

CONSTRUCTIVE TRUSTS

1. "A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee"- per Cardozo J. in *Beatty v Guggenheim* (1919) 225 N.Y. 380.

With reference to relevant cases, discuss the established categories of constructive trusts as envisaged by the above statement.

4.2 Constructive Trust

- Constructive trust arises where no trust has directly or indirectly been declared, but where it would be a fraud or unconscionable for the person on whom the court imposes the trust to assert a beneficial ownership.
- Constructive trust is imposed by law irrespective of the intention of the parties while a resulting trust is based on the intention of the parties.

4.2.1 Definition of Constructive Trust

Paragon Finance v DB Thakerar [1999] 1 All ER 400

- Constructive trust arises by operation of law¹ whenever the circumstances are such that it would be unconscionable for the owner of the property to assert his own beneficial interest in the property and deny the beneficial interest of another.

4.2.2 When does Constructive Trust arise?

Westdeutsche Landesbank v Islington

- The local authority had no relevant knowledge sufficient to raise a constructive trust at any time before the moneys, upon the bank account going into overdraft, became untraceable. Once there ceased to be an identifiable trust fund, the local authority could not become a trustee.
- Constructive arises when the party became aware of the breach or unjust enrichment he obtained.
- Since equity operates on the conscience of the legal owner, he cannot be constructive trustee of the property if so long he is ignorant of the facts that allegedly affect his conscience.

4.2.2.1 Institutional Constructive Trust

- Arises by operation of law as from the date of the circumstances which make the property owner liable to the constructive trust over his property.
- The Court does not impose the trust but merely declare that the beneficiaries enjoy proprietary interest in the property from the time the relevant events occurred.

¹ Unlike private trust that arises from settlor's express intention and resulting trust that arises from settlor's presumed intention.

Explaining Constructive Trusts Explaining Constructive Trusts

Zhe Xu



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Explaining Constructive Trusts Gbolahan Elias, 2002 Concerned with rationalizing the rules Preface p v of constructive trusts this reappraisal of the English law of trusts discounts two major existing theses regarding the rules first that based on the North American experience they should be considered as instruments of restitution and second that they are disorganized and advances Elias new thesis that the rules should be regarded as instruments for the rational furtherance of three good aims 1 making disponors abide by their dispositions 2 making those who gain through loss to others give the gains up to those others 3 making those who inflict losses on others repair those losses Preface p v

Understanding Equity & Trusts Alastair Hudson, 2008 Understanding Equity Trusts provides an accessible readable and comprehensive overview of the main themes in this dynamic area of the law It will be of interest to students struggling to cope with the increasingly complex field of trusts law and to those revising for exams Equity & Trusts Paul S. Davies, Graham Virgo, 2016 Paul Davies and Graham Virgo present the most engaging and student focused text cases and materials approach to equity and trusts providing an authoritative account of the law in a single volume

Equity & Trusts: Text, Cases, and Materials Paul S. Davies, Graham Virgo, 2013-05-30 A complete guide to equity and trusts in a single volume with clear author introductions and analyses of the law while the extracts from cases and materials promote the development of essential case reading skills and allow for detailed appreciation of the practical workings of the law and the best of legal scholarship **An Essay on Equity in Pennsylvania** Antony Laussat, 2002 Laussat Anthony An Essay on Equity in Pennsylvania Philadelphia Published for the Institution by Robert Desilver 1826 vi 7 157 2 pp Reprinted 2002 by The Lawbook Exchange Ltd LCCN 00 067115 ISBN 1 58477 139 9 Cloth 60 Written in 1825 and submitted as a dissertation to the Law Academy of Philadelphia Laussat 1806 1833 a Philadelphia lawyer traces the history of equity in the state paying particular attention to the influence of Quaker beliefs and English Common Law Although the work takes as its subject the law of equity in Pennsylvania he views equity in its most profound sense as the foundation of moral law This study received high praise from Chancellor Kent John Marshall and George Sharswood Cohen Bibliography of Early American Law 4976

Understanding Unjust Enrichment Jason W Neyers, Mitchell McInnes, Stephen G.A. Pitel, 2004-04-20 This book is a collection of articles based on Understanding Unjust Enrichment a symposium held at the University of Western Ontario in January 2003 The articles written from the perspective of English Australian Canadian German and Jewish law deal with numerous theoretical and practical issues that surround restitution and unjust enrichment The articles outline recent developments across the Commonwealth explain the unjust enrichment principle and its component parts and address discrete issues such as tracing choice of law disgorgement damages for breach of contract and the use of unjust enrichment in the cohabitation context The contributors are Kit Barker Peter Benson Jeffrey Berryman Michael Bryan Andrew Burrows Robert Chambers Gerald Fridman Peter Jaffey Dennis Klimchuk Thomas Krebs John McCamus Mitchell McInnes Stephen

Pitel Stephen Waddams and Ernest Weinrib **Constructive Trusts** Malcolm Cope,1992 *California. Court of Appeal*
(2nd Appellate District). Records and Briefs California (State)., *Trusts Law* Graham Moffat, Gerard Bean, John Dewar, 1994
 This text s underlying premise is that an investigation of the social and legal contexts in which trusts commonly appear and
 the functions which trusts perform within these contexts is an essential prerequisite of a proper understanding of trusts law
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Table of Contents Explaining Constructive Trusts Explaining Constructive Trusts

1. Understanding the eBook Explaining Constructive Trusts Explaining Constructive Trusts
 - The Rise of Digital Reading Explaining Constructive Trusts Explaining Constructive Trusts
 - Advantages of eBooks Over Traditional Books
2. Identifying Explaining Constructive Trusts Explaining Constructive Trusts
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Explaining Constructive Trusts Explaining Constructive Trusts
 - User-Friendly Interface
4. Exploring eBook Recommendations from Explaining Constructive Trusts Explaining Constructive Trusts
 - Personalized Recommendations
 - Explaining Constructive Trusts Explaining Constructive Trusts User Reviews and Ratings
 - Explaining Constructive Trusts Explaining Constructive Trusts and Bestseller Lists
5. Accessing Explaining Constructive Trusts Explaining Constructive Trusts Free and Paid eBooks

- Explaining Constructive Trusts Explaining Constructive Trusts Public Domain eBooks
- Explaining Constructive Trusts Explaining Constructive Trusts eBook Subscription Services
- Explaining Constructive Trusts Explaining Constructive Trusts Budget-Friendly Options
- 6. Navigating Explaining Constructive Trusts Explaining Constructive Trusts eBook Formats
 - ePub, PDF, MOBI, and More
 - Explaining Constructive Trusts Explaining Constructive Trusts Compatibility with Devices
 - Explaining Constructive Trusts Explaining Constructive Trusts Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Explaining Constructive Trusts Explaining Constructive Trusts
 - Highlighting and Note-Taking Explaining Constructive Trusts Explaining Constructive Trusts
 - Interactive Elements Explaining Constructive Trusts Explaining Constructive Trusts
- 8. Staying Engaged with Explaining Constructive Trusts Explaining Constructive Trusts
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Explaining Constructive Trusts Explaining Constructive Trusts
- 9. Balancing eBooks and Physical Books Explaining Constructive Trusts Explaining Constructive Trusts
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Explaining Constructive Trusts Explaining Constructive Trusts
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Explaining Constructive Trusts Explaining Constructive Trusts
 - Setting Reading Goals Explaining Constructive Trusts Explaining Constructive Trusts
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Explaining Constructive Trusts Explaining Constructive Trusts
 - Fact-Checking eBook Content of Explaining Constructive Trusts Explaining Constructive Trusts
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development

- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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