

TRUSTS LAW (LAW4170)

Exam Notes

COURSE OVERVIEW

TOPIC 1	INTRODUCTION AND CLASSIFICATION OF TRUSTS
TOPIC 2	CREATION OF TRUSTS
TOPIC 3	CERTAINTY OF SUBJECT MATTER
TOPIC 4	TRUST STRUCTURES
TOPIC 5	FORMALITIES AND CONSTITUTION
TOPIC 6	DUTIES AND POWERS OF TRUSTEES
TOPIC 7	DEFENCES AND LIMITATIONS OF LIABILITY
TOPIC 8	RIGHTS OF TRUSTEES
TOPIC 9	RIGHTS OF BENEFICIARIES
TOPIC 10	REMEDIES FOR BREACH OF TRUST

TOPIC 1 – INTRODUCTION AND CLASSIFICATION OF TRUSTS

GENERAL

- **FIXED INTEREST TRUST**
 - Beneficiaries have shares in trust property fixed at the date of creation
 - Beneficiaries have equitable beneficial interest capable of assignment
 - Beneficiaries have standing to insist trust performed on its terms

- **DISCRETIONARY TRUST**
 - Objects have right to enforce the proper administration of the trust
 - Even though 'shall' was used, it was still an EDT (*Re Gulbenkian*)

- **BARE POWER**
 - Objects have bare power have standing to insist the power, if exercised, be exercised properly
 - General power – distribute to whole world including trustee
 - Hybrid power – distribute among a group except for an excluded class
 - Special power/trust power – power to distribute among defined class of objects

TOPIC 2 – CREATION OF TRUSTS

OVERVIEW:

1. Certainty of intention
2. Certainty of subject matter
3. Certainty of object
4. Consequences of failing one of the three certainties

CERTAINTY OF INTENTION

LOOK FOR THE FOLLOWING CONDUCT:

1. Verbal comments in respect of property e.g. *Paul v Constance*
2. Ambiguous written language
3. Party who created the trust claims it was a 'sham'.

OVERVIEW:

1. **Introductory sentence which outlays the elements:**
2. **State the conduct in question**
3. **Test:**
 - a. *Irrevocable intention*
 - b. *Immediate intention*
4. **Is it created by writing?**
5. **Is it created orally?**
6. **Is there an intention?**
7. **Other options if not a trust**
8. **Revocation**
9. **Conclusion**

CERTAINTY OF INTENTION – ANSWER STRUCTURE

STEP 1: INTRODUCTION:

“in order for the trust to be valid, [x] must have manifested an irrevocable and immediate intention to depart with the beneficial interest, whether or not the word ‘trust’ was actually used. (Harpur v Levy)”

“the onus of proof lies with [x] seeking to establish the existence of the trust. If no certainty of intention, the trust will fail.”