Anne and Brian, who are unmarried, buy a house together in 1990. Anne pays the whole cost of the house, with money given to her by her father. There is no mortgage. The couple put the legal estate of the house in Brian’s name, but orally agree that they are joint tenants in equity.

Between 1990 and 1995, Anne and Brian have three children together, but their relationship breaks down. Brian moves out of their house and they make an oral agreement, that as he does not plan to pay any maintenance for their children, he renounces any claim that he might have to the beneficial ownership of the house. Neither she nor the children see Brian again. Anne remains in the house and pays for all the outgoings. She also undertakes extensive renovation and maintenance work on the house, paying for the materials and doing the manual work herself.

In 2014, Brian reappears and claims that he holds the house jointly with Anne. He wants the house to be sold and the proceeds to be divided equally between them. Anne opposes this and says that although their original common intention, in 1990, was to hold the house jointly, the whole course of dealing between them, since 1996, indicates that their common intention has changed. In her view the family home belongs completely to her.

has an interest in the eyes of equity\(^7\). Therefore, applying this to the situation, Anne and Brian have an express agreement between them. It is clear that they have orally agreed to be joint tenants in equity.

It is also likely that the court will look to see if the clients share a common intention. It should also be a constructive trust should be imposed whenever it is ‘inequitable’ for a legal owner to deny the beneficiary of an equitable interest in land\(^8\). This will be established also by an “understanding of a common intention that the plaintiff will have some sort of proprietary interest.\(^9\)” A common intention involves having a mutual understanding that the property will be shared, and both agreeing with this. It is important to establish that it is not seen as an excuse\(^10\). To look at this, it was first introduced that this would be decided by looking at what was deemed to be “fair” based on the whole course of dealings. For example, who should receive the larger share in the property based on the circumstances\(^11\). This was recently rebutted during the more recent case of *Stack v Dowden* however where Lord Hope saw more reasoning in looking at what the parties intended, and that their conduct prior to this

\(^7\) Grant v Edwards [1986] Ch 638
\(^8\) Gissing v Gissing [1971] AC 886
\(^9\) Eves v Eves [1975] 1WLR 1339
\(^10\) Lloyds Bank plc v Rosset [1990] UKHL 14
\(^11\) Oxley v Hiscock [2004] EWCA Civ 546
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and personality must also be considered, for example Brian left Anne to look after the children on her own, and made no contributions.²⁰

Similar to the situation in Holman v Howes it is important for the court to look at what the common intention between the parties was when acquiring a beneficial interest. Anne has a benefit here however, as herself and Brian agreed that he would no longer have an interest in the house, she therefore may have a claim under these authorities.²¹

To conclude, the main factors which should be considered are dependent upon whether the claimant owns the property in joint or sole ownership. Anne has contributed to the full purchase price of the property, however she agrees to hold the house in equity, whilst Brian holds the formal title of the legal estate. However, a beneficial interest has been established in the form of the express oral agreement between the two and by Anne acting to her detriment in reliance to this. Their common intention changes as Brian leaves, and is therefore then important to look at the whole course of dealings to establish the share. They have an agreement between them that Brian will no longer hold a beneficial interest in the house, and

²⁰ Per Lady Hale, Para 69, Stack v Dowden
²¹ Holman v Howes [2007] EWCA Civ 877