Gentleman

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Lecturer

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Lecture 1

Equity. In colloquial language, means justice.

In the law courts, just as the law is a code of rules enforced by the courts, so equity also means a code of rules similarly enforced. These rules are in many respects very different from the code of rules known as "law.

Both sets of rules are enforced in the Supreme Court. Some equitable rules also in County Court, etc. If we define law as a rule of conduct enforced by the State, then equity is as much entitled to be called law as is common law or statute law.

So equity is often referred to as equity law.

Before 1875, in most of the states of the country, two sets of courts — courts of law and courts of chancery or equity. Courts of law and not administrators or recognized equity, but etc., equity and recognized law, supplementing it with the rules of equity.
Equity acts in personam.
i.e. if A conveyed to B bold on trust for C, the court of law would recognize and enforce the conveyance from A to B but unless the statute of frauds was applicable, it did not require that C had any interest in the land. But in the court of equity, the judge of the matter was in equity, who carefully examined the conveyance A to B in a case with the same rules as a law court, i.e. this necessary to both courts to convey a full estate.

But equity went further, and while making B the legal owner of Blackacre, declared that B held Blackacre as a trustee for C.

Thus equity did not twist the rules of law, but supplemented them by additional rules. Thus in most cases there was no conflict between the rules of law and the rules of equity.

Again, X might recover payment from Y in a court of law, but Y might go to a court of equity and obtain an injunction against X, restraining X from enforcing judgment on the ground that it was unconscionable for him to do so, and if X proceeded to
"Equity acts in personam"
enforce, he was to send 6 persons under his
midnight b. devoir

N.B. The bill of equity restrain the
litigant X - in no way restrained the county
law by prohibition to curiae. In Vic.,
still 1883 the same similar state of affairs
existed; but in Vic. the judge admin. equity
also administered law but not in the same
court. This palpably anomalous.
In England, d. p. pr, p. e. e. bar.
 democr - ecclesiastical law.
attorney - law. Solicitor - equity.
Three great Common Law Courts in
early times - R.B. C.P. Tech.
Exchequer deals largely in revenue cases, but
from time to time encroached on jurisdiction
of the other courts. But Exchequer also a
govt. department; it was the Treasury, and
administered affairs of state; had control of
the officers or clerks who served with patents
of cases in the Common Law Courts - the
clerks of Chancery, headed by the Chancellor.
From earliest times, where E. E. canor
or do not grant relief in cases of wrongs. The
was always an appeal to the King, who sometimes refused these petitions & chancels pr his advise. But this residual jurisdiction of the King arose the lords of the chancels. In this way the blinks of chancels complaints made by white literates, but only issue a writ if his case o facts fell under some precedent. The lords were very conservative, and if the clerks granted a writ on facts unlike in character to any former 7y facts, and and not follow precedents, he could not quash the writ. Therefore a complaint had to show that his case fell under some precedent.

Thus the statute "In Cenemiti casis was passed, which empowered the chancels to issue writs in cases similar those in which there were precedents. But this act had little effect, because courts were very conservative, and repeatedly quashed these writs. Hence the practice grew from appeal to the king the made, chiefly in two sets of cases—

1. When ch 7 law gave no remedy
2. When remedy given was not adequate.
A third class of cases - appeal against some wrong inflicted by the King or his officers - e.g. if the King ruined an estate wrongfully.

These appeals were always of grace, not of right; no writ would be issued, the appeal was by way of petition to the King (today case ages King is by way of petition) Petitions referred to the Chancellor, who heard the case, and recommended to the King to certain course, or if the petition was against an agent, he issued a subpoena calling on wrongdoer to serve complaint personally and on oath.

In this way the Chancellor of Court drew, - the “Court of Chancery” was recognized Oct 7 1229 to 1321 empowering it to give relief in extraordinary cases, and all matters which were of grace to the Chancellor were referred to this court.

Thus this court had statutory jurisdiction, and apart from hearing petitions from the King, practice was then three classes of case:

1. Ordinary Common Law case, in which no relief was by C.C. et al, because of cumbersome procedure, taking 10
2. When law gave no relief
3. When relief was inadequate

Towards end of 14th century, Parli. objected to the
Chancery's born. law by direction, and so the
Chancery restricted to 2. and 3.

Chancellor usually a bishop, and he did not
administer the common law, because the
common law either gave no remedy or was not
adequate. Hence he had to invent or apply
some other law, and he had the rules of equity
or justice, and as successive Chancellors added
the position was by no means consistent,
and decisions not recorded. Common saying
was that "equity depended on the measure of
the Chancellor's foot."

Gradually the Chancellor began to have
regard to precedents, and thus equity took
some of its empiric, and commenced to be
formulated in a code of rules. In 16th cent.
position decisions commenced. He reported;
another great change took place - Laymen
were appointed as Chancellors.

Treat conflict between born. law et
and Chancery took place James I.
Illegitimacy, he contended, was not known to common law, and any litigant complaining of illegitimacy was guilty of perjury. But King declared, on the advice of Bacon and others, in favor of illegitimacy.

Status of illegitimacy was settled, and equity resolved itself into rules. 1873. Indecent acts were the two acts of 6th abolishing both and creating a High Court in lieu of, with nominal divisions, “to administer both law and equity in the same court and in the same action.”

1883. Victorian. Indecent acts, one Supreme Court being created.

Made some limited changes in substantive law, e.g. 1. Declared that tenant for life shall not be deemed the acknowledger of law to convey regnant waste. 2. So, merger—estates shall not be deemed to merge at law unless they are deemed to merge in equity.

3. Mortgagor, i.e., judge. Pet. had no right of law to recover possession or a rent, but in equity he had 10th rights. Jud. Pet.

It was held that he has the reversion in both law and equity.
How equity awards compensation
4. Stipulations as to time are declared to be
those of equity rules — i.e. time not strictly
of the essence of the contract, parti
in contract for the sale of land, unless the parties
by express stipulation or the nature of the contract
make it so.

Similarly, rules of equity as to custody of
children differ from rules of law, but the
Judicature Act declares that rules of equity
shall also be the rules of law.

General prov. for triumph of equity in
cases of clashing between rules of law and equity.

Lecture 2

Slavery was a species of "court of
conscience" — acted upon the conscience of the
defendant.

While law gives damages, equity awards
compensation. Damage are compensation
for loss suffered, but in equity, compensation
is the gain to the defendant owing to the wrong to
the plaintiff.

Thus the two things are distinct
Equity has nothing to do with the criminal
law (that was left to Lord Chancellor)
The sphere of equity defined.

Lord Currie's Act not adopted in Victoria.
Equity has practically nothing to do with torts (save e.g. injunction against contempt - public order!).

Principally deals with property, contracts.

Equity was divided into three jurisdictions -
1. Specific
2. Concurrent
3. Courante

**Exclusive**

1. If there was no remedy at all in law, as in case of trusts, jurisdiction of equity was exclusive.

**Concurrent**

2. If there was a remedy at law, but remedy in damages was inadequate, so that equity gave specific performance, jurisdiction was concurrent.

In England by Lord Canning Act, lot of equity authorized, which had jurisdiction to make injunction or specific performance in lieu thereof to grant damages (thought proper). But with no power to award damages.

He act not having been adopted, equity might "leave the plaintiff to his remedy at law in damages." In cases to which Lord Canning's Act applied, e.g., has no action at common law same for damages, but at equity has a suit for injunction & or in alternative damages.
THE GENERAL MAXIMS OF EQUITY.

1. "No wrong without a remedy."
Maxims

Auxiliary.

3. *Auxiliary jurisdiction of Equity*
   - Bringin action e.g. for damages in a law court. Common law ed. not order discovery of documents, so perj. way to equity and ask for discovery or answers to interrogatories. Then, when obtained, will be used in the court of common law.
   - This jurisdiction now obsolete, because no longer necessary, the one court having power to order discovery and hear the case.

General Maxims of Equity

1. "No wrong without a remedy."
   - This lies at the very origin of Equity - because law did not give remedy to some wrongs that belong of Equity above all. But Equity does not give remedy for all wrongs - only gives remedy in those cases which come within established principles and precedents.
   - It is sometimes put that this maxim largely means that Equity will not suffer remedy to fail merely by reason of a technical defect, e.g. Cl 57 law might come...
2. "Equity follows the Law"
F. Fa. against goods or legal real lands, but if goods or land subject to mortgage, they could not be taken; so equity granted equitable execution — i.e. appointed a receiver, who disposed of them subject to mortgage.

Again, a mortgagee having conveyed his land to the mortgagee out of possession, could not recover his land from a third party, because he was not the owner, and the sheriff in case of lease granted before mortgage — i.e. equity stepped in to allow mortgagee discretion and suit for recovery. This right confirmed by Judicature Act.

2. "Equity follows the law."

This is correct so far as it means that with regard to legal estates and interests coming before the court of Equity, that court recognized the rules of law — e.g. primogeniture, that the eldest son was entitled to his father’s pre-emptory; but since he had persuaded father not to make a will by undertaking to convey one of the f. & s. to younger son, court would declare not that younger son inherited the property, but that the line held it in
Montfort's settle — The rule is fairly well settled that in the case of an executed document arising from an executory document the same words of limitation are necessary; brevity equates with brevity of legal.
trust for the younger son. Equity recognized the legal rules that words of limitation necessary to convey fee simple in case of legal estates, and fully enforced them; also the rules of construing acts of Parliament, and other legal rules. All this was legal; but in its exclusive jurisdiction equity was also said to follow the law. But this was nearly so true as when dealing with legal estates and interests.

In dealing with purely equitable rights and estates, equity only followed the law when there was a clear analogy and also that there was no special circumstances rendering it necessary to depart from the legal rule—e.g., equity adopted rule of permissive use to equitable estates; also adopted legal rule that words of limitation necessary to convey fee simple in equitable estates.

*The Monkton’s Case, 1913 2 Ch. 562*

But, while it convey an estate of equitable title, it is necessary that words of limitation give notice to beneficiary. It is not so necessary to use...
words of limitation, so long as perfectly clear from documents that he was intended to take a feu simple. 

4. A conveys, legal estate in Blackburn to B; this is in trust for C.

To give B a feu simple, equity insists on the rule of law being observed; thus B gives C the equitable feu simple, not strictly necessary to use words of limitation, so long as perfectly clear that intended to take.

Similarly, if A conveys, equitable J. to B, J held in trust for C, here a distinction must be made. In conveyance of equitable estate A to B, words of limitation must be used; but in describing C's interest, words of limitation are not absolutely necessary, so long as the intention is clear.

Take rule in Shelley's case - it applies in equitable estates just as in legal estates.

If Act 9 & 10 39 Geo. 3, passed, 63 & 7 Equity, of course, gives full effect to it. (Real Prop. Act 1915 xex 78-80
Trusts Act 1890 xex 77.)

As to the Statute of Limitations, in application to legal estates, Equity gave full effect to them, and recog. that right at law was barred; but
Inquiry and the Statutes of Limitations

Equitable remedy might be barred by doctrine of laches.
Vigilantibus non Dormientibus

Law about the rights in equity? Actions at law for damages might be barred, so equity by analogy, barred specific performance at end of the same time. But it might deprive plaintiff of action in shorter time, by doctrine of laches (equity acts the inactive, not those who sleep on their rights).

An pursuing equitable remedy, time might thus fall short of the time fixed for bringing action at law.

In its exclusive jurisdictive action, if no statute of limitations applied to equitable estates, the maxim acturus aliquid nullus applicatur, and a reasonable time demanded.

Equity did not follow the law in the following notable cases—

1. No execution of equitable estates (then as now by statute?)

2. Conveyance of equitable estates not require possession—might be by word or month. Now by statute all equitable interests must be assigned by writing signed—Trust Act.

3. Rule of contingent remainder, and not application equitable estates.
4. Equity allowed you to have successive interest in chattels, though the law did not permit this.

5. Equity allowed married woman to hold property separately from her husband; also vested upon anticipation.

6. Rules as to custody of children were different.

7. Stipulations as to time, as contracts for sale of lands, to convey or construe differently in Equity.

Howard v. Fanshawe 1875 2 Ch 581 is an interesting case of Equity following the law. When lease contains covenant that on failure to pay rent within period, landlord may re-enter and forfeit the lease. Then on entry by the lessor, as law determined. But Equity said — re-enter, but only as security for payment of rent, and so tenant can at reasonable time recover the land by payment of rent and interest.

Supreme Court has provided that tenant must bring his action for recovery within 6 months of time when landlord entered under the judgment of the court.
3. "Equity regards the spirit."
In Howard v. Tanbark, landlord re-entered peaceably, not under judge's court, and after 6 mos. tenant filed action to recover, argued that statute did not apply to case of peaceable entry. But Cheshire L.J. held that statute, while only applied to entry under judge, yet equity must follow law, and the tenant's rt to re-enter ended 6 mos. from date of peaceable entry.

Lecture 3

3. "Equity regards the spirit:

It looks more to intention than mere form. Used e.g., form of mortgage is that of an absolute conveyance with rt of redemption on a specified day. In law unless money paid by the day, the mortgagor lost the property.

But the eq of equity held that the harrassment was a security for money and therefore notwithstanding any agreement to contrary among the parties, allowed the mortgagor the "equity of redemption", although the specified day had gone by.

So in leases, it was condition that if rent arrears, lessee might re-enter and determine.
But Equity regarded the condition simply as a security for payment of rent, and on paying the lessee may recover (inside six months) - cf. Howard v. Lansdowne supra.

again, in the case of penalties, e.g. in a mortgage it is specified that interest is 6%, if not paid promptly, interest shall be 10%. This is good at law, but void in Equity.

so in many leases rent paid at 25% such penalties stood. But in mortgage or lease, if paid at 10% to be reduced to 6% if paid by one date, this reverse process is good in Equity as well as at law.

The Victorian Income Tax Act provides that all contracts, let, mortgage and mortgage, lends and borrow to by which the former passes on the tax to the mortgagee, tenant or borrower, are void, e.g. Interest is to be 6% + Income Tax. Inequity - void.

In a Victorian case, a mortgage made before Income Tax Act passed provided that interest shall be 10% to be reduced to 6% if Income Tax Kerosin of the latter paid. Mgr. contended it was only bound to pay 6%. 
4. "Where the equities are equal, the law prevails."
"When equities are equal, law prevails"

Full bond said no: your agreement was to pay 10% with a condition in your favor. If you object to the condition, pay the 10%.

There are other penalty clauses, as in a contract for the sale of land, where a penalty is paid on default in any payment. Such a condition is wholly void. For mere default in payment, vendor not entitled to declare deposit or other payment forfeit. If purchaser refuses to go on with the contract, vendor entitled to retain property and deposit, but told of installments to the use of the purchaser.

4. "When the equities are equal, the law prevails."

The courts of equity refuse to interfere in such a case.

Trustee, in breach of trust, sells a property to bona fide purchaser without notice of value. If the trustee sues to have purchaser declared a trustee for him, the court will refuse, on the ground that the equities are equal. So the law prevails, and purchaser gets the land.

Vendor sells land, conveys it, and puts receipt on the face or back for the purchase money, which in fact he has not received,
5. "Who is first in time is first in Equity."
and negligently gives purchase conveyance. Purchase Rogers conveyance at Bank as security for an overdraft. As his vendor and Bank, Court refuses to interfere - in this case on the ground that the equities are not equal, as the vendor has been guilty of negligently imparting with the conveyance before payment.

A contract C sells lands to B, who on investigating, finds a discomfit land was one subject to an equitable charge. A declares that this has been paid off, and produces a forged receipt for the money. On this B completes the purchase and takes a conveyance. In this case, as B has taken a conveyance, the court will refuse to interfere, but if it had not taken a conveyance would be bound by the equitable charge.

5. "Who is first in time is first in equity."

i.e. Other things being equal, the first in time prevails. This priority of time is said to be the last ground of preference. If the court can find any other circumstances (e.g. negligence) it will disregard time as a ground for preference. A mortgage to B by legal mortgage... then a
Hopkins v Hemsworth — An equitable anti-miesz by deposit made by a legal mess of land has an equitable estate in land, and as such, two such equitable anti-mortgages, the doctrine of obtaining priority by notice does not prevail.
second mortgage B C, and third B D, who takes without notice of C's. B has priority over D, but if D pays off B's 1st mortgage, he is allowed to 'back', and so beats C.

Take successive equitable assignments of choses in action - e.g. A holds a trust fund in trust for B. B assigns a mortgage, his interest to B. Then assigns a mortgage his interest to D, who takes without notice of the assignment to B. C as his, C + D, takes priority as the first in time. But if D gives A notice that he has taken assignment of mortgage, (gives A notice), then D has priority.

Rule - In the assignment of equitable interest in money or other personal property, the assignee who first gives actual notice has priority. (Rule of Durnel v Hall)

This rule does not apply to the assignment of mortgage. (assignment) equitable interests in personal or household land. These assignments take priority according to date.

Hopkins v Farnsworth 1878 20 Ch. 347.
A holds realty personally in trust for B, who assigns his interest, 1st to C, then to D.
6. “Equity looks on that as done which ought to be done.”
D takes without notice of C's assignment, but
ignorance of A type C does.
D has priority in personality, but C in reality.
Companies Act does not take notice of assignment
of trust registered in shares; i.e., rule of Dencker
Hall does not apply. e.g., A is shareholder
registered; mortgage first to B then to D. D
first, quia company notice; nevertheless C has
priority.

6. "Equity looks upon what ought to be done"

e.g., A demises Blackacre to B.
and directs him to sell it to pay the proceeds
to B. Before the executor sells, B dies,
leaving the residue of his personality b.
and residue of A realty to D, who is entitled to
B's minor on Blackacre. The answer is: C.

Because equity regards Blackacre as sold, +
the money, personally, to B's C. This is
the doctrine of "Conversion."

Another case - A demises Blackacre to B.
Then A contracts to sell Blackacre, but A dies
Blackacre is deemed sold.
"Equity imputes an intention to fulfill an obligation."
"Equity implies an intention to fulfill an obligation."

"Doctrine of Reconversion"

Suppose the purchaser died before conveyance, leaving realty to X and personally to Y. Who is entitled to Blackacre? X or Y? X is entitled, on parity of reasoning. But X takes subject to the obligation to pay any unpaid purchase money. (Section 547, Act R.P.A. 1890-137)

This maxim also forms the basis of doctrine of reversion.

DOCTRINE OF RECONVERSION, e.g. A dies and leaves Blackacre to A's executors, who sell Blackacre to B. B intimates to the executors that they're not to sell Blackacre - that he'll take conveyance instead of proceeds. (The executors must not sell Blackacre now unless to pay debts) and the conversion into money or personally is now undone, and reversion has taken place. However, if B dies before reversion and leaves Blackacre to C, personally to D, and not D is entitled, D, who have been entitled, but for the direction not to sell.

1. "Equity implies an intention to fulfill an obligation."

Any act that can be read as showing the intention to discharge obligation will be read. This maxim is the basis of the doctrine of reversion."

"Equity implies an intention to fulfill an obligation."

Any act that can be read as showing the intention to discharge obligation will be read. This maxim is the basis of the doctrine of reversion."
**Doctrine of Satisfaction**

Performance. 9. A on his marriage covenant to purchase and settle their lands Produkhs to value of £20,000 in Western District on his wife. A buys Blackacre in the Western District, says nothing of his intention, dies not settle it on his wife, and dies. The wife is entitled, because he court presumes that A intended to fulfil his obligations. But if A had bought Whiteacre in Euppland, his wife not he so construed, and therefore wife not not be entitled.

*Leckham v Leckham (White v Turner)*

This maxim also as basis Doctrine of Satisfaction. Jackson. Only applies in case of children. Theory is - the father in under moral obligation to provide for his children, and he is the best judge of what is necessary for his purpose, and is not to be deemed to provide twice for same child, unless clearly so intended.

E.g. father's will leaves £5000 to his son and then, upon his death, on son's marriage or entering into business, father gives him £5000 or property of that value. Father then dies without alteration will. Later not entitled to £5000 under he will. If father had given son less.
8. "He who seeks Equity must do Equity"
He who asks equity must do equity.

A plaintiff resorting to courts of equity did so because he could not get justice in cl. of law. So only natural for courts of equity to say—If you ask this court to make the defendants do to you what is equitable and fair, you must do to him what is equitable and fair in the same transaction.

E.g. Doctrine of consolidation of mortgage.

This doesn't exist under Victorian law now.

A mortgaged Whiteacre to B, and subsequently mortgaged Blackacre to B for a separate loan. Both payments fell into arrear, so that the mortgagor in both cases lost his legal right of redemption. If the mortgagor asked for
LOAN TO EXPECTANT HEIR.

WIFE'S EQUITY TO A SETTLEMENT.


Whitacre which is the property of B. Lord will say b B - you can only get Blackacre on condition that you give O Whitacre."
"Election" postulates the giving away by 'states of property not his own.'
you refuse, you may keep Whitacre but C will get Blackburn. This was the old doctrine of forfeiture, but on this equity has now grafted the modern doctrine of compensation. Today, if A may keep Blackburn, compensating C in amount not exceeding the value of Blackburn & Whitacre.

This whole doctrine of election applies not only between properties, but also money gifts. Under old doctrine of forfeiture, if A agreed to take Whitacre, give up Blackburn, he was said to take “under the will”, but if he elected to keep his own property, which Blackburn, he was said to take “against the will”.

This doctrine of election applies to all sorts of instruments – wills, deeds, writings – and to all forms of property – freeholds, leases, chattels, personal, restraints, etc.

In election it is essential for the donor to give away property not his own; whether he knew it not to be his own or not does not matter. It must be capable.

If he purports to give away property, e.g., if A bequeaths B’s property to C, this is not
9. “He who comes into a court of Equity must come with clean hands.”
a case of election, because trustee cannot give away his trust.

This is another form of election to which the maxim also applies - e.g. an infant girl about to marry - she is in a settlement with her intended husband by which she settles property upon him and he settles property upon her. If she repudiates her contract then she cannot take the benefit - 'she cannot appraoch and repudiate' as the Scottish maxim puts it. But if the husband's property settled on her without power of anticipation, this is an exception to the doctrine.

9. "He who comes into a court of Equity must come with clean hands."

Plff. must not have been guilty of wrong conduct in the transaction in question. If he seeks to have a deed cancelled on such grounds, and he himself has been a party to the fraud, the Court will not hear him, unless it would be against public policy to allow the fraud to stand uncancelled.

Plf. is plaintiff, plaintiffly misrepresented that he was of age, and so brought suit, paid costs, but money is now owing to him. On attaining his full age.
10. "Equality is Equity"
he brought suit against Hussey to recover his money, and on Hussey taking defence that they had paid him already on his fraudulent representation of a bargain — the payment to an infant was no payment at all (which is so) of honest money, but came refused relief on the ground of his

ownership of property allows another to put permanent improvements on the property, under the mistaken belief that it is his own. Then if the true owner has to come to court of equity to recover the property, he will only get relief if the quasi compensation is the person who improved it.

So, “Equity is equity”

Law says in favour of joint tenancy, and

Equity says in favour of tenancy in common.

By: Property is granted or conveyed to A and B

without more, this is joint tenancy both at

law and equity. But if property has been

purchased in unequal shares of purchase money,

Equity says that A or B are tenants in common

of the beneficial interest. So, if B dies, at

law A takes the whole with survivorship, but

holds equitable interest for residue of B.
To B A & B are partners. They are deemed to hold the beneficial interests as tenants in common.

If A & B buy the property as a speculation to sell, they are deemed to hold beneficial interests as tenants in common.

Again, if X & Y together lend money to Z, then at law they are joint creditors, but in equity they are tenants in common, and X must pay them receiving receipts from both.

This is irrespective of mortgage. Case recently.

Husband & wife deposited £200 Savings Bank. Fitzroy. Death of husband. Bank refused to pay more than £100 to wife, and only £100 to executors or administrator of the husband.

So in the case of money lent on mortgage by X & Y to Z, I cannot get binding receipts from either of them. He should pay half each, or get a joint receipt.

But if this law differs, then, if Y might be only to Victoria, and Z might not get back his property, or Y might be dead, and money will have to be paid to executors. Hence arose the "joint account" clause in a mortgage. Money lent by X & Y on a joint account ... either could receive payment.
II. "Equity acts in personam"
and give a binding receipt. But despite this, the mortgagees between themselves are tenants in common.

Conveyancers Act 1915 sec 67 provides that the joint accounts clause is presumed unless it is stated to the contrary, and remaining mortgagees can have given valid receipts for mortgage money.

11. *Equity acts in personam.*

In order to decree by attachment of the person of defendant does not comply, he is imprisoned until he does! Also sequestrated the lands and goods of the defendant - put in a receiver. English courts of law, speaking generally, had no jurisdiction in an action relating to land outside the Kingdom - e.g. in action for trespass in France. But Spanish had jurisdiction if the defendant was within England and the plaintiff had an equitable right against him, because the ss. of equity could then impress that equitable right against the defendant's person by attachment or sequestration.

*Penn v Lord Baltimore*

Objection Taken that English it had no jurisdiction. *Reply* - Dep't is true, and we can attach him.
And there is an equitable right against him—adjustment of boundaries. Bond laid down that in those cases, actions for accounts, specific performance, injunction, foreclosure, redemption, etc., lands situated abroad, might to land prove. The title was not in question (as matters of title are decided by the rules).

Since Penn v Ed. Baltimore, English Equity Courts have exercised jurisdiction re foreign lands in cases of contract, fraud, and trusts. But the defendant must be ni Ireland.

Lecture 5

The Law of Trusts

Underhill defines Trusts as page 1. — an equitable obligation — trust property. 

This definition is given from the point of view of the trustee, not of the beneficiary.

Spence at p. 2 gives definition from point of view of the beneficiary — *Beneficial Interest in property without possessing a legal ownership.* *Trust* sometimes has the one meaning, sometimes the other. T.R. Trusts Act 1925 etc.
The meaning of "trust".
says "Trust shall be assigned by writing signed by the assignor." Trust here means the beneficiaire interest.

Trust Act then provides for apps. of new trustees, and says that new trustees appointed under the Act must be appointed by writing. 79. A is trustee for X. X writes B to rid of his trust, and appoints B trustee in his place. That is, the office of trustee has been transferred by A to B; the property has to be transferred to B in the normal legal way. Hence, in reading statutes, be careful as to whether trust means assigns of trustee or only of trustee.

Lewin's definition embodied by Lindsell, as it precludes the notion of a man declaring himself a trustee for some other.

Smith enters. Spencer's definition as not providing for special trusts, actual trusts, and being a definition of simple trusts only. Take a chattel trust - this is no individual ownership at all! Trustee distinct as they think fit (cf. the Allen Request.)

Similarly, a trust to erect a tombstone?

So that Smith says, Spencer's definition insufficient.

Contract is agreement enforceable at law by
The position of the third party is the great axiom. Two Distinctions between Bankrupt and Trust.
the parties b & c.

Trust is enforced not by the parties b & c, but by the third person, the beneficiary. This is fundamental doctrine between contract and trust!!

A transfer of property held in trust for c, b is now done with it. He cannot enforce the trust, b & c has!

Foreign courts have difficulty in seeing that the settlor retains no rights as settlor at all.

Bailment and trust are distinguished. A deposit a library with b. Here b is under legal obligation to keep the books safely and return them to a., and a has the corresponding rights. a remains the owner at law, b has merely the possession. b has also the legal rights to use and enjoy the books - i.e. he can exercise the right of use and possession on his own behalf as how as to hurt.

A settlor books on b in trust for c for life, then for d. here a has parted with his right of ownership as law. b is the full legal owner of the books. but b is under legal obligation to use his rights of ownership and possession for the benefit not of himself, but of c & d.
Let them D are entitled through engagement of the books. Further C, D may enforce the trust, but in the case of Bartlett it can be enforced only by A the original owner.

p. 4. Meanwhile analysis of trust

p. 5. Definitions of legal and equitable estates.

Trustee usually has legal ownership.

“Common law” is that part of the written law which prior to Judicature Act was enforced in the Common Law Courts.

“Equity” is that part of the unwritten law which prior to Judicature Act, was only enforced in the courts of Equity, technically.

“Equity” sometimes need = right enforcible only in courts of Equity.

Legal estate or interest in property is land estate recognized by C.L. to the judge of Judicature Act, 1873 on Judicature Act and not from law and equity, but sound they were to be administered in same court and in the same action.

Note that Trust estate may be equitable.

E.g. Nipa v. Hill. Equity of redemption upon Austin v. Rex. Trustees' estate is thus equitable and not legal.
A holds Blackacre in trust for B. B transfers his equitable estate to X in trust for Y. X thus holds an equitable estate in trust for Y.

Again, B expects to receive under Jethro's will a large sum of money. This is an expectancy, which he may mortgage or assign to trustees held in trust for his children. Trustees would hold equitable interests.

A, owning Blackacre, agrees to grant B a lease, but has not executed it. B has an equitable interest, which he may transfer to trustees held for his children.

6. Difference between legal and equitable estates not merely theoretical. A has legal estate in Blackacre. He conveys to B. Then A transfers B convey estate to C apart from laws as to registration, as his conveyances are legal interests. The first in time prevails! But A, say, has equitable estate in Blackacre. He transfers a free to B. Then B C who takes without notice from B transfers to B C. Then C takes conveyance of legal estate. The property belongs to C, on maxim. When the equities are equal, the law prevails.
Legal estates are conveyed by deed of conveyance, equitable estates by writing signed by the assignor. 

Creation of future interests in legal estates limited by rule 7 contingent remainder (and rules against perpetuities).

Creation of future equitable estates is governed technically by Rule against Perpetuities.

**Lesson 6**

Trusts: Express and Constructive

A more usual division, and one often found in Act 718, is 1. Express

2. Implied

3. Constructive Trusts

**Express Trusts:** AJA § 71, 72

Statute of Limitation applying to money had and received applies by Act 71 to express, implied, or constructive trusts.

**Express Trust** is one arising from words, verbal or written, showing intention to create a trust.

E.g. A settles land on B + C "in trust for X and Y."

**Constructive Trusts**: Blackmore by Honer.
IMPLIED TRUST.

CONSTRUCTIVE TRUST.
Implied trust arising from conduct showing intended to create trust

A, agent for B, under instructions to use money of B, buys Blackacre ostensibly in his own name and takes conveyance. A is deemed an implied trustee for B.

Constructive trust arises from conduct suggesting any intention to create trust, but which conduct is concerned in equity to create a trust.

A, a trustee, in breach of trust, sells trust property to C, who takes with notice of the breach of trust. C is deemed a constructive trustee for B, the beneficiary.

A sells Blackacre to B use of C+B, thus in trust for D for life, remainder on trust that estate passes perpetuity rule. Here the intention was to give the remainder away, but owing to
Note this very carefully

PRECATORY TRUSTS
Presumption Trust

His trust being illegal, it results to A - B + C held under on constructive trust p. 17.

By Manucci p. 490

Thus, Respecting Trust divided into two classes

1. Express Trust, where the settlor's intention is clear and explicit.

2. Constructive, where no express intention is found, but the disposition is illegal.

"Presumption Trust"

In full hope or confidence, praying

Sometimes this words are deemed to create a trust, from the context, but mostly not; but when they are so deemed, it is called a presumption trust, and arises it arises from words, the testator which are considered by court to show intention to create a trust. Presumption trust an express trust.

Words apparently imposing condition or done may be held to show intention to create a trust and not a mere condition.

Special power of appointment may show an intention to create a trust, and will be an express trust, e.g., £10,000 b. behind m. and proportions as thinks.
Judicial definitions of "Repress" Lens
among my children X. Y. Z. If there all the facts, it will imply that in default of a declaration, the fund is to be equally divided among the children. Then, the executor will hold fund in trust. This is a power coupled with a trust.

In Acts 37, Paul's case is considered. Here is formally a duty to express trusts from those for implied or constructive trusts, which usually follow both the same rules. Therefore, for acts of Paul, important distinction is between express trusts and constructive trusts. This fact is stressed by Manderell when he divides trusts into "express" and "constructive." Hence, the important thing is to define express trusts — all others are not express.

Express e.g. "Express by writing a word or month"

Try 1. v. Sandt & Thompson 22 Ch D 617 (This does not seem to include resulting trusts arising when words misused not disposed of)

And Corray v. Cunningham v 109 39 C 984 says, "There must be an express trust; that is, a trust which arises from the construction of the written instrument; not an inference of law/equity imposing a trust upon the consequence, but a trust arising upon the words of the instrument itself."
Achrois & weaver land filed, and continued the field, on Express towns, not barred by Stat. Limitations.
Try J. v. Sands & Thompson says. "Referring
5 sec 39 Real Prop. & - this does not apply to
reselling, implied or constructive trust, etc.
not a case - mortgagee having paid of mife
without a reconvenance.

Dickinson v. Leonard 104 Sec 59 - "The
words express must in statute are used by
way of opposition to implied, reselling, which
by operation of law.

These quotations apply to Sec 39 R. P. A.
and Sec 57(2) Supreme Ct. Bk., and 11, 12 Tex. 4th.

Statute of Limitations 25 = R. P. A. Sec 39

 Says that in case 7 express must of land, that
of Limitations only begins 6 mm from time
has property conveyed to purchaser with notice.
Purchaser has rights on constructive trust.
The section thus exempts from Statutory Limitations
all cases of land held on express trusts.

57(2) S. C. A. says actions to recover prop.
held on express mires shall not be barred
by Statute of Limitations - i.e. extends Sec 39
R. P. A. to personal property. But only
declares the old rule. Equity, and creates no
new rule of law.
See 71 Lucas. Sect says in effect - Trust of lands, documents, &c. must be proved by a writing signed by person declaring the trust. The Sect says preceding section (71) shall not apply to trusts arising by implication or construction of law (equity). Thus 71 only applies to express trusts.

So all important to know what express trust is.

Note particularly that unascertained residuary is held by express trust, as we have seen.

See 72 excludes pr. 71 constructive trust.

As to constructive trust, in some cases by rule of equity the statute was a defense to actions for breach of trust, but in others not, e.g., sometimes cases where residuary or temporal interest not disputed the statute was called constructive trust. Statute of Limit. does not apply. Other cases constructive trust while statute does not apply.


When pointed out that authorities do not seem to have drawn with any precision the line between express & constructive trust.
Rule in *Knee v. Sanafro*

Lever's Classification of Trusts
The trustee of a lease surrenders the lease for
reality, he is nevertheless deemed a trustee for
the benevolence, and his notwithstanding that
landlord refused to renew them as trustee for
the benevolence

Kuck v. Sandford — famous case

Lecture 7

Lewin p. 117 gives at beginning of
page and note classification of trusts as
1. express
2. implied
3. by operation of law

He says express trusts are declared directly
by the form and terms of the trust.
Implied trusts are declared most directly, but only
by implication — by words not affecting to
declare a trust, but evidencing an intention to do
— e.g. A £1000, not doubting that he will
pay Rentou 6 & B an annuity of £20

Thus, in Lewin, both express implied
trusts arose from words showing intention.
But resulting first line is an express train, see its underhill!
create a trust! Lewin's example is a parliamentary trust!

Thus Lewin - mandrell again.

By operation of law - Lewin says there an trust not declared directly or indirectly, but emerging from a rule of equity

1. Rescuing trusts - e.g. if A to pay certain debts, and there is rescuing trust of the surplus

2. Constructive trusts - arising from act of the parties - e.g. when trustee renovates a house for his own benefit

N.B. The first sub-class - this, according to him, fell and on the authority is an express trust, and 68. 490 because it arises from the words of the instrument.

Thus Lewin's classification may differ from that of Mandrell.

In 190 v. Ashwell, said that in applying the statute of limitations to constructive trusts, the authority do not seem to have drawn with any precision the line between express and constructive trusts. In 190 v. Ashwell, the court of Equity repeatedly held that 68. 490 of Limitations applied to constructive trust.
Trust. Simple & Special

Executed. Executory.
General rule was - Statutes of Limitation and not apply to breaches of trust, but there was an exception - breaches of some constructive trusts - and not all constructive trusts. Thus, certain Statutes declared that Stat. of Limitations did apply to breaches of trusts - e.g., Sec. 39 B.P.A. 77 Trusts Act 1925.

10.11 Simple vs. Special Trust
Simple - e.g., Mr. A in Trust for B - a simple trust on A's behalf for B.
Special - e.g., A, lives in Trust for B, where, B collects rent, B enjoys absolute income imposed on the Trust. Similarly, a Trust sell property, pay debts.

Art 15. Important distinction - Execont vs. Incornt TRUSTS (EXPRESS TRUSTS)

Incorntory Trust - e.g., Marriage settlement - The marriage settlement will be an Incorntory Trust.

As for directions in will, often a question whether declarant has declared the Trust, or has only created an Executory one!
But if marriage articles outside of difbyer 2 p.m. *(I have)* how
an marriage can be follow the marriage order.
Directions as to will to draw up trust for

Inheritance trust.

Question has been raised viz. what many

Exempted Trust can annul a will because

Trustee no longer takes directly by devise - rest

prop. pass to executor i.e. trust cannot be

exempted because something remains be done
to create the trust - i.e. naming from executor to

trustee of the executor himself is the trustee,

later not become crank to until it has dis-

charged his duties as executor.

Mackey says Underhill's definition of

exempted trust would hold because of marrying

articles, an exemptory trust, 'the trust may

be most exactly declared and stated by the

settlor! Hence distinction sometimes stated

'Exempted Trust is one... when the maker of the trust

may be said to have been his own conveyance,

i.e. the trust is complete in its terms and

limitations, and the property is in the name

of the trustees, and no further act is necessary

necessary to give effect to it.'

'In an exemptory trust, some further act

necessary as mentioned...
CHARITABLE

NON-CHARITABLE

"The Physical Development of school boys is a charitable object,
in m. Marius 1915 2 Ch. 284"
As to whether a trust in a will is executed in law, it is a question whether the declarer in a will has himself created a trust or only directed one to be created. In cases, the terms and limitations are expressly declared; in the second, they are only declared in a general way, and therefore the terms or limitations have to be created in a more explicit way.

In one case (Chivers) declarer has directed something to be done, and it appears that he has himself completed the trust.

Of Mundell's examples.

[Other distinctions come later, most imp. of which is drawn by "charitable" and non-charitable trusts. To determine whether a trust is charitable or not, look to preamble & Act of Elizabeth which enumerates certain charitable trusts, and also look to trusts declared by courts to be charitable by analogy, as coming within the spirit of the act of Elizabeth.

1. Trusts for public poverty.
2. Advancement of religion.
3. Advancement of education.
5. Trusts to free children from playgrounds.
PUBLIC

PRIVATE

MINISTERIAL

DISCRETIONARY

VOLUNTARY

FOR VALUE.
There is distinction between public trusts and private trusts, and further division into administrative trust and discretionary trust. Ministral - trust to convey Blackburn & B. Discretionary - trust to distribute £1000 among charitable objects specified.

Another distinction between trusts voluntary and for value. All trusts in will are voluntary trusts. Marriage articles are trusts for value.

Art. 1. Creation of Trust

Deed of conveyance abounds in technical expressions - but not needed in creating trusts. Supreme in effect indicates an intention, and points out certain things with reasonable certainty - there is common by called the "trust substance".

1. Definition:
2. Property
3. Beneficiaries

Pretend words, prima facie do not create a trust - must be something more.
May create trust if on the whole will happens
(as intended words to be imperative)
and K is on those who say that the prenary
words create a trust. Example on page 17.
N.B. "Equity never wants a trustee" - trust will
not fail for want one.
A settle prop on B, tenis to A, trust for C,
then. But B is dead. A uniquely holds
the property in trust for C, tenis. If B claims
trust - then A is trustee until another trustee
appointed. - i.e. the author becomes trustee.

Lecture 8

Intention is not sufficient if one of the
three uncertainities is uncertain - void for
uncertainty.

- If property uncertain, no trust arises.
- If property certain, but uncertainies
  uncertain, a trust does arise, but since the
  uncertainies or purpose uncertain, the trustee held
  in trust for the correct or settlor's representatives.
  Thus the three uncertainities must be overcome,
  otherwise trust void, or (in case of uncertainity
  of uncertainies) a resulting trust.

Dr. Stannard must be the uncertainies.}
Beneficiaries may be named so long as the trust is charitable.

Simon - Simon  To trustees to divide among such charitable or religious institutions and societies as they might select.

Trust Act 879

1. No trust shall be so used as to include any non-charitable and invalid as well as some charitable purpose, it remaining as far as many of the purposes to which application of the trust funds directed.

2. Any such trust shall be construed and given effect to in the same manner as if no application of the trust funds for any non-charitable and invalid purpose had been so directed.
objects of charity, may be uncertain. This is an exception to the general rule of certainty.

In Grimes v. Grimes uncertainty respecting and meaning practically the delegating is another of the powers to make the will. But charitable objects may be uncertain and yet such a delegating must may typify — the bond will meet a scheme.

This case a Scotch case! — and in Scotland.

The legal definition of charity is narrower than in England. "Charitable or religious" all is in Eng.; because in England "charitable" includes religious purposes. (Though not all.) It would be a good thing in Victoria for another reason. Thurs. Dec. 19.

Provides that when a trust fund given partly for charitable and partly for invalid non-charitable objects, the fund shall be held in trus t for the charitable object only, and not used as in England.

Thus, Grimes v. Grimes not law in Victoria. 1. Because the trust fund will be held for the charitable objects only.

2. Doubtful whether, apart from trust.
Doctrine of Eks. offiicis, etc. Where specific and necessary legacy in lieu of legacy etc. involves, etc. of the class and, etc. to any person, etc. such, will, etc.

Compensation is a charge upon benefit need. Underst. America 5th ft. D. 734.

c.g. A gift Blackacre to B, D, &amp; to Whiteacre to C &amp; B dying leaving Black &amp; White to D, then D must compensate C or permit him to take Whiteacre so if B die leaving Black to D &amp; White to E, then since value of White is charge upon Blackacre D will take Blackacre subject to that charge. If Blackacre is not kept but under the will, doctrine of compensation does not apply. See Theshail 21st ft. D. 466.

Stated by will gave certain chattels to younger son &amp; residue to eldest son. These chattels,继承物, had by earlier sett. been settled in trust to go with certain annuity house for which eldest son was tenant for life. Eldest son declared that if had to elect red. Take under the will and again interest to Hilborn to younger son. Field that eldest son had no desireable interest in Hilborns, &amp; any attempt, etc. by heir named see a tr. of trust... a mere idle act &amp; nothing.
Bel. in Victoria the will would be invalid, for though in Vic. and in Eng. all religious purposes are not charitable, yet the word charitable in Eng. and Vic. includes religious purposes that the Scotch definition does not include.

120. "Benevolence may not be charitable - for the relief of poverty &c. (though in Victoria the money would be divided among such benevolent institutions as are charitable.)"

But as rule, charities include the four classes mentioned previously—

1. Relief of poverty
2. Advancement of religion
3. Advancement of education

In Victoria—£10,000 "be applied as means aimed among hospitals and public halls." A public hall is not a beneficial charity, under Trusts, not are 79 the trusts not void, but the whole fund must be devoted to the charitable purpose—hospitals.

£10,000 be applied, half to hospitals, half to public halls. Trust of second £10,000
to give up, and that an elder son elected to take
under pride. Complications did not apply
in case of a will, to raise case of election, must
often and will itself (not by parish rules) a
clear intention on part of pastor to dispose of that
which is not his own and it is immaterial whether
know prof. was not his own or by written will,
it was his own.

If pastor has a partial int. in prop. e.g., reversion
will show as far as price to a constituent which
might make him deal only so that int. to which
he was subject. This is jurisprudent a constituent but
if will shows clearly pastor intended to pass entirely,
price will be put to the election, e.g., if pastor has
reversion in White + pastor to devise White. If they
will give benefit to tenant for life of White, then in
case of theory for he is assured only to turn
that which he has power to dispose of. The reversion in
White are. Still by or wording may extend
by devise of whole int. in White. Doctrine of
Election applied to devises and a special power. Thus
when apt. made to strange of apprentice. Power to
resist if by same unit. Benefit is conferred on
person entitled in default of apt. Lattice will be
put in his election.
A useful purpose not necessarily a charitable one, so a trust for charitable or useful purposes was (like trusts of land) void because what funds could have been used for non-charitable purposes. But a trust for charitable and useful purposes was always a good trust.

N.B. Trust to non-charitable institution good so long as the institution specifically named.

In nearly all special powers, there is an implied trust that in default of appointment the property is held in trust for the special object. E.g. gift of £10,000 is a widow; it is distributed in such proportions as donee may think fit among the children of the donee. Here there is usually an implied trust that if no appointment made, fund to held in trust for children equally.

But in a wedder's settle, exceptional cases, it was held that there was no such trust on default of appointment, 'mixture of trust and power'—e.g. direction to purchase an estate is a power of an imperative
e.g. Part of fund is given to A & B & countersigned by XYZ, strangers. There is no case of election. Affidavit to XYZ is void & A & B will lose as an default of affiant, but if defaulter give also prop of XYZ in one of them to A & B or either of them who would declare default of affiant, then A & B is alleged that affidavit of XYZ is void will surrender prop of XYZ affidavit to them.

Under old rule of eg. where former of attachment to claim could make to one only of these 1 farm

confin prop. of subject or other. Affidavit to them elected. Today Court of Queen's act speaks - affidante may affidavit to one only.

case of election: re. Williams 1915 1 App. 152.

Under a rule if an M.S. a husband as prop. or intended moiety & states & may settle property or intended husband on agree to making after accp. prop. to intended husband. Then this devise court as void on ground of infamy, but joint to the elector cannot claim benefit of intestate court.


e.g. infant woman read will on husband's behalf over after age prop. as this decl. make such not binding.

Election is either compulsory or voluntary. Compulsory when person compelled to elect under a § 12 of 51.
A question simply of interpretation. The old decisions tended towards a mechanical interpretation; and the modern rule is against making precatory words into trusts. There must be something more in the instrument if a precatory trust is to be created.

Re Williams — "in the fullest trust" — confidant. Particular trust — "in the fullest trust" — confidant. Had she paid the premium on £1,000 policy belonging to deceased, and clear by her will the policy and the sum of £300 to the daughter. The court said — no trust — the daughter. This is the high water mark of modern decisions — a very strong case.

Re Atkinson — 1st Bank said — bring facts. I think about £5,000, but it is my opinion we feel that the said sum shall be distributed as follows — £4,000 to the C school.
pigeon so completed so that is untenable to have
true ascertained relative value of property
vol. elect of the xerox or n. from book to
prepare tone, it was of and one of
the point. And acts to be standing second to these
with full knowledge of this site also with a
he died in re, nothwithstanding. (Note: argument
must the full knowledge of facts & affairs & legal
rights)
elassan is not a rule of law, but of practice an
inquiry. Knowledge of the archives must set to be
handled as number of legal origins to
be protected or to be based: the idea of
as began + bequeath. L.H. 2 H.L. found on
fascination of a general question of the time. They
began part of the past, should be set forth. But the
prescription of such general question may be whether
they prescribed, your great idea judgment affecting an
bill in my Harding book. 31 R. D.

14. A bond with 1200 to B. V. Grand. B. entered
I have to C. From this is that it indicates that
both gift as this, like full effect of done work. 1200
I may determine C to keep. House or C may keep
own house and beggar to receive. Floor changed
with 1200 in favor of C. Torrez 19 R. W. Park

20
£500 to the N school, and £500 to 10 or more deserving young people connected with the L chapel. 8th. and 9th. no funds.

30. Somersby v. Bowring & Hanbury - note the words "on the construction of the whole will." How many words said. "The words in full confused may or may not create a trust; thus true the words were cut down by the imperative words. 'I hereby amend' showing that words took subject to a conditional statutory limitation.

There are three very important cases.

In afternoon's case Buckley & J. said there had to be two intenotions -

1. Intention to benefit the objects indicated by the precatory words.

2. Intention that it should be imperative upon the donee to use the property otherwise.

2b. Modern decisions say that precatory words are prima facie not imperative.

31 para (2) - how far apparent conditions are construct as charge. Again a matter of interpretation.

On this (p.32) read [G. 1899 1ch 719] and the Book 1894 2ch 282
I. "No man can appreciate a principle unless he understand and accept it or else he is not free to choose to do so." A man's conscience is his own judge. The man who takes a principle without any effort under his own will or without giving full effect to that will (by putting it into practice) is not free to choose his own course. A man who can accept others' principles and will not admit to his own principle is not free to choose his own course. And when a man's conscience is not a matter of his own volition, then he may accept or reject his principle. A principle of one is conditioned by acceptance or rejection. There must be a plurality of principles with an equal amount of freedom for the others. Dealing with others, therefore, one must be free to accept or reject a principle. If one gives principles to be followed, then one must accept or reject them. When a principle fails, another is needed. When a principle fails, another must be chosen. If a principle fails, another must be chosen. And if a principle fails, another must be chosen.

Doctrine of Conversion:

A man who rejects a principle must be free to have been done. I am free to the principle that many are in the world to be laid out.
Lecture

Difference between a condition, a trust, and a charge. If a condition is not fulfilled, no estate accrues.

b.31 Cunningham v. Booth

Other examples given in Underhill.

Note the Doctrines of beneficiary - a gift to a charity, funds, money given to similar institutions, etc. - as nearly as possible.

Very important to distinguish between charge and trust.

Re G.

Re F. and Re Booth are cases constantly met with during practice.

Money given to wife during understanding, to maintain and educate the children. Is this an absolute gift with a special motive or is it a gift given on a certain trust? The second interpretation is the one adopted by the Court.

In all this class of cases, fund now taken as the rule subject to an obligation to maintain the children, even after they attain 21 or many - if they require it. But there is a discretion in the will as to how much shall be devoted to that purpose - (Discretion not capricies).

By F.
Smith v. Smith 29 V.R.R. 932 — A testator devised and bequeathed all his real and personal estate unto his wife to hold the same unto her for her life for the benefit of herself and their children and as her death to be divided equally among each of the children as should then be living.

Bull — that the widow held the property in trust for herself and the children and that during her lifetime the widow and children were equally and jointly entitled to the income thereof.

If testamentary, it is better to devise. The claim was rejected as real estate. If a debt is due, may be real estate.

C. I requested his legal estate to D. He intended the whole being altered with debts paid to D. I doubt it.

Community: Section 9-16. I want to have an heir.
Some children may get nothing e.g. if they leave their home.

A gift coupled with an obligation provides will homeroom, food and clothing. If the widow becomes mad, and creditors claim the fund, then the court has to decide how much should be retained for the children. The widow's share going to the creditors. The court draws up a scheme.

So if the widow is not exercising due discretion and is giving children nothing when they should get something then court will draw a scheme.

If widow is living on adultery, the court will draw up a scheme. (Note not fit one!)

Hence the children are interested in the fund. Distinct cases like re S. and re Bosh from cases like re Smith v Smith 1905 L.R. 4 Ch. 420. Here a gift to widow for life for benefit of herself and her children held — a trust, and widow and children joint tenants, constituting class of which the widow was only one.

Hewitt v Hewitt L.R. 4 Ch. Court will take hold of estate even. Company held that gift is to wife for life and then to the children.
If a person fails to sell a real estate in accordance with the terms and conditions specified in the agreement, and before the sale is concluded, he files a suit for specific performance. If the court upholds the contract, the sale proceeds as agreed. If the court finds against the plaintiff, the sale is canceled, and the defendant is entitled to return the deposit with interest. The court may also award damages for any breach of contract.

In the case of a personal right such as a lease, the court may order specific performance if it is equitable. If the court finds that specific performance would not be equitable, it may award damages instead.

The court may also enjoin a person from performing certain actions, such as making repairs or alterations to the property.

If a person fails to pay the purchase price as agreed, the seller may sue for specific performance or damages. If the court finds that specific performance would not be equitable, it may award damages instead.

In the case of personal property, the court may order specific performance if it is equitable. If the court finds that specific performance would not be equitable, it may award damages instead.

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Illusory Trust

Trusts are of reputation, or explanatory of his wishes, do not impose trusts. Thus £10,000 to my sister that she may be able to send her son to college gives her son no interest.

A valid agreement to create a trust, a mere agreement to break a trust in future, creates a trust in present. — e.g. Marriage articles.

Equity regards that as done which ought to be done — bonds will not enforce specific performance of a voluntary agreement, even though involuntary.

Validity of agreement to break trust depends on whether agreement is one enforceable in equity by specific performance.

Agreement to ransom Blackacre to wife — if no consideration, is not enforceable by specific performance.

Note. Marriage articles. Marriage is the highest consideration known to the law.

Equity gives no assistance to volunteers — but this does not apply to executed trusts, only executory trusts.

Man in difficulties, transfers all his property & business for the benefit of his creditors. Is this a trust or not?
Transfers of property & income for income tax.

Of the lands shall be put out of general pool to gift of watch which is an exact book claim that after redemption they have paid out of general property in favor of Russell's claim.
Can the trustee enforce it as trustee? or is the trustee a mere agent of the debtor, and whose authority may therefore be revoked at any moment?

If the creditors are parties to the deed, they can enforce it. If they are not, pronounced, it is a mere case of agency and not of trust, and the trustee can revoke authority of trustee at any time.

Of debts, by course of creditors, such as selling creditors that he has assigned property for their benefit, creates an equity against himself, a trust in favor of creditors is now created.

Creditors may be parties to the arrangement without regaining the deed of assignment.

And (supra) subsequent notice to creditors is sufficient to make them parties and give them enforceable rights — under conditions. p36.

"Illusory Trust" — when creditors not entitled to enforce it — looks like a trust, but is not one.

p37. When directors to pay expenses, costs in such an assignment, the solicitor is not a temporary, and cannot sue under the deed. (Though he can sue for his costs, anybody with whom he has made a contract.)
Joseph Fall - A direction in a will appointing a person resident of the trust estate imposes no trust solely on the person if the will to continue such person their resident in the management and affairs of the estate.

Ward v. Lewis - Irrelevant.

Gift cannot be construed as trust, in absence of intention to create trust.
N.B. Direction in will appointing man, some description not binding.
Foster v. Ashley 19 Ed. 6. 518.
Ward v. Lewis 22 V. 2 B. 410

Note this very carefully.

Lecture 10

p.38. Now for valuable consideration necessary

An express trust is irrevocable.

Note this. Transaction intended to constitute a gift cannot be read as a trust. A trust postulates an intention to make a trust. This is very fundamental law.

Distinction between "incidental" and "incorporate" trust may be further. "The trust does not vest merely on the fact that the trustee may be required to do some further achievement unless fulfilled in this trust e.g. an agreement or direction by convey or cloth granted trust. True trust is the creation of the trustor. This even conveyance in trust over the property, and in perpetuity stated the limit absolute or trust left it to the
Voluntary Command — May he damage it law,
and no Observer see at Signay.
come to make out his intention from general expressions.


equity will give us assurance to volunters to perform an indirect trust, will not grant specific performance.

Dona bona as born. Law if he has made a gift to object of warranty, or to trustee for the object of his bounty, has committed under real bad something for breach of which remedy in damages.

But equity will not decree specific performance of voluntary covenant or agreement. Law may give damages. Equity never grants specific performance to volunters.

If a trustee will not by action or otherwise enforce his rights against a third party, equity will allow the beneficiary to do, and for this purpose to use the name of the trustee. e.g. take care marriage article. Husband covenants with trustee that he will settle black new upon them for the benefit of his wife and children. If the trustee will not enforce this covenant, the wife can bring action in name of husband.
The Ignotus permission to use Kenmei of a stater who refuer action.

If stater droelands, setter becomes stater of temporary.
A voluntary covenant will B as a trustee that he will pay C $10,000 to hold for C. If B will not enforce, equity will allow C to do so and use B's name as if B is trustee of a covenant.

So if B does an act as trustee for C, he will do an act as C. Law: B was entitled to bring action for damage. If B will not do so, equity allows C to use B's name and bring the action.

940. A conveys prop. B as trustee for C. B devise claims under the trust and the estate. Thus the estate immediately reverts to A and B is trustee for C, although voluntary trust—because it is deemed an executory trust.

Trust won't fail by reason of disclaimer.

Henry Armstrong, great authority in deed, has a voluntary deed cannot be revoked unless a revocation clause in the deed.

941. Trusts Deeds—Trusts may be assigned or mortgaged, signed by the assignor.

944 para. Impractical gift must be construed as a trust. This quite settled by authority.
one of the true elements — the intention to create a trust — is absent.

The assignment in anchelone Smith was not a valid assignment of shares, as not registered (Companies Act 215). And consideration was not made in good faith: declaration of trust, though a bad gift, failed.

**Jones v Lock** — the gift was not made, and not delivered, so that the gift was not a complete one, and could not be construed as a trust, as no expressed intention to create a trust, but only an expression of intention to make a gift.

Further, at law we can equally consider an expectancy to be assigned; but in equity, what punctuated the assignment? Expectancy was read as an agreement to assign when one the owner got the property. — But consideration necessary.

**Amersin v Arming** 4 C.L.R. 1037. — Authority for inserting "by the settlor after necessary duties done" (line 5).
"All that is necessary to be done by others."
all that is necessary to be done by settlor - e.g.
Signed : acknowledgments of receipt of
Stones.

Indeed and delivered promissory note:
Annuit. v. Annuit. the leading case. But
Paradise 7 Q. being about to die, executed
and gift, mother and convey by will to
children all his property, consisting of
chattels in possession, chattels subject to
sale, stock in partnership, promissory note,
Bank deposits, and Bank debt.

But said - as to chattels in possession, the
assignment was valid, subject to Q. Bills of
Sale Act

As to mortgage debts, assignment valid.
subject to any statute law on the matter.
As to shares and chattels, as there was no
instrument of transfer executed and delivered
before word.

Promissory notes not induced - non.
Bank deposits - Bank debts - valid.
debt under Supreme 71. Pet can be assigned
by writing, and notice 5 debts can be given
by assignee even after death of assignor.
Army v. Army
Partnership interest – equitable interest – could be assigned as an equitable charge in action, bond or also land down. In voluntary gift by deed there is an implied covenant by donee not to do anything to prevent donee from obtaining benefit of the gift. E.g. if after assigning deed by deed, donee receives payment, etc. even upon notice given to donee (and another no. under C.C.O. to complete the assignment) donee becomes a creditor of the donee.

In case of an inhuspice gift and continuing intention in donee, then, if donee is made executor, they may complete the gift.

Matthew v. Matthew, 1893, C.C.R.

46 (M.W. Prop. Act 1915, sec 13) — add but not as gift creating if the goods continue when the donee administrates repaired or reacquired ownership of husband.

Lecture: 1. If marriage will not survive, the third party in certain cases may be entitled to do so.

II. If for consideration A agrees with B, to do some act to benefit of C, this gives me to a trust in favour of C, and B can enforce it.
Illustrations of this principle.
owing of the act as agent A, and if B will not do so, it will allow C to do so.

Similarly if A voluntarily commits with B to make the act, then it will do some act for the benefit of C. B or C may enforce.

Trustees are the legal owners of the M.C. E., the club an occupier only. If fire destroyed the grandstand or pavilion, not only would the trustees suffer loss, but the club would also suffer loss arising from loss of revenue from the destroyed stand until replaced. Thus there are two interests in the stand. The trustees recover the stand for their benefit and for the benefit of the club. This destroyed stand—can the club recover? Yes! Though not parties to the contract.

Trustee, contracted as trustee for the club and all persons beneficially interested. So club or can enforce contract if trustee will not do so.

Lloyd's v Harper

So if C nominate B to make contract with A for benefit of C, B contracts as trustee for C, and B or C may sue.
Was it intended to confer immediate equitable rights on the third party?
So it separation deeds husband and wife - husband provides not only for wife and the children. Held that deed may be so drawn that wife is trustee for children and the latter may enjoy if she desires.

**Question of fact:** in all these cases — Did B contract as trustee for C? Was it intended as between A & B to confer immediate equitable rights on C?

Prima facie, contract between A & B is only enforceable by A & B!

**pp. 47.** J. H. Lee: **Case** on the position of the third party — in *Furness Engineering Co. v. Lister & Co.* Cotton LJ. in *Gandy v. Gandy.* A matter of the interpretation of the document in each case — was it intended to confer on others equitable rights?

A contract with B as trustee for C — this general proposition abstains from the terms of *Holden v. Lady Muriel.* Tom told the son did not contract as trustee.

**pp. 49.** *Fletcher v. Fletcher.*

Other illustration cases, the same principle follow on pages 50 - 54. The position of the third party as equitable trustee.
Legal Assignment of Equitable Interest:

1. No coordination necessary
2. Assignee can sue in own name
3. Register deed only as protective measure.
all property is capable of being
made the subject of a trust. But such a
trust must not be of land made invalid by
holding invalid statutes and terms of trust
property must be consistent with the trust
ought to be created.

§ 55. Trustees' choice in action.

Just Acet - Superint. Ct Pet. § 57(b)

Trust to Individual Pet. with choice of action
not assignable at law, with certain exceptions.
8 & 9 Vic c. 106 = Real Prop. Pet. § 166
30 & 31 Vic c. 144 = Companies Pet. § 473

Just. Acet. - Superint. Ct Pet. 57(b)

Equitable choses in action were assignable in
equity, even without consideration, and the
assignee could sue in his own name; notice
of the duty, the person hath, was not to
perpetuate the assignment, but to protect the
assignee's interest, because of his duty and
the assignor after the assignment, it was not hath
to again pay the assignee.

These were equitable choses in action — no
writing required — very simple. Bond
satisfaction wasn't necessary.
EQUITABLE ASSIGNMENT OF LEGAL CHOSES IN ACTION

1. Beneficial assignee necessary
2. Assignee allowed to use in assignor's name.
3. Notice - a protective measure.

Indicative Res.

1. Assignment must be absolute.
2. "In writing"
3. Consideration not necessary.
4. Notice necessary to complete assignment.
5. Assignee can sue in his own name.
6. Takes subject to equitable

 Equitable
In equity, legal choses in action were assignable.

If for consideration, the court of equity would compel the assignor to allow the assignee to sue in a court of law in the assignee's name.

On the assignee himself could sue, adding the assignee's name as a defendant. He is also necessary to protect the assignee's rights.

Ind. Pet. an absolute assignment I a debt or other legal choses in action: by writing under hand of assignee shall be valid if notice is given in writing to the debtor or person liable; and then the assignee can sue in his own name, but he takes subject ball equity, all op r defenses which person liable ce have taken as against the assignee.

This is the statutory rule - the assignment must he absolute and in writing. Nothing about this was needed not be consideration;

N.B. Notice to person liable is necessary to complete the assignment, not merely to protect the assignee's rights.

Finally, anyone can sue in his own name.
Barker v Lloyd. A contingent remainder may be released by deed to the tenant for life, and such a release will operate by way of enlargement of the tenant’s estate, and not merely by way of extinguishment of the contingent remainder.

An instrument which is capable of operating as a release of such an interest, made in favour of a person capable of accepting it, will pass the legal estate to the releasee although by the terms of the instrument the releasee agrees to accept it, not for his own benefit, but as a trustee for others.

Irenee — whether, may be of statutory enactments, the doctrine that executory and contingent interests are not assignable to a stranger except by gift or by a contract for valuable consideration is good law, and whether such interests do not pass by an instrument capable of creating estate e.g. an indenture.

Branch v Vic Rly Com. — Railway agrees in respect of retiring allowance not to be called upon to resume his duties, and his allowance is hence assignable.

If pension granted subject to a condition giving the right to recall the person pensioned back to duty, then the pension is not assignable.

To Williard. — A pension which a member of the police force is entitled to under 47 III & Police Reg Act 1890 is not assignable by him.
Dennis had under this section only those choses in action assignable which were previously assignable in some way at law or in equity.

Here this rule is very great practical value today — important in practice. If an action being brought by assignee in his own name, we have provisions of the Supreme Bonds Act have been complied with.

*Garavan v. Lloyd* 2 C.L.R. 480.

Annuity v. annuity awarded that the notice of winding up can be given by the assignee.

Assignment of expectancy, not enforceable unless for consideration.

Look at para 2 p. 58. — Is pension alternate or not?


Test is — have the Rly. Commissioners power to recall pension or their employment?

*Public Schemes Act — instead of pension, bonuses.*

Lecture 12.

§41 sub. sec. 3.

§126...

These make the policy worthwhile.

*Police Regulation Act § 22.*

*Wyllia's Case 1907 V.L.R.*

*Workers Compensation Act § 29.*
Rule Against Perpetuities
Rule against Perpetuities - deals with

Lecture 12
Walkers New Bradford Bk 12 Q.B.P.

As between assignee and assignor, not necessary
to prove consideration

Rule against Perpetuities - deals with
time of commencement of future estates -
milady the Thellussons Act. Specified times
in temp + 21 years afterwards + period
for gestation.

If no time specified, 21 years is the
period.

The estate in interest must vest within
period, not necessarily come into possession

**Future Interests**

Equitable - Rule v perpetuities applies,
and common law rules do not apply in
remainder.

Rule in Whitby v Mitchell applies (this
must be "rule against double possibility,"
Mackay says no such rule now exists!

Rule in Whitby v Mitchell - unborn son of an
unborn son.

What is the difference between Perpetuities
Perpetuities - rule in Whitby v Mitchell?
Differences between Rule against Perpetuities and Rule in Witty v Mitchell - stated
If estate limited to first son of first son, with proviso that first son by first son is born in lifetime of testator, or 21 years after.

This point by Perpetuities rules, thus

Re Malini 1912 V.L.R. Now land was limited to J., for life, then to eldest son of J. who shall

then be living for life, then to next eldest son of the said

eldest son. Held void, on ground that it was a double personal contingency.

Similar point in

Honeywood v. Honeywood 1905 92 L.T. Like

ru Malini, a cont. under 5 unform person

followed by cont. under 5 unform person,

not the son of the first unform person. Jud

Darcy expressed grave doubt as whether second

cont. under was not void? But point not

decided. Thus Susan J. in ru Malini

supported.

1. Not governed by ru Malini cont. Render.


3. Probably by Whitty v. Mitchell (9 ru Malini)
Legal Reminders

The old rule on monetary interests —
Legal (contingent) remainders not answerable by the Statute of Uses.

1. Governed by rules re cont. remainders.

Take e.g. "A a bachelor, his tenor, then to his first son who shall attain 25

This good remainder.

"To A, then to all his children of A or the survivor of A's children in fee simple." This bad. Rule 22, 1905.

This good illustration. Rule v. Perpetuities.

Applying the Legal Contingent Remainder.

Rule of Whitley-v-Mitchell applies to both legal and equitable contingent remainders. Know whether applies to other equitable estates.

Secrecy interest.

Old rule was: If an executory interest can be read at initi as a Cont. Remainder, it must stand or fall as such; but if it cannot so be read, it is governed by Rule v. Perpet.?
modified by tenancy among next of kin and real property, act '14 '610
(Successor Act 1915 see 71)
This rule no longer holds, by reason of the Conveyancing Act 1904 s47. I suppose Remders fail by reason of farm or particular wish, then good of can be read as good by Rule against perpetuities.

have decided that Rule against perpetuities applies to legal contingent Remainder.

Rule against Perks, thus applies in two ways to Cont. Remders among by county interests:

1. Being Cont. Remder, governed not merely by rules of C.R. but also by the Rule v Perks. i.e. it may be good as a cont. remder but bad by the rule v perpetuities.

2. Or it may be good at unit as Cont. Remder but fail as such (Conveyancing Act) the Rule v Perks may make it void.

Take case:

"Devore to A for life, then to first son of A who shall attain 25 and his heirs." This can be read as Cont. Remder, i.e. it must be unit for valid by Rule v Cont. Remders. and by
The Rule ages Perpetuities.

But A dies when first son is 24 - fails as born Rindon, and not saved by conveyancy
Act!

Conveyance Act does not apply to
English lands dealt as to while Conveyance
Act applies to common law_cont. Rindon,
and an amendment made to section in Con-
veyance Act declared [Real Prop Act 1914]
that section 6 apply to cont. remains limited
without new.

3. "To A for life, then b eldest surviving son,
then b his eldest surviving son". Bad by
Whitby v Mitchell and Rule v Perks

"To A for life, then b eldest surviving son,
then b his eldest son of born within 21 yrs of A's
death." Good by Rule. Bad by W. v M.

"Three brothers A, B, C. Grant to A for
life (bachelor), then b eldest surviving son of
A, then b eldest descendant of B a bachelor,
then b eldest descendant of C, a bachelor.
Good by Rule v Perks. v. Whitby v Mitchell
but Brown J. says there must be some other
rule - double personal contingency".
Accumulations — Hellmson ael

Four穿着
Shelcontract Act. Restrictions on accumulations. Reduced to periods -
1. Lives of grantees or, in case of a "Shelcontract Act"
2. Rule against Perpetuities also applies.
By rule of Perks, unless the term limited must necessarily fall inside permitted period, the accumulation is void in 1856. But if the accumulation paid by Perks rule, may be paid by "Shelcontract Act" - but in that case only word per of time?
10,000 to accumulate for 30 years, then paid & B. Bad by Rule of Perks 1 accum.
Lives of being mentioned.
"Shelcontract Act" present to four periods -
1. Lives of children.
2. 21 years from death of any grantor.
3. During minority of any person living on win or more at death of grantor.
4. Minors if persons who, under instrument directing accumulations, not for the time being, up full age, he entitled to income directed to be accumulated. Wm. Bell 1027 1881.
Perpetuity Rule relates to commencement of interest.

Charitable Trust

Lonton Trust

Power of Sell
e.g. 574. As a rule, the trust is created on their attaining 21 and during their respective minorities. The income shall be accumulated. These children may not be in being at the death, but the accumulation need not be on that account.

Lecture 13

Intestacy: interest in personal property governed by Rule against Perpetuities.

Rule against perpetuities is a rule regarding the commencement of interests, but on page by para 2, we see an exception to this statement, e.g., a charitable trust may continue indefinitely. Once a charitable trust, always a charitable trust. A vacula sanctumom. Rule 5 keeps does not apply to limit the duration of charitable trusts.

But trust must support something must not be beyond period of the rule—live in being and 21 years afterwards.

There is no power to sell private land property unless authorized by statute, by the court, or by the trust instrument.

But trust of really ObjectId sale until happening of event which may be too remote in void.
Policy of the Law - Bankruptcy
Alleviation re
But power will, with no time limit, not necessarily void for uncertainty 1865.
Note this 1st para page 65 - the very literal construction placed on such provisions.

Double possibility - no such rule.

E.g. re Nash 1910 1 Ch.

1 re Malin 1912 V.L.R.

Though Darcy L.J. refers but vi Honeywood

Honeywood Act except from its operation certain things.

1. Provs. for paying debts arising therein.
2. Directions re. producing statute.
3. Laws for buying in repair.
4. Directions upset up insurance policy.

N.B. The 1892 amendment of Honeywood Act not in operation yet.

p.68. re Mackellar 1915 V.L.R. cannot on unwilling to restrain itself by process knowing lack of security.

This repugnant. See also p.362.

Must not be against the policy of bankruptcy law.

p.69. Reckunit on aluation contrary to the policy of the law - thus non reckless or
Peculiarities in position of married women.
Insurance Policy

An attribution quite good.

But trust for personal injury to attempt to salvage, and the gift own to common else - perfectly good!

This is said that "contract" of a married woman was not a contract at all - because she cannot create a right in personam - she can only create a charge upon the personal property not subject to reversion.

Married woman only hath to exact of income in possession at date of judgment (in case of reversion or anticipation).

This the big exception in our laws.

Companies Act 1876 provides that on death of a person his or her life policy to any amount of payable on death only; or upon £1000 or paid on any other date, shall not be assets for payment of his debts, unless the deceased had in the statutory way made the policy money as assets.

Also restrictions on medlancy and execution.

This act - basis - policy hath for funeral
Restrains on Marriage

Corroda v. Corroda

Conditions imposing general restraint on marriage (including re-marriage) are void except when such conditions are imposed, not from a general objection to marriage, but for some reason special with reference to the legatee.
and testamentary expenses as they are not his debt.

Trust for future illegitimate children void as encouragement to future illicit intercourse. But certain restrictions on this broad principle.

Separation Deed. Trust to take effect on future separation of wife and child and husband void as contrary to public morals. But if separation already agreed upon, good.

Law makes omen — trust in restraint of marriage.

Barrodus v Barrodus 1913 R 2 R

General restraint in real estate void, unless

He most be way to benefit the children, a personal

To the widow of children. Provided for my

Widow until marriage — good

In Barrodus v Barrodus, this was no

Gift one on breach of condition; condition

Void in any event.

Law as these conditions on real estate

Comes from common law, but re personally

From canonic instead law.
Summary:
1. Partial Restanct valid
2. General Restanct prima facie invalid
3. Restanct widow - valid
4. If no gift over on marriage, condition bad
5. Gift made marriage good
6. Condition for consent 3rd party - good.

[Handwritten note below]

Talantic bequeathed residue of property to the children of my brother who reach the age of twenty five years in the case of boys and twenty one years in case of girls. Held Tend of modern decisions that void children in a bequest, this kind include children born and born Beguest is wholly void, and property distrub as necessary
Summary

1. Conditions in partial rescind as to reality or personally are valid (not to many a particular person).

2. Conditions in general rescind? marriage appeals brute personal property. As prima facie invalid but see Brandon v. Brandon.

3. Condition in general rescind? widow is probably valid.

4. If no gift over on the marriage, the condition is void.

5. Gift until marriage is valid.


Kty's case: Sort will not mix up with absolute discretion prior to (bristle) to assent to a marriage or refuse, even when such refusal means forfeiting a fund.

p.73. Tires in rescinding after breach void under Rule v. Perps. an also void.

14. So no gift to class - if some enters rule, whole falls to Archibald 1915 V. 2. 7.

Look at: Tires Act p. 71, 72, 73. Irish Act 228, 229.
Trusts Act § 71. Declaration of trusts to be manifest and proved by writing signed by party by law enabled to declare trust or by last will or writing or in writing and of more effect

§ 72. Where conveyance made whereby trust arises by implication or construction of law, or is transferred or extinguished by operation of law, such trust will have like effect as if secs 71, 72 not made.

§ 73. All grants and assignments of trust shall be in writing signed by party granting or assigning same or by such last will or writing void new effect.

Instrument Act § 228. Statute of Frauds, Sec 4

§ 229. No action on any contract or sale of lands or any interest therein by agreement a mere; thereof on which such action brought is signed by any person other than party to be charged therefor unless such person so signing the instrument carefully authorized writing signed by the party to be so charged.
Lecture 14

Charitable trusts may be of unlimited duration.

Trust for a tomb not void but no beneficiary who can enforce it. But such trust must be very strictly limited to the period of the life.

Gift to charitable trust must commence within the period, however.

Good way of giving one gift to charity with condition that tomb be kept in repair N.B. Trusts for dog, horses (useful to man) are considered charitable trusts but great not!

It is said that no beneficiary who can enforce such trust but remember that the attorney General can always enforce a charitable trust.

"Capricious trust" an absolutely void and fund will fall into residue.

Necessity of writing, signature etc. in Trust.

No trust whether of lands or chattels, require be created by writing; but trusts in lands and interests in lands require be proved by
The primary purpose is (a) creation
(b) assignment of rights
written evidence signed by the person declaring
the trust. Such written evidence may come into
existence subsequent to declaration of trust.

Implied trust of lands does not require to be
evidenced by writing.

Thus three propositions

1. Express trust - lands - evidenced by writing
2. Implied, constructive trust - not!
3. All trusts, whether of lands or not, must
be assigned by a signed writing.

Questions arise, how may a trust of a leasehold be
created? Can be created verbally, but must
be evidenced by writing (of express trust)

1. How can trusts of following be created?
   1. Trusts
   2. Leases
   3. Chattels

4. Cases in action
   How can each of the above be evidenced?
   How must each of the above be assigned?}

Trust

- 1 Land
- 2 Chattels personal
- 3 Chattels real
- 4 Chattels personal
- 5 Chattels real

How can each of the above be evidenced?

How can one of the above be assigned?

Trusts Oct 1915 871, 72, 73
None of these statutory rules be made a cloak for fraud.
Assignment of trust must be in writing signed by the assignor (writing not more proof in this case). See Statute of Frauds also relates to this matter. No action by trustee on contract made in concert of marriage unless written evidence. Therefore a contract to create a trust must be in writing. In consideration of marriage, must be evidenced by a signed writing (see 228 Instruments Act).

A conveyance of land to B absolutely. The conveyance is a prior verbal agreement that B will hold for C. B refuses, C brings suit. B raises defence of 171 Limes Act. B relies on fraud of B. In this case the bond will enure to B, notwithstanding that terms of statute not complied with. "Equity will not allow statute to be used as an instrument of fraud."

A devise or bequest to land in chancery to B. B, for A's death, agrees to hold the land in
What the writing must contain
Boyes v. Barrett

chance is much for C (mutually). I can enforce the trust, notwithstanding Wells Pet.

A devise Land to B absolutely - who mutually agrees thereof them as trustee for such persons or purposes as A shall subsequently indicate.

Agrees no subsequent valid indication... B holds as trustee not for himself but line.

familial interest falls into residue or goes to the next of kin.

p. 79.

Lands and tenements include

households. Note this.

The three estates must appear in the writing, but also the trustee, if one was appointed, and terms and conditions of any, if the trust - as well as the signature.

80.

To special form memorandum is required - you may trap your opponent into revealing the position in interrogatives.

Documents relied on must connect him self - cannot give pardon evidence to connect him.

81. Boys v. Barrett

Testamentary trust

be contained in duly executed will

writing essential to will or alteration trust.
No verbal instructions can get over the necessity of will being in writing.
This case of Rogers v. Barnett should be noted very carefully, as it raises many interesting points.

If the express trust had been declared mentally to Barnett, in the declarant's lifetime, then Barnett could not have raised defense. Trust Act, as construed, would not allow Nature to convey a trust.

Lecture 15

Executor is a legal person, but trustee is not. The executor never becomes owner of property.

I leave all my property to my executor, Mr. Barnett. The declarant, as I have mentally informed him, he has so informed him, that the property is to be to Mr. Brown. This is void; a will must be in writing.

The executor will not allow the executor to hand over the property to Mr. Brown.

Wills Act must be made clear for fraud—and in Rogers v. Barnett, Barnett was ridden by Wills Act. The test absolutely, but fraud not allowed. But if Barnett an executor, he could be no fraud, because as executor he could not claim the property.
Effect of Grand

The effect of mental stress on Tenancy in Common

Romiley v. Bowerman
Second case: after parcel evidence unexplained must be rejected on the ground that it was hearsay—
that is, statement was said to have told witness what he believed had said to A.

84. Fraud on exception other wise.

Tenants in common contracted with joint tenants. If A leases prop to B & C as tenants in common, and B's life or after the making of the will is told that B, C are held as trustees for D (but C is not told), B is bound, but C is not.

If A leases prop to B & C as joint tenants, and life making will B is told vagers that B & C shall hold property for D, then both B & C are bound; but if B is told after the making of the will, then B is bound, but C is not.

84. Fraud in conveyances inter vivos.

Rockefeller v Boweshead, 1897, 1 ch 196, the great leading case on this. The view is that a tainting from does not allow transference of duty a parcel condition and so commit fraud.

Who may be a lessee?

Alberta Act (now Supreme Court Act) says
Alcino

Infants Position at Common Law.
Who may be a tenant.

Has alien and friend resident in Vic. may acquire hold, and demesne of lands as if they were a British subject. (As common law, aliens land

[In red ink:]

...on acquisition the property is Brown... and cannot give a better title than they have.

The statutory exception except from the common law the alien friend who is also resident.

[In red ink:]

...unnaturalised German living here may have his land patented, and cannot give a good title.

German naturalised in Brit. only not for life and reversion else. Same in England except where man naturalised by letters patent this gives him British nationality throughout the Empire.

Any person who can give good title to land may create a valid interest in it.

Infants' Relief Act (S.C.A.)

Infant's contract:

1. Some contracts are void unless ratified after attaining 21. E.g. promissory notes.

2. Contracts valid unless repudiated within reasonable time after attaining 21. Those on contracts involving continuous right obligation...
Infants' Relief Act
e.g. contract of partnership, or purchase of shares.

N.B. Both the above contracts meanwhile are voidable, not void or voidable.

3. Contract which ostensibly is for benefit of the infant is valid e.g. apprenticeship.

Gray v. Roberts, recent case.

4. Contract which ostensibly injures the infant — void, e.g. on railway running.

B мин., infant worker, carried on undertaking that in case of accident they were not held by the company liable. Court held such contract bad.

E.g. On travelling guards van in Vic., must suit undertaking that will not hold born liable.

Infant cannot sue such undertaking.


Infant could bring action on contract, but action could not be brought against him.

Could bring action for damage, but not specific price (which requires limitation of remedy).

Infant Relief Act comes along and applies all this. 1915. Supreme Ct. Dec. 8th. 864.

act does not apply to contracts for necessaries.

Nor contracts for benefit of infant.

Contracts for sale of goods to infant or repayment of
The effect of the Act —

Disappearance of section is to be seen.
money due to infants, or accounts stated, shall be absolutely void.

(These forms, accounts: 1. Opening accounts (name).
  2. Account acknowledged (expressly or implicitly).
  3. "Account settled" (account paid in some way).

Infants' Relief Act further says, action cannot be brought against infant on ratification of contract made during infancy unless a new consideration.

What contracts require ratification? className.

Declaras these contracts in that class absolutely void; as to the others, the infant cannot ratify them; they are all void!

So that the Act only applies to one of the first classes: contract.

A money lender lent an infant money with which infant bought land, paid for land. The money lender could not sue for money (Infants' Relief Act) but the court made order declaring that money lender should have vendor's title on the land for that part of the money lent which was paid to the actual vendor.

Similarly, when money lender lent money to infant, with which infant bought necessaries, the court ordered that the money lender should have
The same rights as the vendor of necessaries would have had if he had not been paid.

These two cases very important

p. 88 para 2. Strike out - not vicic.


"shall militate with effect" = invalidate a make inoperative (So held)

p. 89 para 3. M. W. P. A. 1915. See 22 (2)

cross out 49 full age and means unless she is full age when she executes. Cross out:" committed" by "end" p. para.

Lecture 16

p. 89 para 3. After settlements made by the husband or intended husband.

"Tenancy by curtesy. Conveyance. Husband's wife as joint tenants made them tenants by curtesy, or husband dealt with his life interest but not the curtesy. Without consent of his wife.

This is exception 5-para. Husbands wife one person.

On death of one, whole went to survivor.

M. W. P. A. abolish. Tenancy by curtesy.

kept a conveyance or devises to husband or wife.
Conway was set to knock this out...

Corporation's
Corporations.

1. Change as joint tenants a tenant in common
   gave half to husband and half to
   wife. Change? His absolute expression of intention to
   the contrary gave them 1/3 shares in equity.
   
   Dr. Dixon

But Conveyancing Act has stated rule
§ 57. Husband and wife not being as one person
in cases like this for purpose of deciding proportionate
shares of each.

Married women same for as husbands now,
see p. Rechard on Anticipation
Cross out p. 89. Women married 1/2 and

Will apply to

Corporations. Local Govt. Act § 8 making married
corporations capable holding and alienating
land.

Companies Act § 24, 171

Private Acts creating companies usually
have similar provisions (e.g. B. M. P. Act).
Morrismin Act does not apply in Vic., no such
restriction on conveyancing land & corporations.
In the Will of Matthews. The testator insane kept making of will. But he acted voluntarily, deliberately, and intelligently in the testamentary act. But he made no provision for mother, upon whom he had affection, but judging by his verbal statements thorough. He intended that his brother in law, who took after him. Held, under these circumstances, that the will was a valid testament, any paper, and probate thereof should not be revoked.

If the delirium of a testator are such as could reasonably be supposed to affect his testamentary dispositions, or if the court is satisfied that the testator was not subject to them when he made his will, a valid will may be made by a person of unreason mind.

Consider.

Alexis
Lunatics may make valid wills, provided they can recall the nature and extent of their property, the persons who have a claim on their bounty. (R. v. Coopeton 1 Q.B. 618)

In the will of Solomon Matthews (Vic. case) 2049 V.L.R. 243, a man found insane, the will good.

McLachlan v. Young Darby Telegraph 11 C.L.R. 243 held that the power of attorney given by lunatic absolute.

by void.

Followed by

Molyneaux 1905 N.C.

Molyneaux v. Barnes authority for saying that conveyance is a valuable consideration. Valid.

Effect of lunacy in criminal law. (R. v. Young)

Comrie's

Chreis. 1981 $578 - 590

Property must be curat.

Only after or during convulsion. Has disability.

The law held treasures unless by law merchant; can hold realty, but not against the crown (hath of firmness on vigorous, whether in her hands or person surviving both from time).
Henry v Armstrong. The law is that anybody who of full age and sound mind who has accepted a voluntary deed by which he has divested himself of his own property is bound by his own act. (Key 7)

Reciprocation of Document consequent on mistake.
Rectification of Deed.

On the death of a ward to the crown
S. C. R. 558 provides that alien freed men
in Vic can acquire a personal estate in personalty
as of a personal estate
§ 92. § 223. W. W. Prop. Act
§ 93. Settlement executed in concert of an
intended marriage. Marriage broken off,
and no court can cancel settlement.

executing voluntary settlement need not prove
it all - some on those challenging it.
Henry v. Armstrong. The last word on this.

§ 96. of Yost v. Mackinnon
Lewis v. Clay

Lecture 17
If agreement subsequently reduced to
writing, but through some error the writing does
not express correctly the agreement of the parties,
then court will rectify the written instrument.

On the agreement arrived at may be rewritten,
but subsequently expressed formally in a deed
which does not correctly express the written agreement.

In these cases, not matter of law but matter of
fact and evidence.
Fraud in Law.
Fraud in Equity.

UNDUE INFLUENCE.
97. Undue influence differs from fraud in law.

Law remedies damage. Equity REPRESSES or suspends of contract (or good defence)

In law, fraud is merely a fact, made with knowledge or fault, without belief in its truth, with the intention that injured party should not fall upon it; he does not upon it to harm himself.

Have to prove these matters in action. OCCUR.

Equity. But if puff asks for rescission of contract on ground of fraud, there is no necessary to prove that the manner of fact was made with the knowledge of plaintiff or without belief in its truth.

This distinction is fundamental.

Undue influence

When any confidential relation existing between the parties, e.g. master, parent.

Distinguish this from duress.

Undue influence is the influence of mind on mind.

In such cases, essays known on temporary or permanent.

Possum

1. no undue influence
2. outside minds; advice

Settlement

3. hand pronounces written
4. method used understood by settlor.
Wright v Carter

...presumption that it was mainly influenced by the
presumptions relating to the relationship between them; and one is an actual knowledge
of the influence of his relation. Presumptions not unreasonable, but not
sufficiently rebutted by mere fact of client having employed separate counsel, etc.

You cannot be bound by acquiescence unless you
know your legal position.

...continue so long as relation subsists. Client continues for other purposes outside the gift; in all cases unless it can be clearly inferred that the
influence arising from the relation no longer exists. Thus, there is
no obligation to sell by a client whose relation, removed the obligation can
know
(1) that the client was fully informed;
(2) that he had consented to advice; and
(3) that the price given was a fair one.

Incompetency - void Settlements.

13 May 95 - void Settlements.
Inchoency

p.98. Wm. G. Carter, 1903 ch. 22

99. Acquiescence - To have this, you

must know your legal rights when you acquire

otherwise you cannot be estopped from denying
an acquiescence on your part.

100. Potestas of restitution ni inanimus ni

absolutely competent to restoration of contract

101. Inchoency Rest. practically known.

A settlement not made before in consideration

or without notice of an antenuptial contract, or ten

hrs. in favor of a purchaser for value shall be void

if after becomes insolvent within two years, or

if he becomes insolvent within five years, unless

the latter case it can be shown that he was

involuntarily at date of settlement without and of.

property comprised in settlement.

104. Transverse conveyances under 13 Eliz. C. 5

Similar prov. in Inchoency ch. 8, 49 (3)

where not reproducing 13 Eliz. 5.

This latter is in face in Victoria.
Grand operator — Husband and Wife

Bona fide third parties for value — good position
Lecture 18

p. 108. Parm 21. How far is fraudulent intent presumed?

Freeman v. Pope. Lessee has intent to defraud

Create will be inferred in certain cases.

Look at Godfrey v. Poon. P.B. decision -

Court has to decide in each case what intention

of author was.

Freeman v. Pope. Sterling L.J. seems

bent point is still open.

Gifts by husband bump any property

which continues with her disposition or

reported ownership of husband or investments

of many of husband or property created by or in name of wife are void.

Take 2 cases.

1. A makes a voluntary settlement on B

with intent both to delay his creditors-

Verdict under statute.

But B sells to C for value bona fide and

without notice of fraudulent intent. Then the

settlement cannot be set aside. C gets good

title. If C was mortgage only, then settle-

ted to all as his subject to C's rights.
27 Eliz. c 4.

modified by Transient Conveyances Act.

... bomb construed 27 E c 4 any widely.

Present rule — no voluntary conveyance, if without fraud, shall be deemed fraudulent within 27 days ex. by reason of any subsequent purchase for value!
2. A pays value settles Blackacre on B, with intent to defeat a later creditors. If B was


duly to the intent, the settlement is voidable.

If he is not duly to the voidable. If B is

pays the same as in above voluntary trans.


Article 17. Act of 27 Edw. c. 4. Like 13 El. c. 5.

was not restricted to voluntary settlements.

If A makes settlement on B even for value

with intent to defeat a subsequent purchaser C

with knowledge of B, A anted. sells to C, then

settlement on B is void.

The courts construed Section so that

all or any voluntary settlements are void in

favour of a subsequent purchaser for value from

A unless third party had acquired title

from B.

The Voluntary Conveyances Act 1896 was

passed now in Real Prop. Act see 73-5

Principle derives says – that voluntary

conveyance A to B is not void in favour of

subsequent purchaser, unless you can know

and
Recently Trust — not conceived so strictly as
Sacred Trusts
Themselves today a voluntary settlement by
Ron B is not void of favoring intent unless
no favoring intent prevailed by written
conveyance or value or by unstated
unless favoring intent 

But remember 27th of July 04 was not
repealed - but it is the construction of the
ch. 57 the statute that has been altered.
The statute applies to transfers of land under
Transfers of Land Act also.

Rest of article 17 passed on.

Article 18 an executory trust always
contemplated a subsequent and more formal
instrument.

Different construction executory trusts are
and construed literally - real intent of
parties will be carried out.

In purposes of construction the distinction
between executory and executed trust does
not depend on fact that subsequent instrument
has been executed. The true distinction is - Has
the settlor of the trust been his own conveyance
has he exactly stated the limitations on,
Sargent J. in Moreton's Case.

"In the case of an executed document as distinguished from an executory document the same words of limitation are necessary to convey an equitable estate in the same as in a legal estate. The law in that respect"

In case of marriage articles, strong presumption in favour of wife. Shelley's and Wild's case not applied.

Rescuehip Trusts - see cases
not be inferred. To make out his intention from general expressions, hence an instrument may be construed as an express trust, even tho' a further instrument may be necessary or contemplated in order to convey properly. The nucleus.

Re Monkton's Estates 1913 2 Ch. 696

In respect of equitable estates versus an construct trust, in generation, they are construed literally.

Examples p. 120, 121.

Article 19. Rules in Shelley v. Wild's case will not be applied in case of marriage articles.

In case of wills, here is no presumption that issue shall benefit, as there is in case of marriage articles.

Art. 20 - 25 not taken in this class.

Article 26. Constructive trusts, with Undue hill, an all non-express trusts - may include implicit trusts.

Benefit trusts arise in the following cases:

(a) Where property is given to a trustee upon express trusts which do not wholly dispose of the beneficial interest. These we have called express trusts.

(b) Where trusts declared which the law will not permit she earned out.
"Implied Trust"

...even if voluntary transfer, unless rebutted by " intent and the use of"
If A buys Blackacre in name of B as change, B holds in trust for A, then if B is son or daughter, then B's lien must vest in trust. If presumption is that A intended B to have son or daughter. This presumption may be rebutted by what A said or did before time of purchase - so also if B is a change presumption that B is another may be rebutted in same way.

Again - A without consideration transfers Blackacre personally to B. If no more is proved B holds in trust for A, B being a change. But if B is son or daughter, presumption is that they were intended to be beneficiary.

In case of vol. transfer of land (w/ mortgage) then was a resulting use. B holds over to A, who habitually entered, conveys and word.

But presumption that B holds trust or not trust for A may be rebutted by use of words "A and B use of B." This rebutts presumption and trust. Usages never not apply.
Rare case where, on trust founding, trustee takes whole estate.

As a general rule of law it is clear that where there is a gift to trustees, namely as trustees, they cannot take any benefit arising from the fact that the expressed trusts do not, whether originally or from any subsisting rent, exhaust the whole estate. In such the results are, that there is an implied trust for the donor's heirs or representees. (Clerk to Atty.-General 6 Ch. 572. James 2. J.)
Lecture 19.

In ordinary cases, this is a resultant trust.

With trustors there are some rare cases where
the beneficiary is to take whose interests subject them
sacrificing some trust.

If that facts or comes to an end, then he takes
the loss.

In such cases, whether the trust case
belongs to the testator, or, depends upon
injunction of donor or settlor, and it has the determination
by construction of instrument; by taking into account all
the circumstances of circumstances.

These cases are usually given to institutions
those subject to a trust must, say, in the case of the
widow.

Look at James J. J. s program in Merchant Taylors
attorney general.

Standart trusts (by cap, prior, doctrine) in
exception to the general rule of resultant trusts.

If a device to fraudulent by that name, then
they cannot hold temporally.
If man is placed in words to a “trust,” that ends the matter.

But more equitable presumption may be rebutted.

If trust chars or ships doctrine may prevent resulting trusts.
But no resulting trust where a contrary intention can be collected.

Fund not accounted for publicly – temporary drier – fund reverted to the contributor.

Sometimes difficulty whether balance of fund results pure mala or not (as a rule not a charitable trust!)

If it were a charitable trust, question would arise whether ex parte doctrine should apply.

Relief of particular individuals, not charitable charitable trusts is always of a public character!

Don't confuse these cases with cases like Boyes v. Garnett; there are wise men.

Para (2)

Importance of evidence

While on the face of the instrument the donee is to hold as trustee, then parol evidence cannot be admitted to show that donee was intended to be a trustee temporarily. This is the ordinary rule re written contracts – not to be altered by parol evidence.

But when there is an equitable presumption that man is trustee, that presumption can be rebutted by parol evidence.
Illegal Trust:

Maevni 'mi pari alibi' applies unless:
1. Coercion not exercised.
2. Some other act perpetuates the illegal object.

Locus penetraliae
Illegal Trusts

When person intentionally creates an
intended trust for illegal consideration in
possession of person, if there is
beneficiary when, the settler cannot
Thereunder result
1. Illegal-purpose not

2. Something with unlawful

 Illegal Trusts without

1. Illegal purpose not

2. Something with unlawful

Top of page - The principles stated!

Marriage with deceased wife's estates was

new will and void in Victoria - it was
only voidable at the end of one of the parties
in the lifetime of other. Such and wife make

children illegitimate.

Marriage with deceased wife's estates now
no longer voidable.

Fraudulent conveyance - when illegal
purpose is only contemplated, there is a
locus

Smythe v. Hughes

Article 29

Resulting Trusts when purchase
made in another's name. May be rebutted
by parole evidence, or by fact that person in
whom the property was vested, was wife, child or
the purchaser.
Standing v. Browning. Cotton 1.5. Rule is well settled that where there is a transfer by a person into his own name jointly with that of a person who is not his child for his adopted child, then there is a mere facie resulting trust in the transferee. But that is a presumption rebuttable by showing that, at the time, the transferee intended a benefit to the transferee.

"In loco parentis" and adoption.

Ackroyd v. Smithson.
Lecture 20

Resumption on making purchase in another's name may be rebutted in several ways.
163.4. Position of married women.

165. Law recognises "mico parents", but common law does not recognise adoption. (States do this in Victoria)

166. Dowton Property results.

167. Ackroyd v. Simpson, a leading case. Estate left nearly $48,000,000, being $1,100,000 divided among A, B, C, D, Elgin, and $6,000,000 to husband. The wife claimed her share of $1,100,000 and the rest of the time. Her claim was rejected, and the court held that direction to convert into money was only for the purpose of the will.
Questions as between Ordinary Legates and Revolutionary Deputies
and joins other purposes: as this purpose fails as regards D s share, then proportion must go to the heir.

This case could not occur in Re.  as we do not distinguish her hei 1st next of kin.

1. But in Re. def. may arise as a remainder
   descend and remainder Legatee; and we acknowledge
   substant  of this fact taken as 1. D s share of the
   money wo. have gone  to the remainder devises.

2. Sun. when personal estate bequest  b. husband
   to purchase real estate  act. on B s 3. C in equal shares,
   and 3. devise before devise. C s share will go to
   the Legates and not the devisees.

3. Again, real estate devised b. husband b. sold
   tables on B for life, rem. b. C. But C devis
   in lifetime of Legatee. Here real estate has b. 
   be sold, 3. give B life estate in proceeds, but the
   remainder goes to the (heir or) remainder devisees, not
   the rest of kin or remainder Legatees.

4. So of £20,000 given  b. husband  b. purchase
   real estate  act. on B for life, rem. b. C, 1 3
   precedence table. The remainder, not b. the
If trust in God as a tempering fire, this shall remain as if unconquered; but if it is personally when it rains, it remains personally, and He gives it remembrance of it!

When trust for conversion wholly fail, no conversion takes place.
To whom property belongs.

Residuary devisee, but the residuary legatee.

Suppose that residuary legatee d died in this last case, after testament but before B, all residuary realty had her up to E, personally B & E who are entitled B & E's share.

Entitled! See p. 171 para 3

N. B.

Take care where trust for conveyance wholly fails.

1. Reality duresid the estate held is trust for B & C. B & C die before testament A. Then residuary takes the reality as such. B & D are after testament, but before the property, it goes to his residuary devisee.

2. Money legated to purchase land to invested in B & C. B & C die before testament A. Realndary legatee A takes as money. B & D (resid. eq.) die after testament, but before to get the money, it goes to his legatee not devisee.

Both above example — the trusts have wholly failed — and no conveyance takes place.
Trusts for common: what partially fail —
the four examples previously given. Also.

4. Really the said proceeds divided as B 
   C. B dies, hype D. D eldest, i. D the 
   residuary of A, takes half the proceeds as 
   the personal estate. If D dies after D, he 
   has before he gets the money. If D's heirs 
   legatees.

Similarly if D was remainderman on B's money

5. Personal estate. Legatees, B bought 6, proceeds to
   purchase land for B. C. B and hype A, the legatees of A 
   Takes B's share. Don't put it together as money 
   onehalf. We take half the money as money, 
   for only half the money will be used to purchase land 
   of D and hype he get the money. It will pass to the 
   remainder legatees. This is the exception case 
   B get money, not invested in land.

Compare this with preceding one. The 
 following one:

6. Money legatees to purchase land bequeath 
   on B for life, then B. C. C dies, hype A, eldest. 
   In this case the land taken bequeathed to give B 
   life estate, & the capital remains goes to D. He
The Rule in Kueh v. Sandford.
Chapter III

Constructive trust of profits made by person in fiduciary positions.

Kuech v. Sandford: The leading case. Not a particular case, but lays down an absolute rule — trustee receiving case goods as property.

A case of Kuech v. Sandford makes it a very strong case.

In Brittle v. Reeves, 10 V.L.R.B. the doctrine of Kuech v. Sandford was applied to a case of master and servant.

Owner of business premises held on monthly
Nicholson v Gander.

The men obtained an authority to cult certain pernait lands and work them. At end of year, the authority became abandoned, the authority man erred, which, taken with constant drought, during period of currency, indicated that any enterprise abandoned. They then made written applications for new authority. J. Successed instruction: have two declared muster, it was held that the app. was not founded on the basis under the original authority, i.e., that he was not in any fiduciary position towards the others, i.e., not hired to farm the land for benefit of the others.

The true man in "presumption" of law.
tenancy directed management assent vii selling as 
aging concern. Manager for a 6 mo. Case of Kn 
pruiss @ twenty. It held he was a trustee. 

Jones v. Bonifer 12 C.L.R. 579.

Same principle applies to renewal by husband or wife 
of person in pruiss position.

So also tenants for life of leaseholders who claim 
under a settlement cannot renew them for his 
own sole benefit. This irrebuttable.

But in renewals by mortgagees, joint tenants, 
tenants in common, possibly partners, tenants 
of land subject to a charge — the presumption 
is not irrebuttable.

This doctrine modified in these cases.

N.B.

Here are three main presumptions of law.

1. Preemption dominus. A murder 
committed or kept belonging to Smith found 
near by. This is evidence.

2. Preemption juris. Something conclusi 
enless rebutted. A rebuttable presumption — 
e.g. that consideration was given for a bill or 
note also renewals by mortgagees re.
Poshion of fiduciary persons.
3. *Praemptio juris et de jure.* This is an unacceptable presumption.

*E.g.* *Kech v. Sanford.*

*Summary of Del. $169. 170. 174.* (Secret Commission Del.) would now invalidate a solicitor's agreement such as that in p.178 para 2., and make it a misdemeanor.

178. A & B enter. Agreement made by C 

  *P. B. return in full plan.* 2.75 paid by C. The 2.75 goes to the estate - a trustee cannot make a profit out of a trust.

Beyond the commission allowed him.

This made a crime by the Secret Commission Del.

It was a common practice for trustees companies to take over masters from unskilled workers or admin. in this way.

Directors of company cannot enter into

  *Temple* contracts with company. Company is more than the Director + Shareholders - it is a fictitious entity in the eyes of the law.
Wheat v. Allen, In re Read. One who brings a cop into existence by taking an active part in forming it or in procuring persons to join it when formed is a promoter of the company. In an action by plaintiff cop. aged the def't. to recover the profits made by him as promoter of the company, which profits had not been declared to be in the hands of the shareholders—held that no evidence existed as promoter and the company was included because from the time the jurisdiction from the hands, actions as a whole, including the value when issued of shares in the company, issued them which had become worthless, but not including money paid, and shares issued, other and funds transferred by him to others for services rendered him in the formation of the company.

Robinson v. Abbott. Snelton, manager, claimed to be misled in land company, sold ten acres of his own share, carelessly omitting to tell him that he was the vendor. Later the company went into liquidation; 18 mos. later, 12 yrs. after the company had sold to Snelton's own shares, plaintiff brought an action for rescission and refund. Held that courts; Snelton selling to a client cannot support sale, unless can show diligent ascertain of only ranking for client—sequence no bar. A party can not know right to rescission (as they are not in the case.)

Different position of vendor and purchaser.
Secret Commission.

Directors have fiduciary relation towards the company. Of course the Bribery Act.

Sometimes the articles of association provide that the directors may enter into contracts with the company. Sometimes, but not always, provided that such transactions must be ratified by general meeting of shareholders.

Promotion of company is fiduciary person. Thus receipt commission invalid, it now comes.

Liability of directors to refund profits is discussed in

*Weal Allcorn & Co v Read* [1912]


*Robinson v Abbott* [1912]

Constructive trust where equitable and legal estates are not united in same person.

Vendor and purchaser. "Loss falls on the purchaser."

Vendor unable to purchase, but with an actual right to protect his own interest!!!
Vender's miss for purchase only arises when equity would give specific performance.

p180 “To raise a constructive trust of chattel in favour of a purchaser, therefore, the chattel must exist and either the contract must be one which the courts would specifically perform, or (if not) something must have been done by the purchaser necessary to enable him to immediate delivery: This distinct from 'specific delivery' of goods Act.

Vender's heir.
Vendors' Lien

The eq. of equity regarding as done that which ought to be done. The relation only arises in those cases when equity will give specific relief—
as a rule, sales of lands and interests in lands; and in case of some exceptional chattels—those unique and irreplacable.

Goods Act 1911 gives S.C. jurisdiction to order specific delivery of chattels to order specific delivery of chattels if it tends for a legal remedy given by statute. But in these cases, the relations of contract that vendor and purchaser do not arise. These last only arise when equity will give specific performance. (not mere legal specific deliver)

Goods Act § 22, 23 state conditions on which the property passes to the purchaser.

Vendors' lien after conveyance (lands). This is an equitable lien for the unpaid purchase money; and purchaser will hold as ansibi pro tanto. Unless some further expressed duty on some one security is not on the estate. If conveyance is concurrent, pay then no vendors' lien. Later only arises if
Preliminary's case

Mortgage, an execute power

sale conferred on him by mortgage, not being at liberty to disregard out
of mortgage, a bond, hype selling, within prescriptive or by auction,
basestani the value of the mortgagor property and, if the sale is by
auction, so far as the circumstances will permit, so far as of
the sale of such nature, no has 5 partners as opposite.

In this case, the mortgagee entirely disregarded the mortgage's
interest, & i. then to account to plaintiff for amount which
was. have been made on a sale of the property conducted
without such willfull refused.
Near conclusion was to be money paid!
But a collateral security will not rebut the
vendor’s lien.

Equitable mortgages
Devolvion of mortgaged property — not law
see D. & P. Rev 1890 see 6

Para 4. Conducted by Pendlebury’s case:
Pendlebury v. Colverdale Mutual 13 C. L. R.
Property not saleable, valuable, mortgage for a
very small sum. Default, a property sold at
a dirt cheap. Mortgagors claimed that mortgagor
notoriety, even though donum to deed.
H. & C. upheld him. — Ripe mind not
recklessly provide interest of mortgagor, and is	hence bound ripe selling baser or particular
and give notice of the sale as to particulars of
property & plans and modes of sale so as to
induce competition & to realize a fair price.
Thus, it is not necessarily sufficient to comply
with the exact terms of the mortgage deed.
Butler v. Rice. If a stranger pays off a mortgage on an estate, there is a presumption that he intends to keep the mortgage alme for his own benefit. The facts that the owner of the property, the mortgagor, has not requested the stranger to make the payment, that the stranger intended to take a legal mortgage instead of an equitable charge, and that stranger's mortgage was only the one part of the original mortgage property, are not material.

Cudahy v. Poole. A.B.C. rep's says, the land gave Declarant's security, but land sold. Deed contained condition to secure legal mortgage contingency. Deed Dated and W.I. advance $68 on certain terms. G. paid money by D. ejectment, but no assignment of the security. In a partition action, Eclavee the incumbrance. Held that E was also deemed an equitable assignee of D's security, and was entitled to declared an incumbrance.

Brickwood v. Young. The equitable rent of tenant in common of real estate, who has made permanent improvements while in sole occupation, the compensated for expense of which the value of the land has been increased thereby from which attaches to the land and passes with it to a purchaser, but is enforceable only as a permissive equity, in event of a partition or a distribution among tenants in common, by C.S. § Equity, of the proceeds of sale of land.

The fact that the tenant in common has already received without objection a portion of the fund does not necessarily preclude the application of this principle.
Lecture 11

If A tenure or improves the land of B, the improvements belong to B.

This a general rule of law.

But if there is a case of fraud, equity will protect B. This is so even in cases of constructive fraud, as when B stands by and says nothing.

A stranger who pays off a mortgage is in equity deemed the a handerover of the mortgage.

Butler v. Rice 1910 2 Ch.

J. Buddigan v. Poole 18 A. C. R. 120

When co-owner of property expends money on improvements, the money may be charged on prop. in his favour— in two cases 182-3.

Of Wakie's Case

Dr. Brickwood v. Young 2 C. C. R. 387 this person was applied in favour of one several tenants in common, when land was compulsorily resumed and compensation paid into court.

The position of agent— when he is a trustee? (Dissent run not in force here) add — in the Insolvency Act, under which if the trustee becomes insolvent,
It is submitted that where stock is handed to an agent either for investment, sale, safe custody or otherwise, then he is a trustee of that property. But where the agent merely collects or disburs in the like the commissary, or pecuniary fiduciary trust, the relation of trustee e.g. it does not generally arise, unless of exceptionally fiduciary nature.

Seeley v. Merchants' Bank. Defendant, a bankruptcy court, also carried on the business of estate agents. It collected rents for K. K. K. etc.

Despite placing the money so collected in separate account in their books entitled "agency act," and credited it without and thereof, and mixed it with their own money. The bank went into liquidation. And K. K. brought an action to recover money so collected. Held that K. K. was in a fiduciary relation to plaintiff as regards this money in connection with it. "In my opinion, it is well settled law that an agent collecting money stands in a fiduciary relation to the principal." That the rule as follows: that money paid out of bank, and K. K. was entitled to pay the money in full in priority to the other creditors of the defendant bank.
Agent as Trustee (Bank as Trustee)

Thetrust property is not distinct among the creditors, or under the criminal law.

In these three branches of law, important to law whether agent is a trustee.

When property handed to agent, then the latter is a trustee of the property as a general rule. and both legacies, unless commissaries, relations of trustee do not arise unless agency of particularly fiduciary kind. page 184 gives illustrations.

Salley v. Mercantile Bank 18 V.L.R.

Bank collected rents for its customer, mixed them with its own funds, and then went into liquidation. Held a trustee.

Stevy of Melbourne Bank v. Mehop. Board 21 V.L.R.

Board having large sum of credit in bank, sent a cheque for £7,600, and requested Bank to forward £7,600 to England & made entries shortly after on debitsLi. Bank acknowledged receipt of letter, and debited account. Board with £7,600.

The Bank went into liquidation. Debenture holders not having due and proper notice, held, Bank trustee for £7,600, just as if the Board had brought each and asked Bank to have it.
Illegal reduction of capital of companies.
The cashier of Melbourne Bank, Surgeon's Case 23 V.L.R.

Customer bought drafts from Bank, and paid
for them by cheques, and sent the drafts to London.
Before the draft was cleared, Bank went into liquidation.
This is a case of debtor's relief, not bankruptcy:
for a draft was only personal paper, like promissory

Mining company fell due to
the perennial rents. 1 person to nominate for Mines;
and land was afterwards leased from crown by
this person. He was held the trustee for that company.

185. Indian Companies Act, Company can only reduce
capital under authority of the court. The object
of this is, of course, to protect creditors, who might
otherwise lose all their assets.

If this not done, capital reduced by paying to
shareholders, the latter are trustees.

As Anaktu Blackburn, 1 sells to B, who knows
Anaktu to no selling of beach? Must then B
is Anaktu? Blackburn, though he has given full
consideration.

Same name follows of B and not know it was
DISCLAIMER OF TRUST.
Disclaimer of Trust

Disclaimer of Trust. Over this from refusal to act as trustee. Disclaimer means that man refuses to accept the office of trustee; and the effect of disclaimer is that he does not become trustee at all, and property does not vest in him, although it is devised or given to him, for example. Refusal back — when man has accepted trusteeship, and then refuses to carry out his duties. This does not divest him of the property, and if his refusal to act causes loss to the estate, he will have to make it good.

Real Property Act 1952 — Married women must disclaim by deed; husband must consent to the deed.

Note the method of disclaimer — most prudent to do so by deed; but may, as in Stacey v. Elph, be disclaimed by conduct inconsistent with acceptance.
Re Winship. Since Married Women Property Act (1882), a married woman, being entitled to an annuity under her will for her separate use without power of anticipation, agreed with her husband to disclaim the bequest on condition that they paid her a sum of money. Held that the married woman was entitled to disclaim the bequest despite the restraint on anticipation.
Disclaimer of Trust

Note (see Chart v Huk) - executors and trustees are two totally different persons.

Re Smith 42 Ch D. 
Securities in the property, pays debts, hands over beneficiaries. Part of our tenancy infant, then executors become trustees for the infant.

Trustees may be also appointed trustees, and may disclaim on offer. To remainor protest is not necessarily to disclaim the trust; but renunciation protest is evidence of disclaimer of trust, but not conclusive. Married woman may disclaim legacy, though restrained from antenuptial

Winnipeg 1914. 1 Ch 502

When two trustees, one disclaims, legal estate vests in sole trustee.

If sole trustee disclaims, and settlor is living, property remains in the settlor, who is himself now a trustee until new trustees are appointed

Mallett v Wilson 1903 2 Ch
Index of cases

Note very carefully.

Hanning v Hanning 4 C.L.R. 1037.
Boyes v Carrid 26 Ch. D. 531
Carridos v Carridos 1913 V. L.R.
Lowan
Rockey Road
South Yarra

4th Year LL.B. 1816.