

865.65 TRUSTS BY OPERATION OF LAW¹ - PURCHASE MONEY RESULTING TRUST (REAL OR PERSONAL PROPERTY).²

The (*state number*) issue reads:

"[Is] [Was] (*identify property*) held under a purchase money resulting trust by (*name alleged trustee*)?"

You will note that in this issue I have used the word "trust." A trust is a legal relationship between persons. A trust exists when one person acquires property under circumstances where *he* incurs a legal duty to handle that property in a particular way so as to benefit another person. A "resulting trust" is a legal relationship which arises when all of the circumstances show that the person acquiring the property is not to benefit from it.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by clear, strong and convincing evidence,³ four things:

First, that (*name alleged trustee*) acquired (*identify property*). [A person "acquires" personal property when [a contract to purchase] [option to purchase] has been executed which is enforceable against the seller] [it is delivered to *him*]⁴ [the documents of title are executed and delivered to *him*].]⁵ [A person "acquires" real property when [a contract to purchase] [option to purchase] has been executed which *he* can enforce against the seller] [a deed of conveyance is executed and delivered to *him*].]

Second, that at or before the time (*name alleged trustee*) acquired the property,⁶ (*name alleged beneficiary*) [paid its purchase price]⁷ [paid part of its purchase price and was obligated to pay the remainder as part of the same transaction]⁸ [provided to (*name alleged trustee*) [money] [*describe other consideration used for purchase*] which [was] [were] used to pay the purchase price]⁹ [entered into an agreement with (*name*

alleged trustee) to pay the purchase price once the property was acquired].¹⁰ (A person is "obligated" to pay the remainder of the purchase price if *he* promises (or contracts) to pay it, even though *he* may be relieved of *his* obligation (by a later event not within *his* control) (by failure to satisfy a condition in the contract.)) No resulting trust arises where the [money] [*describe other property used for purchase*] is [paid] [provided] after the time property has been acquired. (Furthermore, the [money] [*describe other property used for purchase*] provided must actually be used to purchase the property. If different [monies] [properties] are used to acquire the (*identify property*), it is not held under a resulting trust.)¹¹

Third, that (*name alleged beneficiary*) intended that the property be purchased for *his* own benefit.¹² Whether a person intends that property be purchased for *his* benefit is determined from the facts and circumstances existing at the time of the purchase. In making this determination you should consider, for example, what *he* said, what *he* did, (what *he* failed to do), *his* relationship with other persons involved as well as the nature of the property itself.¹³

And Fourth, that the conduct of (*name alleged trustee*) has deprived (*name alleged beneficiary*) of the beneficial interest to which *he* is entitled in (*identify property*).¹⁴

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find by clear, strong and convincing evidence that the (*identify property*) was held under a purchase money resulting trust by (*name alleged trustee*),¹⁵ then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1 Trusts created by operation of law are classified into resulting trusts and constructive trusts. "[T]he creation of a resulting trust involves the application of the doctrine that valuable consideration rather than legal title determines the equitable title resulting from a transaction; whereas a constructive trust ordinarily arises out of the existence of fraud, actual or presumptive - usually involving the violation of a confidential or fiduciary relation - in view of which equity transfers the beneficial title to some person other than the holder of the legal title. Also, a resulting trust involves a presumption or supposition of law of an intention to create a trust, where as a constructive trust arises independent of any actual or presumed intention of the parties and is usually imposed contrary to the actual intention of the trustee." *Bowen v. Darden*, 241 N.C. 11, 13-14, 84 S.E.2d 289, 292 (1954). See also *Bissette v. Harrod*, ___ N.C. App. ___, ___, 738 S.E.2d 792, 799-800 (2013) (holding that a promise to convey an easement, pending determination of land parcel ownership, does not create an express trust).

2 The sufficiency of evidence required for a *prima facie* case varies somewhat with the relationship between the parties. Generally, a *prima facie* case is made out if the evidence shows conveyance or delivery of property to one person on consideration paid or furnished by another. *Bowen*, 241 N.C. at 13, 84 S.E.2d at 292. However, if property is conveyed or delivered to a wife on consideration paid or furnished by her husband or if property is conveyed or delivered to a child on consideration paid or furnished by the child's parents, there is a rebuttable presumption that a gift was intended. *Waddell v. Carson*, 245 N.C. 669, 674, 97 S.E.2d 222, 226 (1957); *Bowen*, 241 N.C. at 13, 89 S.E.2d at 292. These presumptions of fact have the effect of placing a greater burden on the proponent attempting to make out a *prima facie* case. Not only must evidence of conveyance or delivery to one person on consideration paid or furnished by another be introduced, but also evidence that a gift was not intended at the time. Once a *prima facie* case is established, however, the jury must render its decision based on all the evidence received. The presumption, by itself, has no evidentiary force. The court "will not ordinarily instruct a jury with reference to presumptions of fact, for this would obviously be an encroachment on their province, they being the judges of fact." *Waddell*, 245 N.C. at 679, 97 S.E.2d at 23. It may do so, however, if a special request is made. See, *infra* notes 12 and 13.

3 *Bowen*, 241 N.C. at 14, 84 S.E.2d at 292. See N.C.P.I.-Civil 101.11.

4 Personal property not involving muniments of title.

5 Personal property involving muniments of title.

6 *Fulp v. Fulp*, 264 N.C. 20, 22, 140 S.E.2d 708, 711 (1965); *Rhodes v. Raxter*, 242 N.C. 206, 208, 87 S.E.2d 265, 267(1955); *Byerly v. Byerly*, 38 N.C. App. 551, 554, 248 S.E.2d 433, 436 (1978).

7 *Leatherman v. Leatherman*, 297 N.C. 618, 625, 256 S.E.2d 793, 798 (1979); *Fulp*, 264 N.C. at 22, 140 S.E.2d at 711. Paying off a mortgage which encumbers real estate is not equivalent to purchasing the property. *Byerly*, 38 N.C. App. at 554-555, 248 S.E.2d 436.

8 *Waddell*, 245 N.C. at 674, 97 S.E.2d at 226.

9 *Bingham v. Lee*, 266 N.C. 173, 179, 146 S.E.2d 19, 23 ((1966); *Patterson v. Strickland*, 133 N.C. App. 510, 520, 515 S.E.2d 915, 921 (1999).

10 *Cline v. Cline*, 297 N.C. 336, 346, 255 S.E.2d 399, 406 (1979); *Patterson*, 133 N.C. App. at 520, 515 S.E.2d at 921.

11 *Id.* See also *Miller v. Rose*, 138 N.C. App. 582, 590, 532 S.E.2d 228, 234 (2000).
If the funds are not used to purchase real property, the theory of constructive trust may be used.

12 *Waddell*, 245 N.C. at 647, 97 S.E.2d at 226.

13 If a special request is made for instruction on the presumption of a gift, add the following quoted sentence here: "You must find by clear and strong and convincing evidence that a gift was not intended." See note 2, *supra*.

14 *Leatherman*, 297 N.C. at 622, 256 S.E.2d at 796.

15 If a special request is made for instruction on the presumption of a gift, add the following quoted language here: "and not as a gift." See note 2, *supra*.