Problem question

Mr and Mrs Brown bought a house for their daughter Jenny to live in during her time as a student at university. The house cost £200,000 and for tax reasons was conveyed into Jenny's sole name. Mr and Mrs Brown paid £100,000 in cash and Jenny took out a mortgage to cover the balance of £100,000. It was understood that Mr and Mrs Brown would make payments into her account each month to cover the mortgage instalments as they fell due. Jenny's only financial outlay was £3,000 to cover stamp duty, the expenses of the purchase, removals and home insurance, but it was understood she would not have to pay a penny thereafter apart from the usual bills for gas, electricity and so forth. After one year of her university course Jenny invited Pete to live with her in the house. Pete is Jenny's long-term boyfriend and he has a steady job. From the moment he moved in, he started to pay the mortgage instalments instead of Mr and Mrs Brown. However, the house remained in Jenny's sole name. Jenny explained that her parents had paid a lot of money towards the house and wouldn't let her put the house in the joint names of her and Pete.

A year later Jenny and Pete split up. Advise the parties as to their likely interests in the house.

Guidance

Jenny is the legal owner and as such is presumed to be the absolute owner of the land, with one hundred per cent beneficial entitlement. Because the land is in her sole name, the important decision of the House of Lords in *Stack v Dowden* [2007] (followed in *Jones v Kernott* [2011] UKSC 53, UK Supreme Court) which applies to homes held in joint names, has no application here. There is no express trust or contract binding on Jenny to rebut the presumption that she is the sole legal owner, but it may be that she is informally bound to recognise her parents' and/or Pete as having a beneficial share in the land under a resulting trust or constructive trust

Mrs and Mr Brown

Resulting trust.

The presumption of a resulting trust normally arises in favour of any person who acquires land in another's name. This is the so-called purchase money resulting trust which Lord Browne-Wilkinson identified in the 'Westdeutsche' as the trust which is presumed to arise where A has contributed in whole or in part to the purchase of land which is vested in the name of B. The bad news for the parents is that the presumption of a resulting trust may be rebutted by a presumption that a parent making a donation to a child presumes to make a gift. This is the so-called presumption of advancement. The good news, on the other hand, is that the presumption of advancement is nowadays considered rather paternalistic and anachronistic, so that it is easily rebutted by evidence t the contrary. See, for instance, *Lavelle* v *Lavelle* [2004] EWCA Civ 223, Court of Appeal, where the presumption of advancement from father to daughter was rebutted by evidence that the transfer of land into the daughter's name had been made with the intention of avoiding inheritance tax. The presumption of advancement is unlikely to apply in our case for the same reason, and the presumption of resulting trust in favour of the parents will stand. It is at this point that the parents face another difficulty. If they claim under a resulting trust they will merely receive back a share of the land proportionate to their contribution to the purchase. This will be 3/13ths of the total value of the land. In order to get a larger share to reflect their payment of mortgage instalments in the period before (and presumably after) Nick's period of contribution, they will have to claim under a constructive trust.

Constructive trust

If Mr and Mrs Brown can establish that Jenny held her legal title to the land on constructive for her parents, the court will not be required (as they are under a resulting trust) to quantify the parents' share of the land by reference solely to the money they actually contributed to acquisition. Instead, the court will have a very wide power to quantify their share at a level necessary to give effect to the underlying common intention of the parties. Hence a £30,000 contribution to the purchase of a £130,000 house might give rise to a three-quarter (or even a 100%) share in the house if an agreement to that effect can be inferred from all the facts (including the £30,000 contribution) taken together (*Midland Bank* v *Cooke*). The challenge for the parents, therefore, is to show that their

there was some understanding between Mr and Mrs Brown and Jenny which renders it unconscionable for Jenny to assert that her parents have no beneficial interest in the house. Such a common intention can be established in one of two ways, as set-out by Lord Bridge in the *Rosset* case. The first is where A (the parents) and B (Jenny) by express words 'agree' that A is to have a beneficial interest in the land, and A acts in detriment reliance upon that 'agreement'. The second is where there were direct financial contributions to the purchase price by way of deposit, other purchase capital or mortgage instalments. There is no evidence of any express agreement between Jenny and her Parents under the first limb, but there is no doubt that the parents satisfy the requirements of the second limb. In the circumstances it is clear that Jenny must know that it is unconscionable to deny her parents a share in the land, it then becomes a question of determining the size of the share. The issue of quantification depends in theory upon the extent to which Jenny's conscience is affected, but in practice it is an assessment made by the court on a basis it considers to be broadly fair in all the circumstances of the case (support for this relaxed approach to quantification can be found in the case of Stack v Dowden [2007] HL, mentioned at the start of this answer). In the circumstances of this case, the parents have taken the entire risk of the undertaking (apart form the brief period in which Pete paid the mortgage instalments) and one can expect the court to award the parents in the region of 80-90% of the value of the land. The precise figure depends upon the extent to which Jenny and Pete may be entitled to a beneficial share of the land.

Pete

If Pete had paid rent to Jenny or to her Parents during the period of his occupation of the premises, he would be unable to claim a share of the capital value of the land on the breakdown of the relationship. An intention to rent a house is an outright disposition of his money which rebuts the presumption that he intended to recover his money under a resulting trust. Fortunately for Pete, he arranged to pay the mortgage instalments directly. Assuming there was no express agreement between Jenny and Pete that he would have a share, this direct financial contribution would be enough on its own to establish a constructive trust binding on Jenny's conscience. However, there is some evidence of an express agreement between them. Jenny explained that her parents had paid a lot of money towards the house and wouldn't let her put the house in the joint names of her and Pete. Artificial though it might seem, this express explanation may be construed by the

courts as an express understanding between Jenny and Pete that she accepted him as the owner of a share (see *Grant* v *Edwards*; *Eves* v *Eves*). So Pete is certainly entitled to an interest under a constructive trust (an interest under a resulting trust is harder to establish because his payment of mortgage instalments might not qualify as a contribution to the 'purchase'). The question of quantification is then a complex one. Jenny might have given Pete the impression that she considered him to be an equal co-owner of the house, which might explain his willingness to pay the mortgage instalments. If their understanding was of this nature, does that mean that Pete should be awarded half the house? Not at all. Jenny only has power to give away that which she has, if it turns out that she has little or no beneficial interest of her own in the house, she can only give away at most what little she has. To put it another way, since Jenny's conscience is already bound in favour of her parents, her conscientious obligation to Pete must be qualified by that prior obligation. This approach is consistent with the principle *qui prior est potior est* (the first in time is the first in right). On the facts of this case we can probably expect Pete to receive at most 3-4% of the value of the house for each year he paid the mortgage instalments. This brings us to Jenny.

Jenny

Jenny is the easiest case of all. There is no evidence of any express agreement between her and her parents that she would acquire a share of the house (and if there was such an epxres agreement, there is no evidence of detrimental reliance upon it.). A constructive trust under Lord Bridge's first limb in *Rosset* seems to be out of the question. Neither is there any evidence of a substantial direct financial contribution which would bring her within the second limb or give her a share under a resulting trust. There is, of course, the £3,000 she paid on expenses associated with the purchase. Since they do not contribute directly to the value of the land it may be that she doesn't establish a share under a resulting trust or a constructive trust (although the payment of stamp duty might conceivably give rise to such a share). Nevertheless, she does not need to establish a share in the same way that her parents and Pete did. Jenny is the legal owner of the house and is prima facie presumed to be a beneficial owner of the house, she is therefore entitled to claim a beneficial share expect to the extent that it would be unconscionable to do so. The court might on that basis allow her a small share since it may be a reasonable

expectation that she would not leave empty-handed., if only because the house and mortgage (and therefore all risk) was on her.