

## WEEK 2 - LECTURE 3: INDICIA OF EQUITABLE INTERESTS

- *National Provincial Bank Ltd v Ainsworth* (1965) AC 1175:
  - "Before a right or interest can be admitted into a category of property or of a right affecting property, it must be definable, identifiable by 3rd parties, capable in its nature of assumption by 3rd parties & have some degree of permanence or stability" (at 1247-8 per Lord Wilberforce)
  - not a comprehensive list
  - Meagher, Heydon & Leeming suggest that the proprietary nature of any equitable interest can be measured by reference to the following 4 criteria:-
    1. The power to recover the property the subject of the interest or the income thereof as compared with the recovery of compensation from the D payable from no specific fund
    2. The power to transfer the benefit of the interest to another
    3. The persistence of remedies in respect of the interest against 3rd parties assuming the burden thereof
    4. The extent to which the interest may be displaced in favour of competing dealings by the grantor or others with interests in the subject matter.
  - A right that does not satisfy all the above criteria may still be recognised as an equitable interest

The following rights are analysed:

- Right of a sole beneficiary under a bare trust inter vivos
- The right of a beneficiary in an unadministered estate

### **Right of a sole beneficiary under a bare trust inter vivos**

- Only thing to do is transfer the trust to the sole bene when called upon to do so
- A is a SH in BHP shares, A assigns t=transfer to B dividends expected to receive. When BHP declares and pays to A (SH) they will hold as trustee to B, A only duty is to pay the money to B.
- This is an assignment of future property
- Using this e.g. we can note
  - 1. B can demand transfer from a (trustee)
  - 2. B can dispose of his or her beneficiary to another person
  - 3. B can pursue prop against third parties by of course to remedy of tracing
  - 4. B has equitable int

The right of a beneficiary in an administered estate

- The right considered: a person who is to inherit property following the death of another person, from the date of death of the deceased and through administration of the estate.
- Admin of estate: duties to be attended to to transfer for those entitled
- Who inherits?
  - 1. can leave prop to who they wish by will testator or testrix is the person making the will, beneficiaries are the people who receive it

- 2. If die without will – they die in testate – inheritance is determined para 4 of succession act – deceased closest surviving relative/s, if none it passes to state. ‘where no will, always a relative’

The rights of a beneficiary in an unadministered estate: Commissioner of Stamp Duties (QLD) v Livingston (TXT4.24)

- In an unadministered estate – legal title in the decd's estate has passed to the executor
- The benef has a right against the executor to ensure the executor administers the estate in accordance with the will

***Commissioner of Stamp Duties (Qld) v Livingston - Casebook p 62***

- Facts: In July 1950 Mrs Coulson died intestate. At the time of her death, she was entitled to one-third share in the residue of the deceased estate of Livingston, her first husband. However, at this time, Livingston's estate had not yet been administered and her share had not been exactly ascertained. The executors of Livingston's estate were domiciled in NSW. Livingston's estate included personal and real property in both QLD & NSW. The Stamp Duties commissioner in QLD claimed that, at her death, Mrs Coulson owned an equitable interest in real and personal property in QLD in relation to the share of Livingston's deceased estate that she was to have inherited and, in applying that state's succession legislation, levied succession duty.
- Issue: The issue before the Privy Council was whether Mrs Coulson, at the date of her death, had an equitable interest in relation to her share of Livingston's unadministered estate. If she did, the Stamp Duties Commissioner was entitled to levy succession duty.
- Decision: The Privy Council (Viscount Vincent Radcliff, Lords Reid, Evershed, Pearce, and Upjohn) held that, at the date of her death, Mrs Coulson did not have any proprietary interest in Livingston's unadministered estate (although she did have a right to chose in action connected with the proper administration of his estate). Accordingly, no succession duty was payable.
- Executors held the whole property, it was his. He held it for the purpose of carrying out functions and duties of administration, not for benefit.
- Mr Livingston's property was vested in his executors in full right, and no beneficial property interest in any item of it belonged to Mrs Coulson at the date of her death.
- although she did have a right to chose in action connected with the proper administration of his estate
- Beneficiary has power to compel trustee to properly administer estate which carries with it the right to receive property once administered. (this is their 'beneficiary' interest – not a present property interest as such, coupled with the right to have the residue of the estate paid over to them.)
- as a beneficiary her rights were protected - What matters is that court will control the executor in the use of his rights over assets which do not involve the admission or recognition of equitable rights of property in those assets.
- by reference to the following 4 criteria:-
  1. The power to recover the property the subject of the interest or the income

thereof as compared with the recovery of compensation from the D payable from no specific fund

2. The power to transfer the benefit of the interest to another
  3. The persistence of remedies in respect of the interest against 3rd parties assuming the burden thereof
  4. The extent to which the interest may be displaced in favour of competing dealings by the grantor or others with interests in the subject matter.
- 1) Beneficiary right is not a proprietary interest in the context of DE, they can only compel to properly administer estate. Executor has all prop rights. The right is seen to be a mere equity
  - The int were best described as a financial resource, not property.
  - 2) *Horton v Jones*
    - Facts: Horton looked after Jones, who was old and sick/ In return, Jones made an oral promise to leave 'his fortune' to Horton. The agreement was never reduced to writing. When Jones died, he had rights as next of kin in the unadministered estates to his four children who, in turn, had interests in the unadministered estate of Jones's father. These unadministered estates included land. After Jones's death, Horton sued his estate on the oral contract.
    - Decision: The HCA (Rich Starke, Dixon, Evatt and McTiernan JJ) unanimously held that there was no enforceable agreement entered into between Horton and Jones. Evatt and McTiernan JJ dismissed the claim on the ground that the agreement was void for uncertainty. Dixon and Rich JJ ruled that, as the property that Jones stood to inherit from the unadministered estates of his children included land, Horton's oral agreement was unenforceable because of non-compliance with the statutory requirement of writing in relation to contracts involving land or any interest in land set out in s54A(1) of the Conveyancing Act 1919 (NSW).
    - Rich and Dixon JJ: not the consequence that no right of property, Jones possessed equitable rights enforceable in respect of the assets considered as a whole. It is true that he had no immediate right to possession or enjoyment and that his precise rights involved, at any rate prima facie, administration, and possibly necessitated conversion and calling in of investments. But, none the less, he had more than a mere equity. He had an equitable interest and it related to assets which included interests in land.