Detailed contents

	Preface	V
	Glossary	xix
	Table of cases	xxiii
	Table of legislation	lxxix
	RT I	
	ndamentals of equity and trusts	1
1	The nature of equity	3
	1.1 The foundations of equity 4	
	1.2 The birth of equity 12	
	1.3 Understanding equity 181.4 The core equitable principles 20	
	1.4 The core equitable principles 201.5 Placing equity in context 29	
	1.5 Flacing equity in comess 25	
2	The nature of the trust	35
	2.1 The birth of the trust 36	
	2.2 The definition of a trust 39	
	2.3 Express trusts: the magic triangle 43	
	2.4 Fundamentals of the law of trusts 49	
	2.5 The benefits and uses of trusts 52	
	2.6 The distinction between trusts and other legal concepts 56	
	2.7 Sociological issues in equity and trusts 59	
PA	RT 2	
Ex	press trusts	69
3	Certainty in the creation of express trusts	71
	3.1 Introduction 72	
	3.2 The three certainties 76	
	3.3 Certainty of intention 77	
	3.4 Certainty of subject matter 97	
	3.5 Certainty of objects 121	

4	The	rights of beneficiaries and the beneficiary principle	153
	4.1 4.2	The nature of the rights of beneficiaries in the trust fund 155 The beneficiary principle 168	
	4.3	Unincorporated associations 190	
5	The	constitution of trusts	209
	5.1	Specific formalities in the creation of trusts 211	
	5.2	The proper constitution of a trust 214	
	5.3	Exceptions to the rules of formality 219	
	5.4	Improperly constituted trusts and imperfect gifts 223	
	5.5	Perfecting imperfect gifts 235	
	5.6	Covenants and promises to create a settlement over	
	5 7	after-acquired property 239 Dimensition of acquireble interests 250	
	5.7	Disposition of equitable interests 250	
6	Secr	et trusts	262
	6.1	Introduction 263	
	6.2	Fully secret trusts 269	
	6.3	Half-secret trusts 274	
	6.4	General principles 276	
	6.5	The probate doctrine of incorporation by reference 281	
	6.6	Categorising the secret trust 281	
7	Essa	y – The nature of express trusts	287
	7.1	The paradox at the heart of express trusts 287	
	7.2	The thesis behind this essay 288	
	7.3	Analysing the key cases 290	
	7.4	Conclusion: is there a paradox at the heart of trusts law? 294	
	RT 3		207
Ad	mini	stration of trusts	297
8	The	duties of trustees	299
	8.1	Introduction 301	
	8.2	The office of trustee 303	
	8.3	The general duties of trustees 313	
	8.4	The trustees' duty to provide information and to account to the	
		beneficiaries 350	
	8.5	Limitation of the trustees' duties 365	
	8.6	Control of the trustees 378	
9	The	investment of trusts	383
	9.1	The use of trusts as investment vehicles 385	
	9.2	Introduction to the principles of the Trustee Act 2000 386	

	9.3	The general power of investment 388	
	9.4	The trustees' standard of care when making investments 390 The process of making investment decisions 393	
	9.5	Case law on the trustees' duties in the investment of trusts 398	
	9.6	Express investment powers 405	
	9.7	Trustees as authorised persons under the Financial Services	
	9.8	and Markets Act 2000 406	
	9.9	Breach of trust and investment 410	
	9.10	of investment 413	
		of investment 413	
10	The p	owers of trustees and the variation of trusts	417
	10.1	General powers of trustees 418	
	10.2	Powers of maintenance and advancement 419	
	10.3	Delegation of trustees' duties 425	
	10.4	Variation of trusts 429	
	10.5	Limits on the exercise of powers 441	
PΑ	RT 4		
Tr	usts ii	mplied by law	443
-			
11	Resu	Iting trusts	445
	11.1	Introduction: what is a resulting trust? 446	
	11.2	15.4	
	11.3	Quistclose trusts 458	
	11.4	Presumed resulting trusts 461	
			487
12	Cons	tructive trusts	107
	12.1	Introduction 489	
	12.2	Constructive trusts at large 493	
	12.3	Profits from unlawful acts 499	
	12.4		
	12.5	Unconscionable dealings with property 558	
	12.6	Constructive trusts and agreements relating to property 567	
	12.7	Constructive trusts and the Wills Act 572	
		Trustees de son tort and intermeddlers as constructive trustees 578	
		Personal liability to account as a constructive trustee 579	
	12.10	1) Issues with constructive trusts 580	
1.1	T	ttable estemnel	583
13	Equi	itable estoppel	
	13.1	Introduction 584	
		A single doctrine of estoppel? 585	
	13.3		
	13.4	11	
	13.5	Promissory estoppel 614	

14	Essay – Fiduciaries	616
	14.1 Introduction 616 14.2 Fiduciary 616	
	14.3 The development of new categories 622	
	RT 5 uity, trusts and the home	627
15	Trusts of homes	629
	 15.1 Introduction 632 15.2 Express trusts of homes 639 15.3 Resulting trusts and the emergence of common intention 640 15.4 Constructive trusts: acquisition of equitable interests by conduct or agreement 645 15.5 The balance sheet approach 654 	
	 15.6 The family assets approach 662 15.7 The unconscionability approach 666 15.8 Proprietary estoppel 675 15.9 The principles in Stack v Dowden and Jones v Kernott 681 15.10 Problems with trusts of homes 695 	
16	Trusts of land	703
	16.1 Introduction 703 16.2 Trusts of land 703	
17	Essay – Family law, human rights law and equity	723
	17.1 Introduction 723 17.2 Human rights and equity 723 17.3 Principles of human rights law 724 17.4 Family law and the law of the home 726 17.5 Social justice and rights in the home 731	
	RT 6 each of trust and related equitable claims	737
18	Breach of trust	739
	18.1 Introduction 740 18.2 The basis of liability for breach of trust 742 18.3 Remedies for breach of trust 750 18.4 Defences to liability for breach of trust 763 18.5 Allocating claims 768 18.6 Breach of trust after AIB v Redler 769	

19	Strang	gers: dishonest assistance and unconscionable receipt	770
	19.1	Introduction 772	
		Dishonest assistance 778	
		Unconscionable receipt 818	
		Defences 836	
	19.5	The particular question of liability to account in corporate contexts 837	
	19.6	The personal remedy in Re Diplock 844	
	19.0	The personal remeay in the 2-pro-	
20	Traci	ng	845
	20.1	Tracing: understanding the nature of the claim 847	
	20.2	Common law tracing 854	
	20.3		
		Equitable tracing into mixed funds 863	
		Loss of the right to trace 875	
	20.6		
	20.7	Defences 890	
DA	RT 7		
		ercial uses of trusts	903
C	אווווופ	relations of those	
21	Com	mercial and international trusts law	905
	21.1		
	21.2	Equity and commerce 907	
22	Quist	close trusts	930
	22.1	Introduction 931	
	22.2	The fundamentals of loan contracts 931	
	22.3	The fundamentals of Quistclose trusts 932	
	22.4	Categorising the Quistclose trust 941	
	22.5	Commercial issues with Quistclose trusts 949	
PA	ART 8		
C	hariti	es	955
23	Chai	rities	957
	23.1	Introduction 959	
	23.2	The special features of charities 968	
	23.3	Factors which may negate a finding of charitable status: the need for	
		a charitable intention, but no political purposes 971	
	23.4	Relief and prevention of poverty 976	
	23.5	Trusts for the advancement of education 985	

Charities Act 2011 1007 23.9 Cy-près doctrine 1016 23.10 The regulation of charities 1024 23.11 A brief survey of the public benefit test in the le	aw of charities 1025
PART 9	
Injunctions	1027
24 Injunctions and confidences	1029
24.1 Nature of injunctions 1031 24.2 Classification of injunctions 1036 24.3 Interim injunctions 1037 24.4 Freezing injunctions 1039 24.5 Search orders 1043 24.6 Interaction with the common law 1044 24.7 The equitable doctrine of confidence 1046 24.8 Super-injunctions and the tort of misuse of pri	ivate information 1059
PART 10 Theoretical questions in equity and trusts	1077
25 Essay - Restitution of unjust enrichment	1079
 25.1 Introduction 1080 25.2 Competing models of unjust enrichment 1083 25.3 A chronology of unjust enrichment thinking 1 25.4 The component parts of 'restitution of unjust enrichment 	1084
26 Essay – The concept of conscience in equity	1091
 26.1 Introduction 1091 26.2 The meaning of 'conscience' 1096 26.3 Conscience in modern equity 1103 	
27 Essay – Themes in equity	1107
27.1 Introduction 1107 27.2 Conscience-based equity at work 1111 27.3 From chaos to equity 1117	
Bibliography Index	1121 1136