UNIT 4: BENEFICIARIES



Contents

- Who can be a beneficiary
- Certainty of objects
- Perpetuities / time limits
- Beneficiary role
- Beneficiary rights
- Variation of trusts

UNIT 4: LEARNING OUTCOMES

- Identify the purpose of certainty of objects
- Explain who can benefit from trusts, and how
- Explain the rights and responsibilities of beneficiaries
- Explain the routes through which trusts can be varied
- Apply knowledge to factual scenarios

TRUST PARTIES (RECAP)

Settlor (Testator for will)	Trustee	Beneficiary
The party that creates the trust. Original property owner.	Legal owner of the property while held in trust. Hold property for the benefit of beneficiaries. Manage per terms of trust.	Benefits from trust, per terms. E.g. eventual transfer of ownership, profit etc.

BENEFICIARIES

- The party who benefits from an equitable interest or right in relation to the property
- Non-charitable trusts must always have an identifiable beneficiary (certainty of objects)
- How they benefit will differ from trust to trust, depending on the settlors instructions
    - May be fixed (who and how)
    - May be at trustees discretion (trustees choose between class of beneficiaries, and how they benefit)
    - Each beneficiary does not have to benefit identically



WHO CAN BENEFIT? (1)

- Generally anybody!
- Including those incapable of managing property themselves
- Useful to allow those prevented from legally owning property to benefit, or where practically inappropriate:
  - not yet born: ***Re Bowles* [1902] 2 Ch 650**
  - groups of people (fluctuating membership)
    - settlor's children: ***Re Hastings-Bass* [1975] Ch 25**
    - employees: ***Re Denley's Deed Trust* [1969] 1 Ch 373**
  - larger group than legal limit, e.g. **Land: LPA 1925, s34**
- A deceased person cannot be a beneficiary



CERTAINTY OF OBJECTS

- For a non-charitable trust to be enforceable, the objects/beneficiaries must be sufficiently identifiable: ***Morice v Bishop of Durham* (1805) 10 Ves Jun 522**
- Two reasons:
  - Who can benefit from the trust
  - Who can enforce the trust
- Watkin (2007): fundamentally necessary for trustees to understand how to manage the trust property - otherwise power would be unfettered
- Discretion can be given to trustees to decide how individual beneficiaries benefit within a class



DISCRETIONARY TRUSTS

- Type of trust in which settlor gives the trustees some (not absolute) discretion to decide how the trust property should be distributed to potential beneficiaries.
- Trustees can be given discretion to decide:
  - which of the potential beneficiaries should benefit (within the class), and/or
  - how they should benefit: e.g. in what share and/or according to what frequency.
- Until discretion exercised, beneficiaries have no entitlement to property: **Vestey v IRC (No 2) [1979] 2 All ER 225; Re Murphy's Settlements [1998] 3 All ER 1; Re Manisty's Settlement [1973] 2 All ER 1203.**
- Useful as offer settlor option to create a trust which can respond to changing factual circumstances, as current information can be taken into account by trustees when distrubuting.
- Gives a degree of control over property
- Family context: irresponsible beneficiaries (preventing irresponsible disposal)



TIME LIMITATIONS FOR TRUSTS

- Private express trusts **cannot** go on forever (in perpetuity)
- AKA the rule against remoteness of vesting
- Length of time that property can be held in trusts is limited
- Eventually property must return to the market, otherwise it becomes useless (inalienable = not freely transferrable)
- Traditionally trust void if it extended a life in being plus 21 years:
    - Express lives in being means that these people are expressly noted by the settlor.
        - e.g., 'all my first cousins', which means that the perpetuity period is 21 years after the last person from this group has died. A trust that is contingent on an event that breaches this rule will be rendered void.
    - Implied lives in being are determined by the wording used in the trust, i.e. if they are alive at the time and implied to be involved.



Key sources: Perpetuities and Accumulations Act 2009, s 5.

RULE AGAINST PERPETUITIES

- Legislation has largely simplified these rules for trusts and wills created after 6 April 2010: Settlors can bypass ‘lives in being’ rule by specifying a time period
- Property cannot be held in trust for more 125 years from:
  - date of trust coming into effect
  - date of testator’s death for wills
- The trust must end before this time, usually by transferring legal title to a beneficiary. If not met in this time: the gift fails and reverts to the settlor’s estate or is paid to those entitled in a gift-over.
- Legislation does not have retrospective effective. For earlier trusts:
  - Perpetuities and Accumulation Act 1964
  - Common law (before)
- You will not be assessed on older trusts (but be aware for practice)
- Essentially, the rule prevents a settlor setting criteria in a deed or a will that would continue to affect the ownership of property long after he or she has died



Key sources: Perpetuities and Accumulations Act 2009, s 5.

ACTIVITY 1: ARE THE RIGHTS INALIENABLE OR NOT?

- Consider each scenario below and decide whether the property is inalienable. Why?

Floyd is 50 years old, has one son aged 20 and no grandchildren. He wants to create a trust for his first grandchild to gain beneficial interest when they reach the age of 21.

May is 70 and has no children. Many years ago, she set up a trust for her first grandchild to gain beneficial interest in a piece of land upon their wedding day.

Moira's grandmother placed a property in trust for her until her wedding day. Moira married Rachel last month.

IDENTIFYING THE BENEFICIARY

- One of the key challenges to trustees is that sometimes it may be unclear who should benefit from the trust
- This can happen where the settlor's words were too vague that trustees cannot interpret who should benefit
- Some examples of wording which was considered to lack certainty shown in the image.
- Without further clarification, e.g. definition, criteria or instructions on identifying - settlor's intention could be misinterpreted
- Ultimately, if the beneficiaries (or class of) cannot be identified, the trust will fail for lack of certainty of objects.

'A trust for such persons as have a moral claim on me'
Re Leek [1969] 1 Ch 563

'A trust for worthy causes'
Re Atkinson [1978] 1 All ER 1275

'A trust for my old friends'
Re Barlow's Will Trust [1979] 1 All ER 296

'A trust for my customers'
Sparfax (1965) Ltd v Dommett [1972] The Times, 14 July

ACTIVITY 2: IDENTIFYING THE BENEFICIARY

- In pairs consider the wording:
  - ‘a trust for the benefit of friends’.
- Is it clear from this wording who should benefit from this trust? Why?
- What might the challenges of interpretation be?
- How might you advise the settlor in drafting?

REDUCING LINGUISTIC UNCERTAINTY

- Settlors can use various approaches to assist trustees in identifying their intended beneficiaries:
  - Name each beneficiary
  - Identify class of people, e.g. descendants,' or members/employees of a specific organisation: ***Re Denley's Deed Trust* [1969] 1 Ch 373; *McPhail v Doulton* [1971] AC 424**
  - Set criteria and invite prospective beneficiaries to demonstrate how they meet the criteria (grants)



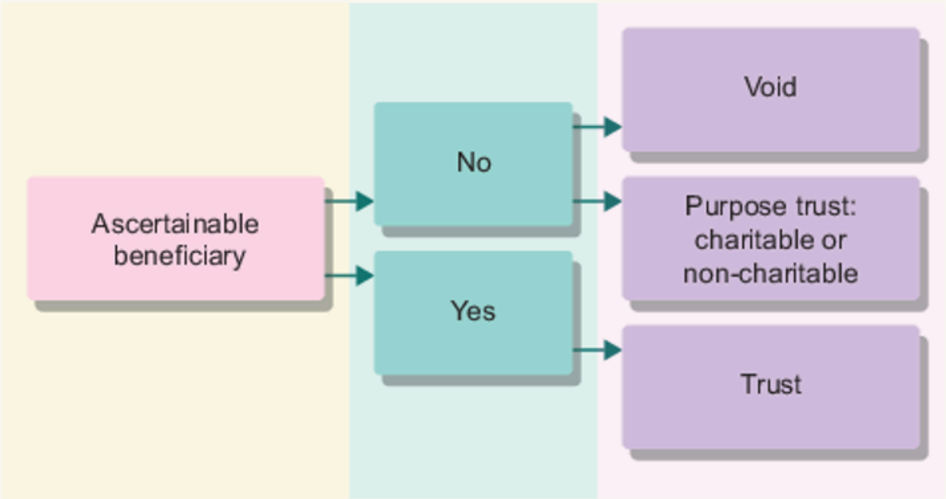
MISSING BENEFICIARIES

- Might be able to clearly identify who should benefit, but difficult to locate or trace a beneficiary
    - E.g. what if a trust to benefit 5 named individuals but one can't be found?
- Trust does not fail for certainty of objects: ***Re Gulbenkian's Settlement Trusts*** **[1970] AC 508;** ***McPhail v Doulton*** **[1971] AC 424**
- If stated: distribution should be made as prescribed
- For the missing beneficiary's share can either:
    - trustees can ask the court for directions
    - be paid to the court
    - if believed dead, request a 'Benjamin order': permission to distribute on assumption missing beneficiary has died
        - if later discovered alive, missing beneficiary can trace share if statutory limitation period not passed: **Limitation Act 1980** (6 years inter, extended to 12 years for inheritance)
        - trustees protected from liability by the court order
        - trustees can buy missing beneficiary insurance to protect themselves



PURPOSE TRUSTS

- Per Lord Evershed MR, in Re Endacott [1960] Ch 232:
  - *"No principle perhaps has greater sanction or authority behind it than the general proposition that a trust by English law, not being a charitable trust, in order to be effective, must have ascertained or ascertainable beneficiaries."*
- Certainty of objects directs that trusts should have identifiable beneficiaries for the trust to be valid (otherwise void).
- Purpose trusts are an exception to this rule, which allow the trust to continue, despite no ascertainable beneficiary.
- Two types of purpose trust:
  - charitable (later in module)
  - non-charitable



NON-CHARITABLE PURPOSE TRUSTS

- Purpose trusts are an exception to the general rule that a trust without a named beneficiary is void, assuming the specific strict requirements are met.
- Three elements need to be established for a non-charitable purpose trust to be valid:
  - it meets the requirements based on the Endacott principles ***Re Endacott*** **[1960] Ch 232**
  - it is limited in perpetuity (time limitations discussed earlier apply)
  - there is someone willing to carry out the purpose – this s a question of fact.



Key sources: Re Endacott [1960] Ch 232

ENDACOTT PRINCIPLES: TRUSTS FOR...



Pet maintenance: ***Re Dean*** **(1889) LR 41**



Erection or maintenance of graves, tombs or monuments: ***Trimmer v Danby*** **(1856) 25 LJ Ch 424**



Saying of private masses (public is charitable): ***Bourne v Keane*** **[1919] AC 815**

BENEFICIARY'S ROLE

- Might seem a strange question: benefit from the trust
- Do not have a formal role in managing trust: often they cannot legally manage property
- Beneficiaries may legitimately want to have some oversight: to make sure they benefit as intended
- Another role, deeply rooted in underpinning rationale for certainty of objects
    - Who should benefit
    - Who has standing to enforce the trust: bring action against trustees



Key sources: *Morice v Bishop of Durham* (1805) 10 Ves Jun 522

HOW THE BENEFICIARY WILL BENEFIT (VESTED)

- A **vested interest** means the beneficiary is entitled to the trust assets. This can take effect either:
  - **in possession**: immediate
  - **in remainder**: in the future
- Once the interest is vested, it becomes an entitlement (whether in possession or not).
- To be vested, an interest must meet the following criteria:
  - The beneficiaries must be ascertainable.
  - The beneficiaries must be ready to take possession (but may be prevented from doing so due to a prior interest).



HOW THE BENEFICIARY WILL BENEFIT (CONTINGENT)

- A **contingent interest** means the beneficiary must meet a condition before benefitting from the trust, after which their interest becomes vested
- If the beneficiary dies before acquiring the interest, it is lost.
- Common scenario is age, e.g. ‘Funds are held on trust for the first of my children to reach 21 years of age’
- But complexity here: if the child is named in a trust for age, it treated a vested interest as there is a definite entitlement, eg. a trust for my daughter Jane.....



ACTIVITY 3: CONTINGENT OR VESTED?

- Consider these scenarios. Which interest is contingent and which is vested?

Lucy's mother placed the family equestrian centre on trust for her until 2025.

Bob has saved funds for his son Lucas to study at university. Bob has placed the funds on trust until his son enrols on a degree course. Lucas is currently 19 and repeating his A levels.

RIGHTS OF ACTION

- Beneficiaries can enforce trust by bringing a breach of trust claim against trustees
- Cannot claim against settlor because, once trust formed, the settlor has no further role in the trust
- Beneficiaries cannot bring action against agents of trustees
- But, trustees failure to take appropriate action against agents, can found an action against trustee for breach of trust (either breach of duty, or breach of fiduciary duty) - indirect route to enforcing (Hargreaves, 2011)



RIGHT TO INFORMATION

- Beneficiaries have the right to information relating to the trust and its management: ***Hawksley v May*** **[1956] 1 QB 304**
  - trusts accounts: ***O'Rourke v Darbishire*** **[1920] AC 581**
  - information relevant to assisting if breach of trust occurred: ***Springett v Dashwood*** **(1860) 2 Giff 521**
  - not confidential information, including information about:
    - trust income if only entitled to capital: ***Nestle v National Westminster Bank PLC*** **[1994] 1 All ER 118**
    - trustee decision making: ***Re Londonderry*** **[1964] 3 All ER 855**
  - but court can order access to any documents if appropriate: ***Schmidt v Rosewood Trust Ltd*** **[2003] 2 WLR 1442**
  - trustees required to disclose any information relevant to litigation



RIGHT TO THE TRUST PROPERTY

- Identifiable adult beneficiaries with capacity who who hold all the beneficial interest can request that the trust is terminated, and that the trust property is transfer to them (or another trustee of their choosing). ***Saunders v Vautier*** **(1841) Cr and Ph 240**
- Beneficiaries are 'true' owners, despite who is identified as the legal owner (trustees)
- Fixed trusts: straightforward, as clear who should benefit and how: beneficiaries have entitlement immediately, as distribution fixed when trust created
- Discretionary trusts, more complex as trustees have discretion in choosing who should benefit and/or how. Until discretion is exercised, distribution is unknown
    - under discretionary trust, prospective beneficiaries have no entitlement to property until discretion applied in their favour: ***Re Murphy's Settlements*** **[1998] 3 All ER 1;** ***Re Manisty's Settlement*** **[1973] 2 All ER 1203**
- If <u>all</u> members of pool of potential beneficiaries have capacity, they can agree to divide the property between themselves in equal shares: ***Re Smith, Public Trustee v Aspinall*** **[1928] Ch 915**
    - Difficult to achieve, even in small groups: any one beneficiary can defeat unanimity if they believe they might get a larger share by waiting: ***McPhail v Doulton*** **[1971] AC 424**

TERMINATION OF TRUSTS

- With the exception of bare trusts (where once the beneficiary reaches a particular age, they may request that the assets are transferred to them), trusts may end for the following reasons:
  - termination on request of the beneficiaries (most common reason)
  - due to the expiration of time (125 years/perpetuity rules)
  - by court order during matrimonial proceedings
  - because of a dwindling or depreciation in the value of assets
  - as a result of particular events occurring (for example, the failure of the purpose of the trust).
- Fixed trusts straightforward. More complex in discretionary trusts (discussed earlier) as the trustees have discretion and the beneficiaries have no actual entitlement to the property until discretion is exercised
- In all instances, it is essential to obtain tax advice as there are implications in relation to both capital gains tax and inheritance tax.



RIGHT TO VARY THE TRUST

- Basic position:
  - trust should be managed according to the settlor's intentions, any deviation is a breach of trust
  - courts should not intervene with the settlor's wishes, or amend the trust in a way that is inconsistent with the settlor's intention, or not authorised by the trust: ***Re New*** **[1901] 2 Ch 534**
- But, settlors create trusts according to information known to them at the time: these can evolve: facts and circumstances can change
- May result in trusts which were appropriate when designed, risking becoming unsuitable when operationalised, and this may make it necessary to revisit its terms, and seek variation:
  - may be that trust terms become unnecessarily burdensome
  - alternative arrangement needed to be more tax efficient: ***Re Weston's Settlements*** **[1969] 1 Ch 223**



ROUTES TO VARIATION



By trust deed



By beneficiaries



Common Law powers



Statutory powers

VARIATION RIGHTS ARISING FROM TRUST

- Once established the trust become irrevocable and should be operationalised per its terms
- Not even the settlor can amend it: ***Paul v Paul*** **(1882) 20 Ch D 742**
- Settlor can in drafting, include variation terms
  - process for variation
  - who can request / approve variation
    - could include settlor/beneficiaries or empower trustees etc.
  - in what circumstances



VARIATION RIGHTS EXERCISABLE BY BENEFICIARIES

- Though the trust is constructed according to the settlor's intention, beneficiaries can agree to the trust being enacted in a different way to that intended by settlor
- Trustees will not be liable for variations of trust either made (**Re Weston's Settlements [1969] 1 Ch 223**):
  - at the beneficiaries' request
  - authorised by the beneficiaries
- In practice the right to vary is limited, as consensual variation often not achievable:
  - The actual or potential beneficiaries must unanimously approve any variation. This can be difficult to achieve where the pool of beneficiaries is large. ***Re Smith, Public Trustee v Aspinall*** **[1928] Ch 915**
  - All the beneficiaries must have capacity and be of age to agree to any variation. Therefore, consensual variation is impossible where any of the beneficiaries lack capacity or are minors.
  - Consensual variation cannot occur where some of the beneficiaries cannot be identified or the trust contains provisions for successive generations, some of whom are not yet born. ***Goulding v James*** **[1997] 2 All ER 239**
-



Key sources: *Saunders v Vautier* (1841) 49 ER 282, (1841) 4 Beav 115

COMMON LAW VARIATION POWERS

- Courts overall reluctant to routinely vary terms of a trust where beneficiaries are not capable of consenting (and if they are - let them sort it out)
- Prepared at common law to vary in 4 circumstances**:**
  - **Conversion:** authorising change to a minor's property: e.g. converting an equitable interest from one of real to personal property (or vice versa)
  - **Emergency:** unforeseen circumstances (not planned for in trust deed). e.g. approving sale of trust assets to fund repair to property. Must benefit beneficiaries, and courts won't overrule beneficiaries if they have refused consent and have capacity. ***Re Jackson*** **(1882) 21 Ch D 786;** ***Conway v Fenton*** **(1888) 40 Ch D 512;** ***Re New*** **[1901] 2 Ch 534**
  - **Maintenance:** trust established on basis of accumulating (growing fund), court can approve advancement to maintain the beneficiary, usually minors who don't have other income. ***Revel v Watkinson*** **(1748) 1 Ves Sen 93**
  - **Compromise:** genuine dispute as to extent of beneficial interests, court may clarify any uncertainty. Where there is no dispute as to the extent of interests, the court has no jurisdiction to intervene (clarify not vary).



Key sources: *Chapman v Chapman* [1954] AC 429

STATUTORY VARIATION POWERS

- Legislation passed following *Chapman* case, mostly to modify the decision reached in relation to 'compromise' powers – very limited at common law.
- VTA expands and simplifies courts power to vary trust, including beneficial interest.
- VTA largely complements the rights of beneficiaries capable of varying a trust by consent, and introduces wide powers to vary any aspect of a trust for those incapable of providing consent, including minors, future beneficiaries, the unborn and prospective beneficiaries of discretionary trusts **(s1).**
- Any variation must be approved for the benefit of the beneficiaries
- Gives *"flexibility by allowing trusts to be varied to take account of changing circumstances, while preserving the right of parties who can consent on their own behalf to make their own decisions and protecting the interests of those who cannot"* (Barr and Picton, 2022, p. 612)



Variation of Trusts Act 1958

1958 CHAPTER 53 6 and 7 Eliz 2

Key sources:
Variation of Trusts Act 1958

OTHER STATUTORY VARIATION POWERS

Trustee Act 1925, s57

court can vary powers of trustees in relation to management and administration only, where expedient to do so, reflecting holistically on trust property: **Re Craven's Estate [1937] Ch 423**

e.g. increase range of powers, including investment, and disposing (selling) property: **Re Shipwrecked Fishermen and Mariners Royal Benevolent Society Charity [1959] Ch 220**

should be no impact on beneficial interest (incidental may be accepted): **Sutton v England [2011] 2 P and CR DG 15; Re Salting [1932] 2 Ch 57**

Mental Capacity Act 2005, s18(1)(h)

Court can agree and/or vary a settlement for any party lacking capacity.

Trustee Act 1925, s53

Extends common law maintenance jurisdiction to allow courts to use trust property or income for benefit of: maintenance, education or benefit of the infant

Only maintenance was allowed at common law

Matrimonial Causes Act 1973, s24

Court can make property adjustment orders in matrimonial proceedings (e.g. divorce) for property owned by either party to marriage. Can be made in favour of party to marriage or any children of family, regarless of who is legal or beneficial owner. Can also vary any existing beneficial interests from any pre- or post-nuptial agreement: ***E v E (Financial Provision)*** **[1990] 2 FLR 233**

ACTIVITY 4: SBA BENEFICIARY (SBA) 1

A man establishes an express discretionary trust of £100,000 for the benefit of the members of the mosques in Birmingham. There are five mosques. Each mosque has a regular membership of 500 people. Four of the mosques keep records of their regular members. One does not. All mosques have attendees who are not regular and for whom there is no record. The maximum capacity of all the mosques is 4,000 people.

Are the objects of the trust sufficiently certain?

A. No. Even though there are records, not all those who attend the mosque are included in the records. Some of those who attend are on the records, and some are not. Also, there are those who attend but who are not on the records. It would, therefore, be impossible for the trustees to ascertain whether a particular individual satisfied the criteria. The group is conceptually and evidentially uncertain.

B. No. Even though there are records for at least four mosques and even though there is conceptual certainty, there are over 2,500 recorded members, together with additional attendees. This means there are too many people who attend all the mosques. The trust would, therefore, fail for administrative uncertainty. It would not be possible to find all those entitled to a share.

C. Yes. Although there appears to be some conceptual uncertainty, it would be possible to consult an imam to clarify those who are 'members of the mosques'. This is likely to be those who are on the record as being members rather than irregular attendees. Similarly, where there are no records, an imam could provide evidence and identify whether individuals were members of the mosque.

D. Yes. There is definitely conceptual certainty – beneficiaries include members and attendees. It would be possible to establish evidential certainty by requiring the imams to keep records of attendance each week. The trust would be administratively workable with 4,000+ potential beneficiaries. Since it is a discretionary trust, it is only necessary for trustees to be able to ascertain whether an individual falls within the definition of a beneficiary.

E. No. The trust is conceptually uncertain. This cannot be remedied by consulting an imam because it is unclear whether the term 'member' means a regular attendee or regular and irregular attendees. There is also evidential uncertainty and administrative unworkability.

ACTIVITY 4: SBA BENEFICIARY (SBA) 2

1.A client dies and leaves her property to her husband, for life and, thereafter, to their three sons (if they survive her husband) once they attain the age of 21. One son is 21, and the other two sons are both 18. The husband is unhappy with the trust and wishes to terminate it.

Who is required to consent to this?

A.The eldest son

B. The husband only.

C. The husband and the eldest son.

D.The husband and all three sons.

E. The three sons only..

ACTIVITY 4: SBA BENEFICIARY (SBA) 3

A will trust contains the following provision: “My Trustees shall hold my property on trust to permit my mother to live in the property for the remainder of her life and after her death to hold the property upon trust for such of my nephew and niece as survive my mother and attain the age of 21 years in equal shares.” The nephew is now aged 20 years and the niece is aged 22 years.

Which of the following statements best describes the beneficial interests in the trust fund?

A.The mother has a vested interest but the nephew and niece have contingent interests.
B. The mother has a contingent interest but the nephew and niece have vested interests.
C. The mother, nephew and niece all have contingent interests.
D. The mother, nephew and niece all have vested interests.
E. The mother and niece have vested interests but the nephew has a contingent interest.

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- Identify the purpose of certainty of objects
- Explain who can benefit from trusts, and how
- Explain the rights and responsibilities of beneficiaries
- Explain the routes through which trusts can be varied
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RECAP

UNIT 4: READING MATERIALS

- You can draw on the following chapters of your textbooks to deepen your understanding of the topics discussed in this unit.
  - Watt (2023) chapter 4, 6 and 9
  - Ramjohn and Bray (2024), chapter 2, 3 and 15
  - Barr and Pearce (2022) chapters 24-29

EXPLORING FURTHER

- You may find the following sources of interest to you in exploring the topics discussed in this unit further. You are not expected to read these to pass the module, they are provided should you wish to explore the topics further.
  - Arter, A. (2012) 'Trusts and banking relationships – who is a beneficial owner?' Trust Law International 3
  - Edelman, J. (2013) 'Two fundamental questions for the law of trusts', Law Quarterly Review, 129(1), January, pp. 66-86.
  - Getzler, J. (2014) 'Morice v Bishop of Durham (1805)', in Mitchell, C. and Mitchell, P. (eds) Landmark cases in equity. Oxford and Portland, OR: Hart Publishing, pp. 157-201.
  - Hargreaves, E. (2011) 'The nature of beneficiaries' rights under trusts' Trusts Law International 163.
  - Hudson, A. (2014) Great debates in equity and trusts. London: Palgrave Macmillan.
  - McKay, L. (1973) 'Trusts for purposes – another view', The Conveyancer and Property Lawyer, 37(6), pp. 420-435.
  - Penner, J.E. (2014a) 'The (true) nature of a beneficiary's equitable proprietary interest under a trust', Canadian Journal of Law and Jurisprudence, 24(2), pp. 473-500.
  - Twersky, C. (2022) 'Don't worry, Choupette Lagerfeld is still living the high life', W Magazine, 16 August. Available at: https://www.wmagazine.com/culture/karl-lagerfelds-cat-choupette-11th-birthday-private-jet (Accessed: 18 March 2023).