

MALAYSIAN LAW OF TRUSTS

Editor
DR MOHSIN HINGUN

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EDITOR: DR MOHSIN HINGUN



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CHAPTER 5

CONSTRUCTIVE TRUSTS

AIMAN NARIMAN MOHD SULAIMAN *

1. Introduction

A constructive trust does not depend on the parties' intention. It arises as operation of law. Traditionally England has adopted the institutional constructive trust model by recognizing certain circumstances which would require Equity to impose a constructive trust. Once imposed it is considered to have effect not from the date of judgment but from the date the relevant events took place giving the beneficiary under the constructive trust some form of proprietary interest. In contrast, in America and in Canada, constructive trusts are viewed as a remedy in response to the defendant's unconscionable behaviour to prevent his unjust enrichment. The courts under this model have discretion whether to impose a constructive trust or

* LLB (Hons), MCL, SJD, Professor, AIKOL, International Islamic University, Malaysia. Dr Aiman's area of expertise is corporate law and governance. She has published several corporate law books including *Directors' Duties and Corporate Governance* (2001, Sweet & Maxwell) and *Commercial Application of Company Law in Malaysia* (2008, CCH Asia) as well as several articles in various reputable local and international journals.