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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BBALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

SUBJECT CODE: BBL 506

NAME OF FACULTY: DR. ANKUR SRIVASTAVA

Lecture-15





LECTURE-15

Equitable doctrines: Conversion-

Now, we will consider the doctrine of conversion. Bowen, L.J. once said: 'It is an established principle in equity that when money is directed or agreed to be turned into land, or land agreed or directed to be turned into money, equity will treat that which is agreed to be or which ought to be done as done already, and impresses upon the property that species of character for the purpose of devolution and title into which it is bound ultimately to be converted.' **Att. Gen. v. Hubbuck** (1884) 13 Q.B.D. 275, 289.

The equitable doctrine of conversion rests on the maxim

that equity regards as done what ought to be done. The doctrine becomes relevant wherever there is an obligation arising under a will, trust, contract or court order, to sell or purchase land. In equity, even though the obligation has not been carried out, the existence of such obligation is sufficient to fix the rights of the parties and to determine the nature and character of such rights as they would have been if the obligation had in fact been performed. This leads to the fictitious and artificial nature of the doctrine.

In the language of Langdell, 'A direct equitable conversion differs from a direct actual conversion in this, namely, that while the latter is a fact, the former is a pure fiction. To say, indeed, that a direct equitable conversion is other than a pure fiction would be to claim for equity those miraculous powers which the ancient alchemists claimed for themselves The immediate object of the direct equitable conversion is to cause a thing to devolve, on the death of its owner, not according to its true nature and quality, but

according to the nature and quality which equity, by a fiction, attributes to it, for example, to cause land to devolve as if it were money or money as if it were land.’ (Equitable Conversion (1904) 18, Harv.L.Rev.83 at 245). The notional or fictitious conversion usually become effective at the date of the instrument expressing the intention, if a deed or contract, and if a will, at the date of the testator's death.

In ***Fletcher v. Ashburner*** (1779) 1 Bro.C.C.497, 28 E.R. 1259, Sir Thomas Sewell M.R. attempted to justify the development of the doctrine when he said that ‘nothing was better established than this principle, that money directed to be employed in the purchase of land, and land directed to be sold and turned into money are to be considered as that species of property into which they are directed to be converted; and this in whatever manner the direction is given: whether by will, by way of contract, marriage articles, settlement or otherwise, and whether the money is actually conveyed or only agreed to be conveyed; the owner of the

land, or the contracting parties, may make land money or money land. The cases establish this rule universally.'

The practical operation of the doctrine as conceived by Sewell, M.R., may be said to have conditioned the development of the doctrine of conversion. Maitland, in his book 'Lectures on Equity (2nd Edn.) p.277, was of the view that the equitable doctrine of conversion is the outcome of the fact that England had two systems of intestate succession, the one for realty, the other for personalty; and that but for that unfortunate fact there would have been no need of the doctrine.

He went further to say that the doctrine has its root in the simple principle that when property has been given to a trustee it must not be in the power of that trustee to alter the devolution of the beneficial interests by committing a breach of trust.

Keeton thought that the development of the doctrine at the beginning of the 18th century can be traced to the unfairness of allowing trustees prejudicially to affect the interests of beneficiaries by postponing sales or purchases of land. No doubt the doctrine is designed to promote justice and also to assist the owner of the subject-matter of conversion in the accomplishment of his objective as regard the ultimate devolution or distribution of his property in accordance with his presumed intention.

Equitable conversion, in the context of real estate law, refers to when, after the parties have entered into a binding contract for the sale of land, the buyer becomes the "equitable owner" before the delivery of the deed. It is applied due to considerations of fairness, because of the unique character of the property or the consequences of the party not performing.

The doctrine of equitable conversion is used to make a buyer the equitable owner of title to the property at the time that they sign a contract binding them to purchase the land at a later date. The buyer is deemed the equitable owner after the contract is signed, but prior to the closing.

For example, if a house on the property burns down after the contract has been signed, but before the deed is conveyed, the buyer will nevertheless have to pay the agreed-upon purchase price for the land. Equitable conversion may also be found when a deed is given as security for the payment of money, though deeds are given to secure the performance of other obligations as well. Parties may avoid application of the doctrine of equitable conversion by providing for how to allocate the risk of loss for damage to the property prior to the closing.

MCQs

1. **The equitable doctrine of conversion rests on the maxim that equity regards as done what ought to be done.**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

2. **Equitable conversion, in the context of real estate law, refers to when, after the parties have entered into a binding contract for the sale of land, the buyer becomes the "equitable owner" before the delivery of the deed.**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

3. **Maitland, in his book 'Lectures on Equity (2nd Edn.) p.277, was of the view that the equitable doctrine of conversion is the outcome of the fact that England had two systems of intestate succession, the one for realty, the other for personalty; and that but for that unfortunate fact there would have been no need of the doctrine.**
 - i. True

- ii. False
- iii. Cannot say
- iv. None of these

4. This maxim is applied due to considerations of fairness, because of the unique character of the property or the consequences of the party not performing.

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

5. The practical operation of the doctrine was conceived by Sewell, M.R.,

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