Chapter 4

Equity and its Relevance to Superannuation Schemes Today

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Introduction

In the Courts of the United Kingdom today, although principles of equity flourish, the traditional private trust is rarely the subject matter of litigation. Taxation and high legal cost have made such cases obsolescent. The emphasis has shifted to corporate and commercially related work: the express trusts in question are more likely to be superannuation schemes – or pension funds as we call them – than family trusts. But the judges' experience of such schemes is still limited and patchy.

Although I can claim a degree of expertise in traditional trust law, I can make no such claim in relation to superannuation schemes. But I know enough about them to be aware of the problems which arise in applying existing trust principles to superannuation schemes. That is the problem I am going to address in this paper.

The Evolution of the Superannuation Scheme

The concept of an employer undertaking responsibility for the livelihood of his employees after retirement is of comparatively recent origin in the United Kingdom. Both the rapid growth of pension funds and the legal structure imposed upon them has been largely the result of the valuable tax concessions granted to schemes in order to promote their obvious social benefit. The price which has had to be paid for these tax concessions is that schemes must be approved by the Inland Revenue. From the outset, the Revenue insisted that superannuation funds must be kept separate from the other assets of the employer. In the case of self-managed schemes, this meant the establishment of a separate trust holding trust assets devoted exclusively to the provision of the retirement benefits. Hence the fact that, whatever its merits or demerits, the law of trusts is the law underlying all self-managed schemes in the United Kingdom today. There is therefore no doubt as to the relevance of the law of trusts: the doubt is as to its suitability to the task of regulating pension schemes.

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