WEEK 2: LAW & EQUITY

- Fusion fallacies arise when the decision reached in a particular case is one, which couldn't have been reached under the separate system of courts that existed before the judicature system reforms were enacted. 2 types of fusion fallacies:
  - (1) Administration of remedy not prev available in CL or equity court or,
  - (2) Modification of principles of one branch of the law by intro of principles from another
  - It is a critique of the CL and equity courts merging into one
  - Harris v Digital Pulse: employment contract stated that employees cannot compete with employer h/w two employees started their own business together and engage in work for existing Digital Pulse clients → breach of contract (CL) and fiduciary duty (equity) but Court held that could not claim damages, only equitable compensation as it was purely an equitable claim
    - Spigelman CJ: heart of fusion fallacy is idea that becos two branches of law are administered together, one is applicable to the other – one can influence the other
  - B/w CL and equity, equity prevails
- ***Walsh v Londsdale*:**
  - Pl (W) entered an agreement to lease a property of the Def (L). Agreement was made but there was no actual lease (deed) → no legal lease. Pl was behind in rent and Def tried to use his right to 'distress'. Pl trying to get injunction against distress
  - **Judgment:** equitable lease arises where there is an agreement to lease in writing which doesn't abide to form req. Equitable lease where court can grant specific performance should be seen as a **legal lease**.
    - In this case, both parties would gain the same entitlements as if it were a legal lease – as there was only one court, equity prevails → Def (L) can use his right for distress
  - The foundation of the principle in Walsh v Lonsdale was the present right to specific performance. It is based on the rationale that equity regards, as done that which the parties agreed to do. Then the court regards it is appropriate to order specific performance
  - This decision only applies to cases where there is a contract to transfer a legal title and an act has to be justified or an action maintained by force of the legal title to which such contract relates. It involves two questions:
    - (1) Is there a contract of which specific performance can be obtained?
    - (2) If yes, will the title acquired by such specific performance justify at law the act complained of, or support at law the action in question?
- Chan v Cresdon Pty Ltd:
  - Lease b/w Cresdon and Sarcourt were never registered. Sarcourt defaulted and Cresdon took action against Chan (as guarantor of the unregistered lease)
  - Judgment:
    - Cresdon's action unsuccessful – no registered lease → no enforceable guarantee
    - Cresdon tried to claim under *Walsh v Lonsdale* but failed because in *Walsh v Lonsdale* meant that an agreement to lease gave rise to an equitable lease, but didn't create a legal lease

NATURE OF EQUITBALE INTERESTS

- Highest form of equitable proprietary interest is a **beneficiary under a trust**
- ***Dickinson v Burrell:*** if A (due to undue influence by B) coveys prop by way of gift to B and then assigns/devices the right to rescind transaction to C. Issue: can C seek equity's assistance to rescind transaction and have property conveyed to C? Held: Yes C can get property on grounds B obtained prop as result of undue influence. A has equitable interest in land.
- Gross v Lewis Hillman Ltd: L sold land to Grace. Grace directed transfer of property to Gross. Contract of sale b/w L and Grace found to be fraudulent misrep. Gross sought to rescind transfer of property to her from L. Issue: Did Grace have right to rescind land as result of contract b/w Grace and Lewis, on grounds of L fraudulent misrep could be enforced by Gross? Held: Gross couldn't enforce right of rescission. It wasn't a proprietary right but personal one

Personal and mere equities

- Personal equity (court cannot access)
- Mere equity – where a person is in a position to make a claim to a court of equity which if successful will entitle person to equitable proprietary interests
- ***Latec Investments Ltd v Hotel Terrigal Pty Ltd (in liq):*** Terrigal (owner) mortgaged to Latec. T defaulted on mortgage. L exercised its power of sale and sold prop to Southern Hotels (S). S was a subsidiary of L (thus mortgagee's sale was fraudulent). S gave MLC nominees a security by way of floating charge over hotel property. Floating charge constituted equitable interest over hotel (in favour of MLC). S defaulted, floating charge crystallised. T sought to have fraudulent mortgagee sale to S set aside. Held: B/w MLC and T, MLC had right to hotel. Fraudulent mortgagee sale was a mere equity and defeated by MLC's equitable interest
- Examples of mere equity:
  - Right to claim an interest in prop, pursuant to proprietary estoppel principles
  - Right to obtain enforcement of oral mortgage, pursuant to doctrine of part perf
  - Right to retransfer of land, where as a result of unilateral mistake by vendor, area of land transferred exceeded area stipulated in contract of sale
  - Right to constructive trust, pursuant to principles laid down by HC
- Before you assign a right, the right must be definable and identifiable by third parties
- Heydon, Leeming and Turner suggest proprietary nature of equitable interest can be measured by reference to the 4 criteria:
  - (1) Power to recover property of subj interest
  - (2) Power to transfer benefit of interest to another
  - (3) Persistence of remedies in respect of interest against third parties
  - (4) Extent which interest may be displaced in favour of competing dealings by grantor or other interests in subj matter

Right of sole beneficiary under a bare trust

- Trustee who has a bare trust has no active duties except to transfer trust property to beneficiary when called to do so
- E.g. assignment of future property

Right of beneficiary in an unadministered estate

- A right is that of a person who is to inherit property following death of another person during a particular time frame
- Administration of estate – duties that legal person/representative of deceased has to attend to transfer deceased assets to those entitled to them
- Qn of who is involved in inheriting deceased person's prop is resolved in one of two ways:
  - (1) One can leave prop to whom they wish by means of **will**
  - (2) When someone dies w/o making a will, they die intestate → deceased prop inherit by closest surviving relatives – ***Commissioner of Stamp Duties (Qld) v Livingston* [1965]:** Mrs C was entitled to 1/3 of deceased husband's estate. At time of Mrs C's death, husband's estate had not been administered and her share couldn't be ascertained precisely. Issue: Did Mrs C at the date of her death, have equitable interest in husband's estate? Held: For Commissioner to succeed, necessary to show that Mrs C died with only an equitable interest in property. Radcliffe stated her rights as beneficiary of husband's estate were protected becos court will control the executor by enforcing remedies which don't involve admission or recognition of equitable rights of property in those assets. You can't have legal and equitable interests.
- Heydon, Leeming and Turner set out four criteria from this case:
  - (1) Beneficiary's right isn't equitable h/w they have power to compel executor to properly administer estate. Executor has all property rights.
  - (2) Beneficiary's right is **proprietary** in nature. It is a **chose in action** – ***Horton v Jones***: H looked after J who was old and sick. J made oral promise to leave his fortune to H but

agreement not in writing. J died, unadministered estate went to his children not H. Held: H not entitled to benefit of contract becos not evidenced in writing.

- (3) Beneficiary has a right to pursue remedies against 3rd parties
- (4) No competition with other legal/equitable interests. B has no right in proprietary, only **chose in action**