

Unit 16: Law of Trust II

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 advanced understanding of the Law of Trust. On completion of this course, learners should have a sound working knowledge of the resulting trust, constructive trust and the remedies and liabilities for the breach of trust. 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. Understand and apply the rules relating to **Constructive trust.**
2. Understand and apply the rules relating to **Resulting trust.**
3. Understand and apply the rules relating to **Breach of Trust: remedies.**
4. Understand and apply the rules relating to **Breach of Trust: liabilities.**

Content

1. Constructive Trust

Constructive trusts: Definition and General nature; Comparison with proprietary estoppel; The contractual vendor as a constructive trustee; The express trustee as a constructive trustee; Trustee profiting from trust; Remuneration of trustees

Genuine examples of constructive trust: Constructive trusts that convert personal rights in land into proprietary rights binding third parties; Constructive trusts arising on a specifically enforceable contract for sale or creation of an interest in land; Constructive trust arising when equity perfects an imperfect gift; Constructive trust imposed upon murderers who inherit from their victims; Constructive trust imposed in cases of breach of trust; The doubtful case of constructive trust of the fiduciary's unauthorised profit.

Trusts mistakenly thought to be constructive: Express trusts which are enforced despite failure to comply with formal requirements; Constructive trusteeship.

2. Resulting Trust

Implied and resulting trusts: Purchase in the name of another; Joint purchase and joint accounts; Contributions to purchase price; Adding value to another's property; Mutual wills – both types; Beneficial interest not completely disposed of.

When does resulting trust arise: 5 situations where resulting trust arise; rebuttal and presumption of advancement.

Why does resulting trust arise: Lord Browne-Wilkinson's view, Birks' and Chambers' view, Vandervell thesis.

3. Breach of Trust: remedies

Remedies for breach of trust: Personal and proprietary remedies;

Tracing: following, tracing and claiming, tracing and constructive trust, the absence of tracing at common law, the rules of tracing, backwards tracing, personal and proprietary claims reliant upon tracing, rights to subrogation reliant upon tracing,

4. Breach of Trust: liabilities

Trustees' liability for breach of trust: Personal and proprietary liability, falsifying and surcharging the trust account, strict liability.

Liabilities of trustees inter se: Joint and several liability, consent of beneficiaries, trustee exemption clauses, S 61 of Trustee Act 1925.

Liabilities of third parties: Personal and proprietary liability of third parties.

Accessory and Recipient liability: Accessory liability, recipient liability.

Learning outcomes and assessment criteria

Learning outcomes	Assessment criteria for pass To achieve each outcome a learner must demonstrate the ability to:
1. Constructive Trust	<ul style="list-style-type: none"> • Define constructive trust • Apply the rules relating to constructive trust in a given scenario • Describe the situations where constructive trusts genuinely arise; • Explain why certain trusts which are thought to be constructive trust are, in reality, not constructive trust.
2. Resulting Trust	<ul style="list-style-type: none"> • Define resulting trust • Apply the rules relating to resulting trust in a given scenario • State the circumstances in which resulting trust arise; • Outline the competing theories of resulting trust and judge which theory best suits the incidence of resulting trust.
3. Breach of Trust: remedies	<ul style="list-style-type: none"> • Explain the remedies resulting from breach of trust • Distinguish between following, tracing and claiming; • Apply the rules relating to tracing in a given scenario
4 Breach of Trust: liabilities	<ul style="list-style-type: none"> • Describe the various ways trusts can be breached; • Explain the liability of trustees for breach of trust between themselves, and the consequences of a beneficiary's consent to breach of trust; • Explain and apply s 61 of Trustee Act 1925 and the law governing trustee exemption clauses. • Explain and apply the tests which govern third party liability for assisting in a breach of trust and receiving trust property.

Guidance on delivery and assessment

Delivery

The outcomes in this unit could be delivered 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 I and will provide an advanced knowledge 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