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## and The Bar

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### EDITORIAL NOTE

#### CONSTRUCTIVE TRUSTS IN WEST VIRGINIA

A constructive trust, as has often been pointed out, is not a true trust at all, but is purely a remedial device<sup>1</sup> used by equity to prevent unjust enrichment. Hence, instead of dealing with constructive trusts as part of the law of trusts, the American Law Institute has included the subject in its Restatement of the Law of Restitution. According to the Restatement,

“Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises.”<sup>2</sup>

Or to put it another way, paraphrasing Judge Hatcher’s language in *State v. Phoenix Mutual Life Insurance Company*,<sup>3</sup> in order to give effect to the maxim that “no man shall be permitted to profit

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<sup>1</sup> Pound, *The Progress of the Law—Equity* (1920) 33 HARV. L. REV. 420, 420-421.

<sup>2</sup> RESTATEMENT, RESTITUTION (1937) § 160.

<sup>3</sup> 114 W. Va. 109, 113, 170 S. E. 909 (1933).