

Can the ethos of equity as offering a remedy for the over-generality of the law b...

[Law](#)



Can the ethos of equity be reconciled with the formality requirements of sec. 53 (LPA) There is a great deal of ambiguity and generality in the law of property and property transfer, which requires for a remedy to make the law more targeted and particular. However, the question that arises is whether the ethos of equity can be reconciled with the formality requirements of sec. 53 (LPA). The doctrine of equity prevents the trustees from the prejudicial unfairness of affecting the interests of beneficiaries, through the postponement of the sale of land or property (Moffat, Bean & Dewar, 2005 p63). This aspect was identified in the case *Rochefoucauld V Boustead* [1897], where the defendant had property sold and the proceeds transferred to him, without the fair consideration that the plaintiff had equal interest in the property, which the defendant had transferred unfairly (Bar, Drobniq & Alpa, 2004 p511). The judge of the trial court had held that the estates had been transferred to the defendant, not as a trustee, but as a beneficial owner of the estates. However, the trial judge held that the existence of a trust relationship could be established. It is this generality that the ethos of equity seeks to address, and it is therefore possible to reconcile the provisions of the ethos of equity with the formality requirements of sec. 53 (LPA), since section 53 (1) (c) requires that a disposition of an equitable or trust that exists at the time of the disposition, be in writing and signed by the party disposing the property (McFarlane, Hopkins & Nield, 2012 p373). This provision safeguards against the unfair transfer without having involved the consent of the interested parties, which is also the objective of the ethos of equity. Therefore, the ethos of equity and formality requirements of sec. 53 (LPA) can be reconciled.

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