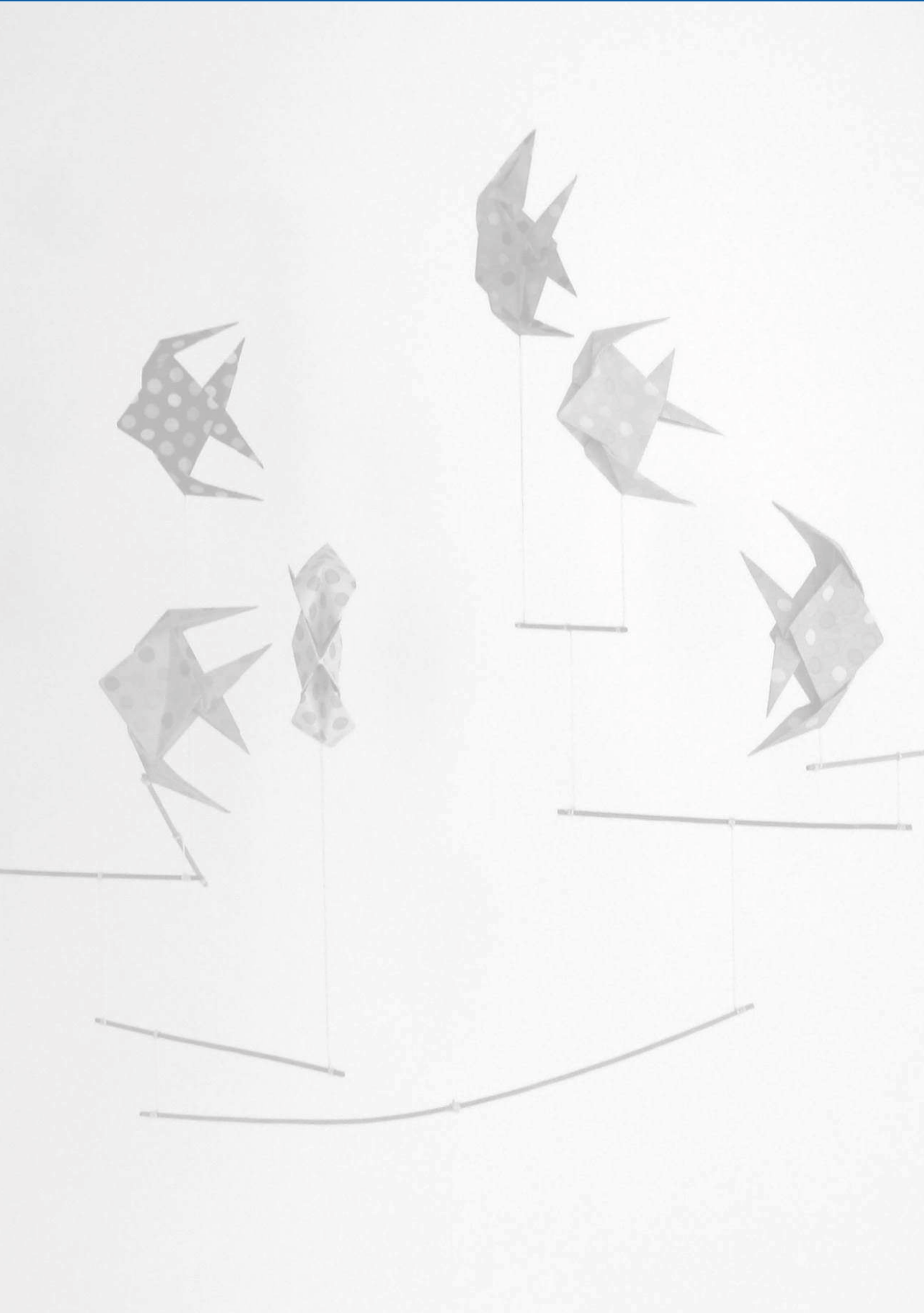


A Student's Guide to EQUITY AND TRUSTS

This engaging introduction explores the key principles of equity and trusts law and offers students effective learning features. By covering the essentials of each topic, it ensures students have the foundations for successful further study. The law is made relevant to current practice through chapters that define and explain key legal principles. Examples set the law in context and make the subject interesting and dynamic by showing how these rules apply in real life. Key points sections and summaries help students remember the crucial points of each topic, and practical exercises offer students the opportunity to apply the law. Exploring clearly and concisely the subject's key principles, this should be every equity student's first port of call.

Judith Bray is Professor of Law at the University of Buckingham. She has taught property law and family law for many years, having previously qualified as a barrister. She is the author of several student texts on land law and also a short casebook on equity and trusts.



A Student's Guide to **EQUITY AND TRUSTS**

Judith Bray

2nd Edition



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PREFACE

Of all the subjects studied by law students, equity and trusts can seem the most opaque and impenetrable. They are intimidated by the ‘fog of Chancery’ described by Dickens in his introduction to *Bleak House*. I have tried to lift some of this fog by explaining the principles of trusts in simple terms and then relating those principles to practical situations that affect all our lives. I have used detailed scenarios throughout the text to illustrate the key principles. I wanted to change the popular perception that the study of trusts is remote and detached from everyday life. Trusts no longer simply affect a limited section of the public but often govern the most important assets that people own, such as the family home and rights under a pension scheme. At the heart of trusts lies the relationship between the trustee and beneficiary and the strict duties imposed upon the trustee, which can be traced back to the early forms of trust. Such duties are just as relevant today in cases involving complex commercial relationships as in the more traditional express trust. I hope that this practical approach will bring to life the subject and its many different aspects. I know that once the main principles of equity and trusts are grasped and their practical effect is fully understood, this becomes a fascinating and intriguing subject.

I would like to thank Caitlin Lisle, Marianne Nield and everyone at Cambridge University Press for their encouragement and support for the idea and the writing of this book and to Rachel Paul for her careful editing and to Stanly Emelson and Jim Diggins for their invaluable help with indexing and editing. Most of all, I would like to thank my husband, Richard, without whose support, good humour and invaluable advice this new edition would never have been completed. I dedicate this book to the many students of equity and trusts who I have taught over the years, who have always been a great source of inspiration.

GLOSSARY OF COMMON TERMS USED IN EQUITY AND TRUSTS

- acquiescence** assenting to circumstances or events either expressly or impliedly.
- administrator/administratrix** a person appointed by the court by letters of administration to deal with the estate of a person who has died without making a will (intestate).
- advancement power of** a power held by a trustee to advance part of the capital for the benefit of a beneficiary.
- agency** a contractual arrangement between two people where one person acts on behalf of another.
- annuity** an annual payment usually made in return for a lump sum.
- appointment power of** a power given to a person by will or deed to appoint a person or persons to an interest in property.
- assignment** a transfer of property rights from one person to another.
- attestation** witnessing a signature to a will.
- bare trust** a trust where the trustee's duty is confined to conveying property to the beneficiaries when required.
- beneficial interest** the nature of the interest held by a beneficiary under a trust.
- beneficiary** a person who is entitled to trust property under a trust.
- bequest** a testamentary gift of personal property.
- bona fide purchaser** a purchaser in good faith.
- bona vacantia** property which passes to the crown because no owner can be found.
- breach of trust** the breach of a duty owed by a trustee to a beneficiary under the terms of the trust or common law or statute.
- capacity** to have the right to make legally binding agreements under the law.
- capital** property held under a trust.
- certainty of trusts** the three basic requirements of any trust in order to be valid – intention, subject matter and objects.
- charge** a form of security for the payment of a debt, usually over real property.
- charitable trust** a trust for a charitable purpose that is for the public benefit and is exclusively charitable.
- chattel** an item of personal property.
- chose in action** a property right enforceable through court action that has no physical existence (e.g., a debt).
- cohabitant** any person living in a personal relationship with another who is neither a spouse nor a civil partner.

- consideration** value given to another in exchange for the promise of rights under contract.
- constitution of a trust** the point when rights of ownership and enforcement pass in a trust transfer from the settlor to the trustee.
- constructive trust** a trust that comes into effect in a variety of situations by operation of law.
- contingent interest** a right under a will dependent on a particular event happening (e.g., reaching a particular age).
- covenant** a right enforceable at common law either made under seal or under a deed.
- cy près** a doctrine allowing a charitable gift that cannot be carried out to be applied to another charitable purpose as close as possible to the original purpose.
- debt** a sum of money due to be paid by one person (the debtor) to another (the creditor) under contract.
- deed** a document that is enforceable by the parties, irrespective of whether consideration has been paid if it complies with the required formalities.
- determinable interest** rights that cease automatically after the occurrence of a particular event.
- devise** a gift usually of real property under a will.
- discretionary trust** a trust where the class of beneficiaries has been defined that also gives trustees discretion over the distribution of the trust property.
- donatio mortis causa** a gift made in contemplation of death, which takes effect on death.
- donee** a person receiving a gift of property or a power to make a choice among a group of beneficiaries.
- donor** a person making/giving a gift or creating a power of appointment.
- equitable interest** a right in property that is enforceable only in equity.
- equitable maxims** recognised maxims of equity that are not binding as rules but act as guidelines to the court.
- executor/executrix** a person who has a duty to carry out the provisions in the will of a deceased person.
- express trust** a trust that is intentionally created.
- fiduciary relationship** a relationship where one person holds a position of trust and loyalty in relation to another, such as a trustee and a beneficiary.
- fixed trust** a type of trust where the beneficiaries and the size of their shares are defined in the trust instrument.
- following** the process of following an asset as it moves from hand to hand.
- gratuitous** a transfer to another without the payment of consideration.
- injunction** an equitable remedy that prevents a person acting in a certain way or occasionally forcing a particular action.

- in personam** rights enforceable against a person.
- in rem** rights enforceable against the world.
- interest in possession** a beneficiary who has an immediate right to enjoy trust property, such as income under a trust.
- inter vivos** during one's lifetime.
- intestacy** to die without making a valid will.
- joint tenants** co-owners of property who are treated as one single owner, and as one party dies, the right of survivorship takes effect.
- legacy** a gift of property under a will – usually personalty.
- letters of administration** a document from the court given to a person to administer the estate of a deceased person who has died intestate.
- letters of wishes** a non-binding letter written by the settlor to the trustees, expressing views on the way the fund should be distributed under a discretionary trust.
- life interest** an interest in property that lasts for the lifetime of the person.
- maintenance** a power held by trustees to apply income to a beneficiary to cover the costs of necessities before a beneficiary has become entitled.
- objects** beneficiaries under a trust.
- overreaching** the transfer of property rights from land to capital monies where the proceeds of a sale is paid to two trustees, which allows a purchaser to take freely of any beneficial interests in the property.
- personal representative** a person appointed to administer a person's estate on death.
- personalty** personal property such as shares, money and chattels.
- priority** the right to enforce a claim to property in preference to others.
- probate** a certificate granted by the high court certifying that the will of a deceased person has been proved and registered, giving the executors authority to act.
- protective trust** a specialised type of trust that determines on the bankruptcy of the beneficiary or other specified event.
- public trustee** an officer appointed by the lord chancellor under the Public Trustee Act 1906, NB Capital letters Public Trustee Act 1906 who acts as administrator for small estates where no one else is suitable, able or willing to act.
- purpose trust** a trust for a purpose rather than for a named human beneficiary, which is rendered void unless it comes within one of the exceptions.
- real property** rights or interests relating to land.
- remainder interest** an interest granted to take effect on the death of the life tenant.
- residuary estate** the part of an estate left after all debts, taxes and specific gifts and legacies have been paid.
- restitution** a process that reverses the unjust enrichment of a claimant.
- resulting trust** an implied trust in which the beneficial interest in property results or reverts back to the transferor.

- revoke** to cancel or withdraw an action.
- right of survivorship** principle whereby rights in property pass on the death of a joint tenant to the surviving joint tenants.
- secret trust** a testamentary gift that provides for someone on death that does not appear on the face of the will (a fully secret trust) or that discloses neither the beneficiaries nor the terms on the face of the will (a half-secret trust).
- settlor** the person who creates or settles a trust.
- specific performance** an equitable remedy that forces the performance of a duty or obligation usually under a contract.
- strangers to the trust** persons who are not trustees but who in some circumstances are liable to the beneficiaries.
- sub-trust** a trust created over an existing beneficial interest.
- sui juris** of full legal capacity.
- tenancy in common** a form of co-ownership of property in which each party has a distinct share of property.
- testamentary** a transfer of property on death made under a valid will.
- testator/testatrix** a person who executes a will.
- tracing** a process that allows a claimant to claim rights over a substitute asset that rightfully belongs to him or her.
- trustee** a person given legal title to property to be enjoyed by others.
- trustee de son tort** a person who intermeddles in a trust, assuming the duties of a trustee without being appointed trustee, and may be held liable for breaches that occur.
- unconscionability** behaviour or conduct that is against good conscience, which usually triggers an equitable remedy.
- unjust enrichment** where a person unjustly gains a benefit at the expense of another, which must be returned subject to any defence.
- vested interest** the right to property.
- void** of no legal effect.
- voidable** an effective transaction that can be set aside and made ineffective on the basis of certain circumstances.
- volunteer** a person who receives property without providing consideration.
- will** a document in which a person sets out his or her intentions with regard to property after death.



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