

EQUITY AND TRUSTS SUMMARY



LAWSKOOL.CO.UK

LAWSKOOL UK

CONTENTS

INTRODUCTION TO EQUITY	5
1.1 Introduction	5
1.2 Definitions	5
1.3 Basic Principles	5
SPECIFIC PERFORMANCE	8
2.1 Definitions and Issues	8
2.2 Specific Performance and Land	8
2.3 Grounds for Refusal of Specific Performance	9
INJUNCTIONS	12
3.1 Definitions and Issues	12
3.2 Classifications of Injunctions	13
3.3 Issues Relating to Perpetual Injunctions	14
3.4 Issues Relating to Interlocutory Injunctions	15
3.5 General Defences to Injunctions	17
LORD CAIRNS' ACT DAMAGES	18
4.1 Definitions and Issues	18
4.2 Requirements for Lord Cairns' Act Damages	18
INTRODUCTION TO TRUSTS	19
5.1 Definition	19
5.2 Classifications of Trusts	19
CREATION OF EXPRESS PRIVATE TRUSTS	21
6.1 Requirements	21
6.2 Exceptions to the rule that equity will not perfect an imperfect gift	23
6.3 Formalities	25
6.4 Secret Trusts	26
RESULTING TRUSTS	28
7.1 Definition and the case of Westdeutsche	28
7.2 Other situations of resulting trusts	29
7.3 Situations where an outright gift is assumed	31

CONSTRUCTIVE TRUSTS	33
8.1 Definition and Issues	33
8.2 Fiduciary Duties	34
8.3 Situations involving fiduciaries where constructive trusts are formed	37
8.4 Situations not involving fiduciaries (strangers) where constructive trusts are formed.	39
8.5 Estoppel	43
8.6 Vendors of Land	45
8.7 The family home	45
CHARITABLE TRUSTS	47
9.1 Introduction	47
9.2 Classifications	48
9.3 Concessions received by Charitable Trusts	57
9.4 The Cy-pres doctrine	59
APPOINTMENT RETIREMENT AND TERMINATION OF TRUSTEES	63
10.1 Capacity and numbers of Trustees	63
10.2 Appointment of Trustees	65
10.3 Disclaimer	69
10.4 Number of Trustees required	70
10.5 Vesting of Trust property	71
10.6 Termination of Trusteeship	71
DUTIES OF TRUSTEES	73
11.1 Before Appointment	73
11.2 Upon Acceptance of Appointment	73
11.3 Duty of act gratuitously	74
11.4 Duty not to profit	76
11.5 Duty to act unanimously	77
11.6 Duty not to delegate	77
11.7 Duty to keep accounts	78
11.8 Standard of the duty of care	79
INVESTMENT OF TRUST FUNDS	80
12.1 Introduction	80
12.2 Express powers of investment	80
12.3 The Trustee Investments Act 1961	80
12.4 Trustee Act 2000	83

REMEDIES FOR BREACH OF TRUST	84
13.1 Injunctions	84
13.2 Personal action against the Trustee	85
13.3 Defences available to the Trustee	87
TRACING	90
14.1 Introduction	90
14.2 Tracing in Equity	91
14.3 Tracing in Common Law	95

SAMPLE

1 Introduction to Equity

1.1 Introduction

In general, equity is a collection of legal principles that is intended to complement common law principles. Generally, it functions to mitigate the unfair impact that rigid common law principles can have in certain situations. It accomplishes this by looking at each individual case and facilitating the right course of action for the parties involved. Simply put, equity's primary mission is to ensure fairness, often at the expense of certainty in the law. It is able to do this as it is guided by certain maxims, instead of being bound by rigid and inflexible rules that limits its powers.

1.2 Definitions

Definitively, equity is the part of law, which immediately prior to the enactment of the Supreme Courts of Judicature Acts 1873 and 1875, was exclusively enforced in the Court of Chancery. Prior to the aforementioned Acts, equity had not been enforced in the Courts of Common Law at all.

A common law remedy at the Court of Common Law was available if there had been an infringement of a legal right, and the relief it afforded was usually that of damages. Equitable remedies at the Court of Chancery were used when damages were deemed to be either inappropriate or inadequate.

The effect of the Acts was to allow the Supreme Court to administer both equitable and common law remedies. Today, section 49 of the Supreme Court Act 1981 allows all courts dealing with civil cases to administer equitable remedies.

1.3 Basic Principles

The following maxims of equity act as guidelines for the courts in determining whether equitable jurisdiction should be exercised:

1.2.1 Equity will not suffer a wrong to be without a remedy.

This principle means that equity will intervene to protect a right that is not enforceable at law due to a mere technicality in the law. E.g. the enforcement of a trust by the beneficiary even though the beneficiary is not the legal owner.

1.2.2 Equity follows the law

Equity does not contravene statute law and will only act against common law rules in exceptional circumstances

1.2.3 He who seeks equity must do equity

A claimant who wishes for equity to be applied must act fairly towards the defendant.

Case: *Chappell v. Times Newspapers Ltd [1975] 1 W.L.R. 482*, where the claimants failed to obtain an injunction to prevent their dismissals as they had refused to undertake not to become involved in strikes.

1.2.4 He who comes to equity must come with clean hands

A claimant will not be able to obtain equitable relief if his behaviour in connection with the relief sought is blameworthy.

Case: *Duchess of Argyll v Duke of Argyll [1967] Ch 302*, where the claimant was refused an injunction to prevent the publication of her ex-husband's account of their married life, due to the fact that it the claimant's subsequent immorality led to the termination of their marriage.

1.2.5 Where the equities are equal, the law prevails

E.g. A bona fide purchaser who purchases land would have prevailing title of the land, even if there had already been a prior equitable interest by another party.

1.2.6 Where the equities are equal, the first in time prevails

Equitable interests rank in order of creation. Therefore, a prior equitable interest would prevail over an equitable interest that had been created after.

1.2.7 Equity imputes an intention to fulfil an obligation

A person cannot seek equitable relief if the purported offending party does some act that could be regarded as performance of his original obligations.

1.2.8 Equity regards as done that which ought to be done

If there is an enforceable obligation between parties, equity treats the parties as already in the position which they would be in after the performance of the obligation.

Case: *Walsh v. Lonsdale (1882) 21 Ch.D. 9*, where it was held that a specifically enforceable contract for a lease creates an equitable lease.

1.2.9 Equity is equality

Where 2 or more parties have an interest in the same property, equity would seek to divide the property equally between the parties, unless there is good reason for any other basis of division. E.g. Unless otherwise stated, equity presumes a tenancy in common, and not a joint tenancy with regard to equitable joint interests.

1.2.10 Equity looks to the intent rather than the form

E.g. Equity will regard a relationship as a trust, even if the term “trust” has not been explicitly used.

1.2.11 Delay defeats equities

A claimant will not be able to seek equitable relief if he has delayed unreasonably in bringing his action.



**To order the complete version of the lawskool Equity and Trusts Law
Summary please visit www.lawskool.co.uk**