

This is a sample summary guide for LAWS2015 and contained snippets of a few topics. The full guide contains all cases and every topic in complete form.

EQUITY

Breach of Confidence

A breach of confidence may arise when a party obtains 'confidential' knowledge for a particular purpose and misappropriates the information for another use.

Identify the information in question, how it was obtained, who it was obtained by and who it was obtained from.

1. **The elements that constitute a breach of conscience that is actionable in equity were developed by Megarry J in *Coco v AN Clark (1969)* UK and further developed in *Optus Networks v Telstra* by the Full Federal Court:**
 - a. **Does the information have a necessary quality of confidence?**
 - i. **Was the information specific?**
 1. ***O'Brien v Komesaroff HCA 1982***: The information here was deemed to be a matter of general knowledge which was published to the world at large. K failed to identify the particular contents of documents that he claims has the confidential information that should be protected.
 - a. ***Mason J*** → One needs to know not only what information conveyed but also what part of that information was not common knowledge
 - b. Note it can still be 'public knowledge' even if only notorious in a particular industry or profession e.g. here the contents of trust deeds aren't known by your everyday citizen but can be found out.
 2. **Example: *R v Department of Health; Ex Parte Source Informatics***: Medical information of script prescriptions had been de-identified and sold to private company. Because it had been de-identified this information is no longer confidential because it is now generalised and not specific – i.e. has lost its quality of confidence.
 3. *Therefore, P needs to go beyond saying this type of information is confidential and identify exactly which parts are not well known.*
 - ii. **Was the information already in the public domain?.....**

Estoppel

A finding of estoppel will prohibit one from denying an existence of a state of affairs in Court based on their previous actions or behaviour. ***Pembroke J Seven Network (Operations) v Warburton***

In common law, estoppel is a device used merely to determine the facts upon which the legal rights of the parties will then be determined by the court, whereas, in equity, rights flow directly from the operation of estoppel in equity. ***Low v Bouverie***

1. Although the issue on the surface appears to be a breach of contract, this action is inapplicable if under the common law a contract was not finalised.
2. **An action in estoppel may be under the common law or equitable jurisdiction:**

Common law or equity? → If it is regarding an assumptions of the facts at the time then it is a common law action – however if it is about how the party will act in the future it is an equitable estoppel.

a. Common law

- i. **Deed** → If a party signs a deed affirming a set of facts existed then in a dispute between the parties, the facts set out in the deed are accepted as true without needing proof. **Dabbs v Seaman**
- ii. **Judgment** → The principle of *res judicata*, that is once a case is finalised and a judgment entered, the party is precluded from bring the same cause of action based on the same facts before the courts again. **Lockyer v Freeman; Blair v Curran**
 1. Estoppel may also arise based on issue (**issue estoppel**), where although it is a separate cause of action, if an issue of facts has been decided in a previous judgement that is relevant in the current proceeding, a party can't deny its truth. **Blair v Curran HCA 1939**
 2. Extending the *res judicata* principle is **Anshun (HCA) estoppel** which prevents a party raising a claim or defence if during an earlier proceeding it was relevant and it would have been reasonable to raise it.
 - a. Discussed in NSW case of **Champerslife (2010)** to raise this it has to be so relevant as to make it unreasonable not to raise it, not just that it could have been.
- iii. **Conduct** → If the estoppel is successfully raised, then the representor will be precluded from denying the facts assumed by the representee.
 1. **Estoppel by representation** → grounded in a representation made by one party to another.
 - a. Elements from **Newbon v City Mutual Life Assurance HCA 1935**: The representation must be:
 - i. Clear and unambiguous
 - ii. Intended to induce a course of conduct to the person whom it was made
 - iii. Result in an act or omission by the person to whom it was made
 2. **Estoppel by Convention** →

b. Equity

- i. **Promissory: Central London Property Trust v High Trees**
 1. Do they parties have a pre-existing legal relationship? **Combe v Combe**
 - a. Yes → go to 2
 - b. No → promissory estoppel will not apply
 2. Has one party induced the other party to adopt an assumption about their relationship?
 - a. Yes → go to 3
 - b. No → promissory estoppel will not apply
 - i. Really consider if it is actually a detriment
 3. Has the party relied upon this assumption and will suffer detriment if not applied?
 - a. Yes → go to 4
 - b. No → promissory estoppel will not apply
 4. The party that made the representation will be estopped from denying the presumption applies.
 - a. E.g. **Central London Property Trust v High Trees**: Property trust leased a property to High Trees at half rent and Property wanted to go after

them to recover the full amount. Property is estopped from enforcing the full amount as they promised they would not.

- i. However, note that if High Trees accidentally paid the full amount, they would not succeed in an action against property to recover – because estoppel is only a defence.

ii. **Proprietary Crabb v Arun**

- 1. Do the plaintiffs have a legally enforceable contract?.....

iii. **Equitable estoppel?**

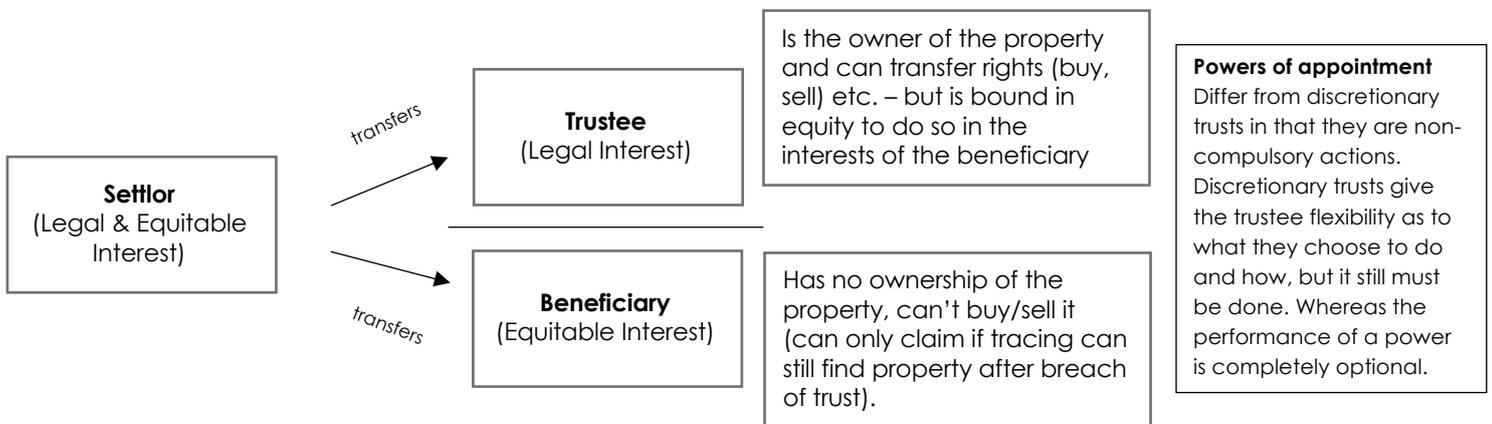
- 1. The HCA in **Walton Stores** consolidated promissory and proprietary estoppels into a single and broader principle of equitable estoppel.

- a. Consider whether or not this would apply but do note that since this decision, judges still seem to discuss them as separate actions.

2. **Walton Stores Brennan J test**

- a. P assumes a legal relationship
 - i. Courts have since departed from this requirement and will allow an equitable relationship to be sufficient.
- b. D **induced** the plaintiff to adopt the assumption
 - i. **Austotel v Franklins**: Although both sides proceeded on the assumption that a final agreement would happen, there was no special representation rather than a normal expectation one would finalise.
 - ii. **Commonwealth v Verwayen**: inducement may be express or implied
- c. P acts (or omits to) in **reliance** on the assumption
 - i. E.g. have they entered contractual or other relations with other parties on the basis of the assumption e.g. worked with solicitors – **Commonwealth v Verwayen**.
 - ii. Was that reliance reasonable? **Waltons Stores** → Court said yes even though they were legally represented. It was based on the strength of the inducement.
- d. D **intended** or knew the P would act on this.....

Nature and Constitution of Trusts



c. Are the **three certainties** satisfied?

- i. **Intention** → For an express trust, it must be certain that the settlor intended to create a trust relationship.

- 1. **Is there an intention to create a trust?**

2. Whether or not a trust was intended, is to be inferred from the words that have been used.
 - a. This is not what the settlor's actual subjective intention was – but rather what can be construed from the word's they have used. **Byrnes v Kendle**
 - i. The word 'trust' was used, we have to take this as a trust over the property e.g. proprietary interest – not that he intended to only give you half proceeds from sale.
 - ii. Doesn't matter what you intended to say – matters what you have actually said. **Gummow & Hayne**
3. The word 'trust' does not have to be used explicitly; however, you do have to use imperative words.
 - a. E.g. 'for the sole benefit and use' is ok – 'I expect you to' is not enough.
4. The HCA in **Associated Alloys** said that when determining can consider:
 - a. Other language used in the contract
 - b. The nature of the transaction
 - c. The relationship between the parties
 - d. Also → was not an issue that this was an amount of money (opposed to a proportion), or that the trust money wasn't going to be kept separately from the rest of the assets.
5. **When advising → what words could have been used instead to ensure the trust doesn't fail on intention grounds.**
6. **If failed → The transfer of legal title is seen as a 'gift' to the 'trustee', legal and equitable title rests in the recipient and there is no trust.**

ii. **Subject matter** → the trust property must be reasonably identifiable

1. **What is the subject matter of the trust?**

- a. Can't identify what it is? E.g. in **Palmer v Simmonds**: 'the bulk' of an estate to be left on trust. Have no idea what is within 'the bulk'. 'The whole' would be certain – but this just means 'the great part'. Trust fails.
 - i. Although in **Re Golay's Will Trust**: 'reasonable income' was effective enough for the Courts to hold this was certain subject matter and the Court could calculate this objectively – there was a history of this relationship between the parties.
 1. Note that this is rare and not authority that 'reasonable' is allowed in any case.
- b. **Is the property tangible or intangible?**

Operation of Express Trusts

1. **Rights of Trustees**

a. **Trustee's right of reimbursement**

- i. A trustee may incur expenses as a result of their duties. As they are the legal proprietary owner, the expense is owed by them personally.
- ii. However, these expenses will create a secured lien over the trust property – which is a personal right to be reimbursed first out of the trust.

1. **Is it a legitimate trust expense?**

a. **Tortious damages – Re Raybould**

- i. The right of reimbursement extends to damages against a trustee in a tort action, provided the trustee has acted with due diligence and reasonably.

1. Here trustee could be reimbursed, damages were caused by earth works to neighbouring land – trustee did not do anything out of the ordinary.
 - ii. This is good for the creditors against the trustee (those who suffered damage) because they can go after the trust property - rather than the trustee personally.
- b. Misleading and deceptive conduct – Gatsios**
- i. Was the expense of damages for MLDC reasonably incurred?
 1. Theoretically yes because the conduct does not have to be a deliberate wrong to constitute this offence.
 2. Or rather than reasonableness – did the conduct amount to a neglect of their duty?
 - c. These cases show a wide leniency as to what is considered a legitimate trust expense and the trustee is likely entitled to reimbursement for all expenses incurred of actions within the terms of the trust – provided the conduct was not fraudulent or intentionally wrong.

2. Liabilities of Beneficiaries

- a. Is the beneficiary personally liable to compensate the trustee when the trust is worthless?
 - i. General rule → Trustees right limited to the assets under the trust, however, in limited circumstances the beneficiaries may be personally liable. **Hardoon v Belilios**
 1. There may be a personal obligation on the beneficiary to indemnify the trustee – if there is only one beneficiary, they have full legal capacity (of age) and they obtain the entire benefit of the property.
 2. The beneficiary is then subject to reimburse the trustee, unless he can show good reason as to why the trustee should bear himself.
 3. This principle was upheld in the more recent case of **JW Broomhead** in **Victoria**.
 - a. And extended it further to apply to multiple beneficiaries – and they will be liable in respect of their portion of the beneficial interest.
 - ii. Note that in **McLean v Burns** a trust clause that excluded the right of the trustee to do this was upheld as valid.
 1. Therefore to escape this liability the beneficiary (or settlor) should input this clause into the deed.

3. Liabilities of Trustees → Reimbursing beneficiary when in breach of trust

- a. Has the trustee acted outside their duties and powers? /is the trustee in breach of trust?
 - i. No → beneficiary must accept loss, can't recover from trustee.
 - ii. Yes → Has the beneficiary adopted or falsified the breach?
 1. Adopted → lose their right to get an account from trustees.
 2. Falsified → can get an account for the loss from trustees.

b. Has the trustee rectified their breach?

- i. In **Target Holdings UK** – the mortgage was secured over the property a few days late, were in breach but fixed it. Court therefore ruled that the breach did not cause the loss – and the bank could not go after the solicitors.
 1. Bank gave out a loan to fraudsters, the bank paid money to fraudster's solicitors to hold on trust for the fraudsters. The solicitors paid out too early (when a mortgage over the property hadn't been secured for the bank yet) but one was gained a few days later. When the fraudsters took off without paying the bank went after the solicitors – saying they paid out money in breach of trust and had to account for it. Solicitors weren't liable because they fixed the breach shortly after – so loss wasn't sufficiently caused by the breach.
- ii. In **Youyang AU** – Y gave money to solicitors to action an investment – half was a safe investment, half was a risky investment. The solicitors acted in breach (care and diligence) and didn't obtain a certificate for the safe investment – they lost all of it. The solicitors didn't fix this and obtain a proper certificate – the HCA held they were in breach and liable to account.

1. Because they didn't restore, the trustee could not agree that their actions were authorised.

c. What is the trustee liable for?

- i. The amount of the breach or to restore to position had the breach not occurred?
 1. In **Target Holdings**, HL asked what loss had been caused by the breach → to put the beneficiary back into the position it would have been in had there been no breach.
 - a. Essentially employing common law questions of causation and remoteness.
 2. In **Youyang**,

1. Quitclose Trusts

- a. Where a creditor has lent money to someone for a particular purpose, and that money is used for another purpose, the money is held on trust for the creditor. **Barclays Bank v Quitclose Investments**
 - i. Therefore, the creditor has a proprietary right to claim the money traced back, as opposed to just a right to be reimbursed by the debtor.
 - ii. **Useful for when the debtor can't afford to pay back creditor.**
- b. A regular loan involves a full transfer of legal title over the original money to the debtor, in exchange for a right to be paid back with interest. If a **Quitclose** trust is found, only legal title is transferred to the debtor (trustee), and the creditor still has an equitable right to that traceable property (beneficiary).
- c. E.g. in **Quitclose** → the company in financial distress got a loan from investment company to pay dividends, the loan was held in a separate account at Barclays. Company failed before it could pay out the dividends. Barclays wanted the money to close the company's overdraft – the investment company argued that they had a proprietary right over the money as it was held on trust for the purpose of paying the dividends → therefore can get the actual money back, not just a claim to it.
- d. **Is there a Quitclose trust (or a regular loan)?** (*inferences rather than test*)
 - i. **Is it held in a separate account form company's general funds?**
 1. C.f. in **Re Australian Elizabethan**: the funds were deposited into the trust's general account.
 - ii. **Is there a purpose for which the money can be used?**
 1. Rather than just a reason for getting the loan.
 - a. E.g. In **Quitclose** correspondence notes 'will only be used for...'
 2. Note that a preferred purpose is insufficient **Re Australian Elizabethan**
 - a. C.f. the words 'unconditionally' were used to mean without obligation – and the preference form wording was precatory/request.
 3. Most commercial loans have a purpose behind them that the creditor knows about – but this does not necessarily create a trust – usually the money can still be used by the recipient for whatever they want.
 - a. Really must look at whether the parties had the intention for the money to be at the free disposal of his recipient. **Twinsectra**
 - iii. **Did the other party have notice of the trust?**
 1. If Barclays didn't know that the money was on trust for QI, then they are a bonafide third party purchaser (purchased the money in exchange for giving up right to claim).
 2. Here, Barclays had been copied in on correspondence regarding purpose of the loan and the segregation.

Extra discussion → **what is the nature of a Quitclose trust?**

- In **Quitclose**, Lord Wilberforce described the nature as constating of two trusts: an express trust in favour of the shareholders, and a secondary trust in favour of the creditors when the primary trust had failed.
 - This interpretation has raised criticisms and questions – including with who does the beneficiary interest actually lay – and how can we judge when the primary/purpose trust has failed.

- o In **Re Australian Elizabethan Theatre Trust**, Justice Gummow instead explained a 'Quistclose' trust as.....

1. Tracing Scenarios:

a. Mixing of trust money with trustee's personal money

- i. The beneficiary has two options:
 - 1. Claim a secured lien against the property limited to the amount of the trust used
 - a. Useful if there is no or little money left (better than a % of nothing) or if there is only a depreciated asset.
 - i. Or e.g. if it was used to bet on a horse → if the horse won you want a proportionate share so you can get the winnings, if it lost you want a secured lien to get the stake back.
 - 2. Adopt the breach and claim a proportionate share over the asset
 - a. Useful if the property traced is now worth more.
 - b. However, consider the impacts of adopting the breach → you can no longer claim a breach of fiduciary duty to go after the trustee personally AND you can't go after third parties through know and assist/receipt because you need a pre-existing breach for that.
 - i. Note that you probably don't care/don't need to because you are claiming a proportionate share because it's worth more than originally was.

b. Mixing trust money from two trusts

- i. E.g. the trustee wrongfully mixes 10k of 1 trust and 10k of another – the money is still there.
- ii. Because these parties are both innocent, their interests rank equally, and they are both entitled to their money. With innocent parties there are no charges or securities (which are personal remedies) over the assets.
 - 1. However, c.f. if one party is not innocent – the other could claim a charge.

c. Property purchased with trust money:

- i. Property purchased with mixed trust/s and trustee personal funds:
 - 1. As per **Re Hallett**,