

Answers to end of chapter Q&A

Question 1: In general terms, how do the rules relating to the acquisition of equitable interests in land differ from those applying to the acquisition of legal estates and interests in land? Can the differences be justified?

Chapter 11 identifies two central themes in relation to the acquisition of equitable interests in land: the first is informality; the second is diversity. These two themes are useful in considering the differences between the acquisition of equitable interests on the one hand, and the acquisition of legal estates and interests on the other. For example, in Chapter 9, we saw that a number of formality requirements regulate the acquisition of legal estates and interests. In contrast, as shown by the cases discussed on p 360, it is often possible for an equitable interest in land to be acquired without the use of any formality. Further, in Chapter 9, we saw that the most common way for B to acquire a legal estate or interest in land is through a grant from another party: A exercises a power to give B a legal estate or interest. In contrast, as shown again by the cases discussed on p 360, there is a greater diversity in the means by which B can acquire an equitable interest.

It is important, however, not to exaggerate the extent of these differences. In particular, in Chapter 10, we saw that it is sometimes possible to acquire a legal estate in land informally, and without relying on a grant: that is the case when B acquires a legal estate through his adverse possession of A's land. Further, on pp 361-364, we examined three very important formality rules that regulate the acquisition of equitable interests in land. In considering possible justifications for the differences in the rules applying to equitable interests, as opposed to legal estates and interests, it is important to bear in mind the special nature and effect of equitable interests. As discussed in Chapter 4, section 7, equitable interests operate differently from legal estates and interests. Given these different effects, it is less surprising that different rules regulate the acquisition of such rights. Alternatively, we could point to particular policy factors to justify, for example, the court's willingness to allow equitable interests to arise informally: see the discussion on pp 365-366.

Question 2: The cases demonstrate that there a number of different means by which a party can acquire an equitable interest in land. Should we expect those means of acquisition to have anything in common with each other?

On pp 366-369, we discuss the *diversity* in the different means by which equitable interests in land can be acquired. This question asks whether this diversity is surprising. Certainly, as discussed in the answer to Question 1 above, it marks a difference between the acquisition of equitable interests on the one hand and the acquisition of legal estates and interests on the other. However, if, as suggested on pp 368-369 (as well as in Chapter 4, section 1), equitable interests depend on A's being under a particular form of duty to B, this diversity is less surprising. After all, given there are a number of different means by which A can come under a duty to B, it should be no surprise that there are a number of different means by which B can acquire an equitable interest in land.

Question 3: What role should the concept of ‘unconscionability’ have to play in relation to the acquisition of equitable interests in land?

This general question is discussed on pp 366-368. We will also examine it later in the book, when looking at specific means of acquiring equitable interests, such as proprietary estoppel (see Chapter 13) and the various principles that can give rise to a constructive trust (see Chapter 14 and Chapter 18). At a very general level, it is certainly true that unconscionability can be seen as a concept that underpins equity: it could be said that equitable rules only intervene to impose duties on A if the common law rules would otherwise allow A to get away with behaving badly. Further, when B claims to have acquired an equitable interest without any formality, the need to prevent A behaving badly may be seen as a justification to limit or ignore a formality rule.

However, like any system of rules, equity has to develop more specific principles: great uncertainty would be caused if, for example, B could acquire an equitable interest in land *simply* by showing that A had behaved badly. As noted by Bagnall J in *Cowcher v Cowcher* (see the extract on pp 367-368), it is important to decide on parties’ rights – and, in particular, on their property rights – by the ‘application of sure and settled principles to proved or admitted facts’. So, whilst unconscionability may, at a general level, underpin the diverse means by which B can acquire an equitable interest, its connecting force may be rather weak: after all, *any* legal rules could be said to be linked by an underlying need to prevent injustice.

Question 4: What formality rules govern the acquisition of equitable interests in land? What are the main exceptions to those rules?

This question is discussed on pp 361-366. Three particular formality rules are highlighted: (i) section 53(1)(a) of the Law of Property Act 1925; (ii) section 53(1)(b) of the same Act; and (iii) section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. It is therefore important to realise that formality rules play an important role in the acquisition of equitable interests.

On pp 364-365, we noted that, despite their importance, these three rules allow some room for informality. For example, section 53(2) of the Law of Property Act 1925, like section 2(5) of the Law of Property (Miscellaneous Provisions) Act 1989, provides an exception for the ‘creation or operation of resulting, implied or constructive trusts’. This exception is important in the cases discussed on p 360: for example, in *Hodgson v Marks*, Mrs Hodgson can be viewed as acquiring a right under a resulting trust. This does raise the question of *why* such trusts should be excepted from the formality rules: this issue is considered on pp 365-366.

Question 5: Why might it be useful to view the acquisition of an equitable interest in land as depending on one party's coming under a duty to another?

This question is discussed on pp 368-369. In Chapter 4, section 1, we considered the idea that equitable property rights may depend on A's coming under a particular sort of duty to B. If that view is correct, it may be helpful in explaining the two themes identified in Chapter 11: the informality and diversity of the means by which B may acquire an equitable interest in land. First, informality may be easier to justify where B's claim does not depend on A having exercised a power to give B a right, but instead depends on showing that there is some other reason why A should be under a duty to B. In *Hodgson v Marks*, for example, that reason may have been Mr Evans' acquisition of a freehold, for free, when he knew that Mrs Hodgson did not intend him to use that right for his own benefit. Second, diversity may flow from the fact that there are many different reasons for which A can come under a duty to B: for example, in *Attorney-General for Hong Kong v Reid*, it was A's receipt of a bribe to act contrary to B's interests that placed A under a duty to B not to use that bribe for A's own benefit.

Of course, this is not to say that the informality and diversity characterising the acquisition of equitable interests can be explained *only* by a model of equitable interests that focuses on the need for A to be under a duty to B. For example, as noted in the extract from Hopkins set out on p 366, there may be other, policy-based justifications for the prominence of informality and diversity.