Model Essay (Property Law)

How to write a law essay

Depending on the required work length, writing a law essay can be a long and involved process. START AS EARLY AS POSSIBLE! Many students develop their own style of attacking an essay topic. Generally however it is useful to break the essay-writing process down into the following steps:

1. Analysing your essay topic

Before you can create an effective argument, you must determine exactly what you are being asked to answer. Your lecturer would have chosen his/her words carefully when setting the essay topic so avoid making generalisations and interpreting the question to suit your interests or level of knowledge. Seek clarification from your lecturer where necessary. It is often a good idea to highlight key words in the essay question and use them to structure your essay.

2. Researching

Be thorough in your researching and try to locate as wide a variety of sources as possible i.e. books, journals, texts, internet articles. Make extensive use of the westlaw and lexis nexis databases for tracking down journal articles (see the lawskool research guide). Many law journals are available online these days and you’ll find that printing out web articles is much cheaper than photocopying from the hard-copy journals.
3. Reading/note taking

This will no doubt be the longest part of the essay-writing process. You should have a tentative essay plan in mind at this stage.

- Firstly skim through your sources and try to work out some categories for your notes.
- Now read through each source thoroughly, highlighting your printouts and tabbing your books, as you go.
- Record extensive dot-point notes for each category (either on paper or on your word processor). Write/type out direct quotes verbatim. Ensure that you record all of your references as you go (trust us, this will make your life so much easier later on).

4. Planning

You probably won’t be able to finalise a definitive essay plan until after you have teased out all of the relevant information from your sources. The following diagram provides you with a useful way of planning out your essay.

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**INTRODUCTION**

- Start broadly
  - Define key terms
  - Determine your point of view on the topic.
  - Highlight your main points.

**MAIN BODY**

Para 1
Para 2
Para 3
Para 4…

- The body is narrow
  - Specifically answer the question.
  - Use topic sentences and linking paragraphs
  - Don’t waffle!
  - Reference quotes

**CONCLUSION**

- End broadly
  - Reflect on your main argument
  - Highlight implications of your discussion for the future.

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5. Draft

The hard part! Personal writing styles will differ; some preferring to stick rigidly to their plan and whittle down the essay in chunks; others taking a stream of consciousness approach in order to just get everything up on the screen before worrying about the text making any sense. Try to follow your plan but by no means worry about writing in perfect English at this stage. That’s what the next step is for. Make liberal use of direct quotes and ensure that they are properly sourced.

6. Revising and refining

This is where you turn your shambolic ‘essay’ into a piece of solid gold that you can be proud of hurling through the essay shute on due date day. Be sure that you fully ANSWER THE QUESTION. It is imperative that there is a logical argument flowing through your entire essay that is easy for your marker to ascertain. If you have time, take your essay to a university law writing clinic. The dedicated individuals will be happy to read over your essay and give you thoughtful criticism and advice.

6. Footnoting

Everything must be fully referenced in a law essay, not just direct quotes. EVERY SINGLE PARAGRAPH MUST BE REFERENCED. Don't underestimate how long this can take you. Legal referencing is very precise and particular. Find out which legal referencing style your lectures prefer. If you keep a record of all your references as you go along, you will avoid having to frantically fumble through your notes at 2am the morning before its due, trying to work out where you pulled your quotes.

Happy essay-writing!

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(a) An occupant of a house who did not contribute to the cost of the acquisition can claim an equitable interest arising either from proprietary estoppel\(^1\) or implied trusts. Most cases will arise from implied trusts which take two forms: presumed resulting trusts\(^2\) and constructive trusts, and will see a woman taking legal proceedings against her male partner. If she is married, her beneficial interest will usually be protected by the Matrimonial Causes Act (1973) ss 24 and 25\(^3\). However, most cases in this area arise because the Act does not offer the same protection to unmarried co-habiting couples, so women must claim there is a trust.

With resulting trusts, the parties will have made direct contributions to the property, not necessarily aware that they have created a trust. Direct contributions are financial contributions made towards the property at the time of the acquisition\(^4\), e.g. payment of a deposit\(^5\). However, the meaning of a ‘direct’ contribution has been stretched by the courts, e.g. council house discounts under the ‘right to buy’\(^6\) and substantial improvements to property made by a spouse under the Matrimonial Proceedings and Property Act (1970) s(37). Furthermore, there is some debate as to whether mortgage payments can be considered\(^7\). It has been suggested that mortgage payments will amount to direct contributions

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1 Many of the cases involve a third party (mortgagee) and estoppels do not bind third parties.
2 There are also automatic resulting trusts, but these are rare.
3 Unless third parties, e.g. mortgagees are involved.
4 Re Roger’s Question [1948] 1 All ER 328
5 Midland Bank v. Cooke [1995] 4 All ER 562
7 Thompson, M. Modern Land Law 2\(^{nd}\) edn. P. 265
in certain circumstances. However, it has been said that mortgage payments cannot constitute direct contributions because they are not paid at the time of the acquisition and mortgage repayments pay off debts and do not purchase an interest in property.

Constructive trusts exist where there is a common intention between the parties. In *Lloyds Bank plc v. Rosset* the court distinguished between two types of constructive trusts. With express bargain trusts, the intention must be orally discussed between the parties and there must be detrimental reliance on the intention. With implied bargain trusts intention is inferred from the parties' conduct. Express bargain trusts will consider direct and indirect contributions, whereas implied bargain trusts will usually only consider direct contributions to indicate entitlement to beneficial ownership.

Lord Bridge's decision in *Rosset* has been praised for bringing clarity to the law and criticised because it has blurred the distinction between resulting and constructive trusts. Furthermore, common intention may not be present at all in some cases, as the claimant simply did not think about whether she had any legal interest. This means that a woman might make indirect contributions to a property, but without express agreement between herself and her partner of a

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8 Carlton v. Goodman [2002] EWCA Civ 545
9 Curley v. Parkes [2004] EWCA Civ 1515
10 Springette v. Defoe [1992] 2 FLR 388 at 392
11 [1991] 1 AC 107
14 Dixon, M. 'Resulting and Constructive Trusts of Land: The Mist Descends and Rises' 2005 Conv 79
15 Rotherham, C. 'The Property Rights of Unmarried Cohabitees: The Case for Reform' 2004 Conv 268
16 Wong, S. 'Constructive trusts over the family home: lessons to be learned from other commonwealth jurisdictions?' 1998 Legal Studies 369 at 372
shared beneficial interest, which means her claim should fail. *Rosset* has been criticised by Anna Lawson as being 'unrealistic and the cause of frequent and sometimes severe injustice'\(^{17}\).

This suggests that the orthodox rules governing implied trusts are unsatisfactory. However, ‘the courts have often been willing to manipulate their findings…. to conclude that the requirements of the orthodox approach are met’\(^{18}\) to promote justice. *Midland Bank plc v. Cooke*\(^{19}\) fitted into neither of the *Rosset* categories\(^{20}\) in suggesting it would be ‘anomalous’\(^{21}\) to exclude deserving individuals from having rights to beneficial ownership. *Drake v. Whipp*\(^{22}\) went further, with Gibson LJ indicating the courts could take a ‘broad brush’ approach to determining parties’ respective shares. It can be argued that while the deviations from *Rosset* make the law fairer, the courts have taken a ‘palm tree’\(^{23}\) approach and this has led to uncertainty and blurred the distinction between proprietary estoppel and constructive trusts\(^{24}\). This was acknowledged by Chadwick LJ in *Oxley v. Hiscock*\(^{25}\).

However, there is still some criticism over the limitations to indirect contributions.

There is a clear sexual division of labour\(^{26}\) but a woman claiming an indirect

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\(^{17}\) Lawson, A. ‘The things we do for love: detrimental reliance in the family home’ 1996 Legal Studies 218

\(^{18}\) Rotherham, C. ‘The Property Rights of Unmarried Cohabitees: The Case for Reform’ 2004 Conv 268 at 274

\(^{19}\) [1995] 4 All ER 562

\(^{20}\) Glover, N & Todd, P. ‘Inferring share of interest in home: Midland Bank v. Cooke’ 1995 Web JCLI

\(^{21}\) Midland Bank v. Cooke [1995] 4 All ER 562 at 575

\(^{22}\) [1996] 1 FLR 826

\(^{23}\) Springette v. Defoe [1992] 2 FLR 388 at 393

\(^{24}\) Hayton, D. ‘Equitable Rights of Cohabitees’ 1990 Conv 370

\(^{25}\) [2004] 3 WLR 715 at 748

\(^{26}\) Wong, S. ‘Constructive trusts over the family home: lessons to be learned from other commonwealth jurisdictions?’ 1998 Legal Studies 369 at 373
contribution on the basis of providing domestic labour and child-care\textsuperscript{27} will usually fail in her claim. However, if a woman can show that there was a common intention that she paid for household bills so that her partner was able to make repayments, this may be accepted as an indirect contribution.\textsuperscript{28} Australia takes a ‘joint venture’ approach, whereby pooled earnings and domestic services were considered as direct contributions which made it unconscionable to deny the claimant an interest\textsuperscript{29}. Canada takes an ‘unjust enrichment’ approach, where if the defendant has benefited from the claimant’s detriment, including payment towards living expenses\textsuperscript{30} and domestic services\textsuperscript{31}, then he has been unjustly enriched. If either of these approaches had been applied to English cases where these issues had arisen, it is probable the outcome would have been fairer.

The Law Commission acknowledged that the system of implied trusts has its difficulties, but that the system should remain unchanged\textsuperscript{32}. Craig Rotherham is critical of the current law and critical of the Commission’s assessment\textsuperscript{33} and along with the Law Society and the courts\textsuperscript{34} has expressed a wish that the law be reformed. It could be reformed through legislation\textsuperscript{35}, an adoption of a commonwealth principles, or by adding the remedial flexibility component of

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\textsuperscript{27} Burns v. Burns [1984] 1 All ER 244
\textsuperscript{28} Gissing v. Gissing [1971] AC 886
\textsuperscript{29} Baumgartner v. Baumgartner [1987] 164 CLR 137
\textsuperscript{31} Sorochan v. Sorochan [1986] 29 DLR (4\textsuperscript{th}) 1
\textsuperscript{32} Law Com No. 278
\textsuperscript{33} Rotherham, C. ‘The Property Rights of Unmarried Cohabitees: The Case for Reform’ 2004 Conv 268 at 269
\textsuperscript{34} Midland Bank plc v. Cooke [1995] 4 All ER 562 at 564-565 and Drake v. Whipp [1996] FLR 826 at 827
\textsuperscript{35} Hayton, D. ‘Equitable Rights of Cohabitees’ 1990 Conv 370 at 385
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proprietary estoppel to constructive trusts\textsuperscript{36}. It is clear that the overlap in constructive trusts could use some form of clarification.

(b) This question concerns whether Olive’s interest in property is superior to Patrick’s and if he can force her to vacate the property, legally. First it is necessary to consider the type of interest each party has: Patrick has a legal interest in the property because Martin has left it to him in his will. It can be inferred that Olive has an equitable interest. Olive may have an equitable remedy in proprietary estoppel. She could bring a case against Patrick or use estoppel to defend herself if he takes legal action. The court would assess this using the \textit{Taylor Fashions Ltd. v. Liverpool Victoria Trustees Co Ltd}\textsuperscript{37} criteria. Olive would need to show that Martin’s assurances (‘this house will be all yours when mother and I have finished with it’) amounted to a representation that after Noreen and Martin’s deaths the property would belong to Olive. The assurances could be considered as vague and ambiguous as it was not stated explicitly that Olive would be included in Martin’s will. However, \textit{Jennings v. Rice}\textsuperscript{38} shows that even vague assurances will amount to a representation. Even if representations cannot be proven, the courts can consider the likelihood of Olive taking care of Noreen for a decade, without payment.

The question does not state whether Martin had written a will leaving property to Olive and changed his mind, or whether he had ever had any intention of leaving

\textsuperscript{36} Hayton, D. ‘Equitable Rights of Cohabitees’ 1990 Conv 370 at 387
\textsuperscript{37} [1982] QB 133
\textsuperscript{38} [2002] ECWA 159 [2003] 1 P & CR 8
the property to Olive. *Taylor v. Dickens*[^39] indicated that it is a person’s right to change their mind even if they have made representations of such a nature as those made by Martin. However, in *Gillet v Holt and another*[^40] Walker LJ stated that assurances repeated over a long period of time were ‘intended to be relied on’, suggesting that Olive could have a claim to the property.

Patrick was privy to Martin’s representations, but the question does not indicate whether others heard Martin’s assurances to Olive. If Patrick was the only living witness to them, it may be difficult for Olive to prove the representations as it would be her word against his. If Olive has assurances in writing from Martin or any witnesses to Martin’s assurances, these would amount to proof and would strengthen her case.

In *Greasley v. Cooke*[^41] Lord Denning MR established that if assurances are made by a promisor, it creates a rebuttable presumption that the claimant acted on the reliance of the assurance and thus, the burden of proof would be on Patrick to disprove detrimental reliance. Receiving low pay[^42] or no pay[^43] will amount to detrimental reliance. Non-financial detrimental reliance such as giving up a job and chances of career advancement will also amount to detrimental reliance[^44]. Olive was unpaid and gave up paid work as a qualified nurse, which satisfies these requirements. The question does not indicate whether Martin used the assurance as an initial inducement for Olive to care for Noreen and there is no evidence of this. However, it is possible that repeated assurances may have amounted to detrimental reliance.

[^39]: [1998] 3 FCR 455
[^40]: [2001] 3 Ch 210
[^41]: [1980] 1 WLR 1306 at 1310
[^42]: *Gillett v. Holt* [2000] 2 All ER 289
[^44]: *Gillet v. Holt* [2000] 2 All ER 289
ensured that Olive continued to care for Noreen for 10 years, as she received no pay. This situation can be seen from *Wayling v. Jones*[^45].

Patrick may claim that Olive benefited from rent-free accommodation for 10 years[^46] and that she had money from the sale of her flat, so there could be no inducement. However, given the time she spent caring for Noreen and the fact that Olive seems to have no other income so has probably been living off the proceeds of the sale of her flat, it is probable that such an argument would be rejected.[^47]

Even if Olive had not been induced into caring for Noreen by Martin’s promises, this would still amount to detrimental reliance[^48]. If it is held that there was a detrimental reliance, English law considers there to be an unconscionable denial of a promise and it will provide a remedy[^49]. If the court decides that Olive has a successful claim in proprietary estoppel, her claim will ‘trump’ Patrick’s claim, even though he had a legal right to inherit.[^50]

The starting point for awarding a remedy will be to give effect to what the parties agreed[^51]. However, the courts have a wide discretion as to what remedy they can award. If Olive is successful, her remedy will be fair and proportionate to her detrimental conduct[^52]. As the facts of Olive’s situation are similar to *Campbell v. Griffin*[^53], it seems probable the court would either grant Olive a legal interest in

[^45]: [1995] 69 P & CR 170
[^47]: Campbell v. Griffin [2001] EWCA Civ 990
[^49]: Re Basham (deceased) [1986] 1 WLR 1498
[^50]: Yaxley v. Gotts [2000] Ch 262
[^51]: Crabb v. Arun DC [1976] Ch 179
[^52]: [2001] EWCA Civ 990
the property or calculate the wages which would be expected reasonably of a full-time carer and deduct this money from the proceeds of the sale of the property, as the courts have expressed the improbability of an individual taking on such a position without the assurance of some form of financial reward.
BIBLIOGRAPHY

Books


Articles


Wong, S, *Constructive trusts over the family home: lessons to be learned from other commonwealth jurisdictions?* [1998] Legal Studies 369

**Reports**

Law Com No. 278

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