

Answers to end of chapter Q&A

Question 1: Assess the relationship between the doctrine of anticipation and specific performance. Is there any other basis upon which an agreement “ought” to be performed?

This question first requires you to consider the relationship between the doctrine of anticipation and specific performance. In part 3 we have seen that generally it is the availability of specific performance that enables us to conclude that a contract “ought” to be performed and therefore triggers the application of the doctrine of anticipation. We have seen both that no rights are acquired under the doctrine until the requirements of specific performance are met and that the rights acquired remain dependent on the continuing availability of specific performance. The precarious nature of such rights creates a difficulty, as proprietary rights are defined by Lord Wilberforce in *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 as requiring “some degree of permanence and stability”. This has led Gardner and McFarlane to doubt that the on-going availability of specific performance is in fact required. You should refer to Gardner’s extract in part 3 in which he forwards a different view of the relationship between specific performance and the doctrine of anticipation.

The second part of this question requires you to consider whether there is any other basis upon which an agreement “ought” to be performed. Although no other circumstances have currently been recognised, we have considered in part 3 Hopkins’ view that full payment of consideration should also provide a basis upon which an agreement “ought” to be performed.

Question 2: Compare and contrast the operation of the doctrine of anticipation to the following contracts: (i) a contract to grant a new lease; and (ii) a contract to assign an existing lease.

As we have seen in part 2, the doctrine of anticipation applies to both of these situations. However, its effect in each situation is different because of the interaction between the doctrine and the law of trusts. We have explored these differences in part 4. Where the doctrine applies to a contract to grant a new lease (the situation typified by *Walsh v Lonsdale* (1882) LR 21 Ch D 9) its effect is to provide the purchaser with an equitable lease; a type of equitable interest that does not require the imposition of a trust. This is analogous to how the doctrine applies to a contract to create an interest in land. For example, a specifically enforceable agreement for a mortgage takes effect under the doctrine as an equitable mortgage. However, where the doctrine is applied to a contract to transfer an existing legal estate (whether freehold or leasehold) the effect of the doctrine is that the existing legal estate is held on trust for the purchaser. The trust arises through the division of entitlement to the legal and equitable estate.

Question 3: Assess the role of the constructive trust in the operation of the doctrine of anticipation

As we have seen in relation to question 2, where the doctrine of anticipation applies to a contract to transfer an existing legal estate (freehold or leasehold) its effect is that the estate is held on trust for the purchaser. (Similarly, a contract to assign an existing beneficial interest would be given effect by the imposition of a sub-trust). The trust in question is a constructive trust, though it is acknowledged as having some unusual features. The trust is explored in part 4.2. We have seen that the use of the trust is inelegant, but has become embedded in the doctrine. To assess the role of the trust you should consider the following points:

- What is the basis for imposing the trust, and does this basis remain valid following *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669? (See part 4).
- What is the consequence of the imposition of the trust? In particular, does the vendor come under fiduciary duties to the purchaser? (See part 4).
- Does it make any difference to the trust whether the purchaser has paid the consideration in full? (See the extract from Hopkins in part 3 and part 4).