

EQUITABLE INTERESTS ARISING BY OPERATION OF LAW

STEP 1: OUTLINE POSITION AT LAW AND AT EQUITY

Position at law:

- [RP] is the legal owner as they are the RP on the title to the land
- [P] has no legal interest in the land but may have acquired an equitable interest against [D]

Position at equity:

- Equity will usually reflect the position at law, unless an exception can be found
- Equitable Transfers of land:
 - S 126 IA, specifically enforceable contract of sale is signed by the person to be charged
 - Oral agreement and part performance

STEP 2: APPLY A TRUST

- A trust relationship will separate the legal from beneficial ownership

RESULTING TRUSTS

- [P] may assert that [D] hold property on resulting trust for them.
- A must have either contributed to the purchase price, or been registered as RP after receiving transfer without contributing to the purchase price.
- Need not be in writing (s 53(2)).
- Arise at the time of the purchase/transfer

A. Transfer to a volunteer

- Automatically arise when property is transferred to [transferee] for no consideration e.g. recipient of gift or under a will

1. Presumption

- Presumed that [transferor/original owner] intended to retain the beneficial interest
- [transferee] is holding legal title on trust for [transferor]

2. Displacing the Presumption

2.1 Presumption of advancement

- As below: presumes gift was intended to be made in certain relationships

2.2 Evidence of contrary intention

- As below

3. Conclusion

- If RT found, [transferee] will hold beneficial interest in the property for [transferor] on trust.
 - Legal title does not change

B. Purchase price resulting trusts

- [P] may have an equitable interest through a PPRT as she does not hold legal title in proportion to her contribution (**Calverly**)
- Automatically arise where the actual contributions to the purchase price do not reflect legal title
- Presumed that parties intended to retain beneficial interest proportionate to their contribution
- Contributions to the purchase price include:
 - Direct financial contributions toward acquisition of property, including costs incidental to registration (e.g. stamp duty)
 - Assumption of liability under a mortgage (**Calverly**)
 - **NB:** Contribution to mortgage repayments are not contribution to the PP as they are made post-purchase (**Calverly**)
 - Costs of building a house on the land, costs must constitute part of transaction (**Cummins**)

Case	Facts
Cummins v Cummins	Mortgage requires parties to build a house within 6 months of purchase; building costs were so closely connected with the purchase of the land that they formed part of the purchase price
Calverly v Green	

1. Presumption

- [X] retains an interest in the property in proportion to their contributions (**Calverly**)
- Onus is on person seeking to rebut the presumption

2. Displacing the Presumption

2.1 Presumption of advancement

- Equity presumes that the parties intended for beneficial interest to pass as a gift in certain relationship categories:
 - Husband to wife (**Calverly**)
 - Not wife to husband
 - Potentially between de facto (**Calverly per Gibbs J**)
 - Parent to child (**Boumelhem**); and
 - Male fiancé to female fiancé (**Wirth**).
 - Argue that the categories are not frozen (**Calverly per Gibbs J**)
- If the presumption of RT is displaced, equity will presume that there is no RT

2.2 Evidence of contrary intention

- Presumption of RT will be rebutted if there is evidence of actual intention, at the time of transfer/purchase to have ownership distributed as is
 - = factual inquiry into the true objective intention of parties
- Presumption of advancement is rebutted if evidence of actual intention not to gift
- If joint tenants of matrimonial home = evidence of intention to hold half/half

Case	Facts
Cummins v Cummins	RT rebutted by intention of parties to hold as JTs (matrimonial home)

3. Conclusion

- If RT found, [transferee] will hold beneficial interest in the property for [transferor] on trust in proportion to his/her respective contribution
 - Legal title does not change

CONSTRUCTIVE TRUSTS

- Arises where it would be unconscionable for legal title holder to retain beneficial interest in property
- Need not be in writing (**s 53(2)**).

A. Common intention constructive trust

- [P] may assert that [D] holds the property on constructive trust for them.

1. Actual common intention

- [P] must first establish there was an actual common intention that [P] has or will have an equitable interest in the property which can be inferred from [words/conduct] but cannot be imputed. (**Ogilvie**)
 - Intention can be formed at **any time** before or after purchase
- Express agreement to which [P] accepted, does not have to be contractual in strict sense:
 - [D] indicated they always intended to [**transfer property etc**] by [**words/conduct**]
 - [P]'s intention is clear as [e.g. he/she referred to the property as [his/hers]]
 - NB: Query who offer was made to and whether it's the same person who accepted
 - Any contingency?
 - Offer may be open until [P] breaks it
 - NB: If JTs, BOTH must be making the intention

Case	Facts
Ogilvie v Ryan	O tells R that if she moves in and takes care of him for the rest of his life, she can live there for rest of her life – common intention that R would have beneficial interest (life estate) in property

2. Detrimental reliance

- [P] must have relied on the common intention to their detriment by (financial loss/loss of bargain) (**Ogilvie**)
 - Expended money/improvements
 - Lost opportunity
 - Marriage breakdown (won't be considered on its own)
 - Disappointed expectation insufficient

Case	Facts
Ogilvie v Ryan	<ul style="list-style-type: none">- R moves out of her existing home to move in with O, giving up opportunity to live independent or look for own house- R takes care of him for no wages, forgoing opportunity to look for other source of income- R spends own money repairing and improving the house, rather than investing in own home

3. Unconscionability

- [P] will argue it was unconscionable for [legal owner] to deny the interest in circumstances where...(Holland J in **Ogilvie**)

4. Conclusion/Effect

- If CICT is made out, court will impose a trust to give effect to actual common intention of parties, identified here as [common intention] (**Ogilvie**) not anything more
- Arises at the time the criteria are met (**Parsons**)
- The court can award a lesser equitable remedy or just damages where an innocent 3P is involved, such as a purchaser (**Boumelhem**)
- Thus, [P] will get [damages/equitable remedy/CICT]

B. Joint venture/Baumgartner/remedial constructive trust

- [P] may assert that [D] hold property on trust for them by way of JVCT
- Imposed to prevent legal title holder from acting unconscionably and other person has made contributions in context of a JV
- Look for pooling of resources

1. Existence of Joint Venture

- Parties have intended to make a JV relationship and assets are acquired for that purpose (**Muschinski**)
- [Here, the JV seems only for [A's] benefit, so not a JV, unlike Muschinski].
- Can have commercial purpose (**Muschinski**)
 - Creations of an arts and craft centre (**Muschinski**)

- Can be domestic/'family unit'/relationship context (**Baumgartner**)
 - Joint relationships for mutual security and benefit, purpose was to secure accommodation for themselves and child (**Baumgartner**)
- Lending money insufficient
- Mere fact of co-habitation and sharing of expense insufficient (**Parij**)

2. Pooling of resources for purpose of Joint Venture

- **[P]** must prove there was pooling of resources for the acquisition of assets
- Don't need joint account or physical pooling of funds but some kind of contribution (**Parij**)
- Financial
 - (**Muschinski**) - M paid purchase price, D to contribute money to build cottage on property
 - (**Baumgartner**) – parties pooled earnings to meet expenses and outgoings arising for living together as family
- Non-financial
 - (**Parij**) – took care of kids and home
 - (**Muschinski**) - manual labour
 - (**Baumgartner**) – manual labour
- Direct or indirect contributions
 - Maintenance of house and children made it possible for [D] to earn income (**Parij**)

Case	Facts
Muschinski v Dodds	<ul style="list-style-type: none"> - Defacto couple tenants in common in equal shares - M contributed 90% PP, D was to contribute labour, establish business and build house - R/ship breakdown, JV frustrated - Unconscionable for D to retain half interest - Parties received proportionate repayment of investment
Baumgartner	<ul style="list-style-type: none"> - Defacto couple - Pooling of resources for household expense and mortgage repayment, W took 3 months off to care for child - R/ship breakdown H wants to rely on sole legal owner - H held legal interest on CT for W in proportion to contribution, including non-financial (except domestic contributions)
Parsons v McBain	Can't avoid creditors by asserting CT prior to transfer

3. Joint venture comes to an end without blame

- On only arises when JV comes to an end, without attributable blame
- The JV has come to an end by **[no fault of either party/]**
- If marriage breaks down court won't inquire into whose fault it was (**Baumgartner**)

5. Unconscionability

- Unconscionable for [D] to retain sole legal title and deny [P's] interest.

6. Conclusion/Effect

- If JVCT found, [D] will hold legal interest on CT for [P] in proportion to their contributions.
- Court can fix time it comes into existence, retrospective, prospective of from date of
 - Institutional – arose at time criteria was satisfied (**Parsons**)
 - Remedial – arose when court declares it, more likely when **third parties affected**
- If a third party is involved, [P] will likely get damages (**Giumelli**)

ESTOPPEL

- [P] may argue [D] created an expectation, that [he/she] reasonably relied on to [his/her] detriment, such that it would be unconscionable to allow the expectation to be defeated
- Property is impressed with a CT when there was reliance, making it unconscionable, independent of court order (**McNab**)

1. Representation/Expectation

- [P] may argue that [D] made representation/expectation that [he/she] would have an [absolute interest/life interest etc] in land. [D] said....
- Expectation that house was to be home for life (**Inwards**)
- Therefore, [P] was led to believe that he would receive the [interest].

2. Reliance

- [P] bears the onus of proving that [he/she] detrimentally relied on [Ds] representation.
- [P] relied to his/her detriment by...[state what he lost]
 - Spending money to build house on land (**Inwards**)
 - Working on orchard for free (**Giumelli**)
 - Giving up full time work and settlement from divorce (**Sidhu**)
 - Improvement
 - Terminated rental property
 - Lost opportunity to purchase own home (**McNab**)
- [D] may argue that [P]'s reliance was not reasonable because:
 - E.g subdivision was conditional on an event which was not guaranteed to occur per **Sidhu**
- However, [P] would argue that inducement does not need to be sole cause, just significant factor (**Sidhu**)

3. Detriment

- Reliance loss – loss flowing from reliance on assumption
 - E.g. costs of building house
- Expectation loss – loss suffered by expectation not being fulfilled
 - E.g. loss of expectation of life interest

4. Unconscionability

- Unconscionable for [D] to renege from their promise in circumstances where:
 - [D] knew or intended that [P] would rely and that failure to deliver would cause detriment
 - 'Life changing decisions with big consequences, beyond measure of money' (**Donson Nettle J**)

Case	Facts
Inwards v Baker	B built house at own expense and lived there for 20 years on expectation that house was home for life
Giumelli	R worked on parents orchard receiving no money, constructed house on lot, planted new orchard, didn't accept other work on expectation that the lot would be his. Damages given due to brother living on land
Sidhu v Van Dyke	V had been induced to remain at property and work by written note saying V would get house and consistent promises over number of years. V gave up property settlement in divorce and didn't find full-time work - V still awarded equitable comp despite assurances being conditional on subdivision and consent of wife
McNab v Graham	G's relied on T's representations that if they moved into property and cared for T's they would get property. In reliance, terminated rental prop, refrained from purchasing another home, looked after and made improvements.

5. Remedy/Conclusion

- If estoppel found, [D] will hold property on CT for [P]
- Prima facie expectation relief awarded, fulfilment of the promise (**Giumelli**), subject to:
 - Proportionality
 - No adverse effect on third parties
 - E.g. brother had moved onto lot (**Giumelli**)
 - Can affect volunteers because they take defeasible title. E.g. hospital in (**McNab**)
- If affecting third P, damages in lieu of expectation loss, based on value of promised land
- Factors considered decided whether to grant full beneficial interest:
 - Full CT
 - Expenditure of money on land (Doris)
 - No other party on land
 - In possession (c.f. Giumelli)
 - Breakdown in family relations, not good idea to move in (**Giumelli**)
 - If subdivision conditional on several factors, equitable compensation awarded secured by an equitable lien (**Sidhu**)
- OR reliance based loss.