TRUSTS			
Definition:	*'A trust is an **obligation** enforceable in a **Court of Equity,** resting on a person, **the trustee, to deal with property** for the benefit of:* *a) Another person, **the beneficiary,** or* *b) For **legally-approved purposes**'*		
	Settlor	Creator of the trust **NOT ALLOWED TO BE A B**	
	Trustee	Legal title to trust property	
	Beneficiary	Beneficial/equitable title to trust property	
	Trust Property	Must have a proprietary interest	
	S → T (on trust) → B The Trust is not a legal person, but the Trustee is a legal person and may be a human or a company. Can't be the sole Trustee AND the sole Beneficiary, as you can't owe an equitable obligation to yourself. Trust collapses on itself.		
	Types	1) Express 2) Implied (Resulting) 3) Implied (Constructive)	
	Proprietary Theory:	This theory is not good at explaining the T and B relationship, but is good at explaining the 3rd P. relationship to the trust.	
	Obligation Theory:	This is similar to the contract relationship, where the trustee owes duties to the beneficiary. This is a trust. All the effects of the trust are based on duties. However, in this circumstance, if the trustee ('T') were to go bankrupt, a third part and the beneficiary ('B') would have the same claim to the trust.	
EXPRESS TRUSTS			
Types	Unilateral	1) Testamentary (wills) 2) Inter-vivos (created during the Settlors lifetime) a) S declare S holds TP for Bs 3) Transfer: S transfers TP to another to act as T on behalf of Bs	
	Bilateral	Agreement between 2 parties. Mutual intention is critical. i.e. *Quistclose*	
Wills	Players	• Testator/Testatrix = settlor • Trustee • Beneficiary	
	Partially invalid?	= Partial intestacy → if there is a residual clause/residual beneficiary then the contents of the invalid part of the will, will be allocated there.	
	Dying Intestate?	= Dying without a will. There is a statutory formula which contends how the estate is distributed.	
Functions	Unit Trust	Public or private (public is more common) Fraction of beneficial interest offered as subscriptions to be traded	
	Trading Trust	Businesses run for the benefit of the beneficiaries Also charitable purposes, but must be for public benefit	

		• Solicitors trust accounts
		• Superannuation
		• Protective Trusts
		  o s 39 Trustee Act 1958 (Vic) → stops creditors getting funds and protects beneficiaries
		  o Essentially renders beneficial interests unavailable
		• Security device (*Quistclose)*
		  o *Secured creditors have priority*
		• Preservation of family wealth & minimise tax paid (*Armitage v Nurse; Reader v Fried)*	

Categories	1) Fixed Trusts	• Interest of Beneficiary is <u>fixed</u>.
		  o i.e. fixed rate (1/3 proportion) or specific amount ($20K to A, $40K to B)
		• Trustee <u>must</u> give B specific property.
		• Settlor announces to Trustee <u>who</u> must distribute.
		• Trustee has NO discretion
		• Beneficiaries have **equitable proprietary interest in TP**
		  o *i.e. B's can deal w/ TP before actually given it.*	

	2) Trust Power/Discretionary Trusts	• Distribution <u>must</u> be made, but Trustee has discretion *as to how* to distribute. • At point of declaration of Trust, discretionary beneficiaries only have a **mere expectancy**. They DON'T have a vested property right in TP. o **Only discretionary trusts can *potentially* be protected from creditors.	
	3) Mere/Bare Power	• Trustee has **dual powers**. • Trustee has discretion (1) *how* to distribute and (2) *whether* to distribute at all. • Trustee empowered to distribute, but <u>doesn't have to.</u> • Whatever is *not* distributed tends to go to 'taker in default'. • Only have **mere expectancy** in TP. No vested property rights.	
	• *The determination of the category of express trust is a process of interpretation → Court to look at meaning and construction of language.* • All beneficiaries have a claim to the Court for due administration (ensuring Trustee is exercising duties properly).		
Exclusion of Trustee Liability	Trustee's must act honestly and in good faith. To have a trust there is an irreducible core to the trustees' obligations to the B. *'it is the duty of a trustee to manage the TP and deal with it in the interests of the B's. If he acts in a way which he does not honestly think is in their interests then he is acting dishonestly.'*		*Armitage v Nurse (UK)*
	• *Armitage* has been read down in *Reader*, 'not liable unless dishonesty'. Court construed exemption of liability clause v narrowly, to limit excludable behaviour/conduct. Dishonest is different to fraud. Can't escape duties by leaving it to others (even lawyers) = reckless = dishonesty • Standard? Not fully tested, but perhaps wilful/actual		Reader v Fried VSC (2001)
	Power to relieve trustee from personal liability If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be ***personally liable*** for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted ***honestly*** and ***reasonably***, and ***ought fairly to be excused*** for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, ***then the Court may relieve him either wholly or partly from***		**TRUSTEE ACT 1958 (Vic) - s 67**