

I. Doctrine of Conversion

- If there is a specifically performable contract (Promise) and the vendor refuses to perform the contract, the equity will regard the purchaser as the already owner from the moment when they entered into that contract, and the purchaser will normally be awarded specific performance against the vendor as long as the purchaser himself is not guilty of inequitable conduct.
- Specific performance will not be ordered when: Legal remedy (ie: damage) is adequate; However, damages are inadequate remedy for lands as land is unique. *Adderley v Dixon*
- OR Plaintiff has been guilty of unconscionable conduct (breach of agreement; failure to fulfil essential terms) *Tanwar*
- OR A bona fide 3rd party purchaser

Bunny Industries v FSW Enterprises (One piece of land, sold twice, title has transferred)

-The vendor becomes a constructive trust for the purchaser, not a bare trustee for he/she has a beneficial interest. (*Lysaght v Edwards*)

-Where there is a clear and undisputed contract, the Court would not permit the vendor to transfer the legal estate to a third party.

-The trusteeship exists only if the court would grant specific performance. But once the title has been transferred, it is impossible to grant specific performance

Tanwar Enterprises Pty Ltd v Cauchi (not paid, serious breach)

-Time stipulation should be the essential term in instalment contracts. - *Dagenham* But generally not.

-The breach of essential terms of the contract give vendor the contractual right to terminate it.

Walsh v Lonsdale (7-year lease without formality, a distress of rent (has been abolished))

- Equity will enforce an agreement for lease as if the lease had actually been granted. (For landlord and tenant)

- Equity rules prevail.

Chan v Cresdon Pty Ltd (lease executed but not registered, guarantee under an obligation)

- Obligations of guarantor/Condition concerning the enforcement of certain rights will only arise under legal lease.
- The agreement for lease can be specifically performable because of an unequivocal lease.

II. Doctrine of Part-performance

Element:

- Act of part performance must be unequivocally referable to the contract for the transfer of an interest in land *McBride v Sandland; Maddison v Alderson*

Sufficient act which can be unequivocally referable to oral agreement

Sale:

- Price is essential to construct an oral contract of sale. (Otherwise no completed contract) -- *McBride v Sandland*
- Permitting someone to take possession of land under an oral sale agreement - *Regent v Millett*
- Expending money to improve the land during possession - *Regent v Millett*

Profit Prendre:

- Entering into possession of the interest as far as possible (spending money, laying snares, employing staff) - *Mason v Clarke*

Mortgage:

- Using the bills of exchange is a part of the deal to give a mortgage *Anz Banking Group Ltd v Widin*
- Deposit of title deed constitutes part performance of an oral agreement to grant a mortgage. - *Russel/Theodore v Mistford*

Lease:

- Improvements to the property by the lessor at the request of the lessee - *Rawlinson v Ames*

Insufficient Act:

- Mere possession (Lease) looks to circumstances for clarification - *McBride v Sandland*
- Housework/Improvement and care performed out of love and devotion, unpaid service - *McBride v Sandland; Ogilvie v Ryan*
- Love and affection in domestic context - *Maddison v Alder*

III. Estoppel

Element	Common law Estoppel	Proprietary Estoppel	Promissory Estoppel
Assumption /Representation	Representor leads the replying party to adopt an assumption of existing fact(Had signed/a particular legal relationship existed)- Jorden v Money	Representor(R) leads the replying party(RP) to adopt an assumption of future fact (Representor would sign/A particular legal relationship would exist/relationship would not be free to withdraw(Waltons) /will grant interest to replying party)	
Inducement	R has induced RP to adopt the assumption or expectation -expressive promise is not required -implied promise(silence/inaction) can be incapable of inducing an adoption of an assumption – Waltons -The representation or promise must be clear and unequivocal - Legione v Hateley		
Detrimental Reliance	<p>RP must have acted on the assumption that he/she will suffer detriment if R is allowed to depart from the assumption-Waltons & Detriment must be substantial(Verwayen) or significant(Je Maintiendrai)</p> <p>Detriment is assessed at the time when the representor seeks to abandon a course of action from the relevant assumption(Je Maintiendrai)</p> <div style="border: 1px solid black; padding: 5px; display: inline-block; margin-left: 20px;">Detriment</div> <ul style="list-style-type: none"> Expectation loss(Remedy: Specific performance or damage): means receiving the benefit that RP expected to receive or was led to believe that RP had Reliance loss(Remedy: Monetary compensation): arise only where RP has acted or abstained from acting in reliance on the assumption <p>For example: Demolishing a building and constructing a new one in reliance on an expectation that lease can be granted(Waltons) Tenant gives up other choice; difficulty to pay the arrears in a lump sum -Je Maintiendrai Tenant fails to exercise an option to renew his/her lease in time- S&E Promotions v Tobin Brothers Bearing the cost of providing for the welfare of the children -W v G A wife gave up a divorce property on the expectation her husband's promise to leave her a house- DeLaforce Served from their lawful means of livelihood -Gray v National Crime Authority Wasted expenditure of money, or time and energy(Verwayen) Detriment does not have to be financial (Verwayen)</p>		
Unconscionable Conduct	The basis of equitable of intervention is R's unconscionable conduct. Mere exercise of its legal right not to exchange contracts didn't amount to unconscionable conduct- Austotel Pty Ltd v Franklins Self-Serve Pty Ltd		
Reasonableness	The relying party's reliance must be reasonable: (a) RP acted reasonably in adopting the relevant assumption (b) RP acted reasonably in taking the relevant detrimental action on the faith of the assumption - Murphy Unreasonableness to rely on an estimate of the budget as to future maintenance expense- Murphy Unreasonableness as Experienced property developer knowing that a formal contract is required - Cobbe		
Departure or Threaten departure	Estoppel can arise where R departs or threatens to depart from the assumption.		
Remedy	<p>-Starting point: Establishing the elements of equitable estoppel gives rise to an equity in favor of the relying party, which means RP is entitled to some equitable relief. This relief is not based on their being a promise or representation, but on the expectation that the promise generated. -Giumelli v Giumelli</p> <p>- The orders to be granted by courts are generally based upon avoiding RP from suffering detriment- Walton</p> <p>1st factor: Impossible/impractical/inappropriate in circumstances to fulfill RP's expectation: The court should take into account impact of orders on relevant third parties and any hardship or injustice they would suffer -Giumelli</p> <p>2nd factor: The relief should proportionate between detriment suffered and relief ordered.- DeLaforce v Simpson-Cook & Young v Lalic</p> <p>- Estoppel as a cause of action -Walton</p>		