Equitable doctrines

Introduction

The maxims of equity are the general principles upon which the Chancery Court developed this system of law and reflect the desire to be fair and even-handed between litigants. The maxims underlie the equitable doctrines and remedies. Their origins are to be found in the history of property law but they are sometimes applied to more modern situations and not always very happily. The application of conversion to trusts for sale of land led to some surprising results and the **Trusts of Land and Appointment of Trustees Act (TLATA) 1996** converted all trusts for sale of land existing on 1 January 1997 (when the Act came into force) into trusts of land to which the doctrine does not apply. (There is one very limited exception to this which is referred to in question 2(a)(iii) in this chapter.) Although it is still possible to create a trust for sale of land, there is little point in it, as the power to postpone sale overrides any provision to the contrary (**s. 4(1)**), and **s. 3** abolishes the application of the doctrine of conversion to a trust for sale of land.

Questions on the doctrines of equity may well be general essay questions which will draw on your overall knowledge of the subject. It would be unwise to attempt these types of questions perhaps, unless you feel you have read generally and widely enough on the background of equity. Problem questions involving the more modern applications of the doctrines are a possibility if your lectures have covered these areas.

In deciding how much attention to give to these more general areas of equity, you should look at past examination papers and consider the emphasis given to equity itself by your lecturer. Although all courses on trusts will include some background of equity, some lecturers will not regard it as worthy of examination questions, whilst other lecturers may set questions on it. You will only know which type of course your lecturer favours by looking at the past examination questions and listening to your lecturer!

Question 1

Equity looks on that as done which ought to be done.

Discuss critically the applications of this maxim in the equitable doctrine of conversion.

Commentary

The equitable doctrine of conversion is an anachronism which can produce unfortunate results in its present day applications. It probably has more significance in land law than in trusts, although it is still capable of affecting interests on succession. The material for this type of question is more likely to be found in a book on equity rather than a book on trusts, and some reference may well be made to it in books on land law, e.g., Maudsley and Burn's, *Land Law: Cases and Materials*, 9th edn, Oxford University Press, 2009.

It is essentially only something which would be examined on a course which covers equity as well as trusts.

Answer plan

- Wherever there is an obligation to convert property to another form, e.g., to sell land and thereby convert it to money, equity regards the obligation as carried out
- Where there is a contract for the sale of land, equity therefore regards the purchaser as having already acquired the beneficial interest in the land; the vendor has the bare legal title and an interest in the proceeds of sale (personalty)
- This was extended in the rule in ***Lawes* v *Bennett*** to options to purchase and applied in ***Re Sweeting*** to a conditional contract
- Trustees of residuary personalty left in succession must also convert wasting or future assets into authorised investments (rule in ***Howe* v *Dartmouth***)

Suggested answer

Although equity did not have the same rigid rules of precedent as the common law, the Court of Chancery did have certain principles which it applied in administering equity. These became

known as the 'maxims' of equity, and 'equity looks on that as done which ought to be done' is one of these. Its application is evident in several areas of equity and it underlies the doctrine of conversion.

The doctrine applies wherever there is an obligation to convert property into another form. Equity will then notionally convert the property before the actual conversion takes place. This has the curious result that realty may sometimes be regarded as personalty, and vice versa, in the eyes of equity. This was significant on the passing of property on an intestacy before 1926, when realty devolved upon the heir and personalty to the next of kin, and may still be relevant after 1925 in the case of a will leaving realty to one person and personalty to another.

Jekyll MR gave the reason for the doctrine in ***Lechmere* v *Earl of Carlisle* (1733) 3 P Wms 211** as the fact that a *cestui que trust* should not be prejudiced by a trustee's possible delay in dealing with trust property in accordance with his obligations. It has received some unfortunate extensions however, in certain areas, which have produced criticisms from the judges, and it was abolished as regards trusts for sale of land by **s. 3** of the **TLATA 1996**.

The doctrine of conversion still applies, however, to a contract for the sale of land. As soon as there is an enforceable contract, equity will impose a constructive trust on the vendor. From the contract, the vendor's interest is treated as being in the proceeds of sale which, if the vendor dies before completion, are payable to the persons entitled to his personalty. The purchaser, who is regarded as having a beneficial interest in the land, should therefore insure it. The position as to insurance may of course be varied by the terms of the contract for sale, and the Standard Conditions applicable to domestic conveyances provide that insurance of the property shall remain the responsibility of the vendor until completion.

In ***Re Sweeting (deceased)* [1988] 1 All ER 1016**, the doctrine was applied to a conditional contract where the condition was not fulfilled until after the testator's death. An unfortunate extension of its application is the rule in ***Lawes* v *Bennett* (1785) 1 Cox 167**, which decided that

the doctrine applies retrospectively when an option to purchase is exercised after the grantor's death. Moreover, if the option is granted after a specific devise of the property by will, on exercise of the option the devise is adeemed and the property, which becomes personalty retrospectively, passes to the residuary legatee: ***Weeding* v *Weeding* (1861) 1 J & H 424**.

A duty to convert property also arises under the rule in ***Howe* v *Earl of Dartmouth* (1802) 7 Ves 137**. The rule aims at achieving fairness as to investments between a life tenant and a remainderman. It requires trustees of a residuary personalty fund which is left in succession to convert any wasting assets, or future assets not yielding an income, into authorised investments, unless the will reveals a contrary intention. The income from any such part of the fund before conversion is apportioned between the life tenant and the remainderman.

A strict application of the doctrine of conversion can produce some unfortunate results, and it is hardly surprising that the courts have sought to avoid it in some circumstances.

Question 2

James, who died earlier this year, appointed Tina and Tom as executors and trustees of his will and devised all his realty to his son Sam and all his personalty to his daughter Doris.

Advise the executors as to who is entitled to the following properties owned by James:

(a)(i) 'The Beeches', held by James and his wife Wynne upon trust for sale for themselves as tenants in common.

(ii) Would your answer differ if James and Wynne had held 'The Beeches' as joint tenants?

(iii) Would your answer differ if James had died before 1 January 1997?

(b) 'The Larches', which James contracted to sell to Peter shortly before he died, subject to Peter obtaining planning consent for an extension. Peter has now obtained planning consent.

(c)'The Firs', upon which he had granted an option to purchase to Frank. Since James died,

Frank has given notice to Tina and Tom of his intention to exercise the option. Would your answer differ if the will had included a specific devise of 'The Firs' to Sam?

Commentary

This question requires a knowledge of some of the circumstances in which the doctrine of conversion applies.

Like all questions in parts, it is probably unwise to attempt it unless you know the answer to at least two parts of it! If you have revised this topic, however, it is a fairly straightforward question, with almost arithmetical answers. You should achieve at least a pass if you can apply the principles, although a more detailed knowledge of the cases would be required to pass well.

Part (a)(iii) will have an increasingly limited relevance as its only importance now is in tracing title to unregistered land where there is such a will disposing of property subject to a trust for sale.

Answer plan

(a) (i) A trust for sale takes effect as a trust of land under **TLATA 1996** and the doctrine of conversion does not apply to it (**TLATA**, **s. 3**). 'The Beeches' is regarded by equity as land and passes to Sam

(ii) Wherever there is a joint tenancy, property passes by the right of survivorship to the surviving joint tenant or joint tenants and not under the will. 'The Beeches' would therefore go to Wynne

(iii) This is the only exception to **TLATA**, **s. 3**. The doctrine of conversion still applies to land held on a trust for sale in the will of a testator who dies before 1 January 1997 leaving 'realty' and 'personalty' specifically in the will. 'The Beeches' would therefore pass as personalty to Doris

(b) The doctrine of conversion applies to a binding contract for sale, and 'The Firs' is therefore regarded as personalty which passes to Doris

• This includes a conditional contract once the condition is fulfilled (***Re Sweeting***), and so the proceeds of sale of 'The Larches' would go to Doris

(c) As soon as an option to purchase is exercised, there is a binding contract to sell, and 'The Firs' is

therefore regarded as personalty which passes to Doris

• If 'The Firs' had been specifically devised by name before the option was granted, the option would override the devise and the position would be as above

• If the specific devise was made after the option was granted, then 'The Firs' would go to Sam together with the benefit of the option

Suggested answer

(a)(i) Wherever there is co-ownership of land, this must take effect behind a trust. Before 1 January 1997, **s. 34** of the **Law of Property Act 1925** imposed a statutory trust for sale. Because a trust imposes a binding obligation on trustees and 'equity looks on that as done which ought to be done', the equitable doctrine of conversion operated to convert property held on a trust for sale to personalty. In the eyes of equity, there was a notional sale and the property was regarded as money.

On or after 1 January 1997 when the **TLATA 1996** came into force, co-ownership takes effect behind a trust of land under the Act, and any trusts for sale existing at that date became trusts of land. It is still possible expressly to create a trust for sale (as here), but the requirement to sell can be overridden (**TLATA 1996**, **s. 4(1)**) and it will take effect as a trust of land under the Act. **Section 3** of the Act abolishes the doctrine of conversion as regards any trust for sale of land (with one exception referred to in (iii) below).

James and Wynne will therefore hold the legal estate to 'The Beeches' as joint tenants at law on a trust of land under **TLATA 1996**, for themselves as tenants in common in equity. The right of survivorship does not apply to a tenancy in common and James's share of 'The Beeches' will therefore pass under his will to his son Sam as realty.

(ii) If James and Wynne held 'The Beeches' as joint tenants, the position as regards the legal estate is the same, and co-ownership takes effect behind a trust of land under **TLATA 1996**. The right of survivorship applies to a joint tenancy at law or in equity, however, so that James's

equitable interest in 'The Beeches' will pass to Wynne and not under James's will at all.

(iii) Although **s. 3** of the **TLATA 1996** abolished the application of the doctrine of conversion to a trust for sale of land, a saving was made by the section for a will such as James's where the testator died before the Act came into force. If James had died before 1 January 1997, therefore, at his death the doctrine of conversion would have applied to the trust for sale on which 'The Beeches' was held, and his share would have passed under his will as personalty to Doris.

The position would have been the same even if there had been no express trust for sale but one had been imposed by reason of co-ownership by **s. 34** of the **Law of Property Act 1925**.

This provision can now be relevant only in tracing title, and in practice, wills leaving personalty to one person and realty to another are rare (except perhaps in examination questions!). A testator is much more likely to specify the property he is leaving by name ('The Beeches') in his will.

(b) As soon as a valid and enforceable contract to sell property exists, equity regards the beneficial interest as having passed to the purchaser, and the vendor holds the legal title as a constructive trustee for the purchaser. Because the contract is enforceable by equity, equity regards the transaction as a notional sale. The interest of the vendor is therefore in the proceeds of sale, which are personalty.

In ***Re Sweeting (deceased)*** **[1988] 1 All ER 1016**, conversion applied to property subject to a conditional contract for sale when the condition was fulfilled after the testator's death.

The proceeds of sale of 'The Larches' will therefore go to Doris as personalty.

(c) The application of the doctrine of conversion to contracts for the sale of land was extended by the rule in ***Lawes* v *Bennett*** **(1785) 1 Cox 167** to options to purchase. As soon as an option to purchase land is exercised, the property becomes personalty in the hands of the vendor because there is a binding obligation to sell it. This is still the case, even if the option is made exercisable after the death of the grantor (***Re Isaacs*** **[1894] 3 Ch 506**). Therefore, as soon as Frank gives notice to Tina and Tom of his intention to exercise the option, it is regarded as personalty in their

hands and will again go to Doris.

However, if the will makes it clear that the devisee of property is to take all the testator's interest in it, then the devise may operate to override the rule in ***Lawes* v *Bennett***. Moreover, it is relevant whether the option was granted before or after the devise in the will. If it was granted before the devise, then there may be a presumption that the testator intended to give the whole of his interest in the property to the devisee, including any rights under the option. In ***Calow* v *Calow* [1928] Ch 710**, a devise of land or 'the proceeds of sale of the land' was held to survive a subsequent contract to sell the land completed after the testator's death. Conversely, if the option was granted after the devise, then the option is regarded as overriding the devise: ***Re Carrington* [1932] 1 Ch 1**.

If James's will specifically devising 'The Firs' to Sam was made before the option to purchase was granted, then the effect of Frank's notice to Tina and Tom to exercise the option is to operate the doctrine of conversion retrospectively. 'The Firs' becomes personalty in their hands and will go to Doris.

If James's will was made after the option was granted, however, then it is likely that the option will be regarded as a right attaching to the property, and 'The Firs' will pass, together with the right, to Sam as realty.

Question 3

(a) Two sisters, Amy and Bertha, were joint tenants of a house. Amy, who died recently, by her will purported to leave the house to Bertha and their brother Cyril in equal shares. There was also a bequest in the will of valuable jewellery worth at least half of the value of the house to Bertha.

Advise Bertha and Cyril.

(b) John, who died recently, made a will in which he gave a legacy of £5,000 to Bill. Bill had lent John £5,000 secured by a charge on John's house. There is a sum of £3,000 outstanding on this debt.

Advise Bill as to whether the debt will be satisfied by the legacy.

Commentary

The first part of this question is on the application of the doctrine of election, and the second part on a possible application of the doctrine of satisfaction.

Both of these doctrines have their origins in equity's desire to be fair to the children of a family in the distribution of family wealth. The doctrines were extended, however, beyond the family circumstances and the doctrine of satisfaction particularly, in its application to creditors to whom a legacy was left. There are few recent cases on the doctrines although they are still occasionally applicable today.

This is not a subject to cover unless your lecturer directs you to do so or deals with it in your lectures. The doctrines, which were included in the 15th edition of Hanbury and Martin's *Modern Equity* (Sweet & Maxwell, 1997) were left out of the 16th edition (2001) and all later editions, no doubt to allow room for more modern developments and applications of the subject.

Answer plan

(a) • Where a person receives a benefit but also suffers a loss from a transaction or a will, he may elect to reject it or to accept it; if he accepts the benefit of the transaction, he must also suffer the loss

• The doctrine would therefore apply to Bertha with regard to Amy's half share of the house and the jewellery

(b) • The doctrine of satisfaction, which had its origins in allowing for portions advanced to beneficiaries under a family settlement, was extended to debts owed by a testator

• The satisfaction of a debt by a legacy left to a creditor became subject to certain technical rules (listed in the answer) which may mean that it will not apply here

Suggested answer

(a) The doctrine of election means that a person who receives a benefit from a transaction, from

which he also suffers a loss, must elect to take with the transaction or against it; that is, he may elect to take the benefit and suffer the loss, or not to accept the benefit at all. It usually applies to a will and arises where property is left to A and some of A's property is left by the same will to B. A cannot accept the gift under the will unless he compensates B from his own property. It is irrelevant that the testator has made a mistake as to the ownership of A's property which he has purported to leave to B.

Because Amy and Bertha were joint tenants of the house and the right of survivorship applies to a joint tenancy, the house automatically passes to Bertha on Amy's death. Amy is therefore leaving to Cyril property which is not hers to dispose of. In ***Re Gordon's Will Trusts*** **[1978] Ch 145**, where a mother and son owned a house as joint tenants and the mother devised it to her trustee upon trust for sale and left furniture and £1,000 to her son, Buckley LJ accepted that the doctrine of election could apply to those gifts to the son.

In that case, other property given in trust for the son was not freely alienable by him, which in fact prevented the application of the doctrine to it. If the property of the elector is not freely alienable, no case for election arises (***Re Lord Chesham*** **(1886) 31 ChD 466**). The jewellery in this question would appear to have been given outright to Bertha, however, so it would seem that the doctrine would apply.

Bertha will therefore have to elect to take with the will, in which case she may keep the jewellery but must convey half of the house to Cyril, or against it, in which case she may keep the whole of the house but must compensate Cyril by letting him have the jewellery. She will be obliged to let him have the whole of the jewellery, however, and not just jewellery to the value of half of the house.

Hanbury and Martin's *Modern Equity*, 15th edn, Sweet & Maxwell, 1997, criticised the doctrine of election as 'too uncertain an instrument of equity', pointing out that the ultimate donee of the elector's property will always benefit, whereas the person put to their election may not benefit at

all. This would seem to be the position here.

(b) The doctrine of satisfaction evolved in order to ensure, as far as possible, an equal distribution of family wealth among the children of a family. It was applied in certain circumstances to adeem a legacy left to a child who had previously received a portion (a sum of money to set him up in life).

It also applies where a legacy is left to a creditor, the underlying maxim for this being that 'equity imputes an intent to fulfil an obligation'. It must be possible to presume from the circumstances that the testator did intend to pay the debt with the legacy and, like all presumptions, it is rebuttable. Certain technical rules have developed to rebut the presumption.

First, the legacy must be as beneficial to the creditor as the debt (see ***Re Van den Bergh's Will Trusts*** **[1948] 1 All ER 935**). As Bill's loan was secured by a charge on John's house, this would not be the case.

Secondly, the doctrine applies only if the will was made after the debt was incurred. We are not told the dates of the will or the debt.

Thirdly, it will not apply if the will includes a clause (which is frequently included in wills) directing the testator's executors to pay the testator's debts and funeral and testamentary expenses. In these circumstances, both the debt and the legacy will be payable. This principle was established in ***Chancey's Case*** **(1717) 1 P Wms 408**. It is not even necessary for the clause to include reference to the payment of legacies (***Re Manners*** **[1949] 2 All ER 201**).

For all these reasons, it is possible that the doctrine of satisfaction will not apply to the legacy in John's will, and Bill will be able to recover his debt from the estate and also take his legacy of £5,000.