Equitable Interests

Exam format –

- Even where the statutory formalities are absent, the purchaser may have acquired an equitable interest in the property
  - Example
    - The act of entering into a contract for the sale of land might itself have a proprietary effect in equity.
      - X signs a contract of sale to buy a house, but settlement of the sale and registration of title will not occur until sometime in the future.

Equitable steps/tests overview

1. A contract has proprietary effect if it is specifically enforceable: Bunny Enterprises
2. Specific enforceable contracts require it to be evidenced in writing: PLA s 126
3. If it is not evidenced in writing by both parties, turn to the doctrine of part performance

STEP 1

TEST: where a contract for the grant of an interest in the land is specifically enforceable, the purchaser acquires an equitable interest: Bunny Industries

→ Turn to cases which display specifically enforceable contracts.

Explanation

- Bunny Industries examined the effect of a transaction in which the parties have made an enforceable contract for the sale of an interest in land but have not yet transferred the legal title
  - Example
    - The vendor still has the legal fee simple title, but it is held on a constructive trust for the purchaser.
      - The person in equity becomes entitled to what they were going to get at law.
        - If you contract for a mortgage, then you have an equitable mortgage.
**Bunny Industries Ltd v FSW Enterprises Pty Ltd (1976)**

**Case summary**

**Facts**
- Bunny contracted with FSW to purchase land
  - Parties entered into an enforceable contract for the sale of an interest in land, but NSW did not transfer legal title
- FSW subsequently entered into a second contract with X to sell the same land
- FSW executed a transfer of land to X who then acquired legal title to the land

**Issues**
- Did Bunny have an equitable interest?
  - Bunny sought a declaration that Bunny had –
    - an interest in the land from the moment they entered the contract
    - an equitable interest in the land;
    - FSW held the proceeds of the second sale on trust for them

**Decision**
- Specific performance not granted after X had registered.
  - However, at the time Bunny entered into the first contract, Bunny was entitled to get an order for specific performance (if the subsequent purchase did not occur).
    - This is because, at the time the contract was made between Bunny and FSW, the vendor is a trustee of the estate for the purchaser.
  - Bunny was entitled to the proceeds FSW acquired from reselling the land to X.
- X keeps the land.
  - The registration could not be undone to favour Bunny.
  - X should be able to rely on the registered title: *curtain principle*.

**Propositions from Justice Connolly**
- On the execution of the contract, the vendor becomes a trustee for the purchaser.
  - Vendor keeps the legal fee simple title, but holds it on constructive trust for the purchaser.
    - The vendor is not a bare trustee because he has personal and substantial interest to the extent of the unpaid purchase monies. He is in ‘progress towards’ bare trusteeship and finally becomes such when the whole of the purchase monies are paid and he is bound to convey: *Wall v Bright*
- The extent of the equitable interest is measured by the amount of the purchase monies paid.
  - For example, paying 60% of the purchase price. See ‘Vendor’s Lien’.
Vendor’s Lien

A lien is a property right that secures performance of some obligation

- Example
  - Purchaser pays a deposit of the property at the time of signing the contract
  - Purchaser has an interest in the property, but so does the vendor: *Rose v Watson*
  - An unpaid vendor retains an equitable lien over the land for the balance of the purchase money
    - This is a personal right under the contract
    - The right is secured by a property right, entitling the vendor to keep a right to the land and use that as security to make sure the purchaser pays the rest

*Tanwar Enterprises v Cauchi (2003)*

Case summary

Facts

- Tanwar entered into three contracts to purchase adjacent parcels of land
- Due to financial problems, an extension for payment is made
- August 2000 – Cauchi issues a notice of termination
- Parties meet and determine three new contracts where time is ‘of the essence’
- 24 June 2001 – settlement period lapses and no money has been transferred
- 25 June 2001 – Cauchi issues a notice of termination
- 26 June 2001 – Cauchi terminates the contract

Issues

- Tanwar argued that he had an equitable interest under *Bunny Industries*, but they had lost that equitable interest because of the termination of the contract.

- Tanwar sought relief against forfeiture because they were only one day late for payment
  - Forfeiture depends on Tanwar having a property interest that was forfeited.
  - In exceptional circumstances, the court will step in to prevent the loss of an interest in property when someone breaches a contract. The court does this by focusing on the circumstances around the breach such as unconscionability.

Holdings

- **Specific performance not granted.** Therefore, no equitable interest.
  - The contract was incomplete and validly terminated by a breach of an essential term.
    - *Stern v Mcarther*: ‘the interest of the purchaser is commensurate with the availability of specific performance. That availability is the very question in issue where there has been a termination by the vendor for failure to complete the contract...’:
Propositions

- Once the purchaser has provided the vendor with all of the purchase monies, the vendor is an express trustee and the purchaser receives the full equitable interest which is created by specifically enforceable contract.

- If a purchaser loses their right to specific performance, they may lose their property interest
  - However, there has not been a High Court case since which suggests how narrowly or broadly *Tanwar* should be interpreted.
  - What interest does the purchaser have after the contract is first entered into but before the time actually arises where the purchaser gets specific performance?
    - Two options.
      1. Contingent trust interest.
         - They might lose this interest at any point if they lose specific performance.
      2. The purchaser has a lien.
         - There is settled law that a purchaser has a property interest like the vendor that secures any money that they have already paid to the vendor. The lien can be enforced by the purchaser if the contract fails even if they rescinded.

**Walsh v Lonsdale (1882)**

Case summary

Facts

- Lonsdale = landlord. Walsh = tenant.
- Agreement to grant lease for 7 years
- Term of the contract included rent payable yearly in advance
- Legal lease never executed
- Despite the agreement, Walsh paid rent quarterly in arrears for 3 years
- Lonsdale asked Walsh to pay for the lease 1 year in advance
- Walsh did not comply
- Lonsdale seized his goods to pay for the proceeds

Held

- Lonsdale got remedy of distress of the breach of an equitable lease out of a specific performance agreement
- A legal lease can be automatically implied from the payment of rent which doesn’t need to be in writing PLA s 54(2)
**Chan(Sarcourt) v Cresdon (1989)**

**Summary of facts**

**Facts**
- Cresdon is the landlord under an equitable lease
- Sarcourt is the tenant under an equitable lease
- Cresdon agreed in writing to lease Sarcourt for a term of 5 years.
- The lease was executed but not registered (no legal interests)
- The unregistered lease form contained a guarantee by Chan of the due and punctual performance by Sarcourt in a registered lease
- Sarcourt defaulted in payment.
- Cresdon tried to enforce the guarantee.

**Held**
- The lease could be enforced according to its terms as in *Walsh v Lonsdale*.
  - ‘A specifically enforceable agreement for a legal lease will be treated as an equitable lease for the term agreed upon and as between the parties equivalent to a lease at law.’
- Between *Cresdon v Sarcourt*, the agreement to create a lease was enough to say that there was an equitable lease.
  - However, the guarantee could not be enforced because it referred to a guarantee that would only come into operation after a registered lease had occurred. So, the guarantee did not become an effective part of the equitable lease.

**Requirements for a contract to be specifically enforceable**

**STEP 2.**

**TEST:** Contracts for the grant of an interest in land are required to be evidenced in writing. It will be enforceable against the party to be charged if they have signed the contract: Instruments Act s 126
- Referring to another document or an email signature is sufficient
- The agreement/note/memorandum should include:
  - Description of land
  - Identification of parties
  - A statement of the transaction
  - The signature of party to be charged or the signature of ‘a person lawfully authorised in writing’ by the party to be charged on his behalf.
    - For example, if a property is sold at auction, the auctioneer has authority to sign a memorandum on behalf of either the vendor or the purchaser – but this authority can only be exercised as part of the sale transaction, and not at a later time: *Wright v Madden* 1992
    - The signed document might refer to another document and the two documents could be read together to prove all the necessary information.
Instruments Act 1958 (Vic) s 126

(1) An action must not be brought to charge a person upon a special promise to answer for the debt, default or miscarriage of another person or upon a contract for the sale or other disposition of an interest in land unless the agreement on which the action is brought, or a memorandum or note of the agreement, is in writing signed by the person to be charged or by a person lawfully authorised in writing by that person to sign such an agreement, memorandum or note.

STEP 2.1
If one of the parties did NOT sign the contract, then -

Exam format –

The court will not enforce the contract against a party who has not signed it. However, the party who is trying to enforce the contract can turn to the Doctrine of Part Performance.

Overcoming s 126 of the Instruments Act: Part Performance

STEP 3

Exam format –

If it can be shown that the party who did not sign the contract, made a commitment to the contract, such as performing acts relating to it, equity will find the contract enforceable against them (McBride v Sandiland). The McBride v Sandiland test states that it must be shown that the act relied on are ‘unequivocal’ and in their own nature are ‘referable’ to the agreement alleged. There must be a clear nexus between the other party’s actions and the contract that they are trying to enforce.

Things to consider
- Part performance need not be signed (PLA s 55(d))
- A party cannot use unequivocal acts in the context of a domestic or familial relationship so as to turn them into legal categories: Ogilvie v Ryan, applying McBride v Sandiland

McBride v Sandiland

Facts
- Father (McBride) is the landlord of his daughter (Sandiland), who is a yearly tenant
- Sandiland is in possession of the land and claims that McBride agreed to grant her an option to purchase the land at a later date
- Sandiland and her husband farm the land and make repairs on top of paying rent
- Sandiland asks her father to transfer the land but he refuses
- Sandiland claims that the acts constitute part performance and are referable to the oral agreement to grant an option
Issue
Is the option enforceable?

Decision
• The court found in favour of McBride. The option is not enforceable.
• A party cannot use unequivocal acts in the context of a domestic or familial relationship so as to turn them into legal categories.

*Ogilvie v Ryan*

Facts
• Ogilvie told Ryan that if she lived with him and cared for him, she could stay in the house for life and would be granted a life estate
• Ryan moved in with Ogilvie and cares for him until death
• Ogilvie dies and does not leave Ryan an interest in the house
• Ogilvie’s son (beneficiary by will) seeks to evict Ryan

Issue
• Is the oral agreement enforceable in that Ryan has an equitable right from performance of the agreement?

Decision
• Unsuccessful on the argument of part performance
  o There was an oral agreement, but acts of part performance were not unequivocally referable to any such contract
  o An alternate explanation for Ryan’s conduct was love, devotion and care for Ogilvie
• However, Ryan succeeded on the principles of a constructive trust

*Other case examples*

Part performance not met
• For sale of land contracts, mere payment of purchase money: *Britain v Rossiter*
• Making an application for a planning permission: *New Hart Builders v Brindle*
Part performance was met

- Improvements to a property by the lessor at the request of a leasee: *Rawlinson v Ames*
- In leases, paying rent or taking possession may not be enough (*Kingswood Estate Co v Anderson*), but together they strongly imply performance (*ANZ Banking Group v Widin*)
- In a contract to sell land, payment of the purchase price and improvements: *Pejovic v Malinic*
- Taking possession of the land: *Regent v Millett*
- Creating a mortgage by deposit of title deeds: *Theodore v Mistford*

The remedy available for a specifically enforceable contract

- A specifically enforceable contract grants [X] an equitable interest and a *Bunny* constructive trust (institutional constructive trust)
  - Damages are not really available for land, because each land is unique