

1. INTRO TO EQUITY:

- Equity refers to the principles, doctrines and remedies applied by Australian courts, exercising the jurisdiction of the English Court of Chancery prior to the reforming judicature legislation of the nineteenth century
- Equity in the “narrow” sense:
 - o Body of law administered by courts of chancery prior to “judicature”.
 - o Historical origins and the “common injunction”
- Equity in the “broad” sense:
 - o A response to laws of “universal” application
 - o Henry Smith argues that equity is a “safety valve” against opportunistic behaviour
- **'Judicature Act 1873'**
 - o S 25(11): "Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the *Rules of Equity shall prevail*."
 - o Stopped the need to go to two separate courts for equity and common law
 - o Controversy
 - Was it merely a procedural issue or do we just have one system of law now?
 - Whether or not there is a point in maintaining two separate bodies of law
- **'Law Reform (Law and Equity) Act 1972'**
 - o S 5: "In all matters in which there was immediately before the commencement of this Act or is any conflict or variance between the rules of equity and the rules of common law relating to the same matter, the rules of equity shall prevail."

Jurisdictions of equity:

- Exclusive:
 - o Only equitable remedies are available – cannot have common law damages.
- Auxiliary:
 - o Where common law damages are inadequate, the plaintiff's legal rights are enforced by an award of an equitable remedy such as specific performance or an injunction.

Equity Maxims:

1. A litigant who seeks equity must do equity
2. A litigant who comes to equity must come with clean hands
3. Equity looks to intent, rather than to form
 - o Form shows that people are serious- they know what they are doing, have the intention to sign it
 - o We now care about objective intention
4. Equity treats as done that which ought to be done
 - o Not always clear what ought to be done- tautology
5. Equity acts in personem
6. Equity follows the law
7. Equity does not assist a volunteer
 - o Volunteer- someone who has not given consideration
8. Equity will not perfect an imperfect gift
9. Delay defeats an equity

Corin v Patton [1990] p. 12- treat maxims with caution

Facts:

- Mr and Mrs Patton were joint registered proprietors of land
- Mr Patton wanted to sever the joint tenancy and give her share of the property to the plaintiff, her brother
- She executed a memorandum of transfer of her interest in the property to the plaintiff, who was to hold it on trust for her until her death
- She didn't provide the registrar with documents required to be able to properly transfer the property
- When she died, the plaintiff claimed her share of the land - a claim resisted partly because he was a volunteer and 'equity does not assist a volunteer'

Decision-Mason CJ and McHugh J:

- The HC held that the transfer would have been complete in equity if Mrs Patton had done everything within her power to complete the transfer. It was, however, incomplete, since she had not procured the certificate of title for registration before she died
- "a volunteer who is the object of an intended trust will only succeed if the trust has been completely constituted."

2. EQUITABLE PROPERTY:

2.1 What is it?

- *A right or title enforced by a court of equity but not at common law; property assignable in equity but not at common law. Equitable property may be assigned for value or, except in the case of an assignment by way of security, voluntarily: Norman v FCT (1963) 109 CLR 9. Voluntary assignments of equitable property must normally be made in writing to be valid: Conveyancing Act 1919 (NSW) s 23C(1)(c); Property Law Act 1958 (Vic) s 53(1)(c). However, some jurisdictions only require voluntary assignments to be evidenced in writing: Property Law Act 1974 (Qld) s 11(1)(c).*
- **(equitable) Proprietary interest** – a right to claim against property directly (note 'in rem' action)
- **(equitable) Personal right** (note 'in personam' action) – a right to claim against a PERSON or to compel a PERSON to do something etc.
- **'Property' interests that equity recognises and will enforce which are NOT recognised at common law:**
 - A beneficiaries interest under a fixed trust;
 - A partners interest in a partnership;
 - Counterpoints to common law interests: e.g. equitable fee simple, equitable leases -but note differences as to e.g. the limit of their enforceability;
 - Equitable security interests
 - (i.e. an equitable charge – attaches to a specific asset which can be enforced via the power of sale where there is a default in the loan);
 - Equitable rights over land (equitable easement or restrictive covenant over land).

2.2 Summary of the law

Nature of Equitable Ownership:

- An absolute owner of property does not hold two estates – one legal and the other equitable, but only the legal interest (retention fallacy)
- This is why one cannot be both trustee and sole beneficiary:
 - o *Firstly, an absolute owner in fee simple does not hold two estates, a legal estate and an equitable estate. He holds only the legal estate, with all the rights and incidents that attach to that estate. If he were to execute a declaration that he held the land in trust for himself absolutely, the declaration would be of no effect; it would give him no separate equitable rights; he would remain the legal owner with all the rights that a legal owner has. – DKL R (NSWCA) (Hope JA).*

DKLR Holding Co (No 2) Pty Ltd v Commissioner of Stamp Duties (NSW) (1982) 149 CLR 431 p. 163- the nature of equitable ownership, competing equity and legal interests

Facts:

- Directors of DKL R Holding Co (No 2) passed resolutions, one being that the land was to be conveyed to DKL R to be held on trust for 29 Macquarie (owner of land).
- Resolution provided that DKL R was only to hold the legal estate in the land
- Question arose as to whether stamp duty was payable in respect of the instrument creating the trust.

Decision:

- Majority of the HC held that stamp duty was payable on the instrument declaring the trust

Aikin J:

- "if one person has both the legal estate 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.
- "it is a fundamental principle of both the common law and of equity that the holder of an estate in fee simple cannot be a trustee of that fee simple for himself for what he holds is a single estate, being the largest estate in land known to the law."

Equitable Interests and Equities

Latec Investments Ltd v Hotel Terrigal Pty Ltd [1965] HCA p. 171- equitable interests prevail over 'mere equity'

Facts:

- Hotel Terrigal was registered proprietor of land
- Latec took a mortgage over the property to secure a loan- mortgagee- have the power to sell
- Hotel Terrigal fell into arrears in repaying the loan- Latec sold the property to a subsidiary company, Southern
- Southern gave MLC an equitable charge over its assets- MLC was therefore entitled to an equitable interest in the property
- Hotel claimed the sale was voidable because the power of sale had not been exercised in good faith and that this should be binding on MLC
- Issue was whether MLC's equitable interest defeated Hotel Terrigal's power to have the sale rescinded.

Decision- Kitto J:

- The HC held that MLC Nominees' equitable interest under the charge prevailed over Hotel's power to have the sale rescinded which was a 'mere equity'

"In my opinion the equitable charge of the trustee for the debenture holders stands in the way of the mortgager's success because it was acquired for value and without any notice