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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

SUBJECT CODE: BAL 506

NAME OF FACULTY: DR. ANKUR SRIVASTAVA

Lecture-18





LECTURE-18

ELECTION: *Continued*

Essentials of the Doctrine:

The essentials of election are firstly that there should be an intention on the part of the donor to dispose of certain property; secondly, the property should not in fact be the donor's own property; and thirdly, a benefit should be given by the disposing instrument to the true owner of the property. (Per Jenkins L.J. in *Re Edwards* (1958) Ch. 168, 175 C.A.).

- i. The donor must have given his own property to the elector; it is out of this property that the elector would compensate the disappointed person where the elector

has elected against the instrument.

- ii. The donor must have given the elector's property to another person.
- iii. The Two Gifts must have been Made in the Same Instrument.
- iv. The donor's property which is given to the elector must be freely alienable so that it could be available for compensation if the elector elects against the instrument.
- v. The Elector's Property which the Donor Purports to Dispose of must be Freely Alienable.
- vi. The Donor must Manifest a Clear Intention on the Face of the Instrument to Dispose of the Elector's Property.

Satisfaction and Election:

A beneficiary under a will is put to his election, that is, to give effect to the will as a whole, on the principle that the testator has conferred some benefits on the beneficiary and at the same time attempted to dispose of the beneficiary's

property. Where the benefit or legacy given to the beneficiary is in satisfaction of a debt, there can be no election, for, no benefit has in fact, been conferred on him. But if the legacy was in satisfaction of a statute-barred debt, such legacy is generally regarded as a bounty, for the testator has no legal obligation to pay the debt, therefore, the beneficiary is bound to elect. *Re Fletcher's Settlement Trusts* (1936) 2 All E.R. 236, 239.

Rights of Elector:

Whenever a person is put to his election, the court has jurisdiction in equity to compel a final election 'so as to quiet the title of those interested in the objects of which one is to be chosen.' See **Douglas v. Douglas** (1871) L.R. 12 Eq. Cas. 617 at 637; See further, *Gretton v. Howard* (1819) 1 Swans. 409; 36 E.R. 443. However, as a condition precedent to the exercise of this jurisdiction, the court will secure to the elector, the right to all information necessary to guide him in his choice. **Douglas v. Douglas** (supra). He must be given a genuine

opportunity of ascertaining the relative values of the properties before electing in favour or against the instrument. He is even entitled to bring an action with a view to knowing the nature and extent of his rights and to ascertain the relative values of the properties between which he is called upon to elect. See **Butricke v. Broadhurst** (1790) 1 Ves. Jun. 171; 30 E.R. 286; **Worthington v. Wiginton** (1855) 20 Beav. 67, 74; 52 E.R. 527. In **Kidney v. Coussmaker** (1806) 12 Yes. 136 at 153; 33 E.R. 53, a widow-electress was held not bound by an election made under a mistaken impression of the extent of the claim against her.

Election may be Express or Implied:

Election may be express or may be implied from the acts or conduct of the person bound to elect; whether or not a person bound to elect has elected is a question of fact. In the case of express election, a communication by the elector to the affected party of his intention to pay compensation is a sufficient evidence of his election against the instrument. Similarly, there would seem to be an express election where

an elector transfers, in accordance with the directions in the instrument that gives rise to election, his own property of which the donor sought to dispose, to the person to whom the property was purportedly given by the instrument, and he at the same time accepts the benefit conferred on him by the instrument.

It is more difficult to establish implied election since the fact of election must be clearly established; moreover, there does not seem to be any general principle indicating all the circumstances necessary to prove or constitute an election. However, to infer an election, there must be clear proof that the person called upon to elect knew that the donor had not the power to give the property which he purported to dispose of, and that he the elector is the owner of that property. There must be evidence that the elector was aware of the gift made to him by the donor; also he must know the relative values of the properties between which he is called upon to elect; he must know that in equity he must have to

elect between the two; and that having that knowledge the elector made a deliberate choice with the intention of making it. See *Dillon v. Parker* (1818) 1 Swanst, 359; 36 E.R. 422; *Sweetman v. Sweetman* (1868) 2 I.R. Eq. 141; *Spread v. Morgan* (1865) 11 H.L.C. 588.

It follows that the mere fact that a person, who is bound to elect, continues to enjoy the two properties may not be a conclusive inference that he intends to elect against the instrument if he was not aware of his rights. See ***Padbury v. Clarke*** (1850) 2 Mac. & G. 298, 306; 42 E.R. 115.

Nevertheless, 'from a long course of leading, from a series of acts, the court is at liberty, as an inference of fact, to conclude that the party called upon to elect knew his rights, knew the value of both estates, and knew the rule of equity, that he was bound to elect, and had, with the full knowledge, made his choice, with the intention of making it, and of electing between the two estates'. Per Chatterton V-C, in

Sweetman v. Sweetman (supra). The series of acts or dealings from which election is to be implied must be consistent only with that of an elector who was fully aware of his rights. Dillon v. Parker (1818) 1 Swanst. 359 at 380. The burden of proof is on the party who alleges implied election. See Sweetman v. Sweetman (supra); Spread v. Morgan (1865) 11 H.L.C. 588.

MCQs

1. **Whenever a person is put to his election, the court has jurisdiction in equity to compel a final election 'so as to quiet the title of those interested in the objects of which one is to be chosen.'**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
2. **It is more difficult to establish implied election since the fact of election must be clearly established; moreover, there does not seem to be any general principle indicating all the circumstances necessary to prove or constitute an election.**
 - i. True

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

3. A person, who is bound to elect, continues to enjoy the two properties may not be a conclusive inference that he intends to elect against the instrument if he was not aware of his rights.

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

4. The burden of proof is on the party who alleges implied election.

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

5. The essentials of election are firstly that there should be an intention on the part of the donor to dispose of certain property; secondly, the property should not in fact be the donor's own property; and thirdly, a benefit should be given by the disposing instrument to the true owner of the property.

- i. True

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