

TRUSTS AND
PATRIMONIES

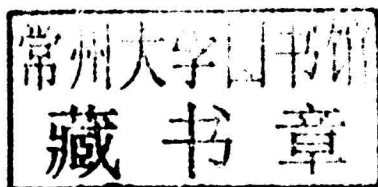
Edited by Remus Valsan

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EDINBURGH STUDIES IN LAW
VOLUME 12

Trusts and Patrimonies

Edited by
Remus Valsan



EDINBURGH
University Press

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Edinburgh University Press Ltd
The Tun – Holyrood Road
12 (2f) Jackson's Entry
Edinburgh EH8 8PJ
www.euppublishing.com

Typeset in New Caledonia by
Servis Filmsetting Ltd, Stockport,
and printed and bound in Great Britain by
CPI Group (UK) Ltd, Croydon CR0 4YY

A CIP record for this book is available from the British Library

ISBN 978 0 7486 9774 8 (hardback)
ISBN 978 0 7486 9775 5 (webready PDF)
ISBN 978 1 4744 0353 5 (epub)

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Trusts and Patrimonies

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Preface and Acknowledgements

This collection of papers explores the multiple ways in which the concepts of trust and patrimony interact in various jurisdictions, with a view to advancing the understanding of the trust as a fundamental legal concept. The volume brings together key reference texts that have pioneered the trust as patrimony idea, and new works addressing contemporary challenges arising from the interaction of the two core concepts of private law. The new papers were presented at a workshop organised by the Edinburgh Centre for Private Law at the Edinburgh School of Law in 2013.

This volume is the first comparative private law study that engages systematically with the relation between trust and patrimony. It underlines the difficulties that various jurisdictions have encountered, and the solutions they have adopted, in trying to understand the common law trust and replicate it using the patrimony as main tool. It includes the first English translation of the first chapter of Pierre Lepaulle's flagship work on trusts, *Traité théorique et pratique des trusts en droit interne, en droit fiscal et en droit international* (1932). I am very grateful to the Paul-André Crépeau Centre for Private and Comparative Law and to Lionel Smith and Alexandra Popovici, in particular, for contributing this exquisite translation.

The Scottish trust features prominently across the papers in this collection. It is hoped that the extensive focus on the Scottish trust will advance the understanding of this institution in Scotland and internationally, and will increase its visibility as a feasible model for a trans-systemic variant of trust.

The editor, the publishers, and the Editorial Board of the Edinburgh Studies in Law would like to thank the authors and the following journals for kind permission to reproduce material: *Revue générale de droit* (Chapter 3 and Chapter 8), *International and Comparative Law Quarterly* (Chapter 5), *European Review of Private Law* (Chapter 6) and *Edinburgh Law Review* (Chapter 7). Full details of the date and place of first publication appear on the first page of each reprint in this volume. Subsequent references to these papers point to the relevant chapter in this book instead of their original place of publication.

This volume, and the workshop that preceded it, would not have been possible without the generous financial support of the Edinburgh School of

Law. I also note with gratitude the invaluable research and editorial assistance provided by María Paz Gatica Rodríguez, who is a doctoral student at Edinburgh School of Law. I would like to thank the editorial board of the Edinburgh Studies in Law and specifically to Professor Elspeth Reid for the continuous support and guidance for this project. I would also like to thank Professors Kenneth Reid and George Gretton for their encouragement and support throughout this project. Finally, I would like to thank all participants in the Trusts and Patrimonies workshop for the lively debates and valuable insights.

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List of Abbreviations

1 Will IV	1 William IV
11 Geo IV	11 George IV
ABGB	Allgemeines bürgerliches Gesetzbuch (Austrian Civil Code)
AC	UK Law Reports, Appeal Cases
Advocates' Q	The Advocates' Quarterly
AJCL	American Journal of Comparative Law
AJLH	American Journal of Legal History
ALJ	Australian Law Journal
All ER	All England Reports
Anst	Anstruther's Exchequer Reports (England and Wales)
App Cas	UK Law Reports, Appeal Cases, House of Lords
art(s)	Article(s) (legislation)
Atk	Atkyns' Chancery Reports (England and Wales)
Bankton, <i>Inst</i>	Andrew McDouall, Lord Bankton, <i>An Institute of the Laws of Scotland in Civil Rights</i> (1751-1753), reprinted by the Stair Society, vols 41-43 (1993-1995)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGH	Bundesgerichtshof (German Federal Court of Justice)
Bro CC	Brown's Chancery Cases (England and Wales)
BW	Burgerlijk Wetboek (Dutch Civil Code)
c(c)	Chapter(s) (legislation)
C de D	Les Cahiers de Droit
CA	Court of Appeal
CBLJ	Canadian Business Law Journal
CCQ	Civil Code of Québec
Ch	English Law Reports, Chancery Division
ChD	High Court of Justice, Chancery Division (England and Wales)
Ch D	English Law Reports, Chancery Division
CLJ	Cambridge Law Journal

CLR	Commonwealth Law Reports (Australia)
Co Rep	Coke's King's Bench Reports (England and Wales)
Colum J Transnat L	Columbia Journal of Transnational Law
ColumLR	Columbia Law Review
Cornell LQ	Cornell Law Quarterly
CSIH	Court of Session Inner House (Scotland)
CSOH	Court of Session Outer House (Scotland)
D	Justinian's Digest
D	Dunlop's Session Cases (Scotland)
D	Recueil Dalloz
DCFR	Draft Common Frame of Reference
DLR (4th)	Dominion Law Reports, 4th series (Canada)
DP	Discussion Paper
Dr & Sm	Drewry and Smale's Chancery Reports (England and Wales)
ECR	European Court Reports
Edin LR	Edinburgh Law Review
ER	English Reports
ERPL	European Review of Private Law
Erskine, <i>Inst</i>	John Erskine of Carnock, <i>An Institute of the Law of Scotland</i> , 8th edn, by J B Nicholson (1871, reprinted 1989)
ETJ	Estates & Trusts Journal
ETPJ	Estates, Trust & Pensions Journal
EWCA Civ	Court of Appeal, Civil Division (England and Wales)
EWHC	High Court (England and Wales)
Gai Inst	Gaius's <i>Institutes</i>
GLJ	Guernsey Law Journal
HarvLR	Harvard Law Review
HKLJ	Hong Kong Law Journal
HL	House of Lords
HLR	Housing Law Reports (England and Wales)
IBL	International Business Lawyer
ICLQ	International and Comparative Law Quarterly
InsO	Insolvenzordnung (Germany)
Inst	Justinian's <i>Institutes</i>
ISAIDAT LR	ISAIDAT (Istituto Subalpino per l'Analisi e l'Insegnamento del Diritto delle Attività Transnazionali) Law Review

J of Equity	Journal of Equity
JLH	Journal of Legal History
JLR	Jersey Law Reports
JR	Juridical Review
KB	English Law Reports, King's Bench Division
KB	High Court of Justice, King's Bench Division (England and Wales)
LFMR	Law and Financial Markets Review
Louisiana LR	Louisiana Law Review
LQR	Law Quarterly Review
LR [...] Eq	Law Reports, Equity Cases (England and Wales)
McGill LJ	McGill Law Journal
Melbourne U LR	Melbourne University Law Review
Miami LQ	Miami Law Quarterly
MiFID	Markets in Financial Instruments Directive
NCCUSL	National Conference of Commissioners on Uniform State Laws
NLJ	New Law Journal
NW	North Western Reporter (United States)
OJ	Official Journal of the European Communities
OJLS	Oxford Journal of Legal Studies
OUCLJ	Oxford University Commonwealth Law Journal
OR (2d)	Ontario Reports, 2nd series
PC	Privy Council
PGR	Personen-undgesellschaftsrecht (Liechtenstein)
QB	English Law Reports, Queen's Bench Division
QB	High Court of Justice, Queen's Bench Division (England and Wales)
Queen's LJ	Queen's Law Journal
R	Rettie's Session Cases (Scotland)
R (HL)	House of Lords cases in Rettie's Session Cases (Scotland)
R Central & East European L	Review of Central and East European Law
R du N	Revue du Notariat
Rabels Z	Rabels Zeitschrift für Ausländisches und Internationales Privatrecht
RGD	Revue General de Droit
RIDC	Revue Internationale de Droit Comparé

RJT	Revue Juridique Themis
RM Themis	Rechtsgeleerd Magazijn Themis
RRJ	Revue de la Recherche Juridique
RSC	Revised Statutes of Canada
RSNS	Revised Statutes of Nova Scotia
RSO	Revised Statutes of Ontario
RTDCiv	Revue Trimestrielle de Droit Civil
RTR	Road Traffic Reports
s(s)	Section(s) (legislation)
S	Shaw's Session Cases (Scotland)
SA	South African Law Reports
SALJ	South African Law Journal
SC	Statutes of Canada
SC	Session Cases (Scotland)
SC (HL)	House of Lords cases in Session Cases (Scotland)
SCC	Supreme Court of Canada
Scot Law Com	Scottish Law Commission
SCR	Supreme Court Reports (Canada)
SI	Statutory Instruments (United Kingdom)
SLT	Scots Law Times
SQ	Statutes of Quebec
Stair, <i>Inst</i>	James Dalrymple, 1st Viscount Stair, <i>Institutions of the Law of Scotland</i> , 6th edn, by D M Walker (1981)
SRA	Solicitors Regulation Authority (England and Wales)
TR	Term Reports in the Court of King's Bench (England and Wales)
Tul Civ LF	Tulane European and Civil Law Forum
Tulane LR	Tulane Law Review
UKSC	United Kingdom Supreme Court
WAR	Western Australian Reports
Washington and Lee LR	Washington and Lee Law Review
WLR	Weekly Law Reports (England and Wales)
WPNR	Weekblad voor Privaatrecht, Notariaat en Registratie
WTLR	Wills & Trusts Law Reports
Yale LJ	Yale Law Journal
ZASCA	Supreme Court of Appeal of South Africa

Table of Cases

Abdul Hameed Sitti Kadija v De Saram [1946] AC 208	88
Air Jamaica Ltd v Charlton [1999] 1 WLR 1399	72
Allan's Trustees v Lord Advocate 1971 SC (HL) 45	120
Attenborough v Solomon [1913] AC 76	147
Ayerst (Inspector of Taxes) v C & K Construction Ltd [1976] AC 167 ..	139
Bain Ptr (1901) 9 SLT 14	102
Banque Financière de la Cité SA v Parc (Battersea) Ltd [1991] 1 AC 221	75
Braun v Blann & Botha NNO 1984 2 SA 850	105
Butler v Broadhead [1975] Ch 97	139
Cailland v Eastwick (1794) 2 Anst 381	72
Château Wilson inc v Fiducie familiale Pezeyre-Lacroix-Foch (2003) Doc 500-32-069887-026, 2003-07-23 J Michel A Pinsonnault, AZ-50184908	58
Commissioner of Stamp Duties (Queensland) v Livingston [1965] AC 694	133, 135, 137–8, 146–7
Croskery v Gilmour's Trs (1890) 17 R 697	113
Cullen v Baillie (1846) 8 D 511	79
Cunningham v Montgomery (1879) 6 R 1333	79
Custom Credit Corp Ltd v Ravi Nominees Pty Ltd (1992) 8 WAR 42 ...	74
Dodds v Tuke (1884) 25 Ch D 617	74
Don King Productions Inc v Warren [2000] Ch 291	136
Doré v Verdun (City) [1997] SCR 862	170
EL v Switzerland [2000] WTLR 873	67
Farr v Newman (1792) 4 TR 620, 100 ER 1209	72, 140–1, 143
Ferguson v Paterson (1898) 25 R 697	79
Foley v Burnell (1783) 1 Bro CC 274	72
Foskett v McKeown [2001] 1 AC 102	81
Fraser v Murdoch (1881) 8 R (HL); 127 (1881) 6 App Cas 855	73
Glasgow City Council v The Board of Managers of Springboig St John's School [2014] CSOH 76	123
Glennon v Federal Commissioner of Taxation (1972) 127 CLR 503. ...	149
Gordon v Cheyne 1824 2 S 675	80

Govan New Bowling-Green Club v Geddes (1898) 25 R 485	114
Hardoon v Belilios [1901] AC 118	48
Hayim v Citibank N A [1987] AC 730	132
Hemphill v Orloff 213 NW 867; 41 HLR 86	41
Heritable Reversionary Co v Millar (1892) 19 R (HL) 43 . . . 80, 92, 114, 120	
Hopkins v Hopkins (1738) 1 Atk 581; 26 ER 365	25
Hunter v Moss [1994] 1 WLR 452	137
Inland Revenue v Clark's Trs 1939 SC 11	114
Jennings v Mather [1901] 1 QB 108; [1902] 1 KB 1 . . . 47, 50, 73, 75–6, 131	
Joint Administrators of Rangers Football Club plc, Noters [2012]	
CSOH 55; 2012 SLT 599	115
Kennon v Spry (2008) 238 CLR 366	70
Leigh and Sillavan Ltd v Aliakmon Shipping Co [1986] AC 785 . . . 51, 132	
Magnum Financial Holdings (Pty) Ltd v Summerly 1984 1 SA 160 . . . 102	
MCC Proceeds Inc v Lehman Brothers International (Europe) [1998]	
4 All ER 675	51, 132
Ministry of Health v Simpson [1951] AC 251	137, 139
Muir v City of Glasgow Bank (1879) 6 R (HL); 21 (1879) 4 App	
Cas 337	79
Octavo Investments Pty Ltd v Knight (1979) 144 CLR 360	74
Parker-Tweedale v Dunbar Bank plc (No 1) [1991] Ch 12	51, 132
Pearson v Lehman Bros [2010] EWHC 2914	71
Piggott v Aulton [2003] EWCA Civ 24; [2003] RTR 540	141
Pinchon's Case (1572) 9 Co Rep 86b, 77 ER 859	143
Raath v Nel (473/2011) [2012] ZASCA 86	130
Re Barker's Trust (1875) 1 Ch D 43	74
Re Bridgman (1860) 1 Dr & Sm 164	74
Re Cockburn's Will Trusts [1957] Ch 438	147
Re Diplock [1948] Ch 465	137–9
Re Endacott [1960] Ch 232	77
Re Frith [1902] 1 Ch 342	48, 73
Re Griffith [1904] 1 Ch 807	74
Re Hallett's Estate (1880) 13 Ch D 696	71
Re Harvey [1941] 3 All ER 284	71
Re Johnson (1880) 15 Ch D 548	49, 73
Re Leng [1895] 1 Ch 652	70
Re Lysaght [1966] Ch 191	45
Re Morgan (1881) 18 Ch D 93	73
Re Piercy [1895] 1 Ch 83	141

Re Pumfrey (1882) 22 Ch D 255	48, 73
Re Richardson [1911] 2 KB 705	50
Re Silver Brothers; A-G Quebec v A-G Canada [1932] AC 514	152
Re Tankard [1942] Ch 69	70
Re Wells [1933] Ch 29	78
Read v Bailey (1877) 3 App Cas 94	50
Ritchie v Dickie 1999 SC 593	79
Roberts v Gill & Co [2010] UKSC 22; [2011] 1 AC 240	132, 139, 145
Royal Insurance (UK) Ltd v AMEC Construction Scotland Ltd [2007] CSOH 179; 2008 SC 201	123
Royal Trust Co v Tucker [1982] 1 SCR 250	58, 201
Sharp v Thomson 1995 SC 455; 1995 SLT 837	114, 158
Shell UK Ltd v Total UK Ltd [2010] EWCA Civ 180; [2011] QB 86	132
Snell v Beadle 2001 JLR 118	68
Space Investments Ltd v Canadian Imperial Bank of Commerce Trust Co (Bahamas) Ltd [1986] 1 WLR 1072	54, 148
Sparkasse Bremen AG v Armutcu [2012] EWHC 4026	65
Sparkasse Hilden Ratingen Velbert v Benk [2012] EWHC 2432	65
Stott v Milne (1884) 25 Ch D 710	48
Strong v Bird (1874) LR 18 Eq 315	144
Strother v 3464920 Canada Inc, 2007 SCC 24	55
Ted Jacob Engineering Group Inc v Matthew [2014] CSIH 18; 2014 SC 579	123
Trident Holdings Ltd v Danand Investments Ltd (1988) 64 OR (2d) 65; 49 DLR (4th) 1	48, 133
Twinsectra Ltd v Yardley [2002] 2 AC 164	72
Watson v Trouteaud (1987) 5 GLJ 6	68
Webb v Webb, Case C-294/92 [1994] ECR I-1717	96
Wewaykum Indian Band v Canada 2002 SCC 79; [2002] 4 SCR 245	152
White v White [2001] 1 AC 596	70
Wright v Redgrave (1879) 11 Ch D 24	72
Wyman v Paterson [1900] AC 271	71, 79
X v A [2000] 1 All ER 490	48

DUTCH CASES

Hoge Raad 25 January 1929, Nederlandse Jurisprudentie 1929/616 (Bierbrouwerij)	224
--	-----

Hoge Raad 14 June 1929, Nederlandse Jurisprudentie 1929/1424 (BUMA)	234
Hoge Raad 3 January 1941, Nederlandse Jurisprudentie 1941/470 (Boerenleenbank/Los)	224
Hoge Raad 18 December 1959, Nederlandse Jurisprudentie 1960/121 (De Gouw/De Hamer)	232
Hoge Raad 12 January 1968, Nederlandse Jurisprudentie 1968/274 (Mulder/Teixeira de Matos)	240
Hoge Raad 3 February 1984, Nederlandse Jurisprudentie 1984/752 (Notaris Slis-Stroom)	233
Hoge Raad 19 May 1995, Nederlandse Jurisprudentie 1996/116 (Keereweert q.q./Sogelease)	227-8, 234

FRENCH CASES*

Cass. civ., 4 January 1825, Sir., 31, 1, 55	194
Bordeaux, 20 May 1830, Sir., 30, 2, 248	186
Cass. civ., 19 January 1832, Sir., 32, 1, 687	194
Toulouse, 20 February 1832, Sir., 32, 2, 389	194
Cass. civ., 15 November 1834, Sir., 34, 1, 777	194
Angers, 13 March 1867, Sir., 68, 2, 273	186

* Editor's note: the references are in the original citation form and in keeping with the style used by the authors of the original text.

Contents

Preface and Acknowledgements	vii
List of Contributors	ix
List of Abbreviations	x
Table of Cases	xiv

INTRODUCTION

1 The Trust as Patrimony: An Introduction	3
<i>Remus Valsan</i>	

PART I: PATRIMONY AND THE COMMON LAW TRUST

2 Lepaulle Appropriated	13
<i>Alexandra Popovici and Lionel D Smith</i>	
3 Trust and Patrimony	42
<i>Lionel D Smith</i>	
4 Square Peg, Round Hole? Patrimony and the Common Law Trust	62
<i>Paul Matthews</i>	

PART II: PATRIMONY AND THE SCOTTISH TRUST

5 Trusts without Equity	87
<i>George L Gretton</i>	
6 Patrimony not Equity: The Trust in Scotland	110
<i>Kenneth G C Reid</i>	
7 Scottish Trusts in the Common Law	127
<i>Lionel D Smith</i>	

PART III: TRUST AND PATRIMONY IN FRANCE, QUEBEC AND THE NETHERLANDS

8 Translating Part of France's Legal Heritage: Aubry and Rau on the <i>Patrimoine</i>	163
<i>Nicholas Kasirer</i>	