

## Equity & Trust Exam Notes

### Chapter 1 Nature & History of Equity

Equity is based on the notion of unconscionability, that is to say that the court will intervene where an act or omission is considered to be against the conscience.

Parkinson noted that there is a category for all such matters;

- exploitation of vulnerability or weakness
- abuse of positions of confidence
- the insistence on rights in circumstances which are harsh or oppressive.
- Inequitable denial of obligations
- The unjust retention of property

### ***Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd [No. 2] (2000)***

French J '[C]ircumstances of inequality do not of themselves necessarily call for the intervention of equity. It is the concept of unfair advantage being taken of serious inequality that is central to the notion of unconscionable conduct ...'

Inequality by itself will not invite equity's intervention. It must be established that it would be against the conscience for a court of equity not to acknowledge what has occurred between the parties.

Attention is focused on the relationship between the parties.

### **Statutes Expanded to Equitable Principles / Doctrines**

- **Ss 20, 21 and 22** of the Australian Consumer Law (ACL) found in Schedule 2 of the *Competition and Consumer Act 2010* (Cth); indicates that a person must not engage in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time. But does not state meaning of it.
- ***Corporations Act 2001* (Cth)** Directors' duties in ss 184 to ensure that they exercise their skill in good faith

### ***Earl of Oxford's Case (1615)***

- Plaintiff preventing defendant's witness from attending court
- Plaintiff was successful in getting a favourable judgement at common law
- Defendant petitioned to the chancellor based on the plaintiff's conduct the judgement should be dismissed
- Chancellor claimed that a common law rule is difficult to be applied in every situation, and awarded an injunction.
- Decision challenged the power of the common law courts and Lord Chief Justice responded by declaring that the defendant had acted unlawfully by petitioning to the Chancellor
- The decision was resolved when King James 1 issued a decree stating that here a party had a good argument in equity, they would not be left to languish at common law.

Prior to the Judicature System; equitable cases were heard in a separate Court from their common law counterparts. If proceedings were commenced in one court, and it was later discovered that they should have been brought in the other, the whole matter would need to start afresh. There was no power to transfer a suit. The same problems occurred with remedies.

### ***Judicature Acts of 1873-1875 (UK)***

- Where there was a conflict or inconsistency between equity and the common law, equity would prevail.
- There would be one court to administer both common law and equitable principles.

### **Victoria**

- Past statute

An Act to Improve the Jurisdiction and Procedure of the Supreme Court and for other purposes connected therewith' [1883] 36 & 38 Vict C 66 – *The Judicature Act 1883* (Vic) s 8

- *Supreme Court Act 1986* (Vic) s 29.

### **- Law and equity to be concurrently administered**

(1) Subject to the provisions of this or any other Act, every [court](#) exercising jurisdiction in Victoria in any civil [proceeding](#) must continue to administer law and equity on the basis that, if there is a conflict or variance between [the rules](#) of equity and [the rules](#) of the common law concerning the same matter, [the rules](#) of equity prevail.

### **Fusion Fallacies**

- The term fusion fallacy is given to decisions where the courts, in considering the effects of the judicature system, have made an error of judgment.
- The judicature system fused the procedures of common law and equity. It did not change the substantive law.
- Common law remedy only has damages
- Equity has, injunction, order for specific performance, and a constructive trust.

### ***Walsh v Lonsdale (1882)***

**Facts:** A landlord entered into a written agreement to lease a weaving shed for seven years. English law required such an agreement to be in a deed, but this did not occur so the arrangement was not recognised at common law. After the tenant took possession, the landlord demanded a year's rent in advance under the terms of the agreement. The tenant refused, so the landlord seized the tenant's personal effects. The tenant sued for damages.

**Issue:** Inconsistency between the common law and equity.

**Decision:**

- His Honour held that it was an agreement to enter into a lease with specific performance to complete the common law requirements.
- Emphasis was placed on the Judicature Acts whereby equity and common law were fused
- There is only one court and where there is a contest between equity and common law, equity principles prevail.

***Seager v Copydex (No. 1)***

- Facts: The plaintiff invented the 'Klent' carpet grip. After being awarded a patent, they entered into negotiations with an agent but no contract was formed. In the course of discussions the agent acquired information that was in confidence. They were not to take advantage of the situation. This information was later given to the defendant company, who produced their own version without infringing the patent. The defendant company called their product the 'Invisigrip'.
- Issue: Awarding common law exemplary damages for a breach of confidence
- Decision: The English Court of Appeal held that there had been a breach of confidence. The judges, considered that damages should be awarded as reasonable compensation, rather than an injunction or an account of profits.

***Harris v Digital Pulse Pty Ltd [2003]***

- employee who was a fiduciary benefited from the position when he established himself as a competitor to his employer.
- He was in breach of an express term in his contract and was dismissed. The employer sought exemplary damages
- The trial judge ordered exemplary damages together with account of profits
- On appeal; held that exemplary damages are not available for equitable wrongs
- Meagher, Gummow and Lehane emphasised the historical development of equity and noted that the *Judicature Act 1873* (UK) **only simplified procedure. It did not create any new legal principles**
- Mason P, in dissent, came to the view that the decision by Palmer J did not subvert any of equity's general doctrines and that common law and equity need not be kept in isolation from each other.

## Chapter 2 – The Concept of Property in Equity

- Property can be divided into real (land and fixtures) and personal (chattels).
- Personal property can then be further divided between intangible property (choses in action) and tangible property (choses in possession).

### The recognition of Equitable Interest

*DKLR Holdings Co (No 2) Pty Ltd v Commissioner of Stamp Duties (NSW)* (1982)

- where it was found that legal and the entire beneficial interest in the land he holds an entire and unqualified legal interest and not two separate interests, one legal and the other equitable.

### Flexible Nature

- Equitable interests are flexible. They arise where equity needs to enforce one of its doctrines. They can also change their character depending on what equity requires.

*Baker v Archer-Shee* [1927] – proprietary interest

Facts: The daughter of the testator was the wife of Lord Archer-Shee. Under the relevant UK tax legislation, the authorities sought to assess income. Her father was the testator who was a US citizen who left property in their will to their daughter for her life so that she had an equitable life estate. The trustee was a US corporation and the property subject to the trust consisted of foreign securities and shares. Income from the property was deposited into a US bank account and no money was sent to the UK.

Issue: The nature of the interest Lord Archer-Shee acquired from his wife's estate

Held: That it was taxable income so it was an equitable proprietary interest rather than a personal interest. The significance of this decision is that the House of Lords identified that in English law equitable interests were not simply personal in character. They could be based on property.

- The flexible nature of equitable interests means that they can change their character depending on the circumstances. An equitable interest may be personal, proprietary, or something less than a full equitable interest—in other words, a mere equity.

### A Personal Interest

*Livingston v Commissioner of Stamp Duties* (1960)

Facts: At the time of Mrs Coulson's death she had acquired a one-third share in the residue of her husband's partially administered estate. Both real and personal property were situated in Queensland and New South Wales. The executors were domiciled in New South Wales. The Commissioner of Stamp Duties for Queensland sought to impose taxation on the basis of her interest.

Issue: The nature of an interest acquired under a partially administered estate.