Equity & Trusts: Text, Cases and Materials BY PAUL **DAVIES** AND GRAHAM **VIRGO** [Oxford: Oxford University Press, 2019. xl + 1038 pp. Paperback: £41.99]

In 1871, Christopher Columbus Langdell, Dean of the Harvard Law School, published what is held to be the first casebook in the common law world—*A Selection of Cases on the Law of Contracts* (1871). It should come as no surprise that, more than a century later, books that combine legal materials with analysis and commentary are still an invaluable part of legal education. The number of relevant cases in any given area only increases with time, and therefore books that harvest, organise and analyse the sheer bulk of relevant legal material are perhaps more needed than ever.

The third edition of Paul Davies and Graham Virgo's text, *Equity & Trusts: Text, Cases and Materials* is a lucid and comprehensive treatment of a difficult area. Students find equity and trusts difficult for two main reasons. First, a proper understanding of the area requires a working knowledge of several other areas—contracts, property, arguably unjust enrichment. Second, many fundamental aspects of the trust, perhaps equity's most important contribution to the law, remain the subject of vigorous disagreement in the academic literature. It is to the authors' credit that the book overcomes both these challenges.

For example, when introducing the concept of equitable property rights (at p 11), the authors also take pains to explain the two modes by which property can be co-owned (at p 13). When introducing the trust, comparisons are made with other legal mechanisms—contract, debt, gifts, and wills, to name a few (at pp 38-54). The exposition on these other areas is naturally brief, but these short detours are quite crucial for figuring out the trust's place in the larger scheme of private law.

On the second point, take the following examples. Resulting trusts are considered in Chapter 8. Why resulting trusts arise is a vexed issue, to say the least. No single view can claim orthodoxy. The differences between the various views on offer are not minor—they range from the claim that resulting trusts respond to a presumed intention to create a trust, to the claim that resulting trusts reverse unjust enrichment, and respond to the absence of intention to benefit the recipient of property. The book adroitly deals with this by first laying out a descriptive account of resulting trusts (when they arise), before summarising the academic debates in a separate section entitled "Explaining Resulting Trusts". The book manages to avoid the twin

dangers that beset the textbook writer when facing situations like this—he must avoid inventing orthodoxy where there is none, and he must maintain a degree of impartiality when dealing with the various views.

Another example to illustrate the second point. In Chapter 2, the book addresses, *inter alia*, the nature of a beneficiary's right under a trust. This is another controversial area. The beneficiary's right has been alternatively characterised as a proprietary right against a particular asset, a personal right against the trustee, and more recently, a right against another right—the beneficiary has a right against the trustee's right of ownership. It might be thought that such things can be a little arcane for the novice in trusts, but the book does not shy away from the difficult task of explaining these debates in a clear and accessible manner.

The previous edition of this book was published in 2016, and since then, there have been several judicial developments of note. The book covers the Supreme Court decision of *Patel v Mirza* [2016] 3 WLR 399 (SC) in Chapter 8. That decision concerned developments in the law of illegality, and although the case did not directly concern trusts, the authors argue that it will be applied to trusts in future cases, as the Supreme Court sought to lay down a test for illegality that would apply throughout private law. Another important development concerning resulting trusts is also covered in Chapter 8—in *Whitlock v Moree* [2017] UKPC 44, both the majority and minority in the Privy Council eschewed the use of a resulting trust analysis to decide beneficial entitlement to funds in a joint bank account, opting instead for a more contractual approach. Taken together with other developments concerning the inapplicability of the resulting trust in the family home context, the authors argue that the resulting trust may have a more limited role to play moving forward.

In the field of common intention constructive trusts, the Privy Council decided in *Marr v Collie* [2017] 3 WLR 1507 (PC) that the fact that a property is bought in the joint names of a cohabiting couple as an investment does not preclude the application of the common intention constructive trust. The authors argue that this means that the resulting trust solution will generally not apply where a personal relationship has broken down, regardless of why the property was purchased. In *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, discussed in Chapter 19, the United Kingdom Supreme Court considered in *obiter* the definition of dishonesty, proffering some clarity in a troubled area.

Perhaps some more attention could be paid to Equity, particularly in light of a recent renewal of interest in equity theory. Recent work in this area has focused on the reasons why equity is still seen as an independent area of law today. Lionel Smith has argued that there is no single purpose, approach, philosophy or norm that characterises equity, but that there are certain things that are unique to equity, such as a peculiar way of comprehending the juridical nature of some obligations—equity will require the duty-holder to perform her obligation, if necessary by substitution, without the option of breaching and paying compensation for loss caused (Lionel Smith, "Equity is Not a Single Thing" in D Klimchuk, I Samet, & HE Smith, eds, *Philosophical Foundations of the Law of Equity* (forthcoming)). There are also important questions to be asked about the connection (or lack thereof) between equity and moral philosophy (see, for example, Irit Samet's book *Equity: Conscience Goes to Market* (2018)). That said, this text's focus on the trust is understandable, given the constraints of space. Many law school courses entitled 'Equity and Trusts' have a

predominant emphasis on the trust, because of the trust's place as the most important example of equity's exclusive jurisdiction.

It must also be said that the book does go through equitable orders in some detail in the last chapter. The chapter primarily focuses on the injunction, though other equitable orders such as specific performance, rectification and rescission are covered as well. The commercial importance of such remedies is hard to overstate, and the ingenuity on display with remedies like the Mareva injunction serves as a good introduction to the creative function of equity.

In sum, the third edition of *Equity & Trusts: Text, Cases and Materials* is a welcome resource for students, teachers and practitioners of the law.

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