

## **EQUITY AND TRUSTS EXAM NOTES 2025**

### **EQUITABLE MAXIMS**

‘Summary statement of a broad theme underlines equitable concepts and principles. Precise scope is necessarily ill-defined and somewhat uncertain.’ - **Corin v. Patton**

Examples of maxims of equity

- Equity will not suffer a wrong without a remedy
  - Development of the equitable jurisdictional foundation
- Equity follows the law **Paramasivam v Flinn (1998)**
  - Limitations periods are more flexible, applied through analogies
- He who seeks equity must do equity (note the different meanings of ‘equity’)
- He who comes to equity must come with clean hands
- Equity aids the vigilant and not the tardy
- Equity is equality
- Equity will not assist a volunteer (to perfect and imperfect gift)
- Equity looks to the intent rather than to the form (**Burns v Kendell**)
- Equity looks on that as done which ought to be done
  - Some cases remedies in equity have become routine → example in beneficiaries seeking remedies in a trust
  - Need to show reason in seeking a remedy in equity
  - Maxims are more flexible in rules for judges to reach a desired decision
  - There are no rules where it may outline a rule
  - Useful to the extent where they guide where there is broader discretion

### **EQUITABLE ESTATES AND INTERESTS**

Equitable proprietary interest	Right recognised in property <ul style="list-style-type: none"><li>• All equitable interests in property are choses in action – intangible rights with respect to property owned by another.</li><li>• Bind the holder of the legal interest and volunteers, but not a purchaser for good faith without notice. Transfer of the legal property to a third party for value without notice (actual, constructive or imputed) of the equitable interest, will destroy the underlying equitable interest.</li><li>• Created less formally (equitable interests are easier to create, and easier to defeat)</li></ul>
Mere Equity	Allowing a person to seek court intervention to rectify a transaction or set aside a deed due to fraud, unconscionable conduct, undue influence or mistake <ul style="list-style-type: none"><li>• What kind of right does a person have if they have a claim in Equity to set aside property transaction, on the grounds of undue influence, unconscionable dealing, or some other ground recognized in Equity for vitiating a contract?</li><li>• How does this kind of equitable right rank against equitable proprietary interests?</li></ul>
Personal equitable right	A right that is enforceable in the court of equity, but not a proprietary interest in the land/property itself, against a person rather a right that binds anyone who interferes with the property <ul style="list-style-type: none"><li>• Seek remedy in equity against a person → in relation to property transaction or obligation</li></ul>

- A personal equity is simply the basic right of access to a court of equity of a plaintiff seeking equitable remedies that are not a proprietary remedy.
- Not a proprietary right at all: not an interest in property.
- Incapable of assignment/ Does not attach to particular assets

### **Characteristics of a proxy interest**

- Property right is a right 'in rem' – against the 'world', not against another person
- The claimant can recover specific property.
- The claimant can transfer their interest to another.
- The claimant's remedies in respect of the interest continue against third parties who deal with the interest.
  - Equity presupposes existence and validity of CL and legal rights to property
  - Recognizes additional rights to property only through equity

### **Important to have a proprietary right? → example (BANKRUPT ISSUE)**

- L lent money to B, so that B could buy a house. B also owes money to X, Y and Z.
- B cannot repay everyone, and is declared bankrupt.
- The house is B's only asset, and the value of the house is not sufficient to repay all of B's debts. So who is paid first?
- All of B's personal creditors share 'pari passu' (equally, according to their contributions) in B's property → L, X, Y and Z
- But any creditor who can claim a proprietary interest in specific property will be paid out of that specific property first.
- If L wants to be paid first out of the proceeds of the house, L must secure a property interest in the house.

### **How do property interests arise in equity?**

- When the owner of a property interest at law is conscience-bound to recognize someone else's interest in the property...
- Equity will find that the claimant has an 'equitable proprietary interest'.
- Less than a legal interest
- Absolute owner owns one legal estate → equitable interest cannot stand next to a legal interest, can only be standalone
- Legal title → will depend on the type of property
- Personal property has less formalities
- Equitable title does not exist → unless there is a separation of ownership of the property (both legal and equitable interest cannot exist together)

### **Equitable rights and interests in property**

- Can be created by the declaration of a trust – so that the trustee holds legal title, and beneficiaries have equitable interests
- Can be created by contract – a specifically enforceable contract for the sale of land will create an equitable interest for the purchaser, pending settlement.
- Can be created by a contract whereby the legal property owner grants security over the property in exchange for a loan (a charge).

- Payment of the purchase price for property in circumstances where Equity will presume a resulting trust creates an equitable interest for the person who paid.
- A court may declare a constructive trust over property, which means that the legal owner of property must recognize the equitable interest of the claimant.

### Examples of equitable proprietary interests

- Interest of a partner in assets of a partnership
- An unregistered mortgage will be treated as an equitable mortgage.
- The trustee's right to be indemnified from trust assets in respect of properly incurred trust expenses
- Future property: **Norman v Federal Commissioner of Taxation (1963)**
- Equitable interests in voluntary assignment of legal property that do not comply with formalities in certain circumstances: **Milroy v Lord (1862)**
- Interest of a beneficiary under a trust
- By implication of law – e.g. resulting trusts; equitable lien
- By operation of law – e.g. court orders for property be held on constructive trust.

### Rights of a beneficiary under an Unadministered estate

- Will: **Succession Act 2006 NSW**
- Death → goes to the executor of the will
- Administration and distribution

### Harris v Digital Pulse (2003) (APPEAL)

Facts	<ul style="list-style-type: none"> <li>Harris and Eden signed employment contracts with DP which contained non-compete clauses.</li> <li>They were fiduciaries to DP</li> <li>In 1999, Harris and Eden left DP to start company 'Juice' of which they were directors</li> <li>In 2000, DP terminated Harris' contract and the next day Eden resigned</li> <li>Projects and clients were diverted from DP to juice DP claimed damages for breach of employment contract, equitable compensation or account of profits for breach of fiduciary duty, compensation for breach of duty under Corporations Act 2001, damages or an account of profits for misleading conduct under FTA 1987, damages or account of profits for breach of copyright, delivery up of business records and equipment, exemplary damages for breach of fiduciary duties (most controversial).</li> </ul>
Issue	<ul style="list-style-type: none"> <li>Appeal against the award of exemplary damages given for equitable breach of fiduciary duty</li> <li>Should common law damages be available for equitable wrongs?</li> </ul>
Held	<p>Since held in <b>Giller v Procopetsthat</b> this decision does not stand in the way of an award of aggravated damages for breach of confidence as they can be classified as compensatory rather than punitive.</p> <ul style="list-style-type: none"> <li>'It is desirable that the jurisdictional origins of rules of law become less and less important as those rules are adapted to changing social realities by courts in fused jurisdictions, where the relationship of those rules inter se and their overall purpose in the legal system as a whole can be better appreciated. After all, what can be done with rules is much more important than where they came from.'</li> </ul>

### Comr of Stamp Duties (Qld) v Livingston (1964)

Facts	<ul style="list-style-type: none"> <li>A testator (T) died in NSW, and his estate held property located in Queensland.</li> </ul>
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- He left 1/3 of his estate to Mrs Coulson (C).
- Before T's estate was administered, C died.
- The taxing statute said duty would be charged on “every past or future disposition of property by reason of which any person....shall become beneficially entitled to any property or the income thereof upon the death of any person..”
- Did C's estate include property in Queensland, subject to Qld succession duty?
- NO. When C died, all she owned was a ‘chase in action’ against T’s executors to ensure due administration of the estate. She did not own any interest in specific property located in Queensland.
- “What equity did not do was to recognize or create for residuary legatees a beneficial interest in the assets in the executor’s hands during the course of the administration”
- BUT: she did have a right to have the estate properly administered. This chase in action was itself a property interest, capable of being transferred to C’s heirs.

Issue	What was the nature of Mrs C’s interest in the unadministered estate of her late husband.
Held	<p>The executor of T’ estate owned the property, subject to an obligation of a fiduciary nature of duty administer the estate according to the terms of T’s will</p> <ul style="list-style-type: none"> <li>• The equity did not create for those residual legatees a beneficial interest in the assets in the executor’s hands during the course of administration → gap between probate and distribution</li> <li>• No trusts created over property under administration of the property was complete</li> <li>• It was not possible to identify which property needed to be sold to satisfy the obligations of the estate</li> <li>• One of the requirements in trust in the property, no trust could arise until the property was ascertained</li> <li>• Could not tell what the wife was going to get because part of the job of the executor of the will is to hold the property and administer it</li> </ul> <p>“the legatee of a share of residue has no interest in any of the property of the testator until the residue has been ascertained. His right is to have the estate properly administered and applied for his benefit when the administration is complete”</p>

Dispute over priorities in a land holding (mere equity and equitable proprietary interest) →

### Hotel Terrigal

- Hotel Terrigal defaulted on mortgage to Latec.
- Latec exercised a power of sale and sold to a related party, Southern.
- Southern granted a charge over all its assets to MLC.
- Southern defaulted on loan to MLC, so MLC claimed the land.
- Hotel Terrigal sought to undo the sale to Southern, on the grounds of a fraudulent exercise of Latec’s power of sale.
- Kitto J: HT had a ‘mere equity’ to set the transaction aside, and this ranked below MLC’s equitable interest arising by way of its charge over the property.
- Taylor J: Hotel Terrigal’s equity to redeem the property was an equitable property interest, but it was postponed to the later equitable interest because it required a court’s assistance to enforce it, and a court should decline relief where a good faith purchaser’s interest has intervened.

- Recall that where there are competing equitable interests in property, the first in time prevails, the equities being equal. → (The bona fide purchaser for value defence applies to later **LEGAL** interests.)

### PROMISSORY ESTOPPEL

**Central London Property Trust v High Trees House** (Commercial dealing in WWII)

Facts	<ul style="list-style-type: none"> <li>• CLPT leased a block of flats to HTL for 99 years in 1939 for a ground rent of 2500 pounds per year.</li> <li>• During WWII, CLPT agreed to reduce the rent to 1250 pounds (but this agreement was not supported by consideration).</li> <li>• After the war, CLPT raised the rent to 2500 pounds and asserted a right to arrears of over 7,000 pounds. CLPT's argument was that the agreement to reduce the rent was not binding in contract.</li> <li>• <b>The arrangement was intended to only last while rental occupancy was low, so the rent should be raised again when the market returned to normal. But there was no entitlement to the arrears.</b></li> <li>• HTL was permitted to use estoppel as a 'shield' against CLPT's claim, because HTL had relied to its detriment on CLPT's representation that the rent would be reduced.</li> <li>• The statement of intention (ie: 'I will not require you to pay the full rent') founded a defensive estoppel which precluded assertion or enforcement of its contractual rights</li> </ul>
Issue	Whether the agreement by CLPT to accept a reduced rent was legally binding, and thus not allowing them to request the full rent once the flats were fully occupied again.
Held	<ul style="list-style-type: none"> <li>• The court held that CLPT could not go back on its promise to accept reduced rent for the period when the flats were not fully occupied.</li> <li>• This was held as a clear case of CLPT making a promissory representation that they intended HTL to rely on and thus were estopped from reneging.</li> <li>• However, it was also held that once conditions went back to normal, the original agreement could be enforced and therefore the claim for full rent for the last quarters of 1945 was successful.</li> <li>• Promissory estoppel 'is only suspensive' — i.e., it only temporarily varied the rent payable — and does not permanently extinguish rights.</li> </ul>

Limitations of *High Trees* promissory estoppel

- Operated as a defence only, not a cause of action: a "shield" not a "sword";
- Arose only in the context of an existing legal relationship, and the unconscious assertion of existing legal rights.
  - Use of equity where it determines a party to consciously asserting existing legal rights
  - Precluded party from relying on the promise

*High Trees* promissory estoppel accepted by HCA → **Legione v Hately (1983)**

Accepted in principle that a clear representation made in the context of an existing legal relationship, that one party will not rely on its legal rights, will be binding in circumstances where the other party has relied to its detriment on that representation, and it would be unconscionable for the first party to resile from the representation.

- The representor will be estopped from enforcing their EXISTING legal rights.
- Note: this form of promissory estoppel is *defensive only*.

### Promissory estoppel in commercial dealings

Courts are wary of interfering with commercial negotiations or dealings, particularly where parties are well resourced, experienced and well advised there must be a 'good reason' why it is inferred by the courts (**Summer Hill**): **Austotel** → rejected Estoppel "courts should, be wary, well-advised corporations in commercial transactions by subjecting them to the overly tender consciences of judges. Such consciences will typically be refined and sharpened by circumstances arising in quite different relationships where it is more apt to talk of conscience and provide relief against offence to it."

### **Waltons Stores (Interstate) Ltd v Maher (1988)**

Facts	<ul style="list-style-type: none"><li>• The Mahers owned a building in Nowra. Waltons Stores negotiated to take a lease of their building, requiring substantial alteration to the building.</li><li>• Terms were agreed to the point where Waltons' solicitor said he would get back to the Mahers' solicitor if there were any amendments but never did. The Mahers (as lessor) forwarded their signed lease for stamping by the other side.</li><li>• There was some urgency to the work: Waltons wanted it completed over Christmas</li><li>• Assumed that they could begin work</li><li>• The Mahers began demolition work – to the knowledge of Waltons - but the company had second thoughts and told their solicitor to "go slow" with the contract.</li><li>• When the rebuild was 40% complete, Waltons said it was not going to proceed.</li></ul>
Held	<ul style="list-style-type: none"><li>• No relief at common law by contract - common law estoppel established<ul style="list-style-type: none"><li>◦ Promise by Walton's that they would enter contract</li><li>◦ There was no lease and therefore no contract could apply</li><li>◦ No cause of action except to the contract</li></ul></li><li>• In the High Court, the majority found for the Mahers on the basis of an expanded form of promissory estoppel arising from the promise by Waltons Stores as prospective lessee that exchange would occur (in the future).<ul style="list-style-type: none"><li>◦ Representation of a future conduct that would be relied on to their detriment</li><li>◦ Representation that Walton stores would enter into a lease contract</li><li>◦ Representation as to future conduct → the common law cannot assist</li><li>◦ Non-contractual promises</li><li>◦ They knew about the contract and demolishing the building, they did not stop them, their conduct of checking in on them means that they cannot rely on estoppel but they have acted unconscionably</li></ul></li></ul>
	<h4><u>Significance of the case</u></h4> <p>No pre-existing legal relationship (like <i>High Trees</i>) used as a cause of action, not merely defence,</p> <ul style="list-style-type: none"><li>• Gave rise to new legal rights.</li><li>• The Mahers assumed a contract exchange <i>would take place in the future</i> – so there was no representation of an existing fact.</li><li>• Nevertheless, the common thread in promissory and proprietary estoppel in equity justified a remedy for an unconscionable failure to fulfil a promise, where the defendant's conduct encouraged the plaintiff's detrimental reliance on the promise. Remedy reversal of detriment.</li></ul> <p>Here, the unconscionable conduct was Waltons creating a sense of urgency, and knowingly failing</p>

to disabuse the Mahers of their expectation of an imminent exchange of contracts.

- Mason CJ and Wilson J found that mere failure to fulfil a promise does not of itself amount to unconscionable conduct – something more would be required.
- *“the creation or encouragement by the party estopped in the other party of an assumption that a contract will come into existence or a promise will be performed and that the other party relied on that assumption to his detriment to the knowledge of the first party.”*

**The Mahers relied on a promise of future exchange.**

- 1.P assumed that a particular legal relationship existed, or would exist, in circumstances where D would not be free to withdraw.
- 2.D induced P to make that assumption.
- 3.P acted, or refrained from acting, on the basis of the assumption.
- 4.D knew or intended P to do so.
- 5.P’s action (or inaction) would cause P detriment if the assumption is not fulfilled.
- 6.D failed to avoid that detriment.

Recent cases confirm these ‘probanda’ are not to be applied in a ‘mechanical fashion’: **Doueihi v Construction Technologies Australia Pty Ltd (2016)**

**Australian Crime Commission v Gray** equity enforced non-contractual promise - couple entered a witness protection program - looked after not financially disadvantaged;

**Wright v Hamilton Enterprises** – equity enforced a non-contractual promise by the owner of Hamilton Island that licensees of restaurants and bars on Hamilton Island would have the licence renewed if the licencees complied with terms of licence.

Examples of unsuccessful promissory estoppel cases

- **Commercial & General Corporation Pty Ltd v Manassen Holdings [2021]**
- **Crown Melbourne Limited v. Cosmopolitan Hotel (Vic) Pty Ltd (2016)**

Facts	<ul style="list-style-type: none"> <li>• The owner of a casino entered into two leases of restaurant premises with commercial tenants. Each lease was for a term of five years with no option to renew, and a condition requiring the tenant to complete a major refurbishment.</li> <li>• After the tenants had executed the leases but before they were delivered to the landlord, a representative of the landlord said to a director of the tenants that, if he spent money to achieve refurbishment to a high standard, he would be “looked after at renewal time”.</li> <li>• Landlord subsequently gave notice to the tenants requiring them to vacate the premises on the expiration of the five year term. The tenants commenced proceedings alleging that the landlord’s representations amounted to a collateral contract to offer a renewal of the leases for a further five year term, or gave rise to an estoppel which prevented the landlord from denying the existence of an obligation to offer to renew the leases.</li> </ul>
Held	<p><b>The statement made by the landlord’s representative was not capable of conveying to a reasonable person that the tenants would be offered further five year leases. Further, the tenants had not established that they acted on the basis of an expectation that they would be offered further five year leases.</b> The representation must create the assumption or expectation in question, it must be shown that that assumption was in fact acted upon. . . the basal purpose of the</p>