

'Courts of Equity decree the specific performance of contracts, not upon any distinction between realty and personalty but because damages at law may not, in the particular case, afford a complete remedy. Thus a Court of Equity decrees **performance of a contract for land, not because of the real nature of the land, but because damages at law, which must be calculated upon the general money value of land, may not be a complete remedy to the purchaser, to whom the land may have a peculiar and special value.** So a Court of Equity will not, generally, decree performance of a contract for the sale of stock or goods, not because of their personal nature, but because damages at law, calculated upon the market price of the stock or goods, are as complete a remedy to the purchaser as the delivery of the stock or goods contracted for; inasmuch as, with the damages, he may purchase the same quantity of the like stock or goods.' - **Adderley v Dixon (1824) 57 ER 239**

2 senses of specific performance

Strict/narrow sense	Approximate/broad sense
- Presupposes an executory contract - Compel the execution in <i>specie</i> of a contract which requires some definite thing to be done before the transaction is complete and the parties' rights are settled and defined in the manner intended J C Williamson v Lukey & Mulholland per Dixon J	- presupposes an executed contract - nothing further needs to be done to settle or define the rights of the parties as intended by the contract.

5 General principles:

- PRECONDITION: Binding and valid contract exists**
 - **You must have given valuable consideration** (equity does not assist a volunteer)
 - A court has no jurisdiction to grant SP of a promise not supported by valuable consideration - **Roxborough v Rothmans of Pall Mall Australia Ltd (2001)**
 - What if consideration is inadequate? - court will still have jurisdiction to grant SP but this may be a factor supporting refusal on discretionary grounds
- Common law damages are an inadequate remedy** (general but not strict distinctions:)
 - **transactions regarding land/real property --> damages inadequate** (specific performance more readily granted)
 - Canada SC: it may not always be the case that land is always unique - **Paramadevan v Semelhago**
 - AU HC: developer buying land (to sell later) - held although interest in land was really financial, the land was unique and damages was inadequate - ordered SP - **Pianta v National Finance & Trustees Ltd**
 - **if damages unavailable at all --> inadequate**
 - e.g. s54A K for sale of land not enforceable unless in writing - thus oral K to sell land unenforceable at common law but if part performance of the K, equity will get involved (SP possible if PP)
 - **transactions regarding Scarce and valuable PP --> damages inadequate**
 - 'articles of unusual beauty rarity and distinction' - **Falcke v Gray**
 - Equity intervenes 'where those chattels are of special value to a person in the carrying on of his business' - **Doulton Potteries v Bronotte (1971) per Hope J**
 - '[T]he rarity of the chattel is one aspect of the general question of inadequacy of damages.' - **Aristoc Industries v R A Wenham (Builders) (1965) per Jacobs J**
 - **Abnormal market conditions/strikes:**
 - **Howard E Perry v British Railways Board (1980)** - Steel was available on the open market but was difficult to come by because of a strike in the

- industry that had led to lower production levels - SP ordered for K for supply of steel
- **Sky Petroleum v VIP Petroleum (1974)** - It will also be ordered if a commonly available commodity becomes temporarily scarce
- **Cook v Rodgers (1946)** - 'the existence of market difficulties of an apparently temporary nature does not give rise to jurisdiction in equity'.
- **transactions regarding common personal property --> damages adequate** (except for scarce and valuable PPs). Contract to pay or lend money is typically damages adequate.
 - e.g. a contract for sale of Hepplewhite chairs was **not** specifically performed on the grounds that the chairs were **not unique** but 'ordinary articles of commerce and of no special value or interest' - **Cohen v. Roche [1927]**

Do other grounds of refusal apply such that the court will not exercise its discretion to order specific performance?

3. Does it require constant supervision

- If the order requires constant supervision from the court, that is a reason to refuse specific performance - **Dougan v Ley HCA**
- Contracts in which parties' obligations are imprecisely defined will not generally be enforced by SP
- **This problem only arises if it is UNCLEAR what needs to be done - Argyll Stores**
 - Undesirable prospect of the court having to give an indefinite series of rulings to ensure execution of the order
 - Only means for enforcing the order is the quasi-criminal procedure of contempt
 - **Prospect of committal or fine:**
 - damages business rep
 - forces D to make decisions under a sword of Damocles
 - application to enforce order would be expensive

4. Is it a personal services K?

- Undesirability of maintaining a personal relationship against the will of one of the parties to the contract
- Court will generally refuse SP of K which requires personal service (due to constant supervision concerns + individual freedom - **de Francesco v Barnum (1890) 45 ChD 430**)
- Court will not grant SP for K for personal services - (obiter) **CH Giles & Co Ltd v Morris**

5. Is there a lack of mutuality

- Lack of mutuality as a ground of refusing SP
- e.g. Adult can't enforce K against Child (but Child can enforce against Adult) - so limited to damages
- **Boyd v Ryan (1947) 48 SR (NSW) 163** - if one party can't get SP, the other party also can't
- **Beswick v Beswick [1968] AC 58** - One party's ability to get SP as a reason to grant SP to the other party
- **Price v Strange [1978] Ch 337** - mutuality not as important consideration if the SP order can be made without causing injustice. Critical time for mutuality to be present is the date on which the court is to make the order for SP.
- **Hoggart v Scott** - A plaintiff who seeks to specifically enforce a contract for the sale of land and who does not, at the date of the contract, actually hold the necessary title, can nevertheless succeed if he or she obtains good title by the time of hearing

6. Does it cause hardship to D or P (flexible discretion)