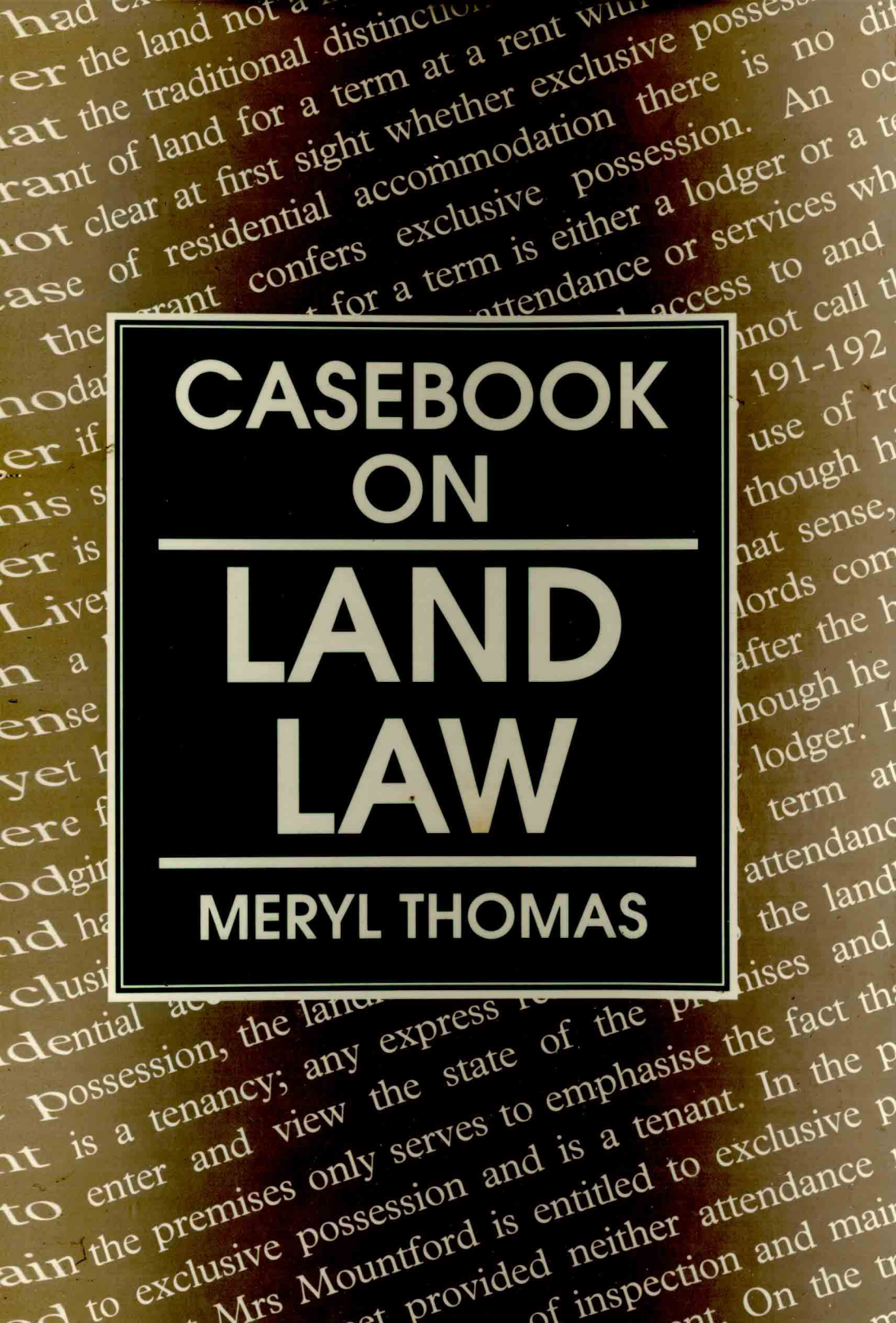
CASEBOOK
ON
LAND
LAW
MERYL THOMAS

CASEBOOK ON LAND LAW

PREFACE

This book has been written for students of land law at undergraduate level or those studying land law for professional examinations. The materials contained in it cover the traditional university land law course and the object of the book is to provide the student with a comprehensive selection of cases and extracts of judgments referred to in such courses.

Land law is a subject where a thorough knowledge and insight into the case law is essential for an understanding of the areas but, in my experience, students are reluctant to spend hours in a library sifting through the judgments of cases in order to understand the principles of land law. The aim of this book is to shortcut the 'sifting' process, by selecting the most relevant extracts of the cases and, where appropriate, adding explanatory or further notes for the student.

All cases are supplemented by linking text, notes and questions aimed to stimulate the student's thoughts and ideas on land law, and references for further reading. Extracts from statutes are included where appropriate. The cases that have been selected are those I regard as the standard cases in land law, but particular emphasis has been placed on the more recent decisions in the courts.

The book is designed to be used in conjunction with lecture and tutorial notes and a standard textbook, although it is possible to use it without the latter.

It is not possible to mention everyone who has assisted in the preparation of this work, but the following deserve particular mention. First, my research assistant, Brian Dowrick, for the substantial assistance which he gave me in writing this book; my husband Bruce who greatly helped at the proof reading stage and finally the ever-patient Kathryn Bates for typing the manuscript and performing other secretarial duties for me.

The law is as stated on 2 October 1992.

Meryl Thomas

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1 INTRODUCTION

SECTION 1: THE CLASSIFICATION OF PROPERTY

English law makes a distinction between real property and personal property. The former category covers interests in land, whereas the latter generally covers interests in property other than land. The term 'real property' derives from the fact that land was the only type of property that could be the subject matter of a real action, i.e. an action to recover the actual thing (or *res*), in the common-law courts. The term 'personal property' derives from the fact that this type of property could only be the subject of a personal action, i.e. an action for compensation for loss. This division into real property (realty) and personal property (personalty or chattels) roughly corresponds to the division into immovables and movables in civil law jurisdictions.

Personal property can be subdivided into two categories, chattels real and chattels personal. Chattels real include leases. Historically leases were regarded as personal property, not rights in the land, since they were originally personal contracts between the parties under which one party allowed the other to use his land in return for the payment of rent. Chattels personal in turn can be subdivided into choses in possession and choses in action. The former category comprises choses that can be enjoyed by taking possession of them, for example a car or a book, whereas the latter category of choses can be enjoyed only by bringing an action for them, for example, the right to a debt or the proceeds of a cheque.

Real property can be divided into corporeal hereditaments and incorporeal hereditaments. 'Corporeal [hereditaments] consist of such as affect the senses such as may be seen and handled by the body; incorporeal are not the object of sensation, can neither be seen nor handled, are creatures of the mind and exist only in contemplation. Corporeal hereditaments consist of substantial and permanent objects.' (Blackstone, *Commentaries,* vol. ii, p. 17) Corporeal hereditaments are inheritable rights which are capable of possession, i.e. the land and buildings on the land, whereas incorporeal hereditaments are

inheritable rights in land which are not capable of being possessed, for example, easements, profits and rentcharges.

SECTION 2: THE MEANING OF LAND

The Concise Oxford Dictionary defines land as the 'solid part of [the] earth's surface'. Section 205(1)(ix) of the Law of Property Act 1925 provides:

> (ix) 'Land' includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and 'mines and minerals' include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof; and 'manor' includes a lordship, and reputed manor or lordship; and 'hereditament' means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir; . . .

SECTION 3: DEVELOPMENT OF EQUITY

(For a detailed discussion, see *Snell's Principles of Equity*, 29th edn, chapter 1 or *Keeton and Sheridan's Equity*, 3rd edn, chapters 1 and 2.)

Equity developed because of the deficiencies of the common law. Such deficiencies included delay, complicated procedures in the writ system and inadequate remedies. The classic statement defining equity can be found in *Lord Dudley and Ward* v *Lady Dudley* (1705) Prec Ch 241, at p. 244 per Nathan Wright LK.

> Equity is not part of the law, but a moral virtue, which qualifies, moderates and reforms the rigour, hardness and edge of the law, and is a universal truth; it does also assist the law where it is defective and weak in constitution (which is the life of the law) and defends the law from crafty evasions, delusions and new subtleties, invented and contrived to evade and delude the common law, whereby such as have undoubted right are made remediless; and this is the office of equity, to support and protect the common law from shifts and crafty contrivances against the justice of the law. Equity therefore does not destroy the law, nor create it, but assists it.

The rules of equity were developed and originally enforced in the Court of Chancery. Until the Judicature Acts 1873–75 there were two separate court systems operating in England and Wales, the Court of Chancery and the common-law courts. Each had its own set of rules and procedures. The two systems then became 'fused', and they are now administered by the same court and by the same process.

SECTION 4: THE CONTRIBUTIONS OF EQUITY TO LAND LAW

(a) One of the most important contributions of equity to land law is the development of the trust. In Underhill and Hayton, *Law of Trusts and*

Trustees, 14th edn, a trust is defined as 'an equitable obligation binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or *cestuis que trust*) of whom he may himself be one, and any one of whom may enforce the obligation'.

Historically the common law courts would not recognise the beneficiaries' rights, only those of the trustee in whom the legal estate was vested. Equity, however, looked at the object and purpose of the arrangement, which was to give the trustee merely the management of the property for the benefit of the beneficiaries. Equity therefore gave effect to the beneficiaries' rights which were equitable in nature. Thus a unique form of duality of ownership evolved.

(b) Equity also developed the equity of redemption. (See chapter 12.)

(c) The common-law rules governing restrictive covenants were narrow and equity developed its own set of rules. (See chapter 11.)

(d) Equity developed the doctrine of proprietary estoppel. (See chapter 7.)

(e) Equity developed its own set of rules relating to agreements for leases or estate contracts. (See chapters 4 and 6.)

SECTION 5: THE DOCTRINE OF NOTICE

The difference between a right that is recognised only in equity and one that is recognised at law is of considerable importance for two reasons:

(a) Rights in equity are enforceable only at the discretion of the court, the court being governed by equitable maxims such as 'He who comes to equity must come with clean hands' and 'He who seeks equity must do equity'. Legal rights are enforceable *as of right*. Once the legal right has been established the court cannot examine the merits of the case before awarding a remedy.

(b) The second significant distinction between rights in equity and rights at law is in relation to the enforceability of those rights against third parties. A legal right is said to be a right in the thing itself — a right *in res* or *in rem* — and can therefore be enforced against any person who subsequently acquires the land. An equitable right is not so extensive in its nature and is said to be a right *in personam*, in that it is enforceable only against certain categories of person. Such an interest is enforceable against all except a bona fide purchaser for valuable consideration of the legal estate (which is subject to the equitable interest) where that purchaser has acquired the legal estate without notice of the equitable interest affecting it. This is commonly called the doctrine of notice.

Pilcher v *Rawlins*

(1872) 7 Ch App 259 (Court of Appeal in Chancery)

Pilcher lent money, which he held on trust for A and his children, to Rawlins by way of a legal mortgage. Rawlins wished to mortgage the property to Stockwell and Lamb for £10,000. He thus conspired with Pilcher to produce a document which showed Rawlins as holding the fee simple, but

the document excluded the mortgage. Rawlins was to repay only £3,500 of the mortgage (which was of £8,373), whilst Pilcher reconveyed the property to him. Thus Stockwell and Lamb received the title deeds to the fee simple. The beneficiaries then discovered the fraud and brought an action, claiming they were entitled to the property as against Stockwell and Lamb. Held: Stockwell and Lamb were bona fide purchasers for value of the legal estate without notice, and thus took free from the equitable interests of the beneficiaries under the trust.

JAMES LJ: I propose simply to apply myself to the case of a purchaser for valuable consideration, without notice, obtaining, upon the occasion of his purchase, and by means of his purchase deed, some legal estate, some legal right, some legal advantage; and, according to my view of the established law of this Court, such a purchaser's plea of a purchase for valuable consideration without notice is an absolute, unqualified, unanswerable defence, and an unanswerable plea to the jurisdiction of this Court. Such a purchaser, when he has once put in that plea, may be interrogated and tested to any extent as to the valuable consideration which he has given in order to shew the *bona fides* or *mala fides* of his purchase, and also the presence or the absence of notice; but when once he has gone through that ordeal, and has satisfied the terms of the plea of purchase for valuable consideration without notice, then, according to my judgment, this Court has no jurisdiction whatever to do anything more than to let him depart in possession of that legal estate, that legal right, that legal advantage which he has obtained, whatever it may be. In such a case a purchaser is entitled to hold that which, without breach of duty, he has had conveyed to him.

A: PURCHASER FOR VALUE

The purchaser must provide consideration in money or money's worth or by means of marriage consideration. The term 'money's worth' includes non-monetary consideration such as the exchange of stocks and shares and even other land. Marriage consideration is limited to future marriages, and a promise in consideration of a future marriage is deemed to be made for value (*Attorney-General* v *Jacobs Smith* [1895] 2 QB 341).

The consideration need not be adequate and can be nominal (*Bassett* v *Nosworthy* (1673) Rep temp Finch 102).

A purchaser can include any person who takes the property by means of sale, mortgage, lease etc., but excludes the acquisition of property by operation of law.

B: LEGAL ESTATE

The purchaser must show that he has acquired the legal estate in land in order to invoke the bona fide purchaser doctrine. The purchaser of an equitable interest in land is in general bound by all prior equitable interests whether he has notice of them or not.

(a) Priority of competing interests

The general rule is that where there are competing equitable interests affecting a legal estate in land, the first in time prevails (*Cave* v *Cave* (1880) 15 ChD

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639). The rule may be modified, however, in cases of misconduct when the priority of the owner of a legal interest may be postponed to a subsequent equitable interest. Misconduct includes fraud on the part of the legal owner or negligence. The interest may also be postponed by the operation of the doctrine of estoppel.

The rule in *Cave* v *Cave* has no application, however, in successive dealings with an equitable interest in land, for example, if a beneficiary with an equitable interest under a trust mortgages his interest first to bank A, then to bank B. Since the beneficiary's interest is equitable and does not affect the legal estate, both mortgages are necessarily equitable. In such a case the priority of the mortgages is governed by the rule in *Dearle* v *Hall* (1828) 3 Russ 1 (see also chapter 12).

(b) Subsequent acquisition of legal estate

Bailey* v *Barnes
[1894] 1 Ch 25 (CA)

J mortgaged four freehold houses of which he was the owner for £1,500 each. The mortgagees transferred their mortgages to B in return for payment of the principal and interest due. B then sold the houses to H for the same sum he paid for the transfer to himself. He conveyed them to H, in exercise of the power for sale in the mortgages, free from the equity of redemption. H then mortgaged the houses for £6,000. H died and M, her successor in title, sold the equity of redemption to L for £2,500 subject to the prior mortgage of £6,000. J's creditors succeeded in getting the sale to H set aside as a fraudulent exercise of the power of sale. L on hearing of this paid the £6,000 mortgage and took a reconveyance from the mortgagees. L had no actual notice of any impropriety in the sale to H at the time he purchased the equity of redemption. The mortgagor claimed to be entitled as against L to redeem the mortgaged property on owning the prior equity of redemption. Held: (the Court of Appeal affirming the decision of Stirling J) L did not have constructive notice of the impropriety in the sale, and the acquisition of the legal estate by him protected him against the prior equitable interest of the plaintiff.

LINDLEY LJ: The question is whether he [L] can now hold the property free from the Plaintiff's judgment.

We are of opinion that he can. The maxim *Qui prior est tempore potior est jure* is in the Plaintiffs' favour, and it seems strange that they should, without any default of their own, lose a security which they once possessed. But the above maxim is, in our law, subject to an important qualification, that, where equities are equal, the legal title prevails. Equality, here, does not mean or refer to priority in point of time, as is shewn by the cases on tacking. Equality means the non-existence of any circumstance which affects the conduct of one of the rival claimants, and makes it less meritorious than that of the other. Equtiable owners who are upon an equality in this respect may struggle for the legal estate, and he who obtains it, having both law and equity on his side, is in a better situation than he who has equity only. The reasoning is technical and not

satisfactory; but, as long ago as 1728, the law was judicially declared to be well settled and only alterable by Act of Parliament: see *Brace* v *Duchess of Marlborough* 2 P Wms 491.

It was contended that this doctrine was confined to tacking mortgages. But this is not so. The doctrine applies in favour of all equitable owners or incumbrancers for value without notice of prior equitable interests, who get in the legal estate from persons who commit no breach of trust in parting with it to them: see *Saunders* v *Dehew* 2 Vern 271, and *Pilcher* v *Rawlins* Law Rep 7 Ch 259. It is true that the doctrine does not apply to an equitable owner or incumbrancer who gets in the legal estate from a trustee who commits a breach of trust in conveying it to him — at all events, if such breach of trust is known to the person who gets in the estate, and, perhaps, even if he does not know of it: see *Carter* v *Carter* 3 K & J 617; *Mumford* v *Stohwasser* Law Rep 18 Eq 556. But the present case does not fall within this exception to or qualification of the general principle; for *Lilley* obtained the legal estate from a mortgagee whom he paid off, and who committed no breach of trust in conveying the legal estate to him.

But see the following case.

McCarthy & Stone Ltd v *Julian S. Hodge & Co. Ltd*
[1971] 1 WLR 1547 (Ch D)

C negotiated first with B to build dwellings on their land, and secondly with a bank to provide finance. The bank was aware of the fact that B was carrying out the development. An agreement was signed in February 1964 whereby B said they would purchase the land for £56,100 and that the agreement could be completed at any time after March 1964. In March 1964 the bank agreed to provide £39,270 of the £56,100 by way of overdraft, and a memorandum of deposit of title deeds with the intent to create an equitable mortgage on the land was executed. The bank was also appointed as attorney to C to perfect any legal charge on the land, and C declared itself possessed of the property as trustee for the bank.

In April 1964 the bank registered the equitable mortgage, and in September 1965 B registered the agreement as a class C(iv) land charge under the Land Charges Act 1925.

In June 1967 the bank appointed a nominee to perfect a legal charge on the property. In October 1967 C was wound up and B sought a declaration that the bank was not entitled to any charge or other interest adverse to their interest in the property. Held: *inter alia*, the builders' unregistered interest under the agreement was not affected by the bank's subsequent legal charge. The bank must show that at the time of the equitable mortgage it had no knowledge of the terms of the agreement such as would put it on inquiry. It had failed to do so.

FOSTER J: Is McStone's interest affected by the bank obtaining a legal mortgage on June 21, 1967? The bank relied on the equitable doctrine that a subsequent equitable incumbrancer who gets in the legal estate takes precedence over the prior incumbrancer. It is enshrined in *Bailey* v *Barnes* [1894] 1 Ch 25. It is a doctrine which qualifies the rule: *Qui prior est tempore potior est jure* and can be shortly stated as follows: 'Where the equities are equal, the legal title prevails.' . . .

[Foster J then refers to Lindley LJ's judgment in *Bailey* v *Barnes*.] In order for the bank to succeed, however, it must show that it had no notice actual or constructive of McStone's equitable interest under the agreement. As a result of the provisions of section 198(1) of the Law of Property Act 1925, it is clear that the bank is deemed to have had actual notice of the estate contract when it was registered on September 27, 1965, and therefore before it got in the legal interest. But did the bank have notice of the agreement when it acquired its equitable mortgage on March 14, 1964? The evidence on this point is as follows. Mr McCarthy, in his affidavit sworn on May 14, 1969, states that 48 cleft oak piles and 4 range lines were collected on February 26, 1964, and for several days following were used by him and his co-director Mr Stone for the initial laying out of the site for development. He then refers to various time sheets of workmen and the delivery on site of 14,000 bricks on March 13, 1964. In paragraph 5, he states:

> My co-director, Mr Stone, and I continued to take a very keen interest in the work on the site and I attended to progress the work almost daily for some weeks after February 26, 1964. I can recollect that the work of laying out the roads and the situation of the first of the proposed houses and bungalows, the grading of the roads, the digging for foundations and drainage pipes and the removal of top soil had progressed to such a point prior to March 14, 1964, that any observer could not have failed to notice on and prior to that date that building works had commenced, that earth moving machinery was at work and further that bulky and obvious building materials had been delivered to the site. The 14,000 bricks alone would be stacked in a pile approximately 30 feet long and 6 feet high and 3 feet deep.

There is no evidence that the bank had actual notice of the agreement of February 17, 1964, before the equitable mortgage on March 14, 1964. Did the bank have constructive notice? By section 199(1) of the Law of Property Act 1925, it is provided:

> A purchaser shall not be prejudicially affected by notice of — . . . (ii) any other instrument or matter or any fact or thing unless — (a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him;

For the bank, it was submitted that the only occupation which imputes notice is occupation inconsistent with Cityfield remaining in occupation and the bank had no reason to suppose that Cityfield was out of occupation. It was said that McStone's activities were consistent with McStone being merely licensees of Cityfield. It is, however, clear that the bank knew that the building was to be done by McStone not as builders for Cityfield but as purchasers of the land from Cityfield, because the amount of the initial overdraft of £39,720 was 70 per cent of the purchase price of £56,100, of which price the bank must have known. In my judgment, the activities carried out on the land prior to March 14, 1964, were sufficient to put the bank on inquiry whether they were being carried out by McStone under a contract, or as licensee pending a contract, and the bank having failed to make that inquiry must be taken on March 14, 1964, to have had constructive notice of McStone's position.

Note

1. The effect of *Bailey* v *Barnes* would seem to be that a purchaser of an equitable interest *who at the time of the purchase of the equitable interest has no notice* of a prior equitable interest and who subsequently obtains the legal estate obtains priority over the prior equitable interest, *even* if at the time of acquisition of the legal estate he has notice of the prior equitable interest. Notice can be actual or constructive.

2. If the purchaser of an estate has the equitable interest conveyed to himself, but the legal estate is, for example, conveyed to a trustee on trust, both he and the trustee will take free of any prior equitable interests affecting the land, provided that neither had notice of the prior interest, since he has a better right to the legal estate (see *Taylor* v *London & County Banking Co.* [1901] 2 Ch 231, at p. 262). There is an obiter statement in *McCarthy & Stone* that this doctrine may apply where there is a declaration of trust of the legal estate by the vendor for the purchaser.

(c) Equitable interests and mere equities

An equitable interest in property must be distinguished from a mere equity. The former gives the owner of the interest a right in the land, whereas the latter does not bestow on its owner any right in the property. It is a right, usually but not always, of a procedural nature, which is ancillary to some right of property, such as a right to have a transaction set aside for fraud or undue influence. The importance of the distinction between the concepts lies in the fact that a purchaser for value of an equitable interest without notice takes free of a mere equity (see *Phillips* v *Phillips* (1862) 4 De G F & J 208, at p. 217-18). See Ann Everton, '"Equitable Interests" and "Equities" — in Search of a Pattern' (1976) 40 Conv 209.

In ***National Provincial Bank Ltd*** v ***Hastings Car Mart Ltd*** [1965] AC 1175, Lord Upjohn said (at p. 1238):

> As Professor Crane has pointed out in an interesting article in The Conveyancer and Property Lawyer, Vol. 19 (N.S.), p. 343 at p. 346: 'Beneficial interests under trusts, equitable mortgages, vendors' liens, restrictive covenants and estate contracts are all equitable interests.' No lesser interests have been held to be sufficient. A mere 'equity' used in contradistinction to an 'equitable interest' but as a phrase denoting a right which in some circumstances may bind successors is a word of limited application and, like the learned editors of Snell, 25th edition, at p. 18, I shall attempt no definition of that phrase. It was illustrated in the case before me of *Westminster Bank Ltd* v *Lee*, where I was constrained in the then state of the authorities to assume that a mere equity might bind successors, yet being at most a mere equity, even subsequent equitable encumbrancers, contrary to the usual rule, could plead purchaser for value without notice. But, my Lords, freed from the fetters which there bound me, I myself cannot see how it is possible for a 'mere equity' to bind a purchaser unless such an equity is ancillary to or dependent upon an equitable estate or interest in the land. As Mr Megarry has pointed out in the Law Quarterly Review, Vol. 71, at p. 482, the reason why a mere equity can be defeated by a subsequent purchaser of an *equitable* estate for value without notice is that the entire equitable estate passes and it is not encumbered or burdened by a mere equity of which he has no notice. For example, a purchaser takes subject to the rights of a tenant in possession whatever they may be. If he sees a document under which the tenant holds, that is sufficient unless he knows, or possibly in some circumstances is put on inquiry to discover, that the tenant has in addition a mere equity, e.g., a right to rectify the document. If the purchaser knows that, he knows that the document does not correctly describe the estate or interest of the tenant in the land and he takes subject to that estate or interest, whatever it may be. But a mere 'equity' naked and alone is, in my opinion, incapable of binding successors in title even with notice; it is personal to the parties.

C: WITHOUT NOTICE

(a) Actual notice

A purchaser of a legal estate is not bound by any equitable interests affecting the land if he had no notice of them at the time of purchase.

(b) Constructive notice

A purchaser cannot deliberately omit to investigate the vendor's title properly and 'shut his eyes' to the matters that come to light, for a purchaser is always deemed to have notice of things of which a prudent, careful and reasonable man would have inquired when purchasing the property. What inquiries are to be made, however, depend upon the facts of the case.

Midland Bank Ltd* v *Farmpride Hatcheries Ltd
(1980) 260 EG 493 (CA)

A bank lent money to a company of which the appellant (W) and his wife were sole directors and shareholders. The company owned land and mortgaged it to the bank as security for the loan. Under a service agreement with the company made prior to the mortgage, W and his family had been given a licence to live in the premises for a period of 20 years. W claimed that this right of occupation under the licence overrode the rights of the bank under the mortgage because the bank had constructive notice of his right to occupy the premises. W had not disclosed his interest to the bank during negotiations for the mortgage. Held: the bank was entitled to possession.

OLIVER LJ: Now of course, an agent who negotiates a sale or mortgage on his principal's behalf does not thereby make any representation that his principal has an indefeasible title to the property offered for sale or as security. As to that the purchaser or mortgagee must satisfy himself by making the usual enquiries before he completes. But in negotiating on his principal's behalf he does, in my judgment, at least represent that he has his principal's authority to offer the property free from any undisclosed adverse interest of his own. I would therefore be prepared to hold that the purchaser or mortgagee dealing with such an agent can reasonably assume that if the agent with whom he is dealing has himself an interest adverse to the title which he offers on his principal's behalf, he will disclose it. It was in my judgment reasonable for Mr Timbers not to make enquiry about an adverse interest of the negotiating agent which that agent's own reticence entitled him to assume did not exist and he did not, therefore, have constructive notice of it. . . .

Notes

1. A purchaser should make inquiries of any person in occupation of the land, since such occupation is deemed to be constructive notice to the purchaser of any rights the occupier may have in the land. A tenant's occupation of the land affects the purchaser of the land with constructive notice of all the tenant's rights, but not with notice of his landlord's title or rights (*Hunt* v *Luck* [1902] 1 Ch 428).

2. If the person in occupation of the land intentionally withholds information relating to his interest in the land from the purchaser, then he cannot later claim the purchaser had constructive notice of his interest. He is estopped from so doing.

Question
Have the courts exhibited a willingness to extend the doctrine of constructive notice?

(c) Imputed notice

Where a purchaser employs an agent to conduct the purchase for him, then any actual or constructive notice the agent receives in the course of that transaction is imputed to the purchaser.

Kingsnorth Finance Co. Ltd* v *Tizard
[1986] 1 WLR 783 (ChD)

In 1979, the proceeds of sale of a matrimonial home were used to purchase land upon which a new matrimonial home was built. Both properties had been vested in the name of the husband. The marriage broke down in 1982 and an agreement was reached between the husband and wife that the house and land should be sold and the net proceeds divided equally between them. The wife only slept in the house when the husband was away, but returned for some time each day to look after the children. In March 1983, the husband took out a loan with the plaintiffs who sent a surveyor to the property as their agent. The surveyor saw only the husband on the property and the husband told him that he and his wife had separated and she was living elsewhere. The agent's report, which was sent to the plaintiff, listed the occupants as husband, son and daughter but gave no more information. The question arose as to whether the plaintiffs' legal mortgage was subject to the wife's equitable interests in the house. Held: the bank was bound by the wife's equitable rights.

JUDGE FINLAY QC: Section 199(1) of the Law of Property Act 1925 provides:

> A purchaser shall not be prejudicially affected by notice of — (i) any instrument or matter capable of registration under the provisions of the Land Charges Act 1925, or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof; (ii) any other instrument or matter or any fact or thing unless — (a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or (b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

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