

UNIT 1: PRINCIPLES OF EQUITY AND TRUSTS



Contents

- Understanding how to succeed in E&T
- Key themes
- SBA style questions
- Equitable maxims
- Legal and equitable ownership
- Modern uses

UNIT 1: LEARNING OUTCOMES

- Understand how to succeed in your study of Equity and Trusts
- Understand how to approach single best answer type questions
- Define key property law terms
- Summarise the nature of equitable relationships
- Explain the development and place of equity in modern society
- Differentiate between equitable and legal ownership

MODULE LEARNING OUTCOMES

- **LO1:** conceptually and comprehensively understand the relationship between common law and equity, and the relevance of equitable principles and remedies in modern law
- **LO2:** critically evaluate the fundamental concept of separation of legal and equitable ownership of property and demonstrate a detailed understanding of the theoretical and practical application of these requirements.
- **LO3:** demonstrate a systematic understanding of the key areas and issues within the discipline, such as those surrounding charitable status and the developing role of resulting and constructive trusts in the commercial sphere

ASSESSMENTS

Assessment	Type	Length	Weight	Testing
1	Written Assessment	2000 words	50%	LO1 and LO2
2	Exam	2 hours plus 15 mins reading time	50%	LO2 and LO3

ASSESSMENTS

Assessment 1

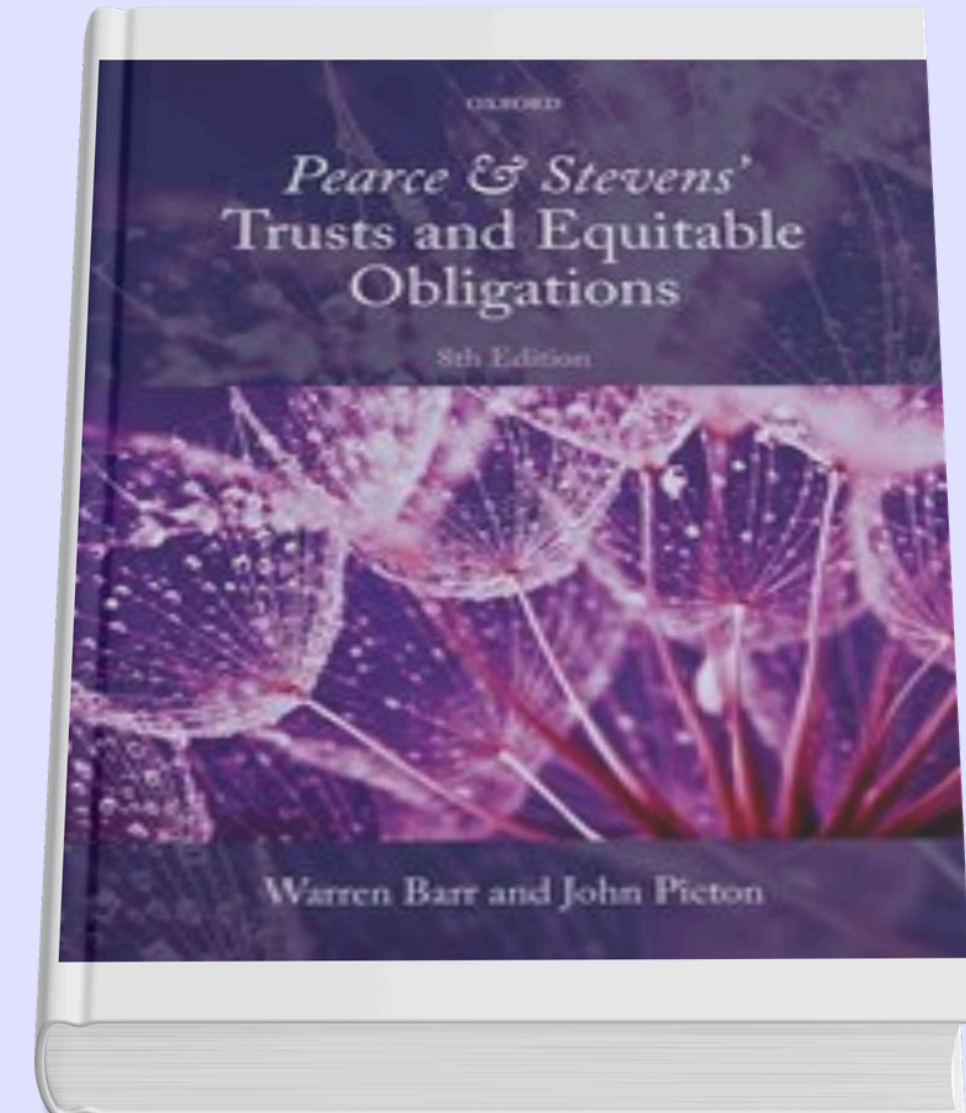
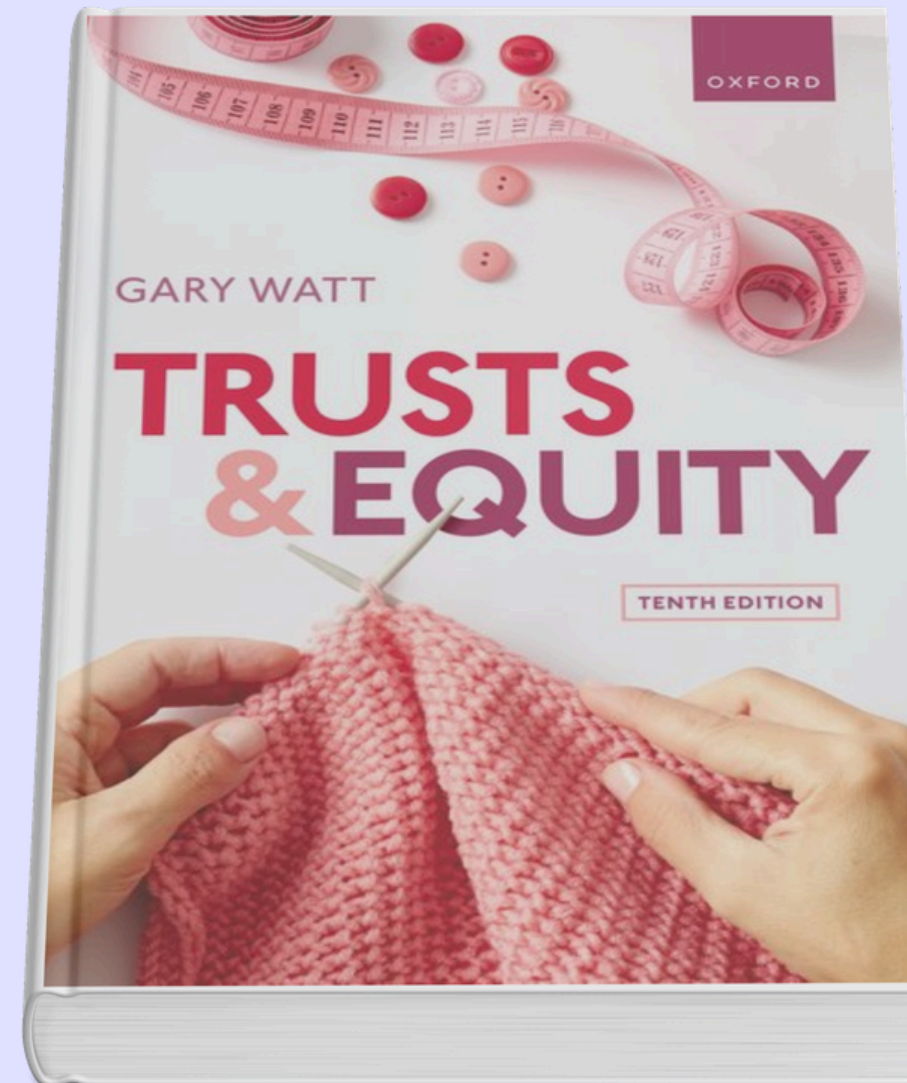
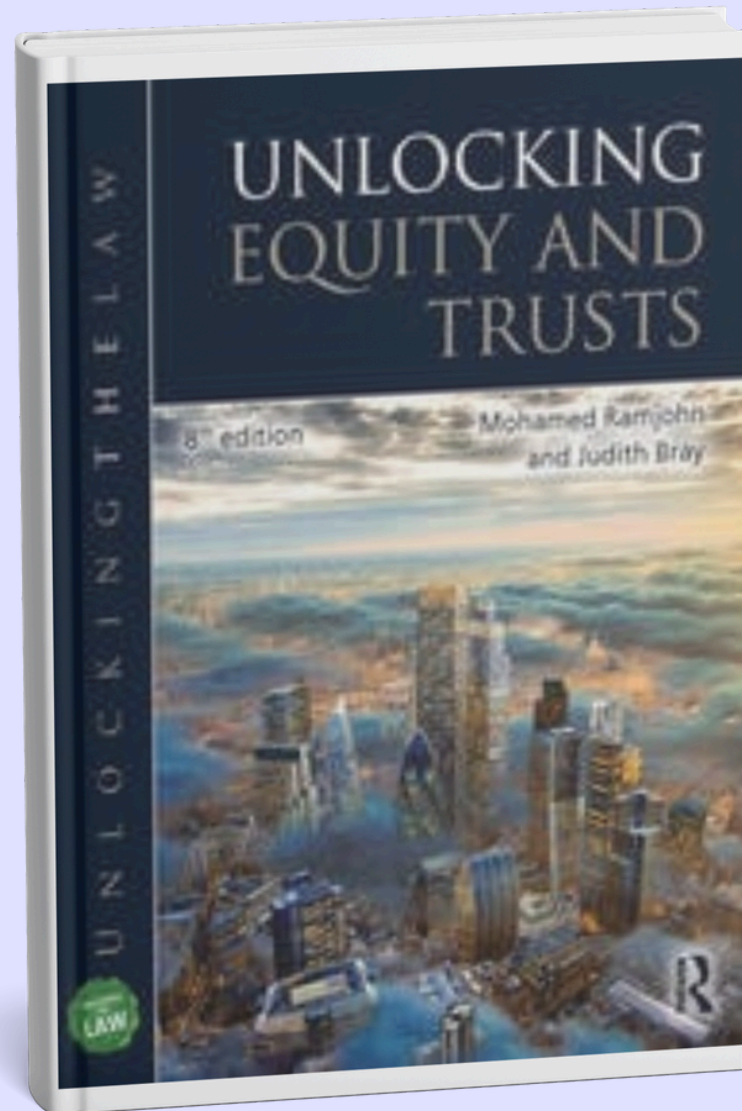
- Law reform task: trustees duties
- Collaborate to produce a piece of legislation
- Produce an independent report in which you evaluate the law
- Produce a legal design output (equivalent of 500 words)

Assessment 2

- Exam
- Part A: (worth 30%) SQE style MCQ questions on any aspect of trusts law
- Part B: evaluate a trust deed and produce written advice



TEXTBOOKS



SCHEME OF WORK

- Principles of equity and trusts
- Creating a trust
- Trustees and their duties
- Beneficiaries
- Equitable remedies
- Progress week
- Implied trusts
- Charities



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
Trinity Saint David

PART 1: **KEY THEMES**

UNIT 1: PRINCIPLES OF EQUITY AND TRUSTS

ACTIVITY 1: WHAT IS THIS MODULE ALL ABOUT?

- In groups, research and define the following term:
 - Law
 - Equity
 - Trusts
- For one source used, draft the reference.

SINGLE BEST ANSWER QUESTION

- Type of multiple choice question with 3 components
- used in SQE 1
- 'Single best answer' questions.
- Testing fundamental legal knowledge.
- Thoroughly read the scenario, question, and answers.
- If you know the answer, select it and move on (but always double and tripple check!)
- If you don't know the answer straight away, eliminate the answers that are not the best fit until you are left with the 'best answer'.
- If you still don't know the answer, take a reasoned guess.
- Watch out for distractors
- Remember that you can skip tricky questions and come back to them later
- 2.7 minutes per question – take your time!

Factual Scenario

The question

Five possible answers

SINGLE BEST ANSWER QUESTION (1)

A man has attended a conference with you on the history of the court of chancery. During the conference, the presenter explains the difference between law and equity.

Which of the following best defines the term 'the law' in England and Wales?

- a) the set of moral guidelines derived from religion
- b) the collection of traditions passed down through history
- c) the set of rules to regulate behaviour and arbitrate disputes in society, created by a legislature, administered by the executive and enforced in the courts
- d) the set of rules developed by a legislature to ensure fairness between members of society, administered by the executive, and enforced in the courts
- e) the set of rules developed through legislation and the courts which are enforceable to regulate behaviour and resolve disputes in society

SINGLE BEST ANSWER QUESTION (2)

A woman has attended a meeting with her solicitor in relation to a boundary dispute. She would like to understand the difference between law and equity.

Which of the following best defines the term 'equity' in the context of the England and Wales legal system?

- a) A system of law that replaces common law entirely
- b) A body of law dealing exclusively with financial and property disputes intended to achieve fairness
- c) A set of guidelines solely used in criminal justice to reduce sentences
- d) A flexible legal framework that offers remedies based on fairness where the application of strict legal rules would result in injustice
- e) A legal doctrine that disregards precedent in favor of moral judgments

SINGLE BEST ANSWER QUESTION (3)

A client has approached their solicitor for advice on testamentary planning. Their solicitor has suggested they may wish to consider setting up a testamentary trust.

Which of the following best explains what a trust is.

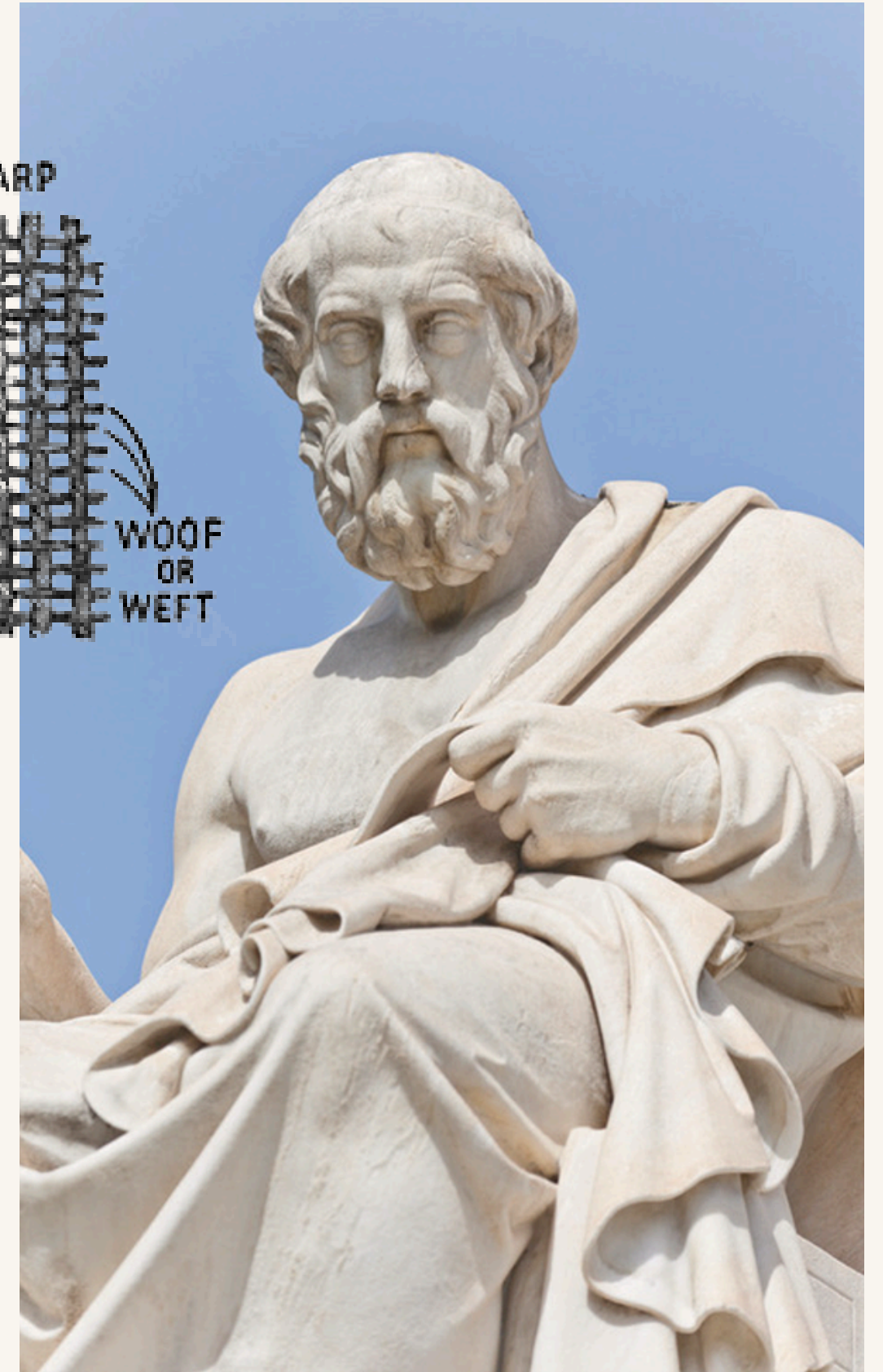
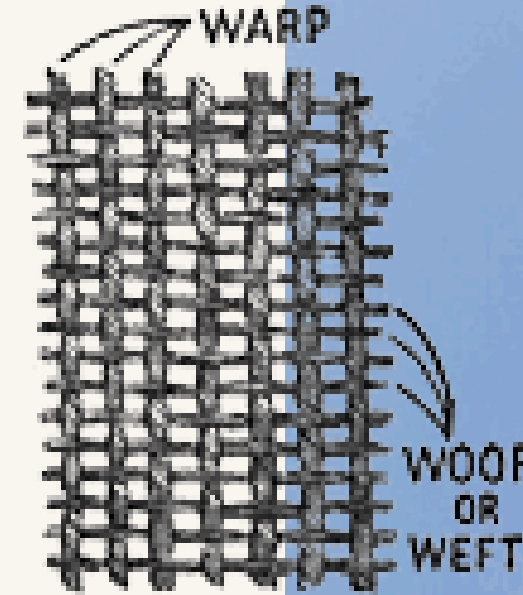
- a) An arrangement where a trustee holds property for the benefit of others, governed by fiduciary duties and equitable principles.
- b) An arrangement where a person transfers assets to another party for that party's exclusive benefit.
body of law dealing exclusively with financial and property disputes intended to achieve fairness
- c) An arrangement where a person receives an asset in return for a financial payment
- d) A tool which can be used to allows individuals to avoid taxes by shifting assets
- e) An informal agreement to share assets between family members

WHAT IS PROPERTY?



WEAVING THE WARP AND THE WOOF

- Complement to and corrective of the law
- Threads of the same tapestry
- Law is the warp: superior material, stronger and firmer
- Equity is the woof: softer and suitably workable
- Not a natural phenomenon
- Conjured and control to achieve a desired outcome
- Influenced by religious bias, but reshaped by secular backlash
- Like the law, equity also reflects social context, embodies complex human reasoning, desires and needs



LAW OF EQUITY

- Branch of law administered by courts
- private (not public or criminal)
- rules, doctrines, principles and procedures largely related with property
- supplements common law
- Maitland's definition largely summarises the body of law we refer to as 'the law of equity'
- **But how did we get here?**

What is Equity? We can only answer it by giving some short account of certain courts of justice which were abolished over thirty years ago. In the year 1875 we might have said 'Equity is that body of rules which is administered only by those Courts which are known as Courts of Equity.' The definition of course would not have been very satisfactory, but now-a-days we are cut off even from this unsatisfactory definition. We have no longer any courts which are merely courts of equity. Thus we are driven to say that Equity now is that body of rules administered by our English courts of justice which, were it not for the operation of the Judicature Acts [1873-75], would be administered only by those courts which would be known as Courts of Equity.

(Maitland, 1909, p1)

WHAT IS THE COMMON LAW?

- Core source of law in E&W (and in fact exported globally)
- Derived from custom and precedent, evolved over time to meet modern needs
- Earliest cases involved land disputes
- Court of the English Kings, traced back to c1066
- Common as applied equally across whole country
- by 13th Century – two courts: royal court and local courts
- Could also petition the King for support however, if justice was not done.
- Writ system: legal orders
- Shaped from tradition, and over time body of precedent, and eventually statute
- King Henry II reforms – no new writs
- Common law can be harsh or inadequate, with parties hiding behind the law to avoid obligations

EQUITY AND THE COURT OF CONSCIENCE

- Equity emerged from the perceived inability of the common law to achieve justice
- If common law outcome was insufficient or harsh, litigant could appeal to equity for justice
- New proceedings before the court of equity/Chancery
- This does not mean that equity can always provide justice, but is a deliberately created body of law, which has provided some flexibility – originally injunction as remedy
- Shaped and refined by mostly Roman Catholics – court of conscience
- Led by the Lord Chancellor (most senior royal officer)– so much discretion ‘justice in equity could be measured by the length of the chancellors foot’
- Post-reformation, when Catholic church lost powers, equity became systemised – more certainty and regularity
- Post-systemisation, equity developed similar to common law – *stare decisis* and precedent

FUSION

- Judicature Acts 1873–1875 saw fusion of common law and equity courts
- Single court system – Senior Courts Act 1981, s49
- Now means that litigants can access common law or equitable remedies, and draw on common law and equitable rules in same courts
- Creates greater consistency in remedies and concepts that will be awarded and applied
- Remains some separation between law and equity

Key sources: Judicature Acts 1873–1875
Senior Courts Act 1981

where the common law and equity conflict,
equity prevails SCA 1981, s49

in some disputes, judges may offer
damages (CL remedy) as well as /instead
of injunction or specific performance
(equitable), SCA 1981, s 50

CL remedies 'as of right', equitable
remedies are discretionary

ACTIVITY 2: EQUITABLE MAXIMS (NOT RULES)

Equity will not suffer a wrong without a remedy

Equity follows the law.

Equity act in personam

Delay defeats equity.

He who seeks equity must do equity.

Equity is Equality.

Equity looks at substance not form.

Equity will not permit a statute to be used as an instrument of fraud.

Those who come to equity must do equity.

Equity sees as done that ought to be done.

Where the equities are equal, the law prevails.

Where equity and law conflicts, equity shall prevail.

Equity imputes an intention to fulfil an obligation.

Where the equity are equal, the first in time prevails.

Equity abhors a vacuum in ownership.

There is no equity to perfect an imperfect gift.

He who come to equity must come with clean hands.

Equity will not assist a volunteer.

REMEDIES IN EQUITY

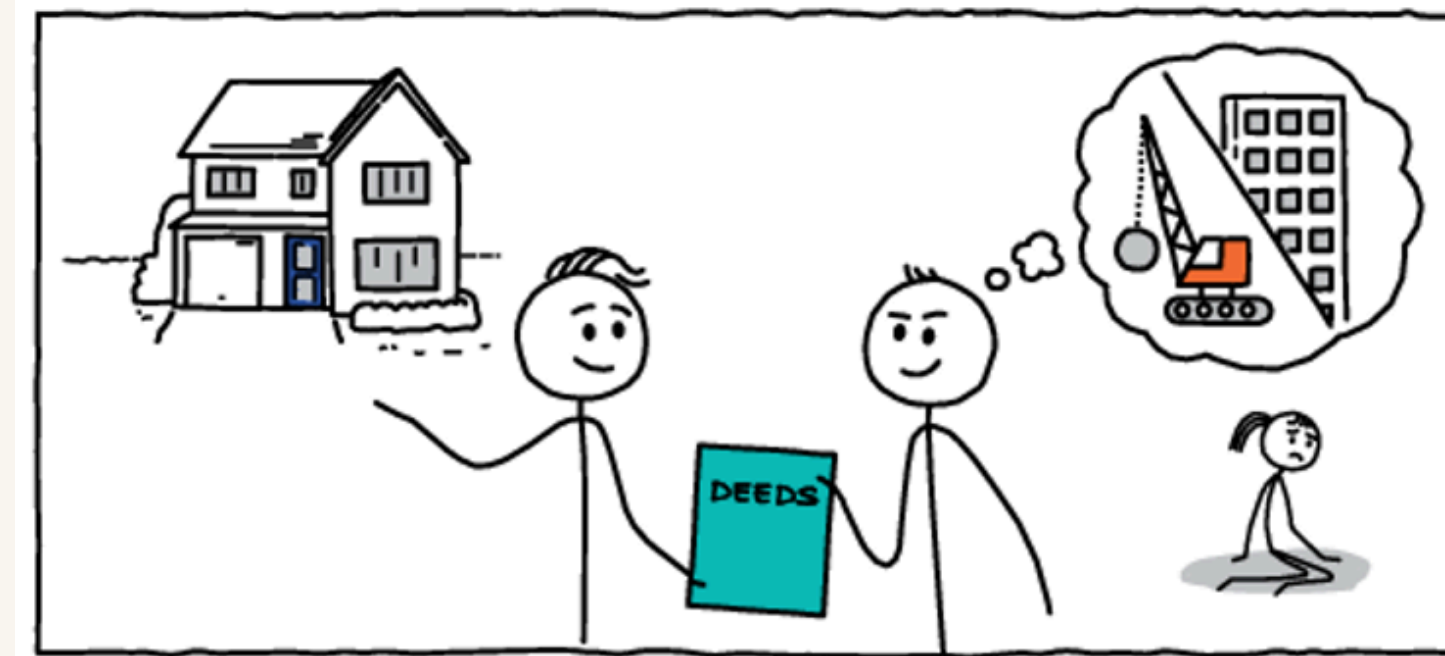
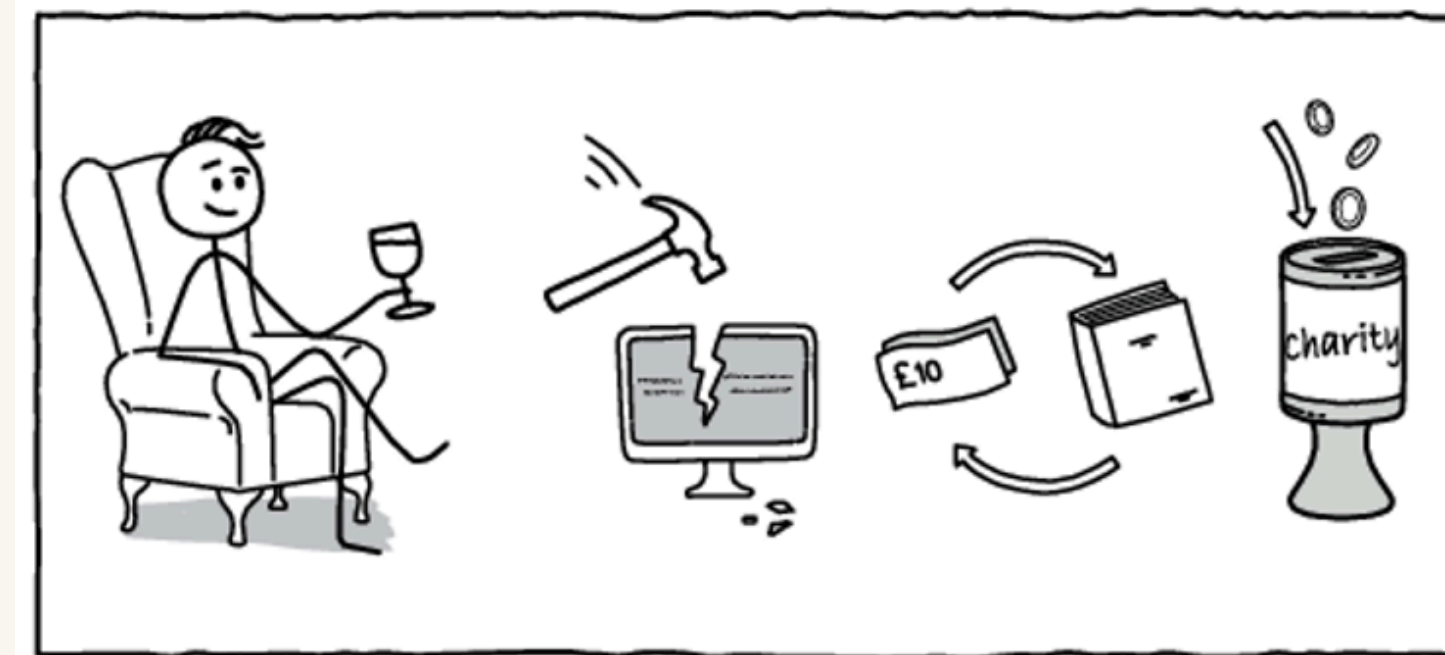
- Specific performance
- Injunction
- Rescission
- Rectification
- Account
- The appointment of a receiver.
- Restitution

IS EQUITY STILL ADAPTABLE?

- *Re Diplock* [1948] Ch 465, Lord Greene:
 - *"A claim in equity must be shown to have an ancestry founded in history and in the practice and precedents of the court administering equity jurisdiction. It is not sufficient that because we think that the justice of the present case requires it, we should invent such a jurisdiction for the first time."*
- *Re Ballet* [1880] 13 Ch D 696, Jessel MR:
 - *"It must not be forgotten that the rules of equity are not, like the rules of the common law, supposed to have been established from time immemorial. It is perfectly well known that they have been established from time to time. The older precedents in equity are of very little value. The doctrines are progressive, refined and improved, and if we want to know what the rules of equity are, we must look, of course, rather to the more modern than the more ancient cases."*
- *Western Fish Products v Penwith BC* [1981] 2 All ER 204; *Cowcher v Cowcher* [1972] 1 WLR 425
- *Eves v Eves* [1975] 1 WLR 1338, Lord Denning MR:
 - *"Equity is not past the age of childbearing. One of her latest progeny is a constructive trust of a new model. Lord Diplock brought it into the world and we have nourished it."*
- Interim injunctions were developed to offer freezing injunctions and search orders

LIMITATIONS OF LEGAL OWNERSHIP

- Caleb is a wealthy business man
- He owns significant real and personal property
- He can do what he likes with his property (within law) enjoy it, destroy, sell it or give it away
- He has been diagnosed with a terminal illness and wants to make sure his 12-year old daughter Alice is provided for
- He wants Alice to benefit from a house
- Alice can't legally own a house as a minor
- He transfers the property to Ben and supplies Ben with the deeds. He tells Ben to look after the house, make sure any income (e.g from rent) goes to Alice, and that the house is given to Alice when she turns 18.
- Ben does not intend to do this. As legal owner he has other ideas of investing the property for his benefit, leaving Alice destitute.
- In law he can do this as the legal owner. Should he be allowed to?

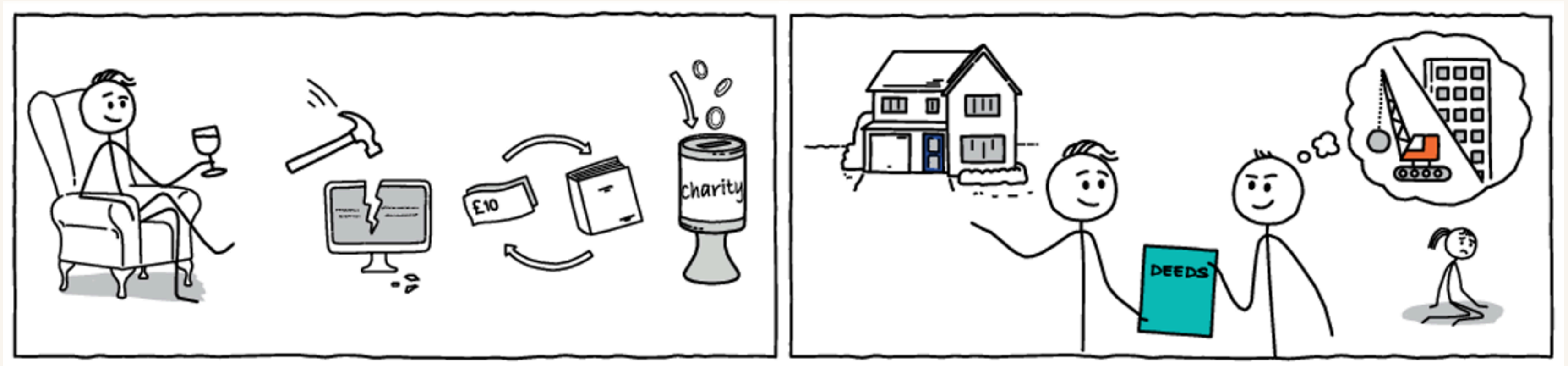


THE TRUST AS A SOLUTION

- Limitations on who can legally own property or land
- But should the benefit of property be limited to those who can (or do) legally own it?
- The trust is an equitable mechanism created to enable others to benefit from property
- Traces back to medieval England and Wales
- Any type of property can be the subject of the trust, but there are specific requirements for setting up a valid trust
- Unique device in E&W property law (Maitland, 1909, p.23; Holdsworth, 1948, p.418)
- Debate that similarity with the concept of the *Waqf* in islamic law

the trust permits a division in the ownership of the trust property between a trustee and a beneficiary so that the trustee is compelled to act entirely in the best interests of the beneficiary in relation to the management of whatever property is held on trust.
(Hudson, 2015, p. 45)

SOLVING LEGAL PROBLEMS



REAL AND NOMINAL OWNER

Trustee: Legal (Nominal) Owner

- Looks like outright owner of property – legal title
- Has control of the property BUT
- Equity forces the trustee to control property for the benefit of the equitable owner

Note: This slide describes situations where the legal and beneficial ownership is split. It is entirely possible that one party is the legal and equitable owner, in which case there is no division between legal and equitable ownership (and no trust)

Beneficiary: Equitable (Real) Owner

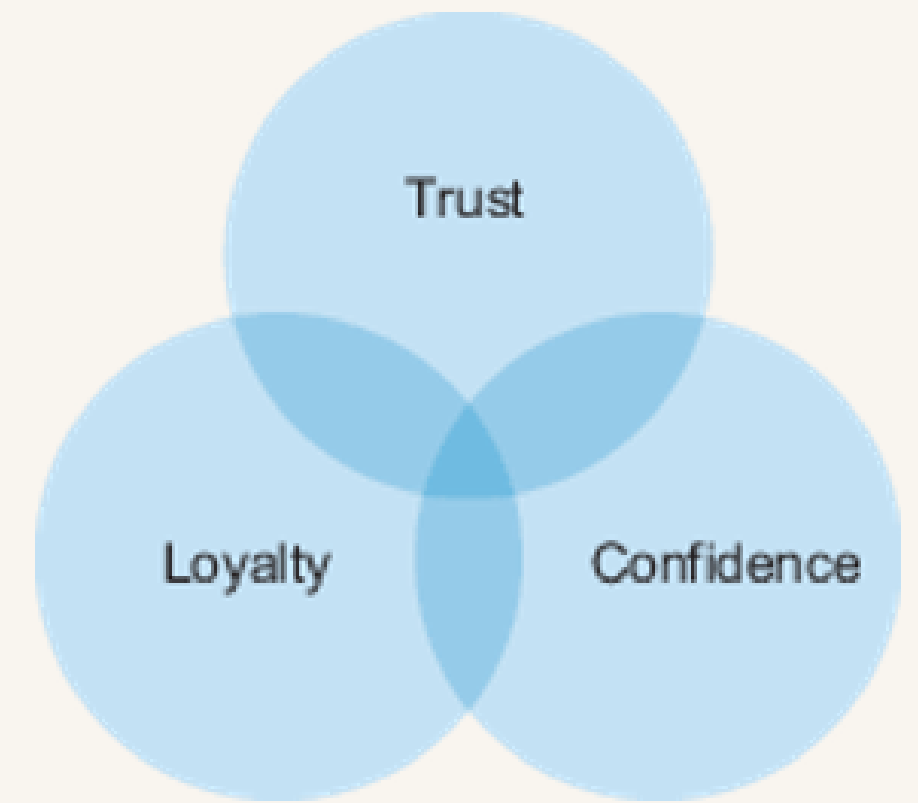
- Name does not appear on legal title
- Has no control of the property BUT
- Has equitable title: Identifies beneficiary as entitled to the benefit of the property
- THEREFORE: Equitable owner is a beneficiary (aka cestui que trust)
- Beneficiary has enforceable rights against trustee, their successors and third parties

NATURE OF TRUST RELATIONSHIPS

- Trust can be created in different ways:
 - **Express trusts:** deliberately created
 - **Implied trusts:** created by operation of law
- Enforceability relies on notice:
 - Actual notice (knew)
 - Constructive notice (should have known)
 - Implied (Agency, imputed, or implied)
- Can be multiple trustees over the same property (or collection of property) – desirable
- Can be multiple beneficiaries for the same property
- Beneficiary can enforce but not instruct – ***Re Brockbank* [1948] Ch 206**
- Beneficiaries can end the trust if all agree and competent ***Saunders v Vautier* (1841) 4 Beav 115**

FIDUCIARIES AND TRUST ENFORCEMENT

- Trustee duty towards beneficiary often described as fiduciary
- Difficult concept to define (abstract), but embraces concepts such as trust, loyalty and confidence – three interlinked concepts
- Lloyds Bank Ltd v Bundy [1975] QB 326 (CA) 341:
 - *It is neither feasible nor desirable to attempt closely to define the relationship, or its characteristics, or the demarcation line showing the exact transition point where a relationship that does not entail that duty passes into one that does.*



Fiduciary knot

(Hudson, 2015)

SOCIAL AND CULTURAL CONTEXT

- 1600–1800 trusts mostly used in family settlements, and continue to do so today.
- Historically used to preserve and transmit wealth between family members (and generations)
- Also protect family property from irresponsible disposal – e.g. young heirs
- Economic changes – developments of new modern forms of trusts – industry, trade, stocks and shares – new forms of investment beyond historic land – increasing use of investment trusts
- Trust can be used as a vehicle for holding shares
- Trusts continued to develop in 20th century – trusts for purpose of revenue: e.g. pension trusts for retirement
- Freezing injunctions and search orders protecting litigants in civil cases
- By 2000 trusts also used in fraud cases
- Trusts are inherently adaptable, and able to respond to the needs of the economy as they change

The English law of Trusts was invented by English barristers and developed by the courts to avoid feudal taxes and to protect property for the benefit of widows and infants. Settlements ensured that primogeniture preserved capital; settlement trustees enforced against eldest sons obligations to maintain widows, educate younger sons and provide financial inducements for the marriage of daughters. Eldest sons became squires, younger sons became clerics or administrators and daughters provided the next generation. The whole system of trusts depended on trust and on the incorruptibility of trustees.

(Lord Templeman, 2002, p. xi)

TRUSTS IN MODERN SOCIETY

- Trusts make it possible for multiple parties to have simultaneous interests in same property
- Trusts can therefore give rise to commercial interests, benefiting society
- Trusts have also been used for purpose of tax avoidance – significantly reduced capacity
- International trusts important in wealth management
- Panama Papers / Paradise papers – uncovered billions of pounds held in overseas trusts – high net worth individuals and corporations use to avoid (and in some cases illegally evade) tax
- Trusts do therefore give opportunity for exploitation



UNIT 1: LEARNING OUTCOMES

- Understand how to succeed in your study of Equity and Trusts
- Understand how to approach single best answer type questions
- Define key property law terms
- Summarise the nature of equitable relationships
- Explain the development and place of equity in modern society
- Differentiate between equitable and legal ownership

RECAP

UNIT 1: READING MATERIALS

- You can draw on the following chapters of your textbooks to deepen your understanding of the topics discussed in this unit.
- Watt (2023) chapter 1
- Ramjohn and Bray (2024), chapter 1 and 2
- Barr and Pearce (2022) chapter 1 and 2

EXPLORING FURTHER

- You may find the following sources of interest to you in exploring the topics discussed in this unit further. You are not expected to read these to pass the module, they are provided should you wish to explore the topics further.
- Abdullah, M. (2019) 'Waqf and trust: the nature, structures and socio-economic impacts', in *Journal of Islamic Accounting and Business Research*, 10(4), pp. 512-527.
- Bailey-Harris, R (1997) 'Equity still childbearing in Australia?' *Law Quarterly Review*, Vol. 113(Apr), pp.227-232
- Frankel, T. (1983) 'Fiduciary law', *California Law Review*, 71(3), pp. 795-836.
- Gaudiosi (1988) 'The influence of the Islamic law of waqf on the development of the trust in England: the case of Merton College', *University of Pennsylvania Law Review*, 136(4), pp. 1231-1261.
- Geztler, J. (2014) 'Morice v Bishop of Durham (1805)', in Mitchell, C. and Mitchell, P. (eds) *Landmark cases in equity*. Oxford: Hart Publishing, pp. 157-203.
- Harding, M. (2013) 'Trust and fiduciary law', *Oxford Journal of Legal Studies*, (33)1, pp. 81-102.
- Herian, R. (2021) *Capitalism and the equity fetish: desire, property, justice*. New York, NY: Palgrave Macmillan.
- Holdsworth, W. (1945) *A history of English law*, vol. IV. 3rd edn. London: Methuen & Co. Ltd/Sweet and Maxwell.
- Maitland, F.W. (2011) *Equity: a course of lectures*. Rev. edn. Cambridge: Cambridge University Press.
- Mason, A (1994) 'The place of equity and equitable remedies in contemporary society' *Law Quarterly Review*, Vol. 111, p238
- Worthington, S. (2006) *Equity*. 2nd edn. Oxford: Oxford University Press.