

Equity and Trusts

Fourth Edition

Sukhninder Panesar

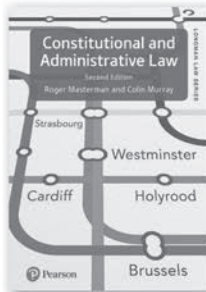
LONGMAN LAW SERIES



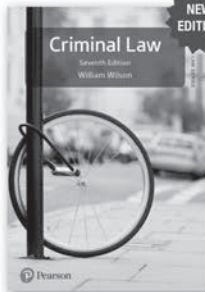
Equity and Trusts



Also in the Longman Law Series



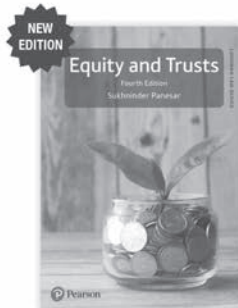
ISBN: 9781292144252



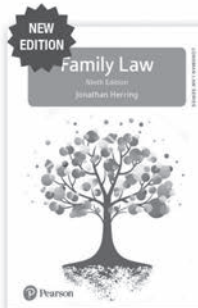
ISBN: 9781292286747



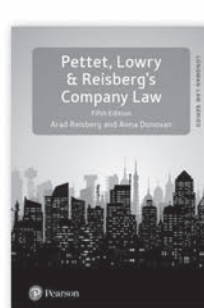
ISBN: 9781408263600



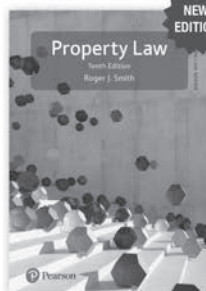
ISBN: 9781292309040



ISBN: 9781292251165



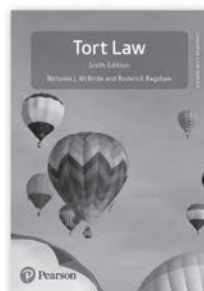
ISBN: 9781292078632



ISBN: 9781292286716



ISBN: 9781292078526



ISBN: 9781292207834

Longman Law Series titles are available to order from all good bookshops or online at: go.pearson.com/uk/hc/resources

Equity and Trusts

Fourth edition

Sukhninder Panesar



Harlow, England • London • New York • Boston • San Francisco • Toronto • Sydney • Dubai • Singapore • Hong Kong
Tokyo • Seoul • Taipei • New Delhi • Cape Town • São Paulo • Mexico City • Madrid • Amsterdam • Munich • Paris • Milan



Pearson

At Pearson, we have a simple mission: to help people make more of their lives through learning.

We combine innovative learning technology with trusted content and educational expertise to provide engaging and effective learning experiences that serve people wherever and whenever they are learning.

From classroom to boardroom, our curriculum materials, digital learning tools and testing programmes help to educate millions of people worldwide – more than any other private enterprise.

Every day our work helps learning flourish, and wherever learning flourishes, so do people.

To learn more, please visit us at **www.pearson.com/uk**

PEARSON EDUCATION LIMITED

KAO Two
KAO Park
Harlow CM17 9SR
United Kingdom
Tel: +44 (0)1279 623623
Web: www.pearson.com/uk

First edition published 2010 (print)
Second edition published 2012 (print)
Third edition published 2017 (print and electronic)
Fourth edition published 2020 (print and electronic)

© Pearson Education Limited 2010, 2012 (print)
© Pearson Education Limited 2017, 2020 (print and electronic)

The right of Sukhninder Panesar to be identified as author of this work has been asserted by him in accordance with the Copyright, Designs and Patents Act 1988.

The print publication is protected by copyright. Prior to any prohibited reproduction, storage in a retrieval system, distribution or transmission in any form or by any means, electronic, mechanical, recording or otherwise, permission should be obtained from the publisher or, where applicable, a licence permitting restricted copying in the United Kingdom should be obtained from the Copyright Licensing Agency Ltd, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN.

The ePublication is protected by copyright and must not be copied, reproduced, transferred, distributed, leased, licensed or publicly performed or used in any way except as specifically permitted in writing by the publishers, as allowed under the terms and conditions under which it was purchased, or as strictly permitted by applicable copyright law. Any unauthorised distribution or use of this text may be a direct infringement of the author's and the publisher's rights and those responsible may be liable in law accordingly.

All trademarks used herein are the property of their respective owners. The use of any trademark in this text does not vest in the author or publisher any trademark ownership rights in such trademarks, nor does the use of such trademarks imply any affiliation with or endorsement of this book by such owners.

Contains public sector information licensed under the Open Government Licence (OGL) v3.0.
<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

Contains Parliamentary information licensed under the Open Parliament Licence (OPL) v3.0.
<http://www.parliament.uk/site-information/copyright/open-parliament-licence/>

Pearson Education is not responsible for the content of third-party internet sites.

The Financial Times. With a worldwide network of highly respected journalists, *The Financial Times* provides global business news, insightful opinion and expert analysis of business, finance and politics. With over 500 journalists reporting from 50 countries worldwide, our in-depth coverage of international news is objectively reported and analysed from an independent, global perspective. To find out more, visit www.ft.com/pearsonoffer.

ISBN: 978-1-292-30904-0 (print)
978-1-292-30905-7 (PDF)
978-1-292-30906-4 (EEB)

British Library Cataloguing-in-Publication Data

A catalogue record for the print edition is available from the British Library

Library of Congress Cataloging-in-Publication Data

Names: Panesar, Sukhninder, author.
Title: Equity and trusts / Sukhninder Panesar.
Description: Fourth edition. | Harlow, England ; New York : Pearson Education Limited, 2020. | Series: Longman law series | Includes bibliographical references and index.
Identifiers: LCCN 2019058693 (print) | LCCN 2019058694 (ebook) | ISBN 9781292309040 (paperback) | ISBN 9781292309057 (PDF) | ISBN 9781292309064 (ebook)
Subjects: LCSH: Trusts and trustees—England. | Equity—England. | LCGFT: Textbooks.
Classification: LCC KD1480 .P36 2020 (print) | LCC KD1480 (ebook) | DDC 346.42/004—dc23
LC record available at <https://lcn.loc.gov/2019058693>
LC ebook record available at <https://lcn.loc.gov/2019058694>

10 9 8 7 6 5 4 3 2 1
24 23 22 21 20

Front cover image: Towfiqu Photography/Moment/Getty Images
Print edition typeset in Charter ITC Std 9.5/12 by SPi Global
Printed and bound in Malaysia

NOTE THAT ANY PAGE CROSS REFERENCES REFER TO THE PRINT EDITION

Brief contents

Preface	xviii
Publisher's Acknowledgements	xxi
Table of cases	xxxv
Table of statutes	xlvii
Part I Introduction to equity and trusts	1
1 Introduction to equity	3
2 The trust concept	38
3 The trust distinguished from other legal concepts	69
Part II Creating the trust relationship	99
4 The three certainties	101
5 Formalities	135
6 Constitution of trusts	160
7 Secret trusts and mutual wills	199
8 The beneficiary principle	234
9 Illegality and public policy	262
Part III Trusts implied by law	287
10 Resulting trusts, part I: Nature of resulting trusts	289
11 Resulting trusts, part II: Imposing resulting trusts	307
12 Constructive trusts, part I: Nature of constructive trusts	365
13 Constructive trusts, part II: Imposing constructive trusts	385
14 Constructive trusts, part III: Imposing constructive trusts – intermeddling with trust property	480
Part IV The administration of trusts	525
15 Introduction to trusteeship appointment, removal and retirement	527
16 Investment of trust funds	563
17 Fiduciary nature of trusteeship	597
18 Powers of trustees	632
19 Variation of trusts	657

Part V	Breach of trust and remedies	691
20	Breach of trust and personal remedies	693
21	Tracing and a proprietary claim	733
Part VI	Charities and charitable trusts	755
22	Charities and charitable trusts	757
23	The cy-près doctrine	845
	Index	873

Contents

Preface	xviii
Publisher's Acknowledgements	xxi
Table of cases	xxxv
Table of statutes	xlvi
Part I Introduction to equity and trusts	1
1 Introduction to equity	3
Learning objectives	3
Setting the scene: Equity and role of unconscionability	4
Introduction	5
The common law	6
The origins and development of equity	8
Equity and the role of conscience	11
Unconscionability, fairness and the role of context	14
The Judicature Acts 1873 and 1875 and the relationship between law and equity	21
Fusion fallacy	23
Equitable maxims	25
Nature of proprietary rights in law and in equity	30
Equity and social reform	33
Conclusion	36
Moot points	37
Further reading	37
2 The trust concept	38
Learning objectives	38
Setting the scene: <i>Hambro and Others v The Duke of Marlborough and Others</i> [1994] 3 WLR 341	39
Introduction	41
Definition	43
The key features of the trust	44
Trust as a product of fragmentation of ownership	50
Historical foundations of the trust	50
Trusts and law reform	52
Classification of trusts	54
The operation of section 33(1) Trustee Act 1925: protective trusts	56
The contemporary significance of trusts	63
Some key players and concepts in the trust relationship	65

Conclusion	67
Moot points	67
Further reading	68
3 The trust distinguished from other legal concepts	69
Learning objectives	69
Setting the scene: <i>Re Mills</i> [1930] 1 Ch. 654	70
Introduction	70
Contract	71
Agency	73
Bailment	74
Interests under wills and administration	75
Debts	77
Powers: general observations	84
Different types of power of appointment	86
Exercising a power of appointment	89
Excessive or fraudulent exercise of a power	91
Consequences of not exercising a power of appointment	93
Conclusion	96
Case study	96
Moot points	97
Further reading	97
Part II Creating the trust relationship	99
4 The three certainties	101
Learning objectives	101
Setting the scene: <i>McPhail v Doulton</i> [1971] AC 424	102
Introduction	103
The effect of uncertainty	104
The rationale for certainty	105
Certainty of intention	105
Certainty of subject matter	113
Certainty of objects: general observations	119
The constituent elements of certainty of objects	119
The test of certainty of objects for a fixed trust	121
The test of certainty of objects for a discretionary trust	124
Conclusion	132
Case study	132
Moot points	133
Further reading	133
5 Formalities	135
Learning objectives	135
Setting the scene: <i>The Vandervell</i> Saga 1958–1965	136
Introduction	137

Testamentary trusts	137
<i>Inter vivos</i> trusts	137
Declarations of trust	138
Dispositions of equitable interests	143
Conclusion	158
Case studies	158
Moot points	159
Further reading	159
6 Constitution of trusts	160
Learning objectives	160
Setting the scene: <i>Pennington v Waine</i> [2002] 1 WLR 2075	161
Introduction	161
Completely constituted and incompletely constituted trusts	162
The <i>Milroy v Lord</i> principles of conferring a benefit on a donee	163
Declaration of trust	165
Transfer to trustees	168
Equity will not strive officiously to defeat a gift	171
Enforcing an incompletely constituted trust	176
Exceptions to the rule that equity will not assist a volunteer	186
Proprietary estoppel	195
Conclusion	196
Case studies	197
Moot points	197
Further reading	198
7 Secret trusts and mutual wills	199
Learning objectives	199
Setting the scene: <i>Re Boyes</i> (1884) 26 Ch D 531	200
Introduction	200
Succession	201
Definition of a secret trust	204
The theoretical justification of secret trusts	206
Requirements for a fully secret trust	210
Requirements for a half-secret trust	218
Predecease of the secret beneficiary	219
Predecease of the secret trustee	220
Can a secret trustee derive a benefit from the secret trust?	220
How are secret trusts classified?	221
Mutual wills	222
Conclusion	231
Case study	231
Moot points	232
Further reading	233

8 The beneficiary principle	234
Learning objectives	234
Setting the scene: <i>Re Astor's Settlement Trusts</i> [1952] Ch 534	235
Introduction	236
Non-charitable purpose trusts and charitable trusts	236
Is the trust a purpose trust?	237
The beneficiary principle stated	238
Rationale behind the principle	239
The <i>Re Denley</i> principle: a situation outside the beneficiary principle	243
The anomalous cases	247
The construction of gifts to unincorporated associations	251
Reform	258
Conclusion	259
Case study	260
Moot points	260
Further reading	261
 9 Illegality and public policy	 262
Learning objectives	262
Setting the scene: <i>Blathwayt v Baron Cawley</i> [1976] AC 397	263
Introduction	263
Freedom of disposition and public policy	264
Trusts contrary to public policy	265
Illegality	270
Trusts which contravene the perpetuity rules	271
Trusts to safeguard property from creditors	272
Trusts defeating the rights of the family and dependants	278
Trusts defeating the rights of a spouse	281
The Law Commission's consultation paper	283
Conclusion	284
Case study	284
Moot points	285
Further reading	285
 Part III Trusts implied by law	 287
 10 Resulting trusts, part I: Nature of resulting trusts	 289
Learning objectives	289
Setting the scene: When does a resulting trust arise?	290
Introduction	290
Theories explaining the imposition of a resulting trust	291
The 'beneficial vacuum' theory	291
Resulting trusts and a restitutionary justification	292
Resulting trusts and the role of intentions	296
Automatic and presumed resulting trusts	300
<i>Westdeutsche</i> : the prevailing view	301

Conclusion	304
Moot points	305
Further reading	305
11 Resulting trusts, part II: Imposing resulting trusts	307
Learning objectives	307
Setting the scene: Problems requiring a resulting trust solution	308
Introduction	309
Failure of the trust	309
Resulting trusts and Quistclose trusts	313
Unexhausted funds	317
Voluntary conveyance in the name of another	333
Purchase in the name of another	337
Rebutting the presumption of a resulting trust	339
Rebutting the presumptions and evidential matters	343
Resulting trusts and the family home	354
Conclusion	361
Case studies	362
Moot points	363
Further reading	363
12 Constructive trusts, part I: Nature of constructive trusts	365
Learning objectives	365
Setting the scene: Why do we impose constructive trusts?	366
Introduction	366
When will a constructive trust be imposed?	367
Institutional and remedial constructive trusts	369
An institutional constructive trust	369
A remedial constructive trust	370
Does English law recognise a remedial constructive trust?	375
Consequences of the imposition of a constructive trust	379
Conclusion	382
Moot points	383
Further reading	383
13 Constructive trusts, part II: Imposing constructive trusts	385
Learning objectives	385
Setting the scene: Problems requiring a constructive trust solution	386
Introduction	387
Acquisition of property as a result of unlawful conduct	387
Unauthorised profits gained by a fiduciary	411
Constructive trusts and the family home	417
Miscellaneous situations giving rise to a constructive trust	460
Conclusion	476
Case studies	476
Moot points	477
Further reading	478

14	Constructive trusts, part III: Imposing constructive trusts – intermeddling with trust property	480
	Learning objectives	480
	Setting the scene: <i>Royal Brunei v Tan</i> [1995] 2 AC 378	481
	Introduction	481
	Nature of liability for knowing assistance	482
	Requisites for liability for knowing assistance	484
	Receipt of trust property in breach of trust	508
	Significance of knowing receipt liability and requisites for liability	509
	Conclusion	521
	Case study	521
	Moot points	522
	Further reading	523
	 Part IV The administration of trusts	 525
15	Introduction to trusteeship appointment, removal and retirement	527
	Learning objectives	527
	Setting the scene: <i>Klug v Klug</i> [1918] 2 Ch. 67	528
	Introduction	528
	Capacity and numbers	530
	Appointment of initial trustees	530
	Appointment of new trustees	531
	The retirement of trustees	538
	Removal of a trustee	538
	Special types of trustees	539
	Vesting of the trust property in trustees	541
	Conducting the office of trusteeship	541
	Control of trustees' discretions	543
	Do trustees need to give reasons?	555
	Conclusion	560
	Case study	560
	Moot points	561
	Further reading	561
16	Investment of trust funds	563
	Learning objectives	563
	Setting the scene: <i>Nestlé v National Westminster Bank plc</i> [1993] 1 WLR 1260	564
	Introduction	564
	The duty of investment and the power of investment	565
	The objectives of trust investment	565
	Historical note and contemporary trends in trustee investment	567
	Common law and statutory duties when investing	570
	Express powers of investment	578
	Statutory power of investment	580

Purchase of land as an investment	585
Mortgages of land as an investment	586
Charitable trusts and social investments	588
Enlargement of investment powers: the return of the <i>Re Kolb</i> principle	589
The duty to act fairly among the beneficiaries	591
Conclusion	594
Case studies	594
Moot points	595
Further reading	596
17 Fiduciary nature of trusteeship	597
Learning objectives	597
Setting the scene: <i>Keech v Sandford</i> (1726) Sel. Cas. Ch. 61	598
Introduction	599
Defining fiduciary relationships	599
The purchase of trust property	612
Trustee remuneration	615
Incidental profits	619
Remedies for breach of fiduciary duty	621
Conclusion	630
Case study	630
Moot points	630
Further reading	631
18 Powers of trustees	632
Learning objectives	632
Setting the scene: <i>Re Pauling's Settlement Trusts</i> [1964] Ch 303	633
Introduction	633
The power to delegate	634
The power of maintenance	641
The power of advancement	645
Miscellaneous powers of trustees	651
Conclusion	655
Case studies	655
Moot points	656
Further reading	656
19 Variation of trusts	657
Learning objectives	657
Setting the scene: <i>Re Weston's Settlements</i> [1969] 1 Ch. 223	658
Introduction	659
The rule in <i>Saunders v Vautier</i>	659
The court's inherent jurisdiction to order variation	663
Statutory provisions	668
The Variation of Trusts Act 1958	674
Conclusion	687
Moot points	688
Further reading	689

Part V	Breach of trust and remedies	691
20	Breach of trust and personal remedies	693
	Learning objectives	693
	Setting the scene: <i>Target Holdings v Redferns</i> [1996] AC 421	694
	Introduction	695
	The personal liability of the trustee	696
	Liability for co-trustees	705
	Joint liability, contribution and indemnity	706
	Established principles when assessing liability	709
	Defences in a personal claim	715
	Limitation of actions	727
	Conclusion	731
	Case study	731
	Moot points	732
	Further reading	732
21	Tracing and a proprietary claim	733
	Learning objectives	733
	Setting the scene: <i>Re Diplock</i> [1948] Ch 465	734
	Introduction	734
	Proprietary claims and tracing	735
	Tracing and proprietary claims at common law	738
	Tracing and proprietary claims in equity	742
	Conclusion	752
	Case study	753
	Moot points	753
	Further reading	754
Part VI	Charities and charitable trusts	755
22	Charities and charitable trusts	757
	Learning objectives	757
	Setting the scene: <i>IRC v McMullen</i> [1981] AC 1 House of Lords	758
	Introduction	759
	A historical note	759
	The structure of charity	762
	The Charities Act 2006 and the Charities Act 2011	764
	Differences between charitable trusts and private trusts	764
	Regulation and supervision of charities	768
	Requirements for a charitable trust	771
	Definition of charity	772
	Charitable purposes under the Charities Act 2011	778
	Recreational charities	813
	Public benefit	816
	Exclusively charitable	830
	Trusts with political purposes	835
	Conclusion	841

Case studies	842
Moot points	842
Further reading	843
23 The cy-près doctrine	845
Learning objectives	845
Setting the scene: <i>Re Rymer</i> [1895] 1 Ch 19 and <i>Re Slevin</i> [1891] 2 Ch 236	846
Introduction	847
The court's inherent jurisdiction to apply cy-près	847
A general charitable intent	850
Initial failure	852
Subsequent failure	858
The Charities Act 1993	860
The Charities Act 2011	864
Charity donations and unidentifiable donors	867
Cy-près schemes	869
Conclusion	870
Case study	870
Moot points	871
Further reading	872
Index	873

Preface

Ask anyone who has studied law which topic they found particularly tricky during their undergraduate degree and the chances are they'll tell you it was equity and trusts. This area of English law is seen to be notoriously difficult and often students are filled with trepidation before they've even started the module. Why should this be? I think there are two main reasons. The first is that students tend to have little by way of a general inclination or understanding of the subject matter of equity and trusts. For example, if we consider an area such as criminal law, we would expect that the student probably already understands that the subject of enquiry relates to the legal rules governing criminal wrongdoing, along with a working knowledge of what such wrongdoing might entail (murder, manslaughter, theft, and so on). With equity and trusts, however, even if the student already has some broad ideas of the nature and principle of equitable relief, they will generally not relate to the trust concept. As such, they are often approaching entirely uncharted territory, and so face the inevitable challenges that delving into any new area brings.

Secondly, the subject matter is, by its nature, broad and complex. We can see this when we consider the diverse contexts in which the trust has operated. In the social context, the trust has historically operated to deal with the rights of various groups, for example, the rights of women or the rights of illegitimate children. More recently, the trust has had an important role to play in protecting the rights of individuals in the family home (particularly in the context of increased non-marital cohabitation). The trust has also been a key factor in the world of commerce, dealing with the rights, for example, of pension fund beneficiaries or the rights of beneficiaries against commercial agents who have intermeddled with trust property. It might initially appear a little daunting, but neither the student learning the law, nor the lecturer teaching it should shy away from the elaborate nature of trusts – to do so will not only short-change the student, but will also hamper the effective understanding of the law. Indeed, if we embrace this fact now then I believe we can make studying equity and trusts a rich and deeply rewarding experience. This is where, I hope, this book comes in.

This book has two primary objectives. Firstly, it seeks to convey the principles of equity and trusts in a manner which the reader will find engaging and easy to understand. To achieve this, the book is divided into six parts. This fragmentation will allow the reader to understand the relevant chapters under a common theme first and then, much like a jigsaw, put all the pieces together to reveal the bigger picture. Part I of the book explores the nature of equity and the grounds for invoking equitable relief. It then examines the nature of the trust concept and the reasons for creating trusts in the contemporary world. Part II explores the substantive and formal requirements needed for the creation of express trusts. Part III looks to those trusts which are implied by law rather than created by a deliberate act on the part of an individual. Part IV looks at the law relating to the administration of trusts, in particular, the powers and duties of trustees. Part V examines the remedies available to a beneficiary for breaches of trust by a trustee. The final part of the book looks

at trusts which are created in favour of the public at large, otherwise known as charitable trusts. The law relating to charitable trusts has recently undergone changes as a result of the enactment of the Charities Act 2011. Part VI explores some of the fundamental changes introduced by the Charities Act 2011 and the future direction of charitable trusts. The book also uses a number of features to help cement knowledge of the concepts and apply it at regular intervals, such as the 'Applying the law' boxes throughout each chapter, occasional end-of-chapter 'Case studies', and 'Moot points' which are at the end of each chapter. These features encourage the reader to apply the law to factual questions and think further about some of the nuances that exist within the law.

The second objective is to give the reader as much context as possible. I have tried to illustrate the significance of the trust in its modern context and some of the older rules within the framework in which they were decided. This approach seeks to show the law 'in action,' and to help the reader understand not just what the law is, but also some of the reasons as to *why* it is so. To this end, each chapter opens with a 'Setting the scene' section which will introduce the reader to interesting cases that bring to light the subject matter of each chapter and offer a frame of reference for what is to follow. Each chapter also examines the relevant cases and rulings pertinent to that area of trusts law, further reinforcing the reader's understanding of how the law has evolved.

The fourth edition of this book contains key case law and statutory developments since the third edition. The book covers a number of decisions of the Supreme Court and the Court of Appeal that are significant in reshaping and reconfirming important principles of equity and trusts. For example: in the context of *donatio mortis causa*, the decision in *Keeling v Keeling* (2017); in the context of the Inheritance (Provision for Family and Dependants) Act 1975, the decision of the Supreme Court in *Ilott v Motson* (2017) considering the correct approach to determine the award for financial provision under the 1975 Act; in the context of the Forfeiture Act 1982, the decision in *Ninian v Findlay* (2019) on the application of the forfeiture rule; in the context of breach of fiduciary duty and unauthorised profits, the decision in *Parr v Keystone Health Ltd* (2019); in the context of the common intention constructive trust, the decision of the Privy Council in *Marr v Collie* (2018) in looking at whether a common intention constructive trust can arise in a commercial setting as opposed to a family domestic setting; in the context of constructive trusts, the decision in *Generator Developments Ltd v Lidl UK GmbH* (2018) as to the operation of the *Pallant v Morgan* equity; in the context of dishonest assistance, the decision of the Court of Appeal in *Group Seven Limited & Ors v Notable Services LLP* (2019) examining the definition of dishonesty; in the context of a beneficiary's right to inspect trust documents, the decision in *Lewis v Tamplin* (2018); in the context of remedies for breach of trust and equitable compensation, the decision of the Court of Appeal in *Ahmed v Ingram* (2018); in the context of defences for breach of trust, the decision in *Santander UK v RA Legal Services* (2014) and the decision in *Dreamvar (UK) Ltd v Mischon de Reya* (2018). The new edition also looks at the Charities (Protection and Social Investment Act) 2016, which confers upon Charity Commissioners greater powers to disqualify charity trustees for mismanagement of charity funds, as well as allowing charities to make social investments.

I would like to thank Pearson Education for publishing this book. In particular, Victoria Tubb and Archana Makhija for their invaluable support and patience during the writing process. I have been very fortunate to have worked with such a dedicated and professional editorial team and a lot of credit for this book belongs to them.

Most importantly, I would like to thank my wife, Sandeep, and my son, Lakhdeep, for their incredible support without which the book would not have been possible. I would

also like to thank two close colleagues and friends, Margaret Walsh and Rebecca Mincher, for their incredible support during the writing of this fourth edition.

I have attempted to state the law up to and as at October 2019.

Finally, this book is dedicated to the memory of my father who sadly passed away on 16 November 2015.

Sukhninder Panesar
Head of Law
University of Wolverhampton Law School

Publisher's Acknowledgements

4 Incorporated Council of Law Reporting for England and Wales (ICLR): *House of Lords in Westdeutsche v Islington London Borough Council* [1996] AC 699 (HL); **12 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Campbell Discount Co Ltd v Bridge* [1961] 1 QB 445 at 459; **12 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Hallett's Estate* (1880) 13 Ch D 696 at 710; **13 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Eves v Eves* [1975] 1 WLR 1338 at 1341; **13 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hussey v Palmer* [1972] 1 WLR 1286; **13 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Cowcher v Cowcher* [1972] 1 WLR 425 13, 352; **13 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 699, 705; **14 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 699, 716; **14 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei Airlines Sdn Bhd v Tan Kok Ming* [1995] 2 AC 378 at 392; **15 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Thorner v Major* [2009] 1 WLR 776 at 805; **19–20 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Thorner v Major* [2009] 1 WLR 776 at 803; **24 Incorporated Council of Law Reporting for England and Wales (ICLR):** *United Scientific Holdings Ltd v Burnley Borough Council* [1978] AC 904 at 924; **39–40 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hambro and Others v The Duke of Marlborough and Others* [1994] 3 WLR 341: The Blenheim Estates, the Duke of Marlborough and his irresponsible son; **49 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 (HL); **58 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche v Islington London Borough Council* [1996] AC 699 at 708; **58 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche v Islington London Borough Council* [1996] AC 699; **59, 298 and 332–333 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Air Jamaica v Charlton* [1999] 1 WLR 1399 at 1412; **60 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche v Islington London Borough Council* [1996] AC 669 at 705; **60 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche v Islington London Borough Council* [1996] AC 669 at 714; **63 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hussey v Palmer* [1972] 1 WLR at 1289; **78 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Carreras Rothmans Ltd v Freeman Mathews Treasure Ltd*, [1985] Ch 207 at 222; **79 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567 at 581; **80 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Twinsectra Ltd v Yardley* [2002] 2 AC 164 (Judicial assessment of Quistclose trusts per Lord Millett);

81 Incorporated Council of Law Reporting for England and Wales (ICLR): *Twinsectra Ltd v Yardley* [2002] 2 AC 164 (the All England Law Reports are published by LexisNexis); **85 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Freme v Clement* (1881) 18 Ch D 499 at 504; **89 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Mills* [1930] 1 Ch 654 at 661; **89 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Weekes' Settlement* [1897] 1 Ch 289 at 292; **90 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Hay's Settlement Trusts* [1982] 1 WLR at 209–10; **91 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Vatcher v Paull* [1915] AC 372 at 378; **102 Incorporated Council of Law Reporting for England and Wales (ICLR):** *McPhail v Douulton* [1971] AC 424; **105 Incorporated Council of Law Reporting for England and Wales (ICLR):** *IRC v Broadway Cottages Trusts* [1955] Ch 20 at 30; **106 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Kayford Ltd* [1975] 1 WLR 279 at 282; **107–108 Court of Appeal (England and Wales):** *Staden v Jones* [2008] 2 FLR 1931 105, 160; **110 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Adams and the Kensington Vestry* (1884) 27 Ch D 394; **110 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Adams and the Kensington Vestry* (1884) 27 Ch D 394 at 410; **111 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Steele's Will Trusts* [1948] Ch 603; **115 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Golay's Will Trusts* [1965] 1 WLR 969; **116 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Golay's Will Trusts* [1965] 1 WLR 969 at 972; **118 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hunter v Moss* [1994] 1 WLR 452 at 449; **120 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Gulbenkian's Settlement Trusts* [1970] AC 508 at 528; **121 and 129 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Baden's Deed Trusts (No. 1)* [1971] AC 424 at 457; **126 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Baden's Deed Trusts (No. 2)*, *Re* [1972] 3 WLR 250 at 257; **127 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Baden's Deed Trusts (No. 2)* [1972] 3 WLR 250 at 255; **127 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Baden's Deed Trusts (No. 2)* [1972] 3 WLR 250 at 265; **128 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Baden's Deed Trusts (No. 2)* [1972] 3 WLR 250 at 268; **129 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Hay's Settlement Trusts* [1982] 1 WLR 202 at 209–10; **130 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Allen* [1953] Ch 810; **131 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Coxen* [1948] Ch 747; **131 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Coxen* [1948] Ch 747 at 761; **140 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Rochefoucauld v Boustead* [1897] 1 Ch 196 at 206; **144 and 310 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Vandervell v IRC* [1967] 2 AC 291 at 329; **149 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Vandervell v IRC* [1967] 2 AC 291 and 311; **155–156 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Oughtred v IRC* [1960] AC 206 at 233; **156 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Oughtred v IRC* [1960] AC 206 at 240; **156 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Oughtred v IRC* [1960] AC 206 at 227; **157 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Chinn v Collins* (Inspector of Taxes), [1981] AC 533 at 548; **163 Chancery Division of the High Court:** *Milroy v Lord* (1862) 4 De GF & J 264; **163**

Chancery Division of the High Court: *Milroy v Lord* (1862) 4 De GF & J 264 at 274; **163–164 Cambridge University Press:** F.W. Maitland, *Equity: A Course of Lectures* (J. Brunyate (ed.), 1936) at pp. 71–2; **165 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Pennington v Waine* [2002] 1 WLR 2075 at 2090; **172 Incorporated Council of Law Reporting for England and Wales (ICLR):** *T. Choithram International S.A. v Pagarani* [2001] 1 WLR 1; **174 Incorporated Council of Law Reporting for England and Wales (ICLR):** *T. Choithram International S.A. v Pagarani* [2001] 1 WLR 1 at 11; **174 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Pennington v Waine* [2002] 1 WLR 2075 at 2089; **185 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Cook's Settlement Trusts*, Re [1965] Ch 902 at 913; **186–187 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Stewart* [1908] 2 Ch 252 at 254; **188 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Gonin* [1979] Ch 16 at 35; **190 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Craven's Estate* [1937] Ch 423 at 426; **195–196 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Taylor Fashions v Liverpool Victoria Trustees Co Ltd* [1982] QB 133 at 151; **207–208 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Blackwell v Blackwell* [1929] AC 318 at 334; **208 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Blackwell v Blackwell* [1929] AC 318; **208–209 and 218 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Blackwell v Blackwell* [1929] AC 318 at 339; **209 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Young* [1951] Ch 344 at 350; **211 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Ottaway v Norman* [1972] 2 WLR 50 at 62; **214 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Keen* [1937] Ch 236 at 242; **218 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Keen* [1937] Ch 236 at 246; **218 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Smart's Goods* [1902] P 238; **223–224 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Olins v Walters* [2009] Ch 212; **225 and 475 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Cleaver (deceased)* [1981] 1 WLR 939 at 947; **225 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Goodchild* [1997] 1 WLR 1216; **227–228 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Oldham* [1925] Ch 75 at 88; **229 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Hagger* [1930] 2 Ch 190 at 195; **230 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Goodchild (deceased)* [1996] 1 WLR 694 at 700; **232 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Blackwell v Blackwell* [1929] 2 AC 318 at 339; **235 Financial Times Limited:** *Philanthropy goes to the dogs* By Christopher Caldwell: *Financial Times* 4 July 2008; **236 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Leahy v A-G for New South Wales* [1959] AC 457 at 478; **236 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Astor's Settlement Trust* [1952] Ch 534; **236 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Astor's Settlement Trust* [1952] Ch 534 at 541; **238–239 and 247 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Astor's Settlement Trusts* [1952] Ch 534 at 547; **239 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Endacott* [1960] Ch 232 at 250; **239 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Endacott* [1960] Ch 232; **243 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Per Viscount Simonds in Leahy v A-G for New South Wales* [1959] AC 457 at 484;

244 Incorporated Council of Law Reporting for England and Wales (ICLR): *Re Denley's Trust Deed* [1969] 1 Ch 373 at 382; **245 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lipinski's Will Trusts, Re* [1976] Ch 235 at 248; **246 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lipinski's Will Trusts, Re* [1976] Ch 235 at 249; **246 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Grant's Will Trusts* [1980] 1 WLR 360 at 370; **247 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Endacott, Re* [1960] Ch 232 at 250; **249 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Hooper* [1932] 1 Ch 38; **252 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Conservative and Unionist Central Office v Burrell* [1982] 1 WLR 522 at 525; **252 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Neville Estates Ltd v Madden* [1962] Ch 832 at 849; **254 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Leahy v Attorney-General for New South Wales* [1959] AC 457; **255–256 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Neville Estates v Madden* [1962] Ch 832 at 849; **257 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hanchett-Stamford v Attorney General* [2009] Ch 173 at 183; **258 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hanchett-Stamford v Attorney General* [2009] Ch 173 at 188; **264 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Blathwayt v Baron Cawley* [1976] AC 397 at 404; **268 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Blathwayt v Baron Cawley* [1976] AC 397 at 426; **268 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Blathwayt v Baron Cawley* [1976] AC 397 at 438; **273 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Butterworth* (1882) 19 Ch D 588 at 598; **278 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hill v Haines* [2008] Ch 412 at 429; **278 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hill v Haines* [2008] Ch 412 at 417; **280 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lilleyman v Lilleyman* [2013] Ch 225 at para. 60; **282 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Kemmis v Kemmis* [1988] 1 WLR 1307 at 1315; **290 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 (HL); **290 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Air Jamaica v Charlton* [1999] 1 WLR 1399 Lord Justice Millett explained that (at p. 1412); **292 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Vandervell v IRC* [1967] 2 AC 291 at 308; **295 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 (HL) at 708; **302 and 303 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 (HL) at 705, 708; **312 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Astor's Settlement Trusts* [1952] Ch 534; **314 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Carreras Rothmans Ltd v Freeman Mathews Treasure Ltd* [1985] Ch 207; **315 Incorporated Council of Law Reporting for England and Wales (ICLR):** The absence of intention approach was advocated by Millett LJ in the Privy Council in *Air Jamaica v Charlton* [1999] 1 WLR 1399; **319 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Osoba* [1978] 1 WLR 791 at 796; **321 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Gillingham Bus Disaster Fund* [1958] Ch 300; **322 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Welsh Hospital (Netley) Fund, Re* [1921] 1 Ch 655 at 659; **323 Incorporated Council of Law Reporting for England and Wales (ICLR):**

Conservative and Unionist Central Office v Burrell [1982] 1 WLR 522; **325 Incorporated Council of Law Reporting for England and Wales (ICLR): *Bucks Constabulary Fund*** (No. 2), Re [1979] 1 WLR 936 320–322; **325 Incorporated Council of Law Reporting for England and Wales (ICLR): *Hanchett-Stamford v Attorney General*** [2009] Ch 173; **326 Incorporated Council of Law Reporting for England and Wales (ICLR): *Hanchett-Stamford v Attorney General*** [2009] Ch 173 at para. 31; **326–327 Incorporated Council of Law Reporting for England and Wales (ICLR): *Hanchett-Stamford v Attorney General*** [2009] Ch 173 at para. 47; **329 Incorporated Council of Law Reporting for England and Wales (ICLR): *Davis v Richards & Wallington Industries Ltd*** [1990] 1 WLR 1511 324, 325, 328; **330 Taylor & Francis Group: A. Hudson, *Equity and Trusts*** (5th edn, 2006) at p. 1001; **333 Incorporated Council of Law Reporting for England and Wales (ICLR): *Vandervell v IRC*** (No. 2) [1974] Ch 269; **339 Incorporated Council of Law Reporting for England and Wales (ICLR): *Pettitt v Pettitt*** [1970] AC 777 at 814; **339 Incorporated Council of Law Reporting for England and Wales (ICLR): *Pettitt v Pettitt*** [1970] AC 777 at 823; **341 Incorporated Council of Law Reporting for England and Wales (ICLR): *Pettitt v Pettitt*** [1970] AC 777 at 824; **341 Incorporated Council of Law Reporting for England and Wales (ICLR): In *Re Eykyn's Trusts*** 15 Jun 1877 6 ChD 115, ChD; **344 Incorporated Council of Law Reporting for England and Wales (ICLR): *Tinker v Tinker*** [1970] P 136 at 141; **345 Incorporated Council of Law Reporting for England and Wales (ICLR): *Lowson v Coombes*** [1999] Ch 373 at 386; **347 Incorporated Council of Law Reporting for England and Wales (ICLR): *Tinsley v Milligan*** [1994] 1 AC 340 at 362; **347 Incorporated Council of Law Reporting for England and Wales (ICLR): *Tinsley v Milligan*** [1992] Ch 310 at 319; **349 Incorporated Council of Law Reporting for England and Wales (ICLR): *Tribe v Tribe*** [1996] Ch 107 (A statement of the current law on illegality and presumptions of resulting trust and advancement, per Millett LJ at 134); **349–350 Incorporated Council of Law Reporting for England and Wales (ICLR): *Patel v Mirza***. [2015] Ch 271 at para. 95; **352 Incorporated Council of Law Reporting for England and Wales (ICLR): *Gray v Thames Trains Ltd*** [2009] AC 1339; **356 Incorporated Council of Law Reporting for England and Wales (ICLR): *Gissing v Gissing*** [1971] AC 886 at 907; **366 Incorporated Council of Law Reporting for England and Wales (ICLR): *Yeoman's Row Management Ltd v Cobbe*** [2008] 1 WLR 1752 (at 1769). (at 1769); **367 Incorporated Council of Law Reporting for England and Wales (ICLR): *Westdeutsche Landesbank Girozentrale v Islington LBC*** [1996] AC 669 (HL) (Constructive trusts and role of conscience per Lord Browne-Wilkinson at 705); **368, 467 and 468 Incorporated Council of Law Reporting for England and Wales (ICLR): *Cobbe v Yeoman's Row Management Ltd*** [2008] 1 WLR 1752 at 1769; **368 Incorporated Council of Law Reporting for England and Wales (ICLR): *Carl Zeiss Stiftung v Herbert Smith*** (No. 2) [1969] 2 Ch 276 at 300; **369 Incorporated Council of Law Reporting for England and Wales (ICLR): *Westdeutsche Landesbank Girozentrale v Islington LBC*** [1996] AC 669 (HL) at 717; **369 Incorporated Council of Law Reporting for England and Wales (ICLR): *Westdeutsche Landesbank Girozentrale v Islington LBC*** [1996] AC 669 (HL) at 714; **370 Incorporated Council of Law Reporting for England and Wales (ICLR): *Metall and Rohstoff AG v Donaldson Lufkin & Jenerette Inc*** [1990] 1 QB 391 at 478; **376 Incorporated Council of Law Reporting for England and Wales (ICLR): *Hussey v Palmer*** [1972] 1 WLR 1286 at 1290; **376 Incorporated Council of Law Reporting for England and Wales (ICLR): *Metall and Rohstoff AG v Donaldson Lufkin & Jenerette Inc*** [1990] 1 QB 391 at 479; **376–377 and 397 Incorporated Council of Law Reporting for England and Wales (ICLR): *Westdeutsche Landesbank Girozentrale v Islington LBC*** [1996] AC 669 (HL) at 716; **377 and 408 Incorporated Council of Law Reporting for England and Wales (ICLR): *Halifax Building Society v Thomas*** [1996] Ch 217 at 229; **381 and 483**

Incorporated Council of Law Reporting for England and Wales (ICLR): *Dubai Aluminium Co Ltd v Salaam* [2002] 3 WLR 1913 at 1946; **387 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Yeoman's Row Management Ltd v Cobbe* [2008] 1 WLR 1752 at 1769; **388 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Cleaver v Mutual Reserve Fund Life Association* [1892] 1 QB 147 at 156; **389 Incorporated Council of Law Reporting for England and Wales (ICLR):** *K, Re* [1985] Ch 85 at 100; **390 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Gray v Barr* [1971] 2 QB 554 at 581; **390–391 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Dunbar v Plant* [1998] Ch 412 at 425; **392 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Dunbar v Plant* [1998] Ch 412 at 427; **393 and 394 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Henderson v Wilcox & Ors.* [2016] 4 WLR 14; **397 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Shalson v Russo* [2005] Ch 281 at 317; **399 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Attorney-General for Hong Kong v Reid* [1994] 1 AC 324; **399 and 400 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Attorney-General for Hong Kong v Reid* [1994] 1 AC 324 at 331; **400 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Daraydan Holding Ltd v Solland International Ltd* [2005] Ch 119 at 139; **402–403 and 626 Trust Law International:** D. Hayton, 'No Proprietary Liability for Bribes and other Secret Profits?' (2011) *Trust Law International* 3; **405 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Bray v Ford* [1896] AC 44 at 51; **406 and 408 Incorporated Council of Law Reporting for England and Wales (ICLR):** *McCormick v Grogan* (1869) LR 4 HL 82 at 92; **406 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 (HL) at 705; **406 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 (HL) at 715; **408 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Halifax Building Society v Thomas* [1996] Ch 217 at 228; **411 and 412 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Bristol and West Building Society v Mothew* [1998] Ch 1 at 18; **411 and 628 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Herschell Bray v Ford* [1896] AC 44 at 51; **412 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Protheroe v Protheroe* [1968] 1 WLR 519 405, 599; **418–419 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Gissing v Gissing* [1971] AC 886 at 905; **419 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Gissing v Gissing* [1971] AC 881 at 908; **420 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lloyds Bank v Rosset* [1991] 1 AC 107; **421 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Capehorn v Harris* [2015] EWCA Civ 955 at para. 16; **422 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Grant v Edwards* [1986] Ch 638 at 649; **422 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Eves v Eves* [1975] 1 WLR 1338 at 1342; **424 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432 at 454; **425–426 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lloyds Bank plc v Rosset* [1991] 1 AC 107 at 132; **428–429 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Grant v Edwards* [1986] Ch 638 at 657; **429 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lloyds Bank plc v Rosset* [1991] 1 AC 107; **434 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432 at 455; **435 and 454 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432 at para. 54; **435 and 454 Incorporated**

Council of Law Reporting for England and Wales (ICLR): *Stack v Dowden* [2007] 2 AC 432 at para. 56; 436 and 442 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432; 437 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432 at para. 92; 437 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432 at para. 125; 437–438 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432 at para. 132; 441 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432 at para. 61; 448 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 1 AC 432 at para. 126; 450 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Marr v Collie* AC 631 at para. 40; 451 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Marr v Collie* [2017] UKHL 17 at para. 32; 451 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd* [1982] QB 133 at 151; 456 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Tribe v Tribe* [1996] Ch 107; 458 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Stack v Dowden* [2007] 2 AC 432 at para. 26; 461 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lsyaght v Edwards* (1876) 2 Ch. D 499; 462 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Jerome v Kelly (Inspector of Taxes)* [2004] 1 WLR 1409 (Vendor and purchaser under a specifically enforceable contract for sale of land, per Lord Walker at 32); 463 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lyus v Prowsa Developments* [1982] 1 WLR 1044 at 1054; 466 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Yaxley v Gotts* [2000] Ch 162 at 180; 468 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Cobbe v Yeoman's Row Management Ltd* [2008] 1 WLR 1752 at 1767; 469 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lonhro plc v Fayed (No. 2)* [1992] 1 WLR 1 at 9–10; 469 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Yeoman's Row Management Ltd v Cobbe* [2008] 1 WLR 1752 at 1773; 470–471 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Banner Homes Holdings Ltd v Luff Developments Ltd* [2000] Ch 371; 481 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei v Tan* [1995] 2 AC 378; 484 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei Airlines Sdn Bhd v Tan Kok Ming* [1995] 2 AC 378 at 387; 486 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei Airlines Sdn Bhd v Tan Kok Ming* [1995] 2 AC 378 at 382; 487–488 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Barlow Clowes International v Eurotrust International* [2006] 1 WLR 1476 at 1484; 489 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Agip Africa (Ltd) v Jackson* [1990] Ch 265 at 293; 490 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei v Tan* [1995] 3 WLR 64 at 70; 490 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei v Tan* [1995] 3 WLR 64 at 69; 490 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei v Tan* [1995] 3 WLR 64 at 73; 493 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei v Tan* [1995] 3 WLR 64 at 75; 493 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei Airlines v Tan* [1995] 1 WLR 64 at 73; 495 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Barlow Clowes International v Eurotrust International* [2006] 1 WLR 1476 at 1481; 495 **Incorporated Council of Law Reporting for England and Wales (ICLR):** *Barlow Clowes International v Eurotrust International* [2006] 1 WLR 1476 at 1479; 497 **Incorporated Council of Law**

Reporting for England and Wales (ICLR): *Barlow Clowes International v Eurotrust International* [2007] 1 Lloyd's Rep. 115 at 127; **503 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 3 WLR 64; **509 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Loftus, Re* [2005] 1 WLR 1890 493; **512 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Bank of Credit and Commerce International (Overseas Ltd) (in Liquidation) v Akindele* [2001] Ch 437 at 450; **512 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Baden v Société Générale* [1983] 1 WLR 509 at 575; **513 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Manchester Trust v Furness* [1895] 2 QB 539; **514 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Montagu's Settlement Trusts, Re* [1987] Ch 264 at 285; **515 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Montagu's Settlement Trusts, Re* [1987] Ch 264; **516–517 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Bank of Credit and Commerce International (Overseas Ltd) (in Liquidation) v Akindele* [2001] Ch 437 at 455; **517 and 521 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Bank of Credit and Commerce International (Overseas Ltd) (in Liquidation) v Akindele* [2001] Ch 437 at 456; **517 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Charter plc v City Index Ltd (Gawler and others, Part 20 defendants)* [2008] Ch 313 at 321; **529 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Ridsdel, Re* [1947] Ch 597 at 605; **532 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Skeats' Settlement, Re* (1889) 42 Ch D 522 513; **535 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Tempest, Re* (1866) 1 Ch App. 485 at 488; **536 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Tempest, Re* (1866) 1 Ch App. 485 at 490; **536 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Henderson v Henderson* [1940] Ch 764 at 767; **544 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hay's Settlement Trusts, Re* [1982] 1 WLR 202 at 209–10; **546 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Edge v Pensions Ombudsman* [1998] Ch 512 at 534; **547 Thomson Reuters Corporation:** D. Hayton and C. Mitchell, *Commentary and Cases on the Law of Trusts and Equitable Remedies*, (12th edn, 2005, Sweet & Maxwell, London) at p. 657; **548 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hastings-Bass, Re* [1975] Ch 25 at 41; **548 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Mettoy Pension Trustees Ltd v Evans* [1990] 1 WLR 1621; **552 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Gibbon v Mitchell* [1990] 1 WLR 1304; **555 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709; **556 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709, para. 66; **559 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Breakspear v Ackland* [2008] EWHC 220 (Ch); **564 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Nestlé v National Westminster Bank plc* [1993] 1 WLR 1260; **575 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Cowan v Scargill* [1985] Ch 270 at 287; **580 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Harries v Church Commissioners for England* [1992] 1 WLR 1241. at 1246; **592 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Chesterfield's (Earl) Trusts, Re* (1883) 24 Ch D 643 at 648; **601–602 Incorporated Council of Law Reporting for England and Wales (ICLR):** *White v Jones* Lord Browne-Wilkinson [1995] 2 AC 207; **602 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Bristol and West Building Society v Mothew* Millett LJ [1998] Ch 1 at 18; **602 Incorporated Council of Law Reporting for**

England and Wales (ICLR): *Millett LJ in Bristol and West Building Society v Mothew* [1998] Ch 1 at 16; **602 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Millett LJ in Bristol and West Building Society v Mothew*; **604–605 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Millett LJ's in Bristol and West Building Society v Mothew* [1998] Ch 1 at 18; **605–606 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Herschell in *Bray v Ford* [1896] AC 44 at 51; **606 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Millett LJ Bristol and West Building Society v Mothew* [1998] Ch 1 at 18; **606 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Millett LJ Bristol and West Building Society v Mothew* [1998] Ch 1 at 16; **608 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Regal (Hastings) Ltd v Gulliver Lord Russell of Killowen* [1967] 2 AC 134 at 150; **610 Incorporated Council of Law Reporting for England and Wales (ICLR):** House of Lords, *Lord Browne-Wilkinson Target Holdings v Redferns* [1996] 1 AC 421; **613 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Megarry VC Tito v Waddell (No. 2)* [1977] Ch 106 at 241; **614 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Thompson's Settlement, Re* [1986] Ch 99 at 115; **616 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Dale v Inland Revenue Commissioners* [1954] AC 11 at 27; **617 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Norfolk's (Duke of) Settlement Trusts, Re* [1982] Ch 61 at 79; **620 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Keech v Sandford* [1968] 1 WLR 519 at 521; **636 Incorporated Council of Law Reporting for England and Wales (ICLR):** Maugham J in *Re Vickery* [1931] 1 Ch 572 at 581; **642 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Peel* [1936] Ch 161; **644 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Cotton LJ Lofthouse, Re* (1885) 29 Ch D 921 at 932; **648 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Pauling's Settlement Trust, Re* [1964] Ch 303 at 333; **648 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Upjohn J Wills' Will Trust, Re* [1959] Ch 1 at 14; **651 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Pauling's ST* [1964] Ch 303, 333 by Willmer LJ; **658 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Weston's Settlements* [1969] 1 Ch. 233: Can you change the terms of a trust if it makes the beneficiary richer? at p. 245; **662–663 Incorporated Council of Law Reporting for England and Wales (ICLR):** Romer J in *Re Smith* [1928] Ch 915 at 918; **663 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Saunders v Vautier* [1948] Ch 206 at 208; **665 Incorporated Council of Law Reporting for England and Wales (ICLR):** Romer J [1910] 2 Ch 534 at 544; **665–666 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Collins, Re* (1886) 32 Ch D 229 at 232; **666 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Morton in *Chapman v Chapman* [1954] AC 429 at 457; **666–667 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Evershed MR Downshire Settled Estates, Re* [1953] Ch 218 at 233; **667 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Downshire Settled Estates, Re* [1953] Ch 218 at 274; **668–669 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Upjohn J Heyworth's Contingent Reversionary Interest, Re* [1956] Ch 364 at 370; **669 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Heyworth's Contingent Reversionary Interest, Re* [1956] Ch 364 at 371; **670 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Downshire Settled Estates Evershed MR* [1953] Ch 218 at 248; **670–671 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Farwell J Craven's Estate, Re* (No. 2) [1937] Ch 431 at 436; **675 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Simonds,

Chapman v Chapman [1954] AC 429 at 444; **676 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Evershed MR in Re Steed's W.T* [1960] Ch 407 at 420; **677 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Eveleigh J Allen v Distillers Co (Biochemicals)* [1974] QB 384 at 394; **678 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Danckwerts J Clitheroe's Settlement Trusts, Re* [1959] 1 WLR 1159 at 1162; **679 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Warner J Knocker v Youle* [1986] 1 WLR 934 at 937; **679–680 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Buckley J Moncrieff's Settlement Trusts, Re* [1962] 1 WLR 1344 at 1346; **680 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Pennycuik J Pettifor's Will Trust, Re* [1966] Ch 257 at 260; **680 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Ungoed-Thomas J Baker's Settlement Trust, Re* [1964] 1 WLR 336 at 337; **681 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Ungoed-Thomas J Baker's Settlement Trust, Re* [1964] 1 WLR 449 at 450; **681 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Pennycuik J Remnant's Settlement Trusts, Re* [1970] Ch 560 at 566; **682–683 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Weston's Settlements* [1969] 1 Ch. 223 (per Lord Denning MR at 445–6); **684 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Dankwerts J Cohen's Will Trusts, Re* [1959] 1 WLR 865 at 868; **684 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Evershed MR Steed's Will Trusts, Re* [1960] Ch 407 at 421; **685 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Megarry J in Re Ball's Settlement Megarry J* [1968] 1 WLR 899 at 905; **686 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re T's Settlement Trusts* [1964] Ch. 158 at 162; **687 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Reid Holmden's Settlement Trusts, Re* [1968] AC 685 at 701; **687 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Holt's Settlement Trusts, Re* [1969] 1 Ch 100 at 115; **687 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Megarry J Holt's Settlement Trusts, Re* [1969] 1 Ch at 116; **695 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Target Holdings Ltd v Redferns* [1996] 1 AC 421 at 434; **695 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Armitage v Nurse Millett LJ* [1998] Ch 241 at 250; **697 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Court of Appeal in Target Holdings v Redferns Peter Gibson LJ* [1994] 1 WLR 1089; **698 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Target Holdings Ltd v Redferns* [1996] 1 AC 421 at 435; **698 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Target Holdings Ltd v Redferns* [1996] 1 AC 421 at 435; **699 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Target Holdings v Redferns* [1996] AC 421 (The nature of equitable compensation per Lord Browne-Wilkinson at 423 and 435); **700 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Millett LJ, Bristol & West Building Society v Mothew* [1998] Ch 1 at 16; **713 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Buckley LJ in Wallersteiner v Moir (No. 2)* [1975] QB 373 at 397; **714 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Brightman J in Bartlett v Barclays Bank Trust Co (No. 2)* [1980] Ch 515 at 538; **715 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Bartlett v Barclays Bank Trust Co (No. 2)* [1980] Ch 515 at 538; **719 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Wilberforce Re Pauling's Settlement Trust* [1964] Ch 303 at 339; **736 Thomson Reuters Corporation:** *Snell's Principles of Equity*, J.A. McGhee (ed.) 31st edn (2005) at p. 683; **736 Incorporated Council of Law**

Reporting for England and Wales (ICLR): *Foskett v McKeown Millett LJ* [2001] 1 AC 102 at 127; **738 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Foskett v McKeown Millett LJ* [2001] 1 AC 102 at 113; **741 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Agip Africa (Ltd) v Jackson* [1990] Ch 265 at 399; **742 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Diplock, Re* [1948] Ch 465 at 530; **743 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Agip (Africa) v Jackson Millet J* [1990] Ch 265 at 270; **743 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 at 716; **743 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Goulding J Chase Manhattan Bank v Israeli-British Bank (London)* [1981] Ch 105 at 119; **745 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Tilley's Will Trusts Thomas J* [1967] 1 Ch 1179 at 1183; **748 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Roscoe v Winder* [1915] 1 Ch 62 at 69; **752 and 753 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Bishopsgate Investment Management Ltd v Homan Leggatt LJ* [1995] Ch 211 at 221; **758 and 800–801 Incorporated Council of Law Reporting for England and Wales (ICLR):** *IRC v McMullen* [1981] AC 1 House of Lords; **765 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Mummery LJ in Gaudiya Mission Brahmachary* [1998] Ch 341 at 350; **766 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsell* [1891] AC 531 at 580; **766 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Tyler, Re* [1891] 3 Ch 252 740. The principle was confirmed by the House of Lords in *Royal College of Surgeons v National Provincial Bank* [1952] AC 631; **773 Incorporated Council of Law Reporting for England and Wales (ICLR):** *William's Trustees v IRC* [1947] AC 447 at 455; **773 and 803 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Strakosch, Re* [1949] Ch 529; **773 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Greene *Strakosch, Re* [1949] Ch 529 at 538; **774 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Upjohn *Scottish Burial Reform and Cremation Society v Glasgow City Corporation* [1968] AC 138 at 153; **774 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Wilberforce *Scottish Burial Reform and Cremation Society v Glasgow City Corporation* [1968] AC 138; **775 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Simmonds [1948] 1 WLR 288 at 73; **775 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Pemsell's case*, Lord Russell LJ *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 at 88; **775 and 812 Incorporated Council of Law Reporting for England and Wales (ICLR):** Russell LJ *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 at 88; **775 and 812 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Browne-Wilkinson *A-G of the Cayman Islands v Wahr-Hansen* [2001] 1 AC 75 at 82; **776 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73; **779 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Evershed MRCoulthurst, Re* [1951] Ch 661 at 666; **779 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Channell J Mary Clark Homes Trustees v Anderson* [1904] 2 KB 645 at 654; **780–781 Incorporated Council of Law Reporting for England and Wales (ICLR):** *De Carteret, Re* [1933] Ch 103; **781 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Maugham J De Carteret, Re* [1933] Ch 103 at 114; **781 Incorporated Council of Law Reporting for England and Wales**

(ICLR): *Eve J Gwyon, Re* [1930] 1 Ch 255 at 260; **781–782 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Harman J Sanders' Will Trusts, Re* [1954] Ch 265 at 270; **782 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Niyazi's Will Trust* [1978] 1 WLR 910; **782 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Megarry VC Niyazi's Will Trust, Re* [1978] 1 WLR 910 at 915; **785 Incorporated Council of Law Reporting for England and Wales (ICLR):** *House of Lords in IRC v McMullen* [1981] AC 1; **785 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Hailsham, IRC v McMullen* [1981] AC 1 at 18; **785 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Buckley LJ Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 at 103; **786 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Farewell J Lopes, Re* [1931] 2 Ch 130 at 135; **786 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Harman J British School of Egyptian Archaeology, Re* [1954] 1 WLR 546 at 551; **787 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Russell LJ Pinion, Re* [1965] Ch 85 at 100; **788 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Wilberforce J Hopkins Will Trusts, Re* [1965] Ch 669 at 679; **788 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Wilberforce J Hopkins Will Trusts, Re* [1965] Ch 669 at 680; **788 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Harman J Shaw, Re* [1957] 3 K & J 497; [1957] 1 WLR 729; **789 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Harman J Shaw, Re* [1957] 3 K & J 497; [1957] 1 WLR 729 at 738; **790 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Dillon J Re South Place Ethical Society* [1980] 1 WLR 1565; **790 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Donovan United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council* [1957] 1 WLR 1080 at 1090; **790 Incorporated Council of Law Reporting for England and Wales (ICLR):** *R v Registrar General ex p Segerdal Buckley LJ* [1970] 2 QB 697; **792 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Hetherington, Re* [1990] Ch 1; **792 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Denning National Deposit Friendly Society Trustees v Skegness UDC* [1959] AC 293 at 322; **793 Incorporated Council of Law Reporting for England and Wales (ICLR):** *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council* [1957] 1 WLR 1080 at 1090; **793 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Neville Estates Ltd v Madden Lord Cross* [1962] Ch 832 at 853; **798 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Harman LJ Pinion, Re* [1965] Ch 85; **799 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Endacott, Re* [1960] Ch 232; **800 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Kekewich J Nottage, Re* [1885] 2 Ch 649 at 653; **801 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Hailsham IRC v McMullen* [1981] AC 1 at 18; **801 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Gray, Re* [1925] Ch 362; **801 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Gray, Re* [1925] Ch 362 at 365; **803 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Greene MR, Strakosch, Re* [1949] Ch 529 at 538; **806 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Peter Gibson Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] Ch 159 at 171; **806 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Romer LJ Cole, Re* [1958] Ch 877; **806–807 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Evershed MR Cole, Re* [1958] Ch 877 at 892; **807 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Swinfen Eady*

LJ Wedgwood, *Re* [1915] 1 Ch 113 at 122; **807 Incorporated Council of Law Reporting for England and Wales (ICLR):** Court of Appeal in *Re Grove-Grady* [1929] 1 Ch 557; **807–808 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Hanworth MR *Grove-Grady, Re* [1929] 1 Ch 557 at 573; **808 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Chitty J Foveaux, Re* [1895] 2 Ch 501 at 507; **809 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Wright National Anti-Vivisection Society v IRC* [1948] AC 31 at 48; **812 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Russell LJ *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 at 88; **813 Incorporated Council of Law Reporting for England and Wales (ICLR):** House of Lords in *IRC v Baddeley* [1955] AC 572; **813 Incorporated Council of Law Reporting for England and Wales (ICLR):** Viscount Simonds, *IRC v Baddeley* [1955] AC 572 at 589; **814 Incorporated Council of Law Reporting for England and Wales (ICLR):** *IRC v Baddeley* [1955] AC 572 at 592; **815 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Guild v IRC* [1992] 2 AC 310; **815 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Guild v IRC* [1992] 2 AC 310 at 322; **818 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Russell LJ Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 at 86; **819–820 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Verge v Sommerville*, Lord Wrenbury [1924] AC 496 at 499; **820 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Lord Simonds Gilmour v Coates* [1949] AC 426 at 449; **821 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Viscount Simonds IRC v Baddeley* [1955] AC 572 at 592; **822 Incorporated Council of Law Reporting for England and Wales (ICLR):** Viscount Simonds in *IRC v Baddeley* [1955] AC 572; **825 Incorporated Council of Law Reporting for England and Wales (ICLR):** *House of Lords in Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297; **825 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Simonds *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 306; **826 Incorporated Council of Law Reporting for England and Wales (ICLR):** *IRC v Educational Grants Association Ltd*; **826 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Koettgen's Wills Trusts* [1954] Ch 252; **826–827 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Oppenheim v Tobacco Securities Trust Co Ltd*, Lord MacDermott [1951] AC 297; **827 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Scarisbrick, Re* [1951] Ch 622 at 639; **828 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Simonds *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 at 309; **828 Incorporated Council of Law Reporting for England and Wales (ICLR):** House of Lords in *Dingle v Turner* [1972] AC 601; **828 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Cross, *Dingle v Turner* [1972] AC 601 at 623; **828 Incorporated Council of Law Reporting for England and Wales (ICLR):** *IRC v Educational Grants Harman J* [1967] Ch 993; **828–829 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Cross, *Dingle v Turner* [1972] AC 601 at 625; **831 Incorporated Council of Law Reporting for England and Wales (ICLR):** Lord Atkin, *Farley v Westminster Bank* [1939] AC 430 at 435; **831 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Romer J, Simson, Re* [1946] Ch 299 at 305; **834 Incorporated Council of Law Reporting for England and Wales (ICLR):** *Re Gillingham Bus Disaster Fund Harman J* [1958] Ch 300; **836 Incorporated Council of Law Reporting for England and Wales (ICLR):** *McGovern v. Attorney General* [1982] Ch 321, All E.R. 493 (Ch.D.) MAURICE C. CULLITY Member, The Ontario Bar; **836 Incorporated Council of Law Reporting for England and Wales (ICLR):** Slade J,

McGovern v A-G [1982] Ch 321 at 354; **837 Incorporated Council of Law Reporting for England and Wales (ICLR): *Re Bushnell***, [1975] 1 WLR 1596; **837 Incorporated Council of Law Reporting for England and Wales (ICLR): *Re Bushnell***, [1975] 1 WLR 1596 at 1603; **837 Incorporated Council of Law Reporting for England and Wales (ICLR): *Slade LJ, Koeppler's Will Trusts, Re*** [1986] Ch 423 at 437; **843 Incorporated Council of Law Reporting for England and Wales (ICLR): *Lord MacDermott, Oppenheim v Tobacco Securities Trust Co Ltd*** [1951] AC 297 at 317; **848–849 Incorporated Council of Law Reporting for England and Wales (ICLR): *Dominion's Student's Hall Trust, Re*** [1947] Ch 183 822 at 186; **849 Incorporated Council of Law Reporting for England and Wales (ICLR): *Laing (JW) Trust, Re*** [1984] Ch 143 823 at 154; **850 Incorporated Council of Law Reporting for England and Wales (ICLR): *Wilson, Re*** [1913] 1 Ch 314 824 at 320; **851 Incorporated Council of Law Reporting for England and Wales (ICLR): *Woodhams, Re*** [1981] 1 WLR 493 825, 832 at 505; **854 Incorporated Council of Law Reporting for England and Wales (ICLR): *Faraker, Re*** [1912] 2 Ch 488 827 at 494; **860 Incorporated Council of Law Reporting for England and Wales (ICLR): *Stanford, Re*** [1924] 1 Ch 73 834 at 77; **864 Incorporated Council of Law Reporting for England and Wales (ICLR): *Peggs v Lamb*** [1994] Ch 172 838, 839 at 197; **867 Incorporated Council of Law Reporting for England and Wales (ICLR): *Hanbey's Will Trusts, Re*** [1956] Ch 264 840, 841 at 274.

Table of cases

- Abacus Trust Company v Barr [2003] 2 WLR 1362 [548](#), [550](#)
- Abbey Malvern Wells Ltd v Ministry of Local Government [1951] Ch 728 [784](#)
- Abbott Fund Trusts, *Re* [1900] 2 Ch 326 [238](#), [318–319](#)
- Abbot v Abbot [2008] 1 FLR 1451 [458](#)
- Aberdeen Railway Co v Blaikie Bros (1854) 1 Macq 461 [613](#)
- Abergavenny's (Marquess) Estate Act Trusts, *Re* [1981] 2 All ER 643 [649](#)
- Abou-Ramah v Abacha [2006] EWCA Civ 1492 [496](#), [499](#), [500](#)
- Abraham's Will Trusts, *Re* [1969] 1 Ch 463 [550](#)
- Achom v Lalic [2014] EWHC 1888 (Ch) [471](#)
- Adams and the Kensington Vestry, *Re* (1884) 27 Ch. D 394 [110](#)
- Adekunle v Ritchie [2007] 2 P&CR DG 20 [438](#), [439](#)
- Agarwala v Agarwala [2013] EWCA Civ 1763 [429](#)
- Agip Africa (Ltd) v Jackson [1990] Ch 265 [489](#), [514–516](#), [741](#), [743](#), [746](#)
- Agricultural Mortgage Corporation plc v Woodward [1994] BCC 688 [275–276](#)
- Ahmed v Ingram [2018] EWCA Civ 519 [704](#)
- AIB Group (UK) Plc v Mark Redler & Co Solicitors [2014] UKSC 58 [427](#), [702–705](#), [724–725](#)
- Air Jamaica v Charlton [1999] 1 WLR 1399 [59](#), [81](#), [290](#), [297–300](#), [303–305](#), [309](#), [311](#), [315](#), [332–333](#)
- AITC Foundation's Application for Registration as a Charity [2005] WTLR 1265 [779](#)
- Akers v Samba Financial Group [2017] UKSC 6 [48–49](#)
- Alder v Blackman [1952] 2 All ER 41 [23](#)
- Alexander v Alexander [2011] EWHC 2721 (Ch) 569 [590](#), [671](#)
- Ali v Khan [2002] EWCA Civ 974 [334](#)
- Alkin v Raymond [2010] WTLR 1117 [536](#)
- Allen, *Re* [1953] Ch 810 [130](#), [131](#)
- Allen v Distillers Co (Biochemicals) [1974] QB 384 [677](#)
- Allen v Jackson (1875) 1 Ch D 399 [268](#)
- Allfrey v Allfrey [2015] EWHC 1717 (Ch) [686](#)
- Allhusen v Whittell LR 4 Eq 295 [593](#)
- Allsop, *Re* [1914] 1 Ch 1 [721](#)
- Ames' Settlement, *Re* [1946] Ch 217 [311](#)
- AMP (UK) v Barker [2001] 1 WTLR 1237 [548](#)
- Andrew's Trust, *Re* [1905] 2 Ch 48 [238](#), [318](#), [319](#)
- Anker-Petersen v Anker-Petersen [2000] WTLR 581 [670](#)
- Anthony v Donges [1998] 2 FLR 775 [114](#)
- Aquila Advisory Ltd v Faichney [2018] EWHC 565 (Ch) [406](#)
- Argyll (Duchess) v Argyll [1967] Ch 302 [27](#)
- Arif v Anwar [2015] EWHC 124 (Fam) [452](#)
- Armitage v Nurse [1998] Ch 241; [1997] 2 All ER 705 [695](#), [716](#), [728](#)
- ARMS (Multiple Sclerosis Research) Ltd, *Re* [1997] 2 All ER 679 [857](#)
- Armstrong, *Re* (1886) 17 QBD 521 [85](#)
- Armstrong DLW GmbH v Winnington Networks Ltd [2012] EWHC 10 (Ch) [740](#)
- Arogundade v Arogundade [2005] EWHC 1766 (Ch) [356](#)
- Aroso v Coutts & Co [2002] 1 All ER (Comm) [340](#)
- Ashburn Anstalt v Arnold [1989] Ch 1 [463–464](#)
- Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223 [546](#), [547](#)
- Astor's Settlement Trusts, *Re* [1952] Ch 534 [235](#), [238–239](#), [247](#), [312](#)
- Atkinson, *Re* (1904) 2 Ch 160 [594](#)
- Attenborough v Solomon [1913] AC 76 [76](#)
- Attorney-General for Hong Kong v Reid [1994] 1 AC 324, [1994] 1 All ER 1 [65](#), [293](#), [380](#), [398](#), [400](#), [403](#), [404](#), [414–416](#), [623](#), [624](#)
- Attorney General of the Bahamas v Royal Trust Co [1986] 1 WLR 1001 [833](#)
- Attorney-General of the Cayman Islands v Wahr-Hansen [2001] 1 AC 75 [775](#)
- Attorney-General Reference (No. 1 of 1985) [1986] QB 491 [404](#)
- Attorney General v Alford (1855) 4 De GM & G 843 [713](#)
- Attorney-General v Blake [1998] 1 All ER 833 [607](#)
- Attorney-General v Margaret and Regius Professors in Cambridge (1682) 1 Vern. 55 [784](#)
- Attorney-General v Power (1809) 1 Ball & B 145 [779](#)
- Australian Securities and Investments Commission v Australian Property Custodian Holdings Limited (No.3) [576–577](#)
- Aviva Insurance Ltd v Brown [2011] EWHC 362 (Ch) [82](#)
- Baden, Delvaux and Lecuit v Société Générale pour Favoriser le Développement du Commerce [1983] BCLC 325, [1993] 1 WLR 509 [490](#), [509](#), [512–515](#)
- Baden, Delvaux v Société Générale pour Favoriser le Développement du Commerce et de l'Industrie en France [1992] 4 All ER 161 [488](#)

- Baden's Deed Trusts (No. 1), *Re* [1971] AC 424 118 [121](#), [129](#)
- Baden's Deed Trusts (No. 2), *Re* [1972] 3 WLR 250 [126–128](#)
- Bahin v Hughes (1886) 31 Ch D 390 [707](#), [708](#)
- Baillie, *Re* (1886) 2 TLR 660 [221](#)
- Baird v Baird [1990] 2 AC 548 at 560 [71](#)
- Baker's Settlement Trust, *Re* [1964] 1 WLR 336 [680](#)
- Ball's Settlement, *Re* [1968] 1 WLR 899 [685](#)
- Bank of Credit and Commerce International (Overseas Ltd) (in Liquidation) v Akindele [2001] Ch 437 [512](#), [513](#), [516–520](#)
- Bank of Ireland v Jaffery [2012] EWHC 1377 [502](#)
- Bank Tejarat v Hong Kong and Shanghai Banking Corp'n [1995] 1 Lloyd's Rep. 239 [741](#)
- Banner Homes Group plc v Luff Developments Ltd [2000] Ch 372 [469–472](#)
- Bannister v Bannister [1948] 2 All ER 133 [141](#), [407](#), [465](#)
- Banque Belge pour L'Etranger v Hambrouck [1921] 1 KB 321 [739](#)
- Banque Financière de la Cité v Parc (Battersea) Ltd [1999] 1 AC 221 [63](#)
- Barclay, *Re* [1899] 1 Ch 674 [713](#)
- Barclays Bank Ltd v Quistclose Investments Ltd [1970] AC 567 [78–82](#), [313–315](#)
- Barclays Bank plc v Eustice [1995] 4 All ER 511 [273](#)
- Barlow Clowes International Ltd v Vaughan [1992] 2 All ER 22, 4 All ER 225 [748–750](#)
- Barlow Clowes International v Eurotrust International [2006] 1 WLR 1476 [487](#), [494–501](#), [503–506](#)
- Barlow's Will Trusts, *Re* [1979] 1 All ER 296 [130](#), [131](#)
- Barnes v Addy (1874) 9 Ch. App. 244 61 [62](#), [482](#), [490](#)
- Barnes v Phillips [2015] EWCA Civ 1056 [446–449](#)
- Barrett v Hartley [1866] LR 2 Eq. 789 [615](#)
- Bartlett v Barclays Bank Trust Co Ltd [1980] 1 All ER 139 [572](#), [582](#)
- Bartlett v Barclays Bank Trust Co Ltd (No. 2) [1980] Ch 515 [713–715](#)
- Bateman's Will Trusts, *Re* [1970] 1 WLR 1463 [214](#), [215](#)
- Bathurst City Council v PWC Properties (1998) 195 CLR 566 [375](#)
- Baumgartner v Baumgartner (1987) 164 CLR 137 [374–375](#)
- Beard, *Re* [1908] 1 Ch 383 [266](#)
- Beatty v Guggenheim Exploration Co 225 NY 380 (1919) [366](#), [368](#)
- Beaumont, *Re* [1902] 1 Ch 889 [189](#)
- Belmont Finance Corporation Ltd v Williams Furniture Ltd (No. 2) [1980] 1 All ER 393 [510](#), [513](#)
- Beloved Wilkes' Charity, *Re* (1851) 3 Mac. & G 440 [544–545](#)
- Bendall v McWhirter [1952] 2 QB 466 [12](#)
- Benett v Wyndham (1862) 4 De GF & J 259 [615](#)
- Ben Hashem v Ali Shayif [2009] 1 FLR 115 [674](#)
- Benjamin, *Re* [1902] 1 Ch 723 [124](#)
- Best, *Re* [1904] 2 Ch 354 [832](#)
- Besterman's Will Trust, *Re* (1980) Times, 21 January, per Slade J [787](#), [788](#)
- Beswick v Beswick [1968] AC 58 [185–186](#)
- Bethell v Abraham [1873] LR 17 Eq. 24 [579](#)
- Bhullar Brothers Ltd, *Re* [2003] 2 BCLC 241 [413](#)
- Bieber v Teathers Ltd [2012] EWCA 1466 [83](#), [316](#)
- Binions v Evans [1972] Ch 359 [62](#), [141](#), [464](#)
- Birch v Treasury Solicitor [1951] Ch 298 [190](#)
- Birmingham v Renfrew (1936) 57 CLR 666 [228](#), [230](#)
- Biscoe v Jackson (1887) 35 Ch D 460 [851](#)
- Bishopsgate Investment Management Ltd v Homan [1995] Ch 211 [751](#), [752](#)
- Bishopsgate Investment Management Ltd v Maxwell (No. 2) [1994] 1 All ER 261 [706](#)
- Blackwell's Settlement Trusts, *Re* [1953] Ch 218 [666](#), [667](#)
- Blackwell v Blackwell [1929] AC 318 [207–208](#), [218](#), [474](#)
- Blair v Duncan [1902] AC 37 [833](#)
- Blathwayt v Baron Cawley [1976] AC 397 [263–264](#), [267](#), [268](#)
- Boardman v Phipps [1967] 2 AC 46 [29](#), [61](#), [403](#), [412–414](#), [601](#), [606](#), [608–610](#), [618](#), [622](#), [624](#)
- Bolton Partners v Lambert (1889) 41 Ch D 295 [294](#)
- Booth v Booth (1838) 1 Beav. 125 [706](#), [708](#)
- Borwick, *Re* [1933] Ch 657 [267](#)
- Bourne v Keane [1919] AC 815 [249](#)
- Bowes, *Re* [1896] 1 Ch 507 [238](#)
- Bowman v Secular Society [1917] AC 406 [789](#), [835](#)
- Boyce v Boyce (1849) 16 Sim. 476 [113](#), [115](#)
- Boyes, *Re* (1884) 26 Ch D 531 [200](#), [213](#), [214](#), [215](#)
- Bray v Ford [1896] AC 44 60 [61](#), [411](#), [605–606](#), [608](#), [628](#)
- Breakspear v Ackland [2008] EWHC 220 [558–559](#)
- Brewer v Iqbal [2019] EWHC 182 (Ch) [554](#)
- Brinks Ltd v Abu-Saleh (No. 3) [1996] CLC 133 [487–488](#)
- Bristol and West Building Society v Mothew [1996] 4 All ER 698 [1998] Ch 1 [294](#), [411](#), [412](#), [600](#), [602](#), [604–607](#), [700](#)
- British School of Egyptian Archaeology, *Re* [1954] 1 WLR 546 [786](#)
- Brockbank, *Re* [1948] Ch 206 [663](#)
- Brooks' Settlement Trusts, *Re* [1939] Ch 993 [177](#)
- Brooks v Brooks [1966] AC 375 [674](#)
- Broome v Monck [1803] 1818] All ER 631 (1805) [461](#)
- Browne v Warner (1808) 14 Ves. 409 [22](#)
- Brown v Brown (1993) 31 NSWLR 582 [342](#)
- Brown v Burdett (1882) 21 Ch D 667 [251](#), [270](#)
- Bucks Constabulary Funds Widows' and Orphans' Fund Friendly Society (No. 2), *Re* [1979] 1 All ER 623. [1979] 1 WLR 936 [256](#), [324](#), [325](#), [327](#)
- Burney v Macdonald (1845) 15 Sim. 6 [216](#)
- Burns v Burns [1984] Ch 317 [58](#), [359](#)
- Burrell v Burrell's Trustees 1915 SC 333 [614](#)
- Burrough v Philcox (1840) 5 My. & Cr. 72 [95](#), [96](#)
- Burton v Liden, 2 March 2016, unreported [21](#), [451–452](#)
- Bushnell, *Re* [1975] 1 WLR 1596 [837](#)
- Butterworth, ex p. Russell, *Re* (1882) 19 Ch D 588 [273](#)

- Byng's Will Trusts, *Re* [1959] 1 WLR 375 [677](#)
 Byrchall v Bradford (1822) 6 Madd. 235 [712](#)
 Byron's Settlement, *Re* [1891] 3 Ch 474 [87](#)
- Caborne, *Re* [1943] Ch 224 [269](#)
 Caffoor v Income Tax Commissioner for Colombo [1961] AC 584 [826](#)
 Cain v Moon [1896] 2 QB 283 [189](#)
 Campbell Discount Co Ltd v Bridge [1961] 1 QB 445 at 459 [12](#)
 Campbell v Walker (1800) 5 Ves. Jr. 678 [613](#)
 Cannon v Hartley [1949] Ch 213 [25](#), [73](#), [180–181](#)
 Canson Enterprises Ltd v Boughton and Co (1991) 85 DLR (4th) 129 [700](#), [712](#)
 Capehorn v Harris [2015] EWCA Civ 955 [421](#)
 Carl Zeiss Stiftung v Herbert Smith (No. 2) [1969] 2 Ch 276 [368](#)
 Carreras Rothmans Ltd v Freeman Mathews Treasure Ltd [1985] Ch 207 [78](#), [314](#)
 Cattle v Evans [2011] EWHC 945 (Ch) [279](#)
 Cavendish Bentinck v Fenn (1887) 12 App. Cas. 652 409 [416](#), [629](#)
 Cavendish Browne's Settlement Trusts, *Re* [1916] WN 341 [182](#), [185](#)
 Chadwick v Collinson [2014] EWHC 3055 (Ch) [391](#)
 Challinor v Juliet Bellis [2015] EWCA Civ 59 [84](#)
 Chang v Mishcon de Reya [2015] EWHC 164 [83](#), [317](#)
 Chang v Registrar of Titles (1976) 137 CLR 177 [461–462](#)
 Chan v Zacharia (1984) 154 CLR 178 [405](#), [627](#)
 Chapman's Settlement Trusts, *Re* [1953] Ch 218 [666](#)
 Chapman's Settlement Trusts, *Re* [1954] AC 429 [667](#)
 Chapman v Browne [1902] 1 Ch 785 [586](#)
 Chapman v Chapman [1954] AC 429 644 [664](#), [666](#), [667](#), [674](#), [675](#)
 Chapple, *Re* (1884) 27 Ch D 584 [617](#)
 Charles v Fraser [2010] EWHC 2154 [226](#)
 Charter plc v City Index Ltd (Gawler and others, Part 20 defendants) [2008] Ch 313 [517](#)
 Chase Manhattan Bank v Israeli-British Bank (London) [1981] Ch 105 [743](#)
 Chattock v Muller (1878) 8 Ch D 177 [470](#)
 Chelsea Cloisters Ltd (in liquidation), *Re* (1980) 41 P & CR 98 [106](#)
 Chettiar v Chettiar [1962] 1 All ER 494 [344](#)
 Chichester Diocesan Fund and Board of Finance v Simpson [1944] AC 341 [238](#), [833](#), [834](#)
 Chillingworth v Chambers [1896] 1 Ch 865 [708](#)
 Chinn v Collins (Inspector of Taxes) [1981] AC 533 [156–157](#)
 Christ's Hospital v Grainger (1849) 1 Mac. & G 460 [766](#)
 City Fire Equitable Insurance Co Ltd, *Re* [1925] Ch 407 [637](#)
 City of London Building Society v Flegg [1988] AC 54 [33](#)
 Clack v Carlon (1866) 30 LJ Ch 639 [619](#)
 Clarke, *Re* [1901] 2 Ch 110 [253](#)
 Clarke, *Re* [1923] 2 Ch 407 [779](#)
 Clarke v Ramuz [1891] 2 QB 456 [462](#)
 Cleaver (deceased), *Re* [1981] 2 All ER 1018, [1981] 1 WLR 939 [221](#), [225](#), [475](#)
 Cleaver v Mutual Reserve Fund Life Association [1892] 1 QB 147 [388](#)
 Clitheroe's Settlement Trusts, *Re* [1959] 1 WLR 1159 [678](#)
 Clore's Settlement Trusts, *Re* [1966] 1 WLR 955 [648](#)
 Close Invoice Company Ltd v Abaowa [2010] EWHC 1920 (QB) [341–342](#)
 Clough v Killey (1996) 72 P & CR D22 [429–430](#)
 Clowes International v Eurotrust International [2006] 1 WLR 1476 *see Barlow Clowes International v Eurotrust International*
 Clydesdale Bank Plc v Workman [2016] EWCA Civ 73 [502](#)
 Coates to Parsons, *Re* (1886) 34 Ch D 370 [533](#)
 Cobbe v Yeoman's Row Management Ltd [2008] 1 WLR 1752; HL; reversing [2006] EWCA Civ 1139; CA (Civ Div); [2006] 1 W.L.R. 2964; affirming [2005] EWHC 266 (Ch); [2005] WTLR 625 [18–20](#), [366](#), [368](#), [387](#), [466–469](#)
 Cochrane, *Re* [1955] Ch 309 [311–312](#)
 Cocks v Manners (1871) LR 12 Eq. 574 [253](#)
 Cohen's Settlement Trusts, *Re* [1965] 3 All ER 139 [683](#)
 Cohen's Will Trusts, *Re* [1959] 1 WLR 865 [683–684](#)
 Cole, *Re* [1958] Ch 877 [806](#), [807](#)
 Coles v Trecothick (1804) 9 Ves. 234 [615](#)
 Collins, *Re* (1886) 32 Ch D 229 [665–666](#)
 Colour Quest Ltd v Total Downstream Plc [2010] EWCA Civ 180 [46](#)
 Comiskey v Bowring-Hanbury [1948] Ch 603 [110](#)
 Commissioner of Stamp Duties (Queensland) v Livingston [1965] AC 694 75 [76](#), [203](#)
 Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531 [766](#), [772](#), [773](#), [775–778](#), [783](#), [785](#), [789](#), [796](#), [797](#), [800](#), [801](#), [807](#), [811–813](#)
 Compton, *Re* [1945] Ch 123 [825](#)
 Conservative and Unionist Central Office v Burrell [1982] 1 WLR 522 [252](#), [323](#)
 Consul Development Pty Ltd v DPC Estates Pty Ltd (1975) 5 ALR 231 [415](#), [507](#), [611](#)
 Cooke v New River Co (1888) 38 Ch D 56 [224](#)
 Cook's Settlement Trusts, *Re* [1965] Ch 902 [181–182](#), [184–185](#)
 Cooper, *Re* [1939] Ch 811 [215](#)
 Cooper v Powerhouse Ltd (in liquidation) [2008] BCC 588 80 [315–316](#)
 Corsellis, *Re* (1887) 34 Ch. D 675 [619](#)
 Coulthurst, *Re* [1951] Ch 661 [779](#)
 Courage Group's Pension Schemes, *Re* [1987] 1 All ER 528 [92](#), [329–330](#)
 Courtwood Holdings SA v Woodley Properties Ltd [2018] EWHC 2613 (Ch) [519](#)
 Cowan v Scargill [1984] 2 All ER 750, [1985] Ch 270 [567](#), [575–576](#)

- Cowcher v Cowcher [1972] 1 WLR 425 13, 358
- Coxen, *Re* [1948] Ch 747 131, 832
- Cradock v Piper (1850) 1 Mac. & G 664 619
- Craven's Estate, *Re* [1937] Ch 423 189, 191
- Craven's Estate, *Re* (No. 2) [1937] Ch 431 670
- Credit Agricole Corp and Investment Bank v Papadimitriou [2015] UKPC 13 751
- Crippen, in the Estate of [1911] P 108 388
- Criterion Properties plc v Stratford UK Properties LLC [2003] 1 WLR 2108 517
- Crowhurst Park, *Re* [1974] 1 WLR 583 533
- Crown Prosecution Service v Aquila Advisory Board [2019] EWCA Civ 588 628
- Cunnack v Edwards [1896] 2 Ch 679 323, 327
- Curley v Parkes [2004] EWCA Civ 1515 357, 358
- Curran v Collins [2015] EWCA Civ 404 423
- Curtis, *Re* (1885) 52 LT 244 341
- Curtis v Pulbrook [2011] EWHC 167 (Ch) 168 170–171, 176
- Dale (deceased), *Re* [1994] Ch 31 228
- Dale v Inland Revenue Commissioners [1954] AC 11; [1953] 3 WLR 448 616
- Dalton v Latham [2003] EWHC 796 (Ch) 394
- D'Angibau, *Re* (1880) 15 Ch D 228 178 179
- Danish Bacon Co Ltd Staff Pension Fund, *Re* [1971] 1 All ER 486 144
- Daraydan Holding Ltd v Solland International Ltd [2005] Ch 119 400, 415
- Davies v Davies [2014] EWCA Civ 568 20, 21
- Davison Solicitors (A Firm) v Nationwide Building Society [2012] EWCA (Civ) 1626 723
- Davis v Richards & Wallington Industries Ltd [1990] 1 WLR 1511 328–330, 332
- Dawson, *Re* [1966] 2 NSW 211 697
- Dean, *Re* (1889) 41 Ch D 552 250
- De Carteret, *Re* [1933] Ch 103 780
- Delius, *Re* [1957] Ch 299 786, 798
- Denley's Trust Deed, *Re* [1969] 1 Ch 373 243–247, 254
- Densham, *Re* [1975] 3 All ER 726 141
- Devaynes v Noble (1816) 1 Mer. 572 748
- Devon Commercial Property Ltd v Barnett [2019] EWHC 700 (Ch) 607
- DHN Food Distributors v Tower Hamlets LBC [1976] 1 WLR 852 156
- Dick, *Re* [1953] Ch 343 92
- Diggles, *Re* (1888) 39 Ch D 253 109
- Dimes v Scott (1828) 4 Russ. 195 714
- Dingle v Turner [1972] AC 601 827, 828
- Diplock, *Re* [1948] Ch 465 312, 734, 742, 751, 752
- Director of Serious Fraud Office v Lexi Holdings plc (in administration) [2008] EWCA Crim 1443 734–735
- Diwell v Farnes [1959] 1 WLR 624 341
- Dominion's Student's Hall Trust, *Re* [1947] Ch 183 861
- Dover Coalfield Extension Ltd, *Re* [1908] 1 Ch 65 621
- Downshire Settled Estates, *Re* [1953] Ch 218 666, 667, 670
- Drake v Whipp [1996] 1 FLR 826 359
- Dreamvar (UK) Ltd v Mischon de Reya [2018] EWCA Civ 1082 727
- Driver v Yorke [2003] 2 P & CR D30 426
- Drummond, *Re* [1914] 2 Ch 90 253
- Dubai Aluminium Co Ltd v Salaam [2002] 3 WLR 1913 381, 483
- Dufour v Pereira (1769) 1 Dick 419 221 223, 475
- Duke of Norfolk's Settlement Trusts, *Re* [1982] Ch 61 615–617
- Dunbar v Plant [1998] Ch 412 390, 392–393
- Dundee General Hospitals v Walker [1952] 1 All ER 896 546
- DWS (deceased), *Re* [2001] 1 Ch 568 388–389, 395
- Dyer v Dyer (1788) 2 Cox Eq. Cas. 92 at p. 93, 30 ER 42 58, 152, 292, 337–338, 355
- Dyson Technology Ltd v Curtis [2010] EWHC 3289 (Ch) 743
- Eagle Trust plc v SBC Securities Ltd [1992] 2 All ER 488 511–512, 515
- Earl of Chesterfield's Trust, *Re* (1883) 24 Ch D 643 592, 593
- Earl of Oxford's Case (1615) 1 Rep Ch 1 4, 11
- Eastbourne Mutual Building Society v Hastings Corporation [1965] 1 WLR 861 77
- Edge v Pensions Ombudsman [1998] Ch 512 546
- Eighmie, *Re* [1935] Ch 524 774
- El Ajou v Dollar Land Holdings [1994] BCC 143 at 154, [1993] 3 All ER 717 509, 510, 519, 743
- Elders Pastoral Ltd v Bank of New Zealand [1989] 2 NZLR 180 375
- Eleftheriou v Costi [2013] EWHC 2168 (Ch) 317
- Elithorn v Poulter [2009] 1 P & CR 19 338
- Ellenborough, *Re* [1903] 1 Ch 697 177
- Elliott, *Re* [1952] Ch 217 266
- Emery's Investments Trusts, *Re* [1959] Ch 410 344
- Endacott, *Re* [1960] Ch 232, [1960] Ch 323 239, 247, 248, 799
- Errington v Errington and Woods [1952] 1 KB 290 at 298 24, 464
- Erskine's Settlement Trusts, *Re* [1971] 1 WLR 162 643–644
- Estate of Crippen, in the [1911] P 108 388
- Evans, *Re* [1999] 2 All ER 777 722
- Evans's Settlement, *Re* [1967] 1 WLR 1294 646
- E v E (financial provision) [1990] 2 FLR 233 674
- Eves v Eves [1975] 1 WLR 1338 13, 422–423, 457
- EVTR, *Re* [1987] BCLC 646 78
- Eykyn's Trusts, *Re* (1877) 6 Ch D 115 341
- Faraker, *Re* [1912] 2 Ch 488 853
- Farepak Foods and Gifts Ltd (in administration), *Re* [2007] 2 BCLC 1 106–107
- Farley v Westminster Bank [1939] AC 430 831

- Farrar v Miller [2018] EWCA Civ 172 [472–473](#)
- FHR European Ventures LLP and others v Cedar Capital Partner LLC [2014] UKSC 45 [404–406](#), [410](#), [415](#), [416](#), [508](#), [626–627](#), [628](#)
- Finger's Will Trust, Re [1972] Ch 268 [853](#), [856](#)
- Fletcher v Fletcher (1844) 4 Hare 67 [74](#), [114](#), [182–184](#), [185](#)
- Fletcher v Green (1864) 33 Beav. 426 [706](#), [713](#), [715](#)
- FM Capital Partners Ltd v Marino [2019] EWHC 725 (Comm) [704](#)
- Foreman v Kingstone [2004] 1 NZLR 841 [556](#)
- Fortex Group v MacIntosh [1998] 3 NZLR 171 [375](#)
- Foskett v McKeown [2001] 1 AC 102 [736](#), [738](#), [745](#), [746](#)
- Foster and Others v Spencer [1996] 2 All ER 672 [618](#)
- Foveaux, Re [1895] 2 Ch 501 [775](#), [808](#)
- Fowkes v Pascoe [1875] 10 Ch App 343 [339](#)
- Fowler v Barron [2008] 2 FLR 831 [424–425](#), [427](#), [438–439](#)
- Francis, Re (1905) 74 LJ Ch 198 [620](#)
- Freeland, Re [1952] Ch 110 [188](#)
- Freme v Clement (1881) 18 Ch D 499 at 504 [85](#)
- Fry, Re [1946] Ch 312 [170](#), [171](#)
- Fry v Densham-Smith [2010] EWCA Civ 1410 [226](#), [227](#)
- Fry v Fry (1859) 27 Beav. 144 [710](#)
- Fry v Tapson (1884) 28 Ch D 268 [635](#)
- Fuller v Evans [2000] 1 All ER 636 [642](#), [644](#)
- Funnell v Stewart [1996] 1 WLR 288 [775](#), [790](#)
- Futter v Futter [2010] EWHC 449 [550–551](#), [553–554](#)
- Gardner (No. 2), Re [1923] 2 Ch 230 [219–220](#)
- Gardner v Parker (1818) 3 Madd 184; 56 ER 478 [190](#)
- Gardner v Rowe (1828) 5 Russ. 258 [139](#)
- Gascoigne v Gascoigne [1918] 1 KB 223 [27](#), [343–345](#)
- Gaudiya Mission Brahmachary [1998] Ch 341 [765](#)
- Gee v Pritchard (1818) 2 Swans. 402 at 414 [10](#), [12](#)
- Gelber v Sunderland Foundation [2018] EWHC 2344 (Ch) [671](#)
- Gendrot v Chadwick [2018] EWHC 48 [277](#)
- Generator Developments Ltd v Lidl UK GmbH [2018] EWCA Civ 396 [472](#)
- Gibbon v Mitchell [1990] 1 WLR 1304 [552](#)
- Gillett v Holt [2001] Ch 210, [2000] 2 All ER 289 [21](#), [221](#)
- Gillingham Bus Disaster Fund, Re [1958] Ch 300 [320–321](#), [834](#), [835](#)
- Gilmour v Coates [1949] AC 426 [792](#), [820](#)
- Gisborne v Gisborne (1877) 2 App. Cas. 300 [545](#)
- Gissing v Gissing [1971] AC 886 [356](#), [358](#), [359](#), [418–419](#), [430](#), [433](#), [444](#), [448](#), [454](#)
- Global Marine Drillships Ltd v Landmark Solicitors LLP [2011] EWHC 2685 (Ch) [82–83](#)
- Glover v Staffordshire Police Authority [2006] EWHC 2414 [391](#)
- Golay's Will Trusts, Re [1965] 1 WLR 969 [115–116](#)
- Goldcorp Exchange Ltd (in receivership), Re [1995] 1 AC 74 [117](#), [376](#)
- Gonin, Re [1979] Ch 16 [188](#)
- Gooch, Re (1890) 62 LT 384 [342](#)
- Goodchild (deceased), Re [1996] 1 WLR 694 [223](#), [225–226](#), [230](#), [475](#)
- Goodfriend v Goodfriend (1972) 22 DLR (3d) 699 [59](#), [292](#)
- Good's Will Trust, Re [1950] 2 All ER 653 [851–852](#)
- Gosling v Gosling (1859) 70 ER 423 [660–661](#)
- Goulding v James [1997] 2 All ER 239 [676](#), [677](#), [684–685](#)
- Graham-York v York [2015] EWCA Civ 72 [445](#), [446](#)
- Grainge v Wilberforce (1889) 5 TLR 436 [142](#)
- Grant's Will Trusts, Re [1980] 1 WLR 360. [1979] 3 All ER 359 [246](#), [256](#)
- Grant v Edwards [1986] 1 Ch. 638 [422](#), [423](#), [428–430](#), [433](#), [457](#)
- Gray, Re [1925] Ch 362 [801](#), [810](#), [813](#)
- Gray v Barr [1971] 2 QB 554 [390](#)
- Gray v Thames Trains Ltd [2009] UKHL 33; [2009] 1 AC 1339 [352](#), [353](#)
- Great Berlin Steamboat Co, Re (1884) 26 Ch D 616 [270](#)
- Green's Will Trust, Re [1985] 3 All ER 455 [124](#), [807](#)
- Green v Spicer (1830) 1 Russ. & M 395 [660](#)
- Grey v IRC [1960] AC 1 [142](#), [146](#), [147](#), [153](#)
- Group Seven Limited & Ors v Notable Services LLP & Ors [2019] EWCA Civ 614 [503–506](#), [717](#)
- Grove-Grady, Re [1929] 1 Ch 557 [807](#), [808](#)
- Grupo Torras SA v Al-Sabah [1999] CLC 1469 [484](#)
- Guild v IRC [1992] 2 AC 310 [815](#)
- Guinness plc v Saunders [1990] 2 AC 663 60 [61](#), [600](#), [604](#), [609](#), [618](#), [622](#)
- Gujra v Roath [2018] EWHC 854 (QB) [353](#)
- Gulbenkian's Settlement Trusts, Re [1970] AC 508; [1968] 3 All ER 785 [120](#), [123](#), [125](#), [126](#)
- Gwyon, Re [1930] 1 Ch 255 [781](#)
- H, Re [1990] 1 FLR 441 [390](#)
- Habana Ltd v Kaupthing Singer & Friedlander (Isle of Man) Ltd [2011] W.T.L.R. 275 [82](#)
- Hagger, Re [1930] 2 Ch 190 227 [229](#)
- Halifax Building Society v Thomas [1996] Ch 217 [377](#), [408–410](#)
- Hallett's Estate, Re (1879 and 1880) 13 Ch D 696 [12](#), [744](#), [747](#)
- Halliwell's LLP (In Administration) v Austin [2012] EWHC 1194 (Ch) [716](#)
- Hambro and Others v Duke of Marlborough [1994] 3 All ER 332 [55](#), [672](#)
- Hammond v Mitchell [1991] 1 WLR 1127 [423](#)
- Hampton Capital Ltd, Re [2015] EWHC 1905 (Ch) [518](#)
- Hanbey's Will Trusts, Re [1956] Ch 264 [866–867](#)
- Hanchett-Stamford v Attorney General [2009] Ch 173 [257](#), [323](#), [325–327](#), [809](#), [836](#)
- Hancock v Watson [1902] AC 14 [114](#)
- Harari's Settlement Trusts, Re [1949] 1 All ER 430 [579](#)
- Harries v Church Commissioners for England [1992] 1 WLR 1241 [576–577](#), [580](#)

- Harrison (JJ) (Properties) Ltd v Harrison [2002] 1 BCLC 162 [729](#)
- Harvard Securities Ltd, *Re* (in Liquidation) [1998] BCC 567 [118](#)
- Harwood, *Re* [1936] Ch 285 [852](#), [853](#), [854](#)
- Hastings-Bass (Deceased), *Re* [1975] Ch 25 [547–549](#), [552](#), [553–554](#)
- Hay's Settlement Trusts, *Re* [1981] 3 All ER 786 [129](#)
- Hay's Settlement Trusts, *Re* [1982] 1 WLR 202 [87](#), [90](#), [544](#)
- Hazell v Hammersmith and Fulham LBC [1990] 2 QB 697 [302](#)
- Head v Gould [1898] 2 Ch 250 [706](#)
- Heartley v Nicholson (1875) LR 19 Eq 233 [164](#)
- Henderson, *Re* [1940] Ch 764 [534](#)
- Henderson v Dorset Healthcare University NHS Foundation Trust [2017] 1 WLR 2673 [353](#)
- Henderson v Henderson [1940] Ch 764 [536](#)
- Henderson v Wilcox & Ors. [2015] EWHC 3469 (Ch) 387 [393](#), [394](#)
- Hetherington, *Re* [1990] Ch 1 247 [249](#), [792](#), [820](#)
- Hewett, *Re* [1918] 1 Ch 458 [269](#)
- Heyworth, *Re* [1956] Ch 364 [668](#)
- Heyworth's Contingent Reversionary Interest, *Re* [1956] Ch 364 [644](#), [669](#)
- Hillsdown Holdings plc v Pensions Ombudsman [1997] 1 All ER 862 [92–93](#)
- Hill v Haines [2008] Ch 412 [277–278](#)
- Hinchinbroke (Lord) v Seymour (1784) 1 Bro CC 395 [92](#)
- Hniazdzilau v Vajgel [2016] EWHC 15 (Ch) [456–457](#)
- Hobday v Peters (No. 3) (1860) 28 Beav. 603 [706](#)
- Hobourn Aero Components Ltd's Air Raid Distress Fund, *Re* [1946] Ch 194; CA; affirming [1946] Ch. 86 [324](#)
- Hodgson v Halford (1879) 11 Ch D 959 [268](#)
- Hodgson v Marks [1971] Ch 892 [335](#)
- Holder v Holder [1968] Ch 353 [76](#), [614](#)
- Holiday Inns Inc v Broadhead (1974) 232 EG 951 [470](#)
- Hollis v Rolfe [2008] EWHC 1747 (Ch) [517](#)
- Holmden's Settlement Trusts, *Re* [1968] AC 685 [686–687](#)
- Holroyd v Marshall (1862) 10 HL Cas 191 [177](#)
- Holt's Settlement Trusts, *Re* [1969] 1 Ch 100 [156](#), [681](#), [685–687](#)
- Hooper, *Re* [1932] 1 Ch 38 [249](#)
- Hopkinson, *Re* [1949] 1 All ER 346 [837](#)
- Hopkins Will Trusts, *Re* [1965] Ch 669 [788](#)
- Hopton v Miller [2010] EWHC 2232 [427](#)
- Horler v Rubin [2011] EWHC 453 (Ch) [518](#)
- Howard v Harris (1681) 1 Vern. 33 [11](#)
- Howe v Earl of Dartmouth (1802) 6 RR 96, (1802) 7 Ves. Jr. 137 [591–593](#), [651](#), [710](#)
- Howlett, *Re* [1949] Ch 767 [728](#)
- HPOR Servicos de Consultoria Ltda v Dryships Inc [2018] EWHC 3451 [406](#)
- Human Dignity Trust v Charity Commission for England and Wales [2015] WTLR [804](#), [838](#)
- Hummeltenberg, *Re* [1923] 1 Ch 237 [775](#), [817](#)
- Hunter v Moss [1996] Conv 233, [1994] 3 All ER 215 [117–118](#)
- Hunt v McLaren [2006] WTLR 1817 [256](#), [325](#)
- Hussey v Palmer [1972] 1 WLR 1286 [13](#), [63](#), [376](#)
- IDC Group Ltd v Clark [1992] EGLR 187 [464](#)
- Ikbal v Sterling Law [2013] EWHC 3291 (Ch) [724](#)
- Ilott v Mitson [2017] UKSC 17, [2015] EWCA Civ 797 [264](#), [280–281](#)
- Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd [1991] 2 All ER 597 [330–332](#)
- Incorporated Council of Law Reporting for England and Wales v Attorney-General [1972] Ch 73 [775–776](#), [785](#), [801](#), [812–813](#), [818](#), [832](#)
- Independent Schools Council v Charity Commission for England and Wales [2012] Ch 214, [2011] UKUT 421 (TCC) [822](#), [824](#)
- Independent Trustee Services Ltd v GP Noble Trustees Ltd [2012] EWCA Civ 195 [47](#)
- IRC v Baddeley [1955] AC 572 [813–815](#), [821](#), [822](#), [830–831](#)
- IRC v Broadway Cottages Trust [1955] Ch 20, [1954] 1 All ER 878 [105](#), [122](#), [125](#)
- IRC v City of Glasgow Police Athletic Association [1953] AC 380 [810](#), [831](#)
- IRC v Educational Grants Association Ltd [1967] Ch 993 [826](#), [828](#)
- IRC v Hashmi [2002] 2 BCLC 489 [275](#)
- IRC v McMullen [1981] AC 1 [758–759](#), [785](#), [800](#), [813](#), [815](#), [833](#)
- IRC v White [1980] TR 155 773 [799](#)
- Island Holdings Ltd v Birchington Engineering Co Ltd (1878) 8 Ch D 177 [470](#)
- Ivey v Genting Casinos UK Ltd [2017] UKSC [503–504](#), [717](#)
- Jaffray v Marshall [1994] 1 All ER 143 [712](#), [713](#)
- James, ex p (1803) 8 Ves 337 [613](#)
- James, *Re* [1935] Ch 449 [188](#)
- James v Thomas [2007] 3 FCR 696 [426–427](#)
- Jeffrey v Gretton [2011] WTLR 809 [577](#), [578](#), [583](#), [710](#), [721](#)
- Jenner v Turner (1880) 16 Ch D 188 [268](#)
- Jerome v Kelly (Inspector of Taxes) [2004] 1 WLR 1409 [462](#)
- JJ Harrison (Properties) Ltd v Harrison [2002] 1 BCLC 162 [729](#)
- Johnson's Will Trusts, *Re* [1967] Ch 387 [269](#)
- Jones (FC) & Sons v Jones [1996] 3 WLR 703 [738](#), [740](#), [741](#)
- Jones, *Re* (1953) Ch 810 [131](#)
- Jones v Badley (1868) LR 3 Ch 362 [216](#)
- Jones v Foxall (1852) 15 Beav. 388 [713](#)
- Jones v Kernott [2012] 1 AC 776, [2011] UKSC 53 [439](#), [442–449](#), [454](#), [456](#)
- Jones v Lock (1865) 1 Ch App 25 [167](#)
- Joseph Rowntree Memorial Trust Housing Association Ltd v A-G [1983] Ch 159 [779](#), [805](#)

- Joy v Joy-Morancho [2014] EWHC 3769 (Fam) [283](#)
 Jyske Bank (Gibraltar) Ltd v Spjeldnaes (No. 2) [1999] 2 BCLC 101 [273](#)
- K, Re [1985] Ch 85 [389, 393](#)
 Kasperbauer v Griffith [2000] WTLR 333 [212](#)
 Kay, Re [1939] 1 Ch 329 [181](#)
 Kayford Ltd, Re [1975] 1 WLR 279 [106](#)
 Kay's Settlement, Re [1939] 1 Ch 329 [182](#)
 Keech v Sandford (1726) Sel. Cas. Ch. 61 [61, 405, 412, 414, 598, 600–601, 609–611, 619–620, 622, 647](#)
 Keeling v Keeling [2017] EWHC 1189 [195](#)
 Keen, Re [1937] Ch 236 [214, 215, 218](#)
 Kelly v Cooper [1993] AC 205 [600](#)
 Kemmis v Kemmis [1988] 1 WLR 1307 [281](#)
 Keown v Nahoar [2015] EWHC 3418 (Ch) [518](#)
 Kernott v Jones [2011] UKSC 53, [2010] EWCA Civ 578 [360, 442](#)
 Kerr v Baranow [2011] SCC 10 [372](#)
 Khaira v Shergill [2014] UKSC 33 [794–795](#)
 King, Re [1923] 1 Ch 243 [859, 860](#)
 Kingsnorth Finance Co Ltd v Tizard [1986] 1 WLR 783 [32–33, 48](#)
 Kings v Bultitude [2010] EWHC 1795 (Ch) 827 [852–853](#)
 King v The Chiltern Dog Rescue & Others [2015] EWCA Civ 581 [193–195](#)
 Klug v Klug [1918] 2 Ch 67 [528, 546](#)
 Knight v Knight (1840) 3 Beav. 171 [104](#)
 Knockor v Youle [1986] 1 WLR 934, [1986] 1 WLR 1159 [678](#)
 Knott v Cottee (1852) 16 Beav. 77 [709](#)
 Koeppler's Will Trusts, Re [1986] Ch 423 [837](#)
 Koettgen's Wills Trusts, Re [1954] Ch 252 [826](#)
 Kolb's Will Trust, Re [1962] Ch 531 [579, 589, 590](#)
 Kumar, Re [1993] 2 All ER 700 [277](#)
- LAC Minerals Ltd v International Corona Resources Ltd (1989) 61 DLR (4th) 14 [373, 599, 603](#)
 Laing (JW) Trust, Re [1984] Ch 143 [849](#)
 Lall v Lall [1965] 1 WLR 1249 [77](#)
 Lambe v Eames (1871) 6 Ch App 597 [109–110](#)
 Lashmar, Re [1891] 1 Ch 258 [142](#)
 Laskar v Laskar [2008] EWCA Civ 347, [2008] 1 WLR 2695 [357, 450](#)
 Last, Re [1958] P 137; [1958] 2 WLR 186 [114–115](#)
 Lavelle v Lavelle [2004] 2 FCR 418 [299](#)
 Leahy v Attorney-General for New South Wales [1959] AC 457 [236, 243, 254](#)
 Learoyd v Whiteley (1897) 12 App. Cas. 727 [570](#)
 Ledgerwood v Perpetual Trustee Co. Ltd (1997) 41 NSWLR 532 [219](#)
 Leek, Re [1969] 1 Ch 563 [120](#)
 Lee v Haley (1869) 5 Ch. App. 155 [27](#)
 Le Foe v Le Foe [2001] 2 FLR 970 [427–428](#)
 Legg v Burton [2017] EWHC 2088 Ch [225, 229](#)
- Leong v Lim Beng Chye [1955] AC 64 [268](#)
 Lepton's Charity, Re [1972] Ch 276 [862, 864, 865](#)
 Letterstedt v Broers (1884) 9 App Cas 371; [1881û85] All ER Rep 882 [539](#)
 Lewis's of Leicester Ltd, Re [1995] 1 BCLC 428 [106](#)
 Lewis v Tamplin [2018] EWHC 777 (Ch) [556, 557](#)
 Life Association of Scotland v Siddal (1861) 3 De GF & J 58 [719](#)
 Liggett v Kensington [1993] 1 NZLR 257 [375](#)
 Lightfoot v Lightfoot-Brown [2005] 2 P & CR D12 [426](#)
 Lilleyman v Lilleyman [2013] Ch 225 [280](#)
 Lillington, Re [1952] 2 All ER 184 [190](#)
 Lindsay Petroleum Co v Hurd (1874) LR 5 PC 221 [29, 730](#)
 Lipinski's Will Trusts, Re [1976] Ch 235 [245, 246](#)
 Lipkin Gorman v Karpnale Ltd [1991] 2 AC 548 62 [63, 294, 520, 738–739](#)
 Liscott v Crown Prosecution Service [2013] EWHC 501 [112](#)
 Lister & Co v Stubbs (1890) 45 Ch D 1 [398–399, 415–416, 623](#)
 Lister's Will Trusts, Re [1962] 1 WLR 1441 [677](#)
 Livingstone v Raywards Coal Co. (1880) 5 App. Cas. 25 [699](#)
 Llewellyn's Will Trusts, Re [1949] Ch 225 [621](#)
 Lloyds Bank plc v Rosset [1991] 1 AC 107 [62, 419–422, 425, 426, 429, 433](#)
 Lloyds TSB Bank plc v Markandan & Uddin (A firm) [2012] 2 AER 884, [2012] EWCA (Civ), [2010] EWHA 2517 (Ch) [606, 702, 722–724](#)
 Lofthouse, Re (1885) 29 Ch D 921 [644](#)
 Loftus, Re [2005] 1 WLR 1890 [509](#)
 Lohia v Lohia [2001] WTLR 101 [334](#)
 London Allied Holdings Ltd v Anthony Lee [2007] EWHC 2061 (Ch) [378, 379](#)
 London and South Western Rail Co v Gomm (1882) 20 Ch. D 562 [31, 47](#)
 Londonderry's Settlement, Re [1965] Ch 918 [555, 557–560](#)
 London Hospital Medical College v IRC [1976] 1 WLR 613 [796, 832](#)
 London Wine Co (Shippers) Ltd, Re (1986) PCC 121 [116, 118](#)
 Lonrho plc v Fayed (No. 2) [1992] 1 WLR 1 [407, 408](#)
 Lonrho plc v Fayed (No. 2) [1992] 1 WLR 1 [468–470](#)
 Lopes, Re [1931] 2 Ch 130 [785–786](#)
 Lord Montfort v Lord Cadogan (1810) 19 Ves. 635 [718](#)
 Lovell, Re [1920] 1 Ch 122 [269](#)
 Lowson v Coombes [1999] Ch 373 [345, 346](#)
 Lsyaght v Edwards (1876) 2 Ch. D 499 [62](#)
 Lysaght v Edwards (1876) 2 Ch. D 499 [461, 462, 858](#)
 Lyus v Prowsa Developments Ltd [1982] 1 WLR 1044 [141, 407, 462–463](#)
- Macadam, Re [1946] Ch 73 [620](#)
 McCormick v Grogan (1869) LR 4 HL 82 [207, 211–212, 406–408](#)
 McEacharn, Re (1911) 103 LT 900 [652](#)

- McGeorge, *Re* [1963] Ch 544 [645](#)
- McGovern v Attorney General [1982] Ch 321 [787](#), [835](#), [836](#)
- Mac-Jordan Construction Ltd v Brookmount Erostin Ltd [1992] BCLC 350 [118](#)
- Mack (Deceased), *Re* [2009] EWHC 1524 [390](#)
- Mackay v Douglas (1872) LR 14 Eq 106 [273](#)
- McWilliam v Norton Finance (UK) Ltd [2015] EWCA Civ 186 [606](#)
- Madoff Securities International Ltd v Raven [2013] EWHC 3147 [518](#)
- Mallot v Wilson [1903] 2 Ch 494 [530](#)
- Manchester Trust v Furness [1895] 2 QB 539 [33](#), [513](#)
- Manifest Shipping v Uni-Polaris Shipping Co Ltd [2001] UKHL 1 [504](#), [505](#)
- Manisty's Settlement, *Re* [1974] Ch 17 [128](#)
- Manser, *Re* [1905] 1 Ch 68 [773](#)
- Mara v Browne [1896] 1 Ch 199 [482](#)
- Margulies v Margulies [2008] WTLR 1853 [212](#)
- Marr v Collie [2018] AC 631 [450](#)
- Martin v City of Edinburgh District Council 1988 SLT 329 [576](#)
- Mary Clark Homes Trustees v Anderson [1904] 2 KB 645 [779](#)
- Mason v Farbrother [1983] 2 All ER 1078 [590](#), [670](#)
- Massingberd's Settlement, *Re* (1890) 63 LT 296 [711](#)
- McCarthy and Stone Ltd v Harding [1973] 1 WLR 1547 [32](#)
- MCC Proceeds v Lehman Brothers International (Europe) (1998) The Times, 14 January 1998 [739](#)
- McKenzie v McKenzie [2003] EWHC 601 (Ch) [358](#)
- McPhail v Doulton [1971] AC 424, [1970] 2 All ER 228 [90](#), [122](#), [125–127](#), [544](#)
- Mead's Trust Deed, *Re* [1961] 1 WLR 1244 [835](#)
- Merchant Navy Ratings Pension Fund, *Re* [2015] EWHC 448 (Ch) [576](#)
- Mercier v Mercier [1903] 2 Ch 98 [341](#)
- Metall and Rohstoff AG v Donaldson Lufkin & Jenerette Inc [1990] 1 QB 391 [370](#), [376](#)
- Mettoy Pension Trustees Ltd v Evans [1991] 2 All ER 513, [1990] 1 WLR 1587 [87](#), [90](#), [91](#), [330](#), [331](#), [548](#)
- Meux' Will Trusts, *Re* [1958] Ch 154 [668](#)
- Meyers, *Re* [1951] 1 All ER 538 [857](#)
- Midland Bank Co Ltd v Green [1981] AC 513 [47](#)
- Midland Bank plc v Cooke [1995] 4 All ER 562; [1995] 2 FLR 915 [356](#), [359](#), [426](#), [430–434](#)
- Midland Bank plc v Wyatt [1995] 1 FLR 696 [112](#), [273](#)
- Millar v Millar [2018] EWHC 1926 [107](#)
- Mills, *Re* [1930] 1 Ch 654 [70](#), [88](#), [94](#)
- Milroy v Lord (1862) 4 De GF & J 264 [163](#), [169](#), [171–173](#)
- Mitford v Reynold (1848) 16 Sim. 105 [248](#)
- Moher v Moher [2019] EWCA Civ 1482 [674](#)
- Molyneux v Fletcher [1898] 1 QB 648 [647](#)
- Moncrieff's Settlement Trusts, *Re* [1962] 1 WLR 1344 [679–680](#)
- Montagu's Settlement Trusts, *Re* [1987] Ch 264 [62](#), [514](#), [516](#)
- Montefiore v Guedalla [1903] 2 Ch 723 [531](#)
- Moore, *Re* (1888) 39 Ch D 116 [266](#)
- MooRe v Williamson [2011] EWHC 672 (Ch) 107 [109](#), [165](#)
- Morgan, *Re* (1881) 18 Ch D 93 [32](#)
- Morice v Bishop of Durham (1804) 9 Ves. 339 [119](#), [236–239](#), [312](#)
- Morley Rennoldson, *Re* (1843) 2 Hare 570 [269](#)
- Morris v Morris [2008] EWCA Civ 257 [427](#)
- Moss v Cooper (1861) 1 John & H 352 [216](#), [217](#)
- Movitex Ltd v Bulfield [1988] BCLC 104 [613](#)
- Muckleston v Brown (1801) 6 Ves. 52 [344](#)
- Murad v Al Saraj [2005] EWCA Civ 959, [2005] WTLR 1573 [414](#), [611](#), [612](#)
- Muschinski v Dodds (1985) 160 CLR 583 [374](#), [375](#), [451](#)
- Mussett v Bingle [1876] WN 170 239 [241](#), [249](#)
- Mussoorie Bank Ltd v Raynor (1882) 7 App. Cas. 321 at 331 [105](#)
- Naas (Lady) v Westminster Bank Ltd [1940] 1 All ER 485 [71](#)
- National Anti-Vivisection Society v IRC [1948] AC 31 [775](#), [808](#), [809](#), [810](#), [819](#), [835–837](#), [839](#)
- National Crime Agency v Robb [2014] EWCA 4384 (Ch) [748](#)
- National Deposit Friendly Society Trustees v Skegness UDC [1959] AC 293 [792](#)
- National Provincial Bank Ltd v Ainsworth [1965] AC 1175 [12](#)
- National Trustees Co of Australasia v General Finance Co of Australasia [1905] AC 373 [721](#)
- National Westminster Bank plc v Jones [2001] 1 BCLC 98 [275](#)
- Nationwide Building Society v Balmer Radmore [1999] Lloyd's Rep. PN 241 [702](#)
- ND v SD (Financial Remedies: Trust: Beneficial Ownership) [2018] 1 FLR 1489 [112–113](#)
- Nelson v Larholt [1948] 1 KB 339 [513–514](#)
- Nelson v Nelson [1995] 4 LRC 453 [342](#), [347](#)
- Nelson v Rye [1996] 2 All ER 186 [730–731](#)
- Nestlé v National Westminster Bank plc, 29 June 1988, unreported [571](#)
- Nestlé v National Westminster Bank plc [1994] 1 All ER 118, [1993] 1 WLR 1260 [564](#), [566](#), [567](#), [571](#), [573–574](#), [577](#), [580](#), [582](#), [701](#)
- Neville Estates v Madden [1962] Ch 832 [252](#), [254–255](#), [257–258](#), [326](#), [793](#), [820](#), [821](#)
- Neville v Wilson [1997] Ch 144, [1996] 3 All ER 171 [157](#), [461](#)
- New, *Re* [1901] 2 Ch 534 [664](#), [665](#)
- New Zealand and Australian Land Co v Watson [1881] 7 QBD 374 [602–603](#)
- Ninian v Findlay [2019] EWHC 297 [395](#)
- Niyazi's Will Trust, *Re* [1978] 1 WLR 910 [782](#)
- Nocton v Lord Ashburton [1914] AC 932 [416](#), [629](#)
- Norfolk's (Duke of) Settlement Trusts, *Re* [1982] Ch 61 [615–617](#)

- Northall (Deceased), *Re* [2010] EWHC 1448 336–337, 340
 North v Wilkinson [2018] EWCA Civ 161 119, 167
 Nottage, *Re* [1885] 2 Ch 649 800, 801
 Novoship (UK) Limited & Ors v Nikitin & Ors [2014] EWCA Civ 908 506–508
- Oatway, *Re* [1903] 2 Ch 356 747
 Ogilvie v Littleboy sub nom: Ogilvie v Allen (1899) 15 TLR 294; HL; affirming (1897) 13 TLR 399 552, 553
 O’Kelly v Davies [2014] EWCA 1606 27–28, 347–348, 453–457
 Oldham, *Re* [1925] Ch 75 227
 Olins v Walters [2009] Ch 212 223–224
 Onslow v Wallis (1849) 1 Mac. and G. 506 142
 Oppenheim v Tobacco Securities Trust Co Ltd [1951] AC 297 762, 818, 825–827
 O’Rourke v Darbishire [1920] AC 581 556
 Osoba, *Re* [1979] 1 WLR 247 238, 319
 O’Sullivan v Management Agency and Music Ltd [1985] QB 428 28–29, 600, 617–618
 OT Computers Ltd v First National Tricity Finance Ltd 122
 Ottaway v Norman [1972] Ch 698, [1972] 2 WLR 50 210–211, 217
 Oughtred v IRC [1960] AC 206 154–156, 461
 Overton v Bannister (1844) 3 Hare 503 718
 Oxley v Hiscock [2004] EWCA Civ 546; [2005] Fam. 211; [2004] 3 All ER 703 356, 357, 422, 430–431, 433–436, 440, 441, 444–445, 449, 457–459
- Paine v Meller (1801) 6 Ves. 349 461
 Pallant v Morgan [1952] 2 All ER 951 468–473
 Palmer v Simmonds (1854) 2 Drew 221 114, 115
 Paradise Motor Co Ltd, *Re* [1968] 2 All ER 625, [1968] 1 WLR 1125 157, 342
 Paragon Finance plc v D. B. Thakerar & Co [1999] 1 All ER 400 366, 368, 381, 417, 729
 Parker v McKenna (1874) 10 Ch App. 96 74
 Parkin v Thorold (1852) 16 Beav. 59 28
 Parr v Keystone Health Care Ltd [2019] EWCA Civ 1246 405–406, 612, 628
 Parsons, *Re* [1940] Ch 973 535
 Parsons, *Re*, ex parte Belchier (1754) Amb. 218 635
 Partington, *Re* (1887) 57 LT 654 708
 Patel v Mirza [2017] AC 467, [2015] Ch 271 348–350, 353
 Patel v Shah [2005] EWCA Civ 157 731
 Pauling’s Settlement Trust, *Re* [1964] Ch 303 633, 647, 651, 718–720, 722
 Pauling’s Settlement Trust, *Re* (No. 2) [1963] Ch 576 709
 Paul v Constance [1977] 1 WLR 527, [1977] 1 All ER 195 106, 138, 167, 168
 Pechar (deceased), *Re* [1969] NZLR 574 389
 Peel, *Re* [1936] Ch 161 642
 Peggs v Lamb [1994] Ch 172 864, 865
 Pemsel’s Case *see Commissioners for Special Purposes of Income Tax v Pemsel*
- Pennington v Waine [2002] EWCA Civ 227; [2002] 1 WLR 2075 161, 165, 173, 174, 176
 Pennyfeathers Ltd v Pennyfeathers Property Co. Ltd [2013] EWHC 3530 413
 Perowne, *Re* [1951] Ch 785 89
 Perrins v Bellamy [1898] 2 Ch 521 721, 722
 Perrin v Lyon (1807) 9 East 170 268
 Peso-Silver Mines Ltd v Cropper (1966) 58 DLR (2d) 1 611, 612
 Pettifor’s Will Trust, *Re* [1966] Ch 257 680
 Pettingall v Pettingall (1842) 11 LJ Ch 176 250, 251
 Pettitt v Pettitt [1970] AC 777 339, 341, 358–359, 419, 454
 Pettkus v Becker (1980) 117 DLR (3d) 257 370–372
 Phillips v Phillips (1862) 4 De GF & J 208 294
 Pilcher v Rawlins (1872) 7 Ch App. 259 31, 33, 47, 48, 73
 Pilkington v IRC [1964] AC 612 647
 Pinion, *Re* [1965] Ch 85 265, 787, 798, 818
 Piper, *Re* [1946] 2 All ER 503 267
 Pirbright v Salway [1896] WN 86 249
 Pitt v Holt [2010] EWHC 45 (Ch); [2010] 1 WLR 1199; [2010] WTLR 269 549, 551–554
 Pitt v Holt [2011] EWCA Civ 197; [2011] 3 WLR 19 549, 551–554
 Plasycoed Collieries Co Ltd v Partridge, Jones & Co Ltd [1912] 2 KB 345 75
 Plumptre’s Marriage Settlement, *Re* [1910] 1 Ch 609 178–179
 Polly Peck International plc (in administration) (No. 2), *Re* [1998] 3 All ER 812 377, 378, 379, 509–510
 Polly Peck International plc v Nadir (No. 2) [1992] 4 All ER 769 511, 515
 Popely v Popely [2019] EWHC 1507 (Ch) 717
 Power, *Re* [1947] Ch 572 585
 Printers and Transferrers Society, *Re* [1899] 2 Ch 184 323–324
 Protheroe v Protheroe [1968] 1 WLR 519 412, 620
 Pryce, *Re* [1917] 1 Ch 234 181
 Pullan v Koe [1913] 1 Ch 9 34, 178
- Queensland Mines v Hudson (1978) 52 AJLR 399 612
 Quistclose Investments Ltd v Rolls Razor Ltd [1970] AC 567 80, 81
 Q v Q [2009] 1 FLR 935 423
- R (on the application of Hodkin) v Registrar General of Births, Deaths and Marriages [2013] UKSC 77 792
 R. (on the application of Palestine Solidarity Campaign) v Secretary of State for Communities and Local Government [2017] EWHC 1502 577
 Ralli’s Will Trusts, *Re* [1964] Ch 288 169
 Random House UK Ltd v Allason [2008] EWHC 2854 (Ch) 140
 Rathwell v Rathwell (1978) 83 DLR (3d) 371–372
 Rayner v Preston (1881) 18 Ch D 1 462
 Ray’s Will Trusts, *Re* [1936] 1 Ch 520 253

- Reading v Attorney-General [1949] 2 KB 232, CA; affirmed [1951] AC 501, HL [600–601](#), [602](#)
- Recher's Will Trust, *Re* [1972] Ch 526 [256](#), [257](#), [326](#)
- Reddel v Dobree, *Re* (1839) 10 Sim. 244; 59 RR 607 [190](#)
- Regal (Hastings) Ltd v Gulliver [1942] 1 All ER 378 [413–414](#), [608](#), [610–611](#), [612](#)
- Registered Securities Ltd, *Re* [1991] 1 NZLR 545 [748](#)
- Relfo Ltd (in Liquidation) v Varsani [2014] EWCA (Civ) 360 [746](#)
- Remnant's Settlement Trusts, *Re* [1970] Ch 560 [681](#)
- Resch's Will Trust, *Re* [1969] 1 AC 514 [796](#)
- Richards v Delbridge (1874) LR Eq. 11 [106](#), [164](#), [165–166](#)
- Richard West and Partners (Inverness) Ltd v Dick [1969] 2 Ch 424 [26](#)
- Rider v Kidder (1805) 10 Ves. 360 [341](#)
- Ridsdel, *Re* [1947] Ch 597 [529](#), [654](#)
- Roberts, *Re* [1946] Ch 1 337 [341](#)
- Robinson v Macdonnell (1816) 5 M & S 228 [177](#)
- Robinson v Pett (1734) 3 P Wms. 249 [615](#)
- Rochefoucauld v Boustead [1897] 1 Ch 196 [140](#), [141](#), [160](#), [161](#), [335](#), [355](#), [463](#), [465](#)
- Rochefoucauld v Boustead [1975] 3 All ER 726 [161](#)
- Roper-Curzon v Roper-Curzon (1871) LR 11 Eq. 452 [647](#)
- Roscoe v Winder [1915] 1 Ch 62 [748](#)
- Rose, *Re* [1952] Ch 499 [170](#)
- Rowe v Prance [1999] 2 FLR 787 [168](#)
- Rowland v Witherden (1851) 3 Mac. & G 568 [636](#)
- Royal Brunei Airlines Sdn Bhd v Tan Kok Ming [1995] 2 AC 378; [1995] 3 WLR 64 [14](#), [62](#), [481](#), [484](#), [486](#), [488](#), [489](#), [491–493](#), [496–498](#), [502–503](#)
- Royal Choral Society v Inland Revenue Commissioners [1943] 2 All ER 101 [786](#), [798](#)
- Royal College of Nursing v St Marylebone Corporation [1959] 1 WLR 1077 [785](#)
- Royal College of Surgeons v National Provincial Bank [1952] AC 631 [766](#), [784](#), [832](#)
- Royal Melbourne Hospital v Equity Trustees [2011] EWHC 2721 (Ch) 570 [591](#), [671](#)
- Russell-Cooke Trust Co v Prentis [2003] 2 All ER 478 [749–751](#)
- Russell v Jackson (1852) 10 Hare 204 [216](#)
- R v District Auditor ex p. West Yorkshire Metropolitan County Council [1986] RVR 24 [129](#)
- R v Ghosh [1982] 2 All ER 689 [492](#), [504](#)
- R v Registrar General ex p Segerdal [1970] 2 QB 697 [790–791](#)
- Rymer, *Re* [1895] 1 Ch 19 [846](#), [851](#), [852](#)
- Sacred Hands Spiritual Centre's Application for Registration as a Charity [2006] WTLR 873, West Law Summary [790](#)
- Salt v Cooper (1880) 16 Ch D 544 [23–24](#)
- Salisbury v Denton (1857) 3 K & J 529 [833–834](#)
- Sandbrook, *Re* [1912] 2 Ch 471 [266](#)
- Sanderson's Trust, *Re* (1857) 3 K & J 497 [238](#), [319](#)
- Sanderson v Hi Peak Property Ltd [2014] EWHC 4918 (Ch) [257](#)
- Sanders' Will Trusts, *Re* [1954] Ch 265 [781–782](#)
- Sands v Singh [2016] EWHC 636 (Ch) [277](#)
- Santander UK v RA Legal Solicitors [2014] EWCA (Civ) 183 [724–727](#)
- Satterthwaite's Will Trusts, *Re* [1966] 1 WLR 277 [854](#)
- Saunders v Vautier (1841) 4 Beav. 115 [147](#), [237](#), [245](#), [247](#), [645](#), [659–663](#), [676](#)
- Sayer, *Re* [1957] 2 WLR 261 [120](#), [123](#)
- Scarisbrick, *Re* [1951] Ch 622 [827](#)
- Scarisbrick Resettlement Estates, *Re* [1944] Ch 229 [672](#)
- Schmidt v Rosewood Trust Ltd [2003] 2 AC 709 [556](#), [557](#)
- Schmitt v Deichmann [2013] Ch 61 [275](#)
- Schobelt v Barber (1966) 60 DLR (2d) 519 [389](#)
- Scottish Burial Reform and Cremation Society v Glasgow City Corporation [1968] AC 138 [773](#)
- Seale's Marriage Settlement, *Re* [1961] 3 All ER 136 [683](#)
- Secretary of State for Justice v Topland Group plc. [2011] EWHC 983 [501](#)
- Segelman, *Re* [1996] Ch. 171 [827](#)
- Selangor United Rubber Estates Ltd v Craddock (No. 3) [1968] 1 WLR 1555 [489](#)
- Sellack v Harris (1708) 2 Eq. Cas. Abr. 46 [204](#)
- Sen v Headley [1991] 2 All ER 636; [1991] Ch 425 [189](#), [191–193](#)
- Serious Fraud Office v Lexi Holdings Plc (In Administration) [2008] EWCA Crim 1443 [734–735](#)
- Shah v Shah [2010] EWCA Civ 1408 [108–109](#), [164–165](#), [705](#)
- Shalson v Russo [2005] Ch 281; [2005] 2 WLR 1213 [397](#), [407–408](#), [746](#), [751](#)
- Sharpe (a bankrupt), *Re* [1980] 1 WLR 219 [338](#), [370](#), [382](#)
- Sharp v Blank [2015] EWHC 3220 [606](#)
- Shaw, *Re* [1957] 3 K & J 497; [1957] 1 WLR 729 [251](#), [788](#), [789](#)
- Shaw v Cates [1909] 1 Ch 389 [588](#)
- Shaw v Foster (1872) LR 5 HL 321 [462](#)
- Shelley v Shelley (1886) LR 6 Eq. 540 [111](#)
- Shepherd v Moulds (1845) 4 Hare 500 [712](#)
- Sherman, *Re* [1954] Ch 653 [613](#)
- Sherry v Sherry [1991] 1 FLR 307 [282](#), [283](#)
- Sichel's Settlements, *Re* [1916] 1 Ch 358 [533](#)
- Sieff v Fox [2005] 1 WLR 1362; 1 WLR 3811 [548](#), [550](#)
- Silkstone and Haigh Moor Coal Co v Edey [1900] 1 Ch. 167 [614](#)
- Silverwood v Silverwood (1997) 74 P & CR 453 [345](#)
- Simson, *Re* [1946] Ch 299 [831](#)
- Sinclair Investment Holdings SA v Versailles Trade Finance Ltd [2005] EWCA Civ 722; [2006] 1 BCLC 60 [14](#)
- Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd (In Administration) [2011] EWCA Civ 347 [65](#), [370](#), [400–402](#), [405](#), [408–410](#), [416](#), [601](#), [603–604](#), [624–626](#), [627](#)

- Sinclair v Brougham [1914] AC 398 [743](#)
 Singh v Anand [2007] EWHC 3346 [157](#)
 Skeats' Settlement, *Re* (1889) 42 Ch D 522 [531](#), [532](#)
 Slevin, *Re* [1891] 2 Ch 236 [846](#), [858](#)
 Smart's Goods, *Re* [1902] P 238 [218](#)
 Smith, *Re* [1928] Ch 915 [662–663](#)
 Smith's Will Trust, *Re* [1962] 2 All ER 563 [796](#)
 Smith v Clay (1767) Amb. 645 [29](#)
 Smith v Matthews (1861) 3 De GF & J 139 [139](#)
 Snowden, *Re* [1979] 2 All ER 172 [209](#), [211](#)
 Solomon, *Re* [1912] 1 Ch 261 [588](#)
 Somerset, *Re* [1894] 1 Ch 231 [588](#), [709](#)
 Soomro v Khuahwar [2015] [143](#)
 Sorochan v Sorochan (1986) 29 DLR (4th) 1 [372](#)
 Soulos v Korkontzilas (1997) 146 DLR (4th) 214 [373–374](#)
 South Place Ethical Society, *Re* [1980] 1 WLR 1565 [790](#)
 Soutzos v Armstrong [2010] EWHC 362, [2010] EWHC 842 [82](#)
 Speight v Gaunt (1883) 9 App. Cas. 1, 22 Ch D 727 [542](#), [570](#), [635](#), [636](#)
 Spencer, *Re* [1935] Ch 533 [644](#)
 Spiller v Maude (1881) 32 Ch D 158 [827](#)
 Sprange v Barnard (1789) 2 Bro. CC 585 [114](#)
 Springette v Defoe [1992] 2 FLR 388 [8](#), [13](#), [356](#), [371](#), [378](#), [432](#)
 Stack v Dowden [2007] 2 AC 432 [360](#), [424](#), [425](#), [427](#), [434–435](#), [437–442](#), [444](#), [447–452](#), [454](#), [456–458](#)
 Staden v Jones [2008] 2 FLR 1931 [107](#), [108](#), [162](#)
 Standing v Bowring (1885) 31 Ch D 282 [296](#)
 St Andrew's (Cheam) Lawn Tennis Club Trust, *Re* [2012] EWHC 1040 (Ch) [258](#)
 Stanford, *Re* [1924] 1 Ch 73 [859–860](#)
 Staniland v Wilmott (1852) 3 Mac & G 664 [191](#)
 Starglade Properties Ltd v Nash [2010] EWCA 1314 [499](#), [501](#)
 Statek Corp v Alford [2008] EWHC 32 (Ch) [499](#)
 Stead, *Re* [1900] 1 Ch 237 [215](#), [216](#)
 Steed's Will Trusts, *Re* [1960] Ch 407 [676](#), [684](#), [685](#)
 Steele's Will Trusts, *Re* [1948] Ch 603 [111](#)
 Stephenson v Barclays Bank Trust Co Ltd [1975] 1 All ER 625 [662](#)
 Stewart, *Re* [1908] 2 Ch 251 [186–187](#)
 Stokes v Anderson [1991] 1 FLR 391 [433](#)
 Stone & Rolls v Moore Stephens [2009] UKHL 39 [353](#)
 Stoneham Settlement Trust, *Re* [1953] Ch 59 [533](#)
 Stott v Milne (1884) 25 Ch D 710 [615](#)
 Strafford (Earl), *Re* [1979] 1 All ER 513 [654](#)
 Strahan, *Re* (1856) 8 De GM & G 291 [706](#)
 Strakosch, *Re* [1949] Ch 529 [773](#), [803](#)
 Strickland v Aldridge (1804) 9 Ves. 517 [217](#)
 Strong v Bird (1874) LR 18 Eq. 315 [29](#), [186–188](#)
 Stuart, *Re* [1897] 2 Ch 583 [722](#)
 Suenson-Taylor's Settlement, *Re* [1974] 3 All ER 397 [652](#)
 Suffert's Settlement, *Re* [1961] Ch 1 [679](#)
 Surrey County Council v Bredero Homes [1993] 1 WLR 1361 [24](#)
 Sutton, *Re* (1885) 28 Ch D 464 [832](#)
 Swain v Law Society [1981] 3 All ER 797 [122](#)
 Swift Advances Plc v Ahmed [2015] EWHC 3265 (Ch) [276](#)
 Swindle v Harrison [1997] 4 All ER 705 410 [416](#), [629](#), [701–702](#)
 Sykes, *Re* [1909] 2 Ch 241 [621](#)
 Tang Min Sit v Capacious Investments [1996] AC 514 [696](#)
 Target Holdings Ltd v Redferns [1996] AC 421; [1995] 3 WLR 352; HL; reversing [1994] 1 WLR 1089 [416](#), [610](#), [629](#), [694–705](#), [712](#)
 Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd [1981] 1 All ER 897, [1982] QB 133 [196](#), [451](#), [465](#)
 Taylor v Plumer (1815) 3 M & S 562 [739–741](#)
 T. Choithram International S.A. v Pagarani [2001] 1 WLR 1 [171–174](#)
 Tee v Ferris (1856) 2 K & J 357 [216](#)
 Tempest, *Re* (1866) 1 Ch App. 48 [535–537](#)
 Tempest v Lord Camoys (1882) 21 Ch D 571 [545](#)
 Thavorn v Bank of Credit and Commerce International SA [1985] 1 Lloyd's Rep. 259 [297](#), [336](#)
 Thompson, *Re* [1934] Ch 342 [250–251](#)
 Thompson's Estate, *Re* (1879) 13 Ch D 144 [115](#)
 Thompson's Settlement, *Re* [1986] Ch 99 [614](#)
 Thompson's Trustee v Heaton [1974] 1 WLR 605 [412](#), [620](#)
 Thomson, *Re* [1930] 1 Ch 203 [621](#)
 Thomson v Eastwood (1877) 2 App. Cas. 215 [615](#)
 Thorner v Major & Others [2009] 1 WLR 776 [15](#), [17–20](#), [465](#)
 Thorne v Heard [1894] 1 Ch 599 [728](#)
 Thornton v Howe (1862) 31 Beav. 14 [793](#), [794](#)
 Thrupp v Collett (1858) 26 Beav. 125 [263](#)
 Tilley's Will Trusts, *Re* [1967] 1 Ch 1179 [745](#)
 Tinker's Settlement, *Re* [1960] 1 WLR 1011 [683](#)
 Tinker v Tinker [1970] P 136 [344](#)
 Tinsley v Milligan [1994] 1 AC 340, [1992] Ch 310 [27](#), [344–348](#), [351](#), [353](#), [355–356](#), [453](#), [455](#)
 Tito v Waddell (No. 2) [1977] Ch 106 [612–613](#), [728](#)
 Townley v Sherborne (1643) J Bridg. 35 [705–706](#)
 Trenchard, *Re* [1902] 1 Ch 378 [667](#)
 Tribe v Tribe [1996] Ch 107 [27](#), [348–351](#), [455–456](#)
 Trimmer v Danby (1856) 25 LJ Ch 424 [248](#)
 Trustees of the British Museum v Attorney-General [1984] 1 All ER 337; [1984] 1 WLR 418 [579](#), [590](#)
 T's Settlement Trusts, *Re* [1964] Ch 158 [686](#)
 Tulk v Moxhay (1884) 2 Ph. 774; 41 ER 1143 [35](#)
 Turner, *Re* [1897] 1 Ch 536 [720](#)
 Turner's Will Trusts, *Re* [1937] Ch 15 [643](#), [645](#)
 Turner v Corney (1841) 5 Beav. 515 [634](#)
 Twinsectra Limited v Yardley [2002] UKHL 12, [2002] 2 AC 164, [2002] 2 All ER 377 [78–83](#), [299](#), [313–316](#), [484–486](#), [491](#), [492](#), [494–495](#), [498](#), [505](#)
 Tyler, *Re* [1891] 3 Ch 252 [766](#)

- Ullah v Ullah [2013] EWHC 2296 [424](#)
 United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council [1957] 1 WLR 1080 [790](#), [792–793](#)
 United Scientific Holdings Ltd v Burnley Borough Council [1978] AC 904 [24](#)
 Uzinterimpex JSC v Standard Bank plc [2008] 2 Lloyd's Rep. 456 [517](#)
- Vajpeyi v Yijaf [2003] EWHC 2339 Ch [338](#)
 Vallee v Birchwood [2013] EWHC 1449 (Ch). [191–194](#)
 Vanasse v Seguin [2011] SCC 10 [372–373](#)
 Vandepitte v Preferred Accident Insurance Corp'n of New York [1933] AC 70 [185](#)
 Vandervell v IRC [1967] 2 AC 291 [144](#), [292](#), [296](#), [299](#), [300](#), [310](#), [311](#)
 Vandervell v IRC (No. 2), *Re* [1974] Ch 269 [58](#), [59](#), [148–153](#), [156](#), [300](#), [303](#)
 Van Gruisen's Will Trust, *Re* [1964] 1 WLR 449 [681](#)
 Varsani v Jesani [1999] Ch 219 [862](#)
 Vasdev v Bellinorth Ltd (In Liquidation) [2017] EWHC 1395 [275](#)
 Vatcher v Paull [1915] AC 372 [87](#), [91](#)
 Vaughan, *Re* (1886) 33 Ch D 187 [248](#), [773](#)
 Verge v Sommerville [1924] AC 496 [819–820](#)
 Vernon's Will Trust, *Re* [1972] Ch 300 [855–856](#)
 Vickery, *Re* [1931] 1 Ch 572 [636](#), [637](#)
 Vinogradoff, *Re* [1935] WN 68 [297](#), [336](#), [530](#)
- Walker, *Re* [1901] 1 Ch 879 [664](#)
 Walker v Stones [2001] QB 902 [92](#), [717](#)
 Walker v Symonds (1818) 3 Swans. 1 [719](#)
 Wallbank v Price [2007] EWHC 3001 (Ch) [168](#)
 Wallersteiner v Moir (No. 2) [1975] QB 373 [713](#)
 Wallgrave v Tebbbs (1855) 25 LJ Ch 241 [213](#)
 Wall v Bright (1820) 1 Jac. & W 494 [461](#)
 Walsh v Lonsdale (1882) 21 Ch D 9 [23](#), [28](#)
 Walter J Schmidt & Co ex p. Feuerbach, *Re* (1923) 298 F 314 [748](#)
 Ward-Smith v Jebb [1964] 108 Sol. Jo. 919 [722](#)
 Ward v Turner (1752) 2 Ves. Sen. 431; 28 ER 275 [191](#)
 Wasserberg, *Re* [1915] 1 Ch 19 [191](#), [195](#)
 Waterman's Will Trust, *Re* [1952] 2 All ER 1054 [543](#), [572](#)
 Watson, *Re* [1973] 1 WLR 1472 [794](#)
 Webb v Webb [1994] QB 696 [26](#)
 Wedgwood, *Re* [1915] 1 Ch 113 [807](#)
 Weekes' Settlement, *Re* [1897] 1 Ch 289 [89](#), [95](#)
 Welsh Hospital (Netley) Fund, *Re* [1921] 1 Ch 655 [322](#), [860](#)
 Westdeutsche Landesbank Girozentrale v Islington LBC [1996] AC 669 (HL) [4](#), [13](#), [14](#), [49](#), [58–60](#), [63](#), [290](#), [291](#), [295–305](#), [309](#), [333](#), [336](#), [360](#), [366–367](#), [369](#), [376–377](#), [381](#), [397](#), [406](#), [483](#), [541](#), [743](#)
- Western Fish Products Ltd v Penwith District Council [1981] 2 All ER 204 [12](#)
 Weston, *Re* [1902] 1 Ch 680 [191](#)
 Weston's Settlements, *Re* [1969] 1 Ch 223 [535](#), [682–683](#)
 West Sussex Constabulary Benevolent, *Re* (1930) Fund Trust [1971] Ch 1 [321–324](#)
 Wheeler and De Rochow, *Re* [1896] 1 Ch 315 [533](#)
 Whiteley, *Re* (1886) 33 Ch D 347 [542](#)
 White's Trusts, *Re* (1886) 33 Ch D 449 [779](#)
 White v Jones [1995] 2 AC 207 [601–602](#)
 White v Vandervell's Trustees Ltd (*Re* Vandervell's Trust No. 2) [1974] Ch 269 *see* *Vandervell's Trusts* (No. 2)
 White v Williams [2010] EWHC 940 [863](#)
 Whiting's Settlement 30, *Re* [1905] 1 Ch 96 [268](#)
 Whittaker v Kinnear [2011] EWHC 1479 [466](#)
 Wiles v Gresham (1854) 2 Drew. 258; 24 LJ Ch 264 [714](#)
 Wilkes v Allington [1931] 2 Ch 104 [190](#)
 Wilkes v Spooner [1911] 2 KB 473 [33](#), [48](#)
 Wilkins v Hogg (1861) LJ Ch 41 [716](#)
 Williamson v Codrington (1750) 1 Ves. Sen. 511 [185](#)
 William's Trustees v IRC [1947] AC 447 [773](#), [814](#), [815](#), [821](#)
 Williams v Byron (1901) 18 TLR 172 [721](#)
 Williams v Central Bank of Nigeria [2014] UKSC 10 [729](#)
 Williams' Will Trust, *Re* [1953] Ch 138 [647](#)
 Willis, *Re* [1921] 1 Ch 44 [531](#)
 Wills' Trust Deeds, *Re* [1964] Ch 219 [91](#)
 Wills' Will Trust, *Re* [1959] Ch 1 [648](#)
 Wilson, *Re* [1913] 1 Ch 314 [850](#)
 Wilson v Law Debenture Trust Corp [1995] 2 All ER 337 [558](#)
 Wilson v Turner (1883) 22 Ch D 521 [642](#), [644](#)
 Wodzicki v Wodzicki [2017] EWCA Civ 95 [449](#)
 Wokingham Fire Brigade Trusts, *Re* [1951] Ch 373 [860](#)
 Woodard v Woodard [1995] 3 All ER 980 [191](#)
 Woodhams, *Re* [1981] 1 WLR 493 [851](#), [858](#)
 Worthington, *Re* [1954] 1 All ER 677 [619](#)
 Wragg, *Re* [1919] 2 Ch 58 [580](#), [585–586](#)
 Wright, *Re* [1954] Ch 347 [859](#)
 Wrightson, *Re* [1908] 1 Ch 789 [539](#)
 Wykes' Will Trusts, *Re* [1961] 1 Ch 229 [835](#)
 Wyndham v Egremont [2009] EWHC 2076 (Ch) [676](#)
- Yaxley v Gotts [2000] Ch 162 [433](#), [465](#), [467](#)
 Yeoman's Row Management Ltd v Cobbe [2008] *see* *Cobbe v Yeoman's Row Management Ltd*
 Young, *Re* (1885) 28 Ch D 705 335 [339](#)
 Young, *Re* [1951] Ch 344 [209](#)
- Zeital v Kaye [2010] EWCA Civ 159 [175](#), [176](#), [196](#)

Table of statutes

- Act of Parliament 1705 [39](#)
- Administration of Estates Act 1925 [104](#)
 - Part 4 [396](#)
 - s. 1(1) [76, 204](#)
 - s. 3(1) [76, 204](#)
 - s. 33(1) [76, 204](#)
 - s. 36(1) [76, 204](#)
 - s. 46 [201, 395, 396](#)
 - s. 46A [396](#)
- Administration of Justice Act 1965
 - s. 6(1) [713](#)
- Administration of Justice Act 1982
 - s. 17 [202](#)
 - s. 21 [111](#)
- Adoption of Children Act 1949 [722](#)
- Apportionment Act 1870
 - s. 2 [594](#)
- Bankruptcy Act 1924
 - s. 42 [276](#)
- Bermuda Trusts (Special Provisions) Amendment Act 1998 [259](#)
- Chancery Amendment Act 1858 [21](#)
- Charitable Trusts Act 1853 [761, 768](#)
- Charitable Trusts (Validation) Act 1954 [834–835](#)
- Charitable Uses Act 1601 [760, 768, 772–773, 776, 779, 783, 796, 801, 805](#)
- Charities (Protection and Social Investment) Act 2016 [588–589, 761](#)
 - s. 292B [588](#)
- Charities Act
 - s. 36 [770](#)
- Charities Act 1960 [761, 768, 847, 849, 861](#)
 - s. 13 [848, 861, 862](#)
 - s. 14 [867](#)
- Charities Act 1993 [761, 768, 771, 847–849, 852, 860–864](#)
 - s. 3A [769](#)
 - s. 13 [864](#)
 - s. 13(1) [866](#)
 - s. 13(1A) [863](#)
 - s. 13(1)(a)(i) [862](#)
 - s. 13(1)(c) [864](#)
 - s. 13(1)(d) [864](#)
 - s. 13(1)(e) [864](#)
 - s. 13(1)(e)(ii) [830](#)
 - s. 13(1)(e)(iii) [862, 863](#)
 - s. 13(5) [830](#)
 - s. 14 [860](#)
 - s. 14B [863, 869](#)
 - s. 32 [237](#)
 - s. 33 [765](#)
 - s. 43 [770](#)
 - s. 43(1) [770](#)
 - s. 73 [770](#)
- Charities Act 2006 [237, 249, 758–761, 764, 768, 771–773, 800, 806, 820, 822, 827, 847, 849](#)
 - s. 2(2)(i) [807](#)
 - s. 3(3) [829](#)
 - s. 6 [768](#)
 - s. 28 [770](#)
- Charities Act 2011 [46, 237, 759–762, 764, 768, 773, 775, 800, 806, 815, 822, 827, 847, 849, 852](#)
 - Part 8 [453–454, 770](#)
 - Part 14A [589](#)
 - Part 16 [854](#)
 - Part 17 [771](#)
 - s. 2(1)(b) [811](#)
 - s. 3 [771–772, 774, 776–778, 796, 811–812, 816](#)
 - s. 3(1) [776, 777, 811, 817–818, 830](#)
 - s. 3(1)(a) [778, 779, 782–783](#)
 - s. 3(1)(c) [789](#)
 - s. 3(1)(d) [796](#)
 - s. 3(1)(e) [796](#)
 - s. 3(1)(f) [786](#)
 - s. 3(1)(g) [785, 802, 810, 811](#)
 - s. 3(1)(h) [797, 802–804, 838](#)
 - s. 3(1)(j) [779, 805, 807](#)
 - s. 3(1)(k) [807](#)
 - s. 3(1)(l) [810](#)
 - s. 3(1)(m) [774, 776–777, 811, 812](#)
 - s. 3(2) [789, 790, 791, 802](#)
 - s. 3(2)(d) [802](#)
 - s. 4 [771, 811, 816–817](#)
 - s. 4(3) [829](#)
 - s. 5 [811, 816](#)
 - s. 5(1) [816](#)
 - s. 14 [768, 769](#)

- s. 15 769
- s. 30 769
- s. 62 850, 861, 862, 864, 867
- s. 62(1) 861
- s. 62(2) 862
- s. 63 867
- s. 63(1) 868, 869
- s. 63(1)(a)(ii) 868
- s. 64 867
- s. 65 868
- s. 65(1) 868
- s. 65(2) 868
- s. 65(3) 869
- s. 65(5) 869
- s. 65(6) 869
- s. 67 869
- s. 185 770
- s. 292C(6) 589
- s. 315 771
- s. 324 771
- Civil Liability (Contribution) Act 1978
 - s. 1 707
 - s. 2(1) 707
 - s. 2(3) 707
- Civil Partnership Act 2004 62, 355, 359, 417
- Common Law Procedure Act 1854 21
- Companies Act 1919 855
- Companies Act 1985
 - Pt VII 763
 - Pt XI 763
 - s. 459 413
- Companies Act 2006 770
 - s. 994 413
- Contract (Rights of Third Parties) Act 1999 73, 179–180
 - s. 1 180, 181
 - s. 1(1)–(5) 179
 - s. 1(1)–(7) 72
 - s. 1(1)(b) 180
 - s. 1(5) 180
- Criminal Justice Act 1988
 - Part VI 408
- Criminal Justice Act 1993
 - s. 52 351
- Criminal Justice Act 1998
 - Part IV 377
- Equality Act 2010 361
 - s. 199 333, 339, 341
 - s. 199(1)–(2) 342
- Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 395
 - s. 1 396
 - s. 2 396
- Executors Act 1830
 - s. 30 109
- Family Law Act 1996 12
- Family Law Reform Act 1969
 - s. 15(7) 264
- Finance Act 1958 678
- Finance Act 1965 658, 682
- Finance Act 1985 144
- Finance Act 2003 144
- Forfeiture Act 1982 388, 391–395
 - s. 1(1)–(2) 391
 - s. 2 395, 396
 - s. 2(1) 392
 - s. 2(2) 392
 - s. 2(3) 392
- Friendly Societies Act 1974
 - s. 49(1) 325
- Health Service Act 1946 855
- Housing Act 1985
 - Part V 356–357, 431
- Human Rights Act 1998 341
 - s. 6 269
- Income and Corporation Taxes Act 1988
 - s. 684 148, 310
 - s. 685 148, 310
- Income Taxes Act 1952
 - s. 415 148, 310
- Inheritance (Provision for Family and Dependents) Act 1975 201–202, 280, 281, 646
 - s. 1(1) 279
 - s. 2 279
 - s. 2(1) 279
 - s. 25(1) 279
 - s. 25(4) 279
- Inheritance and Trustees' Powers Act 2014 47, 76, 104, 201, 651
 - s. 8 645
 - s. 9 648
 - s. 339(1)–(3) 276
- Insolvency Act 1986
 - s. 127 48–49
 - s. 339 276–278
 - s. 341 276, 277
 - s. 342 276
 - s. 399 277
 - s. 423 140, 273, 275–278
 - s. 423(1) 274–275
 - s. 423(1)–(5) 274
 - s. 424 275
 - s. 425 275, 276
 - s. 435 277
- Judicature Acts of 1873 and 1875 21–24
- Judicial Trustee Act 1896 529, 618
- Judicial Trustee Rules 1983 540

- Land Charges Act 1925 48
- Land Charges Act 1972 48, 587
- Land Registration Act 1925 48
 - s. 70(1)(g) 420
- Land Registration Act 2002 48, 193
 - s. 29 168, 335
 - s. 30 168
 - Sched. 3
 - para 2 420
- Law of Property Act 1922 146
- Law of Property Act 1925 48, 138–139, 242, 463, 767
 - s. 1(6) 530
 - s. 2 530
 - s. 20 44, 530
 - s. 27 530
 - s. 27(2) 540, 653
 - s. 52 22
 - s. 53 137, 141–143
 - s. 53(1) 138, 151–152, 200
 - s. 53(1)(b) 138, 139–140, 143, 144, 152, 221, 335, 465
 - s. 53(1)(c) 138, 139, 142–157, 163, 175, 221, 253, 615, 686, 687
 - s. 53(2) 138, 151–153, 156
 - s. 60(3) 334–336
 - s. 87(1) 32
 - s. 101 84
 - s. 164 242
 - ss. 164–166 242, 767
 - s. 172 273
- Law of Property (Amendment) Act 1924 146
- Law of Property (Miscellaneous Provisions) Act 1989
 - s. 1 71, 180
 - s. 2 466
 - s. 2(1) 5, 6, 22, 138, 461, 465, 467
 - s. 2(5) 466, 467
 - s. 2(5)(c) 465
- Limitation Act 1925
 - s. 21(1)(a)–(b) 728
- Limitation Act 1980 29
 - s. 21(1) 728–730
 - s. 21(1)(a) 728, 729
 - s. 21(1)(b) 728
 - s. 21(3) 727, 728
 - s. 38(1) 728
- Lord St. Leonard's Act 1859 568
- Married Women's Property Act 1882 34, 52–53, 177
 - s. 17 358–359, 419
- Matrimonial Causes Act 1973 62, 354, 355, 359, 417–418, 458
 - s. 24 277, 278, 673–674
 - s. 24 (1)(a)–(d) 673
 - s. 24(1) 674
 - s. 24(1)(b) 674
 - s. 24(1)(c) 674
 - s. 37 281, 282
 - s. 37(2) 282
 - s. 37(4) 282
 - s. 37(5) 281
- Mental Health Act 1983 549
- Mental Health Act 1984 549
- Mortmain and Charitable Uses Act 1888 772
- Municipal Corporations Act 1835 864
- Official Secrets Act 1911 607
- Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970
 - s. 1 248
- Pensions Act 1995 64, 328
 - s. 34 584
- Pensions Act 2004 328
- Perpetuities and Accumulations Act 1964 272, 767
 - s. 1 241
 - s. 13 242
- Perpetuities and Accumulations Act 2009 240–243, 272, 686, 767
 - s. 5 241
 - s. 13 242, 767
 - s. 13(a)–(b) 242, 767
 - s. 14 242, 767
 - s. 14(1)–(7) 242–243
- Prevention of Cruelty to Animals Act 1911 810
- Public Trustee Act 1906 529, 618
 - s. 7 539
- Public Trustee and Administration of Funds Act 1986 529
- Race Relations Act 1976
 - s. 34 848, 861
 - s. 34(1) 781
- Recreational Charities Act 1958 801, 805, 813, 814, 815
 - s. 1 814, 815
 - s. 1(1) 814
 - s. 1(2) 814
 - s. 1(2A) 814
 - s. 1(3) 814
 - s. 2(a) 815
- Sale of Goods (Amendment) Act 1995 116
- Senior Courts Act 1981
 - s. 49(1) 22
- Settled Land Act 1925
 - s. 64 672–673
 - s. 68 613
- Stamp Act 1891 155
- Statute of Charitable Uses 1601 *see* Charitable Uses Act 1601
- Statute of Elizabeth *see* Charitable Uses Act 1601
- Statute of Frauds 1677 463
 - s. 7 139, 140, 221
 - s. 9 143, 146

Statute of Uses 1535 35, 52

Statute of Uses 1536 334

Statute of Wills 1540 35, 52

Stock Transfer Act 1963

s. 1 168

Suicide Act 1961

s. 2 395

s. 2(1) 390

Supreme Court of Judicature Act 1873

s. 25(11) 22

Taxation of Chargeable Gains Act 1992

s. 2(4) 550

Theft Act 1968

s. 28 397

Torts (Interference with Goods) Act 1977

s. 3 738

Trustee Act 1893 568

s. 8(1) 588

Trustee Act 1925 568, 584, 586–587, 635, 636–637

Part 1 650

Part 3 650

s. 1 579

s. 1(1)(a) 586

s. 8 587, 588, 722

s. 9 588

s. 12 651

s. 14 653

s. 14(1) 653

s. 14(2) 540, 653

s. 15 653–654

s. 15(1) 653–654

s. 16 651–652

s. 19 652, 653

s. 23 584, 636, 637, 640

s. 25 640–641

s. 25(1) 641

s. 25(1)–(3) 641

s. 25(4) 641

s. 30 584, 636–637, 640

s. 31 643–645, 649–651, 668

s. 31(1) 643, 644

s. 31(2) 643, 644

s. 32 646–651

s. 33 55

s. 33(1) 56–63

s. 33(1)(i) 56

s. 33(1)(ii) 56

s. 34 530

s. 36 532–534, 538

s. 36(1) 530, 533, 534

s. 36(1)–(2) 532

s. 36(1)(a) 532, 533

s. 36(1)(b) 532, 533

s. 36(6) 533–534

s. 36(8) 533

s. 39 538

s. 40(1) 541

s. 41 534–539

s. 41(1) 534, 535

s. 53 668–669

s. 57 589–591, 665, 669–671, 677

s. 57(1) 591, 671

s. 57(1)–(4) 669

s. 61 710, 715, 719–727

s. 62 708–709

s. 62(1) 708, 861

s. 68(7) 587

s. 68(17) 728

Trustee Act 2000 543, 565, 568, 570–572, 580–581, 590, 593, 594, 619, 635, 637–640, 695

Part I 542, 570

Part II 578, 580, 581, 583, 586, 589

Part III 586

Part IV 635, 637

s. 1 542–543, 555, 560, 570, 572, 583, 640, 654, 721

s. 1(1) 654

s. 3 555, 580, 586

s. 3(1) 581

s. 4 582, 589, 639

s. 4(1) 582

s. 4(2) 577, 582

s. 4(3) 582, 583, 589

s. 5 582–583, 589

s. 5(1) 582, 583

s. 5(2) 583

s. 5(3) 583

s. 5(4) 583

s. 6(1) 581

s. 7(1) 581

s. 8 581, 586, 590, 671

s. 8(1) 586

s. 9(1) 586

s. 10 586

s. 11 637, 638, 639

s. 11(1)–(2) 637

s. 12 639

s. 15 584–585, 639

s. 15(1) 639

s. 15(1)–(5) 584–585

s. 15(2)(a) 584, 585

s. 15(2)(b) 585

ss. 16–24 711

s. 21 640

s. 22 585, 637, 638, 640

s. 22(1) 638

s. 22(2) 640

s. 23 637, 640

- s. 23(1) 638
- s. 28 617, 618, 619
- s. 28(1) 617
- s. 29 618, 619
- s. 29(3) 618
- s. 31(1)(a) 615
- s. 34 652–653

Sched. 1 542, 570

Trustee Delegation Act 1999 641

Trustee Investment Act 1889 568

Trustee Investment Act 1961 565, 569, 578, 580, 581, 583,
586–587, 590

s. 6 583

s. 6(1) 582

Trusts (Capital and Income) Act 2013 593–594

Trusts of Land and Appointment of Trustees Act (TLATA)
1996 64–65

s. 1 57

s. 2(1) 672

s. 2(6) 64

s. 6 245, 586, 590, 671

s. 6(1) 651

s. 9 639

s. 14 431

s. 19 537, 538

s. 19(1) 537

s. 19(2) 537

Variation of Trusts Act 1958 589, 658, 659, 664, 667,
674–687, 716

s. 1 668, 675–677, 678, 680, 684, 685

s. 1(1) 677

s. 1(1)(a)–(d) 675–676

s. 1(1)(b) 678, 679

s. 1(1)(d) 680

Welfare Reform and Pensions Act 1999 674

Wills Act 1837 206–208, 218, 222, 336

s. 9 57, 137, 200–202, 205, 474

s. 15 203, 209

s. 25 203, 219

s. 33 396

s. 33A 396

Statutory Instruments

Judicial Trustee Rules 1983 540

European legislation

EC Treaty

Art. 58 763

European Convention for the Protection of Human Rights
and Fundamental Freedoms 1953

Art. 8 269

Art. 9 269, 270

First Protocol, Article 1 327

Seventh Protocol, Art. 5 342

International Legislation

Cayman Islands Special Trusts (Alternative Regime) Law
1997 259

Part I

Introduction to equity and trusts

Part I of this book explores the nature of equity and the trust concept. It is important to have a sound understanding of the nature of equity and the trust concept before moving on to a more detailed study of the law relating to trusts. Chapter 1 explores the nature of equity and its relationship with the common law. The chapter explores the historical development of equitable jurisdiction and explains the modern grounds for the application of equitable relief. The reader is encouraged to appreciate the role of unconscionability as the fundamental ground for invoking equitable relief. Chapter 2 moves on to explore the nature of the trust concept. The chapter explores the nature of the trust, the reasons why people create trusts and the key players in the trust relationship. The purpose of this chapter is to put into context the modern social and economic significance of the trust to allow the reader to appreciate the concerns which form the subject matter of the remaining parts of the book. Chapter 3 looks at how the trust concept differs from other legal concepts, including powers of appointment, contracts and the rights of individuals receiving under a will or on intestacy.

1

Introduction to equity

Learning objectives

After completing this chapter, you should be able to:

- understand the origins of equity
- understand the idea and nature of equity
- understand the relationship between law and equity
- understand the nature of rights in law and rights in equity
- understand the maxims of equity
- understand the nature of equitable relief
- understand the contemporary role of equity.

SETTING THE SCENE

Equity and role of unconscionability

What is equity and why does the English legal system recognise a body of rules known as equity are two frequently asked questions in an undergraduate study in law. In attempting to answer these questions it is, perhaps, apt to begin with a look at two statements made some 400 years apart which provide explanation of the touchstone for the application of equity and equitable doctrines to given factual situations.

The first statement is that of Lord Ellesmere who commented in the famous *Earl of Oxford's Case* (1615) 1 Rep Ch 1 at page 6 that 'men's actions are so diverse and infinite that it is impossible to make any general law which will aptly meet with every particular and not fail in some circumstances. The office of the Chancellor is to correct men's consciences for fraud, breaches of trust, wrongs and oppressions of what nature so ever they be, and so soften and mollify the extremity of the law.'

The idea that equity is essentially conscience driven was reaffirmed by the House of Lords in *Westdeutsche v Islington London Borough Council* [1996] AC 699 (HL) (at p. 705) where Lord Browne-Wilkinson commented in the context of trusts that 'equity operates on the conscience of the owner of the legal interest. In the case of a trust, the conscience of the legal owner requires him to carry out the purposes for which the property was vested in him (express or implied) or which the law imposes on him by reason of his unconscionable conduct.'

The word 'equity' is susceptible to a number of different meanings. In one sense the word means what is 'fair and just' and is, therefore, undistinguishable from the general concern of any system of laws, which is that all laws should be fair and just. However, another somewhat narrower sense of the word is that equity is that specific body of law which supplements the common law and is invoked in circumstances where the conduct of a defendant is deemed unconscionable. The 'unconscionable behaviour' of the defendant may arise in a number of different contexts and for a number of different reasons. Additionally, the defendant's unconscionable conduct will have resulted in the defendant acquiring some advantage, whether personal or proprietary, which cannot be rightfully retained by the defendant. In most cases the defendant's unconscionability will have arisen from the strict and rigid application of a rule of the common law. Where such unconscionable conduct has arisen, the role of equity is to temper the rigour of the common law by the award of an appropriate equitable remedy. Throughout this book there will be many examples where equity has intervened to prevent unconscionable conduct on the part of a defendant.

This chapter explores the nature and function of equity in the English legal system. In particular, the chapter explores the grounds for the intervention of equitable relief and the relationship between equity and the common law. It examines the role of unconscionability in equity and examines some of the important maxims of equity.

Introduction



One of the unique features of the English legal system is the duality of rights that can exist at common law and in equity. English law, like many other systems of law, allows the courts to administer two separate principles of law, which are not necessarily in conflict with each other, but which seek to achieve justice on any given set of facts. The central feature of the common law is that it is based on the principle of precedent and looks to matters of form rather than substance. For example, any potential claimant wishing to pursue a remedy in the common law courts must satisfy that his complaint is a complaint that is recognised as being capable of being remedied in the common law courts, in most cases through the award of damages for loss caused to the claimant. Additionally, the common law requires that the claimant comply with all the necessary formal requirements that apply to the facts which give rise to his cause of action. This is better explained with reference to the following question.

APPLYING THE LAW

Thomas orally agreed with Victor that he would sell his house to Victor for a sum of £400,000. Victor was very pleased with the selling price and told Thomas that he would need a few months to raise the purchase price. Thomas did not hear from Victor for several months and Thomas sold his house to Betty for £500,000. Victor is not happy with the sale to Betty and wants to bring an action against Thomas for going back on his word.

Can he do this?

This admittedly rather simplistic set of facts is a good starting point to illustrate whether a claimant can pursue a remedy in the common law courts. While the reader may or may not be exposed to the common law rules governing contracts for the sale of land, it is a basic principle of modern land law that a contract for the sale of land is put in writing and that the written contract incorporates all the terms agreed between the parties.¹ This formal requirement is found in s. 2(1) of the Law of Property (Miscellaneous) Provisions Act 1989. While it is true that Victor may feel aggrieved by the fact that Thomas did not sell his house to him, Victor would have no remedy at common law on the grounds that a contract for the sale of an interest in land is ineffective at common law if it is not in writing and incorporating all the terms and conditions of the sale.

Equity, on the other hand, is a system of law historically developed in the Court of Chancery correcting unconscionable conduct on the part of a defendant. Unlike the common law, equity is not defeated by failure to comply with form. It is often said that equity looks to matters of substance rather than form. So, where there has been a failure to comply with form, equitable relief is not necessarily prevented from being given if, as a matter of substance, the court decides that equitable relief should be given. As to what matters of substance will persuade a court to grant equitable relief, the court will look to the underlying question of conscience. In particular, equity's concern is over the unconscionable conduct of a defendant. If the defendant, despite an absence of formality, has

¹ For more detail, M. Dixon, *Modern Land Law* (9th edn., 2014) Chapter 1.

conducted himself in a manner in which he has acted unconscionably, the court will grant equitable relief even where to do so would be in the face of an absence of legal formality. It will be observed in this chapter that in the early days of the administration of equitable relief, the Court of Chancery was not necessarily restricted by precedent. The Lord Chancellors of the early Court of Chancery exercised equitable principles on a case-by-case analysis, the only common thread being the proof of unconscionable conduct on the part of the defendant.

A proper understanding of modern equity requires an appreciation of the common law and its shortcomings, particularly in the twelfth and thirteenth centuries. Before that, however, it is worth revisiting the question posed previously regarding the sale of Thomas's house to Victor. While it is established that the contract would be void at common law for failure to comply with the formal requirements of s. 2(1) of the Law of Property (Miscellaneous) Provisions Act 1989, would Victor have any relief in equity, based on what has been said so far about equity and the role of unconscionability? At this stage of the book the reader will not have been exposed to the very specific rules of equity governing oral contracts for the sale of land, but it is nevertheless useful to think whether the Thomas and Victor-type of scenario is one which is within equity's jurisdiction to give some remedy.²



The common law

The origins of the common law go as far back as 1066 when the Norman Conquest introduced a new system of law for England. Towards the end of the thirteenth century two main types of courts were responsible for administering law in the country. First, there were the local courts, which were courts set up within the feudal structure and administered by the feudal lords.³ Secondly, there were the royal courts, also known as the Courts of Common Pleas consisting of the King's Bench, Court of Common Pleas and the Exchequer. A potential litigant who felt that he had not received justice in the local courts had a right to petition the King and ask for his case to be heard in one of the royal courts. The right of an individual to petition the King arose out of the fact that the right to justice was a royal prerogative. Maitland once explained that each of the royal courts at one time had separate spheres of interest, but soon the claimant had a choice as to which court heard his case simply because each court began to administer the same law and in the same manner.⁴ The Exchequer, however, was more than just a court of law; it had

² The detailed equitable rules relating to the enforcement of oral contracts for the sale of land are considered in Chapter 13.

³ The feudal structure of England involved a system where the Crown acquired ownership of all land in the country, sometimes also referred to as the radical title of the Crown. Under this feudal structure, the Crown's radical title served as a means by which smaller rights or ownership could vest in other persons; notably, the most powerful Lords and Knights at the top of the feudal ladder and less powerful individuals at the bottom. These smaller rights did not grant absolute ownership but limited forms of ownership. The limitation of ownership was defined by time; that is, ownership of land for defined periods of time, otherwise known as the concept of estates and tenures in land. For a detailed examination of feudal tenure see F. Barlow, *The Feudal Kingdom of England 1042–1216* (4th edn., 1988) and A.W.B. Simpson, *A History of the Land Law* (2nd edn., 1986).

⁴ F.W. Maitland, *Equity: A Course of Lectures* (J. Brunyate (ed.), 1936), p. 2.

responsibility for fiscal matters as well as legal. Alongside the Exchequer was the Chancery Department, headed by the Chancellor (who was normally a bishop). The Chancery Department at this stage was not a court of equity; that developed much later in the sixteenth and seventeenth centuries, administering equitable principles and doctrines on the basis of unconscionable conduct. Rather, it was a secretarial office answerable to the King's Permanent Council. The Chancellor, by way of delegation from the King, dealt with many of the petitions made to the King for justice to be given in individual cases.

● The inadequacy of the writ system

The law administered by the medieval courts was partly traditional and partly statute. Traditional law was based on precedent and was termed the common law in that it was common to all areas of England and all its subjects.⁵ A claimant wishing to commence an action in the Court of Common Pleas or the Kings Bench required a royal writ. A royal writ consisted of a sealed authorisation to commence proceedings in the royal courts. The office of issuing writs was given to the Chancellor who had at his disposal a number of established writs, but also had a limited power to issue new ones. It is important to note that at this point in history the Chancellor did not act in a judicial manner; his role was simply to hear the claimant's application and issue the appropriate writ. The grant of a writ did not mean that the claimant was successful, since the courts could quash the writ as being contrary to the law of the land. The power to invent new writs presented a real threat to the feudal lords and barons since new writs meant new remedies, which in turn created new rights and duties. In recognition of this problem faced by the feudal lords and barons, the Provisions of Oxford 1258 disallowed the issuing of new writs without the permission of the King's Council. In one sense, this was the power of the feudal lords and barons sitting in the King's Council preventing new law, which was primarily directed at them. The net effect of the Provisions of Oxford was that a number of new cases requiring new remedies remained unresolved in the common law. The common law became rigid and incapable of dealing with the changes taking place in society requiring the recognition of new rights and remedies.

● The inadequacy of an appropriate remedy

Apart from the fact that the common law was not able to redress new legal problems, there was also the fact that the common law lacked an appropriate remedy in many cases. The predominant remedy at common law was, and still is today, the award of monetary damages. Thus, in the case of typical civil wrongs – for example, a breach of contract or the commission of tort such as negligence – the injured party was and still is entitled to compensation in the form of monetary damages reflecting the loss suffered by that injured party. While the award of damages is appropriate in some cases it is not appropriate in all, particularly where the subject matter of the dispute involves some property: for example, land. A good example of the inappropriateness of damages is illustrated by the example of a persistent trespasser of land. In the case of a persistent trespasser a landowner can sue for damages: however, a more appropriate remedy would be an injunction preventing the commission of the trespass. The problem with the common law is that it does not recognise a remedy in the form of an injunction. It will be seen later that one of the reasons

⁵ See, generally, S.F.C. Milsom, *A Historical Foundation of the Common Law* (2nd edn.); Holdsworth, *A History of English law* (7th edn., 1956) Vol I and also J. Baker, *An Introduction to English Legal History* (2nd edn., 1979).

for the development of equity was primarily in response to the inadequacy of the common law remedy. Another good example is the sale of a valuable painting to a purchaser. It is trite law that in the event of a breach of such a contract, the purchaser has a right to sue for damages for failure to deliver the painting. However, given the fact that special significance is attached to the painting in that it is something that is not readily available on the open market, a more appropriate remedy would be a decree of specific performance compelling the seller to perform the contract. Again, a primary shortcoming of the common law is that it does not recognise the remedy of specific performance. Seen in this way, one of the fundamental contributions of equity to the English legal system was the diverse range of remedies available to a claimant to enforce his rights.



The origins and development of equity

Most legal systems, whether based on common law or civil law, have had to entertain the notion of equity.⁶ The term equity is susceptible to a number of different meanings. In one sense the word equity means what is fair and just and, in this sense, equity is a theme that runs through most legal systems in that all laws should strive for fairness and justice. Another sense of the word is that equity consists of a distinct body of rules that seeks to introduce ethical values into the legal norms. In this respect, one commentator once explained that equity consists of ‘a set of legal principles entitled by their extrinsic superiority to supersede the older law’.⁷ It is this latter definition which properly explains the idea of equity in the English legal system. It will be observed in this chapter that equity in the English legal system is not a system of law based on what is necessarily fair on any given set of facts. As one judge once commented, English law does not possess a jurisdiction to administer ‘palm tree justice’.⁸ Modern equitable jurisdiction is exercised in well-defined circumstances which involve unconscionable conduct on the part of a defendant.

The nature of equity in the early days

In its early development, equity was developed by the Court of Chancery in the medieval ages to iron out the deficiencies of the common law and correct unconscionable conduct. The need for a separate court to administer equitable relief arose from the deficiencies of the common law in the Middle Ages, which have already been outlined in this chapter. In particular, the common law failed to address new legal problems simply because of the rigidity of the writ system; that is, the unavailability of a writ to initiate proceedings because of the lack of a recognised cause of action. Even where a recognised action existed, there was the problem of an appropriate remedy to resolve the dispute between defendant and claimant. However, it was not simply the fact that a remedy was inappropriate; in many cases even though a remedy existed, it was simply not forthcoming for the claimant. The principal reason for this was that in many cases rich and powerful individuals could influence both the court and the jury, resulting in the situation that justice was simply not forthcoming for the very weak and vulnerable. Equity, as administered by

⁶ For an excellent discussion of equity in the context of different legal systems, see R.A. Newman, *Equity in the World's Legal Systems: A Comparative Study* (1973).

⁷ Sir Henry Sumner Maine, *Ancient Law* (1905) at p. 44.

⁸ *Springette v Defoe* [1992] 2 FLR 388 at 393 per Dillon LJ.

the early Lord Chancellors, was not defeated by these constraints. The Lord Chancellor attempted to correct abuses of fraud and unconscionable conduct by looking at each case on its merits, rather than at the question of whether an appropriate course of action existed in the first place.

The Lord Chancellor

In the early development of equity, the Lord Chancellor administered equitable relief. It will be recalled that when a potential litigant wished to commence proceedings against a defendant, he was required to obtain a royal writ from the Chancellor's office. Where the Lord Chancellor was unable to issue a writ because of the lack of a precedent, he could demand that the defendant appear before him and answer the charges made against him. The process by which this could happen required the complainant to issue the Lord Chancellor with a bill outlining the nature of his grievance. Having considered the bill, the Chancellor ordered the potential defendant to appear before him and answer the grievances raised by the complainant. In order to compel the defendant to appear before the Chancellor, the Chancellor issued a writ, called a *subpoena*, ordering the defendant to appear upon pain of forfeiting a sum of money, otherwise known as *subpoena centum librarum*.⁹ This writ was very different from the types of writs available to commence proceedings in the common law courts, since it simply required the person against whom the complaint was made to answer to the Lord Chancellor the complaints made against him.

What started out as a mere secretarial office of government answerable to the King's Council now took on the shape of a court administering law in its own right. What law did the Chancellor administer? The Chancellor did not introduce any novelty in the law-making process and neither did he introduce laws so different in their juridical nature to the ordinary laws of the land. However, what the Chancellor did recognise was the inability of the common law to deal with the social and economic changes taking place in society. Given the fact that the Chancellor was an ecclesiastic, a man of the Church and learned in civil and canon law, he was ideally placed to deal with the legal problems put to him. The basis upon which he exercised his power was on the simple premise of what was right in any given case. If there is one word that describes how the Chancellor exercised his power to relieve aggrieved parties, that word is conscience.

The early court of equity was essentially a court of conscience. Every case was decided on its merits rather than on the question of whether there existed a precedent to deal with the complaint brought by the claimant. Given the fact that the Lord Chancellor would change from time to time, each Chancellor would exercise greater or lesser power depending on his own notions of justice. In this respect most accounts of equity refer to the 'length of the Chancellor's foot', which was another way of saying that some Chancellors went further in the exercise of equitable relief than others. Later in the development of equity, lawyers rather than ecclesiastics were appointed to the office of Chancellor. Lord Nottingham (1673–82), Lord Hardwicke (1736–56) and Lord Eldon (1801–27) were pioneers of modern equity as we know it today. They developed a set of principles and doctrines which were to become as fixed and rigid as the common law. In more recent times, a question that has been frequently asked is whether equity has passed childbearing and is now as established and rigid as the common law. This is a question to which this chapter will return later.

⁹ See, F.W. Maitland, *Equity: A Course of Lectures* (J. Brunyate (ed.), 1936), p. 2.

Lord Eldon, described as one of the greatest equity lawyers,¹⁰ was primarily responsible for establishing equity as a defined body of rules and principles. He once remarked that ‘nothing would inflict on me greater pain in quitting this place than the recollection that I had done anything to justify the reproach that the equity of this court varies like the Chancellor’s foot’.¹¹ One of the many areas where Lord Eldon contributed to the development of equity was in the context of fiduciary relationships and the imposition of strict duties on persons standing in fiduciary relationships. These are analysed in more depth in Chapter 16.

Disputes in the early Court of Chancery

The types of complaints petitioned to the Chancellor at the initial stage of the development of equity were predominantly property based and centred on the most prized resource at the time, which was land. A number of examples can be given here: one of the most common complaints brought before the Lord Chancellor was the abuses of trusts. The predecessor of the modern trust, the use, was primarily employed in feudal England to overcome the taxation implications of feudal landholding.¹² Land would be put upon use by appointing trustees (called feoffees) for the benefit of beneficiaries (called *cestui que use*). Under feudal law, the heir of a deceased was required to pay feudal dues before taking possession of the land which once belonged to his father. Coupled with this problem was the fact that an individual had no freedom of testation, that is, the freedom to dispose of his land to his heirs by way of a will. These problems could, however, be avoided by the employment of a use. Typically, land would be conveyed to a number of feoffees who would be directed to hold the land for designated beneficiaries such as the oldest son of the person creating the use. The legal title would pass to the trustee; however, the Court of Chancery would recognise the rights of the beneficiary on the grounds that the conscience of the trustees would bind them to the trust. On the death of the landholder, that is the person who created the trust, the oldest son could compel the trustees to transfer the land to the oldest son on the grounds that he had equitable rights in the land. Equity would compel the trustees to transfer the land to the beneficiary. Seen in this way, a landholder could by the use of trustees convey land to his oldest son who would avoid paying feudal dues because all transfers of the land would be taking place during the lifetime of the person creating the trust and then during the lifetime of the trustees.¹³

Another notable example of the intervention of equity was in the context of a mortgage transaction. Historically, and particularly in the eighteenth and nineteenth centuries, the typical mortgage transaction was very different from the type of mortgage transaction which operates today. Today, a mortgage confers upon the mortgagee (the lender) a charge on the property of the mortgagor. The charge has the effect of conferring upon the mortgagee a number of rights, not least the right to take possession of the mortgagor’s land and sell it should the mortgagor default in paying the monies due under the mortgage. Historically, a typical mortgage took the form of an outright transfer of the mortgagor’s land to the mortgagee. The mortgagee became the absolute owner of the land in return for the mortgage money which had been duly paid over to the mortgagor. The problem with this type of arrangement was that the common law regarded the agreement

¹⁰ J.E. Martin, *Hanbury and Martin: Modern Equity* (19th edn., 2012) at p. 14.

¹¹ *Gee v Pritchard* (1818) 2 Swan. 402 at 414.

¹² The nature of the trust and its origins are discussed in more detail in Chapter 2.

¹³ The concept of the use and the abuses thereof are considered in more detail in Chapter 2.

to create a mortgage as an ordinary commercial one. Thus, the common law failed to redress key issues affecting the mortgagor such as his right to redeem the land once he made full payment under the terms of the mortgage. For example, if the contractual date of redemption had passed, there was nothing stopping the mortgagee from keeping the land for himself. Equity, however, intervened in a number of ways to prevent the mortgagee getting more out of the transaction other than the security for his money. Equity regarded the right of the mortgagor to get his property back on repayment of the loan money as fundamental to the mortgage agreement. The right to the return of the property, termed in equity as the mortgagor's 'equity of redemption', prevailed over and above the contractual provisions purporting to restrict it. The need for equity to intervene in mortgage transactions of the eighteenth and nineteenth centuries was influenced by the inequality of bargaining power between lender and borrower. The typical mortgage transaction at this time was in the form of money raised for some commercial venture or, as a last resort, for the poor person. Lord Chancellor Nottingham was particularly instrumental in protecting and recognising the rights of the mortgagor against abuses of power by the mortgagee.¹⁴



Equity and the role of conscience

In the early development of equity, the notion of conscience underpinned the grounds for the intervention of equitable relief. This has, perhaps, been best explained by Lord Ellesmere in the famous *Earl of Oxford's Case* where the Chancellor held that:

men's actions are so diverse and infinite that it is impossible to make any general law which will aptly meet with every particular and not fail in some circumstances. The office of the Chancellor is to correct men's consciences for fraud, breaches of trust, wrongs and oppressions of whatever nature so ever they be, and so soften and mollify the extremity of the law.¹⁵

The Chancellor, in administering equitable relief, did so not by interfering with the common law but rather by asking the defendant to personally appear before him. A judgment was said to be given *in personam*, which was also another way of saying that *equity acts in personam*. The Chancellor would order the defendant to do something; failure to comply with the Chancellor's order would make the defendant liable to imprisonment for contempt of court. The flexibility of the early Court of Chancery was illustrated by the fact that it was not constrained by precedent, and moreover the Chancellor could make a number of orders which were not merely monetary awards. In modern equity, the types of equitable remedies include specific performance of an obligation, injunctions, rescission and rectification.

In more recent times, the question has often been asked whether equity is still to be regarded as a court of conscience in the manner in which it once operated. For example, do the courts administering modern equity have the same degree of flexibility and discretion that was once available to the Lord Chancellors of the early Court of Chancery? In other words, are the grounds for equitable intervention dependent on looking at the merits of every case on a case-by-case basis rather than by the application of some rigid process of principle and precedent? This question has received a mixed response. Lord Chancellor Eldon observed in 1818 that 'nothing would inflict on me greater pain . . .

¹⁴ *Howard v Harris* (1681) 1 Vern. 33.

¹⁵ (1615) 1 Rep. Ch 1 at 6.

than the recollection that I had done anything to justify the reproach that the Equity of this Court varies like the Chancellor's foot'.¹⁶ Some 140 years later Harman LJ remarked that equity principles had been 'rather too often bandied about in the common law courts as though the Chancellor still had only the length of his foot to measure when coming to a conclusion'.¹⁷ In light of these remarks there have been suggestions that equity is truly beyond childbearing and that the process of creating new rights and remedies, as equity once did, should now be the responsibility of Parliament and not the courts. For example, in *Western Fish Products Ltd v Penwith District Council*,¹⁸ Megaw LJ took the same view as Harman LJ in *Campbell Discount Co Ltd v Bridge*¹⁹ that 'the system of equity has become a very precise one. The creation of new rights and remedies is a matter for Parliament, not the judges'.²⁰

Despite the previous remarks, it has been equally suggested and argued that equity continues to work in the same manner as it once did, in other words, the recognition of new rights and remedies is not beyond those judges who administer equity. For example, Jessel MR explained in 1880 that:

the rules of Courts of equity are not supposed to have been established from time immemorial. It is perfectly well known that they have been established from time to time – altered, improved and refined from time to time. The doctrines are progressive, refined and improved.²¹

Despite the remarks of Jessel MR, the general position in the modern equity is that equity has become more a system of principle and precedent rather than a system of ad hoc justice as once administered by the Lord Chancellor. The reason for this is primarily the uncertainty that is created by ad hoc justice in individual cases. This is, perhaps, no better illustrated than in the context of the cohabitation and the 'deserted wife' cases of the 1970s and the attempt by Lord Denning to introduce into English law a 'new model of constructive trust'.²²

During the 1970s Lord Denning attempted to introduce broad notions of justice in resolving family property disputes. Although these matters are discussed in more detail in Chapter 13, the attempted application of broad notions of justice was primarily in response to the limited common law proprietary rights of spouses and cohabitantes in land co-occupied with their respective spouses and partners. Firstly, in a decision some 20 years earlier in *Bendall v McWhirter*²³ Denning LJ suggested that a wife who had no legal title to her husband's property and who did not make any contribution to the purchase nevertheless had a deserted wife's equity in the property capable of binding a purchaser of the land. The House of Lords in *National Provincial Bank Ltd v Ainsworth*²⁴ rejected this analysis of a deserted wife's equity. In the view of the House of Lords, this deserted wife's equity did not have all the characteristics of a property right, namely identifiability, stability and permanence. The House of Lords' decision illustrated the uncertainty that would have been introduced to the system of conveyancing.²⁵

¹⁶ *Gee v Pritchard* (1818) 2 Swans. 402 at 414.

¹⁷ *Campbell Discount Co Ltd v Bridge* [1961] 1 QB 445 at 459.

¹⁹ [1961] 1 QB 445.

¹⁸ [1981] 2 All ER 204.

²⁰ [1981] 2 All ER 204 at 210.

²¹ *Re Hallett's Estate* (1880) 13 Ch D 696 at 710.

²² This constructive trust is discussed in more depth in Chapter 13.

²³ [1952] 2 QB 466.

²⁴ [1965] AC 1175.

²⁵ A spouse does, however, have a statutory right of occupation now to be found in s. 30 of the Family Law Act 1996.

In 1975, when dealing with a cohabitation dispute between a husband and his wife, Lord Denning commented that ‘a few years ago even equity would not have helped her. But things have altered now. Equity is not past the age of child bearing. One of her latest progeny is a constructive trust of a new model . . .’²⁶ What Lord Denning attempted to do was to use the new model of constructive trust as a means of doing broad justice by awarding a spouse equal ownership in the home that was in the sole name of the husband. As to the grounds upon which this could be done, Lord Denning looked to the somewhat broader and artificial notion that where a husband and wife were living jointly, they both intended to share the beneficial ownership of their family home. In relation to the grounds for imposing a constructive trust, his Lordship famously commented in one case that such a trust was founded on large principles of equity and could be imposed ‘whenever justice and good conscience’ required it.²⁷ Despite Lord Denning’s attempts in the 1970s to introduce wide principles of equity, the higher courts have not accepted them. The principal reason for this, as mentioned earlier, is the palm tree justice that would be served as a result of wide discretion by the courts and the resulting uncertainty that would arise.²⁸ For example, Bagnall J commented in *Cowcher v Cowcher*²⁹:

[I] am convinced that in determining rights, particularly property rights, the only justice that can be attained by mortals, who are fallible and are not omniscient, is justice according to law; the justice that flows from the application of sure and settled principles to proved or admitted facts. So in the field of equity the length of the Chancellor’s foot has been measured or is capable of being measured.³⁰

More recently, however, there has been some suggestion that there may be scope for the development of a new model of constructive trust which could serve as a restitutionary remedy to reverse unjust enrichment.³¹ However, English lawyers continue to demonstrate a more cautious approach to the recognition of wholly new principles of equity based on wide principles of justice and good conscience. So, where does this leave modern equity? Lord Browne-Wilkinson’s judgment in *Westdeutsche v Islington LBC*,³² which can perhaps be described as one of the more important equity and trusts cases of the last century, seeks to offer an explanation of modern equity. The facts of this case involved a complex interest-rate swap transaction that turned out to be *ultra vires* the council’s power.³³ In an attempt to address the issue of whether a resulting trust could be imposed on payment made under a transaction which should not have taken place, his Lordship attempted to define some basic premises of the law of equity and the law of trusts. With regard to the juridical basis of equitable intervention, his Lordship explained that ‘equity operates on the conscience of the owner of the legal interest. In the case of a trust, the conscience of the legal owner requires him to carry out the purposes for which the property was vested in him (express or implied trust) or which the law imposes on him by reason of his unconscionable conduct (constructive trusts)’.³⁴ In relation to the possibility of equity introducing a broad notion of justice based on a new model constructive trust, his

²⁶ *Eves v Eves* [1975] 1 WLR 1338 at 1341.

²⁷ See *Hussey v Palmer* [1972] 1 WLR 1286.

²⁸ See, for example, *Springette v Defoe* [1992] 2 FLR 388 at 393.

²⁹ [1972] 1 WLR 425.

³⁰ [1972] 1 WLR 425 at 430.

³¹ See, for example, *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 699.

³² [1996] AC 699.

³³ The facts of this case are considered in more detail in Chapter 11.

³⁴ [1996] AC 699 at 705.

Lordship commented that ‘although the resulting trust is an unsuitable basis for developing proprietary restitutionary remedies, the remedial constructive trust, if introduced into English law, may provide a more satisfactory road forward. However, whether English law should follow the United States and Canada by adopting the remedial constructive trust will have to be decided in some future case where the point is directly in issue.’³⁵



Unconscionability, fairness and the role of context

So far, it has been observed how the early Court of Chancery, which started out as a court administering equitable relief on a case-by-case basis, transformed into a court administering established principles of equity. As to the grounds for the application of the decided principles of equity, it has already been mentioned that the fundamental feature was the unconscionability of the defendant’s conduct. This section explores the concept of unconscionability and how it differs from the notion of fairness. Although the term ‘unconscionability’ has been used widely in the sphere of equity to describe the grounds for the intervention of equitable relief, it is a term which is not always defined with exact precision.³⁶ When will a lawyer seeking equitable relief know whether the conduct complained of by his client has the grounds for the application of equitable principles leading to a successful remedy? In this respect, there is a lot to be said for Lord Nicholls’s comment, in the context of a case concerning the liability of third parties intermeddling with trust property, that:

unconscionable is a word of immediate appeal to an equity lawyer. Equity is rooted historically in the concept of the Lord Chancellor, as the keeper of the Royal Conscience, concerning himself with conduct which was contrary to good conscience. It must be recognised, however, that unconscionable is not a word in everyday use by non-lawyers. If it is to be used in this context, and if it is to be the touchstone for liability as an accessory, it is essential to be clear on what, *in this context*, unconscionable means.³⁷

At present there is no universal definition of unconscionability which encapsulates all the various contexts in which equity has operated. This statement may at first instance seem rather strange and controversial on the grounds that it questions the very fabric and foundations of equitable relief. The statement almost implies that equity lacks decided principles which allow the courts to measure whether a defendant’s conduct has indeed been unconscionable. However, nothing could be further from the truth and the answer, as will be seen in the discussion in this chapter and indeed throughout this book, lies in understanding the importance of ‘context’ before defining what is unconscionable and what is not unconscionable.

The absence of a universal definition of unconscionability has not proved to be a limitation in equity’s ability to intervene in a diverse range of commercial and family contexts. In fact, it has been precisely because of the lack of a rigid test of unconscionability that equity has been able to resolve a number of disputes in a number of different contexts.

³⁵ [1996] AC 699 at 716. More recently, in *Sinclair Investment Holdings SA v Versailles Trade Finance Ltd* [2006] 1 BCLC 60 Arden LJ did not rule out the question whether a new model constructive trust would be introduced in English law; however, that was to be decided by a further court.

³⁶ For an excellent discussion, see H. Delany and D. Ryan, ‘Unconscionability: A Unifying Theme’ (2008) *Conv.* 401. See more recently, N. Hopkins, ‘The Relevance of Context in Property Law: A Case for Judicial Restraint’ (2011) *Legal Studies*, Vol. 31 at 175–198.

³⁷ *Royal Brunei Airlines Sdn Bhd v Tan Kok Ming* [1995] 2 AC 378 at 392.

The diversity of contexts in which equity has operated throughout the previous centuries has allowed the courts to define the notion of unconscionability with specific meanings in each context. In fact, this has been one of the fundamental features of modern equity. One leading commentator on equity writes:

The word unconscionable has lost its connection to morality and the courts try to use it as precisely as possible, in ways which vary from context to context, but it reminds us of equity's ecclesiastic origins and reminds us that equity is a broader idea than the quite narrow legal version of the concept might suggest. Language such as unconscionability sits somewhat uncomfortably in modern law, but that is a good thing for keeping the law realistically and appropriately humble about its capacity to cover every possible case by means of general rules. The language of unconscionability is highly effective at keeping the general rules open to just exceptions in particular cases and particular kind of cases.³⁸

One of the fundamental reasons for the absence of a unifying definition of unconscionable conduct relates to the fact that the definition operates in so many different social and commercial contexts and, as explained by Delany and Ryan in their analysis, in each context 'the principle has been or is currently being used in a distinct manner. As such, the invocation of the principle has different implications and consequences for equitable intervention in each context.'³⁹ The importance of understanding the principle of unconscionability in light of the context in which it is being applied was explained by Lord Neuberger in *Thorne v Major*.⁴⁰ The facts of this case, which are considered in more detail later in this chapter, concerned the question of whether a claimant, who had worked unpaid on his uncle's farm for many years, was entitled to the farm in circumstances where he had been made certain promises by his uncle that he would inherit the farm. The case involved the application of the equitable doctrine of proprietary estoppel, which prevents a person from denying a claimant a proprietary right which the claimant has been led to believe will be granted to him and one which the claimant has relied upon and suffered a detriment. The doctrine, which is explored in more detail in Chapter 13, requires the defendant to have made a clear and unambiguous assurance to the claimant that he will acquire some property right in the defendant's land. However, what amounts to a clear and unambiguous assurance depends primarily on the context in which it is made. Lord Neuberger explained that in the context of the facts of *Thorne v Major and Others*, the course of dealings between the uncle and nephew, although not amounting to express references that the nephew would inherit the uncle's farm, were nevertheless capable of establishing the level of unconscionability which would otherwise arise if the nephew was denied a right to inherit his uncle's farm. In the course of his judgment, Lord Neuberger explained that 'in the facts of this case, it seems to me to have been an eminently sensible conclusion. Indeed, that point is a neat illustration of the fundamental importance of context to the questions of how a particular statement or action would have been understood, and whether it was "clear and unambiguous".'⁴¹

While unconscionability is not necessarily capable of a precise definition, it is a concept which can be readily appreciated when looked at in the context in which it is being employed. At the heart of unconscionability is the element of some advantage, whether personal or proprietary, taken by the defendant, which he or she has consciously agreed belongs to the claimant. Examples of the types of context in which such unconscionable

³⁸ G. Watt, *Todd and Watt's Cases and Materials on Equity and Trusts* (7th edn., 2009) OUP Oxford at p. 3.

³⁹ H. Delany and D. Ryan, 'Unconscionability: A Unifying Theme' (2008) *Conv.* 401 at p. 402.

⁴⁰ [2009] 1 WLR 776 at 805.

⁴¹ [2009] 1 WLR 776 at 805.

advantage has been taken by the defendant are diverse and they include the very subject matter of this book: that is, the trust. At the heart of the enforcement of a trust is the trustee's conscience that he or she has agreed to hold trust property for the beneficiary. Where a trustee refuses to accept the rights of the beneficiary in the trust property, equity will intervene in order to prevent the trustee from obtaining an advantage over the beneficiary's property. Another good context is that of proprietary estoppel, which prevents the owner of some property from denying the claimant some property interest in the property belonging to the owner. The doctrine of proprietary estoppel operates where the legal owner of, let's say, land encourages the claimant to believe that he will be entitled to some, if not all, of the legal owner's land and the claimant relies on that assurance and suffers some detriment as a result of the reliance.⁴² Where the legal owner of land seeks to deny the existence of the proprietary right he has led the claimant to believe will be his, his conduct will be deemed as unconscionable. Equity will invoke the doctrine of proprietary estoppel in order to prevent the legal owner from taking an advantage which clearly has been given to the claimant.

Unconscionability is, however, to be distinguished from the notion of fairness. Despite what students of equity may think, unconscionability and fairness are not the same thing. Furthermore, fairness is not the basis for the intervention of equitable relief. Many factual situations may be perceived by the layman as being unfair; however, they do not necessarily provide the basis for the intervention of equitable relief. Consider the following questions.

APPLYING THE LAW

In her will, Sarah left one half of her property to charity and the other half to her two youngest children equally. Sarah has, in fact, five children. The three elder children who have not been left any of Sarah's property are not happy that they have not received anything under their mother's will.

Do you think Sarah's conduct was unconscionable and that the children should seek equitable relief?

APPLYING THE LAW

Sarah, who is of very old age and suffering from a terminal illness, has two children both of whom emigrated to Australia some time ago. Her nephew, Thomas, has cared for Sarah for the last seven years. Thomas qualified as an architect and was offered a high-profile job in the city. He declined the job in order to look after Sarah. Sarah assured him that she would leave her cottage to him after her death, knowing that he had cared for her and was the only important person in her life. Last year, Thomas decided to marry his girlfriend; however, Sarah persuaded him not to as it would mean that he would have to move to London, and he would not be able to care for Sarah. Thomas decided not to marry and continued to live with Sarah. In her will Sarah left her cottage to her two children. When Thomas found out he was not very happy about this.

Do you think that Sarah's conduct is unconscionable? Should equity intervene here?

⁴² Proprietary estoppel is considered in Chapter 13 in the context of constructive trusts.

In order to think more about equity and unconscionability it is convenient at this stage to investigate two cases where equitable principles have been the subject matter of discussion. The cases provide a useful insight into notions of unconscionability and the importance of understanding the context in which equity is asked to operate.

CASE SUMMARY

Applying equity: two cases in the House of Lords – where lies the unconscionability?

In order to understand the importance of unconscionability and the context in which it is applied it is perhaps a good starting point to consider two decisions of the House of Lords. Although, at this stage of the book, the reader will not have been exposed to the equitable doctrines and principles in operation in the two cases, it is nevertheless a useful exercise to explore the facts of both cases and consider whether equitable relief should be given. Read the facts of these cases first and think whether the claimants in both cases should have a remedy of some sort from the court; then read what was actually decided by the House of Lords and see where the unconscionability lies, if any, in both cases. Remember, at this stage it is not crucial whether you fully understand the equitable principles applied in the cases: rather the emphasis is on identifying factual contexts which give rise to unconscionability.

Case One: *Thorner v Major* [2009] 1 WLR 776

The facts

In 1997 Peter Thorner made a will by which, after a number of pecuniary legacies, he left the residue of his estate, including his farm (Stear Farm, Cheddar), to his nephew, David Thorner. The will was subsequently destroyed, and Peter died intestate in November 2005. In accordance with the intestacy rules, Peter's estate, including Steart Farm, was available for his blood relatives, namely, his sisters. David commenced proceedings against Peter's sisters and the personal representative to claim the farm on the grounds that he had the benefit of a proprietary estoppel against Peter and his estate. The claim was based on the grounds that Peter had made an assurance to David that the farm would be left to him after his death and that David had relied on that assurance by working for a period of some 28 years on the farm and thereby suffering a detriment.

The relevant facts in David's claim to be entitled to a proprietary estoppel begin around about 1976 when Peter's first wife died at an early age. David would help Peter in some aspects of the running of the farm; however, after Peter's second marriage failed, David worked on the farm almost on a daily basis for no remuneration at all. The work included attending to the animals, mending the fences and gates, taking cattle to and from the market, working on farm buildings and bringing in hay. Additionally, it was observed that much of the paperwork relating to the management of the farm was in a mess when David first started helping out on the farm. David took it upon himself to sort out the paperwork and continued to look after it from then on. The court was told that by 1985 David was working 18 hours a day and 7 days a week for no payment. Several witnesses remarked that David was an exceptionally hard worker and had no social life as such. Other witnesses, including a surveyor, noted that in any discussions relating to the farm, Peter would always consult with David and his father (Peter's cousin). It was further noted that, despite working punishing hours, David lived on pocket money which his own parents gave him.

It was argued on behalf of David that Peter had indeed made an assurance to him that he would inherit the farm. Although it was not possible to pinpoint the exact time at which the assurance was made, it was argued that the expectation arose around about the early 1990s when Peter handed over a number of documents and discussed with David that he would take over the farm and run it. One such document was a Prudential Bonus Notice relating to two life policies worth £20,000. Peter explained to David that they would be sufficient to cover his death duties. The timing of these discussions was important because they were at a time when David was possibly thinking of pursuing his own career. The court was pointed to the fact that the timing of these discussions was to encourage David to stay with his parents, who lived nearby, and continue helping Peter. In 1997, Peter made a will in which he left the farm to David, and a number of pecuniary legacies to others who had helped Peter on the farm. Peter's intention was clear, in that he wanted David to have the farm. In 1998, Peter fell out with some of the persons who were receiving the pecuniary legacies under his will and thus destroyed the will with the intention of making another one. In 2004 Peter suffered a stroke and David continued to look after him, but more importantly, engaged in major work on the farm. Peter died in November 2005, a couple of weeks after David's own father had died.

Having read the facts of this case do you think that David should be given his uncle's farm? If so, what factors lead you to come to that conclusion?

Case Two: *Yeoman's Row Management Ltd v Cobbe* [2008] 1 WLR 1752

The facts

The facts of *Yeoman's Row Management Ltd v Cobbe* involved a claimant who was unhappy about the defendant's conduct in refusing to honour an oral agreement to purchase land from the defendant. The essence of the agreement, which was conducted with one of the directors of Yeoman's, was to the effect that Mr Cobbe would seek planning permission out of his own pocket to develop land belonging to Yeoman's and that if permission was obtained, Yeoman's would sell the land to Mr Cobbe for a sum of £12 million. The agreement also made provision for Mr Cobbe to receive vacant possession of the land in order to erect six town houses. Additionally, the agreement made allowance for Yeoman's to receive further profits from the sale of the town houses should Mr Cobbe succeed in making a profit in excess of £24 million. This agreement, which was concluded 'in principle', did not cover all the matters relating to the sale of the land to Mr Cobbe – for example, matters relating to timescales regarding completion of the building of the flats, and so on. The parties had deliberately not entered into a legally binding agreement because there was so much left to agree, and it was only when such matters had been agreed that the parties proposed to enter into a legal binding written agreement. Planning permission was duly granted by the local authority; however, Yeoman's withdrew from the original oral agreement and claimed that Mr Cobbe had incurred expenditure on the land at his own risk. Mr Cobbe, however, commenced proceedings against Yeoman's on the grounds it was unconscionable for Yeoman's to withdraw from the oral agreement. In particular, he claimed that they were estopped from denying the interest in the land they had promised to give him; furthermore, he had incurred the expenditure as a result of the assurances given by Yeoman's to him. Additionally, Mr Cobbe sought to argue that a constructive trust arose in his favour on the grounds of the unconscionability of Yeoman's conduct in

withdrawing from the oral agreement. Therefore, on the grounds of both proprietary estoppel and a constructive trust, Mr Cobbe argued that the terms of the oral agreement should be enforced in his favour.

Do you think that Yeoman's were acting unconscionably when they refused to honour the oral agreement? Do you think that Yeoman's had unequivocally made a promise to sell the land to Mr Cobbe?

The decision of the House of Lords in *Thorner v Major*

The House of Lords held that David was indeed entitled to his uncle's farm on the grounds of proprietary estoppel. In the context of their dealings and conduct, the requisite degree of unconscionability had arisen whereby it would be inequitable to deny David a right to the farm. Although there was no evidence of express assurances that David would inherit the farm, it was clear from the context that what David had done over the years was done in reliance that the farm would become his one day.

The decision of the House of Lords in *Yeoman's Row Management Ltd v Cobbe*

The House of Lords held that Mr Cobbe was not entitled to claim a proprietary right in the land which Yeoman's had orally agreed to sell to him. The oral agreement which had been entered into was nothing more than an agreement 'in principle'. There was still room for further negotiations and the agreement did not refer to all the terms which the parties would have wanted to include. In this respect Mr Cobbe could not be heard to be asserting that the oral agreement was enforceable but for the absence of writing. Lord Scott explained that the oral agreement did not profess to create an expectation that Mr Cobbe would be granted an interest in land. At most, the expectation Mr Cobbe had was that there would be further negotiations which would lead to a formal agreement.

Distinguishing the decision in *Thorner v Major* and *Yeoman's Row Management Ltd v Cobbe*

The facts of both cases illustrate situations where there have been promises of some sort that the claimant will acquire some interest in the defendant's land; however, only the claimant in *Thorner v Major* was successful. How do you distinguish the two cases?

The following extract from Lord Neuberger's judgment in *Thorner v Major* [2009] 1 WLR 776 at 803 may help answer the question:

93 In the context of a case such as Cobbe's case [2008] 1 WLR 1752, it is readily understandable why Lord Scott considered the question of certainty so significant. The parties had intentionally not entered into any legally binding arrangement while Mr Cobbe sought to obtain planning permission: they had left matters on a speculative basis, each knowing full well that neither was legally bound – see para 27. There was not even an agreement to agree (which would have been unenforceable), but, as Lord Scott pointed out, merely an expectation that there would be negotiations. And, as he said, at para 18, an 'expectation dependent upon the conclusion of a successful negotiation is not an expectation of an interest having [sufficient] certainty'.

94 There are two fundamental differences between that case and this case. First, the nature of the uncertainty in the two cases is entirely different. It is well encapsulated by Lord Walker's

distinction between 'intangible legal rights' and 'the tangible property which he or she expects to get', in Cobbe's case [2008] 1 WLR 1752, para 68. In that case, there was no doubt about the physical identity of the property. However, there was total uncertainty as to the nature or terms of any benefit (property interest, contractual right, or money), and, if a property interest, as to the nature of that interest (freehold, leasehold, or charge), to be accorded to Mr Cobbe.

95 In this case, the extent of the farm might change, but, on the deputy judge's analysis, there is, as I see it, no doubt as to what was the subject of the assurance, namely the farm as it existed from time to time. Accordingly, the nature of the interest to be received by David was clear: it was the farm as it existed on Peter's death. As in the case of a very different equitable concept, namely a floating charge, the property the subject of the equity could be conceptually identified from the moment the equity came into existence, but its precise extent fell to be determined when the equity crystallised, namely on Peter's death.

96 Secondly, the analysis of the law in Cobbe's case [2008] 1 WLR 1752 was against the background of very different facts. The relationship between the parties in that case was entirely arm's length and commercial, and the person raising the estoppel was a highly experienced businessman. The circumstances were such that the parties could well have been expected to enter into a contract, however, although they discussed contractual terms, they had consciously chosen not to do so. They had intentionally left their legal relationship to be negotiated, and each of them knew that neither of them was legally bound. What Mr Cobbe then relied on was 'an unformulated estoppel . . . asserted in order to protect [his] interest under an oral agreement for the purchase of land that lacked both the requisite statutory formalities . . . and was, in a contractual sense, incomplete'.

97 In this case, by contrast, the relationship between Peter and David was familial and personal, and neither of them, least of all David, had much commercial experience. Further, at no time had either of them even started to contemplate entering into a formal contract as to the ownership of the farm after Peter's death. Nor could such a contract have been reasonably expected even to be discussed between them. On the deputy judge's findings, it was a relatively straightforward case: Peter made what were, in the circumstances, clear and unambiguous assurances that he would leave his farm to David, and David reasonably relied on, and reasonably acted to his detriment on the basis of, those assurances, over a long period.

98 In these circumstances, I see nothing in the reasoning of Lord Scott in Cobbe's case [2008] 1 WLR 1752 which assists the defendants in this case. It would represent a regrettable and substantial emasculation of the beneficial principle of proprietary estoppel if it were artificially fettered so as to require the precise extent of the property the subject of the alleged estoppel to be strictly defined in every case. Concentrating on the perceived morality of the parties' behaviour can lead to an unacceptable degree of uncertainty of outcome, and hence I welcome the decision in Cobbe's case [2008] 1 WLR 1752. However, it is equally true that focussing on technicalities can lead to a degree of strictness inconsistent with the fundamental aims of equity.

The role of unconscionability in the award of equitable relief was more recently illustrated in the Court of Appeal decision in *Davies v Davies*.⁴³ Like *Thorner v Major*⁴⁴ the case concerned a claim by a daughter to a share in her parents' farm on the grounds that she had worked long hours on the farm on the assurance that the farm would be hers one day. Similar to *Thorner v Major*, the case concerned the equitable doctrine of proprietary estoppel. In finding that the daughter had been made an assurance that she would

⁴³ [2014] EWCA Civ 568.

⁴⁴ [2009] 1 WLR 776.

have an interest in her parents' farm and that she had relied upon it, the Court of Appeal held that she was entitled to an equity in the farm. In the course of his judgment, Floyd LJ referred to the judgment of Lord Walker in *Gillett v Holt*⁴⁵ where his Lordship explained the role of unconscionability in the context of proprietary estoppel. Walker LJ explained that:

it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a 'mutual understanding' may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round.⁴⁶



The Judicature Acts 1873 and 1875 and the relationship between law and equity

The idea of two sets of courts, that is the common law courts and the Court of Chancery, gave rise to procedural problems for potential litigants in the nineteenth century. The common law courts did not have equity jurisdiction; the Court of Chancery did not have the right to interfere or change a decision given by the common law courts. If a litigant had no redress at common law, he would have to present a bill to the Lord Chancellor for his complaint to be heard in the Court of Chancery. This was so even where the common law courts acknowledged that there might be redress in equity; however, because of their limited jurisdiction, they could not award an equitable remedy such as an injunction. The same was true of the Court of Chancery, which could not award damages although it could grant an equitable remedy.⁴⁷ This meant the lodging of a new complaint in a separate court. However, it was not just the problem of procedure itself; by the nineteenth century the work of the Court of Chancery had increased considerably, and this inevitably resulted in numerous delays.

To overcome the problems of two separate courts and the delays involved in litigation, the Judicature Acts 1873 and 1875 were enacted in order to restructure the court system in England. The Acts had the effect of abolishing the old courts and establishing one unified court, the Supreme Court, which was divided into a number of divisions. Initially, these divisions were the Court of Chancery, King's Bench Division, Common Pleas, Exchequer, Probate and the Court of Admiralty. The Supreme Court could administer law and equity at the same time. Whether the effect of the Judicature Acts was to fuse common law and equity is, however, a question which has been asked on many occasions and which is addressed in the next section.

⁴⁵ [2001] Ch 210.

⁴⁶ [2014] EWCA Civ. 568 at para. 30. See also, *Burton v Liden* 2 March 2016, Unreported.

⁴⁷ There were limited reforms in the form of the Common Law Procedure Act 1854 which gave the common law courts power to grant equitable remedies. The Chancery Amendment Act 1858 gave the Court of Chancery the power to award damages.

The modern position is re-enacted in the Senior Courts Act 1981, which divides the Supreme Court into the Court of Appeal and the High Court, the High Court consisting of the Queen's Bench Division, Chancery and the Family Division.⁴⁸ These divisions are to administer law and equity together, and where there is a conflict between the rules of equity and the rules of the common law the rules of equity are to prevail. The supremacy of the rules of equity is enshrined in s. 25(11) of the Supreme Court of Judicature Act 1873 which provides: 'Generally, in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.' The relationship between law and equity is perhaps nowhere better explained than in the context of a lease. A lease which has a duration exceeding three years can only be created if it is in a deed.⁴⁹ Failure to comply with the requirement of a deed has the effect that no legal lease is created since no legal estate is created in the tenant. There simply is no lease capable of recognition in the common law courts. At most, where the landlord purports to act inconsistently with the terms of the lease, the purported tenant only has a right to damages for breach of contract. This is on the premise that the landlord entered into a contract with the tenant to grant a lease, albeit that the contract confers no proprietary interest in the land because of the failure to comply with the requirement of a deed. At common law the tenant would not have an exclusive right to possession of the land.

However, given the fact that a lease is a contract, where all the other requirements of the lease have been met, there seems to be no reason why equity should not intervene to compel performance of the lease. After all, as a matter of substance, as opposed to form, the landlord has done what he said he would do and the only reason why the lease is not being recognised at common law is failure to comply with the requisite formality of a deed. Equity has long recognised that a lease which has failed for formality at common law could take effect in equity as a contract to grant a lease. Although it was not a legal lease, the contract to grant a lease was for all practical purposes a lease taking effect in equity. Equity could compel the purported landlord to perform his obligation to grant the lease by means of a decree of specific performance of the contract.⁵⁰ Until such time as a decree of specific performance was granted, equity recognised the lease in equity on the equitable maxim that equity regards that as done which ought to be done.⁵¹ Thus, the substantive lease, which was purported to be created in law, would be recognised in equity as a lease for all practical purposes.

Recognition of the lease in equity did not mean that the tenant was vested with a legal estate in the land. At common law, the lease would still be merely contractual in nature, unless it could be construed as a different lease – for example, one not requiring formalities in the nature of a deed. It is a well-settled principle of property law that where a tenant pursuant to a long lease⁵² moves into possession of land without compliance with the requisite formality of a deed, his tenancy will be construed at common law as a periodic

⁴⁸ See s. 49(1) Senior Courts Act 1981. The Constitutional Reform Act 2005 has introduced a new Supreme Court of the United Kingdom to replace the House of Lords as the highest court of appeal. The Court of Appeal, the High Court and the Crown Court will be collectively called the Senior Courts of England and Wales.

⁴⁹ See s. 52 Law of Property Act 1925. A deed is a formal written document which declares itself to be a deed and which is signed by the parties: see s. 2(1) Law of Property (Miscellaneous Provisions) Act 1989.

⁵⁰ See *Browne v Warner* (1808) 14 Ves. 409.

⁵¹ This equitable maxim along with others is discussed later in this chapter.

⁵² Exceeding three years.

tenancy. This is particularly so where the tenant is paying periodic rent, that is, month to month or quarter to quarter. A periodic tenancy requires no formality even though its duration may be longer than three years. Thus, a periodic tenancy may arise at common law even though the intentions of the parties were to create a long lease of the land.⁵³ It is at this point in the example that one can see the potential conflict between law and equity. The question that arises here is: what is the position where a long lease fails at common law for lack of formality but is nevertheless recognised in equity, and at common law is construed as a periodic tenancy? In other words, which one takes supremacy in the event of a dispute?

The matter is both illustrated and answered in the seminal case of *Walsh v Lonsdale*⁵⁴ where the court upheld the supremacy of equity. On the facts, a landlord had agreed in writing to grant a seven-year lease of a mill to the tenant but had failed to grant the lease by deed as necessary to give it effect at common law. One of the terms of the lease was that the tenant pay rent in advance. The tenant paid no rent in advance: instead he moved in and paid rent on a quarterly basis. The payment of quarterly rent was sufficient to find a periodic tenancy at common law. When the landlord demanded one year's rent in advance, the tenant refused to pay. The landlord sought to exercise his right of distress, which entitled him to distrain the tenant's goods in order to meet the rent demanded. The tenant complained that the distress was illegal since the periodic tenancy which arose at common law did not contain any provision for the payment of advance rent. The landlord counter-argued that the distress was not illegal because it was the seven-year lease, which had a provision for the payment of advance rent, which determined the rights and obligations of the landlord and tenant. There was no doubt, on what has already been said in this chapter, that the seven-year lease took effect in equity as a contract to grant a lease, while at common law there was mere periodic tenancy. In court, the tenant's action failed since the contract to grant a lease – in other words, the equitable lease – prevailed over and above the legal periodic tenancy. The distress by the landlord, pursuant to the terms of the seven-year lease, was therefore not illegal at all but entirely consistent with the terms of that lease.



Fusion fallacy

The effect of the Judicature Acts was to allow one court to administer law and equity simultaneously. However, a question which has often been asked in discussions on equity is whether the effect of the Acts was to fuse the principles of the common law and equity into one single coherent body of law applicable to any dispute.⁵⁵ In other words, could a potential claimant ask the court for a common law remedy or an equitable remedy irrespective of the nature of his claim? Professor Ashburner once commented on the relationship between law and equity by saying 'the two streams of jurisdiction though they run in the same channel run side by side and do not mingle their waters'.⁵⁶ Professor Ashburner's view very much reflected the generally understood position as to the effect of the Judicature Acts of 1873 and 1875, which was explained by the great Sir George Jessel MR in *Salt v Cooper*.⁵⁷ His Lordship commented that the main object of the Acts 'has been sometimes inaccurately called the fusion of law and equity; but it is not any fusion, or anything of the

⁵³ See *Alder v Blackman* [1952] 2 All ER 41.

⁵⁴ (1882) 21 Ch D 9.

⁵⁵ See J. Martin, 'Fusion, Fallacy and Confusion: a Comparative Study' [1994] *Conv.* 13.

⁵⁶ Ashburner, *Principles of Equity* (2nd edn., 1933) at p. 18.

⁵⁷ (1880) 16 Ch D 544.

kind; it was the vesting in one tribunal of the administration of law and equity in every cause, action or dispute which should come before that tribunal'.⁵⁸

However, in more recent times there have been suggestions that the rivers of law and equity are truly mingled and that there is a single coherent body of law consisting of the common law and equity. For example, in *United Scientific Holdings Ltd v Burnley Borough Council*,⁵⁹ Lord Diplock, referring to Professor Ashburner's metaphor, commented:

[M]y Lords, by 1977 this metaphor has in my view become both mischievous and deceptive. The innate conservatism of English lawyers may have made them slow to recognise that by the Judicature Act 1873 the two systems of substantive and adjectival law formerly administered by Courts of Law and Courts of Chancery were fused. As at the confluence of the Rhone and Saone, it may be possible for a short distance to discern the source from which each part of the combined stream came, but there comes a point at which this ceases to be possible. If Professor Ashburner's fluvial metaphor is to be retained at all, the waters of the confluent streams of law and equity have surely mingled now.⁶⁰

Likewise, in other Commonwealth jurisdictions such as New Zealand the courts have been more relaxed in finding that equity and common law are truly fused into a single body of law. In one New Zealand Court of Appeal case concerning whether common law damages were available for breach of an equitable obligation, the court held that 'for all purposes now material, equity and common law are mingled or merged. The practicality of the matter is that in the circumstances of the dealings between the parties the law imposes a duty of confidence. For its breach a full range of remedies should be available as appropriate, no matter whether they originate in common law, equity or statute.'⁶¹

Despite the approaches taken in some Commonwealth jurisdictions and what has been said by Lord Diplock in *United Scientific Holdings Ltd v Burnley Borough Council*,⁶² it is incorrect to suggest that the common law and equity are fused in a single coherent body of law. This is perhaps best illustrated by the subject matter of this book, which is the trust concept. In Chapter 2 the trust concept is examined in much more detail; however, suffice it to say here that the trust concept generates two separate sets of rights. The legal title is vested in the trustee, and the equitable title to the trust property is vested in the beneficiary. The beneficiary's equitable title is only recognised in equity and enforced therein. If there is some breach of trust involving the transfer of the beneficiary's property to a third party, then that beneficiary has no right to follow that property into the hands of the third party at common law, but only in equity. If a third party negligently damages trust property, then the beneficiary has no right at common law to sue the third party for negligence.⁶³

Further examples can be given to illustrate that the common law and equity remain two distinct bodies of law, although administered by one single court. It is trite law that the equitable remedy of specific performance is available in relation to a contract which has been entered into for valuable consideration. Thus, where A enters into a contract with B to sell his painting for £3,000, B can ask the court to decree specific performance instead of awarding damages. However, the equitable remedy of specific performance will not be

⁵⁸ (1880) 16 Ch D 544 at 549.

⁵⁹ [1978] AC 904. Much earlier, Lord Denning advocated that law and equity had truly merged; see *Errington v Errington and Woods* [1952] 1 KB 290 at 298.

⁶⁰ [1978] AC 904 at 924.

⁶¹ [1990] 3 NZLR 299 at 310.

⁶² [1978] AC 904.

⁶³ *Surrey County Council v Bredero Homes* [1993] 1 WLR 1361. These matters are explored in more detail in Chapter 21.

available in relation to a contract which is created by deed and recognised in the common law only. The common law recognises and enforces a contract entered into by deed on the grounds that the deed is the consideration.⁶⁴ Equity, however, takes the view that there is no valuable consideration and therefore refuses to recognise the contract. Thus, if A had entered into a promise by deed to transfer his painting to B, in the event of breach, B could ask the common law for an award of damages but could not ask for specific performance of the contract as the contract would not be recognised in equity.

So, what then does one make of Professor Ashburner's metaphor about the two streams which run side by side and do not mingle their waters? The answer to this is neatly explained by Gary Watt, who writes: '[T]he image of two streams in single channel is not a helpful one. It would be better to see the single river of law being composed of two parts: the riverbed and the water that runs over it. The common law is the river bed, in places it is as unyielding as stone, but in those places over time it is softened by the more fluid processes of equity.'⁶⁵



Equitable maxims

It has already been seen that historically equity developed based not on any formal process of precedent, but rather on the discretion of the Lord Chancellor. However, as time went on, the decisions of the Court of Chancery began to form a set of principles and doctrines, which one can say have become as rigid as the common law. What emerged in the course of the development of equity were a set of maxims which explained the way in which equity would intervene in given situations.

Equity will not suffer a wrong without a remedy

This equitable maxim provides that, where possible, a wrong should be redressed by the courts. It does not suggest that every possible wrong complained of should be addressed, but that where there is a defect in the common law then equity should provide an answer. A good example here is the trust. In the early development of equity, the Court of Chancery readily upheld the rights of the beneficiary of the trust despite the trustee having a legal title to the trust property enforceable at common law. The trustee would be compelled to recognise the rights of the beneficiary and to transfer the property to the beneficiary. Another example of the operation of this maxim is in the context of a contract. A contract may be perfectly recognised at common law in that it has satisfied all the common law requirements as to form. However, if such a contract has been entered into on grounds of fraud, mistake or undue influence, equity will allow the party affected by the fraud, mistake or undue influence to escape contractual liability. Unlike the common law, equity can put the contract to an end by the remedy of rescission, the purpose of which is to undo the contract and put the parties in the position they would have been in had the contract not been entered into.

Equity follows the law

Equity developed as a response to the defects of the common law; however, it did not aim to override the common law. Of course, where there was a conflict between law and

⁶⁴ See *Cannon v Hartley* [1949] Ch 213.

⁶⁵ Gary Watt, *Textbook on Trusts* (2nd edn., 2006) OUP Oxford at p. 25.

equity, equity would prevail. This maxim is particularly relevant in the context of land law where equitable estates and interests in land reflect legal estates and interests in the land. Thus, where a legal estate in the land fails for want of formality such as a deed, the same estate will be recognised in equity.

Equity acts *in personam*

One of the more important maxims of equity is that ‘equity acts *in personam*’. This maxim has its origins in the manner in which the Lord Chancellor would seek to redress a legal wrong complained of by a claimant. The Chancellor would not interfere with the common law rule or judgment awarded by the common law courts; instead he would ask the defendant to appear before him personally. A decision would be given, and an order would be made personally against the defendant to carry out what was instructed. For example, where a contract was capable of being specifically performed, an order would be made to perform that contract. Similarly, where a trustee refused to recognise the rights of a beneficiary under a trust, an order would be made compelling the trustee to so recognise the rights of the beneficiary and convey the title to the trust property in appropriate circumstances. Failure to comply with the order amounted to a contempt of court, which could lead to imprisonment; thus, there was every incentive to comply with such an order. What is clearly apparent from the idea of acting *in personam* is that the Chancellor and, therefore, equity did not interfere as such with the property in the hands of the defendant. For example, in the context of a trust, equity did not have the power to say that the beneficiary was the legal owner of the property, but could compel the trustee to recognise the existence of the trust, and if appropriate to convey the title to the trust property to the beneficiary in the appropriate common law way.

A modern example of this maxim was illustrated in *Webb v Webb*⁶⁶ where the Court of Justice of the European Community recognised that equity acting *in personam* was sufficient to give jurisdiction over a person abroad and it made no difference that the order related to property situated abroad. On the facts, a son was ordered to hold a flat on resulting trust for his father on the grounds that his father had paid the purchase price of the flat but did not take legal title to it.⁶⁷ Given the fact that the order related to the person and not the property, there was no conflict with the laws of the foreign country regarding ownership of the disputed property.

He who comes to equity must come with clean hands

This maxim is one that students of law become more accustomed to than any other. Unlike the common law, which is based on precedent and looks to questions of form, equitable relief is given on a discretionary basis. Indeed, all equitable remedies are given on a discretionary basis and are not available *per se*. Thus, even if all matters of form were complied with, the Lord Chancellor could deny the claimant a remedy if there was some impropriety in his conduct leading up to the dispute complained of. A good example is a claim between a landlord and tenant under a lease. Although a lease confers on the tenant an estate in the land, it is also a contractual agreement. Any attempt by the landlord to remove the tenant

⁶⁶ [1994] QB 696. See also *Richard West and Partners (Inverness) Ltd v Dick* [1969] 2 Ch 424 where an English court had jurisdiction to grant specific performance of a contract for the sale of land in Scotland.

⁶⁷ Resulting trusts arising on grounds of contribution to the purchase price of property are discussed in more detail in Chapter 11.

contrary to the terms of the lease agreement amounts to a breach of contract; the tenant can ask equity to decree specific performance of the lease. However, it is quite clear that equity will not decree specific performance where the tenant is at fault, for example, by not observing the covenants in the lease agreement.

An example of the operation of the maxim can be seen in *Lee v Haley*⁶⁸ where the claimants sought an injunction to protect their coal business. This was, however, denied by the Court of Appeal on the simple grounds that they had fraudulently sold their customers short.

It is important, however, that the wrongful conduct of the complainant must have a direct nexus with the dispute in question for the maxim to apply. For example, in *Argyll (Duchess) v Argyll*,⁶⁹ the fact that the wife's adultery was the sole reason for divorce proceedings did not prevent her from obtaining an injunction stopping her former husband from publishing confidential information. Similarly, in *Tinsley v Milligan*,⁷⁰ where the House of Lords considered the maxim in detail and the extent to which it was admissible to prevent the court from awarding the claimant a remedy, the House of Lords explained that the wrongful conduct must be causally related to the dispute in question. On the facts of this case, a lesbian partner had joined her co-partner in the purchase of land but did not put herself on the title to the disputed property. This was done in order to make dishonest claims for social security benefits. When her co-partner denied her an interest in the disputed property, she complained that she had an equitable interest under a resulting trust by virtue of her contribution to the property. Her co-partner (the legal owner of the house) argued that her dishonest conduct in claiming social security benefit was sufficient to deny her equitable relief because she was not coming to equity with clean hands. The House of Lords, however, held that the maxim only applied where the wrongful conduct of the claimant had the purpose of setting up her entitlement in the first place. On the facts, although there had been wrongful conduct by the claimant, her right to an interest in the property purchased was not influenced by the wrongful conduct put before the court.⁷¹ In Lord Browne-Wilkinson's opinion the claimant did not need to rely on her dishonest conduct to establish an entitlement to the property: that entitlement arose by virtue of the resulting trust in her favour. In other words, if the dishonest conduct of the claimant was the only basis upon which her entitlement could be established then that would be not entertained by the court. A good example of this is illustrated in *Gascoigne v Gascoigne*,⁷² where a husband took a lease in the wife's name. This was sufficient to raise a presumption of advancement and infer a donative intent on his part.⁷³ The husband sought to rebut that presumption of advancement by arguing that the only reason he transferred the lease in his wife's name was to defraud his creditors. The Court of Appeal, however, held that he was not entitled to use evidence of an illegal nature to rebut the presumption of advancement.

More recently, in *O'Kelly v Davies*⁷⁴ the question arose for the first time as to the role and effect of illegality in the context of a common intention constructive trust of land. In particular, is a claimant barred from enforcing a beneficial interest in land under such a

⁶⁸ (1869) 5 Ch App. 155.

⁶⁹ [1967] Ch 302.

⁷⁰ [1994] 1 AC 340. See Chapter 11 for a more detailed analysis of this case.

⁷¹ See also *Tribe v Tribe* [1996] Ch 107.

⁷² [1918] 1 KB 223.

⁷³ The equitable presumption of advancement infers a donative intent when a transfer is made from father to child or husband to wife. These are considered in more detail in Chapter 13.

⁷⁴ [2014] EWCA 1606. The decision is analysed in further detail in Chapter 13.

trust if he or she has been involved in some illegal purpose? The Court of Appeal held that a claimant was entitled to enforce his beneficial interest under a constructive trust of land despite his participation in an illegal purpose. The illegal purpose was not relied upon to set his entitlement to the beneficial interest.

Equity looks to substance as opposed to form

Equity will not be defeated by lack of compliance with form. It has already been observed in *Walsh v Lonsdale*⁷⁵ that a long lease which failed for want of formality was nevertheless recognised and upheld in equity on grounds that in substance the landlord had purported to grant a long lease. Sometimes this maxim is also explained by saying that equity looks to intent rather than form. The matter is neatly explained by Romilly MR in *Parkin v Thorold*⁷⁶ when he commented that ‘courts of equity make a distinction between that which is a matter of substance and that which is a matter of form; and if it finds that by insisting on the form, the substance will be defeated, it holds it inequitable to allow a person to insist on form, and thereby defeat the substance’.⁷⁷

Equity regards that as done which ought to be done

Equity sees that as done which ought to be done at law. Once again, the decision in *Walsh v Lonsdale*⁷⁸ provides a perfect example of the operation of this maxim. The decision to uphold the long lease in that case was based on the ground that equity regarded that as done which ought to be done and, in doing so, the court regarded the long lease as having been granted even though at common law it failed for formality. The maxim also explains the grounds upon which the equitable remedy of specific performance is decreed in the case of a contract for the sale of land or some other special property. Where a contract is capable of being performed, the vendor becomes a constructive trustee and the equitable interest in the subject matter of the contract passes to the purchaser. The basis for treating the purchaser as owner in equity is simply because equity regards that as done which ought to be done. The decree of specific performance will require the vendor to transfer the legal title to the purchaser.

He who seeks equity must do equity

Where a person seeks equitable relief, he must act fairly towards the other party against whom the equitable relief is being sought. For example, where an individual seeks to set aside a contract by asking the court to rescind the contract, he must be prepared to pay over any money received under the contract. Equally where a contract is set aside, for example, on grounds of undue influence, one party will be allowed to retain remuneration for work done despite having to return the profits made under the contract which is now rescinded. Thus, in *O’Sullivan v Management Agency and Music Ltd*⁷⁹ a contract between a singer and a music agency was set aside on grounds of undue influence. The Court of Appeal ordered the music company to return any profits made to the singer, but also held that the company was entitled to retain some of the profits by way of remuneration for

⁷⁵ (1882) 21 Ch D 9.

⁷⁶ (1852) 16 Beav. 59.

⁷⁷ (1852) 16 Beav. 59 at 66.

⁷⁸ (1882) 21 Ch D 9.

⁷⁹ [1985] QB 428.

their labour and skill. A similar result was achieved in *Boardman v Phipps*⁸⁰ where a solicitor who was acting in connection with a trust advised the trustees, who already held shares in a private company, that they should acquire more shares in the same company with a view to exerting greater control in that company. The trustees refused to purchase further shares on the basis that the trust instrument did not authorise them to do so. After consultation with some of the trustees, the solicitor acquired a controlling interest in the company and made a substantial profit for himself as well as restructuring the company and profiting the beneficiaries. The House of Lords held by a bare majority that the solicitor was required to account for those profits made in his capacity as a fiduciary. Despite the absence of dishonesty on his part, those profits had been made in his capacity as a fiduciary and thus belonged to the beneficiaries. The decision illustrates the strict rule of equity that a fiduciary is not entitled to retain any property made in his capacity as a fiduciary. Boardman, however, was authorised to retain some of the profit by way of remuneration on the basis of *quantum meruit*. Both the Court of Appeal and the House of Lords were aware that Boardman was a man of great ability and had expended labour in reorganising the company and increasing the share therein.

Equity imputes an intention to fulfil an obligation

Equity will impute an intention to fulfil an obligation. If a person intends to carry out an obligation and then does something which has the effect of fulfilling that obligation, equity will deem that obligation to be satisfied. This maxim is better explained by what has become known as the rule in *Strong v Bird*.⁸¹ This rule holds that where a person (donor) intends to make a lifetime gift to another (donee) but fails to do so then, provided his intention to make the gift continues up until his death and he appoints the donee as his executor or administrator, the gift is said to be complete. The vesting of the donor's property in the donee as executor or administrator is deemed to impute an intention that he wanted the donee to keep what he was promised during the lifetime of the donor.

Delay defeats equity

Otherwise known as the equitable defence of laches, a person who seeks equitable relief must do so within a reasonable time.⁸² If he does not assert his right to bring an action within a reasonable time then his conduct is seen as being acquiescence with the wrong complained of. The equitable defences of laches, which still applies in some cases today, must be seen in light of the Limitation Act 1980.

Where equities are equal, the first in time prevails

Where there are two competing equitable interests in the same property then the first in time will prevail. For example, if A grants an equitable mortgage to B and then subsequently grants an equitable mortgage to C, B's mortgage will take priority.⁸³

⁸⁰ [1967] AC 46. The decision in *Boardman v Phipps* is considered in more detail in Chapter 17.

⁸¹ (1874) LR 18 Eq. 315. The rule is considered in much detail in Chapter 5.

⁸² See *Smith v Clay* (1767) Amb. 645 and also *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221.

⁸³ An equitable mortgage will arise, for example, where the mortgagor only has an equitable interest to mortgage. Thus, a beneficiary under a trust can only grant an equitable mortgage over the equitable interest in the trust property.

● Where the equities are equal, the law prevails

Unlike the last maxim, which seeks to address priority between two competing equitable rights, this maxim addresses the priority between an equitable right and a legal right in respect of the same property. The legal right takes priority over the equitable right. It does not matter whether the equitable right pre-existed the legal right.

● Where there is a conflict between law and equity, equity prevails

It has already been seen that where there is a rule of the common law and a rule of equity, equity is said to prevail over and above the common law.



Nature of proprietary rights in law and in equity

From what has been observed so far in this chapter, it is clear that rights, particularly proprietary rights, are recognised both at common law and in equity. There is, however, a fundamental difference between those rights recognised at common law and those recognised in equity. Proprietary rights at common law are said to be rights *in rem* whereas proprietary rights recognised in equity are said to be rights *in personam*.

● Legal proprietary rights: rights *in rem*

The general principle is that proprietary rights, such as legal ownership, are good against the whole world. Proprietary rights recognised at law are said to be rights *in rem*.⁸⁴ There are two meanings to the use of *in rem* as meaning binding the whole world. In the first place, legal rights prevail over any subsequently created legal or equitable interests.⁸⁵ A legal right, for example, affecting land will bind anyone who subsequently acquires the land irrespective of knowledge of its existence.⁸⁶ Thus if A, the owner of land, leases it to B for a term of 25 years and then subsequently sells the land to C, then C, although the freehold owner of the land, cannot take possession of the land because he will be bound by the legal lease created in B. C is, however, entitled to the receipt of rent from B.

The second aspect of the meaning that legal rights in property bind the world relates to the fact that the right in question is held against a thing rather than a person or persons. In this respect the right is good against anyone who interferes with the thing in which the right is held. Thus, the ownership of A's house is good against anyone in the world and it does not matter who has trespassed on his land. A will have an action against anyone who wrongfully interferes with his land; his right to bring an action is not limited to certain

⁸⁴ Meaning that they bind the whole world.

⁸⁵ The only limited exception to this rule is in the case of personal property when there may be exceptions to what is known as the *nemo dat quod non habet* rule. This rule holds that a person cannot give a better title to property than he has. Thus, a person cannot give a good title to something if he does not have it in the first place. The exceptions to the *nemo dat quod non habet* rule are outside the scope of this book; however, see generally, M. Bridge, *Personal Property Law* (3rd edn., 2002) at pp. 95–115.

⁸⁶ In the case of land, certain legal rights may be subject to registration where the title to land is registered. Registration of legal rights in this context is an integral and normal part of the registration process; such registration does not detract from the common law principle that legal rights bind the whole world.

persons. In this respect, Austin once commented that ‘rights *in rem* may be defined in the following manner – rights residing in persons and availing against persons generally’.⁸⁷

Equitable property rights: rights *in personam* or rights *in rem*?

Unlike common law property rights, equitable property rights are often described as rights *in personam*. This attribute arises from the historical basis whereby equity acts *in personam*. Conceptual problems do, however, arise when equitable property rights are described as rights *in personam*. The reason for this is that rights *in personam* have traditionally been analysed as purely personal rights. Parties under a contract have personal rights; for example, a personal right to see that the contract is performed. This creates the rather strange paradox that although we refer to equitable property rights as property rights, we describe them as rights *in personam*, suggesting that they are purely personal rights. However, the fact is that equitable property rights are not rights *in personam* in the sense that they are purely personal rights: they are indeed property rights.⁸⁸ For example, the right of a beneficiary under a trust is proprietary, albeit an equitable proprietary right. The fact that they are also described as rights *in personam* is attributable to the method of enforcement of the right in equity, that is, an order *in personam* in equity.

It is submitted that equitable property rights, albeit classified as rights *in personam*, are proprietary rights in the true sense of the word. The answer is arrived at if one puts aside the juridical analysis of rights and then simply asks the question as to enforceability of the right. Where a right has the ability to bind a potentially large class of persons then it looks more like a proprietary right than a personal one. Equitable rights are not mere personal rights as, for example, those arising under a contract; they are rights which are capable of binding a potentially large class of persons. Even though equity acts *in personam*, the range of persons capable of being bound by an equitable right can be great. In this respect Megarry and Thompson write:

[E]quitable rights . . . look less and less like mere rights *in personam* and more and more like rights *in rem*. Although it is still possible to regard them as rights *in personam*, it is perhaps best to treat them as hybrids, being neither entirely one nor entirely the other. They have never reached the status of rights *in rem*, yet the class of persons against whom they will be enforced is too large for mere rights *in personam*.⁸⁹

Equitable rights and the doctrine of notice

Equitable rights, for example, the rights of a beneficiary under a trust, are governed by the doctrine of notice. This doctrine holds that equitable rights are binding on all persons except a bona fide purchaser of a legal interest without notice of the pre-existing interest.⁹⁰ Equity, acting *in personam*, clearly binds the conscience of the party against whom an equitable interest is granted. Thus, for example, a trustee is clearly bound by the trust and

⁸⁷ Austin, *Jurisprudence* (4th edn.) at p. 381.

⁸⁸ Some commentators have, however, suggested that all equitable rights are personal as opposed to proprietary. See, for example, Langdell, *Brief Survey of Equity Jurisdiction* (2nd edn.) who once wrote that an equitable right ‘may be defined as an equitable personal obligation. It is an obligation because it is not ownership’, (p. 6). See also W. Hart, ‘The Place of Trust in Jurisprudence’ (1912) 28 *LQR* at 290, where the author examines the idea of a right *in personam* in the context of the trust and the rights of the beneficiary thereunder.

⁸⁹ A.J. Oakley (ed.) *Megarry’s Manual of the Law of Property*, (8th edn., 2002) at p. 57.

⁹⁰ See *London and South Western Rail Co v Gomm* (1882) 20 Ch. D 562 and *Pilcher v Rawlins* (1872) Ch App. 259.

must recognise and respect the equitable interest of the beneficiary. However, equity goes further and binds all those persons who subsequently acquire the legal title to the property in which the equitable right is granted with notice of the equitable right. Thus, where a trustee transfers the legal title to the trust property to a third party, the equitable rights of the beneficiary will bind the third party if he has notice of the equitable interest of the beneficiary.

The doctrine of notice requires the purchaser to be a bona fide purchaser. This is no more than saying that the purchaser must be one who is innocent and acting in good faith. The absence of notice on the part of the bona fide purchaser will readily satisfy this requirement. The purchaser must have given value, that is, consideration. Consideration includes the common law meaning as well as the meaning in equity, thus money or money's worth and marriage consideration will suffice.⁹¹ A purchaser for value need not, however, show that consideration was adequate.⁹² Where a purchaser has not provided any consideration he will not be able to rely on the doctrine of notice and will be bound by the equitable right irrespective of notice. This is primarily because equity will not assist a volunteer and a volunteer is someone who has not provided consideration. The purchaser must be a purchaser of a legal estate. In the context of real property this means that the purchaser must be a purchaser of either a freehold estate or a leasehold estate.⁹³ In the context of personal property the purchaser must simply be the purchaser of the legal title to such property; for example, the legal title to shares in a company or a painting. It is clear, however, that the doctrine of notice does not extend to the purchase of an equitable estate or interest in property. Here the equitable maxim 'where the equities are equal the first in time prevails' applies in order to give priority to such rights.⁹⁴

The central requirement of the doctrine of notice relates to the question of what constitutes notice. Three types of knowledge have been identified for the purposes of the doctrine.

- 1 *Actual notice.* This is the most obvious and simplest form of knowledge attributable to a purchaser. It refers to the situation where a purchaser is consciously aware of the equitable right in the property at the time of the purchase. Thus, if a trustee sells trust property in breach of trust to a third party who knows of the existence of the trust then that third party is clearly bound by the equitable right of the beneficiary.
- 2 *Constructive notice.* Actual notice is to be distinguished from constructive notice, which refers to knowledge which would have come to the attention of a purchaser had he carried out a reasonable inspection of the title to that which he was purchasing. A good example of constructive notice was illustrated in a trust of land case, **Kingsnorth Finance Co Ltd v Tizard**.⁹⁵ On the facts, a husband held the legal title to a matrimonial home on trust for himself and his wife. After they had separated, the wife discontinued living with her husband but did visit the house on a daily basis to look after the children. The husband arranged a mortgage with the mortgagee, which was duly given after an inspection on a Sunday afternoon arranged by the husband at a time when the wife was not there. The husband told the surveyor that he had

⁹¹ Marriage consideration is considered in more detail in Chapter 6.

⁹² *Midland Bank Co Ltd v Green* [1981] AC 513.

⁹³ Purchaser includes a legal mortgagee who, by operation of the Law of Property Act 1925, s. 87(1), is deemed as being vested with a legal estate in the land.

⁹⁴ *Re Morgan* (1881) 18 Ch D 93; *McCarthy and Stone Ltd v Harding* [1973] 1 WLR 1547.

⁹⁵ [1986] 1 WLR 783.

separated from his wife some time ago and that she did not have any interest in the house. When the husband later absconded with the mortgage monies, the court held that the equitable rights of the wife under the trust bound the mortgagee. The inspection by the mortgagee was simply insufficient and they were affixed with constructive notice.⁹⁶

- 3 *Imputed notice.* The final type of notice is imputed notice, which arises when an agent of the purchaser has notice, actual or constructive, which is imputed to the purchaser; for example, where a solicitor of the purchaser may have notice but fails to communicate it to the purchaser. Nevertheless, the purchaser will have imputed notice by virtue of his agent.

The effect of a successful claim that a purchaser purchased the legal title without notice of the equitable right is to give him an ‘absolute, unqualified, unanswerable defence’⁹⁷ against the holder of an equitable interest in the property purchased. The doctrine of notice not only gives the purchaser an unqualified defence against the holder of the equitable right, but also operates in a destructive way so that the equitable interest in the property is completely destroyed. It cannot be revived against a subsequent purchaser of the legal title who may have notice of the fact that the equitable right once existed.⁹⁸

In the context of land, the doctrine of notice has been largely superseded by a system of registration of interests. Furthermore, the doctrine of overreaching was introduced whereby the rights of beneficiaries under a trust were automatically transferred to the proceeds of sale, provided that the purchase money was paid over to a minimum of two trustees.⁹⁹



Equity and social reform

In this chapter a lot has been said about the development of equity as a gloss upon the common law. It has been seen that equity played an important role in ironing out the deficiencies of the common law and thereby developing its own unique equitable principles and doctrines. However, it must also be remembered that equity played an important role in social and economic reform and recognised rights and doctrines which were not recognised at common law. Three particular examples can be given in this chapter to illustrate equity’s contribution to social and economic reform.

⁹⁶ The extent to which constructive notice operates in contexts other than land is debatable. It is generally understood that the level of investigation of title in personal property transactions is different from that of land transactions. Personal property has never been subject to the rigorous inspection of title that occurs in land transactions simply because there are no elaborate title deeds or system of registration by which a purchaser can inspect title. Over a hundred years ago Lindley LJ remarked that ‘the equitable doctrines of constructive notice are common enough in dealing with land and estates with which the Court is familiar; but there has always been repeated protest against the introduction into commercial transactions of anything like an extension of those doctrines and the protest is founded on perfect good sense’. See, *Manchester Trust v Furness* [1895] 2 QB 539 at 545.

⁹⁷ *Pilcher v Rawlins* (1872) 7 Ch App. 259 at 269.

⁹⁸ *Wilkes v Spooner* [1911] 2 KB 473.

⁹⁹ See s. 2(1) Law of Property Act 1925. For an application of the doctrine of overreaching, see *City of London Building Society v Flegg* [1988] AC 54. The process of registration of equitable interests in registered land is now governed by the Land Registration Act 2002.

● The property rights of married women

Until the enactment of the Married Women's Property Act 1882, a married woman had no right to own property; everything she had belonged to her husband. Despite the 1882 legislation, which changed that rule, the husband usually continued in practice to be the sole owner of property.¹⁰⁰ It is not altogether clear why the common law denied property rights to married women. Holcombe explains that historians attribute the common law rule to grounds such as religion.¹⁰¹ The medieval church regarded marriage as sacramental and the idea that two persons became one flesh justified the husband's dominion over his wife and any property she may have had. Other justifications simply concentrate on the social and economic reality of the position of women in the Middle Ages. The extent of the common law rule prior to 1882 is neatly explained by Holcombe who writes:

[T]he property that a woman possessed or was entitled to at the time of the marriage and any property she acquired or became entitled to after her marriage became her husband's to control. Moreover, if a woman who accepted a proposal of marriage sought, before the marriage took place, to dispose of any property without the knowledge and consent of her intended husband, the disposition could be set aside as a legal fraud.¹⁰²

The denial of property to married women was not something peculiar to English law; other systems of law and state followed similar patterns.¹⁰³

Despite the denial of property rights for women at common law, equity recognised and enforced marriage settlements, protecting that property which was the subject of the settlement. Under a marriage settlement, the wife would agree to settle any property she brought into the marriage or any property acquired after her marriage upon trust. The trustees of the marriage settlement would then hold such property for her and her issue.¹⁰⁴ The role of equity in protecting the property rights of women is best explained by Holcombe, who writes:

In practice the Court of Chancery allowed the creation of a special category of property, the so-called separate property or separate estate of married women. At law a married woman could not own property, but in equity property could be settled upon her for her use under the management of a trustee who was responsible to the court for carrying out the terms of the trust. At first it was necessary to prove to the court's satisfaction that there was a good reason for the creation of the trust, as, for example, that the husband was a wastrel or that the woman was separated from her husband. But soon equity came to accept without inquiry any trust created for a married woman. The separate property created by the trust would be protected by the Court of Chancery against a woman's husband and all other persons according to the wishes of the donor.¹⁰⁵

● Freedom of testation

The system of feudal tenure discussed earlier in the chapter operated in a way in which no person, apart from the Crown, was absolute owner of land. Instead the ownership

¹⁰⁰ See B. Roshier and H. Teff, *Law and Society in England* (1980) at p. 173.

¹⁰¹ L. Holcombe, *Wives and Property* (1983) at p. 19.

¹⁰² *Ibid.* at p. 18. The approach of the common law to the property rights of married woman was not followed by equity jurisdiction. Equity contributed to law reform by using equitable principles, notably the trust and marriage settlements, to protect the rights of married woman in property they might acquire after marriage.

¹⁰³ See E. Sullerot, *Woman, Society and Change* (1971) at pp. 19–28.

¹⁰⁴ See, for example, *Pullan v Koe* [1913] 1 Ch 9. Marriage settlements are discussed at more length in Chapter 6.

¹⁰⁵ L. Holcombe, *Wives and Property* (1983) at p. 38.

of land was fragmented vertically so that the King granted land to powerful lords who could in return grant further segments of land to tenants. The trust developed out of the use as a way in which feudal tenants could freely leave land to their heirs, without their heirs having to pay feudal dues to the overlord. By transferring the land to trustees on use of the tenant and, after the tenant's death, his family, there would be no acquisition on the land after the tenant's death. Instead, the trustees would be (and would always remain) the owners of the land but would be bound by equitable intervention to the use (this is discussed more fully in Chapter 2, under 'Historical foundations of the trust').¹⁰⁶

The second advantage of the trust lay in the fact that it permitted greater freedom to the tenant in devising his property to persons other than just the heir. The common law was strict in requiring land be vested in the heir of the tenant. Where the tenant died without an heir, the overlord became entitled to the land by way of escheat.¹⁰⁷ Transfer to trustees, however, allowed land to be enjoyed by those designated in the terms of the use rather than on the strict principles of the common law. In recognition of the potential scope of the use in undermining the system of feudal dues and the consequential emptying of the Crown's pocket, the Statute of Uses 1535¹⁰⁸ was introduced, which had the effect of undermining certain uses. The basic aim of the legislation was to deny the beneficiary equitable rights in the land. Rather, where the use was employed, the intended beneficiary acquired a legal title to the land and was thus subject to feudal dues in the event of the death of the tenant. In 1540 the Statute of Wills was also passed in recognition that the landowning aristocracy rejected the strict common law rule requiring land to be acquired by the heir. The statute permitted greater freedom in the disposition of property after the death of the tenant; however, such dispositions would be subject to the same feudal taxes that existed before the statute.

Restrictive covenants

Although in the nineteenth century it was important to keep land unfettered by burdens so as to maintain its optimal value for industry, there was also a growing recognition towards the end of the century that the pace of industrial and urban growth would seriously undermine land use in the country.¹⁰⁹ In the landmark decision in *Tulk v Moxhay*,¹¹⁰ Lord Cottenham LC held that a successor of a negative covenant who had notice of the covenant was thereby bound in conscience to honour it. On the facts of the case, the covenantor had agreed with the covenantee that he would maintain a garden at Leicester Square uncovered with any buildings. Although the sale of the covenantor's land to his successor contained no provision in the conveyance relating to the garden, it bound the successor of the covenantor on the grounds of notice. The effect of the ruling in *Tulk v Moxhay* was to recognise a new equitable interest in land capable of binding third parties despite having its origins in contract and starting out as a personal right.

¹⁰⁶ This basically involved delivery of possession in the presence of witnesses followed by ceremonial acts; see Thorne, 'Livery of Seisin' (1938) 52 *LQR* at p. 345.

¹⁰⁷ See Megarry and Wade, *The Law of Real Property* (7th edn., 2008) at p. 17.

¹⁰⁸ Described as the 'most important single statute in the history of the trust's development' by G. Moffat, *Trust Law: Text and Materials* (3rd edn., 1999); see now (4th edn., 2005) CUP Cambridge, at p. 40.

¹⁰⁹ See W.R. Cornish and G. de N. Clarke, *Law and Society in England 1750–1950* (1989) at p. 150.

¹¹⁰ (1884) 2 Ph. 774; 41 ER 1143.

Conclusion



This chapter has explored the nature and historical development of equity. It has been observed that equity developed in response to the inadequacies of the common law in the thirteenth and fourteenth centuries. The two deficiencies identified in this chapter were the inadequacy of the common law remedy and the rigidity of the system of precedent. Equity developed in such a manner as not to override the common law or indeed to conflict with it; rather equity's aim was to supplement the common law system and provide a gloss on the common law. The early Court of Chancery was administered by the Lord Chancellor who sought to exercise his discretion in any given dispute by looking to the unconscionable conduct of the defendant. In this respect, equity has sometimes been described as a system of law which seeks to undo unconscionable conduct. Although the early Court of Chancery interpreted the notion of unconscionability with reference to principles of morality and applied it on a very broad discretionary basis, the modern interpretation of unconscionability is much more refined. Unconscionability in modern equity is interpreted and understood by looking at the relevant context. By examining the various contexts in which equity has operated and continues to operate, one can see that the courts have over time established set principles and rules which determine whether the conduct of the defendant has been unconscionable in that context.

Although the early Court of Chancery looked at cases on an individual basis, and exercised relief on the merits of every case, in more recent times there has been debate as to whether equity still possesses the same degree of flexibility in developing new rights and remedies. It has been suggested that equity has gone past childbearing and now possesses the same degree of rigidity as the common law, that is, the rules of equity are now as determined and established as the rules of the common law. While this is true to a large extent in English law, the courts have from time to time shown a willingness to use equitable jurisdiction to develop new rights and remedies. However, it must be said that English law, unlike its Commonwealth partners, has remained cautious in the expansion of new equitable rights and remedies. This has primarily been in response to the perceived uncertainty in law that would arise by the creation of new rights and remedies.

This chapter has examined some of the basic maxims of equity which explain how equitable relief is administered by the courts. These maxims provide the basis upon which the discretionary nature of equitable relief is administered. As well as the maxims of equity, this chapter provides the reader with an understanding of the difference between property rights which are recognised at law and those recognised in equity. The fundamental difference lies in the fact that property rights at law are described as rights *in rem* while rights in equity are recognised as rights *in personam*. The distinction between the two relates primarily to the enforceability of the rights against third parties. Property rights at common law bind the whole world whereas property rights in equity are governed by the equitable doctrine of notice and bind everyone except a bona fide purchaser of the legal title without notice of the equitable interest.

Finally, while this chapter has looked at the manner in which equity developed as a gloss on the common law, the supremacy of equity in dealing with emerging social and economic reform cannot be underestimated. This chapter has looked at some of those areas, such as the rights of married women, the rights of a borrower under a mortgage and the restrictive covenant in planning, which demonstrate the importance of equity

in meeting some of the social and economic challenges presented from time to time. Indeed, one of the notable achievements of equity has been its ability to provide legal redress in a number of quite diverse contexts ranging from the social to the commercial.

Moot points

- 1 Explain the reasons for the development of the early Court of Chancery.
- 2 What do you understand by the term 'unconscionability' and how would you differentiate it from the notion of fairness?
- 3 How would you describe the relationship between the common law and equity?
- 4 What do you understand by the 'fusion fallacy' between common law and equity? With specific examples, explain how common law and equitable remedies need to be distinguished on any given set of facts.
- 5 What are the fundamental differences between property rights at law and property rights recognised in equity?
- 6 One of the greatest achievements of equity in English law has been its ability to operate in a number of quite diverse contexts ranging from social to commercial. Explain the reasons why equity has been able to do this.

Further reading

Baker, J.H. *An Introduction to English Legal History* (5th edn., 2019) Oxford: Oxford University Press. A useful resource for further investigation into the development of the common law and equity.

Delany, H. and D. Ryan 'Unconscionability: A Unifying Theme' (2008) *Conv.* 401. This article provides an excellent discussion surrounding the term 'unconscionability' and explores the extent to which it is possible to identify a unifying theme which explains the term.

Duggan, A.J. 'Is Equity Efficient?' (1997) 113 *LQR* 601.

Hayton, D. 'The Development of Equity and the Good Person Philosophy in Common Law Systems' (2012) *Conv.* 4. 263–273. Explores the historical emergence of equity under the common law.

Holmes, O. 'Early English Equity' (1885) 1 *LQR* 162. Provides a useful historical account of equity.

Maitland, F.W. *Equity: A Course of Lectures* (J. Brunyate (ed.) 1936) Cambridge: Cambridge University Press. This provides an excellent read on the nature of equity and its associated principles and doctrines as delivered by Professor Maitland to his students.

Martin, J. 'Fusion, Fallacy and Confusion: A Comparative Study' [1994] *Conv.* 13. Examines the fusion fallacy between equity and the common law.

Worthington, S. *Equity* (Oxford: Clarendon Press, 2003). Provides a very interesting read into the nature, scope and functions of equity.

2

The trust concept

Learning objectives

After reading this chapter, you should be able to:

- understand the nature of a trust
- understand the reasons for creating a trust
- explain the trust as a product of fragmentation of ownership
- understand the historical development of the trust and its modern-day significance
- explain the respective rights of the trustee and the beneficiary
- explain the difference between express trusts and implied trusts
- understand how express trusts and implied trusts are classified
- explain the role of trusts in law reform
- understand the functions of trust law.

SETTING THE SCENE

Hambro and Others v The Duke of Marlborough and Others
[1994] 3 WLR 341: **The Blenheim Estates, the Duke of Marlborough and his irresponsible son**

Many readers with an advanced understanding of the law of trusts may be a little surprised and taken aback as to why the 'Setting the scene' in this chapter begins with a look at a decision of the High Court in 1994 concerning the famous Blenheim Estates. It is quite understandable why such a reader may be surprised, given the fact that litigation of the type in the case is not one which is commonplace in modern trust law. Nonetheless, the facts and the litigation concerning the Blenheim Estates and the 11th Duke of Marlborough illustrate some very important manifestations of the trust concept.

For those students who recall their history lessons, by 1704 the French King Louis XIV had powerful control over Europe in an attempt to build a massive French Empire. In order to continue with his dominance in Europe, the King formed an alliance with Bavaria. In 1704, John Churchill, the 1st Duke of Marlborough, marched an English army, allied with the Dutch, some 200 miles and triumphed over the French and their allies at a place called Blenheim. In recognition of this triumph, Queen Anne of England gave the Royal Manor of Woodstock, near Oxford, as a gift to the Duke of Marlborough. She instructed that a palace be built on the land. By an Act of Parliament in 1705, the land was subject to a settlement (trust) to the effect that the land be passed on to descendants of the 1st Duke of Marlborough, including female heirs. The effect of this arrangement was that the land was held for the 1st Duke of Marlborough and his subsequent heirs.

While the land continued to pass to subsequent Dukes of Marlborough, the 11th Duke of Marlborough commenced proceedings in 1994 contending that his son, the Marquis of Blandford, was financially irresponsible and that his right to the enjoyment of the Blenheim Estates be subject to restrictions. These restrictions were authorised by the High Court on the grounds that the Marquis of Blandford was not in a position to take control of the Blenheim Estates.

The famous victory at Blenheim, and the reward to the 1st Duke of Marlborough and the concerns of the 11th Duke provide good enough facts to illustrate some of the issues arising in trust law. First of all, the land was given by way of a gift to the 1st Duke of Marlborough, albeit subject to a settlement by an Act of Parliament in 1705. A unique feature of a trust is that it involves, in a majority of cases, a gift from one person to another. However, the gift is usually modified in some way; for example, that the enjoyment of it is only for the life of the beneficiary, as in the case of the Duke of Marlborough, or is otherwise postponed until some future time. Secondly, the land forming the Blenheim Estates was held by trustees for the benefit of beneficiaries – the heirs of the Duke of Marlborough. Thirdly, the facts of the case illustrate that a trust often has a long duration and in the course of the duration of a trust certain things can change. When such changes take place, can the trustees or the courts change the nature of the trust which was created many years previously by the settlor? Fourthly, the case is an excellent example of what can happen when a person creating a trust, or indeed trustees administering a trust, find themselves with an irresponsible beneficiary. Is there any means by which the trust property can be protected from the irresponsible behaviour of the beneficiary? In the case of the Blenheim Estates, what do you think Queen Anne, or indeed the 1st Duke of Marlborough, would have done if they knew that the estates would be under the control of an irresponsible heir? Finally, although the Blenheim Estates and the settlement of the land thereof provides an example of the use of the trust concept, the question arises as to whether the trust continues to operate in the manner in which it did in the case of the Blenheim Estates, or whether it has other more contemporary functions.

Moving on: thinking about trusts and trust law in the modern law

Most students doing a first degree in law will be unfamiliar with the concept of a trust. Unlike some areas of English law such as contract law or criminal law, the law of trusts is one which students will often find hard to relate to. This is not unusual, since most students will not have encountered the trust concept in their lives. They will readily relate to contracts and understand criminal wrongs, but to relate to the idea that a trust allows the fragmentation of ownership of a thing is something of an alien concept. So, what is it all about?

In order to understand the role and function of a trust it is best to start thinking about the following scenarios which may arise in everyday life.

Scenario One

Harry is sixteen years of age and is doing very well in his studies. It is his intention to qualify as a lawyer and work with his father, who has his own law firm. Harry's father has a sum of money which he would like to give to Harry so that he can use it for his studies and eventually qualify as a lawyer. Harry's father is concerned that if he simply hands over the money to Harry, he may just spend it without using it for his studies. A better solution might be for someone to hold the money for Harry and make it available only for his studies. Can this be done?

Scenario Two

Victor is a wealthy businessman and has shares in a number of different private and public companies. Over the past few years he has received substantial dividends on the shares. He has also had to pay tax on the profits he has made. Victor is taxed at a high rate and is wondering whether his tax liability could be lowered if he was to move some of his shares to family members.

Scenario Three

Wayne and Hillary purchased a house in 1989 and the legal title to the house was conveyed in Wayne's name only. It was intended that the house would be their family home and Hillary contributed to the deposit of the house. Hillary also made regular contributions to the mortgage. Recently, Wayne and Hillary, who are not married, decided to split up. Hillary is concerned that she is not on the legal title to the house but feels she must have some interest in it. Hillary has no legal title to the land, but has she got some interest in the house?

As well as the famous *Blenheim Estates* case, these three scenarios depict the type of matter which a student of equity and trusts may have to deal with. Each of these scenarios involves a solution which is provided by the trust concept. This chapter examines the concept of a trust and investigates its key features and the manner in which it operates.

Introduction



This book is primarily concerned with trusts and the law of trusts, and therefore the purpose of this chapter is to explore the concept of the trust, in particular its nature and the means by which trusts are classified. Maitland once wrote:

[O]f all the exploits of Equity the largest and most important is the invention and development of the Trust. It is an institute of great elasticity and generality; as elastic, as general as contract. This perhaps forms the most distinctive achievement of English Lawyers. It seems to us almost essential to civilization, and yet there is nothing quite like it in foreign law.¹

Indeed, the trust has played an important role in achieving various social and economic goals, which will be explored in this chapter and throughout the course of this book. For the time being, the following illustration explains the versatility of the modern trust by giving some examples of the types of socioeconomic problems that can be resolved by the use of a trust.² Some of the problems have already been raised in this chapter; however, Table 2.1 illustrates just how versatile the trust concept is.

Table 2.1 The versatility of the modern trust

A problem requiring a trust solution	The trust solution
Alfred, a wealthy businessman, has a number of investments which yield substantial income at the end of each tax year. Because the income exceeds the threshold for higher income tax, the question arises as to how he could possibly reduce his tax liability on the income he is earning.	The trust has, since its very beginnings, been a primary vehicle by which an individual can reduce his tax liability by settling his property for the benefit of his family members, thereby reducing the extent of tax payable on his income. For example, in the problem raised, rather than Alfred retaining beneficial ownership of the investments which yield the income, he can ask for those investments to be held by trustees on trust for family members, who will pay no tax at all or pay at a lower rate of tax.
Simone, who died recently, is survived by her three children, who are all under the age of eighteen years. Amongst other property, Simone has left her house to her three children. The children discover that the law does not permit a minor to hold the legal title to land.	The fact that the children cannot hold the legal title to land is not fatal to them enjoying the beneficial interest in the land. The law provides that a conveyance of a legal estate to a minor operates as a declaration of trust of that land in favour of the minor. In this way, the land is held by trustees for the benefit of the children, who on reaching the age of majority can call for the conveyance of the land to them.
Michael, who is married to Heather, wishes to leave his property to Heather after his death. However, unknown to Heather, Michael has for a long time maintained a very close relationship with his secretary Patsy. He wishes to leave a large sum of money to Patsy after his death. He is quite happy to leave his property to Heather in his will; however, he is also aware that if he leaves a large sum of money to Patsy in the will then this will be subject of much controversy, not least, the disclosure of his relationship with Patsy.	A will is a public document and as such is available to anyone to read. It is understandable why Michael would not want to include Patsy in his will. The trust, however, is an excellent vehicle by which he can provide for Patsy without Heather or anyone else finding out about the gift to her. Michael can leave the money in his will to someone like his solicitor, who agrees to give it to Patsy after Michael's death. This creates what is known as a secret trust. Michael's solicitor appears to receive the money absolutely; however, during Michael's lifetime he has agreed to be a trustee for Patsy. Indeed, secret trusts, as will be seen later, were a primary vehicle for providing for mistresses and illegitimate children.

¹ F.W. Maitland, *Equity: A Course of Lectures* (J. Brunyate (ed.), 1936) at p. 23.

² These are just some of the many ways in which the trust has been employed to meet different social and economic objectives.