

# Resulting Trusts

Resulting trusts arise in the absence of an express declaration where a person holds legal title in circumstances where they can not be taken to have full equitable ownership. According to *Re Vandervell's Trusts (no 2)* [1974] Ch 269 There are two categories of resulting trusts:

1. Automatic resulting trust
2. Presumed resulting trust

"Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention". per Lord Brown *Wilkinson Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] 2 WLR 802

## 1. Automatic resulting trust

An automatic resulting trust will arise where the settlor transfers property to the intended trustee but the trust has failed for some reason. The trustee holds the legal title of the property on trust. The beneficial or equitable ownership is retained by the settlor.

## 2. Presumed resulting trust

Presumed resulting trusts arise either from voluntary transfer of the legal estate or by contribution to the purchase price. In these situations it is presumed that the person did not intend to make a gift of the property or money unless there is a clear intention that they did so intend. In such circumstances a resulting trust arises and the transferor or the person making the contribution retains or takes a share in the beneficial interest. However, in some relationships there is a counter presumption that a gift was intended. This is known as the presumption of advancement.

## Requirements of presumed resulting trust

### Voluntary conveyance

Outside of land law, where a person transfers property to a third party who does not provide any consideration, there is a presumption of resulting trust, unless the relationship is one which gives rise to the presumption of advancement. However, [S.60\(3\) Law of Property Act 1925](#) cast doubt as to whether this would apply to the transfer of land.

S.60(3) did not prevent a resulting trust being imposed in:

*Hodgson v Marks* [1971] Ch 892 [Case summary](#)

However, in the following two cases it was suggested that s.60(3) had a more reaching impact:

*Tinsley v Milligan* [1993] 3 All ER 65 [Case summary](#)

# Resulting Trusts

**S Baum**



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