

# MLP717 — Trusts Law

Deakin University · Juris Doctor

**Complete Notes — Topics 1–10**

# Topic 1 — The Nature of a Trust

### Required Reading

- Textbook: Chapters 25–26 (The Nature of a Trust; Classification of Trusts)
- DKLR Holdings v Commissioner of Stamp Duties (1982) 149 CLR 431
- Barclays Bank Ltd v Quistclose Investments Ltd [1970] AC 567
- Bosanac v Commissioner of Taxation [2022] HCA 34

## 1. Historical Origins of the Trust

The trust is an equitable institution with roots in Roman law (*fideicommissum*) and medieval English practice. Key historical developments:

- **Crusaders:** Landowners departing on Crusades transferred land to a "feoffee to uses" who held it for the benefit of the crusader's family — the origin of the use.
- **Feoffment to Uses:** Legal title transferred to a feoffee; the feoffee was bound in conscience (equity) to hold for the named beneficiary (*cestui que use*).
- **Statute of Uses 1535:** Henry VIII sought to execute uses and restore feudal dues; the Statute converted most passive uses into legal interests, but active uses survived and evolved into the modern trust.
- **Court of Chancery:** Enforced the obligations of trustees in personam — the personal obligation of the trustee to the beneficiary is the bedrock of trust law.

## 2. What is a Trust?

The classic definition (Underhill & Hayton):

### Definition of a Trust (Underhill & Hayton)

*A trust is an equitable obligation binding a person (called a trustee) to deal with property over which he has control (which is called the trust property) for the benefit of persons (who are called the beneficiaries or cestuis que trust), of whom he himself may be one, and any one of whom may enforce the obligation.*

Key characteristics:

- **Separation of legal and equitable title:** The trustee holds legal title; the beneficiary holds the equitable (beneficial) interest.
- **Obligation in personam:** The trust is a personal obligation on the trustee, enforceable in equity — not merely a contractual obligation.
- **Property-based:** A trust must attach to specific property — there can be no trust without a subject matter.
- **Third-party enforceability:** The beneficiary can enforce the trust against the trustee and (in some cases) against third parties who receive the trust property.

### 2.1 DKLR Holdings — Legal and Equitable Interests

Case Name	Issue	Key Facts	Held
<b>DKLR Holdings v Commissioner of Stamp Duties (1982) 149 CLR 431</b>	Whether legal and equitable interests in land can be held simultaneously by the same or different persons; stamp duty implications	A company held land as trustee and as beneficial owner. The Commissioner sought to aggregate both interests for stamp duty purposes.	Mason and Brennan JJ: legal and equitable interests are distinct and co-existing. The trust does not merge the two; they remain separate proprietary interests capable of separate treatment.

## 3. Classification of Trusts

### 3.1 Express Trusts

Created by the deliberate intention of the settlor. Two modes:

- **Transfer to trustee:** Settlor transfers property to a third-party trustee to hold for beneficiaries (e.g. "I transfer Blackacre to T to hold on trust for B").
- **Declaration of trust:** Settlor declares themselves trustee of property for the beneficiaries (e.g. "I hold my shares on trust for B") — no transfer required, but must satisfy formality requirements.

### 3.2 Resulting Trusts

Arise by operation of law where equity imputes an intention to create a trust, or where a trust fails:

- **Presumed resulting trust:** Where one person pays for property but title vests in another — equity presumes the recipient holds on resulting trust for the payer. Rebutted by evidence of gift or presumption of advancement.
- **Automatic resulting trust:** Where an express trust fails (wholly or partly), the beneficial interest results back to the settlor — the property is held on resulting trust for the settlor's estate.

### 3.3 Constructive Trusts

Imposed by equity regardless of intention, typically to prevent unjust enrichment or unconscionable conduct. Common examples: receipt of trust property by a knowing third party; vendor under a specifically enforceable contract of sale.

### 3.4 Discretionary Trusts

The trustee has a discretion as to which beneficiaries (within a defined class) receive trust income or capital, and in what proportions. No individual beneficiary has a fixed entitlement to any particular share — only a right to due administration of the trust.

- **Family discretionary trust:** Used for income-splitting and asset protection. Trustee distributes income among family members at their discretion.
- **Superannuation trust:** Governed by SIS Act; trustee exercises discretion in paying death benefits.

## 4. Social and Commercial Contexts for Trusts

Trusts are used across a wide range of contexts:

- **Family trusts:** Asset protection, income splitting, estate planning.
- **Superannuation funds:** Compulsory superannuation held on trust for members.
- **Unit trusts:** Commercial investment structure — beneficial interest divided into units; unitholder acquires beneficial interest proportional to units held.
- **Trading trusts:** Trustee carries on business on behalf of beneficiaries; trustee personally liable for business debts but entitled to indemnity from trust assets.
- **Charitable trusts:** No fixed beneficiaries; purpose must be charitable; enforced by Attorney-General.

## 5. The Quistclose Trust

A Quistclose trust arises where money is lent for a specific purpose and the borrower is unable to use it for any other purpose. If the purpose fails, the money results back to the lender on resulting trust.

### Quistclose Trust Elements

*Two requirements: (1) the money was paid for a specific purpose; (2) there was a mutual intention that the money not be at the free disposal of the recipient until the purpose was achieved.*

Case Name	Issue	Key Facts	Held
<b>Barclays Bank Ltd v Quistclose Investments Ltd [1970] AC 567</b>	Whether money lent for a specific purpose could be held on trust for the lender if the purpose failed	Rolls Razor Ltd borrowed money from Quistclose specifically to pay a declared dividend. The money was placed in a separate account. Rolls Razor went insolvent before the dividend was paid.	HL (Lord Wilberforce): the money was held on trust for Quistclose as the purpose had failed. The money never became part of the general assets of Rolls Razor.
<b>Australasian Conference Association v Mainline</b>	Whether a Quistclose trust arose where money was paid	Money paid by Mainline to its head contractor was placed in a separate account	HC: Quistclose trust arose. Mutual intention that funds be used only for the specific purpose was sufficient.

<b>Constructions (1978)</b> <b>141 CLR 335</b>	for a specific purpose in a construction context	earmarked for subcontractors.	
<b>Re Australian Elizabethan Theatre Trust (1991)</b> 30 FCR 491	Application of Quistclose principles to charitable donations made for specific purposes	Donations made to the trust for specific theatrical purposes. The trust became insolvent.	Gummow J: Quistclose principles applicable. Donations held on trust for the donors if the purpose could not be achieved.
<b>Legal Services Commission v Brereton [2011]</b> 33 VR 126	Whether Quistclose trust arose where legal aid funds were paid directly to a solicitor	LSC paid money to solicitor to fund legal proceedings; solicitor sought to apply the funds for other purposes.	Quistclose trust established — funds held for the specific purpose of the legal proceedings only.
<b>Marriner v Australian Super Developments [2012]</b> 46 VR 213	Quistclose trust in property development context	Money advanced for a specific property development purpose. Developer became insolvent before completing the purpose.	Quistclose trust established on the facts — mutual intention found that funds not be at the free disposal of the developer.
<b>Braham Investments v Wantrup [2018]</b> VSCA 291	Whether a Quistclose trust arose in a commercial lending context	Money advanced for a specific commercial purpose; dispute arose as to whether the purpose had failed and whether the funds resulted back.	VSCA considered and applied Quistclose principles; emphasised that mutual intention is critical and must be established on the facts.

## 6. Presumed Resulting Trusts

Where one person (A) provides the purchase money for property but title is taken in another's name (B), equity presumes B holds on resulting trust for A.

- **Rebuttal — gift:** If the relationship between A and B suggests a gift was intended (e.g. parent to child), the presumption is rebutted.
- **Presumption of advancement:** In relationships of parent-child or husband-wife, equity presumes a gift (advancement) rather than a trust. This presumption has been substantially weakened by modern courts.

Case Name	Issue	Key Facts	Held
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<b>Bosanac v Commissioner of Taxation [2022] HCA 34</b>	Whether presumption of resulting trust or presumption of advancement applied where husband paid for property in wife's name	Husband paid the purchase price of the matrimonial home but title was in the wife's name. Commissioner argued husband had beneficial interest for tax purposes.	HC (majority): presumption of advancement applied. Wife held the legal title outright; no resulting trust arose. The presumption of advancement from husband to wife survived in Australia (though weakened).
<b>Andrews v McPherson [2011] WASC</b>	Presumed resulting trust — contribution to purchase price	One party contributed to purchase price but was not on title.	Resulting trust presumed in proportion to contribution to purchase price.
<b>Calverley v Green (1984) 155 CLR 242</b>	Proportionate resulting trust where unmarried couple purchased property with unequal contributions	Defacto couple; man paid deposit and mortgage; woman on title. Man claimed beneficial interest.	HC: resulting trust in proportion to financial contributions. Presumption of advancement does not apply to de facto relationships.



### EXAM TIP

1. Identify what type of trust is at issue (express, resulting, constructive, Quistclose).
2. For resulting trusts: identify who paid purchase price; consider presumption of advancement.
3. For Quistclose: identify the specific purpose and whether there was mutual intention that funds not be at free disposal.
4. Consider whether formality requirements are satisfied (s 53 Property Law Act — see Topic 5).
5. Consider the consequences of the trust on third parties (creditors, insolvency).

Key Concept	Summary
<b>Express trust</b>	Deliberately created by settlor; requires certainty of intention, subject matter and objects
<b>Resulting trust</b>	Arises by operation of law; presumed (purchase money) or automatic (failed trust)
<b>Constructive trust</b>	Imposed by equity to prevent unconscionability; no intention required
<b>Quistclose trust</b>	Money lent for specific purpose held on resulting trust for lender if purpose fails

<b>Discretionary trust</b>	Trustee has discretion over distribution; no fixed entitlement per beneficiary
<b>Presumption of advancement</b>	Parent-to-child/husband-to-wife relationships rebut presumed resulting trust

— *End of Topic 1 Notes* —