CHAPTER 3

ESSAY / DISCUSSION QUESTIONS

QUESTION 1

In *Corin v Patton* (1990) 169 CLR 540 at 582 Deane J said:

‘The test [for a voluntary assignment of Torrens title land] is a twofold one. It is whether the donor has done all that is necessary to place the vesting of legal title within the control of the donee and beyond the recall and intervention of the donor. Once that stage is reached and the gift is complete and effective in Equity, the equitable interest in the land vests in the donee and, that being so, the donor is bound in conscience to hold the property as trustee for the donee pending the vesting of the legal title.’

Critically discuss this statement. Do you agree with Deane J, who together with Mason CJ and McHugh J formed the majority in *Corin v Patton* (1990) 169 CLR 540?

TIPS FOR QUESTION 1:

A detailed discussion of *Corin v Patton* (1990) 169 CLR 540 is required to answer this question. See Figure 3.1 for further information about related cases and statutory requirements.
QUESTION 1

Bill is the absolute owner of a house in Gisborne. Last night while he was talking to his brother he said, ‘I want you to have my house in Gisborne’.

(a) What, if anything, has been achieved in this discussion between Bill and his brother regarding the property in Gisborne?

(b) Would it make any difference if Bill had visited his solicitor and signed a memorandum of transfer?

Answer both parts.

TIPS FOR QUESTION 1:

There are two issues to focus on – the nature of the interest and the form of the dealing. Note that real property is involved in this matter. See Figure 3.1 for further information. Statutory requirements for writing also need to be addressed.

QUESTION 2

Susan has just been diagnosed with a terminal illness. She is very keen to put her affairs in order. After thinking of all her relatives and friends, the next day she telephones her solicitor and tells her she wants the following to occur:

- Please transfer my 10,000 XYZ shares to my cousin Rita.
- I want my sister Mary to have my house at Brighton.

The solicitor carefully notes down Susan’s instructions and informs Susan that she will need to come into the office the next day and sign some papers. Susan says, ‘I will be there tomorrow at 9 am’.

The next day Susan is running late and unfortunately is killed crossing the road in front of her solicitor’s office.

Andrew is a beneficiary under Susan’s will. He seeks your advice on whether any of the purported dealings have been effective. He would like to know if the company shares and the house are still part of Susan’s estate.

TIPS FOR QUESTION 2:

Again, there are two issues to focus on – the nature of the interest and the form of the dealing. Note that both personal and real property are involved. See Figure 3.1 for further information. Statutory requirements for writing also need to be addressed.
QUESTION 3

Andrew owes $5000 to Ben. When talking to Mary on the telephone, Ben decides to give the money Andrew owes him to Mary.

Has anything been achieved in law or equity? Would it make any difference if Mary provided valuable consideration or if the purported dealing was reduced to writing?

TIPS FOR QUESTION 3:

A debt is a chose in action and is governed by its own statutory scheme. This largely involves both writing and notice to be given to all relevant parties. These requirements have not been satisfied at first instance as between Andrew, Ben and Mary. Consequently, nothing has been achieved in law or equity. If valuable consideration is provided, the equitable chose in action has been effectively assigned in equity. If writing is involved and no consideration has been provided, then the legal chose in action is still retained by Ben but the equitable chose in action has been effectively assigned in equity to Mary.