THE SUNSET OF EQUITY: CONSTRUCTIVE TRUSTS AND THE LAW-EQUITY DICHOTOMY*

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INTRODUCTION

Once, not very long ago, equity courts had wide-ranging power to grant broad relief. In the wake of a series of Warren Court decisions, courts in the 1960s and 1970s issued detailed orders governing cases involving school busing, prisons, and state hospitals. In 1971, the Supreme Court operated under the rule that "[o]nce a right and a violation have been shown, the scope of a . . . court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."[1] Thus, courts had great latitude in granting equitable relief.

Lately, however, the United States Supreme Court has required a plaintiff to demonstrate a close connection between the actual constitutional harm alleged and the relief sought. In a series of recent decisions, beginning with *Board of Education of Oklahoma City Public Schools v. Dowell*[2] and running through *Missouri v. Jenkins*,[3] the Supreme Court has significantly reduced the equity powers of federal courts. The Court now recognizes that it once "permitted the federal courts to exercise virtually unlimited equitable powers to remedy th[e] alleged constitutional violation" of segregation.[4] But the Court is reining in the scope and breadth of equity such that traditional equitable remedies are increasingly mirroring their legal counterparts.

This trend toward making equitable relief look more like legal relief suggests a larger trend toward the abolition of equity as a separate substantive area of law. Concurrent with this development, courts appear to be applying traditional standards of legal relief to requests for equitable relief. Consequently, courts no longer seem to apply the rule that injunctions are available only when legal relief is inadequate.[5] As equitable relief begins to merge with legal relief, courts are granting equitable remedies where there may be an appropriate legal remedy. In the words of Professor Douglas Laycock, we have witnessed "[t]he death of the irreparable injury rule."[6]

This Comment tests how far the decline of equity has extended by studying the trends emerging in the Alabama state courts with regard to the specific equitable remedy of a constructive trust. While there has been sub-

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1. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971). The court noted:

> The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.

Id. (quoting Hecht Co. v. Bowles, 321 U.S. 321, 329-30 (1944)).

2. 498 U.S. 237 (1991).
3. 515 U.S. 70 (1995).
4. *Id.* at 114 (Thomas, J., concurring).
5. *See infra* Part II.B.
6. DOUGLAS LAYCOCK, THE DEATH OF THE IRREPARABLE INJURY RULE (1991).

stantial treatment of the deterioration of equity rules within the equitable remedy of injunctive relief,[7] there has been no work exploring the impact on constructive trust theory. Thus, this Comment plumbs the Alabama constructive trust doctrine to determine the status of equity in the confined sphere of Alabama jurisprudence.[8] It seeks two purposes. First, it endeavors to establish the boundaries of the current constructive trust doctrine in Alabama to determine the circumstances in which Alabama courts permit the invocation of constructive trusts. Second, it takes that doctrinal analysis and explores the meaning of constructive trusts for equity as a general form of relief. Is there an independent, substantive basis for a constructive trust? Or, are constructive trusts permitted in cases where legal relief is also available (even if less desirable)? Is the relief granted through a constructive trust different from that available through legal remedies? While this Comment pursues those questions based on Alabama caselaw, it has broader implications for equity doctrine and theory generally.

The analysis herein is framed in terms of Douglas Laycock's book, *The Death of the Irreparable Injury Rule.*[9] Part II sets out both the thesis of that work as well as its criticisms. Part II.B considers the recent trend in the Supreme Court to move toward requiring proof of actual harm in certain instances, such as cases dealing with school desegregation and prison reform. Part III expands the thesis beyond injunctive relief to constructive trusts. Part IV details how Alabama courts have used the constructive trust doctrine and details the current state of equity in Alabama. Finally, this Comment concludes that while equity increasingly looks like legal relief, and constructive trusts increasingly look like a legal rather than an equitable remedy, constructive trusts, nevertheless, retain some key equitable features. Consequently, the constructive trust doctrine continues to provide a check on those who see or seek the demise of equity.

I. THE DEMISE OF THE IRREPARABLE INJURY RULE?

A. *Douglas Laycock's Theory That the Irreparable Injury Rule Is Obsolete in Modern Courts*

1. Laycock's Thesis

In *The Death of the Irreparable Injury Rule*, Douglas Laycock offers a persuasive national case study focusing on injunctive relief.[10] He argues that courts no longer actually use the irreparable injury rule to determine damages but merely invoke it to justify decisions made wholly on other

7. *See id.*

8. While this analysis is focused on Alabama caselaw, one can extract some rules of general applicability. As the conclusion points out, using illustrations from other jurisdictions, Alabama appears to be following a nationwide trend toward the merging of law and equity.

9. LAYCOCK, *supra* note 6.

10. *See id.*

grounds.[11] The traditional irreparable injury rule states that equitable remedies are unavailable to a plaintiff when there are adequate legal remedies to repair the harm.[12] Laycock argues that courts across the country are misusing the rule, purporting to impose it as a cover for otherwise policy-based decisions.[13] According to Laycock, although the irreparable injury rule is repeatedly cited by courts, it almost never impacts the outcome of a decision.[14]

Laycock views the irreparable injury rule as a fossil, lingering from a time when courts of equity were distinct from courts of law.[15] He argues,

> The[se] conventional rules are stated in terms of the[] ancient categories [of law and equity] . . . [and] have become obstacles to decision[s] instead of guides. The courts have generally manipulated such rules to achieve just and functional results, but the formal rules, the vocabulary, and the conceptual categories have become dysfunctional.[16]

Laycock asserts that courts ostensibly make decisions based on specific factual and equitable concerns and then mold conventional rules of law to justify their findings.[17] Generally, the court will grant a wronged plaintiff whatever remedy he seeks, unless the cost to the defendant unconscionably outweighs the benefit to the plaintiff.[18] Laycock contends that a court can deem any proposed legal remedy inadequate if it so chooses.[19] Unless the property at stake is fungible and readily available in the market in *exactly* the same form, no amount of money will place the plaintiff in precisely the

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11. Laycock admits that the irreparable injury rule has continued significance with regard to preliminary relief, noting that the rule "has teeth . . . because it does serve a purpose there." *Id.* at 117.

12. *Id.* at 4.

13. As one reviewer noted,

> He begins by stressing the necessity of articulating the real reasons for remedial choices; he discovers that, while the irreparable injury rule created the appearance of a principle of confinement on equity, in reality it failed to serve that purpose. . . . The rule, Laycock shows, covers up the way disputes are decided, allows the judge to escape the constraint of stating reasons, lulls us into a false sense of certainty where none exists, prevents us from formulating better rules, and may deceive some poor literally minded chumps into doing the wrong thing.

Doug Rendleman, *Irreparability Irreparably Damaged*, 90 MICH. L. REV. 1642, 1647 (1992) (reviewing LAYCOCK, *supra* note 6) (citations omitted).

14. LAYCOCK, *supra* note 6, at 5-7.

15. There are clear procedural distinctions between relief in equity and relief at law. Equity is a judicial determination, while legal damages are generally submitted to a jury. *See* Rendleman, *supra* note 13, at 1644-45 ("Equity leads to judicial factfinding, personal orders, and contempt enforcement; law leads to jury factfinding, money judgments, and impersonal collection.").

16. LAYCOCK, *supra* note 6, at 7.

17. *Id.* at 5 ("[The] real reasons for denying equitable remedies are not derived from the adequacy of the legal remedy or from any general preference for damages. The meanings of 'irreparable' and 'adequate' are constantly manipulated to achieve sensible results.").

18. *Id.* at 5-6 ("Courts may balance the costs of the equitable remedy against plaintiff's need for it, and in that sense the degree of inadequacy may matter. But this balancing process is triggered by variations in the cost of the equitable remedy, not by variations in the adequacy of the legal remedy.").

19. *Id.*

same position he occupied prior to the wrong.[20] Thus, the court can grant or deny equitable relief at its discretion and find ample precedent in caselaw to support either determination.[21]

Laycock's concern with the continued presence of the irreparable injury rule is that it highlights the obsolete distinction between law and equity and subordinates more functional schemes for classifying remedies.[22] He wants courts to rely upon modern, specific rules, allowing those operating within the judicial system to predict a court's outcome and act accordingly.[23] Courts must detail the *real* reasons for their decisions, not veil their rationale in "code phrase[s]."[24] Thus, Laycock would have judicial rhetoric mirror the modern merging of law and equity, specifically citing the true reasons for granting or denying equitable remedies and not clouding the matter with an antiquated rule.

2. *Criticisms of* The Death of the Irreparable Injury Rule

Although Laycock's theory has met with resounding praise, there are those who doubt that the irreparable injury rule is, in fact, dead.[25] Gene Shreve criticizes the thesis, noting that the "[n]umerous cases cited in the book suggest that the rule is alive in the minds of judges."[26] Recognizing Laycock's concession that the rule applies in certain specific instances, such as preliminary injunctions, critics worry that Laycock's analysis advances an "'alive if you like it, dead if you don't' approach to legal criticism."[27] One cannot deem a rule of law "dead" merely because it can lead to bad results, if, in truth, it is still very much employed by courts of law. There is an additional concern that the theory posited by Laycock suggests that the rule never had any validity at all.[28] It is as if the irreparable injury rule is not only dead but was "stillborn."[29] Critics question Laycock's thesis, as it is clear that the rule once was—if not still is—relevant to judicial determinations.[30]

Furthermore, Deanne Wilson and Michael Haratz, New Jersey practitioners, assert that the irreparable injury rule is alive and functioning within

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20. *Id.* at 4 ("Damages can be used . . . for only one category of losses: to replace fungible goods or routine services in an orderly market.").
21. *Id.* at 5.
22. *Id.*
23. *Id.* at 6 ("Analysis would be both simpler and clearer if we abandoned the irreparable injury rule and spoke directly of the real reasons for choosing [the] remedies.").
24. *See id.* at 240-43 (arguing that the phrase "irreparable injury" has been reduced to a code phrase, signaling that the court has made its determination on some other grounds).
25. Gene R. Shreve, *The Premature Burial of the Irreparable Injury Rule*, 70 TEX. L. REV. 1063, 1064 (1992) (reviewing LAYCOCK, *supra* note 6).
26. *Id.*
27. *Id.* at 1066.
28. *Id.* at 1067.
29. *Id.*
30. *Id.*

New Jersey courts.[31] "A review of the last 150 years of New Jersey equity jurisprudence demonstrates that . . . the 'irreparable' nature of the injury ostensibly stands as the linchpin of" equitable remedies.[32] In New Jersey, "[t]he manner in which the harm is to be inflicted and the motivations for the infliction . . . must be offered if the court is to find a comfortable basis for affording . . . [equitable] relief."[33] Thus, in New Jersey, it is not the case "that the chancellor's whim, as opposed to any injury, serves as the basis for equitable relief."[34] "While injury alone may not win . . . injury along with grossly inequitable conduct will" force equity to act.[35] Therefore, in New Jersey, courts *do* require a showing of irreparable injury to grant equitable relief, but such showing can be based on the egregiousness of the defendant's conduct.

Thus, while Laycock is adamant that the rule is dead and no longer serves any purpose within the judicial system, some courts continue to employ the rule in a meaningful way to render their decisions. Nevertheless, there is some merit to Laycock's concern that the retention of an antiquated rule obfuscates the reality of a court's reasoning in making a determination. If modernity is shifting toward the merging of equitable and legal remedies, the judicial system would be greatly served by a court articulating the actual rationale behind its rulings with clarity and specificity, instead of relying on an outmoded rule. Petitioners and judges alike would benefit from more predictability within the courts. Disposing of an antiquated rule that serves no function, and forcing courts to be clear and specific in their determinations, would lead to a more efficient and fairer judicial system.

B. Rising Trend to Tailor Equitable (Injunctive) Relief to the Specific Harm

Laycock's theory of the merging of law and equity is tentatively emerging in recent United States Supreme Court decisions. The Court is increasingly tailoring what purports to be equitable relief to the underlying specific harm.[36] This shift further corroborates the theory that law and equity are merging, as the Court is using harm and damage rhetoric in formulating equitable relief. Court opinions are shifting their focus from "equity" to

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31. Deanne M. Wilson & Michael S. Haratz, *Equity's Slippery Slope: Irreparable Injury*, 165 N.J. LAWYER, Nov.-Dec. 1994, at 9, 9.

32. *Id.*

33. *Id.* at 10.

34. *Id.* at 46.

35. *Id.*

36. The most recent evidence comes from the Supreme Court's interpretation of the Federal Trademark Dilution Act (FTDA), where the Court determined that the statute "unambiguously requires a showing of actual dilution, rather than a likelihood of dilution" to merit injunctive relief. Moseley v. V Secret Catalogue, Inc., 537 U.S. 418, 433 (2003). Although dealing with federal law, the Court determined that a clear showing of actual harm was required to seek the equitable remedy offered by the statute. A showing of mere "threatened harm" was not sufficient. *Id.*

"adequacy" (i.e., is there an "adequate" legal remedy to right the wrong).[37] Traditionally, a plaintiff need not demonstrate actual harm in seeking equitable remedies,[38] but the Supreme Court appears to be moving away from this doctrine, requiring that the plaintiff demonstrate actual damage. This "necessary nexus" between harm and relief is particularly pronounced in "'structural injunction' cases brought against state and local governments as remedies for school desegregation, housing discrimination, and other infringements of civil rights," including prison reform.[39]

With regard to school desegregation, the Supreme Court has been adamant in refusing to allow "generalized societal discrimination" to be "the basis for supporting race-based affirmative action."[40] In *Milliken v. Bradley*,[41] the Supreme Court was faced with determining whether the costs of various programs necessary for the desegregation of a Detroit school system were to be borne by the school board, the state, or both.[42] The Court was forced to establish whether "a District Court can, as part of a desegregation decree, order compensatory or remedial educational programs for schoolchildren who have been subjected to past acts of *de jure* segregation, and . . . require [that] state officials found responsible for constitutional violations . . . bear part of the cost[]."[43] Answering in the affirmative, the Court noted that "[i]n fashioning and effectuating the [desegregation] decrees, the courts will be guided by equitable principles."[44] Furthermore, those "equitable principles" are to be applied based on three factors.[45] First, "the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. The remedy must therefore be related to 'the *condition* alleged to offend the Constitution . . . .'"[46] "Second, the decree must indeed be *remedial* in nature . . . designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occu-

37. This shift has been particularly pronounced in the litigation surrounding equal protection and school finance reform. William H. Clune, *The Shift from Equity to Adequacy in School Finance*, 8 EDUC. & POL'Y 376 (1994); Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 TEMP. L. REV. 1151 (1995).

38. *See* Drew Lucas, Comment, *There is a Porn Store in Mr. Roger's Neighborhood: Will You Be Their Neighbor? How to Apply Residential Use Restrictive Covenants to Modern Home Businesses*, 26 CAMPBELL L. REV. 123, 127 (2004) ("When breach . . . is shown, the courts will enjoin the violation in the name of equity even though there is no proof of actual damages to the plaintiff . . . .").

39. Ronald M. Levin, *"Vacation" at Sea: Judicial Remedies and Equitable Discretion in Administrative Law*, 53 DUKE L.J. 291, 315 (2003).

40. Alfred L. Brophy, *Reparations Talk: Reparations for Slavery and the Tort Law Analogy*, 24 B.C. THIRD WORLD L.J. 81, 88 (2004) (citing Shaw v. Hunt, 517 U.S. 899, 909-10 (1996); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 220 (1995); Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 274-77 (1986)). The *Wygant* Court noted, "Societal discrimination, without more, is too amorphous a basis for imposing a racially classified remedy." *Wygant*, 476 U.S. at 276.

41. Milliken v. Bradley (*Milliken II*), 433 U.S. 267 (1977).

42. *Id.* at 269.

43. *Id.*

44. *Id.* at 280 (quoting Brown v. Bd. of Educ., 349 U.S. 294, 300 (1955)) (second alteration in original).

45. *Id.*

46. *Id.* at 280 (citing Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 16 (1971); Milliken v. Bradley (*Milliken I*), 418 U.S. 717, 738 (1974)) (citation omitted) (alteration in original).

pied in the absence of such conduct.'"[47] Finally, the "remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution."[48] The Court went on to clarify: "The well-settled principle that the nature and scope of the remedy are to be determined by the violation means simply that federal-court decrees must directly address and relate to the constitutional violation itself."[49]

Based on these factors, it is clear that any equitable remedy is to be closely tailored to the actual harm inflicted by the de jure segregation. Victims are only to be compensated and reform is only to be mandated where there is a clear showing of actual harm. Thus, in regard to desegregation cases, the federal courts seem to merge traditional equitable and legal remedies, requiring a showing of actual harm.

In addition to the school desegregation litigation, equity is melding with legal relief in prison reform litigation. In the 1970s, civil rights activists instigated litigation to reform the condition of America's prisons, which were described as "filthy, noisy, dimly lit, unventilated, vermin-infested affronts to decency."[50] In the wake of *Swann v. Charlotte-Mecklenburg Board of Education*,[51] courts began broadly wielding the equitable remedies emerging from desegregation jurisprudence in subsequent prison reform cases.[52] "Beginning in the 1980's [sic], the Rehnquist Court [in conjunction with Congress] attempted to circumscribe lower court judicial intervention in the context of inmates' rights," by reining in the use of broad equitable remedies.[53] In *Wilson v. Seiter*, Justice Scalia "required [a] more specific showings of the actual effects of overcrowding[] [and] examples of actual physical danger, not just anticipated debilitating psychological effects."[54] He feared that "[t]he equitable remedies the federal courts had promulgated were just too costly in terms of federal judicial time and state finances. The Court's position was crystal clear: It was uncomfortable with the federal bench applying broad equitable remedies to reform state prisons."[55] Congress followed suit in this effort to rein in lower court involvement by enacting the Prison Litigation Reform Act of 1996, which limits the jurisdiction of federal courts over prisoner suits. The Act has been criticized as "shift[ing] away from individual suits [and] replac[ing] it with a system of administrative reviews," including "severe limits on courts' equitable pow-

47. *Milliken II*, 433 U.S. at 280 (quoting *Milliken I*, 418 U.S. at 746).
48. *Id.* at 280-81.
49. *Id.* at 281-82.
50. LARRY W. YACKLE, REFORM AND REGRET: THE STORY OF FEDERAL JUDICIAL INVOLVEMENT IN THE ALABAMA PRISON SYSTEM 256 (1989).
51. 402 U.S. 1 (1971).
52. *Developments in the Law–The Law of Prisons*, 115 HARV. L. REV. 1838, 1849 (2002).
53. Robert W. Milburn, Comment, *Congress Attempts to Remove Federal Court Supervision over State Prisons: Is § 3626(b)(2) of the Prison Litigation Reform Act Constitutional?*, 6 TEMP. POL. & CIV. RTS. L. REV. 75, 76 (1997).
54. Melvin Gutterman, *The Contours of Eighth Amendment Prison Jurisprudence: Conditions of Confinement*, 48 SMU L. REV. 373, 391 (1995) (citing Wilson v. Seiter, 893 F.2d 861, 865 (6th Cir. 1990), *vacated by* 501 U.S. 294 (1991)) (footnote omitted).
55. *Id.* (footnote omitted).

ers."[56] Both the Court and Congress are attempting to curb federal courts' broad exercise of equitable authority after the decision in *Swann* and "to stop frivolous prisoner lawsuits."[57]

Thus, prison reform litigation, in addition to school desegregation jurisprudence, indicates the federal merging of law and equity. Or, phrased another way, it suggests the elimination of equity as an independent body of law. Now, to obtain equitable relief, parties must show the precise manner in which they have been injured and that their injury comports with the degree of relief sought. Even if one doubts the death of the irreparable injury rule, any notion of a substantive equity doctrine appears to be fading away.

In his concurrence in *Missouri*, Justice Thomas expressed a concern that judicial equitable powers, if unchecked, could undermine the entire justice system.[58] He noted that it is "not surprising that broad equitable powers have crept into our jurisprudence, for they vest judges with the discretion to escape the constraints and dictates of the law and legal rules."[59] Consequently, he thought "that we must impose more precise standards and guidelines on the federal equitable power, not only to restore predictability to the law and reduce judicial discretion, but also to ensure that constitutional remedies are actually targeted toward those who have been injured."[60] Thus, the federal solution to broad equitable powers is the imposition of "more precise standards and guidelines," thereby rendering equitable remedies practically indistinguishable from more predictable, targeted, legal relief.[61]

II. EXPANDING THE THESIS

A. Are Other Forms of Equitable Relief Merging with Legal Relief?

Laycock claims that the irreparable injury rule no longer holds sway in American courts.[62] The shift of federal courts toward requiring actual harm further corroborates this theory. Laycock asserts that judges are measuring the applicability of equitable remedies against a threshold that has nothing to do with the adequacy of damages at law.[63] His analysis, therefore, raises the question of whether it is possible to distinguish legal and equitable remedies at all. Are there other equitable remedies that are slowly merging with their legal counterparts so as to become indistinguishable? If courts no longer require the inadequacy of legal damages for the institution of remedies in equity, is there any difference between the two? Do courts now

56. John Valery White, *Foreword: Is Civil Rights Law Dead?*, 63 LA. L. REV. 609, 636-37 (2003).
57. Thomas J. Butler, Comment, *The Prison Litigation Reform Act: A Separation of Powers Dilemma*, 50 ALA. L. REV. 585, 589 (1999).
58. Missouri v. Jenkins, 515 U.S. 70, 128 (1995) (Thomas, J., concurring).
59. *Id.* at 133.
60. *Id.*
61. *Id.*
62. LAYCOCK, *supra* note 6, at 117.
63. *Id.*

mandate that a plaintiff show *actual damages* to justify the imposition of *equitable relief*? Do courts merely consider the specific facts of a given case and issue a ruling based on ultimate fairness and the plaintiff's desired remedy, giving little consideration to the requirements of equitable relief? Is equity dead?

B. Are Alabama Courts Employing a Constructive Trust Doctrine That Appears More Legal and Less Equitable?

More specifically, what are modern Alabama courts doing with equitable relief? No one disputes that law and equity have been merged procedurally in Alabama courts,[64] but it is less certain whether the dual application of these once distinct forms of relief has resulted in the merging of the equitable remedies themselves. Therefore, this Comment now inquires: How is equitable relief treated by Alabama courts in the context of unjust enrichment claims and the attendant equitable remedy of constructive trusts? Are Alabama courts following the federal trend of interpreting injunctive relief to require a clear showing of actual harm in order to merit equitable relief?

Alabama courts adhere, at least superficially, to traditional notions of the split between law and equity, noting as recently as 2005 that "a constructive trust [will] not be imposed unless relief at law would be inadequate."[65] But where does Alabama fit along the continuum of state interpretation, as courts continue to blur the line between law and equity and move their judicial relief toward a pure consideration of strict harm?[66] Are Alabama courts witnessing not only the death of the irreparable injury rule, but the death of equity itself? The remainder of this Comment presents a careful analysis of all Alabama Supreme Court cases filed since 1980 to test whether equity, as a distinct form of relief in Alabama, is dead.

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64. In 1973, law and equity procedurally merged in Alabama with the adoption of "Rule 2" of the Alabama Rules of Civil Procedure. "It is clear that under [Alabama] rules the circuit court has the power to grant whatever relief is appropriate, whether historically known as 'legal relief' or as 'equitable relief,' in the same action." Waters v. Jolly, 582 So. 2d 1048, 1053 n.3 (Ala. 1991). The rule gave "any circuit court the power to hear both equitable and legal issues. That merger was accomplished so that litigants could present related legal and equitable claims in an orderly manner. It operates . . . to avoid the presentation of claims in separate actions." *Id.* (quoting *Ex parte* Reynolds, 436 So. 2d 873, 874 (Ala. 1983)) (alteration in original).

65. Hensley v. Poole, 910 So. 2d 96, 107 (Ala. 2005) (quoting Interstate Truck Leasing, Inc. v. Bender, 608 So. 2d 716, 720 (Ala. 1992)).

66. Rendleman, *supra* note 13, at 1646 ("Modern procedural reforms . . . have blurred the distinction between remedies at law and equity." (quoting RESTATEMENT (SECOND) OF CONTRACTS § 208 cmt. b (1979))); *see also id.* ("Two generations after procedural merger, the leading practice work observed: 'Eventually it may well be that courts will feel free to ask only: 'What remedy is best adapted to making the plaintiff whole?'" (quoting 4 CHARLES ALLEN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1043 (2d ed. 1987))) (footnotes omitted).

III. THE DOCTRINE OF UNJUST ENRICHMENT AND THE RESULTING CONSTRUCTIVE TRUST

A. Alabama Requirements for Imposing a Constructive Trust

1. The Harm: Unjust Enrichment

Unjust enrichment is one of the principal claims whereby a court may impose a constructive trust.[67] The trust is not intended to repair the harm inflicted on the plaintiff but permits the plaintiff to capitalize on any benefit garnered by the defendant through his wrongful conduct.[68] Although unjust enrichment typically emerges where a defendant has acted wrongfully, such as fraud or duress, it can be found even where a defendant has acted in good faith.[69] Ultimately, all that is necessary is a finding that the defendant's "retention of a benefit would be unjust."[70] Furthermore, the Alabama Supreme Court has clarified:

> Retention of a benefit is unjust if (1) the donor of the benefit . . . acted under a mistake of fact or in misreliance on a right or duty, or (2) the recipient of the benefit . . . engaged in some unconscionable conduct, such as fraud, coercion, or abuse of a confidential relationship. In the absence of mistake or misreliance by the donor or wrongful conduct by the recipient, the recipient may have been enriched, but he is not deemed to have been *unjustly* enriched.[71]

Thus, an unjust enrichment claim can be grounded in an innocent mistake, misreliance, or unconscionable conduct employed by the recipient to deprive the donor of some tangible right. In either instance, a constructive trust may be imposed as a form of restitution to preserve that tangible right and divest the recipient of what was wrongly, albeit innocently or fraudulently, bestowed upon him.[72]

2. The Remedy: Constructive Trusts

Justice Benjamin Cardozo, while sitting on the New York Court of Appeals, defined a constructive trust as "the formula through which the con-

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67. AUSTIN WAKEMAN SCOTT & WILLIAM FRANKLIN FRATCHER, 5 SCOTT ON TRUSTS § 462.2 (4th ed. 1989).

68. Douglas Laycock, *The Scope and Significance of Restitution*, 67 TEX. L. REV. 1277, 1282-83 (1989).

69. RESTATEMENT OF RESTITUTION § 1 cmt. e (1937).

70. Welch v. Montgomery Eye Physicians, P.C., 891 So. 2d 837, 843 (Ala. 2004) (quoting Jordan v. Mitchell, 705 So. 2d 453, 458 (Ala. Civ. App. 1997)).

71. *Id.* at 843 (quoting *Jordan*, 705 So. 2d at 458).

72. Laycock, *supra* note 68, at 1277 ("The law of restitution offers substantive and remedial principles of broad scope and practical significance. In an outline of the sources of civil liability, the principal headings would be tort, contract, and restitution.").

science of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee."[73] Thus, a constructive trust provides for the imposition of a fictional "trust" on the wrongfully obtained property.[74] The "beneficiary" is the wrongfully deprived party, and the wrongdoer (or current holder of the property) is deemed a fictional "trustee."[75] There is no actual trust relationship formed. As with restitution by quasi-contract, there is merely a fictional trust.[76] The purpose of the trust is to prevent the defendant from enjoying any unjust enrichment from his wrongful possession of the property.[77] Nevertheless, because the "trustee" is not in fact a *real* trustee, he owes none of the traditional fiduciary obligations typically associated with an actual trust.[78]

The Supreme Court of Alabama has described the instances in which a constructive trust will be invoked:

> A constructive trust . . . arises . . . "[w]henever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentation, concealment[], or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means . . . which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never perhaps have had any legal estate therein; and a court of equity has jurisdiction to reach the property in the hands of the original wrong-doer or in the hands of a subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right, and takes the property relieved of the trust."[79]

Thus, the Alabama courts operate under a broad understanding of the remedy, allowing equitable relief in the event of actual fraud, misrepresentation, concealment, undue influence, or duress. Nevertheless, as discussed in Part IV.B.1, the *actual* traditional bases upon which courts will grant an equitable remedy are somewhat narrower. Generally, a constructive trust requires

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73. Am. Family Care, Inc. v. Irwin, 571 So. 2d 1053, 1058-59 (Ala. 1990) (quoting Beatty v. Guggenheim Exploration Co., 122 N.E. 378, 380 (N.Y. 1919)).

74. JAMES M. FISCHER, UNDERSTANDING REMEDIES 347 (1999).

75. *Id.*

76. *See* Banton v. Hackney, 557 So. 2d 807, 820 (Ala. 1989) ("A constructive trust, or as frequently called, an involuntary trust, is a fiction of equity." (quoting GEORGE G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 471, at 8 (Rev. 2d ed. 1978))).

77. *See* Sims v. Reinert, 235 So. 2d 802, 804 (Ala. 1970) (finding that "a constructive trust is a creature of equity" which operates to prevent unjust enrichment).

78. *See* RESTATEMENT OF RESTITUTION § 160 cmt. a (1937) ("A constructive trust, unlike an express trust, is not a fiduciary relation.").

79. Knowles v. Canant, 51 So. 2d 355, 357 (Ala. 1951) (quoting 4 JOHN N. POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 1053 (Spencer W. Symons ed., 5th ed. 1941)).

some wrongful conduct that renders it inequitable for the wrongdoer to retain title to the property.[80] The trust does not arise intentionally or by choice but as an operation of law to avoid unjust enrichment.[81] The fiction of the "trust" emerges immediately upon the wrongful possession of the property in question, but the court must determine whether equity demands the enforcement of a constructive trust to prevent any unjust enrichment.[82]

Additionally, one must note that, in imposing equitable remedies, a court has great discretion in determining which remedy best suits a given set of facts: "In the exercise of its equity jurisdiction, a . . . court is entirely justified in molding a decree which adjusts the equities of all the parties."[83] In *Puckett v. Richard*,[84] the Alabama Supreme Court affirmed the imposition of a constructive trust while admitting that there were other equitable remedies available.[85] The defendants challenged the lower court's enforcement of a constructive trust, claiming that a different equitable remedy would have been more appropriate.[86] The court noted that while it "might well have affirmed a decree" in accordance with the defendants' request, it chose to affirm the imposition of the trust.[87]

Still, the court is not unlimited in its application of the constructive trust doctrine. In *Crosby v. Corley*,[88] the trial court tried to employ a constructive trust to prevent an abusive father from taking his statutory share of the settlement proceeds following his daughter's death in an automobile accident.[89] The girl's mother alleged unjust enrichment, claiming that the father's abandonment and abuse of the child should exclude him from the disbursement.[90] Nevertheless, the trial court was reversed on appeal, as "absent a statute, courts may not circumvent the statutory distribution scheme on the grounds the recipient is 'unworthy.'"[91] The court "recognize[d] the trial court's novel effort to avoid what may be perceived as harsh inequities caused by the blind application of the distribution statute,"[92] but found that the trial court lacked "the power to conform the statute to its conception of

80. FISCHER, *supra* note 74.

81. *See* Am. Family Care, Inc. v. Irwin, 571 So. 2d 1053, 1058 (Ala. 1990) (noting that a constructive trust occurs when "an obligation is imposed not because of the intention of the parties but to prevent unjust enrichment" (quoting 3 AUSTIN WAKEMAN SCOTT, THE LAW OF TRUSTS § 462.1 (1967))).

82. Commentary, *Must the Remedy at Law Be Inadequate Before a Constructive Trust Will Be Impressed?*, 25 ST. JOHN'S L. REV. 283, 295 (1951) [hereinafter *Remedy at Law*].

83. Puckett v. Richard, 418 So. 2d 838, 839 (Ala. 1982) (citing Blair v. Morris, 101 So. 745, 746 (Ala. 1924)).

84. *Id.*

85. *Id.* at 839.

86. *Id.*

87. *Id.* at 839-40.

88. 528 So. 2d 1141 (Ala. 1988).

89. *Id.* at 1142.

90. *Id.*

91. *Id.* at 1143 (quoting Pogue v. Pogue, 434 So. 2d 262, 264 (Ala. Civ. App. 1983)). The court further notes that only "when the one seeking to share has caused the death of the intestate have the courts disregarded the clear meaning of a distribution statute and fashioned a different result." *Id.* Because the father did not profit from his own wrong, he must be permitted to take his statutory distribution of the settlement. *Id.*

92. *Id.* at 1144.

justice under the facts of this case."[93] Thus, while courts have broad discretion in imposing equitable relief, that discretion is not unbounded. Consequently, the facts of *Crosby* suggest that justice required an equitable remedy, but granting that relief was beyond the court's power.

3. *Facial Requirement: No Adequate Remedy at Law*

In addition to establishing a "basis" upon which equity can act, the plaintiff generally must plead and prove that no sufficient legal remedy exists.[94] He or she may be required to demonstrate the inadequacy of legal relief before seeking equitable relief: "The inadequacy rule . . . restricts the grant of equitable remedies to cases where the legal remedy is inadequate. It is sometimes applied to deny a constructive trust . . . ."[95] Thus, in addition to considering the underlying basis for invoking equity, the court *should* first look to whether legal relief is sufficient to rectify the wrong.

The Alabama Supreme Court has been fairly explicit in answering the question of whether a showing of inadequate legal damages is a prerequisite to the imposition of a constructive trust. In *American Family Care v. Irwin*,[96] shareholder plaintiffs sought both the imposition of a constructive trust and control over the assets of a small corporation.[97] The trial court granted the plaintiffs' requested relief and imposed a constructive trust on certain challenged shares of stock.[98] The defendant corporation appealed, asserting that the plaintiffs could not prove adequate grounds for the creation of a trust.[99] At trial, the court determined that the president of American Family Care was operating under a fiduciary duty to the shareholders and other directors, and subsequently had breached that duty.[100] A court in equity typically has jurisdiction regarding claims of a breach of a fiduciary duty, regardless of the presence or absence of adequate legal remedy.[101] Furthermore, it is well established that "[a] constructive trust is . . . the remedial device through which preference of self is made subordinate to loyalty to others."[102] Thus, the trial court felt that a constructive trust was warranted to honor the president's duty to put the shareholders' interests above his own.[103]

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93. *Id.*
94. FISCHER, *supra* note 74, at 351-53.
95. ELAINE SHOBEN ET AL., REMEDIES: CASES AND PROBLEMS 857 (3d ed. 2002) (citing as an exception, Hughes Tool Co. v. Fawcett Pubs., 297 A.2d 428 (Del. Ch. 1972), *rev'd on other grounds*, 315 A.2d 577 (Del. 1974), *aff'd*, 350 A.2d 341 (Del. 1975); Gilbert v. Meyer, 362 F. Supp. 168 (S.D.N.Y. 1973) (denying equitable relief because legal relief was adequate, though time-barred).
96. 571 So. 2d 1053 (1990).
97. *Id.* at 1054.
98. *Id.* at 1058.
99. *Id.*
100. *Id.* at 1059.
101. *See infra* note 148.
102. *Am. Family Care*, 571 So. 2d at 1059 (quoting Meinhard v. Salmon, 164 N.E. 545, 548 (N.Y. 1928)).
103. *Id.*

But, on appeal, the court was faced with the question of whether equity would "specifically enforce the duty of the constructive trustee to convey the property held in constructive trust if there is an adequate remedy at law."[104] In its opinion, the court considered two opposing views on this question.[105] The first position, held by Professor George T. Bogert, asserted that inadequate legal damages should not be required to impose a constructive trust.[106] The alternate position, held by Professor Austin W. Scott,[107] claimed that the existence of adequate legal damages foreclosed any possibility of imposing a constructive trust.[108] The court weighed both opinions and adopted a clear answer: "[A]s to constructive trusts, while equity has the power to act, it will not; unless a fiduciary or quasi-fiduciary relation is involved, or unless relief at law would be inadequate because the chattel is unique or the defendant-wrongdoer is insolvent."[109]

Thus, the court retains, at least superficially, the traditional separation between law and equity. A court shall not grant the equitable remedy of a constructive trust unless one of three traditional equitable conditions exists.[110] There must be a fiduciary obligation present, unique property, or an insolvent defendant.[111] The holding implies that, without one of these three criteria, legal damages will be sufficient, thereby necessitating that Alabama courts engage in irreparable injury analysis.

Some states superficially follow Alabama in this requirement, requiring that a complainant demonstrate the absence of an adequate legal remedy before seeking the equitable relief of a constructive trust.[112] "New York law[] has held that an equitable remedy such as a constructive trust is appropriate only if 'the party seeking relief . . . demonstrate[s] that [its] remedies at law are incomplete and inadequate to [accomplish] substantial jus-

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104. *Id.* at 1060.

105. *See id.* at 1060-61.

106. *See* GEORGE GLEASON BOGERT & GEORGE TAYLOR BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 472, at 14-15 (2d ed. 1960). The treatise notes:

> In a suit to obtain a constructive trust, it is believed that it should not be necessary to prove the inadequacy of the remedy at law, but there are some decisions or dicta to the contrary. The complainant should be able to elect freely between the relief which the law can give him and the constructive trust device.

Id. (footnote omitted).

107. *See* 5 SCOTT & FRATCHER, *supra* note 67, § 462.3 ("There are, however, situations in which it is held that because the remedy at law is adequate equity will not specifically enforce the duty of the constructive trustee.").

108. *See Am. Family Care*, 571 So. 2d at 1061.

109. *Id.* (quoting *Remedy at Law*, *supra* note 82, at 295).

110. *Remedy at Law*, *supra* note 82, at 295 ("[I]t remains true that while a constructive trust may exist, having been brought into being by the defendant's conduct, it will not be enforced by equity unless the remedy at law is for some reason inadequate.").

111. *See Am. Family Care*, 571 So. 2d at 1061.

112. *See* Branch Banking & Trust Co. v. Lighthouse Fin. Corp., No. 04 CVS 1523, 2005 WL 1995410, at *9 (N.C. Super. Ct. July 13, 2005) ("Where adequate remedies at law exist to pursue claims of fraud, the equitable remedy of a constructive trust is unwarranted." (citing Old Line Life Ins. Co. v. Bollinger, 589 S.E.2d 411, 413 (N.C. App. 2003))); Gagne v. Vaccaro, No. 950372611S, 2001 WL 1667881, at *2 (Conn. Super. Ct. Dec. 10, 2001), *aff'd*, 835 A.2d 491 (Conn. App. Ct. 2003) ("A trial court may afford a plaintiff equitable relief when there is no adequate remedy at law." (citing Conn. Sav. Bank v. First Nat'l Bank, 51 A.2d 907, 910 (Conn. 1947))).

tice.'"[113] In Maine, the court "resort[s] to equitable remedies, such as . . . [the] remedy of constructive trust, only after concluding that the complainant has or will have no '*adequate*' *remedy at law*."[114] Under Missouri law, a constructive trust "is applicable only where there is an inadequate remedy at law and 'justice would suffer without the equitable remedy.'"[115] Florida courts also hold that a constructive trust "is only appropriate if there are no adequate remedies at law."[116] Nevertheless, other courts are stepping away from the doctrine and granting the remedy regardless of whether there is sufficient legal relief.[117] Still, Alabama courts are entrenched, at least rhetorically, in the necessity of inadequate legal relief prior to invoking equity.

4. Benefits in Equity

There are certain benefits afforded by equitable remedies that make a constructive trust superior to other remedies and may encourage plaintiffs to seek equitable relief over other legal relief. First, constructive trusts allow those wrongfully deprived of property to trace that property as it is converted into new forms, even if the property is "mixed" with that of the "trustee."[118] This act of tracing is directly tied to equitable relief and may be adequate to render legal relief insufficient.[119] Furthermore, one can obtain actual restitution of the wrongfully taken property, trace that property through various conversions, and protect the property from the claims of the "trustee's" creditors through the vehicle of a constructive trust.[120]

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113. Motorola Credit Corp. v. Uzan, 388 F.3d 39, 61 (2d Cir. 2004) (quoting Lucente v. Int'l Bus. Machs. Corp., 310 F.3d 243, 262 (2d Cir. 2002)) (alterations in original); *see also* First Cent. Fin. Corp. v. Martin Ochs, 377 F.3d 209, 215 (2d Cir. 2004) ("It is well-established under New York law that 'equity will not entertain jurisdiction where there is an adequate remedy at law.'" (quoting Boyle v. Kelley, 365 N.E.2d 866 (N.Y. 1977))).

114. Davis v. Cox, 356 F.3d 76, 95 (1st Cir. 2004).

115. Broadview Lumber Co. v. SW Mo. Bank of Carthage, 118 F.3d 1246, 1253 (8th Cir. 1997) (quoting Jorritsma v. Tymac Controls Corp., 864 F.2d 597, 599 (8th Cir. 1988)).

116. Tronzo v. Biomet, Inc., 156 F.3d 1154, 1161 n.4 (Fed. Cir. 1998) (citing Bender v. Centrust Mortgage Corp., 51 F.3d 1027, 1030 (11th Cir. 1995)).

117. *See* Di Benedetto v. Grell, No. A100738, 2004 WL 902458, at *13 (Cal. Ct. App. Apr. 28, 2004) (unpublished opinion) ("[E]quity is not precluded by the existence of what might appear to be an adequate remedy at law. '[A] court of equity is not bound down to the strict legal rights of the parties, but will take into consideration all the circumstances in order to arrive at the justice of the case.'" (quoting Weyant v. Murphy 78 P. 568, 569-70 (Cal. 1889))) (citations omitted) (second alteration in original).

118. *See* D.W.M. WATERS, THE CONSTRUCTIVE TRUST: THE CASE FOR A NEW APPROACH IN ENGLISH LAW 47 (1964) ("If the transferee mixes the transferor's moneys with his own or the transferee is bankrupt or the transferee has himself transferred the asset to an innocent third party, who has mixed with his own . . . the plaintiff . . . must trace in equity.").

119. *See, e.g.*, Banton v. Hackney, 557 So. 2d 807, 820 (Ala. 1989) (quoting Haskel Eng'g & Supply Co. v. Hartford Accident & Indem. Co., 144 Cal. Rptr. 189, 192 (Cal. Ct. App. 1978)). The *Banton* court noted that the plaintiff

> had the right to trace the money paid by her to the home purchased by the [defendants] . . . [as a] "[c]onstructive trust is an equitable remedy to prevent unjust enrichment and enforce restitution, under which one who wrongfully acquires property of another holds it involuntarily as a constructive trustee, and the trust extends to property acquired in exchange for that wrongfully taken.

Id.

120. *See infra* note 123.

Second, equity may give a plaintiff greater assurance of recovery, as a constructive trust affords superior leverage over a defendant's assets than comparable legal remedies such as replevin.[121] A constructive trust serves to alter the priorities all of the parties who have a claim on a given asset: the beneficiary of the constructive trustee has priority over all other claims.[122] Constructive trusts actually grant the beneficiary "ownership," such that the property is not subject to the claims of the creditors of the constructive trustee.[123] A creditor cannot seek payment from property that does not belong to the debtor.[124] The plaintiff's damages are "secured" by the existence of the trust, and the plaintiff will have priority over the defendant's creditors.[125]

Consequently, plaintiffs often seek this equitable remedy when the same goals may be accomplished, albeit with less certainty, through legal remedies. Courts appear to account for this added recovery leverage when determining whether a constructive trust is merited. In *Interstate Truck Leasing, Inc. v. Bender*,[126] the court found adequate remedies at law and foreclosed the plaintiff's ability to seek a constructive trust, denying the benefit of additional collection power.[127] In that case, the lessee filed a claim against his lessor, alleging that the property owner fraudulently suppressed knowledge of the state's pending condemnation of the property subject to the lease.[128] With no notice of the forthcoming condemnation, the plaintiff entered into a one-year lease for the property with an option to renew for an additional year and proceeded to improve the land at a considerable expense.[129] Shortly thereafter, the state notified the plaintiff of the condemnation action, only allowing the plaintiff to finish out the term of the current

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121. Additionally, a constructive trust may afford greater recovery than simple restitution. If the "trustee" in wrongful possession of the property resells the property for a greater value, the wronged party may recover the resale price, even if it exceeds market value for the property in question. *See* HENRY L. MCCLINTOCK, HANDBOOK OF THE PRINCIPLES OF EQUITY 229 (2d ed. 1948) (citing Falk v. Hoffman, 135 N.E. 243 (N.Y. 1922)). Because the property has been conveyed to a bona fide purchaser for value, the corpus of the trust is redefined as the consideration received in the subsequent sale. *Id.* (citing Borchert v. Borchert 113 N.W. 35 (Wis. 1907)).

122. See 5 SCOTT & FRATCHER, *supra* note 67, § 481.2, which notes:

> Where a person holds property upon a constructive trust, his bankruptcy does not preclude the beneficiary from reaching the property. In a great many cases in which the owner of the property seeks to follow it and impress a constructive trust . . . upon the product of the property the person or institution holding the property is bankrupt, and the claimant is given priority over the general creditors of the wrongdoer.

123. FISCHER, *supra* note 74, at 356.

124. *See* Woco Pep Co. of Montgomery v. Montgomery, 149 So. 692, 693 (Ala. 1933) (finding that the claim of a beneficiary of a constructive trust has priority over other creditors); Crestar Bank v. Williams, 462 S.E.2d 333, 334 (Va. 1995) ("The constructive trust establish[es] priority of the investors' claims over those of certain of the debtor's judgment creditors."); Javor v. State Bd. of Equalization, 141 Cal. Rptr. 226, 233 (Cal. Ct. App. 1977) (noting that a beneficiary with a constructive trust over the property in question "has priority over other creditors of the trustee").

125. FISCHER, *supra* note 74, at 356.

126. 608 So. 2d 716 (Ala. 1992), *overruled by* State Farm Fire & Cas. Co. v. Owen, 729 So. 2d 834 (Ala. 1998) (overruled on other grounds).

127. *Id.* at 720.

128. *Id.* at 718.

129. *Id.* at 719.

lease.[130] The plaintiff subsequently filed suit against the defendant, seeking to recover expenses for the improvements made to the parcel and the cost of relocating to an alternate site.[131] The plaintiff appealed the lower court's grant of summary judgment, seeking the imposition of a constructive trust on the state's condemnation payment to the defendant.[132]

Although the court did not rule on the plaintiff's actual entitlement to recovery, it did conclude that the plaintiff had "an adequate remedy at law" and affirmed the lower court's grant of summary judgment on the matter of a constructive trust.[133] Thus, while the defendant potentially abused a confidential relationship and possibly acted fraudulently, because the plaintiff was seeking repayment for money spent in improving the property, he was relegated to monetary damages and was not entitled to a constructive trust.[134] The holding suggests that, in this case, public policy did not necessitate affording the defendant any additional collection protection. This was strictly a business deal, and the court refused to secure the plaintiff's potential recovery with a trust over the defendant's award from the state.

While the court in *Interstate Truck Leasing* was unwilling to impose a trust on the proceeds of the defendant's sale to give the plaintiff additional leverage,[135] in *Holman v. Kruk*[136] the court was willing to go further. In *Holman*, the court imposed a constructive trust even when the property underlying the suit was gone.[137] Just as the land was sold in *Interstate Truck Leasing*, in *Holman* the money that should have comprised the "corpus" of the trust was spent.[138] The defendant used her minor sister's social security checks to pay her own expenses, including several mortgage payments on the defendant's house.[139] The trial court found that the defendant was unjustly enriched by wrongfully using the plaintiff's money and imposed a constructive trust on the house.[140] Because the money was gone, the court imposed the trust on the defendant's property, even though the plaintiff never possessed any ownership interest in the house.[141] The holding suggests that, because the defendant effectively converted the plaintiff's money into real estate through the mortgage payments, an equitable interest arose in the house. Typically, one would assume that since the defendant took the plaintiff's money, the court would impose legal damages and force the defendant to repay the cash. But here, the court opted for a constructive

130. *Id.*
131. *Id.*
132. *Id.* at 720.
133. *Id.* at 720-21.
134. *Id.*
135. *See id.* at 720.
136. 485 So. 2d 715 (Ala. 1986).
137. *Id.* at 716.
138. *Id.*
139. *Id.* at 715.
140. *Id.*
141. *Id.* at 715-16.

trust.[142] Though not completely insolvent, forcing the defendant to sell her house to recoup the plaintiff's money may have imposed an unjustifiable burden. Thus, because the legal remedy would have been too costly, the court imposed equitable relief instead. Furthermore, the court may have determined that the minor plaintiff was entitled to a greater assurance of recovery. Although the plaintiff could have sought legal repayment, she was afforded much greater leverage in her recovery through the imposition of a constructive trust on the house. It is likely that the defendant did not have the money, and by invoking a constructive trust, the court assured the plaintiff recovery despite the defendant's lack of liquidity.

Consequently, there may be instances in which a plaintiff will seek a constructive trust in the face of an adequate legal remedy. The court may factor in the specific circumstances of the case to determine whether the plaintiff should be afforded the greater recovery assurance of a constructive trust. It is likely that courts are more willing to extend this advantage when dealing with an individual plaintiff who is personally injured as opposed to a plaintiff wronged in an arms-length business transaction.

B. Application of the Unjust Enrichment Doctrine and Constructive Trust Remedy in Alabama: Traditional vs. Non-Traditional Bases for Imposition

1. Constructive Trusts and the Traditional Bases

Alabama courts have typically held that there are "traditional bases" upon which a constructive trust can be granted. In the absence of one such "basis," the equitable remedy must be denied, regardless of the circumstances of the matter. Summary judgment will be granted for a defendant where "the plaintiff[] failed to allege any of the traditional bases for establishment of a constructive trust, such as [the] abuse of a confidential relationship, mistake, fraud, or a parol promise to hold [the property] in trust."[143] Nevertheless, although Alabama courts articulate a sweeping set of circumstances in which a constructive trust may be granted,[144] in actuality the factual scenarios giving rise to equitable relief are more constrained. Still, those "sweeping circumstances" suggested by the Alabama Supreme Court are, for the most part, incorporated in the modern conception of the "traditional bases." The concepts of "undue influence, duress, [and] taking advantage of one's weakness or necessities"[145] merge in the general "abuse of a confidential relationship"[146] basis. However, one can clearly exercise undue influence, engage in duress, or take advantage of another without establishing the necessary criteria of a confidential relationship. Thus, one

142. *Id.* at 716.
143. Teele v. Graves, 425 So. 2d 1117, 1119 (Ala. 1983).
144. *See supra* Part III.A.2.
145. Knowles v. Canant, 51 So. 2d 355, 357 (Ala. 1951) (quoting 4 POMEROY, *supra* note 79).
146. *Teele*, 425 So. 2d at 1119.

should first consider the court's treatment of the three "traditional bases" and then turn to the facially excluded "non-traditional" bases to determine when and how the court will invoke this equitable remedy. In order to establish a viable claim for a constructive trust in Alabama one of these underlying claims must be present: the breach of a confidential relationship, mistake, or fraud.[147]

2. *The "Traditional Bases"*

i. Constructive Trusts and the Breach of a Confidential Relationship

First, a constructive trust may be imposed where there is a breach of a confidential relationship.[148] However, because the breach of confidential relationship is somewhat analogous to a breach of a fiduciary duty, courts do not engage in irreparable injury analysis when determining if a plaintiff is entitled to equitable relief in this instance.[149] The court merely focuses on the existence of a relationship, whether the relationship was breached, and whether that breach unjustly enriched the defendant in such a way as to merit a constructive trust.[150]

The Alabama Supreme Court recently considered unjust enrichment in this context in *Welch v. Montgomery Eye Physicians*.[151] There, the plaintiff claimed that the defendant, her deceased husband's employer, was unjustly enriched by assuming her husband's established optometry practice at his death.[152] In 1994, the deceased merged his private practice into the defendant's ophthalmology practice, which consisted of a professional corporation of medical doctors.[153] Because the plaintiff focused her claim on the abuse of a confidential relationship, the court only considered this prong of unjust enrichment in its analysis.[154] The court found that no such relationship existed between the deceased and the defendant, as "a confidential relationship [only] exists when 'confidence is reposed by one party in another, and the trust or confidence is accepted under circumstances which show that

147. In *Knowles*, the Alabama Supreme Court defined the underlying bases for the imposition of a constructive trust more broadly. 51 So. 2d at 357. Nevertheless, in practice, it appears that the courts impose a constructive trust only on these three fundamental claims. Courts are not willing to impose a constructive trust when there has been mere "undue influence, duress, taking advantage of one's weakness or necessities." *Id.* Instead, they require a showing of mistake, fraud, or the breaking of a confidential relationship. *Id.*

148. *See* Welch v. Montgomery Eye Physicians, P.C., 891 So. 2d 837, 843 (Ala. 2004).

149. FISCHER, *supra* note 74, at 351 ("In some decisions, the presence of a fiduciary obligation serves expressly to satisfy the irreparable injury requirement.").

150. *See* GROVER S. MCLEOD, EQUITABLE REMEDIES AND EXTRAORDINARY WRITS IN ALABAMA 167 (1981) ("It must also be shown that the imposition of a trust is necessary to prevent a miscarriage of justice." (citing Cole v. Adkins, 358 So. 2d 447 (Ala. 1978))).

151. *Welch*, 891 So. 2d 837.

152. *Id.* at 843.

153. *Id.* at 839.

154. *Id.* at 843.

it was founded on intimate personal and business relations . . . which gave the one advantage or superiority over the other.'"[155] The deceased was an experienced businessman, and nothing in the record suggested that the defendant had any "advantage or superiority" over him.[156] The parties previously contracted on three separate occasions to renew the terms of the relationship, and at any time, the deceased could have expressed an interest to sell his practice outright.[157] He failed to do so. The court further found that the deceased had been handsomely compensated by the defendant over the years, dispelling any further claims of unjust enrichment.[158] Thus, as there was neither a confidential relationship nor unjust enrichment, the plaintiff's requested equitable relief was denied.[159]

Nevertheless, in *Radenhausen v. Doss*,[160] the court found that the trustee's abuse of a confidential relationship *did* give rise to the imposition of a constructive trust.[161] Although the trial court entered summary judgment as to the alleged "breach of fiduciary duty and dismissed the counterclaims alleging conversion, fraud, and conspiracy to defraud," there were still "other bases upon which Alabama courts may impose a constructive trust."[162]

In *Radenhausen*, the husband left a will providing for the division of his estate between his family and his wife's family if she predeceased him.[163] In 1992, the husband developed Alzheimer's and granted his wife a durable power of attorney.[164] She then created a trust and named herself settlor and trustee.[165] Although initially set up so that the assets would be dispersed in accordance with her husband's wishes (half of the estate to his family and half to her family) the trust was amended just before the wife's death.[166] The amended trust granted each of the husband's daughters from a previous marriage $100 and dispersed the remaining assets among the wife's family.[167] The husband's family promptly sought "an accounting and the imposition of a constructive trust . . . alleging a breach of fiduciary duty, conversion, fraud, [and] conspiracy to defraud."[168] The court ruled in favor of the wife's family, and the husband's family appealed the dismissal of the constructive trust claim.[169] The wife's family claimed that the dismissal was proper "because a constructive trust is an equitable remedy—not a separate

155. *Id.* (quoting Cannon v. Gilmer, 33 So. 659, 659 (Ala. 1902)).
156. *Id.*
157. *Id.*
158. *Id.* at 844.
159. *Id.*
160. 819 So. 2d 616 (Ala. 2001).
161. *Id.* at 622.
162. *Id.* at 619.
163. *Id.* at 617.
164. *Id.* at 618.
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.*

cause of action"; thus, after the court entered summary judgment as to all other claims, there were "no grounds upon which to seek the equitable remedy of a constructive trust."[170]

Although the court agreed that a constructive trust does not constitute a cause of action, "fraud, conspiracy to defraud, and breach of fiduciary duty are not the only allegations of wrongdoing that will support the imposition of a constructive trust."[171] Thus, the remedy can be granted when a recipient is unjustly enriched by virtue of the abuse of a confidential relationship.[172] As noted, a plaintiff must "allege any of the traditional bases for establishment of a constructive trust," and the abuse of a confidence is one such basis.[173] In *Radenhausen*, there was evidence that the wife "took advantage of her position and the mental and physical weakness of [her husband]," controlling of all his assets and treating them as if they were her own.[174] Thus, because there was sufficient evidence of a "traditional bas[is]" upon which a constructive trust could be imposed, the court reversed the dismissal and remanded the claim.[175]

In the similar case of *Herston v. Austin*,[176] the court also imposed a constructive trust based on the abuse of a confidential relationship existing between the parties in an attempt to prevent the defendant from taking advantage of the infirmed plaintiff.[177] In that case, the plaintiff conveyed her house, certificate of deposit, and passbook savings to her son based on his "promise[] to support her in the future."[178] Nevertheless, the relationship between the parties deteriorated, and the plaintiff eventually sued her son, "alleging fraud and requesting that the trial court put the . . . property back in her name and return . . . the certificate of deposit and savings account to her."[179] Although the court found "no actual or intentional fraud[] . . . it imposed a constructive trust to prevent [the] unjust enrichment" of the son.[180] The defendant appealed this ruling, asserting that there can be no constructive trust where there is no fraud and no evidence of unjust enrichment.[181] The court rejected these contentions, finding that the defendant gave no consideration and that the plaintiff did not intend for him to have the property outright but merely sought his care and support.[182] Thus, a con-

170. *Id.* at 620.
171. *Id.*
172. *Id.* ("A constructive trust may be impressed upon property when the grantee of the property has abused a confidential relationship with the grantor." (quoting Jordan v. Mitchell, 705 So. 2d 453, 461 (Ala. Civ. App. 1997))).
173. *Id.* (quoting Teele v. Graves, 425 So. 2d 1117, 1119 (Ala. 1983)).
174. *Id.* at 621.
175. *Id.* at 622.
176. 603 So. 2d 976 (Ala. 1992).
177. *Id.* at 977.
178. *Id.*
179. *Id.*
180. *Id.*
181. *Id.* at 979.
182. *Id.*

structive trust was necessary to prevent the unjust enrichment of the defendant, who was in a confidential relationship of trust with the plaintiff.[183]

Still, even where there is unjust enrichment and the existence of a confidential relationship, the court may, upon consideration of the totality of the circumstances, decline to grant equitable relief. In *Brothers v. Fuller*,[184] the plaintiff, struggling with financial problems, willingly transferred title to her property to her daughter and son-in-law (defendants) who, in return, secured a loan on the plaintiff's behalf by using the property as collateral.[185] Subsequently, the plaintiff allowed the defendants to pay off the balance of the first loan, take out a second loan, and begin renovations on the property to open a restaurant.[186] It was not until the work was nearly completed that the plaintiff voiced her concerns and requested that title be returned to her.[187] The court considerd the totality of the circumstances and the actions of the parties, determining that while the defendants never formally paid for the property and were unjustly enriched at the plaintiff's expense, equity could not justifiably divest them of title.

In *Brothers*, although the plaintiff proved that she was entitled to monetary damages because the defendants were unjustly enriched, she failed to present adequate evidence to merit the creation of a constructive trust over her property.[188] While the court conceded that the defendants were unjustly enriched in possessing the *unique* parcel of land that the plaintiff rightfully owned, it refused to divest the defendants in the absence of a clear showing of fraud.[189] Although the parties were clearly in a confidential relationship, as between mother and daughter, the daughter did not breach that relationship through her actions, regardless of the resulting unjust enrichment. The court refused to allow the plaintiff to idly watch the improvement of her property only to demand its return subsequent to the investment.[190] While *Brothers* appeared to meet the requirements for equitable relief, with a confidential relationship, unjust enrichment and non-fungible property, the court allowed other factors to influence its ruling, holding that it would be unjust to divest the defendants of title. Though it was clear that money damages were not adequate to replace the non-fungible property at issue, the court weighed the totality of the circumstances and the costs and benefits afforded each party and denied equitable relief. The plaintiff's own acquiescence in the "unjust enrichment" and subsequent attempt to be unjustly enriched herself by reclaiming the now-improved land, foreclosed her ability to seek the imposition of a trust.

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183. *Id.*
184. 607 So. 2d 135 (Ala. 1992).
185. *Id.* at 136.
186. *Id.*
187. *Id.*
188. *Id.* at 137.
189. *Id.* at 136-37.
190. *Id.*

ii. Constructive Trusts and Mistake

Generally, Alabama courts require a showing of fraud or some other wrongdoing in the original transaction to merit the application of a constructive trust.[191] "[A] constructive trust is an equitable remedy; and a request to impose such a trust is not a cause of action that will stand independent of some wrongdoing."[192] Still, the court may impose a constructive trust in the face of a mistake if there is "*legally significant* unjust enrichment. . . . [such] that 'it would not be equitable to allow [the property] to be retained by him who holds it.'"[193] Therefore, in employing the "traditional basis" of "mistake," the plaintiff must meet a court-determined threshold of "legally significant" to invoke equitable relief, thereby giving the court great deference in determining when a legal remedy will be adequate.[194] If the plaintiff cannot reach this threshold, the court is relegated to monetary damages.[195] Furthermore, the plaintiff bears the burden of proving to the court that it would be inequitable to allow the defendant to retain possession of the property.[196]

In *Beasley v. Mellon Financial Services*,[197] although there was no fraud present in the transaction, the court determined that the equities demanded the imposition of a constructive trust in light of the mutual mistake of the parties.[198] The court granted equitable relief to rectify unjust enrichment, basing its conclusions not on fraud but on the general harm and benefits imposed on the parties.[199] There, the plaintiff sought the imposition of a constructive trust when a house was mistakenly built on the wrong parcel of

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191. Ledbetter v. Ledbetter, 126 So. 2d 477, 478 (Ala. 1961) ("[I]t [is] clear that the fraud prerequisite to the enforcement of a constructive trust must be implicit in the original transaction, not later.") (citation omitted). One should note that some courts will impose a constructive trust even where there was no misconduct perpetrated by the trustee. *See* Kidd v. Biscuit, 58 Pa. D. & C.4th 305, 315 (Pa. Ct. Com. Pl. 2001) ("A constructive trust may arise 'even though the acquisition of property was not wrongful and the defendant's intention was not malign. Our courts focus not on intention, but on the result of unjust enrichment.'" (quoting Gee v. Eberle, 420 A.2d 1050, 1056 (Pa. 1980))). Additionally, Alabama courts have held that there need be no showing of fraud to impose a constructive trust where a confidential relationship exists between the parties. Where a party uses a position of power over another, a constructive trust may be warranted. *See* Radenhausen v. Doss, 819 So. 2d 616, 620 (Ala. 2001) ("A constructive trust may be impressed upon property when the grantee of the property has abused a confidential relationship with the grantor.'" (quoting Jordan v. Mitchell, 705 So. 2d 453, 461 (Ala. Civ. App. 1997))).

192. *Radenhausen*, 819 So. 2d at 620.

193. *Brothers*, 607 So. 2d at 137 (quoting Brothers v. Moore, 349 So. 2d 1107, 1108 (Ala. 1977)) (second alteration in original).

194. *But see* MCLEOD, *supra* note 150, at 166 ("[W]here there is no fraud, or undue influence, there of course could not be a constructive trust." (citing Smith v. Davis, 352 So. 2d 451 (1977))). Consequently, there is some confusion in Alabama jurisprudence as to whether one can call upon the court to invoke a constructive trust where there is neither fraud nor undue influence of any intentional nature. Although this earlier case suggests that there is not, later cases indicate otherwise.

195. PENNY A. DAVIS, TILLEY'S ALABAMA EQUITY 285 (1994) (citing *Brothers*, 607 So. 2d at 137).

196. *Id.*

197. 569 So. 2d 389 (Ala. 1990).

198. *Id.* at 394-95.

199. *Id.* at 395.

land through a mutual error of the parties.[200] By virtue of a mistake in the deed, the plaintiff constructed the house on land owned by the defendant.[201] The plaintiff "requested relief under the theory of a constructive trust . . . .[as] it is clear that [the defendant] unfairly holds [a] property interest in the parcel of land on which the house is located."[202] The lower court determined that "there was no significant difference in any particular two-acre tract of said land from any other particular two-acre tract contained within the whole parcel."[203] The court granted plaintiff's request, finding that the defendant would be "equitably served by receiving title to a similar parcel of property and further, that [the defendant would] be equitably served by obtaining title to the parcel of property on which [the] home is located."[204] On appeal, the Alabama Supreme Court affirmed the lower court's ruling.[205]

The court determined that equity favored enforcing a constructive trust, finding that the parcels of land at issue were fungible and that the plaintiff would not be harmed by relinquishing title to one parcel and accepting title to another.[206] This case offers an interesting twist on traditional equitable remedies. Here, the defendant is forced to relinquish title to property that was *rightfully* hers and accept a different parcel because a mutual mistake of the parties led to her unjust enrichment. Still, there is nothing to suggest that money damages would have been more appropriate. Therefore, although not expressly articulated, the court finds no adequate remedy at law and creates a constructive trust so that the parties may have possession-in-fact of the parcels of land to which they are each equitably entitled.[207]

Accordingly, Alabama courts will impose a constructive trust, in the absence of fraud, where there is a mistake of fact that creates the inequitable enrichment of one party at the expense of the other. Nevertheless, the court will consider the circumstances of the case, as there must be "legally significant" unjust enrichment to impose a trust in the absence of fraud.

iii. Constructive Trusts and Fraud

In addition to a breached fiduciary duty and mistake, constructive trusts are often employed to reclaim any benefit obtained through fraud. The trust operates to equalize unjust enrichment, stripping the fraudulent party of any inequitable gain. Though often dealing with fiduciaries, there need not be a confidential relationship to impose a trust where there is fraud.

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200. *Id.* at 391.
201. *Id.*
202. *Id.* at 392 (third alteration in original).
203. *Id.*
204. *Id.* at 393.
205. *Id.* at 394.
206. *Id.* at 393.
207. *Id.* at 394.

Alabama courts utilize constructive trusts when parties employ fraudulent transfers to guard property from creditors. In *O'Grady v. Bird*,[208] the court imposed a trust on the defendant's land, finding that the husband retained equitable title and was the "owner within the purview of the materialmen's lien law."[209] In that case, the husband conveyed title to his wife "for the purpose of defrauding" creditors, attempting to exempt the property from debts he owed.[210] The court determined that the conveyance created a constructive trust, whereby the wife "held legal title for the use and benefit of [the husband] as the one equitably entitled thereto."[211] Thus, the existence of creditor's claims to the property terminated the trust and rendered the husband "the sole owner of the real estate . . . subject to the liens in favor of the other parties."[212] When a lien emerged on the property, the court vested title in the husband, determining that the conveyance to the wife was a fraudulent attempt to evade creditors.[213]

The constructive trust arose even though there was no evidence of an intent to defraud because, regardless of the existence of fraud, a trust can be imposed where "it would be inequitable to allow the property interest to be retained by the person who holds it."[214] Furthermore, the wife carried the burden of proving that the conveyance was bona fide; a burden she was unable to meet.[215] Therefore, the court used the vehicle of a constructive trust to vest title back in the proper owner and allow the creditors to reach the property in satisfaction of their claims. Unlike traditional applications, this case vested title in the defendant, not the plaintiff, even though it was the defendant who stood to be unjustly enriched by his actions. Regardless of whether the transfer was fraudulent or whether the creditors had an adequate remedy at law, the court determined that the husband had equitable ownership of the property and could not evade creditors in this manner.[216] While it would seem that the creditor's primary remedy for recuperation of debts owed would be legal, the court granted a trust to afford the plaintiffs the added leverage and assurance of repayment.

Although the court will readily employ a constructive trust when the parties attempt to use fraud to deprive another of a benefit to which they are entitled, the fraud must occur within the original transaction. It cannot emerge at a later date. In *McClure v. Moore*,[217] the plaintiffs sought to impose a constructive trust on certain lands they expected to receive through a testamentary devise.[218] The plaintiff's father made a gift of two acres of

208. 411 So. 2d 97 (Ala. 1981).
209. *Id.* at 104.
210. *Id.*
211. *Id.*
212. *Id.*
213. *Id.* at 100.
214. *Id.* at 104 (quoting Coupounas v. Morad, 380 So. 2d 800, 803 (Ala. 1980)).
215. *Id.*
216. *Id.*
217. 565 So. 2d 8 (Ala. 1990).
218. *Id.*

land in an attempt to encourage his daughter to move closer to him.[219] The daughter and her husband (plaintiffs) claim that there was a "general family understanding" that the remainder of the land would be theirs at the death of the plaintiff's father and his current wife, the defendant in the case.[220] In reliance on that promise, the plaintiffs built a house on their two acres and a barn on part of the land maintained by the plaintiff's father.[221] What's more, the plaintiff's daughter and her husband installed a mobile home on the property and made substantial improvements to the surrounding area.[222] Nevertheless, the plaintiff's father and the defendant executed parallel wills naming each other as principal beneficiary and both containing a contingent beneficiary provision devising the property to the plaintiffs.[223] Accordingly, at the death of the plaintiff's father, the defendant had total control over the property and consequently sold it out from under the plaintiffs.[224]

After the sale, the plaintiffs sought the establishment of a "'constructive' trust, or in the alternative, reimbursement for the expenses incurred . . . in reliance upon the promises made by [the defendant]."[225] The plaintiffs based their claims on fraud, alleging that the defendant intended to deceive the plaintiffs at the time the promises of an eventual conveyance were made.[226] The court found no such fraud, as "there [was] no evidence that at the time [the defendant] made the promise . . . she had a different intention or that there was any intent to deceive on her part."[227]

To impose a constructive trust for fraud, "[t]he fraud must have been present in the original transaction and must not have occurred later."[228] But here, the fraudulent act alleged by the plaintiffs occurred years after the plaintiff's father and the defendant executed their wills.[229] "For fraud to exist, [the defendant] must have intentionally deceived the plaintiffs at the time [the] will was executed."[230] The court found no evidence of such intentional deceit.[231] Furthermore, the court rejected plaintiffs' reliance on

> the general rule that when a promisor repudiates a contract (made during the lifetime of the promisor to convey or to will property *in consideration of services or support*) and conveys or attempts to convey the promised property to others, a constructive trust may be

219. *Id.* at 9.
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.*
224. *Id.*
225. *Id.*
226. *Id.* at 10.
227. *Id.*
228. *Id.* (citing Ledbetter v. Ledbetter, 126 So. 2d 477, 478 (1961)).
229. *Id.*
230. *Id.*
231. *Id.*

imposed if there had been substantial performance on the part of the promisee.[232]

Here there was no indication that the plaintiffs were to receive the land in consideration for services or care rendered. So, even if there was a contract of sorts, there was no consideration tendered to justify the imposition of a trust.[233]

The court in *McClure* refused to impose a constructive trust although the plaintiffs acted in reliance on the promises of the defendant and expended a considerable sum of money in improving the property.[234] While unjust enrichment technically may have occurred, it did not rise to a level necessitating equitable relief.[235] Furthermore, the court found none of the traditional bases required for a constructive trust.[236] There was no mistake of fact, no fraud, and no breach of a fiduciary duty. The defendant merely changed her mind, and the court determined that it was within her rights to do so.[237] The court failed to expressly address whether the plaintiffs were entitled to the legal remedy of reimbursement for money spent in improving the property, but the opinion suggested that they were entitled to no relief at all.[238] There was no fraud and therefore no justification for court action.[239]

Finally, one must note that a fiduciary or special relationship is not required for the imposition of a constructive trust.[240] "A constructive trust . . . is not a fiduciary relation, although the circumstances which give rise to a constructive trust *may or may not involve a fiduciary relation* . . . ."[241] Thus, in *Banton v. Hackney*,[242] the court imposed a constructive trust even though the transaction was void of a fiduciary responsibility.[243] The defendants intentionally misrepresented the status of the company to the plaintiff, thereby fraudulently obtaining a considerable investment from him.[244] The plaintiff was "therefore legally entitled to impose a constructive trust on all such sums . . . representing the proceeds of the amount paid by him to [the defendant]."[245] There was no requirement that a fiduciary relationship exist.[246] The plaintiff was deprived of property and the defendant, using fraudulent methods, was unjustly enriched.[247] That is all that is required.[248]

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232. *Id.* at 10-11.
233. *Id.* at 11.
234. *Id.* at 9-11.
235. *Id.* at 10.
236. *Id.* at 11.
237. *Id.*
238. *Id.*
239. *Id.*
240. Banton v. Hackney, 557 So. 2d 807, 819 (Ala. 1989).
241. *Id.* (quoting RESTATEMENT OF RESTITUTION § 160 cmt. a (1937)) (second alteration in original).
242. *Id.*
243. *Id.*
244. *Id.* at 821.
245. *Id.*
246. *Id.*
247. *Id.*

The court failed to consider whether legal damages would be more appropriate. The plaintiff sought a constructive trust, and the court granted the remedy without affording much thought, if any, to the presence of an irreparable injury.[249]

Therefore, courts will impose constructive trusts where the fraud occurred in the original transaction so as to unjustly enrich the defendant. There is no requirement that a fiduciary relationship be present. Even where the actual intent to defraud may be unclear, the court may nevertheless impose a constructive trust to prevent otherwise inequitable enrichment. When dealing with fraudulent unjust enrichment, courts do not typically engage in irreparable injury analysis, granting the remedy whenever a plaintiff was defrauded and seeks such relief.

3. Non-Traditional Bases

The 1951 Alabama Supreme Court listed three instances meriting a constructive trust that were not adopted in later articulations of the doctrine: "undue influence, duress, [and] taking advantage of one's weakness or necessities."[250] These various "bases" can be grouped into a general category of "undue influence," as the distinctions between them are subtle. Although not requiring the existence of a confidential relationship, one equity scholar noted that "[i]t would behoove counsel when attempting to establish a constructive trust based on undue influence to have evidence of the confidential relationship of the parties."[251] While the commentator does mention the possibility of raising an equitable claim based on age or infirmity, Alabama caselaw suggests that undue influence generally necessitates the existence of a confidential relationship.[252]

Consequently, although the earlier courts appeared to allow a broad range of underlying claims to qualify for equitable relief, in reality the modern court focuses on the three traditional bases of a breached confidential relationship, mistake, and fraud. In the absence of one of these, the court balks at moving beyond legal relief and clings to a more conventional understanding of equity.

C. What Is the Current State of Equity in Alabama?

Based upon the foregoing analysis, Alabama courts appear to use traditional factors to determine whether a constructive trust is merited. The

248. *Id.*
249. *Id.*
250. Knowles v. Canant, 51 So. 2d 355, 357 (1951) (quoting 4 POMEROY, *supra* note 79).
251. MCLEOD, *supra* note 150, at 166.
252. There are four cases dealing with constructive trusts and undue influence post-1980, and all four cases center on the breach of a confidential relationship. *See* Radenhausen v. Doss, 819 So. 2d 616 (Ala. 2001); Davis v. Davis, 494 So. 2d 393 (Ala. 1986); Morgan v. Tate, 445 So. 2d 273 (Ala. 1984); Seals v. Seals, 423 So. 2d 222 (Ala. 1982).

courts employ the irreparable injury rule where it is necessary and deny relief when faced with a clearly adequate legal remedy. Nevertheless, there are also instances where the courts finesse the doctrine to comport with the circumstances of the specific case, employing a trust to protect a party even where adequate legal remedies may be present.

Wilbourn v. Ray[253] presents an interesting twist on the interplay between legal and equitable relief in Alabama courts.[254] In that case, the Alabama Supreme Court decided that a plaintiff can actually waive his right to equitable relief when he *elects* to accept money damages.[255] The case focused on allegations of a breached contract and the intentional interference with a contract to sell real property.[256] The plaintiff contracted with a third party to purchase property owned by the third party's mother-in-law, over whom he had power of attorney.[257] After the plaintiff had made a down payment, but before he rendered the balance of the purchase price, the defendants allegedly engaged in misrepresentation, maliciously causing the mother-in-law to break the contract and transfer the property to the defendants.[258] The plaintiff sought money damages and equitable relief, and the jury found for the plaintiff on all counts.[259] "The trial court ordered that [the plaintiff] choose between (1) the award of money damages against [the mother-in-law]; (2) the award of money damages against the [defendants]; or (3) the equitable relief as fashioned by the trial court."[260] The plaintiff chose money damages, and then later filed to alter, amend, or vacate the judgment.[261] Subsequently the matter was appealed.[262]

On appeal the court held that the plaintiff "waived his right to equitable relief . . . by virtue of his election. Therefore, any argument that the trial court erroneously fashioned the equitable relief [was] now moot."[263] But the plaintiff argued that he should not have been forced to choose because he was entitled to independent relief for the breach of the contract claim and the claim of intentional interference with a contract.[264] Still, the court found only one injury, "[the] inability to complete the purchase," which was caused both by the breached contract and the intentional interference.[265] Thus, "[t]he trial court properly held that [the plaintiff] must make an election between the remedies available. . . . Once he has been fully *compensated* by either, the remaining defendant is discharged."[266]

253. 603 So. 2d 969 (Ala. 1992).
254. *Id.* at 972.
255. *Id.*
256. *Id.* at 970.
257. *Id.*
258. *Id.*
259. *Id.* at 971.
260. *Id.*
261. *Id.*
262. *Id.*
263. *Id.*
264. *Id.* at 972.
265. *Id.*
266. *Id.*

The court gave no consideration to the irreparable injury rule. The notion of an adequate remedy at law was absent throughout the entire opinion. The court merely noted that both equitable and legal remedies were available and then allowed the plaintiff to decide how he preferred to be compensated.[267]

This case suggests the ultimate merging of equitable and legal relief. The court, with no consideration to the presence or absence of irreparable injury, permitted the plaintiff to elect the remedy he preferred. Thus, the court relinquished its traditional power of determining whether equity should act. The plaintiff was given the choice, but once one form of relief was selected, the other was foreclosed.

Conversely, in an April 2005 decision, the Alabama Supreme Court again articulated a hard-and-fast adherence to the traditional separation between law and equity. In *Hensley v. Poole*,[268] the court concluded that the cross-petitioner was *not* entitled to a constructive trust because he "never argue[d] or explain[ed] to [the] Court how the remedy actually afforded him by the trial court was inadequate."[269] Even though the court conceded that the imposition of a constructive trust would have been an easier and "more straightforward" remedy, the fact remained that "a constructive trust may not be imposed unless relief at law would be inadequate."[270] Thus, the current court appears staunch in the requirement that all legal relief be both exhausted and inadequate before it will consider an equitable remedy.

Interestingly, in its determination, the court noted that the trial court stated that because the cross-petitioner did "not have 'clean hands' . . . [he] is not entitled . . . to such equitable relief."[271] Consequently, the real rationale underlying the court's decision becomes somewhat convoluted. Did the court choose to deny equitable relief because it determined that the available legal remedies were adequate, or did it disregard equity because the petitioner was also at fault? Is the court making a policy determination that, although equitable relief may indeed have been more appropriate, the cross-petitioner is relegated to inadequate legal relief because of his own malfeasance?

Thus, the current state of equitable relief in Alabama remains somewhat baffling. Although courts appear to adhere to traditional "irreparable injury" rhetoric, requiring that the petitioner demonstrate the absence of an adequate legal remedy, other factors and circumstances will play into the ultimate decision. Perhaps Laycock's theory is correct. Perhaps the "ghost" of the irreparable injury rule remains to haunt and confuse courts and practitioners, while courts are couching their actual decisions on entirely unrelated grounds.

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267. *Id.*
268. 910 So. 2d 96 (Ala. 2005).
269. *Id.* at 107.
270. *Id.* (quoting Interstate Truck Leasing, Inc. v. Bender, 608 So. 2d 716, 720 (Ala. 1992).
271. *Id.*

CONCLUSION

Although there is much talk about the death of the irreparable injury rule and the conversion of equity into legal relief, constructive trusts—which lie at the heart of equity—continue to function according to a distinct set of equity rules. Although Alabama courts place clear limitations on equitable relief, making the remedy *appear* more legal, constructive trusts still retain some of their equitable attributes. Courts persist, at least ostensibly, in requiring a petitioner to demonstrate the absence of adequate legal relief. Furthermore, courts continue to limit the invocation of this equitable remedy to instances of unconscionable unjust enrichment through a breached fiduciary duty, mistake, or fraud.

It remains to be seen whether Alabama equity differs from other states, although a sampling of constructive trust cases from other jurisdictions suggests that equity law is preserving its distinct, equity-based rules. The idea of equity retains important power, and plaintiffs will continue to seek the often-superior relief afforded by equitable remedies. This Comment suggests the persistence of equity in the relatively limited but important area of restitution by virtue of a constructive trust. While state courts, specifically Alabama, will, on occasion, stretch equitable doctrines to account for the specific circumstances of a case and balance fairness to the parties, most courts adhere to the traditional distinction between law and equity, allowing the superior advantages of a constructive trust only when equity demands it. So long as the court is clear in its rationale and faithful to the tenets underlying its decision, equity can continue to play a viable and important role in our jurisprudence. But if, as Professor Laycock suggests, courts are merely invoking the rhetoric of equity to decide cases on their own terms, perhaps state judiciaries would be better served if the sun did, in fact, set on equity as a distinct remedy.

Grace Murphy Long