

Topic 1: Equitable Interests Arising by Operation of Law

- The legal vehicle, institution or arrangement which gives effect to equitable interests are trusts (a relationship between private parties that has property as its foundation).
- There are 2 different ways trusts are given effect to; (1) by the will of the parties in an express trust (studied in Trusts) and (2) by operation of law in an implied trust.

Equitable interests in land arise by operation of **3 distinct equitable doctrines**:

1. **The doctrine of resulting trust.**
2. **The doctrine of constructive trust.**
3. **The doctrine of estoppel.**

Positions at law and equity

D is the legal owner as they are registered proprietor on the title to [land]. Although P's [legal interest is different/non-existent], they may argue they acquired an equitable interest against D as they have a [RT/CT/proprietary estoppel claim]. Although P's potential interest has not created formally, this is irrelevant (s 53(2) PLA).

Is there a Resulting Trust?

- Red Flag = contributions to purchase price are not reflected in legal title.
- Not Relevant = Given P has not contributed to the PP, we will not engage in a RT analysis (go to CT or estoppel)
- There are 3 classes of trusts: express, resulting and constructive.
- The imposition of a RT reflects the view in equity that parties' interests should correspond with their contribution to the purchase price.
- The party who made the bigger contribution would invoke RT.

P may argue they hold a particular equitable interest in [property] arising under a resulting trust.

Transactional Situations

Voluntary Transfer RT

- At common law, once an executed deed has been handed to the donee, or under the Torrens system the donee has become the registered proprietor of the land, the donee can assert the gift is completed and can enforce their rights conferred by it. The doctrine of RT is not relevant when there is a 'clear intention' but rather when it is unclear Moore, Grattan, and Griggs' Australian Real Property Law textbook (pg 500). Accordingly, they reckon that the presumption against gifts (where beneficial ownership is left with the transferor and the donee's legal title is subject to a RT in favour of the transferor) only operates when there is an absence of intention.
- A presumption of RT may arise in situations wherein the property owner transfers legal title to a volunteer/donee without consideration (Wirth). Here, a RT may have arisen insofar that [gift-giver/transferor] sought to gratuitously transfer [the fee simple interest] to [transferee/volunteer] without consideration, given that equity presumes against gifts. Accordingly, It is presumed [transferee] holds the legal title of [property] entirely on resulting trust for [transferor] and [transferor] retains beneficial/equitable title.
 - *Contrary Intention*: However, donee would argue there is clear contrary intention displacing any presumption (see below).
 - *Presumption of Advancement*: Given that the donee/D is not a stranger but is rather P's [wife], the presumption of resulting trust might not apply due to the counter-presumption of advancement (see below).

Only applies where the intention of the owner cannot be ascertained (see Rebuttal) and only actions prior to acquisition are relevant.

Purchase Price/Money RT

A presumption of RT arises where legal title does not reflect the parties' contribution to the purchase price. Equity presumes they intended to retain beneficial interests in the property in proportion to their contributions (Caverley).

- *P's Purchase in the Name of Another*: Here, although [P] was the sole party contributing to the purchase price, such a fact is not reflected in the legal title insofar that [D] is registered proprietor. Accordingly, equity makes a presumption of resulting trust here in favour of P who provided the consideration. It is presumed D holds the legal title of property entirely on resulting trust for P and the beneficial/equitable title resides solely in P.
- *P's Sole Contributor but Shared Title*: Here, although P was the only party contributing to the purchase price by [contributions], both P and D are registered proprietors. Accordingly, equity makes a presumption of resulting trust in favour of P. It is presumed D holds their share of the interest entirely on resulting trust for P.
 - **Contributions (eg assumption of liability, but not mortgage repayments)**: However, D would argue that they also contributed by jointly assuming liability under the terms of a loan/mortgage agreement – **akin to how Ms Green contributed by jointly assuming liability to repay the \$18,000 loan used to meet the purchase price** (Caverley). Although P may argue they were the sole payer of mortgage repayments, this is not deemed a contribution to the purchase price inasmuch as it is post-purchase and is given to the lender not vendor (Caverley) - **Only contributions prior to purchase or at time of purchase are considered, contributions after purchase not considered.**
- *Both Contributors but Sole Title to D*: Here, although both P and D contributed to the purchase price in the form of [contributions], only D is the registered proprietor. Accordingly, equity makes a presumption of resulting trust in favour of P. It is presumed D holds their share of the interest on resulting trust for P in proportion to their respective contributions. Therefore, P retains a [50%] equitable interest in [property] and D retains a [50%] equitable interest in property.
- *Unequal Contributions and Joint Tenancy*: Here, although A contributed 80% to the purchase of the fee simple interest in land whilst B only contributed 20%, both are registered as joint tenants (which are taken to hold an even 50-50 shares). Accordingly, equity makes a presumption of resulting trust in favour of P. It is presumed the parties intended to hold their share of the interest on resulting trust for themselves as tenants in common in defined shares proportionate to their contributions. Therefore, P will retain an equitable interest of [higher proportion] with D's interest confined to [lower proportion] – **akin to how Mr Caverley retained an interest of 2/3 and Ms Green's interest confined to 1/3 instead of the 50% she was entitled to at law** (Caverley).
 - **Cummins v Cummins Presumption (Matrimonial Couples Contributing to Matrimonial Home)**: [Party for 50% share] would argue that the Cummins v Cummins presumption should apply. Given P and D were a married couple and contributed towards a matrimonial home, [Party for 50% share] would argue that equity assumes they intended to hold equal shares as joint tenants regardless of how it is registered and the amount contributed by each (Cummins) – **akin to how it was held that Mr Cummins was entitled to a 50% share in the matrimonial home with Mrs Cummins despite only contributing relatively minimal to the purchase price** (Cummins). However, D would argue that Bosanac has moved away from this, and reaffirmed the fundamental importance of the parties' intention over presumptions (Bosanac).

Rebutting the Presumption

However, these presumptions are rebuttable/displaceable – an onus on D. Moreover, it is important to note that recent case law has diluted the importance of presumptions and shifted the focus more towards intent (Bosanac).

1. The Presumption of Advancement

Equity makes the presumption that a beneficial interest passes and there is no resulting trust if the parties are in a particular relationship (Nelson) or **where it is more probable than not that a beneficial interest was intended to be conferred (Caverley; Wirth)**. D may counter that the presumption of advancement applies insofar that a:

- husband/wife or male fiancée/female fiancée (not wife to husband though or to de facto couples per Deane J in Caverley – though Gibbs CJ in obiter argued it should extend to de facto)
- parent/child
- **The categories of relationships is not settled or closed (Deane J in Caverley).**

relationship exists between [P] and [D]. Accordingly, it is presumed that [husband/parent/male fiancée] in fact intended to [make a gift/confer a benefit] upon [wife/female fiancée/child] to advance her/their interests. Accordingly, the presumption of RT is displaced by a presumption of advancement and it is presumed that D (ie recipient of gift) took beneficial title.

- However, it is important to note that Bosanac has moved away from this, and reaffirmed the fundamental importance of the parties' intention over presumptions (Bosanac). **Gordon and Edelman JJ intimated that the presumptions should only arise where there is a paucity of evidence as to the intention of the parties, altering the traditional application of equitable presumptions of resulting trust and focusing more on evidence first before applying presumptions.** Bosanac affirmed that the court needs to consider the intention of the parties at the time of purchase; consider factors like business knowledge, prior dealing, etc.
- However, this counter-presumption of advancement can be rebutted by evidence of contrary intention. If rebutted, the presumption of RT operates.

2. Evidence of Contrary Intention

D may rebut against the presumption by presenting evidence of contrary (*common** if more than one party contributed to purchase price) intention at the time of the purchase. The BOP resides in [beneficiary/D who is prejudiced by equity's presumption] to demonstrate that [trustee/transferor] intended for them to have beneficial ownership. Here, D would contend it should be rebutted insofar that [evidence before or at time of transaction indicates that P had the intention to confer benefit].

- Whether a common intention existed at the time of purchase is not ascertained by reference to the subjective, uncommunicated intentions of the parties but rather by reference to their words and conduct (Caverley).
- However, it is important to note that Bosanac has moved away from this, and reaffirmed the fundamental importance of the parties' intention over presumptions (Bosanac). **Gordon and Edelman JJ intimated that the presumptions should only arise where there is a paucity of evidence as to the intention of the parties, altering the traditional application of equitable presumptions of resulting trust and focusing more on evidence first before applying presumptions.** Bosanac affirmed that the court needs to consider the intention of the parties at the time of purchase; consider factors like business knowledge, prior dealing, etc.

Conclusion

What has beneficial ownership and in what proportion? If a RT is presumed, then [reiterate conclusion from each scenario]. If it is rebutted, then [explain]. If rebutted, it may be appropriate to consider whether CT arises **like in Muschinski** (proceed below).

Is there a Constructive Trust?

- **Red Flags: D comes up with all the purchase price money akin to how Ogilvie bought the property single-handedly without the help of Ms Ryan (Ogilvie).**

P may argue they hold a particular equitable interest in [property] arising under a CT.

Common Intention CT

The court may impose a CT to give effect to the parties' actual common intention found before or after the property was acquired (Parsons) provided the 3 elements are established and it is unconscionable for the legal owner to deny a beneficial interest in property to P (Ogilvie).

1. Common Intention

Firstly, P will argue that there is an *actual* (not imputed) common intention between P and D before/after the property was purchased for P to acquire a [life/fee simple/leasehold] interest in [property] (Parsons).

This can be inferred/IMPLIED from their words/conduct (Ogilvie; Snyder). Here, D [said or did something to create the common intention of P having an equitable interest] – **akin to how it was common intention for the Parsons' wives to acquire a half equitable interest in the 2 properties (Parsons) OR Akin to how it was common intention for Ms Ryan to acquire a life interest in the property after Mr Ogilvie said she would (Ogilvie).**

- Evidence about the conduct of the parties can come from before **or after** the property was acquired (Parsons).

2. Detrimental Reliance

Secondly, P would submit they detrimentally relied on the common intention as illustrated by the material [financial/non-financial disadvantage caused by reliance on D's promise...] (Ogilvie) – **akin to how Ms Ryan suffered detriment in giving up the opportunity to move into another house and giving up 2 years of her life to care for Mr Ogilvie (Ogilvie)/Akin to how Ms Green leaving her former life in Thailand was sufficient detriment although she only benefitted financially (Green).**

- Although the detriment must be material, it need not be financial (Ogilvie).

3. Unconscionability

Thirdly, P would argue that – given the common intention and the detrimental reliance – it would be unconscionable for the registered proprietor to renege or depart from the common intention of the parties about the expectation P would acquire a particular proprietary interest.

Conclusion

Ultimately, a common intention CT is/is not established. Consequently, D holds [property] on CT for P.

Go to Remedies**

Joint Venture CT (D contributing most to property and legal title reflecting it but P contributing to the joint venture in another way – a non-proprietary contribution in need of equitable recognition)

The court may impose a joint venture CT provided the 4 elements are established (Baumgartner).

- This arises irrespective of intention.

1. Joint Venture

Firstly, P would argue there was an underlying joint venture [with a commercial purpose – **akin to in Muschinski and the parties' understanding that Ms Muschinski would effectively buy the property and Mr Dodds would renovate the cottage and buy a prefabricated house on the land to set up an arts and craft business**].

- D may argue against classifying P and D's relationship as a joint venture insofar that it is domestic in nature and is not directed to some commercial endeavour. However, P would counter-argue that even a wholly domestic/familial arrangement was sufficient to establish a joint venture CT **akin to how the Baumgartner's joint venture had no commercial complexion** (Baumgartner).

2. Pooled Resources

Secondly, P would submit that the co-venturers namely P and D, pooled financial/non-financial resources together for the purpose of their joint commercial/domestic venture – **akin to how Mr**

Baumgartner contributed 55% and Mrs Baumgartner 45% to a pooled account used to meet their various outgoings, such as furniture and property acquisition and how Mrs Baumgartner looked after kids (Baumgartner).

3. Breaking Down of Joint Venture

Thirdly, P would contend that the joint venture broke down without attributable blame – **akin to how Ms Muschinski and Mr Dodds mutually ended the relationship and thus the joint venture without assignable blame** (Muschinski).

4. Unconscionability

Fourthly, P would argue that it would be unconscionable for D to retain the benefits under the joint venture when the contributions were made for the joint venture – **akin to how it was unconscionable for Mr Dodds to retain his 50% share in the property given the joint venture ended and such a benefit was granted on the basis of the joint venture and Dodds building the cottage for the venture which did not eventuate** (Muschinski) OR **akin to how it was unconscionable for Mr Baumgartner to retain his sole legal title to the land given the joint venture ended and such a benefit was granted on the basis of the joint venture and the Baumgartner's pooled earnings meeting various household expenses** (Baumgartner).

Conclusion

Ultimately a CT based on JV will be awarded and D and P would hold their interests in property on CT for themselves as tenants in common in proportion to their respective contributions to the purchase price – **akin to how Ms Muschinski and Mr Dodds held the property on CT for themselves as tenants in common in proportion to their uneven 10/90 contributions** (Muschinski).
Go to Remedies**

Is there Proprietary Estoppel?

- **Red flag: landowner encourages an expectation of acquiring an interest in land in the future.**

NO CI CT: In the event there is a lack of common intention and a CI constructive trust is not established, estoppel may be argued, which is increasingly used to justify equitable intervention where there is unconscionability.

P may contend that proprietary estoppel has arisen and D should be estopped from [denying P their specific interest in land].

1. Inducement of Expectation

Firstly, P would argue D induced an expectation regarding the acquisition of an interest in land by:

- Making a clearly expressed promise **akin to the 3 key promises Mr and Mrs Giumelli gave to their son Robert about receiving an interest in the property** (Giumelli).
- Allowing an expectation to be created in P's head – **akin to how Jack Baker's father allowed him to expect the bungalow to be his home although he did not expressly indicate so** (Inwards).
- Making clear assurances to P **akin to how Mr Sidhu repeatedly assured Van Dyke the land would be subdivided and gratuitously transferred to her** (Sidhu).

This promise/assurance would have encouraged P to believe/assume/expect that they would receive a [interest] in [property].

2. Reasonable Reliance

Secondly, P would contend they reasonably relied on the expectation because they:

- Declined to pursue other opportunities – **akin to how Robert agreed to improve his parents' property on the condition he would not accept offers to work elsewhere** (Giumelli).
- Expended money to improve the property – **akin to how Jack Baker junior expended money and time to build the bungalow on his father's rural property under the expectation he could remain there** (Inwards) OR **Akin to how Robert made significant**

improvements to his parents' Dwellingup property under the expectation he would remain there (Giumelli).

- Lived on the land for a substantive period of time – akin to how Jack Baker lived in the bungalow for 20 years on the basis of the expectation he could live there in the future (Inwards).

Conditional promises: though D may argue it was unreasonable for P to rely on the promises given they were conditional, it was found that even though the promise to gift property to Ms Van Dyke was conditional on Sidhu's wife approving the subdivision, there was still reasonable reliance (Sidhu).

3. Detriment

Thirdly, P would submit that they have suffered detriment in reliance of the expectation – akin to:

- How Jack Baker expended labour and built a bungalow instead of pursuing other property options (Inwards).
- How Robert Giumelli expended unpaid labour and made significant improvements to his parents' property (Giumelli).
- How Ms Van Dyke failed to find a full time job because of the expectation of receiving property (Sidhu).
- How the Grahams failed to purchase an additional home and instead cared for Mr Turner (McNab).

Conclusion

Ultimately, proprietary estoppel is/is not made out and D would be estopped from denying P an equitable interest.

Remedies

Courts have full discretion when awarding remedies but P is prima facie entitled to expectation-based relief in specie, which makes good to the expectation (Inwards). Accordingly, P would argue that a CT should be declared over the property which was promised to P.

- *Detriment:* P would argue this is because of the significant, life-changing consequences of the detriment they have suffered which is not quantifiable by money (Sidhu) – akin to how Jack Baker would effectively been rendered homeless in Inwards]. However, D would argue that the detriment is relatively small and quantifiable, and therefore a reliance-based monetary award should be given instead (Sidhu).
- *Degree of unconscionability* (Inwards; Giumelli).
- *Impact on innocent third parties* (Sidhu).

According to Parsons, a common intention CT is institutional rather than remedial and thus arises from the moment the elements are satisfied. Therefore, P's proprietary interest was established at [insert exact time] and the court is merely declaring something which existed already.

However, D would argue that the court should consider whether there is an appropriate, less invasive remedy available to prevent unconscionability (Giumelli). Although in specie expectation relief is the prima facie remedial entitlement, it can be militated against by the issues in the litigation or circumstances of the case, for example considerations of proportionality and adverse effects on third parties (Giumelli). Accordingly, D would argue that a monetary payment or equitable compensation equivalent to the value of the property should be awarded to P because [a CT would adversely affect an innocent third party or the CT would disproportionately exceed the detriment P suffered] (Sidhu) – akin to how the imposition of a CT would adversely affect Mr Sidhu's wife who inhabited the relevant property (Sidhu) or Akin to how the imposition of a CT would adversely affect Robert's brother who inhabited the relevant property (Giumelli).

Accordingly, P is likely to be awarded (1) equitable title over the property or (2) monetary sum of [x].

