

ESSAYS
IN
EQUITY

EDITOR
FINN



Essays in EQUITY

Edited by

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PREFACE

For over a century lawyers have prophesied or asserted the demise of Equity. Yet it continues to flourish. Australian lawyers can, justly, claim some responsibility in this. In a country still not well endowed with legal text books, the writings on Equity stand out as a notable exception. The last ten years or so have witnessed the advent of more than half a dozen works which together have illuminated much of Equity jurisprudence. Over the same period there has been a revitalised interest in, and utilisation of, equitable doctrines, remedies and institutions. One need only point to the vogue of the trading trust and to the burgeoning of equitable intervention in contract. More important, perhaps, is the renewed judicial appreciation of Equity's potency—an appreciation which is unshackling the restraints the late nineteenth and early twentieth century lawyers imposed upon equitable doctrine, and which is developing doctrine to meet new concerns. One can, doubtless, point to instances where the judges may have faltered. *Allen v. Snyder* [1977] 2 N.S.W.L.R. 685 is a contentious example. But it is in the High Court where old orthodoxies have been reappraised, new doctrines established or foreshadowed. The list of recent equity decisions is impressive and growing, and includes *Commonwealth v. John Fairfax & Sons Ltd* (1981) 55 A.L.J.R. 45; *Taylor v. Johnson* (1983) 151 C.L.R. 422; *Hewett v. Court* (1983) 149 C.L.R. 639; *Legione v. Hately* (1983) 57 A.L.J.R. 292; *Commercial Bank of Australia v. Amadio* (1983) 151 C.L.R. 447; *Heid v. Reliance Finance Corporation Pty Ltd* (1983) 57 A.L.J.R. 683; *Chan v. Zacharia* (1984) 58 A.L.J.R. 353 and *Hospital Products Ltd v. United States Surgical Corporation* (1984) 58 A.L.J.R. 587.

This book is something of a reflection of the last decade. It is an outcome of a seminar on Equity held at the Australian National University in May 1984 which brought together for the first time a group of judges, writers, practitioners and academics who, in one role or another, have contributed to fostering an understanding of Equity jurisprudence in Australia. Save for the concluding essay, each was commented upon, discussed and criticised at the seminar, and then revised in light of the commentaries. While each author accepts responsibility for the views, etc. expressed in his own contribution, the volume itself embodies the ideas, suggestions and criticisms of all the participants at the seminar. For this reason the commentators, who so added to these essays, require individual mention. They were—

The Hon. Sir Richard Blackburn, Chief Justice of the Australian Capital Territory

The Hon. Mr Justice F. R. Fisher, Federal Court of Australia

The Hon. Mr Justice J. B. Kearney, Supreme Court of New South Wales

The Hon. Mr Justice G. A. Kennedy, Supreme Court of Western Australia

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By way of acknowledgement the role played by the Australian National University in hosting the seminar requires mention. Its promotion of a forum at which judges, practitioners and legal academics from throughout the nation can be brought together for the discussion of important and basic areas of the law is a welcome development.

P.D.F.

*Australian National University,
Canberra,
December, 1984.*

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TABLE OF CASES

A. v. C. [1980] 2 All E.R. 347	128
A. v. Hayden (1985) 59 A.L.J.R. 6	247
A.B. Consolidated v. Europe Strength Food Co. Pty Ltd [1978] 2 N.Z.L.R. 515	111, 117, 118
A.D.M. Franchise Pty Ltd, Re (1983) 7 A.C.L.R. 987	153
Aas v. Benham [1891] 2 Ch. 244	123, 224
Aberfoyle Plantations Ltd v. Cheng [1960] A.C. 115	139
Ackroyd v. Smithson (1780) 1 Br.C.C. 503; 28 E.R. 1262	160
Ackroyds (London) Ltd v. Islington Plastics Ltd [1962] R.P.C. 97	113, 115, 118
Adams v. Bank of N.S.W. [1984] 1 N.S.W.L.R. 285	228, 229, 237, 238
Adey v. Arnold (1852) 2 De G.M. & G. 432; 42 E.R. 940	176
Aitken's Trustees v. Aitken [1927] S.C. 374	160
Ajayi v. R. T. Briscoe (Nigeria) Ltd [1964] 1 W.L.R. 1326	89
Alder v. Moore [1961] 2 Q.B. 57	51
Alec Lobb Ltd v. Total Oil G.B. Ltd [1983] 1 All E.R. 944	4, 21
Alfred Crompton Amusement Machines Ltd v. Commissioners of Customs and Excise (No. 2) [1973] 2 All E.R. 1169	128, 129
Alfred Shaw & Co. Ltd, Re (1897) 8 Q.L.J. 93	158
Allcard v. Skinner (1887) 36 Ch.D. 145	18
Allen v. Snyder [1977] 2 N.S.W.L.R. 585	196
Allied Mills Industries Pty Ltd v. Trade Practices Commission (1981) 34 A.L.R. 105	126
Aluminium Industrie Vaassen BV v. Romalpa Aluminium Ltd [1976] 2 All E.R. 552	108
Amalgamated Investment & Property Co. Ltd (in liq.) v. Texas Com- merce International Bank Ltd [1982] Q.B. 84	59, 76, 77, 78, 80, 245
Amalgamated Television Services Pty Ltd v. Television Corporation Ltd [1969] 2 N.S.W.R. 257	97, 102, 104
Amber Size and Chemical Co. Ltd v. Menzel [1913] 2 Ch. 239	110
Annesley v. Earl of Anglesea (1743) 17 How. State Tr. 1139	126
Ansell Rubber Co. Pty Ltd v. Allied Rubber Industries Pty Ltd [1967] V.R. 37	110, 116, 122
Apex Supply Co., Re [1942] Ch. 108	51
Archer v. Cutler [1980] 1 N.Z.L.R. 386	12
Argyll v. Argyll [1967] 1 Ch. 302	111, 114, 115
Aristoc Industries Pty Ltd v. R. A. Wenham (Builders) Pty Ltd [1965] N.S.W.R. 581	137
Armstrong v. Sheppard & Short Ltd [1959] 2 Q.B. 384	79, 80
Ashburton Oil N.L. v. Alpha Mining N.L. (1971) 123 C.L.R. 614	221
Associated Distributors Ltd v. Hall [1938] 2 K.B. 83	51, 52, 57, 248
Astley v. Reynolds (1731) 2 Str. 915	20
Astley v. Weldon (1801) 2 Bos. & Pul. 346; 126 E.R. 1318	48
Astor's Settlements, Re [1952] Ch. 534	171, 173, 176, 184
Attorney-General for N.S.W. v. The Perpetual Trustee Company (Ltd) (1940) 63 C.L.R. 209	173
Attorney-General to the Prince of Wales v. Collom [1916] 2 K.B. 193	67
Attorney-General v. Jonathan Cape Ltd [1976] 1 Q.B. 752	117
Attorney-General v. National Provincial and Union Bank of England [1924] A.C. 262	160

Austin v. United Dominions Corporation Ltd (unreported, 19/10/84)	248
Avondale Printers & Stationers Ltd v. Haggie [1979] 2 N.Z.L.R.	124 196
Ayerst v. C. & K. (Construction) Ltd [1976] A.C.	167 152
Backhouse v. Backhouse [1978] 1 W.L.R.	243 5
Bacon v. Pianta (1966) 114 C.L.R.	634 181, 192, 250
Baden Delvaux and Lecuit v. Societe Generale [1983] Com.L.R.	88 212, 226, 230, 231, 233, 235, 238, 239, 240
Bainbrigge v. Browne (1881) 18 Ch.D.	188 14
Baker v. Gough [1963] N.S.W.R.	1345 42
Baker (G. L.) Ltd v. Medway Building and Supplies Ltd [1958] 1 W.L.R.	1216 213, 215
Banco de Portugal v. Waddell (1880) 5 App. Cas.	161 158
Bank Negara Indonesia v. Hoalim [1973] 2 M.L.J.	3 75
Bank of N.S.W. v. Adams [1982] 2 N.S.W.L.R.	695 232
Bank of N.S.W. v. Rogers (1941) 65 C.L.R.	42 14, 200
Bank of N.S.W. v. Vale Corporation (Management) Ltd (unreported, N.S.W. C.A., 21/10/81)	226, 241
Bankers Trust Co. v. Shapira [1980] 3 All E.R.	353 128
Barleycorn Enterprises Pty Ltd, Re [1970] Ch.	465 154
Barnes v. Addy (1874) L.R. 9 Ch.App.	244 201, 206, 208, 229, 230, 239
Barney, Re [1892] 2 Ch.	265 207, 210, 221, 222
Barton v. Armstrong [1976] A.C.	104 20, 22, 23, 24
Batson v. Morgan (1894) 13 N.Z.L.R.	525 160
Batten v. Wedgwood Coal & Iron Co. (1884) 28 Ch.D.	317 154, 155
Beckford v. Wade (1805) 17 Ves. 87; 34 E.R.	34; [1893] 2 Q.B. 390 206
Beddoe, Re [1893] 1 Ch.	547 145, 147
Bell v. Keesing (1888) 7 N.Z.L.R.	155 144
Bell's Indenture, Re [1980] 1 W.L.R.	1217 209
Belmont Finance Corporation Ltd v. Williams Furniture Ltd (No. 1) [1979] Ch.	250 233, 238
Belmont Finance Corporation Ltd v. Williams Furniture Ltd (No. 2) [1980] 1 All E.R.	393 219, 220, 233, 236
Beloff v. Pressdram Ltd [1973] 1 All E.R.	241 127, 128
Benedict v. Lynch (1815) 1 Johns Ch.	370; 7 Am.Dec. 484 37, 38, 39, 41
Benett v. Wyndham (1862) 4 De G.F. & J.	259; 45 E.R. 1183 143, 148
Bernard v. Josephs [1982] 2 W.L.R.	1052 196
Berry's Trusts, Re (1893) 7 Q.L.J.	63 147, 149, 151
Birmingham and District Land Co. v. London & North Western Railway Co. (1888) 40 Ch.D.	268 61, 71, 86, 87, 88
Blomley v. Ryan (1956) 99 C.L.R.	362 3, 4, 6, 7
Blundell, Re (1888) 40 Ch.D.	370 147, 208, 229
Blundell, Re (1889) 44 Ch.D.	1 150, 151
Blyth v. Fladgate [1891] 1 Ch.	337 209, 211, 229
Boardman v. Phipps [1964] 1 W.L.R. 993; [1967] 2 A.C.	46 210, 222, 224, 225, 233, 236, 237
Bond Worth Ltd, Re [1979] 3 W.L.R.	629 108
Borden (U.K.) Ltd v. Scottish Timber Products Ltd [1979] 3 W.L.R. 672	108
Bostitch Inc. v. McGarry & Cole Ltd [1964] R.P.C.	173 118
Boston Deep Sea Fishing & Ice Co. v. Ansell (1888) 39 Ch.D.	389 107
Bowman v. Secular Society Limited [1917] A.C.	406 163, 164, 168, 171
Brady v. St Margaret's Trust [1963] 2 Q.B.	494 53
Brand v. Chris Building Co. Pty Ltd [1957] V.R.	625 80
Bray v. Ford [1896] A.C.	44 95

Brian Pty Ltd v. United Dominions Corporation Ltd [1983] 1 N.S.W. L.R. 490	96, 106, 199
Brickles v. Snell [1916] 2 A.C. 599	32, 133, 248
Bridgman v. Gill (1857) 24 Beav. 302; 53 E.R. 374	205, 206
Brikom Investments Ltd v. Carr [1979] Q.B. 467	75
Brinsden v. Williams [1894] 3 Ch. 185	209
Bristol Athenaeum (1889) 43 Ch.D. 236	186
British Franco Electric Pty Ltd v. Dowling Plastics Pty Ltd [1981] 1 N.S.W.L.R. 448	120, 124
British Industrial Plastics Ltd v. Ferguson (1939) 56 R.P.C. 271	114
British Power Traction & Lighting Co. Ltd, Re [1910] 2 Ch. 470	148, 150
Brocklebank v. East London Ry Co. (1879) 12 Ch.D. 839	151
Brown v. Hay (1898) 35 S.L.R. 877	113
Brusewitz v. Brown [1923] N.Z.L.R. 1106	2, 19
Bryson v. Whitehead (1822) 1 Sim. & St. 74; 57 E.R. 29	122
Buchanan v. Ayre [1915] 2 Ch. 474	145
Bucks Constabulary Widows' & Orphans' Fund Friendly Society (No. 2), Re [1979] 1 W.L.R. 936	175
Budacz v. Fradken 126 A. 220 (1924)	40
Burden, Ex parte; Re Neil (1881) 16 Ch.D. 675	48
Burdick v. Garrick (1870) L.R. 5 Ch. 233	203
Burmah Oil Co. Ltd v. Bank of England [1979] 2 All E.R. 461	129
Burrowes v. Lock (1805) 10 Ves. 470; 32 E.R. 927	61, 63, 65, 80
Burt, Boulton & Hayward v. Bull [1895] 1 Q.B. 276	142, 143, 144
Butler v. Board of Trade [1971] Ch. 680	122
Butler v. Broadhead [1975] Ch. 97	214
Byrne Australia Pty Ltd (No. 2), Re [1981] 2 N.S.W.L.R. 364; 6 A.C.L.R. 222	142, 153
Campbell Discount Co. v. Bridge [1962] A.C. 600	51, 57
Canadian Aero Services Ltd v. O'Malley (1973) 40 D.L.R. (3d) 371	106
Canham v. Jones (1913) 2 V. & B. 218; 35 E.R. 302	122
Carl Zeiss Stiftung v. Herbert Smith & Co. (No. 2) [1969] 2 Ch. 276	203, 228, 230, 232, 233, 235, 236, 237, 238
Carpenters Estates Ltd v. Davies [1940] Ch. 160	136
Carr, Ex parte (1814) 3 V. & B. 108; 35 E.R. 420	63
Castrol Australia Pty Ltd v. EmTech Associates Pty Ltd (1981) 33 A.L.R. 31	111, 112, 118, 120
Central London Property Trust Ltd v. High Trees House Ltd [1947] 1 K.B. 130	86
Chalmers v. Pardoe [1963] 1 W.L.R. 677	66, 92
Chan v. Zacharia (1984) 58 A.L.J.R. 353	197, 199
Chang v. Registrar of Titles (1976) 137 C.L.R. 177	36, 197
Chaplin & Co. Ltd v. Brammall [1908] 1 K.B. 233	20
Chapman v. Thomas 126 A. 2d 579 (1956)	40
Charterhouse Credit Co. Ltd v. Tolly [1963] 2 Q.B. 683	53
Chase Manhattan Bank N.A. v. Israel-British Bank (London) Ltd [1980] 2 W.L.R. 202	108, 109, 199, 215
Cheney v. Libby 134 U.S. 68 (1890)	31, 38, 40
Chennell, Re (1878) 8 Ch.D. 492	147, 149, 155
Cherry v. Boulton (1839) 4 My. & Cr. 442	158
Christ's Hospital v. Grainger (1849) 16 Sim. 83; 60 E.R. 804; 1 Mac. & G. 460; 41 E.R. 1343	165
Church of Scientology v. Kaufman [1973] R.P.C. 627; [1973] R.P.C. 635	116, 126, 127, 128

Clavarella v. Balmer (1983) 57 A.L.J.R. 632	39, 135
Citicorp Australia Ltd v. Hendry (unreported, 29/2/84)	46, 54
Clarkson v. Davies [1923] A.C. 100	204
Clarkson v. McClean (1918) 42 C.L.R. 1	145
Clifford Davis Management Ltd v. W.E.A. Records Ltd [1975] 1 W.L.R. 61	4
Clore's Settlement Trusts, Re [1966] 1 W.L.R. 955	165
Clydebank Engineering and Shipbuilding Co. v. Don Jose Ramos Yzquierdo y Castenada [1905] A.C. 6	52
Coates v. Sarich [1964] W.A.R. 2	33
Coco v. A. N. Clark (Engineers) Ltd [1969] R.P.C. 41	111, 112, 115, 116, 118
Cohen v. Cohen (1929) 42 C.L.R. 91	203, 204, 211
Coleman v. Myers [1977] 2 N.Z.L.R. 225	198, 199
Collins (Engineers) Ltd v. Roberts [1965] R.P.C. 429	116, 118
Combe v. Combe [1951] 2 K.B. 215	87, 89
Commercial Bank of Australia v. Amadio (1983) 151 C.L.R. 447; 57 A.L.J.R. 358	3, 4, 5, 7, 9, 10, 11, 13, 14, 17, 18, 24, 60, 61, 73, 81, 200, 244
Commonwealth of Australia v. John Fairfax & Sons Ltd (1981) 55 A.L.J.R. 45	111, 112, 117, 118
Competitive Insurance Co. Ltd v. Davies Investment Ltd [1975] 1 W.L.R. 1240	202
Conservative and Unionist Central Office v. Burrell [1980] 3 All E.R. 42	187, 191
Consul Development Pty Ltd v. D.P.C. Estates Pty Ltd [1974] 1 N.S.W.L.R. 443; (1975) 132 C.L.R. 373	7, 107, 199, 203, 218, 219, 220, 221, 222, 223, 226, 231, 233, 234, 235, 236, 238, 239, 240
Cooden Engineering Co. Ltd v. Stanford [1953] 1 Q.B. 86	51
Cook v. Deeks [1916] 1 A.C. 554	106, 234
Coomber, Re; Coomber v. Coomber [1911] 1 Ch. 723	101
Corrigan v. Farrelly (1896) 7 Q.L.J. 105	149
Crabb v. Arun District Council [1976] Ch. 179	59, 68, 69, 71, 72, 73, 75, 83, 88, 91
Craig, Re (1952) 52 S.R. (N.S.W.) 265	147
Cranleigh Precision Engineering Ltd v. Bryant [1966] R.P.C. 81	115, 121
Cresswell v. Potter [1978] 1 W.L.R. 255	5
Crest Realty Pty Ltd (No. 2), Re [1977] 1 N.S.W.L.R. 664; 2 A.C.L.R. 502	152
Crowder v. Hilton [1902] S.A.S.R. 82	113
D. v. National Society for the Prevention of Cruelty to Children [1977]	
1 All E.R. 589	128, 129, 130
Dagenham (Thames) Dock Co., Re (1873) L.R. 8 Ch. 1022	133
Daly v. Sydney Stock Exchange Ltd [1982] 2 N.S.W.L.R. 421	107
Daly v. Union Trustee Company of Australia Ltd (1898) 24 V.L.R. 460	149, 150
Dann v. Spurrier (1802) 7 Ves. 231; 32 E.R. 94	66, 70, 71, 72
Darke v. Williamson (1858) 25 Beav. 622; 53 E.R. 774	149
Darwin Cyclone Tracy Relief Fund, Re (1979) 39 F.L.R. 260	182
Davidson, Re [1909] 1 Ch. 567	171
Davies (Paul A.) (Aust.) Pty Ltd v. Davies [1983] 1 N.S.W.L.R. 440	107, 108
Dawson, Re [1966] 2 N.S.W.R. 211	216, 241
De Beer v. Graham (1891) 12 L.R. (N.S.W.) Eq. 144	225

De Mattos v. Gibson (1858) 4 De G. & J. 276; 45 E.R. 108	42
Dean v. MacDowell (1878) 8 Ch.D. 345	123, 224
Dean, Re (1889) 41 Ch.D. 552	174
Denley's Trust Deed, Re [1969] 1 Ch. 373	174, 175, 190
Denn d. Gaskin v. Gaskin (1777) 2 Cowp. 657; 98 E.R. 1292	160
Derry v. Peek (1889) 14 App.Cas. 337	62, 65
Deta Nominees Pty Ltd v. Viscount Plastic Products Pty Ltd [1979] V.R. 167	224
Dillwyn v. Llewelyn (1862) 4 De G.F. & J. 517; 45 E.R. 1285	72, 79, 92
Diplock, Re [1948] Ch. 465	108, 109, 214, 215, 216, 217, 228, 231
Dodds v. Tuke (1884) 25 Ch.D. 617	155
Donoghue v. Stevenson [1932] A.C. 562	246
Dowse v. Gorton [1891] A.C. 190	142, 148
Duke of Beaufort v. Patrick (1853) 17 Beav. 60; 51 E.R. 954	60, 67, 71, 72
Dunlop Pneumatic Tyre Co. Ltd v. New Garage and Motor Co. Ltd [1915] A.C. 79	52, 56, 249
Durham Fancy Goods Ltd v. Michael Jackson (Fancy Goods) Ltd [1968] 2 Q.B. 839	87
East India Co. v. Vincent (1740) 2 Atk. 83; 26 E.R. 451	60, 70, 71, 90
Eddis v. Chichester Constable [1969] 1 W.L.R. 358	214
Edlin v. Battaly (1675) 2 Lev. 152; 83 E.R. 494	93
Edmonds, Ex p. (1862) 4 De G.F. & J. 488; 45 E.R. 1272	147
Elmore, Re [1968] V.R. 390	177
Emery, Re (1928) 34 A.L.R. 167	165
Endacott, Re [1960] Ch. 232	159, 177
English v. Dedham Vale Properties Ltd [1978] 1 W.L.R. 93	199
Enhill Pty Ltd, Re [1983] 1 V.R. 561; 7 A.C.L.R. 8	142, 143, 153, 154, 250
Eshun v. Moorgate Mercantile Ltd [1971] 1 W.L.R. 722	53
Evans Marshall & Co. Ltd v. Bertola S.A. [1973] 1 All E.R. 992	42
Evans v. Bicknell (1801) 6 Ves. 174; 31 E.R. 998	63
Evans v. Wood (1867) L.R. 5 Eq. 9	146
Evans, Re (1887) 34 Ch.D. 597	143, 148, 150, 151
Eves v. Eves [1975] 1 W.L.R. 1338	196
Exchange Telegraph Co. v. Howard (1906) 22 T.L.R. 375	113
Exhall Coal Company Ltd, Re (1866) 35 Beav. 449; 55 E.R. 970	147, 149, 150, 155
Export Credit Guarantee Department v. Universal Oil Products Co. [1983] 2 All E.R. 205	51
Fairland v. Percy (1875) L.R. 3 P. & D. 217	151
Falcke v. Scottish Imperial Insurance Co. (1886) 34 Ch.D. 234	1
Farhall v. Farhall (1871) L.R. 7 Ch.App. 123	143
Fell v. Fell (1922) 31 C.L.R. 268	160
Financings Ltd v. Baldock [1963] 2 Q.B. 104	51, 53, 54, 57
Finger's Will Trusts, Re [1972] Ch. 286	167
Fitch v. Weber (1848) 6 Hare 145; 67 E.R. 1117	160
Foss v. Harbottle (1843) 2 Hare 461; 67 E.R. 189	172
Foster, Re; Hudson v. Foster (No. 2) [1938] 3 All E.R. 610	79
Foxcraft v. Wood (1828) 4 Russ. 487; 38 E.R. 888	147
Foxton v. Manchester and Liverpool District Banking Co. (1881) 44 L.T. 406	209
Franchi v. Franchi [1967] R.P.C. 149	121
Franklin v. Giddins [1978] Qd.R. 72	116, 119
Fraser v. Evans [1969] 1 Q.B. 349	122, 125

Fraser v. Murdoch (1881) 6 App.Cas. 855	143, 144, 145, 148
Frith, Re [1902] 1 Ch. 342	148, 150
Fry v. Lane (1888) 40 Ch.D. 312	5
G. v. Day [1982] 1 N.S.W.L.R. 24	112, 122
Garland, Ex parte (1804) 10 Ves. Jun. 111; 32 E.R. 786	143
Garner v. Garner (1920) 36 T.L.R. 196	128
Gartside v. Inland Revenue Commissioners [1968] A.C. 553	142
Gartside v. Outram (1857) 26 L.J. Ch. (N.S.) 113	125, 126
Gasbourne Ltd, Re (1984) 2 A.C.L.C. 103	234, 241
Gaskell v. Gosling [1896] 1 Q.B. 669	143
Geary, Re [1939] N.I. 152	151
General Credits Ltd v. Tawilla Pty Ltd [1984] 1 Qd.R. 388	143
German Mining Co., Re; Ex parte Chippendale (1854) 4 De G.M. & G. 19; 43 E.R. 415	142, 145, 147, 149
Giles & Co. Ltd v. Morris [1972] 1 All E.R. 960	42
Gladstone Town Council v. Gladstone Harbour Board [1964] Qd.R. 505	143
Godfree, Re [1952] V.L.R. 353; [1952] A.L.R. 595	164
Goodson, Re [1971] V.R. 801	180
Graham, Pitt & Bennett, Re (1891) 9 N.Z.L.R. 617	143
Grant v. Grant (1879) 5 V.L.R. (Eq.) 314	165
Grant's Will Trusts, Re [1980] 1 W.L.R. 360 175, 180, 181, 187, 188, 192	
Greasley v. Cooke [1980] 1 W.L.R. 1306	90
Green v. Bestobell Industries Pty Ltd [1982] W.A.R. 1; (1982) 1 A.C.L.C. 1	105, 234
Green v. Folgham (1923) 1 Sim. & St. 398; 57 E.R. 159	123
Green v. Rutherford (1750) 1 Ves. Sen. 462; 27 E.R. 1144	165
Greene v. West Cheshire Ry Co. (1871) L.R. 13 Eq. 44	136
Grime Carter & Co. Pty Ltd v. Whyte's Furniture (Dubbo) Pty Ltd (1983) 7 A.C.L.R. 540	153
Grissel v. Money (1869) 38 L.J. Ch. 312	149
Grundt v. Great Boulder Pty Gold Mines Ltd (1937) 59 C.L.R. 641 59, 78	
Habib Bank Ltd v. Habib Bank A.G. Zurich [1981] 1 W.L.R. 1265 59, 73	
Half Court Tennis Pty Ltd v. Seymour (1980) 53 F.L.R. 240	118
Hamilton v. Watson (1845) 12 Cl. & Fin. 109; 8 E.R. 1339	12
Hammersley v. De Biel (1845) 12 Cl. & Fin. 45; 8 E.R. 1312	61, 62, 63, 64, 66, 70, 77, 83
Hannah's Will, Re (1939) 34 Tas. L.R. 45	181
Hardey v. Tory (1923) 32 C.L.R. 592	164
Hardoon v. Belilios [1901] A.C. 118	145, 180
Harris v. Jenkins (1922) 31 C.L.R. 341	16
Harris v. Skevington [1978] 1 N.S.W.L.R. 176	184
Harrison v. Project and Design Co. (Redcar) Ltd [1978] F.S.R. 81	120
Hedley Byrne & Co. Ltd v. Heller & Partners Ltd [1964] A.C. 465	65
Heid v. Reliance Finance Corporation Pty Ltd (1983) 57 A.L.J.R. 683 84	
Helvetic Insurance Corporation Pty Ltd v. Knight (1982) 7 A.C.L.R. 225	144
Helwig v. Jonas [1922] V.L.R. 261	144
Henderson v. Dodds (1866) L.R. 2 Eq. 532	155
Henderson v. Fisher 46 Cal. Rptr 173 (1965)	35
Henry v. Hammond [1913] 2 K.B. 515	203
Hewett v. Court (1983) 149 C.L.R. 639; 57 A.L.J.R. 211	35, 36, 136, 138, 197

TABLE OF CASES

xvii

High Crest Motors Pty Ltd, Re (1978) 3 A.C.L.R. 564	154
Hill v. Venning (1979) 4 A.C.L.R. 555	155
Hobart Savings Bank v. Federal Commissioner of Taxation (1930) 43 C.L.R. 364	173
Hobbin dec'd, Re [1957] V.R. 341	33
Hobbs v. Norton (1682) 1 Vern. 137; 23 E.R. 370	61
Hobbs v. Wayet (1887) 36 Ch.D. 256	145, 146
Hodgson v. Duce (1856) 2 Jur. N.S. 1014	137
Holder v. Holder [1968] Ch. 353	223
Holland v. Holland (1869) 4 Ch.App. 449	176
Hongkong Fir Shipping Co. Ltd v. Kawasaki Kisen Kaisha Ltd [1962] 2 Q.B. 26	56
Hooper, Re [1932] 1 Ch. 38	174
Hopgood v. Brown [1955] 1 W.L.R. 213	78, 79, 80, 81
Horan v. Borthwick (1980) S.C. (N.S.W.) Ed. Nos 2655-6/79	180
Hospital Products Ltd v. United States Surgical Corporation (1984) 58 A.L.J.R. 587	198, 199, 201, 218, 219, 220, 221, 222, 230, 231, 236, 237, 238, 239, 240, 241, 242, 246, 247
Houston v. Burns [1918] A.C. 337	160
Howard Smith Ltd v. Ampol Petroleum Ltd [1974] A.C. 821	95, 221
Hoyt's Pty Ltd v. Spencer (1919) 27 C.L.R. 133	75, 245
Hughes v. Metropolitan Railway Co. (1877) 2 App.Cas. 439	61, 72, 87, 88
Huning v. Ferrers (1711) 1 Gilb. Rep. 85; 25 E.R. 59	63, 67, 71, 76, 90
Hunsden v. Cheyney (1690) 2 Vern. 150; 23 E.R. 703	61, 72
Hurley v. B.G.H. Nominees Pty Ltd (No. 2) (1984) 2 A.C.L.C. 497	230
I.A.C. (Leasing) Ltd v. Humphrey (1972) 126 C.L.R. 131	50
I.R.C. v. Broadway Cottages Trust [1955] Ch. 20	177
ITC Film Distributors v. Video Exchange Ltd [1982] 2 All E.R. 241	119
Inche Noriah v. Shaik Allie Bin Omar [1929] A.C. 127	18
Industrial Development Consultants v. Cooley [1972] 1 W.L.R. 443	105
Industrial Furnaces Ltd v. Reaves [1970] R.P.C. 605	121
Initial Services Ltd v. Putterill [1968] 1 Q.B. 396	126, 127
Inman, Re [1965] V.R. 238	184
Interfirm Comparison (Australia) Pty Ltd v. Law Society of New South Wales [1977] R.P.C. 137	111, 113, 117, 118
International Sales and Agencies Ltd v. Marcus [1982] 3 All E.R. 551	220, 228, 230, 236
Interoffice Telephones v. Freeman [1958] 1 Q.B. 190	55
Inwards v. Baker [1965] 2 Q.B. 29	68, 73, 90, 93
Ives (E. R.) Investment Ltd v. High [1967] 2 Q.B. 379	68, 73, 90
Jackson v. Cator (1800) 5 Ves. 688; 31 E.R. 806	60, 67, 70, 71, 72, 81, 85, 87, 88, 89
Jackson v. Crosby (No. 2) (1979) 21 S.A.S.R. 280	83, 197
James v. Heim Gallery (London) Ltd (1980) 256 Est. Gaz. 819	88
Jarman & Platt Ltd v. Barget Ltd [1977] F.S.R. 260	111
Je Maintiendrai Pty Ltd v. Quaglia (1981) 26 S.A.S.R. 101	73, 87, 88
Jeffray v. Webster (1895) 17 A.L.T. 72	145, 148
Jenkins v. Wise 574 P. 2d 1337 (1978)	39
Jennings v. Mather [1901] 1 Q.B. 108; [1902] 1 K.B. 1	143, 145, 147, 148, 149, 150
Jervis v. Wolferstan (1874) L.R. 18 Eq. 18	145
Johnson v. Buttress (1936) 56 C.L.R. 113	13, 16
Johnson v. Heat and Air Systems Ltd (1941) 58 R.P.C. 229	124

Johnson, Re (1880) 15 Ch.D. 548	143, 148, 150, 151, 158
Jones v. Pacaya Co. [1911] 1 K.B. 455	45
Jorden v. Money (1854) 5 H.L.C. 185; 10 E.R. 868	62, 64, 70, 86
Joseph v. Lyons (1884) 15 Q.B.D. 280	228
Kammins Ballrooms Co. Ltd v. Zenith Investments (Torquay) Ltd [1971] A.C. 850	69
Karak Rubber Co. Ltd v. Burden (No. 2) [1972] 1 W.L.R. 602	203, 211, 219, 222, 223, 225, 226, 229, 230, 231, 235, 238
Kaufman v. Gerson [1904] 1 K.B. 591	20, 21
Kayfords, Re [1975] 1 W.L.R. 279	152
Keech v. Sandford (1726) Sel. Cas. T. King 61; 2 Eq. Cas. Ab. 741; 25 E.R. 223	196, 197, 198
Keene, Re [1922] 2 Ch. 475	123
Keith Henry & Co. Pty Ltd v. Stuart Walker & Co. Pty Ltd (1958) 100 C.L.R. 342	98
Kemtron Industries Pty Ltd v. Commissioner of Stamp Duties [1984] 1 Qd. R. 576	150
Kettle v. Dunster & Wakefield (1927) 138 L.T. 158	144
Kilmer v. British Columbia Orchard Lands Ltd [1913] A.C. 319	32, 133, 134
Kimm v. Andrews 313 A. 2d 466 (1974)	38, 40
Kitson v. Playfair, <i>The Times</i> , 28 March 1896, p. 5	126
Kratzmann (N. A.) Pty Ltd (No. 2), Re (1968) 123 C.L.R. 295	157
Kurt Keller Pty Ltd v. B.M.W. Australia Ltd [1984] 1 N.S.W.L.R. 353	75
Labouchere v. Tupper (1857) 11 Moo. P.C. 198; 14 E.R. 670	143
Lally v. Edgecombe (1883) N.Z.L.R. 1 S.C. 364	144
Lamb v. Evans [1893] 1 Ch. 218	113
Lamb v. Sambas Rubber & Gutta Percha Co. [1908] 1 Ch. 845	45
Lamson Store Service Co. Ltd v. Russell Wilkins & Sons Ltd (1906) 4 C.L.R. 672	50, 248
Lancashire Loans Ltd v. Black [1934] 1 K.B. 380	14, 200
Laws Holdings Pty Ltd v. Short (1972) 46 A.L.J.R. 563	72, 77
Le Compte v. Public Trustee [1983] 2 N.S.W.L.R. 109	75, 197
Leahy v. Attorney-General (N.S.W.) [1959] A.C. 457; (1959) 101 C.L.R. 611	181, 184, 188, 250
Lee v. Sankey (1872) L.R. 15 Eq. 204	205, 206, 212, 213, 229
Leeds and Hanley Theatres of Varieties Ltd, Re [1902] 2 Ch. 809	171
Legione v. Hateley (1983) 57 A.L.J.R. 292	30, 31, 33, 35, 36, 37, 38, 39, 40, 41, 44, 45, 60, 61, 73, 75, 86, 88, 131, 134, 135, 242, 244, 245, 247, 248
Lehrer v. Gandali [1970] 1 N.S.W.R. 9	34
Leslie (J.) Engineers Co. Ltd, Re [1976] 1 W.L.R. 292	214
Lessors (Aust.) Pty Ltd v. Westley [1964] N.S.W.R. 2091	50, 53
L'Estrange v. Graucob [1934] 2 K.B. 394	25
Life Association of Scotland v. Siddal (1861) 3 De G.F. & J. 58; 45 E.R. 800	204
Lind, Re [1915] 2 Ch. 345	34
Linggi Plantations Ltd v. Jagatheesan [1974] 1 M.L.J. 89	33
Lipinski's Will Trusts, Re [1976] Ch. 235	175, 185
Lister & Co. v. Stubbs (1890) 45 Ch.D. 1	107, 198, 217, 246
Litholite Ltd v. Travis and Insulators Ltd (1913) 30 R.P.C. 266 and 532	113
Littlewoods Organisation Ltd v. Harris [1978] 1 All E.R. 1026	117

Liverpool and District Hospital for Diseases of the Heart v. A.-G. [1981] Ch. 193	168
Lloyd v. Collet (1793) 4 Ves. Jun. 690; 31 E.R. 356	38
Lloyd, Re [1958] V.R. 523	184
Lloyds Bank v. Bundy [1975] Q.B. 326	1, 13, 14, 15, 16, 17, 24
Loffus v. Maw (1862) 3 Giff. 592; 66 E.R. 544	62, 64, 65
London & Provincial Sporting News Agency v. Levy [1928] MacG. Cop.Cas. (1923-1928) 340	121
London United Breweries Ltd, Re [1907] 2 Ch. 511	150, 151, 155
Lonrho Ltd v. Shell Petroleum Co. Ltd [1980] 1 W.L.R. 627	129
Lord Ashburton v. Pape (1913) 2 Ch. 469	121
Lord Strathcona Steamship Co. v. Dominion Coal Co. [1926] A.C. 108	42
Louinder v. Leis (1982) 56 A.L.J.R. 433	37
Lovell, Re Will of (1984) (unreported, S.C. of Qld)	194
Low v. Bouverie [1891] 3 Ch. 82	62, 65
Lumsden v. Buchanan (1865) 4 Macq. 950	144
Lutheran Church of Australia South Australia District Inc. v. Farmers' Co-operative Executors and Trustees Ltd (1970) 121 C.L.R. 628 162, 177, 249	
Lyell v. Kennedy (1889) 14 App.Cas. 437	203
Lysus v. Prowsa Developments Ltd [1982] 1 W.L.R. 1044	196
McCathie v. McCathie [1971] N.Z.L.R. 58	76
McDonald v. Dennys Lascelles Ltd (1933) 48 C.L.R. 457	33, 35, 134
McFaddon v. Walker 488 P. 2d 1353 (1971)	39
McIntosh v. Dallwood (No. 3) (1930) 30 S.R. (N.S.W.) 332	146
McIntosh v. Dallwood (No. 4) (1930) 30 S.R. (N.S.W.) 415	146
McPhail v. Doulton [1971] A.C. 424	30, 175, 180, 190, 194
McWilliam v. McWilliams Wines Pty Ltd (1964) 114 C.L.R. 656	34
Maddison v. Alderson (1883) 8 App.Cas. 467	62, 65
Malone v. Commissioner of Police of the Metropolis (No. 2) [1979] 2 All E.R. 620	119, 126
Malsbury v. Malsbury [1982] 1 N.S.W.L.R. 226	197
Mansard Developments Pty Ltd v. Tilley Construction Pty Ltd [1982] W.A.R. 161	240, 241
Mara v. Browne [1896] 1 Ch. 199	207, 208, 209, 229
Marks v. Beyfus (1890) 25 Q.B.D. 494	129
Markwell Bros Pty Ltd v. C.P.N. Diesels (Qld) Pty Ltd [1983] Qd.R. 508	198, 223, 241
Martin v. Meles 60 N.E. 397 (1901)	61
Maskell v. Horner [1915] 3 K.B. 106	22
Matthews v. Ruggles-Brise [1911] 1 Ch. 194	145
Maunsell v. Hedges (1854) 4 H.L.C. 1039; 10 E.R. 769	64
M'Caig v. University Glasgow [1907] S.C. 231	160
M'Caig's Trustees v. Kirk Session of United Free Church of Lismore [1915] S.C. 426	160
Mense v. Milenkovic [1973] V.R. 784	116, 118
Mercantile National Bank v. Heinz 135 N.Y.S. 962 (1912)	40
Messageries Imperiales Co. v. Baines (1863) 7 L.T. 763	42
Metropolitan Bank v. Heiron (1880) 5 Ex.D. 319	107
Milroy v. Lord (1862) 4 De G.F. & J. 264; 45 E.R. 1185	82
Ministry of Health v. Simpson [1951] A.C. 251	214, 216
Mitford v. Reynolds (1848) 16 Sim. 105; 60 E.R. 812	174
Moore v. M'Glynn [1904] I.R. 340	155
Moorgate Mercantile Co. Ltd v. Twitchings [1976] Q.B. 225	76