valid express trust of land to be in writing. (Section 53(1) (b) LPA 1925).

The difficulty is, proving a common intention/understanding/agreement, can be very onerous, however, it is essential to carefully consider every bit of evidence, since very subtle actions can amount to evidence of an agreement or understanding as to how property is held. A particular case may at first appear to be a very weak case, but on close analysis of the facts and course of dealings of the parties involved, it may be a case that has real prospects. The court must take into account all circumstances. For example, cultural norms may be an important factor to evidence an understanding.

It was held in the case of *Gibson v Revenue and Customs Prosecution Office* [2008] EWCA Civ 645, that where there was evidence of an understanding that a property was to be held jointly, and such evidence included funding of the property from proceeds of crime, the court found it necessary to hold that there was an agreement as to the beneficial shares in the property albeit such an agreement was evidenced partly by funding of the property by proceeds of criminal activity. This was on the premise that the court could not deviate from what the true intentions of the parties were found to be.

In my experience, cases are often more complex than at first consideration, and it is essential to spend considerable time investigating facts, as cases in this area can turn on one statement or a particular conduct, howsoever subtle.

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