# TRUSTS B

## EXAM NOTES

1. Automatic Resulting Trusts
2. Presumptive Resulting Trusts & Constructive Trusts
3. Trustee Duties and Powers
4. Trustee Duty of Administration
5. Rights of Trustees
6. Duty of Due Care and Skill
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# (1) Automatic Resulting Trusts

## Automatic Resulting Trusts

- Arise where failure to dispose of entire beneficial interest in trust property
- No intention or presumption of resulting trust – automatically takes effect by law

### 1. Trusts does not refer to beneficial interest

Vandervell v IRC - Transfer of **option to purchase** to company, but company wasn't to take beneficially – to be held on trust. There was **no beneficiary**, to be expressed at a later time, but because never expressed, resulting trust for V.

### 2. Trust is void or unenforceable

- Primary trust cannot be performed, resulting trust in favour of settlor

Vandervell v IRC - Purported to transfer gift of dividends from shares he held to College. Where **do not abandon completely beneficial interest in property, invalid gift** = resulting trust found. If settlor does some mistake, accident or failure to comply with requirements of law – resulting trust for them.

### 3. Surplus of property where purpose of trust fulfilled or at end

- Trustee ought not keep property as never intended to go to them as a gift – resulting trust back to settlor

Re Gillingham Bus Disaster Fund - Unascertainable donors.
If they **can be found by inquiry then resulting trust should be executed** in their favour.
If they cannot be found, money had to go to court for court direction on where to go, like any other trustee that cannot find their beneficiary (Not bona vacantia to the Crown).
No cy pres scheme as donations for specific appeal (the accident), not general charitable purpose.

Re West Sussex Constabulary's Widows, Children and Benevolent
Could not distribute money amongst **fund members on winding up** as **never intended to be beneficiaries**. Legacy donations (from wills) were unequivocal intention to benefit the trust – resulting trust back to donor's estates. BUT **no resulting trust** over outside money raised through raffles etc. Donors intended to part with money absolutely - donations were bona vacantia.

### 4. Failure of purpose of trust

Barclays Bank v Quistclose Investments (applied in Aus in ACA v Mainline Constructions)
Loan made specifically ("only, exclusively'") in order for Rolls Razor to pay dividend (declared dividend but liquidity issues). RR went into voluntary liquidation, Quistclose demanded money back. But BB had already set off dividend account against debt over by RR to other accounts. Contractual relationship of debtor/creditor – didn't exclude parallel equity relationship

- Mutual intention sum advanced should not become part of RR general assets
- Necessary consequence that if for any reason dividend couldn't be paid, money to be returned
- Lender had equitable right to see that money applied for primary designated purpose
- **Secondary trust for benefit of lender to arise if primary trust to pay dividend couldn't be carried out**
- If primary trust fails, property not gifted over to person settlor never intended to benefit
- Moneys received in commercial transaction ordinarily don't give rise to trust

**Who is the settlor?**
Re Kayford - Mail order company took pre-payments, put in separate account named trust. Note: **payment into separate trust account useful, but by no means conclusive** (*Hunter v Moss*). No intention of customers that to be held on trust until received goods. Customers paid with intention that it was to belong to company beneficially. Trust created unilaterally by company. Express trust – not really a resulting or constructive trust as in Quistclose. Also issue of voidable preference under bankruptcy law – received monies beneficially and then trust created. Not voidable preference if issued a receipt to be signed by C saying money to be held on trust after advancement (parties agreed for money to be held on trust)

- Public policy issues – general creditors expect to be able to divide up company property, attractive tool to avoid liquidation if told customers money would be held on trust – company could trade longer than otherwise could

**Limited to trusts for payment of debts? No.**
Twinsectra v Yardley

- Not limited to debt cases – if purpose provided by lender, trust may arise. Doesn't have to be payment of debts.

## Express or Resulting trust?

**Traditional analysis:** primary trust seen as express (donor clearly stated intention as to use of money), secondary trust looked like automatic resulting trust arising by operation of law upon failure of primary trust

Barclays Bank v Quistclose
Parties' intentions in relation to secondary trust is what matters.
**If a secondary purpose** (ie. Repayment to the lender) **has been agreed expressly or by implication** = express or resulting.
**Australian Position – Quistclose was express trust**

Re Elizabethan Theatre Trust- AETT went into liquidation – donations held on trust or available to creditors?

- Relevant intention to be inferred from language, nature of transaction, relevant relationship circumstances
- Unconditional deposits for tax deduction
- Practice in arts donation to have '**preference' for how money should be applied - mere precatory words**, AETT in fact had unfettered discretion, also not earmarked in separate account

**English Position – Quistclose was resulting trust**

- Twinsectra v Yardley – said was example of resulting trust

**Where does beneficial interest lie under primary trust?** (while purpose still capable of fulfillment)
Twinsectra v Yardley - Loan to finance purchase secured by solicitor undertaking – gave specific direction what loan to be used for

- Lord Millett– said that a Quistclose trust is a resulting trust for the lender
- **Money remains beneficially with lender unless and until it is applied for stated purpose of primary trust**
- When purpose fails, money is returnable to the lender not under some new trust in his favour which only comes into being on the failure of the purpose, but because the resulting trust in his favour is no longer subject to any power on the part of the [recipient] to make use of the money.

**Are Quistclose trusts a good thing?**

- Context of bankruptcy – justifiable
- However where loans for any purpose – not necessarily related to prevention of bankruptcy

Arguable that recognising trusts gives unwarranted priority over other unsecured creditors

## (2) Presumptive Resulting Trusts

- **Resulting trusts arise to reflect value provided**

**The Presumptions**
Where appears that transfer of property to transferee as absolute owner, equity presumes transferor did not intent transferee have beneficial title (ie. Presumed transfer is not a gift)

1. **Volunteer situation**
   - Where person pays purchase price of property, then causes it to be transferred to another or to another and themselves jointly
   - Presumed to be held by transferee/s on trust for person who provided purchase money

PLA s7(3) – volunteer situation unclear, no cases on it yet
- in a voluntary conveyance a resulting trust in favour of transferor shall not be implied merely by reasons that property not expressed to be conveyed for use or benefit of grantee
- no presumption of resulting trust merely because property not expressed to be gift/benefit of grantee

2. **Unequal contribution of purchase monies situation**
   - Where two or more persons advance purchase price of property in different shares
   - Resulting trust in favour of those who provided purchase price in shares in which provided it

Calverley v Green
- Man and woman obtained mortgage under which C and G jointly liable to make repayments
- Agreed between them C would actually make the payments, G contributed to other household expenses
- Important: Liability for half the mortgage was wife's contribution to purchase of property
- **Held on resulting trust in proportion to contributions** (mortgage liability + C extra payments)
- Agreement – only informal arrangement, no effect at law. **Future repayments of mortgage don't constitute contribution to purchase price** – if C hadn't adhered to arrangement bank would have pursued them both

**Rebutting the Presumptions**

a) **Presumption of Advancement**
- If status of parties is certain type of relationship, equity presumes property transfer to be a gift
- No presumption if - parties intend to maintain independent control of money and property

Nelson v Nelson – leading case on presumption of advancement
- **Mother transferred house to volunteer children** – presumption of resulting trust would arise
- But presumption of advancement then arose – equity presumes a gift
- Evidence of actual intention rebutted it – was to receive subsidy under Defence Services Homes Act, not for children to take beneficially (but had to repay ill-gotten gains – he who seeks equity must do equity)
- Extended categories for presumption of advancement (mother to child)

NAB v Blacker (bad law, pre-dates Nelson v Nelson)
- No presumption of advancement from wide to husband, as no obligation to provide for husband

Calverley v Green
- De facto partners don't attract presumption of advancement
- Presume intend to maintain independent control of money and property, not joint ownership
- BUT note Family Law Act ss79, 80, 90SM – outdated idea in C v G? Marriage not necessarily property arrangement. Presumption could apply to de facto relationships now.

Pyke v Campbell
- Presumption of advancement doesn't apply to transfer from man to de facto partner's children

b) **Evidence of actual intention**
- Evidence of actual intention inconsistent with registered transfer of land

Calverley v Green
- Evidence of parties includes **acts and declarations before, at time of, and immediately after transaction**
- Evidence after transfer only admissible if against transferor's interest

Muschinski v Dodds
Unmarried de facto couple, woman paid for land and man agreed to renovate cottage. Man agreed to renovate if registered as tenants in common. Woman instructed solicitor that purchase to be effected so that tenants in common despite small financial contribution by man.
- Presumed resulting trust in woman's favour rebutted by evidence actual intention
- **Neither of them intended man to acquire beneficial interest in stages** as he contributed to planned joint endeavor
- Planned future association and joint activity provided explanation of arrangement between them
- **Interest of man not contingent on him doing things he agreed to**

**CONSTRUCTIVE TRUSTS**

- Where disparity between parties' contributions can't be accounted for by resulting trust
- Subsequent contributions/informal arrangements made after purchase
- Constructive trust can be imposed regardless of parties' intentions (*Allen v Snyder*)

***a) Common Intention constructive trust***
- Party whose beneficial interest not expressed in legal title acts on faith of common intention so it would be **unconscionable for other party to deny interest the common intention** was for
  - Common intention
  - Acting on faith of common intention
  - Unconscionability – not allow statute to shield fraud
- If can't prove common intention, estoppel may help (see below)

***b) Failed joint endeavor constructive trust***
- Parties pool assets in furtherance of agenda, joint endeavor fails
- Without fault of either parties (substratum of JE removed without attributable blame)
- Where would be **unconscionable for one party to retain benefit** (legal interest)

Muschinski v Dodds
No presumptive resulting trust (see previous) BUT Woman paid over 90% purchase price - **Equitable charge and constructive trust found.**
- Purchase price $20,000, sale price $30,000 – paid out how much each of them HAD paid in purchase/improvements ($25,000 and $3,000), then residue paid in equal shares ($1000 each)
- Collapse of commercial venture and failure of personal relationship – entitled to realization of contributed assets

Baumgartner v Baumgartner
De facto couple moved onto land which man bought/registered as his own. Woman provided some funds which man pooled with his own – used for household expense including mortgage repayment ($51,000 from man, $38,000 from woman).

- Broke up, woman sought declaration that she had interest
- **Test for constructive trust not whether 'fair or reasonable' but unconscionable**
- Joint endeavor failed prematurely, unconscionable use of legal title – unconscionable not to impose trust

Swettenham v Wild
Elderly man contributed $190k to daughter's $235k house, he was to live in the granny flat. Daughter unable to borrow rest of purchase price, so he borrowed with intention daughter would repay him.

- Daughter repaid father then transferred property into her name subject **to informal arrangmenet that father could live on property for life**

Relationship broke down – constructive trust imposed

- Parties should be proportionately repaid respective contributions to property

**Other equitable and Statutory Relief**

Proprietary equitable estoppel

- Show that someone encouraged to believe that would have interest in property, and that acted in own detriment because of that representation