PROPERTY B SUMMARY 2017

1. EQUITABLE INTERESTS

1.1 Resulting Trusts

- Resulting trusts occur when a different person holds beneficial ownership to the person holding title.
- There are two main types: Purchase price or money resulting trust, and voluntary or gratuitous transfer.
- Purchase price trusts occur when the legal title is held otherwise than in accordance with contributions to purchase price.
    - Equity will assume that whoever paid the purchase price intends to hold a beneficial trust in proportion with their contribution.
    - If A's name is on the title but B paid for the property, equity will assume that B intended to hold a beneficial ownership ie. That A will hold it in trust for them.
    - If property is purchased solely by A but placed in the names of both A and B, presumption will be that B holds a share on trust for A.
    - If A and B put in the money but its only in B's name, it's assumed that B holds the property on trust for themselves and A in proportion to their respective contributions.
    - If A and B put in different amounts of money but put the property in their joint names as joint tenants (co- ownership) they have collective ownership but neither has their own share. They are treated as a single entity as owners. Equity will presume that even as joint tenants in law they intend to hold different shares in proportion to their contributions.
    - Contributions can include contributions to actual price of property as well as incurred fees like stamp duty and registration.
    - Mortgage repayments are not a contribution to purchase price (*Calverly v Green*).

Calverley v Green (1984) 155 CLR 242

Facts

- Man and woman listed as joint tenants. Man provided one third of purchase price by deposit, the remaining was by mortgage.
- Both parties jointly liable to make repayments under the mortgage. Man actually made all of the mortgage repayments.
- Relationship failed and man claimed sole ownership in equity and that the woman held her share on trust for him. Woman claims it must be sold and split equally as they are joint tenants and she was equally liable under the mortgage.

Held

- Mortgage repayments are not a payment of the purchase price. They are paid to the lender and not to acquire the property.
- Borrowing the money to pay the purchase price is a contribution to the purchase price.
- Remember the only intention that matters is that at the time of purchase. It doesn't matter that the man later paid all himself.
- Therefore both parties had contributed to the purchase price as they had both taken out the loan together and were liable under it. So man has paid 2/3, woman has paid 1/3.
- Therefore presumption of resulting trust arises. Although both listed as joint tenants, man entitled to 2/3 of property at equity, woman entitled to 1/3.
- Presumption of advancement does not apply to de facto relationships.

The presumption of a resulting trust was not rebutted. No evidence that man intended for them to hold equal beneficial ownership at equity as at law. The only reason it had been put into both names was because he couldn't get a loan alone.

- Voluntary transfer trusts occur when one person transfers property to another for no consideration and equity will presume that they intended for the other person to hold it for them on trust.
  - Equity is acting counter-intuitively here in raising a presumption that goes against what the owner has done.
  - Equity makes these presumptions because it takes the view that people prefer to bargain rather than give things away.
- These presumptions can be rebutted by evidence to the contrary.
  - Eg: A buys property, puts it in B's name- presumption is that B holds legal title on trust for A. The presumption is the starting point and B bears the onus of rebutting the presumption by producing evidence that A intended B to have beneficial ownership.
  - Evidence can be gleamed from words and conduct between parties. Eg. Transfer to B being accompanied by a card saying happy birthday implies it is intended as a gift.
  - These acts and conduct must be contemporaneous with purchase (occurring before, during or immediately after) so that they constitute a part of the transaction.
- The Presumption of Advancement displaces the presumption of a resulting trust as it presumes that the purchaser intends to give the title holder ownership in law and equity. It historically arose in two main situations:
  - Where the property was purchased by a husband put in the name of the wife, or man purchasing in the name of his fiancé. (Not other way around- *Cummins*)
  - Where a father bought property in the name of his children.
  - These two situations are special because parents are under legal obligations to support their children and because men were traditionally the main income earners so would be in a position to purchase property for wives and children. Therefore it's more likely than not that it is a gift in these situations.
- The Presumption of Advancement can also be rebutted by evidence to the contrary.

***Trustees of the Property of Cummins (A Bankrupt) v Cummins* (2006) 227 CLR 278**

Facts

- Cummins declared bankrupt after not lodging a tax return for decades.
- Prior to this he transferred the family home to his wife. Bankruptcy Act voids certain transactions like this.
- Court found the only reason he had transferred home was to avoid creditors so it was void.
- Prior to the transfer, the home was registered with C and wife as joint tenants. Wife paid 76% of purchase price of property, they then borrowed money to build home on the land.

Held

- Court voided transfer.
- Question is then: what does Mr Cummins own? His share of the house's value will be given to creditors.
- Mr Cummins paid 24%, you would think that a resulting trust would presume this was his share and distribute it to creditors. Court acknowledged this is ordinarily the case.
- Presumption of advancement does not apply from wife to husband, so he does not have beneficial ownership of the 76% that his wife paid.
- Court introduced a new presumption: where spouses both contribute money to purchase the matrimonial home, it doesn't matter the amount they contribute or whose name it's registered

under. The presumption is that they both intended to hold an equal share.
- It was important to the court in reaching this conclusion that:
  - They were a married couple.
  - It was the family home, not an investment property.
  - Not just the purchase of the vacant land is relevant, but the building of the house. They should be treated as one transaction for the purpose of resulting trust principles.
  - The money to build the house was jointly borrowed.
  - "It might be fortuitous or accidental" which spouse pays for the house and which pays for other expenses. The uneven contribution doesn't need to be regarded as significant; he may have paid the rates and other expenses and they regarded the ownership of the house as equal. Note this only applies to family homes.
  - When Mr C attempted to sell house, they referred to the sale of "his half share" showing that they intended to hold equal shares when they purchased homes.
- Cummins does complicate the application of resulting trusts, but it should be confined to its facts and only applied when a similar situation arises so as not to undermine the principles of resulting trusts.

1.2 Constructive Trusts

- Constructive trusts are imposed by equity in order to prevent the person with legal interest in a property from acting unconscionably.
- Differ from resulting trusts in that they are not concerned with what was intended at the time of purchase/ contributions to purchase price but arise when actions after purchase my change ownership.
- Because constructive trusts operate to prevent fraud or unconscionable conduct they fall outside writing requirements that may be imposed on trusts.

Common Intention constructive trusts

- First arose in the 1960's to 1970's when there was a rise in divorce and de facto relationships. Many cases were women didn't contribute to purchase of family home or have name on title but contributed to ownership and value in unpaid and domestic roles.
- Courts based constructive trusts around the idea of unconscionability: Would it be unconscionable for the owner to assert legal title to defeat the beneficial interest?

Three requirements for common intention constructive trusts (*Ogilvie v Ryan*):

1. **Common Intention:** *existence of an actual common intention that claimant was to have a beneficial interest in the property.*

- Question of fact: needs objective examples of words or conduct.
- Court will not impute it or infer where it wasn't there just in the interest of a fair outcome.
- This can be difficult to prove because in some relationships people don't expressly discuss these things. It only comes into question after a break up. This means that in practice courts do sometimes infer intentions.
- It isn't necessary for parties to have agreed upon a specific share of property, just that they are both entitled to a share.
- Intention can arise after property is acquired, it just depends on the circumstances.
- Not dependent on a contract between parties.