

A Sourcebook on

# EQUITY & TRUSTS

in AUSTRALIA

M.W. Bryan, S.E. Degeling  
M.S. Donald & V.J. Vann

CAMBRIDGE



# A SOURCEBOOK ON EQUITY AND TRUSTS IN AUSTRALIA

*A Sourcebook on Equity and Trusts in Australia* can be used as both a freestanding casebook and as a companion to the *Equity and Trusts in Australia* textbook.

This casebook follows the structure of *Equity and Trusts in Australia* and provides a selection of primary legal materials together with accompanying commentary and discussion, covering the principal areas of equity and the law of trusts taught in Australian law schools. Cases have been carefully selected based on the needs of undergraduate law and Juris Doctor students approaching this subject for the first time. Case extracts give a clear account of the facts and issues considered by the court, and the detailed commentary is accompanied by problems and discussion questions to enhance student learning.

Clearly written by authors with extensive experience in the field, *A Sourcebook on Equity and Trusts in Australia* encourages students to engage with the principles of equity and the law of trusts and to understand how they apply in the real world.

**Michael Bryan** is Emeritus Professor at Melbourne University Law School.

**Simone Degeling** is Professor of Law in the Faculty of Law, University of New South Wales and General Editor of the *Journal of Equity*.

**Scott Donald** is Senior Lecturer and Director – Centre for Law, Markets & Regulation in the Law School at the University of New South Wales.

**Vicki Vann** is Adjunct Associate Professor at Monash University. Vicki is admitted to practice in both Queensland and Victoria.



# A SOURCEBOOK ON EQUITY AND TRUSTS IN AUSTRALIA

**M W Bryan, S E Degeling, M S Donald and V J Vann**

 **CAMBRIDGE**  
UNIVERSITY PRESS

# CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107663213](http://www.cambridge.org/9781107663213)

© Cambridge University Press 2016

This publication is copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2016 (version 5, February 2018)

Cover designed by Sardine Design

Typeset by Aptara Corp.

Printed in Singapore by Markono Print Media Pte Ltd, January 2018

*A catalogue record for this publication is available from the British Library*

*A Cataloguing-in-Publication entry is available from the catalogue of the National Library of Australia at [www.nla.gov.au](http://www.nla.gov.au)*

ISBN 978-1-107-66321-3 Paperback

## **Reproduction and communication for educational purposes**

The Australian *Copyright Act 1968* (the Act) allows a maximum of one chapter or 10% of the pages of this work, whichever is the greater, to be reproduced and/or communicated by any educational institution for its educational purposes provided that the educational institution (or the body that administers it) has given a remuneration notice to Copyright Agency Limited (CAL) under the Act.

For details of the CAL licence for educational institutions contact:

Copyright Agency Limited  
Level 15, 233 Castlereagh Street  
Sydney NSW 2000  
Telephone: (02) 9394 7600  
Facsimile: (02) 9394 7601  
E-mail: [info@copyright.com.au](mailto:info@copyright.com.au)

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

# CONTENTS

<i>Preface</i>	xxi
<i>Table of cases</i>	xxiii
<i>Table of statutes</i>	xli
<i>Acknowledgements</i>	xlv

## **PART A INTRODUCTION** 1

### **1 Introduction** 2

#### **1.1 Introduction** 3

#### **1.2 Definition** 3

##### 1.2.1 Dictionary definition 3

1.2.1a *Macquarie Dictionary and Thesaurus Online* 3

##### 1.2.2 Philosopher and jurist 4

1.2.2a Aristotle, *Nicomachean Ethics* (W D Ross trans, Oxford University Press, 1908) *Book V: Moral Virtue* 4

1.2.2b *The Earl of Oxford's Case* (1615) 1 Ch Rep 1, 6; 21 ER 485, 486 4

#### **1.3 History** 5

##### 1.3.1 Origins 5

1.3.1a J H Baker, *An Introduction to English Legal History* (Oxford University Press, 4th ed, 2002) 99–102 5

1.3.1b Petition c 1417–1424, No117 from W P Baildon (ed), *Select Cases in Chancery* (Selden Society, 1896) vol 10 6

##### 1.3.2 Conflict between common law and equity 6

1.3.2a Joshua Getzler, 'Patterns of Fusion' in Peter Birks (ed), *The Classification of Obligations* (Clarendon Press, 1997) 175 6

1.3.2b *The Earl of Oxford's Case* (1615) 1 Ch Rep 1; 21 ER 485 7

##### 1.3.3 Reform and renewal 8

1.3.3a Charles Dickens, *Bleak House* (first published 1853) 8

1.3.3b *Judicature Act 1873* (Imp) 9

1.3.3c *Law Reform (Law and Equity) Act 1972* (NSW) 9

1.3.3d Keith Mason, 'Fusion: Fallacy, Future or Finished?' in S Degeling and J Edelman (eds), *Equity in Commercial Law* (Thomson Reuters, 2005) 9

1.4	The maxims of equity	12
1.4a	<i>Corin v Patton</i> [1990] HCA 12; (1990) 169 CLR 540	12
<b>PART B EQUITABLE REMEDIES</b>		<b>15</b>
<b>2</b>	<b>An introduction to equitable remedies</b>	<b>16</b>
2.1	Introduction	17
2.1a	<i>McKenzie v McDonald</i> [1927] VLR 134	17
2.1b	<i>Nelson v Nelson</i> [1995] HCA 25; (1995) 184 CLR 538	19
<b>3</b>	<b>Specific performance, injunctions and equitable damages</b>	<b>23</b>
3.1	Introduction	24
3.2	Specific performance	24
3.2.1	Inadequacy of damages	24
3.2.1.1	Contracts for the sale of land	24
3.2.1.1a	<i>Loan Investment Corporation of Australasia v Bonner</i> [1970] NZLR 724	24
3.2.1.2	Contracts for the sale of chattels	28
3.2.1.2a	<i>Dougan v Ley</i> (1946) 71 CLR 142	28
3.2.1.3	Contracts in favour of third parties	30
3.2.1.3a	<i>Beswick v Beswick</i> [1968] AC 58	30
3.2.2	Bars to equitable relief	31
3.2.2.1	Continuous supervision	31
3.2.2.1a	<i>Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd</i> [1998] AC 1	31
3.2.2.1b	<i>Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia</i> [1998] HCA 30; (1998) 195 CLR 1	34
3.2.2.2	Lack of mutuality	36
3.3	Injunctions	36
3.3.1	General principles	37
3.3.1a	<i>Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd</i> [2001] HCA 63; (2001) 208 CLR 199	37
3.3.2	The distinction between mandatory and prohibitory injunctions	39
3.3.2a	<i>Morris v Redland Bricks Ltd</i> [1970] AC 652	39
3.3.3	Social considerations	40
3.3.3a	<i>Miller v Jackson</i> [1977] 1 QB 966	40
3.3.4	Preventing breaches of contract by injunction	42
3.3.4a	<i>Curro v Beyond Productions Pty Ltd</i> (1993) 30 NSWLR 337	42
3.3.5	Interlocutory injunctions	44
3.4	Equitable damages	45
3.4.1	The legislation	45

3.4.2	Criteria for determining whether a damages award should be made	46
3.4.2a	<i>Shelfer v City of London Electric Lighting Co</i> [1895] 1 Ch 287	46
3.4.3	Quantifying damages	48
3.4.3a	<i>Giller v Procopets</i> (2008) 24 VR 1	48
<b>4</b>	<b>Monetary remedies in equity</b>	<b>51</b>
<b>4.1</b>	Introduction	52
<b>4.2</b>	Accounts of profits	52
4.2a	<i>Warman International Ltd v Dwyer</i> [1995] HCA 18; (1995) 182 CLR 544	52
4.2b	<i>Victoria University of Technology v Wilson</i> (2006) 68 IPR 597	54
4.2c	<i>Attorney-General v Blake</i> [2001] 1 AC 268	56
<b>4.3</b>	Equitable compensation	59
4.3.1	Account	59
4.3.1a	<i>Libertarian Investments v Hall</i> (2013) 16 HKCFAR 681	59
4.3.2	Substitutive and reparative compensation	61
4.3.2a	<i>Agricultural Land Management v Jackson (No 2)</i> (2014) 48 WAR 1	61
4.3.3	Substitutive compensation	63
4.3.3a	<i>Caffrey v Darby</i> (1801) 6 Ves 488; 31 ER 1159	63
4.3.3b	<i>Re Dawson (deceased); Union Fidelity Trustee Co Ltd v Perpetual Trustee Co Ltd</i> [1966] 2 NSW 211	64
4.3.3c	<i>Youyang Pty Ltd v Minter Ellison Morris Fletcher</i> [2003] HCA 15; (2003) 212 CLR 484	66
4.3.4	Reparative compensation	69
4.3.4a	<i>Nocton v Lord Ashburton</i> [1914] AC 932	69
4.3.4b	<i>O'Halloran v R T Thomas &amp; Family Pty Ltd</i> (1998) 45 NSWLR 262	70
4.3.4c	<i>Stewart v Layton</i> (1992) 111 ALR 687; affirmed <i>Layton (t/as B M Salmon Layton &amp; Co) v Stewart</i> [1993] FCA 532; [1994] ANZ ConvR 283	73
<b>4.4</b>	Common law principles and equitable compensation	75
4.4a	<i>Pilmer v Duke Group Ltd (in liq)</i> [2001] HCA 31; (2001) 207 CLR 165	75
<b>4.5</b>	Exemplary damages	78
4.5a	<i>Harris v Digital Pulse Pty Ltd</i> (2003) 56 NSWLR 298	78
<b>5</b>	<b>Rescission and rectification</b>	<b>84</b>
<b>5.1</b>	Introduction	85
<b>5.2</b>	Total and partial rescission	86
5.2a	<i>Vadasz v Pioneer Concrete (SA) Ltd</i> [1995] HCA 14; (1995) 184 CLR 102	86

5.3	The election requirement	90
5.3a	<i>Daly v Sydney Stock Exchange Ltd</i> [1986] HCA 25; (1986) 160 CLR 371	90
5.4	The restoration process	94
5.4a	<i>Alati v Kruger</i> [1955] HCA 64; (1955) 94 CLR 216	94
5.4b	<i>Maguire v Makaronis</i> [1997] HCA 23; (1997) 188 CLR 449	97
5.5	Rectification	101
5.5a	<i>Commissioner of Stamp Duties (NSW) v Carlenka Pty Ltd</i> (1995) 41 NSWLR 329	101
<b>6</b>	<b>Bars to relief</b>	<b>104</b>
6.1	Introduction	105
6.2	Laches	105
6.2a	<i>Lindsay Petroleum Co v Hurd</i> (1874) LR 5 PC 221	105
6.2b	<i>Orr v Ford</i> [1989] HCA 4; (1989) 167 CLR 316	107
6.3	Acquiescence	110
6.3a	<i>Orr v Ford</i> [1989] HCA 4; (1989) 167 CLR 316	110
6.4	Unclean hands	111
6.4a	<i>Black Uhlands Inc v New South Wales Crime Commission</i> [2002] NSWSC 1060	111
6.5	Hardship	116
6.5a	<i>Patel v Ali</i> [1984] 1 Ch 283	116
6.5b	<i>ANZ Executors and Trustees Ltd v Humes Ltd</i> [1990] VR 615	117
6.6	Effect of order on third parties	119
6.6a	<i>Giumelli v Giumelli</i> [1999] HCA 10; (1999) 196 CLR 101	119
<b>PART C</b>	<b>EQUITY, CONTRACT AND PROPERTY</b>	<b>123</b>
<b>7</b>	<b>Equity and contract</b>	<b>124</b>
7.1	Introduction	125
7.2	Equitable estoppel	125
7.2.1	Promissory estoppel	125
7.2.1a	<i>Waltons Stores (Interstate) Ltd v Maher</i> [1988] HCA 7; (1988) 164 CLR 387	125
7.2.2	Proprietary estoppel	131
7.2.2a	<i>Giumelli v Giumelli</i> [1999] HCA 10; (1999) 196 CLR 101	131
7.2.2b	<i>Sidhu v Van Dyke</i> [2014] HCA 19; (2014) 251 CLR 505	133
7.3	Equity and voidable transactions	135
7.3.1	Undue influence	135
7.3.1a	<i>Quek v Beggs</i> (1990) 5 BPR 11,761	135

7.3.2	Undue influence and third parties	140
7.3.2a	<i>Royal Bank of Scotland v Etridge (No 2)</i> [2001] UKHL 44; [2002] 2 AC 773	141
7.3.3	Unconscionability in equity	143
7.3.3a	<i>Blomley v Ryan</i> [1956] HCA 81; (1956) 99 CLR 362	143
7.3.3b	<i>Commercial Bank of Australia Ltd v Amadio</i> [1983] HCA 14; (1983) 151 CLR 447	144
7.3.4	<i>Yerkey v Jones</i> liability	150
7.3.4a	<i>Garcia v National Australia Bank Ltd</i> [1998] HCA 48; (1998) 194 CLR 395	150
<b>7.4</b>	<b>Equitable relief against penalties and forfeiture</b>	<b>154</b>
7.4.1	Relief against penalties	155
7.4.1a	<i>Andrews v Australia and New Zealand Banking Group Ltd</i> [2012] HCA 30; (2012) 247 CLR 205	155
7.4.2	Relief against forfeiture	157
7.4.2a	<i>Tanwar Enterprises Pty Ltd v Cauchi</i> [2003] HCA 57; (2003) 217 CLR 315	157
<b>8</b>	<b>Equitable proprietary interests</b>	<b>162</b>
<b>8.1</b>	Introduction	163
<b>8.2</b>	The nature of equitable ownership	163
8.2a	<i>DKLR Holding Co (No 2) Pty Ltd v Commissioner of Stamp Duties (NSW)</i> (1982) 149 CLR 431	163
8.2b	Ben McFarlane and Robert Stevens, 'The Nature of Equitable Property' (2010) 4 <i>Journal of Equity</i> 1	165
<b>8.3</b>	Equitable interests and equities	171
8.3a	<i>Latec Investments Ltd v Hotel Terrigal Pty Ltd (in liq)</i> [1965] HCA 17; (1965) 113 CLR 265	171
8.3b	<i>Walsh v Lonsdale</i> (1882) 21 Ch D 9	176
<b>8.4</b>	The doctrine of notice	178
8.4a	<i>Conveyancing Act 1919</i> (NSW)	178
8.4b	<i>Hermann v Pitt</i> (1890) 11 NSWLR (Eq) 294	178
<b>9</b>	<b>Equitable assignments</b>	<b>180</b>
<b>9.1</b>	Introduction	181
9.1.1	Legal property and equitable property	181
9.1.2	Equity's intervention in assignments of legal property	181
9.1.3	Equity and consideration	181
9.1.4	Presently existing or future property?	182
9.1.5	Transfers of choses in action	182
9.1.6	The requirement for writing in equitable assignments	182

<b>9.2</b>	Equitable recognition of ineffective gifts of legal property	183
9.2a	<i>Milroy v Lord</i> (1862) 4 De GF & J 264; 45 ER 1185	183
9.2b	<i>Corin v Patton</i> [1990] HCA 12; (1990) 169 CLR 540	184
<b>9.3</b>	Assignments of future property	187
9.3a	<i>Norman v Federal Commissioner of Taxation</i> [1963] HCA 21; (1963) 109 CLR 9	187
9.3b	<i>Shepherd v Federal Commissioner of Taxation</i> [1965] HCA 70; (1965) 113 CLR 385	191
9.3c	<i>Holroyd v Marshall</i> (1862) 10 HLC 191; 11 ER 999	193
<b>9.4</b>	Gifts of equitable property	195
9.4a	<i>Norman v Federal Commissioner of Taxation</i> [1963] HCA 21; (1963) 109 CLR 9	195
<b>9.5</b>	Assignment of choses in action at common law	196
9.5a	John McGhee QC (ed), <i>Snell's Equity</i> (Thomson Reuters, 2010) 55	196
9.5b	<i>Equuscorp Pty Ltd v Haxton</i> [2012] HCA 7; (2012) 246 CLR 498	197
<b>9.6</b>	Statutory assignment of choses in action	199
9.6a	<i>Conveyancing Act 1919</i> (NSW)	199
9.6.1	Equitable choses in action	199
9.6.1a	<i>Federal Commissioner of Taxation v Everett</i> [1980] HCA 6; (1980) 143 CLR 440	200
<b>9.7</b>	Statutory writing requirements for the assignment of equitable property	202
9.7a	<i>Property Law Act 1958</i> (Vic)	202
9.7b	<i>Comptroller of Stamp Duties (Vic) v Howard-Smith</i> [1936] HCA 12; (1936) 54 CLR 614	203
9.7c	<i>Grey v Commissioners of Inland Revenue</i> [1960] AC 1	204

## **PART D EQUITABLE OBLIGATIONS** **207**

### **10 Fiduciary relationships** **208**

<b>10.1</b>	Introduction	209
<b>10.2</b>	Identifying fiduciary relationships: Recognised or status based fiduciary relationships	209
10.2a	<i>Hospital Products Ltd v United States Surgical Corporation</i> [1984] HCA 64; (1984) 156 CLR 41	209
10.2b	<i>Daly v Sydney Stock Exchange Ltd</i> [1986] HCA 25; (1986) 160 CLR 371	210
<b>10.3</b>	Identifying fiduciary relationships: Criteria	212
10.3.1	'Distil the essence' or the characteristics of the relationship approach	213

10.3.1a	<i>Hospital Products Ltd v United States Surgical Corporation</i> [1984] HCA 64; (1984) 156 CLR 41	213
10.3.2	Horizontal relationships	218
10.3.2a	<i>United Dominions Corporation Ltd v Brian Pty Ltd</i> [1985] HCA 49; (1985) 157 CLR 1	218
10.3.3	Equity and contract	221
10.3.3a	<i>Hospital Products Ltd v United States Surgical Corporation</i> [1984] HCA 64; (1984) 156 CLR 41	221
10.3.3b	<i>Breen v Williams</i> [1996] HCA 57; (1996) 186 CLR 71	221
<b>10.4</b>	Scope of the fiduciary relationship	<b>222</b>
10.4a	<i>Breen v Williams</i> [1996] HCA 57; (1996) 186 CLR 71	223
10.4b	<i>Howard v Commissioner of Taxation</i> (2014) 253 CLR 83	224
<b>10.5</b>	Fiduciary obligations	<b>227</b>
10.5a	<i>Breen v Williams</i> [1996] HCA 57; (1996) 186 CLR 71	227
10.5.1	Obligation not to obtain any unauthorised profit from the relationship	228
10.5.1a	<i>Regal (Hastings) Ltd v Gulliver</i> (1942) 1 All ER 378; [1967] 2 AC 134	228
10.5.2	Obligation not to be in a position of conflict	230
10.5.2a	<i>Boardman v Phipps</i> [1967] 2 AC 46	230
10.5.2b	<i>Hospital Products Ltd v United States Surgical Corporation</i> [1984] HCA 64; (1984) 156 CLR 41	235
10.5.2c	<i>Commonwealth Bank of Australia v Smith</i> (1991) 42 FCR 390	236
10.5.2d	<i>Breen v Williams</i> [1996] HCA 57; (1996) 186 CLR 71	238
10.5.3	Informed consent	239
10.5.3a	<i>Maguire v Makaronis</i> [1997] HCA 23; (1997) 188 CLR 449	239
10.5.4	Two principles or one?	241
10.5.4a	<i>Chan v Zacharia</i> [1984] HCA 36; (1984) 154 CLR 178	241
<b>10.6</b>	Contracting out of fiduciary obligations	<b>243</b>
10.6a	<i>Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Ltd (No 4)</i> (2007) 160 FCR 35	244
<b>11</b>	<b>Third party participation in a breach of fiduciary obligation</b>	<b>248</b>
<b>11.1</b>	Introduction	<b>249</b>
11.1a	<i>Barnes v Addy</i> (1874) LR 9 Ch App 244	249
<b>11.2</b>	Knowing receipt	<b>251</b>
11.2.1	Breach of fiduciary duty	251
11.2.2	Receipt of property by a third party	252
11.2.2a	<i>Farah Constructions Pty Ltd v Say-Dee Pty Ltd</i> [2007] HCA 22; (2007) 230 CLR 89	252
11.2.2b	<i>Agip (Africa) Ltd v Jackson</i> [1990] Ch 265	253

11.2.3	Knowledge	254
11.2.3a	<i>Farah Constructions Pty Ltd v Say-Dee Pty Ltd</i> [2007] HCA 22; (2007) 230 CLR 89	255
11.2.3b	<i>Grimaldi v Chameleon Mining NL (No 2)</i> [2012] FCAFC 6, [259]–[268]	256
11.2.4	Remedy	259
<b>11.3</b>	Knowing assistance	259
11.3.1	A dishonest and fraudulent breach of trust	259
11.3.1a	<i>Royal Brunei Airlines Sdn Bhd v Tan</i> [1995] 2 AC 378	260
11.3.1b	<i>Farah Constructions Pty Ltd v Say-Dee Pty Ltd</i> [2007] HCA 22; (2007) 230 CLR 89	261
11.3.2	Assistance in the breach	263
11.3.3	Knowledge	264
11.3.3a	<i>Royal Brunei Airlines Sdn Bhd v Tan</i> [1995] 2 AC 378	264
11.3.3b	<i>Farah Constructions Pty Ltd v Say-Dee Pty Ltd</i> [2007] HCA 22; (2007) 230 CLR 89	265
11.3.4	Remedies for knowing assistance	268
11.3.5	Other forms of participatory liability	268
<b>12</b>	<b>Breach of confidence</b>	<b>269</b>
<b>12.1</b>	Introduction	270
<b>12.2</b>	The elements of the cause of action	270
12.2a	<i>Coco v A N Clark (Engineers) Ltd</i> (1968) 1a IPR 587	270
12.2.1	Specifying the confidential material	272
12.2.1a	<i>O'Brien v Komesaroff</i> [1982] HCA 33; (1982) 150 CLR 310	273
12.2.1.1	Quality of confidence	274
12.2.1.1a	<i>Australian Football League v Age Co Ltd</i> (2006) 15 VR 419	275
12.2.2	Circumstances imposing an obligation of confidence	278
12.2.2a	<i>Smith Kline &amp; French Laboratories (Australia) Ltd v Department of Community Services and Health</i> [1990] FCA 151; (1990) 22 FCR 73	278
12.2.3	Unauthorised use	281
12.2.3a	<i>Commonwealth v John Fairfax &amp; Sons Ltd</i> [1980] HCA 44; (1980) 147 CLR 39 (the 'Defence Papers case')	281
<b>12.3</b>	Defences	283
12.3a	<i>Australian Football League v Age Co Ltd</i> (2006) 15 VR 419	283
<b>12.4</b>	Remedies	286
12.4a	<i>Bluescope Steel Ltd v Kelly</i> (2007) 72 IPR 289	287
12.4b	<i>Giller v Procopets</i> (2008) 24 VR 1	289



<b>15</b>	<b>Creating an express trust</b>	<b>336</b>
15.1	Introduction	337
15.2	Declaration of trust	337
15.2a	<i>Conveyancing Act 1919</i> (NSW)	337
15.2b	<i>Secretary, Department of Social Security v James</i> (1990) 20 ALD 5	338
15.3	Creating a trust by transfer to the intended trustee	340
15.3a	<i>T Choithram International SA v Pagarani</i> [2001] 1 WLR 1	341
15.4	Exceptions to statutory writing requirements	343
15.4a	<i>Last v Rosenfeld</i> [1972] 2 NSWLR 923	343
15.5	Testamentary trusts	345
15.5a	<i>Voges v Monaghan</i> [1954] HCA 63; (1954) 94 CLR 231	345
<b>16</b>	<b>Trusts for charitable purposes</b>	<b>348</b>
16.1	Introduction	349
16.2	What is a charitable purpose?	350
16.2a	<i>Preamble to the Statute of Charitable Uses 1601</i> (Statute of Elizabeth)	350
16.3	Trusts for the relief of poverty	351
16.3a	<i>Downing v Federal Commissioner of Taxation</i> [1971] HCA 38; (1971) 125 CLR 185	351
16.4	Trusts for the advancement of education	352
16.4a	<i>Re Shaw (deceased)</i> [1957] 1 All ER 745	352
16.5	Trusts for the advancement of religion	353
16.5a	<i>Church of the New Faith v Commissioner of Pay-roll Tax (Vic)</i> [1983] HCA 40; (1983) 154 CLR 120	354
16.5b	<i>Roman Catholic Archbishop of Melbourne v Lawlor</i> [1934] HCA 14; (1934) 51 CLR 1	356
16.6	Trusts for other purposes beneficial to the community	356
16.6a	<i>Incorporated Council of Law Reporting of the State of Queensland v Federal Commissioner of Taxation</i> [1971] HCA 44; (1971) 125 CLR 659	357
16.7	The requirement of public benefit: 'Benefit'	358
16.7a	<i>Gilmour v Coats</i> [1949] AC 426	358
16.7b	<i>Aid/Watch Inc v Commissioner of Taxation</i> [2010] HCA 42; (2010) 241 CLR 539	360
16.8	The requirement of public benefit: 'Public or section of the public'	363
16.8a	<i>Oppenheim v Tobacco Securities Trust Co Ltd</i> [1951] AC 297	363
16.8b	<i>Dingle v Turner</i> [1972] AC 601	364

<b>PART F PERFORMING THE TRUST</b>	<b>367</b>
<b>17 Trustees' duties and powers</b>	<b>368</b>
<b>17.1</b> Introduction	369
<b>17.2</b> Sources of the trustee's duties and powers	369
<b>17.3</b> Trustees' duties	369
17.3.1 Duty to adhere to the terms of the trust	369
17.3.2 Duty to 'get in' the trust assets	370
17.3.2a <i>Field v Field</i> [1894] 1 Ch 425	370
17.3.3 Investment of trust funds	371
17.3.4 Duty to keep assets separate	371
17.3.4a <i>Re Lehman Brothers International (Europe) (No 2)</i> [2012] 1 BCLC 487	371
17.3.5 Keeping and rendering accounts	373
17.3.5a <i>Kemp v Burn</i> (1863) 4 Giff 348; 66 ER 740	373
17.3.6 Duty to give information to beneficiaries	373
17.3.6a <i>Spellson v George</i> (1987) 11 NSWLR 300	374
17.3.6b <i>Re Londonderry's Settlement</i> [1965] Ch 918	374
17.3.6c <i>Schmidt v Rosewood Trust Ltd</i> [2003] 2 AC 709	376
17.3.6d <i>Avanes v Marshall</i> (2007) 68 NSWLR 595	377
17.3.6e <i>McDonald v Ellis</i> [2007] NSWSC 1068; (2007) 72 NSWLR 605	379
17.3.7 Duty of care	381
17.3.7a <i>Speight v Gaunt</i> (1883) 22 Ch D 727	381
17.3.7b <i>Bartlett v Barclays Bank Trust Co Ltd</i> [1980] Ch 515	382
17.3.8 Duty to act impartially	385
17.3.8a <i>Tanti v Carlson</i> [1948] VLR 401	385
17.3.8b <i>Nestle v National Westminster Bank plc</i> (1996) 10 TLR 234	386
17.3.9 Duty to act personally	387
17.3.9a <i>Speight v Gaunt</i> (1883) 22 Ch D 727	387
17.3.10 Duty to consider exercise of powers	389
17.3.10.1 Trustees' powers	389
17.3.10.1a <i>Karger v Paul</i> [1984] VR 161	390
17.3.10.1b <i>Finch v Telstra Super Pty Ltd</i> [2010] HCA 36; (2010) 242 CLR 254	391
17.3.10.2 The consequences of an invalid exercise of power	393
17.3.10.2a <i>Futter v Revenue and Customs; Pitt v</i> <i>Holt</i> [2013] UKSC 26; [2013] 2 AC 108	393
<b>18 Investment of trust funds</b>	<b>395</b>
<b>18.1</b> Introduction	396
<b>18.2</b> Sources and content of trustees' investment powers	396

<b>18.3</b>	Trustee duties in the context of investment	397
<b>18.4</b>	The modern approach to ‘prudence’	399
18.4a	<i>Will and Estate of William Lionel Buckland deceased; ANZ Executors and Trustee Co Ltd v A-G for Victoria</i> (Unreported, Supreme Court of Victoria, Nathan J, 11 August 1993)	400
18.4b	<i>Nestle v National Westminster Bank plc</i> (1996) 10(6) TLI 112	403
<b>18.5</b>	The case for trustees having regard to ethical considerations	406
18.5a	<i>Cowan v Scargill</i> [1985] Ch 270	406
18.5b	<i>Harries v Church Commissioners for England</i> [1993] 2 All ER 300	408
<b>18.6</b>	Compensation for loss	411
<b>19</b>	<b>Trustees’ rights</b>	<b>413</b>
<b>19.1</b>	Introduction	414
<b>19.2</b>	Nature of the trustee’s right of indemnity	415
19.2a	<i>Chief Commissioner of Stamp Duties (NSW) v Buckle</i> [1998] HCA 4; (1998) 192 CLR 226	415
<b>19.3</b>	‘Properly incurred’ expenses	417
19.3a	<i>Re Raybould</i> [1900] 1 Ch 199	417
19.3b	<i>Gatsios Holdings Pty Ltd v Nick Kritharas Holdings Pty Ltd (in liq)</i> [2002] NSWCA 29; (2002) ATPR 41-864	418
19.3c	<i>Nolan v Collie</i> (2003) 7 VR 287	421
<b>19.4</b>	Recovery against beneficiaries personally	425
19.4a	<i>Hardoon v Bellios</i> [1901] AC 118	425
19.4b	<i>J W Broomhead (Vic) Pty Ltd (in liq) v J W Broomhead Pty Ltd</i> [1985] VR 891	426
<b>19.5</b>	Right to seek directions from the Court	429
19.5a	<i>Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar the Diocesan Bishop of Macedonian Orthodox Diocese of Australia and New Zealand</i> [2008] HCA 42; (2008) 237 CLR 66	429

## **PART G BREACH OF TRUST** **435**

<b>20</b>	<b>Breach of trust: Defences and remedies</b>	<b>436</b>
<b>20.1</b>	Introduction	437
<b>20.2</b>	Who can sue for breach of trust?	437
20.2a	<i>Young v Murphy</i> [1996] 1 VR 279	437
<b>20.3</b>	Defences	439
20.3.1	Exculpation clauses	440
20.3.1a	<i>Armitage v Nurse</i> [1998] Ch 241	440
20.3.2	Statutory exculpation	443
20.3.2a	<i>Trustee Act 1925</i> (NSW)	443

20.3.2b	<i>National Trustees Co of Australasia Ltd v General Finance Co of Australasia Ltd</i> [1905] AC 375	443
20.3.2c	<i>Trustee Act 1925</i> (NSW)	445
20.3.2d	<i>Dalrymple v Melville</i> (1932) 32 SR (NSW) 596	446
<b>20.4</b>	The beneficiary's consent to a breach of trust: Statute and equity	447
20.4a	<i>Spellson v George</i> (1992) 26 NSWLR 666	448
<b>20.5</b>	Remedying a breach of trust: Removing the trustee	450
20.5a	<i>Miller v Cameron</i> [1936] HCA 10; (1936) 54 CLR 572	451
<b>21</b>	<b>Tracing</b>	<b>453</b>
<b>21.1</b>	Introduction	454
21.1a	<i>Foskett v McKeown</i> [2001] 1 AC 102	454
<b>21.2</b>	Fiduciary requirement?	457
21.2a	<i>Creak v James Moore &amp; Sons Pty Ltd</i> [1912] HCA 67; (1912) 15 CLR 426	458
<b>21.3</b>	Mixing money in a bank account: Competition between fiduciary and beneficiary	460
21.3a	<i>Re Hallett's Estate</i> (1880) 13 Ch D 686	460
21.3b	<i>Re Oatway</i> [1903] 2 Ch 356	462
21.3c	<i>Lofts v MacDonald</i> (1974) 3 ALR 404	463
<b>21.4</b>	Mixing money in a bank account: Competition between beneficiaries	465
21.4a	<i>Re French Caledonia Travel</i> (2003) 59 NSWLR 361	465
<b>21.5</b>	Mixing by recipients of property from the fiduciary	468
21.5a	<i>Re Diplock</i> [1948] 1 Ch 465	468
<b>21.6</b>	Tracing into profits	473
21.6a	<i>Scott v Scott</i> (1963) 109 CLR 649	473
21.6b	<i>Foskett v McKeown</i> [2001] 1 AC 102	476
<b>21.7</b>	Defences to equitable tracing claims	478
<b>PART H</b>	<b>NON-CONSENSUAL TRUSTS</b>	<b>479</b>
<b>22</b>	<b>Resulting trusts</b>	<b>480</b>
<b>22.1</b>	Introduction	481
<b>22.2</b>	Overview of resulting trusts	481
22.2a	<i>Anderson v McPherson (No 2)</i> [2012] WASC 19	481
<b>22.3</b>	Presumed resulting trusts	484
22.3.1	Presumption of resulting trust	484
22.3.1a	<i>Anderson v McPherson (No 2)</i> [2012] WASC 19	484
22.3.1b	<i>Calverley v Green</i> [1984] HCA 81; (1984) 155 CLR 242	486
22.3.2	When does the presumption of resulting trust not apply?	488
22.3.2a	<i>Anderson v McPherson (No 2)</i> [2012] WASC 19	488
22.3.2b	<i>Calverley v Green</i> [1984] HCA 81; (1984) 155 CLR 242	491

22.3.2c	<i>Trustee of the Property of Cummins v Cummins</i> [2006] HCA 6; (2006) 227 CLR 278	494
22.3.2d	<i>Bloch v Bloch</i> [1981] HCA 56; (1981) 180 CLR 390	496
22.3.2e	<i>Nelson v Nelson</i> [1995] HCA 25; (1995) 184 CLR 538	497
<b>22.4</b>	Incomplete dispositions of a beneficial interest	498
22.4a	<i>Re Trusts of the Abbott Fund</i> [1900] 2 Ch 326	498
22.4b	<i>Air Jamaica Ltd v Charlton</i> [1999] 1 WLR 1399	499
<b>22.5</b>	Quistclose trusts	501
22.5a	<i>Barclays Bank Ltd v Quistclose Investments Ltd</i> [1970] AC 567	501
22.5b	<i>Twinsectra Ltd v Yardley</i> [2002] 2 AC 164	502
22.5c	<i>Raulfs v Fishy Bite Pty Ltd</i> [2012] NSWCA 135	505
<b>22.6</b>	Rationale of resulting trusts	506
22.6a	R Chambers, 'Tracing and Unjust Enrichment' in J Neyers et al. (eds), <i>Understanding Unjust Enrichment</i> (Hart Publishing, 2004), 263–309, 286–7	506
22.6b	W Swadling, 'A New Role for Resulting Trusts' (1996) 16 <i>Legal Studies</i> 110–31	507
<b>23</b>	<b>Constructive trusts</b>	<b>511</b>
<b>23.1</b>	Introduction	512
<b>23.2</b>	The common intention constructive trust	513
23.2a	<i>Allen v Snyder</i> [1977] 2 NSWLR 685	513
<b>23.3</b>	Unconscionability based constructive trusts	517
23.3a	<i>Muschinski v Dodds</i> [1985] HCA 78; (1985) 160 CLR 583	517
23.3b	<i>Baumgartner v Baumgartner</i> [1987] HCA 59; (1987) 164 CLR 137	522
<b>23.4</b>	Constructive trust as a remedy for estoppel	525
23.4a	<i>Giumelli v Giumelli</i> [1999] HCA 10; (1999) 196 CLR 101	526
<b>23.5</b>	Constructive trusts raised in response to a breach of fiduciary obligation	528
23.5.1	Fiduciary obtains a benefit or profit where there was an actual or possible conflict of interest and duty	529
23.5.1a	<i>Furs Ltd v Tomkies</i> [1936] HCA 3; (1936) 54 CLR 583	529
23.5.1b	<i>Chan v Zacharia</i> [1984] HCA 36; (1984) 154 CLR 178	530
23.5.2	Bribes and secret commissions	532
23.5.2a	<i>Lister &amp; Co v Stubbs</i> (1890) 45 Ch D 1 (CA)	532
23.5.2b	<i>Attorney-General for Hong Kong v Reid</i> [1994] 1 AC 324	533
23.5.2c	<i>Grimaldi v Chameleon Mining NL (No 2)</i> [2012] FCAFC 6; (2012) 200 FCR 296	534
23.5.2d	<i>FHR European Ventures LLP v Cedar Capital Partners LLC</i> [2014] UKSC 45; [2015] AC 250	536

<b>23.6</b>	Constructive trust imposed over stolen money and its proceeds	539
23.6a	<i>Black v S Freedman &amp; Co</i> [1910] HCA 58; (1910) 12 CLR 105	539
<b>23.7</b>	Constructive trusts as a restitutionary remedy for unjust enrichment	542
23.7a	<i>Chase Manhattan Bank NA v Israel–British Bank (London) Ltd</i> [1981] 1 Ch 105	544
23.7b	<i>Wambo Coal Pty Ltd v Ariff</i> [2007] NSWSC 589; (2007) 63 ACSR 429	546
<b>23.8</b>	Constructive trusts and mutual wills	548
23.8a	<i>Birmingham v Renfrew</i> [1937] HCA 52; (1937) 57 CLR 666	549
<b>23.9</b>	Constructive trusts imposed over property transferred under specifically enforceable contracts	550
23.9a	<i>Chang v Registrar of Titles</i> [1976] HCA 1; (1976) 137 CLR 177	551
23.9b	<i>Tanwar Enterprises Pty Ltd v Cauchi</i> [2003] HCA 57; (2003) 217 CLR 315	554
	<i>Index</i>	555



# PREFACE

One of the unfortunate side effects of the semesterisation of law degrees has been the severance of equity from trusts, so that few law schools today teach equity and trusts as an integrated subject. Even students taking trusts as a discrete subject, however, must often make reference back to equitable principles and keep steadily in mind the relevance of equitable remedies.

This book has been designed as a companion to *Equity and Trusts in Australia*, published by Cambridge University Press in 2012. Students will derive the greatest benefit from working with both books, but this Sourcebook has been designed as a freestanding teaching resource for equity teachers and students who prefer to work only from primary legal materials. Like the textbook, the Sourcebook has been written with the conviction that an understanding of equitable doctrine must rest on a secure knowledge of the principles that inform the award of equitable remedies – hence the early chapters devoted to an analysis of the principles governing the award of equitable relief.

Simone Degeling acknowledges the assistance Samuel Gerber and Eftim Ancev in preparing her chapters. We all acknowledge the professionalism, patience and resourcefulness of Lucy Russell, Danushka Silva and their colleagues at Cambridge University Press, and of Jane O'Regan in editing the copy and preparing the proofs.

We have endeavoured to state the law as at 30 June 2015.

Michael Bryan  
Simone Degeling  
Scott Donald  
Vicki Vann  
19 July 2015



# TABLE OF CASES

## Australia

- A G Australia Holdings Ltd v Burton* (2002) 58 NSWLR 464, 272
- ABN AMRO Bank NV v Bathurst Regional Council* (2014) 24 FCR 1, 212
- Adamson v Hayes* (1973)130 CLR 276, 338
- Aequitas Ltd v Sparad No 100. Ltd* (2001) 19 ACLC 1006, 245, 246
- Agricultural Land Management Ltd v Jackson (No 2)* (2014) 48 WAR 1, 61–2, 239, 439
- Agripay Pty Ltd v Byrne* [2011] 2 Qd R 501, 154
- Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539, 358, 360–2
- Alati v Kruger* (1955) 94 CLR 216, 85, 87, 94–6, 99
- Alexander v Perpetual Trustees WA Ltd* (2003) 216 CLR 109, 447
- Allen v Snyder* [1977] 2 NSWLR 685, 513–15
- AMI Australia Holdings Pty Ltd v Fairfax Media Publications Pty Ltd* [2010] NSWSC 1395, 278
- Anderson v McPherson (No 2)* [2012] WASC 19, 140, 481–6, 488–90, 493
- Andrews v Australia and New Zealand Banking Group Ltd* (2012) 247 CLR 205, 155–6
- Anning v Anning* (1907) 4 CLR 1049, 185, 186
- ANZ Executors and Trustees Ltd v Humes Ltd* [1990] VR 615, 31, 117–19
- Apostolou v VA Corporation of Australia Pty Ltd* (2010) 77 ACSR 84, 416
- Associated Alloys Pty Ltd v ACN 001 452 106 Pty Ltd* (2000) 202 CLR 588, 301–3, 318, 371, 460
- Astley v Austrust Ltd* (1999) 197 CLR 1, 76, 77
- Attorney-General (NSW) v Perpetual Trustee Co Ltd* (1940) 63 CLR 209, 349
- Attorney-General (UK) v Heinemann Publishers Australia Pty Ltd* (1987) 10 NSWLR 86, 274, 285
- Austin v Austin* (1906) 3 CLR 516, 423
- Austotel Pty Ltd v Franklins Selfservice Pty Ltd* (1989) 16 NSWLR 582, 130
- Australasian Conference Association Ltd v Mainline Constructions Pty Ltd (in liq)* (1978) 141 CLR 335, 307, 310–11
- Australia and New Zealand Banking Group Ltd v Bangadilly Pastoral Co Pty Ltd* (1978) 139 CLR 195, 216
- Australia and New Zealand Banking Group Ltd v Westpac Banking Corporation* (1988) 164 CLR 662, 139
- Australian Broadcasting Commission v O'Neill* (2006) 227 CLR 57, 44
- Australian Broadcasting Corporation v Lenab Game Meats Pty Ltd* (2001) 208 CLR 199, 37–8, 49, 109
- Australian Building & Technical Solutions Pty Ltd v Boumelhem* (2009) 2 ASTLR 366, 522
- Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd* (2003) 214 CLR 51, 109, 149, 150
- Australian Financial Services and Leasing Pty Ltd v Hills Industries Ltd* (2014) 253 CLR 560, 542, 543
- Australian Football League v Age Co Ltd* (2006) 15 VR 419, 275–7, 281, 283–6
- Australian Securities Commission v AS Nominees Ltd* (1995) 62 FCR 504, 384
- Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Ltd (No 4)* (2007) 160 FCR 35, 212, 244–7
- Avanes v Marshall* (2007) 68 NSWLR 595, 374, 377–9, 380, 381
- Bacchus Marsh Concentrated Milk CoLtd (in liq) v Joseph Nathan & Co Ltd* (1919) 26 CLR 410, 102
- Babr v Nicolay (No 2)* (1988) 164 CLR 604, 308, 318
- Baird v BCE Holdings Pty Ltd* (1996) 40 NSWLR 374, 159

*Bank of Australia v Murray* (1850) 1 Legge 612, 10  
*Bank of New South Wales v Rogers* (1941) 65 CLR 42, 136, 137, 140, 152  
*Bank of Victoria Ltd v Mueller* [1925] VLR 642, 88, 151, 152  
*Barescape Pty Ltd v Bacchus Holdings Trust (No 9)* [2012] NSWSC 984, 240  
*Barns v Barns* (2003) 214 CLR 169, 550  
*Bathurst City Council v PWC Properties Pty Ltd* (1998) 195 CLR 566, 296, 350, 358, 546  
*Baumgartner v Baumgartner* (1987) 164 CLR 137, 522–5, 546  
*Beecham Group v Bristol Laboratories* (1968) 118 CLR 618, 44  
*Bennett v Horgan* (Unreported, New South Wales Supreme Court, Bryson, J, 3 June 1994), 522  
*Birmingham v Renfrew* (1937) 57 CLR 666, 549–50  
*Birtchnell v Equity Trustees, Executors and Agency Co Ltd* (1929) 42 CLR 384, 214, 219, 220, 223, 530  
*Black v S Freedman & Co* (1910) 12 CLR 105, 458, 539–41, 542  
*Black Ublans Inc v New South Wales Crime Commission* [2002] NSWSC 1060, 13, 111–15, 482, 483  
*Bloch v Bloch* (1981) 180 CLR 390, 496–7  
*Blomley v Ryan* (1956) 99 CLR 362, 143–4, 145, 148, 149  
*Bluescope Steel Ltd v Kelly* (2007) 72 IPR 289, 287–9  
*Body Bronze International Pty Ltd v Febcorp Pty Ltd* (2011) 34 VR 536, 150  
*Bofinger v Kingsway Group Ltd* (2009) 239 CLR 269, 512  
*Bolton v Federal Commissioner of Taxation* (1965) ALR 481, 200  
*Bosaid v Andry* [1963] VR 465, 103  
*Brady v Stapleton* (1952) 88 CLR 322, 462, 475  
*Brandling v Weir* [2003] NSWSC 723, 516  
*Breen v Williams* (1996) 186 CLR 71, 67, 212, 217, 221–2, 223, 224, 227–8, 238–9, 423  
*Bridgewater v Leahy* (1998) 194 CLR 457, 105, 149  
*British American Tobacco Australia Ltd v Gordon* [2007] NSWSC 292, 278  
*Brown v Brown* (1993) 31 NSWLR 582, 486, 493  
*Brown v Manuel* [1996] QCA 65, 524  
*Brown v Smitt* (1924) 34 CLR 160, 95  
*Brunker v Perpetual Trustee Co Ltd* (1937) 57 CLR 555, 186  
*Bryson v Bryant* (1992) 29 NSWLR 188, 525  
*Buckenara v Hawthorn Football Club Ltd* [1988] VR 39, 43  
*Bunny Industries Ltd v FSW Enterprises Ltd* [1982] Qd R 712, 553  
*Burdett-Baker v National Australia Bank Ltd* [2013] FCA 799, 505  
*Byrnes v Kendle* (2011) 243 CLR 253, 311, 312, 318–20, 321, 337, 450, 483  
*Cadd v Cadd* (1909) 9 CLR 171, 515  
*Cadwaller v Bajco Pty Ltd* [2002] NSWCA 328, 115  
*Calverley v Green* (1984) 155 CLR 242, 483, 486–7, 489, 491–3, 495, 518  
*Cambouya Pty Ltd v Buchanan* [2005] NSWSC 743, 516  
*Campbells Cash & Carry Pty Ltd v Fostif Pty Ltd* (2006) 229 CLR 386, 197  
*Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd* (1974) 131 CLR 321, 219  
*Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380, 38  
*Carkeek v Tate-Jones* [1971] VR 691, 487  
*Catt v Marac Australia Ltd* (1986) 9 NSWLR 639, 438  
*Cetojevik v Cetojevik* [2006] NSWSC 431, 522  
*Chan v Cresdon* (1989) 168 CLR 242, 177  
*Chan v Zacharia* (1984) 154 CLR 178, 225, 241–2, 245, 530–1, 538  
*Chang v Registrar of Titles* (1976) 137 CLR 177, 296, 551–2, 554  
*Chang v Tijong* [2009] NSWSC 122, 322  
*Charles Marshall Pty Ltd v Grimsley* (1956) 95 CLR 353, 486, 487, 494  
*Chief Commissioner of Stamp Duties (NSW) v Buckle* (1998) 192 CLR 226, 415–16, 422  
*Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120, 354–5  
*Ciavarella v Balmer* (1983) 153 CLR 438, 158

*Clay v Clay* (2001) 202 CLR 410, **210, 296**  
*Cobcroft v Bruce* (2013) 9 ASTLR 397, **322–4**  
*Coben v Coben* (1929) 42 CLR 91, **299–300**  
*Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447, **87, 89, 90, 91, 125, 144–8, 149, 150, 152, 519**  
*Commissioner of Stamp Duties (NSW) v Carlenka Pty Ltd* (1995) 41 NSWLR 329, **101–3**  
*Commissioner of Stamp Duties (NSW) v Perpetual Trustee Co Ltd* (1943) 67 CLR 234, **307**  
*Commissioner of Stamp Duties (Qld) v Jolliffe* (1920) 28 CLR 178, **311, 319, 320**  
*Commissioner of Taxation v Linter Textiles Australia Ltd (in liq)* (2005) 220 CLR 592, **482**  
*Commissioner of Taxes (Qld) v Ford Motor Co of Australia Pty Ltd* (1942) 66 CLR 261, **215**  
*Commonwealth v John Fairfax & Sons Ltd* (1980) 147 CLR 39, **279, 281–3**  
*Commonwealth v Verwayen* (1990) 170 CLR 394, **120, 130, 131–2, 527**  
*Commonwealth Bank of Australia v Doggett* [2014] VSC 423, **149**  
*Commonwealth Bank of Australia v Smith* (1991) 42 FCR 390, **236–8**  
*Compass Resources Ltd v Sherman* (2010) 42 WAR 1, **505**  
*Comptroller of Stamp Duties (Vic) v Howard-Smith* (1936) 54 CLR 614, **203–4**  
*Consul Development Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373, **253, 255, 256, 257–8, 262, 266, 530**  
*Coolbrew Pty Ltd v Westpac Banking Corporation* [2015] NSWCA 135, **505**  
*Corin v Patton* (1990) 169 CLR 540, **12, 13, 184–7, 337, 340, 495**  
*Cornerstone Property & Development Pty Ltd v Suellen Properties Pty Ltd* (2015) 1 Qd R 75, **263**  
*Corrs Pauey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434, **285**  
*Coulls v Bagot's Executor and Trustee Co Ltd* (1967) 119 CLR 460, **30–1**  
*Countess of Bective v Federal Commissioner of Taxation* (1932) 47 CLR 417, **309, 323–4**  
*CPT Custodian Pty Ltd v Commissioner of State Revenue* (2005) 224 CLR 98, **416**  
*Creak v James Moore & Sons Pty Ltd* (1912) 15 CLR 426, **457, 458–9**  
*Crowe v Stevedoring Employees Retirement Fund Pty Ltd* [2003] VSC 316, **380**  
*Crowther v Brophy* [1992] 2 VR 97, **359, 363**  
*Curro v Beyond Productions Pty Ltd* (1993) 30 NSWLR 337, **42–4**  
*Dalgety Wine Estates Pty Ltd v Rizzon* (1979) 141 CLR 552, **43**  
*Dalrymple v Melville* (1932) 32 SR (NSW) 596, **446–7**  
*Daly v Sydney Stock Exchange Ltd* (1986) 160 CLR 371, **85, 90–3, 210–12, 223, 245, 246**  
*Dart Industries Inc v Décor Corporation Pty Ltd* (1993) 179 CLR 101, **53, 288**  
*David Securities Pty Ltd v Commonwealth Bank of Australia* (1992) 175 CLR 353, **542, 544**  
*David Syme & Co Ltd v General-Motors-Holden Ltd* [1984] 2 NSWLR 294, **285**  
*Davis v Heuber* (1923) 31 CLR 83, **300**  
*Dean v Cole* (1921) 30 CLR 1, **309**  
*Dimos v Dikeakos Nominees Pty Ltd* (1996) 68 FCR 39, **416**  
*DKLR Holding Co (No 2) Pty Ltd v Commissioner of Stamp Duties (NSW)* (1982) 149 CLR 431, **163–4, 482**  
*Doneley v Doneley* [1998] Qd R 602, **396**  
*Donis v Donis* (2007) 19 VR 577, **134**  
*Dougan v Ley* (1946) 71 CLR 142, **28–9**  
*Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575, **277**  
*Downing v Federal Commissioner of Taxation* (1971) 125 CLR 185, **351**  
*Drakeford v Bromhead* [2003] NSWSC 296, **505**  
*Dullow v Dullow* (1985) 3 NSWLR 531, **486**  
*Duyver v Calco Timbers Pty Ltd* (2008) 234 CLR 124, **392**  
*Elders Trustee and Executor Co Ltd v E G Reeves Pty Ltd* (1987) 78 ALR 193, **102**  
*Enfield City Corporation v Development Assessment Commission* (2000) 199 CLR 135, **38**  
*Equiscorp Pty Ltd v Haxton* (2012) 246 CLR 498, **197–8, 544**  
*Eslea Holdings Ltd v Butts* (1986) 6 NSWLR 175, **305**  
*Estex Clothing Manufacturers Pty Ltd v Ellis and Goldstein Ltd* (1967) 116 CLR 254, **215**  
*FAI Insurances Ltd v Pioneer Concrete Services Ltd* (1987) 15 NSWLR 552, **113, 115**

*Farab Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89, 240, 249, 251, 252–3, 254, 255–6, 258, 259, 261–2, 263, 265–7, 268, 543, 544, 548  
*Federal Commissioner of Taxation v Everett* (1980) 143 CLR 440, 200–1  
*Finch v Telstra Super Pty Ltd* (2010) 242 CLR 254, 390, 391–2  
*Fodare Pty Ltd v Shearn* [2011] NSWSC 479, 258  
*Foran v Wight* (1989) 168 CLR 385, 130  
*Forsyth v Blundell* (1973) 129 CLR 477, 176  
*Fouche v Superannuation Fund Board* (1952) 88 CLR 609, 423  
*Franklin v Giddins* [1978] Qd R 72, 279  
*Frontier Touring Co Pty Ltd v Rodgers* (2005) 223 ALR 433, 504  
*Furs Ltd v Tomkies* (1936) 54 CLR 583, 226, 529, 530, 535, 536  
*Gall v Mitchell* (1924) 35 CLR 222, 117, 119  
*Garcia v National Australia Bank Ltd* (1998) 194 CLR 395, 125, 141, 150–4  
*Gatsios Holdings Pty Ltd v Nick Kritbaras Holdings Pty Ltd (in liq)* (2002) ATPR 41–864, 418–20, 421, 422, 424  
*George v Webb* [2011] NSWSC 1608, 505  
*Gerace v Auzhair Supplies Pty Ltd (in liq)* (2014) 87 NSWLR 435, 109  
*Gill v Gill* (1921) 21 SR NSW 400, 323  
*Giller v Procopets* (2008) 24 VR 1, 46, 48–9, 50, 83, 287, 289–91  
*Giumelli v Giumelli* (1999) 196 CLR 101, 13, 119–21, 130, 131–2, 134, 482, 512, 526–7, 528  
*Gray v Motor Accident Commission* (1998) 196 CLR 1, 82  
*Greater Sydney Development Association Ltd v Rivett* (1929) 29 SR (NSW) 356, 112  
*Green v Green* (1989) 17 NSWLR 343, 516  
*Green v Wilden Pty Ltd* [2005] WASC 83, 442  
*Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296, 256–8, 259, 268, 530, 534–6, 538, 541, 542  
*Grundt v Great Boulder Pty Gold Mines Ltd* (1937) 59 CLR 641, 128, 133–4  
*Hadid v Lenfest Communications Inc* [1999] FCA 1798, 245  
*Halloran v Minister Administering National Parks and Wildlife Act 1974* (2006) 229 CLR 545, 195, 202  
*Hammond v Hammond* (2007) 13 BPR 24 619, 324  
*Hancock v Rinehart* (2015) 106 ACSR 207, 452  
*Harpur v Levy* (2007) 16 VR 587, 324–6  
*Harries v Church Commissioners for England* [1993] 2 All ER 300, 405, 406, 408–11  
*Harrigan v Brown* [1967] 1 NSWLR 342, 43  
*Harris v Digital Pulse Pty Ltd* (2003) 56 NSWLR 298, 18, 75, 78–82, 288  
*Harris v Jenkins* (1922) 31 CLR 341, 137  
*Harrison v National Bank of Australasia Ltd* (1928) 23 Tas LR 1, 148  
*Hartigan v International Society for Krishna Consciousness* [2002] NSWSC 810, 97  
*Hartigan Nominees Pty Ltd v Rydge* (1992) 29 NSWLR 405, 376–7, 379  
*Hasler v Singtel Optus Pty Ltd* (2014) 87 NSWLR 609, 240, 263  
*Hawthorn Football Club Ltd v Harding* [1988] VR 9, 43  
*Hayes v National Heart Foundation of Australia* [1976] 1 NSWLR 29, 323  
*Haywood v Roadknight* [1927] VLR 512, 211  
*HBL v Trust Co Ltd* [2010] QCAT 40, 405  
*Helvetic Investment Corporation Pty Ltd v Knight* (1984) 9 ACLR 77, 414  
*Heperu Pty Ltd v Belle* (2009) 76 NSWLR 230, 541  
*Hepworth v Hepworth* (1963) 110 CLR 309, 514, 519  
*Herdegen v Federal Commissioner of Taxation* (1988) 84 ALR 271, 295, 298  
*Hermann v Pitt* (1890) 11 NSWLR (Eq) 294, 178–9  
*Hewett v Court* (1983) 149 CLR 639, 34  
*Hewson v Sydney Stock Exchange Ltd* [1968] 2 NSWLR 224, 112  
*Horan v James* [1982] 2 NSWLR 376, 334  
*Horsman v M G Kailis Pty Ltd* [2009] WASC 166, 258

*Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41, 58, 79, 209–10, 212, 213–17, 221, 223, 235, 535, 536

*Hospitality Group Pty Ltd v Australian Rugby Union Ltd* (2001) 110 FCR 157, 58

*House v Caffyn* [1922] VLR 67, 492

*Howard v Commissioner of Taxation* (2014) 253 CLR 83, 224–7, 236, 241

*Howell v Hyde* (2003) 47 ACSR 230, 347

*Hoyt's Pty Ltd v Spencer* (1919) 27 CLR 133, 127

*Hybonie Holdings Pty Ltd v Leroy* [2003] NSWSC 624, 319

*Incorporated Council of Law Reporting of the State of Queensland v Federal Commissioner of Taxation* (1971) 125 CLR 659, 357–8

*J W Broomhead (Vic) Pty Ltd (in liq) v J W Broomhead Pty Ltd* [1985] VR 891, 426–9

*Jenyns v Public Curator (Qld)* (1953) 90 CLR 113, 216

*John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd* (2010) 241 CLR 1, 121, 217, 528, 530, 536

*Johnson v Buttress* (1936) 56 CLR 113, 136, 137

*Kakavas v Crown Melbourne Ltd* (2013) 250 CLR 392, 149

*Kalls Enterprises Pty Ltd (in liq) v Baloglow* (2007) 63 ACSR 557, 251, 252, 258

*Kara Kar Holdings Pty Ltd v Knudsen* [2001] NSWCA 276, 483

*Karger v Paul* [1984] VR 161, 389, 390–1, 392, 393

*Kauter v Hilton* (1953) 90 CLR 98, 319

*Keith Henry & Co Pty Ltd v Stuart Walker & Co Pty Ltd* (1958) 100 CLR 342, 530, 531, 535

*Kellas-Sharpe v PSAL Ltd* (2013) 2 Qd R 233, 157

*Kennon v Spry* (2008) 238 CLR 366, 191

*Kern Corporation Ltd v Walter Reid Trading Pty Ltd* (1987) 163 CLR 164, 554

*Kettles and Gas Appliances Ltd v Anthony Hordern & Sons Ltd* (1934) 35 SR (NSW) 108, 112, 114, 115, 116

*Knudsen v Kara Kar Holdings Pty Ltd* [2000] NSWSC 715, 483

*Kranz v National Australia Bank Ltd* (2003) 8 VR 310, 142, 154

*Lampson (Australia) Pty Ltd v Fortsecue Metals Group (No 3)* [2014] WASC 162, 542–3

*Langman v Handover* (1929) 43 CLR 334, 99

*Last v Rosenfeld* [1972] 2 NSWLR 923, 343–5

*Latec Investments Ltd v Hotel Terrigal Pty Ltd (in liq)* (1965) 113 CLR 265, 92–3, 94, 171–6

*Layton (t/as B M Salmon Layton & Co) v Stewart* [1993] FCA 532; [1994] ANZ ConvR 283, 73

*Legal Services Board v Gillespie Jones* (2013) 249 CLR 493, 505

*Legione v Hateley* (1983) 152 CLR 406, 126, 127, 158–9, 519

*Levy v Watt* [2012] VSC 539, 326

*Lewis Construction (Engineering) Pty Ltd v Southern Electric Authority of Queensland* (1976) 11 ALR 305, 102

*Lift Capital Partners Pty Ltd v Merrill Lynch International* (2009) 73 NSWLR 404, 160

*Lofts v McDonald* (1974) 3 ALR 404, 463–4

*Louth v Diprose* (1992) 175 CLR 621, 149

*Lutheran Church of Australia South Australia District Inc v Farmers' Co-operative Executors and Trustees Ltd* (1970) 121 CLR 628, 391

*Macedonian Orthodox Community Church St Petka Inc v His Eminence Petar the Diocesan Bishop of Macedonian Orthodox Diocese of Australia and New Zealand* (2008) 237 CLR 66, 414, 429–33

*Maguire v Makaronis* (1997) 188 CLR 449, 72, 75, 77, 80, 97–100, 225, 239–40, 262

*Mansour v Mansour* (2009) 24 VR 498, 452

*Maralinga Pty Ltd v Major Enterprises Pty Ltd* (1973) 128 CLR 336, 102

*Marks v CCH Australia Ltd* [1999] 3 VR 513, 305

*Marriner v Australian Super Developments Pty Ltd* [2012] VSCA 17, 268

*Martin v Martin* (1959) 110 CLR 297, 490, 491

*Mason v State of New South Wales* (1959) 102 CLR 108, 544

*Maybury v Atlantic Union Oil Co Ltd* (1953) 89 CLR 507, 127

*McCracken v Attorney-General (Vic)* [1995] 1 VR 67, 334

*McDonald v Ellis* (2007) 72 NSWLR 605, **374, 379–80, 381**  
*McKenzie v McDonald* [1927] VLR 134, **17–18, 85**  
*McLaughlin v Fosbery* (1904) 1 CLR 546, **33**  
*Metro-Goldwyn-Mayer Pty Ltd v Greenham* [1966] 2 NSWLR 717, **156**  
*Metropolitan Petar v Mitreski* [2012] NSWSC 1610, **268**  
*Michael Wilson & Partners Ltd v Nicholls* (2011) 244 CLR 427, **259, 268**  
*Mid-City Skin Cancer & Laser Centre v Zabedi-Anarak* (2006) 67 NSWLR 569, **272**  
*Miller v Cameron* (1936) 54 CLR 572, **451, 452**  
*Mills v Renwick* (1901) 1 SR (NSW) Eq 173, **179**  
*Moffatt v Crawford* [1924] St R Qd 241, **472**  
*Money v Money (No 2)* [1966] 1 NSWLR 348, **116**  
*Moorgate Tobacco Co Ltd v Philip Morris Ltd (No 2)* (1984) 156 CLR 414, **49, 280**  
*Munchies Management Pty Ltd v Belperio* (1988) 58 FCR 274, **100**  
*Murdoch v Attorney-General (Tas)* (1992) 1 Tas R 117, **358**  
*Muschinski v Dodds* (1985) 160 CLR 583, **38, 517–21, 546**  
*National Trustees Executors and Agency Co of Australia Ltd v Barnes* (1941) 64 CLR 268, **422**  
*Nelson v Nelson* (1994) 33 NSWLR 740, **493**  
*Nelson v Nelson* (1995) 184 CLR 538, **19–22, 486, 489, 493, 497–8**  
*News Ltd v Australian Rugby Football League Ltd* (1996) 64 FCR 410, **218**  
*Ninety Five Pty Ltd (in liq) v Banque Nationale de Paris* [1988] WAR 132, **257**  
*Noack v Noack* [1959] VR 137, **491**  
*Nolan v Collie* (2003) 7 VR 287, **421–4**  
*Norman v Federal Commissioner of Taxation* (1963) 109 CLR 9, **187–90, 192, 193, 194, 195, 196, 199, 202**  
*O'Brien v Komesaroff* (1982) 150 CLR 310, **273–4**  
*O'Brien v Sheeaban* [2002] FCA 1292, **528**  
*Octavo Investments Pty Ltd v Knight* (1979) 144 CLR 360, **416, 422**  
*Official Receiver in Bankruptcy v Schultz* (1990) 170 CLR 306, **165**  
*O'Halloran v R T Thomas & Family Pty Ltd* (1998) 45 NSWLR 262, **62, 70–2**  
*Orix Australia Corporation Ltd v Moody Kiddell & Partners Pty Ltd* [2005] NSWSC 1209, **546, 547**  
*Orr v Ford* (1989) 167 CLR 316, **105, 107–8, 110**  
*Owners of Ship 'Shin Kobe Maru' v Empire Shipping Co Inc* (1994) 181 CLR 404, **431**  
*Paciocco v Australia and New Zealand Banking Group Ltd* (2014) 309 ALR 249, **157**  
*Paciocco v Australia and New Zealand Banking Group Ltd* (2015) 321 ALR 584, **157**  
*Palette Shoes Pty Ltd v Krohn* (1937) 58 CLR 1, **194**  
*Parianos v Melluish* (2003) 30 Fam LR 524, **516**  
*Parij v Parij* (1997) SASR 153, **525**  
*Parsons v McBain* (2001) 109 FCR 120, **516**  
*Partridge v Equity Trustees Executors and Agency Co Ltd* (1947) 75 CLR 149, **391**  
*Patmore v Upton* (2004) 13 Tas R 95, **176**  
*Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* (1998) 195 CLR 1, **34–5**  
*Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221, **542**  
*Peldan v Anderson* (2006) 227 CLR 471, **482**  
*Pendlebury v Colonial Mutual Life Assurance Society Ltd* (1912) 13 CLR 676, **173**  
*Perpetual Trustee Co Ltd v Pacific Coal Co Pty Ltd* (1953) 55 SR (NSW) 495, **127**  
*Pilmer v Duke Group Ltd (in liq)* (2001) 207 CLR 165, **67, 75–7, 211, 212, 222, 236**  
*PT Ltd v Maradona Pty Ltd (No 2)* (1992) 27 NSWLR 241, **202**  
*Pukallus v Cameron* (1982) 180 CLR 447, **102**  
*Quek v Beggs* (1990) 5 BPR 11 761, **135–9, 140**  
*R v McNeil* (1922) 31 CLR 76, **109**  
*Rabnam Investments Pty Ltd v Esplin* [2004] NSWSC 529, **505**  
*Rasmanis v Jurewitsch* (1969) 70 SR (NSW) 407, **541**  
*Raulfs v Fishy Bite Pty Ltd* [2012] NSWCA 135, **306, 309–14, 505, 506, 521**

*Re Adams' Trust* (1902) 2SR (NSW) (Eq) 177, 451  
*Re Armstrong* [1960] VR 202, 320  
*Re Associated Securities Ltd and the Companies Act* [1981] 1 NSWLR 742, 307, 308  
*Re Australian Elizabethan Theatre Trust* (1991) 30 FCR 491, 306–9, 310, 312, 502, 505  
*Re Baker (deceased); Rouse v Attorney-General for Victoria* [1961] VR 641, 401  
*Re Blyth* [1997] 2 Qd R 567, 334  
*Re Byrne Australia Pty Ltd* [1981] 1 NSWLR 394, 418  
*Re Campbell; Ex parte Muir* (1861) 1 QSCR 39, 552  
*Re CCR* [2006] QCAAT 45, 405  
*Re Clarke and Solomon's Agreements Trusts* (1905) 5 SR (NSW) 498, 552  
*Re Darwin Cyclone Tracy Relief Fund Trust* (1979) 39 FLR 260, 358  
*Re Dawson (deceased); Union Fidelity Trustee Co Ltd v Perpetual Trustee Co Ltd* [1966] 2 NSWLR 211, 62  
*Re Enbill Pty Ltd* [1983] 1 VR 561, 418  
*Re French Caledonia Travel* (2003) 59 NSWLR 361, 465–7, 472  
*Re Global Finance Group Pty Ltd* (2002) 26 WAR 385, 466  
*Re Income Tax Acts (No 1)* [1930] VLR 211, 366  
*Re McGrath & Anor (In their capacity as liquidators of HIH Insurance Ltd)* (2010) 78 ACSR 405, 240  
*Re MF Global Australia Ltd (in liq)* (2012) 267 FLR 27, 418  
*Re Rules' Settlement* [1915] VLR 670, 317  
*Re Scott* [1948] SASR 193, 295, 296  
*Re Staff Benefits Pty Ltd (in liq)* [1979] 1 NSWLR 207, 414  
*Re Suco Gold Pty Ltd* (1983) 33 SASR 99, 418  
*Re Umpherston (deceased)* (1990) 53 SASR 293, 445  
*Re Wall; Ex parte Official Receiver v Kemmis* (1979) 25 ALR 615, 308  
*Reader v Fried* [2001] VSC 495, 442  
*Re-Engine Pty Ltd (in liq) v Fergusson* (2007) 209 FLR 1, 263  
*Riddle v Riddle* (1952) 85 CLR 202, 401  
*Robb Evans of Robb Evans & Associates v European Bank Ltd* (2004) 61 NSWLR 75, 483, 484, 541, 546  
*Roman Catholic Archbishop of Melbourne v Lawlor* (1934) 51 CLR 1, 356  
*Romanos v Pentagold Investments Pty Ltd* (2003) 217 CLR 367, 160  
*Rose v Rose* (1986) 7 NSWLR 679, 308  
*Roxborough v Rothmans of Pall Mall Australia Ltd* (2001) 208 CLR 516, 543, 544  
*Royal North Shore Hospital of Sydney v Attorney-General (NSW)* (1938) 60 CLR 396, 360–1, 362  
*Russell v Scott* (1936) 55 CLR 440, 491  
*RWG Management Ltd v Commissioner for Corporate Affairs* [1985] VR 385, 414, 419  
*Salvo v New Tel Ltd* [2005] NSWCA 281, 483  
*Scott v Pauly* (1917) 19 WALR 55, 491  
*Scott v Scott* (1963) 109 CLR 649, 462, 473–6, 478  
*Secretary, Department of Social Security v James* (1990) 20 ALD 5, 338–40  
*Shepherd v Doolan* [2005] NSWSC 42, 516  
*Shepherd v Federal Commissioner of Taxation* (1965) 113 CLR 385, 191–3  
*Short v Crawley (No 30)* [2007] NSWSC 1322, 240  
*Shortall v White* [2007] NSWCA 372, 320, 328  
*Sidbu v Van Dyke* (2014) 251 CLR 505, 133–4, 527, 528  
*Smith Kline & French Laboratories (Australia) Ltd v Department of Community Services and Health* (1990) 22 FCR 73, 278–80, 281, 283, 285, 290  
*Spellson v George* (1987) 11 NSWLR 300, 374  
*Spellson v George* (1992) 26 NSWLR 666, 240, 448–50  
*Spong v Spong* (1914) 18 CLR 544, 137  
*Stephens Travel Service International Pty Ltd v Qantas Airways Ltd* (1988) 13 NSWLR 331, 254  
*Stern v McArthur* (1988) 165 CLR 489, 158, 160

*Stevens v Brodribb Sawmilling Company Pty Limited* (1986) 160 CLR 16, 245  
*Stewart v Layton* (1992) 111 ALR 687, 73–4  
*Stewart Dawson & Co (Vic) Pty Ltd v Federal Commissioner of Taxation* (1933) 48 CLR 683, 487  
*Stivactos v Michelatos (No 2)* [1993] NSW Conv R 55–683, 140  
*Sullivan v Sclanders & Goldwell International Pty Ltd* (2000) 77 SASR 419, 285, 286  
*Suttor v Gundowda Pty Ltd* (1950) 81 CLR 418, 118  
*Swanston Mortgage Pty Ltd v Trepan Investments Pty Ltd* [1994] 1 VR 672, 176  
*Tabcorp Holdings Pty Ltd v Bowen Investments Pty Ltd* (2009) 236 CLR 530, 24  
*Talbot v General Television Corporation Pty Ltd* [1980] VR 224, 49  
*Tanti v Carlson* [1948] VLR 401, 385, 387  
*Tanwar Enterprises Pty Ltd v Cauchi* (2003) 217 CLR 315, 157–60, 161, 554  
*Taylor v Taylor* (1910) 10 CLR 218, 353  
*Thompson v Palmer* (1933) 49 CLR 507, 126, 128  
*Thompson; Olsson v Dyson* (1969) 120 CLR 365, 128  
*Thornley v Tilley* (1925) 36 CLR 1, 211  
*Tidex v Trustees Executors and Agency Co Ltd* [1971] 2 NSWLR 453, 307  
*Trendtex Trading Corporation v Credit Suisse* [1982] AC 679, 198  
*Trident General Insurance Co Ltd v McNiece Brothers Pty Ltd* (1988) 165 CLR 107, 31, 296, 304–5, 308, 337  
*Trustee of the Property of Cummins v Cummins* (2006) 227 CLR 278, 494–5  
*Turner v Bladin* (1951) 82 CLR 463, 36  
*Union Bank of Australia Ltd v Whitelaw* [1906] VLR 711, 136, 148  
*Union Trustee Co of Australia Ltd v Federal Commissioner of Taxation* (1962) 108 CLR 451, 351  
*United Builders Pty Ltd v Mutual Acceptance Ltd* (1980) 144 CLR 673, 312  
*United Dominions Corporation Ltd v Brian Pty Ltd* (1985) 157 CLR 1, 218–21, 243–4, 247  
*United States Surgical Corporation v Hospital Products International* [1982] 2 NSWLR 766, 438  
*Uren v John Fairfax & Sons Pty Ltd* [1965] NSW 202, 82  
*Vacuum Oil Co Pty Ltd v Wiltshire* (1945) 72 CLR 319, 416, 422  
*Vadasz v Pioneer Concrete (SA) Pty Ltd* (1995) 184 CLR 102, 86–90, 98, 103, 150  
*Vallance v The Queen* (1961) 108 CLR 56, 102  
*Victoria University of Technology v Wilson* (2006) 68 IPR 597, 54–6  
*Voges v Monaghan* (1954) 94 CLR 231, 345–7  
*Walker v Corboy* (1990) 19 NSWLR 382, 307, 308  
*Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387, 125–9, 130  
*Wambo Coal Pty Ltd v Ariff* (2007) 63 ACSR 429, 542, 546–8  
*Warman International Ltd v Dwyer* (1995) 182 CLR 544, 52–3, 54, 243, 288  
*Warner Brothers Pictures Inc v Ingolia* [1965] NSW 988, 43  
*Waterhouse v Waterhouse* (1998) 46 NSWLR 449, 452  
*Waterside Workers' Federation of Australia v Stewart* (1919) 27 CLR 119, 155  
*Watkins v Combes* (1922) 30 CLR 180, 148  
*Weigall v Barber* (1884) 10 VLR (E) 90, 552  
*Wentworth v Woollabra Municipal Council* (1982) 149 CLR 672, 46  
*West v Mead* (2013) 13 BPR 24, 431, 524  
*West v Public Trustee* (1942) SASR 109, 137, 139  
*West v Weston* (1998) 44 NSWLR 657, 334  
*Westfield Holdings Ltd v Australian Capital Television Pty Ltd* (1992) 32 NSWLR 194, 160  
*Westpac Banking Corporation v Bell Group Ltd (in liq) (No 3)* (2012) 44 WAR 1, 251, 259, 263, 268  
*Whereat v Duff* (1972) 2 NSWLR 147, 136  
*Whereat v Duff* (1973) 47 ALJR 540, 137  
*White v Shortall* (2006) 68 NSWLR 650, 327–8  
*Wilden Pty Ltd v Green* (2009) 38 WAR 429, 442  
*Wilkie v Equity Trustees Executors and Agency Co Ltd* [1909] VLR 277, 386

*Will and Estate of William Lionel Buckland deceased; ANZ Executors and Trustee Co Ltd v Attorney-General for the State of Victoria* (Unreported, Supreme Court of Victoria, Nathan J, 11 August 1993), 400–3

*Wilson v Darling Island Stevedoring and Lighterage Co Ltd* (1956) 95 CLR 43, 304

*Wilson v Ferguson* [2015] WASC 15, 291

*Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq)* (2012) 301 ALR 1, 212

*Wirth v Wirth* (1956) 98 CLR 228, 489, 490, 492, 493, 518

*Woolworths Ltd v Kelly* (1991) 2 NSWLR 189, 245

*Yard v Yardoo Pty Ltd* [2006] VSC 109, 483

*Yard v Yardoo Pty Ltd* [2007] VSCA 35, 483

*Yerkey v Jones* (1939) 63 CLR 649, 85, 125, 135, 136, 140, 141, 150–4

*Young v Murphy* [1996] 1 VR 279, 437, 439

*Youyang Pty Ltd v Minter Ellison Morris Fletcher* (2003) 212 CLR 484, 66–8, 369, 423

*Zhu v Treasurer of the State of New South Wales* (2004) 218 CLR 530, 24

## Canada

*Austin v McCaskill* (1922) 70 DLR 819, 137

*Brickenden v London Loan & Savings Co* [1934] 3 DLR 465, 67, 74, 100

*Canadian Aero Service Ltd v O'Malley* (1973) 40 DLR (3d) 371, 242

*Canson Enterprises Ltd v Broughbam* (1991) 85 DLR (4th) 129, 71

*Insurance Corporation of British Columbia v Lo* (2006) 278 DLR (4th) 148, 535, 536

*Kerr v Baranow* [2011] 1 SCR 269, 482

*LAC Minerals Ltd v International Corona Resources Ltd* [1989] 2 SCR 574, 287

*M(K) v M(H)* (1992) 96 DLR (4th) 289, 210

*Morrison v Coast Finance Ltd* (1965) 55 DLR (2d) 710, 148

*Norberg v Wynrib* (1992) 92 DLR (4th) 449, 79

*Pecore v Pecore* [2007] SCC 17, 493

*Peso Silver Mines Ltd (NPL) v Cropper* [1966] SCR 673, 242

*R H Deacon & Co Ltd v Varga* (1972) 30 DLR (3d) 563, 214

*Soulos v Korkontzilas* (1997) 146 DLR (4th) 214, 536

## Hong Kong

*Libertarian Investments v Hall* (2013) 16 HKCFAR 681, 59–61

## New Zealand

*Aquaculture Corporation v New Zealand Green Mussel Co Ltd* [1990] 3 NZLR 299, 79

*Avondale Printers & Stationers Ltd v Haggie* [1979] 2 NZLR 124, 519

*Brusewitz v Brown* (1923) NZLR 1106, 139

*Carly v Farrelly* [1975] 1 NZLR 356, 519

*Farrington v Rowe McBride & Partners* [1985] 1 NZLR 83, 239

*General Communications Ltd v Development Finance Corporation of New Zealand Ltd* [1990] 3 NZLR 406, 502

*Keats v Wallis* [1953] NZLR 563, 118

*Knight v Biss* [1954] NZLR 55, 491

*Loan Investment Corporation of Australasia v Bonner* [1970] NZLR 724, 24–8, 36

*New Zealand Netherlands Society 'Oranje' Inc v Kuys* [1973] 2 NZLR 163, 214, 240, 241, 242

*Nicholas v Ingram* [1958] NZLR 972, 118

*Pickens v Metcalf and Marr* [1932] NZLR 1278, 491

*Re Muller; Cassin v Mutual Cash Order Co Ltd*, 492

*Re Registered Securities Ltd* [1991] 1 NZLR 545, 466

*Westpac Banking Corporation v Savin* [1985] 2 NZLR 41, 257

## Scotland

*Martin v City of Edinburgh District Council* (1988) SLT 329, 407

## Singapore

*Sumitomo Bank Ltd v Kartika Ratna Thabir* [1993] 1 SLR 735, 535

## United Kingdom

*A Schroeder Music Publishing Co Ltd v Macaulay* [1974] 1 WLR 1308, 146

*Aas v Benbam* [1891] 2 Ch 244, 232–3

*Aberdeen Railway Co v Blaikie Brothers* (1854) 2 Eq Rep 1281, 233, 234, 242

*Abram Steamship Co Ltd v Westville Shipping Co Ltd* [1923] AC 773, 95

*Adam v Newbigging* (1888) 13 App Cas 308, 95

*Agip (Africa) Ltd v Jackson* [1990] Ch 265, 253–4, 257

*Agip (Africa) Ltd v Jackson* [1991] Ch 547, 454, 457

*AIB Group (UK) plc v Mark Redler & Co* [2014] 3 WLR 1357, 68, 69

*Air Jamaica Ltd v Charlton* [1999] 1 WLR 1399, 484, 498, 499–501

*Allcard v Skinner* (1887) 36 Ch D 145, 85, 93, 136, 137, 139

*Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd* [1976] 2 All ER 552, 460

*American Cyanamid Co v Ethicon Ltd* [1975] AC 367, 44

*Antony v Weerasakare* [1953] 1 WLR 1007, 136

*Argyle v Argyle* [1967] 1 Ch 302, 113–14

*Armitage v Nurse* [1998] Ch 241, 369, 378, 440–3

*Armstrong v Jackson* [1917] 2 KB 822, 92, 211

*Armstrong v Sheppard & Short Ltd* [1959] 2 QB 384, 114

*Attorney-General v Blake* [2001] 1 AC 268, 56–8, 59

*Attorney-General for the Dominion of Canada v Ritchie Contracting and Supply Co* [1919] AC 999, 39

*Attorney-General for Hong Kong v Reid* [1994] 1 AC 324, 533–4, 535, 536, 538

*Atwood v Maude* (1868) LR 3 Ch App 369, 520

*Baden v Société Générale pour Favouriser le Développement du Commerce et de l'Industrie en France SA* [1993] 1 WLR 509, 256–7, 258, 264, 267

*Babin v Hughes* (1886) 31 Ch D 390, 447

*Bainbrigge v Blair* (1839) 48 ER 1032, 451

*Bainbrigge v Browne* (1881) 18 Ch D 188, 172

*Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437, 257, 267

*Bankers Trust Co v Shapira* [1980] 1 WLR 1274, 547

*Bannister v Bannister* [1948] 2 All ER 133, 344, 515

*Banque Belge Pour L'Etranger v Hambrouck* [1921] 1 KB 321, 464

*Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, 296, 297–8, 299, 303, 306, 307–8, 309, 310–11, 312, 316, 481, 501, 502–3, 504–5, 509

*Barclays Bank plc v Boulter* [1999] 4 All ER 513, 179

*Barclays Bank plc v O'Brien* [1994] 1 AC 180, 141

*Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1 All ER 333, 267

*Barnes v Addy* (1874) LR 9 Ch App 244, 242, 249–50, 252, 254, 255–6, 258, 259, 261, 265, 266, 267, 268, 437, 438, 547

*Barron v Willis* ([1900] 2 Ch 121, 98

*Bartlett v Barclays Bank Trust Co Ltd* [1980] Ch 515, 382–3, 384, 406, 412

*Belmont Finance Corporation Ltd v Williams Furniture Ltd (No 2)* [1980] 1 All ER 393, 251–2

*Benett v Wyndham* (1862) 45 ER 1183, 417, 418, 419

*Bennet v Bennet* (1879) 10 Ch D 474, 489, 491

*Beswick v Beswick* [1968] AC 58, 30, 31

*Bishopsgate Investment Management Ltd (in liq) v Homan* [1995] Ch 211, 465

*Blackburn v Smith* (1848) 154 ER 707 at 711, 95  
*Boardman v Phipps* [1967] 2 AC 46, 54, 55, 230–5, 240, 243, 478, 530  
*Bodly v –* (1679) 22 ER 824, 112  
*Borden (UK) Ltd v Scottish Timber Products Ltd* [1981] Ch 2, 460  
*Boscawen v Bajwa* [1996] 1 WLR 328, 472  
*Bray v Ford* [1896] AC 44, 233–4, 241  
*Bridge v Campbell Discounts Co Ltd* [1962] AC 600, 80  
*Brisbane City Council v Attorney-General (Qld)* [1979] AC 411, 350  
*Bristol and West Building Society v Mothewe* [1998] Ch 1, 537  
*Broome v Monck* (1805) 32 ER 976, 551  
*Brown v Inland Revenue Commissioners* [1965] AC 244, 211  
*Bull v Bull* [1955] 1 QB 234, 476  
*C H Giles & Co Ltd v Morris* [1972] 1 WLR307, 32  
*Cadman v Horner* (1810) 34 ER 221, 112  
*Caffrey v Darby* (1801) 31 ER 1159, 62, 63, 64  
*Car & Universal Finance v Caldwell* [1965] 1 QB 525, 94  
*Carreras Rothmans Ltd v Freeman Matthews Treasure Ltd* [1985] Ch 207, 504  
*Casborne v Scarfe* (1737) 26 ER 377, 172  
*Casborne v Scarfe* (1738) 37 ER 600, 172  
*Cave v Cave* (1880) 15 Ch D 639, 175  
*Cavendish Square Holding BV v Talal El Makdesi* [2015] UKSC 67, 155, 157  
*Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130, 127  
*Chase Manhattan Bank NA v Israel-British Bank (London) Ltd* [1981] 1 Ch 105, 93, 544–5  
*Chennells v Bruce* (1939) 55 TLR 422, 137  
*Chichester Diocesan Fund v Simpson* [1944] AC 341, 468  
*Chillingworth v Chambers* [1896] 1 Ch 685, 447, 448  
*Christoforides v Terry* [1924] AC 566, 211  
*Cia de Seguros Imperio v Heath (REBX) Ltd* [1999] 1 All ER (Comm) 750, 110  
*Clarke v Dickson* (1858) 120 ER 463, 94  
*Clayton's Case* (1816) 35 ER 781, 462, 465, 468, 469, 471, 472  
*Cloutte v Storey* (1911) 1 Ch 1, 173  
*Coco v A N Clark (Engineers) Ltd* (1968) 1a IPR 587, 270–2, 274, 278, 281, 282  
*Combe v Combe* [1951] 2 KB 215, 127  
*Commissioner for the New Towns v Cooper (Great Britain) Ltd* [1995] Ch 259, 103  
*Commissioner of Stamp Duties (Qld) v Livingston* [1965] AC 694, 165  
*Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531, 350, 356, 357, 361, 362, 363  
*Cook v Fountain* (1676) 36 ER 984, 485  
*Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1, 31–4, 35, 36  
*Cornelius v De Taranto* [2001] EMLR 12, 290  
*Cory v Gertcken* (1816) 56 ER 250, 112  
*Cotterall v Stratton* (1872) 8 Ch 295, 419  
*Cowan v Scargill* [1985] Ch 270, 399, 405, 406–7, 411  
*Cowan de Groot Properties Ltd v Eagle Trust plc* [1992] 4 All ER 70, 257  
*Crabb v Arun District Council* [1976] Ch 179, 127  
*Cresswell v Potter* [1978] 1 WLR 255, 148  
*Davis v Richards & Wallington Industries Ltd* [1990] 1 WLR 1511, 500  
*Dean v MacDowell* (1878) 8 Ch D 345, 233  
*Dering v Earl of Winchelsea* (1787) 29 ER 1184, 113, 114  
*Derry v Peek* (1889) 14 App Cas 337, 441  
*Dillwyn v Llewelyn* (1862) 45 ER 1285, 526  
*Dingle v Turner* [1972] AC 601, 364–5  
*Diwell v Farnes* [1959] 2 All ER 379, 476  
*Dodds v Tuke* (1884) 25 Ch 617, 415

*Doberty v Allman* (1878) 3 App Cas 709, 42  
*Duchess of Argyll v Duke of Argyll* [1967] Ch 302, 271, 274  
*Duke of Manchester v National Westminster Bank Ltd* [1987] Ch 264, 547  
*Duncuift v Albrecht* (1841) 59 ER 1104, 29  
*Dyer v Dyer* (1788) 30 ER 42, 485, 489, 539  
*Eagle Trust plc v SBC Securities Ltd* [1992] 4 All ER 488, 257  
*Earl of Oxford's Case* (1615) 1 Ch Rep 1, 4, 7, 80  
*Eastes v Russ* [1914] 1 Ch 468, 118  
*Edge v Pensions Ombudsman* [1998] Ch 512, 387  
*El Ajou v Dollar Land Holdings plc* [1993] 3 All ER 717, 456, 541  
*Elliot v Elliot* (1677) 22 ER 922, 489  
*Ellis v Torrington* [1920] 1 KB 399, 198  
*English v Dedham Vale Properties Ltd* [1978] 1 All ER 382, 213  
*Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cas 1218, 88, 95  
*Evening Standard Co Ltd v Henderson* [1987] ICR 588, 43  
*Eves v Eves* [1975] 3 All ER 768, 519  
*Ex parte James* (1803) 32 ER 385, 529  
*Fairhurst v Griffiths* (Unreported, Isle of Man), 508  
*Falcke v Gray* (1859) 62 ER 250, 29  
*Fanning v Dunbam* (1821) 9 Am Dec 283, 99  
*Farrant v Blanchford* (1863) 46 ER 42, 449  
*Federal Republic of Brazil v Durant International Corporation* [2015] UKPC 35, 465  
*FHR European Ventures LLP v Cedar Capital Partners LLC* [2015] AC 250, 243, 536–8  
*Field v Field* [1894] 1 Ch 425, 370–1  
*Finch v Throckmorton* (1597) 118 Selden Soc 441, 7  
*Foskett v McKeoun* [2001] 1 AC 102, 454–7, 462, 476–8  
*Franchi v Franchi* [1967] RPC 149, 276  
*Frazer v Evans* [1969] 1 QB 349, 284  
*French v French* [1902] 1 IR 172, 346  
*French v Macale* (1842) 2 D & W 269, 156  
*Fry v Lane* (1888) 40 Ch D 312, 148  
*Futter v Revenue and Customs; Pitt v Holt* [2013] 2 AC 108, 390, 393–4  
*Garrard v Frankel* (1862) 54 ER 961, 172  
*Gartside v Internal Revenue Commissioners* [1968] AC 553, 376  
*Gascoigne v Gascoigne* [1918] 1 KB 223, 112, 114  
*Gibert v Gonard* (1884) 54 LJ CL 439, 310  
*Gibson v Jeyes* (1801) 31 ER 1044, 211  
*Giles v Thompson* [1994] 1 AC 142, 198  
*Gill v Lewis* [1956] 2 QB 1, 112  
*Gilmour v Coats* [1949] AC 426, 358–9, 363  
*Gissing v Gissing* [1971] AC 886, 514–15  
*Glyn v Weston Feature Film Company* [1916] 1 Ch 261, 112  
*Goddard v Midland Railway Company* (1891) 8 TLR 126, 112, 115  
*Goldsworthy v Brickell* (1987) Ch 378, 136  
*Goodman v Harvey* (1836) 4 A & E 870, 442  
*Grant v Edwards* [1986] Ch 638, 516  
*Gravesend Corporation v Kent County Council* [1935] 1 KB 339, 476  
*Gresley v Mousley* (1859) 45 ER 31, 92, 172–3  
*Grey v Commissioners of Inland Revenue* [1960] AC 1, 204–5  
*Grey v Grey* (1677) 36 ER 742, 483  
*Griffith v Owen* [1907] 1 Ch 195, 531  
*Hampton v Spencer* (1693) 23 ER 785, 344  
*Hardoon v Belilios* [1901] AC 118, 425–6, 427, 428

*Harewood v Retese* [1990] 1 WLR 333, 340  
*Harries v Church Commissioners for England* [1993] 2 All ER 300, 405, 406  
*Hay's Settlement Trusts* [1981] 3 All ER 786, 389  
*Head v Gould* [1898] 2 Ch 250, 447  
*Head v Tattersall* (1871) LR 7 Exch 7, 95  
*Hill v C A Parsons & Co Ltd* [1972] Ch 305, 43  
*Hoghton v Hoghton* (1852) 51 ER 545, 137  
*Holmes v Millage* [1893] 1 QB 551, 37  
*Holrov Marshall* (1862) 11 ER 999, 193–5  
*Hordern v Hordern* [1910] AC 465, 242  
*Hughes v Metropolitan Railway Co* (1877) 2 App Cas 439, 127  
*Huguenin v Baseley* (1807) 33 ER 526, 136, 137  
*Hunter v Moss* [1994] 1 WLR 452, 326–7, 328  
*Imperial Tobacco Company of India Ltd v Bonnan* (1924) 41 RPC 441, 215  
*Inche Noriah v Shaik Allie Bin Omar* (1929) AC 127, 136, 137  
*Inland Revenue Commissioners v Broadway Cottages Trust* [1955] Ch 20, 329, 332–3  
*Isenberg v East India House Estate Co Ltd* (1863) 3 De GJ & S2 63, 33  
*Jervis v Berridge* (1873) 8 Ch App 351, 99  
*Johnson v Agnew* [1980] 1 AC 367, 48  
*Jones v Kernott* [2012] 1 AC 776, 516  
*Jones v Lenthal* (1669) 1 Cas in Ch 154, 114  
*Jorden v Money* (1854) 10 ER 868, 126  
*Joscelyne v Nissen* [1970] 2 QB 86, 101  
*Karak Rubber Co Ltd v Burden (No 2)* (1972) 1 WLR 602, 264  
*Keech v Sandford* (1726) 25 ER 223, 232, 531, 537, 538  
*Kemp v Burn* (1863) 66 ER 740, 373  
*Kennedy v De Trafford* [1897] AC 180, 216  
*Klug v Klug* [1918] 2 Ch 67, 391  
*Lady Hood of Avalon v Mackinnon* [1909] 1 Ch 476, 508  
*Lake v Bayliss* [1974] 2 All ER 1114, 553  
*Lake v Craddock* (1732) 24 ER 1011, 485  
*Lake v Gibson* (1729) 21 ER 1052, 485  
*Lancashire Loans v Black* (1934) 1 KB 380, 137  
*Lawrence v Fen Tigers* [2014] AC 822, 47  
*Learoyd v Whiteley* (1887) 12 App Cas 727, 381  
*Lee v Sankey* (1872) LR 15 Eq 204, 255  
*Leeds Industrial Co-operative Society Ltd v Slack* [1924] AC 851, 48  
*Les Affiniteurs Reunis Societe Anonyme v Leopold Walford (London) Ltd* [1919] AC 801, 304  
*Letterstedt v Broers* (1884) 9 App Cas 371, 451  
*Life Association of Scotland v Siddal* (1861) 45 ER 800, 449  
*Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221, 88, 105–6, 107, 109  
*Lion Laboratories Ltd v Evans* [1985] QB 526, 285  
*Lister & Co v Stubbs* (1890) 45 Ch D 1, 532, 536, 538  
*Litvinoff v Kent* (1918) TLR 298, 112  
*Lloyd v Spillet* (1740) 26 ER 493, 485  
*Lloyd's v Harper* (1880) 16 Ch D 290, 304  
*Lloyds Bank Ltd v Bundy* [1975] 1 QB 326, 148  
*Lockhart v Reilly* (1856) 25 LJ Ch 697, 449  
*Lord Ashburton v Pape* [1913] 2 Ch 469, 274, 279  
*Lord Provost of Edinburgh v Lord Advocate* (1879) 4 App Cas 823, 474, 475  
*Lumley v Wagner* (1852) 42 ER 687, 42–3, 44  
*Lyell v Kennedy* (1889) 14 App Cas 437, 232  
*Lynch v Knight* (1861) 9 HLC 577, 48

*Lyon v Home* (1868) LR 6 Eq 655, 137  
*Lyon v Tweddell* (1881) 17 Ch D 529, 520  
*Lysaght v Edwards* (1876) 2 Ch D 499, 551, 552, 554  
*Malden v Menill* (1737) 26 ER 402, 172  
*Mallot v Wilson* [1903] 2 Ch 494, 316  
*Manchester Trust v Furness, Withy & Co* [1895] 2 QB 539, 179  
*Marangos Hotel Co Ltd & Ors v Stone* [1998] 3 All ER 812, 547  
*McCormick v Grogan* (1869) LR 4HL 82, 346  
*McGovern v Attorney-General* [1982] Ch 321, 362  
*McPhail v Doulton* [1971] AC 424, 317, 331–4, 335, 376  
*McPherson v Watt* (1877) 3 App Cas 254, 91, 211  
*Mercier v Mercier* [1903] 2 Ch 98, 491  
*Metropolitan Bank v Heiron* (1880) 5 Ex D 319, 538  
*Mettoy Pension Trustees Ltd v Evans* [1991] 2 All ER 513, 376  
*Miller v Jackson* [1977] 1 QB 966, 40–2  
*Milroy v Lord* (1862) 45 ER 1185, 35, 183–4, 187, 340, 341, 342  
*Ministry of Health v Simpson* [1951] AC 251, 468  
*Moate v Moate* [1948] 2 All ER 486, 492  
*Moody v Cox and Hatt* (1971) 2 Ch 71, 238  
*Morice v Bishop of Durham* (1804) 32 ER 656, 317, 349  
*Morris v Redland Bricks Ltd* [1970] AC 652, 39–40  
*Morton v Tewart* (1842) 63 ER 29, 339  
*Moses v Macferlan* (1860) 97 ER 676, 543  
*Murless v Franklin* (1818) 36 ER 278, 489, 491  
*National Provincial Bank Ltd v Hastings Car Mart Ltd* (1964) Ch 9, 172  
*National Trustees Co of Australasia Ltd v General Finance Co of Australasia Ltd* [1905] AC 375, 443–4  
*Neste Oy v Lloyds Bank plc* [1983] 2 Ll Rep 658, 546, 547  
*Nestle v National Westminster Bank plc* (1996) 10 TLR 234, 386, 399, 400, 403–5  
*Neubigging v Adam* (1886) 34 Ch D 582, 95  
*Nocton v Lord Ashburton* [1914] AC 932, 18, 67, 69–70, 80, 440–1  
*North v Great Northern Railway Co* (1860) 66 ER 28, 29  
*North London Railway Co v Great Northern Railway Co* (1883) 11 QB 30, 37  
*Norton v Relly* (1764) 28 ER 908, 136  
*Nottidge v Prince* (1860) 66 ER 103, 136  
*Nutbrown v Thornton* (1804) 32 ER 805, 29  
*Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297, 363–4, 365  
*O'Rorke v Bolingbroke* (1877) 2 App Cas 814, 148  
*O'Rourke v Darbishire* [1920] AC 581, 375  
*O'Sullivan v Management Agency & Music Ltd* [1985] QB 428, 88, 139  
*Owen and Gutch v Homan* (1853) 10 ER 752, 147  
*Page One Records Ltd v Britton* [1968] 1 WLR 157, 43  
*Paine v Meller* (1801) 31 ER 1088, 551  
*Panama & South Pacific Telegraph Co v India Rubber, Gutta Percha & Telegraph Works Co* (1875) LR 10 Ch App 515, 529  
*Patel v Ali* [1984] 1 Ch 283, 31, 116–17, 119  
*Paul v Constance* [1977] 1 WLR 527, 320  
*Peachy v Duke of Somerset* (1720) 93 ER 626, 155  
*Pennington v Waine* [2002] 1 WLR 2075, 187  
*Perrins v Bellamy* [1899] 1 Ch 797, 441  
*Petition c 1417–1424*, 6  
*Pettitt v Pettitt* [1970] AC 777, 491, 514  
*Phillips v Phillips* (1861) 45 ER 1164, 93, 171–2, 174–5, 176  
*Phipps v Boardman* [1965] Ch 992, 54, 55, 213, 214, 216, 241, 242

*Pilkington v Inland Revenue Commissioners* [1964] AC 612, 391, 489  
*Plimmer v Mayor, Councillors and Citizens of the City of Wellington* (1884) 9 App Cas 699, 527, 528  
*Price v Strange* [1978] Ch 337, 36  
*R v District Auditor No 3 Audit District of West Yorkshire Metropolitan County Council* [1986] RVR 24, 334  
*R v Ghosh* [1982] QB 1053, 264  
*Rayner v Preston* (1881) 18 Ch D 1, 551  
*Re a Solicitor: Ex parte Incorporated Law Society* [1898] 1 QB 331, 211  
*Re ABC Television Ltd Pension Scheme* (Unreported, Foster J, 22 May 1973), 32, 499  
*Re Arthur Wheeler & Co* (1933) 102 LJ Ch 341, 211  
*Re Baden's Deed Trusts (No 2)* [1973] Ch 9, 334  
*Re Barker's Trusts* (1879) 12 Ch D 634, 451  
*Re Beddoe* [1893] 1 Ch 547, 416, 422, 423  
*Re Beloved Wilkes Charity* (1851) 42 ER 330, 375  
*Re Biss; Biss v Biss* [1903] 2 Ch 40, 531  
*Re Blundell; Blundell v Blundell* (1888) 40 Ch D 370, 255  
*Re Bowden* [1936] Ch 71, 341  
*Re Chapman* [1896] 2 Ch 763, 411–12  
*Re Colling* (1856) 32 Ch D 333, 552  
*Re Compton* [1945] Ch 123, 364  
*Re Coomber; Coomber v Coomber* [1911] 1 Ch 174, 216, 223  
*Re Cowin; Cowin v Gravett* (1886) 33 Ch D 179, 377  
*Re Cuming* (1869) 5 Ch App 72, 552  
*Re Denley's Trust Deed* [1969] 1 Ch 373, 504  
*Re Diplock* [1948] 1 Ch 465, 92, 457, 468–73  
*Re Emery's Investment Trusts; Emery v Emery* [1959] Ch 410, 112  
*Re EVTR* [1987] BCLC 646, 308  
*Re Farmer; Nightingale v Whybrow* [1939] Ch 573, 466  
*Re Garnett; Robinson v Grandy* (1886) 33 Ch D 300, 174  
*Re German Mining Co; Ex parte Chippendale* (1853) 4 De G M & G 19, 425  
*Re Goldcorp Exchange Ltd* [1995] 1 AC 74, 546  
*Re Grant's Will Trusts* [1980] 1 WLR 360, 504  
*Re Gresham Life Assurance Society; Ex parte Penney* (1872) LR 8 Ch App 446, 375  
*Re Gulbenkian's Settlement Trusts* [1970] AC 508, 329–31, 335, 391  
*Re Hallett's Estate* (1880) 13 Ch D 696, 216, 460–1, 464, 539, 541  
*Re Hastings-Bass* [1975] Ch 25, 390  
*Re Hobourn Aero Components Ltd's Air Raid Distress Fund* [1940] Ch 194, 364  
*Re Hopkins' Will Trusts* [1965] Ch 669, 353  
*Re Lehman Brothers International (Europe) (No 2)* [2012] 1 BCLC 487, 371–2  
*Re Londonderry's Settlement* [1965] Ch 918, 374–6, 377–8, 379, 380  
*Re Manisty's Settlement* [1974] Ch 17, 334, 376  
*Re Montagu's Settlement Trusts* [1987] Ch 264, 257, 547  
*Re Multi Guarantee Co Ltd* [1987] BCLC 257, 307  
*Re Northern Developments Holdings Ltd* (Unreported, High Court, Chancery Division, Mergarry VC October 1978), 503  
*Re Oatway* [1903] 2 Ch 356, 462–3  
*Re Pauling's Settlement Trusts; Youngusband v Coutts & Co* [1962] 1 WLR 86, 449  
*Re Pinion (deceased)* [1965] Ch 85, 352, 353  
*Re Polly Peck International plc (in admin) (No 2)* [1998] 3 All ER 812, 547  
*Re Ralli's Will Trusts* [1964] Ch 288, 341  
*Re Raybould* [1900] 1 Ch 199, 417, 418, 419  
*Re Resch's Will Trusts* [1969] 1 AC 514, 352  
*Re Rogers* (1891) 8 Morr 243, 503

*Re Rose; Rose v Inland Revenue Comrs* [1952] Ch 499, 342  
*Re Scarisbrick's Will Trusts* [1951] Ch 622, 365  
*Re Scbebsman* [1944] Ch 83, 304  
*Re Segelman (deceased)* [1996] Ch 171, 366  
*Re Shaw (deceased)* [1957] 1 All ER 745, 352–3  
*Re Sherman (deceased)* [1954] 1 Ch 653, 93  
*Re Snowden (deceased)* [1979] Ch 528, 347  
*Re Trusts of the Abbott Fund* [1900] 2 Ch 326, 498–9  
*Re Vandervell's Trusts (No 2)* [1974] Ch 269, 483, 508  
*Re Vickery; Vickery v Stephens* ([1931] 1 Ch 572, 446  
*Re Waterman's Will Trusts* [1952] 2 All ER 1054, 383  
*Re Wedgwood* [1915] 1 Ch 113, 358  
*Re West of England & South Wales District Bank; Ex parte Dale & Co* (1879) 11 Ch D 772, 461  
*Re Whiteley* (1886) 33 Ch D 347, 383, 404, 423  
*Re Williams* [1897] 2 Ch 12, 321–2, 337  
*Re Wilson (deceased); Hartley v Marie Curie Hospital* [1940] Ch 966, 466  
*Reese River Silver Mining Co v Smith* (1869) LR 4 HL 64, 95  
*Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134, 226, 228–30, 232, 242, 474, 531  
*Rice v Reed* [1900] 1 QB 54, 458  
*Richards v Delbridge* (1874) LR 18 Eq 11, 341  
*Robertson v Wait* (1853) 155 ER 1360, 304  
*Rochefoucauld v Boustead* [1898] 1 Ch 550, 515  
*Roe v Mutual Loan Fund* (1887) 19 QB 347, 459  
*Roscoe (Bolton) Ltd v Winder* [1915] 1 Ch 62, 464  
*Royal Bank of Scotland v Etridge (No 2)* [2002] 2 AC 773, 141–2  
*Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378, 257, 260–1, 263, 264–5, 266, 267  
*Saunders v Vautier* (1841) 49 ER 282, 366, 370, 416  
*Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709, 374, 376–7, 377–8, 379, 380, 381  
*Seager v Copydex Ltd* [1967] 2 All ER 415, 271  
*Selangor United Rubber Estates Ltd v Craddock (No 3)* [1968] 1 WLR 1555, 264  
*Shaw v Foster* (1872) LR 5 HL 321, 551, 552  
*Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287, 46–7  
*Shephard v Cartwright* [1955] AC 431, 487  
*Shiloh Spinners Ltd v Harding* [1973] AC 691, 158  
*Sinclair v Brougham* [1914] AC 398, 509  
*Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd* [2012] Ch 453, 535, 536, 538  
*Sky Petroleum Ltd v VIP Petroleum Ltd* [1974] 1 WLR 576, 29  
*Slingsby v Bradford Patent Truck and Trolley Co* [1905] WN 122, 112  
*Slingsby v Bradford Patent Truck and Trolley Co* [1906] WN 51, 112  
*Smith v Baker* LR 8 CP 350, 459  
*Smith v Cock* [1911] AC 317, 242  
*Smith v Matthews* (1861) 45 ER 831, 339  
*Soar v Ashwell* [1893] 2 QB 390, 255  
*Soar v Foster* (1858) 70 ER 64, 490, 491  
*Speed Seal Productions Ltd v Paddington* [1985] 1 WLR 1327, 278  
*Speight v Gaunt* (1883) 22 Ch D 727, 381–2, 383, 387–8, 423  
*Spence v Crawford* [1939] 3 All ER 271, 89, 95  
*Stafford v Stafford* (1857) 44 ER 697, 449  
*Stern v Schwabacher; Re Schwabacher* (1907) 98 LT 127, 29  
*Stocks v Wilson* [1913] 2 KB 235, 547  
*Stone v Hoskins* [1905] P 194, 550  
*Strong v Bird* (1874) LR 18 Eq 315, 13

*Stump v Gaby* (1852) 42 ER 1015, 92, 93, 172, 173–4, 175–6  
*T Choitbram International SA v Pagarani* [2001] 1 WLR 1, 341–3  
*Tailby v Official Receiver* (1888) 13 App Cas 523, 194  
*Tamplin v James* (1880) 15 Ch D 215, 118  
*Target Holdings Ltd v Redfems* [1996] 1 AC 421, 71  
*Tate v Williamson* (1867) 2 Ch App 55, 91  
*Taylor v Plumer* (1815) 105 ER 721, 454  
*The Siskina* [1979] AC 210, 37  
*The Venture* [1908] P 218, 476  
*Tinker v Tinker* [1970] 1 All ER 540, 112  
*Toovey v Milne* (1819) 106 ER 514, 297–8  
*Trustees of the Property of F C Jones & Sons v Jones* [1997] Ch 59, 456  
*Tucker v Bennett* (1877) 38 Ch D 1, 102  
*Tufton v Sperni* [1952] 2 TLR 516, 91, 136, 213  
*Turner v Turner* [1984] Ch 100, 370, 390  
*Twinsectra Ltd v Yardley* [2002] 2 AC 164, 267, 310, 311–12, 481, 501, 502–4, 510  
*United Grand Lodge of Ancient and Accepted Masons of England v Holborn Borough Council* [1957] 1 WLR 1080, 355  
*Uppington v Bullen* (1842) 2 Dr & War 184, 173  
*Vandepitte v Preferred Accident Insurance Corporation of New York* [1933] AC 70, 304, 439  
*Vanderell v Inland Revenue Commissioners* [1966] Ch 261, 500  
*Vanderell v Inland Revenue Commissioners* [1967] 2 AC 291, 484, 500  
*Vigers v Pike* (1842) 8 ER 220, 115  
*Wall v Bright* (1820) 37 ER 456, 551  
*Wall v Stubbs* (1815) 56 ER 31, 112  
*Walsb v Lonsdale* (1882) 21 Ch D 9, 176–7  
*Warman International Ltd v Dwyer* (1995) 182 CLR 544, 52–4, 56  
*Warner Brothers Pictures Inc v Nelson* [1937] 1 KB 209, 43  
*Warren v Mendy* [1989] 1 WLR 853, 43  
*Webb v Stenton* (1883) 11 QBD 518, 68  
*Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, 488, 510, 545, 546, 547  
*Westminster Bank Ltd v Lee* (1956) Ch 7, 172  
*Whittington v Seale-Hayne* (1900) 82 LT 49, 100  
*Williams v Baltic Insurance Association of London Ltd* [1924] 2 KB 282, 304  
*Williams v Central Bank of Nigeria* [2014] UKSC 10, 108  
*Wilson v Turner* (1883) 22 Ch D 521, 330  
*Wolverhampton Corp v Emmons* [1901] 1 KB 515, 34  
*Woodhouse v Newry Navigation Co* [1898] 1 IR 161, 39  
*Wray v Steele* (1814) 35 ER 366, 485  
*Wright v Carter* (1903) 1 Ch 27, 137, 139  
*Wyllie v Pollen* (1863) 46 ER 769, 179  
*Zamet v Hyman* (1961) 1 WLR 1442, 137

## United States of America

*Bivens v Six Unknown Named Agents of Federal Bureau of Narcotics* (1971) 403 US 388, 361  
*Commonwealth v Scituate Savings Bank* (1884) 137 Mass 301, 127  
*Loughbrin v Loughbrin* (1934) 292 US 216, 112  
*Maddox v Maddox* (1949) NW 2d 547, 91  
*Meinhard v Salmon* (1928) 249 NY 458, 219  
*Pollard v McKenney* (1903) 96 NW 679, 91

*Primeau v Granfield* (1911) 184 Fed R 480, 476

*Re Walter J Schmidt & Co; Ex parte Feuerbach* (1923) 298 F 314, 466

*Securities and Exchange Commission v Chenery Corporation* (1943) 318 US 80, 222, 246

*United States v Carter* (1910) 217 US 286, 535

## **Vanuatu**

*Barrett & Sinclair v McCormack* [1999] VUCA 11, 547

# TABLE OF STATUTES

## Commonwealth

### *Australian Securities and Investments*

#### *Commission Act 2001*

- s 12CA, 149
- s 12CB, 149, 157
- s 12CC, 157

### *Bankruptcy Act 1966*, 463

- s 120, 516
- s 121, 516

### *Competition and Consumer Act 2010*

- sch 2 s 20, 149
- sch 2 s 21, 150
- sch 2 s 22, 150

### *Copyright Act 1968*

- s 115(2), 52

### *Corporations Act 2001*

- s 60GC, 384
- ss 181–3, 109
- s 553(1), 546
- s 601FC, 387
- s 912A(1), 245
- s 912A(1)(aa), 246
- s 1013D(21)(l), 408
- s 1318, 262

### *Corporations Law*

- s 9, 302
- s 266(1), 302
- s 266(1)(c), 302

### *Family Law Act 1975*

- s 79, 517
- s 90SM, 517

### *Income Tax Assessment Act 1936*, 201, 306

- s 78(1)(a)(xiii), 307

### *Income Tax and Social Services Contribution*

#### *Assessment Act 1936*

- s 44, 188

### *Law Reform (Law and Equity) Act 1972*

- s 5, 9

### *National Consumer Credit Protection Act 2009*

- sch 1, 157

### *Patents Act 1990*

- s 122(1), 52

### *Personal Property Securities Act 2009*, 179

- s 12, 195
- s 12(2)(d), 303
- s 12(2)(j), 195
- s 18(2), 195
- s 19(2), 195
- s 32(1), 303

### *Social Security Act 1947*

- s 8, 339

### *Superannuation Industry (Supervision)*

#### *Act 1993*

- s 10, 397
- s 52, 442
- s 52(2)(b), 384
- s 52(2)(e), 387
- s 58(1), 388
- s 58(2)(d), 388
- s 120, 452
- s 350, 388

### *Taxation (Unpaid Company Tax) Assessment Act*

#### *1982*

- s 5(1), 298
- s 5(5), 298–9

### *Trade Practices Act 1974*, 86, 420

- s 51AA, 149
- s 52, 418, 419

## Australian Capital Territory

### *Civil Law (Property) Act 2006*

- s 201, 182
- s 201(2), 338
- s 201(3), 202
- s 205, 199

### *Domestic Relationships Act 1994*

- s 3, 517

### *Supreme Court Act 1933*

- s 33, 9

### *Trustee Act 1925*

- s 6, 451
- s 14, 396
- ss 14A–C, 399
- s 59, 445

s 63, 434  
s 85, 443  
s 86(1), 448  
s 89A, 412

## **New South Wales**

*Charitable Trusts Act 1993*

s 23, 349

*Conveyancing Act 1919*

s 12, 199

s 13, 200

s 23(1)(c), 202

s 23(2), 343

s 23C 182, 202, 337–8, 550

s 23C(1), 338

s 23C(1)(a), 338

s 23C(1)(b), 338

s 54A, 345, 552

s 164, 178

s 164(1)(a), 178, 179

s 164(1)(b), 178

*Environmental Planning and Assessment Act 1979*

s 81(1), 253

*Interest Reduction Act 1931*, 66

*Limitation Act 1969*

s 23, 109

*Partnership Act 1892*

s 20(1), 313

*Property (Relationships) Act 1984*

s 5, 517

*Public Authorities (Financial Arrangements) Act 1987*

s 39, 398

*Sale of Goods Act 1923*

ss 26–28, 179

*Stamp Duties Act 1920*

s 66, 415

*Supreme Court Act 1970*, 12

s 57, 11

s 68, 45, 126

*Trustee Act 1925*

s 6, 451

s 14, 396, 397–9

s 14A, 444

s 14A(2), 399

s 14B(2)(d), 399

s 14B(c), 386

s 14C(2), 399

s 59 445, 446, 447

s 59(2), 446

s 63, 430–3

s 63(2), 432  
s 63(3), 431  
s 63(10), 433  
s 81, 370  
s 85, 430, 443, 444, 446  
s 85(1), 430  
s 85(2), 430, 433, 446  
s 86(1), 448  
s 90A, 412

## **Northern Territory**

*Law of Property Act*

s 10, 182

s 10(1)(a), 338

s 10(1)(b), 338

s 10(1)(c), 202

s 182, 199

*Supreme Court Act 1979*

s 68, 31

*Trustee Act 1893*

s 5, 396

ss 6–8, 399

s 10F, 412

s 11, 451

s 26, 445

s 49A, 443

s 50, 448

## **Queensland**

*Judicature Act 1876*, 31

*Land Act 1962*

s 91, 108

s 296, 108

*Limitation of Actions Act 1974*

s 10(6)(b), 109

*Property Law Act 1974*

s 11, 182, 550

s 11(1)(a), 338

s 11(1)(c), 202

s 199, 199

s 346, 178

*Queensland Government Savings Bank Act 1916*, 319

*Trustee Act 1925*

s 12, 451

s 21, 396

ss 22–24, 399

s 30C, 412

s 76, 443

s 77, 448

s 96, 434

*Trusts Act 1973*

- s 72, 420
- s 104, 349

## **South Australia**

*Administration and Probate Act 1919*

- s 69, 296

*Domestic Partners Property Act 1996*

- s 3, 517

*Law of Property Act 1936*

- s 15, 199
- s 29, 550
- s 29(1)(a)–(b), 338
- s 29(1)(c), 202
- s 117, 178

*Supreme Court Act 1878*, 31

*Trustee Act 1936*

- s 6, 396
- ss 7–9, 399
- s 13D, 412
- s 14, 451
- s 35, 445
- s 35(1a)(b), 445
- s 56, 443
- s 57, 448
- s 69A, 349
- s 91, 434

## **Tasmania**

*Conveyancing and Law of Property Act 1884*,  
338

- s 5, 178
- s 60, 182, 550
- s 60(2)(a), 338
- s 86, 199

*Relationships Act 2003*

- ss 5–6, 517

*Supreme Court Civil Procedure Act 1932*,  
31

- s 11(12), 37

*Trustee Act 1898*

- s 6, 396
- ss 7–9, 399
- s 12E, 412
- s 13, 451
- s 27, 445
- s 50, 443
- s 53, 448

*Variation of Trusts Act 1994*

- s 4(2), 349
- s 4(3), 349

## **Victoria**

*Charities Act 1978*

- s 7M, 349

*Conveyancing and Law of Property  
Act 1884*

- s 60(2)(c), 202

*Goods Act 1958*

- ss 27–31, 179

*Limitation of Actions Act 1958*

- s 5(8), 109

*Property Law Act 1958*

- s 53, 182
- s 53(1), 202
- s 53(1)(a), 338, 550
- s 53(1)(b), 338
- s 134, 199
- s 199, 178

*Supreme Court Act 1986*

- s 38, 45, 290, 291

*Supreme Court (General Civil Procedure) Rules  
2005*

- r 54.02, 434

*Supreme Court (Judicature) Act 1883*, 9

*Trustee Act 1958*

- s 5, 396
- ss 6–8, 399
- s 12D, 412
- s 36(1), 445
- s 41, 451
- s 51, 551, 552
- s 51(2)(o), 551
- s 63, 370, 400
- s 63A, 370
- s 67, 423, 443,
- s 68, 448

*Wrongs Act 1958*

- pt XI, 50
- s 24, 447

## **Western Australia**

*Property Law Act 1969*

- s 20, 199
- s 34, 182, 550
- s 34(1)(a), 339
- s 34(1)(b), 339, 340
- s 34(1)(c), 202

*Supreme Court Act 1880*, 9

*Trustees Act 1962*

- s 7, 451
- s 17, 396
- ss 18–20, 399
- s 26C, 412

s 36, 445  
s 71, 420  
s 75, 443  
s 76, 448  
s 92, 434  
s 102, 349

## United Kingdom

*Australian Courts Act 1828*  
s 11, 32  
*Chancery Amendment Act 1858*, 24, 45, 46, 48  
*Charitable Uses Act 1601*, 357  
*Charter of Justice 1814*, 10, 11  
*Conveyancing Act 1882*  
s 3, 178  
*Judicature Act 1873*, 9, 10, 11  
s 25, 10, 11  
s 25(1)–(10), 12  
s 25(11), 12  
*Judicial Trustees Act 1896*, 522  
s 3, 262, 440  
*Law of Property Act 1925*  
s 53 (1)(c), 205  
s 53(1)(a), 206  
s 53(1)(b), 206  
s 53(1)(c), 205, 206  
*Limitation Act 1980*  
s 21, 108  
s 38(1), 108  
*Married Women's Property Act 1882*, 183  
*New South Wales Act 1823*, 10  
*Official Secrets Act 1911*, 56  
*Real Property Limitation Act 1833*  
s 26, 110  
*Senior Courts Act 1981*  
s 50, 45  
*Statute of Charitable Uses 1601*, 349  
preamble, 350  
*Statute of Frauds 1677*, 182, 205, 337, 339, 340,  
343, 483  
s 3, 202, 338  
s 7, 338  
s 9, 190, 195, 205, 338  
*Statute of Limitations 1623*, 299, 300  
*Trustee Act 1850*, 552  
*Trustee Act 1925*  
s 21(1)(a), 108  
s 68(17), 108  
*Trustee Act 2000*  
s 5, 399  
*Wills Act Amendment Act 1862*, 432

# ACKNOWLEDGEMENTS


Extracts from Victorian Supreme Court and Victorian Court of Appeals reproduced with permission; Extracts from New South Wales Court of Appeal and New South Wales Supreme Court reproduced with the permission of the Council of Law reporting for NSW; Extracts from Western Australia Supreme Court reproduced with permission of the Western Australian Attorney General. **Chapter 1:** Extract from Macquarie Dictionary Online, 2015, Macquarie Dictionary Publishers, an imprint of Pan Macmillan Australia Pty Ltd, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au); Extract from JH Baker, *An Introduction to English Legal History* 4th edn, Oxford University Press, 2002, p. 99. By permission of Oxford University Press; Extract from J. Getzler 'Patterns of Fusion' in P. Birks (ed.) *The Classification of Obligations*, Clarendon, 1997, p. 175. By permission of Oxford University Press; Extract from Keith Mason 'Fusion: Fallacy, Future or Finished?' in S. Degeling & J. Edelman (eds), *Equity in Commercial Law*, Thomson Reuters, 2005. Reproduced with permission of Thomson Reuters (Professional) Australia Limited, [www.thomsonreuters.com.au](http://www.thomsonreuters.com.au). **Chapter 3:** Extract from *Beswick v Beswick* [1968] AC 58. Contains Parliamentary information licensed under the Open Parliament Licence v3.0.; Extract from *Libertarian Investments v Hall* (2013) 16 HKCFAR 681. Reproduced with permission of Thomson Reuters (Professional) Australia Limited, [www.thomsonreuters.com.au](http://www.thomsonreuters.com.au). **Chapter 9:** Extract from © J McGhee QC (ed) *Snell's Equity*, London, Thomson Reuters, 2010, p. 55. Reproduced by permission of Thomson Reuters (Professional) UK Limited. **Chapter 22:** Extract from © R. Chambers, 'Tracing and Unjust Enrichment', from *Understanding Unjust Enrichment*, by Jason Neyers, Mitchell McInnes and Stephen Pitel (eds) 2004, Hart Publishing, used by kind permission of Bloomsbury Publishing Plc.



PART



**INTRODUCTION**

The background of the page is a topographic map with contour lines. A large, bold, dark gray number '1' is positioned in the upper right quadrant, partially overlapping the white background and the map. The map's contour lines are more densely packed in the lower half of the image, which is shaded gray.

# 1

# INTRODUCTION

## 1.1 Introduction

Equity is a chameleonic word, taking its colour from the context in which it is used. For the purposes of this Sourcebook, equity refers to the principles, doctrines and remedies applied by Australian courts exercising the jurisdiction of the English Court of Chancery prior to the reforming judicature legislation of the nineteenth century. Equity, in this sense, is intelligible without having to acquire an understanding of legal history, but the understanding will be deeper if that history is known. This chapter identifies some of the landmarks of that history.

The final section summarises some of the more common equitable maxims. The student will occasionally encounter them when reading the cases, and should consider their value in applying equitable doctrine to the circumstances of an individual case.

## 1.2 Definition

### 1.2.1 Dictionary definition

#### 1.2.1a *MACQUARIE DICTIONARY AND THESAURUS ONLINE*

equity/ 'ekweti/ (say 'ekwuhtee)  
*noun (plural equities)*

1. the quality of being fair or impartial; fairness; impartiality.
2. that which is fair and just.
3. *Law*
  - a. the application of the dictates of conscience or the principles of natural justice to the settlement of controversies.
  - b. a system of jurisprudence or a book of doctrines and rules developed in England and followed in other common law countries, serving to supplement and remedy the limitations and the inflexibility of the common law.
  - c. an equitable right or claim.

#### **Note**

This book is concerned with meanings 3(a)–(c) above. Consider the relationship between these meanings and meanings 1 and 2 above. Reflect also on the relationship (and occasional tension) between 3(a) and 3(b).

## 1.2.2 Philosopher and jurist

### 1.2.2a ARISTOTLE, *NICOMACHEAN ETHICS* (W D ROSS TRANS, OXFORD UNIVERSITY PRESS, 1908) *BOOK V: MORAL VIRTUE*

#### Chapter 10: Equity, a corrective of legal justice

And this is the nature of the equitable, a correction of the law where it is defective owing to its universality. In fact this is the reason why all things are not determined by law. That about some things it is impossible to lay down a law, so that a decree is needed ... It is plain, then, what the equitable is, and that it is just and is better than one kind of justice. It is evident also from this who the equitable man is; the man who chooses and does such acts, and is no stickler for his rights in a bad sense but tends to take less than his share though he has the law on his side, is equitable, and this state of character is equity, which is a sort of justice and not a different state of character.

### 1.2.2b *THE EARL OF OXFORD'S CASE* (1615) 1 CH REP 1, 6; 21 ER 485, 486

#### Lord Ellesmere LC

The Cause why there is a Chancery is, for that Mens Actions are so divers and infinite, That it is impossible to make any general Law which may aptly meet with every particular Act, and not fail in some Circumstances.

The Office of the Chancellor is to correct Mens Consciences for Frauds, Breach of Trusts, Wrongs and Oppressions, of what Nature soever they be, and to soften and mollify the Extremity of the Law, which is called *Summum Ius*.

#### Note

Aristotle and Lord Ellesmere justified equity on the ground that it modifies the law where the inflexible application of legal rules causes injustice in individual cases. When studying the individual equitable doctrines, consider whether this is a convincing justification for equitable intervention.

## QUESTION

---

Is equity still needed now that legislation can remedy defects in the law?

## 1.3 History

### 1.3.1 Origins

#### 1.3.1a J H BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* (OXFORD UNIVERSITY PRESS, 4TH ED, 2002) 99–102

The Chancery (*cancellaria*) began as the royal secretariat, housed in the king's chapel. In origin it was no more a court of law than the Exchequer, but was a department of state descended from the Anglo-Saxon scriptorium where royal writs and charters were drawn and sealed. The head of department, the chancellor, had the custody of the great seal of England, which was used to authenticate the documents which his clerks prepared. Royal grants of property, privilege, dignity or office, charters, writs and commissions, all had to 'pass the seal' in Chancery. The original writs of the common law emanated from the same department, and through them the chancellor was associated with the ordinary administration of justice.

The chancellor has always been primarily an officer of state and a minister of the Crown. Most medieval chancellors were also bishops, or even archbishops. Some chancellors, notably Cardinal Wolsey (1515–29) and Lord Clarendon (1658–67) were prime ministers in all but name ... Yet the majority of chancellors have been lawyers and until 1875 spent most of their time sitting in court ...

The chancellor's English jurisdiction, so called because the bills and pleadings were written in the vernacular tongue, grew not from the departmental work of the Chancery but from the jurisdiction of the king's council to deal with bills of complaint. We have seen that in the fourteenth century bills addressed to the king in council, complaining of interference with the common law, were passed on to the judges. Later in the century bills of this kind were addressed to the chancellor alone, whose function in such cases was not to dispense justice so much as to facilitate its achievement in other courts, to serve as 'a convenient clearing-house for all kinds of business transacted elsewhere' (Sayles, 76 *Selden Society* lxxi, lxxix). The jurisdiction was still that of the council, and the chancellor was – by a kind of fiction – deemed to be acting on behalf of 'the king and his council in Chancery.' By the time of Richard II (1377–1399), a further development had occurred. Bills increasingly sought a specific remedy from the chancellor himself, irrespective of whether proceedings were pending at common law, and it is evident that the chancellor had begun to issue process and grant decrees in Chancery instead of sending the petition elsewhere. ... Decrees were at first made in the name of the king in council, and then by the 'court', sometimes reciting the presence of judges and king's serjeants, councillors and advisers; but during the fifteenth century the chancellor came to issue decrees in his own name. In making such decrees, medieval councillors or chancellors did not regard themselves as administering a system of law different from the law of England. They were reinforcing the law by making sure that justice was done in cases where shortcomings in the regular procedure, or human failings, were hindering its attainment by due process. They came not to destroy the law, but to fulfil it (F W Maitland, *Equity* (1909) 17).

### 1.3.1b PETITION C 1417–1424, NO 117 FROM W P BAILDON (ED), *SELECT CASES IN CHANCERY* (SELDEN SOCIETY, 1896) VOL 10

To the most reverend and most gracious Father in God, the Bishop of Durham, Chancellor of England,

Humbly beseecheth your continual orator, Thomas Messendyn the younger, that whereas Thomas Messendyn his father enfeoffed Richard Pierson, parson of the church of Hatcliffe, John West, parson of the church of Bradley, John Barneby of Barton the younger, and John See of Little Coates, of certain land and tenements in the town of Healing in the County of Lincoln, to the value of £10 a year, on condition that the said enfeoffees should enfeoff the said suppliant in the lands and tenements aforesaid when he should come to the age of 18 years; and now the said suppliant is of the age of 18 years and more, and he hath many times requested the said feoffees to enfeoff him in the said lands and tenements according to the wish and condition of his said father; and they do utterly refuse, and say that they will hold the said lands and tenements to their own use: May it please your most gracious Lordship to grant certain writs to send for the said feoffees on certain pains by you to be limited, to answer before you in the Chancery, and to declare wherefore they will not enfeoff the said suppliant according to the wish and condition aforesaid; for God and in way of charity; considering, most gracious Lord, that the said suppliant can have no recovery at common law.

#### Note

This is a translation of a petition written in French. The arrangement said to have been created by the supplicant's father was the use. The use was the early form of trust and, in modern terminology, the complaint is one for breach of trust: land was conveyed to various persons (the feoffees) on condition that they conveyed it to the complainant (enfeoffed him) when he was 18. The petition requests the Chancellor to investigate the allegation that the feoffees retained the land for themselves instead of keeping their promise to convey it to the complainant.

### 1.3.2 Conflict between common law and equity

#### 1.3.2a JOSHUA GETZLER, 'PATTERNS OF FUSION' IN PETER BIRKS (ED), *THE CLASSIFICATION OF OBLIGATIONS* (CLARENDON PRESS, 1997) 175

Sometime in the early 1530s, two centuries after the inception of Chancery's jurisdiction in equity, the Lord Chancellor of England invited the common law judges to dinner. Sir Thomas

More's purpose in throwing this entertainment was to discuss the judges' vehement objections to the Chancery's practice of issuing common injunctions, which forbade plaintiffs from pursuing unconscionable claims in the common law courts. Sir Thomas, himself a skilled common lawyer and the first such to sit on the Woolsack, suggested that Chancery would desist from intervening if only the law courts would exercise their discretion to 'mitigate and reform the rigour of the law'. But the judges refused, as More later recounted, because 'they may by the verdict of the jury cast off all quarrels from themselves upon them, which they account their chief defence' [W F Roper, *The Lyfe of Sir Thomas More* (ed E V Hitchcock, London 1935) 44–5]. At this time came perhaps the fateful step towards the splitting of legal and equitable jurisdictions in England. When the common lawyers refused to admit the broadest range of factual evidence into curial deliberations, and then to develop legal tests and principles to sift such an expanded admission of evidence and guide the jury, they thereby ensured the survival and growth of the ameliorating Chancery jurisdiction. For the rest of the sixteenth century litigants flocked to the Chancery and the other prerogative courts of equity, and their business came to rival that of the common law courts, whose business relatively declined.

### 1.3.2b *THE EARL OF OXFORD'S CASE* (1615) 1 CH REP 1; 21 ER 485

In the late sixteenth century chancellors began issuing orders, known as common injunctions, restraining plaintiffs from executing a judgment obtained at common law where the judgment had been obtained unconscionably. In *Finch v Throckmorton* (1597) 118 Selden Soc 441 the common law judges resolved that this kind of 'intermeddling' in common law matters should be prohibited. However, Thomas Egerton, appointed Chancellor by King James I as Lord Ellesmere, continued the practice of issuing common injunctions. The common law judges, led by Coke CJ, released litigants who had been imprisoned for disobeying the injunctions.

The issue was brought to a head in this case involving an action of ejectment to remove an alleged unlawful occupier of land. Chief Justice Coke held in the King's Bench that action failed since, applying an Elizabethan statute, the plaintiff did not have a valid title to the land. Lord Ellesmere issued an injunction, declaring that it was inequitable to apply the statute to deprive the plaintiff of title to sue for ejectment.

The matter was referred to King James I in the Privy Council. He issued a declaration affirming the injunction, stating that 'it properly belongeth to our princely office to take care and provide that our subjects have equal and indifferent justice ministered to them; and that when their case deserveth to be relieved in course of equity by suit in our Court of Chancery, they should not be abandoned and exposed to perish under the rigour and extremity of our laws, we . . . do approve, ratifie and confirm, as well the practice of our Court of Chancery' (D Kerly, *An Historical Sketch of the equitable jurisdiction of the Court of Chancery*, 1890, 114).

### 1.3.3 Reform and renewal

#### 1.3.3a CHARLES DICKENS, *BLEAK HOUSE* (FIRST PUBLISHED 1853)

London, Michaelmas Term lately over, and the Lord Chancellor sitting in Lincoln's Inn Hall ... On such an afternoon, if ever, the Lord High Chancellor ought to be sitting here – as here he is – with a foggy glory round his head, softly fenced in with crimson cloth and curtains, addressed by a large advocate with great whiskers, a little voice, and an interminable brief, and outwardly directing his contemplation to the lantern in the roof, where he can see nothing but fog. On such an afternoon, some score of members of the High Court of Chancery bar ought to be – as here they are – mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat-hair and horse-hair warded heads against walls of words, and making a pretence of equity with serious faces, as players might. On such an afternoon, the various solicitors in the cause, some two or three of whom have inherited it from their fathers, who made a fortune by it, ought to be – as are they not? – ranged in a line, in a long matted well (but you might look in vain for Truth at the bottom of it), between the registrar's red table and the silk gowns, with bills, cross-bills, answers, rejoinders, injunctions, affidavits, issues, references to masters, masters' reports, mountains of costly nonsense, piled before them.

Well may the court be dim, with wasting candles here and there; well may the fog hang heavy in it, as if it would never get out; well may the stained glass windows lose their colour, and admit no light of day into the place; well may the uninitiated from the streets, who peep in through the glass panes in the door, be deterred from entrance by its owl-like aspect, and by the drawl languidly echoing to the roof from the padded dais where the Lord High Chancellor looks into the lantern that has no light in it, and where the attendant wigs are all stuck in a fog-bank! This is the Court of Chancery; which has its decaying houses and its blighted lands in every shire; which has its worn-out lunatic in every madhouse, and its dead in every churchyard; which has its ruined suitor, with his slipshod heels and threadbare dress, borrowing and begging through the round of every man's acquaintance; which gives to monied might the means abundantly of wearying out the right; which so exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart; that there is not an honourable man among its practitioners who would not give – and who does not often give – the warning, 'Suffer any wrong that can be done you, rather than come here!'

#### Note

It is generally agreed that *Bleak House* is set in or about 1827 when Lord Lyndhurst had just succeeded Lord Eldon as Chancellor. On the nineteenth century reforms to Chancery, see M Lobban, 'Preparing for Fusion: Reforming the Nineteenth Century Court of Chancery' (2004) 22 *Law and History Review* 389, 565; Patrick Polden, 'The Court of Chancery 1820–1875' in *The Oxford History of the Laws of England* (Oxford University Press, 2010) vol XI, 646–91; M J Leeming, 'Five Judicature Fallacies' in J T Gleeson et al (eds), *Historical Foundations of Australian Law* (Federation Press, 2013) 169.

### 1.3.3b JUDICATURE ACT 1873 (IMP)

#### Section 25(11)

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.

### 1.3.3c LAW REFORM (LAW AND EQUITY) ACT 1972 (NSW)

#### Section 5: Rules of equity to prevail

In all matters in which there was immediately before the commencement of this Act or is any conflict or variance between the rules of equity and the rules of common law relating to the same matter, the rules of equity shall prevail.

#### Note

The delayed introduction of judicature legislation in New South Wales has arguably had a significant effect on the development of equitable doctrine in Australia. Most other States adopted the Judicature Act model not long after it was enacted in England: *Judicature Act 1876* (Qld); *Supreme Court Act 1878* (SA); *Supreme Court Civil Procedure Act 1932* (Tas); *Supreme Court (Judicature) Act 1883* (Vic); *Supreme Court Act 1880* (WA). The relevant legislation for the Territories is the *Supreme Court Act 1933* (ACT) (s 33 being the equivalent of s 25(11) above) and the *Supreme Court Act 1979* (NT) (s 68 reproduces s 25(11)).

Queensland and South Australia had pioneered innovative models of fusion prior to the adoption of the English model: see B McPherson, *The Supreme Court of Queensland* (Butterworths, 1989) 138; G Taylor, 'South Australia's Judicature Act Reforms of 1853' (2001) 22 *Journal of Legal History* 55.

## QUESTION

Did the judicature legislation remove the defects of Chancery identified by Charles Dickens in *Bleak House*? If not, what defects was the legislation intended to remove?

### 1.3.3d KEITH MASON, 'FUSION: FALLACY, FUTURE OR FINISHED?' IN S DEGELING AND J EDELMAN (EDS), *EQUITY IN COMMERCIAL LAW* (THOMSON REUTERS, 2005)

In 1765, William Blackstone in his *Commentaries on the Laws of England*, formulated the general law rule of reception of English law into 'settled' colonies, which all Australian colonies were later presumed

to be. He proclaimed that 'all the English laws then in being ... [were] immediately there in force'. This principle was qualified by the statement that the colonists carried with them 'only so much of the English law as is applicable to their own situation and the condition of an infant colony'. The uncertain operation of Blackstone's rule had led to difficulties in New South Wales by the 1820s, but no one doubted that the general law of England (including Chancery law) was part of the colonists' inheritance. Ellis Bent who was Judge-Advocate during Governor Macquarie's time granted equitable relief where appropriate, although he had no specific statutory authority to do so. The Civil Supreme Court created under the second *Charter of Justice* in 1814 was declared among other things to be a Court of Equity having equitable jurisdiction.

Section 24 of the *Australian Courts Act 1828* (Imp), which applied in Australia by paramount force, was applicable to New South Wales as well as Tasmania, Victoria, Queensland and the Australian Capital Territory as they later emerged out of New South Wales. It provided that all laws and statutes in force in England on 25 July 1828 were to be applied 'so far as the same can be applied'. The Supreme Court of New South Wales founded in 1823 (which continues to this day) was a creature of statute and the royal prerogative. Its statutory parent was the *New South Wales Act 1823*. The 1823 Act declared it lawful for the King to establish a court of judicature styled 'the Supreme Court of New South Wales'. The Act defined the principal jurisdictions of the Court, largely by reference to English models. Jurisdiction at common law was assimilated to the civil and criminal authority of the Judges of Kings Bench, Common Pleas and Exchequer in England. As a court of equity, the Supreme Court was to have the equitable jurisdiction exercised by the Lord High Chancellor within England. In 1828, this last grant of jurisdiction was supplemented by adding 'and all such acts matters and things can or may be done by the said Lord High Chancellor within the realm of England in the exercise of the common law jurisdiction to him belonging' (*Australian Courts Act 1828* s 11). This neatly makes my point that procedural and remedial fusion in England started long before the *Judicature Act 1873* (UK).

For New South Wales the systems of common law and equity were never, as in England, to be administered by separate courts, but always by one and the same Supreme Court. But procedures and doctrines remained distinctive. A single judge wearing his equity wig could issue a common injunction directed at the prosecution or enforcement of common law proceedings or judgments pending before one of his brethren or in the Supreme Court generally ...

The 19th century judges in New South Wales were well aware that law and equity were different systems, each with their different procedures. Certainly by the 1840s any thought of adopting a single procedure was abandoned. English court dress, precedents and practice came to be followed with as much rigour as colonial conditions allowed. The Privy Council also curbed centrifugal tendencies, as elsewhere throughout the Empire. English reforming statutes were followed and adopted for use within the single Supreme Court. In 1850, the Full Court of the Supreme Court of New South Wales in *Bank of Australia v Murray* ((1850) 1 Legge 612) declined to grant any relief to a plaintiff who had proceeded by bill in equity instead of at common law. There the matter rested until the Queenslander Sir Samuel Griffith became the first Chief Justice of the High Court of Australia in 1903.

The substantive and procedural rules pertaining to matters on the common law and equity 'sides' of the Supreme Court of New South Wales operated in separate and seldom intersecting spheres, albeit administered by a single Supreme Court. The size of the Court never rose above seven in the 19th century. The shortage of judges skilled in equity and mid-century delays in handling equity matters

actually encouraged moves to differentiate the Equity side of the Court. A Primary (later Chief) Judge in Equity was designated. There was even a proposal to create a separate building for Equity. The fusion reforms of the English *Judicature Act 1873* were resisted, although the judiciary and profession were divided on the issue.

... Echoes of the nineteenth, twentieth and twenty-first century debates about fusion and its consequences surfaced as early as the first volume of the Commonwealth Law Reports.

In *McLaughlin v Fosbery* ((1904) 1 CLR 546) the High Court refused to overturn an order of the New South Wales Chief Judge in Equity staying all proceedings on an action for damages for assault and false imprisonment. The underlying dispute related to the confinement of the appellant, a lunatic, on the basis of an order by his committee. The High Court held that the Supreme Court ought to have stayed proceedings in the exercise of its inherent jurisdiction to stay vexatious actions, ie reliant on the exercise of common law jurisdiction. It was therefore an error that the stay of the common law action had been granted by the Chief Judge in Equity in reliance on (Equity) lunacy jurisdiction. Since, however, the Full Court of the Supreme Court had power on appeal to disregard formal defects and irregularities in the proceedings, the High Court decided by majority to do the same. Accordingly the appeal was dismissed.

Griffith CJ (speaking for himself and Barton J) explained (at 568–9) that the Supreme Court of New South Wales was:

one Court, having under its original constitution all the powers which the Courts of Chancery and the Common Law and Ecclesiastical Courts had in England. Every Judge of the Court has the powers and authority of a Judge of the Court, and his powers are not in fact or in law impaired if he erroneously attributes the source of any particular power to the wrong Statute. ...

O'Connor J dissented strongly, stating (at 574–5):

It is said there is only the one Supreme Court invested with both common law and Equity powers, and that it is always open to the Court to apply any of its powers to facts that come before it. It is true that there is only one Supreme Court invested with all these powers, but ever since the establishment of the Court under the Charter of Justice its powers in Equity and its powers at common law have been exercised by separate divisions of the Court – separate not only in name and form, but administering in many respects different systems of jurisprudence ...

... Statutory reforms were introduced to the Supreme Court of New South Wales in stages, culminating in the fusion of administration of law and equity and adoption of a common pleading system with the *Supreme Court Act 1970*. Section 57 of that Act commands the Court to 'administer concurrently all rules of law, including rules of equity'. There were other borrowings from the English provisions.

The early stirrings in the High Court nevertheless suggest that a bolder resort to existing judicial power might have broken the waters of separation for New South Wales, which had by 1900 become a legal Jurassic Park. They certainly affirm my proposition ... that any distinction between law and equity is non-jurisdictional ...

### **Substantive fusion achieved by the *Judicature Act***

Section 25 of the *Judicature Act 1873* (UK) also directly fused substantive law and equity. On the orthodox view, it did so, only to a limited degree. It is, however, possible to see s 25(11) as the statutory

capping of a process that had started in 1615. Parliament confirmed Equity's precedence as a matter of last resort (if Judges of a single Court could not sort out remedial and doctrinal differences between Law and Equity by their own devices).

The side-note to s 25 was 'Rules of law upon certain points'. Subsections (1) to (10) dealt with particular conflicts between law and equity in respect of the same subject matter. The 'conflicts or variances' thereby resolved related to assignments of choses in action, stipulations as to time in contract, the custody of infants, equitable waste, merger of estates, administration of insolvent estates and actions for trespass by mortgagors in possession. Resolution was generally in favour of Chancery's rule, but a statutory amalgam of law and equity was devised as regards assignments. The miscellany of topics is itself testimony to the extent to which the two systems were treading on each other's toes when administered separately. . . .

By the time that New South Wales took its great leap forward to the 19th century by enacting the *Supreme Court Act 1970* most of the matters covered by s 25(1)–(10) of the *Judicature Act 1873* (UK) had already been addressed by the New South Wales Parliament. It was only thought necessary to enact a modern variant of subs (11).

## 1.4 The maxims of equity

Students will come across references to the maxims of equity. The maxims are not rules, but they conveniently summarise some equitable principles. There is no authoritative list of equitable maxims, but the following are among those commonly cited and applied:

- (a) A litigant who seeks equity must do equity.
- (b) A litigant who comes to equity must come with clean hands.
- (c) Equity looks to intent, rather than to form.
- (d) Equity treats as done that which ought to be done.
- (e) Equity acts in personam.
- (f) Equity follows the law.
- (g) Equity does not assist a volunteer.
- (h) Equity will not perfect an imperfect gift.
- (i) Delay defeats an equity.

### 1.4a *CORIN v PATTON* [1990] HCA 12; (1990) 169 CLR 540

#### Background

Mr and Mrs Patton were joint registered proprietors of land. Mrs Patton, who was terminally ill, wanted to sever the joint tenancy and give her share of the property to the plaintiff, her brother. She executed a

memorandum of transfer of her interest in the property to the plaintiff, who was to hold it on trust for her until her death. She also executed a will leaving her estate to her children. If the transfer was successful, her share of the property would have formed part of her estate.

The certificate of title was held by a bank, as unregistered mortgagee of the property. Mrs Patton took no action to procure production of the certificate of title from the bank so as to enable the transfer to be registered. When she died, the plaintiff claimed her share of the land – a claim resisted partly because he was a volunteer and ‘equity does not assist a volunteer’.

### Decision

The High Court held that the transfer would have been complete in equity if Mrs Patton had done everything within her power to complete the transfer. It was, however, incomplete since she had not procured the certificate of title for registration before she died.

The following passage discusses the application of the principle that equity will not assist a volunteer.

#### MASON CJ AND McHUGH J

Of course it would be a mistake to set too much store by the maxim [that equity will not assist a volunteer]. Like other maxims of equity, it is not a specific rule or principle of law. It is a summary statement of a broad theme which underlies equitable concepts and principles. Its precise scope is necessarily ill-defined and somewhat uncertain. It is subject to certain clearly established exceptions such as the rule in *Strong v Bird* (1874) LR 18 Eq 315 and the doctrine of estoppel, where an equity arises in favour of an intended donee from the conduct of the donor after the making of the voluntary promise by the donor . . . These exceptions have no bearing on the present case except in so far as they demonstrate that the maxim does not enunciate an inflexible or universal rule. What is of importance is that this and the related maxim that equity will not perfect an imperfect gift are primarily associated with the rule that a voluntary covenant is not enforceable in equity, a rule which itself has become the subject of critical scrutiny in some of its applications: see Macnair, ‘Equity and Volunteers’, (1988) 8 Legal Studies 172. Thus, a volunteer who is the object of an intended trust will only succeed if the trust has been completely constituted.

### Note

For other examples of use of equity’s maxim see *Black Ublans* [6.4a]; *Giumelli v Giumelli* [6.6a and 7.2.2a]; and *Milroy v Lord* [9.2a].

## QUESTIONS

1. How useful are the maxims? J Edelman in John McGhee (ed), *Snell’s Equity* (Sweet and Maxwell, 2010) at 5-001 states that application of the maxims has ‘led to decisions which obfuscate and which are difficult to justify or to understand. In few, if any, of the decisions in which the maxims have been expounded would the reasoning have been any worse, or the rule any less clear; without them. In most, the reasoning would have been improved’. Do you agree?
2. How useful was the maxim that ‘equity will not assist a volunteer’ in deciding *Corin v Patton*?