

## Chapter 6: Family Property

### Question One

*'Unlike continental European systems, English law has never developed a special regime for dealing with matrimonial or family property. Consequently, whenever ownership of family assets is in issue recourse must be had to the ordinary rules governing property law'* (Lowe and Douglas, 2015, Bromley's Family Law, p.123)

In the light of this quote, evaluate the approach taken in England and Wales to the ownership of the family home.

### Answer Guidance

The quote upon which this essay question is based indicates that English law does not have a special regime for dealing with family property: rather, the ordinary rules of property law apply. Students are therefore required to explain and evaluate the provisions of English property law and discuss whether they are appropriate in family situations. First, students should explain that ownership of property is of little relevance when a married couple separate as the courts have the power to redistribute to property under the Matrimonial Causes Act 1973. But it is relevant if a spouse/partner becomes insolvent or if an unmarried couple separate. The answer should include a basic explanation of the legal and beneficial estate and reference should be made to the Law of Property Act 1925. It should then discuss the acquisition of a beneficial interest through resulting trust (*Walker v Hall* [1984] FLR 126) and constructive trusts (*Lloyd's Bank v Rosset* [1991] A.C. 107). Cases such as *Burns v Burns* [1984] FLR 216 should be included to illustrate the hardship that can be caused by applying ordinary rules of property law to quasi-matrimonial situations. The use of estoppel should also be considered (*Southwell v Blackburn* [2014] EWCA Civ 1347). Students should discuss whether the courts have modified the ordinary rules of property law when faced with family situations and should consider whether the law should change. Reference may be made to the Law Commission report (2007) and the provisions of the Cohabitation Rights Bill 2014-15.

## Question Two

Paula and Quincy met twenty years ago at the local climbing centre. Two years later Paula moved into Quincy's house. Initially Paula paid half of the household bills e.g. gas and electricity and Quincy continued to pay the mortgage. Paula and Quincy shared the chores and together redecorated the property, which remained registered in Quincy's sole name. Four years after Paula moved into Quincy's house, she gave birth to Ryan. Paula became concerned about her financial position and asked Quincy about ownership of the family home. Quincy said that he would ensure that Paula was registered as a co-owner of the property as the property was just as much hers as his. Based on this assurance Paula used £20,000 that she had inherited from her mother to build an extension to the property, which increased its value considerably. The couple have no other significant assets. They have a car, which is registered in Paula's name and which was purchased from funds in their joint bank account. Quincy has just been made bankrupt. He has been advised that the family home, which remains registered in Quincy's sole name, will have to be sold to pay the creditors. The property is worth £200,000 and is mortgage free.

Advise Paula and Quincy in relation to this matter. Would it make any difference if the couple were married?

## Answer Guidance

This problem question requires students to apply the law relating to property to a factual scenario. Quincy is bankrupt, which means that his property can be used to satisfy creditors. Paula's property cannot be used to meet Quincy's debts unless she has made herself liable (see *Lloyd's Bank v Rosset* [1991] A.C. 107). It is therefore essential to determine whether Paula owns a share of the home, which is registered in Quincy's name and the car, which was purchased from funds in the couple's joint bank account. The answer should include a basic explanation of the legal and beneficial estate and reference should be made to the Law of Property Act 1925. Students should then consider whether Paula has acquired a beneficial interest through a constructive trust (*Lloyd's Bank v Rosset* [1991] A.C. 107). This requires a discussion of common intention (*Hammond v Mitchell* [1992] 2 ALL ER 109), detrimental reliance (*Grant v Edwards* [1987] 1 FLR 87) and the quantification of shares. Whether Paula can acquire an interest or other remedy using estoppel (*Southwell v Blackburn* [2014] EWCA Civ 1347) and the fact that a child is living in the family home should be considered (Insolvency Act 1986). Students should then explain the law relating to ownership of funds in a joint bank account (*Jones v Maynard* [1951] Ch 572) and items purchased using such funds i.e. the car. The latter is based on the intention of the parties rather than the registration documents. Students should be aware that the same law applies if the couple are married, although spouses have a greater degree of protection than cohabitants in insolvency situations (Insolvency Act 1986).

### **Question Three**

When unmarried couples separate, disputes relating to property are resolved by applying the ordinary law relating to property and trusts. Discuss the consequences of this and evaluate the proposals to reform the law in this area.

### **Answer Guidance**

This essay question requires students to consider the consequences of applying the ordinary law of property and trusts to disputes relating to property that arise when a cohabiting couple separates. Prior to doing this, it is useful to summarise the law in this area i.e. the difference between the legal and beneficial estate, the acquisition of a beneficial interest through resulting and constructive trusts (*Lloyd's Bank v Rosset* [1991] A.C. 107) and the use of estoppel (*Southwell v Blackburn* [2014] EWCA Civ 1347). Students should then discuss the impact of applying these general principles to unmarried couples e.g. if the property is registered in the name of one partner alone, the other may be disadvantaged, particularly if s/he has given up work to look after the home and family (see cases such as *Burns v Burns* [1984] FLR 216). As consequence, there have been many calls to reform the law in order to protect the economically weaker party. On the other hand, unmarried couples have chosen not to marry or form a civil partnership: it can therefore be argued that their decision should be respected and that the law should not impose a regime on them. These and other arguments for and against reform should be considered in the answer. The essay should discuss specific proposals for reform i.e. The Law Society Recommendations (2002), the Law Commission Law Commission Report (2007), the Cohabitation Bill 2008 and the Cohabitation Rights Bill 2014-15. It would also be useful to make reference to reform in other jurisdictions such as the Family Law (Scotland) Act 2006.