

Equity exam notes

Ordinary claim skeleton

To weave in authority (case and legislation):

- ___ is authority for the proposition that ___. In these circumstances therefore _____.
- _____ is authority that there is justification for a _____.
- - 'the application of s__ will result in _____'

When using case law, consider:

- Does the case apply? Are the facts sufficiently similar or can it be distinguished?
 - What is the ratio of the case? Is it binding precedent or just persuasive?
 - Why is the current scenario similar to justify applying the case?
1. State which party may be bringing an action against whom.
 - a. Also note the likely remedy they may seek.
 2. Any co-ownership issues? - *see below*.
 3. Is the party claiming a right under an express trust? *Note if there is a contract on the facts.*
 - a. Has an express trust been created?
 - i. Via declaration
 - ii. By transfer of property by the settlor to the trustee
 - iii. By direction
 - b. Are the three certainties present? If not, the trust is not valid (*Ying v Song*).
 - i. Certainty of Intention – *See notes below*
 - ii. Certainty of Subject Matter - *See notes below*
 - iii. Certainty of Objects - *See notes below*
 1. Fixed trust?
 2. Discretionary trust?
 3. To an incorporated body?
 4. Is it a charitable trust?
 - c. Consider the rights of a beneficiary under the trust – *Advise these based on facts!*
 - i. Also note how the beneficiary can deal with their interest.
 4. Is the party claiming a right under a resulting trust? *Note consider this in alternative AFTER express trust.*
 - a. Are certainties of subject matter and objects satisfied? Intention will be presumed.
 - i. The statutory need for writing does not apply to resulting trusts per s 29(2) *Law of Property Act 1936 (SA)*.
 - b. Has a resulting trust arisen? *Apply to facts!*
 - i. Automatic Resulting Trust - – *See notes below*
 1. Where express trust has failed
 2. Where settlor fails to dispose of entire beneficial interest in property

3. Where purpose of trust cannot be fulfilled
 4. Where amount of property given exceeds amount needed
 - ii. Will the presumption of resulting trust arise? – *See notes below*
 - a. A has given property to B – Law presumed B holds it on trust for A.
 - b. Where A has purchased property in the name of B – Law will presume B holds their interest for A.
 2. This presumption of resulting trust can be rebutted by:
 - a. Evidence of contrary intention
 - b. The presumption of advancement – *if certain relationship arises on the facts.*
 3. Consider the interest each party will hold under the resulting trust. – *see below.*
5. Is the party bringing an action for breach of a fiduciary duty?
- a. If so, is there a fiduciary relationship?
 - i. Established categories under the status-based method
 1. Partners
 2. Employee and employer
 3. Agents and the principal
 4. Solicitors and their clients
 5. Directors and their companies
 6. Wards and their guardians
 7. Promoters
 8. Trustees and their beneficiaries – *first need to establish a trust as above.*
 9. Financial advisers and clients
 10. Brokers and clients
 - ii. Establish on the facts using the ad hoc method:
 1. Banker and customer
 2. Financial adviser and client
 3. Manufacturer and distributor
 4. Bailee and bailor
 5. Doctors and patients
 6. Joint ventures

Apply the undertaking, trust and confidence and vulnerability theories to determine if a fiduciary relationship can arise. Remember to also examine the commercial context.
 - b. Did the fiduciary breach their fiduciary duty?
 - i. Conflict rule
 - ii. Profit rule
 - c. Any defences to the breach?
 - i. Honesty – nope
 - ii. Contractual clauses – not really
 - iii. Impossibility of the beneficiary making a profit – nope
 - iv. Contributory negligence – nope

- v. Fully informed consent – possible but difficult
 - vi. Laches
 - d. Remedies – *see below for more information*
 - i. Equitable compensation
 - ii. Account of profits
 - iii. Constructive trust
 - iv. Rescission
 - v. Injunction
6. Could the plaintiff have an action under equitable estoppel?
- a. First, consider if the action could be brought under contract law.
 - b. Second, consider the doctrine of part performance (as the remedy will be guaranteed specific performance)
 - i. Fraud Rule
 - ii. Evidentiary Rule
 - c. Is the estoppel action proprietary or promissory?
 - d. Are the elements satisfied?
 - i. Representation
 - ii. Reliance
 - iii. Detriment
 - iv. Thus, it is unconscionable for the other party to depart from the assumption?
 - e. State effects:
 - i. If proprietary estoppel, *prima facie*, the outcome will be enforcing the promise. BUT, if inappropriate, the court can award to merely reverse the detriment.
 - ii. If promissory, the court will most likely just remedy the detriment.
7. Could an action be bought under undue influence?
- a. Either actual, in a presumed class, or presumed on the facts.
 - b. Could the action be taken under the Married Women’s Equity? Applies to married women if (per *Garcia*):
 - i. She did not understand the transaction
 - ii. The transaction was voluntary
 - iii. The bank must have expected trust and confidence from the woman to the man
 - iv. The bank did not ensure the transaction was explained to her.
8. Could the action be bought under unconscionable bargains: Per *Amadio* if:
- a. The weaker party has a special disability
 - i. *See list below.*
 - b. The stronger party knew of the disability
 - c. The transaction was not fair and reasonable.
9. Also consider damages for misrepresentation, rescission for mistake or the statutory prohibitions under s 20 and 21 *ACL*.
10. Will a Constructive Trust be sought by the plaintiff?
- a. Is it available?
 - i. To render a fiduciary accountable for a breach of their fiduciary duty

- ii. To attach liability to a third party using the two limbs of *Barnes v Addy*:
 - 1. Knowing receipt limb
 - 2. Knowing Assistance limb
 - iii. To prevent an unconscionable assertion of ownership of property
 - iv. In response to equitable fraud.
 - b. Is it appropriate?
 - i. Must be no other ways capable of doing full justice
 - ii. Cannot be injurious to a third party
 - iii. Property must not have been destroyed
- 11. Consider an institutional constructive trust
 - a. If parties had intention about the holding of property
 - b. If there is no legal writing
 - c. One party relied on this to their detriment
- 12. Consider the doctrine of laches!
- 13. Remedies
 - a. If breach of common law primary right, then damages must be 'inadequate'.
 - i. If no substitute is available
 - 1. Land
 - 2. Other good
 - ii. Contract to a third party
 - b. Could seek equitable remedy of:
 - i. Injunction,
 - ii. Specific performance,
 - iii. Account of profits,
 - iv. Rectification
 - c. Will still be refused if
 - i. Contracts of personal service
 - ii. Orders that require constant supervision
 - iii. Laches (which means delay which has caused prejudice)
 - iv. Unclean hands
- 14. Ensure you consider Maxims wherever possible!

NOTE: these equitable rights are enforceable against all *besides* a bona fide purchaser of the legal interest, for value, without notice.

NOTE: In the event of a conflict between the rules of equity and the rules of common law, the rules of equity shall prevail: *Supreme Court Act 1935 (SA) s 28*.