

INDEFEASIBILITY QUESTIONS REGARDING P. EQUITABLE V S. LEGAL INTERESTS

→ s58 TLA: Instruments not effectual until registered.

*STATE THE ISSUE AT HAND

"Issue 1: If [A] has rights to [Subiaco property]."

"Issue 2: If [B] knew of [A's] interest, would this change [A's] priority?"

**INTERESTS

"[A (prior interest)] claims to have rights over [Subiaco property] and is seeking to challenge [B's (subsequent interest)] rights to [Subiaco property]."

"This will give rise to a property dispute between [B's] registered fee simple interest and any interest that [A] claims to have in [Subiaco property]. The possibilities of [A's] claim to [Subiaco property] lies within his dealings with the prior owner before [B], [C] as they did not contract with [B] directly."

All of the following are to be discussed in relation to [A's] dealings with [C]:

(A) SPECIFICALLY ENFORCEABLE CONTRACT (SEC).

"[A] would argue that they had a SEC because [C promised A a life interest in Subiaco property after A had been caring for the property]. [A] would argue that there was a SEC because there was a: (1) final agreement on the essential terms [give example], (2) that [A] was ready, willing and able [give example], (3) that [A] came with clean hands (nothing on the facts to the contrary), and (4) compliance with s4 Statute of Frauds or sufficient acts of part performance that were unequivocally referable to the contract."

Statute of frauds s4 requires there to be a contract in writing and it must be signed by the party to be charged.

Part performance requires unequivocally referable part performance to the contract. This can include the caring for the property etc. Acts like this were held sufficient in the case of *Bogdanovic*.

(B) ESTOPPEL.

"In order for [A] to be able to claim an interest in [Subiaco property] via estoppel, there needs to be satisfaction of the four elements: (1) a representation regarding an interest in the land, (2) action taken by the party seeking to claim estoppel in relation to this representation, (3) this action taken is in reasonable reliance on the representation, (4) the party claiming estoppel would suffer a detriment if the representation was to be departed from (*Barry; Rasmussen*)."

(C) COMMON INTENTION CONSTRUCTIVE TRUST.

"It was held in *Rasmussen*, that the elements of estoppel and a common intention constructive trust (CICT) are similar, the three CICT elements to be satisfied are: (1) a common intention of the parties as to the beneficial interest, (2) an action by the party claiming a CICT to their detriment in reliance on the common intention, and (3) that it would be unconscionable to deny the claiming party an interest in the property."

(D) BAUMGARTNER-STYLE CONSTRUCTIVE TRUST.

"It may be unconscionable for [C] to deny [A] an interest in [Subiaco property] so that there will be an imposition of a constructive trust (CT). [Give example on how person has acted to their detriment]. However, this may be [distinguished/analogous] to the case of *Baumgartner* as the court distinguished the fact that Mr and Mrs Baumgartner had pooled their resources in a joint venture, which is [dissimilar/similar] to the facts on hand [give example]."

CONCLUSION

"∴ [A] has a [registered/unregistered] interest in [Subiaco property] which is likely to arise out of [SEC/estoppel/CICT/Baumgartner-style CT] and less likely to arise out of [SEC/estoppel/CICT/Baumgartner-style CT] for the reasons above."