

ab initio

From the beginning (pronounced 'ab in-ish-ee-oh').

account

A process by which the court assesses the sum due from one person to another, and the remedy of payment of the sum due that is ordered at the end of the assessment process.

accumulation of income

Instead of being spent or otherwise applied, trust income is sometimes retained by the trustees and accumulated. Accumulation of income is not the mere retention of income for administrative purposes. It is the process of adding income to capital.

acquiescence

The decision by an injured party not to take action in response to the wrong done. Acquiescence may be a ground for barring a claim.

ad valorem stamp duty

A tax charged as a percentage of the value transferred by a document.

advancement

A statutory power granted to trustees (which may be altered, enlarged or removed by the trust instrument) under which the trustee can apply trust capital for the benefit of beneficiaries even though the beneficiaries are not yet strictly entitled to it.

beneficial joint tenants

Where legal title to land is in the joint names of two or more persons who are also joint owners in equity, the co-owners are said to be beneficial joint tenants. Husband and wife will often be beneficial joint tenants.

bequest

a gift of personalty made by will. Personalty means personal property, so the term includes all forms of property apart from land. The one exception is leases, which for historical reasons are treated as personalty.

bona fide

Good faith (pronounced 'bone-a fyde' or 'bonna fye-dee').

bona vacantia (pronounced 'bone-a vak-ansh-ee-a' or 'bonna vak-ant-ee-a')

Vacant goods, i.e. ownerless property. In England and Wales ownerless property will usually pass to the Crown or the Duchy of Lancaster.

capacity

'Legal competency or qualification' (Oxford English Dictionary).

certum est quod certum reddi potest

That is certain which can be made certain (pronounced 'sir-tumm esst quad sir-tumm red-dee poh-test').

cestui que trust

The one who trusts, i.e. the beneficiary of a trust (pronounced 'settee key trust').

Chancery

The current Division of the High Court derived from the old Court of Chancery, which itself had its origins in the special jurisdiction of the mediaeval Chancellor to exempt the King's subjects from the King's common law where justice in the particular case required it

Charitable trust

A trust for non-political purposes exclusively beneficial to the public.

civil partnership

A registered relationship between two people 'of the same sex' (Civil Partnership Act 2004).

'class'

Persons who 'come within a certain category or description defined by a general or collective formula, and who, if they take at all, are to take one divisible subject in certain proportionate shares' (per Lord Selborne LC, *Pearkes v Mosely* (1880) 5 App Cas 714 at 723).

compound interest

Interest calculated annually by adding to the capital the simple interest which has arisen during the previous year. Compound interest for the following year is calculated on the compound sum of capital and simple interest. The following year accumulated compound interest is added to capital, and the process repeated. It is, essentially, interest on interest.

constructive trust

A trust imposed by the court on the legal owner of an asset to prevent that person asserting beneficial ownership of the asset in bad conscience to the prejudice of the true beneficial owner.

covenant

This is a promise contained within a deed is called a 'covenant'. A covenantee (i.e. a person to whom a promise is made by deed) is not a mere volunteer because the deed itself (or, traditionally, the seal on the deed) is deemed to satisfy the common law requirement of consideration.

CREST

An electronic share settlement system introduced to the UK Stock Exchange in 1996.

cy près

Old law French for the 'the nearest thing', literally 'that which is near' (pronounced 'sea-pray').

debt

'A monetary obligation owed by one person to another which is an item of value because it can be transferred to a third party by way of sale or security for a loan' (Michael Bridge, *Personal Property*, 2nd edn, Blackstone Press, 1996, p. 4).

delegatus non potest delegare

This is the classic maxim which summarises the trustees' duty of personal service. It means 'the delegate has no power to delegate'.

devise

A gift or trust of realty made by will. Realty means real property, so the term would include land apart from leases.

discretionary trust

This arises where there is an obligation upon the donee of certain property to distribute it amongst a certain class of beneficiaries, but with discretion as to the manner of distribution.

donatio mortis causa

A gift made inter vivos in expectation of the donor's imminent death, but which is not fully effective until the donor's death.

dualism

In its most extreme form, the belief that, despite the Judicature Acts, equity remains utterly distinct from the common law.

equitable maxim

This is a traditional judicial principle developed in the old Court of Chancery which serves as a guide to the exercise of discretion in the application of equitable doctrines and the award of equitable remedies.

fee simple

The largest and best form of land ownership in English law.

fiduciary

(As an adjective) descriptive of a duty of exclusive loyalty owed in law by one person to another and descriptive also of certain offices (the paradigm being trusteeship) under which a fiduciary duty is always one of the duties owed. (As a noun) descriptive of certain people: although a trustee is the paradigm fiduciary, the term 'fiduciary' is often used as shorthand to indicate 'a fiduciary other than a trustee'.

fully secret trust

This is where X formally leaves property to Y by his will in circumstances where Y is informally made aware by X during X's lifetime (and Y expressly or impliedly accepts) that Y is to hold the property as trustee for the benefit of Z.

fusion fallacy

The belief that, after the Judicature Acts, equity and the law are indistinguishable.

gift subject to conditions precedent

The intended donee of such a gift will not be entitled to the gift unless he or she first satisfies a particular condition, e.g. he or she might have to qualify as a barrister before the gift vests.

gift subject to conditions subsequent

Such a gift vests unconditionally in the donee, but will be forfeited if the donee subsequently breaches a condition to which the gift was subject, e.g. the gift of land to a person might come to an end in the event of their moving to live abroad.

half-secret trust

This is where X formally leaves property by his will to Y expressly 'on trust' for another, but where Y is only informally made aware of the identity of that other. It will be clear on the face of the will that Y is not the beneficial owner of the property.

Hastings-Bass, the rule in

Under this rule a court may set aside an otherwise unreviewable trustee decision if it is clear that the trustees would not have decided as they did if they had taken all relevant factors (and only such factors) into consideration.

in loco parentis

'In the parent's place'. A guardian is said to stand in loco parentis to the child in his or her care (pronounced: 'inn low-co pair-entiss').

in personam

'Against the person' or 'personal'. To say that X brought an in personam claim against Y, means that X brought the claim against Y personally. An in personam action is normally contrasted with the claim in rem, which is a claim against property held by the defendant (pronounced 'inn purse-own-em').

in rem

A right is an in rem right (also known as a 'proprietary right') where it is enforced against assets in the defendant's hands in which or over which the claimant has a proprietary interest, thus it is not defeated by the defendant's personal insolvency.

inter vivos

Also known as a 'lifetime' trust. A trust is said to be inter vivos if it is effective within the lifetime of the settlor. The person setting up an inter vivos trust is called a 'settlor'.

intermediate income

Income arising from a gift, including a trust, during the period between the effective date of the trust (e.g., the date of the testator's death, in the case of a trust made by will) and the date that the beneficiary's interest vests in possession.

intestacy

The legal scheme for distributing the estates of people who die without leaving a valid will.

investment

The process by which assets are applied with the intention of producing income and/or capital growth over the medium to long term.

laches

Delay or 'laxness' in bringing a claim. A claim against a defendant will be barred by reason of the claimant's laches if there was such a delay in bringing the claim as is likely to prejudice the defendant's fair trial or otherwise offend the public interest in finality of litigation.

maintenance

A statutory power granted to trustees (which may be altered, enlarged or removed by the trust instrument) under which the trustee can apply trust income for the benefit of infant beneficiaries of the trust.

mandate

A binding instruction given to an agent.

marriage settlement

'A legal arrangement by which property is given or secured when a couple get married' (The Oxford Dictionary of English, Oxford University Press).

Maxim

A traditional judicial principle of the Court of Chancery which serves as a guide to the exercise of discretion in the application of equitable doctrines and the award of equitable remedies.

mutual wills

These are wills entered into by two or more persons in identical form and intended to be irrevocable upon the death of the first of them to die.

Power of appointment

A power given to the donee of certain property to distribute it if he sees fit amongst a certain class of objects.

Perpetuity, the rules against

Rules which prevent the disposition of property (eg. by trust) from vesting in the donee at too remote a future date, and which prevent capital being rendered inalienable for too long a time. (Closely related to the rule against excessive accumulations, which prevents income from being accumulated for too long a time.)

Proprietary

In the nature of property or appertaining to property

Proprietary estoppel

A doctrine which operates where B has been led to rely to his detriment upon a representation by A that B has an interest in A's land. It operates by preventing A from acting unconscionably in a manner inconsistent with the representation made. A is said to be 'estopped'.

proselytise

'To convert or attempt to convert (someone) from one religion, belief, or opinion to another' (The Oxford Dictionary of English, 2nd edn, Oxford University Press, 2003).

protective trust

A trust established by the settlor to protect the beneficiary (who cannot be the settlor) from the beneficiary's creditors. Sometimes called a 'spendthrift' trust, because it was traditionally employed to protect spendthrift children of the settlor.

quantum meruit

The literal translation of this Latin phrase is 'as much as he has deserved'.

According to the The Oxford Dictionary of English 'a reasonable sum of money to be paid for services rendered or work done when the amount due is not stipulated in a legally enforceable contract' (2nd edn, Oxford University Press, 2003).

quia timet

'Because he fears'. A quia timet injunction is ordered where a civil wrong is threatened but has not yet been committed.

Quistclose Trust

Where property is transferred for a particular purpose, a trust imposed on property to prevent its misapplication for any other purpose. Exemplified by the trust in *Barclays Bank v Quistclose Investments Ltd* [1970] AC 567, House of Lords.

re-conversion

'That notional or imaginary process by which a prior notional conversion is annulled or discharged, and the notionally converted property restored...to its original actual quality' (Snell's Equity, 20th edn, Sweet & Maxwell, 1929).

restitutio in integrum

To put the parties back into the position they were in prior to entering the rescinded agreement.

restitution

For present purposes we will adopt Professor Andrew Burrows' simple (and disputed) proposition that 'Restitution is the law concerned with reversing a defendant's unjust enrichment at the plaintiff's expense'.

resulting trust

Where an attempt is made by the owner of an asset to dispose of the beneficial ownership of the asset, the benefit will return to the donor under a resulting trust whenever the

attempt is for any reason unsuccessful, unless it is clear that the owner intended to abandon the entirety of his interest in the asset.

‘right of survivorship’

This is where an asset, such as land or the balance of a bank account is owned ‘jointly’ (i.e. not in shares) so that each owner can be said to own the whole of the asset, on the death of one joint tenant the surviving joint tenant (or joint tenants) remains owner of the whole by ‘right of survivorship’.

secret trust

This is a trust binding on property passed under a will, but which does not comply with the formalities required the Wills Act. It is effective because it binds the conscience of the person to whom the property passes under the will, that person having accepted the trust when the testator was still alive.

Settlor

The person who sets up a trust inter vivos.

simple interest

Interest calculated, usually on an annual basis, on the capital monies due from the trustee to the trust.

specific performance

An equitable remedy taking the form of an order of the court requiring performance of a contract; it is awarded where the court will not permit the defendant to breach his contract and pay common law damages by way of remedy.

sui juris

Adult and of sound mind (pronounced ‘soo-ee your-is’).

testamentary

Any trust which comes into effect upon the death of the person setting up the trust is said to be ‘testamentary’. The person setting up such a trust is called a ‘testator’ (if male) and a ‘testatrix’ (if female).

‘The three certainties’

certainty of intention = a certain intention to create a trust (i.e. words and conduct which create an imperative obligation); certainty of subject = certainty with regard to the assets (property) subject to the trust and the shares in which it is to be held by the beneficiaries; certainty of object = certainty with regard to beneficiaries or purposes of the trust.

Tracing

The process of following the value of an asset into substitute assets (e.g. the value of a coin can be traced into a book acquired with the coin).

Trustee

A legal owner of assets who is bound to hold and apply the assets for the exclusive benefit of other persons or to advance charitable purposes.

trustee de son tort

'If one, not being a trustee and not having authority from a trustee, takes upon himself to intermeddle with the trust matters or to do acts characteristic of the office of trustee, he may thereby make himself what is called in law a trustee of his own wrong, i.e., a trustee de son tort', per Smith LJ in *Mara v Browne* (1896) 1 Ch 199 at 209.

volunteer

Where a promise is made voluntarily in favour of a person, the person claiming the benefit of the promise is said to be a volunteer. A volunteer does not give contractual consideration for the performance of the promise.