

TOPIC OVERVIEW

1	EQUITABLE INTERESTS ARISING BY OPERATION OF LAW Includes resulting trusts, constructive trusts and estoppel
2	MORTGAGES The main focus is on the remedies available to registered Torrens System mortgagees upon default
3	AN INTRODUCTION TO THE ENFORCEMENT OF PROPRIETARY INTERESTS AND THE TORRENS SYSTEM Includes a brief overview of priority disputes under the general law, the deeds registration system and an introduction to the Torrens System
4	THE PRINCIPLE OF INDEFEASIBILITY OF TITLE Defines the principle of indefeasibility and delineates its scope
5	EXCEPTIONS TO INDEFEASIBILITY OF TITLE Includes fraud, in personam and other exceptions
6	UNREGISTERED INTERESTS UNDER THE TORRENS SYSTEM Includes the basis for recognition of equitable interests under the Torrens system; the caveat system and priority disputes between unregistered interests
7	CO-OWNERSHIP Includes joint tenancy and tenancy in common, rights and duties of co-owners, severance and termination of co-ownership

TOPIC 1- EQUITABLE INTERESTS ARISING BY OPERATION OF LAW

RESULTING TRUSTS – WHAT ARE THESE RELATIONSHIPS?

Trustees of the Property of Cummins v Cummins

- RELEVANCE
 - The HC reiterated the approach that between husband and wife, uneven contributions to a purchase price should not be presumed to be significant as a balance may derive from financial and other contributions
 - Note - doesn't fit into what we know, muddies the waters of resulting trusts
- FACTS
 - C was a barrister that was declared bankrupt because hasn't lodged tax returns for decades
 - 1987 - transfers family home to his wife - argued because to offload it so when he's bankrupt he won't have owned anything
 - Before this - vacant land bought and joint tenants (her 76%, him 24%)
 - Joint mortgage used to build the house
- HELD
 - C had only transferred to avoid creditors, so treat that sale in 1987 as void
 - Look at how the house was held before that fraudulent sale to discover his share
 - Presumption of advancement doesn't operate because wife is primary purchaser and no presumption she would want to benefit husband
 - COURT DOES SOMETHING NEW -
 - Spouses who hold home are presumed to hold it as equal in equity - court makes up this new presumption
 - It doesn't matter how they registered, the presumption is that they intended to each hold an equal share regardless of the amounts registered
 - Probably only applies to
 - Married couple
 - Family home, not investment property
 - Look at purchase of vacant land and the building of the house, treat it as one transaction for the purpose of the resultant trust - it's a composite transaction
 - Money borrowed was jointly borrowed
 - Professor Scott - when married it might be that one pays for the house and other pays for other expenses, so the uneven contribution to purchase price might not actually be significant
 - Also the 'sale' was him selling his half share so that suggested they equally held the share

RESULTING TRUSTS – ARE MORTGAGE REPAYMENTS REGARDED AS CONTRIBUTIONS TO PURCHASE PRICE?

Calverley v Green

- RELEVANCE
 - One of the seminal cases on resulting trust - deals with a lot of factors
 - Liability to mortgage counts to contribution to purchase price but the payments of mortgage don't count to contribution to the purchase price
 - Look to a search of common intention where joint purchasers contribute unequally. Each party's intention is what was reasonably understood by the other to be manifested by that party's words or conduct
- FACTS
 - Man and woman were on the title as joint tenants (treated as 1 entity) but not married
 - The man provided 1/3 of price as cash
 - The other 2/3 was from a mortgage
 - Under the mortgage both parties were jointly liable to make the repayments
 - It was agreed between the couple that it would be the man who repaid them, and the woman would just contribute to the house expenses
 - Relationship fails
 - Woman argues that it should be sold for 50/50 because they are joint tenants (at law) so at law she had an equal position with the man - relying on her legal title
 - Man argues that he has paid all of the deposit and has been paying the mortgage, so he is the sole contributor and that was an agreement between the couple - so he is arguing for sole ownership at equity and the woman is just holding her interest on trust for him
- Q FOR THE COURT?
 - Was the man the sole contributor to the mortgage?
 - Woman said she was equally liable under the mortgage so she thought this was contribution to purchase price
- HELD -
 - mortgage repayments weren't a payment of the purchase price
 - The purchase price is whatever is paid to acquire the property
 - Man paid 2/3 and woman 1/3 (purchase price and mortgage) in reality so there is a presumption of resulting trust
 - The parties held on trust for themselves in proportion to their original contributions to the price
 - Presumption of advancement doesn't operate with de facto so N/A here
 - Was the presumption of resulting trust rebutted?
 - No - no evidence that the man intended the woman to hold equally a beneficial interest
 - No intention of the man to make the woman hold an equal share
 - The mortgage didn't really affect the resulting trust but the court still takes it into account
 - Note - probably not fair because woman hasn't actually paid anything
 - Note - the court may need to keep adjusting the interest later as it goes on

CONSTRUCTIVE TRUSTS

Ogilvie v Ryan

- **FACTS**
 - Mr O was the MD of a company that owned cottages
 - Ms R was a tenant of one of the cottages
 - lived in R's cottage and paid her board and she cooked for him etc
 - The company sold the cottages and R was going to have to leave
 - said don't find another place, I'll buy a house for both of us and keep this arrangement going
 - He said he would let her live there as long as she wanted
 - They did the arrangement, she doesn't pay rent just looks after him etc
 - dies and O doesn't mention her in the will and the executor tries to kick her out
 - No express trust for her, no resulting trust because she hasn't contributed anything to purchase price
 - She is arguing oral contract part performed (there has to be part performance for an oral contract) - but the actions aren't unequivocally referable to the type of contract, maybe she did it because she loved him or had another motive
 - She argued common intention/meeting of the minds, she altered her position in reliance of that promise
 - Is it unconscionable that she doesn't get anything?
- **HELD**
 - Hollander J - reviewed English authority where they have construed trusts
 - Category of trust - Where O acquires property in his own name, but the value of the property is increased by someone else's labour and there is a common understanding that those labour contributions will be part of the trust
 - But no evidence that R has painted/renovated etc
 - But judge said there was personal benefits to O and he said that was the same as property benefits, don't draw any distinctions
 - Therefore trust construed to prevent unconscionability from legal title holders
 - **ELEMENTS**
 - Common intention
 - Acted on to detriment
 - Unconscionability
 - R had a life estate, not a fee simple, so the common intention was the life estate

Muschenski v Dodds

- **RELEVANCE**
 - HC 1980s
 - Deane J paved the way for courts to use equity to favour people where there is no common intention that the legal title holder is holding on trust for the other person
 - This is picked up in the next case
- **FACTS**
 - Parties in a de facto relationship bought land and registered as tenants in common in equal shares
 - The woman contributed nearly all the purchase price, because it was intended that the man would contribute labour and money for the house
 - Didn't get planning permission so house never built, relationship breaks down
 - Woman says she put up 90% money even though it was in their names equally

- Woman asks the court to adjust the legal position of the shares, there is no unconscionability but she still wants constructive trust
- Resulting trust wouldn't work - the intention was an equal beneficial interest from the outset, so the presumption is rebutted
- Can't use Ogilvie and Ryan because no common intention
- HELD
 - Deane and Mason said they would find for the woman on a constructive trust basis
 - Deane - borrowed on the notion of a joint venture - where the parties make a JV and the JV fails, look at if it was a gift or money put in for the purpose of a JV. Basically you then get the money out that you put in
 - Her contributions wouldn't have otherwise been made for his benefit, so constructive trust made to stop this unconscionable act
 - So they each got out their contributions back