34. Tracing in equity – tracing into bank accounts

Mixture of two trust funds or mixture with innocent volunteer’s money

Reading: Hudson, paras 19.4.2 and 19.4.3

a) The traditional rule

*Clayton’s Case (1816) 1 Mer 572 - first in, first out w.r.t current accounts

Re Diplock, supra - ‘Where an innocent volunteer (as distinct from a purchaser for value without notice) mixes ‘money’ of his own with ‘money’ which in equity belongs to another person, or is found in possession of such a mixture, although that other person cannot claim a charge on the mass superior to the claim of the volunteer, he is entitled, nevertheless, to a charge ranking pari passu with the claim of the volunteer … Such a person is not in conscience bound to give precedence to the equitable owner of the other of the two funds.’ [1948] Ch 465, 524.

b) The retreat from Clayton’s Case

Re Registered Securities [1991] 1 NZLR 545
**Russell-Cooke Trust Co v Prentis [2003] 2 All ER 478
Commerzbank AG v IMB Morgan plc [2004] EWHC 2771

Cf. Foskett v McKeown [2000] 3 All ER 97

4. Loss of right to trace

Reading: Hudson, para 19.5.5

Roscoe v. Winder [1915] 1 Ch. 62 - cannot claim more than lowest intermediate balance.