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Sharing Homes by Unmarried Cohabiting Couples in England and Wales: Rebutting Presumptions and Exceptional Conduct

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Keywords: unmarried cohabitation; shared home; constructive trust; intention; exceptional conduct; rebuttal of presumptions

Abstract:

The article examines recent cases such as *Stack v Dowden* and *Jones v Kernott* in England and Wales where the courts have restated the principles of the common intention constructive trust over property used as the family home. Both cases deal with disputes between cohabiting unmarried couples over the family home after termination of their relationships. The courts held in those cases that the presumption is that equity follows the law. Where, for instance, the legal title is held by the cohabiting couple in joint names, they are presumed to be legal and equitable joint tenants sharing equally unless one party rebuts that presumption by establishing that either their common intention was to hold the property in different shares or the original intention of equal sharing had changed over time, leading to an ambulation of the trust (the ambulatory trust). A rebuttal of the presumption will thus focus on the *context* of the couple's relationship over the period of cohabitation (*time*), which arguably provides a more nuanced approach. It enables the parties' relationship to be assessed from the time of acquisition of the property to the point of separation in order to ascertain their actual intentions. The focus of the article is on the way in which time and context of home-sharing by unmarried cohabitants are being construed by the English courts and, particularly, the assumptions being made about certain types of conduct. The article seeks to argue that the cases reveal how the law remains imbued with certain ideologies and therefore reinforces a particular type cohabiting relationship, i.e., one that mimics marriage. Women continue to be portrayed as 'wife/mother/innocent' who require the law's protection against men. The sociology of unmarried cohabitation may require more in-depth examination in order to determine whether these assumptions are, or remain, apposite to cohabitants.

Sharing Homes by Unmarried Cohabiting Couples in England and Wales: Rebutting Presumptions and Exceptional Conduct

Simone Wong, Reader in Law, University of Kent, UK

I. Introduction

*Stack v Dowden*¹ and *Jones v Kernott*², the two decisions that are at the centre of this article, are recent additions to a long list of cases in England and Wales which deal with disputes after the separation of a unmarried, cohabiting couple over the beneficial ownership of the family home. Both these House of Lords/Supreme Court decisions provide a restatement of the principles of the common intention constructive trust, which will be discussed in more detail below. It was held that, when determining the beneficial ownership of a property which is used by a cohabiting couple as their shared family home, the presumption is that equity follows the law. This means that, where the property is in joint names, the couple are presumed to be legal and equitable joint tenants unless the claimant is able to rebut that presumption by establishing either a common intention to hold the property in different shares or that the trust is ‘ambulatory’ in nature, i.e., one in which the parties’ original intention regarding their beneficial interests had changed over time. Likewise, the claimant in a case where the property is held in the defendant’s (the claimant’s cohabiting ex-partner’s) sole name will have to prove that she was intended to have a beneficial interest in the property.

The cases further affirm that the presumptions are likely to be rebutted only in exceptional cases and the court may take into consideration a wider range of factors than just financial contributions in ascertaining the couple’s common intention, which may be express, inferred or imputed. *Stack* and *Jones* therefore provide a set of rules that is seemingly more simple and straightforward. A more holistic approach is taken in the process of ascertaining and rebutting the parties’ intentions, with greater attention being given to the ‘context’ of their relationship over the period of cohabitation. This combination of *time* and *context* is supposed to provide a more nuanced approach which enables an assessment of the couple’s relationship from the time of acquisition to the point of separation, and even beyond, as in *Jones*, in order to ascertain their actual intentions. Yet, these judicial attempts at tinkering with the common intention constructive trust have kept academic debate alive about the law’s lack of clarity and coherence, particularly on points such as inferred and imputed intentions.³

¹ [2007] 2 All ER 929 (HL).

² [2011] 3 WLR 1121 (SC)

³ GARDNER/DAVIDSON, *The future of Stack v Dowden*, *Law Quarterly Review* 2011, 13; DIXON, *Editor's notebook: the still not ended, never-ending story*, *Conveyancer* 2012, 83; MEE, *Jones v Kernott: inferring and imputing in Essex*, *ibid*, 167; PAWLOWSKI, *Imputed intention and joint ownership - a return to common sense: Jones v Kernott*, *ibid*, 149.

It is not the aim of the article to rehearse those arguments. Instead, the focus is on the way in which time and context of home-sharing by cohabitants are being construed by the English courts and, particularly, the assumptions that are being made about certain types of conduct for the purposes of rebutting the presumption and/or ascertaining the parties' (different) intentions about equitable ownership of the family home. These judicial constructions appear to reflect a desire to mitigate the harshness of *Lloyds Bank v Rosset*⁴ and provide greater justice in these cases. The article, however, will argue that these constructions may be problematic in several ways. For instance, the cases show how the law remains imbued with certain ideologies and therefore seem to reinforce a particular type cohabiting relationship, i.e., ones that mimic marriage. There is further a continued portrayal of the female claimant as 'wife/mother/innocent' who requires the law's protection against men who do not, for example, pull their weight during the relationship (*Stack*) or fail in their responsibilities towards their children by becoming absent fathers after separation (*Jones*). This brings into question the appositeness of the inferences drawn by judges from the couple's conduct over the course of cohabitation when seeking to determine whether such conduct is sufficiently 'exceptional'. While there is increasingly greater sociological research being conducted with regard to cohabitants and their financial arrangements, the sociology of cohabitation may require more in-depth examination in order to better address the issue of exceptionality.

II. Background: Constructive Trusts and The Family Home

By way of brief background, the property of spouses and civil partners in England and Wales⁵ is treated as separate property belonging to the particular spouse or civil partner who is the legal owner. In the event of divorce and the dissolution of a civil partnership, the English courts have very wide discretionary powers to redistribute the assets of spouses and civil partners under the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004 respectively. The financial orders that the English court may make include financial provision (e.g., lump sum or periodical payments) and property adjustment orders (e.g., a transfer or settlement of property belonging to one spouse to the other). The current position in England is that there is no formal legal recognition of cohabitation. This means that, upon the breakdown of cohabitation, cohabitants in England will have to look to other areas of the law, such as, contract, property and trusts, to deal with their financial and property matters.⁶ In the case of disputes over the ownership of the family home, an area of law that is frequently invoked by cohabitants is trusts law. While legal ownership of the family home might be held in either the sole name of one of the cohabitants or their joint names, there is the separate question of the couple's beneficial interests in the property. It is possible for a sole legal owner to hold the property as trustee for himself and his partner beneficially.

⁴ [1991] 1 AC 107 (*Rosset*).

⁵ For the purposes of the article, subsequent reference to 'England' refers to both England and Wales.

⁶ In Scotland, cohabitants are provided some legal protection upon the termination of their relationship: see Family Law (Scotland) Act 2006, ss 25-29.

Equally, a couple who are joint legal owners might hold the property beneficially for themselves or even just one of them. There is further the related question of the sizes of the beneficial shares they hold in the property.

A key reason for disputes arising in these cases is the absence of any express declaration of trust by the cohabiting couple to state explicitly what their respective beneficial interests are in the family home. Consequently, when cohabitation terminates, a dispute may potentially arise between the couple as to who owns what in respect of the family home, especially when both may have made contributions, financial and non-financial, during the course of the relationship towards the property and the family. Where the family home is purchased in joint names, the couple are usually taken to be both beneficially entitled to the home. The matter, however, is less clear-cut in the case of sole legal ownership. The nature of the dispute therefore might be a claim to a beneficial share in the property (in sole legal ownerships cases) and/or the size of that interest (in both sole and joint legal ownership cases). In addition, given the lack of an express trust at the outset, cohabitants are often likely to argue that the beneficial interest is held under a common intention constructive trust.

Generally speaking, a constructive trust is a trust which is implied by law. The nature of the common intention constructive trust (CICT) will seem peculiar to many Continental lawyers. It is a constructive trust which the law implies exists on the ground that the parties formed some common intention to share the property. The landmark case that laid down the principles relating to a CICT is *Rosset*.⁷ In order to prove the family home is subject to a CICT, the claimant must establish that there is, firstly, the requisite common intention to share, whether express or inferred; and secondly, the claimant must have acted to his or her detriment in reliance on that common intention. *Rosset* has also been taken as authority for the principle that, in the absence of any express intention, an intention may only be inferred from direct financial contributions towards the purchase of the property. As a result, a claimant who fails to make any direct financial contributions towards the acquisition of the family home but rather makes indirect financial, and even substantial, contributions towards the household and family,⁸ will not satisfy the strict *Rosset* test and will come away empty-handed.

Consequently, there have been criticisms about the rigidity of the *Rosset* test. The Law Commission of England and Wales, for instance, noted that, whilst the legal principles are sufficiently coherent and flexible, the requirements for proving the existence of a CICT are nonetheless inadequate to deal with the informal way that couples typically deal with each other.⁹ English courts in subsequent cases such as *Midland Bank v Cooke*,¹⁰ *Drake v Whipp*,¹¹ and *Hammond v Mitchell*¹² have tried to get around the

⁷ *Rosset* (Fn. 4).

⁸ e.g., paying for household bills, food and clothing for the family, and/or non-financial contributions, such as, unpaid labour in the home and provision of childcare.

⁹ Law Commission, *Sharing Homes: A Discussion Paper* (2002), paras 2.40 and 2.112.

¹⁰ [1995] 4 All ER 562 (*Cooke*).

¹¹ [1996] 1 FLR 826 (*Drake*).

rigidity of the *Rosset* test by taking a more generous interpretation of indirect contributions, at least for the purposes of demonstrating detrimental reliance by the claimant and the quantification of his or her beneficial interest.

III. *Stack and Jones*: The Significance of Time and Context on Intention to Share

Stack and *Jones* tell the familiar tale of a cohabiting couple who purchase a property in joint names in order to set up home for themselves and their children but omit to make an express declaration of trust of their beneficial interests. In both cases, there was no dispute that the man and the woman held beneficial interests in the family home. The dispute was over the quantification of their respective shares. Ms Dowden, in *Stack*, sought to argue that the parties' intention at the time of acquisition was that the beneficial shares would be in proportions different to a joint tenancy, i.e., that they did not hold equal shares to the property. Briefly, Ms Dowden had cohabited with her ex-partner, Mr Stack, for nearly 27 years, during which time they had four children. Their first home was a property in Purves Road which was purchased by Ms Dowden in 1983 in her sole name for £30,000. Substantial improvements to the property were carried out by Mr Stack, which significantly increased its value. That property was subsequently sold for £90,000 and a property in Chatsworth Road was purchased in 1993 for £190,000 as their new family home. That purchase was financed by £67,000 from the sale proceeds of the Purves Road house, £58,000 from Ms Dowden's savings and a mortgage of £65,000 in joint names, which was secured by one endowment policy in joint names and another in Ms Dowden's sole name.

It was clear that, during the relationship, Ms Dowden's financial and non-financial contributions towards the acquisition of the Chatsworth Road property and household expenses as well as the care of the family were significantly greater than Mr Stack's. There was further evidence that they had kept their finances separate, having separate bank accounts and investments and savings. The couple separated in 2002 and Mr Stack brought proceedings seeking an order for the sale of the property and equal division of the sale proceeds. Ms Dowden, on the other hand, claimed a 65:35 split in her favour. While Mr Stack's claim was successful at first instance, both the Court of Appeal and the House of Lords found in favour of Ms Dowden and held that she was entitled to a 65% share.

Jones was also a case involving cohabitants, Ms Jones and Mr Kernott, who purchased a property in Badger Hall Avenue in joint names in 1985. They lived together in that property as their family home with their two children. The purchase was funded by a 20% deposit of £6000 from Ms Jones and the balance from an endowment mortgage in joint names. Mr Kernott subsequently provided the funds and labour for constructing an extension to the property which increased its value by nearly 50%. While the

¹² [1991] 1 WLR 1127. However, cases like *Hammond* (ibid), *Cooke* (Fn. 10) and *Drake* (Fn. 11) indicate that, while indirect non-financial contributions will be taken into account in deciding whether there has been detrimental reliance, there must, at the very minimum, be some direct financial contribution towards the purchase of the property in order to get the CICT claim off the ground.

couple was cohabiting, Mr Kernott paid £100 per week to Ms Jones which she used together with her earnings to pay for the mortgage interest, the endowment premiums and all outgoings on the property and the household expenses. The relationship ended in 1993 and Mr Kernott moved out. At the time of separation, it was not disputed that the property was held by the parties beneficially in equal shares. The case was unusual in that the dispute did not arise until some 14 years after the couple's separation.

After separating, the couple tried unsuccessfully to sell the Badger Hall Avenue property. They then surrendered the life insurance policy in joint names and divided the proceeds equally. Mr Kernott used his share to purchase a property on Stanley Road in his sole name.¹³ Over the next 14 years, he stopped contributing to the outgoings on the Badger Hall Avenue property including payment of the mortgage interest and endowment premiums. In 2006, Mr Kernott sought payment of a half share in the value of the Badger Hall Avenue property which prompted Ms Jones to make an application under s 14 of the Trust of Land and Appointment of Trustees Act 1996 for a declaration that the beneficial interests in the property was held under a 90:10 split in her favour. Mr Kernott in turn served a notice on Ms Jones in 2008 to sever the joint tenancy so that they held their respective beneficial interests not as joint tenants but as tenants-in-common.¹⁴

Both parties conceded that, from the time of acquisition right up to their separation, the intention had been for the beneficial interests to be held in equal shares. Ms Jones, however, successfully argued that that common intention had changed over time, particularly post-separation when she undertook full responsibility for the ownership of the property. The unusual question that the court had to grapple with was whether a CICT could be ambulatory in nature whereby the couple's original common intention regarding their respective beneficial shares in the property could evolve and change over the course of time. An ambulation of the CICT would then enable Ms Jones to acquire an enlarged share of 90% after the couple separated.

A couple of significant points emerge from the decisions of the House of Lords/Supreme Court in *Stack* and *Jones*. Firstly, a distinction was drawn by the law lords between a domestic and a commercial context, with the former raising the presumption that equity follows the law. This means that the equitable (beneficial) interests will reflect the legal interests in the property. Thus, '[j]ust as the starting point of sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership'.¹⁵ Secondly, the presumption of equitable joint tenancy is

¹³ Ms Jones had initially sought to claim a half share in the Stanley Road property but the claim was rejected by HHJ Dedman. She initially appealed against that finding but subsequently abandoned her claim. Mr Kernott instead sought to the appeal against the finding that he held only a 10% share in the Badger Hall Avenue property.

¹⁴ Under English property law, the beneficial interests of two or more persons in property can be held by them either as joint tenants or tenants-in-common. One specific feature of joint tenancy is the application of the rule of survivorship, i.e., the interest of the deceased will vest automatically in the survivor. The right of survivorship does not apply to interests held under a tenancy-in-common, which provides each beneficial owner an undivided share in the property. A tenant-in-common is therefore entitled to deal with his or her undivided share as he or she wishes and may bequeath that share to a third party.

¹⁵ *Stack* (Fn. 1), per Lady Hale at [56].

rebuttable. However, according to Lady Hale, the presumption would only be rebutted in exceptional cases and the burden, which lies with the party seeking to rebut the presumption, is a heavy one and ‘is not a task to be lightly embarked upon’.¹⁶ Crucially, in *Jones*, the Supreme Court further added that the presumption may be rebutted by establishing a *change of intention* through an ambulatory trust, provided that the parties’ interests remain the same at any one point in time and they cannot intend to hold different interests concurrently.¹⁷ In other words, common intention is not immutable and may change thereby enabling a CICT to be ambulatory. The ambulation of the trust would require ‘compelling evidence ... before one can infer that, subsequent to the acquisition of the home, the parties intended a change in the shares in which the beneficial ownership is held’.¹⁸

Lady Hale further goes on to say in *Stack* that, ‘context is everything’ in law and ‘[t]he context is supplied by the nature of the parties’ conduct and attitudes towards their property and finances’.¹⁹ In *Jones*, Lord Walker and Lady Hale reiterate that there are at least two reasons for the presumption of equitable joint tenancy in cases where a couple, married or unmarried, purchase a family home in joint names. The first is that the joint purchase is a strong indication of ‘emotional and economic *commitment to a joint enterprise*’ (emphasis added).²⁰ Secondly, couples do not adhere to a strict accounting of contributions made and are unlikely to undertake an arithmetic calculation of their respective contributions towards the purchase of the property, outgoings and household expenses during the relationship. Furthermore, there is the added practical difficulty of analysing respective contributions to the property over a long period.²¹ Lady Hale states that many factors other than financial contributions may be relevant in ascertaining the parties’ intentions regarding beneficial ownership of the family home. They include, for example: the reason for the acquisition of the property; the nature of the parties’ relationship; whether they had children; the parties’ financial arrangements; how the purchase of the property is financed, both initially and subsequently, and whether they undertook joint liability for the mortgage; the arrangements for meeting all outgoings on the property and household expenses; and the individual characters and personalities of the parties.²² This multi-factorial approach engages the court in an evaluation of the context of each case and, more specifically, the parties’ conduct for the purposes of ascertaining whether or not there was a commitment to a joint enterprise. In doing so, the judges ascribe meanings and constructions to the couple’s conduct in order to determine whether the particular conduct is sufficiently exceptional to rebut the presumption of equitable joint tenancy, which we turn to below.

IV. Rebutting Presumptions and the Search for Exceptionality

¹⁶ *Ibid*, per Lady Hale at [68].

¹⁷ *Ibid*, per Lady Hale at [63] and [70].

¹⁸ *Ibid*, per Lord Neuberger at [138].

¹⁹ *Ibid*, per Lady Hale at [69] and [90].

²⁰ *Jones* (Fn. 2) at [19].

²¹ *Ibid* at [22].

²² *Stack* (Fn. 1) at [69].

In order to rebut the presumption of equitable joint tenancy, both Ms Dowden and Ms Jones had to establish the exceptionality of their respective cases. This section looks at the types of conduct the courts took into account and, more importantly, the meanings they ascribed to such conduct, for the purposes of determining whether the case was indeed exceptional. In *Stack*, the couple's financial arrangements significantly influenced the majority's interpretation of the context and whether the couple's conduct was sufficiently exceptional to rebut the presumption of equitable joint tenancy. Ms Dowden had undoubtedly contributed considerably more towards the acquisition of the property and all outgoings on the property than Mr Stack. Her total financial contribution towards the purchase price of the Chatsworth Road property was about £163,435 (i.e., £125,000 for the purchase price and £38,435 for the mortgage repayment) compared to Mr Stack's £60,747 (i.e., £27,000 for the mortgage repayment and £33,747 for the joint endowment policy premiums).²³ Ms Dowden also paid most of the utilities bills and all the premiums for the life policy in her sole name. The couple had kept their finances separate and took responsibility for specific items of household expenditure. These facts led the majority to hold that there was *no pooling of resources* by the couple for the common good. Consequently, the individualised financial arrangements adopted by Ms Dowden and Mr Stack made the case exceptional since, in Lady Hale's view, '[t]here cannot be many unmarried couples who have lived together as long as this, who had four children together, and whose affairs have been kept as rigidly separate as this couple's affairs were kept'.²⁴

Lord Neuberger, who dissented from the majority as to reasoning, took a different tack on the exceptionality issue. While his Lordship agreed with the majority that the presumption of equal sharing could only be rebutted in exceptional cases,²⁵ there were differences in opinion about the types of conduct that would be sufficient for a rebuttal. Lord Neuberger, for instance, acknowledges that couples may not always intend to share their assets equally, even in a long-term close and loving relationship, and accepts the view of the majority regarding the reduced importance of arithmetical calculation of the parties' respective contributions within a domestic context. Thus, repayments of capital *per se*, even if wholly made by one party, may not necessarily lead to an inference of an intention that the beneficial interests should be adjusted.²⁶ However, he takes a narrower approach than the majority to the question of whether there is sufficiently 'compelling evidence' to rebut the presumption. More particularly, he is reluctant to assume an intention of equal sharing purely on the basis that the parties have shared or pooled resources, especially where the family home had been acquired by significantly different contributions.²⁷ According to Lord Neuberger, the types of conduct that might justify an inference of an intention to share other than equally include, for example: substantial improvements to the property (and not just decoration or repairs even if substantial) which add to the capital value of the property;

²³ This in fact works out nearly to a 65:35 split in contribution.

²⁴ *Stack* (Fn 1) at [92].

²⁵ *Ibid* at [138].

²⁶ *Ibid* at [132] and [140].

²⁷ *Ibid* at [133], [141] and [146].

repayments of capital; and possibly interest payments.²⁸ These types of contributions may typically be classified as contributions, whether direct or indirect, towards the acquisition of the property and reflect Lord Neuberger's general preference for using the resulting trust analysis for rebuttal purposes. Thus, for him, it is Ms Dowden's significantly greater direct financial contributions towards the acquisition of the family home rather than the broader relationship and personality factors that justify an adjustment of the couple's beneficial interests.

Jones, on the other hand, dealt with the extent to which post-acquisition (more specifically, post-separation) conduct may alter the parties' intentions. In other words, the presumption of equitable joint tenancy may be rebutted by establishing an ambulatory constructive trust. The question then is whether the parties' post-separation conduct with regard to the Badger Hall Avenue property, where Ms Jones had substantially undertaken full responsibility for all the outgoings of the property and Mr Kernott had become increasingly detached from it, can be seen as sufficiently exceptional to rebut the presumption of equal sharing. Unlike in *Stack*, the pooling of resources during the relationship would lend support to the view that the couple's commitment to a joint enterprise and that their initial intention had been to hold the property in equal shares. However, the very separate financial arrangements of the couple post-separation were equally, if not more, exceptional than in *Stack*: that there was 'an even more marked degree [of separation of finances] than the unmarried couple in *Stack v Dowden*'²⁹ from which a change of intention might be inferred or imputed. Ms Jones, like Ms Dowden, had contributed financially a larger proportion. Aside from paying for all other outgoings on the property, household expenses and maintenance of the couple's children since 1993, she contributed the 20% deposit and a preponderant contribution of 81.5% of the mortgage interest and endowment premiums. Mr Kernott's contribution was limited to the capital value added to the property (roughly 33%) and payments of the mortgage interest and endowment premiums between 1985 and 1993 (about 18.5% of those payments). The Court of Appeal, on the other hand, took a very different view. As Wall LJ explains:³⁰

There has to be something to displace those interests, and I have come to the conclusion that the passage of time is insufficient to do so, even if, in the meantime, the appellant has acquired alternative accommodation, and the respondent has paid all the outgoings.

The majority in the Court of Appeal then proceeded to find that there was insufficient evidence from the couple's post-separation conduct to enable the judge to infer the existence of an ambulatory trust and that the parties' original intention had changed. However, in allowing Ms Jones' appeal to the Supreme Court, Lord Walker and Lady Hale, who delivered a joint judgment, found that the significant changes in the couple's post-separation financial arrangements (i.e., keeping their finances completely separate and the cessation of the pooling of resources) were treated as being sufficiently exceptional to

²⁸ Ibid at [139].

²⁹ [2010] 1 All ER 947 (HC), per Nicholas Strauss QC at [47].

³⁰ [2010] 3 All ER 423 (CA) at [58].

rebut the initial intention of equal sharing. Within the context-based relational approach taken by the House of Lords/Supreme Court, the couples' lack of pooling of resources was seen as a significant factor.

The upshot is that an equal sharing intention arises in a joint names case only when the couple's 'emotional and economic commitment to a joint enterprise' evidences, in Gardner's view, a materially communal relationship where there is a pooling of all material resources such as money, assets and labour.³¹ The commitment of spouses and civil partners, on the other hand, are subject to less scrutiny since their relationships are ordinarily regarded as being materially communal regardless of the nature and scale of their respective contributions to the family economy.³² Gardner, for instance, points to *Drake*³³ as a case in point where the couple had generally kept their finances separate, only pooling together on certain things such as the acquisition and improvement of the family home. Given the non-materially communal relationship, their beneficial shares reflected their respective financial contributions towards the acquisition of the property. By contrast, the fact that the couple in *Cooke*³⁴ were married lent itself to the relationship being deemed as materially communal and that the spouses intended to share equally despite their significantly unequal contributions towards the purchase of the property. Cohabitants who wish to benefit from the presumption of equal sharing are thus required (and expected) to demonstrate their commitment by behaving like married couples and operating as a single economic unit since anything less will not do! Cohabitants whose behaviour deviates from this normative view of (marital) couple relationships are more likely to succeed in demonstrating the exceptionality of the case and rebutting the presumption of equal sharing. There remain, however, the questions of whether the marriage model should be applied to cohabitation and, more importantly, whether judicial views on the way committed couples, married and unmarried, conduct, or ought to conduct, themselves are appropriate to modern day relationships.

V. Deciphering Context and Conduct in Intimate Couple Relationships

The emphasis placed on context in *Stack* and *Jones* enables a more fact-sensitive analysis of the parties' dealings and, more importantly, a shift away from direct financial contributions to a wider range of financial and non-financial contributions to ground a CICT claim. Such a move is significant in terms of acknowledging the existence of economic inequalities within couple relationships as a result of a gendered division of labour. However, the cases have received mixed reception from academic

³¹ GARDNER, Family Property Today, Law Quarterly Review 2008, 422. Cf. a non-materially communal relationship extends to those where there is partial pooling of material resources such as joint purchase of certain items (e.g. groceries and purchase of a car) rather than a pooling of material resources across the board.

³² Ibid at 432.

³³ *Drake* (Fn. 11).

³⁴ *Cooke* (Fn. 10).

commentators. Some have questioned the legal effect given by the courts to context³⁵ while others are concerned with the lack of doctrinal clarity and coherence.³⁶ Some note that *Stack* and *Jones* illustrate the increasing familialisation of trusts law in the case of the family home.³⁷ This is reflected, for instance, in the factors listed in para 69 by Lady Hale in *Stack* being similar to those considered in family law. In doing so, the approach now being taken in disputes over the family home is more nuanced and enables the courts to consider a couple's interpersonal relationship. The familialisation of property law has further led to a shift from the principle of separate property to a notion of equal sharing of family assets by (married) couples. Similarly, the familialisation of the trusts regime, HAYWARD argues, enables a more family-centric approach to be taken in disputes between couples over jointly owned property.³⁸ This may also mitigate the 'relationship blindness' of *Rosset*.³⁹ The presumption of equitable joint tenancy is symbolic of this familialisation process and that only exceptional circumstances will rebut that presumption.

The disparate weight given by the courts in *Stack* and *Jones* to the factors surrounding the parties' relationship before and after separation nonetheless flags up the problem that judges face in construing the context of the parties' relationship. They have to attach meanings to the ways in which the couples behave and conduct their interpersonal dealings as a means to determining their commitment and, relatedly, a common intention to share equally. As discussed above, the familialisation of trusts law has meant that the focus on context has led to 'conduct' performing an evidentiary role of filtering out the deserving (committed) from the less or non-deserving (non-committed) cohabiting relationships, with cohabitants' conduct being measured against the marriage model. Here, GARDNER's categorisation of materially and non-materially communal relationships provides a useful reminder of the narrow construction that judges have given to the context of couples' relationships. The allocation of responsibility for certain items of capital and household expenditure between Ms Dowden and Mr Stack, for instance, is a stark reminder of the judges' preoccupation with joint pooling of resources as a significant indicator of commitment.

The prioritisation of joint pooling of resources further reflects the way in which the law remains imbued by certain ideologies which, in this case, is the traditional family model of male breadwinner/female homemaker. The judges are, accordingly, adopting a particular notion of commitment. In doing so, they make certain assumptions about the way(s) that married couples behave as a result of their commitment and extend those assumptions to cohabitants. In these cases, cohabiting

³⁵ See, e.g., HOPKINS, *The Relevance of Context in Property Law: A Case for Judicial Restraint?*, Legal Studies 2011, 175

³⁶ DIXON (Fn. 3); MEE (Fn. 3).

³⁷ HAYWARD, "Family property" and the process of "familialisation" of property law, *Child and Family Law Quarterly* 2012, 284, who builds on Dewar's original thesis of the familialisation of property law in DEWAR, *Land Law, and the Family Home*, in BRIGHT/DEWAR (eds), *Land Law: Themes and Perspectives*, Oxford 1998, 327-355; COOKE, *Community of Property, Joint Ownership and the Family Home*, in DIXON/GRIFFITHS (eds), *Contemporary Perspectives on Property, Equity and Trusts Law*, Oxford 2007, 39-55.

³⁸ HAYWARD (Fn. 37) at 296.

³⁹ BOTTOMLEY, *Women and Trust(s): Portraying the Family in the Gallery of Law*, in BRIGHT/DEWAR (Fn. 36), 206-228.

relationships that mimic marriage are able to benefit from the way in which marriage forms a symbolic signal of commitment.⁴⁰ In other words, the familialisation of trusts law leads to the application of the logic of semblance where protection is extended from marriage to other groups (e.g., cohabitants) on the basis of patterns of sameness or similarity.⁴¹ This approach, however, raises two further and interrelated questions. The first is whether or not married couples and cohabitants hold different notions of commitment and, secondly, whether the judicial assumptions about the ways in which committed couples, whether married or unmarried, structure their relationships including financial arrangements and their willingness to share resources are accurate.

Notions of commitment

As cohabiting relationships tend to be more fragile than marriage,⁴² there is a general perception that cohabitants are less committed than married couples. SMART and STEVENS' research found that cohabitants' commitment fall along a continuum that ranges from mutual to contingent.⁴³ This seems to then set their notion of commitment apart from spouses', with mutually committed relationships being the closest proximate of marriage. Yet, SMART observes that relationships based on contingent commitment do not necessarily lack commitment.⁴⁴ That being the case, there is the question of whether spouses and cohabitants have similar or different notions of commitment and what bearing that would have, if any, on the way in which their relationships are structured.

Social psychologists have found that the notion of commitment is three-dimensional, comprising: commitment to partner (wanting to stay with a particular partner); commitment to relationship (feeling morally bound to stay in and maintain the relationship); and feelings of entrapment (feeling trapped in the

⁴⁰ ROWTHORN, Marriage as a signal, in DNES/ROWTHORN (eds), *The Law and Economics of Marriage & Divorce*, Cambridge 2002, 132-156.

⁴¹ See BOTTOMLEY/WONG, Shared Households: A New Paradigm for Thinking about the Reform of Domestic Property Relations, in DIDUCK/O'DONOVAN (eds), *Feminist Perspectives on Family Law*, Abingdon 2006, 39-57.

⁴² The fragility of cohabitations is usually based on the duration of those relationships, which tend to be shorter than marriages. Yet, there is evidence that cohabitation is gradually increasing in duration. In the United Kingdom, the average length of cohabitation increased from 6.5 years in 2000 to 6.9 years in 2006. Parenting cohabitations have also increased to 8.5 years by 2006. See BARLOW/BURGOYNE/CLERY/SMITHSON, Cohabitation and the law: myths, money and the media, in PARK/CURTICE/THOMSON/PHILLIPS/JOHNSON/CLERY (eds), *British Social Attitudes: The 24th Report*, London 2008, 29, 33.

⁴³ SMART/STEVENS, Cohabitation Breakdown, Family and Parenthood Policy and Practice (Family Policy Studies Centre, 2000).

⁴⁴ SMART, Stories of Family Life: Cohabitation, Marriage and Social Change, *Canadian Journal of Family Law* 2000, 20. Here, Smart classifies the mutually committed and contingently committed relationships as being reflexive and risky ones respectively. A reflexive relationship means one where the couple have put some thought into their relationship and have made plans including planning for children, making legal and financial agreements and formulating mutually agreed expectations of the relationship; cf risk relationship where the couple act by chance or spontaneously when faced with significant life events. Smart, however, stresses (at 36) that the latter is not necessarily commitment-free but rather one where the couple hope things work out somehow and actual expectations are either left unsaid or minimal.

relationship).⁴⁵ ‘Commitment to partner’ is more present-oriented while ‘commitment to relationship’ is future-oriented. Both dimensions evince more positive feelings about the relationship, with ‘commitment to relationship’ being particularly salient to the long-term stability of the relationship.⁴⁶ Despite ‘feelings of entrapment’ portraying more negative feelings towards the relationship, this may be due to the couple’s disparate levels of education and earnings, the quality of the relationship and/or a sense of dissatisfaction. A high level of any one of these three dimensions of commitment may lead to a comparatively high level of commitment.⁴⁷

The public declaration made by spouses during the wedding ceremony *per se* suffices to indicate their commitment, with commitment to partner and/or marriage being the idealised norms rather than feelings of entrapment. However, what is less obvious is the level of that commitment, which may vary between married couples but is nonetheless uniformly assumed to exist. The point is that the existence and the level of commitment are both taken for granted in a marital relationship. It is further assumed that, due to the greater fragility of cohabitation, the quality of cohabitants’ commitment as well as their perception of commitment may be qualitatively different from, if not inferior to, spouses’. As has been argued elsewhere,⁴⁸ the willingness of the law to provide protection to cohabitants is then governed by the degree to which a cohabiting couple exhibits the type of commitment equivalent to that of spouses. The familialisation of trusts law has meant that the courts are searching for evidence that a cohabiting couple’s commitment is similar, or comparable, to marital commitment in order for a presumption of equal sharing to apply. That commitment should in turn translate into the cohabiting couple behaving in patterns similar to a married couple.

While only small-scale research on cohabitants has been conducted to date in the UK, the findings reveal that there is little difference between spouses and cohabitants in terms of their notion of commitment. LEWIS found that the three-dimensional notion of commitment was equally applicable to cohabitants.⁴⁹ She further found that it was not the notion of commitment that varied significantly between spouses and cohabitants but their mode of expression of that commitment. Couples who choose marriage are clearly willing to express their commitment in a more public and overt way, compared to cohabitants who generally prefer a more private expression of their commitment. A tentative conclusion that may be drawn from the limited research findings is that cohabitants and spouses do not differ significantly in terms of their notions of commitment. Even then, an analysis of commitment only tells a partial story. The more central concern in disputes over the family home is the effect that commitment has on the way in which couples, married and unmarried, might structure their relationship and day-to-

⁴⁵ DRIGOTAS/RUSBULT/VERETTE, Level of commitment, mutuality of commitment, and couple well-being, *Personal Relationships* 1999, 389.

⁴⁶ ADAMS/JONES, The Conceptualization of Marital Commitment: An Integrative Analysis, *Journal of Personality and Social Psychology* 1997, 1177.

⁴⁷ DRIGOTAS/RUSBULT/VERETTE (Fn. 45).

⁴⁸ WONG, Shared commitment, interdependency and property relations: a socio-legal project for cohabitation, *Child and Family Law Quarterly* 2012, 60.

⁴⁹ LEWIS, *The End of Marriage?*, London 2001, at 125.

day arrangements since this enquiry feeds into the issue of interpretation of context. The imbueing of the law with ideologies such as the traditional ‘male breadwinner/female homemaker’ notion of family affects judicial constructions of interdependency in that it can skew the meanings that judges ascribe to the parties’ conduct.

Interdependence and the structure of relationships

Research findings have found a correlation between a partner’s commitment and the couple’s level of interdependence.⁵⁰ Given that relationships are influenced by various factors including institutionalised roles and cultural norms, the concept of interdependence is neither static nor one-dimensional. Dependence encompasses four dimensions: the basis of dependence; the degree of dependence; the matching of the partners’ respective goals; and whether dependence is mutual (interdependence) or unilateral.⁵¹ A significance of the correlation as well as multi-dimensionality of commitment and interdependence is that they shape and influence the couple’s interaction and degree of interdependence. In addition, affect also has an effect on the way that couples structure their relationship. As PEPLAU observes: ‘Affect ... influences behavioural patterns in that the roles that people undertake within a relationship are influenced by one’s emotional investment in a relationship’.⁵² Research findings on the psychological perceptions of commitment and (inter)dependence therefore indicate their effect on the way and extent to which couples embark on accommodative behaviour in an effort to maintain the relationship.⁵³ Higher levels of commitment directly influence each partner’s willingness to make sacrifices for the good of both the dyad and the relationship.⁵⁴ There is further the latent correlation between (inter)dependency and power, i.e., that one partner’s dependence on the other is roughly equivalent to the latter’s level of power over the former. Thus, the greater one partner’s dependence on the other, the greater the latter’s power in that relationship. Not all relationships are likely to be perfectly balanced relationships of interdependency. It is more likely that one partner may be more dependent on the other, whether emotionally or economically, in which case the power dynamics will be skewed in favour of the latter.

Within the family home context, we consider two particular structural aspects of cohabitants’ interdependence: the first is the (gendered) division of labour and the other, their financial arrangements,

⁵⁰ Here, interdependence may be understood as consisting of two aspects: the first is the level of each partner’s dependence on the other for the achievement of good outcomes; and the other is the mutuality of their dependence i.e. the extent to which they are similarly dependent on each other to achieve those outcomes.

⁵¹ BLUMSTEIN/KOLLOCK, *Personal Relationships*, Annual Review of Sociology 1988, 467; RUSBULT/VAN LANGE, *Interdependence, Interaction, and Relationships*, Annual Review of Psychology 2003, 351

⁵² PEPLAU, *Roles and Gender*, in KELLEY et al (eds), *Close Relationships*, New York 1983, 220-264, at 228.

⁵³ BERSCHEID, *Interpersonal Relationships*, Annual Review of Psychology 1994, 79; TRAN/SIMPSON, *Prerelationship Maintenance Behaviors: The Joint Roles of Attachment and Commitment*, Journal of Personal and Social Psychology 2009, 685.

⁵⁴ POWELL/VAN VUGT, *Genuine Giving or Selfish Sacrifice? The Role of Commitment and Cost Level upon Willingness to Sacrifice?*, European Journal of Social Psychology 2003, 403

e.g., management and control of money and perceptions of ownership of money especially when one partner either is the sole earner or earns significantly more than the other. The way in which the majority in the House of Lords/Supreme Court had responded to the narratives of the female claimants' lives in *Stack* and *Jones* demonstrates an inclination towards a gendered construction of the parties' conduct. The judges were not only ascribing meanings to the parties' conduct in terms of how committed (marital) couples behave (or at least expected to behave) but also in a gendered way. The substantial provision of caregiving contributions by Ms Dowden and Ms Jones were seen as being the norm and to be expected of their roles as 'wives' and 'mothers'.⁵⁵ When provided by women, these types of contributions are normalised by the courts as being provided out of natural love and affection.⁵⁶ Thus, the ordinary provision of such contributions by a woman as mother is not exceptional. While it is not completely clear from *Stack* or *Jones* whether non-financial contributions alone would be sufficient to ground a claim to a beneficial interest under a common intention constructive trust, the imagery of the 'good wife/mother' within a familialised framework is nonetheless a powerful one and can help to bolster a woman's claim that the relationship was a joint enterprise and, relatedly, her just desert is to have at least an equal, if not greater, share in the family home.

Conversely, the traditional family form reinforces the role of the man as the main, if not sole, wage-earner, thus requiring him to demonstrate his efficient performance of the role of good provider by making adequate provision to the household income. In *Stack*, for instance, Lady Hale even hinted at Mr Stack's lower financial contributions towards the purchase of the family home as well as the family economy as evidence of his lack of commitment:⁵⁷

Had it been clear that he had undertaken to *pay* for consumable and child minding, it might have been possible to *deduce some sort of commitment* that each would do what they could. But Mr Stack's evidence did not even go as far as that. (emphasis added)

This statement might be unpacked to indicate an acceptance of the gendered division of labour within a heterosexual couple relationship. The man therefore is not expected to actually perform the task of child-minding as this is seemingly women's work: as (expected) financial provider, he might be able to relieve himself of personal responsibility for performing those types of tasks as long as he performs the normative role of breadwinner and is able to pay someone else to do the job. Likewise, Mr Kernott's detachment from not just the property but also his children, particularly his failure to contribute financially both towards the property and the maintenance of his children, was seen as somewhat reckless (being an absent father) and deviant to the role of male breadwinner. Thus, Mr Stack's and Mr Kernott's

⁵⁵ Interestingly, research indicates that women who earn significantly more than their male partners (e.g. Ms Dowden) may still perform a larger portion of the housework due to the gender display approach to the division of labour. Gender expectations, or deviance from gender norms of male breadwinning, may lead to women performing a larger share of the housework: see BITTMAN et al, When Does Gender Trump Money? Bargaining and Time in Household Work, *The American Journal of Sociology* 2003, 186.

⁵⁶ LAWSON, The things we do for love: detrimental reliance in the family home, *Legal Studies* 1996, 218; WONG, Would You "Care" to Share Your Home?, *Northern Ireland Legal Quarterly* 2007, 268.

⁵⁷ *Stack* (Fn. 1) at [91].

conduct were construed by the courts as being exceptional since their conduct were seemingly an abdication of their masculine responsibilities as main breadwinners.

The construction of the couples' respective financial arrangements was also influenced by this normative view of family life. Here, the presumption made is that spouses, as a committed couple, operate as a single economic unit. Cohabitants wishing to benefit from this familialised framework of trusts law are expected to act like spouses and, accordingly, operate as a single economic unit. Yet, it is questionable whether these perceptions are not only relevant to but also an accurate reflection of how couples, married and unmarried, manage their finances. Earlier research indicates that the financial arrangement of married and unmarried couples tend to follow one of four typologies that were initially identified by PAHL.⁵⁸ Moreover, there is a positive linear relationship between earnings and the allocation of personal spending as well as exercise of control and power.⁵⁹ These money management typologies have been subsequently expanded and divided into two categories: joint management systems where the couple operates as a single economic unit (e.g., female or male whole wage model and joint pooling); and independent management systems where they function as separate economic units (e.g., partial pooling and independent money management).⁶⁰

Among joint management systems, the use of joint pooling is more common than female and male whole wage systems which have seen a growing decline in their use over the years. There is correspondingly a slight increase in the use of independent management systems such as partial pooling.⁶¹ These choices of money management systems may be influenced by perceptions of commitment but they may equally be motivated by other factors such as the notion of equality that the couples subscribe to. VOGLER, for instance, observes that joint pooling is normally chosen by couples who perceive their relationships in terms of trust and sharing and seek to achieve equality of outcomes through equal control and access to household income.⁶² In these cases, the notion of equality could be translated by couples as sharing everything which, in practical terms, leads to joint pooling. Joint pooling is prevalent among married couples and parenting cohabitants. That choice may be due to the system being symbolic of 'being together' and complies with the perceived view that couples share.

⁵⁸ PAHL, *Money and Marriage*, Macmillan Education/Basingstoke 1989. The four basic typologies of money management systems identified by Pahl are: wife-management system; allowance system; pooling system; and independent management system.

⁵⁹ PAHL, *Household Spending, Personal Spending and the Control of Money*, *Journal of British Sociological Association* 1990, 119; PAHL/VOGLER, *Money, power and inequality within marriage*, *The Sociological Review* 1994, 263; VOGLER, *Cohabiting couples: rethinking money in the household at the beginning of the twenty first century*, *The Sociological Review* 2005, 1.

⁶⁰ VOGLER/BROCKMANN/WIGGINS, *Intimate relationships and changing patterns of money management at the beginning of the twenty-first century*, *The British Journal of Sociology* 2006, 455.

⁶¹ *Ibid.*

⁶² *Ibid.*

On the other hand, childless and post-marital cohabitants and remarried couples generally prefer to use independent management systems such as partial pooling.⁶³ The use of independent management systems may be due to a greater subscription to the principle of equality rather than a lack of commitment.⁶⁴ Couples choosing independent management systems tend to define equality in slightly different terms. The system is often characterised by couples having their own but differential levels of earnings and/or assets⁶⁵ and a desire for autonomy over one's own earnings. For them, equality within the relationship means equal contributions towards joint expenses which may be framed as either joint expenses being divided equally between the couple or each partner being allocated responsibility for particular sets of expenses.⁶⁶ This can in turn translate into sharing all the costs of acquiring and sharing a home through equal contributions either by splitting everything equally (formal equality) or, as in *Stack*, in proportion to each partner's earnings (substantive equality).⁶⁷

Due to the diversity of couples' relationships, whether married or cohabiting, ASHBY and BURGOYNE argue that their choice of money management system cannot simply be reduced to their notion of commitment alone.⁶⁸ As discussed above, a couple's notion of equality, coupled with other factors such as the level of their commitment and earnings, may influence their choice of money management system. BURGOYNE and SONNENBERG, for instance, observe that the holding of a joint account does not necessarily mean that the money in that account would be shared equally by the couple in practice: this may be due to principles such as earner entitlement⁶⁹ and perceptions of ownership.⁷⁰ Likewise, holding separate finances (independent money management and even partial pooling) may not be sufficiently indicative of the couple's lack of commitment as there may be pragmatic as well as ideological (equality and autonomy) reasons for doing so rather than a lack of commitment.⁷¹

⁶³ These types of couples arguably may choose more individualised management systems in order to exercise a greater sense of equality and autonomy within their new relationships and/or avoid a repetition of negative experiences from their past relationships.

⁶⁴ SINGH/LINDSAY, Money in heterosexual relationships, Australian and New Zealand Journal of Sociology 1996, 55; ELIZABETH, Managing money, managing coupledom: a critical examination of cohabitants' money management practices, The Sociological Review 2001, 389. See also VOGLER/BROCKMANN/WIGGINS, Managing money in new heterosexual forms of intimate relationships, The Journal of Socio-Economics 2008, 552 who found that parenting cohabitants are likely to operate joint pooling. Her study revealed that 59% of married couples and 52% of cohabitants used joint pooling.

⁶⁵ VOGLER/BROCKMANN/WIGGINS (Fn. 60) who found that couples with similar levels of income are more likely to use joint pooling while those with different income levels preferring partial pooling.

⁶⁶ ELIZABETH (Fn. 64) at 399.

⁶⁷ For a fuller discussion of the problems related to the notion of equality and its role in influencing couples' choice of money management systems, see WONG (Fn. 48).

⁶⁸ ASHBY/BURGOYNE, Separate financial entities? Beyond categories of money management, The Journal of Socio-Economics (2008), 458.

⁶⁹ This principle relates to the non-earner feeling a sense of lack of entitlement to spend the money of the earner. Notwithstanding a couple's subscription to equality, there may still be inequalities of access to and/or control over household income due to the non-earner feeling constrained in terms of spending and/or how and what amounts may be spent. See ELIZABETH (Fn. 64) at 398, 400-401.

⁷⁰ BURGOYNE/SONNENBERG, Financial Practices in Cohabiting Heterosexual Couples: A Perspective from Economic Psychology, in MILES/PROBERT (eds), Sharing Lives, Dividing Assets: An Inter-Disciplinary Study, London 2009, 89-108.

⁷¹ Ibid.

Based on these research findings and the significantly different levels of earnings of Ms Dowden and Mr Stack, their use of the partial pooling system may not necessarily be quite as unusual as made out by Lady Hale especially when one considers their differential income levels. Ms Dowden was earning nearly twice as much as Mr Stack. As BITTMAN et al put it: ‘Money talks in marriage’.⁷² This might be equally true of cohabitation! ELIZABETH similarly observes that women who earn as much or more than their partners are better placed to negotiate a position of greater power and in ensuring the use of a more favourable money management system.⁷³

VI. Conclusion

While a more family-centric approach in these trust cases is to be welcomed in terms of enabling a wider range of contributions to be taken into consideration, the focus on context is not without problems. The use of presumptions within cases in the domestic context has helped to alleviate some, without eradicating all, of the evidential and doctrinal problems linked with the common intention requirement. Thus, in the joint names cases, *Stack* and *Jones* have provided for a presumption of equal sharing to arise which can only be rebutted in exceptional cases. This then calls for closer scrutiny of the context of the parties’ relationship in order to ascertain whether the nature and surrounding circumstances of their relationship are sufficiently exceptional or unusual to rebut the presumption of equal sharing. In doing so, the cases seem to indicate some acknowledgement of the gender bias and unfairness faced by claimants (usually women) who have contributed substantially in indirect ways, whether financially or non-financially, to the acquisition and running of the property as the family home. Thus, the multi-factorial approach adopted by Lady Hale seeks in part to provide scope of these indirect contributions to be accounted for.

Yet, the way in which ‘context’ has been construed by the judges has proved equally problematic and not exactly free from gender bias. This is because the judicial constructions given to the context of cohabiting couples’ relationships seem to be based on a particular type of relationship – the traditional ‘male breadwinner/female homemaker’ marriage model. To enable the presumption of equal sharing to arise, the cohabitation must be a ‘joint enterprise’ that mimics marriage. While there is evidence that spouses’ and cohabitants’ perception of the notion of commitment may not vary greatly, judicial assumptions about what committed couples do and how they structure their relationships are still tied to this normative family model. There is, implicitly, a continued acceptance by the judiciary of a gendered division of labour within couple-based relationships but what should be less tolerated is the devaluation of the (gendered) unpaid work. Thus, while a woman’s unpaid caregiving work is to be valued and given due weight and recognition in these cases, so too must the man’s paid work and his continued role as

⁷² BITTMAN et al (Fn. 55) at 209.

⁷³ ELIZABETH (Fn. 64) at 404. See also KENNEY, *The Power of the Purse: Allocative systems and Inequality in Couple Households*, *Gender & Society* 2006, 354.

breadwinner, albeit not necessarily as sole wage-earner. Within this normative framework, there is further an expectation of the continued compliance with the perceived view that committed couples share their money and assets. Any relationship that opts for a form of money management system other than joint pooling is then seen as deviant and, thus, exceptional! These notions of sharing lives are worrisome as both the allocation of roles and division of labour have become further entrenched in gender, reinforcing the principal role of women as unpaid caregivers and men as wage-earners.