

# EQUITY AND TRUSTS

ENGLISH LAW AND TERMINOLOGY

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# WHAT IS "EQUITY"?



# DEFINITION

- “Justice administered according to fairness (as contrasted with the strictly formulated rules of Common Law)”
- Equity is applied only where the legal remedies are inadequate

# HISTORY OF EQUITY - WRITS

- Many years ago, it was difficult for an ordinary English citizen to start a lawsuit
- Why? Because the plaintiff would need to first obtain a *writ*
- A *writ* was a formal written order issued by a court
- *Writs* were difficult for plaintiffs to obtain; the plaintiff had to include specific elements in support of the writ, and this was not always possible
- Furthermore, a courts could only provide the plaintiff *monetary relief*

# HISTORY OF EQUITY – COURTS OF CHANCERY (EQUITY)

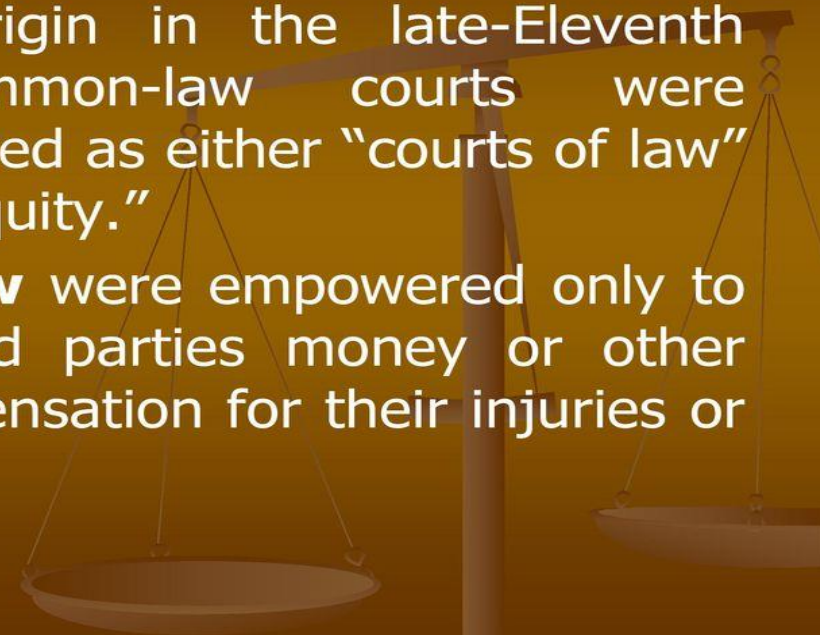
- Since *writs* were difficult to obtain, and the remedies courts offered were only monetary, the King allowed plaintiffs to seek justice by an alternative route: by directly petitioning the King (or the Chancellor, often a bishop)
- This led to the development of the *Court of Chancery*, which was concerned primarily with fairness

# CONTRIBUTIONS OF THE COURT OF CHANCERY

- ***Subpoenaing*** witness
- Requiring ***testimony under oath***
- Issuing ***injunctions***
- Using ***discretion*** in creating remedies
- Foregoing the use of ***juries***

# CONTRAST: COURT OF CHANCERY AND COURTS OF LAW

## LAW VS. EQUITY

- From their origin in the late-Eleventh Century, common-law courts were typically classified as either “courts of law” or “courts of equity.”
  - **Courts of Law** were empowered only to award wronged parties money or other valuable compensation for their injuries or other losses.
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# WHAT PRINCIPLES GUIDED THE JUDGES OF EQUITY COURTS?

Before a judge would hear a case in Equity, the plaintiff had to comply with “Equitable Maxims”

**Definition:** a set of general principles or rules which govern the way in which equity operates.



#1

***Whoever seeks equity must do equity***

(Anyone who wishes to be treated fairly  
must treat others fairly)

#2

***Where there is equal equity, the law must prevail***

(The law will determine the outcome of a dispute in which the merits/claims of both sides are equal)

# #3

***One seeking the aid of an equity court must come to that court with clean hands***

(The plaintiff must have acted fairly and honestly)

## #4

***Equity will not suffer a wrong to be without a remedy***

(Equitable relief will be awarded when there is a right to relief and there is not adequate remedy at law)

#5

***Equity regards substance rather than form***

(Equity is more concerned with fairness and justice than with legal technicalities and strict rules)

#6

***Equity aids the vigilant, not those who rest on their rights***

(Equity will not help those who neglect their rights for an unreasonable length of time – “Doctrine of Laches”)

#7

***Equity acts in personam***

(As long as the defendant is within the jurisdiction of the court, he/she must comply with the court's decree—even if the subject matter of the dispute is outside the court's jurisdiction)

# EXAMPLES OF SITUATIONS WHERE EQUITY MIGHT APPLY

1. Fraud
2. Undue influence
3. Breach of confidence/trust [A duty of *confidence* arises when confidential information comes to the knowledge of a person in circumstances in which it would be unfair if it were disclosed to others]
4. Contract breach where one party refuses to perform
5. Trespass
6. Violations of legal rights (privacy)



## (CONTINUED)

6. Interpretation of wills
7. Appointment of receivers (bankruptcy, dissolution)
8. Company problems
9. Partnership problems
10. Property law matters (possession)

# EQUITABLE REMEDIES

What kind of relief will the judge order at the end of trial?

# #1 – SPECIFIC PERFORMANCE

Definition:

An equitable remedy in the law of contract, whereby a court issues an order requiring a party to perform a specific act, such to complete performance of the contract. It is typically available in the sale of land.

## #2 - INJUNCTIONS

Definition:

An equitable remedy in the form of a special court order that compels a party to do or refrain from specific acts

A party that fails to comply with an *injunction* faces criminal or civil penalties, including possible monetary sanctions and even imprisonment.

# TYPES OF INJUNCTIONS

1. Prohibitory (don't do it)
2. Mandatory (undo the damage you have already done)
3. Interim (don't do it until we decide which party should prevail)
4. Final (you lost, sucker. Don't do it. Ever.)

## (CONTINUED)

5. Without Notice (okay, we will grant the injunction immediately since no one knows the defendant's whereabouts)
6. "Freezing" (defendant, we're freezing your assets since it's likely you will try to hide them)
7. Search orders (okay, Plaintiff, you're free to search the defendant's house for your mother's will)

## #3 - RESCISSION

### Definition:

In contract *law*, *rescission* is an equitable remedy which allows a contractual party to cancel the contract

*Rescission* is the unwinding of a transaction. This is done to bring the parties, as far as possible, back to the position in which they were before they entered into a contract (the *status quo ante*).

# #4 – RECTIFICATION/REFORMATION

## Definition:

An equitable remedy whereby a court orders a change in a written document to reflect what it ought to have said in the first place (specifically, the parties' original intent)



# EVOLUTION OF COURTS OF EQUITY

- Eventually, law and equity were combined
- Thereafter, English courts could hear either type of case

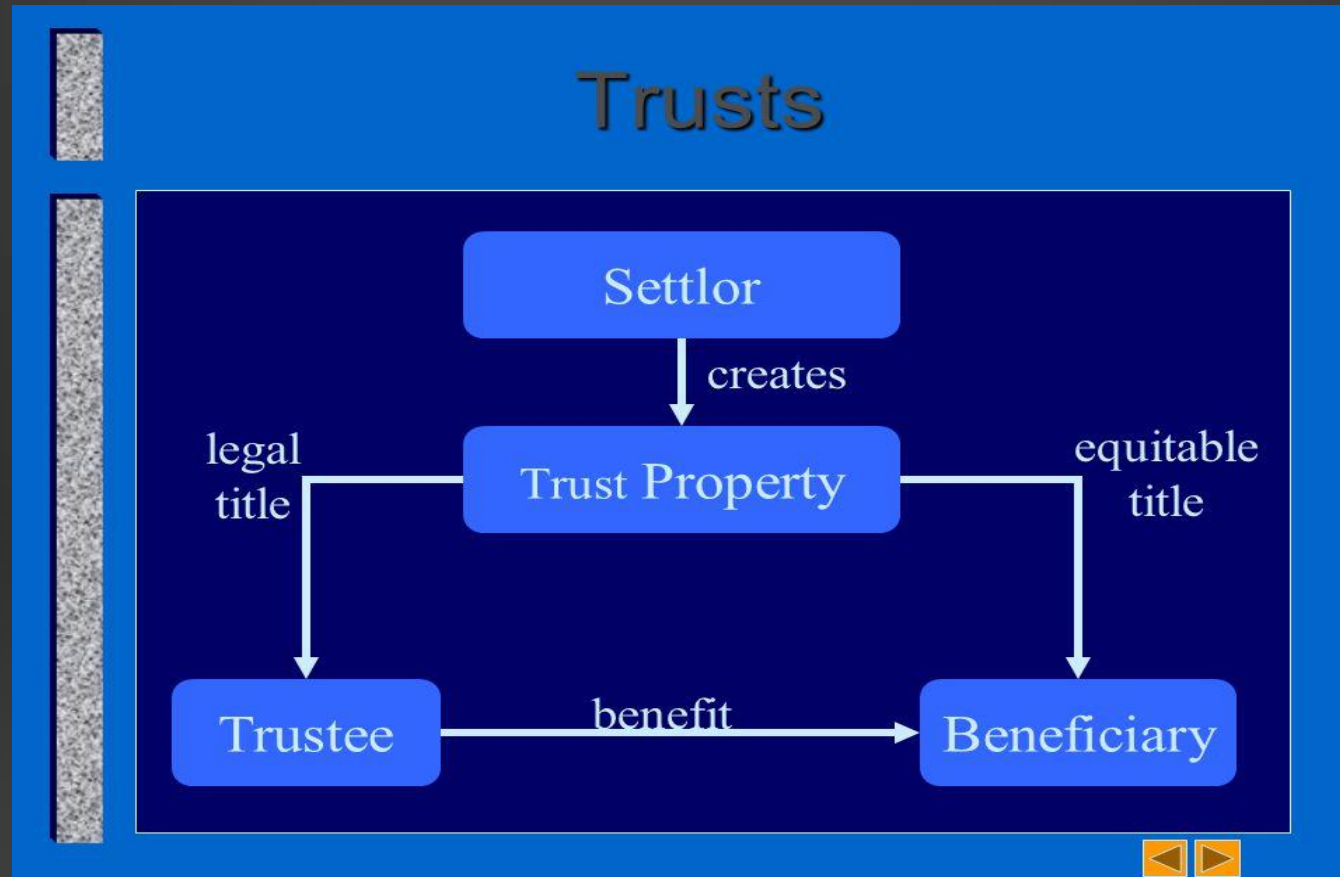
# TRUSTS



# WHAT IS A TRUST?

A legal arrangement by which property is transferred from a *settlor* (owner of the property) to a *trustee* (guardian of the property) with the intention the property will be held and managed by the trustee for the benefit of a *beneficiary* (third party)

# DIAGRAM



# PARTIES TO A TRUST

1. Settlor – creates the trust
2. Trustee – holds legal title to the trust property
3. Beneficiary – holds equitable title to the property, and presumably will benefit from it

# “LEGAL” AND “EQUITABLE” TITLE

While a legal title focuses on the *duties* of the property owner, equitable title refers to the *enjoyment* of the property.

**Equitable title** is the benefits the buyer will get to use and enjoy when he or she becomes the **legal** owner.

**Equitable ownership** is not “true ownership.”

# FIDUCIARY DUTY

A Trustee has a “Fiduciary Duty” to the Beneficiary

Definition:

A legal obligation of one party to **act** in the best interest of another. The obligated party is typically a **fiduciary**--that is, someone entrusted with the care of money or property

# THREE CERTAINTIES

For a trust to exist, three conditions (“certainties”) must be present:

1. Intention (settlor must have clearly intended to create a trust)
2. Subject matter (trust property must be adequately identified)
3. Objects (beneficiary must be adequately identified)



# TYPES OF TRUSTS



## #1 – PRIVATE EXPRESS TRUST

“I give in trust to Susie, my granddaughter, 50,000 pounds to pay for her university education after she completes her baccalaureate.”

## #2 – CHARITABLE TRUST

“I give in trust to Oxford University 20 million pounds,  
to fund scholarships for students from India.”

## #3 – CONSTRUCTIVE TRUST

“We, the Court create a trust for any profits derived by Jack the Ripper in publishing his memoirs, *Cut ‘Em and Gut ‘Em*. The beneficiaries of this trust will be the families of his victims.”

## #4 – RESULTING TRUST

“We, the Court, hold that since the settlor failed to name a beneficiary in the trust document, the trustee hereinafter holds the property in trust for the settlor.”

# TRACING

If the trustee absconds with trust property, the beneficiary can trace the property through all the changes in its nature and demand title to its most recent transformation (house, yacht, securities, etc.)

Title remains with the beneficiary

# HYPOTHETICAL #1

Nigel, a lifelong Freddie Mercury fan, learned that Mercury's boyhood home was for sale. The seller agreed to convey the property to Nigel for 500,000 pounds, and the parties signed a real estate contract. Two days before the closing, the seller revoked the contract in order to donate the structure to the city of London for a Freddie Mercury museum. Nigel is furious.

## HYPOTHETICAL #2

Emma, a prominent British TV actress, has been followed in the streets for weeks by a homeless man named Rupert. He has neither touched her, spoken to her, nor harmed her in any way. Still, she finds him annoying due to his lack of personal hygiene, and complains, *I can always smell him before I see him!*



## HYPOTHETICAL #3

For 2 million pounds, Sean sells Guinevere a painting by the famous English painter, Lucien Freud. Guinevere is delighted with the painting and hangs it above her living room sofa. After a few weeks, however, she notices chips of paint falling from the artwork, exposing, underneath, an entirely different painting on black velvet depicting Donald Trump.

## HYPOTHETICAL #4

When Eustace died, he left a will in which he conveyed all of his property *to my favorite son, "J"*. *The other one doesn't deserve a bloody sixpence*. It turned out that Eustace had two sons, Jonathan and Richard. Richard had always been called "Jack" by his father.

# QUESTIONS?

