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**Articles**

[The transplantation of Quistclose trusts in China: Difficulties in law and normative uncertainties](#)

— *Hui Jing and Siyi Lin*

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This article examines the transplantation of Quistclose trusts in China from the perspectives of legal doctrine and normative justification. Legal transplantation is a process of digestion and absorption, requiring consideration of not only the law to be transplanted, but also why and how it should be transplanted. In this light, the article first analyses the operation of Quistclose trusts in English law. Two specific questions are explored: (a) what is the legal nature of a Quistclose trust; and (b) what are the core rules and values in relation to Quistclose trusts? The article then examines the legal difficulties and uncertainties in relation to the transplantation of Quistclose trusts in China. It argues that the introduction of this device to China may face three difficulties. The first relates to conflicts between Quistclose trusts, an equitable device in common law systems, and various branches of Chinese law. Second, the conservative attitude of Chinese judges in applying and interpreting Chinese laws raises another barrier in transplanting Quistclose trusts. Third, the lack of normative justification for Quistclose trusts raises doubt as to whether and why the transplantation of Quistclose trusts should be proposed in China. Finally, the article concludes that it is currently not feasible to transplant Quistclose trusts into the Chinese legal system.

[Peering through equity's prism: A fiduciary's duty of care or a fiduciary duty of care?](#)

— *Weiming Tan*

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The nature of a fiduciary's duty of care has been a contested one. Different jurisdictions characterise this duty differently. This article argues that the duty is not a tortious duty. In addition to being equitable in origin, it is properly conceived as a fiduciary duty. Recognising a fiduciary duty of care enhances the protection of the fiduciary relationship. This ensures that a principal's vulnerability to both his fiduciary's disloyalty and mismanagement is equally mitigated. It is also argued that a fiduciary duty of care would help resolve the overlap between a fiduciary's duty to act bona fide in the best interests of his principal and a fiduciary's duty of care — an overlap that courts have at times struggled to delineate persuasively. The article also addresses the ambit of such a fiduciary duty of care, given that not every duty of care owed by a fiduciary ought to be a fiduciary duty.

[Trusts for unincorporated associations: The contract-holding theory in Australia](#)

— *TS Morgan*

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A trust for the benefit of a political party would be a novel institution in Australian law. A recent case in the Victorian division of the Federal Court held that there was a valid trust in favour of the Victorian

Liberal Party over shares in a company which provides electoral funding for the promotion of certain ideological objects. The outcome in that case comes close to a recognition of such a novel institution — and the dispositive reasoning could potentially be generalised to trusts in favour of any unincorporated association. This article contends that the result in that case was brought about by a misapplication of what has become known as the ‘contract-holding theory’. An accurate account of the orthodox analysis is sought to be provided and the authoritative status of that analysis in Australia prior to this decision is sought to be demonstrated.