## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>v</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>xix</td>
</tr>
<tr>
<td>Table of Statutes</td>
<td>ccvii</td>
</tr>
<tr>
<td>Table of Statutory Instruments</td>
<td>ccxxvii</td>
</tr>
</tbody>
</table>

## PART I—EQUITY AND EQUITIES

### 1. THE NATURE, HISTORY AND COURTS OF EQUITY

*David Fox*

- Nature of Equity: 1-001
- History of Equity in England: 1-005
- Courts of Equity: 1-032

### 2. EQUITABLE PROPERTY

*David Fox*

- Equitable Interest of Trust Beneficiary: 2-002
- Selected Equitable Rights to Property: 2-006

### 3. ASSIGNMENT OF CHOSES IN ACTION

*David Fox*

- Common Law and Equity: 3-001
- Statutory Assignment: 3-004
- Equitable Assignment: 3-012
- Effect of Assignment on Equities: 3-024
- Assignment of Future Choses in Action: 3-030
- Ineffective Assignments: 3-033

### 4. PRIORITIES

*David Fox*

- The Basic Rule: Order of Creation: 4-002
- Registration: 4-004
- Overreaching: 4-013
- The Bona Fide Purchaser for Value Without Notice: 4-017
- Conduct of the Parties: 4-042
- The Rule in *Dearle v Hall*: 4-052
PART II—MAXIMS AND DOCTRINES

5. THE MAXIMS OF EQUITY

James Edelman

1. Equity will not suffer a wrong to be without a remedy 5–002
2. Equity follows the law 5–005
3. Where there is equal equity, the law shall prevail 5–008
4. Where the equities are equal, the first in time shall prevail: *qui prior est tempore, potir est jure* 5–008
5. He who seeks equity must do equity 5–009
6. He who comes into equity must come with clean hands 5–015
7. Delay defeats equities, or, equity aids the vigilant and not the indolent: *vigilantibus, non dormientibus, jura subvient* 5–016
8. Equality is equity: *aequitas est aequitas* 5–020
9. Equity looks to the intent rather than to the form 5–029
10. Equity looks on that as done which ought to be done 5–030
11. Equity imputes an intention to fulfil an obligation 5–031
12. Equity acts in personam 5–032

6. THE EQUITABLE DOCTRINES

Stuart Bridge

1. Conversion 6–001
2. Election 6–012
3. Performance 6–040
4. Satisfaction 6–056

PART III—EQUITABLE PROTECTION

7. FIDUCIARIES

Matthew Conaglen

1. Fiduciaries and Fiduciary Relationships 7–001
2. General Nature of Fiduciary Duties 7–007
3. Conflicts Between Duty and Interest 7–018
4. Conflicts Between Duty and Duty 7–036
5. Profits Made Out of Fiduciary Position 7–041
6. Remedies for Breach of Fiduciary Duty 7–051
7. Relationship with Other Equitable Doctrines of Protection 7–065

8. FRAUD, UNDUE INFLUENCE AND UNCONSCIONABLE TRANSACTIONS

James Edelman

1. Fraud in Equity 8–001
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Actual Fraud</td>
<td>8-005</td>
</tr>
<tr>
<td>3.</td>
<td>Undue Influence</td>
<td>8-008</td>
</tr>
<tr>
<td>4.</td>
<td>Unconscionable Transactions</td>
<td>8-034</td>
</tr>
<tr>
<td>9.</td>
<td>Breach of Confidence</td>
<td>9-001</td>
</tr>
<tr>
<td></td>
<td>James Edelman</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>The Nature of Breach of Confidence</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>The Elements of breach of Confidence</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Breach of Confidence and Privacy</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Remedies</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Powers—General Principles</td>
<td>10-001</td>
</tr>
<tr>
<td></td>
<td>Richard Nolan</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Powers and the Sources of Powers</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>The Categorisation of Powers</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>The Exercise of Powers</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Matters Preliminary to the Exercise of a Power</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Controlling Powers</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Specific Powers—Powers of Appointment</td>
<td>11-001</td>
</tr>
<tr>
<td></td>
<td>Richard Nolan</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>General</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Defective or Excessive Execution of a Power of Appointment</td>
<td>11-002</td>
</tr>
<tr>
<td>3.</td>
<td>Mistake</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>The Rule in Hastings-Bass</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Fraud on a Power/Improper Purposes</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Severance</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Appointment to Holder</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Protection of Purchasers</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Disclaimer or Release of a Power</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Revocation</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Illusory Appointments</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Delegation of a Power</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Estoppel</td>
<td>12-001</td>
</tr>
<tr>
<td></td>
<td>James Edelman</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Sources of the Modern Law of Estoppel</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Promissory Estoppel</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Propriety Estoppel</td>
<td></td>
</tr>
</tbody>
</table>
13. **PENALTIES AND FORFEITURES**  
*James Edelman*

1. Contrast Between Penalties and Forfeiture 13–001
2. Penalties 13–002
3. Relief Against Forfeiture 13–015

**PART IV—EQUITABLE REMEDIES**

14. **INTRODUCTION**  
*Steven Elliott*

1. Legal and Equitable Remedies 14–001
2. Discretion 14–002
3. Minor and Defunct Remedies 14–003

15. **RESCISSON**  
*Steven Elliott*

1. Nature 15–001
2. Relation to Other Doctrines 15–002
3. Grounds 15–004
4. Self-help Rescission and Judicial Rescission 15–010
5. Exclusion of Rescission 15–013
6. Effect of Rescission 15–019

16. **RECTIFICATION**  
*Paul S. Davies & Janet O'Sullivan*

1. Nature of Rectification 16–001
2. Scope of Rectification 16–007
3. Mistake 16–012
4. Defences 16–025
5. Effect of Order 16–027

17. **SPECIFIC PERFORMANCE**  
*Janet O'Sullivan*

1. Introduction 17–001
2. Inadequacy of Damages—Threshold Requirement for Availability of Specific Performance 17–007
3. Bars to Specific Performance 17–012
4. Parties to Action for Specific Performance 17–047
5. The Court Order 17–050
18. INJUNCTION

Paul S. Davies

1. Introduction 18-001
2. Perpetual (or Final) Injunctions 18-008
3. Interim Injunctions 18-045
4. Operation of Injunction 18-096

19. RECEIVERS

Richard Nolan

1. Appointment and Functions 19-001
2. Persons who may be Appointed 19-011
3. Appointment Out of Court 19-014
4. Appointment by the Court 19-015
5. Receiver by Way of Equitable Execution 19-026

20. PERSONAL MONETARY CLAIMS

Steven Elliott

1. Introduction 20-001
2. Accounting in Equity 20-003
3. Equitable Compensation 20-016
4. Account of profits 20-023
5. Monetary Awards Relating to Rescission 20-031
6. Monetary Awards Relating to Specific Performance and Injunctions 20-040
7. Accounts Between Co-Owners 20-059

PART V—TRUSTS

21. DEFINITION AND CLASSIFICATION OF TRUSTS

David Fox

1. The Core Case of the Trust 21-001
2. Classifications 21-017
3. Trusts Compared with Other Relationships 21-033

22. PRIVATE EXPRESS TRUSTS

David Fox

1. Varieties of Express Trusts 22-001
2. Certainty in Defining the Essential Elements of the Trust 22-012
3. Executed and Executory Trusts 22-026
4. Enforcement of the Trustee’s Duties 22-028
## Contents

5. Formalities  22-035  
6. Constitution of Trusts  22-041  
7. Setting Trusts Aside and Unenforceable Trusts  22-050  

### 23. Charitable Trusts

**David Fox**  
1. Introduction  23-001  
2. The Essentials of Charity  23-008  
3. Perpetuity  23-039  
4. The *Cy-pres* Doctrine  23-042  
5. Administration and Supervision  23-059  

### 24. Trusts Arising to Enforce an Informally Expressed Intention

**David Fox**  
1. General  24-001  
2. Trusts Giving Effect to Specifically Enforceable Obligations  24-002  
3. Trusts to Enforce Incomplete Inter Vivos Gifts  24-005  
4. Trusts Giving Effect to a *Donatio Mortis Causa*  24-016  
5. Secret Trusts  24-023  
6. Mutual Wills  24-032  
7. Constructive Trusts under the Equity in *Pallant v Morgan* Equity  24-038  
8. Constructive Trusts of Land to Enforce Informal Common Intention  24-041  

### 25. Resulting Trusts

**David Fox**  
1. Rationale  25-001  
2. Gratuitous Transfer  25-003  
3. Failure of Express Trust to Exhaust Beneficial Interest Property  25-022  
4. *Quistclose* Trusts  25-033  

### 26. Trusts Arising from Wrongs

**David Fox**  
1. General  26-001  
2. Wrongs From Which Trust May Arise  26-006  
3. Remedial Constructive Trust  26-014
# Contents

## 27. Appointment, Retirement and Removal of Trustees

*Richard Nolan*

1. Capacity to be a Trustee  
2. Number of Trustees  
3. Appointment of Trustees  
4. Vesting of Trust Property  
5. The Public Trustee  
6. Determination of Trusteeship

## 28. Specific Powers: The Administrative Powers of Trustees

*Richard Nolan*

1. Sale  
2. Partition  
3. Insurance  
4. Delegation  
5. Compromise and Valuation  
6. Protection Against Claims  
7. Maintenance and Advancement

## 29. The Duties and Discretions of Trustees

*Richard Nolan*

1. The Trust Property  
2. *Howe v Earl of Dartmouth*  
3. Duty to Keep Accounts and Records and Disclosure of Trust Documents  
4. Control by Beneficiaries  
5. Control by Court  
6. Trustee Profiting from Trust  
7. Indemnification of Trustee

## 30. Breach of Trust

*David Fox*

1. Nature of Breach of Trust  
2. Establishing a Breach of Trust  
3. Personal Remedies Against a Trustee in Breach  
4. Defences and Adjustments to Trustee’s Liability  
5. Proprietary Remedies Against Proceeds of Breach of Trust  
6. Personal Liability of Third Parties involved in Breach of Trust
PART VI—ADMINISTRATION OF ASSETS

31. COLLECTION AND REALISATION OF ASSETS

1. General Introduction
   31-001
2. The Definition of Assets
   31-005
3. Collection of Assets
   31-013
4. The Trust on Intestacy
   31-014
5. Powers of Personal Representatives
   31-018

32. PAYMENT OF DEBTS

1. Duty to Pay
   32-001
2. Order of Payment
   32-002
3. Payment of Statute-barred Debts
   32-025
4. Preference and Retainer by Personal Representatives
   32-027
5. Order of Application of Assets
   32-028
6. Charges on Property
   32-048

33. DISTRIBUTION OF ASSETS

1. Transfer of Property
   33-001
2. Ascertainment of Settled Residue
   33-016
3. Retainer of Debt to the Estate
   33-020
4. Liabilities
   33-026

34. REMEDIES

1. Administration by the Court
   34-002
2. Substitution or Removal of Personal Representatives
   34-015
3. Guidance by the Court
   34-016
4. Actions Against Personal Representative
   34-017
5. Liability of Recipients of Assets
   34-021

35. LEGACIES

1. Classification
   35-001
2. Ademption and Abatement
   35-005
3. Payment of Legacies
   35-009
4. Annuities
   35-022
5. Income from Legacies and Devises
   35-032
6. Accretions to Legacies
   35-043
PART VII—SECURITIES

36. THE NATURE AND CLASSIFICATION OF SECURITIES
   Matthew Conaglen & Stuart Bridge
   1. Generally 36–001
   2. Mortgages 36–002
   3. Charges 36–003
   4. Pledges 36–004
   5. Liens 36–005
   6. Suretyship 36–008

37. CREATION AND SETTING ASIDE OF MORTGAGES
   Matthew Conaglen & Stuart Bridge
   1. General Matters 37–001
   2. Mortgages of Land 37–005
   3. Mortgages of Personalty 37–013
   4. Equitable Mortgages 37–019
   5. Setting Aside Mortgages for Undue Influence or as Unconscionable Bargains 37–022
   6. Misrepresentation and Mistake 37–030
   7. Statutory Provisions Affecting the Enforceability of Mortgages 37–032
   8. Forgeries 37–038
   9. Unlawful Consideration 37–039

38. THE RIGHTS AND INTEREST OF THE MORTGAGOR
   Matthew Conaglen & Stuart Bridge
   1. The Nature of the Mortgagor’s Interest 38–001
   2. The Right to Redeem 38–004
   3. Exercise of the Right to Redeem 38–015
   4. Loss of Right to Redeem 38–042
   5. Rights of the Mortgagor in Possession 38–044

39. THE RIGHTS AND INTEREST OF THE MORTGAGEE
   Matthew Conaglen & Stuart Bridge
   1. Right to Enforce Personal Covenant of Mortgagor 39–001
   2. Right to Possession 39–002
   3. Right to Sale out of Court 39–034
   4. Right to Foreclosure or Judicial Sale 39–046
   5. Right to Appoint a Receiver 39–056
   6. Right to Transfer the Mortgage 39–060
   7. Right to the Title Deeds 39–061
   8. Limitation 39–063
Contents

9. Right to Consolidation 39-076
10. Right of Marshalling 39-085
12. Subrogation 39-091

40. Floating Charges

Richard Nolan

1. The Nature of the Floating Charge 40-001
2. The Importance of Overreaching 40-008
3. An Alternative View 40-010
4. Conceptual Limits on Floating Charges 40-011
5. Practical Limits on Floating Charges 40-012
6. The Utility of Floating Charges: Benefits and Costs 40-013
7. Characterising a Charge: Fixed or Floating 40-014
8. Priorities 40-017
9. Crystallisation 40-019
10. Enforcement Mechanisms 40-023

41. Priorities of Mortgages

Matthew Conaglen & Stuart Bridge

1. General Principles 41-001
2. Tacking 41-006
3. Subrogation 41-012

42. Discharge of Mortgages

Matthew Conaglen & Stuart Bridge

1. Merger 42-002
2. Redemption 42-004

43. Pledges

Matthew Conaglen & Stuart Bridge

1. Creation of Pledges 43-001
2. Rights of the Parties 43-006

44. Liens

Matthew Conaglen & Stuart Bridge

1. Types of Liens 44-001
2. Vendor’s Liens 44-006
3. Purchaser’s Liens 44-014
4. Solicitor’s Liens 44-016
5. Lien for Sums Spent on Property of Another 44-034
6. Other Equitable Liens 44-037
45. Suretyship

Matthew Conaglen & Stuart Bridge

1. The Concept of Suretyship 45–001
2. Nature of Suretyship 45–005
3. Position of Creditor 45–010
4. Position of Surety 45–014
5. Quia Timet Relief for Surety: Before Payment 45–017
6. Remedies of Surety: After Payment 45–019
7. Discharge of Surety 45–030