

NO. 1 BESTSELLING REVISION SERIES

EQUITY AND TRUSTS

8TH EDITION

JOHN DUDDINGTON

 Pearson

LawExpress

LawExpress

EQUITY AND TRUSTS

LawExpress

EQUITY AND TRUSTS

8th edition

John Duddington

Former Head of the Law School, Worcester College of Technology
Lecturer in Law, University of Worcester



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 EDUCATION LIMITED

KAO Two

KAO Park

Harlow CM17 9SR

United Kingdom

Tel: +44 (0)1279 623623

Web: www.pearson.com/uk

First published 2007 (print and electronic)

Second edition published 2009 (print and electronic)

Third edition published 2011 (print and electronic)

Fourth edition published 2013 (print and electronic)

Fifth edition published 2014 (print and electronic)

Sixth edition published 2017 (print and electronic)

Seventh edition published 2019 (print and electronic)

Eighth edition published 2021 (print and electronic)

© Pearson Education Limited 2007, 2009, 2011, 2013, 2014, 2017, 2019, 2021 (print and electronic)

The right of John Duddington 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.

ISBN: 978-1-292-29529-9 (print)

978-1-292-29527-5 (PDF)

978-1-292-29528-2 (ePub)

British Library Cataloguing-in-Publication Data

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

10 9 8 7 6 5 4 3 2 1

25 24 23 22 21

Front cover image: [johnnyscriv/E+/Getty Images](https://www.gettyimages.com)

Print edition typeset in Janson MT Pro 10/12 by SPi Global

Printed and bound in Malaysia

NOTE THAT ANY PAGE CROSS REFERENCES REFER TO THE PRINT EDITION

Contents

Acknowledgements	vii
Introduction	x
Guided tour	xiv
Table of cases	xvi
Chapter 1: Nature of equity and trusts	2
Chapter 2: Equitable remedies and doctrines	16
Chapter 3: The three certainties	36
Chapter 4: Formalities	54
Chapter 5: Constitution	72
Chapter 6: Secret and half-secret trusts	92
Chapter 7: Resulting trusts	108
Chapter 8: Constructive trusts and estoppel	124
Chapter 9: Charitable trusts	146
Chapter 10: Non-charitable purpose trusts	172
Chapter 11: Trusteeship and variation of trusts	188
Chapter 12: Breach of trust	206
Glossary of terms	224
Index	228

Acknowledgements

Writing Law Express books has now become part of my life and so my thanks go to those who share that life: my wife Anne, for her constant support, loyalty and technical expertise, without which my books would never begin to be written; my daughter Mary, for her seemingly faultless proofreading and sense of fun which keeps me going; and my son Christopher, for just being himself. In addition, I can never forget my father, Walter Duddington, who first encouraged me to become a lawyer, and who would, I am sure, have been an equity enthusiast.

I would also like to thank the staff of Pearson Education for their encouragement, cheerfulness and practical guidance, and the reviewers who sent in such detailed and helpful suggestions for this edition.

Equity and trusts is a fast-moving area and, once again, there have been developments in virtually every topic in this book since the previous edition. There have been significant cases on such areas as *donatio mortis causa* (*Keeling v Keeling*), illegality and resulting trusts (*Patel v Mirza*), the nature of institutional constructive trusts as opposed to remedial trusts, (*Angove's Pty Ltd v Bailey*) and trusts for political purposes and charities (*Bishop on Behalf of Crocels Community Media Group v The Charity Commission for England and Wales*). Indeed, I have made changes to virtually all chapters to reflect both legal developments and examination practice. Moreover, it is gratifying to see so much scholarly writing taking place on equity and trusts; it also means that students must, for a good mark, keep up with this and I have given references to some of these writings in the hope that students will explore further.

The book is based on materials available to me on the day it was completed:
5 October 2019.

John Duddington

Former Head of the Law School, Worcester College of Technology
Lecturer in Property Law, University of Worcester

Publisher's acknowledgements

8 Incorporated Council of Law Reporting (ICLR): *Tinsley v Milligan* [1994] 1 AC 340; **12 Thomson Reuters Corporation:** Hayton, D. and Mitchell, O. (2010). *The law of trusts and equitable remedies* (13th edn.). London: Sweet and Maxwell; **19 Chancery Division of the High Court:** *Veroce and others v Rutland Fund Management Ltd and others* (2010) EWHC 424 (ch); **19 The National Archives:** *The Family Law Act 1996*; **22 LexisNexis:** *Anton Piller KG v Manufacturing Processes Ltd* (1976) 1 All ER 779, Ormrod LJ; **40 Incorporated Council of Law Reporting (ICLR):** *Re Adams and Kensington Vestry* (1884) 27 Ch D 394 (CA); **40 Incorporated Council of Law Reporting (ICLR):** *Comiskey v Bowring-Hanbury* [1905] AC 84 (HL); **41 Court of Appeal:** *Day v Harris* [2013] EWCA Civ 191; **41 Jordan Publishing Ltd:** *Anthony v Donges* (1998) 2 FLR 775 (HC); **42 Thomson Reuters Corporation:** *Curtis v Rippon* (1820) 5 Madd 434 (HC); **46 Incorporated Council of Law Reporting (ICLR):** *Re Hay's Settlement Trusts* (1982) 1 WLR 202, Megarry VC; **56 The National Archives:** *Law of Property Act 1925, section 53(1)(b)*; **59 The National Archives:** *Law of Property Act 1925, section 53(1)(C)*; **60 Cambridge University Press:** Garton, J. (2015). *Moffat's Trusts Law, Text and Materials* (6th edn.). Cambridge: Cambridge University Press; **66 Incorporated Council of Law Reporting (ICLR):** *Re Paradise Motor Co. Ltd* [1968] 1 WLR 1125 (HC); **77 LexisNexis:** *Choithram (T) International SA v Pagarani* [2001] 2 All ER 492 (PC); **77 Cambridge University Press:** Hopkins, J. (2001). *Constitution of trusts – a novel point*. *The Cambridge Law Journal*, vol.60, p. 483; **79 Court of Appeal:** *Milroy v Lord* [1862] EWHC J78; **83 The National Archives:** *Contracts (Rights of Third Parties) Act 1999, section 1*; **85 Incorporated Council of Law Reporting (ICLR):** *Sen v Hedley* [1991] Ch 425 (CA); **98 Incorporated Council of Law Reporting (ICLR):** *Re Keen* [1937] Ch 236 (CA); **98 Thomson Reuters Corporation:** *Moss v Cooper* (1861) 4 LT 790, Wood VC; **101 House of Lords:** *Huguenin v Baseley* [1807] EngR 397; **103 Chancery Division of the High Court:** *Rawstron v Freud* [2014] EWHC 2577; **111 Cambridge University Press:** Garton, J. (2015). *Moffat's Trusts Law, Text and Materials* (6th edn.). Cambridge: Cambridge University Press; **114 Court of Appeal:** *Lavelle v Lavelle & Ors* [2004] EWCA Civ 223 Phillips MR; **115 The Supreme Court:** *Patel v Mirza* [2016] UKSC 42 (SC); **118 Chancery Division of the High Court:** *Bieber v Teathers Ltd (In Liquidation)* [2012] EWHC 190 (Ch); **118 House of Lords:** *Twinsectra Ltd v Yardley* [2002] UKHL 12; **126 Thomson Reuters Corporation:** *Millett, P.* (1998). *Restitution and constructive trusts*. 114 LQR 399; **127 House of Lords:** *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55, Lord Scott; **127 The Supreme Court:** *Williams v Central Bank of Nigeria* [2014] UKSC 10; **128 Law Book Co. of Australasia:** Mason, Sir A. (1985). *Themes and prospects*. In Finn, P. (ed.) *Essays in Equity*. Sydney: Law Book Company; **128 Thomson Reuters Corporation:** Tan, D. (1995). *The fiduciary as*

an accordion term: can the Crown play a different tune? 69 ALJ 440; **128 Bloomsbury Publishing:** Conaglen, M. (2007). *Fiduciary Loyalty*. Oxford: Hart Publishing at p. 249; **128 Incorporated Council of Law Reporting (ICLR):** *Bray v Ford* [1896] AC 44, Lord Herschell; **129 LexisNexis:** *Movitex Ltd v Bulfield* [1988] BCLC 104; **129 Incorporated Council of Law Reporting (ICLR):** *Boardman v Phipps* [1967] 2 AC 46 (HL); **131 The National Archives:** Section 175(4)(a) Companies Act 2006; **132 The Supreme Court:** *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45; **133 Incorporated Council of Law Reporting (ICLR):** *Midland Bank Trust Co. Ltd v Green* [1981] AC 513 (HL); **136 New Zealand Law Reports:** New Zealand case of *Carly and Another v Farrelly and Others* – [1975] 1 NZLR 356, Mahon J; **137 Lloyd’s of London Press:** *Neste Oy v Lloyd’s Bank* [1983] 2 Lloyd’s Rep 658; **140 Incorporated Council of Law Reporting (ICLR):** *Stack v Dowden* [2007] 2 AC 432; **151 Incorporated Council of Law Reporting (ICLR):** *Re Coulthurst* [1951] Ch 661 (HC); **152 Incorporated Council of Law Reporting (ICLR):** *Re Hopkins’ Will Trusts* [1965] Ch 669 (HC); **152 The National Archives:** Section 3(2) (a) Charities Act 2011; **152 The Supreme Court:** *R (on the application of Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77; **153–154 The National Archives:** Charities Act 2011; **157 The National Archives:** Lord Hodgson, *Trusted and Independent: Giving charity back to charities*, Review of the Charities Act 2006; **160 Incorporated Council of Law Reporting (ICLR):** *Cafoor v Income Tax Commissioner* [1961] AC 584, Lord Radcliffe; **160 LexisNexis:** *Re Hetherington Gibbs v Mc Donnell* (1989) 2 All ER 129; **161 LexisNexis:** *McGovern v Attorney-General* [1981] 3 All ER 493 (HC); **179 The National Archives:** Section 18, *Perpetuities and Accumulations Act 2009*; **181 Incorporated Council of Law Reporting (ICLR):** *Re Recher’s Will Trusts*: Ch D 1972, Brightman J; **191 The National Archives:** Section 41, *Trustee Act 1925*; **192 LexisNexis:** *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER; **195 The National Archives:** *Trustee Act 2000*, section 1; **196 The National Archives:** *Trustee Act 2000*, section 3; **196 The National Archives:** *Trustee Act 2000*, section 4; **196–197 The National Archives:** *Trustee Act 1925*, section 31; **197 The National Archives:** *Inheritance and Trustees’ Powers Act 2014*, section 8; **198 The National Archives:** *Trustee Act 1925*, section 32; **200 The National Archives:** *Trustee Act 2000*, section 11; **201 Court of Appeal:** *Armitage v Nurse* [1997] EWCA Civ 1279, Millett LJ; **213 Court of Appeal:** *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2000] EWCA 502, Nourse LJ; **213 House of Lords:** *Twinsectra Ltd v Yardley* [2002] UKHL 12, Lord Millett; **214 House of Lords:** *Twinsectra Ltd v Yardley* [2002] UKHL 12, Lord Hutton; **217–218 Incorporated Council of Law Reporting (ICLR):** *Foskett v McKeown* [2001] 1 AC 102 (HL).

Introduction

Some general issues

Most students achieve an average mark in equity exams, some do not pass at all, and others do very well. So far this is typical of all exams, but in my experience the number of students who do very well is smaller than in other law exams. Why? This introduction aims to give you some pointers to getting into the category of those who do very well, and equally pointers for simply achieving a pass. What are the problems that students commonly face in tackling these questions? How does this guide help?

It is not a superficial guide which skims the surface of the subject but it aims to help you in the following ways:

- It provides a platform for the study of equity by taking you through the fundamental areas step by step and encourages you not to go on to the next area until you have mastered the one before.
- It links different areas by pointing you to other connected areas of the syllabus.
- It highlights key cases, statutes and definitions.
- It gives you tips for the exam based on my experience over 30 years as an equity and trusts examiner.
- It shows you how each topic develops by a visual map attached to each chapter.
- It gives you suggestions for further reading which will enable you to boost your exam marks.

What this guide *cannot* do is to:

- Do away with the need to learn the material thoroughly and be able to use it in the exam. Only you can do this!
- Act as a substitute for the standard textbooks.

General essay question advice

Equity is founded on a number of doctrines such as the concept of a fiduciary, unconscionability, notice and discretion in the grant of remedies. Students often simply scratch the surface when discussing these and this is the major reason why they do essay questions badly.

Take the concept of a fiduciary.

This is relevant in questions on constructive trusts, trustees, the nature of equity and undue influence. As such it is very well worth knowing some ideas of precisely what it means. But take a typical answer to this question:

'The concept of a fiduciary is at the heart of equity.'

What do you understand by the term 'fiduciary' and to what extent is this true?

This appears to be relatively easy. Students can remember cases in which the fiduciary concept has been relevant and they put them together. I have read hundreds of answers like this. Cases such as *Keech v Sandford* (1726) and *Boardman v Phipps* (1967) are dealt with and, in each instance, it is remarked that they are examples of the fiduciary principle. Possibly *Queensland Mines Ltd v Hudson* (1978) is mentioned as an example of where the fiduciary principle did not apply.

This is leading to a mark of around 50 per cent. There is knowledge of the case law and students will be surprised that they have not done better in spite of all their work. The reason is simple: they have just scratched the surface. No attempt has been made to deal with the nature of the fiduciary concept. What is it about? A good answer would explain that the central idea is that of loyalty, which then translates into a principle that the fiduciary must not allow a conflict of interest between their duties as a fiduciary and their personal interests. How do fiduciary relationships arise? Is it through a voluntary undertaking on the part of the fiduciary? Moreover, the above examples of fiduciary relationships refer only to trustees. What about undue influence? Remember to take examples from as wide an area as possible. (Fiduciaries are mainly dealt with in Chapter 8 (for constructive trusts) and Chapter 2 (for undue influence).) In addition, remember to refer to scholarly writing on this area.

A student intervenes at this point: How can I cover all the cases *and* deal with the theoretical issues?

Answer: you cannot, so you will not be penalised for not doing so. Select a few cases, learn them well, read around them and relate them to the theoretical issues you have discussed. You will now be on the way to a good pass. *Less detail – more depth.*

General problem question advice

These are easier as the structure of the problem gives you the structure of your answer. However, in equity problems there are often rather subtle points which, when picked up, can give you extra marks. A good example is secret and half-secret trusts (see Chapter 6), a very common area for problems.

Introduction

Here is one example. The generally accepted rule for communication of a half-secret trust is that the details of the trust must be communicated before the will (*Re Keen* (1937)). However, *Re Keen* is also authority for another rule which can conflict with this: that the details must be communicated in accordance with the terms of the will. Again, an answer which scores about 50 per cent will mention and apply the first rule, which is probably the correct one. However, an answer which also applies the other rule will clearly score more. (These rules are all dealt with in Chapter 6.)

Another subtle point arising here is the law where the trust is communicated to one trustee but not the other. Is the one to whom it is not communicated bound? (See *Re Stead* (1900).) Learn these rather tricky points thoroughly.

About this book

This book is *not* a potted version of the subject. You will not find within it all the detail you need to pass your exams. It is an aid to learning and not a substitute for reading textbooks, articles (essential if you want a good pass) and, of course, attendance at lectures, tutorials and seminars. It can be used either at the end of the course as a revision aid or during the course to guide you along. Above all it tries to encourage you to *think* about the subject. Thinking students are those who gain the highest marks in exams.

Journals referred to in the ‘Key further reading’ sections are as follows:

<i>ALJ</i>	<i>Australian Law Journal</i>
<i>All ER Review</i>	<i>All England Law Review</i>
<i>CLJ</i>	<i>Cambridge Law Journal</i>
<i>Conv.</i>	<i>Conveyancer and Property Lawyer</i>
<i>Ecc LJ</i>	<i>Ecclesiastical Law Journal</i>
<i>LQR</i>	<i>Law Quarterly Review</i>
<i>LS</i>	<i>Legal Studies</i>
<i>MLR</i>	<i>Modern Law Review</i>
<i>SLT</i>	<i>Scots Law Times</i>
<i>Web JCLI</i>	<i>Web Journal of Current Legal Issues</i>

Revision Note

Success in exams in equity and trusts requires the following:

- an ability to tackle essay questions in such areas as the nature of equity, constructive trusts and equitable remedies;
- an ability to tackle complex problem questions in areas such as constitution of trusts, charities and secret trusts;
- dealing with theoretical concepts (usually at the start of your answer);
- using a wide range of examples.

Throughout your revision, use the questions on the companion website to check your understanding of the subject, and to identify areas where you may want to focus your revision.

Exam tip

Do keep up to date especially with case law in this area. For example, during the currency of this edition, there will be significant case law and statutory developments in many of the areas covered by this book.

Guided tour

How to use features in the book and the companion website.

Understand quickly

Topic maps – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin on your wall or add to your revision notes.

Key cases and key statutes – Identify and review the important elements of the essential cases and statutes you will need to know for your exams.

Key further reading – These carefully selected sources will extend your knowledge, deepen your understanding, and help you to earn better marks in coursework and exams.

Glossary – Forgotten the meaning of a word? This quick reference covers key definitions and other useful terms.

Test your knowledge – How well do you know each topic? Test yourself with quizzes tailored specifically to each chapter.

Revise effectively

Revision checklists – Identify essential points you should know for your exams. The chapters will help you revise each point to ensure you are fully prepared. Print the checklists from the companion website to track your progress.

Flashcards – Test and improve recall of important legal terms, key cases and statutes. Available in both electronic and printable formats.

Take exams with confidence

Sample questions with answer guidelines – Practice makes perfect! Consider how you would answer the question at the end of each chapter, then refer to the accompanying answer guidance. Try out additional sample questions online.

Assessment advice – Use this feature to identify how a subject may be examined and how to apply your knowledge effectively.

Impress your examiner – Impress your examiners with these sources of further thinking and debate.

Exam tips – Feeling the pressure? These boxes indicate how you can improve your exam performance when it really counts.

Don't be tempted to – Spot common pitfalls and avoid losing marks.

You be the marker – Evaluate sample exam answers and understand how and why an examiner awards marks.

Table of cases

Cases

- Abbott (Bankrupt No. 8 of 1980), Re* [1982] 3 All ER 181, **116**
- Abou-Rabmah v Abacha* [2006] EWCA Civ 1492, **213**
- Adams and Kensington Vestry, Re* (1884) 27 Ch D 394, CA, **40, 50, 51**
- AIB Group (UK) plc v Mark Redler & Co Solicitors* [2014] UKSC 58, **211–212, 222**
- Akers v Samba Financial Group* [2017] UKSC 6, **67**
- American Cyanamid Co. v Ethicon Ltd (No. 1)* [1975] AC 396, HL, **20–21, 33**
- Andrew's (Cheam) Law Tennis Club Trust, Re* [2012] EWHC 1040 (Ch), **176, 181**
- Angove's Pty Ltd v Bailey* [2016] UKSC 47, **136, 137**
- Anthony v Donges* [1998] 2 FLR 775, HC, **41**
- Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55, **22**
- Armitage v Nurse* [1998] Ch 221 HC, **189, 193, 200, 201, 204, 205**
- Astor's Settlement Trusts, Re* [1952] Ch 534, HC, **175, 176, 177, 185**
- Attorney-General for Hong Kong v Reid* [1994] 1 AC 324, PC, **132**
- Attorney-General v Charity Commission for England and Wales* [2012] UKUT 420 (TCC), **157, 167, 168**
- Baden's Deed Trusts (No. 2), Re* [1973] Ch 9, CA; affirming [1972] Ch 607, **45, 46**
- Bank of Credit and Commerce International (Overseas) Ltd (In Liquidation) v Akindele* [2001] Ch 437, **213**
- Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, HL, **8–9, 109–110, 113, 117–118–120, 121, 133, 183**
- Barclays Bank plc v O'Brien* [1994] 1 AC 180, **18, 29–30, 34**
- Barlow Clowes International Ltd (In Liquidation) v Eurotrust International Ltd* [2006] 1 WLR 1476, **218**
- Barlow Clowes International Ltd (In Liquidation) v Vaughan*, [1991] EWCA Civ 11, **220**
- Barlow's Will Trusts, Re* [1979] 1 WLR 278, HC, **37, 38, 47–48, 50, 51, 52**
- Beloved Wilkes' Charity, Re* (1851) 3 Mac & G 540, HC, **192**
- Bernstein, Re* [2008] EWHC 3454 (Ch), **202**
- Bieber v Teathers Ltd (In Liquidation)* [2012] EWCA 1466, **118**
- Binions v Evans* [1972] Ch 359, **126, 136**
- Bishop on Behalf of Crocels Community Media Group v The Charity Commission for England and Wales* (2016) WL 03947469 6, **161**
- Bishopsgate Investment Management (In Liquidation) v Homan* [1995] Ch 211, CA, **216**

- Blackwell v Blackwell* [1929] AC 318, **95, 96**
- Boardman v Phipps* [1967] 2 AC 46, HL, **13, 126, 128, 129–131, 136, 137, 142, 144, 190, 203, 208**
- Boyes, Re* (1884) 26 Ch D 531, **98**
- Bradbury v Taylor* [2012] EWCA Civ 1208, **140**
- Bray v Ford* [1896] AC 44 HL, **128**
- Broadbent, Re* [2001] EWCA Civ 714, **163**
- Buckinghamshire Constabulary Widows' and Orphans' Fund Friendly Society (No. 2), Re* [1979] 1 WLR 936, **166**
- Bucks Constabulary Fund, Re (No 2)* [1979] 1 WLR 936, **165**
- Burns v Burns* [1984] 1 All ER 244, CA, **135**
- Cafoor v Income Tax Commissioner, Columbo*, (1961) AC 584, **160**
- Cannon v Hartley* [1949] Ch 213, **81**
- Capehorn v Harris* [2015] EWCA Civ 955, **134, 135**
- Carly v Farrelly* [1975] 1 NZLR, **136**
- Carreras Rothmans Ltd v Freeman Matthews Treasure Ltd (In Liquidation)* [1985] Ch 207, **118**
- Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, **27**
- Chichester Diocesan Fund and Board of Finance Inc. v Simpson* [1944] AC 341, HL, **162–163, 168, 169**
- Choitbram (T) International SA v Pagarani* [2001] 2 All ER 492, PC, **73, 74, 77, 80, 88, 90**
- Citibank NA v MBIA Assurance SA* (2006) EWHC 3215 (Ch), **201**
- CL, Re* [1969] 1 Ch 587, **202**
- Clayton, Re* (1816) 1 Mer 572, **218, 220**
- Clayton's Case* see *Clayton, Re*
- Comiskey v Bowring-Hanbury* [1905] AC 84, HL, **40, 41, 51**
- Cook's Settlement Trust, Re* [1965] Ch 902, HC, **83**
- Cooper (Colin), Re* [1939] Ch 811, **102**
- Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1, HL, **24, 25, 32, 34**
- Coulhurst, Re* [1951] Ch 661, HC, **151, 168**
- Cowan v Scargill* [1985] Ch 270, **196**
- Craddock Bros v Hunt* [1923] 2 Ch 136, HC, **26–27, 33**
- Craig, Re* (1971) Ch 95, **28**
- Creggy v Barnett* [2016] EWCA Civ 1004, **212**
- Curtis v Pulbrook* [2011] EWHC 167 (Ch), **80**
- Curtis v Rippon* (1820) 5 Madd 434, HC, **42, 43, 51**
- Danish Bacon Co. Ltd Staff Pension Fund, Re* [1971] 1 WLR 248, **66, 70**
- Day v Harris* [2013] EWCA Civ 191, **41**
- Dean, Re* (1889) 41 Ch D 552, **177**
- Denley's Trust Deed, Re* [1969] 1 Ch 373, HC, **173, 175, 177–178, 181, 184, 185**
- Diggles, Re* (1888) 39 Ch D 253, **39**
- Dillwyn v Llewellyn* (1862) 4 de GF and J 517, **86**
- Dingle v Turner* [1972] AC 601, HL, **157, 159**
- Diplock, Re* [1948] Ch 465, **216, 221**
- Drakeford v Cotton* [2012] EWHC 1414 (Ch), **59**
- Dunbar Bank plc v Nadeem* (1997) 2 All ER 253, **31**
- Dyer v Dyer* (1788) 30 ER 42, **113**
- Ellison v Ellison* (1802) 6 Ves 656, **75**
- Endacott, Re* [1960] Ch 232, 160, **176, 177**
- Eves v Eves* [1975] 1 WLR 1338; [1975] 3 All ER 768, CA, **135**
- Farab Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22, Aus HC, **213**
- Faraker, Re* [1912] 2 Ch 488, **164**

Table of cases

- Farepak Food and Gifts Ltd (In Administration)*, Re [2006] EWHC 3272 (Ch), **41, 117**
- FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45, **125, 132, 136, 142**
- FHR European Ventures LLP v Mankarious* [2016] EWHC 359 (Ch) (2 March 2016), **217**
- Finger's Will Trusts*, Re [1972] Ch 286, **165**
- Foskett v McKeown* [2001] 1 AC 102, HL, **216, 217–218, 221**
- Freud (Deceased)*, Re [2014] EWHC 2577 (Ch) (30 July 2014), **95, 99, 103**
- Gardner*, Re [1920] 2 Ch 523, **102, 103, 106**
- Gardner v Rowe* (1828) 5 Russ 258, **58**
- Gillingham Bus Disaster Fund*, Re [1959] Ch 62, **116, 165**
- Gilmour v Coats* [1949] AC 426 HL, **12, 160, 169**
- Golay*, Re [1965] 1 WLR 969, **42, 50, 51**
- Goldcorp Exchange Ltd (In Receivership)*, Re [1995] 1 AC 74, **43**
- Gold v Hill* [1998] Fam Law 664, **97**
- Gonin*, Re [1979] Ch16, **85**
- Goodchild v Bradbury* [2006] EWCA Civ 1868, **28**
- Grant's Will Trusts*, Re [1979] 3 All ER 359, HC, **176, 181, 182–183, 184, 185**
- Grey v IRC* [1960] AC 1, HL, **61, 63, 69**
- Group Seven Ltd v Notable Group Services LLP*, [2019] EWCA Civ 614, **214, 222**
- Haines*, Re (1952) The Times, 7 November 1952, **179**
- Halifax Building Society v Thomas* [1995] 4 All ER 673, **136**
- Hallett's Estate*, Re (1880) 13 Ch D 696, HC, **216–217, 220, 221**
- Hanchett-Stamford v Attorney-General* [2008] EWHC 330 (Ch), **166, 169**
- Harwood*, Re [1936] Ch 285, **164**
- Hastings-Bass (Deceased)*, Re [1975] Ch 25, **192, 193**
- Hay's Settlement Trusts*, Re [1982] 1 WLR 202, **46**
- Herbert v Doyle* [2010] EWCA Civ 1095, **140**
- Hetherington*, Re [1989] 2 All ER 129 HC, **160**
- Hill v CA Parsons and Co Ltd* [1972] Ch 305, **26**
- Hodgson v Marks* [1971] 1 Ch 892, CA, **58, 113**
- Holder v Holder* [1968] Ch 353, **191**
- Hooper*, Re [1932] 1 Ch 38, **177, 180**
- Hopkins' Will Trusts*, Re [1965] Ch 669, HC, **152, 168**
- Horley Town Football Club*, Re [2006] EWHC 2386 (Ch), **182–183, 185, 186**
- Howe v Earl of Dartmouth* (1802) 7 Ves 137 Chan, **194–195, 204**
- HSBC Bank v Brown* [2015] EWHC 359, Ch, **30**
- Hubbard v Pitt* [1976] QB 142, **20**
- Huguenin v Baseley* (1807) 14 Ves. Jun. 273, **101**
- Hunter v Moss* [1994] 1 WLR 452; [1994] 3 All ER 215 CA, **43, 52**
- Hunt v McLaren see Horley Town Football Club*, Re
- Ilott v Mitson* [2017] UKSC 17, **197**
- Independent Schools Council v Charity Commission for England and Wales* [2011] UKUT 421 (TCC), **158**
- Inland Revenue Commissioners v Broadway Cottages Trust* [1955] Ch 20, CA, **44**
- Ivey v Genting Casinos UK Ltd (t/a Crockfords Club)* [2017] UKSC 67, **214**
- Jennings v Rice* [2002] EWCA Civ 159, **140**
- John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd* [2010] HCA 19, **136**

- Jones, Re* [1953] Ch 125, **47**
Jones v Kernott [2011] UKSC 53, **134**
Jones v Lock (1865–66) LR 1 Ch App 25, **77**
- Kay, Re* [1939] Ch 329, **83**
Keech v Sandford (1726) Sel Cas Ch 61, Ct of Chan, **9, 129, 136, 142, 212**
Keeling v Keeling (2017) EWHC 1189 (Ch), **86**
Keen, Re [1937] Ch 236, CA, **94, 98, 99–100, 105, 106**
Kennedy v Kennedy [2014] EWHC 4129 (Ch), **27**
Kershaw's Trusts, Re (1868) LR 6 Eq 322, HC, **198, 203**
Kings v Bultitude [2010] EWHC 1795 (Ch), 149, **164, 169**
King v Dubrey [2014] EWHC 2083 (Ch), **85, 86, 89**
Klug v Klug [1918] 2 Ch 67, **192**
Knight v Knight (1840) 3 Beav 148, **39**
Koettgen's Will Trusts, Re [1954] Ch 252, HC, **159–160, 168, 169**
Koh Cheong Heng v Ho Yee Fong [2011] SGHC 48, **86**
- Lambe v Eames* (1870–71) LR 6 Ch. App. 597, **40**
Lavelle v Lavelle [2004] EWCA Civ 223, **114**
Leaby v Attorney-General for New South Wales [1959] AC 457, **176, 179**
Lipinski's Will Trusts, Re [1976] Ch 235, **184**
Lister & Co v Stubbs (1890) 45 Ch D 1, **131, 119**
Lloyds Bank plc v Rosset [1991] 1 AC 107, **134, 135**
Lock International plc v Berwick [1989] 1 WLR 1268; [1989] 3 All ER 373, Ch D, **22**
Lobia v Lobia [2001] WTLR 101, HC, **113**
- Londonderry's Settlement, Re* [1965] Ch 518, **194**
London Wine Co. (Shippers) Ltd, Re [1986] PCC 121, HC, **38, 43, 51, 133**
- Mair v Collie* (2017) UKPC 17, **113**
Mareva Compania Naviera SA v International Bulkcarriers SA (The Mareva) [1980] 1 All ER 213, **21**
Mascall v Mascall (1985) 50 P & CR 119, **79**
Matchmove Limited v Dowding and Church [2016] EWCA Civ 1233, **141**
Matila Ltd v Lisbeen Properties Ltd [2010] EWHC 1832 (Ch), **24, 32, 33**
McCormick v Grogan (1869–70) LR 4 HL 82, **96**
McGovern v Attorney-General [1981] 3 All ER 493, HC, **161, 169**
McPhail v Doulton [1971] AC 424 HL, **37, 38, 45, 48–50, 51, 52, 106, 178**
Midland Bank Trust Co. Ltd v Green [1981] AC 513, HL, **133–134, 142**
Milroy v Lord (1862) 4 De GF & J 264, **76, 77, 78–79**
Morice v Bishop of Durham (1805) 10 Ves 522, **38, 176**
Moss v Cooper (1861) 1 John & H 352, **98, 106**
Movitex Ltd v Bulfield [1988] 2 BCLC 104, **129**
Mussett v Bingle [1876] WN 170, **179**
- National Commercial Bank Jamaica Ltd v Olint Corp Ltd* [2009] UKPC 16, **21**
Nelson v Greening & Sykes (Builders) Ltd [2007] EWCA Civ 1358, **65**
Neste Oy v Lloyd's Bank [1983] 2 Lloyd's Law Rep 658, **137**
Neville v Wilson [1997] Ch 144, **64, 70**
Niyazi's Will Trusts, Re [1978] 3 All ER 785, HC, **152**

Table of cases

- North East Lincolnshire BC v Millennium Park (Grimsby) Ltd* [2002] EWCA Civ 1719, **24**
- Novoship (UK) Ltd v Nikitin* [2014] EWCA 908, **32**
- Oatway, Re* [1903] 2 Ch 356, **217, 220**
- Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297, HL, **12, 159–160, 168, 169**
- Osoba (deceased), Re* [1979] 1 WLR 247, CA, **116**
- Ottaway v Norman* [1972] Ch 698, **97**
- Oughtred v Inland Revenue Commissioners* [1960] AC 206, HL, **56, 63–64, 69, 70**
- Page One Records Ltd v Britton (t/a The Troggs)* [1967] 3 All ER 822, HC, **25**
- Pallant v Morgan* [1952] 2 All ER 951, **133**
- Palmer v Simmonds* (1854) 2 Drew 221, **41**
- Paradise Motor Co. Ltd, Re* [1968] 1 WLR 1125, HC, **66, 70**
- Parinv (Hatfield) Ltd v IRC* [1998] STC 305, **64**
- Patel v Ali* [1984] Ch 283, HC, **6, 13, 19, 32**
- Patel v Mirza* [2016] UKSC 42, **115–116, 120, 121**
- Pauling's Settlement Trusts (No. 1), Re* [1964] Ch 303, **198**
- Paul v Constance* [1977] 1 All ER 195, **76**
- Pecore v Pecore* [2007] 1 SCR 795, **114**
- Pennington v Waine* [2002] EWCA Civ 227; [2002] 1 WLR 2075, CA, **5, 12, 73, 74, 77, 79–80, 88, 90**
- Pilkington's Will Trust IRC, Re* [1964] AC 612, **198**
- Pinion (Deceased), Re* [1965] Ch 86, CA, **155**
- Pitt v Holt* [2013] UKSC 26, **27, 193, 204, 205**
- PJS v News Group Newspapers* [2016] UKSC 26, **21**
- Polly Peck International plc (No. 2), Re* [1998] 3 All ER 812, **136**
- Posner v Scott-Lewis* (1987) Ch. 25, **25**
- Prest v Petrodel Resources Ltd* [2013] UKSC 34, **114, 120**
- Pryce, Re* [1917] 1 Ch 234, **83**
- Pullan v Koe* [1913] 1 Ch 9, **81**
- Queensland Mines Ltd v Hudson* (1978) 18 ALR 1, PC, **12, 130–131, 142**
- R (on the application of Hodkin and another) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, **152–153**
- Ralli's Will Trust, Re* [1964] Ch 288 HC, 75, **73, 83–84, 89**
- Rawstron and another (Executrices of the Estate of Lucian Freud) v Freud* [2014] EWHC 2577 (Ch) *see Freud (Deceased), Re* [2014] EWHC 2577 (Ch) (30 July 2014)
- Recher's Will Trusts, Re* [1972] Ch 526, HC, **181, 184, 185**
- Rees, Re* [1950] Ch 204, **102–103, 106**
- Regal (Hastings) Ltd v Gulliver* [1942] 1 All ER 378, **131**
- Remnant's Settlement Trusts, Re* [1970] Ch 560 HC, **202**
- Resch's Will Trusts, Re* [1969] 1 AC 514, **158**
- Richards v Delbridge* (1874) LR 18 Eq 11, **77, 88**
- Rochefoucauld v Boustead* [1897] 1 Ch 196, CA, **58, 69, 70, 133**
- Rogge v Rogge* [2019] EWHC 1949 (Ch), **194**
- Roscoe v Winder* [1915] 1 Ch 62, **217, 221**
- Rose, Re* [1952] Ch 499 (HC), **73, 79, 80, 88, 89**
- Royal Bank of Scotland v Etridge (No. 2)* [2001] UKHL 44; [2002] 2 AC 773, HL, **17, 28, 29–31, 33–34**

- Royal Brunei Airlines Sdn Bhd v Tan Kok Ming* [1995] 2 AC 378 DC, **214**
- R v Clowes* (No. 2) [1994] 2 All ER 316, **41**
- R v District Auditor, ex parte West Yorkshire MCC* [1986] RVR 24, **46**
- Rymer, Re* [1895] 1 Ch 19, **164**
- St. Andrew's (Cbeam) Lawn Tennis Club Trust, Re*, [2012] 3 All ER 746, **181**
- Saunders v Vautier* (1841) Cr & Ph 240, CA, **201, 205**
- Schmidt v Rosewood Trust Ltd* [2003] 2 WLR 1442, **194**
- Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705, **192**
- Sen v Hedley* [1991] Ch 425 (CA), **85–86, 87, 89**
- Shah v Greening* (2016) EWHC 548 (Ch.), **6**
- Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd (In Administration)* [2011] EWCA Civ 347, **132**
- Singh v Anand* [2007] EWHC 3346 (Ch.), **64**
- Sky Petroleum v VIP Petroleum Ltd* [1974] 1 WLR 576, **24, 33**
- Slevin, Re* [1891] 2 Ch 236, **164**
- Spread Trustee Co. Ltd v Hutcheson* [2011] UKPC 13, **201**
- Stack v Dowden* [2007] UKHL 17, **113, 134, 135, 140**
- Stead, Re* [1900] 1 Ch 237, HC, **93, 94, 101, 107**
- Stickland v Aldridge* (1804) 9 Ves 516, **96**
- Strong v Bird* (1874) LR 18 Eq 315 CA, **73, 84–85, 89**
- Suggitt v Suggitt* [2012] EWCA Civ 1140, **140**
- Tang Ying Loi v Tang Ying IP* (17 February 2017, Wilberforce Chambers), **218**
- Target Holdings Ltd v Redferns* [1996] 1 AC 421, HL, **208, 211–212, 221**
- Tempest v Lord Camoys* (1882) 21 Ch D 571, **192**
- Thorner v Major* [2009] UKHL 18, **136, 139, 140, 143**
- Thornton v Howe* (1862) 31 Beav 14, Ct of Chan, **153**
- Tilley's Will Trust, Re* [1967] Ch 1179, **221**
- Tinsley v Milligan* [1992] Ch 310 CA; [1994] 1 AC 340, HL, **8, 115, 116, 120**
- Torquay Hotel Co. Ltd v Cousins* [1969] 1 All ER 522, **20**
- TSB Bank plc v Camfield* [1995] 1 WLR 430; [1995] 1 All ER 951, CA, **31**
- Tuck's Settlement Trusts, Re* [1978] Ch 49, HC, **46–47, 51**
- Twinsectra Ltd v Yardley* [2002] UKHL 12, **117–118, 120, 213–214**
- Tyler's Fund Trusts, Re* [1967] 1 WLR 1269, **60, 103, 106**
- United Scientific Holdings v Burnley BC* [1978] AC 904, **10**
- Universal Thermosensors v Hibben Ltd* [1992] 1 WLR 840, **22**
- Vallee v Birchwood* [2013] EWHC 1449 (Ch), **85**
- Vandervell's Trusts (No. 2), Re* [1974] Ch 269, CA, **63, 69, 111, 119**
- Vandervell v Inland Revenue Commissioners* [1967] 2 AC 291, HL, **56, 62, 65, 69**
- Vercoe v Rutland Fund Management Ltd* [2010] EWHC 424 (Ch) 16 Vinogradoff, **19**
- Vinogradoff, Re* [1935] WN 68, **112**
- Vucicevic v Aleksic* [2017] EWHC 2335 (Ch), **40–41, 50, 51**
- Wallgrave v Tebbs* (1855) 2 K & J 313, HC, **97–98, 106**
- Walsh v Lonsdale* (1882) 21 Ch D 9, HC, **3, 11, 13**

Table of cases

- Warner Bros Pictures Inc v Nelson* [1937] 1 KB 209, HC, **26, 33**
- Warren v Mendy* [1989] 3 All ER 103, **25**
- Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669, **112**
- Weston's Settlements, Re* [1969] 1 Ch 223, **202**
- West Sussex Constabulary's Widows, Children and Benevolent (1930) Fund Trusts, Re* [1970] 2 WLR 848; [1970] 1 All ER 544, Ch D, **165**
- Whittaker v Kinnear* [2011] EWHC 1479 (QB), **140**
- Williams v Central Bank of Nigeria* [2014] UKSC 10, **136, 137**
- Woodford v Smith* [1970] 1 WLR 806, [1970] 1 All ER 1091; (1970) 114 SJ 245, **19**
- Wright v Gater* [2011] EWHC 2881 (Ch), **202**
- Yaxley v Gotts* [2000] Ch 162, CA, **140**
- Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55, **127, 138–139, 141, 143, 144**
- Young, Re* [1951] Ch 344, **102**
- Yusuf v Yusuf* (2019) EWHC 90 (Ch.) **39**
- Zeital v Kaye* [2010] EWCA Civ 159, **66, 73, 77, 80, 88, 89, 90**
- s. 5, **155**
- s. 14(2), **158**
- s. 17, **158**
- s. 62, **164**
- s. 63, **166**
- Civil Procedure Act 1997, s. 7, **22**
- Companies Act 2006
- s. 175(1), **131**
- s. 175(4)(a), **130**
- s. 175(4)(b), **131**
- Contracts (Rights of Third Parties) Act 1999, **81**
- s. 1, **83**
- s. 7(3), **83**
- Equality Act 2010, s. 199, **114, 121**
- Family Law Act 1996, **17**
- Human Rights Act 1998, **21**
- Inheritance (Provision for Families and Dependants) Act 1975, **197**
- Inheritance and Trustees' Powers Act 2014, **199, 203**
- s. 8, **197, 203**
- s. 9, **198**
- Insolvency Act 1986
- s. 127, **67**

Legislation

- Charities Act 2006, **148, 157–158, 168, 170**
- Charities Act 2011, **148, 149, 153–154, 158, 163, 180**
- s. 2, **151**
- s. 3(1), **151, 162**
- s. 3(1)(d)–(m), **153–154**
- s. 3(2)(a), **152**
- s. 4, **155**
- s. 4(2), **157–158**
- s. 4(3), **158**
- Judicature Act 1873, **3, 7, 9–11, 13**
- s. 25(11), **9, 11**
- Judicature Act 1875, **3, 7, 9–11, 13**
- Land Charges Act 1972, 133–134
- Law of Property (Miscellaneous Provisions) Act 1989
- s. 2, **140**
- s. 2(5), **141**
- Law of Property Act 1925
- s. 52(1), **11, 78, 87**
- s. 53(1)(b), **55, 56, 57, 58, 59, 65, 68, 78, 103, 106, 110, 111**

- s. 53(1)(c), **55, 59–63, 65, 66–67, 69, 70, 80, 81**
- s. 53(2), **57, 60, 103, 111**
- s. 60(3), **113–14**
- s. 175, **197, 199**
- Lord Cairns Act 1858, **27**
- Perpetuities and Accumulations Act 1964
 - s. 2(2), **150**
 - s. 5A, **49, 225**
- Perpetuities and Accumulations Act 2009
 - s. 5, **49, 225**
 - s. 16, **225**
 - s. 18, **179**
- Senior Courts Act 1981, s. 50, **34**
- Trade Union and Labour Relations Act 1992, s. 236, **25**
- Trustee Act 1925
 - s. 31, **197, 199**
 - s. 31(1), **196–197**
 - s. 32, **197, 198, 199, 203**
 - s. 32(1), **197**
 - s. 36(1), **191**
 - s. 39, **191**
 - s. 41, **191**
- s. 57, **201**
- s. 61, **219**
- s. 62, **219**
- s. 69(2), **194, 196, 199**
- Trustee Act 2000, **190, 205**
 - s. 1, **195, 200, 203**
 - s. 3, **196, 201**
 - s. 4, **196, 211**
 - s. 5, **196, 203**
 - s. 8, **200**
 - s. 11, **200**
 - s. 29, **191**
- Variation of Trusts Act 1958, **189, 201, 202, 205**
- Wills Act 1837, **94**
- Statutory Instruments
 - Civil Procedure Rules 1998/3132
 - Practice Direction 25A
 - para. 7, **22**
- International Conventions
 - European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
 - Article 10, **162**
 - Article 1 of First Protocol, **166**

1

Nature of equity and trusts

Revision checklist

Essential points you should know:

- The meanings of the term 'equity'
 - The reasons why equity developed as a separate system of law
 - What is meant by the concept of a trust
 - The later development of equity in outline
 - The modern arguments for and against whether equity and the common law are now fused
-

Topic map

