

## EQUITY LECTURE

### EQUITABLE DOCTRINE OF SATISFACTION AND PERFORMANCE

Satisfaction is the gift or donation of a thing with the intention that it shall be taken either wholly or partly in extinguishment of some prior claim of the donee. See *Chichester v Coventry* (1867) LR 2 HL 95; and *Ojule v Okoya* (1972) 1 All NLR (pt 1) 385.

The doctrine becomes relevant where X, who had been under a certain obligation to give something to Z, donates a thing (which is not directly connected with the discharge of his obligation) to Z, such donation, subject to the fulfilment of some other attendant requirements, raises a presumption that the intention of X in making the donation is to satisfy or discharge his prior obligation to Z.

INTRODUCTION contd

before a presumption of satisfaction can be raised, two basic requirements must be met:

First, the donation must have been made in such circumstances that an intention on the part of the donor to satisfy an obligation can be presumed since the essence of the doctrine is carry into effect the presumed intention of the donor. See *Cranmer's case* (1702) 91 ER 434; *Goldsmid v Goldsmid* (1818) 1 Wils. H. 140.

Secondly, there must be some prior and existing

INTRODUCTION contd

claim of the donee as cases of genuine equitable satisfaction presuppose an existing obligation which the donor is presumed to have intended to satisfy. See *Re Fletcher* (1888) 38 CH.D 572.

Doctrine of satisfaction is founded on the equitable maxim that 'equity imputes an intention to fulfil an obligation'. In addition, it can be explained on the basis of other maxims such as 'equity leans against double portion' or 'equality is equity.'

#### HEADS OF SATISFACTION

##### SATISFACTION OF DEBT BY LEGACY.

Where a testator gives a legacy to his creditor without any reference to the debt, such legacy (subject to the fulfilment of the above requirements), will be presumed to be a satisfaction of the testator's indebtedness to the donee.

In other words, the intention of the testator, in that circumstance, is presumed to be that his creditor/donee shall not have both the debt and the legacy, and if the presumption is sustained, the legacy discharges the testator's prior obligation to pay the debt. See *Talbot v Duke of Shrewsbury* (1714) 24 ER 177.

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The rule may be said to have been founded on the maxim 'debitor non praesumitur donare', i.e. a debtor is not presumed to intend to give. He is presumed to intend to be just before being generous. See *Talbot* case.

#### Circumstances Rebutting The Presumption

The presumption is rebutted where the legacy is smaller than the debt. See *Coates v Coates* (1898) 1 E.R 258.

Here, there is no pro tanto satisfaction of a debt by a legacy. See *Chrichton v Chrichton* (1895) 2 CH. 853.

HEADS contd

The whole essence of the doctrine therefore is that the debtor can be held to have offered the creditor something equivalent to his debt or greater than it. See *Re Horlock* (1895) 1 Ch 516; *Fitzgerald v National Bank* (1929) 1 KB 394.

There is no presumption where the debt was contracted subsequently to or even contemporaneously with the making of the will as there cannot exist an obligation to satisfy a non-existing obligation. See *Cranmer's case; Wiggins v Horlock* (1888) 39 CH.D. 142.

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There is no presumption where the legacy is not in every way as beneficial and advantageous as the debt.

Thus, there is no presumption where the debt is certain, and the legacy is contingent or uncertain, even though the legacy is of greater amount than the debt. This is because uncertainty of a legacy makes it less beneficial and less advantageous than the debt which is certain. See *Talbott case; and Crichton case.*

HEADS contd

Whether a legacy is not as beneficial and advantageous as a debt is a question of fact to be determined by reference to the facts of the case. See *Re Haves* (1951) 2 All E.R. 928.

i) There no presumption where there is contrary intention (express or implied) in the will of the testator.

For example, where there is an express direction in a will for payment of debts and legacies (See *Bradshaw v Huish* (1889) 43 Ch. 613); or merely contains a direction to pay debts (*Re Manners* (1949) Ch 613).

This is due to the fact that it is not necessary in a Will to give a direction to pay debts at all. Hence, once such direction is inserted, it may be assumed to be there for a purpose.

HEADS contd

Likewise, a contrary intention will also be implied where the testator states a particular motive for the legacy other than in satisfaction of the debt

ii) There is no presumption of satisfaction where the legacy is not of the same nature as the debt.

For instance, a bequest of the life use of a house and furniture should not be treated as a satisfaction of a debt. See *Barret v Beckford*.

Likewise, a devise of land would not be presumed to be a satisfaction of debt.

Also, there is no presumption of satisfaction where the amount of debt due is uncertain

HEADS contd

iv) Payment of debt in the lifetime of the testator. See *Re Fletcher* (1888) 38 Ch.D. 373.

## 2. SATISFACTION OF PORTION DEBTS BY LEGACIES

Where a father or a person in *loco parentis* is under a covenant to provide a portion for a child, and the father or the person in *loco parentis* subsequently gives a legacy to the child, *a presumption arises that the legacy was intended as a satisfaction of the portion debt.*

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This is founded on the maxim 'equality is equity' which leans against double portion.

Here equity is not in favour of the child or quasi-child claiming the legacy and at the same time, insisting on enforcing his rights under the covenant.

Where the legacy is equal to or greater than the portion-debt, there is satisfaction *in toto*. But if the legacy is less than the portion-debt, there is satisfaction *pro tanto*.

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As stated by Cotton L.J. in *Montagu v Earl of Sandwich* (1886) 32 Ch.D. 525 'as between father and son, the presumption arises that a father does not intend to give double portion to his children; that is to say, if a father has made a provision by way of covenant in favour of his child before the date of his Will; then unless it appears upon the Will or by parol testimony,...that he intends to give the benefit conferred by Will in addition to that which is already secured to the child by covenant, then the child will not take both'. See also *Re Blundell* (1906) 2 Ch. 222.

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#### SATISFACTION OF PORTION-DEBTS BY SUBSEQUENT PORTIONS.

Where a father or a person *in loco parentis* had agreed to give a portion to a child and subsequently makes some other provision *inter vivos* which has the character of a portion, the second provision is deemed to be a satisfaction either wholly or in part of the agreed or covenanted provision. See *Lawes v Lawes* (1881) 20 Ch.D. 81.

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#### SATISFACTION (OR ADEMPTION) OF LEGACY BY PORTION

The rule as stated in *Re Pollock* (1885) 28 Ch.D. 552, is that 'when a testator gives a legacy to a child or any other person towards whom he has taken upon himself parental obligation and afterwards makes a gift or enters into a binding contract in his lifetime in favour of the same legatee, then (unless there be distinctions between the nature and condition of the two gifts), there is a presumption *prima facie* that both gifts were made to fulfil the same natural or moral obligation of providing for the legatee and consequently, that gift *inter vivos* is either wholly or in part a substitution for, or an "ademption" of the legacy.'

HEADS contd

If the amount of the subsequent gift is less than that of the legacy, the presumption does not go beyond an ademption *pro tanto*. See *Pym v Lockyer* 4 ER 283.

#### WHAT IS A PORTION

- It is something given by a father to his child with a view to establishing the child in life. See *Taylor v Taylor* (1875) L.R. 20.
- Example of gifts by way of portion include marriage portion, money laid out either for the training of the child into a profession or setting him up in business; paying for the goodwill of a child's business;----
- Portion contd.
- Paying for his commission, and giving him stock-in-trade.
- Whether or not a gift is to be regarded and treated as a portion depends on the intention of the donor which may be drawn from the circumstances in which the gift is made. See *Re George's Will Trust* (1948) 2 All ER 1004.

Thus, there is no difficult where the purpose for which the gift is made is expressly stated, but in the absence of such evidence, where the father gives a large sum of money to a child in one payment, the presumption is strengthened that--

Portion contd.

Money is intended to start him in life or make a provision for him.

But if it is a small amount that is given, it requires strong evidence to show that it is intended to be a portion. See *Taylor* case.

There is presumption where the purpose for which the payment was made has been shown to be that which everyone would recognise as being for establishing the child or making a provision for the child. See *Re Peel* (1911) 2 Ch 165; *Re George's Will Trust* (1939) Ch 465;

Portion contd.

It should be noted that it is not every payment or gift to a child that is to be regarded as an advancement by way of portion. This is due to the fact that there may be various reasons why the gift is made to the child. For instance, he may wish to free him from embarrassment or something of that kind. In such instances, the rule does not apply. See *Re Scott* (1903) 1 Ch 1.

#### LOCO PARENTIS

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EQUITY LEANS against double portion in order to secure equality amongst the children in the sharing of their father's property and thereby maintain harmonious relations within the family by reducing possible areas of conflict

It therefore follows that before the rule applies, there must exist a relationship between the donor and donee, equivalent to the relationship between father and child. In other words, the donor must stand in the position of a father to the donee. See *Ojule v Coker* (1972) 1 All NLR 385

#### LOCO PARENTIS

Hence, where the donor is not the father of the donee, there is no presumption of satisfaction unless it can be established that the father is in loco parentis.

A person is in loco parentis when he has so acted towards the child and has thereby imposed on himself a moral obligation to provide for that child. See *Lord Eldon inn Ex Parte Pye* (1811) 34 ER 271

This applies irrespective of the fact that the child lives with or is maintained by the father. See *Pows v Mansfield* (1837) 40 ER 964

#### LOCO PARENTIS

Where the donor is the mother, there is no presumption that a portion is intended. The reason being that the duty of making a provision for the child falls on the father. See *Re Ashton* (1897) 2 Ch 574

There is no moral or legal obligation on the mother to take over the burden of parenthood. Although it can be presumed in instances where the father is dead or where she puts herself in loco parentis. See *Benneth v Benneth* (1879) 10 Ch.D 474. The same applies to a grandfather. See *Re Dawson; Ebrand v Dancer*.

Also, it only applies where a father puts himself in loco parentis with regard to his illegitimate child. See *Lawes v Lawes*

## **POSITION OF A STRANGER-DONEE**

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There is no presumption of satisfaction or ademption where the donee is neither the child or quasi-child of the donor. In that case, the donee, who is a stranger to the donor, is entitled to claim both gifts. See *Re Dawson; Re Pollock*

While the rule against double portions do not apply to a stranger, and he is therefore entitled to the benefits of non-application, he is precluded from deriving any benefits from the application and operation of the rule as it is only designed to achieve equality between children. See *Re Heather*

### **REBUTTING THE PRESUMPTION**

#### **BUTTING THE PRESUMPTION**

The rule against double portion is based on the presumed intention of the father or the person in loco parentis.

Hence, the presumption may be rebutted if it can be shown that the father intended the child to take both gifts.

Internal or external evidence is admissible to rebut the presumption

### **REBUTTING THE PRESUMPTION**

Internal evidence showing the substantial and not slight differences in the nature of the two provisions may rebut the presumption. See *Weall v Rice*

Substantial differences occur in instances where the two provisions are so inconsistent in their nature and character as to lead the court to the conclusion that the two gifts were intended to be cumulative. See *Chichester v Coventry*

### **REBUTTING THE PRESUMPTION**

It also occurs when there are substantial differences between the subject-matter in the two provisions (*Eiusdem Generis*). See *Re Jacques* (1903) 1 Ch 267.

In essence, 'the thing given in satisfaction must be of the same nature, and attended with the same certainty, as the thing in lieu of which it is given, and land is not to be taken in satisfaction for money, nor money for land' see Lord Hardwicke in *Bellasis v Uthwatt* (1737) 26 ER 271

### **REBUTTING THE PRESUMPTION**

**External Evidence** relating to parol evidence of surrounding circumstances showing the true intention of the father, is generally admissible to rebut the presumption against double portion.

Hence declarations made by the father or person in loco parentis either at the time, before or after the making of the gifts are admissible to rebut the presumption. See *Re Tussand's Estate*.

### **REBUTTING THE PRESUMPTION**

- Note that where the court in the construction or interpretation of the instruments, raises a presumption of satisfaction, parol evidence is admissible either to support or rebut the presumption. *Re Tussand's Estate*
- But this does not apply where on the construction of the instruments, there is *prima facie* no presumption of satisfaction. See *Hall v Hill*

Note also in rebutting the presumption, there is need for a weightier evidence in rebutting ademption than in rebutting satisfaction

### REBUTTING THE PRESUMPTION

This is due to the fact that in satisfaction, there is an existing binding obligation which the father is presumed to have intended to satisfy while in ademption, there is no previous obligation to be satisfied.

Indeed, ademption arises not from any binding obligation, but from the free will of the donor to give, and the benefit is given by will which is a revocable instrument, alterable at any time by the testator at his pleasure either by express words, or by implication of law. Hence, it requires a strong evidence to rebut the presumption that the testator intend substitution of the first gift with the second gift.

### REBUTTING THE PRESUMPTION

In the case of satisfaction of portion debt by legacy where there is a prior binding obligation followed by a legacy, it is far easier to presume that the legacy was intended to satisfy the existing obligation which is enforceable by the child. It is presumed that one intends to be just before being generous.

Thus, it requires much less to rebut the presumption of satisfaction than in the former presumption of ademption of legacy which the testator was not obliged to give. See Lord Cransworth in Chichester v Coventry

### DOCTRINE OF PERFORMANCE

The equitable doctrine of performance is also founded on the maxim 'Equity imputes an intention to fulfil an obligation'

There is a close functional similarities between the doctrine and that of satisfaction, and hence the distinction between the two is sometimes blurred. For instance, both lean against double portion.

However, the differences between the two become very real in the detailed consideration of the rules and requirements applicable to each of the doctrines

### PERFORMANCE

In this connection, it would be seen that in satisfaction, the act presumed to be in satisfaction of the obligation is different from what the donor had agreed to do; on the contrary, performance is premised on the doing of an identical act to which the donor had covenanted to do. See Lechmere v Lechmere (1735) 25 E.R. 673

• The doctrine becomes operative when a person has covenanted to do an act and he does something else, which in the eye of equity, is deemed to be identical to, or in furtherance of his obligation under the covenant, he will be presumed to have done that act with the intention of performing his obligation under the covenant

### • PERFORMANCE

• Cases of performance may be divided into two vis-a-vis (1) where there is a covenant to purchase and settle land, (2) where there is a covenant to leave money

#### (1) Covenant to Purchase and Settle Land

• A person may be under an obligation arising from a covenant to purchase and settle land or to leave money to trustees for the purchase of the land

## PERFORMANCE

ordinarily, this obligation would be satisfied if he had actually purchased the land or he had left money to trustees for the purchase of the land. Failure to do either means that he has not carried out his obligation under the covenant.

But if after the covenant, he purchased land, equity will presume that the subsequent purchase was intended to be a performance or part-performance of his obligation under the covenant. See *Lechmere v Lechmere*.

## PERFORMANCE

There is much flexibility in the application of the doctrine.

Hence, the fact that the value of the land subsequently purchased is less than the value of the land which ought to have been purchased and settled under the covenant, is not a bar to the operation of the doctrine. For such will be presumed to be part-performance of the obligation under the covenant. In essence, the pro tanto rule applies.

## PERFORMANCE

Also non-compliance with matters of form, such as requirement that land should be purchased with the consent of trustees or that it should be purchased within a specified period of time, is not sufficient to exclude the operation of the doctrine as equity looks to the intent and not the form.

Note the doctrine does not apply to land owned or purchased prior to the making of the covenant. Likewise, it does not apply where the property subsequently purchased is of different nature from that which the covenantor agreed to purchase and settle under the covenant.

## PERFORMANCE

Furthermore, the rule does not apply to a covenant for value to settle specific and identifiable property as in such instances, the court will decree specific performance of the covenant. See *Collyer v Isaacs; Pullan v Koe*.

### Covenant to Leave Money

It does happen that a person has covenanted to leave by his will, or that he would direct his executors or trustees to pay, a sum of money to the covenantee and he, subsequently dies intestate, and the covenantee becomes entitled under the intestacy to a share in the personal estate of the deceased intestate.

## PERFORMANCE

Such a share is presumed to be a performance or part-performance of the covenantor's obligation under the covenant. See *Blandy v Widmore*.

The rule also applies where the covenantor makes a will in accordance with the covenant, but the legacies under the Will fail to take effect so that the property descends on intestacy, and the covenantee becomes entitled to a share under the intestacy rule. See *Goldsmit v Goldsmid; Re Hall (1918) 1 Ch 562*.

## PERFORMANCE

In both cases, the pro tanto rule applies so that if the covenantee receives less than what he is entitled to under the covenant, that which he received would be taken to be performance pro tanto. See *Garthsmore v Chalie (1804) 32 ER 743*.

However, there is no performance where the thing done and alleged to constitute performance, was in fact done after the covenant has been broken. See *Oliver v Brickland (1732) 27 ER 851*.