LEVEL 6 - UNIT 5 – EQUITY & TRUSTS
SUGGESTED ANSWERS - JANUARY 2012

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2012 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners’ reports which provide feedback on student performance in the examination.

SECTION A

Question 1

As a general rule, a trust which is expressed for purposes, rather than for a human beneficiary, cannot be valid. Charitable trusts are the main exception to this rule.

‘Charity’ is defined in s.1(1) Charities Act 2006 as an institution which is established for charitable purposes only. By s.2 of the Act, a purpose is charitable if (i) it falls within one of the descriptions in s.2(2), or is analogous to or within the spirit of one of these, and (ii) is for the public benefit.

Prior to the 2006 Act, a purpose was charitable if it fell within one of the heads of Pemsel’s case (1891). The case law relating to these heads may still be used to decide whether or not a particular purpose falls within the s.2(2) descriptions or not.

Examples of the s.2(2) descriptions are the relief of poverty, which may extend to the relief of anyone who has to ‘go short’ even though not destitute (Re Coulthurst 1951), the advancement of education, which can include useful research (Re Hopkins’ Will Trusts 1965), and the advancement of religion, whether that religion involve the belief in a god/gods or not (s.2(3)(a) of the Act).

A political purpose cannot qualify (McGovern v AG 1982), although a trust for political education may be charitable if the political aspect is only subsidiary to the primary educational purpose (as in AG for New South Wales v Henry George Foundation 2003).

The purposes must be wholly and exclusively charitable. Where both charitable and non-charitable purposes are referred to, validity may depend on construction: where only purpose A is charitable, a trust for purpose A and purpose B may be upheld, while one for purpose A or purpose B may not be.
A trust may be charitable even though some expenditure is permitted for non-charitable purposes, although this is only possible if the non-charitable purpose is incidental (Re Coxen (1948). Alternatively, it may be possible to save a gift by severing the offending parts.

The purpose must provide a benefit and the benefit must be to the public or a section of the public (s.2(1) CA 2006).

The Act specifies in s.3 that there is now no presumption of benefit, as there had been previously under some of the Pemsel’s case heads of charitable purposes. The meaning of public benefit may change over time, and the Charity Commission may provide guidance from time to time on how the test can be satisfied. Current guidance is that there must be an identifiable benefit (taking into account any harm also) from which there should be no exclusion by reason of poverty, and a section of the public must not be restricted by geographical area or ability to pay.

An obvious difference between charitable and private trusts is that charitable trusts do not need to have ascertainable human beneficiaries, since they are enforceable by the Attorney General. The rule against perpetual trusts does not apply to charitable trusts, although a gift must still vest within the perpetuity period, as is the case with private trusts also. Charitable trusts enjoy tax relief, which private trusts do not. Whereas on the failure of a private trust a gift results to the settler or his estate, a charitable trust may be saved under the cy-près doctrine. Under s13 Charities Act 1993 funds can be applied cy-près (using a scheme close to the original purposes) if the original purposes stated by the settler/testator cannot be carried out. In cases of initial impossibility, the settler/testator must have demonstrated a general charitable intent for a cy-près scheme to be permitted.

**Question 2**

The general rule is that, if an attempted transfer of property to trustees is imperfect, the trust is not completely constituted. Where consideration has been provided, the transfer may be treated as perfect in the eyes of equity even though in law it is not. Where there has been no consideration, however, no effective trust is created, since equity will not assist a volunteer. A failed gift cannot then be saved by treating it instead as a self-declaration of trust: if a settlor intends to use one method to confer a benefit on a person but fails to do so effectually, equity will not save the gift (Milroy v Lord).

Over the years, the courts have found a number of ways to avoid the harshness of the rule that equity will not perfect an imperfect gift.

A gift is complete in equity as soon as the settlor has done everything in his power to complete the transfer, despite the fact that formal requirements at law may still be outstanding. In Re Rose (1952) a transfer of shares was treated as complete in equity when the settlor submitted the completed transfer form and share certificate to the company. The outstanding legal requirement of registration was not something in the settlor’s power to do. A legitimate query may be raised, however, as to how the principle in Re Rose would apply if the directors of a private company were to refuse to register the transfer, as is their right, even though the settlor had done all in his power.

It had been thought that the Re.Rose principle applied only where settlor’s actions had been irrevocable. In Choithram and Pagarani (2001) and Pennington v Waine (2002), however, the crucial question was said to be simply whether it
would be unconscionable for the settlor to refuse to complete the transfer. These cases suggest the development of a new approach to the constitution of trusts, although this introduction of the inherently uncertain concept of unconscionability has attracted criticism.

The rule in Strong v Bird (1874) is that where a donor intends to make a gift during his lifetime but fails to vest the legal estate in the donee, the gift may still be perfected if legal title vests in the donee because he becomes personal representative to the donor (now deceased), provided 1. the donor’s intention was to make an immediate inter vivos gift, and 2. the donor had a continuing intention to make the gift up until death. This principle was applied to the constitution of trusts in Re Ralli (1964).

A formally incomplete transfer may nevertheless be effective if it qualifies as a ‘donatio mortis causa’ ('DMC'). The requirements are that (i) the gift is made in contemplation of death, (ii) the gift is conditional on death, and (iii) there is delivery of the property or of something representing ownership, (Cain v Moon 1896). So, in Birch v Treasury Solicitor (1951), a savings account was held to have been validly transferred under the DMC principle, by the handing over of the savings account book. Generally, all forms of personal property can form the subject-matter of a DMC. The principle was extended to incomplete transfers also of real property by the Court of Appeal in Sen v Headley (1991).

An imperfect gift may be perfected under the principle of proprietary estoppel.

Following the requirements stated in Thorner v Majors (2009), the principle will apply to ‘estop’ a defendant from unconscionably denying a volunteer’s proprietary right where the latter had been encouraged by the defendant to expect the right, and had relied on that expectation. Such circumstances would, however, only give rise to an ‘estoppel equity’ in favour of the volunteer, which the court can then satisfy by the award of whatever remedy they see fit, not necessarily by an award of the proprietary right which the volunteer expected. So, in Rice v Jennings (2003), the property claimed had a value out of all proportion to the value of the claimant’s acts in reliance on D’s assurances. In the circumstances, the claimant’s ‘equity’ was satisfied by a monetary award rather than by any proprietary right in the property. Again, the use by the courts of unconscionability as the basis for perfecting imperfect gifts, whilst perhaps achieving justice in individual cases, does so at the expense of predictability.

**Question 3**

(a)

A search order requires a defendant to allow a search of premises to prevent disposal of evidence. It is a form of mandatory interim injunction, and an example of how equity is prepared to develop a remedy where the needs of justice are not adequately served by the common law.

The court’s power to make such an order is now under s.37 Supreme Court Act 1981. A search order may only be granted where the following conditions apply (Anton Piller v Manufacturing Processes 1976): 1. the claimant has an extremely strong prima facie case, 2. the claimant can show very serious actual or potential damage, 3. it is clear that the defendant has incriminating evidence, 4. there is a real possibility of its destruction, and 5. inspection will do no real harm to the defendant.

Only in the above circumstances it is considered justifiable to allow interference with the rights of a defendant, after only an ex parte application. Further
safeguards of the defendant’s rights have subsequently been introduced. In Universal Thermosensors v Hibben (1992) guidelines for enforcement included that the order should be served and carried out in the presence of an independent solicitor, the search must take place in the presence of the defendant and a list must be made of any items to be removed and the defendant given an opportunity to check it. Aggravated damages may be awarded for seizing items which are not covered by the order (Columbia Pictures Inc v Robinson 1986).

A search order should generally not require a defendant to disclose information which would incriminate him (Rank Film Ltd v Video Information Centre 1982).

In Chappell v United Kingdom (1990) the European Court of Human Rights held that a search order did not infringe a defendant’s right under article 8 of the European Convention of Human Rights (right to respect for private and family life), since the aim of protecting the rights of others was legitimate, and since the safeguards were sufficient to ensure that action was only taken where it was necessary.

(b)

The equitable remedy of an order of specific performance requires a defendant to perform positive obligations under a contract.

An order of specific performance may only be granted if damages at common law would not provide an adequate remedy for the claimant. In contracts of sale of land, for example, damages are normally regarded as inadequate to remedy a refusal to perform by the seller, since the particular property in question is usually of great importance to the buyer. In the case of sale of personality, only if the item is unique, or if identical property cannot be obtained for some other reason, would the court award specific performance.

Specific performance will not be granted where performance of the contract requires constant supervision by the court. In Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1997] the House of Lords refused to grant an order for specific performance of a covenant in a lease which required the tenants to keep the premises open as a shop, on the grounds that it might require an indefinite series of court rulings to ensure such ongoing activity.

A court will not usually order specific performance of contracts of service, sometimes because they would often require constant supervision (discussed above), and sometimes because it would be against public policy (De Francesco v Barnum 1890).

If one party could not obtain specific performance, it should not be available to the other party. Lumley v Ravenscroft (1895) is an example of this 'mutuality' principle, where a minor was unable to obtain an order since specific performance could not have been awarded against him.

The general bars to equitable relief may also prevent an order being obtained.

For example, a person seeking specific performance must come to court with clean hands, eg Coatsworth v Johnson (1886) where specific performance of a contract to grant a lease was refused where the tenant was himself was in breach of the lease’s requirements. Unreasonable delay will also defeat a claim for the remedy (eg. Eads v Williams 1854), and specific performance may be refused if to order it would cause undue hardship to one party or to a third party
(eg Patel v Ali 1984), although damages in lieu may be awarded in appropriate cases.

**Question 4**

(a)

Where a gift carries intermediate income, Trustee Act 1925 s31 gives trustees discretionary powers to use income for maintenance, education or benefit of a minor beneficiary. This power is subject to any prior interests or charges affecting the trust property.

Vested gifts normally carry intermediate income. Contingent gifts may do so also, although a pecuniary legacy by will only carries intermediate income if the testator was the father of, or in loco parentis to, the beneficiary – s.31(3).

In exercising the power, the trustees are required by s31 to have regard to the beneficiary’s age and requirements and the circumstances generally. They must not make automatic payments (Wilson v Turner 1883).

Provided the trustees exercise their discretion in the best interests of the beneficiaries, it does not matter that it incidentally benefits another party (eg by relieving another party of the need to pay school fees in Fuller v Evans (2000).

(b)

Under s32 Trustee Act 1925, trustees have the power to “pay or apply any capital” in a trust “for the advancement or benefit” of any beneficiary entitled to the trust capital (whether absolutely or contingently, in possession, remainder or reversion, etc).

By s32(1), usually no more than half that beneficiary’s presumptive or vested share or interest may be advanced, any amount advanced must be brought into account when that beneficiary becomes absolutely entitled, and the interests of a person with a prior life or other interest must not be prejudiced, unless that person is of full age and consents in writing.

In Pilkington v IRC (1964) the House of Lords considered that the words “advancement or benefit” mean “any use of the money which will improve the material situation of the beneficiary.”

In Re Pauling’s Settlement Trust (1964), it was held that where funds are advanced for a particular purpose, the trustees have a duty to ensure that it is actually used for that purpose.

(c)

Where a trust instrument is silent on investment, a trustee may rely on the general power in s.3 Trustee Act 2000 to make any kind of investment he could make if he were absolutely entitled to the assets of the trust, subject to the ‘Standard Investment Criteria’ in s4. The SIC in s.4 oblige trustees to consider the suitability to the trust of the type of investment contemplated, the suitability of the particular investment, and the need for diversification. The SIC cannot be excluded by contrary intention. This replaces the previous complex system whereby the trustee could only choose from a closed list of assets, divided into three types.
By s.8, a trustee has the power to acquire land in the UK as an investment, or for occupation by a beneficiary or for any other reason. Previously, trustees were not permitted to invest in land.

s1 of the Act creates a statutory duty of care, regardless of when the trust was created, and applicable whether the investment powers arise under a trust instrument or s.3 of the Act (although the duty of care can be partly or completely excluded by the trust instrument - Schedule 1 paragraph 7). The duty is to take reasonable care and skill, taking into account any special knowledge or experience, and, in the case of a professional trustee, the knowledge or experience expected of a person in that position. Previously, the duty was simply to take such care as an ordinary prudent man would take Re Whiteley (1886).

Under s.5, before exercising any power of investment, and also when reviewing investments, the trustee must obtain and consider advice.

Other common law duties applicable to all trustee functions are unaffected by the Act: to act in the best financial interests of trust (accordingly, their own ethical views should not influence their selection of investments - Cowan v Scargill 1985); to act fairly between the beneficiaries; and to act in accordance with the trust instrument.

**SECTION B**

*Question 1*

(a) Hector's will can provide for funds to be held on trust for the maintenance of his wife's grave. Generally, trusts for (non-charitable) purposes are void. The beneficiary principle states that for a trust to be valid there must be ascertainable beneficiaries, capable of enforcing it (Moric v Bishop of Durham 1804).

Lord Evershed MR in Re Endacott (1960) classified the exceptions to this, which include trusts for the erection and maintenance of monuments and graves. An example is Mussett v Bingle (1876) where the court upheld a trust for the erection of a monument to the first husband of the testator's wife.

A further obstacle is that it has to be certain that a trust will definitely come to an end before the perpetuity period expires. At common law, the perpetuity period is the lifetime of any relevant life in being (or lives in being) plus 21 years. Most purpose trusts, however, could theoretically be carried out forever. Hector should, therefore, be advised to expressly limit the trust to a duration of 21 years (or the lifetime of a specified life in being plus 21 years). Alternatively, a useful drafting technique is simply to provide for the trust to continue “for so long as the law allows”.

(b) The difficulty here is that, as an unincorporated association, Fulchester Rugby Club is not a legal person and so cannot own property or be the beneficiary of a trust. A gift to an association on trust for its purposes would be void since this offends the beneficiary principle and the rule against perpetuity (eg. Leahy v AG for NSW 1959).

Various alternatives are available to Hector (set out in Neville Estates v Madden 1962), but none can ensure that the gift will always be used for the purposes specified.
A gift could be made on trust, but for present and future members rather than for purposes. This would require limitation to the perpetuity period, and even then there will be nothing to prevent the beneficiaries bringing the trust to an end and dividing the fund between themselves.

A gift on trust expressed for a purpose can be valid if it nevertheless benefits identifiable persons who, whilst not beneficiaries in the normal sense of owning beneficial interests, would have locus standi to enforce the trust. This approach was applied to an unincorporated association in Re.Lipinski’s Will Trusts (1976), but subsequently doubted in Re Grant (1980). Again, this would require limitation to the perpetuity period, and even then there will be nothing to oblige the beneficiaries to fulfill the specified purposes.

Instead of creating a trust, an absolute gift can be made to present members. Clearly, however, unless constrained in some way, there would be nothing to prevent any individual member from severing their share and pocketing their part of the funds. The only possible constraint would be if the gift were subject to the contractual agreement between members (if there is one) found in the club’s rules.

This analysis was used in Re Recher (1972). It is perhaps the best option for Hector, and he should be advised to make this intention express in the will. In order not to offend perpetuity rules, the members must be entitled under the rules to control of the club funds, so that they could, at any time, wind up the association and distribute the funds among themselves.

**Question 2**

The beneficiaries of both trusts should seek to trace the trusts’ funds into the hands of Max or any recipient third parties. This can be done whether the property is in its original form or in the form of substitute assets. Once a proprietary right has been established, the trusts can seek proprietary remedies, in priority to general creditors. Tracing at common law is of no application here, since trust property was mixed and so ceased to be identifiable, and, in any event, the beneficiaries had only an equitable interest in it. Both trusts may, however, trace in equity. The requirements, set out in Re.Diplock, are that there must be 1. a fiduciary relationship, and 2. an equitable proprietary interest in the property being traced. Both are clearly satisfied.

Psi trust can trace the first £3000 though Max’s account into the painting.

The general rule applicable here is that Max will be presumed to have used his own funds before any of the trust’s (Re.Hallett). Consequently, the trust would be able to claim an equitable charge on the painting to the extent of their funds used in its purchase (£1,000).

The trust cannot trace the remainder since it was dissipated by Cilla after it came into her hands. Since this would leave a shortfall, the principle in Re.Hallett may be displaced and instead Psi’s funds can be treated as having been used first (Re.Oatway). In this way Psi can establish a proprietary right to the whole of the painting.

Since Psi is still under-compensated by £1,000, they should consider a possible personal claim against Cilla as a constructive trustee of their property on the basis of ‘knowing receipt.’ The first requirement of such an action, that the defendant received the property for her own use and benefit (Agip (Africa) Ltd v Jackson 1989) is clearly satisfied. Whether she satisfies the requirement of
knowledge is less certain. In Re Montagu’s Settlement Trusts (1987) it was doubted that constructive knowledge (based on what a reasonable person would have known or suspected) would be sufficient, whilst actual knowledge or willfully shutting her eyes to the obvious, which seem to apply here, would be sufficient. In Polly Peck International plc v Nadir (No.2) (1992) the fundamental question was whether the defendant should have been suspicious. In BCCI (Overseas) Ltd v Akindele (2000) the test was suggested to be not one of dishonesty (as had been assumed in Agip v Jackson) but whether the defendant had such knowledge as to make it unconscionable to retain the property received. By any of these tests, it would appear that Cilla is liable.

The remaining transactions involve the mixing of funds of two beneficiaries in an active account. Here the rule in Re Clayton’s Case (1816) applies. This rule states that payments out of the account will follow the order that payments were made in. This would mean that Omega’s money had been used to pay off the debt, and Psi’s for the gift to Jack. Assuming the creditor is a bona fide purchaser for value without notice, Omega’s money cannot be traced into its hands. If, however, the debt had been secured against property of Max’s, Omega can claim an equitable charge on the property to the extent that its money had been used to pay off the debt under the principle of subrogation (Boscawen v Bajwa 1995).

Tracing of Psi’s money can be permitted against Jack, subject to the possible availability to Jack of the defence of change of position (Lipkin Gorman (a firm) v Karpnale Ltd 1991). It may be inequitable that Jack’s house should have to be sold to enable Psi to recover its money.

Should the positions of Omega and Psi not be equally favourable under this analysis, the rule in Clayton’s case may be displaced so that both trusts share whatever proceeds can be traced rateably (Barlow Clowes international Ltd (in liquidation) v Vaughan (1992).

**Question 3**

(a)

The purported gift on trust to Julie will be effective if it is sufficiently certain in respect of intention, subject matter and objects (Knight v Knight 1840). The will is sufficient to vest property in Julie. Ellen’s intention to create a trust is clearly manifested by her words, ‘to my Aunt Julie on trust’. The issues here relate to certainty of subject matter and of objects.

The subject matter of the gift, half of the shares and half of the coins, is problematic since the particular shares and coins are not identified. In Re London Wine Co (Shippers) Ltd [1986] buyers of wine stored in various warehouses could not establish a trust of particular bottles in their favour. The decision would have been different if the bottles had been separated from the bulk. In Hunter v Moss, however, a trust of 50 of the issued shares of a particular company was held to be sufficiently certain even though no particular shares had been separated, on the basis that all the shares were identical. Accordingly, Ellen’s gift of half of the shares in GreatOil Plc is sufficiently certain. The validity of the gift of half of the krugerrands, on the other hand, seems to depend on whether coins of this type are all identical. In Re Goldcorp Exchange Ltd [1995], one of the grounds on which a claim for a trust of gold bullion was rejected was that particular bars had not been ascertained. The gift of half of the krugerrands would fail ab initio. The gift would not vest in Julie. The coins would fall into residue for Olly.

Certainty of objects also presents difficulties. The trust here would be a discretionary trust, so the test applicable would be the ‘any given person’ test in
McPhail v Doulton [1971]. That is, it must be possible to say with certainty whether any given person is or is not within the class of potential beneficiaries. This requires the class to be conceptually certain. Although ‘relatives and dependants’ was conceptually certain in Re Baden’s Deed Trusts (No. 2) [1973], the word ‘younger’ is ambiguous. In the context of Ellen’s family, however, it may be sufficiently clear. If the objects are held not to be sufficiently certain, the shares would be held by Julie on resulting trust for the residuary estate.

(b)

The issue in this case is whether the £1,000 forms part of the residuary estate or whether there was an intention to create a trust of this money for Isabella. In Re Kayford [1975] money received in advance from customers was held in a separate account. It was held that a trust had been created. Here, it is unclear whether Ellen was treating herself as holding the money on trust or treating it merely as payment in advance. The fact that the money was retained in its envelope separate from others funds, along with the words she wrote, favours a trust.

(c)

Here, the issue is not one of certainty but of correct formalities.

A declaration of trust of subsisting equitable interest may amount to a ‘disposition’ within s.53(1)(c) LPA 1925, and so require to be made in signed writing.

According to Grainge v Wilberforce (1889), if the sub-trust is a ‘bare’ trust, where B has no active duties, B would effectively ‘drop out’ of the picture and the original trustee would hold on trust directly for X. This would be equivalent to an express assignment of the beneficial interest and so will amount to a ‘disposition’. Here, it would seem that Ellen retains no active duties. Consequently, this disposition fails for lack of formality, and the interest in the trust fund would belong to the residuary estate.

Question 4

How the proceeds of sale will be distributed depends first on which of the parties is entitled to an equitable interest at all and second on the proportionate value of their interests. This answer will consider the possible interests of Paolo and Maddy first, and then consider how Simi and Tariq share the remainder.

Paolo

A financial contribution to the initial purchase price has traditionally been treated as giving rise to presumed resulting trust. In a domestic setting, however, this may no longer be the case and any trust interest will always be considered as an interest under a constructive trust (Stack v Dowden). Paolo’s relationship with the property, however, is a commercial one. In Laskar v Laskar, a resulting trust was found where the parties had purchased a property as an investment.

In any event, the fact that Paolo is Simi’s father gives rise to a counter-presumption of advancement. That is to say that it will be presumed that it was a gift to Simi and was not intended to create any proprietary rights for Paolo. Such presumptions are, however, weak (Pettit v Pettit), and will be easily rebutted by contrary evidence, as here.
Paolo’s interest will be in simple arithmetic proportion to his contribution to the initial purchase price.

Maddy

Maddy may claim to be entitled to an interest under a common intention constructive trust.

Such an interest may arise as a result of an expressed or implied common intention that the claimant should have an interest in the property, on which the claimant has relied to her detriment (Lloyds Bank v Rossett).

The type of conduct capable of giving rise to an inference of such a common intention was limited in Rossett to direct financial contributions to the purchase of the property (whether initially or to mortgage repayments). Maddy here has not contributed in this way. Obiter dicta in Stack v Dowden (which has since been followed in the Court of Appeal) suggests, however, that the limitation in Rossett should no longer apply, at least in the context of a cohabiting couple. It is possible that this approach may extend to Maddy, given that her relationship with the property is of a domestic nature. If so, Maddy’s conduct may still be sufficient to give rise to an interest under an implied common intention constructive trust.

Even pre-Rossett, expenditure needed to be substantial (Burns v Burns), although indirect expenditure was still referable to the purchase price if it freed the other party to pay the mortgage. In Burns v Burns, caring for children was not sufficient, being explicable as something a mother would naturally do in any event. Similarly, renovations in Rossett, as well as being minimal, were explicable as the normal conduct of any spouse in the matrimonial home. In this case, however, Maddy is neither the spouse nor the children’s mother. Consequently, depending on the degree, her care of the children along with the renovations might give rise to an interest.

Any common intention constructive trust interest here will be quantified by inference of the parties’ intention taking into account their whole course of conduct in relation to the property (Oxley v Hiscocks, Stack v Dowden).

An alternative basis for Maddy’s claim may be proprietary estoppel. She would argue that Simi and Tariq should be ‘estopped’ from unconscionably denying her a proprietary interest on the basis that she had been encouraged by them (actively or by acquiescence) to expect an interest, and had relied on that expectation (Thorner v Majors). Such circumstances would, however, only give rise to an ‘estoppel equity’ in favour of Maddy, which the court can then satisfy by the award of whatever remedy they see fit, not necessarily by an award of the proprietary right which she may expect (Rice v Jennings 2003).

Simi & Tariq

Both have an interest in the equitable title, deriving from the fact of their financial contributions. Following Stack v Dowden, these should be treated as constructive trust interests since the context is domestic.

As above, a constructive trust interest will be quantified by inference of the parties’ intention taking into account their whole course of conduct in relation to the property (Oxley v Hiscocks, Stack v Dowden). However, since both participate in the legal title as joint tenants), Stack v Dowden holds that there is a very strong presumption that they are also joint tenants in equity, in the
absence of any express declaration to the contrary. This means that they would share equally on subsequent severance (Goodman v Gallant) and so on division of proceeds of any sale.

In exceptional cases, this presumption of equality can be rebutted, but not by the mere fact of unequal financial contributions. Regard should also be had, inter alia, to the reasons why the house was acquired in joint names, the nature of the parties’ relationship, responsibility to house children, how they arranged their finances, how they handled household expenses. In Stack itself, the presumption was indeed rebutted. Significant factors, in addition to unequal financial contribution to purchase, were how they managed household expenses and the fact that their individual finances were strictly separated. By comparison, in Fowler v Barron, the presumption stood, where there was no such strict separation of finances, contributions from both parties to discretionary expenditure, and no agreement on who would pay what. On our facts, the inequality of initial contribution favours a rebuttable of the presumption, but the disproportion reduces when their total financial contributions (including the mortgage repayments) are considered. Although further details must be sought as to the way they arranged their finances, it is unlikely that Tariq could claim an enhanced share in the property.