Plan of reading lists
1. Declaring a trust
2. Trusts for non-charitable purposes
3. Charitable trusts
4. Failures to create a trust and resulting trusts
5. Fiduciaries and fiduciary liabilities
6. The powers, duties and control of trustees
7. Responses to a breach of trust (1): personal liabilities
8. Responses to a breach of trust (2): proprietary claims

Books
On the reading lists, I will be referring to:


This is my favourite of the available textbooks, but is on the short side. This at least gives it the virtue of brevity – but it does mean that it also doesn’t cover the law in enough detail for your purposes. I will also be referring to:


You will also need an up-to-date, and unmarked, copy of Blackstone’s Statutes on Property Law (last year’s version, from Land Law, will be fine). Other books that you might want to look at from time to time are: Virgo, Principles of Equity and Trusts; Davies and Virgo, Equity and Trusts: Text, Cases and Materials; Hanbury and Martin, Modern Equity; Parker and Mellows, The Modern Law of Trusts; and Mitchell, Hayton and Mitchell: Commentary and Cases on the Law of Trusts and Equitable Remedies.

Cases
The reading lists will refer you to a number of key cases – you will be expected to read them. But having read them, don’t stop there. Use them as the basis for deepening your knowledge of the law by going onto Westlaw, looking them up, and then on the menu on the left, click on ‘Key cases citing’ and ‘Journal articles’ to see whether there are any recent cases that have anything interesting to say about the key cases to which I have referred you, and to see whether there are any interesting casenotes or articles in legal journals on those cases. Do this in particular for any key cases that were decided in the last five years, as they are the ones most likely to give rise to further litigation/comment in the legal journals/questions in the exam.

Journals
You should start getting into the habit of looking at the specialist law journals on Equity – The Conveyancer and Property Lawyer (available on Westlaw), Trust Law International (available on Westlaw, but also on Lexis Library where you can browse through lists of contents – click on ‘Journals’, then ‘Browse full text journals’ on the left, and then scroll down the list of journals that will open up until you get to Trust Law International) and the Journal of Equity (an Australian journal, only available in hard copy). You will benefit far more from looking through those than ploughing through a textbook.

mcbridesguides
I have written a number of essays for you to help you out with various aspects of your Equity studies. These are available on my website www.mcbridesguides.com. I have concentrated on areas of the law that are not dealt with at all well in the textbooks. I will indicate on the reading lists as and when
you will need to read one of these essays. When I do, MAKE SURE YOU READ IT before the supervision. It is far more important that you read these essays than anything else on the reading list. I will be pretty displeased if I have to spend time in the supervision going over points that I have worked hard to set out clearly and at length in an essay for you. I want to use the supervisions to focus on going over past paper questions, and any queries that you still have AFTER you have read everything I have told you to read.

**Additional reading**

There are number of articles on Equity that would be good for you to read to make you much more sophisticated in your knowledge of the subject and your ability to discuss it. However, these articles don’t fit easily within any of the reading lists. So in various weeks, you will be set one or two articles to read as ‘Additional reading’. Make sure you do it – it is going to be important for the exam that you are acquainted with the ideas in that reading.

**Aims and objectives**

Each week, I will set out the aims and objectives that you should have in mind in going through the reading. Check your progress against these aims and objectives, and if you are failing to achieve these aims and objectives, see if a different approach to your work would help; if not, ask me in the supervision about any areas of the law where you are still not up to speed.

**Written work**

Every two supervisions, you will be expected to do some written work and hand it in, in the supervision. What written work will be specified on the reading list.

**Questions for the supervision**

For most of the supervisions, you will be asked to consider a variety of questions, which are intended both to encourage you to deepen your understanding of the law, and to highlight issues that you need to focus on in your reading. We will go through these questions in the supervision.

**Past paper questions**

At the end of every supervision reading list, you will find some past paper questions relevant to the reading for that supervision. We will be aiming to go through some of these questions in the supervision – so it would be a good idea to have a look at them before the supervision and get some general idea of what the questions are about and how you might try to answer them.

**Final warning**

Do not underestimate how tough Equity is. It is complicated (though I have tried to help a lot with that, with my essays on www.mcbridesguides.com), and the Equity exams have tended in the past to be very difficult. You really have to give yourself 100% to this subject if you are to achieve a good mark in it.

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SUPERVISION 1. DECLARING A TRUST

Reading
mcbridesguides → Equity → Express Trusts → Creation
Webb, chs 1-3, 16
Moffat, ch 1, pp 132-139, 179-200, 228-270, 352-356
Hunter v Moss [1994] 3 All ER 215
Re Kayford [1975] 1 WLR 279
Re Barlow [1979] 1 All ER 298
McPhail v Doulton [1971] AC 424
Re Baden (No 2) [1973] Ch 9
Re Hay [1981] 3 All ER 786

Additional reading
Harris, ‘Trust, power and duty’ (1971) 87 LQR 31
Birks, ‘Meagher, Gummow and Lehane’s Equity: Doctrines and Remedies’ (2004) 120 LQR 344
Hayton, ‘The development of equity and the “good person” philosophy in common law systems’ [2012] Conv 263
Matthews, ‘The comparative importance of the rule in Saunders v Vautier’ (2006) 122 LQR 266

Aims and objectives
In doing the reading for this supervision, you should have a number of aims:

(1) To understand what a trust is, and how a trust is different from: (i) a contract to use property in a particular way; (ii) a contract of agency; (iii) a bailment; (iv) a charge; (v) the interest of a legatee under a will that has not yet been executed.

(2) To understand the various reasons (good and bad) why someone might want to create a trust.

(3) To understand what the rule in Saunders v Vautier says, and why the rule exists.

(4) To understand the basic rules that have to be complied with if a declaration of trust is to be valid. In particular, the rules on: (i) certainty of intention; (ii) certainty of subject matter; (iii) certainty of objects.

(5) To understand what a discretionary trust (sometimes referred to in the cases as a ‘trust power’) is, and how it is different from a fixed trust. For example: What sort of trust is the following: ‘£5,000 to be held on trust for whoever, in the opinion of my trustees, gave the best speech at my wedding’?

(6) To understand the difference between a discretionary trust and a power of appointment; and to understand the different kinds of powers of appointment (bare, fiduciary) that are recognised in English law.

(7) To understand the nature and rationale of the rules relating to certainty of objects (and capriciousness and administrative workability) that will apply to determine whether a
discretionary trust is valid or not. Also to understand to what extent those rules apply to powers of appointment.

(8) To understand when an ‘uncertainty curing’ clause (whether applying to a fixed trust, or a discretionary trust) will be valid, and when it will not be.

Questions for the supervision

Are the following provisions in Bill’s will valid (and how many of these provisions purport to create a trust):

(a) ‘100 of my 200 shares in British Gas to Joanna.’
(b) ‘Five of the best bottles of wine in my cellar to Fred.’
(c) ‘£500 to each of my friends.’
(d) ‘£100,000 to be distributed equally among everyone who helped me in my career; in case of doubt as to whether someone helped me in my career, my wife is to have the final word.’
(e) ‘£10,000 to Stanley, in the expectation that he will use the money to ensure that anyone whom I cheated will be recompensed.’
(f) ‘£50,000 to be distributed as my trustees see fit among everyone who bullied me at school.’
(g) ‘£5,000 to be given each year to the best Scottish sprinter.’
(h) ‘The rest of my estate to my wife, so long as she never marries again or has an intimate relationship with anyone else.’

Past paper questions

2 (a) ‘There is no reason why a trust deed should not be able to make the opinion of the trustees or some third party conclusive in resolving any uncertainty as to the identity of beneficiaries of the trust.’
   Discuss.
   
   and

   (b) Richard has just died. By his will (which contained other gifts as well) he gave £200,000 to his trustees to hold on trust for ‘such one or more, as the trustees shall appoint, of Edward, Ruth, Helen and anyone else my old friends Chris and Charlotte think should benefit from my will but has not already done so’. The will also appointed Chris and Charlotte as Richard’s trustees.
   Advise Chris and Charlotte how they should deal with the £200,000, and give your reasons.

1 Sally is considering making a trust. She wants the trustees to have power to benefit those who have helped her achieve her present success as an author and those who were kind to her when she was struggling at the start of her career. Sally cannot understand the rather convoluted explanation that Lenny, her lawyer, has offered as to why a power in these terms might cause difficulties.

   (a) Explain what is problematic about such a power as a matter of equity, and the reasons why such problems exist.
   
   and

   (b) Suggest any alternative ways by which Sally may, so far as possible, validly achieve her goal.
1 Jason died recently, leaving a will which provided:

(i) ‘£250,000 to my wife, Kate, as trustee, to be distributed by her, in her absolute discretion among my best friends and the more famous of my professional associates. In case of doubt as to who are my best friends, Kate shall have the power to settle any difficult questions.’

(ii) ‘My trustee shall also be able to distribute up to £100,000 of the aforementioned sum of £250,000 among the people of Scotland, in her absolute and unfettered discretion, trusting that she will take into the people of Glencoe, where I so loved walking.’

The population of Scotland is approximately 5,100,000, and that of the Glencoe region of Scotland approximately 19,250.

2 Daniel has recently died and his home made will provides as follows:

(i) I give enough money to my trustees as is required to ensure that my children and their families can have the good standard of living they deserve.

(ii) I give £200,000 for distribution in my trustees’ discretion amongst my ballet-loving friends. Any doubts about who gets what shall be determined by the Director of the Royal Ballet.

(iii) I give the residue of my estate to my niece Rebecca if she shall divorce her feckless husband Henry. Advise the executors of Daniel’s will as to the validity of these provisions.
SUPERVISION 2. TRUSTS FOR NON-CHARITABLE PURPOSES

Reading

(1) The beneficiary principle

mcbridesguides → Equity → Express Trusts → Beneficiary principle
Webb, ch 4
Moffat, pp 270-290, ch 6
Re Endacott [1960] Ch 232
Re Denley [1969] 1 Ch 373
mcbridesguides → Equity → Equity Casenotes → Re Horley FC

(2) The puzzle of the Quistclose trust

mcbridesguides → Equity → Quistclose Trust
Webb, pp 191-196
Moffat, pp 759-775
Barclays Bank v Quistclose Investments [1970] AC 567
Twinsectra Ltd v Yardley [2002] 2 WLR 802, paras [68]-[103]

Aims and objectives

In doing the reading for this supervision, you should have a number of aims:

(1) To understand why the law is reluctant to recognise that a trust for a non-charitable purpose is valid; and to understand the reason for the exceptions to the rule against non-charitable purpose trusts.

(2) To understand why the rule against non-charitable purpose trusts creates difficulties for unincorporated associations when someone makes a gift to the association (particularly in a will), and to understand how the courts and donors to unincorporated associations have sought to overcome those difficulties.

(3) To understand why the rule against non-charitable purpose trusts creates difficulties in the Quistclose situation where A lends (or gives) money to B to be used only for a particular purpose; and to understand what the legal position will be in that kind of situation.

(4) To form some views as to whether or not the law in this area needs reforming.

Written work

Answer the following question:
Questions for the supervision

1. Are the following provisions in Candy’s will valid:
   (a) ‘£10,000 to be used to pay for an annual fireworks display in memory of me.’
   (b) ‘£5,000 to be used to pay off Ernest’s debts.’
   (c) ‘£7,500 to look after my neighbour’s tortoise after my neighbour dies.’
   (d) ‘£50,000 to my husband, subject to my trustees having a power to use the money to help my children learn some useful lifeskills.’
   (e) ‘£100,000 to be distributed as my trustees see fit among anyone other than the members of my family.’

2. Is the following declaration of trust valid: ‘I hold all my assets on trust for my children, subject to a power to use the assets for whatever purpose I like.’

3. Robert has fallen on hard times. He approaches his father, Victor, for a loan. Victor lends him £20,000, specifying, ‘You can do what you like with the money, but don’t let your ex-wife get a penny of it.’ Robert has now invested £10,000 of the money in a business run by his ex-wife. What is the position?

Past paper questions

3. ‘The beneficiary principle does not require that every trust should at all times have cestui que trust who are vested with beneficial ownership of the trust property. All that is required is that there must be a person or persons with locus standi to compel the trustees to carry out their duties.’
   Do you agree?
7 Either (a) "Once an otherwise English trust is valid as a non-charitable purpose trust because, say, Jersey law has been made the governing law and an enforcer has been appointed, one wonders why such a trust should not be allowed to develop as a valid English trust if limited to a valid perpetuity period and the purposes are certain and workable: the old cases rejecting non-charitable purpose trusts can be explained as really void for perpetuity or for unworkability." (HAYTON, 2003)

Do you agree?

Or (b) "As Sherlock Holmes reminded Dr Watson, when you have eliminated the impossible, whatever remains, however improbable, must be the truth. I would reject all the alternative analyses ... and hold the quasichase trust to be an entirely orthodox example of the kind of default trust known as a resulting trust." (LORD MILLETT in Titanic Ltd. v. Yardley, 2002)

Evaluating Lord Millett’s analysis of quasichase trusts.

2 Answer both (a) and (b):

(a) "An express trust must exist even though there is no corresponding equitable interest held individually or collectively (or a group of beneficiaries) and it is possible to have an express trust without being able to locate an equitable interest in the property held on trust." (wacknung Dilemma) and

(b) Consider the effects of the following provisions contained in the will of Atworth, recently deceased:

(i) 30 of the most valuable books in my library to the Master, Fellows and Scholars of Balliol
College Cambridge for the furtherance of research within the College;

(ii) sufficient from my shareholding in the Clarke company to ensure that my nephew,
Donald, will have a comfortable life;

(iii) picture to be selected by my trustees from my collection, one to be given to each of my
friends;

(iv) my residuary to my trustees as to half for distribution amongst each of my cricket-loving
coaches as they shall select, for the purpose of enjoying visits to Lord's Cricket
Ground in memory of the happy times we all spent together there and as to half for the purpose of
improving the catering facilities at that Cricket Ground.

2 Answer both (a) and (b):

(a) There is, usually, no good reason for regarding a non-charitable purpose trust as being void and there is good reason, ordinarily, for regarding it as valid." Discuss and

(b) Advise the executors and trustees of Easymon’s will as to the validity of the following bequests which were contained in his will.

(i) £100,000 to my trustees for the purpose of ensuring that my two cats continue to live in
luxury and are left at the death of the survivor of them for the purpose of providing good seats at
the opera for each of my opera-loving friends as my trustees shall select;

(ii) £100,000 to the Fanfaron golf club for the purpose of improving its catering facilities.

1 Consider the effect of each of the following dispositions contained in the will of
Nelson, who died recently:

(i) £10,000 to Julia as trustee, the money to be applied in building a bus shelter by the village green as a lasting memorial to my father Walter, who hated waiting for the
bus in the rain;

(ii) £10,000 to the Felpsham Antiquestarian Society (a non-charitable unincorporated association), to be used in the first instance for the refurbishment of their
meeting room; any sums not needed for the refurbishment may be put to the Society’s
purposes generally;

(iii) £10,000 to Elizabeth as trustee, for the purpose of paying for the upbringing of
her children Freddy and Lily;

(iv) my residuary to Shula as trustee, to be distributed between the regular
customers at Nelson’s wine Bar, so that each of the regulars shall receive at least £500,
or a larger sum at the trustee’s discretion. Shula shall also have power to make an
individual gift of £1,000 from the residuary estate to any person I have left out of my will
whom she feels ought to receive something from me.

How would your answer be affected, if at all, if the Felpsham Antiquestarian Society
had been wound up last week by a vote of its members?
SUPERVISION 3. CHARITABLE TRUSTS

Reading
Webb, ch 5
Moffat, chs 16-17
Charities Act 2011, ss 1-5
Re Pinion [1965] Ch 85
Dingle v Turner [1972] AC 601
Re Koeppler’s Will Trusts [1986] Ch 423
http://www.charity-commission.gov.uk (especially their ‘Public Benefit Assessments’)  
mcbidgesguides → Equity → Equity Casenotes → ISC v Charity Commission  
Hackney, ‘Charities and public benefit’ (2008) 124 LQR 347  
Synge, ‘Charitable status: not a negligible matter’ (2016) 132 LQR 303

Additional reading
Hackney, ‘The politics of the chancery’ (1981) 34 Current Legal Problems 113

Aims and objectives
In doing the reading for this supervision, you should have a number of aims:

(1) To understand the rules that currently apply to determine whether or not a given purpose trust is charitable in nature.

(2) To understand what will happen to a charity’s assets if, at some point in the future, that charity’s purposes are held no longer to be for the ‘public benefit’.

(3) Given (2), to understand why the Charity Commission’s role in determining whether a given charitable organisation (such as a school, or a religious organisation) is operating for the ‘public benefit’ is so controversial; and to understand what legal recourse a charitable organisation has if the Charity Commission declares that the existence of that organisation is not for the ‘public benefit’.

(4) To understand the rationale of the rule that a political purpose will not be charitable in nature; and to understand what effect that rule has on a charitable organisation’s ability to pursue political projects.

(5) To understand when, and how, the rules on cy-prés will apply to allow money that has been donated for a particular charitable purpose or organisation to be applied for a different purpose or organisation.

Questions for the supervision

1. Are the following provisions in Dermot’s will valid:
   (a) ‘£50,000 to provide music lessons for poor people.’
   (b) ‘£100,000 to endow a prize, to be awarded every ten years to the most outstanding legal academic under 25.’
   (c) ‘£6m to purchase and destroy as much pornography as possible.’
   (d) ‘£100,000 for the promotion of the Roman Catholic religion.’
(e) ‘£60,000 to subsidise the cost of meals at my old college.’
(f) ‘£4m for the creation of an indoor swimming pool at my old school.’
(g) ‘£800,000 to encourage cat owners to have their pets neutered; we need to reduce the number of cats – there are too few birds as it is.’
(h) ‘£3m to create a swimming pool, jacuzzi and massage centre for sex workers; they have a hard life and need some fun.’
(i) ‘£8m to tell unemployed people in other countries how miserable life in Britain is so that they won’t try to come here illegally.’

2. Karl left £100,000 to the ‘Southend Cat Sanctuary’ in his will. There is no such sanctuary. What is the position? What if a little old lady had run a home for cats and given it the name the ‘Southend Cat Sanctuary’ but the home had not existed for 5 years as the little old lady had died?

**Past paper questions**

3 Answer both (a) and (b):

(a) ‘Whether a group of persons is a section of the public is a question of fact and degree.’
Discuss.

and

(b) Whether the following trusts are charitable:

(i) ‘For the display of paintings by chimpanzees;’

(ii) ‘For the encouragement of plain speaking by politicians and the encouragement of the use of private monies for the improvement of public services the National Health Service in particular;’

(iii) ‘For the provision of a chapel in the maximum security wing of Dartmoor Prison;’

(iv) ‘For the relief of stress suffered by practising solicitors.’

Or (b) Consider the nature and validity of the following trusts set up under the will of a recently deceased testator:

(i) ‘for the promotion of the welfare of persons generally and for the extension of their vocabulary and improvement of their education in particular;’

(ii) ‘for the provision of free donkey rides on Brighton beach for the children of single mothers;’

(iii) ‘for the provision of a sports and recreation centre in Brighton;’

(iv) ‘for the provision of a snooker table to provide relaxation for the members of a strictly cloistered order of nuns;’

(v) ‘to educate the public about the disadvantages for the United Kingdom of its adopting the Euro as its currency and for the publication of arguments for and against the holding of a referendum on the matter.’

5 (a) Discuss the validity and effect of the following gifts on trust:

(i) ‘to restore plant biodiversity on a private country estate;’

(ii) ‘to encourage young people in Cambridge to play the card game of bridge;’

(iii) ‘to fund research studentships in peace studies at a university.’

and

(b) ‘The first aspect is that the nature of the purpose itself must be such as to be a benefit to the community; this is public benefit in the first sense ... The second aspect is that those who may benefit from the carrying out of the purpose must be sufficiently numerous, and identified in such manner as, to constitute what is described in the authorities as ‘a section of the public;’ this is public benefit in the second sense.’

(DOWER TRIBUNAL, TAX AND CHANCERY CHAMBER, 2011)

Does this statement assist our understanding of the case law on the public benefit in charity law?
3 Marcus’s will provided as follows:

’(i) £250,000 to my trustees to provide daily religious services for the prisoners in maximum security at HM Prison at Full Sutton for the next 20 years.’

’(ii) £200,000 to my trustees for the education of children living in Cornville.’

’(iii) £150,000 to my trustees for the purpose of promoting a better understanding in English secondary schools of the history of the Conservative Party.’

’(iv) £200,000 to the Metropolis Housing Trust for the purpose of furthering its work.’

Cornville is a town of some 150,000 inhabitants. Almost all of its adult population works for Cornstar, a popcorn factory. Marcus had no formal connection with either, other than buying Cornstar popcorn.

The Metropolis Housing Trust had provided affordable housing for the poor. Before Marcus’s death, but unknown to him, the Metropolis Housing Trust had been dissolved. Its remaining funds had been added to the trust fund of the comparable Urbane Housing Trust, which still exists.

Advise the residuary legatee of Marcus’s estate as to the validity of the gifts.

9 (a) The Charity Commission’s Public Benefit Guidance goes beyond promoting awareness and understanding of the public benefit requirement in charity law. It actually modifies the existing case and statute law.’

Do you agree?

and

(b) Are the following purposes charitable?

(i) To provide art classes for young people in economically deprived areas of London;
(ii) To preserve the rural hinterland of Cambridgeshire from urban development;
(iii) To provide educational scholarships for the children of Church of England ministers.

4 ‘Recent statutory reforms of English charity law supply an utterly modern basis for altruism and the law of giving. No more will charitable status depend on the idiosyncratic opinions of judges, or on obscure and contradictory principles that are unjustifiable in today’s society.’

Do you agree?
SUPERVISION 4. FAILURES TO CREATE A TRUST AND RESULTING TRUSTS

Reading

(1) Rules for the constitution of a trust
Webb, pp 123-129, 158
Moffat, pp 153-163
Choitharam International SA v Pagarani [2001] 1 WLR 1
Pennington v Waine [2002] 4 All ER 215
Luxton, ‘In search of perfection: the Re Rose rule rationale’ [2012] Conv 70

(2) Formalities for the creation, or disposition, of an interest under a trust
mcbridesguides → Equity → Express Trusts → Formalities
Moffat, 139-153
Wood, s 53

(3) Resulting trusts
mcbridesguides → Equity → Resulting Trusts
Webb, ch 8
Moffat, 214-227, ch 15
Re Andrew [1905] 2 Ch 48
Re Osoba [1979] 1 WLR 247
Re West Sussex Constabulary Trusts [1971] Ch 1
Re Sick and Funeral Society of St John’s Sunday School, Golcar [1973] Ch 51
Re Bucks Constabulary Widows’ Fund (No 2) [1979] 1 WLR 936
Swadling, ‘Explaining resulting trusts’ (2008) 124 LQR 422

Additional reading
Moffat, pp 72-105
Conaglen, ‘Sham trusts’ (2008) 67 CLJ 176

Aims and objectives
In doing the reading for this supervision, you should have a number of aims:

(1) To understand the requirements that have to be fulfilled for a trust to be validly constituted, and what will happen when those requirements are not complied with.

(2) To understand (in outline) the nature and function of the formality rules governing the creation of trust interests, and dealings with those interests. In particular, you should aim to understand when someone will be held to be attempting to ‘dispose’ of a beneficial interest that he has in trust property – with the result that what he is attempting to do will be ineffective unless put in writing.

(3) To understand what a resulting trust is, and the basic situations that will normally give rise to a resulting trust.

(4) To understand the various theories as to why resulting trusts arise in those situations, and not in any others.
To understand what principles will apply to determine how money that has been given to, or raised, by an unincorporated association will be distributed when that association is wound up.

**Written work**

Answer the following question:

6 Answer both (a) and (b):

(a) '[A] resulting trust …arises whether or not the transferor intended to retain a beneficial interest - he almost always does not- since it responds to the absence of any intention on his part to pass a beneficial interest to the recipient.' *(per LORD MILLETT, *Air Jamaica v. Charlton*, 1999)*

Discuss.

and

(b) The Arcadia Allotment Association (a non-charitable unincorporated association) existed for two purposes:

(i) to hold regular meetings of allotment holders, for the exchange of advice and information; and

(ii) to make grants to allotment holders, for the purchase of tools, seed and other gardening materials.

The rules of the association provided that grants to allotment holders were to be made by the Management Committee in its absolute discretion, and expressly stated that no allotment holder was to receive financial benefits in excess of £50 in any one year. The funds of the Association were derived partly from the annual subscriptions of the allotment holders who were members of the Association, and partly from the annual subscriptions of ‘affiliated members’ who (although not themselves allotment holders) wished to offer regular financial support to the work of the Association.

Last week the Arcadia Allotment Association was dissolved by a vote of its members. Consider what should happen to its surplus funds.

**Questions for the supervision**

What is the position in the following situations:

(a) A transferred shares into B’s name having told B beforehand that he wanted B to hold the shares ‘on trust’. After making the transfer, A told B to hold the shares on trust for C.

(b) D orally declared that he held *Blackacre* on trust for E. E directed D to transfer *Blackacre* into the name of E’s son. D – who thought that E’s son was a scoundrel who would spoil and waste *Blackacre* – did as he was instructed, but only because he felt that he had no legal alternative. D then died. D’s next of kin want to claim *Blackacre* if they possibly can.

(c) F told G that he was going to give him £100,000. F asked G for his bank details so he could make the payment electronically. F made the payment and received confirmation
that the transfer would go through in a couple of hours’ time. However, a suspicious bank officer held up the transfer and rang F to confirm that he was authorising the transfer. By then, the enormity of the sum that F thought he had paid out of his account made him have second thoughts, and he told the officer he did not want to make the transfer.

(d) Relatives of six university friends gave them £2,000 to fund a cycling trip in France. The night before the trip, all six fell ill with food poisoning and could not go.

(e) Midas gave £1m to his old college’s law society to fund an annual away day in Paris for the college law students, complete with dinner at a top restaurant. Does it make a difference (i) legally, and (ii) practically, whether he did this while he was alive, or in his will?

Past paper questions

1. Andrew holds shares in SilverCorp Ltd. on trust for Brian. Brian has decided that he would prefer if the shares were held on trust by Clarissa for Brian’s sister, Deirdre. Brian seeks your advice as to the steps he ought to take to achieve this result. If you consider that more than one method of achieving the result is available, please identify the reasons why you consider the different methods are available and advise Brian as to which method you consider preferable.

2. Either (a) ‘To say that “Equity will not assist a volunteer” in the constitution of a trust is highly misleading. Equity often assists a volunteer in the constitution of a trust. Indeed, it should do so more widely than it does now.’
   Discuss.
   
   Or (b) ‘Section 53 of the Law of Property Act 1925 is an incoherent disgrace to the law, a disgrace compounded by the antique and absurd case law encrusted on it. Parliament should reform the section as a priority or, better still, simply repeal it.’
   Discuss.

6. The Anti-Bomb Campaign (‘ABC’) is an unincorporated association founded in the 1960s by three peace activists called Peter, Paul and Mary. Its object is ‘to promote conflict resolution by raising public awareness of the dangers of nuclear war’. ‘Regular members’ of the ABC pay an annual subscription in return for a newsletter and invitations to meetings where they may vote about the direction of the ABC’s campaigns. ‘Life members’ pay £500 in return for the same membership benefits for the rest of their lives and a special certificate commemorating their ‘enduring commitment to peace’. ‘Child members’ quality for automatic membership if one of their parents becomes a regular member. They are entitled to attend ABC meetings but not to vote.

   ABC has just two substantial assets: the unexpired term of the lease on its office space which was granted at a low rent by a supporter of ABC called Sandy, and about £20,000 in a current bank account. Of this sum, £15,000 represents income from membership subscriptions and lectures given by Peter, Paul and Mary over the years. The remaining £5,000 was lent 10 years ago by Derrick to enable the ABC to run a series of newspaper advertisements, which it never did.

   The ABC membership has dwindled. There are just two regular members and five child members. The only life members are Peter, Paul and Mary.

   Peter, Paul and Mary would like to wind up ABC. Advise them.

9. ‘There are no longer competing theories to explain the disposal of assets on the dissolution of an unincorporated association. The way they are disposed of follows from the way the contributors intended them to be held while the association existed.’
   Do you agree? Illustrate your answer by reference to the decided cases.
15

7 Jane is president of the Corbridge Netball Club, a non-charitable unincorporated association. The Club’s main asset is land in Corbridge on which are located netball courts and a club house. The rules of the Club establish two categories of members – ordinary and affiliated members – and two types of club meetings: ordinary and special meetings. All decisions of the Club may be made by simple majority vote among ordinary members in an ordinary meeting, while a winding-up of the club requires a special majority of 80% of fully paid up ordinary members at two successive special meetings. Affiliated members are entitled to use the Club's facilities and to attend social functions held by the Club, but have no voting rights.

Celia, who is an ordinary member, lends £5,000 to Jane specifically for the purchase of new uniforms for all players in the Club's team. The loan terms state the money must not be used to fund any of the Club’s social events. After paying for the new uniforms, Jane nevertheless uses £100 of the money to buy cakes for an ordinary meeting of the Club. At the meeting, the Club’s ordinary members unanimously vote that the remaining loan money should be used to fund the Club’s May Ball.

At the May Ball, a row takes place among the Club members over the quality of their new uniforms. Some allege the uniforms are second-hand. Unable to mend their differences, the members wish to wind up the Club. They accordingly hold a further meeting at which all the ordinary members of the Club are present and vote to wind up the Club immediately.

The affiliated members wish to prevent the Club from being wound up. In the alternative, they wish to know if they will be entitled to any part of the Club's property on dissolution.

Adviser Jane. Celia and the other members of the Club of their respective rights and liabilities.

(b) Amanita conveys her house, The Woodlands, to Belladonna, expressly stipulating in the conveyance that Belladonna is to hold the property 'on trust as I shall instruct her'. A week later Amanita sends Belladonna a fax instructing her that The Woodlands is to be held on trust for Catkin for life, with remainder to Dandelion.

On hearing of the trust, Catkin orally informs Belladonna that she will not accept the life interest, since she regards both Amanita and Belladonna as thoroughly poisonous characters.

Amanita also orally declares herself trustee of 'three-quarters of my shares in McDougalls Ltd' on trust for Eglinnte for life with remainder to Fern. Amanita holds 100 shares in McDougalls Ltd (a private company), shortly before declaring the trust she had entered a contract to sell 50 of them to Gillyflower, but no shares have been transferred. A few months later, dividends are declared upon the shares and Amanita pays seventy-five per cent of the proceeds to Eglinnte, but shortly afterwards Eglinnte orally informs Amanita that she wishes to receive no further income from the shares (having discovered that McDougalls Ltd are implicated in the destruction of forest habitats), saying 'Fern can have the lot'.

Amanita then dies, leaving all her property to Hazel in her will. Advise Amanita's executors.

6 Tim and Tricia were the joint registered proprietors of Stonyfield farm, which they held on trust absolutely for Bernard. For many years, Bernard had been wondering whether he should let his son, Stephen, take over the farm or whether it should instead pass to his daughter, Davina.

Bernard finally made up his mind. He called in Tim, Tricia, Stephen and Davina, and solemnly announced that he was renouncing all his interest in the farm and that it should pass with immediate effect to Stephen. Stephen soon afterwards gave notice to quit the rented farm property where he worked, and prepared to move to Stonyfield. Bernard gave unsigned written instructions to Tim and Tricia that they should transfer Stonyfield to Stephen. The trustees executed the Land Registry transfer form naming Stephen as transferee, and lodged it with Bernard to hold until the agreed completion date. Stephen expected that Bernard would have last-minute doubts so he secretly stole the transfer form from Bernard's house one night and lodged it with the Land Registry. Unaware of this, Bernard telephoned Tim and Tricia some days later to say that he had indeed changed his mind about the transfer, and that he instead wanted them to hold Stonyfield on trust for Davina. He gave them signed written instructions to his effect.

Advise Bernard, on the assumption that the transfer to Stephen is still unregistered.
(a) There is no single or convincing explanation as to why a resulting trust arises or as to when it does." Discuss.

3 'Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention.' (LORD BROWNE-WILKINSON in *Westdeutsche Landesbank v. Islington London Borough Council* (1996))

Discuss.

4 (a) What theories have been offered to explain when and why a resulting trust arises?
Which do you find most convincing, and why?

and

(b) Can resulting trusts explain how property used for the purposes of a non-charitable unincorporated association is to be divided on the dissolution of the association?

2 Alan executed a transfer of a registered freehold estate in land to Belinda and Charles, and simultaneously declared that they were to hold the land as trustees for David absolutely. The transfer to Belinda and Charles was duly registered but Alan's declaration of trust was never reduced to writing.

Belinda and Charles later took the view that Alan's oral declaration of trust was probably ineffective so they told Alan that they had no intention of carrying out the trust. This suited Alan since he had changed his mind in the meanwhile and now preferred to see the land go to Edward instead. He orally directed Belinda and Charles to transfer the registered estate to Edward as beneficial proprietor. Belinda and Charles duly executed the memorandum of transfer and passed it to their own solicitor to hold until the date arranged for completion with Edward. Alan died suddenly before completion.

Belinda and Charles are unsure whether they should still proceed with the transaction.

Advise them.
SUPERVISION 5. FIDUCIARIES AND FIDUCIARY LIABILITIES

Reading

(1) Fiduciaries and gain-based liabilities
mcbridesguides → Equity → Fiduciaries
Webb, ch 10 (skim pp 263-265)
Moffat, ch 8 (skim pp 434-441), pp 791-843
Boardman v Phipps [1967] 2 AC 46
Regal (Hastings) Ltd v Gulliver [1967] 2 AC 134
Bhullar v Bhullar [2003] EWCA Civ 424
Murad v Al-Saraj [2005] EWCA Civ 959
Conaglen, ‘The nature and function of fiduciary loyalty’ (2005) 121 LQR 452
Smith, ‘Fiduciary relationships: ensuring the loyal exercise of judgment on behalf of another’ (2014) 130 LQR 608

(2) Is there a proprietary claim over the gain made by a fiduciary?
Webb, pp 230-237
Moffat, pp 843-849
Attorney General of Hong Kong v Reid [1994] 1 AC 109
Swadling, ‘Constructive trusts and breach of fiduciary duty’ (2012) 18 Trusts and Trustees 985

(3) Liabilities to pay equitable compensation arising out of a breach of fiduciary duty
Moffat, 849-850
Swindle v Harrison [1997] 4 All ER 705
Bristol & West Building Society v Mothew [1998] Ch 1

Additional reading

Aims and objectives
In doing the reading for this supervision, you should have a number of aims:

(1) To understand what a fiduciary is, and why certain legal actors are classed as fiduciaries and why others are not (for example, why don’t we say that a building contractor is a fiduciary, with the result that if making a gain for himself might tempt him to breach his contract with A to put up a building with reasonable skill and care, he will not be allowed to keep that gain for himself, but will have to hand it over to A).

(2) To understand the nature and rationale of the ‘no conflict’ and ‘no profit’ rules that fiduciaries are subject to; and to think about whether these rules are different in any way, or whether there are situations where these rules might work in different ways (one to say that a
fiduciary can keep a gain, because making that gain did not involve a conflict with his duty to his principal; and the other to say that the fiduciary has to give up the gain, because he made that gain by reason of his position as a fiduciary).

(3) To understand the remedies that are available when a fiduciary breaches a fiduciary duty. In particular, you should aim to understand: (i) when (and why!) a fiduciary will hold a gain that he has made in breach of his fiduciary duty to his principal on constructive trust for that principal; and (ii) whether a contract entered into by a fiduciary in breach of his fiduciary duty will be void or voidable; and (iii) whether a fiduciary can ever be held liable to compensate his principal for a loss that the principal has suffered as a result of the fiduciary’s breach of fiduciary duty.

Questions for the supervision

What is the position in the following situations?

(a) Developer employed Agent to purchase for it blocks of flats which it could renovate and sell on for a profit. Slum persuaded Agent to purchase Slum’s block of flats on behalf of Developer by paying Agent a bribe of £100,000. Agent paid the going market rate (£2m) for Slum’s block of flats, given their condition. Unknown to everyone at the time the block of flats was bought – including the surveyor whom Agent employed to survey the flats – the flats are riddled with asbestos and will need to be torn down. The value of the land without the block of flats on it is only £1m.

(b) Tycoon fell under the spell of an influential Guru and invariably followed Guru’s advice on everything. Knowing this, Innovator paid Guru £50,000 to advise Tycoon to invest in Innovator’s new business. Guru – to whom money means nothing – paid the money to his local Church and never mentioned Innovator’s business to Tycoon.

(c) The Trustee of a trust fund met the trust fund’s Solicitor in Solicitor’s offices. While Solicitor went out to get some coffee for him and Trustee, Trustee happened to see some legal papers in the office indicating that a takeover bid for Doldrums was about to be launched. Trustee bought some shares in Doldrums that doubled in value when the takeover bid was announced.

Past paper questions

2 ‘The underlying purpose of the [fiduciary] duty of loyalty, ..., is to advance the best interest of the beneficiaries. ... [A] transaction prudently undertaken to advance the best interest of the beneficiaries best serves the purpose of the duty of loyalty, even if the trustee also does or might derive some benefit. A transaction in which there has been a conflict or overlap of interest should be sustained if the trustee can prove that the transaction was prudently undertaken in the best interest of the beneficiaries.’ (Langbein, 2005)

Do you agree? Give your reasons.

5 ‘It does not appear to me that this rule [prohibiting conflicts of interest and duty is …] founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he is bound to protect.’ (Lord Herschell, 1896)

Is there a general explanation for the rules of fiduciary liability?
Roberta and Suzanne are wealthy heiresses. Trevor is a property developer with considerable experience in the London market over the last 20 years. Trevor convinced Roberta and Suzanne to enter into a joint venture arrangement with him, to purchase a rundown warehouse block, known as ‘Block A’, in East London with a view to developing it into apartments. The arrangement between the three parties was such that Roberta and Suzanne provided funding to purchase Block A and for its re-development, while the management of the project was left entirely in Trevor’s hands given his expertise in that area. Trevor applied for planning consent for the re-development of Block A. However, the Local Council refused to grant planning consent for the re-development unless a neighbouring warehouse, known as ‘Block B’, was also purchased and developed into a leisure centre, to encourage people to live in the apartments. Trevor did not reveal this to Roberta and Suzanne and instead proceeded to purchase Block B for himself. The purchase and re-development of Block A have cost Roberta and Suzanne £1.5m. In contrast, Trevor managed to buy and re-develop Block B at the relatively low cost of only £500,000. Contrary to expectations, the local population has flocked to the leisure centre, with the consequence that Trevor was able to sell it recently for £2m. He has used his profits to repay a mortgage loan over another re-development project in West London. Also contrary to expectations, the apartments in Block A have not been popular.

Roberta and Suzanne have sought your advice, telling you that they believe Block A would only sell for £1m on the open market today.

Geoffrey purchased a warehouse for £1,000,000. The purchase was funded partly with a £750,000 loan from the Wayward Bank, secured by a first mortgage over the warehouse. Geoffrey suggested to the Bank that his solicitor, Harry, should act for both parties in the mortgage transaction, and the Bank agreed.

In addition to the Wayward Bank loan, Geoffrey needed further finance for the warehouse purchase. He contacted Harry, who approached a financier friend of his, Ian. Ian provided Geoffrey with a further loan secured by a mortgage over Geoffrey’s flat. Harry received a finder’s fee of £2,500 from Ian for arranging the second loan, though he, Harry, did not mention this to Geoffrey. Geoffrey thanked Harry for arranging the loan but added that even without it, he could have proceeded with the purchase by borrowing the necessary money from his father.

When Harry completed Geoffrey’s application form for the loan from the Wayward Bank, he did not reveal the existence of the loan from Ian, despite a question on the form asking about secondary borrowing. Harry did this because he thought the Bank would be more likely to make the loan to Geoffrey if it did not know about the loan from Ian. Indeed, the Bank’s policy was to lend no more than 50% of the value of a property where the mortgage was borrowing from secondary sources to fund the purchase.

Geoffrey has defaulted on both the loans due to Wayward Bank and Ian. The Wayward Bank has exercised its power of sale and sold the warehouse for £650,000. Ian has also sold Geoffrey’s flat under his power of sale, covering the debt due to Ian. Geoffrey is now bankrupt and has nowhere to live.

Advised Geoffrey and the Wayward Bank.

Servalan and Travis are trustees of the Blake family settlement. The beneficiaries are Avon, Blake, their respective spouses and children. Avon and Blake are both married, and each has three children who are all minors. Servalan and Travis employ Federation Financial Futures as the settlement’s investment advisors, and the investment policy document states that its main goal is long-term capital growth.

Three years ago, Servalan and Travis received a letter from Federation Financial Futures which stated that shares in a new start-up company, Liberator Ltd., were the investment opportunity of a lifetime for sophisticated investors, with huge prospects for capital growth even though not currently paying dividends. Servalan and Travis invested £100,000 of the settlement’s money in Liberator shares. Travis wanted to invest £200,000, which the settlement could just afford, but Servalan persuaded Travis that this would mean too high a proportion of the settlement’s money would be invested in one stock. Instead, Servalan bought £80,000 of Liberator shares for herself, and Travis bought another £200,000 of them for himself.

Two years later, Orac Inc made an offer to buy Liberator. The offer price was four times the value of the shares at the time of the three purchases made by Servalan and Travis. Orac required vendors who were beneficial owners of their shares to give onerous guarantees that Liberator’s most recent annual report and accounts were entirely accurate, though it was willing to accept significantly less onerous guarantees from vendors who were trustees. So Servalan and Travis sold their shareholdings to the settlement for slightly less than the offer price, and then the settlement sold them on to Orac.

Advised Avon and Blake.
SUPERVISION 6. THE POWERS, DUTIES AND CONTROL OF TRUSTEES

Reading
(1) Appointment and powers
Webb, ch 12
Trustee Act 2000, ss 3, 8, 11, 16, 24
(2) Duties
Webb, pp 273-286
Moffat, ch 9
Trustee Act 2000, ss 1-2, Sched 1, ss 4-5, 22-23
Cowan v Scargill [1985] Ch 270
Harries v Church Commissioners for England [1992] 1 WLR 1241
Evans, ‘Challenging trustee decisions: differing approaches to the supervision of the exercise of trustees’ powers’ (2012) 26 Trust Law International 55
(3) Control
Webb, pp 286-288
Moffat, pp 543-557
Schmidt v Rosewood Trust Ltd [2003] 2 AC 709
Webb, pp 313-315
Moffat, pp 586-591
Armitage v Nurse [1998] Ch 241
Trukhtanov, ‘The irreducible core of trust obligations’ (2007) 123 LQR 342

Aims and objectives
In doing the reading for this supervision, you should have a number of aims:

(1) To understand the processes by which trustees are appointed can be removed from their position.

(2) To understand the powers enjoyed by a trustee under the general law, and the trust instrument, and what happens when the trustees acts in excess of those powers.

(3) To understand the basic duties of a trustee to safeguard the trust property and to act prudently in investing the trust property.

(4) To understand the other duties that a trustee is subject to, particularly in relation to exercising any discretions that are vested in him or her under the trust instrument.
(4) To understand why a trust instrument might provide that a trustee is exempt from liability for breaching his duties as a trustee, and to understand when such an exemption clause will be valid.

(5) To understand when the beneficiaries under a trust will be able to obtain documents relating to the administration of that trust; and whether the beneficiaries will

Written work

Answer one of the past paper questions from the reading list for this supervision or the previous supervision.

Past paper questions

9  (a) Rhonda and William are the trustees of a £5m trust fund which they hold on trust to further the education of the children of employees of Huge College, Oxford. In a recent poll, 85% of the employees of Huge College indicated a strongly held belief that the arms industry is inherently evil. Those employees have signed a petition to Rhonda and William, asking that they ensure the trust fund does not contain any investment in the arms industry. Rhonda and William have sought your advice.

and

(b) ‘The beneficiary is entitled to see all trust documents because they are trust documents and because he is a beneficiary. They are in this sense his own.’ (LORD WRENBURY in O’Rourke v. Darbishire, 1920)

Discuss, in the light of modern authority, the accuracy of Lord Wrenbury’s view, with particular reference to the beneficiary’s right to obtain information about the trustees’ reasons for action.

8  (a) Roger transferred property to Mary on trust for such of Roger’s children, Anna, Brendan and Chris, as Mary, in her absolute discretion, should think fit.

Roger wrote separately to Mary indicating that he thought Brendan deserved nothing and that the assets should be divided equally between Anna and Chris. He asked her to keep this confidential so as not to make him appear a bad father.

Mary has recently appointed the property to Brendan as to 75% and to Anna as to 25%. Mary has refused to give any reasons for her decision.

Anna and Chris are unhappy at the decision, as they consider it does not reflect their good relationship with their father, nor Brendan’s poor one with him. They consider, however, that the decision is unsurprising given that Brendan is living with Mary’s daughter.

Advise Anna and Chris whether Mary’s decision can be challenged.

Or  (b) ‘Modern trustees have so many administrative powers that it is almost impossible for beneficiaries to exercise any effective control of their trustees’ administration of the trust fund.’

Discuss.
Sarah wanted to put her personal assets beyond the reach of her creditors. In 2000, she settled £200,000 on her old friend, Teresa, 'to hold on trust subject to a power to appoint capital or income to such of my children as my trustee may in her absolute discretion select'. Sarah had three children.

Sarah and Teresa agreed that the beneficiaries should know nothing about the trust. 'They'll only turn into wastrels if they hear about it,' Sarah told Teresa. The trust instrument purported to exclude the beneficiaries' right to see the trust instrument and accounts. It also purported to exempt the trustee from liability for any loss resulting from any breach of trust 'howsoever caused', and to bar the beneficiaries from asserting 'any claim to any property or its proceeds which may be applied by the trustee in breach of trust'. In the following years, Teresa never did anything in the administration of the trust without first consulting Sarah. Nor did she ever exercise the power of appointment in favour of the children.

Last year, Sarah asked Teresa to pay money from the trust fund to provide the start-up capital for her new business venture, Growth Enterprises Ltd. Teresa consulted the trust solicitor, Ron, about Sarah's request. Ron told Teresa that she should 'wise up to whose money it really is' under the trust. 'Anyway,' he said, 'there's an exemption clause so you needn't worry.' Teresa paid £100,000 from the trust to Growth Enterprises Ltd. The business was highly successful and is now worth £300,000.

Sarah died recently leaving enormous personal debts. The assets of the 2000 settlement are worth £1 million.

Advise Sarah's executors and the children about their claims (if any) arising out of the settlement.
SUPERVISION 7. RESPONSES TO A BREACH OF TRUST (1):
PERSONAL LIABILITIES

Reading
(1) Liability of trustee
Webb, ch 13
Moffat, pp 558-584
Nestle v National Westminster Bank [1993] 1 WLR 1260
Target Holdings Ltd v Redfners (a firm) [1996] AC 421
Millett, ‘Equity’s place in the law of commerce’ (1998) 114 LQR 214, 223-227
Chambers, ‘Liability’ in Birks and Pretto (eds), Breach of Trust (2002)
Elliott, ‘Remoteness criteria in equity’ (2002) 65 MLR 588
Trustee Act 1925, s 61

(2) Liability of beneficiary who instigated or approved trustee’s actions
Moffat, pp 584-586
Trustee Act 1925, s 62

(3) Liability of third parties to the trust
mcbridesguides → Equity → Constructive Trusts and Constructive Trustees (this essay is also relevant to next week’s work)

(a) For assisting a trustee to commit breach of trust (note that there is also liability for inducing a trustee to commit a breach of trust)
Webb, pp 356-365
Moffat, pp 692-696, 709-722

(b) For receiving trust assets disposed of in breach of trust
Webb, pp 342-356
Moffat, pp 696-709
Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd [2011] EWCA Civ 347, [92]-[128]
mcbridesguides → Equity → Equity Casenotes → Armstrong v Winnington Networks Thomas, “‘Goodbye” knowing receipt, “hello” unconscientious receipt’ (2001) 21 O.J.L.S. 239
Peter Birks’ view on knowing receipt – the recipient’s liability should be strict, subject to defences (see Birks, ‘Receipt’ in Birks and Pretto (eds), Breach of Trust (2002))
Lord Millett’s view – I agree with Peter Birks (see Dubai Aluminium Co Ltd v Salaam [2003] 2 AC 366, at [87]; and Twinsectra v Yardley [2002] 2 AC 164, at [105])
Lionel Smith’s view – the recipient’s liability should be fault-based (see Smith, ‘Unjust enrichment, property and the structure of trusts’ (2000) 116 LQR 412)
Lord Nicholls’ view – the recipient should incur one type of liability if he was at fault when he received the trust assets, a different type of liability if he wasn’t (see Nicholls, ‘Knowing receipt – the need for a new landmark’ in Cornish et al (eds), Restitution: Past, Present and Future (1998))
Aims and objectives
In doing the reading for this supervision, you should have a number of aims:

(1) To understand in outline the rules governing a trustee’s liability to compensate the beneficiaries of the trust fund for losses resulting to the fund from his breach of trust.

(2) To understand when a third party will be held personally liable either: (i) for the value of trust assets disposed of in breach of trust on the basis that they passed through his hands (liability for knowing/unconscientious receipt); (ii) for the loss suffered by the trust fund as a result of a breach of trust that that third party assisted the trustee to commit (liability for dishonest receipt).

(3) To form some views as to what should be the standard of liability in cases where a third party receives trust assets, or does something that assists a trustee to commit a breach of trust.

Past paper questions

5 Alistair settled property on his solicitor, Brent, and his sister, Caroline, as trustees for his children, Mary and Peter. The trust deed expressly forbade investment in real property. The trust fund included shares in a tobacco company. Brent considered tobacco investments to be morally wrong and wanted to sell the shares. Caroline favoured retaining them but Brent convinced her to agree to the sale. The shares were sold for £200,000. Brent and Caroline invested the proceeds in a new land development. It subsequently failed, leading to an entire loss of the investment.

Brent and Caroline also developed a policy of investing in start-up businesses. They made two such investments. First, they invested £100,000 in shares in a new flower business which Caroline was starting up, Brush Ltd, with a right to dividends of 5% per annum. Brush flourished and when a year later Caroline sold the business, she returned the trust’s investment of £100,000 and paid the 5% dividend to all the investors. Secondly, following a suggestion from Mary, they invested a further £100,000 in a start-up motorised-bicycle company, Fast-to-Go Ltd. Fast-to-Go performed poorly and after a year Brent and Caroline decided to sell their shareholding for just £75,000.

The value of the tobacco shares sold by the trust has since risen to £250,000.

The £100,000 invested by the trust in Brush Ltd represented 80% of the start-up capital for the business (which was £125,000). When Caroline sold Brush, she sold it for twice its original value, at £250,000.

It was well known in the City at the time of the trust’s investment that the previous company of the two directors of Fast-to-Go had been liquidated, causing a near total loss to its investors. Neither Brent nor Caroline knew this when they invested in Fast-to-Go, although Mary was fully aware of this when she suggested the investment.

Neither Brent nor Caroline took professional advice respecting any of these transactions.

Discuss the liability (if any) of the trustees.

10 The purpose of the law on fiduciaries and express trustees has been said to be to keep fiduciaries and express trustees “accountable” for their actions. Such explanations are mere rhetoric. The ideas of accounting and accountability do not describe the duties of fiduciaries or express trustees, nor what a successful claimant achieves by suing a fiduciary or an express trustee. Those ideas also fail to explain such phenomena as the availability of proprietary relief and relief against third parties. Do you agree?
5 Answer both (a) and (b):

(a) "Liability for knowing receipt" is receipt based. It does not depend on fault. Constructive notice is sufficient and may not even be necessary. There is a powerful academic support for the proposition that the liability of the recipient is strict but subject to...defences." [Lord Millet]

(b) Getting, by his will, left certain properties to Hannah and Jenkins to sell them and to pay the proceeds of their sale to Liddament, Getting's grandson, when he became 21. Getting died when Liddament was only 3. The will had been drafted by Mallock, a solicitor, who, over time, had completely forgotten the terms of the trust though he had always had a copy of the will in his safe. 15 years after Getting had died, Hannah and Jenkins, who had taken an increase choice to Liddament, instructed Mallock to arrange for the sale of the properties and to pay the proceeds to Pardon, Getting's nephew. Mallock did so.

Pardon, a rather timid young man who had taken a first in the Law Tripos, expressed surprise at receiving the money but was assured by Jenkins that all was in order. He met his father who said to him that he had thought that Getting had instructed Liddament to have the money but he did not take his father's remarks seriously and has since dissipated the money. Liddament, who is now 21, has just discovered the facts. Advise him.

7 Teresa and Ursula held £5 million on trust for Diana for life, remainder to Ediannor. Teresa and Ursula felt that they were out of their depth making investments in the current turbulent financial markets, and they wished to appoint an investment manager. Teresa was an old friend of Imogen, who owns and manages director of Imogen Investments Ltd, a very successful boutique fund management company. Teresa persuaded Ursula that the quickest solution to their problem was simply to appoint Imogen Investments Ltd as their investment manager and hand over the trust fund to the company for management. Imogen wanted to help Teresa and so Imogen procured her company to take the trust fund under management immediately in its own name, without waiting for formal instructions from the trustees. She also gave Teresa some investment tips, and Teresa made £30,000 on her personal investments as a result.

All went well, with the trust fund invested in a portfolio constructed by Imogen to provide balanced income and capital growth, until the great market crash of 2008. Most of the investments from the trust fund were then wiped out, though an investment in Gold Diggers Ltd (a gold mining company) is still showing a healthy profit of £30,000. Teresa, Ursula and Imogen now realised that they should put the management of the trust fund on a firmer footing, and they executed documents confirming the appointment of Imogen Investments Ltd and setting out the strategy it should follow. They also provided that Imogen Investments Ltd shall change its past practice and henceforth account to the trust fund for any commissions it receives when it makes investments on behalf of the trust.

Advise Diana, who has now discovered these facts. Would it make a difference to your answer if the trust had provided that 'no trustee shall be liable for losses beyond an aggregate sum of £20,000'?

5 Belinda and Camilla were the trustees of their mother's will trust. The trust assets were divided into the 'Education Fund' and the 'General Fund', each of which was worth £500,000. The terms of the Education Fund provided: 'The trustees shall apply... in their absolute discretion... for the sole purpose of supporting the education of the testatrix's grandchildren at school.' Under the General Fund, Belinda and Camilla had a joint life interest, with the remainder vested absolutely in the grandchildren in equal shares.

In 2005, the trustees wanted to improve the investment return on the trust assets. Simple, a solicitor with no expertise in trust or tax matters, advised them that it would be more tax-efficient to transfer the assets of the Education Fund to an educational charitable trust. He said the trustees could then apply the charitable income to support the grandchildren's education. Despite some misgivings, the trustees followed his advice and duly transferred the assets of the Education Fund to a separate charity of which they were the trustees. It was registered with the Charity Commission.

Belinda also persuaded Camilla to agree to all the £500,000 of assets of the General Fund in a 50% shareholding in a chocolate retail business called Cocoa-to-Go Ltd, which Belinda was setting up and in which she, Belinda, held the remaining shares. Belinda could not have started the business without the investment of trust money.

Cocoa-to-Go Ltd yielded big income returns for the trust and Belinda in the first few years. But in 2011 it hit hard times, and the value of the company plummeted to £100,000. That same year the Charity Commission launched an investigation into the trustees' decision to apply all the income of the charitable trust to pay the grandchildren's school fees. The grandchildren's legal advisers questioned whether the establishment of the charitable trust had ever been a valid exercise of the trustees' powers under the Education Fund.

Advise the grandchildren.
2 ‘In Royal Brunei Airlines Sdn. Bhd. v. Tan, Lord Nicholls most helpfully clarified the law as to the liability of a third party who has assisted in a breach of trust on the part of the trustee. But as to the liability in personam of one who has received trust property transferred to him in breach of trust, the authorities are inconsistent and confused. Bank of Credit and Commerce International v. Akindele does not help much; the decision there is really a lost opportunity.’ Discuss.

6 Either (a) ‘It is impossible to discern at present any coherent principle that explains and justifies receipt based liabilities in equity.’
Discussion.

Or (b) Should ‘dishonesty’ be the touchstone of accessory liability in equity? Does the answer to that question depend on what ‘dishonesty’ means? Give your reasons.
8. RESPONSES TO A BREACH OF TRUST (2): PROPRIETARY CLAIMS

Reading

(1) Rescinding a wrongful disposition
   (a) For breach of fair dealing rule/rule against self-dealing
       Webb, pp 263-265
       Moffat, pp 434-441
       Re Thompson’s Settlement [1986] Ch 99
   (b) Under the rule in Re Hastings’s Bass/Pitt v Holt
       Webb, pp 283-286
       Moffat, pp 529-543
       mcbridesguides → Equity → Equity Casenotes → Pitt v Holt (UKSC)

(2) Tracing trust assets
    mcbridesguides → Equity → Constructive Trusts and Constructive Trustees
    Webb, pp 319-342
    Moffat, pp 661-692
    Brazil v Durant International Corp [2016] AC 297 (watch out for any notes on this appearing in the standard law journals)
    Stevens, ‘Vindicating the proprietary nature of tracing’ [2001] Conv 94
    Conaglen, ‘Contests between rival trust beneficiaries’ (2005) 64 CLJ 45
    Conaglen, ‘Difficulties with tracing backwards’ (2011) 127 LQR 432
    Cutts, ‘Tracing, value and transactions’ (2016) 79 MLR 381

Additional reading

Swadling, ‘The fiction of the constructive trust’ [2011] Current Legal Problems 1

Aims and objectives

In doing the reading for this supervision, you should have a number of aims:

(1) To understand the current scope of the rule in Re Hastings-Bass, and have a view on whether this area of law is now in a satisfactory state.

(2) To understand the principal differences between tracing at law and tracing in equity, and to understand the historical reasons why if someone wanted to find out where his money had gone, he could only take advantage of the equitable tracing rules if he had an equitable interest in that money.

(3) To understand who will be allowed to take advantage of the equitable tracing rules nowadays to find out where his money has gone (i.e. who will be held to have an equitable interest in his money when it goes walkabouts).

(4) To understand the equitable tracing rules in detail. In particular:
   (a) what rules will be applied when the claimant’s money is paid into a mixed fund and then money is withdrawn from that fund; and
(b) what remedies will be available when it is shown that: (i) an item of property in the
defendant’s hands was acquired by the defendant with the claimant’s money; and (ii) an item
of property in the defendant’s hands was improved with the claimant’s money.

(5) To understand the concept of ‘backwards tracing’ and when, and when it will not, be
allowed.

Written work

Answer one of the past paper questions from the reading list for this supervision or the
previous supervision.

Questions for the supervision

1. A holds money on a discretionary trust for three sisters, B, C and D. A is having an
affair with B and allocates all of the money in the trust fund (£10,000) to B. B puts the money
into a bank account which already has £30,000 in it. She then withdraws £4,000 from the
account and buys a painting with the money. The painting turns out to have been a bad
investment: it is now valued as being worth £100. What is the position?

2. Trustee takes £10,000 that he holds on trust for Beneficiary and uses the money to
throw a party for businesspeople where Trustee presents his idea for making a new kind of
car. Dragon invests £3m in Trustee’s idea, and they become co-owners of a car production
company which is now valued as being worth £14bn. What claims can Beneficiary make
against Trustee?

3. Trustee takes £100,000 that he holds on trust for Beneficiary and gives it to Trustee’s
Son as a 21st birthday present. Son is very surprised by the size of the present, but Trustee
tells him, ‘It’s been a great year, and you are only 21 once.’ Son uses £30,000 of the money
to pay off his student loans, £20,000 on a much better holiday with his girlfriend than the one
he had been saving up for, £10,000 to pay off the remaining payments due on his car to the
hire-purchase company from whom he was buying it, and a further £10,000 for various
improvements to be made to the car which increased its value from £15,000 to £50,000. Son
used the remaining £30,000 to buy a timeshare on an apartment in Spain, which gave him the
right to use it for six weeks every year. What claims can Beneficiary bring here?

4. Angry pays Killer £50,000 to kill his wife. Killer does no such thing, but uses the
£50,000 to purchase some shares that are now worth £1m.

Past paper questions

6 ‘The law of tracing, and the remedies consequent on it, already result in the
supremely unjust favouring of beneficiaries over the holders of unsecured personal claims,
and all the present suggestions for development of the law in this area would simply make
that injustice worse. The law should instead be much more restricted in its effect than it now
is.’

Discuss.
1 Critically consider how, if at all, the fusion of law and equity by the Judicature Act 1875 should affect the development of equity jurisprudence. Illustrate your answer with examples drawn from the Equity course.

6 ‘Debate as to the fusion of law and equity is an unnecessary distraction. Real cases are decided by applying the more detailed doctrines and principles of common law and equity. To take a position for or against fusion is a purely academic exercise.’

Do you agree?

6 Courts simply accept or reject claims asserting the existence of a fiduciary duty in order to allow or deny the procedural and remedial advantages that flow from recognition of a fiduciary obligation.’

Discuss.

3 In what sense are constructive trusts ‘constructive’ and in what sense are they ‘trusts’? What, if anything, is gained by thinking of them in these terms?

1 Terry and Ulric are trustees of the Blackadder family settlement. That settlement provides that the trust fund shall be held for such of the descendants of Edmund as the trustees may within the perpetuity period appoint, with various remainders over. Terry is married to Olivia, who is Edmund’s daughter. Terry is also terminally short of cash. Terry and Olivia persuaded Ulric that he and Terry should appoint £1 million of the trust fund to Olivia absolutely. That has now been done.

Life has since been good to Terry. Olivia spent £400,000 paying off Terry’s debts. The other £600,000 was used to found E-Buy-Gum Ltd, an internet retailer based in Yorkshire. E-Buy-Gum has been very successful, and the shares in the company are now worth £3 million. Terry used some of the money he earned as an employee of the company to bet on Maggie May, a horse that won the 3.15 pm race at Market Forces, netting Terry a profit of £50,000.

Nerys, who is Olivia’s estranged sister, has just discovered these facts. Advise Nerys.

5 Under Alice’s will, Bridget was holding £1,000,000 on trust to pay £200,000 to any of Alice’s five grandchildren who both obtained a university degree and attained the age of 25; subject thereto, the fund was to be paid to the Red Cross.

Shortly after the twenty-fifth birthday of Charles, one of the grandchildren, Charles’s father, David, produced to Bridget a certificate from the University of the North Circular, which Charles had given to him, showing that some years before Charles had obtained an ordinary degree in New Age Studies. As Charles was out of the country at the time, David asked Bridget to pay £200,000 to him on behalf of Charles. Bridget did this.

David only paid £150,000 to Charles and spent the remaining £50,000 on a round-the-world cruise for himself and Charles’s mother. Charles put £100,000 of the money paid to him towards the purchase of a house, the balance of the total £400,000 purchase price being provided by a building society mortgage. The house has since fallen dramatically in value. Charles gave £20,000 to his girlfriend Elizabeth, spent £20,000 on a boat and spent the remaining £10,000 on food and drink and good living.

Bridget has just been informed that the degree certificate is a forgery and that Charles has no degree.

Advise Bridget.
9. The trustees of the Gorky Discretionary Trust hold paintings on trust with a power to sell up to half the paintings and appoint the proceeds equally as between twins Alexei and Dina, who are twenty years old. The remaining paintings are to be divided equally between Alexei and Dina in the following year when they turn twenty-one.

Bob, an art advisor, tells the trustees to sell the paintings urgently because the art market is about to plunge. When he says this, Bob is hallucinating and does not realise he is saying the opposite of what he means. Nevertheless the trustees decide to sell half the paintings on the basis of Bob's advice. Bob's assistant, Joe, hears of Bob's mistake and phones the trustees offering to buy any or all of the paintings at a low price. The trustees sell half the paintings to Joe who then declares that he holds 'all my paintings and the bulk of my vinyl record collection for a new charity, Leg Up, which he founds to benefit under-educated children of his poverty-stricken friends.

Dina induces the trustees to sell the remaining paintings to Moira. Moira knows some would find the trustees' sale to her odd, but is comfortable with it herself. She knows Dina would have induced the trustees to sell the remaining paintings to someone else in any event. The trustees say they would have kept the remaining paintings had Dina not induced them to sell.

Advise the parties.

4. Richard wished to make provision for his family out of the shares in his very profitable company, QuickBuck Ltd, without losing voting control of the company. Consequently, he declared that he held 20,000 of his 30,000 shares in QuickBuck Ltd on trust absolutely for his nieces. As it happens, 15,000 of Richard's shares in QuickBuck Ltd are already subject to an equitable charge in favour of Southern Shock Bank as security for Richard's sizeable overdraft.

Subsequently, Richard fell on hard times and had to sell 10,000 of the shares in QuickBuck for £400,000. With the money he did the following.

(i) He paid the last hire-purchase instalment of £10,000 on his car that cost £40,000 in total.

(ii) He discharged the remaining £200,000 of the first mortgage he had raised to buy his house. The house cost £500,000 ten years ago; the mortgage debt had originally amounted to £300,000, and the house is worth £1,000,000 even in the present market.

(iii) He discharged a second mortgage of £180,000 on the house that he had raised to buy a yacht, which he still owns.

Richard has now been declared bankrupt.

Advise his nieces.

4. Sir Basil and Lady Rosemary are the trustees of the Herb Trust. The beneficiaries are Sage and Thyme. Sir Basil is perennially short of cash.

Sir Basil told the trust's solicitor, Araminta, that the trustees would be mortgaging one of the trust assets, Herb Hall. Araminta said this seemed rather risky, as there appeared to be no clear plan for repayment. Sir Basil first blustered, then said he would bring her a memorandum, signed by both trustees, stating that they had properly considered taking out the mortgage, and that in the mean time Araminta should prepare the mortgage documents. Araminta did so, and the mortgage was later granted. She never saw the memorandum, but assumed it would arrive when Sir Basil was less busy, as he had never failed in the past to keep his promises.

Sir Basil had the mortgage monies paid into the personal account belonging to him and Lady Rosemary jointly. He paid off his debts, though some of his creditors, including the local betting shop, were surprised at his sudden wealth. Lady Rosemary, who was sometimes a little vague, had signed the mortgage thinking it was simply a matter of routine trust administration. But afterwards she noticed how much money was in the joint personal account, and used some of it to pay off the mortgage on the cottage belonging to her boyfriend, Boyleaf the gardener. A year later, when the cottage had doubled in value, Boyleaf sold it and spent the proceeds. Sir Basil also invested in a time-share business run by his old friend Dil, hoping to make enough money to repay the trust. The investment allowed Dil to expand the business hugely and then sell it at a large profit for both himself and Sir Basil. Sir Basil and Lady Rosemary then went on a spending spree with the money and are now bankrupt.

Advise Sage and Thyme.
Sandra settled £20,000 on trustees subject to power in herself, Sandra, 'to appoint the sum to such of her particularly deserving grandchildren as she may in her absolute discretion select'. In default of appointment, the fund was to be held on trust for her three daughters, Deila, Deborah and Donna, in equal shares.

Deila's two children, Gerard and Harry, were young and struggling to support themselves, so Sandra exercised the power of appointment equally in their favour. The trustees paid them £10,000 each.

Gerard deposited his £10,000 from the trust in his current bank account which before the deposit had been £3,000 overdrawn. He then deposited a further £5,000 of his own money to bring the account to £13,000 which he used to pay for an extension to his house. The extension improved the value of the house by £20,000.

Henry used his £10,000 from the trust to pay the first five instalments under a hire purchase agreement for a new car. He then paid the five remaining instalments from his own money and acquired ownership of the car. Encouraged by his new-found wealth, Henry also withdrew £10,000 from his own savings account and invested the money in Whitizo Ltd shares. Whitizo failed and the shares have become worthless.

Deborah and Donna resent the way that Sandra exercised the power in favour of Deila's children. They wish to challenge the validity of Sandra's power and recover the appointments made to Gerard and Henry. Advise them.

Eastend Enterprises plc is a vector capital company which makes development loans to small businesses. Their agent Ian is drinking one night in the Queen Victoria, a seedy and seriously under-capitalised public house. Ian gets talking to the pub's proprietor, Grant, who agrees to pay Ian £1,000 if Ian will arrange a loan for him from Eastend Enterprises. A loan of £30,000 is duly arranged, and Grant pays the £1,000 to Ian in cash, telling him to regard it as 'something for yourself, on the house.' Ian puts the entire sum on a horse running that afternoon at Kempton Park. When it wins Ian makes a profit of £10,000.

The loan agreement between Eastend Enterprises and Grant stipulates that the £30,000 is to be used only for the purpose of investment in the Queen Victoria. In fact, the main reason why Grant wants the money is to buy with it his heart's desire, a vintage Jaguar car. As his personal bank account is seriously overdrawn, Grant opens a separate bank account and pays the loan money into it. From this account Grant withdraws £35,000 which he spends: restoring the interior of the Queen Victoria, that includes the purchase of an antique juke box for £1,000. He then spends £35,000 buying a vintage Jaguar from Roy. Grant has had his eye on the Jaguar for some time, and Roy is surprised to find that Grant suddenly has the money to buy it (as a regular drinker at the Queen Victoria he knows that the bar is not doing well) but he decides not to ask Grant where the money has come from.

Despite its refurbishment, the Queen Victoria is still losing money and finally has to close. Grant is declared bankrupt, with the last £20,000 of the Eastend Enterprises loan still owing in the separate bank account. The Jaguar turns out to have belonged to Dicky Den, a legendary local gangster, and is currently valued at £75,000. The juke box is found to be a highly sought after piece of 1950s memorabilia, valued at £5,000.

Advise Eastend Enterprises.

Captain Nixon is a soldier in the British Army with authority to procure supplies for his unit in Afghanistan. He accepts a bribe in US dollars from an Afghan vegetable grower to procure a supply of fresh vegetables for the base's use. When he returns to England he converts the US dollars into £10,000 sterling.

His wife, Mrs Nixon, holds £20,000 cash on trust for her and Capt. Nixon's son Rufus. The terms of the trust give Mrs Nixon as trustee 'absolute, unfulfilled discretion' to select investments. However, the trust terms also say the contents of a 'wish letter' are to be read as terms of the trust. The relevant 'wish letter' says that trust funds are only to be invested in automotive companies.

On Capt. Nixon's return to England, he and Mrs Nixon decide to establish a business importing exotic artefacts. They settle the £10,000 sterling profit with the £20,000 cash which Mrs Nixon holds on trust and buy a consignment of 'mysterious Far Eastern instruments' for £4,000. In the consignment is a calligraphy scroll which will be worth £10,000 once repaired at a cost of £1,000. Shipping the consignment costs £1,000. From the remaining combined fund, Mrs Nixon then spends £100 on a haircut, £200 on raffle tickets from Rufus's school, and £700 to buy an ivory bird cage which she bought on credit. Capt. Nixon spends the rest of the combined fund on advice about establishing a business. Mrs Nixon has now sold the cage for £9,000 and won a motor car in the school raffle. She also refuses to let Rufus see the 'wish letter'.

Advise Capt. Nixon, Mrs Nixon, Rufus and the British Army of their rights and liabilities, if any.