Law of Real Property 1
2018-2019

Lecture 10



LEARNING OBJECTIVES

By the end of this lesson, you should be able to:-

- Explain the different types of equitable interests
- Identify and explain the types of notice that equity recognises
- Discuss the doctrine of the bona fide purchaser for value without notice
- Explain how legislation affects the application of the doctrine of the bona fide purchaser for value without notice

July 2013, q6

In 1997, Mike sold and conveyed Redacre to Nick. Mike delivered possession of the property to Nick after receiving payment of the initial deposit of $20,000, ie 10% of the purchase price of $200,000. In the conveyance, Mike acknowledged having received the full purchase price of $200,000. In 2000, Nick entered into a written contract to sell Redacre to Olson, who paid a sum of $250,000 as the purchase price and entered into possession of the property. Nick, however, did not convey the property to Olson. Instead, he (Nick), deposited the title deeds of Redacre with Dollar Bank, which granted him a loan of $300,000. In 2001, Nick succeeded in obtaining the title deeds from the Manager of Dollar Bank. He then sold and conveyed the property to Dogood for $350,000.

Dogood is seeking to recover possession of Redacre from Olson. Dollar Bank has instituted proceedings to have Redacre sold in order to recover the sum of $300,000 advanced to Nick. Mike is also making a claim to be paid out of the proceeds of the sale the outstanding debt of $180,000 plus interest, which was owed to him on account of the 1997 sale transaction with Nick.

Identify all the possible issues and advise the parties.

Mike

Nick





Redacre

Dollar Bank

Dogood

Olson



EQUITABLE INTERESTS

Types of equitable interests

Remember we said that earlier that equity did two (2) things:

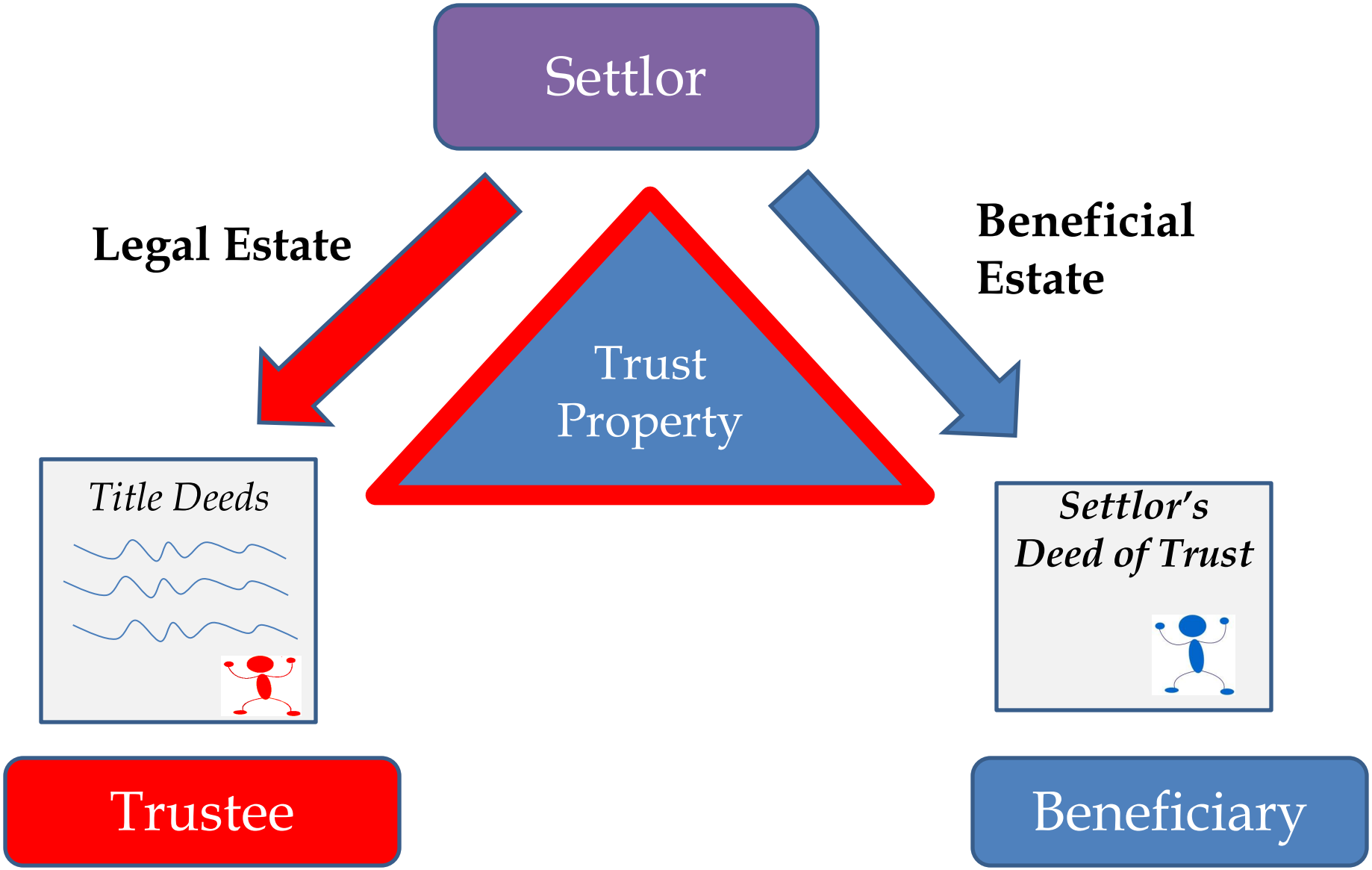
a) It developed new remedies where the common law remedies were inadequate (e.g. injunctions and specific performance).

b) It recognised new rights and interests where none existed before.

- Some of the interests that equity recognises are:
  a) **Trusts**
  b) **Estate contracts**
  c) **Equitable liens**
  d) **Proprietary estoppel**
  e) **Restrictive covenants (Real Prop 2)**

Trusts

- Express
- An express trust arises where land is conveyed to T, a trustee, upon trust for B, a beneficiary or *cestui que trust*; the bare legal or nominal title vested in T and the fruits or rights of enjoyment of title to B.


Settlor
Legal Estate
Beneficial Estate
Trust Property
Title Deeds
Settlor's Deed of Trust
Trustee
Beneficiary

Implied Trust

- The law also recognizes implied trusts or the creation of trusts by implication. These may emerge by operation of law. A court may recognise that by virtue of one party's conduct he is held to hold a legal title to land on trust for another party. Implied trusts fall into two categories (i) resulting and (ii) constructive trusts.

Settlor

Legal Estate

Beneficial Estate

Trust Property

Title Deeds



Settlor's Deed of Trust



Or Court Order Declaration of Trust

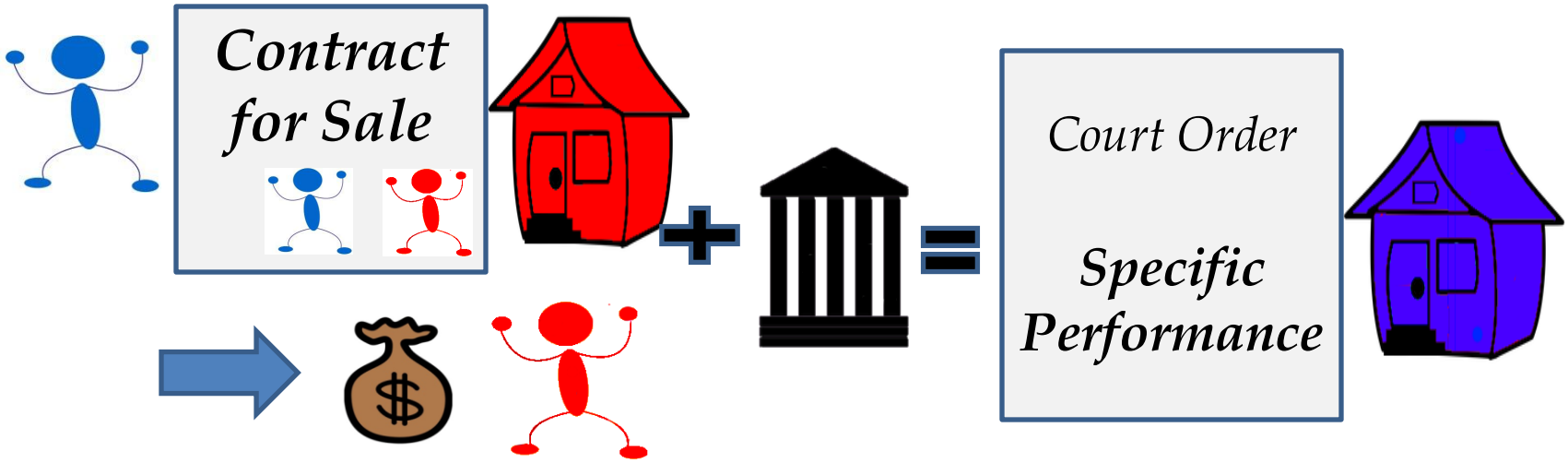


Trustee

Beneficiary

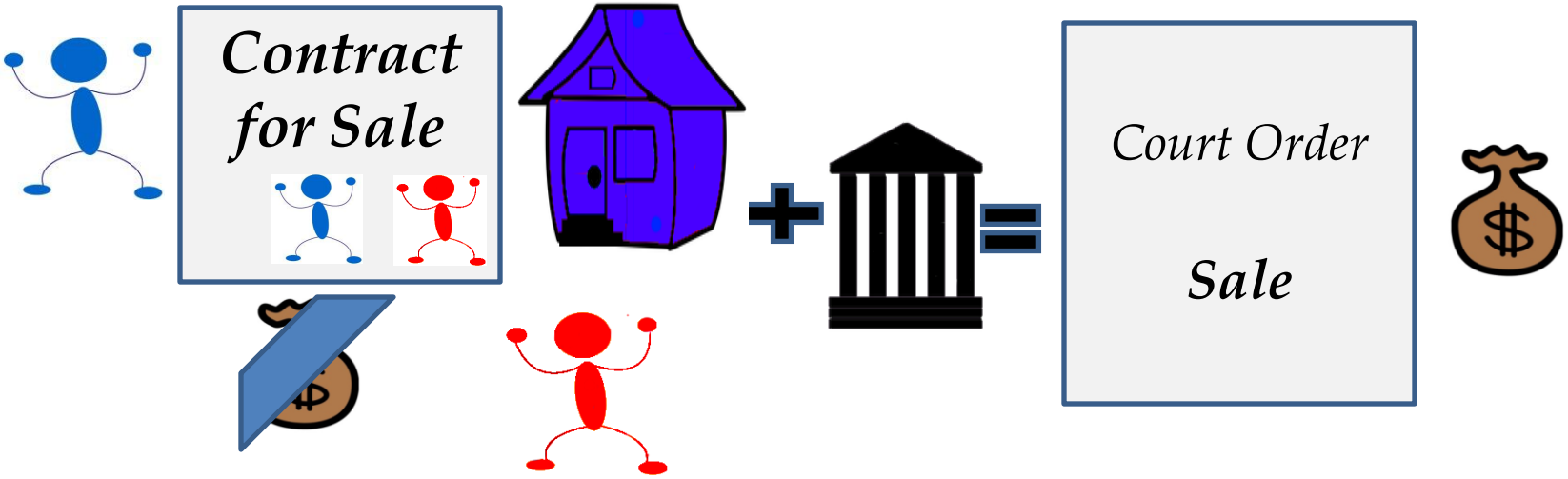
Estate Contracts

- This arises here the fee simple owner (A) has agreed to either convey the legal estate (fee simple) to B or to grant a term of years (leasehold) to B.
- In each case, the law requires compliance with certain formalities. Until those formalities are fully complied with, B has an equitable interest in the property.



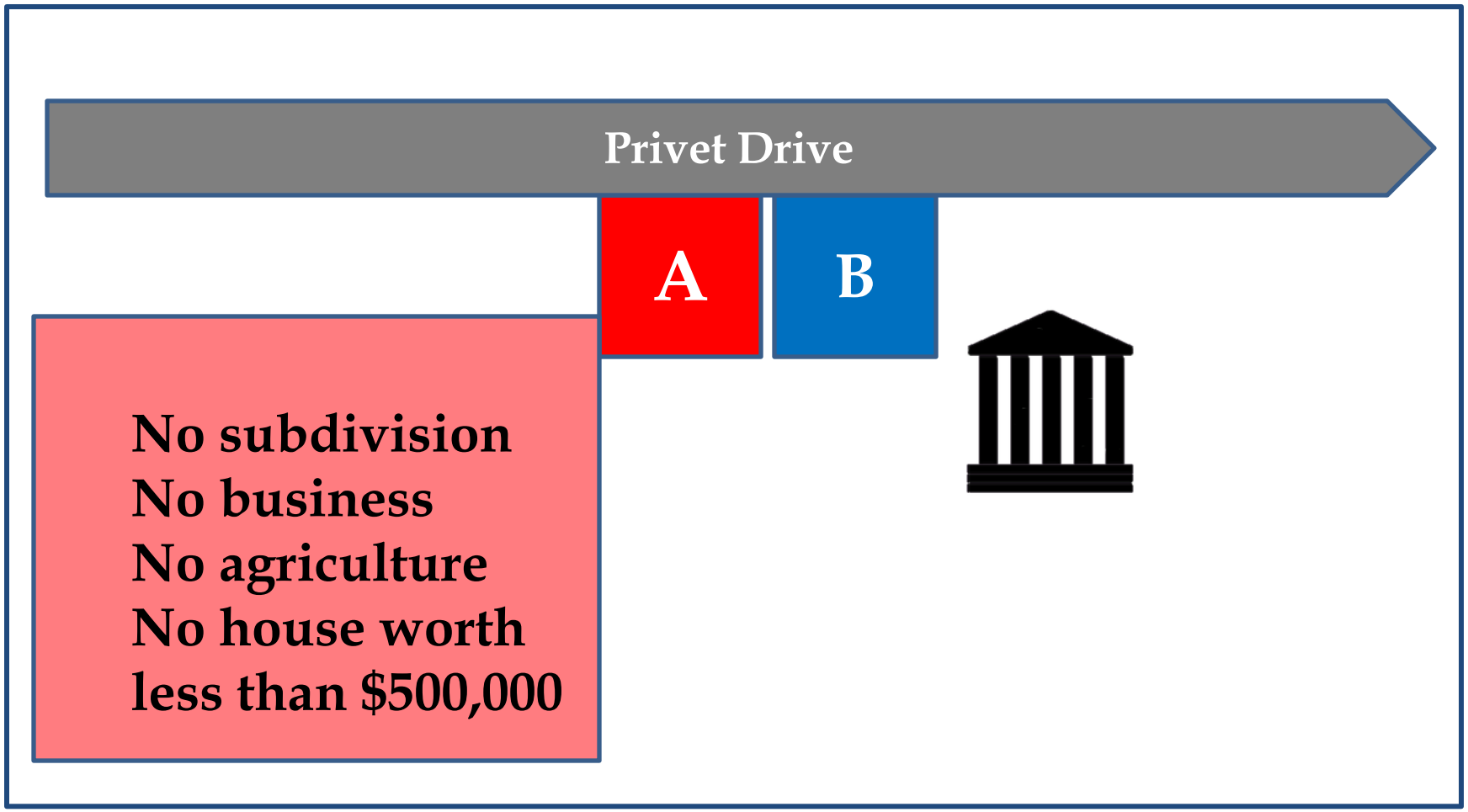
Equitable lien

- This arises where a vendor conveys land to the purchaser before he has been paid.
- The vendor acquires a lien on the land in respect of the unpaid purchase price.
- This lien is enforceable by a sale under the court's direction. It is a mere equity (ie not an equitable interest)



Restrictive covenants

- A covenant by which the use of A's (covenantor) land is restricted for the benefit of B's (covenantee) adjoining property.
- B acquires an equitable interest in A's land.
- This can be enforced by obtaining an injunction to restrain a breach by B and his successors in title (except a *bona fide purchaser for value* without notice of the restrictive covenant.)


Privet Drive
A
B
No subdivision
No business
No agriculture
No house worth
less than $500,000

Proprietary estoppel

- This arises where A (a fee simple owner) encourages B to her land, and B relying on this encouragement to his detriment, then occupies A's land.
- Such encouragement must be such that would cause B to believe that he will obtain an interest in the property.
- B obtains an equitable interest which he can enforce against A and A's successor's in title except a bona fide purchaser for value without notice.

What happens to 3rd Parties?

Impact of the trust on third parties

- The rights in equity are rights *in personam*.
- The interest of the beneficial owner binds the trustee.
- The interest also binds all others except a *bona fide purchaser for value without notice* of the equitable interest.
- Therefore a beneficial interest is binding or must be recognised by:

(i) the trustee's successor in title – **Finch v. Earl of Winchelsea** 24 ER 387 at 389

(ii) creditors of the trustee – **Re Diplock** (1881) 18 Ch D 93 at 104

(iii) donees of the trustee – **Re Diplock** (1881) 18 Ch D 93 at 104

The Chancellor's Darling

- The equitable owner is not in as strong a position as the legal owner.
- His interests are subject to or can be defeated by a *bona fide purchaser for value of the legal estate without notice of his interest.*
- **Plicher v Rawlins** – it is established law that a plea of "purchaser for valuable consideration without notice is an **absolute, unqualified, unanswerable defence**".

The Chancellor's Darling

- To establish this defence (that he is equity's darling) the purchaser must show:

i. ***Bona fides*** – relates to the existence of notice. The absence of (constructive or actual) notice that is **genuine and honest** – **Midland Bank Trust v Green** [1981] AC 513 at 528).

ii. Purchase of the legal estate –

To defeat pre-existing equitable rights, the purchaser must take a legal estate in land. Examples of these in Barbados are found at ss. 3-4 Property Act, Barbados.

The legal estate prevails over the equitable interests as a result of the doctrine that *where the equities are equal the law prevails*.

iii.Purchaser for valuable consideration –

The purchaser must have given valuable consideration for the property in money or money's worth or marriage.

Consideration may be inadequate or even nominal – ***Midland Bank Trust Co. Ltd. v Green***.

A donee of the legal estate or a squatter cannot benefit from the defence and will not take the property free of the equitable interests.

iv. The purchase was WITHOUT NOTICE of the equitable interest

- A prudent purchaser must investigate the vendor's title and inspect the land he is purchasing.
- A purchaser with actual or constructive notice of the equitable interest will be bound by it.
- In the absence of notice, his conscience is unaffected by the presence of the equitable interest.
- Lord Wilberforce in **Midland Bank Trust Co. Ltd. v Green** [1981] AC 513 at 528 explained the doctrine of notice as an instance of equity's tendency to fasten upon conscience. The doctrine was "used to epitomise circumstances in which equity would or rather would not do so" (i.e. fasten upon a purchaser's conscience).

Actual notice :

- Refers to matters the purchaser was consciously aware of at the date of the purchase, irrespective of the source (doesn't have to be from the vendor).
- It "consists of facts within the physical sensibilities and reasonable inferences to be drawn from those facts" – **Barclays Bank DCO v Admin General & Hamilton**.
- Information gained in a casual conversation may not amount to actual notice - "[a] purchaser is not bound to attend to vague rumours" - **Barnhart v Greenshields** (1853) 14 ER 204 at 211.
- Statutory notice is equivalent to actual notice - **section 33** of ***Land Registration Act,*** provides:- "Any person acquiring land, a lease or charge shall be deemed to have had notice of every entry in the register relating to that land, lease or charge: Cap. 229, 1977-8 (Barbados)".

Constructive notice:

- This refers to matters which would have come to the purchaser's attention if he had taken reasonable care to inspect both land and title.
- **Constructive notice** will be established where:

(1) The purchaser omitted to make usual and proper enquiries of the vendor's title

(2) The purchaser omitted to follow up an enquiry which arose from a matter of which he had actual notice.

(3) Where he deliberately abstained from enquiring for the purpose of avoiding notice.

- **<u>Hackett v Inverugie Investment Ltd.,</u>** per Da Costa JA: "Constructive notice may arise from failure to investigate the known as well as from abstaining, whether carelessly or deliberately, from making those inquiries which a prudent purchaser would have made. Thus a purchaser with notice of a mortgage will have constructive notice of any other circumstances referred to in the mortgage deed."

Imputed notice:

- A purchaser is deemed to have notice of those matters of which his own Attorney-at-law (or other agent involved in the transaction) is actually aware or should reasonably have been aware – **Meretz Investments NV v. ACP Ltd**. [2007] Ch. 197 at paras. 323-325.
- This knowledge must arise within the current transaction of the purchase by the purchaser – s. 3(1) Conveyancing Act, Jamaica.

- The doctrine applies to unregistered land.
- Statute has displaced the application of the doctrine in respect of registered land:
  - ✓ss. 26 and 31 Land Registration Act (B'dos.)
  - ✓s. 59 Registration of Titles Act, Jamaica

What about 3rd parties who are not the Chancellors Darling?

- *The qui prior est tempore, potior est jure* principle provides that as between the equitable interests they will rank in priority according to the date of creation.
- Even the legal estate only takes free of those equitable interests of which he has no notice. In respect of those he has notice of he takes the legal estate subject to them according to their respective priorities.

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