

2008/2009

Equity and Trusts

General Editor **D.G. Cracknell**

- unannotated – ideal for exam use
- updated annually



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Equity and Trusts

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Douglas Cracknell was called to the Bar in 1957 and he is still in practice. Over the years, he has devoted much time to writing and editing textbooks for students and practitioners.

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PREFACE

Although the rules of equity, and the concept of trust, grew out of the relief of hard cases by the medieval Chancellor, 'the keeper of the King's conscience', in course of time many of these rules were embodied in, and amended by, Acts of Parliament.

Above all, it was Parliament which brought about, and subsequently confirmed, the 'fusion' of the rules of common law and equity and provided that, in the event of conflict or variance, it is the rules of equity which prevail.

Statutes, and particular provisions of statutes, in force on 1 June 2008 have been taken into account. Accordingly, changes made by the Charities Act 2006 which were in force on that date, or in respect of which a commencement date was known at that date, have been covered in the text. Indeed, all relevant provisions of this Act are now included in the main text, as opposed to an Appendix, and note is made of those provisions which were not in force, or a commencement date known, at 1 June 2008.

Suggestions as to statutes, or provisions of statutes, which could helpfully be included in future editions would always be most gratefully received.

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STATUTES

CHARITIES ACT 1601

(43 Eliz 1 c 4)

Preamble

Whereas Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money and Stocks of Money, have been heretofore given, limited, appointed and assigned, as well by the Queen's most excellent Majesty, and her most noble Progenitors, as by sundry other well-disposed Persons; some for Relief of aged, impotent and poor People, some for Maintenance of sick and maimed Soldiers and Mariners, Schools of Learning, Free Schools, and Scholars in Universities, some for Repair of Bridges, Ports, Havens, Causways, Churches, Sea-banks and Highways, some for Education and Preferment of Orphans, some for or towards Relief, Stock, or Maintenance for House of Correction, some for Marriages of poor Maids, some for Supportation, Aid and Help of young Tradesmen, Handicraftsmen and Persons decayed, and others for Relief or Redemption of Prisoners or Captives, and for Aid or Ease of any poor Inhabitants concerning Payments of Fifteens, setting out of Solders and other Taxes; which Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money and Stocks of Money, nevertheless have not been employed according to the charitable Intent of the Givers and Founders thereof, by reason of Frauds, Breaches of Trust, and Negligence in those that should pay, deliver and employ the same ...

NB. Although this provision has been repealed, it continues to be of relevance: see, eg, section 1(3) of the Charities Act 2006.

WILLS ACT 1837

(7 Will IV & 1 Vict c 26)

1 Meaning of certain words in this Act

The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows: (that is to say,) the word 'will' shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to an appointment by will of a guardian of a child and also to an appointment by will of a representative under section 4 of the Human Tissue Act 2004, and to any other testamentary disposition; and the words 'real estate' shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments,

whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any estate, right, or interest (other than a chattel interest) therein; and the words 'personal estate' shall extend to leasehold estates, and other chattels real, and also to moneys, shares of government and other funds, securities for money (being not real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever, which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

9 Signing and attestation of wills

No will shall be valid unless –

- (a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and
- (b) it appears that the testator intended by his signature to give effect to the will; and
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) each witness either –
 - (i) attests and signs the will; or
 - (ii) acknowledges his signature,

in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary.

15 Gifts to an attesting witness to be void

If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

25 A residuary devise shall include estates comprised in lapsed and void devises

Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail to be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in such will.

As amended by the Statute Law Revision (No 2) Act 1888; Statute Law Revision Act 1893; Statute Law (Repeals) Act 1969; Administration of Justice Act 1982, s17; Children Act 1989, s108(5), Schedule 13, para 1; Trusts of Land and Appointment of Trustees Act 1996, s25(2), Schedule 4; Human Tissue Act 2004, s56, Schedule 6, para 1.