Preface

We are honoured to have succeeded Jill Martin as the Editors of *Modern Equity* for its 20th edition. Each of us used the book in our early years of teaching and researching on equity and trusts, and it is a privilege for us now to be responsible for the work and its legacy.

Prior to the first appearance of the book in 1935, HG Hanbury set out his idea for the project in an article in the *Law Quarterly Review*, “The Field of Modern Equity” (1929) 45 L.Q.R. 196. He noted that one objection to a textbook on equity might be that practitioners would find “little use for it”. But Hanbury’s response was that the role of a practitioner and a jurist are different (at 202-3):

“The practitioner is concerned with one case at a time, one case which must fill his mind to the exclusion of all else, to be completely forgotten when finished, for fear that the memory of it may crowd out the details of the next case on which he must focus his mind. But the eye of the jurist can look further afield; he is like a visitor to the Vatican or the Louvre, walking from room to room and looking at picture after picture, while the practitioner sits still, as it were, and copies one particular picture.

The task of the jurist is reconciliation and co-ordination, for so he may eventually aid the legislator. For the jurist has leisure for just that general study and scientific co-ordination of principles for which the practitioner has none… It is the business of the jurist to examine all the cases minutely, to range each one on its proper side of the line, and so to define in what that line consists.”

We have tried here to stay true to Hanbury’s vision, and the subsequent elaboration of it by Ronald Maudsley and Jill Martin. We note here owe our debt of gratitude to them and their scholarship, and we pay tribute to them. *Modern Equity* has always been an authoritative and comprehensive yet readable text, and we hope that continues with this edition. It is the quotation above which inspired our choice for the cover picture for the book: Hubert Robert’s imagined *Design for the Grande Galerie in the Louvre*.

That first edition of *Modern Equity* was published 60 years after the Judicature Acts 1873-75, and ten years after the passage of the property legislation reforms of 1925. It was an opportune time for a systematic consideration. Upon publication, the first edition was praised as “a monument not only to patient industry in the assembling of materials, but to a scholarly mastery of equitable principles and to their presentation in a virile and lucid style calculated to invest the whole subject with a living interest” ((1936-38) 6 C.L.J. 123).

In the eighty years since then, the law and the understanding of it have been refined and reformed. As a result, we have revised the structure of the book. A significant change for this edition is in the ordering of the chapters, and we have
separated some topics into independent chapters, so as to reflect the way in which Trusts modules are taught. The material on Certainty, Constitution and Formalities is now found in three separate chapters and the discussion of that material has been recast to guide readers through the new structure. There is also a new Part IV, “Personal and Proprietary Claims”, which contains chapters on the Consequences of Breach of Trust, Personal Claims against Third Parties, and Tracing. Some of the material now found in these chapters was previously found in the chapters on Constructive Trusts and Breach of Trust, but much of the material in this edition is original. We have also added a new chapter, Chapter 3 “Equity and the Modern Commercial World”, to provide some of the commercial context which is seen in topics throughout the remainder of the book.

Beyond those changes, the substance of the book has been comprehensively revised and updated. The past three years have seen major developments in the law of trusts and equity, by the courts, the legislature and jurists. The Justices of the Supreme Court have considered matters of fundamental principle in several decisions. In 2012, the Court decided *Pitt v Holt* on trustees’ decision-making and equitable mistake (considered in Chapters 18 and 29). 2014 saw three significant cases: *Williams v Central Bank of Nigeria* on dishonest assistance, knowing receipt and limitation (principally considered in Chapter 25); *FHR European Ventures v Cedar Capital Partners LLC* on proprietary remedies for breach of fiduciary duty (considered in Chapter 22); *AIB Group (UK) v Mark Redler & Co Solicitors* on equitable compensation for breach of trust (considered in Chapters 3 and 24). There have also been numerous important decisions from the Court of Appeal and the High Court.

This field has been a profitable area for the implementation of Law Commission proposals, in particular via a new procedure for the introduction of uncontroversial Law Commission bills in the House of Lords (the first Act to be passed under this procedure was the Perpetuities and Accumulations Act 2009); there have thus been the introduction of the Consumer Insurance (Disclosure and Representations) Act 2012, Trusts (Capital and Income) Act 2013 and Inheritance and Trustees’ Powers Act 2014 (several of these reports which led to these Acts were noted in Jill Martin’s preface to the previous edition). Other statutory changes have been made by government, such as the introduction of the right of same sex couples to marry by the Marriage (Same Sex Couples) Act 2013. In addition, there have been various changes in the legislative approach to pensions with the Public Service Pensions Act 2013, Taxation of Pensions Act 2014 and Pension Schemes Act 2015. Not all of these have had a dramatic effect on the essential trusts principles applicable, but they are noted where appropriate. The government has been consulting on possible changes to the taxation of discretionary trusts, as discussed in Chapter 10, but as yet no concrete proposals seem to have emerged.

We have incorporated reference to academic literature throughout the book, especially when considering the more recent developments.

James completed part of his work on the book while a MacCormick Visiting Fellow at the Edinburgh Law School in the autumn of 2014, which he gratefully acknowledges.
PREFACE

We are very grateful to Amanda Strange for all her support throughout the commissioning and writing process. We also thank Tejal Parmar, Kirsty Guymer, Kate Webster, Amjed Ghafoor, and the rest of the team at Sweet and Maxwell/Thomson Reuters, and the anonymous reviewers of our proposal for this edition.

Finally, we should like once again to pay tribute to our predecessors as Editors, Jill Martin, Harold Hanbury and Ronald Maudsley.

We take joint responsibility for the entire text. Although it proved possible to take into account some later developments during the editorial process, we have endeavoured to state the law as of 31 March 2015.

Jamie Glister and James Lee