

简明法学案例丛书(影印版)

briefcase on EQUITY & TRUSTS

衡平法和信托法简明案例

(第二版)

(Second Edition)

加利·瓦特

Gary Watt



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本书导读

信托制度起源于中世纪英国的衡平法,因为当时英国普通法院不承认受益人依赖于受托人获得的权利,而衡平法院则总是通过对受托人施加衡平法上的义务来支持这种权利的。它是英美法系一个独特的制度,在大陆法系中几乎找不到一个与之相对应的制度。又由于信托制度是建立在双重所有权观念基础之上的,即受托人享有普通法上的所有权而受益人享有衡平法上的所有权,所以坚持一物一权主义的大陆法国家在接受和移植该制度的时候难免与英美法中该制度有所差异。对于学习信托法的人来说有必要参考一下英美法学者有关信托法的论著。本书就是这样一本案例教材,作者在理论和实务的基础上运用各种案例讲述了信托法的基本制度,这对于我们这些长期接受大陆法系理论教育的人来说的确是一种很新颖的教学方式。

本书既介绍了衡平法与信托法的历史沿革,也介绍了它们最近的一些最新发展。全书分为六个部分,第一部分主要是介绍衡平法和信托法;第二部分则叙述了明示信托的设立,该部分又分了8节,逐一介绍了设立明示信托行为能力与要式的要求,确定性的要求,赠与的完成与信托的设立,永久权与信托设立时的公共政策限制,目的信托,公益信托和特殊种类信托;第三部分探讨了明示信托变更的各种方式以及1958年信托变更法中对于变更的要求;第四部分则分析了受托人的地位和职责,同时也分析了类似于受托人的人的地位和义务,该部分又分6节,逐一介绍了受托人的职的任命,受托人的职的履行,受托人的义务,受托人投资的权利及义务,抚养与预付以及信托违约的抗辩与免除;第五部分则把重点放在拟制信托与回归信托之上,讲解了推定的回归信托,自动的回归信托,地产的拟制信托,拟制信托受托人的义务,陌生人作为拟制信托的受托人等许多内容;最后作者谈到了追及与衡平法上的救济,在讲到追及的时候既谈到了普通法上的追及,又谈到了衡平法上的追击,在讲衡平法上的救济的时候则讲到了衡平法上对于实际履行的救济和衡平法上的禁令。

本书作为介绍英国信托法律制度的基本读物,内容简明扼要,通俗易懂。作者理论联系实际,借助丰富翔实的案例,深入浅出地勾勒出了英国信托法的基本框架制度。这对于我们开展比较研究,理解和掌握英国美法系

相关法律知识,借鉴和学习英美法系相对成熟的法律制度是大有裨益的。

本书中文目录、法规一览表、术语及索引部分由武汉大学民商法博士研究生王茂祺翻译并整理,纰漏之处在所难免,希望广大读者多提宝贵意见。

译 者

2004年4月

Preface

In spite of its medieval origins, the trust concept boasts a multiplicity of modern uses. Accordingly, the aim of this book has been to focus upon a number of recent developments within the law of equity and trusts, while not neglecting their historical (mostly Victorian) background.

This book is divided into six parts. Part 1 is an introduction to equity and trusts. Part 2 considers the setting up of express trusts. Part 3 details the ways in which an express trust may be varied. Part 4 examines the role of trustees, and of fiduciaries whose positions are analogous to those of trustees. Part 5 looks at resulting and constructive trusts and Part 6 considers tracing and equitable remedies. Each part is further subdivided into chapters, which reflect headings found in larger textbooks and typical subject areas in modern law degrees. Each chapter contains subheadings within which the case summaries are arranged in chronological order, the most recent cases appearing last.

Although this book is primarily a collection of case summaries, it has been necessary to include extracts of certain crucial statutes. Where possible, these extracts have been included in paraphrased form, in which case they will appear in square brackets.

This edition has been fully updated to include the Trustee Act 2000 and a number of significant recent cases including *Foskett v McKeown*; *T Choithram International SA v Pagarani*; *Air Jamaica Ltd v Charlton*; and *Banner Homes Group plc v Luff Developments Ltd (No 1)*. Terminology has also been updated to reflect the changes introduced by the Civil Procedure Rules 1998. So, for example, 'plaintiff' becomes 'claimant' where appropriate.

The reader will also note that the text is interspersed with guidance notes and questions, with a view to prompting reflective thought upon the materials. A book of this size cannot, however, hope to cover everything that might be covered in a larger book. As to which, my personal favourites are Graham Moffat's *Trusts Law: Text and Materials* and Parker and Mellows' *The Modern Law of Trusts*.

I hope, therefore, that the reader will find this book not only a useful aid to understanding this area of law, but also an inspiration to undertake further study. You might even conclude, as I have done, that the flexibility and utility of equity goes beyond that of any other area of the law. After all, in which other area could the reader find Shakespeare and 'Star Wars', the composer Delius and the pop star Gilbert O'Sullivan, Arthur Scargill

and Robert Maxwell, all within the covers of a single book? They are all to be found within the pages that follow, so pick up your briefcase and go to work!

Gary Watt
1 March 2001

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