QUESTION 1

‘A mere equity is an equitable interest that is less than a full equitable interest. An equitable chose in action is very similar.’

Do you agree? Critically discuss this statement. Is it possible to distinguish between a mere equity and an equitable chose in action?

TIPS FOR QUESTION 1:

See Figure 2.1 and the cases regarding the ‘flexible nature’ of equitable interests.

QUESTION 2

‘Like an “equitable interest”, a “mere equity” is a slippery creature. It can be cornered and illuminated by example but not captured and confined by definition.’

- Mills v Ruthol Pty Ltd [2002] NSWSC 294 [126]

Do you agree? Critically discuss this statement with reference to the nature of equitable interests. Do equitable interests create rather than solve more problems?

TIPS FOR QUESTION 2:

Examine how and why equitable interests are called into existence. See Viscount Radcliffe in Commissioner of Stamp Duties v Livingston [1965] AC 694 at 712 (discussed in Chapter 2).

Prepared by Chris Brien, author of Equity and Trusts Guidebook 2e
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QUESTION 3

Ong has noted:

‘Conceptually, there are four kinds of equitable interests. In descending order of strength they are:

(i) Equitable Proprietary Interests in specific property;

(ii) Mere Equities in specific property;

(iii) Equitable Proprietary Interests in respect of, but not in, specific property; and

(iv) Personal Equities, being equitable interests that are neither interests in, nor even interests related to, specific property.’

- D Ong Ong on Equity Federation Press 2011 p.1.

Given that the courts have not neatly organised equitable rights, titles and interests into a coherent system, critically discuss the above statement.

TIPS FOR QUESTION 3:

This question involves carefully discussing Ong’s conceptual classification of interests. Note that equitable interests are flexible and depending upon circumstances the nature of the equitable interest may change. Although courts have been reluctant to provide a scientific coherent system, Ong’s work does have merit as a means of thinking about equitable interests.

PROBLEM QUESTION

QUESTION 1

Smith and Brown operate a bed and breakfast business. Given the growth of other competitors in the local area, they want to refurbish and extend their premises.

They contact A Really Big Bank as a means of financing the work. The bank agrees with their plans and the funds are secured by a mortgage on the property.

About eighteen months later, as interest rates have been rapidly rising, Smith and Brown fail to make the necessary repayments and default under the mortgage. Despite a high-profile marketing campaign by A Really Big Bank indicating that they are ‘a friendly bunch of people’, they exercise their mortgagee power of sale on the property.

When the bed and breakfast property is put on the market, A Really Small Bank ultimately purchases the property. A Really Small Bank subsequently uses it as
security for the purchase of other property from ABC Ltd. Given the uncertainty surrounding the global financial markets, A Really Small Bank fails to maintain its repayments.

Smith and Brown have been very upset about the actions of A Really Big Bank. Approximately two years after the power of sale was exercised, they have discovered that it was fraudulently exercised.

Smith and Brown seek your advice.

TIPS FOR QUESTION 1:

The facts presented in the question need to be carefully considered with respect to Latec Investments Ltd v Hotel Terrigal Pty Ltd (1965) 113 CLR 265.