

Equity and Trusts Concentrate: Law Revision and Study Guide (8th edn)
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p. 42 **4. Constitution**

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Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more.

Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. When a person transfers legal title to another, the legal title is said to vest in the other person. This chapter considers the rules for the transfer of title (ownership) in property in relation to different types of property. The general principle is that unless the property has been transferred by the correct legal rules then the transfer fails; it is said to be imperfect. The chapter begins by briefly considering the legal rules in relation to validly transferring property to another person. It then deals with equitable rules which have developed to overcome the strict application of the legal rules of vesting.

Keywords: legal title, transfer of title, ownership, property, vesting, equitable rules

Key facts

- There are three ways to benefit another with property.
- There are legal rules for validly transferring an interest in property.
- When the legal rules fail, equity has developed methods to prevent the intention of the transferor being defeated.
- Key principles to be discussed are:
 - The 'rule' in *Strong v Bird [1874]*;
 - *donatio mortis causa*;
 - the 'every effort' principle;

- unconscionability;
- proprietary estoppel;
- covenants to settle.

p. 43

Introduction

When a person transfers legal title to another, the legal title is said to **vest** in the other person. This chapter will consider the rules for the transfer of title (ownership) in property in relation to different types of property. The general principle is that unless the property has been transferred by the correct legal rules then the transfer fails—it is said to be **imperfect**. The equitable maxim that ‘equity will not perfect an imperfect gift’ would be the starting position for the courts. If the transferee has not given valuable consideration, that person is said to be a **volunteer**. Failing to validly ‘vest’ title in the volunteer means that the volunteer has no enforceable legal rights. This is reflected in the equitable maxim that ‘equity will not assist a volunteer’.

Terminology tip

It is sometimes the language of equity that students struggle with, so at a *basic* level this may help.

When a person has property, he or she is said to be the ‘absolute owner’. In a simple, but artificial way it can be said that he or she has the legal title and the beneficial (equitable) title. A person who gives a lifetime gift is referred to as the donor; a person creating a trust of the same property would be called a settlor. If the same transactions were being created by a will, the person would be called the testator (or a testatrix if female).

The person who receives the gift (which means a transfer without consideration) is a donee; a person receiving an interest under a trust is a beneficiary; and a person receiving property under a will is a legatee or devisee. For now, the person giving the property will be called the transferor; the person who is intended to get the property will be called the transferee.

The maxim ‘Equity will not perfect an imperfect gift’ refers to any transfer of legal title, including to a third party to hold on trust.

This chapter begins by briefly considering the legal rules in relation to validly transferring property to another person. It then deals with equitable rules that have developed to overcome the strict application of the legal rules of vesting.

Equity is a gloss on the common law and, as such, has implications beyond the creation of trusts. The rules for transfer of ownership as a gift overlap with the transfer of legal title to the trustee. This chapter is closely linked with chapter 5 on the formalities for creating a trust.

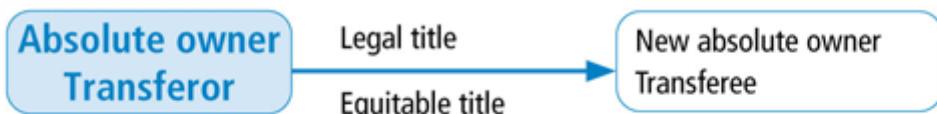
Benefiting another with property

Milroy v Lord (1862) identified three ways in which an absolute owner of property could benefit another with his or her property:

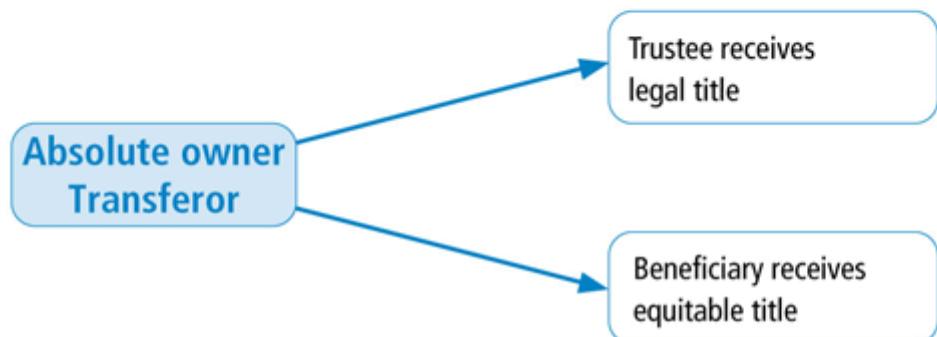
- an outright gift;
- a transfer of legal title to a third person to hold on trust for the benefit of another; or
- declaring that the absolute owner now holds that property on trust for another.

p. 44 ↵ Figure 4.1 shows that it is artificial to talk of the absolute owner having legal and equitable title. The legal and equitable interests have not been separated. However, as with the previous Terminology tip, as a device for learning the principles, it may help to think of the interests in this way.

1. Gift



2. Transfer to third person to hold on trust



3. Absolute owner declares that he or she holds property on trust for another

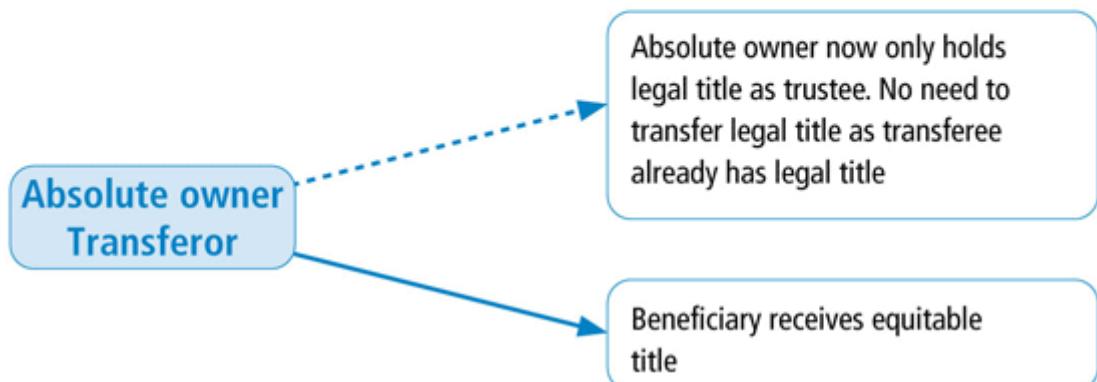


Figure 4.1 Three ways to benefit another with your property

Looking for extra marks?

A common mistake made by students when dealing with constitution issues is either to try to find a trust where the intention was to make a gift or to only consider who has the equitable interest when the transferor intended to create a third person as trustee. Chapter 5 considers the requirements for dealing with the beneficial ownership of property under a trust. These two topics are closely related but they have been separated out here to help you in your revision. *Keep distinct the legal requirements for constituting the transfer of an interest in property and the formalities for creating and dealing with a trust interest.*

A good plan of the answer usually remedies this, and an answer that has been planned really pays off.

p. 45

Revision tip

In answering questions, the focus will be on how equity steps in to modify the legal rules. Do not wander into a long explanation of the legal rules. Briefly explain how the legal rule for transfer of title has failed, then explain the equitable rules which may apply.

When lawyers talk of a transfer it is said to be ‘perfect’ if all the legal requirements for a valid transfer have been complied with. If they have not, then the transfer is said to be ‘imperfect’.

Different legal rules apply to different types of property. Remember that property includes *any* thing, tangible or intangible, that is capable of being owned. The following sections set out the rules for the valid transfer of the most common types of property transfer.

Land

A transfer in land or an interest in land is set out in s 52 Law of Property Act 1925.

- Transfer must be by deed (defined in s 1 Law of Property (Miscellaneous Provisions) Act 1989).
- Transfer is completed by registration at the Land Registry (s 27 Land Registration Act 2002).

See *Richards v Delridge [1874]*.

Stocks and shares which regulate the ownership of companies

Private limited company:

- Memorandum of transfer.

- Registration of shares.
- **Stock Transfer Act 1963; Companies Act 1985.**
- Public limited company (plc):
- If there has been compliance with the electronic CREST system, then the correct instruction will be adequate.

See *Milroy v Lord (1862)*.

Chose in action

This includes such things as cheques, debts, or rights under a contract.

- Compliance with **s 136 Law of Property Act 1925**, which requires endorsement.

See *Jones v Lock (1865)*.

p. 46 **Chattels**

This includes such things as paintings, jewellery, etc.

- By deed, *Jaffa v Taylor Gallery Ltd (1990)*; or
- compliance with *Re Cole [1964]*:
 - delivery;
 - intention that legal ownership is transferred.

Glaister-Carlisle v Glaister-Carlisle (1968)

The owner of a miniature female white poodle was upset that his wife had allowed his poodle to mate with his wife's black poodle. He threw the white poodle at her and said, 'She is your responsibility now'. The court held that the language was too vague to transfer the legal title, despite the delivery.

The requirement for delivery can be actual delivery or constructive. This may include, for example, delivery of car keys, representing the delivery of the car itself. It may also be informing the intended donee where he or she can find the chattel: *Thomas v Times Book Co [1966]*.

Money

A valid transfer of money merely requires delivery.

Transfer of an equitable interest

Another type of property that can be transferred is the ownership of a beneficial interest. The legal requirements to transfer this interest to another are set out in s 53(1)(c) **Law of Property Act 1925**. This applies to the beneficial interest in *any* type of property, *not* just interests in land. This type of transfer is dealt with in detail in chapter 5.

Revision tip

These clear legal rules, from either statute or common law, for the valid transfer of property rights provide the necessary certainty in dealing with property ownership. Learn the legal requirements for each type of property covered in this chapter. Explain this first in an exam before moving on to say that equity has developed means to overcome problems of imperfect title transfer.

Equitable principles which perfect a transfer

Where legal title has not vested correctly, equity has established exceptions to the legal rules outlined earlier. It is important to establish the legal rules *first*, then consider which—and there may be more than one—of the equitable rules applies to perfect title.

p. 47

Legal title vests in another capacity (fortuitous vesting)

Where the legal owner promises to transfer property (or promises that he or she will not enforce the repayment of a debt) but fails to do this in his or her lifetime, the gift should fail. However, if the promised property vests in the potential transferee in another capacity, the courts have held that the transfer has been perfected: *Strong v Bird [1874]*. To be able to rely on the ‘Rule in *Strong v Bird*’ the requirements are that:

- there is a clear intention to make an *inter vivos* gift to the transferee;
- there is a present intention to give: *Re Freeland [1952]*;
- the intention continues unchanged until death: *Re Gonin [1977]*; and
- the intended transferee obtains legal ownership by appointment as executor or personal representative: *Re James [1935]*.

Revision tip

When reading the exam question ensure that you note who the executors are. This is usually at the end of the question. Ensure that you read the whole question.

Intention

The intention must be a clear intention to give immediately and there has only been some practical barrier to the transfer. It must not be an intention to give in the future. The rule originated in the release from debts, but it has been extended:

- to chattels: *Re Stewart [1908]*; and
- to an intention to transfer legal title to hold as trustee: *Re Ralli's WT [1964]*.

Looking for extra marks?

It is not clear whether the decision in *Re Ralli's WT* is an extension of *Strong v Bird* or a different principle altogether.

Donatio mortis causa

Property transferred under a will must comply with the **Wills Act 1837**. Section 9 requires that the will be in writing, signed by the testator, and witnessed by two people who are not beneficiaries. However, a deathbed bequest can supersede the will if it complies with the requirements of a *donatio mortis causa* (DMC) as set out in *Cain v Moon [1896]* and more recently reviewed by the Court of Appeal in *King v Dubrey [2015]*, ie:

- p. 48
- if the bequest is made in contemplation of imminent death;
 - if the bequest is made contingent (conditional) on death; and
 - there is actual or constructive delivery of the property.

Contemplation of death

This is more than contemplation of death, which everyone must face. It can be in contemplation of hazardous undertakings, active service during war, or a dangerous trip. It will not matter that the death actually occurs by a different means; in *Wilkes v Allington [1931]* the donor had terminal cancer but actually died of pneumonia. This was still held to be valid. However, see recently in *Keeling v Keeling [2017]*, when the alleged donor did not die from a heart attack, made a full recovery, and survived a further six months. It will not apply in the contemplation of suicide: *Re Dudman [1925]* but see the case of *Mills v Shields [1948]*.

Contingent on death

If the transferor recovers, the intended gift fails. Therefore, the gift is revocable if death does not occur. It can also be expressly revoked by taking back **dominion** of the property.

Actual or constructive delivery

This means that the transferor hands ‘dominion’ to the transferee, by giving the transferee the means to control the property. This will be dependent on the nature of the property. Where the goods are tangible this may not be difficult, but where the property is intangible, such as money, there may be evidential problems. In the latter situation the courts will look for relevant evidence to indicate the transfer of dominion (see Table 4.1).

Table 4.1 Examples of constructive delivery

PROPERTY	CASE EXAMPLES OF CONSTRUCTIVE DELIVERY
Safety deposit box	Re Lillingston [1952] : keys to a trunk, which held another key to another box, which held a further key. Interestingly, the subject matter of the DMC also included all the property in the first trunk
Car	Woodard v Woodard [1995] : giving the keys to a car
Bank accounts	Re Dillon [1890] : the relevant passbook will be adequate
Unregistered land	Sen v Headley [1991] : the only keys to a safety box which contained the relevant title deeds
Registered land	Although the Land Registration Act 2002 states that the land certificate is merely evidence of ownership, it may form sufficient evidence of delivery of ‘dominion’ (see Pearce and Stevens, <i>Land Law</i> , 3rd edn (2005), p 79)
Shares	Staniland v Willott (1852) suggests that handing the executed share transfer form will suffice

p. 49

Examples

Additionally, the property must be capable of forming the subject matter of a DMC. A cheque made by the transferor cannot be the subject matter of a DMC as a DMC is a mandate that ends on death: **Re Beaumont [1902]**. However, a cheque payable to the transferor can be: **Re Mead (1880)**.

Every effort has been taken by the transferor

The property has failed to vest despite every effort of the transferor to perfect title in the transferee: **Re Rose [1952]**. The principle to be gained from this exception is that where power to complete the transfer is out of the hands of the transferor, equity will ‘look upon as done that which ought to be done’. In **Re Rose** the forms for transfer of shares were completed and sent to the company. There was a three-month delay between sending the forms to the company and registration at the company of the transfer. The court held that transfer was effective when the transferor had done all that he could to complete the transfer. Effectively at this point the shares were held on constructive trust by the donor for the intended donee.

It seems from this case that the transferor must have ‘gone beyond the point of no return’. In effect, the transferor has practically lost dominion of the property. Compare *Re Rose* with *Re Fry [1946]*, where the transferor had completed forms to transfer title and sent the forms to be registered. The company needed the consent of the Treasury to make the registration. The transferor had completed all the forms to get this consent but had died before the consent was given. The court held that the transferor still held power of the shares and had not done all that was required to transfer them.

If a rule can be gleaned from the cases, it seems from *Mascall v Mascall (1984)* that the courts will perfect the transfer when the transferor can no longer change their mind and the property has been taken out of the control of the transferor.

Unconscionability

In *Choithram International v Pagarani [2001]*, Lord Browne-Wilkinson said that while ‘equity will not aid a volunteer, it will not strive officially to defeat a gift’. In that case, Mr Pagarani died after orally declaring the transfer of his property to a trust foundation, of which he was one of the trustees. The Privy Council found that there was sufficient oral and written evidence of his intention to make an immediate unconditional gift to the foundation. As he already had legal title and was one of the trustees, the transfer could be perfected.

Lord Browne-Wilkinson considered that the situation fell between the typical *Milroy v Lord* criteria for transferring an interest to another in that it was not a gift and neither was it actually a transfer to a third party to hold on trust (see Figure 4.1) but was where the intended donor, who has legal title, intends that they and another person will hold the property of trust for a beneficiary. It can only have been an intention to transfer the property on trust. As the donor was one of the trustees, the courts of equity could require the executors to transfer the interest to the trust foundation.

p. 50

↳ However, this decision was used by Arden LJ in *Pennington v Waine [2002]* as a basis to extend the equitable jurisdiction of the principles set out in *Re Rose* considerably. The owner of shares wanted to transfer them to her nephew. The relevant forms were completed but not registered, being on file at her solicitors. Her nephew took on some responsibility for the running of the company, which the transfer gave him. All parties acted as if he had the shares. On her death, the court was asked to perfect the transfer.

It appears from the decision in *Pennington v Waine* that where:

- there has been a promise to transfer property to a transferee,
- the transferee has then acted, in relation to that property, as if it had been transferred to the transferee, and
- it is unconscionable to rely on the strict rule of law to deny the transferee the promised property, the courts will require that the property be validly transferred.

Arden LJ, in a comprehensive judgment, reviews the history of the law on perfecting legal title. She felt unconstrained by the decisions in *Re Rose* and relied on the comments of Lord Browne-Wilkinson as providing the authority to perfect the transfer where it would be unconscionable for the transferor to recall the gift; however, the decision is not without criticism. In *Curtis v Pulbrook [2011]*, the High Court considered

that the decision was actually one of detrimental reliance and came within the principles of proprietary estoppel (see 'Estoppel' below). Had this been the case there may have been less strident criticisms of the decision.

Looking for extra marks?

A common mistake is for students to see the principle of *Pennington v Waine* as the remedy for all failure in vesting. On the facts of the case, there was a catalogue of relationships which Arden LJ felt created the relevant equity. Equity is not about doing what may appear morally right regardless of principle. Equity develops on clear principles and will, unless equity demands otherwise, 'follow the law'. After all, remember *Jones v Lock* (1865): the father had promised in front of witnesses that the cheque was for the child and yet the child was denied the property. It is suggested that this decision may be restricted on its facts but was recently applied in *Khan v Mahmood* [2021].

Estoppel

Estoppel is the equitable principle that enforces promises which are unsupported by valuable consideration. Proprietary estoppel, unlike promissory estoppel, can form the basis of a claim (*Pascoe v Turner* [1979]), so it can act as a sword, not only a shield. The requirements are that:

- there is a clear promise, which can be by acquiescence: *Ramsden v Dyson* (1866);
- there is reliance; and
- it would be inequitable not to enforce the assurance.

p. 51 Promise

The promise must be unequivocal, which means that the courts must be able to identify the property over which the equity arises. In *Yeoman's Row v Cobbe* [2008], the House of Lords held that in a commercial agreement a promise in a 'gentleman's agreement' meant that there was no property over which the estoppel could be raised. The situation may have been different if there had been an enforceable contract. However, shortly after, in a domestic situation in *Thorner v Major* [2009], the House, with Lord Scott sitting in both cases, reached a different conclusion. The agreement had been vague but clear enough on which to base reliance.

Reliance

The burden is on the claimant to prove a causal link between the assurance and the act in reliance. In *Gillett v Holt [2001]* the claimant had worked for the defendant since he was 16. The claimant had rejected opportunities to work elsewhere and better himself on assurances by the defendant that he would leave the farm to the claimant. Over 40 years later they fell out and the defendant made a new will leaving the farm to another person. It was held that the claimant had relied on the assurances.

However, in *Coombes v Smith [1986]* the claimant moved into a house owned by Smith when she became pregnant by him, leaving behind an unhappy marriage. The court held that both these acts were not in reliance of any assurance by Smith but were the actions of a woman in love with a man and unhappy in her marriage. This illustrates the need for reliance but has been criticized in its narrow view of Coombes' motives.

If a promise and reliance can be proven, then evidentially the courts can find the necessary basis on which to raise a remedy in equity. Reliance can be a variety of actions and it is for the court to apply the minimum equity to do justice. Table 4.2 shows some examples where the courts have found sufficient equity.

Table 4.2 Examples of reliance

DETIMENT OR CHANGE OF POSITION	AUTHORITY
Improvements to land	<i>Pascoe v Turner [1979]</i> —decorating and repairs <i>Matharu v Matharu [1994]</i> —installing new kitchen <i>Gillett v Holt [2001]</i> —making substantial improvements
Working for low pay	<i>Wayling v Jones [1995]</i> —working in cafe for partner on promise of having property left by will <i>Gillett v Holt [2001]</i> —working for 40 years on low wages
Personal disadvantage	<i>Greasley v Cooke [1980]</i> —caring for the family <i>Re Basham [1986]</i> —not buying own property, or leaving employment to live nearby <i>Gillett v Holt [2001]</i> —not taking employment elsewhere

Illustrative cases

Remedies on finding an estoppel will be the 'minimum equity to do justice'. This is an unclear situation, based on the extent of reliance, how much detriment has been suffered, etc. This can range from an absolute transfer to the promisee in *Thorner v Major [2009]*, a licence to remain on the property in *Greasley v Cooke [1980]*, or merely financial compensation in *Jennings v Rice [2002]*.

Looking for extra marks?

In addressing a possible estoppel argument, a link could be made between the unconscionability argument in *Pennington v Waine* and the comments of the High Court in *Curtis v Pulbrook* and the role of unconscionability in establishing an estoppel.

In another direction it would be worth reading the judgment of Lord Scott in *Thorner v Major*, where he felt that the remedy would be better as a remedial constructive trust. In chapter 9 the issue of constructive trusts is discussed in more detail.

Covenants to settle

A covenant is a promise contained in a deed. Because the common law sees a deed as consideration this creates a contract at common law, without the need for further consideration. If there is no ‘valuable consideration’, equity does not see the promise as part of a contract; equity does not recognize the deed as consideration (see Table 4.3).

Table 4.3 Examples

FACTS	EQUITY	COMMON LAW
1. Anne enters into a deed with Dell to transfer her house to him to hold on trust for their children, Luke and Katie.	This is not a specifically enforceable contract as equity does not see a contract.	The common law may award damages, but what is Dell's loss? (see <i>Hadley v Baxendale (1854)</i> in contract law).
2. Anne enters into a contract for £20 to transfer her house to Dell to hold on trust for their children, Luke and Katie.	This is a valid contract; as the property is unique, an order for specific performance may be awarded.	This is a valid contract; as the property is unique, an order for specific performance may be awarded.
3. Anne promises her future husband, Dell, that she will transfer money to him to hold on trust for any children they may have. They marry and have two children, Luke and Katie.	This is a valid contract; as the property is unique, an order for specific performance may be awarded.	This is not a contract as there is no consideration given for the promise.

The consequences of this are that if there is a covenant to settle property, ie I enter into a covenant with a trustee to transfer property to them to hold on trust for my family, but I fail to make the promised transfer, the remedies available will depend on the presence of consideration.

A breach of contract can be remedied by specific performance (see chapter 13), ie if the property is unique (*Falke v Gray (1859)*). The first requirement is that there must be a valid contract. Equity will not award specific performance when it does not recognize a contract. If there is a covenant to settle which is supported by a deed alone the contract cannot be specifically performed. If there is a contract supported by consideration which equity does recognize, then equity may allow an order for specific performance and order the constitution (transfer) of the promised property. This means that until the transfer is properly constituted the property is held on constructive trust by the promisor until validly transferred.

A further confusion is that equity does recognize marriage as consideration (see *Pullan v Koe [1913]*).

Complications

1. In equity, not only is Anne party to the contract in situation 3, but so are Luke and Katie. As such, in addition to Dell, Luke and Katie can also force Anne to make the transfer: *Re Cook's ST [1965]*.
2. At common law, Dell cannot claim for specific performance or damages as he has had no loss, and neither can Luke or Katie because of the doctrine of privity. If they were party to the deed they could make a claim in their own right: *Cannon v Hartley [1949]*. Any claim in common law will, however, be limited to the common law remedy of damages and no specific performance is available.
3. **Section 1 Contract (Rights of Third Parties) Act 1999** provides that, at the time of contracting, those intended to benefit from the contract shall have the same rights of action as those party to the contract, regardless of consideration. They cannot be in a better position than the person who entered into the contract. The problem remains that if equity would not recognize the contract, as made by deed, then it will still not recognize it under the Act.
4. Can Dell sue on behalf of Luke and Katie? There have been moves in contract law to allow such recovery (*McAlpine v Panatown [2001]*) but this goes against general contractual principle and the doctrine of privity. The House of Lords has stated that this is no longer needed since the passing of the **Contract (Rights of Third Parties) Act 1999**.
5. At common law you cannot make a contract for property which you do not own. However, equity has based its rules on the principle that 'equity looks upon as done that which ought to be done'. When the promisor acquires the promised property, it will immediately be held on trust for the promisee: *Re Ellenborough [1903]*.
6. It could be argued that the promise to settle the property is the subject matter of the obligation, creating a trust of the promise; *Fletcher v Fletcher (1844)*. This has been accepted in cases such as *Don King v Warren [1998]* but there is a general reluctance to undermine the doctrine of privity.

Conclusion

The law requires evidential certainty in relation to the transfer of ownership. Many of the rules set out in this chapter are there to satisfy this evidential burden. The first step in addressing this issue is to establish the legal rules in relation to all property. However, sometimes the legal rules have not been complied with and this failure will cause some injustice. The application of the legal rules in this situation can be particularly

harsh. The intervention of equity to remedy the harshness of the legal rules is based on clear principles and clear criteria. It is sometimes assumed by students that equity is merely to achieve some general concept of ‘justice’. This is too wide a view of the aims of equity and the principles on when equity will intervene with the legal rules are relatively certain. In an answer plan, you should be able to identify the legal rules and any (there may be more than one) equitable interventions.

Key cases

CASE	FACTS	PRINCIPLE
<i>Cain v Moon [1896] 2 QB 283</i>	The daughter gave her mother a deposit note worth £50. Contradictory evidence suggested that it had been a gift for the mother’s care for the daughter during an illness. But later the daughter said: ‘Have you got the deposit note safe? Never part with it. The bank-note is for you if I die.’	For a valid DMC there should be three elements—a transfer: 1. in contemplation of imminent death; 2. conditional on death; 3. on delivery.
<i>Choithram International v Pagarani [2001] 1 WLR 1</i>	Mr Pagarani set up a trust foundation, of which he was one of the trustees. He made an oral declaration that he intended the bulk of his remaining wealth to go to the trust foundation. There was both oral and written evidence of the intention to transfer the property to the trust foundation companies. Mr Pagarani died before title was transferred to the trust foundation. He was one of the trustees of the foundation.	The Privy Council said that as Mr Pagarani intended to make an immediate unconditional gift to the foundation and was one of the trustees of the foundation, he had legal title in the property, and that although the court will not perfect an imperfect gift, neither will it ‘strive officiously’ to deny the intention of the transferor. The legal title in the property would be transferred to the trust foundation (see ‘Key debates’ in the following section).
<i>Gillet v Holt [2001] 1 Ch 210</i>	The claimant had worked for the defendant since he was 16. The claimant had rejected opportunities to work elsewhere and better himself on assurances from the defendant that he would leave the farm to the claimant. Over 40 years later they fell out and the defendant made a new will leaving the farm to another person.	Where there was a clear, unequivocal promise, express or by acquiescence, made by the transferor, and this was followed by reliance by the transferee, which meant it was inequitable to allow the transferor to go back on the promise, the court would carry out the minimum equity to do justice. The facts had created an estoppel for the claimant, which in proprietary estoppel can found a cause of action (ie used as a sword).
<i>Jones v Lock (1865) 1 Ch App 25</i>	A father wanted to transfer the interest in a cheque, which was made out to him, to his infant son. He had made an oral declaration to that effect but had failed to endorse the cheque.	The transfer as a gift had failed as it required endorsement and the court would not create a trust out of an imperfect gift.

CASE	FACTS	PRINCIPLE
<i>Milroy v Lord (1862) 2 DE G F & J 264</i>	An attempt was made to transfer property to be held on trust. Although the transferor had made the transfer by deed and delivered it to the respondent, the failure of the transfer to be registered in the bank's books meant that the transfer was imperfect.	Where the transfer had failed because the transferor had failed to do all he could to perfect title, the courts would not complete the transferor's actions.
<i>Pennington v Waine [2002] 1 WLR 2075</i>	The owner of shares wanted to transfer them to her nephew. The relevant forms were completed but not registered, being on file at her solicitors. Her nephew took on some responsibility for the running of the company, which the transfer gave him. All parties acted as if he had the shares. On her death the court was asked to perfect the transfer.	Based on principles of unconscionability, the court would perfect the transfer to the nephew (see 'Key debates' in the following section).
<i>Re Cole [1964] Ch 175</i>	A husband took his wife through the home and said 'Look, it is all yours'. On his bankruptcy she claimed legal ownership of the furniture.	A transfer of chattels not by deed requires a delivery of the chattel with unequivocal words of transfer to be valid.
<i>Re Fry [1946] Ch 312</i>	The transferor wanted to transfer shares but to do this he needed permission from the Treasury. He had not obtained this.	The transferor had not done all that was required of him to make good the transfer. Equity would not perfect the transaction.
<i>Re Gonin [1977] 2 All ER 720</i>	A mother had promised her daughter that she would have her house. But the mother believed that she would not be able to leave the house to the daughter, as her daughter was illegitimate. She then wrote a cheque to her daughter.	The writing of the cheque was evidence that the intention did not remain unchanged until death.
<i>Re Ralli's WT [1964] Ch 288</i>	A testator promised to establish a trust, which he never did. On death the promisee was appointed executor.	The trust was constituted. However, this decision is doubtful as an extension to <i>Strong v Bird [1874]</i> as there was no failed attempt.
<i>Re Rose [1952] 1 All ER 1217</i>	Rose transferred shares to his wife and trustees on 30 March. To complete the transfer, it had to be registered with the company. The transfer was registered on 30 June.	Where the transferor has done all in his power to make the transfer, and the only fault is a third-party inaction, over which the transferor has no control, equity will perfect the transfer.

CASE	FACTS	PRINCIPLE
<i>Richards v Delridge (1874)</i> LR 1 HL Eq 11	A grandfather wanted his leasehold interest in land to be held for the benefit of his grandson. He assigned the lease to the boy's mother but did not make the transfer by deed as required under s 52 Law of Property Act 1925.	Failure to complete the necessary legal requirements will mean the transfer fails.
↳ <i>Sen v Headley [1991]</i> 2 All ER 636	The transferor was terminally ill with cancer; he told the transferee, with whom he had had a long-term close relationship, that he wanted her to have his house, saying, 'You have the keys. They are in your bag. The deeds are in the steel box'.	Confirming that land could be the subject of a DMC, the Court of Appeal confirmed the decision in <i>Cain v Moon [1896]</i> that a valid DMC required transfers made: <ol style="list-style-type: none"> 1. in contemplation of death; 2. conditional on death; 3. with actual or some indicia of the transferor giving 'dominion' (control) of the property to the transferee (sometimes called symbolic delivery).
<i>Strong v Bird (1874) LR 18 Eq 315</i>	A promise to forgo the payment of a debt was unenforceable at law for want of consideration. The promisee was appointed as the executor of the will of the promisor.	Where there has been a failure of the legal requirements of a valid transfer, but the transferee is appointed as executor or administrator of the transferor's estate, equity will perfect if there has been a continuing intention to give during the transferor's lifetime.
<i>Thorner v Major [2009] UKHL 18</i>	A young farmer, David, worked for an elderly relative, Peter, for many years on a farm. There were several comments by Peter that David would inherit the farm. The statements were vague and imprecise. Peter was a 'man of few words' and little formal education. Peter died intestate and David claimed that the estate was estopped from denying him an interest in the farm.	Although the extent of the farm was imprecise, the property itself (the farm) was clear. Although the evidence was imprecise as to the assurance, it was clear on the first-instance evidence that David and Peter had proceeded on the understanding that David would inherit the farm. The estate was estopped from denying this. Per Lord Scott, the decision is better decided as one of remedial constructive trust rather than estoppel as the property was of a future interest under a will rather than a present property.
<i>Yeoman's Row Management Ltd v Cobbe [2008] UKHL 55</i>	A property owner entered into a 'gentleman's agreement' to sell property to Cobbe when he had obtained planning permission, sharing the proceeds by an agreement they would draw up legally at a later date. After expending a great deal of money on the planning application, the property owner refused to complete the	There was no clear property over which the estoppel could be raised. The agreement was not a valid contract, which could form the basis of an estoppel. Both were commercially experienced people who took the risks in the 'gentleman's agreement'.

4. Constitution

CASE	FACTS	PRINCIPLE
	agreement. Cobbe claimed that the property owner was estopped from doing this.	

p. 57

Key debates

Topic	Unconscionability
Viewpoint	The decisions in <i>Choithram</i> and <i>Pennington v Waine</i> are problematic. While the decision in <i>Choithram</i> may be based on a valid development of equity acting on the conscience of the parties and on the particular facts justified, it is suggested that the decision in <i>Pennington v Waine</i> has strayed too far. There is a lack of guidance on what makes a transaction unconscionable from Arden LJ and it has left the principle of <i>Re Rose</i> uncertain.
Source	Pearce and Barr, <i>Pearce and Stevens' Trusts and Equitable Obligations</i> , 7th edn (2018), comments at pp 101–5 on the decision, offering a good, concise criticism.
Topic	Proprietary estoppel
Academic/author	Robertson
Viewpoint	A review of the reliance issues in finding an adequate remedy in estoppel cases.
Source	Robertson [2008] Conv 295.

Exam questions

Problem question

Charles says to his brother James, ‘You can have my shares in DDD Ltd.’ Before Charles has time to transfer title in the shares to James he dies and James has been appointed as executor of Charles’s will.

Sumita has been run over by a car and is seriously ill. She has been told that she will die soon. Her friend Ellie comes to visit her and Sumita says, ‘I think I am going to die, I want you to have my car. Here are the keys and registration documents’. Sumita then dies.

Advise James and Ellie on who owns the property.

See the Outline answers section in the end matter for help with this question.

Essay question

The decision in ***Pennington v Waine*** has introduced a much-needed degree of flexibility in the strict rules on transfer of legal interests. Giving effect to the intention of the settlor should be the primary concern of the courts.

Discuss.

p. 58 **Online resources**

This chapter is accompanied by a selection of online resources to help you with this topic, including:

- Further reading <<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-4-further-reading?options=showName>>
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- Looking for extra marks quiz <<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-4-looking-for-extra-marks?options=showName>>
- Multiple choice questions <<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-4-multiple-choice-questions?options=showName>>
- Outline answers to essay questions <<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-4-outline-answers-to-essay-questions?options=showName>>
- Key facts checklists <<https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-4-key-facts-checklist?options=showName>>

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