

CONVERSION AND RECONVERSION

CONVERSION

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. See *Att. Gen. v. Hubbuck* (1884) 13 Q.B.D. 275

This leads to the fictitious and artificial nature of the doctrine.

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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).

CONVERSION

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.

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.

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Importance of the Doctrine

- Practically, the doctrine is of little significance in Nigeria, hardly can one find a single reported case in which the doctrine has been applied.
- Even, in England where the doctrine originated, the importance of the doctrine has declined since the property legislation of 1925.
- **CONVERSION**
- Nevertheless, the doctrine has not become totally impotent AS there are a number of circumstances in which the question of conversion can still arise, and a fair and just settlement of such question can be achieved by reference to the equitable doctrine of conversion. See *Sweetapple v. Bindon* (1705) 23 E.R. 947
- Note that the doctrine can only operate where someone is under an obligation to have carried out certain act and there is someone who is in a position to compel the performance of such obligation.
- **CONVERSION**

TYPES OF CIRCUMSTANCES IN WHICH THE DOCTRINE IS OPERATIVE

1. Where there is a binding and specifically enforceable contract for the sale or purchase of land

In this case, the doctrine of conversion becomes effective at the date and time of the contract expressing the intention. The land, the subject-matter of the contract of sale is considered and treated as personality and the purchase-money is considered and treated as land.

Thus, where there is a contract by A to sell land to B at a certain price, B becomes the owner in equity of the land, subject, however, to B's obligation to perform his part of the contract by paying the purchase-money; But subject to that, the land is the land of B, the purchaser

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As regards the position of A, the vendor, he truly has the legal estate in the land, but for many purposes, from the moment the contract is entered into, he holds it as a trustee for B, the purchaser.

Although A has certain rights in the land remaining, all those rights are conditioned and limited by the circumstances that they are all referable to his rights to recover and receive the purchase-money.

Hence, his interest in the land when he has entered into a contract for sale is not an interest in land; but an interest in personal estate, in a sum of money due under the contract. See *Vaisey, J., in Hillington Estates Co. v. Stonefield Estates Co. Ltd. (1952) Ch. 627 at 631-632.*

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The implication as apparent from the statement of Lord Eldon in the early case of *Seton v. Slade (1802) 32 E.R. 108 at 273*, is that if a vendor dies before completion of the contract, the question would be whether at the time of his death, he was under such an agreement that could have been specifically enforced against him.

If the answer is in the affirmative, the land which the vendor had agreed to sell will be treated as personality and would devolve to the person or persons entitled to personality under the vendor's will. See *Curre v. Bowyer (1818) 49 E.R. 478.*

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Conversely, on the death of the purchaser before completion, the land will devolve on his devisee who is however bound to pay the purchase-money.

It is a condition precedent to the application of the doctrine that there must be, in every case, a contract binding on the vendor and the purchaser, and capable of being specifically enforced as between the vendor and the purchaser for ownership to change. See *Lysaght v. Edwards (1876) Ch. 499; and National Bank of Nigeria Ltd. v. Compagnie Frassinet (1948) 19 N.L.R. 4*

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Indeed, all the cases on the doctrine of constructive conversion are founded on the principle that a valid and specifically enforceable contract actually changes the ownership of the estate in equity. See *Lysaght v. Edwards; Re Thomas (1886) 34 Ch. 166; Buckmaster v. Harrop (1802) 32 E.R. 139*

Similarly, conversion does not take place where the vendor-purchaser relationship is absent; and such relationship does not exist where the contract of sale is subject to a condition precedent; conversion will only take place if and when the condition has been performed. See *Renelagh v. Melton (1864) 62 E.R. 627.*

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2) Where there is an Option to Purchase

The general rule is that if an owner of a real estate contracts to sell it and dies before the contract is executed, the estate is converted into personality; and that when a party under an agreement is given unilateral power of

making an election at a future date, as to whether or not the contract should be carried out, and that party has elected in favour of the contract, there is conversion which is related back to the time the power was granted; although the contract which gives rise to the option is never in fact specifically enforceable, there is conversion from the moment the power to elect is exercised and, therefore, becomes a binding contract in the life time of either party.

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But a different situation arises where an option is granted and the option is not exercisable until after the grantor's death; in that case there ought to be no conversion since there cannot be a specifically enforceable contract in existence as from the date and time of the grantor's death.

This is the position in most, if not in all, of the American jurisdictions. See *Rockland-Rockport Lime Co. v. Leary* 203 N.Y. 469 (1911), *Inghram v. Chandler*; 161 N.W. 434 (1917), *Smith v. Loewenstein* 34 N.E. 159 (1893).

But the rule in *Lawes v. Bennett* (1785) 29 E.R. 1111, is to the contrary

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It states that where there is a contract giving an option to purchase real estate, and the option is not exercised till after the death of the person who created the option, nevertheless, the purchase price, if and when the option is exercised, goes as part of the grantor's personal estate and not as part of his real estate.

That the exercise of an option to purchase given in a lease has a retroactive effect, in that it relates back to the time the option was granted and, therefore, conversion operates, as between the persons interested in the realty and personality respectively of the lessor, as from the date the option was granted.

CONVERSION

1. Where there is a Binding Trust to Sell or Purchase Land

Whenever there is a direction, contained in a will or settlement, that trustees shall sell or purchase land, there is a trust for conversion which becomes operative from the moment the instrument creating the trust becomes effective.

In the case of conversion directed by will, conversion takes place from the time of the testator's death. See *Beauclerk v. Mead* (1741) 26 E.R. 505

In the case of conversion directed by deed; conversion takes place from the date of its delivery or execution. See Wigram, V.C. in *Griffith v. Ricketts* (1849) 68 E.R 122.

There can only be a trust for conversion where the direction to convert is imperative and definitive. See *Re Walker* (1908) 2 Ch. 705 at 712

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Hence, a mere declaration that personality shall devolve or pass to persons successively as realty is in itself inoperative since the whole doctrine of conversion turns on the maxim that equity considers to have been done what ought to have been done pursuant to the trust. See *Re Walker* (*supra*).

Thus, nothing short of an absolute and effective trust for sale or purchase can in equity create a conversion of realty into personality or vice versa. See Stirling, J. in *Goodier v. Edmunds* (1893) 3 Ch. 455, 462

CONVERSION

4. Under a Statutory Trust for Sale - Applicable only in the Former West and Mid-West States Under the PCL 1959 and the Administration of Estates Law, 1959

The following provisions statutorily create trusts for sale *a fortiori*, the consequences are automatic conversion. Section 61(2) of the law provides that where, after the commencement of the law, land is expressed by conveyed to any persons in undivided shares and those persons are of full age, the conveyance shall notwithstanding anything to the contrary in the law operate as if the land had been expressed to be conveyed to the grantees ... as joint tenants upon the statutory trusts.

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Section 61(3) provides that a devise, bequest or testamentary appointment, coming into operation after the commencement of the law, of land to two or more persons in undivided shares shall operate as a devise, bequest or appointment of the land to the personal representatives of the testator, and upon the statutory trusts.

See also Ss 62, 63(1) & 64(1) PCL; and 37(1) of the Administration of Estates Law, 1959

Generally, where there is statutory imposition of a trust for sale, the effect is, as far as beneficiaries are concerned, to convert land into money. See *Re Kempthorne* (1930) 1 Ch. 268 at 290

CONVERSION

Where Land is Partnership Property

Where land is partnership property, such land has always been treated in equity as personality.. See Bowen, LJ. in *Attorney-General v. Hubbuck* (1884) 13 Q.B.D. 275 at 289

Indeed, the doctrine of conversion necessarily affects partnerships .

Hence, to achieve the various purposes of a partnership and upon dissolution to ensure equitable division of partnership property among the partners, partnership property must be treated in the end as subject to a trust for sale and conversion. This is the basis of the rule which has now been made statutory. See S 22 of the Partnership Act 1890; section 23 of the Partnership Law (WN).

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. Where Court Directs a Sale

Where a court of competent jurisdiction directs a sale of realty, conversion becomes operative from the date of the order. See *Fauntleroy v. Beebe* (1911) 2 Ch. 257 at 263

The mere fact that the order was made for a purpose which does not exhaust the proceeds of sale does not prevent conversion. See *Burgees v. Booth* (1908) 2 Ch. 648 at 651

The court may, however, order that there should be no conversion, which may mean that the property would retain its original nature and character either for all purposes or for purposes of devolution only. Such order is, perhaps, usually made where the property ordered to be sold or to be purchased is owned by someone suffering under certain incapacity. See *A-G v Marquis of Ailesbury* (1887)

CONVERSION

Failure of Conversion

* Failure of conversion may be either total or partial.

Total failure

* Whether a conversion is directed by a Deed or by a Will, if the objects for which the conversion has been directed totally fail before the will or the deed becomes operative, there is no conversion.

A number of reasons may be responsible for total failure of conversion; for example where all the beneficiaries under a trust for sale die before the trust instrument comes into operation for example, death of legatees or devisees in the life time of the testator in the case of conversion directed by will, or death of all the beneficiaries before a deed, directing conversion in their favour, becomes inoperative.

CONVERSION

Whatever reason that brings about a total failure of objects for which conversion was directed, and whether the direction was by Will or by Deed, the effect is the same and that is there is no conversion.

The reason being that the equitable doctrine of conversion can only operate where there is a human being who is able to insist that the nature and character of the subject matter for conversion shall be altered. See *Smith v. Claxton (1820) 56 E.R 784*

In the case of total failure of conversion directed by deed, the property results back to the settlor if he is alive; if not it would pass under his will or intestacy as the case may be. See *Re Lord Grimthrope*. See *Re Lord Grimthrope (1908) 2 Ch. 675*

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However, where there is no residuary bequest or devise under the testator's will, the property would devolve on intestacy. See *Smith v. Claxton (1820) (supra)* at 494; and *Re Walpole (1933) Ch. 431*

Partial Failure

- There is partial failure of conversion where, for example, if A devises 'Ikeja Estate', upon trust to sell and the proceeds to be divided between X and Y, and X pre-deceased A; there is a lapse of the gift to X while that of Y is good.

CONVERSION

However it is necessary to distinguish between conversion directed by deed and that directed by will since the consequences of partial failure of objects of conversion differ from one to the other.

- The basis for this distinction as explained by Wigram V.C. In *Griffith v. Ricketts (1849) 7 Hare 299, 311*, is that a will speaks from the death of the testator while a deed takes effect from the date of its execution.

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Deeds: Effect of Partial Failure

- Where there is a partial failure of the purposes of a conversion directed by deed, the property not required for the objects stated in the deed reverts to the settlor; if he is dead, it reverts to those claiming under him-in both cases, the property reverts in its converted form.
- Thus, where the direction is to turn land into money, the lapsed part of the land reverts to the settlor or those claiming under him as personality. Similarly, money directed to be laid out in land reverts, on a partial failure of the direction, to the settlor or those claiming under him, as land.

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Will: Effect of Partial Failure

(a) Land into Money:

- Where land is the subject matter of a conversion directed by will, and there is a partial failure of the purposes for which conversion has been directed, the trust for conversion becomes operative though, and so far as one

of the purposes have failed, land directed to be sold and converted into money would go to the person entitled to realty under his intestacy, but that person would take it as personalty. See *Ackroyd v. Smithson*

CONVERSION

Money into Land:

Where money is laid out for the purchase of land and there is a partial failure, the same rule and reasoning apply as in *Ackroyd v. Smithson (supra)*.

Thus in *Cogan v. Stephens* (1835) 5 L.J. Ch. 17 at 20, Lord Langdale MR. stated that if a testator devises land for purposes which are in part illegal, or which partially fail or which require part only of the land devised, the person entitled to realty in that circumstance takes the part which fails; or which is not required for the purposes of the will; and that conversely in the case of money laid out for the purchase of land, the Person entitled to personalty in the circumstances would take

RECONVERSION

Whenever the equitable doctrine of conversion operates, though the subject-matter for conversion has not in fact been converted, in the eye of equity there is notional conversion of that subject-matter, because equity looks on that as done which ought to be done.

Again in certain circumstances, the notional or fictitious and artificial character, which equity has imposed on the subject-matter, is annulled yielding place to the actual state of the property; the state in which it was, before being impressed by the equitable stamp of conversion. At this state there is reconversion.

RECONVERSION

Reconversion has been defined as that imaginary process by which a prior notional conversion is reversed or discharged, and the notionally converted property restored in contemplation of equity to its original actual quality.

Reconversion may be effected vis-a-vis by act of the Parties or by operation of law.

The former depends on the manifestation of intention by the party or parties entitled to reconvert; while the latter reconversion is automatic.

RECONVERSION

It frequently happens that the beneficial ownership of subject-matter for conversion is vested in one person who is *sui juris*, not being under any disability and absolutely entitled in that case, he is entitled to take the property in its actual state.

Thus, if money is laid out for the purchase of land, the party who would have the sole and absolute interest in the land when bought, may elect to have the money paid to him and that the money, the subject-matter for conversion, shall not be used for the purchase of land.

RECONVERSION

- in such instances, a court of equity will not order a contrary decree which might be annulled or rendered vain by the act of the absolute owner. See *Benson v. Benson* (1710) 24 E.R. 324.
- For if the purchase were to be enforced, he might at the same moment sell the land and convert it into money, thereby stultifying the court order, and 'equity like nature does nothing in vain.' See *Seeley v. Jago* (1717) 24 E.R. 438; *Saunders v. Vautier* (1841) 10 L.J. Ch. 354

RECONVERSION

Where more than one person are interested in the subject-matter of conversion, the same principle applies as in the case of an absolute beneficial owner.

For example where land is held on trust for sale for the benefit of A and B in undivided shares, and they are both of full age and absolutely entitled, provided they agree, they can effect a reconversion. See *Re Daveron* (1893) 3 Ch. 421.

However, the case is different where one of the several beneficiaries is not willing to reconvert.

RECONVERSION

It appears in such instances, where the undivided shares relate to money to be laid out in land, a partial reconversion can be allowed even without the concurrence of the other co-owners. The reason being that such course of action will not in any way be detrimental to the interest of the other co-owners who are not willing to reconvert. See *Holloway v. Radcliffe* (1857) 53 E.R. 64

However, If the undivided shares relate to land to be laid out in personality, if there is to be any reconversion, at all, it must be total, which means all the beneficiaries must concur; a co-owner cannot effect a partial reconversion. See *Holloway v. Radcliffe*

RECONVERSION

Remainder man

- a remainder man may reconvert, but his election to reconvert is only operative when his interest falls into possession, and if before then, the property is in fact unconverted. See *Re Duke of Cleveland's Estates* (1893) 3 Ch.n. 244
- A person who is absolutely entitled under a settlement of land upon trust for sale may by his will elect to take the property in its unconverted state, which election would operate as a reconversion of the personality into realty; he cannot however do so if he is a remainder man whose interest is still contingent at his death. See *Re Sturt* (122) 1 Ch. 416

RECONVERSION

Infants and Persons of Unsound Mind

- Ordinarily, it would appear that an infant cannot elect to reconvert. See *Robinson v. Robinson* (1854) 52 E.R. 442.
 - But in certain circumstances, the court may elect for him (See *Burgess v. Booth* (1908) 2 Ch. 648); or sanction his election where he has already elected.
 - The court will only exercise this power after an enquiry has been directed as to what is most beneficial to the infant in the circumstance.
 - In the case of persons of unsound minds, the same principle applies as in the case of infants. See *Re Douglas and Powell's Contract* (1902) 2 Ch. 296
- RECONVERSION
 - Evidence of Election to Reconvert
 - Election presupposes a clear intention to take the property 'in specie' free from a trust or direction to convert.

In order to establish an election, there must be sufficient evidence of the election; such evidence may be by express declarations or inferred from acts or conduct of the party or parties entitled to elect. See *Re Douglas and Powell's Contract*

RECONVERSION

Where a party's right to elect is subject to the right of another person to prevent reconversion, it is not enough for the party entitled to elect to show evidence of his intention to elect; in addition, it must also be shown that the person who can prevent reconversion has assented to an election. See *Re Douglas and Powell's Contract*

In the case of a direction to convert land into money, it is easier to infer intention to reconvert; circumstantial evidence such as the retention of the land for a reasonable length of time and expending money on its improvement may be sufficient. See *Mutlow v. Bigg* (1875) 1 Ch.D.385; *Re Gordon* (1877) 6 Ch.D. 531

RECONVERSION

However, where the direction is to layout money for the purchase of land, a stronger and more direct evidence of an intention to reconvert is required.

Thus a receipt of the income from the money for a long period of time may not be enough; there must be, in addition, a more positive manifestation of intention to reconvert. See *Re Pedder's Settlement* (1854) 43 E.R. 1116.

RECONVERSION

Reconversion by Operation of Law

In certain circumstances property which has been notionally converted in equity, becomes reconverted without any declaration or act of the party entitled to reconvert.

This usually occurs either where the duty to convert and the right to call for the subject-matter in 'specie' are vested in the same person; or where both the legal interest and the equitable interest are vested in the same person.

- In both cases the obligation to convert is extinguished, and the property is said to be 'at home'.
- RECONVERSION
- Thus, where money directed to be laid out for the purchase of land, actually comes into the hands of the person who would be entitled to dispose of the land if purchased, the money is his absolute property, and will pass under a general bequest of his personal estate. See *Pulteney v. Earl of Darlington* (1783) 28 E.R. 1095; *Chichester v. Bickerstaff* (1693) 2 Vern 296; 23 E.R. 791; *Re Cook* (1948) Ch. 212;