

TRANSFER OF LAND

1. It must first be determined what interest [X] has in relation to the property.

2. Has there been a legal transfer?

[X] has no legal interest in the property as he has not been registered under the torrens system (**s 41 TLA**) nor is there evidence of a deed upon the facts for it to satisfy general law system (**s 52 PLA**). Although [X] has no legal interest in the property, it does not however mean that he/she has no interest at all. As in the failure to comply with formalities, an equitable interest in land may pass to the purchaser before legal title actually passes.

- *General Law*
 - Outside the Torrens system - All conveyances of land void unless made by deed (**PLA s 52**)
 - Deed needs to be signed – sealing alone not sufficient (**PLA s 73**)
 - A document signed and expressed to be sealed is deemed to be sealed (**PLA s 73A**)
- *Torrens System (Law in VIC)*
 - No deed required
 - Upon registration certificate of title given - Conclusive evidence of title (**TLA s 41**)
 - Anything short of registration – no legal title may pass – therefore cannot create vary extinguish or pass any estate or interest or encumbrance (**TLA s 40**)
 - Registered proprietor free from all other encumbrances – paramount (**TLA s 42**)

An equitable interest will only arise provided that the contract of sale is binding, there is evidence of the contract and the contract is specifically enforceable.

Is there a valid contract?

There is nothing in the facts that suggest otherwise. There is evidence of an offer, [X] accepted the offer, consideration and intention to create legal relations.

Is there evidence of a contract?

A contract can be evidenced in one of 2 ways, either through a written agreement pursuant to **s 126 of the instruments act** or where a written agreement cannot be established, [X] may rely on oral agreement supported by part performance of the parties.

- **Written Agreement: s 126 IA**

Under s 126 of the IA, the contract must be written and signed by the person to be charged (person who you're enforcing the contract against) or someone authorised to sign on their behalf or a written memorandum signed.

 - Can be signed electronically s 126(2) IA
 - Here, [X] can argue that as [Y] signed the contract and [Y] is the person to be charged, the contract can be enforced against them

Multiple Documents

In **ANZ v Widin** it was found that two documents can be read together but only if the documents makes reference to one another in writing (not orally). Here, [X] would seek to have both the [contract and email/note/memorandum] to be read together in order to prove evidence of the contract and thus enforce it against [Y].

- **ANZ:** mortgage form signed by W didn't include property to actually charge the mortgage against – bank sought to incorporate diary note of bank manager but diary note wasn't signed by creditor of W – didn't comply w/s 126 – couldn't be read with mortgage doc
- Reference can be express or implied – sufficient to say 'terms to be agreed in some future document'

- Oral Agreement & Sufficient Acts of Part Performance
On the facts, s 126 is likely to fail as [2 documents cannot be read together], however, [X] may rely on part performance to prove an existing contract. Doctrine of PP therefore allows the enforcement of an oral contract for the sale of an interest in land when the contract has been sufficiently acted upon by the party seeking to enforce the contract (**ANZ v Widin**).

The HCA in **McBride v Sandland** affirming the test in *Madison v Alderson* stated that part performance will be found where acts of the person seeking to enforce the alleged oral agreement are 'unequivocally and in their own nature referable to some such agreement alleged'. Thus, [X] may argue that acts of [apply] were unequivocally done for the contract in question.

- **Maddison v Alderson:** Acts of PP (cleaning washing) were not unequivocal to the type of K alleged – they could have been done out of love and affection
- **Regent v Millet:** children went into possession of house – began paying off mortgage and effected repairs – sufficient acts of PP – possession was unequivocally referable to the K alleged – no other explanation for taking possession other than PP
- **ANZ v Widin:** acts of PP = handing over money (was considered not sufficient – transfer of money always equivocal – never points to any particular kind of K) – filling out paper work, endorsing bills – were all done pursuant to agreement – acts clearly referred to some contract

Arguable that actions done in execution of the K by [party seeking to enforce] make it unjust to deny enforcement of the contract

If you have an SE K, there is an equitable interest – how is that interest characterised?

- No clear authority
- *Tanwar* may be confined to its facts – so when K not SE – equitable title will not pass
- But from *Lysaght* – a SE K may adopt the traditional view (constructive trust)

SPECIFICALLY ENFORCEABLE CONTRACT

- *Are there any bars in equity?*
- *Is the purchaser ready willing and able to fulfil the terms of the contract?*
- *Can damages be awarded instead of specific performance?*
- *If no, no specifically enforceable contract – no equitable interest*
- *If yes, contract is specifically enforceable – confers an equitable interest on the purchaser of the land*

As an equitable interest can be found as the contract is most likely specifically enforceable, it must next be determined what this interest provides.

Under *Lysaght*, Jessel MR found that upon execution of a SE K for the sale of land, the vendor becomes in equity a constructive trustee of the land for the purchaser and beneficial ownership of the land passes to the purchaser.

The moment you have a valid contract for sale, the vendor becomes in equity a trustee for the purchaser and the beneficial ownership passes to the purchaser

If [1st] has a SE K, then on the authority of Bunny Industries [Vendor] will hold the profit on trust for [1st]

Two Situations

1. Where the second sale has NOT been registered

It appears on the facts that the sale to [second purchaser] has not been registered and thus can be distinguished to the case of *Bunny Industries*. Thus, actual specific performance is still a possibility for [first purchaser's] contract. If so, he/she will get the property for the price agreed upon, namely [\$].

Alternatively if the court allows the contract with [second purchaser] to go thru to completion, [first purchaser] may rely on *Bunny Industries* and can claim the profit of [\$] arguing that [vendor] was holding the profit on trust for him/her

2. Where the second sale HAS been registered