

Ali and Bianca are both stockbrokers and meet through work. They soon become a couple, going on holiday together and Bianca (and her dog Tiger Lily) move into Ali's London penthouse flat. A month later the couple become engaged and Ali hands over a large diamond ring to Bianca with the words 'soon we will be man and wife. Then our lives together will really start. We will buy a house with a large garden and we shall live happily thereafter.' Bianca stops actively pursuing her career as a stockbroker.

Bianca spends considerable time searching for their dream home and finds a dilapidated house in Essex. Ali buys the house, paying £450,000 of the £480,000 asking price in cash and borrowing the rest upon a mortgage. The legal estate is registered in the name of Ali. He tells Bianca that this is a mere 'formality', because he has borrowed the money. Bianca spends a year organizing the renovation of the house, which costs £150,000. Ali pays £130,000 of this and Bianca pays the other £20,000 from her own savings and a bank loan.

Soon after, Bianca and Ali separate. Bianca is living in Ali's London flat, but Ali is living elsewhere. She considers that she is entitled to at least a share of the flat and/or the house and seeks your advice.

Advise Bianca upon whether she has any claim to the flat or the house and how the court would decide the size of her share (if any).

Suggested Answer

This is a problem on the family home. Ali is the registered legal owner but there is no hint that the couple have made a written agreement to share the equitable interest. The burden is on Bianca to show that she has an equitable interest in the house: *Stack v Dowden* confirmed by *Jones v Kernott*. Therefore, we should start with *Lloyds v Rosset*, but not confine ourselves to it.

The two categories should be mentioned, oral agreement and detriment or direct financial contribution.

In the first category, there is not a clear, oral agreement on sharing the equitable interest in the house, but it seems from the case law that this does not matter. 'Imprecise terms' were mentioned in *Rosset* itself and somewhat inconclusive evidence has been accepted in cases like *Ungurian v Lesnoff*. Misleading statements, such as that made by Ali, have been interpreted as an 'agreement' in *Eves v Eves* and *Grant v Edwards*.

Bianca also needs to act to her detriment. Supervising building work was not enough in *Rosset*. Searching for a home might be, as in *Ungurian v Lesnoff*.

At first sight Bianca does not seem to have made a direct financial contribution, as strictly defined in *Rosset*. She has neither made a direct contribution to the purchase price nor does she pay the mortgage. Paying towards the renovation costs might be acceptable as a capital contribution: *Apsden V Elvey*. Even if these costs were not acceptable as direct

contributions, as there is an oral agreement they could qualify as detriment in the first category: *Gissing v Gissing* or *Grant v Edwards*.

It is possible, that a lower court might not stick rigidly to the two categories in *Lloyds*, but might move straight to the whole course of dealing approach, described in *Stack v Dowden* below. If that was done, Bianca would certainly qualify for a share, as she has made the kind of contributions mentioned by Baroness Hale in *Stack*.

It looks quite likely that Bianca has a share in the equitable interest, so the next step is to quantify it. *Lloyds Bank v Rosset* does not deal with this, but in the Court of Appeal, *Midland Bank v Cooke* stated that the court should see whether the couple agreed upon the size of their respective shares. *Oxley v Hiscock* modified this approach and said that if there were no agreement on the size of the shares, the court should not presume that a 50/50 split was automatic, but should look at all the factors including the size of their respective contributions. In the end the court should do what was fair and just. In *Stack v Dowden* the House of Lords confirmed the approach of looking at the whole course of dealing in order to decide the shares. Their Lordships, however disagreed with *Oxley*, insisting that the court could not just award fair shares, but must find the common intention of the couple from the evidence. The most recent Supreme Court case, *Jones v Kernott* confirms the approach in *Stack*, but recognises that sometimes, there will not be enough evidence to reveal the common intention of the couple. Then the courts must ascribe fair shares, based on the presumed common intention of the parties. We have little evidence here of the common intention of Ali and Bianca, as they never seem to have discussed the matter, so maybe the court would do that here and award fair shares. In cases like *Stack v Dowden* and *Oxley v Hiscock* the size of financial contributions was very important factor. Bianca's contribution was relatively small so presumably her share should be smaller than that of Ali. As there is more than one house and a valuable ring the court has great freedom to divide up their property.