EQUITABLE ESTOPPEL IN CALIFORNIA

September 22, 2015 by Gregory Brown

What is equitable estoppel in California? The doctrine of estoppel is codified in California Evidence Code section 623, which states:

"When a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."

Four elements must ordinarily be proved to establish an equitable estoppel: (1) the party to be estopped must know the facts, (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended, (3) the party asserting the estoppel must be ignorant of the true state of the facts, and (4) he must rely upon the conduct to his injury. *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Café & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59; *Insurance Co. of the West v. Haralambos Beverage Co.* (1987) 195 Cal.App.3d 1308, 1321.

An estoppel may arise from silence where there is a duty to speak. *Spray, Gould & Bowers v. Associated Internat. Ins. Co.* (1999) 71 Cal.App.4th 1260, 1268. An estoppel from silence exists where a party with a duty to speak has an opportunity to do so, yet remains silent knowing that the circumstances require him to speak. *Id.* For example, as fiduciaries of their clients, real estate agents are required to act with the highest good faith, and have a duty to disclose all facts within their knowledge that are material to the matter in which they are employed. *Wyatt v. Union Mort. Co.* (1979) 24 C3d 773, 782; *Bate v. Marsteller* (1959) 175 Cal.App.2d 573, 580-581.

ecuted pursuant to the provisions of subdivision (b) of Section 3 of this act shall reserve to the City of Long Beach as trustee, or to the State of California if the lands fall within the provisions of Chapter 1579, Statutes 1961, all oil, gas, minerals, and other hydrocarbons in any lands found to be Long Beach tidelands. The reservation of said rights to minerals, oil, gas or other hydrocarbons shall not preclude the conveyance, release or quitclaim of the right of entry upon the surface of said lands for the purposes of drilling, mining or extraction of those reserved interests.

SEC. 6. Any conveyance, release, quitclaim or settlement made by the City of Long Beach pursuant to the provisions of this act shall be made by an appropriate document executed by the City of Long Beach and approved by the State Lands Commission.

SEC. 7. (a) All lands or interests in lands which lie below the line of mean high tide and are received by the City of Long Beach as a result of sales or exchanges authorized by this act shall be deemed tidelands under the provisions of Chapter 676, Statutes 1911; Chapter 102, Statutes of 1925; and Chapter 158, Statutes of 1935, all as amended or supplemented.

(b) All lands or interests in lands which lie above the line of mean high tide and are received by the City of Long Beach as a result of sales or exchanges authorized by this act shall be deemed lands upward of the compromise line and acquired with tideland trust moneys, under and according to the provisions of Section 7 of Chapter 138, Statutes of 1964, First Extraordinary Session

(c) All moneys and other things of value, excluding land interests in lands, which are received by the City of Long Beach as a result of sales or exchanges authorized by this act shall be used only for those trust purposes defined in Chapter 676, Statutes of 1911; Chapter 102, Statutes of 1925; Chapter 158, Statutes of 1935, Chapter 29, Statutes of 1956; and Section 6 of Chapter 138, Statutes of 1964, First Extraordinary Session, all as amended and supplemented.

(d) All oil and dry gas revenues derived from any lands received by the City of Long Beach as a result of sales or exchanges authorized in the foregoing section of this act shall be subject to the terms and conditions of Chapter 138, Statutes of 1964, First Extraordinary Session.

SEC 8. The provisions of this act shall not be deemed exclusive with respect to the settlement or litigation of titles and boundaries of lands within the Alamitos Bay area and this act shall not alter or impair the existing procedural or substantive rights or disabilities of any person or entity claiming title to or an interest in any lands in the Alamitos Bay area in the defense or prosecution of any proceeding now or hereafter instituted under the laws of this state, nor affect the applicability to said lands of any other provision of law.

SEC. 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such in-

times out of ten defeat the actual but accidentally unprovable intention of the parties.

But while in the United States there is properly a presumption against a resulting trust for the grantor on a conveyance for a stated consideration or on a declared use, the general American doctrine that there is a conclusive presumption against an implied trust of any kind in such a case is indefensible. It is often said in justification of the American doctrine just stated that, "in conveyances that are in form deeds of bargain and sale, parol evidence cannot be received to control or contradict the statement of the consideration,"[22] and that the recitation in any deed that the grantee is to hold to his own use conclusively rebuts the presumption of a resulting trust, "as it is a rule that when a use is declared no other use can be shown to result";[23] but neither statement is a justification. In all jurisdictions equity does go behind the recitations of consideration and of use in a deed in order to enforce a constructive trust against a voluntary grantee who agreed orally to hold in trust for the grantor, and now refuses to perform and relies on the parol-evidence rule and on the Statute of Frauds, provided that the oral promise of the voluntary grantee was made with the actual secret intent on his part not to perform, or the deed was obtained by undue influence, or there was a special confidential relationship which equity will not permit to be violated through the breach of the oral promise; and since equity can go behind those recitations in some cases, it can go behind either or both of them in any case where it is desirable to do so, for equity need never regard mere form. The statement that the declared *use* necessarily prevents a presumption of resulting *trust* is unsound. The declared *use* prevents a presumption of a resulting *use*, of course, and therefore, because of the stated use, the Statute of Uses cannot revest the legal title in the grantor; but while the legal title must remain in the grantee, a resulting *trust* might be presumed if it seemed fair; and even though a resulting trust should not be presumed, a constructive trust might well be enforced where an express oral agreement to hold in trust and an unjust enrichment in breach of it are shown. To indulge a presumption of fact against a trust under such a deed is one thing, but to refuse to let that presumption or

[22] 1 Perry on Trusts, 6 ed., § 162, p. 254.

[23] Id. p. 255.

any other be rebutted where a trust was actually intended and undertaken and, in consequence, to allow unjust enrichment, is quite a different thing. Whether such refusal to permit the presumption to be rebutted is based on the parol-evidence rule or on the Statute of Frauds, it is historically and logically unsound.[24]

So much for the first kind of resulting trust urged on the analogy of the first kind of resulting use.

The second kind of resulting use — that presumed because one man paid the purchase money and the deed was taken to another who was not so related to the payer that the presumption seemed unfair — was made by chancery the model for a similar presumed resulting trust, and, accordingly, a rebuttable presumption of a trust for such a payer is indulged, wherever by statute the rule has not been changed.[25]

The third kind of resulting use mentioned above was the prototype for a similar kind of trust customarily called a resulting trust.

Pomeroy splits that kind of trust — called by him a resulting trust — into two subdivisions; but that seems unnecessary. Under the general head of "trust resulting to the donor" Pomeroy has three subdivisions, the third being the case of conveyances without consideration already discussed, and the other two being stated as follows:

"1. Where property is conveyed by will or deed upon some particular trust or particular objects, and these purposes fail in whole or in part, or the particular trusts are so uncertain and indefinite that they cannot be carried into effect, or they lapse, or they are illegal, — in all of these cases a trust, either with reference to the whole property or to the residuum, results in favor of the grantor, or the heirs, residuary devisees or legatees, or personal representatives of the testator. . . .

"2. . . . A second subdivision includes those cases where the owner of both the legal and the equitable estates conveys the legal estate, but does not convey the equitable estate, or conveys only a portion of it, and a trust in the entire equitable estate in the one instance, or in the

[24] For a refutation of the parol-evidence rule argument, see the concurring opinion of Connor, J., in Gaylord *v.* Gaylord, 150 N. C. 222, 63 S. E. 1028 (1909). A refutation of the Statute-of-Frauds argument is attempted later in this article.

[25] The justifiableness of that presumption in our time has well been doubted. Ames, Lectures on Legal History, 431, 434; 20 HARV. L. REV. 549, 555–557. It is there pointed out, however, that a statutory or other conclusive presumption against a trust is even more unjustifiable.

part of it undisposed of in the other, will, in general, result to the grantor, or to the heirs or representatives of the testator." [26]

Most of Pomeroy's second subdivision has practically been eliminated in the United States by the rule of construction which cuts down the legal estate expressed for a trustee to one no greater than he needs for the proper execution of the trust, and which therefore gives a grantor, or the heir or residuary devisee of a testator, a legal interest where once he would have had a resulting equitable interest. In the United States this rule of construction applies to deeds of trust as well as to devises in trust; [27] but in England, though the rule applies to wills, it seems not to apply to deeds, because "there the construction adheres more strictly to the letter." [28]

The two subdivisions mentioned in the passage quoted from Pomeroy are essentially one, for in both the court of chancery concludes that the grantee is not to keep any undisposed-of beneficial interest despite a stated consideration in the deed and despite an *habendum* to the use of the grantee. The words "in trust nevertheless" following the *habendum* clause are sufficient to show that if the trust for any reason fails to take effect, the voluntary grantee is not to keep for himself.

Before the statute of uses, then, there were three kinds of resulting uses, namely: (1) Where by feoffment, fine, or recovery, the full legal title which the grantor had was transferred without consideration and without the declaration of a use, there was a resulting use to the grantor; (2) where by feoffment, fine, or recovery, or common-law lease and release, made for consideration paid by one person, the legal title was conveyed to another who was a legal stranger to the payer, there was a resulting use to the payer of the consideration unless the payer did something to negative it; (3) where by feoffment, fine, or recovery, without consideration, or by common-law lease and release, without consideration, a use was declared which did not exhaust the equitable interest which would have resulted if no use had been declared, there was a resulting use to the grantor to the extent that the use declared did not exhaust that interest.

[26] 3 Pomeroy, Equity Jurisdiction, 3 ed., §§ 1032, 1034.

[27] 1 Perry on Trusts, 6 ed., § 319.

[28] Lewin on Trusts, 12 Eng. ed., 241. See also 1 Perry on Trusts, 6 ed., § 319.

Since the Statute of Uses, the first kind of resulting use has commonly been supposed to continue, and though that may be doubted,[29] the fact that feoffments, fines, and recoveries have long been obsolete makes the question wholly a moot one. But after chancery saw the fraud permitted by the Statute of Uses and stopped it by recognizing and enforcing passive trusts — uses on uses — and after it became possible, by so-called bargain-and-sale leases and releases, operating under the Statute of Uses, to convey a fee without consideration, and without entry under a lease or livery of seisin, the question whether a resulting trust corresponding to the first kind of resulting use mentioned above should not be presumed on a conveyance without consideration by a common-law lease and release or by a bargain-and-sale lease and release, became a practical one. As we have seen, some prominent English writers believe that there is in England such a resulting trust corresponding to the first kind of resulting use, but in the United States the notion that such a trust should be presumed is not entertained. But in both England and the United States trusts corresponding to the second and third classes of resulting uses above mentioned, and in both instances commonly called resulting trusts, have been and are to-day presumed and exist. We shall have occasion, however, to question the correctness of the name "resulting trust" as applied to the third class of trusts.

III.

Constructive Trusts.

Constructive trusts are not easy to define. They comprise all trusts recognized and enforced by chancery that are neither express trusts nor resulting trusts. Express trusts and resulting trusts are trusts by the real or the presumed intention of the parties,[30] but constructive trusts are trusts *in invitum*. A con-

[29] See note 11, *ante*.

[30] With reference to resulting trusts as intention trusts, an interesting question may arise. Whose intention, for instance, is presumed or must be presumed? Suppose, for example, that A. pays the purchase price for land bought from B. and the conveyance is made to C., a legal stranger to A., but without any knowledge on B.'s part that A. has anything to do with the sale. It would, of course, be held that a resulting trust exists in the absence of affirmative proof of a gift as intended by A. to C., and the

structive trustee may, indeed, have started out as an express or resulting intention trustee, and then have repudiated the trust in reliance on the Statute of Frauds or the Statute of Wills or some other statute, or in reliance on the parol-evidence rule; but in such case it was not until he repudiated the express trust that he did or could become a constructive trustee. *Qua* constructive trustee — as where his repudiation with retention of the trust *res* constitutes a gross violation of a special confidential relation — he is from the start a resisting and not a consenting or intention trustee.

Constructive trusts are preëminently trusts which in current court language are called "implied by law." "Implied by law" is, however, an erroneous designation, because "implied" means "inferred," and a constructive trust is not "inferred," but instead is created for the first time and imposed on the trustee because of his fraud. In a sense resulting trusts are implied by law, because it is the court that indulges the presumption of fact; [31] but since

necessary consequence of such a holding would be that B.'s intentions are immaterial. But is that consistent with the rule as to express trusts? One supposititious case will demonstrate that it is. If A. and C. agree in writing that C. shall obtain from B. a deed to land that B. has to sell, that A. through C. shall pay the purchase price, and that C. shall hold the title so acquired in trust for A., and if B. makes the conveyance without any knowledge that A. is interested, the trust by which C. is bound is clearly an express intention trust. Since in the case of an express trust of the kind supposed the only parties who must have trust intentions are the payer of the purchase money and the one who takes the title to the property bought, it would seem clear that the only intention that need be presumed in the case of a resulting trust of the same kind to make it an intention trust is the intention of those same parties. If the vendor of the property knew of the relations between his grantee and the payer of the purchase money and purported to express the trust in his deed, that fact might raise some question as to the proper writing to look to as proof of the terms of the express trust, but it would not make the trust any more an intention trust. The same thing is true of the knowledge of the vendor in the third-person-payer resulting trust case, and in consequence the vendor's knowledge that his grantee is not paying for the property himself need not be presumed.

[31] That is the sense which justifies the view that they come under section eight of the Statute of Frauds instead of under section seven. In writing of the history of assumpsit Dean Ames said: "The lawyer of to-day, familiar with the ethical character of the law as now administered, can hardly fail to be startled when he discovers how slowly the conception of a promise implied in fact, as the equivalent of an express promise, made its way in our law." Ames, Lectures on Legal History, 154. See same passage in 2 HARV. L. REV. 53, 58. While chancery got the conception earlier than the law courts did, as Dean Ames also pointed out (Ames, Lectures on Legal History, 154; 2 HARV. L. REV. 53, 60), and the resulting-use doctrine was one of the consequences of chancery's acceptance of implications of fact, the chancery judges have been behind the law judges in discriminating between implications of fact and so-called "im-

the presumption of a resulting trust is in essence one of fact, such a trust is presumed as an actually intended trust and so is fundamentally not implied by law. A resulting trust, properly so called, is a law-inferred-as-a-fact trust; a constructive trust is a law-imposed trust.

With reference to constructive trusts the important question is, What are the essential ingredients of such a trust? It is common to speak of a constructive trustee as an *ex delicto* or *ex maleficio* trustee, and it is said that a man must be guilty of fraud before he can be deemed a constructive trustee. It is no doubt too late to quarrel seriously with that way of stating the matter, but though it is necessary to accept that language, the acceptance must be with explanations and conditions. The first condition is that regardless of whether the subdivision of fraud into (1) actual fraud and (2) constructive fraud is in general to be commended, — no doubt it is not to be approved,[32] — the admission that a construc-

plications of law." While the general distinction between contracts implied in fact and quasi-contracts is being emphasized by law judges to-day, the fact that a resulting trust is implied in fact and that a constructive trust is an equitable quasi-contract is being overlooked. It is being assumed to-day, just as it was assumed by the authors of the Statute of Frauds, that a resulting trust is implied by law just because the law announces that a rebuttable presumption of intention is applicable on proof of certain facts. That assumption is wrong, but section eight of the Statute of Frauds was framed by those who believed it to be the right assumption, and, in consequence, resulting trusts have properly been deemed trusts which "arise or result by the implications of law" within the meaning of those words in that section. While resulting trusts properly fall under that section, the wording of that section should not prevent a realization that resulting trusts are after all implied in fact and not implied by law, and that no trusts are properly to be called "implied by law."

[32] "It must be remembered that for a long time equity judges and text-writers thought it necessary or prudent for the support of a beneficial jurisdiction to employ the term 'fraud' as *nomen generalissimum*. 'Constructive fraud' was made to include almost every class of cases in which any transaction is disallowed, not only on grounds of fair dealing between the parties, but on grounds of public policy. This lax and ambiguous usage of the word was confusing in the books and not free from confusion in practice. Plaintiffs were too apt to make unfounded charges of fraud in fact, while a defendant who could and did indignantly repel such charges might sometimes divert attention from the real measure of his duties. Cases in which there was actual fraud or culpable recklessness of truth were not sufficiently distinguished from cases in which there was only a failure to fulfil a special duty. But it seems needless at this day to pursue an obsolete verbal controversy." Pollock, Contracts, 8 ed., 556. Unfortunately the controversy is not obsolete in the United States, even if it is in England; and with us it is still advisable to resort at times to the phrase "constructive fraud" to keep a defendant who indignantly denies actual fraud from diverting "attention from the real measure of his duties."

tive trust is a fraud trust can be made on no other terms than the retention of both actual fraud and what has been called "constructive fraud" as fraud. One illustration will make this clear. A., the express trustee of a secret trust, makes a deed of gift to B. of forty acres of the trust *res*. The deed recites a consideration and states that B. is to hold to his own use. B. takes innocently, but later C., the *cestui que trust*, learns of the transaction and demands that B. deed back the property, and A., the guilty trustee, unites in the demand. B. refuses to deed back the property. Here B. is not an express trustee, and he is not a resulting trustee. Is he a constructive trustee? If actual fraud were necessary to make him a trustee, most jurisdictions would have to say that he is not one; for in most jurisdictions actual fraud would not be deemed to exist unless B. acquired the property by resort to artifice, trick, or design, or with knowledge that the trustee was giving him trust property. But, in the case supposed, actual fraud, so defined, did not exist and, what is more, is not deemed essential in any jurisdiction to the enforcement of a constructive trust in such a case. B.'s insistence on retaining his legal advantage for which he gave no consideration, after learning that A. conveyed in breach of trust, is just as bad as a fraudulent acquisition would have been, and is so called "constructive fraud" which equity makes the basis of a constructive trust. While the courts frequently forget the fact in the Statute-of-Frauds cases, fraudulent retention, *i. e.*, retention of the property with "constructive fraud," after innocent acquisition, is just as satisfactory a basis for a constructive trust as is fraudulent retention after fraudulent acquisition. Both ought to be recognized as actual fraud — fraud at the end is as much fraud as is fraud at the start — but whether fraudulent retention is called actual fraud or constructive fraud, it is sufficient justification for raising a constructive trust.

The defendant's intent to retain the property existing at the time when he refuses to give it up and when it is a violation of good faith or of common honesty for him to retain it, is, then, the only fraudulent intent which equity needs to justify it in declaring a constructive trust to exist and in awarding a remedy.[33]

[33] Some of the Statute-of-Wills cases make this clear. See, for instance, Powell *v.* Yearance, 73 N. J. Eq. 117 (1907); Winder *v.* Scholey, 83 Ohio St. 204, 216, 93 N. E. 1098 (1910).

B. Classification.

Now that we have some acquaintance with our terms, the real questions of classification can be confronted, and at the start it seems desirable to emphasize the often-forgotten fact that the fundamental reason for enforcing an express trust is the same as that for enforcing a resulting trust and is the same as that for enforcing a constructive trust. In classifying it is usually more important to emphasize differences than similarities, but now that we have marked off resulting trusts as implied in fact and constructive trusts as imposed by law, and have distinguished both, therefore, from express trusts, it would seem to be of very considerable practical importance to show their really close relation. To do so, it is only necessary to answer the question, Why does equity recognize and enforce a resulting trust? Where A. pays the purchase money for land owned by B. in fee, and B. at A.'s request conveys to C. in fee, we say that there is a resulting trust, because C. is presumed to have agreed, *i. e.*, has by conduct agreed, to hold in trust. It is a promise by act, as distinguished from an express oral or written promise, but nevertheless is an actual promise. But why should chancery make C. perform that implied-in-fact promise or make the trustee of an express trust perform his express promise? The question is not whether in the resulting trust case supposed the Statute of Frauds should be a defense to C., for clearly that statute was not intended to interfere with resulting trusts; but the question is whether equity has any good reason to give for enforcing at all a resulting trust or an express trust. The answer of chancery judges to that question, and their only possible answer, is that it is against conscience to permit C. to enrich himself at A.'s expense contrary to the ascertained intention of the parties, by repudiating his implied-in-fact promise or his express promise and keeping the property. But unjust enrichment is just as much the basis of a constructive trust as of a resulting trust or of an express trust, even though the constructive *cestui* should be deemed to have a quasi-contractual claim against the constructive trustee; for chancery does not regard the money judgment that would be rendered on that quasi-contractual claim as an adequate remedy, and offers its own adequate remedy to prevent the unjust enrichment. A resulting trust, unlike a constructive trust, is an intention trust, but an intention trust, whether an express or an

implied-in-fact trust, is enforced for the very same fundamental reason that a constructive trust is, namely, to prevent the unjust enrichment of the fraudulent retainer of the property. We are too apt to forget that the sole reason why chancery took jurisdiction to enforce uses, the earliest trusts, was to prevent the unjust enrichment by feoffees through their fraudulent retention of land conveyed to them in use or confidence, and that to-day there is no other reason for chancery's enforcement of any kind of a trust.[34]

In the case of express trusts the trust will everywhere be enforced regardless of whether the fraud consists of fraudulent acquisition and fraudulent retention combined or only of fraudulent retention. In the case of resulting trusts the same thing is true. But some courts hesitate to raise constructive trusts in the Statute-of-Frauds cases on fraudulent retention alone, though it is fraudulent retention and not fraudulent acquisition that injures the defrauded party and enriches the fraudulent party, and though the same courts in effect recognize the truth of that statement whenever they enforce a resulting trust in favor of the payer of the purchase money against a grantee who took innocently but afterwards decided to retain the trust *res* for himself through the aid of the parol-evidence rule or of the Statute of Frauds or of both. However inconsistent in granting and in withholding relief in the trusts cases some courts may be, the proper principle for their guidance is clear the moment the essential reason for the recognition and enforcement of trusts — the rectification of unjust enrichment — is seen to be the same for all trusts, whether they are express or implied, and whether, if not express, they are resulting or constructive.

With this explanation, we may now proceed to consider the classification problems in more detail.

I.

Express Trusts.

Express trusts heretofore have needed practically no subdivision. By reason, however, of the somewhat old use in the books of the word "implied" to describe what are really, in a fair sense, only express trusts, it will be well to divide express trusts into (1) Ex-

[34] This is common historical knowledge. See Ames, Lectures on Legal History, 237–238; 21 HARV. L. REV. 265.