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An Introduction to Equity and Trusts

1.01 The term “equity” is, in a general sense, associated with notions of fairness, morality and justice. It is an ethical jurisdiction, originally of canon law descent.¹ On a more legalistic level, however, “equity” is the branch of law that was administered in the Court of Chancery prior to the Judicature Acts 1873 and 1875.² This was a jurisdiction evolved to achieve justice and to overcome the rigours and deficiencies of the common law.³

As Lord Cowper LC rather grandly explained in *Lord Dudley v Lady Dudley*:

“Now equity is no part of the law, but a moral virtue, which qualifies, moderates, and reforms the rigour, hardness, and edge of the law, and is a universal truth; it does also assist the law where it is defective and weak . . . and defends the law from crafty evasions, delusions, and new subtleties intended as contrived to evade and delude the common law, whereby such as have undoubted right are made remediless; and this is the office of equity, to support and protect the common law from shifts and crafty contrivances against the justice of law. Equity therefore does not destroy the law, nor create it, but assists it”.⁴

Although an ethos of conscience pervades this aspect of the law, equity never bestowed a totally unfettered jurisdiction on the Court of Chancery to do what was fair in the settlement of a dispute.⁵ Embodying aspects of ecclesiastical law and Roman law, equity developed and gradually emerged as a distinct body of law. In time, the system became as hidebound by rules and principles as its common law counterpart.⁶

¹ See generally, H. Coing, “English Equity and the *Denunciatio Evangelica* of the ‘Canon Law’” (1955) 73 L.Q.R. 223.

² Equity was, as Lord Neuberger MR noted in his Keating lecture (delivered at Lincoln’s Inn on 19 May 2010) entitled “Equity, ADR, Arbitration and the Law: Different Dimensions of Justice”, para.30, “the common law’s twin administered by the Court of Chancery, its jurisdiction arising from the prerogative of grace”. This is available at <http://webarchive.nationalarchives.gov.uk/20131202164909/http://judiciary.gov.uk/media/speeches/2010/speech-lord-neuberger-19052010> [Accessed 14 April 2017].

³ As Lord Neuberger MR observed in his lecture “Equity, ADR, Arbitration and the Law: Different Dimensions of Justice”, 19 May 2010, para.31, “Equity arose as a second doorway to justice as a consequence of defects, weaknesses and limits in the common law”. It was fashioned so that “the justice system could properly ensure that substantive justice could be done” (para.30).

⁴ (1705) Prec. Ch. 241 at 244.

⁵ Sir George Jessel MR explained in *Re National Funds Assurance Co* (1878) 10 Ch. D. 118 at 128 that, “This court is not, as I have often said, a Court of Conscience, but a Court of Law”.

⁶ Lord Neuberger MR admitted in his lecture “Equity, ADR, Arbitration and the Law: Different Dimensions of Justice”, 19 May 2010,

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The Law Times, 1933-07 *Equity and Trusts* Michael Haley, Angela Sydenham, 2007 An introduction to equity Descriptions and classifications of trusts The three certainties Constitution of trusts Formalities Secret trusts The statutory avoidance of trusts Protective trusts Resulting trusts Constructive trusts Non charitable purpose trusts Charitable trusts The Cy Pres doctrine Appointment retirement and removal of trustees Trustees duties Powers of maintenance advancement and the appointment of agents Variation of trusts Breach of trust Examination checklist Sample questions and model answers

Equity and Trusts Miriam Dowling, Karl Dowling, 2012-09-17 This book is a revision tool for students summarising the essential components of the law of Equity and Trusts It is a user friendly accurate and concise work that will be an invaluable study aid It has chapters on all the main examinable topics and an analysis of the important cases in each area Designed with the busy student in mind the Nutshell is perfect for exam preparation with brief clear explanations of key exam topics throughout The first edition has been redesigned and updated to include a number of significant decisions that have been recently delivered as well as legislative developments such as the enactment of the Land and Conveyancing Law Reform Act 2009 and the Charities Act 2009 Author Miriam Dowling BA Hons works for Pearsons Solicitors Dublin *Equity and Trusts* Alastair Hudson, 2009-09-11 Equity and Trusts is an ideal textbook for undergraduate courses on the law of trusts and equitable remedies It provides a clear current and comprehensive account of the subject through which the author's enthusiasm and expertise shine through helping to bring to life an area of the law which students often find difficult Beginning with the core principles Professor Hudson reinforces the key points by means of clear examples throughout each chapter helping students to build and develop their own knowledge of equity and trusts Equity and Trusts Mohamed Ramjohn, 2006 Presenting practical answers to fifty typical exam questions this new edition helps students to penetrate and understand the complexities of equity and trusts Traditionally a difficult subject for those approaching it for the first time special care has been taken to present the subject as a whole in a structured way with basic matters examined first before moving on to more difficult concepts Incorporating new questions and answers this new edition has been fully updated to include recent case law e.g. *Choithram v Pagarani* 2001 *Pennington v Waine* 2002 *Twinsectra v Yardley* 2002 *Duggan v Governor of Full Sutton Prison* 2004 discussion of the Charities Bill 2004 the implications of the Trustee Act 2000 Clarifying the mysteries surrounding the study of equity and trusts this book contains essential advice and examples which illustrate how to successfully answer examination questions on the subject **LEXISNEXIS QUESTIONS AND ANSWERS**, 2021

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Equity and Trusts Margaret Halliwell, 2000

Equity and Trusts John Duddington, 2009

Principles of Equity and Trusts Samantha J. Hepburn, 2009 This fourth edition of Principles of Equity and Trusts has been comprehensively updated and revised It retains its original style of presenting principles and remedies relevant to equity and trusts in a straightforward and succinct manner This new edition includes a discussion of new developments in knowing receipt constructive trusts resulting trusts charitable trusts injunctions equitable rescission and forfeiture All chapters have been fully revised with significant new analysis in a range of chapters including those dealing with the relationship between common law and equity fiduciary obligations and certainty rules for the creation of trusts New case discussions in this edition include *Stack v Dowden* 2007 the House of Lords considering the presumptive application of resulting trusts in domestic de facto relationships *Trustees of the Property of Cummins a bankrupt v Cummins* 2006 the High Court considering the presumptive application of purchase money resulting trusts in a marriage relationship *Farah Constructions Pty Ltd v Say Dee Pty Ltd* 2007 the High Court considering the scope and application of knowing receipt constructive trusts *Twinsectra v Yardley* 2002 and *Barlow Clowes International Ltd in liq v Eurotrust International* 2006 1 All ER 477 the House of Lords considering the dishonesty test relevant to knowing assistance constructive trusts and *Commissioner of Taxation v Word Investment Ltd* 2006 the Federal Court considering the

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