

UNIT 3: TRUSTEES AND THEIR DUTIES

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UNIT 3: LEARNING OUTCOMES

- Identify factors motivating trustees
- Explain who can become a trustee and how they are appointed
- Explain the rights and obligations of trustees
- Evaluate the rules relating to trustee duties and the routes to limit liability
- Apply knowledge to factual scenarios

INTRODUCTION

- Divided ownership in law and equity
- How trusts can be intentionally created, and not just imposed as a remedy
- Trusts can be used in diverse range of circumstances
- Private express trust
- Trusts can take effect during life (*inter vivos*), or after death (testamentary)
- Limited formalities, except for land and testamentary trusts
- Where trusts are intentionally created: 3 certainties need to be proven.
- 3 Certainties needed because need to prove settlor deliberately wanted to break absolute ownership to divide ownership in law and equity

TRUST PARTIES (RECAP)

Settlor
(Testator for will)

The party that creates the trust. Original property owner.

Trustee

Legal owner of the property while held in trust. Hold property for the benefit of beneficiaries. Manage per terms of trust.

Beneficiary

Benefits from trust, per terms. E.g. eventual transfer of ownership, profit etc.

TRUSTEES

- Trustee is the legal owner of the property
- Trustee manages the property for beneficiary's benefit
- Important distinction with agent:
 - Trustee acts for the beneficiary, not the settlor
 - But, trustee manages the property according to settlor's intentions
- Most demanding role in relation to trust
- Assumes obligations towards property
- Exposed to liability
- But often trustees are unpaid, and act entirely altruistically

WHO CAN BE A TRUSTEE? (1)

- Anybody capable of holding legal title of property
- People and those with legal personhood (e.g. companies)
- Some difference between express and implied trusts
 - Minors cannot be trustees for express trusts:
appointment void, **Law of Property Act 1925, s20**
 - Minors can be trustees for implied trusts *Re Vinogradoff, Allen v Jackson* [1935] WN 68
 - Minors can never be trustees for land – as cannot hold legal title **Law of Property Act 1925, s1(6)**
- If minor is appointed equity prevents trust from failing for absence of trustee: *Re Armitage* [1972] Ch 438
- Statutory mechanism to appoint alternative trustees
Trustee Act 1925, s 36

WHO CAN BE A TRUSTEE? (1)

- Good practice (but not mandatory) to appoint more than one trustee
 - distribute workload
 - more effective management
 - checks and balances
 - reducing risk of negligence or fraud
- For land – maximum of 4 trustees: **LPA 1925, s34**
- Except for charities, trustees must act unanimously *Luke v South Kensington Hotel Company (1879) 11 Ch D 121*
 - may seem attractive to appoint several trustees: too many makes unanimity difficult to achieve, preventing effective trust management
- Family trusts: usually family members or settlor's solicitor will be the trustee
- Some circumstances: qualifying restrictions limit who can act as a trustee, e.g. a trustee in bankruptcy must be a qualified insolvency practitioner: **Insolvency Act 1986, s 292(2)**

TRUSTEE APPOINTMENT



By declaration



By law



By selection



By transfer of property



By imposition

Which method of appointment
will Jasmine use?

Key sources: Trustee Act (TA)
1925, ss 36–37, 41

FAILURE FOR ABSENCE OF TRUSTEE

- Basic function of trust depends on having trustees in post
- Occasions arise where trust has no trustees, e.g. due to resignation, incapacity or death of trustee (this could happen before operationalisation of trust, especially testamentary)
- Trust will **not fail**, as trust survives loss of trustees as alternative trustees can be appointed for ongoing management and operation of trust
- Settlor can pre-empt: include clauses in trust deed for appointment/replacement procedure. If does: these should be followed
- If no provisions: statutory provisions exist, **TA 1925, ss36-37 and s41, TOLATA 1996, s19**
- However, in assessing if alternative trustee appointment is appropriate: must first evaluate whether in fact trust fails for absence of:
 - certainty of intention
 - certainty of subject matter: e.g. secret trusts in wills can fail because the death of the named trustee means the property does not reach the trustee for their distribution to intended beneficiary



Key sources: Trustee Act (TA) 1925, ss 36-37, 41; Trusts of Land and Appointment of Trustees Act (TOLATA) 1996, s 19

TRUSTEE'S RIGHT TO DECLINE APPOINTMENT

- Duties of trustees can be onerous – imposing obligations: stressful and expose to liability
- Individual may not wish to accept appointment
- May want to decline before appointment
- If via declaration or property transfer, can refuse receipt: this would prevent formation of the trust
- Can avoid appointment by selection by not applying
- Trustees appointed by imposition **cannot** decline appointment: as trust is automatic because of their relationship with property, e.g. in co-ownership



NO!

TRUSTEE'S RIGHT TO RESIGN AND REPLACE

- Trustees can resign after appointment
- If there is a resignation process outlined in the deed: it must be followed
- Alternatively if no process: statutory power to resign voluntarily **TA 1925, s39.**
- Resignation does not always require replacement: any remaining trustees can share duties
- If replacement trustees needed:
 - follow process outlined in deed
 - if no process: statutory appointment process, **TA 1925 s36-37 and s41**



Key sources: Trustee Act (TA) 1925, ss36-37, 39 and 41

TRUSTEE'S RIGHT TO REMAIN AS A TRUSTEE

- Historically, unless a trustee was incapacitated, or had committed maladministration, they could not be forced to resign. This right however has been removed.
- Beneficiaries now have powers in some circumstances to end the trust, effectively removing the trustee(s):

***Saunders v Vautier* (1841) Cr and Ph 240**

- Statutory powers to remove:
 - Power of beneficiaries to force trustees of land to retire (but this can be excluded) **TOLATA 1996, s19**
 - Courts can discharge individual trustees: **TA 1925, s41 and TOLATA 1996, s19**



Key sources: Trustee Act (TA) 1925, ss 36–37, 41; Trusts of Land and Appointment of Trustees Act (TOLATA) 1996, s 19

TRUSTEE'S RIGHT TO PROTECTION

- Two key protections:
 1. from liability for any rental debts or covenant breaches arising after the estate's distribution, **TA 1925, s26**
 2. where distribution of property is intended, but possible unknown beneficiaries exist, protected from claim of an unknown beneficiary: : **TA 1925, s 27. To rely on must:**
 - a. post a notice in both the London Gazette and the local newspaper covering the area in which the trust property is located; and
 - b. wait two months from the notice date for potential beneficiaries to present themselves before distributing the property.



Key sources: Trustee Act (TA) 1925, ss26 and 27

TRUSTEE'S RIGHT TO REMUNERATION

- All trustees are entitled to be refunded for:
 - expenses incurred discharging their duties: **TA 2000 s31**
 - legal advice: ***Macnamara v Jones* (1784) 2 Dick 587**
 - fees to effect appointment
 - fees for transferring legal ownership: ***Harvey v Olliver* [1887] WN 149**
- Not usually paid for undertaking their duties **except if**:
 - authorised in trust deed
 - authorised by the court
 - professional trustees:
 - remuneration clause (common practice)
 - statutory right: **TA 2000, s28**
 - agents: **TA 2000, s 32**



Key sources: Trustee Act (TA)
2000, s31-32

TRUSTEE'S DUTIES AND LIABILITIES

- Trustees are in the most powerful and onerous position in the trust: having control over all trust property
- Fundamentally must manage the trust:
 - in accordance with the settlor's intention, AND
 - for the benefit of the beneficiaries
- Failure to do so, exposes them to liability
- This module focuses on trusts law, but remember trusts law doesn't occupy in a vacuum. Other areas of law may also be engaged for trustee's failure:
 - criminal law, e.g. fraud/theft
 - civil remedy in negligence (especially professional)
 - professional liability, e.g. SRA may take action
- Beneficiaries (not settlors) have a right of action against trustees for breach of trust ***Target Holdings Ltd v Redfurns* [1996] 1 AC 421**
- As trustees must act jointly and unanimously, they are all considered to act collectively – joint liability: ***Luke v South Kensington Hotel Co* (1879) 11 Ch D 121**
- Beneficiary can bring claim against **any** trustee, regardless of who caused breach
 - strategically important: improve chances of compensation

SOURCES OF DUTIES



Strict Liability

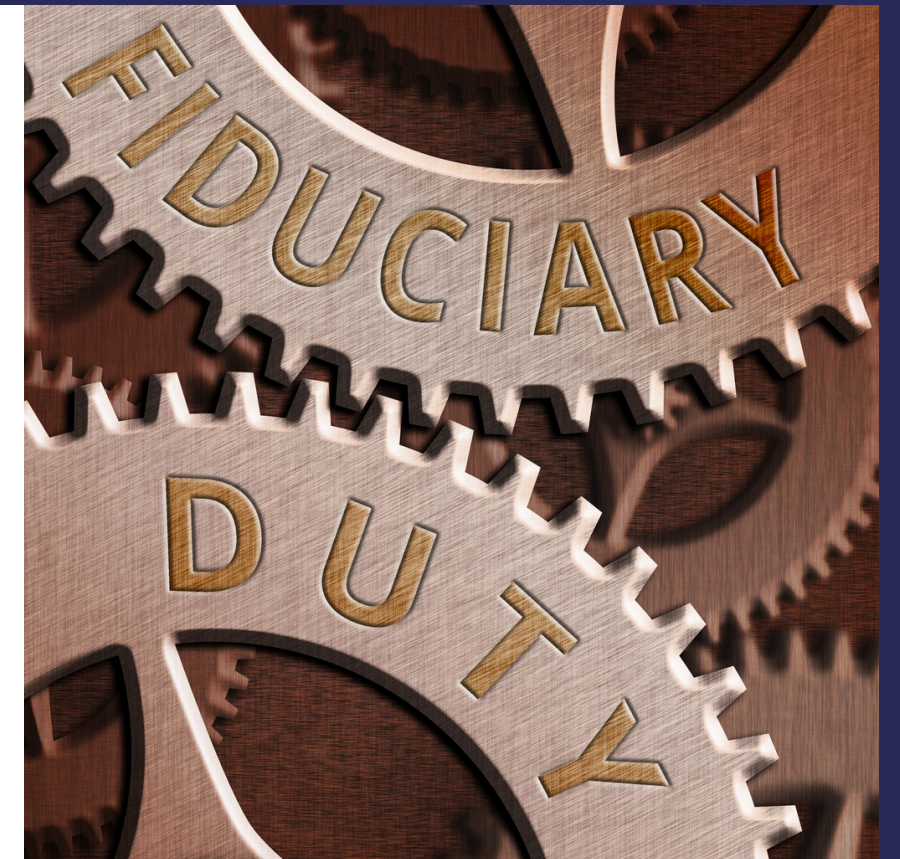


Common Law Duty



Trustee Act 2000

Statutory Duty



Fiduciary Duty

STRICT LIABILITY

- The trustee's primary obligation is to give effect to the settlor's intentions.
***Hallows v Lloyd* (1888) 22 Ch D 255; *Clough v Bond* (1838) 3 My and Cr 490**
- This imposes a duty to:
 - a. to safeguard the trust assets, including a duty to maintain the trust property; and
 - b. to ensure that the trust property is applied and distributed in accordance with the directions given in the trust instrument.
- Unless otherwise directed by court, trustees cannot act inconsistently with the settlor's intentions, including exceeding authority.
- Trustees who act inconsistently with their powers are said to act **ultra vires**
- Any action not authorised in the deed is a breach of trust. Liability for breach of trust is strict, imposed irrespective of fault ***Futter and another v HMRC*, *Pitt and another v HMRCs* [2013] UKSC 26**

Liability for acting *ultra vires* is strict because acting inconsistent with deed, amounts to acting inconsistently with settlor's intentions

COMMON LAW DUTY OF CARE

- Acting *ultra vires* gives rise to strict liability for breach of trust. Breach of trust however can also arise where, despite acting consistently with the trust terms, the way that the trustees have discharged their duties **falls below standard of care expected of them**
- **Common law:** trustees must exercise the levels of 'diligence and prudence expected of an ordinary businessperson' in discharging their duties ***Charitable Corporation v Sutton (1742) 2 Atk 400***
- Duty to exercise reasonable care in managing the trust property
- This does not expect specialist expertise, but if a trustee expresses professional expertise, they will be held to the professional standards claimed *Nestle v National Westminster Bank* [1992] EWCA Civ 12
- Duty does not safeguard against every possible loss from trust management – some losses inevitable, despite prudent management
- Claim for breach of duty of care only succeeds where it is shown that the trustees have failed to act diligently in managing the trust and its property: ***Bartlett v Barclays Bank* [1980] Ch 515**
- Objective test: does not attract strict liability: ***Speight v Gaunt* (1883) 9 App Cas 1**

ACTIVITY 1: STRICT LIABILITY OR BREACH OF DUTY?

- **Consider the following scenario, and identify whether any actions give rise to a breach of trust, and if so whether liability is strict.**
- Siwan establishes a trust for the benefit of her brother Berwyn. Trystan is appointed as the trustee. Under the trust terms, Berwyn is entitled to receive the proceeds from the sale of Siwan's rare Fabergé egg and to reside in the family home for the remainder of his life. Upon Berwyn's death, the family home is to be transferred to Siwan's children.
- After receiving the trust property, Trystan, unsure what a Fabergé egg is, takes it to his local pub and shows it to the pub landlord. The landlord tells him that it's just a 'pretty object' and offers him £100 for it. Trystan accepts the offer and transfers the money to Berwyn. Berwyn is disappointed to receive so little for the egg, as he knew that an identical egg had been valued for £10,000. Berwyn angrily confronts Trystan because he was expecting to receive at least that value. Unhappy at being confronted, Trystan sells the family home and tells Berwyn that he must vacate it so that the purchaser can move in.

EXERCISING THE COMMON LAW DUTY

- The duty requires active engagement by trustees: actively interested in its operation and associated activities
- Basic duty to familiarise themselves with (***Bartlett v Barclays Bank* [1980] Ch 515**):
 - the terms of the trust
 - nature of trust property
 - identity and range of beneficiaries
 - basic history of the trust's management
- Duty to safeguard the trust's assets, including to maintain the property and invest where appropriate. ***Re Wragg* [1919] 2 Ch 58**
- When exercising this duty of investment, they must act in the beneficiaries' best interest ***Cowan v Scargill* [1985] Ch 270**;
- Effective management also requires trustees to maintain records of the trust. Including:
 - Trust accounts: ***Freeman v Fairlie* (1817) 3 Mer 24**
 - Records relating to the trust property (e.g. fund details, and associated documents): ***Clarke v Earl of Ormonde* (1821) Jac 108**
 - Beneficiaries have rights of access (unit 4)

STATUTORY DUTY

- Trustee Act 2000 given statutory framing to duty of care, but only applies in specific circumstances, e.g. investment and land acquisition (full list in schedule 1)
- Does not apply, if obvious from the trust that settlor intended that the statutory duty should not apply, i.e. excluded by settlor (sch 1, s7)
- Does not replace common law, but exists in parallel
- Some synergies with the common law duty, but also aligns with duty of care in negligence (modernising language)

Trustee Act 2000: Section 1

(1) Whenever the duty under this subsection applies to a trustee, he must exercise such care and skill as is reasonable in the circumstances, having regard in particular:

- (a) to any special knowledge or experience that he has or holds himself out as having, and
- (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

Key source: Trustee Act (TA) 2000, s1-2 (part 1) and sch 1

INVESTING THE TRUST PROPERTY

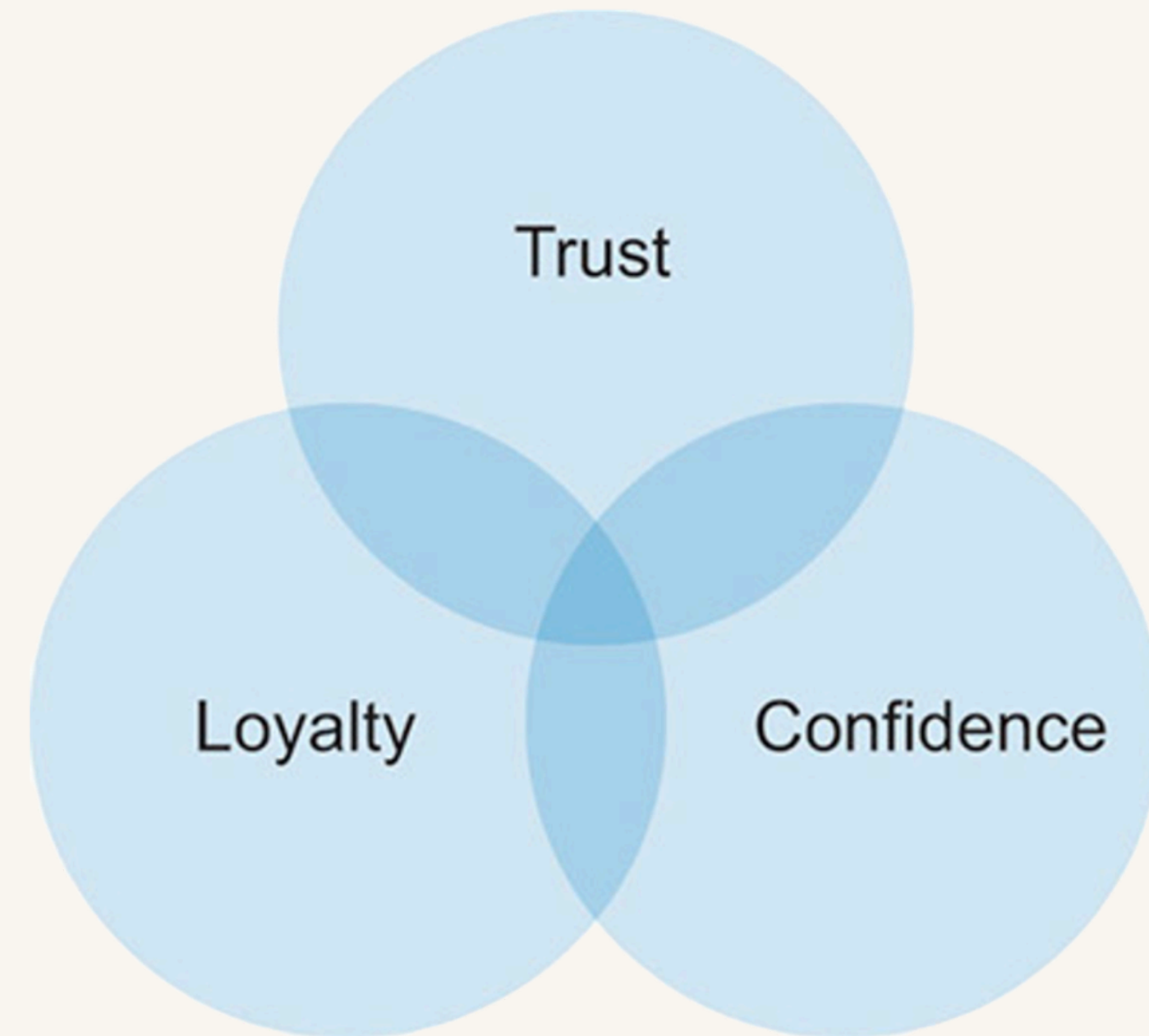
- Statutory duty applies when trustees invest trust property. In such cases, sections 3–5 must be considered
- TA 2000 substantially modified powers of investment of trustees
- Historically could only invest in funds which offered guaranteed return, eg savings accounts **Trustee Investments Act 1961** – protected funds, but offered limited growth, and risked fall in value against inflation
- Trustees can now invest in any type of investment that they might otherwise make if they were the property's absolute owners: **TA 2000, s3**
- But when doing so, must comply with statutory duty of care
- Not fully free to invest foolishly as they might their own wealth
- Must also have regard to standard investment criteria as to both choice of type and specific investment being considered, and whether trust investments are suitably diverse: **TA 2000, s4(3)**
- Must periodically review investments, varying as needed (**TA 2000, s4(2)**)
- Standard objective, tailored to risk of individual investment choice
- Must also take and consider proper advice (**s5(1)**)
- **Also consider standard investment criteria when reviewing (s5(2))**



Key source: Trustee Act (TA)
2000, s3–7 (part 2)

FIDUCIARY DUTY

- Trustee-beneficiary is also fiduciary in nature
- Unit 1 introduced the concept of the fiduciary: difficult to define, but connected to ideas of trust, loyalty and confidence
- Core duty: duty of loyalty towards beneficiaries to promote interests of the trust and its beneficiaries:
Re Merchant Navy Ratings Pension Fund [2015]
EWHC 448 (Ch).



EXHIBITING THE FIDUCIARY DUTY

- trustees must act in good faith, in good conscience, *Re Cockburn's Will Trusts; Cockburn v Lewis and others* [1957] 3 WLR 212
- honestly and diligently, without conflict of interest. *Bristol and West Building Society v Mothew* [1998] Ch 1 (CA) 18
 - prioritise the interests of their beneficiaries over their own interests or that of others.
- trustees must not benefit or profit from the trust, or their position as a trustee (unless authorised). *Keech v Sandford* (1726) Sel Cas Ch 61; *Boardman v Phipps* [1966] UKHL 2
- duty to act gratuitously, without any right to payment:
 - unless either permitted by the trust instrument *Robinson v Pett* (1734) 3 P Wms 249; *Dale v IRC* [1954] AC 11.
 - or authorised by statute, **Trustee Act 2000, s 29** (professional trustees)
- duty to avoid conflict of interest. *Clough v Bond* (1838) 3 My and Cr 490; *Bray v Ford* [1896] AC 44
- in distributing property: acting even-handedly between beneficiaries *Stephenson v Barclays Bank Trust Co Ltd* [1975] 1 WLR 882
- not act on their own behalf with trust property *Tito v Waddell (No 2)* [1977] Ch 106
- deal fairly with trust property

DEFENDING A BREACH OF TRUST CLAIM

- Regardless of basis, most common claim against trustees is breach of trust: ***Target Holdings Ltd v Redfern* [1996] 1 AC 421**
- To succeed, beneficiary must demonstrate that the breach has caused them to suffer a loss
- As the trust is an equitable mechanism – remedies are always discretionary
- Remedies may include: account of loss (equity's version of compensation) or to remedy performance (e.g. specific performance/injunction)
- Instead of pursuing litigation, beneficiaries can **condone breach**, and may especially do so if they have not suffered a loss, or perhaps even made a profit: ***Boardman v Phipps* [1966] UKHL 2.**
- Trustees' can also limit liability through:
 - obtaining fully informed prior consent (before acting)
 - including for breach of duty cases:
 - ***Boardman v Phipps* [1966] UKHL 2;**
 - ***Bristol and West BS v Mothew* [1996] 4 All ER 698**

Reflection:

Is it right that trustees can limit or exclude their liability?

TRUSTEE EXEMPTION CLAUSES

- Liability of trustees can be limited by incorporating a clause within the trust deed to either exempt or limit liability for breach of trust
- Except for pension trusts, unit trusts and debenture trusts, a trustee exemption clause can:
 - defend against claims arising in negligence including gross negligence: ***Spread Trustee Ltd v Hutcheson* [2011] UKPC 13**
 - not actual fraud/dishonesty: ***Armitage v Nurse* [1998] Ch 241**
- Where effectively deployed, such **clauses can**:
 - exclude or limit liability for loss and damage to trust property caused by trustees *'no matter how indolent, imprudent, lacking in diligence, negligent or wilful [they] may have been, so long as [they] had not acted dishonestly'*. ***Armitage v Nurse* [1998] Ch 241 (CA) 251 (Millett LJ)**.

There is an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust. If the beneficiaries have no rights enforceable against the trustees there are no trusts. But I do not accept the further submission that these core obligations include the duties of skill and care, prudence and diligence. The duty of the trustees to perform the trusts honestly and in good faith for the benefit of the beneficiaries is the minimum necessary to give substance to the trusts, but in my opinion it is sufficient ... A trustee who relied on the presence of a trustee exemption clause to justify what he proposed to do would thereby lose its protection: he would be acting recklessly in the proper sense of the term.

Key sources:
Armitage v Nurse [1998] Ch 241;

TEST FOR DISHONESTY

- Millet LJ equated dishonesty with actual fraud
- Subjective test: trustees either intended, knew or were recklessly indifferent as to whether their course of action was contrary to the beneficiaries' interests (at 479)
- CA since clarified proper test to use is an **objective test**:
***Walker v Stones* [2001] QB 902**
- A belief, while honestly held by the trustees, can be found to be dishonest, if that belief was so unreasonable that no reasonable trustee could have thought that the actions of the trustees were for the benefit for their beneficiaries.



Key sources:

Armitage v Nurse [1998] Ch 241;

INCORPORATING CLAUSES

- Trustee exemption clauses can be incorporated into wills, exempting trustees and executors from liability for their own negligence in relation to the exercise and execution of the powers and trusts declared under that will.
- A solicitor is duty bound to explain the usual terms under which trustees and executors are appointed.
- Nevertheless, they can inform the settlor/testator that they would not accept office without the inclusion of an exemption clause drafted in wide terms.
- ***Bogg v Roper*** held that a conflict of interests does not exist, requiring the settlor/testator be separately represented and advised in relation to the inclusion of such an exemption clause



Key source:
Bogg v Raper (1989-99) 1 ITLR 267

PROPOSALS FOR REFORM

- Ability for professional trustees (and other trustees) to exempt or limit liability for negligence or gross negligence has attracted criticism
- UKSC not considered this point yet, but Lady Hale doubted Millett LJs interpretation, suggesting it should be revisited: ***Spread Trustee Company Ltd v Hutcheson* [2011] UKPC 13**
- If fiduciary duties can also be exempted: seems to clash with central basis of equity as good faith should be inherent in trust relationship.
- Disconnect between commercial and family trusts: statute expressly forbids exclusion of liability in:
 - pension: Pensions Act 1995, s 33.
 - unit: Financial Services and Markets Act 2000, s 253
 - debenture trusts: Companies Act 2006, s 750
- But arguably position is justified on public policy grounds: complex commercial trusts have significant economic impact

According to Hudson (2015, p.417):
If exclusion clauses can displace many of the trustee's obligations to act in the utmost good faith, not to permit conflicts of interest, and to invest as though managing the property of someone for whom the trustee felt morally bound to provide, then the nature of trusteeship fails to have any particular resonance. It is like being a party to an ordinary contract and not like being someone who is subject to fiduciary duties.

PROFESSIONAL V NON-PROFESSIONAL PARADOX

- Paradox between professional and non-professional trustees, those with professional expertise (and knowledge to exempt) escape liability.
- According to Hudson (2015, p.419):
 - *“The present organisation of the law on trustee exemption clauses contains one tremendous paradox, namely that the more professional a trustee is, the more likely she is to have a term included in the trust instrument which governs her actions so as to exclude her liability when she acts negligently in the discharge of her fiduciary duties; whereas, a non-professional trustee who would probably not know that such a provision could be included in a trust instrument would therefore be held fully liable for breach of trust if she causes some loss to the trust despite never having held herself out as being a professional trustee in the first place. Thus, the qualified and experienced professional trustee escapes liability for causing loss completely, whereas the non-qualified and inexperienced trustee will bear full liability. There is something intuitively wrong with that, I would suggest.”*
- Even Millet LJ in *Armitage* acknowledged this issue

PROPOSALS FOR REFORM



Law
Commission
Reforming the law

- Trust Law Committee (1999) proposed reform preventing paid trustees from being exempt against liability for breach of trust arising from negligence. **Not enacted.**
- Law Commission (2003) initially made similar proposals, that an exemption clause could be disapplied where its reliance would be inconsistent with the overall purposes of the trust and thus unreasonable for the trustee to be exempted from liability
- Law Commission (2006) resiled this position. Recommending instead a rule of practice that:
 - any paid trustee [requiring inclusion of an exemption clause] must take such steps as are reasonable to ensure that the settlor is aware of the meaning and effect of such clauses.... (para 7.1)
- This proposal has been implemented by prof bodies, eg Society of Trust and Estate Practitioners, which has issued a practice rule that its members should disclose clauses exempting trustees and executors from liability.
- Kenny (2007) criticises the final proposals of the Law Commission, stating that *'it is incomprehensible that it is still permissible to have paid trustees, chosen for their reliability and expertise, who do not have to assume responsibility for their own misconduct, and in fact will still be entitled to payment'* (p. 106).

ACTIVITY 2: SBA TRUSTEES (SBA) 1

A man died leaving a will by which he left all his estate to three trustees to hold on trust for the four children of his best friend. The children are to inherit at the age of 18. Two of the children have reached the age of 18 and have received their share of the trust fund. The other two children are still under the age of 18. The trust fund comprises a portfolio of shares. One of the trustees has just died.

Which of the following best describes whether it is necessary for a replacement trustee to be appointed?

- A.** A replacement trustee must be appointed because some of the beneficiaries are still under the age of 18.
- B.** A replacement trustee must be appointed because three trustees were originally appointed and there are now only two trustees.
- C.** There is no requirement to appoint a replacement trustee because the trust came into effect after the man's death and not during his lifetime.
- D.** There is no requirement to appoint a replacement trustee because there is no land in the trust investments.
- E.** There is no requirement to appoint a replacement trustee because there are two surviving trustees.

ACTIVITY 2: SBA TRUSTEES (SBA) 2

A man died one month ago leaving a will by which he appointed his friend as his sole executor.

The executor has not yet applied for a grant of probate. He wishes to protect himself against claims of unknown creditors and has decided to place advertisements in the London Gazette, a newspaper circulating in the district in which any land forming part of the estate is situated and any other newspaper or publication he considers might be appropriate.

Which of the following best describes how the executor can protect himself against claims from unknown creditors through advertising as above?

- A.** He should place the advertisements and must wait 2 months from the grant of probate date before distributing the estate.
- B.** He should place the advertisements and must wait for two months from the advertisement date before distributing the estate.
- C.** He should place the advertisements and must wait for two months from the date of death before distributing the estate.
- D.** He should place the advertisements but must wait for two months from the date of death before doing so.
- E.** He should place the advertisements but must wait for two months from the date of the grant of probate before doing so.

ACTIVITY 2: SBA TRUSTEES (SBA) 3

A settlor established a trust in which the trustee was to invest the trust funds for the benefit of the beneficiary. The trustee initially placed the fund in a savings account. However, 6 months later, as the returns were low, with the settlor's agreement, the trustee withdrew all of the funds from the trust's bank account and invested the trust funds by gambling it playing roulette. The trustee expected to significantly increase the fund value. The trustee lost all of the trust funds playing roulette.

Which of the following best describes the trustee's liability?

- A.** The trustee is liable for breach of trust under strict liability as they acted *ultra vires*
- B.** The trustee is liable for breach of trust because according to their duty of care they can only invest the trust funds in schemes offering guaranteed returns
- C.** The trustee is liable for breach of trust because they have breached their duty of care
- D.** The trustee is not liable for breach of trust as trustees can invest trust money however they see fit, as if it was their own
- E.** The trustee is not liable for breach of trust because the settlor consented to the trustee's action

UNIT 3: LEARNING OUTCOMES

- Identify factors motivating trustees
- Explain who can become a trustee and how they are appointed
- Explain the rights and obligations of trustees
- Evaluate the rules relating to trustee duties and the routes to limit liability
- Apply knowledge to factual scenarios

RECAP

UNIT 3: 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 10–13
 - Ramjohn and Bray (2024), chapter 13–14 and 16
 - Barr and Pearce (2022) chapters 32–35

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.
 - Chia, H.Y. (2015) 'Trustee exemption clauses: a call for caution', *Trust Law International*, 29(3), pp. 114-135.
 - Harding, M. (2013) 'Trust and fiduciary law', *Oxford Journal of Legal Studies*, 33(1), pp. 81-102.
 - Hudson, A. (2015) *'Great debates in equity and trusts.'* London: Palgrave Macmillan.
 - Kenny, A. (2007) 'The good, the bad and the Law Commission', *Conveyancer and Property Lawyer*, March-April, pp. 103-108.
 - Law Commission, Trustee Exemption Clauses (Law Com No 171, 2003). Available at: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-1ljsxou24uy7q/uploads/2015/03/cp171_Trustee_Exemption_Clauses_Consultation.pdf (Accessed: 30 May 2023).
 - Law Commission, Trustee Exemption Clauses (Law Com No 301, 2006). Available at: https://www.lawcom.gov.uk/app/uploads/2015/03/lc301_Trustee_Exemption_Clauses.pdf (Accessed: 02 November 2022).
 - Matthews, P. (1989) 'The efficacy of trustee exemption clauses in English law', *Conveyancer and Property Lawyer*, Jan-Feb, pp. 42-54.
 - Penner, J.E. (2014) 'Is loyalty a virtue, and even if it is, does it really help explain fiduciary liability?', in Gold, A.S. and Miller, P.B. (eds) *Philosophical foundations of fiduciary law*. Oxford: Oxford University Press, pp. 159-175.