

Glossary of common terms

- ACQUIESCENCE** assent to a set of events that can be express, or inferred from the conduct of a party.
- AD VALOREM** proportionate to the value of the property.
- ADMINISTRATOR** a person appointed by the court to deal with the estate of a deceased person (a female administrator is known as an 'administratrix'); an administrator can also be appointed to wind up an insolvent company.
- ADVANCEMENT, POWER OF** enables the trustees to advance (make an immediate payment of) part of the capital to beneficiaries who are contingently interested in the trust fund, but who have not yet satisfied all the conditions for immediate payment.
- AFTER-ACQUIRED PROPERTY** property acquired after a trust or settlement is created. To be distinguished from future property.
- AGENCY** an arrangement where one person (the agent) acts for another (the principal), and where the acts of the agent can bind the principal.
- ANNUITY** an annual payment made in return for the payment of a lump sum (unless the contract otherwise specifies, there is no right to the repayment of all or any part of the capital).
- ASSIGNMENT** where one person transfers the whole of his/her entitlement to property to another, so that he/she retains no rights in the property whatsoever.
- ATTORNEY, POWER OF** a form of agency under which one person (the attorney) is empowered to act for another (the principal) in executing deeds or (in the case of a lasting power of attorney) making defined decisions on behalf of the principal; also the instrument conferring this authority.
- BANKRUPTCY** a legal process started by or against an individual (a 'bankrupt') who is no longer able to meet outstanding debts owed to creditors.
- BARE TRUST** a trust in which the trustees are only effectively nominees and must act according to the beneficiaries' instructions.
- BENEFICIARY** a person entitled to the benefit or enjoyment of the trust property held by the trustees.
- BENEFICIAL INTEREST** the nature of the equitable interest the beneficiary has in a trust.
- BEQUEST** a gift of personal property made under a will.
- BONA FIDE** in good faith.
- BONA VACANTIA** property which vests in the Crown, because no other owner can be established.
- CAPACITY** to be of the age of legal majority (18) and not to be suffering from a disability that prevents the person from understanding the transaction in question. Capacity is required for making binding legal arrangements such as entering into legally binding agreements or making a will. Also known as being 'sui juris' (in charge of one's own affairs).
- CAPITAL** the property (or fund) held under a trust.
- CESTUI QUE TRUST** a beneficiary under a trust.
- CHARGE** a security for the payment of a debt or the fulfilment of an obligation that operates over identified property (*see* mortgage).
- CHARITY** an organization or purpose which is recognized by law as being of such public benefit as to merit special treatment.

- CHATTEL** an item of personal property (*see* personal property).
- CHOSE IN ACTION** property (such as copyright or the right to payment of a debt) which has no physical existence but is enforceable through legal proceedings.
- CIVIL PARTNERS** partners in a registered same-sex relationship, which gives similar property entitlements as conferred on married couples.
- CLAIMANT** a person initiating an action in court (formerly known as a 'plaintiff').
- COHABITANT** a person living with another, in a close personal relationship, who is neither a registered civil partner nor a spouse. A cohabitant is sometimes referred to as a 'cohabitee'.
- CONSIDERATION** the concept of value given in return for a promise or the transfer of property, which is a prerequisite to transform a promise into a binding contractual obligation at law. In equity, consideration has a slightly wider meaning and can include the reason why a transfer is made (such as love and affection), even if no value is provided.
- CONSTRUCTIVE TRUST** a trust that is implied or imposed by operation of law, in defined circumstances relating to unconscionable conduct by the parties.
- CONTEMPT OF COURT** conduct which impedes the court process. In the context of equity, this would usually consist of a failure to follow an order of the court, which may lead to a fine or a custodial sentence.
- CONVEYANCE** the transfer and vesting of title to, or the creation of an interest in, property (usually land).
- CONDITIONAL GIFT** a gift which is dependent on a specified event occurring or thing being done (e.g., a gift to Charlie if she graduates with a degree in law).
- CONTINGENT INTEREST** a right which is provisional because it is dependent on the happening of an event which has not yet taken place (e.g., a gift to Clarissa if she survives her mother who is still alive).
- COVENANT** a contractual promise contained in a deed.
- DEBT** a sum of money due from one person (the debtor) to another (the creditor).
- DEED** a specialized form of document, which must declare on its face that it is a deed and must be signed by the parties in the presence of a witness.
- DEHORS THE WILL** literally, outside the will.
- DEVISE** a gift of real property made under a will.
- DETERMINABLE INTEREST** an interest that ends on the happening of an event, although the event may never occur (e.g., a gift of an annual sum to Davina until she qualifies as a solicitor).
- DISCRETIONARY TRUST** a trust in which the trustees elect how to distribute property among a class of potential beneficiaries (the objects of the discretionary trust), as they in their discretion think fit.
- DISCLAIMER** a refusal to accept either an office (such as the office of trustee) or a gift.
- DISPOSITION** a transfer of title to property.
- DISTRIBUTIVE POWER** power to allocate property either generally or to the members of a defined class (objects).
- DONEE** a person who receives either property or a distributive power.
- DONOR** a person who gives property by way of a gift or creates a distributive power in favour of the donee.
- ELECTION** a choice, e.g., to rescind a contract or keep it in existence, or to choose a particular remedy.
- ENDOWMENT** where property is given to provide a permanent fund or source of income.
- EQUITABLE TITLE** title to property that is only enforceable in equity, and is vested in the beneficiaries under a trust.

- EQUITABLE INTEREST** an interest that can only be enforced in equity.
- ESTATE** either describes the property assets of a deceased person or describes the ownership rights a person enjoys over land.
- EXECUTOR** a person who acts as personal representative of a deceased person in carrying out the terms of a will and who was named in the will. (A person acting as a personal representative who is not named in the will is known as an administrator.)
- EXEMPTION CLAUSE** a contractual term designed to exclude or reduce the liability of one or other parties.
- EXPRESS TRUST** a trust that is intentionally created.
- FIDUCIARY** a person who has undertaken an obligation of loyalty to another and is compelled to put that other person's interests before his/her own (e.g., director of a company is a fiduciary for the company shareholders).
- FIDUCIARY OBLIGATIONS** the duties imposed by equity on a fiduciary to make sure that they act in the best interests of the person to whom they stand as a fiduciary.
- FUTURE PROPERTY** rights to property that have not yet been acquired, but may be acquired in the future.
- GIFT** a gratuitous transfer of all title in property.
- GRATUITOUS** without receiving a legally recognized benefit in return.
- HOLDING TRUST** specific type of trust in which the trustees simply obey the orders of the principal, often used to conceal the true identity of the principal.
- IMPLIED TRUST** the label given to a trust that has not been formally declared by the parties, but is found to exist by the courts because the evidence indicates that the parties meant to create this kind of obligation (either through a resulting or constructive trust).
- INALIENABLE** unable to transfer e.g., inalienable property is property that may not be transferred.
- INTANGIBLE** without physical form, e.g., intangible property, such as shares in a company.
- INTER ALIA** among other things.
- INTER VIVOS** during one's lifetime.
- INTESTACY** the process relating to the distribution of an individual's property after death where an individual dies without leaving a will.
- INSOLVENCY** a legal process started by or against a company that is no longer able to meet outstanding debts owed to creditors.
- INSTRUMENT** the legal document that creates an obligation or transfers an interest (e.g., a trust instrument is the document creating a trust).
- JUDICIAL TRUSTEE** a person appointed by the court to replace a trustee or fiduciary who has acted improperly (e.g., personal representatives under a will).
- KNOWLEDGE** the state of mind or awareness of facts necessary to the imposition of liability.
- LEASE** an estate in land of limited duration (held by a tenant), which is created out of a large estate of another (the landlord).
- LIEN** a right to claim or hold another's property as security for a debt.
- LIFE INTEREST** an interest in property that lasts for the duration of the holder's life.
- MAINTENANCE, POWER OF** enables the trustees to apply the income generated by a trust fund for the maintenance of the beneficiaries, even where they are not as yet entitled to the capital of the fund.
- MORTGAGE** the creation of a specific form of charge (usually of land) to provide security for a loan.
- MORTGAGEE** the person or company that advances the loan and receives the mortgage charge as security.

- MORTGAGOR** the person or company that receives the loan and creates the mortgage charge over their property in favour of the mortgagee.
- NOMINEE** a person or company who holds the legal title to property and ostensibly the control of the property, but who must exercise it in accordance with the directions of their principal (person who appointed the nominee or persons to whom the nominees owe their duty).
- NOTICE, DOCTRINE OF** an equitable doctrine that affects the durability of equitable property rights. Notice can be either actual (being aware of rights) or constructive (the rights would have been revealed if reasonable enquiries had been made).
- OBJECTS** the persons who may benefit from property on the exercise of a distributive power or discretionary trust.
- OPTION** a right to elect to create a binding contract to purchase property, when exercised.
- OVERREACHING** a process by which the asset value of beneficial interests in land is transferred to the proceeds of sale, so that a purchaser takes free from the beneficial interests.
- PARI PASSU** a right to share in property equally and without preference.
- PAROL** oral (e.g., a parol evidence lease is one created without writing).
- PERSONAL PROPERTY** rights or interests relating to property other than land.
- PERSONAL RIGHTS** *see* Rights in personam.
- POSSESSION, INTEREST IN** an immediate entitlement to rights or income in property (compare with an interest in remainder).
- POWER** an authority to do something (e.g., allocate property to beneficiaries).
- PRINCIPAL** person to whom obligations are owed under a relationship (e.g., agency, or fiduciary).
- PRIORITY** to enforce a claim to property in preference to others.
- PRIVITY** a rule of common law that provides that obligations can only be enforced by and against the parties to a transaction.
- PROBANDUMS** something which has to be proved. The plural is probanda, so that if there are three probanda, there are three things to be proved.
- PROBATE COURT** authority approving a will given to an executor to begin the administration of a deceased person's estate.
- PROPRIETARY RIGHTS** *see* Rights in rem.
- PROTECTIVE TRUST** a specialized form of trust, which allows beneficiaries to receive income on the property, but preventing them from transferring the right to income to someone else (sometimes called a spendthrift trust).
- REAL PROPERTY** rights or interests relating to land.
- RECEIVER** a person appointed (usually by court order) to receive income payments from property (e.g., on the bankruptcy of an individual).
- REMAINDER, INTEREST IN** an interest granted to take effect on the expiry of an interest in possession (e.g., to Lucy for life, remainder to Raoul). The person entitled to a remainder is known as a remainderman.
- RESIDUARY ESTATE** the final property of a deceased person, once all debts have been paid and any specific gifts by will have been made.
- RESTITUTION** the body of law designed to prevent unjust enrichment of the defendant by the claimant.
- RESULTING TRUST** an implied trust in which the beneficial interest in property results (comes back) to the person who transferred the property.
- RIGHTS IN PERSONAM** rights that are enforceable only against the person granting them (also known as personal rights).
- RIGHTS IN REM** rights that are enforceable against the whole world, not just the

- person granting them (also known as proprietary rights).
- SECRET TRUST** a specialized form of trust used to provide for someone on death, which is secret because it does not appear in the will (fully secret) or does not disclose the beneficiaries (half secret).
- SENIOR COURTS** the new title of the High Court and Court of Appeal. Until the creation of the United Kingdom Supreme Court, these courts were known as the Supreme Court of Judicature.
- SETTLOR** the person who creates a trust by putting (settling) his property on trust.
- SPOUSE** a married partner.
- STRANGER TO A TRUST** a third party who is neither the trustee nor beneficiary under a trust, but who deals with trust property (e.g., a bank facilitating the deposit of trust funds in a trust account).
- SUI JURIS** to be of full legal capacity. *See* Capacity.
- SUPREME COURT** the court which in October 2009 replaced the House of Lords as the highest court in the United Kingdom.
- TESTAMENTARY** property transfers on death made by will (wills are also known as testaments).
- TESTATOR** a male person who executes (creates) a will (a female person is known as a 'testatrix').
- TITLE** a right to ownership of property.
- TRANSFeree** person who receives a transfer of property.
- TRANSFEROR** person who transfers property to another.
- TRUST** although impossible to define accurately, it describes a form of property ownership in which the control and benefit to property are separated, with legal title and control vested in trustees who are compelled by equity to exercise such control for the benefit of the beneficiaries, who hold the equitable title.
- ULTRA VIRES** in excess of authority (beyond the powers of a body or person with limited authority).
- VALUE** payment, usually in money or money's worth.
- VESTING** the satisfaction of all the requirements necessary for a right to property to become unconditional; the completion of the transfer of property to a person, so that they can begin to enjoy the rights in that property.
- VOID (AB INITIO)** of no legal effect (from the outset).
- VOIDABLE** a transaction which can be set aside at the election of one party, but which is otherwise effective until set aside.
- VOLUNTEER** a person who has not given consideration for a promise to have property settled on them on trust.
- WILL** the instrument by which a person declares what their wishes are concerning their property after their death. The terms of the will do not take effect automatically, but have to be implemented by an executor or administrator.