Topic 1 - Equitable Interests

Three types of equitable interests:
- Resulting trusts
- Constructive trusts
- Estoppel

Definitions
- Trustee –> legal owner -registered as the legal interest
- Trust fund -> assets personal and real property
- Beneficiary -> equitable owner

Express Trusts

1. (a) No interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
   (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
2. This section shall not affect the creation or operation of resulting, implied or constructive trusts.

Examples of Express Trust

- By transfer
  - 'I transfer my land to Tom to hold on trust for Hugo'
- Declaration of trust
  - 'I declare that henceforth I hold my land on trust for Ben'

Resulting Trusts

- Resulting trusts arises when legal title is transferred to someone who is not intended to be the beneficial owner
- Equity ***presumes*** a trust has arisen: (at the time prop transferred/purchased)

Raising the presumption:

Voluntary/Gratuitous Transfer

- A transfers property to B for **no consideration**, equity presumes that A intended B to hold the property on trust for A (*Little v Little*)

Purchase Price Resulting Trust

- When ownership at law doesn't reflect actual **contributions to purchase price (PP)**, equity presumes that provider of purchase price intends to hold a beneficial interest in proportion to their contribution (*Calverley*)
- Even if hold legal title as JTs, equity still presumes proportionate interest (only arises where contributions are unequal) (*Calverley*)
- Size of beneficial interest is solely determined by direct contribution to PP
  - Land: cost of prop, stamp duty, registration fees (unavoidable costs are included)
  - Doesn't include mortgage repayments (*Calverley*)
- If **matrimonial home**, see *Cummins*
- Examples:
  - Property is purchased solely by A and place in the names of both A and B.
    - Equity presumes that A intends B to hold his share on trust for A.
  - A and B both purchase property and put it in the name of B alone.
    - Equity presumes that it is intended that B hold the property on trust for herself and A in proportion to their respective contributions.
  - A and B both purchase property but make <u>unequal</u> contributions to the purchase price and the legal title is put in their joint names.
    - Equity presumes that even though the parties are joint tenants at law, they intend to hold their shares as tenants in common in proportion to their respective contributions
    - Note: this presumption only arises where the contributions to purchase price are unequal.

Unequal Contributions

- Annie contributes 70% and Barb contributes 30% of the purchase price of a property and they put the legal title in Barb's name alone.
    - Equity presumes that the parties intended Barb to hold the property on trust for Barb and Annie in proportion to their respective contributions - Annie 70% Barb 30% [equitable title]
- Annie contributes 70% and Barb contributes 30% of the purchase price of a property and they put the legal title in joint names
    - Equity presumes that the parties are joint tenants at law but intend to hold their shares in equity as tenants in common in proportion to their respective contributions [Annie 70% Barb 30%]
    - Note: only arises when unequal contributions
- A, B and C buy land together $100,000. A puts in $60,000 [60%], B and C each put in $20,000 [20%], and they have the vendor transfer to the three of them jointly.
    - What would equity presume as to the beneficial (equitable) ownership of the land?
        - Legal title A, B, C jointly 1/3 each
            - A - $60,000, 60%
            - B - $20,000, 20%
            - C - $20,000, 20%
- Conclusion:
    - Follow the money - e.g. property and equity both 50% each.

Rebutting the Presumption:

- **Onus** is on person who doesn't have the benefit of the presumption
- The presumption that A intended to B to hold the property on trust for A can be rebutted by evidence to the contrary.

Words/Conduct that Indicate Intention to the Contrary

- The **purchaser's/transferor's intention** is the relevant intention
- Words/conduct must be **contemporaneous** with purchase: taken place at or before time of purchase or so immediately thereafter such that it can be properly deemed part of the transaction
- Evidence of an actual intention to pass a beneficial interest (eg a gift or loan to be repaid)
    - The intention is that of the parties at or before the time of the transfer or purchase
    - Intention must be actual, and can be express or inferred from words or conduct
    - The intention must come first.

Illegal Transactions (transfer for an illegal property)

- Courts have generally let presumption lie and let other areas of law punish the transferor

Presumption of Advancement

- The presumption of a resulting trust can also be rebutted by the presumption of advancement, which arises if the parties are in a particular relationships with each other.
- Presumed that the equitable interest follows the legal estate in certain relationships

HISTORICAL	EXTENDED
Husband/male fiancé => wife/female fiancé (*Wirth*)	Step-parent => step-child (had parental responsibilities to) (*Olivieri*)
Father => children	Mother => children

- Wife/female fiancé => husband/male fiancé: It has **never been applied** (*Cummins*)
    - No presumption
- **De facto** relationships: HCA maj in *Calverley v Green* refused to apply it bc parties by choosing not to marry it was more likely than not that chosen to retain independent control of assets
    - No presumption
- Elderly parent => financially independent adult children: **presumption is weaker** (*Nelson*)
- Presumption **can be rebutted** by evidence to the contrary
    - Really just mechanisms for allocating burden of proof
    - Argued that people register themselves in the way they intend and that should hold instead of a presumption (*Cummins*)
- A contrary presumption applies - the transferee is presumed to take beneficial title.
    - Equity presumes that the provider of the purchase money or transferor of title intended to make a gift (an 'advancement')
- The presumption is not rebutted lightly (*Buffrey v Buffrey (2007)*)

What constitutes a 'contribution to the purchase price'?

- $$ and/or liabilities assumed for the purposes of purchasing the property
- May include stamp duty, registration fees, legal costs and bank charges
- Assumption of liability under a mortgage
- Shares under RT are fixed at the time of purchase

Constructive Trust

- RT helps at start of purchase and CT may help later
- Arose from the difficulty of proving unequivocal acts in doctrine of past performance, quantifying some contributions, unprincipled notion of holding title in whatever proportion court deemed reasonable, etc. Decided to work with the notion of unconscionability

Common Intention Constructive Trust (CICT)

Requires 3 Elements:

- **Common intention**
  - Expressed in words, implied from conduct of parties
  - Court won't impute it – have to find it existed, not deem it. Criticised bc people don't really talk about intention, suggested that courts actually do impute it
  - Don't require that parties have settled on specific share of prop
  - Can arise before or after the prop is acquired
  - Can be independent of a contract
- **Acted on to detriment**
  - This is what makes it unconscionable
  - Not, 'has the title holder received a benefit?' but 'has the party asserting the trust acted in detriment?'
  - Detriment not just disappointment
  - Must be a material disadvantage (can be financial or non-financial)
  - Doesn't have to be directed towards prop itself, done as part of the common intention
- **Unconscionability**
  - Unconscionable to try and defeat the intention
- Doesn't require a marriage or marriage like relationship. Can be non-sexual, non-romantic.
  - Attempts to narrow application of *Ogilvie* to married couples have failed
- **Remedy**: give effect to what parties intended (why intention is important), not rearranging interests of parties

Joint Venture/Constructive Trusts - construing trusts in the absence of a common intention

- **No common intention** but it will still be unconscionable for someone to walk away with the legal title and deny the other party's interest
- Notion of **joint venture** (*Muschinsky; Baumgartner*)
  - Underlying JV
    - Intimate relationship or not. Commercial or not. Can operate wherever people have pooled resourced. Can be siblings etc.
    - Assets have been acquired and built up for the purposes of that JV
  - Pooling of resources for benefit of JV
    - Doesn't have to be a literal merging of financial resources
    - Can be agreement to pay one type of bill each
    - Non-financial contributions also count (domestic labour; child care etc.)
  - JV breaks down without attributable blame
    - Court won't enquire into why the relationship broke up
    - Also, note that we have no fault divorce in Aust
  - Unconscionability
    - Unconscionable for legal title holder to retain benefit of the contributions of the other party
- **Remedy** likely to be proportionate to contributions

When does a CT arise?

- If only people arguing about ownership are the so-called T and B then it doesn't matter much
- But, if there's a TP claiming an interest (that's not registered) then their interest must be factored in => Matters bc of 'first in time, better in right'
- Comes into existence at the time of the conduct that gives rise to it; OR
  - When all the criteria are met
  - But court could also decide not to construe a trust even though criteria met
- View CT as remedy, so only comes into existence when court declares it; OR
- CT arises whenever the court deems it to arise; OR
- For common intention CT = when criteria met
- Unclear re JV situation

When does a CICT arise?

- Elements of the trust: *Ogilvie v Ryan*
  - Common intention (express or implied) that the party get an interest in the property
  - Induced to act to her detriment
  - Unconscionable use of title to defeat interest
- Terms of the trust
  - Court imposes a trust which gives effect to the common intention
- Timing of the trust
  - The trust arises when the criteria are fulfilled: *Parson v McBain*
  - The court can fix the time it comes into existence (which can be retrospective, prospective, from date of judgment)

When does a JC CT arise?

- Possibilities
  - When the criteria are met ad before the court declares it. A pre-existing interest.
  - Only when the court declares it as a remedy
    - Court can fix the time it comes into existence which can be retrospective, prospective or form the date of judgment
  - Deane J in *Muschinksi* discusses the issue but gives no clear answer
- Elements of a trust
  - Underlying joint venture or relationship
  - Pooling of resources for its benefit
  - Unconscionability
- Terms of the trust
  - A trust is imposed to remedy the unconscionable situation notwithstanding the parties' intention. The remedy is usually proportionate to the contributions
- Timing of the trust
  - Refer to a CICT arise

>> Where there is a third party need to use a common sense principle

- Who is that third party and what is their interest
- What is the likely detriment that there interest loses out to an earlier interest

Note Legislation

- *Relationships Act 2008* (Vic): Allows for the registration of domestic relationships and caring relationships and provides for the adjustment of property interests between persons in such relationships (as well as maintenance)
- *Family Law Act 1975* (Cth): Determines property settlements on the breakdown of marriages and de facto relationships (same and opposite sex)
- Courts making adjustments under these Acts do not ignore the CL principles that result in the creation of resulting and constructive trusts but they are not bound by them