



## IT'S ALL MINE

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1. There are two primary questions:
  - (1) Did C, the non-owner at law, acquire a share in the house?
  - (2) If so, what is the extent of that share?

It is vital to distinguish the two.

### Did C acquire a Share?

2. There must have been a common intention that C share in the beneficial ownership of the house. That intention can be demonstrated in one of two ways:
  - (a) by express agreement between C and D that C was to have a share, followed by C acting to his or her detriment or altering his or her position in reliance on the agreement: see *Lloyds Bank Plc v. Rosset* [1991] 1 A.C. 107 at 132E-133C;
  - (b) in the absence of an express agreement, by inference from the conduct of the parties that they had a common intention to share the house beneficially.

### *(a) Express Agreement*

3. There must be evidence of some agreement, arrangement or understanding, usually prior to acquisition, or exceptionally at some later date, that each party should have some beneficial interest: *Rosset*. The agreement, arrangement or understanding need not extend to defining the extent of the shares: see *Oxley v. Hiscock* [2004] EWCA Civ. 546 at para.40. Usually there will have been some discussions. Even if they are imprecise in their terms, that does not prevent the court from finding an express agreement: see *Lightfoot v. Lightfoot-Brown* [2005] EWCA Civ. 201 at para. 23.

*(b) Inferred Common Intention*

4. If there was no discussion about the matter, the intention to share the beneficial interest has to be inferred from the conduct of both parties.
5. If C made direct contributions to the purchase price, whether initially or by payment of mortgage instalments, that will readily justify the inference that both parties intended to share the beneficial interest. In *Rosset* Lord Bridge said that it is at least extremely doubtful whether anything less will do but the law has moved on: *Abbott v. Abbott* [2007] UKPC 53 at paras 5-6. Such direct contributions do not lead necessarily to the further inference that the respective shares should be proportionate to their amount: *Oxley v. Hiscock* at para.40.
6. The parties must communicate their common intention to each other: *Oxley v. Hiscock* at para.68 and *Lightfoot v. Lightfoot-Brown* at para. 27. There must be either (a) express communication or (b) words or conduct causing the other party reasonably to understand that the intention is held: see *Gissing v. Gissing* [1971] A.C. 886 at 906, quoted in *Lightfoot v. Lightfoot-Brown* at para. 27. In (b) the question for the court is: what inferences as to the intention of both parties can reasonably be drawn from their words or conduct?

7. Once the common intention is established, the financial contribution of the non-legal owner will constitute detriment: *Oxley v. Hiscock* at para.68.
8. "The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it": *Stack v. Dowden* [2007] UKHL17 at para.60, applied in a single-legal-owner case in *Abbott v. Abbott* at para. 6.

#### The Extent of the Share

9. The extent of the non-owning party's share can be determined (a) by express agreement or (b) by the court imputing a common intention on the basis of what, in the light of all material circumstances (including the acts and conduct of the parties after acquisition) is shown to be "fair": *Oxley v. Hiscock* at para.66.
10. In the absence of evidence that the parties discussed the amount of their respective shares, each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property: *Oxley v. Hiscock* at para.69, approved (subject to one caveat) by Lord Walker and Lady Hale in *Stack v. Dowden* [2007] UKHL 17 at paras. 34 to 36 and para. 61 respectively. The caveat is that it is not for the court to impose its own view of what is fair; rather it is for the court to find the result which the parties must, in the light of their conduct, be taken to have intended. See also *Abbott v. Abbott* at para. 19, "The parties whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to its ownership."
11. So at all stages one is seeking to ascertain the intention of the

parties, that is, their intention fixed for all purposes: *Stack v. Dowden* at para.62. There is no need for that intention to have communicated one to the other: *Lightfoot v. Lightfoot-Brown* at para. 27.

#### The Relevance of Contributions

12. Any contributions made by C may be relevant for a number of purposes:
- (a) as evidence from which intention can be inferred;
  - (b) as corroboration of direct evidence of intention;
  - (c) as evidence that C has acted in reliance on the intention;
  - (d) to quantify the size of the beneficial interest.

See *Grant v. Edwards* [1986] Ch. 638, 655 quoted in *Lightfoot v. Lightfoot-Brown* at para. 24.

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