Contents

	Prefa	ce	·V
	U	e to the companion website	ix
	Gloss	ary	xix
	Table	of cases	xxi
	Table	of legislation	1xv
PA	RTI		
Fu	ndan	nentals of equity and trusts	
1	Intro	luction – the nature of equity	3
	1.1	The foundations of equity 3	
	1.2	The birth of equity 14	
	1.3	Understanding equity 21	
	1.4	The core equitable principles 25	
	1.5	Placing equity in context 33	
2	Unde	rstanding the trust	41
	2.1	The birth of the trust 41	
	2.2	The definition of a trust 43	
	2.3	Express trusts – the magic triangle 47	
	2.4	Fundamentals of the law of trusts 58	
	2.5	The benefits and uses of trusts 62	
	2.6	The distinction between trusts and other legal concepts 67	
PA	RT 2		
Ex	press	trusts	71
3	Certa	inty in the creation of express trusts	73
	3.1	Introduction 74	
	3.2	The three certainties 77	
	3.3	Certainty of intention 77	

3711	Contents
X11	COLLEGIS
ANTI	COLLEGIACO

a la companya di salah di sala

		Certainty of subject matter 96 Certainty of objects 115	
4	The ri	ghts of beneficiaries and the beneficiary principle	150
	4.1	The nature of the rights of beneficiaries in the trust fund 151	
	4.2	The beneficiary principle 167	
	4.3	Unincorporated associations 189	
5	Forma	alities in the creation of express trusts	210
	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 222	
	5.5	Perfecting imperfect gifts 233	
	5.6	Covenants and promises to create a settlement over after-acquired property 237	
	5.7	Disposition of equitable interests 249	
6	Secret	trusts	268
	6.1	Introduction 268	
	6.2	Fully secret trusts 274	
	6.3	Half-secret trusts 279	
	6.4	General principles 282	
	6.5	The probate doctrine of incorporation by reference 287	
	6.6	Categorising the secret trust 288	
7	Essay	- The nature of express trusts	295
	7.1	Themes in the nature of express trusts 295	
PAI	RT 3		
		stration of trusts	305
8	The di	uties of trustees	307
	8 1	Introduction 308	
		The office of trustee 309	
	8.3	The general duties of trustees 320	
		The general duties of trustees 320 The trustees' duty to provide information and to account to	
	0.7	the beneficiaries 355	
	8 5	Limitation of the trustees' duties 370	
		Control of the trustees 381	
	0.0	Control of the trustees 301	

.

9	The in	vestment of trusts	387
	9.1	The use of trusts as investment vehicles 387	
	9.2	Introduction to the principles of the Trustee Act 2000 389	
	9.3	The general power of investment 394	
	9.4	The trustees' standard of care when making investments 395	*
	9.5	The process of making investment decisions 399	
	9.6	Case law on the trustees' duties in the investment of trusts 405	
	9.7	Express investment powers 414	
	9.8	Trustees as authorised persons under the Financial Services and Markets Act 2000 415	2
	9.9	Breach of trust and investment 421	
	9.10	The selection and management of particular types of investment 426	
10	The po	owers of trustees and the variation of trusts	430
	10.1	General powers of trustees 430	
	10.2	Powers of maintenance and advancement 431	
	10.3	Delegation of trustees' duties 438	
		Variation of trusts 442	
		Limits on the exercise of powers 450	
BA			
	RT 4		4 - 1
Ir	usts II	mplied by law	451
11	Result	ing trusts	453
	11.1	Introduction – what is a resulting trust? 453	
	11.2	Automatic resulting trusts 462	
	11.3	Quistclose trusts 468	
	11.4	Presumed resulting trusts 471	
	11.5	Mistake and resulting trust 493	
12	Const	ructive trusts	497
	12.1	Introduction 498	
		Constructive trusts at large 503	
	12.3	Unconscionable dealings with property 508	
		Profits from unlawful acts 517	
		Fiduciary making unauthorised profits 535	
		Constructive trusts and agreements relating to property 564	
		Voluntary assumption of liability 572	
	12.8	Trustees de son tort and intermeddlers as constructive trustees 575	
	12.9	Personal liability to account as a constructive trustee 576	
		Issues with constructive trusts 579	
	The state of the s		

13	Bequitable estoppel		
	13.1	Introduction 584	
	13.2	A single doctrine of estoppel? 585	
	13.3	Proprietary estoppel 588	
	13.4	Estoppel licences: from contract to property rights 611	
	13.5	Promissory estoppel 612	
	13.6	Other forms of estoppel in commercial contexts 613	
	13.7	In conclusion 615	
14	Essay	- Thinking about the law on fiduciaries	616
	14.1	The role of the fiduciary 616	
	14.2	A question of definition 616	
	14.3	Established categories of fiduciary relationship 617	
	14.4	The advantages of remedies based on fiduciary responsibility 620	
	14.5	Scope for the development of new categories? 622	
	14.6	Conclusions – the traditional context 628	
PΔ	RT 5		
		rusts and the home	629
15	Trusts	of homes	631
	15.1	Introduction 632	
	15.2	Express trusts of homes 638	
	15.3	Resulting trusts and the emergence of common intention 639	
	15.4	Constructive trusts – acquisition of equitable interests by conduct or agreement 646	
	15.5	The balance sheet approach 662	
	15.6	The family assets approach 671	
		Proprietary estoppel 676	
	15.8	The unconscionability approach 682	
	15.9	The limited effect of Stack v Dowden 697	
	15.10	Different approaches elsewhere in the Commonwealth 706	
		Different approaches elsewhere in the Commonwealth 706 Trends in the academic discussion of trusts of homes 709	
16	15.11		718
16	15.11 Trusts	Trends in the academic discussion of trusts of homes 709	718
16	15.11 Trusts 16.1	Trends in the academic discussion of trusts of homes 709 of land	718

17	Essay	- Family law, human rights law and equity	745
	17.1	Introduction 745	
	17.2	Human rights law and equity 746	
	17.3	Principles of human rights law 751	
	17.4	Family law and the law of the home 755	
	17.5	Social justice and rights in the home 763	
PAI	RT 6		
Br	each	of trust and related equitable claims	771
18	Breac	h of trust	773
	18.1	Introduction 773	
	18.2	The basis of liability for breach of trust 775	
	18.3	Remedies for breach of trust 783	
	18.4	Defences to liability for breach of trust 799	
	18.5	Allocating claims 804	
19	Traci	ng	806
	19.1	Tracing – understanding the nature of the claim 807	
	19.2	Common law tracing 814	
	19.3	Equitable tracing 818	
	19.4	Equitable tracing into mixed funds 822	
	19.5	Loss of the right to trace 835	
	19.6	Claiming: trusts and remedies 839	
	19.7	Defences 853	
	19.8	Issues with tracing 866	
20	The li	ability of strangers to account for involvement in a breach of trust	870
	20.1	Introduction 871	
	20.2	Dishonest assistance 877	
	20.3	Knowing receipt 908	
	20.4	Defences 924	
	20.5	The particular question of liability to account in corporate contexts 924	
	20.6	The personal remedy in Re Diplock 930	
	20.6	Questions as to the nature of the liability of strangers 931	

PAI	RT 7			
Commercial uses of trusts				
21	Commerce, international trusts law and dealing with property		937	
	21.1	Introduction 937		
	21.2	Equity and commerce 938		
22	Quistc	lose trusts, financial transactions and retention of title	960	
	22.1	Introduction 960		
	22.2	Retention of title and pledge 961		
		The fundamentals of Quistclose trusts 963		
	22.4	Categorising the Quistclose trust 967		
23	Mortg	ages, charges and taking security	990	
PAI	RT 8			
W	elfare	uses of trusts	991	
24	Occup	ational pension funds	993	
25	Charit	ies	994	
	25 1	Introduction 995		
		The special features of charities 1003		
		Factors which may negate a finding of charitable status: the		
		need for a charitable intention, but no political purposes 1007		
	25.4	Relief of poverty 1012		
	25.5	Trusts for the advancement of education 1021		
	25.6	Trusts for religious purposes 1029		
		Other purposes beneficial to the community 1036		
	25.8	The new categories of charitable purpose under the Charities Act 2006 1041		
	25.9	Cy-près doctrine 1051		
	25.10	The regulation of charities 1059		
	25.11	A brief survey of the public benefit test in the law of charities 1060		

PAF	RT 9				
Eq	Equitable remedies				
26	Specifi	c performance	1065		
	26.1	The nature of specific performance 1065			
		Contracts where specific performance is available 1067			
		Contracts where specific performance is unavailable 1068			
		Defences to a claim for specific performance 1073			
2.7	Injunct	tions	1078		
	•				
		Nature of injunctions 1079			
		Classification of injunctions 1083			
		Interim injunctions 1084			
		Freezing injunctions 1087			
		Search orders 1091			
	27.6	Interaction with the common law 1092			
28	Resciss	sion and rectification	1095		
	28 1	Introduction 1095			
		Rescission 1095			
	20.5	Rectification 1104			
29	Doctri	ne of notice and undue influence	1108		
	29.1	The doctrine of notice 1109			
		Undue influence 1111			
	29.3	Misrepresentation and equitable wrongs 1117			
	29.4	Setting mortgages aside – the principle in Barclays Bank v O'Brien 1118			
30	Miscel	laneous equitable remedies	1138		
	30.1	Introduction 1138			
	30.2	Account 1138			
	30.3	Specific restitution 1140			
	30.4	Equitable compensation 1141			
	30.5	Equitable damages 1142			
	30.6	Compound interest 1143			
		Subrogation 1144			
		Receivers 1148			
	30.9	Delivery and cancellation of documents 1148			
		Equitable doctrines modifying existing rights 1149			
		Mere equities 1150			
	30.12	Mutual benefit and burden 1151			

	RT 10		
Th	eore	tical questions relating to equity and trusts	1153
31	The n	ature of property in equity and trusts	1155
	31.1 31.2 31.3	Questions of property as they apply to trusts 1155 Theories of property in law 1159 The distinction between equity and restitution of unjust enrichment 1168	
32	Equit	y, chaos and social complexity	1170
	32.3 32.4 32.5 32.6	Mapping the social role of equity 1170 The legal notion of conscience 1172 Social complexity 1177 Equity and chaos 1179 Equity, culture and politics 1181 The goals of equity 1185 In conclusion 1186	
	Biblio Index	graphy	1189 1203