

Topic 6 - Dispositions of Equitable Interests and the Requirement of Writing (Chapter 6) Conveyancing Act 1919 (NSW) s 23C

1. DIRECTION BY A BENEFICIARY (= beneficiary only has equitable interest)

a) to hold property on trust for a third party: [WRITING]

- beneficiary instructing trustee to hold the equitable interest in the property that is subject of the trust for a third party and no longer for the beneficiary NEEDS TO SATISFY s 23C
 - *Grey v Inland Revenue Commissioners [1960] AC 1* (Casebook – pp 102-104) [Oral direction to transfer equitable interests is ineffective → disposition of an equitable interest must be in writing (s 23(1)(c)); effective only when written declaration executed.]

Facts

- o Mr. Hunter made six settlements in favour of his grandchildren
- o Mr. Hunter transferred shares to trustees, including PLT, to hold them on trust for him
- o Mr. Hunter orally instructed the trustees to hold the shares on the trusts for the grandchildren's settlements
- o Mr. Hunter's directions were later confirmed in a document

Issue

- o When did the disposition occur?

Held

- o Oral disposition of equitable interest NOT effective - Only occurred when the written declaration was executed

b) Transfer property to a third party [ORAL INSTRUCTION]

- beneficiary directs the trustee to transfer both legal and equitable interest in the trust to a third party, so that the beneficiary becomes the absolute owner of the property.

- *Vendervell v Inland Revenue Commissioners [1967] 2 AC 291* (Casebook – pp 104-106)

[When both legal and equitable interests are transferred together (absolute disposition), s 23(1)(c) CA writing requirement does not apply — oral instruction to trustee is sufficient.]

Facts

- o National Provincial Bank was a bare trustee of shares for PLT
- o PLT orally directed NPB to transfer the shares to the Royal College of Surgeons
 - PLT intended for RCS to acquire both legal and equitable interest in the shares
- o DEF tried to tax PLT for the dividends of the shares
 - PLT argued, pursuant to the legislation, he was not taxable because he divested himself absolutely of the shares
- o DEF argued PLT had not effectively disposed the shares

Issue

- o Did PLT effectively dispose his shares?

Held

- o Held where a person wishes to dispose both legal AND equitable interest, the written requirement of s51C(1)(c) of Law of Property Act 1925 is NOT invoked

2. DISPOSITION BY WAY OF CONTRACT

a contract for valuable consideration to assign an equitable interest in property = a "disposition" under section 23C(1)(c) and therefore must be in writing.

However, where the contract for value gives rise to a constructive trust, equity enforces the bargain even without writing (23C(2))

- *Oughtred v Inland Revenue Commissioners [1960] AC 206* (Casebook – pp 107-110)

[Oral agreement to transfer an equitable interest is ineffective under s 23(1)(c) CA; only the written deed effected the transfer, making it taxable]

however, minority and then adopted in other cases → [An oral contract for valuable consideration to assign property of any kind gives rise to a constructive trust, whereby **the vendor is a constructive trustee of the property for the purchaser**, provided it is specifically enforceable. This type of contract does not need to meet the requirements of writing mandate by s 23C(1) under 23C(2)]

Facts

- o PLT held a beneficiary life estate in certain shares - PLT's son had revisionary interest in those shares
- o Oral agreements made to transfer the son's interest to PLT to avoid stamp duty
- o Documents executed to effectuate the transfer
- o DEF argued stamp duty was payable as the deeds transferred the beneficial interest, not the oral agreements
- o PLT argued the interest were transferred via constructive trust from the oral agreement and the deed was merely a record of what had already occurred

Issue o Did the oral agreement create a constructive trust and effectuate the transfer or was it the deed?

Held

- o The oral agreement did NOT effectively dispose of the son's equitable interest in the shares
- o The deed of transfer was taxable

TOPIC 7 - Property with a limited capability of being assigned (Chapter 7)

- **Equuscorp Pty Ltd v Haxton** (2012) 246 CLR 498 [1960] AC 1 (Casebook – pp 113-115) [Litigation rights alone can't be sold; need a real commercial stake.]
[BARE RIGHT TO LITIGATE NOT ASSIGNABLE → exception: assignee has a 'genuine commercial interest']

Where the assignee can show a 'genuine commercial interest' in the outcome of the claim, the assignment of a bare right to litigate may be recognized in equity. For an interest to be a genuine commercial or legitimate interest, it 'must be distinct from the benefit that the person supporting the action seeks to derive from the litigation. It must be something beyond a mere personal interest in profiting from the outcome of the proceedings. (Project 28 Pty Ltd v Barr) → National Mutual Property Services v Citibank Savings – Lindgren J said the commercial interest must exist already or by reason of other matters, and receive ancillary support from the assignment

Because proceedings for damages or ancillary relief pursuant to the Competition and Consumer Act and the ACL can only be pursued by the person who has suffered loss or damage as a result of an infringement of any of their provisions, such proceedings are not assignable

An example: a financial interest in the outcome of the claim that exists independently of the claim itself