

Unit 15: **LAW OF TRUST I**

Learning hours: 72 hours

Unit level: **H2 (H1 or H2 for BTEC Higher Nationals only)**

Unit description

The aim of the unit is to develop a sound understanding of the Law of Trust. On completion of this course, learners should have an awareness of the different types of trusts, a sound working knowledge of the creation of trust, secret trust and purpose trust and trust by operation of law. Learners will be expected to demonstrate knowledge, understanding and an ability to apply the rules in a given scenario.

Summary of learning outcomes

To achieve this unit a learner must:

1. Identify the **Classification of trusts**;
2. Understand and apply the rules relating to **Creation of Trust**.
3. Understand and apply the rules relating to **Secret Trust**.
4. Understand and apply the rules relating to **Purpose Trust**.

Content

1. Classification of Trust

Types of trust): Meaning and Definition of Express trust; Meaning and Definition of Discretionary trust, fixed and bare trust; Meaning and Definition of Constructive trust; Meaning and Definition of Statutory trust; Meaning and Definition of Implied trust; Meaning and Definition of Resulting trust; Meaning and Definition of Testamentary and intervivos trust; Meaning and Definition of Purpose trust; Several and conflicting meaning of these trusts;

Operation of Protective trust

2. Creation of Trust

Requirements of a trust. Capacity to create trust; whether children and mentally incapacitated persons have capacity to create trust;

Formalities; Proving a declaration of a trust, The admissibility rule, effect of oral declaration, Exceptions to the rule, The type of trust in Rouchefoucauld, statutory exception to formality requirement, disposition by a beneficiary of his interest, Is s.53 (1)(c) confined to land, Rationale of s.53(1) (c).

Certainties: certainty of intention, certainty of subject matter, certainty of beneficiaries;

Constitution, Equity will not assist a volunteer. The general rule in Milroy v Lord; Exceptions to the rule that equity will not assist a volunteer.

3. Secret Trust

Secret Trust: Meaning and definition of secret trust; Will formalities, Full secret trust and half secret trust and their application.

Justifications for the admission of evidence not in the form sanctioned by the statute: the fraud theory, the outside the will theory,

4. Purpose Trust

Charitable Trust: Charitable status; Meaning of charity;

Charitable purposes-relief of poverty, advancement of religion and education and other purposes from Charities Act 2006

Public benefit requirement

Contaminating non charitable elements;

Cy-pres doctrine: failure of charitable trust

Charities Act 2006

Learning outcomes and assessment criteria

Learning outcomes	Assessment criteria for pass To achieve each outcome a learner must demonstrate the ability to:
1. Classification of Trust	<ul style="list-style-type: none"> • Explain and define the different types of trust • Indicate where some of these terms have several, perhaps conflicting meanings • Explain the operation of protective trust.
2. Creation of Trust	<ul style="list-style-type: none"> • Understand who has the capacity to create a trust; • Apply the rules relating to formalities in a given scenario and the rationale of s 53(1) (c). • Apply the rules relating to certainties in a given scenario; • Explain and apply the rule in Milroy v. Lord and the exceptions to the rule in a given scenario
3. Secret Trust	<ul style="list-style-type: none"> • Define and understand the meaning of secret trust • Evaluate the justifications for the admission of evidence not in the form sanctioned by the statute • Apply the rules relating to Full secret trust in a given scenario • Apply the rules relating to Full secret trust in a given scenario
4. Purpose Trust	<ul style="list-style-type: none"> • Evaluate the importance of Charities Act 2006 • Explain the elements of charitable trust • Apply the rules relating to charitable trust in a given situation.

Guidance on delivery and assessment

Delivery

This unit should be delivered with types of trust, formalities and certainties and constitution at first. After these topics, other topics could be covered with personal preference. Group work and other active methods of learning can be employed to enhance learners' experience and promote the required understanding. The use of case studies and specimen documentation is to be particularly encouraged, both as a means of assessment and as part of the normal learning process. Students may take part in research.

Assessment

Evidence of outcomes may be in the form of:

- Group work
- Problem questions and case studies for analyzing practical issues.
- Essays on changes and reforms.

Links

This unit links to trust law II and will provide a foundation on the law of trust.

Resources

Textbooks

- J.E. Penner- *Core Text Series: The Law of Trusts* 6th ed Oxford University Press
- David Hayton, Charles Mitchell Hayton & Marshall -*Commentary and Cases on the Law of Trusts and Equitable Remedies* 12th ed Sweet & Maxwell Ltd
- Jill E. Martin-*Hanbury and Martin: Modern Equity* 18th ed Sweet & Maxwell Ltd
- Graham Moffat, Gerry Bean, Rebecca Probert-*Law in Context: Trusts Law: Text and Materials* 5th ed Cambridge University Press
- Philip H. Pettit-*Equity and the Law of Trusts* 11th ed Oxford University Press
- A.J. Oakley-*Parker & Mellows: The Modern Law of Trusts* 9th ed Sweet & Maxwell Ltd

Centre devised unit