

MLL405 – Equity & Trusts

Summaries / Answer Guides

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A. EQUITY

Topic 1: Historical Development of Equity

Key Equitable Maxims:

1. Equity does not suffer a wrong without a remedy
2. Equity regards substance rather than form
3. Equity regards as done that which ought to be done
4. Equality is equity
5. Where equities are equal the first in time will prevail
6. Where equities are equal the law will prevail
7. Equity follows the law
8. One who comes into equity must come with clean hands
9. One who seeks equity must do equity
10. Equity aids the vigilant not those who sleep on their rights
11. Equity acts *in personam*, not *in rem*
12. Equity imputes an intention to fulfil an obligation
13. Equity acts specifically

Fusion of Equity and Law?

- 4 views:
 1. Fusion is a fallacy
 2. Modified fusion (by Judiciary Act)
 3. Judicature system has substantive impact
 4. Fusion is a fact

Topic 2: Undue Influence & Uncontentious Dealing

- Undue influence (UI) focuses on coercion, which prevents a party exercising free judgment and acting voluntarily. The party is influenced and so didn't actually consent (as they didn't exercise free will)
- Unconscientious dealing focuses on a party who has knowingly taken advantage of another party's special disability.

Undue Influence

1. Is there a transfer of property obtained in an unconscientious way?
2. Was there undue influence?
 - Was the agreement 'given freely in knowledge of the true facts'? (*Royal Bank of Scotland v Etridge (No 2)*)
 - A. **Was there presumed UI?** (Class 2 relationship - *Barclays Bank v O'Brien*)
 - The complainant only has to show in the first instance that there was a **relationship of trust and confidence** between his complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction.
 - In class 2 cases therefore there is no need to produce evidence that actual UI was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved the burden then shift to the wrongdoer to prove that the complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice.
 - *May be multiple relationships in the 1 question.*
 - **Class 2A – certain relationships:**
 - Parent → child
 - Guardian → ward
 - Trustee → cestui que trust
 - Solicitor → client
 - Physician → patient
 - Religious authority
 - Large gifts taken by a man from affianced woman (not husband receiving from wife) (*Yerkey v Jones*)
 - **Class 2B – proves de facto relationship:**
 - Even if there is no relationship falling within class 2A if the complainant proves the de facto existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises the presumption of UI.
 - In the absence of evidence disproving UI, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual UI or otherwise abused such trust and confidence in relation to the particular transaction impugned.
 - OR – if can't demonstrate that a class 2A or 2B relationship existed...
 - B. **Was there actual UI?** (Class 1 relationship - *Barclays Bank v O'Brien*)