
LAWS2385 Equity and Trusts

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Intro

Role of discretion

- Extent of equity
 - Has the plaintiff made out her cause of action and what is the extent of the equity?
 - Personal/proprietary interest/loss/gain?
- Which remedy → DISCRETIONARY
 - What remedy is minimum to meet the equity raised?
 - Consider both parties
 - No plaintiff has an absolute right
 - Third parties/hardship etc.
 - McKensie v McDonald
 - Giumelli
- Measure/extent
 - E.g. how much
- Equity - sort of right → subject to discretion - not absolute

| Compensation for loss | Gain | Recovery of specific property | Compulsion | Other |
|--|--------------------|--|--|---|
| Equitable compensation/equitable damages | Account of profits | Constructive trust/resulting trust/lien/charge | Injunctions/specific performance Equitable damages? - when specific performance is not possible | Administrative remedies to assist performance - e.g. judicial advice/appointment or removal or trustees |

Equitable remedies

- Consider the positions of both parties
- At common law the plaintiff is limited to damages
- Equity focusses on the remedy that restore the plaintiff's position

Personal remedies:

- Equitable compensation
- Account of profits
- Injunction

Proprietary remedies

- **Constructive trust**
 - Order that the defendant hold the property on trust for the plaintiff
 - Plaintiff will be entitled to the property in equity or to a proportionate interest in that property
 - If the property increases in value the plaintiff will be entitled to value
 - But if it depreciates --> plaintiff will carry the loss
- **Equitable lien (charge)**
 - Security interest over property - plaintiff does not obtain a share of the property
 - Instead the lien acts to secure a debt
 - If the defendant does not discharge the debt to the plaintiff, the property will be sold and the plaintiff paid out of the proceeds
- **Advantages** of proprietary remedies
 - Make a **claim** to property - crucial if the defendant is bankrupt or insolvent
 - Enforceable against 3rd parties who have received the property from the defendant
 - No right to recover from 3rd parties when there is a **bona fide purchaser for value without notice**
 - Entitle the plaintiff to claim title of special property of special value for which money cannot provide compensation
 - i.e. property held on trust rather than monetary compensation
- **Disadvantages**
 - Cannot be awarded if the defendant no longer has the property in dispute (assumes existence of property for entitlement)

Objectives of equitable relief

- **Coercion** - equitable remedies such as
 - Specific performance - Compels the defendant to perform obligations according to contractual duties
 - Injunction- compel the defendant to act or restrain from acting by the court
- **Compensation**
- **Disgorgement**
 - Where a defendant has profited from the breach of confidence or fiduciary obligation
- **Restitution**
 - Misappropriated trust money Court order make restitution to the trust fund – RESTORATION (or property)
- **Nullification**
 - Invalidate or make void a contract
- **Rectification** has the effect of reforming a legal document so that it gives effect to the agreement of the parties
- **Partial rescission** - also may reform the contract - to ensure that the contract conforms to the agreement of the parties
- **Declarations and injunctions** may have the effect of validating the plaintiff's rights

- Declaration = court's statement of the respective rights of the parties

Equitable Proprietary interests

Personal vs proprietary rights

- In personam - enforceable against persons
- In rem - right enforceable against many people regarding a thing

Debt

- Example of personal obligations and rights
- Obligation to repay - right to repayment (personal)
- Lender/customer <--> borrower/bank
 - Lender - right to repayment
 - Borrower - must repay

Proprietary rights to our personal rights

Security interests

- Unsecured interest - personal right
- Lender's right to look to specific property for satisfaction of the borrower's obligation to repay - proprietary right
- Security interest
 - A right to property that secures performance of an obligation, usually to pay money
 - Personal right to be repaid
 - Personal right to performance is secured against a specific thing
- Mortgage = form of security interest

Personal vs proprietary remedies

- Personal remedy - court order directing the defendant to personally do something
 - i.e. to pay money to the plaintiff
- Equitable proprietary remedy
 - Court order directing the defendant to do something in relation to property
 - i.e. order that defendant holds on constructive trust

Insolvency/bankruptcy

- Example of when the proprietary/personal distinction matters
- Insolvent company, bankrupt person
- Upon insolvency or bankruptcy, property owned by insolvent company/bankrupt person distributed to creditor

Equitable ownership
