SQE1

TRUSTS

COMPREHENSIVE STUDY NOTES

Express Trusts • Resulting Trusts • Constructive Trusts • Trustees • Remedies

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CHAPTER 1

Express Trusts: Declaration of Trust

Covers the first essential step in creating a valid express trust: making a valid declaration.

1.1 Introduction

A valid express trust requires both a declaration of trust (the "instruction manual" identifying trustees, trust property, beneficiaries, and trustee powers) and the constitution of the trust (the transfer of legal title to the trustees). This chapter focuses on the declaration.

1.2 Fixed Interest vs Discretionary Trusts

Type	Description	Key Characteristic
Fixed Interest Trust	Settlor fixes beneficiaries and their shares upfront	Trustees have NO discretion — distribution is predetermined (e.g. "my children in equal shares")
Discretionary Trust	Trustees decide which class members benefit and how much	Trustees have FULL discretion to respond to changing needs over time

1.3 The Three Certainties

> A valid declaration must satisfy the three certainties established in Knight v Knight (1840): intention, subject-matter, and objects.

1.3.1 Certainty of Intention

It must be objectively clear from words or conduct that the settlor intended to create a trust (not a gift or contract).

- **Precatory words:** Mere hope, wish, or expectation ("I hope you will look after it") does NOT create a trust — results in an absolute gift instead.
- **Absence of intention:** If intention cannot be proven, the transfer is treated as a gift or the law applies presumptions.

1.3.2 Certainty of Subject-Matter

Element	Rule	Consequence if Absent
Trust property	Must be currently owned by settlor; specifically identifiable (not "the bulk of my estate")	No trust created
Beneficial interests	Shares must be defined; silence = equal shares presumed if beneficiaries are certain	Property held on resulting trust for settlor

1.3.3 Certainty of Objects (Beneficiaries)

Trust Type	Test Required	What It Means
Fixed interest trust	COMPLETE LIST TEST	Possible to list every single beneficiary; requires conceptual certainty (objective class description) + evidential certainty (enough evidence to find everyone)
Discretionary trust	GIVEN POSTULANT TEST	Can it be said with certainty whether any

		given individual IS or IS NOT a member of the class? Must also avoid administrative unworkability and capriciousness.

Failure of certainty of objects = RESULTING TRUST back to settlor in both cases.

1.4 The Beneficiary Principle

A trust must generally be for the benefit of individual human beings who have standing to enforce it in court. Trusts for individuals automatically satisfy this.

1.5 Perpetuities

Beneficial interests must vest within the perpetuity period. For trusts created on or after 1 April 2010: the perpetuity period is 125 YEARS.

1.6 Formalities for the Declaration of Trust

Trust Type	Formality Required	Consequence of Non-Compliance
Will Trust	In writing; signed by testator; witnessed by two people (Wills Act 1837)	Invalid will trust
Lifetime trust over LAND	Must be "manifested and proved" by signed writing — s 53(1)(b) LPA 1925	Trust unenforceable (but not void)
Lifetime trust over OTHER property	Can be ORAL (though written form advised)	No adverse consequence; trust fully valid if oral

Chapter 1 — Summary

✔ Express trusts require a valid DECLARATION (this chapter) and CONSTITUTION (Chapter 2).

✔ Three certainties: intention; subject-matter (property + shares); objects (beneficiaries).

✔ Fixed interest trusts: complete list test. Discretionary trusts: given postulant test.

✔ Precatory words = gift, NOT trust. "Hope" or "wish" is insufficient for certainty of intention.

✔ Perpetuity period: 125 years for trusts created on or after 1 April 2010.

✔ Lifetime trust over land: declaration must be manifested and proved by signed writing (s 53(1)(b) LPA 1925).

✔ Failure of certainty of objects = resulting trust back to settlor.

CHAPTER 2

Express Trusts: Constitution of Trusts

Covers the second essential step: vesting legal title to the trust property in the trustees.

2.1 Introduction

Constitution is the actual transfer of trust property to the trustees. A trust is only valid once the property has vested in the trustee; until then the trust is not fully created. Beneficiaries are usually volunteers and cannot enforce an unconstituted trust.

2.2 Self-Constituting Trusts

A trust SELF-CONSTITUTES if the settlor appoints themselves as the SOLE TRUSTEE. No transfer needed — the settlor already holds legal title. Once they make a valid declaration, the trust is automatically constituted.

2.3 Transfer Rules by Property Type

Property Type	How to Transfer Legal Title	When Transfer Completes
Land	Execute a deed (Form TR1 for registered land) + send to Land Registry	When trustee is registered as new proprietor at Land Registry
Shares (CREST)	Electronic transfer via stockbroker	On electronic transfer
Shares (outside CREST)	Stock transfer form + share certificate to trustee/company	When company secretary enters trustee in register of members
Money (cash)	Physical delivery	On delivery
Money (bank)	Electronic transfer	When money arrives in trustee's bank account
Cheque	Deliver cheque	When cheque clears (not on delivery)
Chattels (paintings, jewellery)	Physical delivery OR deed	On delivery or execution of deed

2.4 Equity Will Not Assist a Volunteer

If a settlor fails to follow the correct transfer rules, the trust remains unconstituted and invalid. Beneficiaries are "volunteers" (they provide no consideration) so equity will not "perfect an imperfect gift" to force completion.

2.5 Exceptions — When Equity Will Assist

Exception	When It Applies	Effect
The "Every Effort" Test	Settlor did everything within their power to transfer; only a third party act remains (e.g. Land Registry registration, company secretary entry)	Property treated as beyond recall; trust constituted in equity
Rule in Strong v Bird	Settlor intended immediate trust; transfer failed for lack of	Trust constituted at settlor's death through executor appointment

	formality; intention continued unchanged until death; intended trustee becomes executor/administrator	
Rule in Choithram v Pagarani	Settlor is one of joint trustees; declares trust validly but dies before completing transfer to joint names	Trust valid in equity; unconscionable to allow settlor to resile after declaring it

Chapter 2 — Summary

✔ Self-constitution: settlor as sole trustee — declaration alone constitutes the trust automatically.

✔ Transfer rules vary by property type: land (deed + Land Registry); shares (stock transfer form + register entry); money (delivery/receipt); chattels (delivery or deed).

✔ Equity will NOT assist a volunteer — unconstituted trust cannot be enforced by beneficiaries.

✔ "Every effort" exception: settlor did everything possible; only a third-party act remains.

✔ Strong v Bird: unconstituted trust saved if intended trustee later becomes settlor’s executor/administrator.

CHAPTER 3

Beneficial Entitlement

Examines the different types of beneficial interest and the rule that allows beneficiaries to bring a trust to an early end.

3.1 Capital and Income

Concept	Meaning	Example
Capital	Underlying value of the trust property itself	Market value of a house or shares
Income	Regular monetary return derived from the capital	Rent, dividends, bank interest

3.2 Types of Beneficial Interest in Fixed Trusts

Interest Type	Description	What Happens on Death of Beneficiary
Vested	Unconditional — beneficiary is already entitled	Property passes to their personal estate (even if not yet physically transferred)
Contingent	Conditional on a future event (e.g. reaching age 25)	Interest FAILS and returns to settlor by resulting trust (unless substitution clause)
Successive / Life Interest	Life tenant receives income for life; remainderman receives capital after life tenant's death	Life tenant's interest ends; remainderman takes capital (if their own interest has vested)

3.3 Discretionary Trusts

In a discretionary trust, individuals are "objects" not beneficiaries until trustees exercise their discretion. Objects hold merely a "mere hope" — no proprietary right. Once trustees select an object to receive property, that person acquires a vested interest in that portion.

3.4 The Rule in Saunders v Vautier

This rule allows beneficiaries to override the settlor's timeline and bring a trust to an EARLY END by directing trustees to transfer property to them.

Type	Requirements	Effect
Bare Trust (sole beneficiary)	SOLE adult (18+) beneficiary with a vested interest + mental capacity	Can end trust at any time by demanding the property
Extended rule (group)	ALL beneficiaries: in existence; ascertained; aged 18+; mental capacity; all AGREE; collectively absolutely entitled to the WHOLE fund	Group can collectively end the trust

KEY: All potential interests must be accounted for — including any resulting trust in favour of the settlor. If ANYONE has a potential interest, the extended rule cannot be used.

Chapter 3 — Summary

✔ Capital = underlying value; income = regular monetary return (rent, dividends, interest).

✔ Vested interest: unconditional; passes to estate on death. Contingent: conditional; fails if condition not met.

✔ Successive interests: life tenant receives income; remainderman receives capital on life tenant's death.

✔ Discretionary trust objects hold a "mere hope" until trustees exercise discretion.

✔ Saunders v Vautier (bare trust): sole adult beneficiary with vested interest can demand property.

✔ Extended Saunders v Vautier: ALL beneficiaries must be 18+, in existence, agree, and be absolutely entitled to the WHOLE fund.

CHAPTER 4

Charitable and Non-Charitable Purpose Trusts

Explores trusts for purposes rather than individuals, covering the beneficiary principle, perpetuity rules, and the requirements for charitable status.

4.1 Purpose Trusts — The Problem

Purpose trusts direct trustees to advance a cause rather than distribute property to individuals. They face two challenges: (1) the beneficiary principle (no human to enforce the trust in court); and (2) the rule against perpetuities (capital locked away too long).

GENERAL RULE: Purpose trusts are VOID unless they fall into a valid exception.

4.2 Rules Against Perpetuities for Purpose Trusts

Trust Type	Perpetuity Rule	Period
Non-charitable purpose trust	Rule against inalienability of trust capital	Capital must be capable of being SPENT within 21 years OR capital must be capable of being spent in full in one go
Charitable trust	EXEMPT from this rule	No time limit — can be permanent

A trust to "maintain changing rooms" using only income is VOID — capital locked indefinitely to generate income.

A trust to "build changing rooms" is VALID — capital can be spent all at once, ending the trust.

4.3 Charitable Trusts — Requirements

Charitable trusts are exempt from the beneficiary principle and the rule against inalienability. Enforced by the Attorney General; regulated by the Charity Commission. Three requirements must ALL be met:

Requirement	Detail
1. Charitable purpose	Must fall under one of 13 categories in s 3(1) Charities Act 2011 — including: prevention of poverty; advancement of education; advancement of religion; advancement of arts, culture, heritage, science; community development; health; sport.
2. Public benefit	Must benefit the public or a sufficiently large section. Poverty trusts: more generous rules (can benefit "my relatives"). Education/religion: must not be limited by a personal nexus (e.g. employees of company X) or arbitrary class restriction. Fee-charging institutions must not exclude the poor.
3. Exclusively charitable	No political purposes (campaigning to change the law; supporting a political party). All profits ploughed back — no distribution to individuals.

4.4 Valid Non-Charitable Purpose Trusts

Type	Requirements	Notes
Re Denley trust	Purpose secures a TANGIBLE BENEFIT to an ASCERTAINABLE CLASS of people (who have standing to enforce it)	Must still comply with the 21-year perpetuity rule

Trusts of Imperfect Obligation	Trusts to: maintain specific animals; maintain graves/tombs	Valid but UNENFORCEABLE. Trustees may perform or not. If they refuse, residuary beneficiary claims the money. Limited to 21 years.

Chapter 4 — Summary

✔ Purpose trusts are generally VOID: no beneficiary to enforce; potential to lock up capital perpetually.

✔ Charitable trusts: exempt from beneficiary principle and inalienability rule; enforced by Attorney General.

✔ Three requirements for charity: (1) charitable purpose under CA 2011; (2) public benefit; (3) exclusively charitable.

✔ Political purposes (campaigning to change law) are NOT charitable.

✔ Re Denley trusts: valid purpose trusts where purpose benefits an ascertainable class who can enforce.

✔ Trusts of imperfect obligation (graves, animals): valid but unenforceable; limited to 21 years.

✔ Purpose trust perpetuity: capital must be spendable within 21 years OR spendable in full in one go.

CHAPTER 5

Resulting Trusts

Explores implied trusts created by operation of law when it is unclear who should own the beneficial interest.

5.1 Introduction

Resulting trusts arise when property is transferred but it remains unclear who should own the beneficial interest. They "plug an equitable vacuum" by returning the beneficial interest to the transferor or their estate.

5.2 Presumptions

Presumption	When It Arises	Effect
Resulting Trust	A transfers property to B for FREE (voluntary transfer of personalty); OR X pays for property put in Y's name	B/Y holds on resulting trust for A/X (transferor keeps beneficial interest)
Advancement (Gift)	Father to child; person in loco parentis to child; husband to wife; male fiancé to female fiancée (if they marry)	Transferee takes property outright — gift presumed, not trust

Voluntary transfer of LAND: s 60(3) LPA 1925 means resulting trust is NOT automatically presumed for land transfers. Additional evidence required.

Presumption of advancement does NOT apply in reverse (e.g. wife to husband is NOT a presumption of advancement).

Both presumptions are REBUTTABLE by evidence contemporaneous with or prior to the transfer.

5.3 Resulting Trusts from Incomplete Disposal of Beneficial Interest

When a settlor creates an express trust but the equitable interest does not fully vest in beneficiaries, the interest "results back" to the settlor. This happens when:

- A contingent interest fails (beneficiary dies before meeting the condition).
- Lack of certainty: failure of certainty of objects or subject-matter.
- Legal rules broken: breach of beneficiary principle or rules against perpetuity.

5.4 Formalities

Resulting trusts (and all implied trusts) require NO formalities. Under s 53(2) LPA 1925, implied trusts are valid even without any written document.

Chapter 5 — Summary

✔ Resulting trusts: implied by law; return beneficial interest to transferor when purpose or intention is unclear.

✔ Voluntary transfer of personalty: presumption of RESULTING TRUST (not a gift).

✔ Specific family relationships: presumption of ADVANCEMENT (gift) — father to child; husband to wife.

- ✔ Advancement does NOT apply in reverse (e.g. wife to husband).
- ✔ Both presumptions rebuttable by contemporaneous evidence of actual intention.
- ✔ s 53(2) LPA 1925: no formalities required for resulting (or other implied) trusts.

CHAPTER 6

Trusts of the Family Home

Explores the legal mechanisms for determining ownership interests in the family home, particularly for unmarried couples.

6.1 Introduction

Married couples rely on the Matrimonial Causes Act 1973 (wide judicial discretion). Unmarried cohabitees have NO statutory regime — they must rely on trust law. There is no "common law marriage." Equity determines their interests through: (1) express trusts; (2) resulting trusts; and (3) common intention constructive trusts (CICT).

6.2 Express Trusts of the Family Home

If a couple has a valid declaration of trust evidenced in signed writing (s 53(1)(b) LPA 1925), that document dictates the beneficial interests. In joint ownership, the TR1 form often creates an express trust. Rare where land is in sole name.

6.3 Resulting Trusts — Limitations for Family Homes

Resulting trust ONLY counts contributions to the purchase price (not later payments, bills, or fees).

Only counts contributions made contemporaneously with the purchase.

Ignores non-financial contributions: childcare, domestic labour, giving up a career.

Generally considered INADEQUATE and UNFAIR for the family home context.

6.4 Common Intention Constructive Trust (CICT)

6.4.1 Jointly Owned Home — Both Names on Title

Starting presumption: "equity follows the law" — both own equally (50:50). To claim a DIFFERENT share, a partner must prove a different common intention through an express agreement OR the "whole course of dealing" (childcare, financial arrangements, outgoings). Departure from 50:50 is VERY RARE.

6.4.2 Solely Owned Home — One Name on Title

No presumption of joint ownership. Claiming partner must satisfy a TWO-STAGE test:

Stage	What Must Be Proved
Stage 1: ESTABLISH the trust (Rosset)	Common intention for shared ownership + DETRIMENTAL RELIANCE by the claiming partner
Stage 2: QUANTIFY the shares	Follow any agreed shares; if none, court awards a "fair" share based on the WHOLE COURSE OF DEALING (financial AND non-financial factors)

Method to Establish Stage 1	How	Examples of Detriment
Method 1: Express common intention + detriment	Oral agreement + act to detriment in reliance	Financial contributions; substantial domestic changes in reliance on the promise
Method 2: Inferred common intention +	Inferred from DIRECT FINANCIAL CONTRIBUTIONS only (to purchase	Direct financial contributions to purchase price; significant mortgage

detriment	price or significant mortgage payments); no express agreement	payments

6.5 Proprietary Estoppel

Separate equitable mechanism preventing the legal owner from going back on a promise when it would be unconscionable to do so.

Element	What Is Required
1. Assurance	Active promise OR passive encouragement of an expectation of an interest in the land
2. Detriment	Substantial disadvantage: spending money on renovations; working for little pay; giving up a job; detriment weighed against any benefits (e.g. living rent-free)
3. Reliance	Causal link: the assurance led the claimant to act to their detriment
4. Remedy (discretionary)	Court awards "fair and proportionate" remedy: from full legal title to financial compensation only. Wider than CICT.

CICT: guarantees a beneficial SHARE. Proprietary estoppel: court has WIDE DISCRETION over remedy — may be less than a beneficial share.

Chapter 6 — Summary

✔ Married couples: Matrimonial Causes Act 1973. Unmarried couples: trust law ONLY ("common law marriage" is a myth).

✔ Express trust: signed writing required under s 53(1)(b) LPA 1925; most reliable evidence of interests.

✔ Resulting trust: inadequate for family homes — only counts purchase-price contributions; ignores non-financial contributions.

✔ CICT — jointly owned: equity follows law = 50:50 presumption; very difficult to depart from this.

✔ CICT — solely owned Stage 1: Rosset test — common intention (express or inferred from direct financial contributions) + detrimental reliance.

✔ CICT — solely owned Stage 2: quantification by "whole course of dealing" including non-financial factors.

✔ Proprietary estoppel: assurance + detriment + reliance; remedy is discretionary (may be less than a share).

CHAPTER 7

Trustees: Appointment, Removal and Retirement

Outlines the legal framework for managing the identity of trustees throughout the duration of a trust.

7.1 Who Can Be a Trustee

- Most adults with mental capacity — individuals or companies (if authorised by constitutional documents).
- "Trust corporations": specific corporate entities performing trustee duties for profit.
- MINORS cannot be trustees.

7.2 Number of Trustees

Trust Type	Minimum	Maximum	Key Rule
Trusts over LAND	2 human trustees OR 1 trust corporation	4 trustees	At least 2 required for "overreaching" on sale
Trusts of PERSONALTY	1 sole trustee	No statutory maximum (but >4 is impractical)	Single trustee possible
Best practice	2 trustees	4 trustees	Ensures supervision and continuity

7.3 Retirement of Trustees

Statutory Route	Conditions	Form Required
s 36(1) TA 1925	Retirement only if REPLACEMENT is appointed; appointed by person nominated in trust deed or continuing trustees	Must be in writing; DEED recommended (automatically vests property in new trustees under s 40 TA 1925)
s 39 TA 1925	Retirement WITHOUT replacement; at least 2 human trustees or 1 trust corporation must remain after retirement	Must be by DEED; retiring trustee and remaining trustees must all consent

Retiring trustee remains liable for their OWN PAST breaches. Not liable for future breaches UNLESS they retired specifically to facilitate those breaches.

7.4 Removal and Replacement of Trustees

Power	Who Uses It	Grounds/Conditions
s 36(1) TA 1925	Person nominated in deed or continuing trustees	Trustee is: dead; outside UK for 12+ months; refuses to act; unfit or incapable; a minor
s 41 TA 1925	COURT	Where it is "expedient" and otherwise difficult/impractical
s 19 TLATA 1996	BENEFICIARIES (collectively)	All beneficiaries are: 18+; have capacity; absolutely entitled. Power cannot be excluded by the trust instrument and no one else nominated to appoint.

7.5 Appointment of Additional Trustees

Power	Who Uses It	Conditions
s 36(6) TA 1925	Person nominated or continuing trustees	Total number cannot exceed 4
s 41 TA 1925	Court	If expedient
s 19 TLATA 1996	Beneficiaries (all 18+, capacity, absolutely entitled)	Same conditions as for removal

7.6 Death of a Trustee

Trustees hold legal title as JOINT TENANTS. Under s 18 TA 1925, if one trustee dies, legal title automatically devolves to the surviving trustees. Sole surviving trustee should appoint a replacement to maintain administrative continuity.

7.7 Appointment of an Attorney

s 25 TA 1925: A temporarily unavailable trustee can delegate functions to an attorney for up to 12 MONTHS.

Delegation must be by DEED; written notice given to co-trustees within 7 days.

CRITICAL: Delegating trustee remains AUTOMATICALLY LIABLE for the acts and defaults of their attorney.

Chapter 7 — Summary

✔ Trusts over land: minimum 2 human trustees (or 1 trust corporation); maximum 4. Best practice: 2–4 at all times.

✔ s 36(1) retirement with replacement: must be in writing; DEED is recommended (vests property under s 40).

✔ s 39 retirement without replacement: must be by deed; at least 2 human trustees or 1 trust corporation must remain.

✔ s 36(1) removal: trustee dead; absent 12+ months; refuses to act; unfit; incapable; minor.

✔ s 19 TLATA 1996: beneficiaries can direct appointment/removal if all 18+, have capacity, absolutely entitled.

✔ s 25 attorney delegation: up to 12 months; by deed; delegating trustee remains fully liable for attorney’s defaults.

CHAPTER 8

Trustee Powers: Maintenance and Advancement

Examines the statutory powers allowing trustees to provide beneficiaries with income or capital before they are strictly entitled to receive it.

8.1 Introduction

Trustees may need flexibility to respond to beneficiaries' changing circumstances. The Trustee Act (TA) 1925 provides default statutory powers of maintenance (income) and advancement (capital). These are POWERS, not duties — trustees cannot be compelled to exercise them.

8.2 Power of Maintenance — s 31 TA 1925

Trustees may use trust INCOME for the maintenance, education, or benefit of a beneficiary who is under 18.

Rule	Detail
Conditions for the power	No contrary provision in the trust deed; no prior interests in the income (e.g. a life tenant currently entitled to all income)
Payment method	Must NOT be paid directly to a minor (they cannot provide "good receipt"). Pay to parent, guardian, or directly to provider (e.g. school).
Unused income	Must be ACCUMULATED (invested) for the beneficiary's future benefit.
Nature	POWER, not a duty — trustees cannot be compelled to pay; parents cannot force release of funds.

8.3 Duty to Pay Income to Adult Contingent Beneficiaries — s 31 TA 1925

Once a contingent beneficiary TURNS 18: trustees' discretion to "apply" income ENDS.

Replaced by a MANDATORY DUTY to pay trust income as it arises until the interest vests.

If beneficiary dies before the contingency is met: their estate KEEPS income already paid; no further capital or accumulated income.

8.4 Power of Advancement — s 32 TA 1925

Trustees may advance CAPITAL to a beneficiary before they are strictly entitled to it.

Condition	Detail
Purpose	Must be for the beneficiary's "advancement or benefit" — broadly includes anything that improves their material situation. Generally EXCLUDES pleasure, leisure, or hobbies (e.g. a jet ski).
Statutory limit (trusts after 1 Oct 2014)	Up to the FULL VALUE of the beneficiary's presumptive share.
Statutory limit (trusts on/before 1 Oct 2014)	Up to HALF the beneficiary's presumptive share.
Prior interests	If someone has a prior interest (e.g. a life tenant), WRITTEN CONSENT from that person is required before advancing capital.
Hotchpot rules	Any early advancement is deducted from the beneficiary's final share when the trust ends.

Nature	POWER, not a duty — beneficiaries cannot compel trustees to advance capital.

Chapter 8 — Summary

✔ Maintenance (s 31): income for under-18s; discretionary; payment to parent/guardian (not directly to minor); unused income accumulated.

✔ At 18 (adult contingent beneficiary): MANDATORY duty to pay income as it arises replaces the discretionary maintenance power.

✔ Advancement (s 32): capital paid early for "advancement or benefit"; NOT for pleasure/leisure/hobbies.

✔ Post-1 Oct 2014 trusts: up to 100% of presumptive share. Pre-1 Oct 2014 trusts: up to 50%.

✔ Prior interest holder (e.g. life tenant): written consent required before advancing capital to remainderman.

✔ Both maintenance and advancement are POWERS not duties — trustees cannot be compelled to exercise them.

CHAPTER 9

Trustees’ Duties When Running a Trust

Details the legal obligations and standards of conduct required of trustees as they manage trust property on behalf of beneficiaries.

9.1 Duties vs Powers

Concept	Definition	Can Beneficiaries Compel It?
Duty	Mandatory action (e.g. distribute property to specific beneficiaries at a set time)	YES — court order available
Power	Discretionary (e.g. early maintenance or advancement)	NO — but trustees must CONSIDER exercising powers periodically

9.2 The Duty of Care

Standard trustee: must act as an "ordinary prudent man of business" managing their own similar affairs (Speight v Gaunt). Objective standard.

Paid professional trustee (solicitor, accountant, etc.): held to a HIGHER standard of care and skill expected of experts in their field.

9.3 Duties on Appointment

On appointment, a new trustee MUST:

- Verify they were PROPERLY APPOINTED.
- Ascertain and obtain control of ALL TRUST PROPERTY; ensure legal title is vested in their name.
- Review the trust document and all associated paperwork; FAMILIARISE themselves with the trust’s operations.
- ENQUIRE INTO PAST BUSINESS to check for previous breaches; take action to remedy any such breaches.
- Draw up a proper INVENTORY if the trust includes chattels.

9.4 Key Ongoing Duties

Duty	Key Rules
Duty to act fairly between beneficiaries	Must not prefer one beneficiary at the expense of another; does not require equal treatment or consultation with all.
Duty to act unanimously	Decisions must be UNANIMOUS unless trust deed says otherwise. Co-trustees cannot outvote each other.
Duty to act personally	Cannot be passive; must SUPERVISE co-trustees; cannot leave management to another. Passive trustee may be liable for co-trustee’s breach.
Duty to exercise discretions properly	Must act in good faith and rationally; for the specific purpose the power was created; only regard RELEVANT material facts (cannot distribute based on irrational factors like hair colour).

9.5 Reasons and Disclosure

Issue	Position
Giving reasons for decisions	Trustees are generally NOT required to give reasons. But if they do give reasons, the court can review their soundness.
Legitimate expectations	If trustees have habitually made a specific payment for years, they may need to give advance warning before discontinuing.
Beneficiaries' right to information	CAN see: trust deed/will; trust accounts; schedules of investments. CANNOT see: trustees' deliberations (meeting minutes, diaries); settlor's letter of wishes (unless court orders disclosure for sound administration of the trust).

Chapter 9 — Summary

✔ Duty of care: ordinary prudent business person standard. Professionals held to a higher standard.

✔ On appointment: verify appointment; obtain trust property; review trust deed; enquire into past breaches.

✔ Decisions must be UNANIMOUS; trustees must act PERSONALLY (cannot be passive).

✔ Exercise discretions properly: good faith; rational; relevant factors only; correct purpose.

✔ No general duty to give reasons for decisions; beneficiaries cannot see trustees' deliberation documents.

✔ Beneficiaries CAN see: trust deed, accounts, investment schedules. CANNOT see: meeting minutes, letter of wishes.

CHAPTER 10

Trustee Duties: Investment

Explores the legal framework and practical considerations for trustees when managing and investing trust property.

10.1 Introduction and Objectives

Trustees are under a general duty to invest all trust capital and income not currently being distributed. Goals: combat inflation (preserve purchasing power); generate additional income. Trustees not liable for poor performance if they followed the correct LEGAL PROCESS.

Investment Objective	Consider
Nature of beneficial interests	Balance income needs (life tenant) against capital growth needs (remainderman)
Timescale	Long-term: can accept more risk for higher returns. Short-term: "de-risk" to keep funds safe.
Size of fund	Larger funds: diversify across different investment types.
Tax consequences	Consider CGT, income tax implications of different investment choices.

10.2 Authorised Investments — Trustee Act 2000

Power	What It Allows	Restrictions
s 3 TA 2000: General power	Any investment the trustees could make if they owned the assets absolutely	NO arbitrary restriction on investment types
s 8 TA 2000: Land	Purchase freehold or leasehold land in the UK for investment or beneficiary occupation	Cannot purchase land ABROAD unless trust deed expressly permits

Non-investments: depreciating assets (run-around cars); gambling; generally unsecured loans.

10.3 Statutory Duties When Investing

Duty	Source	Detail
Standard investment criteria	s 4 TA 2000	Must consider SUITABILITY (appropriate for this trust?) and DIVERSIFICATION (spreading risk across sectors/types)
Obtain advice	s 5 TA 2000	Must obtain and consider proper EXPERT ADVICE before purchasing or reviewing investments. Exception: if a trustee is a qualified financial adviser and can reasonably conclude advice is unnecessary.
Duty of care	s 1 TA 2000	Reasonable care and skill; PROFESSIONALS held to a higher objective standard.
Act fairly between beneficiaries	Non-statutory	Balance income and capital needs; cannot favour one beneficiary at expense of another.

Best financial return	Non-statutory	Must prioritise FINANCIAL RETURN over personal ethical views. Ethical considerations only permitted if: returns comparable; charitable trust; OR trust deed specifically excludes certain sectors.

10.4 Delegation of Investment Duties

Trustees may collectively delegate asset management functions to a suitably qualified agent. To avoid personal liability for agent's failure, trustees must:

- Appoint the agent in WRITING.
- Provide a written POLICY STATEMENT setting out the trust's investment objectives.
- Ensure the agent AGREES to comply with that policy.
- Select a SUITABLY QUALIFIED agent.
- REGULARLY REVIEW the agent's performance.

> Under s 23 TA 2000: trustees are NOT liable for agent's defaults if they complied with ALL personal duties of appointment and supervision.

Chapter 10 — Summary

✔ General power of investment under s 3 TA 2000: any investment they could make personally. Exception: no overseas land (s 8).

✔ s 4 TA 2000: standard investment criteria = SUITABILITY + DIVERSIFICATION.

✔ s 5 TA 2000: must obtain expert investment advice (unless a trustee is a qualified adviser).

✔ Must prioritise financial return; ethical preferences only allowed in limited circumstances.

✔ Delegation: appointment in writing; written policy statement; suitably qualified agent; regular review.

✔ s 23 TA 2000: if trustees comply with delegation duties, they are NOT liable for the agent's defaults.

CHAPTER 11

Fiduciary Duties

Explains the strict obligations of loyalty that prevent trustees and other fiduciaries from exploiting their position for personal gain.

11.1 Who Is a Fiduciary?

A fiduciary is someone who has undertaken to act on behalf of another in a relationship of trust and confidence. Includes:

- Trustees
- Company directors (to their company)
- Business partners (to each other)
- Agents (to their principal)
- Solicitors (to their clients)
- Senior employees with access to confidential information

11.2 The Core Fiduciary Duty

A fiduciary must be SINGLE-MINDEDLY LOYAL to their principal.

Must NOT put their personal interests in conflict with their duty to the trust.

Must NOT make an unauthorised profit, even if they acted honestly and the trust suffered no loss.

LIABILITY IS STRICT: if an unauthorised profit was made, it must be paid to the trust regardless of good faith.

11.3 When a Trustee CAN Make a Personal Profit

Only if authorised by:

- **Trust deed:** Express authorisation in the declaration of trust.
- **Beneficiaries:** Fully informed consent of ALL beneficiaries who are 18+ and have capacity.
- **Court or statute:** Court order or statutory provision (e.g. TA 2000 for professional remuneration).

11.4 Key Breaches of Fiduciary Duty

Breach	Description	Effect
Self-dealing	Trustee buys property from the trust or sells their own property to the trust	Transaction voidable by beneficiaries within reasonable time — regardless of fair price or good faith. Retiring specifically to buy does NOT avoid this rule.
Competition with trust	Trustee sets up a competing business	Must account for ALL profits made from the competing enterprise
Remuneration without authority	Trustees generally cannot charge for services unless authorised	Trust corporation or professional trustee may charge if: charging clause in deed; beneficial consent; or TA 2000 authority (professional, >1 trustee, written agreement)
Commission from third parties	Trustee receives commission for placing trust business with a	Commission must be PAID INTO the trust fund

	third party	
Director's salary from trust shares	Trustee uses trust shares to vote themselves into a directorship	Salary must be surrendered to the trust UNLESS: would have been appointed regardless of trust shares; OR was a director before becoming a trustee
Exploiting information or opportunity	Trustee profits from opportunity or information obtained through trusteeship	Must account for profits even if acted honestly (Boardman v Phipps)

11.5 Remedies for Breach of Fiduciary Duty

Remedy	Nature	Advantage
Account of profits (personal claim)	Trustee pays the VALUE of unauthorised profit from personal funds	No need to prove the trust actually suffered a loss
Proprietary claim	Recover the SPECIFIC PROPERTY (or its replacement) held by trustee	Valuable if the asset has increased in value since the breach

Chapter 11 — Summary

✔ Fiduciary relationships: trustee; company director; business partner; agent; solicitor; senior employee.

✔ Core duty: single-minded loyalty; no unauthorised profit; no conflict of interest. Liability is STRICT.

✔ Authorisation defence: trust deed; fully informed consent of all adult beneficiaries; court or statute.

✔ Self-dealing: voidable by beneficiaries regardless of fair price or good faith. Retiring to buy does not avoid it.

✔ Commission from third parties: must be paid into the trust fund.

✔ Director's salary: must be surrendered unless appointed regardless of trust shares or was director first.

✔ Remedies: account of profits (personal) OR proprietary claim to recover the specific asset.

CHAPTER 12

Remedies Against Trustees: Personal Claims

Details the legal actions beneficiaries can take to seek monetary compensation from trustees who have committed a breach of trust.

12.1 Personal vs Proprietary Claims

Type	Nature	Key Advantage	Key Risk
Personal claim (Ch 12)	Monetary compensation from trustee's personal funds	Simple; no need to identify specific property	Worthless if trustee is insolvent
Proprietary claim (Ch 13)	Recovery of specific trust property or its substitute	Survives trustee's insolvency; captures increase in value	Fails if property has been dissipated

12.2 What Constitutes a Breach of Trust?

Any breach of duty in running the trust — including: failing to follow investment duties; misapplying trust funds; signing blank cheques that allow a co-trustee to misappropriate funds (passive negligence).

12.3 Liability — Joint and Several

Trustees are NOT vicariously liable for each other's defaults — a trustee must personally be in breach.

BUT if multiple trustees are in breach: liability is JOINT AND SEVERAL.

Beneficiary can sue ALL of them, or choose just ONE to pay the FULL loss (typically the wealthiest or insured professional).

Causation: "but for" test — the loss would not have occurred but for the trustee's breach.

12.4 Value of the Claim

If successful: total loss to the trust fund + INTEREST from the date of the breach (court has discretion over interest rate).

12.5 Defences

Defence	When Available	Limitations
Exemption clause in trust deed	Settlor included a clause exempting trustees from liability	VOID for fraudulent breaches; can exempt negligent or innocent breaches only
Beneficiary knowledge and consent	All adult beneficiaries with capacity gave FULLY INFORMED and FREE consent to the breach	Must be ALL beneficiaries; must be fully informed; must be genuinely free
s 61 TA 1925	Trustee acted HONESTLY and REASONABLY and ought fairly to be excused	Court discretion; professionals less likely to be excused than lay trustees
Limitation Act 1980	Personal claims generally barred after 6 YEARS from date	Clock starts for minors at 18; for remaindermen when interest falls into

	of breach	possession. FRAUDULENT breach: NO limitation period.
Laches (equitable doctrine)	Claimant's unreasonable delay causes prejudice to the trustee	Courts apply this in equity where statutory limitation is unavailable

12.6 Indemnity and Contribution Between Co-Trustees

Mechanism	When Available	Effect
Equitable indemnity (100%)	Co-trustee acted FRAUDULENTLY; was a PROFESSIONAL whose advice was blindly followed; BENEFITED PERSONALLY from the breach	Paying trustee recovers the FULL AMOUNT from that co-trustee
Contribution (Civil Liability (Contribution) Act 1978)	Co-trustee was also in breach	Court orders co-trustee to pay a "just and equitable" share based on BLAMEWORTHINESS

Chapter 12 — Summary

✔ Personal claim: monetary compensation from trustee's personal funds; worthless if trustee insolvent.

✔ Breach of trust: any breach of duty in running the trust; includes passive negligence (signing blank cheques).

✔ Trustees not vicariously liable; but multiple breaching trustees are JOINT AND SEVERALLY liable.

✔ "But for" test of causation: loss would not have occurred but for the breach.

✔ Defences: exemption clause (not for fraud); beneficiary consent (informed, free, all adults); s 61 (honest + reasonable); limitation (6 years; no limit for fraud).

✔ Indemnity: 100% recovery from fraudulent/professional/personally benefiting co-trustee.

✔ Contribution: "just and equitable" share based on blameworthiness (1978 Act).

CHAPTER 13

Remedies Against Trustees: Proprietary Claims

Explains how beneficiaries can recover specific trust property or its substitutes through proprietary claims and equitable tracing rules.

13.1 Why Proprietary Claims?

Advantage Over Personal Claims	Detail
Insolvency protection	Trust property does NOT form part of trustee's personal estate — beneficiaries recover in priority to creditors
Appreciation in value	Proprietary claim captures any INCREASE in value of an asset purchased with trust money
No limitation period	Proprietary claims have NO statutory limitation period (unlike 6-year personal claims)
Limitation	FAILS if property has been DISSIPATED (spent on holidays, unsecured debts) — nothing physical to trace into

13.2 Tracing Rules

13.2.1 Clean Substitution (Trust Funds Exchanged for an Asset)

If trust money is used to buy a new asset in the trustee's name, beneficiaries choose:

- Take the SUBSTITUTE PROPERTY — best if it increased in value.
- Sue for the original loss and take an EQUITABLE LIEN over the property — best if it decreased in value.

13.2.2 Trustee Mixes Trust Funds with THEIR OWN Money

Scenario	Rule Applied	Effect
Mixed ASSET (trust + trustee funds)	Beneficiaries choose: proportionate share OR equitable lien	Proportionate share = good if asset increased in value. Lien = good if asset decreased.
Mixed BANK ACCOUNT — Re Hallett	Trustee presumed to spend their OWN money first	Best if money is still in the account or used for an asset
Mixed BANK ACCOUNT — Re Oatway	Beneficiary has FIRST CHARGE on fund and any assets bought from it	Used when Re Hallett would leave trust money to be the spent money; protects trust funds
Lowest Intermediate Balance (Roscoe v Winder)	Proprietary claim limited to the LOWEST BALANCE the account reached between misappropriation and the claim	Subsequent unrelated deposits do NOT replenish the trust funds

13.2.3 Trustee Mixes Funds from TWO INNOCENT TRUSTS

Scenario	Rule Applied	Effect
Mixed ASSET (Trust A + Trust B)	Both trusts share PARI PASSU (rateably) in proportion to contributions	Fair split regardless of whether asset increased or decreased in value

Mixed BANK ACCOUNT — general rule	CLAYTON'S CASE (FIFO): First In, First Out	First trust money in is first money out on each withdrawal
Mixed BANK ACCOUNT — if FIFO causes injustice	BARLOW CLOWES v VAUGHAN: rateable distribution	Courts depart from FIFO if it causes injustice or contradicts parties' intentions
Three-way mix (Trust A + Trust B + Trustee)	Use Re Hallett/Oatway to exhaust TRUSTEE'S funds first, then Clayton's/Barlow Clowes to divide between innocent trusts	Innocent trusts protected; trustee's own money used first

Chapter 13 — Summary

✔ Proprietary claim: recover specific property or its substitute. Survives insolvency. Captures appreciation. No limitation period.

✔ FAILS if property dissipated (spent on holidays, unsecured debts).

✔ Clean substitution: take substitute OR equitable lien depending on whether value has risen or fallen.

✔ Trust mixed with TRUSTEE funds: Re Hallett (trustee spends own money first); Re Oatway (trust has first charge if Hallett inadequate); Roscoe v Winder (lowest intermediate balance limits claim).

✔ Two innocent trusts mixed: pari passu for assets; Clayton's Case (FIFO) for bank account; Barlow Clowes if FIFO unjust.

✔ Three-way mix: exhaust trustee's money first (Hallett/Oatway), then pari passu/Clayton's between innocent trusts.

CHAPTER 14

Remedies Against Third Parties

Explains the equitable claims beneficiaries can bring against strangers to the trust who become involved in a breach of trust or fiduciary duty.

14.1 Introduction

When trustee claims are inadequate (insolvency; dissipation), beneficiaries may pursue third parties who are "strangers to the trust." Two main routes: recipient liability (received trust property) or accessory liability (assisted in breach).

14.2 Overview of Claims Against Third Parties

Claim	Nature	Against Whom?	Key Element
Intermeddling	Personal liability	Person who acts as trustee without appointment (trustee de son tort)	Treated as if an expressly appointed trustee
Knowing Receipt	PERSONAL claim	Recipient of trust property for their own benefit	Knowledge making retention UNCONSCIONABLE
Equitable Proprietary Claim	PROPRIETARY claim	Recipient still holding property or its traceable substitute	Depends on recipient's status (wrongdoing vs innocent)
Dishonest Assistance	PERSONAL claim	Person who assisted in the breach (did not receive property)	Objective DISHONESTY

14.3 Intermeddling — Trustee de Son Tort

A person who acts as a trustee WITHOUT being legally appointed (e.g. an agent who continues collecting trust rents after their mandate ends) is a trustee de son tort. They are personally liable for all trust losses as if expressly appointed.

14.4 Knowing Receipt (Equitable Personal Recipient Liability)

Liability attaches where the recipient's KNOWLEDGE makes retention UNCONSCIONABLE.

Unconscionability includes: ACTUAL KNOWLEDGE that property belongs to a trust; WILFULLY SHUTTING ONE'S EYES to the obvious; FAILING TO ASK QUESTIONS to deliberately avoid learning the truth.

Claim FAILS if: the third party disposed of the property BEFORE acquiring the requisite knowledge.

This is a FAULT-BASED personal claim — based on the recipient's state of knowledge.

14.5 Equitable Proprietary Claims Against Third Parties

Recipient Type	Tracing Rules Applied
Bona fide purchaser for	NO proprietary claim — complete defence

value without notice ("equity's darling")	
Wrongdoing recipient (intermeddling / knowing receipt)	HARSH rules: same as wrongdoing trustee (clean substitution; mixed asset — proportionate share or lien; Re Hallett / Re Oatway for bank accounts)
Innocent volunteer (gift recipient with no knowledge)	KINDER rules: Clayton's Case (FIFO) or Barlow Clowes for bank accounts; Re Diplock defence: if innocent volunteer used trust money to improve their own land, court will NOT force a sale

14.6 Dishonest Assistance (Equitable Personal Accessory Liability)

Personal claim for the TOTAL LOSS caused by a third party who ASSISTED in a breach of trust.

Key element: the third party must have acted DISHONESTLY.

Test for dishonesty: primarily OBJECTIVE. Would an ordinary honest person (with the same experience and intelligence as the defendant) have acted differently knowing what the defendant knew?

Common defendants: solicitors and accountants (who often have insurance sufficient to meet the judgment).

14.7 Choosing the Right Claim

Scenario	Best Claim
Third party received property and still has it (or a substitute); is SOLVENT	Proprietary claim to recover the specific asset / substitute
Third party received property and DISSIPATED it; is solvent	Knowing receipt (personal claim for value received)
Third party ASSISTED the breach but received no property; is solvent	Dishonest assistance (personal claim for total loss caused)
Third party received property; is INSOLVENT	Proprietary claim — trust property does not form part of bankrupt estate
Third party is acting as trustee without appointment	Intermeddling (held liable as if an expressly appointed trustee)

Chapter 14 — Summary

✔ Trustee de son tort: acts as trustee without appointment; liable as if expressly appointed.

✔ Knowing receipt: personal claim; fault-based; knowledge making retention unconscionable; fails if property disposed of before knowledge acquired.

✔ Dishonest assistance: personal claim; total loss; objective dishonesty test; professionals (solicitors/accountants) common defendants.

✔ Proprietary claims: bona fide purchaser for value without notice = complete defence.

✔ Wrongdoing recipient: harsh tracing rules (same as wrongdoing trustee).

✔ Innocent volunteer: kinder rules (Clayton's Case / Barlow Clowes; Re Diplock defence for land improvements).

QUICK REFERENCE — KEY RULES AND THRESHOLDS

Rule / Provision	Threshold / Detail	Notes
Perpetuity period (trusts after 1 Apr 2010)	125 years	Beneficial interests must vest within this period
Non-charitable purpose trust perpetuity	21 years OR capital spent in one go	Rule against inalienability of trust capital
Number of trustees (land)	Minimum 2 (or 1 trust corporation); Maximum 4	Overreaching requires at least 2 on sale
Number of trustees (personalty)	Minimum 1; no statutory maximum	More than 4 is impractical
Attorney delegation (s 25 TA 1925)	Up to 12 months	Delegating trustee remains FULLY liable for attorney's defaults
Maintenance (s 31 TA 1925)	Under 18: discretionary power. 18+: mandatory duty to pay income.	Cannot pay directly to minors; pay to parent/guardian
Advancement limit (post-1 Oct 2014)	Up to 100% of presumptive share	s 32 TA 1925; prior interest holder must give written consent
Advancement limit (pre-1 Oct 2014)	Up to 50% of presumptive share	s 32 TA 1925 original limit
Standard investment criteria (s 4 TA 2000)	Suitability + Diversification	Must obtain expert advice under s 5 TA 2000
Investment power (s 3 TA 2000)	General power — any investment personally possible	No overseas land (s 8); non-investments excluded
Trustee duty of care (lay)	Ordinary prudent business person standard	Objective standard — Speight v Gaunt
Trustee duty of care (professional)	Higher objective standard of expert in their field	Solicitors, accountants held to higher standard
Limitation — personal claims	6 years from date of breach	Start: age 18 for minors; interest falls in for remaindermen; NO limit for fraud
Equitable indemnity (100%)	Co-trustee: fraudulent; professional advice blindly followed; personally benefited	Full recovery from that co-trustee
s 61 TA 1925 defence	Honest + reasonable + ought fairly to be excused	Less likely for professionals; court discretion
Saunders v Vautier (bare trust)	Sole adult (18+) beneficiary with vested interest + capacity	Can end trust at any time
Extended Saunders v Vautier (group)	ALL beneficiaries: 18+; in existence; agree;	No exception for possible future interests

	absolutely entitled to WHOLE fund	
Presumption of resulting trust	Voluntary transfer of personalty; purchase money cases	Not automatically presumed for land (s 60(3) LPA 1925)
Presumption of advancement	Father to child; husband to wife; in loco parentis to child	Does NOT apply in reverse (wife to husband)
s 53(1)(b) LPA 1925	Lifetime trust over land must be manifested and proved in signed writing	Trust unenforceable (not void); implied trusts exempt (s 53(2))
Re Hallett	Trustee presumed to spend OWN money first from mixed account	Best for tracing trust money into account balance or assets
Re Oatway	Beneficiary has first charge on mixed fund and assets bought	Used when Hallett fails to protect trust money
Roscoe v Winder	Claim limited to lowest intermediate balance	Later unrelated deposits do NOT replenish trust funds
Clayton's Case	FIFO: First In, First Out	Applied to two innocent trusts mixed in a bank account
Barlow Clowes v Vaughan	Rateable distribution — departs from FIFO if unjust	Applied where FIFO causes injustice or contradicts intention