8. The constitution of trusts

The Law of Trusts (11th edn)
JE Penner

Chapter: (p. 213) 8. The constitution of trusts

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DOI: 10.1093/he/9780198795827.003.0008

Titles in the Core Text series take the reader straight to the heart of the subject, providing focused, concise, and reliable guides for students at all levels. A trust is fully set up, or constituted, only when the property is in the hands of a person who is properly bound to be a trustee. The issues that arise concerning the constitution of trusts are closely tied up with equity’s general principles for dealing with gifts. This chapter begins by discussing an important guiding principle of the court of equity. The principle has two main strands: equity will not enforce gratuitous promises; and equity will not perfect an imperfect gift. The focus then turns to covenants, covering the enforcement of covenants to settle by equity and enforcement of covenants to settle at common law. Cases relating to the fortuitous vesting of the trust property are also analysed.

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