

ARTICLE

## APPLICATION OF THE EQUITABLE DOCTRINE OF CONVERSION AND DUTY TO CONVERT: ARE THEY MUTUALLY EXCLUSIVE OR INCLUSIVE?

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### Abstract

The doctrine of conversion is where there is a duty imposed on a person to either purchase or sell real property. In either case, the property is converted to the form the property will take if the obligation is fulfilled notwithstanding the fact that the property has not actually been purchased or sold. However, there is a misconception of the doctrine of conversion as a result of which the trustee's duty to convert under a rule in *Howe vs. Earl of Dartmouth* is treated as application of doctrine of conversion. The article utilised doctrinal research method to examine the doctrine of conversion with the objective of determining whether conversion extends to the rule in *Howe v. Earl of Dartmouth*. The research question is thus, 'is the trustee's duty to convert wasting assets under the rule in *Howe v. Earl of Dartmouth* covered by the doctrine of conversion?' This article found that there is an overlap between the doctrine of conversion and the trustee's duty to convert which has resulted to misapplication of the doctrine of conversion. They are as exclusive as they are inclusive. In view of the finding, it was argued that the duty to covert wasting assets enunciated in the rule in *Howe v. Earl of Dartmouth* is not covered by the doctrine of conversion. Although both the doctrine and the duty to convert involve conversion, the doctrine of conversion and the rule in *Howe v. Earl of Dartmouth* apply to real and residual personal property respectively.

**Keywords:** Conversion, Duty to Convert, Equity, rule in *Howe v. Earl of Dartmouth*

## 1.0 Introduction

The doctrine of conversion is a process by which equity departed from the common law where an obligation has been imposed on a person to buy or sell land. Common law and equity construed the effect of contract for purchase of land differently. On the one hand, Common law regarded estate as that of the vendor while the purchase price is that of the purchaser. On the other hand, equity considers that the property is that of the purchaser from the moment the contract is concluded.<sup>1</sup> Thus, real property such as land is converted into money and money is converted into real property. It was from this doctrine that the maxim, 'equity considers that as done which ought to be done' evolved. Thus, Davis argued that doctrine of conversion evolved from application of the equitable maxim 'what is contracted to be done is considered as done'.<sup>2</sup> This doctrine finds expression whenever there is an obligation arising from a will, contract, trust, or court order to buy or sell. In equity, the right of the parties will be determined as if the obligation has been carried out although it has not been carried out.<sup>3</sup> The doctrine is important as it determines and protects the right to property, and also constitutes a security or guarantee for the fulfilment of obligations to buy or sell landed property. More so, it helps to define and distribute benefits and burdens in a property and determines the devolution upon death of rights of parties to properties.<sup>4</sup> It is thus in accordance with the provision of the constitution which guarantees right to movable and immovable property.

However, there is an uncertainty in the scope of the application of the doctrine of conversion to testamentary disposition of personalties on trust to persons in succession. Consequently, there is arbitrary extension of the doctrine of conversion while it becomes difficult to define rights of parties entitled to property. This begs the question, 'does the doctrine of conversion apply to testamentary disposition of movable assets where there is a duty imposed on a trustee to treat beneficiaries such as a life tenant and a remainder man equally in the distribution of wasting assets?' The article examines the doctrine of conversion and the scope of its application with the

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<sup>1</sup> Clark, Andrew "The Origin and Bases of the Doctrine of Equitable Conversion," *Kentucky Law Journal*: [1937] (25) (2)166. Available at: <https://uknowledge.uky.edu/klj/vol25/iss2/5>. Accessed 22/2/25 at 3:pm

<sup>2</sup> Davis, John L "The Origin of the Doctrine of Equitable Conversion by Contract," *Kentucky Law Journal* [1936] (25)(1)63. Available at: <https://uknowledge.uky.edu/klj/vol25/iss1/5>. Accessed on 22/2/25 at 10am

<sup>3</sup> M.I. Jegede, *Law of Trusts, Bankruptcy and Administration of Estate*, (MIJ Professional Publishers Ltd, 1999), 204.

<sup>4</sup> Sidney P. Simpson, Legislative Changes in the Law of Equitable Conversion by Contract, *Yale Law Journal* (1935) (XLIV)(4) 559.

objective of determining whether the doctrine of conversion covers the duty to convert wasting assets.

## 1.2 Evolution and Nature of the Doctrine of Conversion

The doctrine of conversion can be traced to England where equity evolved in the Court of Chancery. The doctrine is said to have originated based on the equitable maxim 'equity considers that as done which ought to be done', one of the 12 orthodox maxims of equity.<sup>5</sup> Two reasons account for evolution of the doctrine of conversion. First, until 1926, there were two systems of intestate succession which determined succession to the estate of the deceased who died intestate. As such, if a man died intestate, his real property devolved to his heirs while his personal property devolved to his next of kin.<sup>6</sup> It was therefore important to determine what property was real and what was personal for the purpose of determining who got what. However, the 1925 legislation altered the previous position and provided that both real and personal property shall devolve the same way, and therefore, an heir or next of kin can now inherit the property (real or personal) of the deceased who died intestate.<sup>7</sup> Thus, the importance of the doctrine in England has declined with the enactment of the Law of Property Act 1925.

However, there is a second purpose for the progress of the doctrine which was to ensure that trustees for sale or purchase do not defeat the interest of beneficiaries by failing to fulfil his obligation. In equity, it did not matter that the trustee did not convert the property into the form (real or personal property) intended by the settlor.<sup>8</sup> According to Kyuka, the goal is still relevant today; hence the relevance of the doctrine of conversion despite the enactment of the 1925 legislation and similar laws in Nigeria relating to administration of estates of the deceased.<sup>9</sup> Although the doctrine of conversion has lost of its significance, testators sometimes dispose of their realty and personalty differently notwithstanding the 1925 legislation.<sup>10</sup>

Conversion may be actual or notional depending on whether the property has been sold or not. If the property is land and had been sold, there an actual conversion of the property from its original state, land to money. However, notional conversion takes place as soon as there exists a

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<sup>5</sup> (n, 1)

<sup>6</sup> Adamu Kyuka Usman, *Law and Practice of Equity and Trust*, (Malthouse Press Ltd, 2017)35.

<sup>7</sup> *ibid*,35-36.

<sup>8</sup> *ibid*,36

<sup>9</sup> *ibid*.

<sup>10</sup> John Mcghee, *Snell's Equity*, (Thirty- First Edition, Sweet & Maxwell, 2005)114.

duty to convert. In equity, on the basis of ‘equity considers that as done which ought to be done’, the right of the parties is not affected by the moment a duty to convert is carried out. In a nutshell, conversion in equity is a fiction, in contrast with actual conversion which is a fact.<sup>11</sup>The rule on conversion was established in the celebrated case of *Fletcher v. Ashburner*<sup>12</sup> where Thomas Sewel enunciated the basis of conversion as follows:

Money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted: whether by will, by way of contract, marriage articles, settlement, or otherwise, and whether the money is actually deposited or only covenanted to be paid, whether the land is actually conveyed or only agreed to be conveyed. The owner of the fund or the contracting parties may make land money or money land.

The doctrine evolved to ensure that the trustee to whom property has been conveyed for sale does not do any act contrary to the instruction that will prejudice the interests of those who will benefit if the duty is carried out.

### **1.3 Nature of Real Property**

Real property in its physical state is not capable of ownership which makes it a subject of debates. Real property is conceived as the earth surface, subsoil, the air space above it as well as things that are permanently attached to it.<sup>13</sup> But the right which can be the subject of ownership consists of some rights to use and enjoy the land to the exclusion of other persons. In the past, property was deemed ‘real’ if the courts would restore the property to a dispossessed owner of the property and not by award of compensation for the loss of the property. Thus, distinction was made between real property that could be specifically recovered, and personal property which was not recoverable.<sup>14</sup>Megarry and Wade submitted that all interests in land are real property, with the exception of leasehold classified as personality.<sup>15</sup>Therefore, rights, interests and privileges in land such as rent, easement, and purchase price are considered as real property.

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<sup>11</sup> Festus Emiri and Ayuba Giwa, *Equity and Trusts in Nigeria*, (Malthouse Press Ltd, 2012)109.

<sup>12</sup> (1779)1 Bro.C.C. 497, 499.

<sup>13</sup>Utuama, A.A, *Nigerian Law of Real Property* (Shaneson C.I. Ltd, 1989)4.

<sup>14</sup>Megarry, R. and Wade, H.W.R, *The Law of Real Property* (Fifth Edition, Stevens & Sons Ltd,1984) 10.

<sup>15</sup> *ibid*

However, it is argued that leasehold in the nature of right of occupancy which is granted by the government can be considered as real property.

Real property may be divided into two; corporeal hereditaments and incorporeal hereditaments. Corporeal hereditaments comprise those substantial and permanent objects which affects the senses while incorporeal hereditaments are intangible things that can neither be seen nor handled but can be perceived and exist on the land. Incorporeal hereditament is not the subject of the right but the right itself.<sup>16</sup> This clearly demonstrates that real property is not defined by reference to the physical quality of the land alone. The Property and Conveyancing Law defines land to include buildings, structures, rights, privileges, rents and other incorporeal hereditaments.<sup>17</sup> Thus, it shows that both the common law and the statutory definition of land are the same substantially. Real property is not limited to land or things permanently attached to the land but include rents as well. Therefore, real property has a wider meaning and scope than land even as all land is now vested in the governor of the state.

The basis of conversion is classification of property into real and personal so that land is converted to money and money is converted to land where there is an obligation on a person. However, it seems that the definition of real property blurs the distinction between real property and other forms of personalty which are derived from real property. It may be argued that without a clear distinction between real property and money which accrue from the real property, application of doctrine of conversion on the basis of real and personal property becomes doubtful.

#### **1.4 Scope of the Application of the Doctrine of Conversion**

The precise scope of the doctrine of conversion cannot be defined as it is applicable to varying situations which involve purchase or sell of real property. Some instances of conversion which illustrates the scope of the application of the doctrine of conversion will be examined below:

##### **i. An Express Trust**

This is the commonest cause of conversion whereby trustees pursuant to a binding trust, are directed to sell or to purchase land or personalty, and there is a beneficiary or someone who can insist on carrying out the direction or instruction. An express trust arises where there is

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<sup>16</sup>Fatula,O, *Fundamental of Nigerian Real Property Law* (Afribic Press, 2012)4

<sup>17</sup> Section 2(1) of the Property and Conveyancing Law, Cap.100, Laws of Western Region of Nigeria, 1959.

declaration of trust *inter vivos* by the settlor, where there is conveyance of property to trustees *inter vivos* or disposition of property to trustees by will.<sup>18</sup> In any of such cases, the property is treated as converted from the moment the instrument comes into force.<sup>19</sup> The failure of the trustees to carry out the instruction or duty does not change the character of the property. Therefore, in order to be effective, the direction must be imperative because if it is not imperative, there will be no conversion and the property will remain real or personal based on the actual condition in which the property was found.<sup>20</sup> A discretion given to the trustees to postpone sale does not prevent conversion provided the settlor intended the property to be sold or purchased at a future date.<sup>21</sup>

However, where a settlor or testator directs trustee to sell or purchase land and such direction is to take place with the approval of some named persons, that will not be effective enough to make the direction not to be imperative. Thus, in *Attorney-General v. Dodd*,<sup>22</sup> the direction to sell was made subject to the qualification that it should be done at the request of some specified persons. The Court held that the direction was imperative, the qualification notwithstanding.

One of the powers of the trustee is the power to sell the trust property. The power is conferred by statute<sup>23</sup>, but it is often given by the trust instrument expressly or by implication.<sup>24</sup> Therefore, if real property is held on trust for sale, the trustees have duty to sell, though they can postpone the sale if they unanimously agree to do so.<sup>25</sup> If the decision to postpone sale is not unanimous, the land must be sold immediately. A trust for sale in relation to real property is an immediate binding trust for sale, whether exercisable at the request or with consent of any person, and with or without discretion to postpone the sale.<sup>26</sup> Kyuka submitted that such power given to trustees for sale was to ensure that trustees for sale or for purchase do not defeat the interest of beneficiaries.<sup>27</sup> Since the land is considered money in equity, it does not matter that the trustee

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<sup>18</sup> Gilbert Kodilinye, *An Introduction to Equity in Nigeria*, (Spectrum Books Ltd, 1975), 65-66.

<sup>19</sup> Robbert Megarry and P.V Baker, *Snell's Principles of Equity* (Twenty- Seventh Edition, Sweet & Maxwell, 1973) 470.

<sup>20</sup> *ibid*

<sup>21</sup> *ibid*

<sup>22</sup> (1894) 2 QB 150, 154.

<sup>23</sup> Sections 13, 14 & 15 of the Trustee Act, 1893.

<sup>24</sup> Ezejiofor, G. "Appointment, Powers, and Duties of Trustees" In, Utuama, A.A. and Ibru, G.M. (eds) *The Law of Trusts and their Uses in Nigeria*. (Malthouse Press Ltd, 2004) 23.

<sup>25</sup> *ibid*.

<sup>26</sup> *Ademola v. Sodipo* (1989) 5 NWLR pt.121, 329.

<sup>27</sup> (n, 6) 36.

does not actually convert them as the settlor prescribed.<sup>28</sup> However, where the trustee has only mere power to sell land, there is no conversion and the land is treated as such.<sup>29</sup>

## **ii. Contract for Sale of Land**

Where there is a binding and specifically enforceable contract for the sale or purchase of land, the doctrine becomes operative from the moment the intention is expressed. The land, subject matter of the contract for sale of land, is considered as personalty and the purchase price is treated as land. Thus, from the moment the contract is concluded, the vendor becomes the trustee of the land and holds the legal interest for the purchaser.<sup>30</sup> Therefore, by conversion, the purchaser is entitled to land into which the purchase price has been converted while the vendor is entitled to money into which the land has been converted. It is important however, to stress the point that there must be binding and specifically enforceable contract before the doctrine of conversion can apply in a contract for sale of land between vendor and purchaser.<sup>31</sup>

## **iii. Where there is an Option to Purchase**

The doctrine of conversion applies where a person has the opportunity to exercise option to purchase. The rule here is that if an owner of real estate agrees to sell the property and he dies before the contract is concluded, the estate is converted into personalty. Similarly, when a party under an agreement is given unilateral power of making an election in future on whether or not the contract will be carried out, and there is an election in favour of the contract, conversion will apply effective from the date the power is granted.<sup>32</sup> It does not matter that the contract is not specifically enforceable as there will be conversion from the time the option to purchase is exercised, which would be a binding contract in the lifetime of either party.<sup>33</sup> For instance, if Mr. Goldface who died intestate in 1924 and left behind a son and an uncle, had granted Mr. Nawaz option to purchase his plot of land at G.R.A., Zaria. If Mr. Nawaz exercised the option to purchase the property before Mr. Goldface's death, Goldface would be under obligation to sell to Nawaz. Thus, the property will be personalty which will devolve on Goldface's uncle as his next

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<sup>28</sup> (n,18)65.

<sup>29</sup> *ibid.*65.

<sup>30</sup> (n, 1)

<sup>31</sup> Adewale Taiwo and Oluwatoyin Akintola, *Introduction to Equity and Trusts in Nigeria*, (Princeton Publishing Co, 2016) 133.

<sup>32</sup> *ibid.*,133.

<sup>33</sup>*ibid.*

of kin.

iv. Under a Statutory trust for Sale

Some statutes impose trust for sale in real property transactions. For instance, the Property and Conveyancing Law create trust for sale where land is conveyed on trust.<sup>34</sup> This statutory imposition of trust for sale operated to convert the land into money. In *Re Kempthorne*,<sup>35</sup> it was held that statutory trust for sale operated to convert an undivided share of real estate into a corresponding share of the proceeds of the sale of the real estate, and by the Law of Property Act 1925, the interest of an owner of undivided real estate became personal estate and devolved accordingly. Although the case was decided based on English Law Property Act, 1925, a post-1900 legislation which is inapplicable in Nigeria, the case is still relevant in Nigeria because sections 34-36 of the Law of Property Act on the basis of which the case was decided have been re-enacted in sections 61-63 of the Property and Conveyancing Law.<sup>36</sup>

**v. Partnership property**

Where the partnership property is land, it will be treated as personalty unless there is an express intention to the contrary. The reason for this position is that the property will be sold after dissolution of the partnership and the proceeds will be shared among the partners. However, after 1925, there will usually be a trust for sale imposed by statute by reason of the beneficial tenancy in common between the partners.<sup>37</sup> But where the partners made a contract to purchase land there will be conversion on the basis of contract for sale of land.

**vi. Under an Order of Court**

The court may order for sale of real property in which case, conversion will occur. Conversion takes effect from the day the order is made and not the date the order is carried out. Therefore, where the court orders sale of property to which two people are entitled but one of them dies before the sale, his interest in the property is that of personalty, and not realty.<sup>38</sup>

## 1.5 Duty to Convert

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<sup>34</sup> Sections 61(2) & (3), 62, 63(1) and 64(1) of the *Property and Conveyancing Law*, 1959.

<sup>35</sup> (1930) 1 Ch. 268 at 290.

<sup>36</sup> *ibid*

<sup>37</sup> (n, 19) 472.

<sup>38</sup> (n, 31) 137.

The duty to maintain equality between beneficiaries requires that trustees should not favour one beneficiary at the expense of the other. Thus, the trustee has a general duty to maintain equality and act impartially between all beneficiaries.<sup>39</sup> This duty has been described as the basis for the rule of conversion which imposes a duty to convert on the trustee.<sup>40</sup> Duty to convert may arise by reason of the creation of an express trust to sell or convert, or in the case of residual personality under the rule in *Howe v. Earl of Dartmouth*.<sup>41</sup> In the case of express trust for sale of personality, the trustee's duties depend on the terms of the trust.<sup>42</sup> However, the rule in *Howe v. Earl of Dartmouth*<sup>43</sup> establishes that in the absence of contrary intention in the will, there is a duty to convert where a residual personality is settled in favour of persons in succession.<sup>44</sup>

Therefore, the trustee has a duty to convert the trust assets into authorized investments such as sale. The duty may arise from the terms of the trust (e.g. trust for sale) or from statute.<sup>45</sup> This duty is the basis of the doctrine of conversion and re-conversion which has been held to be applicable to real property and rents.<sup>46</sup> The purpose of the rule is to be fair and just to the beneficiaries where one beneficiary is a tenant for life and the other a remainder man, the beneficiary who takes whatever is left after the death of the tenant for life.<sup>47</sup> For instance, if the property consists of wasting asset (one which depreciates in value over time) such as copy right or a lease, 'a tenant for life' will enjoy all the royalties or rents and profit as the case may be but by the time he dies, the copyright might have expired or the lease determined so that 'remainder man' will derive no benefit. Thus, in the absence of any contrary intention shown in the trust instrument, trustees have a duty to sell all wasting assets and invest the proceeds in authorized investment, the wasting assets being converted for the benefit of the remainder man.<sup>48</sup>

It seems the properties that can be converted are residual personalty and therefore, the rule does not extend to specific bequests or realty or to property passing on intestacy. Where the rule applies, the conversion must be affected within one year of the testator's death.<sup>49</sup> However, in

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<sup>39</sup> D.J Bakibinga, *The Law of Trusts in Nigeria*, (Department of Law, University of Ilorin, 1986)178

<sup>40</sup> Jill E. Martin, *Modern Equity*, (Sixteen Edition, Sweet & Maxwell Ltd, 2001)553.

<sup>41</sup> (1802)7 Ves Jr. 137.

<sup>42</sup> (n,40) 555.

<sup>43</sup> (supra)

<sup>44</sup> (n, 40)555.

<sup>45</sup> Edwards, R.and Stockwell, N, *Trusts and Equity* (Pearson Education Limited, Fifth Edition, 2002) 370.

<sup>46</sup> *Hart v. T.S.K.J (Nig.)Ltd* (1998)12 NWLR pt.578,372,389,C-E.

<sup>47</sup> Fabunmi, J.O, *Equity and Trusts in Nigeria* (Obafemi Awolowo University Press Ltd., 2006) 322.

<sup>48</sup> (n, 6) 204.

<sup>49</sup> *ibid*, 204.

England, there is no duty to convert leases exceeding 60 years as they are authorized investments<sup>50</sup> but it seems that the rule applies to shorter leases of land.<sup>51</sup> There is no similar provision in Nigeria on the duty to convert a lease less than 60 years. Nevertheless, it can be contended that since the right of occupancy is limited to a number of years, trustee of right of occupancy will have duty to convert it for the benefit of the beneficiaries if the Right of Occupancy is for a period not exceeding 60 years. More so, the duty to convert a lease less than 60 years can be considered to be in line with the ideas of equal access to land, freedom from discrimination and right to acquire and own immovable real property enshrined in the Constitution.<sup>52</sup>

### **1.6 The Effect of the Land Use Act on the Doctrine of Conversion**

The concept of settlement started around the end of the 18<sup>th</sup> century in England on the occasion of a marriage for certain family arrangements to be made in respect of land. These arrangements are called ‘strict settlement’ and were usually made by the husband who limited the land to himself for life, and after his death, to his first son in tail, followed by a provision for a joint rent-charge in favour of the wife, and the portion for the younger children.<sup>53</sup> Settlement means any deed, will, agreement or other instrument by virtue of which any property is or is deemed to be limited to or in trust for any person by way of succession.<sup>54</sup> Traditionally, successive interests in land could be created in two main ways: by way of strict settlement or alternatively by way of trust for sale.<sup>55</sup>

Strict settlement is a mechanism which describes an arrangement which establishes a series of successive beneficial interests in a landed property in favour of a number of persons.<sup>56</sup> A good example is when a land is left by a settler to B for life remainder to C in fee simple. Settlement usually comes into existence on the occasion of marriage or a death, and was used in old times to keep land in the family.<sup>57</sup> Thus, B is the tenant for life who holds the legal estate and is

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<sup>50</sup> Section 73(1)(xi) of the Settled Land Act, 1925.

<sup>51</sup> (n, 45) 371.

<sup>52</sup> Section 13, 42 & 43 of the 1999 Constitution.

<sup>53</sup> Elias, T.O, *Nigerian Land Law* (Fourth Edition, Sweet & Maxwell, 1971) 330.

<sup>54</sup> Section 2 of the Settled Land Act of 1882; Section 2 of the Property and Conveyancing Law, Cap. 88, Laws of Oyo State.

<sup>55</sup> Osward, W.B *Land Law in a Nutshell*. (Fifth edition, Sweet and Maxwell, 2000) 54.

<sup>56</sup> *ibid.*, 54.

<sup>57</sup> *ibid.*, 54.

beneficially entitled for his lifetime, and he has extensive powers of management and disposition. C is the remainder man who will become absolutely entitled to the property when B dies. Trustees of the settlement will often be appointed by the instrument of creation.<sup>58</sup>

On the other hand, trusts for sale is a trust which directs the trustees to sell the trust property and invest the proceeds and hold the resulting funds upon a trust declared by the settler.<sup>59</sup> A simple example would be where S conveyed Black acre to X and Y (trustee) on trust to sell the land and to hold the proceeds for the benefit of B for life, then to C absolutely. Under such trust for sale, the trustees held the legal estate and the powers of management and control are vested in them and not the tenant for life. The trust for sale treated the property as money (conversion) and this enabled easy distribution of the property.

However, under the Property and Conveyancing Law, operating in Oyo, Ogun, Ondo, Osun, Ekiti, Edo and Delta States, it is no longer possible to ensure that the person ultimately entitled to the property will receive the very property that is settled, for the trustees who invariably have the power to sell the property, may decide to do so, and re-invest the proceeds.<sup>60</sup> This is consistent with the duty of the trustee to convert the property subject matter of settlement to ensure equality between the life-tenants and the remainder man. Therefore, under the rule in *Howe vs. Earl of Dartmouth*<sup>61</sup>, there is an implied duty to sell certain investments and reinvest the proceeds in authorised investments.<sup>62</sup>

The rule is aimed at maintaining balance between the competing interests of the life tenant and remainder man. Thus, if no conversion is done, income accruing from wasting assets such as copyright, mine, ship, livestock or the like, might be exhausted by the life tenant to the detriment of the remainder man. Conversely, if it is the reversionary interests (i.e. proprietary interests that will only come into possession after the death of the life tenant), the life tenant may get nothing before he dies.<sup>63</sup> However, there are limitations to the application of the rule. Firstly, it does not apply where the testator has expressly excluded the application of the rule. The essence of the

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<sup>58</sup> *ibid.* 55.

<sup>59</sup> *ibid.*,55.

<sup>60</sup> Utuama, A.A, The Uses of Trusts in the Management of Property: Problems and Prospects. In: Utuama, A.A and Ibru, G.M. (eds.) *The Law of Trusts and Their Uses* (Malthouse Press Limited, 2004) 39; ss 30,32,33,36, 61 and 62 of the Property and Conveyancing Law, 1959.

<sup>61</sup> (1802) 7 Ves, Jr.,137.

<sup>62</sup> Sydenham, A, *Equity and Trusts in a Nutshell* (Sweet & Maxwell, 2000) 90.

<sup>63</sup> Chukwu, L.O.C. "Theoretical Underpinnings of Trust Investment: Juxtaposing Nigerian Law with Current Trends in Other Common Law Jurisdictions," *Annual Survey of International and Comparative Law*, [2017](22)(1)92.

duty to convert is to give effect to the presumed intention of the settlor /testator. Once the intention is clear and unequivocal, the rule will not apply because a contrary position will defeat the express intention of the testator. Secondly, the rule does not apply to cases of intestacy since in such circumstance the law also imposes statutory trust for sale.<sup>64</sup> Finally, Trust for sale and settlement are mutually exclusive and could not exist at the same time in respect of the same property.<sup>65</sup>

However, the Land Use Act seem to prohibit transfer of successive interests by way of settlement. Section 25 of the Land Use Act provides that:

In the case of the devolution or transfer of rights to which any non-customary law applies, no deed or Will shall operate to create any proprietary right over land except that of a plain transfer of the whole of the rights of occupation over the whole of the land.

Smith submitted that the effect of the above provision is to defeat any attempt to create successive ownership by way of settlement so that transfer of rights of occupancy on land should now be effected as a transfer of the whole of the rights of occupancy.<sup>66</sup> More so, James stated that section 25 of the Land Use Act restated the common law principle against successive interest at law.<sup>67</sup> The learned author further argued that this is to sustain the right of occupancy system. Section 25 does not however affect any existing settlement of land before the Land Use Act was promulgated, and same is not affected by section 26 of the Land Use Act which renders such instrument void for contravening the provisions of the Act.<sup>68</sup> However, the provision does not affect trust for sale which is created to avoid the consequences of violation of section 25 of the Act.<sup>69</sup> Thus, the Land Use Act has not affected the application of the doctrine of conversion to land subject of trust for sale. It can be argued that the exclusion of trust for sale from the provisions of section 25 of the Land Use Act is due to relevance and significance of the doctrine of conversion.

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<sup>64</sup> George W. Keeton, and L.A. Sheridan, *The Law of Trusts*, (Tenth Edition, Professional Books Limited, 1974)260.

<sup>65</sup> ( n,55) 55.

<sup>66</sup> Smith, I.O, *Practical Approach to Law of Real Property in Nigeria* (Revised Edition, Ecowatch Publications (Nigeria) Ltd., 2013) 177.

<sup>67</sup> James, R.W, *Nigerian Land Use Act: Policy and Principles* (University of Ife Press Ltd, 1987) 98.

<sup>68</sup>ibid,98.

<sup>69</sup> ibid, 98.

## 1,7 Conclusion

The article examined the equitable doctrine of conversion and its application. It is doctrine that evolved based the different system which determined succession to estate of a deceased who died intestate and the need to ensure that trustees who are under obligation to buy or sell land do not fail in their obligation. Therefore, the doctrine of conversion is applicable in certain circumstances to convert real property to money and vice versa. However, there is confusion as to application to the doctrine to trust of residual personality to persons in succession. The duty to convert enunciated in the rule in the case of *Howe v. Earl of Dartmouth* is considered as a basis of the application of doctrine of conversion.

This article therefore, has found that there is a distinction between doctrine of conversion and duty to convert in *Howe v. Earl of Dartmouth* because the purpose of the latter is to convert personalty to investment while the former is to convert real property to money. Although there is overlap between the doctrine of conversion and duty to convert, they are distinct and subject to different rules. While the duty to convert arising from trust for sale of land or statutory trust for sale will involve doctrine of conversion, the duty to convert wasting assets enunciated in the rule in *Howe v. Earl of Dartmouth* is not covered by the doctrine of conversion. It is therefore suggested that in determining whether the doctrine of conversion or the rule in *Howe v. Earl of Dartmouth*, the nature of the obligation, property and the purpose of the conversion should be considered.