

MLL405 EXAM NOTES

Contents

TOPIC 1: ORIGIN AND NATURE OF EQUITY	8
WHAT IS EQUITY	8
JURISDICTION.....	10
JUDICATURE ACT 1873.....	12
FUSION FALLACY	12
LEGITIMATE FUSION	13
TOPIC 2: UNDUE INFLUENCE AND UNCONSCIENTIOUS DEALING	17
UNCONSCIONABILITY.....	17
DIFFERENCE BETWEEN UNDUE INFLUENCE AND UNCONSCIENTIOUS DEALING	18
UNDUE INFLUENCE	19
INTRODUCTION.....	19
CATEGORY 2A: PRESUMED INFLUENCE (BARCLAYS BANK V O’BRIEN).....	20
CATEGORY 2B: PROVEN INFLUENCE	22
THIRD PARTIES	25
UNCONSCIENTIOUS DEALING	31
INTRODUCTION.....	31
SPECIAL DISADVANTAGE.....	31
REQUIREMENTS	32
INDEPENDENT LEGAL ADVICE	36
TOPIC 3: FIDUCIARY RELATIONSHIPS AND DUTIES	38
INTRODUCTION	38
GENERAL	38
INTERACTION WITH CL AND TRUSTEE DUTIES.....	38
UI/UD V FIDUCIARY	38

FIDUCIARY RELATIONSHIPS.....	38
GENERAL	38
CATEGORIES.....	39
SPECIFIC SCENARIOS	41
SCOPE.....	43
FIDUCIARY DUTIES	44
GENERAL	44
SCOPE.....	45
INFORMED CONSENT.....	47
EXAM PLAN FOR FIDUCIARY PROBLEM	48
TOPIC 4: EQUITABLE FIDUCIARY REMEDIES.....	50
EQUITABLE COMPENSATION	50
GENERAL	50
ASSESSMENT.....	51
SCOPE.....	51
LORD CAIRNS ACT DAMAGES.....	52
ACCOUNT OF PROFIT	54
GENERAL	54
FUNCTIONALITY	54
CONSTRUCTIVE TRUST.....	55
GENERAL	55
TYPES.....	55
REQUIREMENTS FOR CONSTRUCTIVE TRUST WHEN FIDUCIARY DUTY BREACHED	56
CONSTRUCTIVE TRUSTS AND THIRD PARTIES.....	57
TRACING.....	60

GENERAL	60
MIXED FUNDS	60
THIRD PARTIES	61
TOPIC 5: INJUNCTIONS AND SPECIFIC PERFORMANCE.....	63
INJUNCTIONS AND SPECIFIC PERFORMANCE	63
GENERAL	63
INJUNCTIONS	63
GENERAL	63
TYPES OF INJUNCTIONS	63
SPECIFIC PERFORMANCE	76
GENERAL	76
ELEMENTS	77
EXAM PLAN	82
TOPIC 6: NATURE OF A TRUST	83
WHAT IS A TRUST.....	83
GENERAL	83
DEFINITION.....	83
4 ELEMENTS	83
FURTHER EXPRESS TRUST REQUIREMENTS	84
SOCIAL AND COMMERCIAL TRUSTS.....	86
DISCRETIONARY TRUSTS	87
TRUST VS OTHER SIMILAR RELATIONSHIPS	88
TRUST VS CONTRACT	88
TRUST VS FIDUCIARY RELATIONSHIP	89
MORAL OBLIGATION	89

CONDITIONAL GIFT	89
TRUST VS CHARGE.....	90
TRUST VS AGENCY.....	90
TRUST VS BAILMENT	90
CLASSIFICATION OF TRUSTS.....	90
EXPRESS TRUST BY DECLARATION	90
FORMALITY REQUIREMENTS FOR EXPRESS TRUSTS	91
RESULTING TRUSTS	91
CONSTRUCTIVE TRUSTS	93
TRUSTS EXAM PLAN	94
TOPIC 7: TRUSTEE DUTIES AND BENEFICIARY AND TRUSTEE RIGHTS AND POWERS	95
TRUSTEE DUTIES	95
FIDUCIARY DUTIES	95
DUTY TO ACT WITH REASONABLE PRUDENCE.....	95
DUTY TO ACT IN BEST INTERESTS OF BENEFICIARY	98
DUTY TO KEEP TRUST FUNDS SEPARATE	99
DUTY TO ACT GRATUITOUSLY	99
DUTY TO INVEST IN AUTHORISED SECURITIES.....	100
DUTY NOT TO PURCHASE TRUST PROPERTY (SELF-DEALING RULE).....	101
DUTY TO ALLOW BENEFICIARIES ACCESS TO TRUST DOCUMENTS	102
STATUTORY DEFENCE: ACTING HONESTLY AND REASONABLY	104
BENEFICIARY AND TRUSTEE RIGHTS AND POWERS.....	105
TRUSTEE'S PROPER EXERCISE OF POWER.....	105
POWER OF BENEFICIARY TO WIND UP THE TRUST FUND: SAUNDERS V VAUTIER PRINCIPLE	108
RIGHTS WHERE TRUSTEE IN BREACH.....	110

REMOVING A TRUSTEE.....	110
TRUSTEE’S RIGHT OF INDEMNITY	113
TRUSTEES PERSONAL LIABILITY.....	116
TRUSTEES RIGHT TO CONTRIBUTION FROM CO-TRUSTEES.....	117
TRUSTEES RIGHT TO SEEK ADVICE AND DIRECTIONS FROM COURT	117
TRUSTEES RIGHT TO COMMISSION	118
TOPIC 8: STATUTORY FORMALITIES AND COMPLETE CONSTITUTION OF EXPRESS TRUSTS	120
STATUTORY ‘WRITING PROVISIONS’	120
GENERAL	120
PLA SECTION 53.....	120
DISPOSITION	124
EXCEPTIONS TO SECTION 53(1) WRITING REQUIREMENT	124
COMPLETE CONSTITUTION	125
INTRODUCTION.....	125
TOPIC 9: CERTAINTY REQUIREMENTS FOR EXPRESS TRUSTS	126
INTRODUCTION.....	126
CREATION OF TRUSTS	126
BY DECLARATION	126
BY TRANSFER.....	126
BY DIRECTION.....	127
3 CERTAINTIES.....	127
CERTAINTY OF INTENTION	127
CERTAINTY OF SUBJECT MATTER (TRUST PROPERTY)	131
CERTAINTY OF OBJECT (BENEFICIARIES).....	132
TOPIC 10: CHARITABLE TRUSTS	138

INTRODUCTION	138
GENERAL	138
DIFFERENCES WITH OTHER EXPRESS TRUSTS	138
CHARITABLE PURPOSE	138
CHARITIES ACT 2013 (CTH).....	140
PUBLIC BENEFIT.....	141
TYPES OF CHARITABLE TRUSTS	142
COMMERCIAL TRUSTS (WORD INVESTMENTS: BIBLE TRANSLATION FOR PROFIT)	142
TRUSTS FOR POLITICAL PURPOSES	143
RELIGIOUS TRUSTS	143
TRUSTS FOR RELIEF OF POVERTY	144
TRUSTS BENEFICIAL TO THE COMMUNITY	145
TRUSTS WITH MIXED CHARITABLE AND NON-CHARITABLE PURPOSES	146
TRUSTS FOR ADVANCEMENT OF EDUCATION	146
ADMINISTRATIVE SCHEME.....	147
CY-PRES DOCTRINE	147
UNINCORPORATED ASSOCIATIONS	148
EXAM PLAN FOR TRUSTS	149

TOPIC 8: STATUTORY FORMALITIES AND COMPLETE CONSTITUTION OF EXPRESS TRUSTS

STATUTORY 'WRITING PROVISIONS'

GENERAL

- No requirement that trusts be set up by way of deed, but most of them do need to be in writing
- No writing requirement if dealing with personal property that is not a subsisting equitable interest
- Section 53 cannot be used to cloak a fraud so courts must take care to consider the circumstances in which the claim is being raised
 - Person to whom land is conveyed as trustee, and knows it was so conveyed, cannot deny the trust (*Rochevoucauld v Boustead; Bannister v Bannister; Last v Rosenfeld; Re Marlborough*)
- Writing also provides a prima facie intention of deliberate action to create a trust (intention)

PLA SECTION 53

- (1): Subject to the provisions of this Act with respect to the creation of interests in land by parol
- **(a) No interest in land can be created or disposed of except by writing**, signed by the creator / conveyer / his agent or by will, or by operation of law
 - Includes both legal and equitable interests in land (legal interest must be by deed per s 52) (*Adamson v Hayes*: Oral pooling agreement with shares)
 - Must be in writing at the time the trust is created (*Gardner v Rowe*)
 - Disposition is any act to get rid of an existing interest and includes:
 - Declaration of trust over land (*Comptroller of Stamps v Howard-Smith*: Request to pay out of my shares at your discretion to the persons below)
 - NB: If declaration of trust over legal interest in land, (a) does not apply because (b) does
 - Transfer
 - Direction
 - Executory trusts:
 - Creation includes: