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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

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Lecture-9





LECTURE-9

The constructive trust of a new model developed largely because of the creative activity of Lord Denning MR. In **Hussey v Palmer** [1972] 1 WLR 1286, CA, Lord Denning described the constructive trust as one 'imposed by law wherever justice and good conscience require it'. Cases such as **Eves v Eves** [1975] 1 WLR 1338, CA, where the woman was given an equitable interest in the property representing her contribution in terms of heavy work, and **Cooke v Head** [1972] 1 WLR 518, CA, a similar case, took this development further. Several cases, including **Lloyds Bank v Rosset** [1991] 1 AC 107, sought to re-establish less flexible principles in this field relating to the existence of a common intention that an

equitable interest should arise, and the existence of a direct financial contribution. Nevertheless, the House of Lords in **Stack v Dowden** [2007] UKHL 17, followed by the Supreme Court in **Jones v Kernott** [2011] UKSC 53, have re-introduced some of the earlier flexibility into the constructive trust showing that equity is alive and well.

The new model constructive trust has been most alive in the field of licences. At common law, a contractual licence was controlled by the doctrine of privity of contract, and failed to provide protection against a third party. Equitable remedies have been made available to prevent a licensor breaking a contractual licence and to enable a licence to bind third parties. It has been accepted that certain licences may create an equitable proprietary interest by way of a constructive trust or proprietary estoppel.

In **Binions v Evans** [1972] Ch 359, CA, it was held by Lord Denning MR that purchasers were bound by a contractual licence between the former owners and Mrs Evans, an occupant. A constructive trust was imposed in her favour as

the purchasers had bought expressly subject to Mrs Evans' interest and had, for that reason, paid a reduced price. Also in **Re Sharpe** [1980] 1 WLR 219, a constructive trust was imposed on a trustee in bankruptcy in respect of an interest acquired by an aunt who lent money to her nephew for a house purchase on the understanding that she could live there for the rest of her life.

The fluidity of these developing areas is shown in case law which appears to hold back from a development which may have pushed the frontiers too far. Obiter dicta by the Court of Appeal in **Ashburn Anstalt v W. J. Arnold & Co.** [1989] Ch 1, approved in *Habermann v Koehler* (1996) 73 P & CR 515, suggest that a licence will only give rise to a constructive trust where the conscience of a third party is affected.

It will be imposed where their conduct so warrants. Judicial creativity in equitable fields is thus made subject to refinements by judges in later cases. Proprietary estoppel is another example of an equitable doctrine which has seen

significant developments in the interests of justice since its establishment in the leading case of **Dillwyn v Llewelyn** (1862) 4 De GF & J 517. The doctrine is based on encouragement and acquiescence whereby equity was prepared to intervene and adjust the rights of the parties. Its application has been further enhanced by the Court of Appeal in **Gillett v Holt** [2001] Ch 210, where a broader approach to the doctrine was taken that depended, ultimately, on the unconscionability of the action.

Two House of Lords' decisions in *Yeoman's Row Management v Cobbe* [2008] UKHL 55 and **Thorne v Major** [2009] UKHL 18 also injected new approaches into the doctrine with later decisions in *Crossco No 4 Unlimited v Jolan Ltd* [2011] EWCA Civ 1619 and *Herbert v Doyle* [2010] EWCA Civ 1095, evaluating the use of the equitable doctrine in commercial contexts. Again, it is a development which stands outside the system of property rights and their registration established by Parliament.

Cases such as **Jennings v Rice** [2002] EWCA Civ 159, [2003] 1 P & CR 8, **Matharu v Matharu** (1994) 68 P & CR 93, **Costello v Costello** (1995) 70 P & CR 297 and **Durant v Heritage** [1994] EGCS 134 show that the doctrine of proprietary estoppel and the protection of licences by estoppel remain an effective method used by the judges for the protection of licences and equitable rights. The degree to which the right receives protection is variable depending on the circumstances of the particular case. For instance, in **Matharu v Matharu**, the licence did not confer a beneficial interest but gave the respondent a right to live in the house for the rest of her life.

In **Durant v Heritage** the court ordered the house to be transferred to the applicant under the doctrine of proprietary estoppel. In **Jennings v Rice**, by contrast, the equity was satisfied by monetary compensation.

Another development in equity resulted from the decisions of the House of Lords in **Barclays Bank plc v O'Brien** [1994] 1 AC 180 and **CIBC Mortgages plc v Pitt** [1994]

1 AC 200. These two cases heralded the re-emergence in a broad sense of the equitable doctrine of notice. They provide that, where there is undue influence over a co-mortgagor or surety, this may give rise to a right to avoid the transaction. This right to avoid the transaction amounts to an equity of which the mortgagee may be deemed to have constructive notice. This resurrection of the equitable doctrine of notice in a very modern context demonstrates clearly the flexibility of equity. A number of cases followed these two decisions.

In **Royal Bank of Scotland v Etridge (No. 2)** [2001] 4 All ER 449 (a case in which eight conjoined appeals were heard), the House of Lords laid down general guidelines for the application of the doctrine of notice in this context.

So, although there may be setbacks and refinements in the development of new doctrines when later judges seek to rationalise and consolidate new principles, nevertheless it is clear that equity maintains its traditions.

MCQs

1. Lord Denning described the constructive trust as one ‘imposed by law wherever justice and good conscience require it’.
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

2. The doctrine of proprietary estoppel and the protection of licences by estoppel remain an effective method used by the judges for the protection of licences and equitable rights.
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

3. In *Matharu v Matharu*, the licence did not confer a beneficial interest but gave the respondent a right to live in the house for the rest of her life.
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

4. Proprietary estoppel is another example of an equitable

doctrine.

- i.** True
- ii.** False
- iii.** Cannot say
- iv.** None of these

5. Jones v Kernott [2011] UKSC 53, have re-introduced some of the earlier flexibility into the constructive trust showing that equity is alive and well.

- i.** True
- ii.** False
- iii.** Cannot say
- iv.** None of these
