16. Resulting trusts – automatic resulting trusts

Reading: *Hudson, section 11.1*

The term "resulting" comes from the Latin 'resalire' meaning to 'jump back'.

1) The leading case on the definition of a "resulting trust"


Lord Browne-Wilkinson in *Westdeutsche Landesbank v. Islington*:–

"Under existing law a resulting trust arises in two sets of circumstances:

(A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B; the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A’s intention to make an outright transfer.

(B) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest. 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.

Megarry J. in *Re Vandervell’s Trusts (No.2)* suggests that a resulting trust of type (B) does not depend on intention but operates automatically. I am not convinced that this is right. If the settlor has expressly, or by necessary implication, abandoned any beneficial interest in the trust property, there is in my view no resulting trust: the undisposed-of equitable interest vests in the Crown as bona vacantia."

AUTOMATIC RESULTING TRUSTS

This category of resulting trust arises automatically by operation of law. Where some part of the equitable interest in property is unallocated by S after transferring property to T, the equitable interest automatically results back to S.

Reading: *Hudson, section 11.2*

No declaration of trust, by mistake

**Vandervell v. IRC [1966] Ch 261; [1967] 2 AC 291**