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**Articles**

[Equity's Darling and the legal estate in the 19<sup>th</sup> century](#)

— *Adam Reilly*

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Bona fide purchase of a legal estate represents a fundamental doctrine of Equity jurisprudence. The orthodox understanding of that defence explains its availability and rationale in terms of the defendant's acquisition of a legal property right. However, there are 'exceptions' to this, such as when the defendant purchases an equitable interest and seeks to defend it against a prior 'equity' (known as the rule in *Phillips v Phillips*). This seems an arbitrary approach: why emphasise one instance of the defence, the purchase of a legal title, while describing the other instance as an 'exception'? When we examine the historical development of bona fide purchase, we do not find a convincing explanation for this approach. Instead, the orthodox understanding of the defence as we know it today is revealed for what it is; a habit of mind that formed in response to a series of contingent developments in the mid-19<sup>th</sup> century.

[Conceptualising the Chinese charitable trust](#)

— *Hui Jing*

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In common law jurisdictions, there is a substantial literature on characterising charitable trusts as quasi-legal entities. In contrast, the debate on whether Chinese charitable trusts can be characterised as organisations has not yet been conclusively settled since their introduction in 2016. To date, no paper has presented a comprehensive analysis of the organisational characteristics of Chinese charitable trusts and why Chinese charitable trusts should be deemed organisations. This article aims to fill this analytical gap. In comparing the rules of English and American charitable trusts, this article first explores the internal governance rules and the asset partitioning rules that legislators have constructed for Chinese charitable trusts, as well as the problems associated with their observance. Next, this article discusses the implications of an organisational analysis for the improvement of the Chinese charitable trust system. It argues that the organisational character of the Chinese charitable trust lays the foundation for it to learn from analogous organisational forms in the course of its reform. Following this argument, this article discusses the reforms that can be made to the existing charitable trust rules.

[Co-owners, occupation rent, and equitable accounting](#)

— *Paul Law*

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Co-ownership could be a breeding ground for disputes, especially when the personal relationship between the co-owners breaks down. Suppose a co-owner then leaves the property. Would there be any remedies available to the co-owner out of occupation? In this regard, equity has fashioned a special remedy through the tool of equitable accounting, and may order the occupying co-owner to

pay 'occupation rent' as compensation to the co-owner out of occupation in the accounting process. This rule has been subject to close examination in the recent Hong Kong Court of Final Appeal's decision of *Cheung Lai Mui v Cheung Wai Shing* [2021] HKCFA 19. In response to the judgment, this article explores two issues, namely the availability of an equitable account between co-owners and the grounds for claiming occupation rent in the accounting process. In relation to the triggering conditions of the equitable jurisdiction, the article argues that a co-owner should only be able to seek an account in a partition or an analogous proceeding after which the co-ownership will no longer exist. As to the grounds for seeking occupation rent, this article criticises that the grounds recognised in the case law, such as a constructive ouster or a set-off to a claim to recover expenditures on property improvements, unduly undermine the occupying co-owner's right to possession.

## Awarding quia timet injunctions to prevent future torts

— Aiden Lerch

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The quia timet injunction is an underexplored remedy. Originally forged as a common law writ, it was later awarded by the Court of Chancery as an equitable remedy. Today, it is granted frequently to prevent future torts. However, as demonstrated by the decision of the Court of Appeal in *Bromley LBC v Persons Unknown* [2020] EWCA Civ 12, [2020] 4 All ER 114, courts have adopted a strict rule-based approach when granting quia timet relief. This article offers an interpretivist account of the field to clarify the positive law in England and Wales governing when quia timet injunctions can be awarded to prevent future torts. In line with a more equitable approach, the author contends that courts can award quia timet relief to prevent a future tort in two types of cases: (1) where there is a real and imminent risk of a tort being committed; or (2) where the claimant is unable to protect itself from a future tort causing irreparable harm.