

Jointly organised by



Centre for Law & Business  
Faculty of Law



# Equity, Trusts and Commerce

Date: 12 April 2016

Time: 2.00pm to 5.40pm

Venue: Viewing Gallery, Level 8, Supreme Court Building

## Synopsis

### The Enforcement of Modern Trust Structures

by Professor Richard Nolan

This paper will examine the law surrounding the enforcement of modern, complex family trust structures. In particular, it considers the standing to enforce the trust of those who are merely objects of discretionary powers, and those who are protectors of the trust. The paper will address recent case law on the subject and both its practical and theoretical implications.

### The Intersection of Agency Law with the Law of Trusts

by Professor Peter Watts QC

The principal-agent relationship and the trustee-beneficiary relationship are both important institutions of Commonwealth private law. The two institutions are usually seen as discrete. Their respective rules can, however, intersect in a number of contexts. First, for example, it is very common for trusts to be established with two or more trustees jointly owning assets. The law of trusts presumes that trustees are intended to act unanimously in dealings with those assets, and may not delegate. However, at least where the trustees have legal ownership of the trust assets, a separate body of law assumes that one co-owner can authorise, or apparently authorise, another co-owner, or even a more junior delegate, to make decisions about the disposition of those assets as agent of the others. This paper intends to explore the implications of this. Secondly, it frequently proves necessary for agents to be given legal title to assets supplied by their principals (most commonly money) but on terms that they will hold that title on trust for the principal. Similarly, agents often need to be authorised to receive ownership of assets from third parties although beneficial entitlement is to rest with the principal. The respective common law and equitable duties that arise in such circumstances, and the effect of breaches of them, has given rise to difficulties in the courts. These too will be touched upon.

### Accessory Disloyalty: Comparative Perspectives on Substantial Assistance to Fiduciary Breach

by Professor Deborah A. DeMott

This essay will explore the distinct wrong of lending substantial assistance to another actor's breach of fiduciary duty, drawing on recent developments in the law in the United States and Great Britain. The essay will situate its specific focus within the framework of broader questions and issues associated with facilitating another actor's wrongdoing, whether through affirmative conduct or nonfeasance, including distinctive elements of culpability and factual causation.

### Not Quite Backwards Tracing

by Professor James Penner

Both the CA decision in *Relfo v Varsani* and the PC decision (on appeal from Jersey) in *The Federal Republic of Brazil v Durant International Corporation* accept that in certain circumstances a claimant may trace money paid into a bank account into assets previously acquired with funds from that bank account. Whether this amounts to the acceptance of 'backwards tracing' is not clear. These cases will be examined in light of the theoretical debate, in particular the Smith/Conaglen debate over the nature and validity of backwards tracing.

### The Nature of Recipient Liability

by Professor William Swadling

While we know that a recipient of rights dissipated in breach of trust will in certain circumstances be liable to be ordered by a court to pay over the value of what he or she received, being said to be 'liable to account as a constructive trustee', we are still a long way from understanding why. Some say that the liability is triggered by the recipient's unjust enrichment. Others say it is because he is a wrongdoer. Yet another view is that he really is a trustee, coming under custodial duties with respect to the rights, and that the claim is for a breach of those duties. The purpose of this paper is to interrogate these various views. Rejecting the idea that the claim is in unjust enrichment or that the recipient genuinely is a trustee, it ultimately concludes that the only viable explanation for recipient liability is one based on wrongdoing.

2.5 Public  
CPD Points



## Speakers



**Professor Richard Nolan** is Professor of Law at the University of York. Before moving to York in 2012, he was Reader in Corporate and Trust Law at the University of Cambridge and a Fellow of St John's College, Cambridge. He has published widely in the areas of company law and trusts. He has been a visiting professor in Australia, Hong Kong, New Zealand, Singapore and the USA. He is an editor of the *Journal of Corporate Law Studies*, and is a contributing editor of *Snell's Equity*. He has acted on several occasions as a consultant to governmental bodies in the UK. Professor Nolan is also a barrister and door tenant at Erskine Chambers, Lincoln's Inn, London.



**Professor Peter Watts QC** is a graduate of Canterbury and Cambridge Universities, and is a Professor of Law at The University of Auckland, where he has been since 1985. He is the General Editor of *Bowstead & Reynolds on Agency*, responsible for the 19th and 20th editions. His other books include *Directors' Powers and Duties* (2nd ed, 2015, LexisNexis), and *P Watts, N Campbell, and C Hare, Company Law in New Zealand* (2011, LexisNexis). His research interests are in agency law, company law, law of restitution, insolvency law, and equity and trusts. He is a door tenant at Fountain Court Chambers, The Temple, London, and at Bankside Chambers in Auckland. He was made Queen's Counsel in 2013, and a Fellow of the Royal Society of New Zealand in 2014.



**Professor Deborah A. DeMott** is the David F. Cavers Professor of Law, Duke University School of Law. She joined Duke's faculty in 1975 and has been a visiting professor at universities in the United States, and other countries, most recently Central European University in Budapest and the University of Sydney. Professor DeMott served as the sole Reporter for the American Law Institute's Restatement (Third) of Agency; her other books and scholarly articles focus primarily on agency law, fiduciary obligation, and corporate governance. She is the co-editor (with Danny Busch) and an author of *The Liability of Asset Managers* (Oxford Univ. Press 2012). Professor DeMott received a B.A. from Swarthmore College and a J.D. from New York University School of Law.



**Professor James E Penner** (B.Sc., UWO 1985; LL.B., Toronto, 1988; D.Phil., Oxon, 1992) is Professor of Law, Faculty of Law, the National University of Singapore, and barrister of Lincoln's Inn. He has formerly taught at Brunel University, the London School of Economics, King's College London, and University College London. He has written extensively on the law of trusts and private law more generally and on the philosophy of law, with special interests in property theory. He is the author of *The Idea of Property in Law* (OUP, 1997) and *The Law of Trusts* (OUP, 2014, 9th Ed.)



**Professor William Swadling** is Reader in the Law of Property at the University of Oxford and the Senior Law Fellow at Brasenose College. He chairs the faculty's teaching groups in Restitution and Personal Property. Before coming to Oxford, he held posts at a number of other universities, including University College London and Trinity College, Cambridge. He is the editor of a number of books, including *The Quistclose Trust: Critical Essays*. He is particularly interested in the intersection between trusts/property and restitution, and a number of his articles on this topic have been cited in the English courts, most notably in *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669. He is a contributor to *Halsbury's Laws of England* (4th ed, reissue), and wrote the section entitled 'Property' in Burrows (ed), *English Private Law* (3rd ed, 2013). He is a founding editor of the *Restitution Law Review* and has held visiting professorships at the University of Hamburg, Seoul National University, the National University of Singapore, University of Paris II (Panthéon-Assas), and the University of Leuven. He is an academic associate at One Essex Court (chambers of Lord Gribner QC), a Senior Fellow at the University of Melbourne, an elected member of the American Law Institute, and an academic member of the Chancery Bar Association.

## Chairpersons



**Professor Tan Cheng Han SC** is a Professor of Law at the National University of Singapore Faculty of Law, where he served as Dean from 2001 to 2011. He has been a visiting professor at East China University of Political Science and Law, National Taiwan University and Peking University, and was a member of the International Advisory Committees of the National Chengchi University College of Law (2009) and the Australian National University College of Law (2011). His current appointments include being Chairman of the Media Literacy Council, Chairman of the Public Accountants Oversight Committee, and a Commissioner of the Competition Commission of Singapore. Some of his recent publications include "Veil Piercing – A Fresh Start" [2015] JBL 20; "The Agency of Liquidators and Receivers" in *Agency Law and Commercial Practice* (OUP, 2016) (with Wee Meng Seng); "The Beijing Consensus and Possible Lessons from the 'Singapore Model'?" in *The Beijing Consensus. How China has Changed the Western Ideas of Law and Economic Development* (Cambridge University Press, 2016).



**Professor Robert Stevens** is the Herbert Smith Freehills Professor of Private Law at the University of Oxford. Previously he has been the Professor of Commercial Law at University College London (2007–2012) and a lecturer in law at the University of Oxford and a Fellow and Tutor in Law at Lady Margaret Hall (1994–2007). He read law as an undergraduate at the University of Oxford, where he also studied for the Bachelor of Civil Law. He was called to the Bar in 1992. He has taught and lectured widely both within the Commonwealth (Australia and Canada) and Continental Europe (Germany, the Netherlands, Spain). His most significant work is his book *Torts and Rights* (OUP, 2007).

## Fees

(inclusive of 7% GST)

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✓	<b>Full-time Students<sup>#</sup></b>	<b>S\$ 42.80</b>

<sup>#</sup> Student registrations can only be made by writing to [les@sal.org.sg](mailto:les@sal.org.sg). Please include a copy of a valid matriculation card.

## Programme

2.00 pm	<b>Registration</b>
2.30 pm	<b>The Enforcement of Modern Trust Structures</b> <i>by Professor Richard Nolan</i>
2.50 pm	<b>The Intersection of Agency Law with the Law of Trusts</b> <i>by Professor Peter Watts QC</i>
3.10 pm	<b>Accessory Disloyalty: Comparative Perspectives on Substantial Assistance to Fiduciary Breach</b> <i>by Professor Deborah DeMott</i>
3.30 pm	<b>Panel Discussion and Q &amp; A</b> Chairperson: Professor Tan Cheng Han SC
4.00 pm	<b>Tea Break</b>
4.30 pm	<b>Not Quite Backwards Tracing</b> <i>by Professor James Penner</i>
4.50 pm	<b>The Nature of Recipient Liability</b> <i>by Professor William Swadling</i>
5.10 pm	<b>Panel Discussion and Q &amp; A</b> Chairperson: Professor Robert Stevens
5.40 pm	<b>End of Session</b>

## Registration

(Closing date: 5 April 2016 or until seats last)

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2.5 Public CPD Points  
Practice Area:  
Corporate / Commercial  
Training Level:  
General

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