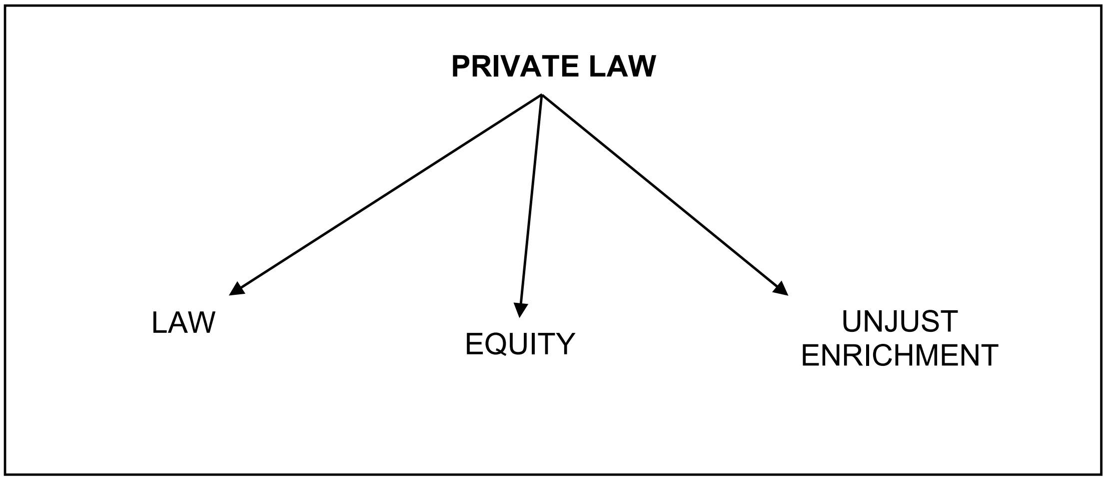
<u>Trusts & Equity – Law 463</u>
Fall Term 2018

INTRODUCTORY NOTES

1. 'EQUITY' IS A PART OF PRIVATE LAW



LAW: *In rem* (against a "thing") jurisdiction. Statues, regulations, common law. Example: property rights.

EQUITY: *In personam* (against a person) jurisdiction of the Court. Wrongs, obligations, remedies, and other applications. Example: a trust.

UNJUST ENRICHMENT: A developing area of law which seeks to address unjustified transfers of value from one person to another with a corresponding deprivation to the transferring party without an adequate legal justification and with no parasitic reliance on a legal or equitable doctrine.

2. 'MAXIMS OF EQUITY'

Some maxims of particular relevance:

- EQUITY ACTS *IN PERSONAM*

The maxim *Equity Acts in Personam* means that a court of equity has a jurisdiction over a specific person; it is thus a personal jurisdiction. Historically this meant that equity was not exercised over the person because he or she owned something (held title) but because of their conduct; thus, equity acts on the conscience of the defendant and prevent that person from acting unconscionably.

Equitable remedies and interests, then, generally operate against only the person subject of the court's order which is enforceable though the threat of imprisonment for contempt. For example, a common law judgement vesting title in property in A is traditionally considered as 'good against the world' – A enjoys rights *in rem* – whilst the order of a court in equity enforcing an equitable interest enforces a beneficial interest in the property in the hands of the defendant regardless of legal ownership. Thus, whilst the equitable interest can be enforced against a person with legal title to the property, it can also be enforced against a person never having had either legal title or possession of the property (a third party accessory to breach of trust) where the court's jurisdiction can be invoked. The only person consistently to defeat the beneficial interest enforced by the court is a bona fide purchaser for fair value ('equity's darling') of the title who has no notice of the beneficial interest – his conscience is not affected and equity will refrain from exercising its jurisdiction over him.

- EQUITY FOLLOWS THE LAW

A person who comes to equity for relief against interference with a property right gains no more rights in equity than enjoyed at law, whether framed merely as a matter of the width of an equitable remedy or the recognition of a legal interest as an interest protected in equity.

- EQUITY WILL NOT PERFECT AN IMPERFECT GIFT

Equity will not usually order a gratuitous transfer. This will be considered in detail later in the course.

- EQUITY WILL NOT ALLOW A STATUTE TO BE USED AS AN INSTRUMENT OF FRAUD

Formal statutory provisions intended to protect an interest cannot be manipulated outside their rationale to provide equitable relief.

3. TRUSTS ARE A PART OF EQUITY.

The orthodox view of property stems from trusts, and not the other way round.

Terminology

Settlor - the person who set up a trust (in a 'settlement') by contributing property to the trust and vesting ownership in the trustee.

Trustee - an individual or trust institution that holds legal title to property in trust for the benefit of the trust beneficiaries.

Beneficiary - the person for whose benefit the trust is created. The beneficiary has an equitable interest in the trust property which can be enforced against the trustee.

Classification of Trusts

Express trusts:

- Such trusts are created by express or inferred intention of the settlor *inter vivos* or the testator as a testamentary disposition of property. That intention must be expressed in relation to certain property and in favour of certain people. These are known as the 'three certainties' (certainty of intention, certainty of property, certainty of beneficiaries).

- Such trusts may be either "bare trusts" (the trustee has no active management duties, and merely holds for the beneficiary) or active trusts.

- Express trusts might be fixed or discretionary, or even settled for charitable purposes. A fixed trust has specific beneficiaries who have set beneficial interests without any room for discretion on the part of the trustee to select beneficiaries or set their equitable entitlements.

Resulting trusts:

These are trusts that arise by operation of law based on the presumed, but rebuttable, intention of the settlor to settle a trust on behalf of herself. For example, a failed gift is held on resulting trust for the transferor.

Constructive trusts:

Here the trust arises by operation of law without respect to the intent of the settlor, and in opposition to the intent of the current legal owner. It is often a remedial device.