

# LAWS2385 / JURD7285

## Equity and Trusts

UNSW Faculty of Law

Comprehensive Course Notes

Covering Weeks 1 through 9

## Week 1A: Introduction to Equitable Remedies

### 1.1 The Nature of Equity and Equitable Jurisdiction

Equity developed as a body of law alongside the common law courts, administered by the Court of Chancery. Unlike the common law, which operated through fixed rules, equity responded to the conscience of the defendant and the circumstances of particular cases. The result is a body of doctrine characterised by flexibility, discretion, and responsiveness to the facts before the court.

Equity operates in personam: it acts upon the conscience of the defendant rather than directly upon property. Even where equity recognises proprietary interests, this recognition derives from the imposition of an obligation on the title-holder to deal with property in a particular way for the benefit of the plaintiff.

#### 1.1.1 Personal Rights and Proprietary Rights

A fundamental distinction in equity is between rights that operate in personam and those that operate in rem:

<b>Personal Right (in personam)</b>	A right exigible against determinate persons. Does not bind the whole world. Hohfeldian analysis: claim-right, power, privilege, immunity against a specific party.
<b>Proprietary Right (in rem)</b>	A right in respect of a thing (the res) exigible against indeterminate persons, effectively binding the whole world. Must be definable, identifiable by third parties, capable of assumption by third parties, and have some degree of permanence or stability: <i>National Provincial Bank v Ainsworth</i> [1965] AC 1175.
<b>Personal Remedy</b>	Operates in personam. Includes equitable compensation (loss-based), account of profits (gain-based), and other in personam orders directing payment or performance.
<b>Proprietary Remedy</b>	Operates in rem. Involves recognition of a beneficial or security interest in specific property, including constructive trusts, resulting trusts, equitable liens, and charges.

#### 1.1.2 Equitable Property

The label 'equitable property' describes particular types of equities for relief, recognised by equitable principle, that are definable by reference to specific property. The interest requires the defendant to exercise their power over property in a particular way for the plaintiff. A purchaser of land under a specifically enforceable contract acquires an equitable proprietary interest in the land.

As Palmer J stated in *Mills v Ruthol* at [121]-[123]: 'equity acts in personam and the rights recognised and enforced are not rights in rem but rights in personam ... [the] equitable interest is commensurate with the extent and availability of a right in personam against someone so that they exercise their property rights in a particular way.'

Before a right can be admitted into the category of property, it must be: (1) definable; (2) identifiable by third parties; (3) capable in its nature of assumption by third parties; and (4) have some degree of permanence or stability: *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175, 1247-48 (Lord Wilberforce).

**DKLR Holding Co v Commissioner of Stamp Duties [1980] 1 NSWLR 510; (1982) 149 CLR 431**

**FACTS:** 29 Macquarie transferred land to DKLR by executing a transfer and declaration of trust, whereby DKLR would hold the land on trust for 29 Macquarie.

**ISSUE:** The nature of the interests created.

**NSW CA (Hope JA):** Before the transfer, 29 Macquarie held the unencumbered legal estate with no separate equitable interest. Upon transfer, DKLR obtained the legal estate in fee simple. Simultaneously, 29 Macquarie acquired an equitable estate arising from the trust terms.

**HCA (Aickin J):** A person holding both legal and equitable interest holds a single unqualified legal interest, not two separate interests. If one person has the legal estate and the entire beneficial interest, they hold the entire absolute interest -- not two separate interests. The equitable interest merges into the legal estate.

**PRINCIPLE:** One cannot be trustee of a fee simple for oneself alone. The same person cannot hold a separate legal and equitable interest simultaneously.

### 1.1.3 Equitable Ownership

Equitable ownership is a label for particular types of equitable proprietary rights where the content of those rights supports an analogy with ownership. This arises classically where trust terms create in favour of the beneficiary an absolute entitlement to the benefit of trust property.

## 1.2 Functional Objectives of Equitable Remedies

Equitable remedies serve distinct functional objectives, and this taxonomy assists in selecting and calibrating the appropriate remedy:

<b>Compensation</b>	To compensate for loss caused by equitable wrongdoing. Example: reparative equitable compensation for breach of fiduciary duty.
<b>Disgorgement</b>	To strip the defendant of gains made from equitable wrongdoing. Examples: account of profits (personal); constructive trust (proprietary).
<b>Restitution</b>	To restore to the plaintiff property that ought to belong to them. Example: rescission.
<b>Reformation</b>	To correct legal documents to reflect the objective intention of parties. Example: rectification.
<b>Coercion</b>	To compel performance or restrain breach. Examples: specific performance; injunction.
<b>Vindication</b>	To confirm and validate the plaintiff's rights. Examples: declarations; injunctions.
<b>Substitutive Performance</b>	To provide a monetary substitute for a primary obligation. Example: substitutive equitable compensation.

### 1.3 Equitable Remedies Are Discretionary

There is no right to equitable relief. The plaintiff has an equity for relief, not a right to relief. Both the plaintiff and defendant are suitors before the court. The court's analysis proceeds through several questions:

- Has the plaintiff made out a cause of action, including any equitable defences (such as informed consent)?
- What is the nature and extent of the plaintiff's equity for relief?
- Which remedy is the minimum necessary to meet that equity?
- Are there any bars to relief?
- How does the position of third parties affect the analysis?
- Has the plaintiff's own conduct rendered it inequitable to grant relief?

### 1.4 Analytical Framework for Thinking Remedially

When confronting an equity and trusts problem, a systematic remedial analysis requires consideration of the following questions on the facts:

1. Has the defendant made a gain?
2. Has the plaintiff suffered a loss?
3. Is the defendant solvent?
4. Does the defendant hold legal title to property obtained through equitable wrongdoing?
5. Does the plaintiff wish to compel performance of an obligation?
6. Does the plaintiff wish to restrain certain conduct?
7. Does the plaintiff wish to rescind a contract or transaction? Are there bars to rescission?
8. What is the plaintiff's conduct? Are there facts supporting a bar to relief?

### 1.5 Key Case Studies: Remedial Discretion in Practice

#### Giumelli v Giumelli (1999) 196 CLR 101

**FACTS:** Robert Giumelli worked on his family's orchard in Dwellingup WA without wages, in reliance on a series of representations by his parents that a portion of the land would be his. He spent approximately \$47,000 constructing a home on the site. Following a falling out over his second marriage, the promised lot was never transferred. His brother Steven subsequently moved in and made further improvements.

**ISSUE:** What remedy was appropriate for proprietary estoppel?

**HELD:** Gleeson CJ, McHugh, Gummow and Callinan JJ: The appropriate remedy was an award of equitable compensation secured by a charge over the Dwellingup property, not a constructive trust. Before imposing a constructive trust, the court must first determine whether there is an appropriate remedy falling short of a trust. Sufficient weight had to be given to the position of third parties, especially Steven and his family. The remedy 'points inexorably to relief expressed not in terms of acquisition of title to land but in a money sum.'

**PRINCIPLE:** The court will mould relief to meet the minimum necessary to address the plaintiff's equity and no more. Third party interests can preclude proprietary relief in favour of a personal money remedy.

#### McKenzie v McDonald [1927] VLR 134

**FACTS:** Mrs McKenzie's real estate agent McDonald encouraged her to exchange her farm (true value 2,445 pounds) for his shop (true value 1,550 pounds), overvaluing his shop at 2,000 and undervaluing her farm at 2,300. He then sold her farm to a bona fide purchaser for its true value.

**ISSUE:** What remedy was available for breach of fiduciary duty? Could rescission be achieved?

**HELD:** Dixon AJ: Mrs McKenzie was entitled to set aside the agreement. However, the sale to the bona fide purchaser made complete restitution impracticable. The court instead awarded equitable compensation of 595 pounds (representing the difference in value), with an option for McDonald to retake the shop at an adjusted price.

**SIGNIFICANCE:** Illustrates that where bars to rescission exist (disposition to a bona fide purchaser), equitable compensation is an alternative that achieves substantial restitution through a money remedy.

### **Nelson v Nelson (1995) 184 CLR 538**

**FACTS:** Mrs Nelson purchased a home (Bent St) in the names of her children to maintain eligibility for a subsidised Defence Services Homes Act Loan, falsely declaring she had no interest in real property. She later sought to claim the proceeds of sale of Bent St.

**HELD:** Deane and Gummow JJ: Mrs Nelson was entitled to the proceeds on resulting trust. However, equity required her to repay the DSHA loan benefit as the price of obtaining relief. Relief was granted on terms requiring her to satisfy the demands of good conscience by discharging the amount received under the scheme.

**PRINCIPLE:** Relief in equity may be granted conditionally. Where a plaintiff obtains equitable relief through conduct that was itself improper, equity may impose terms designed to address the consequences of that conduct. The unclean hands maxim does not operate as an automatic bar; the court has discretion to grant relief on conditions.

## Week 1B: Equitable Property and the Trust Relationship

### 1B.1 The Concept of Equitable Property

Equitable property describes those equitable interests that have sufficient proprietary character to bind third parties and withstand the insolvency of the obligor. The following diagram represents the relationship between legal and equitable title:

<b>Legal Title</b>	The formal title holder recognised at common law or under statute (e.g., registered proprietor of land; legal owner of goods). Has all powers of an owner at law.
<b>Equitable Title / Beneficial Interest</b>	Held by beneficiary under a trust or by a party whose equity for specific relief has crystallised into a proprietary interest (e.g., purchaser under specifically enforceable contract).

### 1B.2 Debts and Bank Deposits

A bank deposit does not result in the customer retaining property in the deposited funds. As Lord Millett explained in *Foskett v McKeown* [2001] 1 AC 102, 128: 'Money paid into a bank account belongs legally and beneficially to the bank and not to the account holder.' The customer holds a contractual chose in action -- a personal right to demand repayment of the balance. This has significant consequences for tracing and priority disputes.

### 1B.2 Conditions for Equitable Property

Equitable property requires:

- A plaintiff who has an equity for relief against the holder of legal title requiring the exercise of that title for the plaintiff's benefit.
- The relevant interest must be definable by reference to specific property.
- The interest presupposes the availability of specific relief (e.g., specific performance or injunction) such that equity would compel the legal title holder to exercise their powers for the plaintiff.
- The right must be definable, identifiable, capable of assumption by third parties, and have some permanence: *Ainsworth*.

### 1B.3 *Beconwood Securities v ANZ Banking Group* [2008] FCA 594

Finkelstein J in *Beconwood* considered the nature of equitable property through a securities lending arrangement. The court emphasised that equitable property is characterised by its enforceability against third parties and its basis in compelling the holder of legal title to deal with property in a particular way. The case illustrates that the distinction between personal and proprietary equities is both analytically and practically important, particularly in insolvency contexts where proprietary claims take priority over unsecured personal claims.