

LAWS2012 – Finals Scaffold

Property and Commercial law

CONTENTS

Topic 3: Choses in Action.....	2
1. Choses in Action Generally.....	2
2. Types of Equitable Choses in Action.....	3
2.1. Interests Arising Under a Trust.....	3
2.2. Interests Arising Out of Equity of Redemption (Revision from Mid-Sem)	6
2.3. Interests Arising Under Unadministered Estates ('Livingston Rights')	6
3. Choses in Action Incapable of Assignment	8
Topic 4: Assignment and disposition of interests	11
1. Assignment of Future Property	12
2. Legal Assignment of Legal Interests	14
2.1. Legal assignment of legal interest in old systems land	14
2.2. Legal assignment of legal interest in Torrens title land	15
2.3. Legal assignment of ownership in chose in possession via lost and found	15
2.4. Legal assignment of ownership in chose in possession via gift.....	17
2.5. Legal assignment of ownership in chose in possession via SOGA.....	19
2.6. Legal assignment of ownership in chose in possession via gift donation mortis causa	23
2.7. Legal assignment of possessory interest in chose in possession via bailment.....	24
2.8. Legal assignment of legal interest in chose in action (debt or chose in action).....	26
2.9. Assignment or disposition of shares.	26
3. Equitable Assignments of Legal Interest	28
3.1. Equitable Assignment of future property	28
3.2. Equitable Assignment of a part chose in action (not assignable at common law)	28
3.3. Equitable Assignment of legal interest property without consideration (gift).....	28
3.4. Equitable agreement to assign legal interest in real property for consideration	29
3.5. Equitable Agreement to assign other legal interests for consideration	32
4. Equitable Assignments of Equitable Interest	33
4.1. Has there been a declaration of trust? [Not a disposition].....	33
4.2. Has there been an agreement or contract to declare a trust? [Not a disposition]	35
4.3. Contract for value to assign [Not a disposition]	36
4.4. Declarations of sub trust [May or may not be a disposition].....	36
4.5. Direction to trustee to hold on trust for the beneficiaries [Disposition]	37
4.6. Direction to trustee to transfer full legal and beneficial ownership collapsing trust [Not a disposition]	38
4.7. Release to trustee / disclaimer of gift [Uncertain]	39
Topic 5(A): Priority Regimes	40
1. Priorities under the Sale of Goods Act	40
1.1. Nemo dat (a person can't give what they don't have) quod habet and exceptions	40
2. General Law Priority Rules: Contests between legal and equitable interests	44
2.1. General Law Priority Rules	44
2.2. Prior legal interest vs subsequent equitable interest.....	45
2.3. Prior equitable interest vs subsequent legal interest.....	45
3General Law Priority Rules: Contests in Equity	46
3.1. Prior equitable interest vs subsequent equitable interest.....	46
4. Result of priority contest.....	47

Topic 3: Choses in Action

- ☐ Is it a chose in action?
- ☐ Equitable chose in action
 - ☐ Interests arising under a trust
 - ☐ Interests arising under an unadministered estate
- ☐ Choses of action incapable of assignment
 - ☐ Bare rights to litigate
 - ☐ Public pay
 - ☐ Benefits or burdens of contracts
 - ☐ Personal service contracts

1. Choses in Action Generally

Cases Glossary

- 1) *Colonial Bank v Whinney* (1885) 30 Ch D 261 (**Whinney**)

Is there a chose in action? (Intangible personal property)

- 1) A chose in action is incorporeal personal property that is incapable of being the subject of actual possession, and can only be protected by legal action **Whinney**
- 2) Essentially all enforceable property rights that are not capable of physical possession
 - a. The main characteristics of a chose in action are:
 - i. Enforceability **Tolson**
 1. Must be capable of being enforced by the rightsholder against the duty holder e.g. creditor v debtor
 - ii. Incorporeal and intangible **Tolson**
 1. I.e. not physical
 - iii. Bare right **AVGH v German Property**
 1. There is only a bare right, with no occupation or enjoyment

Legal chose in action

- 1) Legal choses in action are those recognised under the common law
- 2) Examples
 - a. Negotiable instruments (e.g. bill of exchange, promissory notes, cheques) **Whinney**
 - b. Debts – ‘an obligation to pay money to the creditor’: their essence being that the debtor is required to pay money to the creditor **King**
 - c. Shares in the issued capital of a company **Archibald**
 - d. Contractual rights including royalties **Linden Garden**
 - e. Insurance policies **Moore; Ex Parte Ibbetson**
 - f. A guarantee given by a guarantor to a creditor **Loxton**

Equitable chose in action

- 1) Equitable choses in action are those recognised only by courts of equity
- 2) Examples

- a. Shared interest in a partnership *Everett*
- b. Interest of a beneficiary under a trust *Norman*
- c. Interest in a legacy *Perpetual*
- d. A reversionary interest under a will *Tritton*
 - i. Beneficiaries interest under an unadministered estate *Livingston*

2. Types of Equitable Choses in Action

Types of equitable choses in action

- 1) Interest of a beneficiary under a trust
- 2) Equity of redemption under general law mortgage
- 3) Interest of unadministered estate

2.1. Interests Arising Under a Trust

Cases Glossary

- 1) *Byrnes v Kendle* (2011) 243 CLR 253 (**Byrnes**)
- 2) *Associated Alloys Pty Ltd v ACN 001 452 106 Pty Ltd (in liq)* (2000) 202 CLR 588 (**Alloys**)
- 3) *Paul v Constance* [1977] 1 All ER 195 (**Paul v Constance**)
- 4) *Walker v Corboy* (1990) 19 NSWLR 382 (**Walker v Corboy**)
- 5) *Oughtred v Inland Revenue Commissioners* [1960] AC 706 (**Oughtred**)
- 6) *Baker v Archer-Shee* [1927] AC 844 (**Baker**)

What is a trust?

- 1) A trust is a relationship between a person who holds legal title to property (the trustee) for the benefit of another person (the beneficiary) *Jacobs*
- 2) Types of trusts
 - a. Express trust – trust created by words or conduct which expresses an intention to create a trust
 - b. Resulting trust – trust created by the court based on the presumed intention of the parties
 - i. Where a person has provided some or all of the purchase price, an implied trust is presumed in their favour, proportionate to his contribution *Allen v Synder*
 - ii. Unlike constructive trust, is based on the presumed intention of the parties
 - c. Constructive trust – trust created by the court for reasons of justice regardless of the parties' intention

Requirements for transfer of legal property to a trustee to hold on trust

- 1) Has there been a valid transfer of legal title in property to the trustee? (see topic 4)
 - a. Have the substantive requirements for a legal assignment been satisfied?
 - b. Have the formal requirements for a legal assignment been satisfied?
- 2) Has there been a valid declaration of a new trust for the beneficiary?
 - a. Have the substantive requirements for a creation of an express trust been satisfied?
 - b. Have the formal requirements for a creation of an express trust been satisfied?