Swaps, restitution and trusts

(published by Sweet & Maxwell in 1999)

Allastair Hudson

This book was based on my book The Law on Financial Derivatives and my doctoral research: it deals with the impact of the local authority swaps cases on derivatives market practice. The published version suffered from a very young editorial assistant working on her first book failing to transfer my hand-written changes from the proofs to the published version of the book. This was a great shame given the detailed, technical nature of the book and a great lesson. On this web page I have reproduced my original computer files for the abstract, preface, the opening portion of the Introduction and the contents for this book which gives an idea of the thesis of the work.

Abstract

The book analyses the case of Westdendsche Landesbank v. Islangton L.B.C. and its ramifications for the swaps markets. In particular the book advances the thesis that claims in relation to restitution of money arising in relation to financial transactions ought to be founded on a notion of suitability. Further, the book highlights three key issues arising from the Islangton litigation. First, that the courts failed to take into account the nature of swaps and their necessary allocation of risks between counterparties. Second, the problems created for the law of restitution by English law's conception of money as tangible property rather than as intangible choses in action held in electronic accounts. Third, the problem of taking security in financial transactions as a result of the decision of the House of Lords and by using standard market contracts as currently constituted. The underlying theme of the book is the conflict between the attitudes of traditional trusts lawyers and the proponents of the emerging principle of restitution of unjust enrichment. The book sets out new models for problems of equitable proprietary claims and unjust enrichment claims based on suitability for future cases, based on existing caselaw and by employing other techniques such as common intention constructive trusts, the doctrine of severance and the doctrine of undue influence.

Preface

The author has worked in the derivatives markets as legal counsel and as a finance professional, retaining a particular interest in the law of restitution. In that time the author developed the view that existing private law rules relating to financial transactions did

Swaps Restitution And Trusts

Paul A. U. Ali, Kanako Yano

Swaps Restitution And Trusts:

Swaps, Restitution, and Trusts Alastair Hudson,1999 Examines the conflicts between the attitudes of traditional trust lawyers and the proponents of the emerging principle of restitution of unjust enrichment In particular it considers developments in these areas and their ramifications for commercial and financial contracts The book analyzes the case of Westdeutsche v Islington LBC and its ramifications on the swaps markets The book also advances the thesis that claims in relation to restitution of money arising in relation to financial transactions ought to be found on a notion of suitability

Equity & Trusts Alastair Hudson, 2014-05-27 This new edition considers all of the academic commentary governing the area of equity and trusts in particular the emerging law of restitution and the raft of new case law over the 1990s It is suitable both as a sholarly reference and as a resource for students Equity and Trusts Alastair Hudson, 2016-07-15 Alastair Hudson's Equity and Trusts is an ideal textbook for undergraduate courses on the law of trusts and equitable remedies It provides a clear current and comprehensive account of the subject The author's enthusiasm and expertise shine through helping to bring to life an area of the law which students often find challenging This Ninth Edition has been extensively re written but remains the same book in spirit as it has always been It contains an analysis of the important decisions of the Supreme Court in FHR European Ventures v Cedar Capital Jones v Kernott and Williams v Central Bank of Nigeria and the important decisions in Charity Commission v Framjee Rawstron v Freud Patel v Mirza Federal Republic of Brazil v Durant Hodkin Novoship v Mihaylvuk National Crime Agency v Robb St Andrews Cheam Lawn Tennis Club the after effects of the Lehman Brothers collapse and analysis of many other new cases besides Equity and Trusts remains the most comprehensive and up to date coverage of the law of Equity and Trusts while still a lively and thoughtful account of the issues raised by it This book has been cited as being authoritative in the courts of numerous countries The ninth edition is supported by the author's website at www alastairhudson com with brand new resources including short podcasts discussing and clarifying key topics from within the book which cover an entire course complete lecture recordings made specifically to accompany this book New video documentaries bringing to life selected key topics A host of other online materials and study guides new for 2016 Review of a previous edition One of the book s great strengths is its clear exposition of some very difficult areas of the law moving seamlessly from points that puzzle students to points that puzzle practitioners Other strengths are the breadth of its approach the fact that it is extremely up to date the freshness and vividness of its approach and its willingness to place equity in a wider context The student will enjoy a clear lively and challenging account of the subject matter The practitioner will find the book well worth consulting for its clear exposition of the basic principles and of their application in difficult areas New Law Journal Lessons of the Swaps Litigation Peter Birks, Francis Rose.2020-11-25 This is the first comprehensive review of the extent of remedies and impact of contractual agreements on restitution claims for void unenforceable and discharged contracts **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 Understanding Equity and Trusts Alastair Hudson, 2013 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 **Principles of Equity and Trusts** Alastair Hudson, 2016-06-10 Principles of Equity and Trusts is a concise new textbook from Alastair Hudson the author of the definitive classic Equity and Trusts Through clear and careful analysis the author explains what the law is its foundational principles and its social and economic effect By beginning with the core principles on which this field is based even the most complex academic debates concerning express resulting and constructive trusts the family home charities law and other equitable doctrines become comprehensible and interesting This book offers a fresh lively and often humorous account of Equity and Trusts Through easy to follow worked examples and analysis of the case law Alastair helps you to answer problem questions and to prepare coursework The author shows how the law affects real people in real situations Each chapter begins with a clear and concise introduction to the core principles It contains numbered headings for ease of navigation and advice on studying this subject Students also have access to Professor Hudson's ever popular supporting website which has had hundreds of thousands of hits over the years It has over 50 brief podcasts on key issues which have been specially re recorded to coincide with the publication of this book That website also contains detailed lectures a variety of videos explaining the law and guidance on tackling assessments Characterised by the passion and enthusiasm for his subject matter that make Alastair Hudson's classic textbook so popular Principles of Equity and Trusts is sure to be a winner with both academics and students alike **Restitution and Equity Volume 1: Resulting Trusts and Equitable Compensation** Peter Birks, Francis Rose, 2020-11-25 The first part of this volume collates papers from the Second Mansfield Symposium which examined the areas of equity trusts and restitution The second part addresses the emerging field of equitable compensation and its implications Resulting Trusts Robert Chambers, 1997 The resulting trust has received little attention in recent years and this may be because until relatively recently the law relating to resulting trusts was thought to be settled and uncontroversial Most of the current academic writing about resulting trusts is found in the established textbooks on equity and trusts but these tend to provide little more than catalogues of the situations in which resulting trusts arise There is however very little consensus on the principle by which the resulting trust operates including the fundamental question whether it arises by operation of law or depends on the presumed intention to create a trust This book examines the true nature of the resulting trust and the question whether the trusts brought into being to reverse unjust enrichment should not include resulting trusts It then considers whether when resulting trusts are properly understood it does turn out that it is through the resulting trust that equity makes its principle

contribution to reversing unjust enrichment This book examines principally the case law of the UK Canada and Australia and it also makes reference to the views of academic commentators as found in the standard texts and law journals **Debates in Equity and Trusts** Alastair Hudson, 2014-08-26 This textbook is an ambitious and engaging introduction to the more advanced writings on equity and trusts primarily designed to allow students to get under the skin of the topic and begin to build their critical thinking and analysis skills Each chapter is structured around key questions and debates that provoke deeper thought and ultimately a clearer understanding The aim of the book is therefore not to present a complete overview of theoretical issues in equity and trusts but rather to illustrate the current debates which are currently going on among those working in shaping the area The text features summaries of the views of notable experts on key topics and each chapter ends with a list of guided further reading Unjustified Enrichment David Johnston, Reinhard Zimmermann, 2005-01-28 Unjustified enrichment has been one of the most intellectually vital areas of private law There is however still no unanimity among civil law and common law legal systems about how to structure this important branch of the law of obligations Several key issues are considered comparatively in this 2002 book including grounds for recovery of enrichment defences third party enrichment as well as proprietary and taxonomic questions Two contributors deal with each topic one a representative of a common law system the other a representative of a civil law or mixed system This approach illuminates not just similarities or differences between systems but also what different systems can learn from one another In an area of law whose territory is still partially uncharted and whose borders are contested such comparative perspectives will be valuable for both academic analysis of the law and its development by the courts **Trusts and Equity Gary** Watt, 2012-06-28 Gary Watt provides detailed and conceptual analysis of the complex area of trusts and equity Emphasis on the modern commercial context and abundant cultural references ensure students find Watt's approach a stimulating and inspiring read Modern Financial Techniques, Derivatives and Law Southern Methodist University. Institute of International Banking and Finance, 2000-08-08 This work examines both the UK and international regulation as well as the case law and legislation affecting a wide spectrum of modern financial techniques Within the scope of those financial techniques are the broad range of instruments structures and contracts deployed by global financial markets in relation to corporate customers sovereign entities and other public sector bodies The essays in this collection are concerned with the nature of the modernity of financial products like derivatives and the particularly acute challenge that they pose both to the control of financial markets by private law and by established means of regulation Much of the book focuses on derivatives as exemplars of this broader context The authors analyse practical and theoretical issues as diverse as credit derivatives dematerialised securities the ISDA EMU protocol and the OTC derivatives market as well as the regulation of financial products the economics of financial techniques and the international regulatory framework They examine issues of private law including the legal implications of immobilisation and dematerialisation in collateral transactions seller liability in credit

derivatives markets and fraud The essays examine the benefits and shortcomings of various legal mechanisms and methods of financial regulation and suggest new approaches to the questions facing the law of international finance The essays in this book arose out of the W G Hart workshop on Transnational Corporate Finance and the Challenge to the Law held at the Institute of Advanced Legal Studies in London in 1998 Restitution: Past, Present and Future William Cornish, 1998-06-19 A collection of essays on the law of restitution published in honour of Professor Gareth Jones Equity & Trusts Paul S. Davies, Graham Virgo, 2019 Paul Davies and Graham Virgo present a clear and engaging text cases and materials approach providing a contextualized and authoritative account of equity and trusts The Principles of the Law of Restitution Graham Virgo, 2024-04-25 The fourth edition of The Principles of the Law of Restitution brings this widely cited and influential volume fully up to date Substantially rewritten to reflect significant changes in the law of restitution and the expansion in the theoretical and critical commentary on the subject this book is grounded in its clarity of exposition and analysis The new edition significantly expands existing chapters on the treatment of the history of unjust enrichment enrichment the treatment of legally effective bases for receipt and compulsion It further expands existing parts on restitution for wrongs and proprietary restitutionary claims as well as offering completely new chapters dealing with at the claimant s expense absence of intent and the defence of illegality Focusing primarily on English law the volume also engages with the law in other common law jurisdictions notably Australia Canada New Zealand and Singapore It provides a clear exposition of complex areas of law as well as critical analysis of that law Timely and comprehensive this book provides readers with a crucial guide to the law of restitution and will continue to be invaluable to student academics and practitioners alike New Perspectives on Property Law Alastair Hudson, 2012-10-02 The essays in this collection consider the fundamental concepts of property and obligations in law Ideas of property and of obligations are central organising concepts within law but are nevertheless liable to fragmentation and esoteric development when applied in particular contexts Eco-finance Paul A. U. Ali, Kanako Yano, 2004-01-01 Market based environmental instruments are the most creative of the many initiatives devised to combat air and water pollution and promote biodiversity Among these none has attracted more attention than the burgeoning trade in environmental allowances and credits Originally developed in the United States around 1990 these varieties of tradable instruments were globally validated by the Kyoto Protocol of 1997 which explicitly contemplates the buying and selling of environmental allowances and credits among both sovereign states and corporate entities Despite U S opposition to the Kyoto Protocol global trading in pollution instruments is growing at an exponential rate with instruments representing over 70 million tonnes of greenhouse gas emissions estimated to have been traded in 2003 Eco Finance is the first in depth legal analysis of this extraordinary hybrid of environmental regulation and global financial markets It deals with what are currently the two dominant types of market based environmental instruments market traded environmental instruments which include the tradable pollution allowances envisaged by the Kyoto Protocol and environmental financing instruments

which include the emerging class of environmental and socially responsible investment funds Among the numerous topics and issues treated by Ali and Yano are the following the cap and trade regime debt for environment swaps forestry securitisations greenhouse gas emissions markets carbon funds and swaps tradable green certificates weather derivatives duty to hedge climatic risks catastrophe bonds protected cell companies the prudent investor rule and ethical security indices The authors deal searchingly with the critical legal issues that arise in connection with these market based environmental instruments such as the danger that courts might recharacterise underlying risk transfer agreements as illegal insurance products For this reason and for its wealth of practical theoretical and informational detail Eco Finance will be of enormous value to a broad range of legal governmental and business professionals including environmental regulators securities regulators financial market professionals institutional and other fiduciary investors corporate risk managers and investment fund managers as well as practitioners and academics in both environmental law and financial law

Alternative Assets Guy Fraser-Sampson, 2011-12-07 The investment landscape has changed dramatically over the last few years destroying many of the old certainties by which investors lived their lives In particular it has shaken belief in the ability of traditional asset types such as bonds and equities to protect them from abnormal market conditions and it has brought home how closely correlation between different markets can be squeezed together by extreme pressure Future investors will have to regard so called alternative assets as essential elements within their portfolios and be prepared to deal with the complexities that this will entail This will in turn force a re appraisal of core concepts such as risk and return not least because some alternative asset classes do not lend themselves well to traditional return measures Exciting times lie ahead but a thorough working knowledge of the various alternative asset classes will be an essential pre requisite to success and perhaps even to survival Alternative Assets meets investor s need for a guide on where to allocate in this new climate It provides investors with a primer on each alternative asset class as well as practical tips on the pros and cons implementation returns analysis fees and costs It also offers introductory guidance on how to set investment targets and how alternative assets can be accommodated within the allocation process Each chapter gives useful background knowledge on a particular asset type including a discussion of whether a satisfactory beta return level exists and if so the different ways in which it might be accessed Written by best selling author Guy Fraser Sampson this book guides investors through the new look alternative investment arena providing post financial crisis perspective and investment advice on the alternatives landscape

The Law on Investment Entities Alastair Hudson, 2000 In recent years English case law has begun to acknowledge that there are special considerations open to trustees of multinational investment funds which do not apply to the trustees of family trust funds and vice versa This book examines how English law has begun to understand the special status of the investment fund and considers the ways in which the law might develop in the future Its comprehensive coverage includes the legal personality of investment funds disclosure of information relating to fund members and Financial Services Act

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Table of Contents Swaps Restitution And Trusts

- 1. Understanding the eBook Swaps Restitution And Trusts
 - The Rise of Digital Reading Swaps Restitution And Trusts
 - Advantages of eBooks Over Traditional Books
- 2. Identifying Swaps Restitution And 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 Swaps Restitution And Trusts
 - User-Friendly Interface
- 4. Exploring eBook Recommendations from Swaps Restitution And Trusts
 - Personalized Recommendations
 - Swaps Restitution And Trusts User Reviews and Ratings
 - Swaps Restitution And Trusts and Bestseller Lists
- 5. Accessing Swaps Restitution And Trusts Free and Paid eBooks
 - Swaps Restitution And Trusts Public Domain eBooks
 - Swaps Restitution And Trusts eBook Subscription Services

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