1. Introduction to equity and trusts

Without assuming prior legal knowledge, books in the Directions series introduce and guide readers through key points of law and legal debate. Questions, diagrams and exercises help readers to engage fully with each subject and check their understanding as they progress. Expressly created trusts are a special form of gift that do not require any formality. However, formality is extremely important with regard to the subsequent transfer of beneficial interests after the creation of a trust and with regard to trusts made by will (so-called testamentary trusts). Not everybody has the capacity to create a binding trust; where there is no capacity it is mainly due to poor mental health or minority (infancy). This chapter deals with capacity and formality requirements in relation to the creation of trusts and considers inter vivos transactions, the relevant provisions of the Law of Property Act 1925, lack of formality as a defence to disguise a fraud and testamentary trusts. It also examines whether a would-be settlor is legally capable of setting up a trust and discusses the equitable interest under a trust in compliance with the proper formalities,
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trusts for which there are no formality requirements and valid ‘mutual wills’ and ‘secret trusts’.

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