A question on implied trusts of the home can come as either a problem question or as an essay question. It lends itself nicely to discussion, and in fact on the whole when an essay goes well the awarded mark is much higher. However, the essay is not to be considered an easy option; if the essay goes badly, the mark is a disaster.

### Express Trusts
Express trusts require evidence in writing, otherwise unenforceable s 53(1)(b) LPA

Implied trusts are exempt from formalities s 53(2) LPA

### Presumed Resulting Trust
Share in proportion to contribution to purchase price - *Bull v Bull*, *Cowcher v Cowcher*

Do mortgage payments count?

No – *Curley v Parkes* [2004] CA; unless anticipated from outset *Tinsley v Milligan* [1993] HL

NB *Stack v Dowden* [2007] HL

A constructive trust of the home is based on the common Intention of the parties as to sharing ownership of the home, not just use of the home.

### ECICT (Express Common Intention Constructive Trust)
This requires
1. Express discussions about ownership at time or before purchase and ‘exceptionally’ at later date AND
2. Detrimental Reliance (must take place after discussions)

Detrimental reliance

*Grant v Edwards* [1986] CA

Nourse LJ - conduct otherwise inexplicable

Mustill LJ - conduct referable to promise

Browne-Wilkinson LJ – conduct relating to joint lives

Proving detrimental reliance

Direct and indirect financial contributions to purchase price or mortgage - *Grant v Edwards* YES

Significant contribution to household expenses - *Grant v Edwards* YES

Looking after family and home – *Burns*; compare *Rosset* and *Grant v Edwards* UNLIKELY

### ICICT (Implied Common Intention Constructive Trust)
This requires:

- Direct contribution to purchase price either by contributing to:
  - Initial purchase price, and/or
  - Mortgage payments
- ‘Extremely doubtful’ anything less will do
- Indirect contributions will not suffice for an ICICT:
  - eg Decorating - *Rosset*
  - DIY - *Pettitt*
  - Extension - *Thomas v Fuller Brown*
  - Buying furniture/laying lawn - *Gissing*
  - Raising children and running home – *Burns*

**SUBSTANTIAL INDIRECT FINANCIAL CONTRIBUTION**

*Burns v Burns* [1984] - may suffice

But doubtful after *Rosset*

### Quantifying Outcome

**Resulting Trust**

Proportionate to direct contribution to purchase

Contribution of 50% of price gives half share

NB *Stack v Dowden*

**ECICT**

Any agreement e.g. *Gissing*

Infer ‘common understanding’ from conduct – *Gissing*

‘Broad brush’ approach – *Drake v Whipp*, Also, *Oxley v Hiscocks*, ‘fair share’ (obiter), *Stack v Dowden*

**ICICT**

Orthodox view – proportionate share, but now *Stack v Dowden*, if joint legal names. *Midland Bank v Cooke* - survey ‘whole course of dealings’

*Oxley v Hiscock* [2004] a ‘fair’ share

*Stack v Dowden* [2007] HL – NOT a fair share. Search for parties’ intention.

### The Question

The question could either be a problem question or an essay question; this will vary possibly according to your course provider, possibly.

Anyway, a useful checklist is:

- When the law of trusts is relevant to disputes over the home
- Social significance of this area
- The current state of the law (the law is continuously in a state of flux), especially the current failings of the law
- Two ways of claiming: claims based on common intention and detrimental reliance;
- Claims based on direct financial contributions
- How the size of the share is determined
- Rights which an equitable interest gives
- Where the law should be going?