



### Concentrate Questions and Answers Equity and Trusts: Law Q&A Revision and Study Guide (3rd edn)

Rosalind Malcolm

## p. 240 16. Skills for Success in Coursework Assessments

Rosalind Malcolm, Barrister, Professor of Law, University of Surrey

<https://doi.org/10.1093/he/9780198853213.003.0016>

**Published in print:** 06 August 2020

**Published online:** September 2020

### Abstract

The Concentrate Questions and Answers series offer the best preparation for tackling exam questions. Each book includes typical questions, bullet-pointed answer plans, suggested answers, and author commentary. This book offers advice on what to expect in exams and how best to prepare. This chapter gives advice on skills for success in coursework assessments.

**Keywords:** equity, trusts, coursework, questions, planning, research, reference

### First Word

---

- You will have read this advice in the first chapter but it is so important I am going to repeat it.

Do you write well? Lawyers are wordsmiths. Words are our tools and we must use them precisely to convey what we mean. Writing well is an essential requirement and if you have been pulled up about this in formative coursework, or, if you know that this is not your strong point, then do something about it. It may be that your university offers classes for writing skills. Go to them. Practise writing. Write letters to friends and relatives. Write a short story and ask someone to read it over and critique it. Learn basic grammar from an English grammar book. Read how others write. Read a judgment and see how judges construct their sentences. We would like to urge you to write beautifully but clarity will suffice. Clarity comes from writing grammatically and coherently. You will not be marked on whether you have good grammar. But you will be marked on whether you have made clear what you are arguing. That comes from good writing skills.

In coursework this is even more important than in exams because, as you have time to get it right, then that will be the expectation. In the heat of the exam room there is leeway for some infelicities of style—not in coursework.

### Planning

---

- You have time to plan your coursework assignment and that is time well spent. Coursework is about research and here is an opportunity to demonstrate your research skills. But how good are they? Before you get to this point you need to ensure that you have grasped how to use the law databases and the printed word. Much of research nowadays can be done online but do not assume that everything is available online. While what is produced today is (almost) always put on online immediately as well as being in print, that does not apply to historical material. For instance, the Conveyancer is not available online before the 1980s and there may be important articles which you need to use from that era. A question on fusion of common law and equity may require you to read Maitland in the original—definitely not online. So, don't ignore the advantage of having learned your way around the library and the stock held in print there.

p. 241

- Next, are you actually competent at using the databases? Ensure you go to the sessions arranged by your library for learning how to use these databases. They are all a bit different and can be idiosyncratic. You may also find that some of the journals you are used to finding in one place are no longer available there. That is for commercial reasons—publishers negotiate with the online databases and can pull out of one set and join another. If you can't find a journal article in one place then hunt around and usually there is an invaluable person who can help you—the law librarian. Make their acquaintance.

- Having done the hard work of learning research skills, use them. Read all the primary (cases, statutes, etc.) and secondary material (books, journal articles, policy documents, guidance, Law Commission reports, etc.) you have been given and go a bit further for that first class answer.

- Take notes as you read of the points which link back to your coursework question. Your notes should consist of the following:

- Citation (book, article, etc.)

- Page number where you read the key point you want to use (that's called a pinpoint)

- Any verbatim quotation in quotation marks

- Any argument, point on which you wish to rely (or dispute, etc.)

You think you will remember these key things—but you won't. It is also the way to avoid an allegation of plagiarism (more on that later).

- As you do this reading (your research) start to develop your argument for the assignment. If you are asked to critique something, e.g. the role of public benefit in the law of charities, use the key points from your reading to make a case about public benefit. For example, this article argues that public benefit is elastic; the Charity Commission have produced guidance showing that public benefit in education cases is down to the trustees to demonstrate, and so on. Build your coursework from your research.

-

Write a plan for your coursework. If it is an essay, then you have an argument to make. Think of it as a thread which needs to link all the points you are going to make. For example, if the question asks you to consider whether the rules for interim injunctions fairly balance the interests of the parties, then think through what your answer is going to be. Do you agree that the rules do achieve this or not? Or do you think there are some points either way? Set out your points in a way so that each sets out to answer the question. Keep the thread going to the end.

- If it is a problem question, then list out the issues and jot down in your plan all the cases etc. that are relevant then the secondary material. If asked to advise, decide what your advice is going to be and ensure your conclusion deals with that.

### Read, Research, then Reference

---

- Use OSCOLA (the Oxford Standard Citation of Legal Sources). Download and print a copy of it and keep it beside you as you do your research. In your notes write down the OSCOLA-proof citation. You only need to do it once—do it at the start.

- Make sure you reference any statement, opinion, argument, or statistic that you give. It is about giving credit where it is due and about enabling a reader to go and check for themselves what that author said. For example, ‘as Lord Denning states ...’ Then in your footnote to this, put the source of this reference (in the correct OSCOLA format). It is a good news story for you as it shows you have been going about your research in a diligent and profitable manner. Your feedback will mention that there has been good research undertaken. You will be rewarded for reading, researching, and referencing.

p. 242 ● If you are going to quote verbatim then use the appropriate punctuation marks and cite (it is called pinpointing) the exact page numbers where that is to be found.

### Practical Points

---

- Keep within your word limit.
- Footnotes and bibliography must be included and done in OSCOLA fashion. Note that (rather irritatingly) OSCOLA has different rules for footnotes and bibliography. Read OSCOLA and follow the rules.
- Proofread not once but twice. Once when you have just finished; then go away for a few days and proofread again. On each occasion proofread twice—once for sense (does that sentence/paragraph make sense; is that sentence too long? Then proofread again for typographical errors. If you use a spellchecker still go back and make sure it has chosen the correct word.

### Last Word

---

- Enjoy the research involved and the writing, and most of all making the argument. It is what being a lawyer is all about.

## Coursework Question

Critically<sup>1</sup> examine the extent to which the Privy Council in *Marr v Collie (Bahamas)* [2017] UKPC 17<sup>2</sup> has settled the debate as to the proper approach<sup>3</sup> to establishing the beneficial ownership of a jointly-held asset, even one acquired as an investment, rather than as a home for the legal co-owners.<sup>4</sup>

<sup>1</sup> Usual suspect—this requires a critical analysis of this decision not a description.

<sup>2</sup> Reading the case is not optional here.

<sup>3</sup> There's a clue here—there is a debate. So you need to engage with that.

<sup>4</sup> Here's the key issue—the difference in treatment of a commercial investment to a family home.

## Answer Pointers

1 KEY ISSUE:

*Explain the issue: initial presumption of resulting trust or *Stack v Dowden* approach?*

Explain how the legal dispute centred over whether the correct approach was that set out by Lady Hale in *Stack v Dowden* [2007] 2 AC 432, that a conveyance into joint names creates a presumption of equal beneficial ownership, or whether, as held by Lord Neuberger in *Laskar v Laskar* [2008] EWCA Civ 347 (and following his dissenting judgment in *Stack*), that principle was restricted to the domestic context, in a narrow sense, and so where a property was purchased as an investment, the traditional presumption that property is held on resulting trust for the parties ⇐ according to their contributions to the purchase price applied, in the absence of evidence to the contrary.

2 THE LAW

Critically analyse the reasoning in cases such as *Stack v Dowden*, *Laskar v Laskar*, and *Jones v Kernott* [2011] UKSC 53. Show how *Marr v Collie* prefers the *Stack v Dowden* approach to the initial presumption of resulting trust.

3 CRITICAL ANALYSIS OF EFFECT OF JUDICIAL AUTHORITY LEADING TO *MARR V COLLIE*:

- What is the ‘context’ of the acquisition; purely commercial transaction? (falls outside *Stack*).
- Not purely commercial? Joint legal ownership equals equal beneficial ownership; presumption of equal shares unless evidence to the contrary or of some other positive intention can be found.
- Intention not fixed at the date of purchase, but may change and should be determined by evidence from the whole course of dealings between the parties, i.e. by considering the same factors applicable in the case of a couple’s home given at para. 69 of Lady Hale’s judgment in *Stack*.
- Where evidence that the parties did not acquire property in joint names to give effect to an intention to share co-owned property equally, and no other intention as to sharing can be established by the evidence (including by inference or imputation, see *Jones v Kernott*)—then resulting trust presumption.

Here you will need to refer to some of the proliferation of academic articles prompted both by the earlier cases and by *Marr v Collie*. Examples of such literature following the *Marr v Collie* decision include: J. Roche, ‘Returning to clarity and principle: the Privy Council on *Stack v Dowden*, Case Comment’ (2017) 76 CLJ 493–496; M. George and B. Sloan, ‘Presuming too little about resulting and constructive trusts?’ [2017] Conv 303–312. No doubt more will follow so a current literature review is essential for this (and any) topic.

4 CONCLUSION:

Critique the conclusion of the case and argue about the certainty versus justice point. (Are you a Lady Hale person or a Lord Neuberger person—Is this a divide between property lawyers and family lawyers?)

## Online Resources

[www.oup.com/uk/qanda/](http://www.oup.com/uk/qanda/) <<http://www.oup.com/uk/qanda/>>

p. 244 Go online for extra essay and problem questions and a podcast with advice on revision and exam technique. ↩

### Related Books

View the Essential Cases in equity & trusts

### Related Links

Visit the online resources for this title [\\_<https://oup-arc.com/access/equity-qanda3e>](https://oup-arc.com/access/equity-qanda3e)

Test yourself: Multiple choice questions with instant feedback [\\_<https://learninglink.oup.com/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-diagnostic-test>](https://learninglink.oup.com/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-diagnostic-test)

### Find This Title

In the OUP print catalogue [\\_<https://global.oup.com/academic/product/9780198853213>](https://global.oup.com/academic/product/9780198853213)