

## Law of Trusts Curriculum

This document includes:

- Knowledge & Skills Objectives
- Topics Covered

### Knowledge & Skill Objectives

Detailed objectives are contained in each chapter of the text material. The following is an overview:

#### *Knowledge Objectives:*

Upon completion the student will:

- Understand basic trust concepts and terminology
- Understand different approaches to classifying types of trusts
- Understand requirements to create an express trust
- Understand how trusts are terminated and when they can be varied
- Understand how trusts can be used by an individual
- Appreciate nature of trusts for non-personal (commercial) purposes
- Understand how trusts can be used to achieve charitable purposes
- Appreciate the nature and scope of trustee duties and powers
- Understand how trustees are appointed and replaced
- Appreciate nature and consequences of breach of trust
- Understand the difference between a trust and a power of attorney
- Understand distinction between express, resulting and constructive trusts
- Appreciate the importance of drafting to the validity of a trust and the trustee's ability to administer the trust assets
- Appreciate the distinction between trusts governed by the Quebec Civil Code and common law trusts
- Identify applicable legislation and law that governs the creation and administration of trusts
- Apply the concepts learned to a given fact pattern

#### *Skills Objectives:*

Upon completion the student will, in relation to the topic headings listed below, be able to:

Trust concepts and terminology:

- Provide a definition and example of an express trust

## Knowledge & Skill Objectives Continued...

- Provide definitions and examples of resulting trusts and constructive trusts
- Explain key trust terms

### Trust Classification:

- Identify methods to classify trusts
- Describe & distinguish trusts within different classification systems

### Creation of an express trust

- Explain the elements required to create a valid express trust
- Identify legal and statutory constraints when creating express trusts
- Analyze a scenario to determine if a trust has been created

### Termination & Variation

- Identify the laws and rules that govern whether a trust can be terminated or varied
- Recognize when a trust can be terminated and the steps required to do so

### Uses of trusts

- Identify and describe how trusts can be used to meet an individual's personal needs and objectives
- Describe commercial and pension uses of trusts
- Explain the rules that apply to charitable purpose trusts
- Define and identify charitable purpose trusts
- Define and describe non-charitable purpose trusts
- Explain the "cy-pres" power to vary charitable trusts

### Trustee Duties and Powers

- Explain the nature and scope of trustee duties and powers
- Explain the nature and scope of liability for a breach of trust
- Describe the defences available to trustees when a breach of trust is alleged
- Identify options for a beneficiary who alleges a breach of trust has occurred
- Describe methods for appointment, replacement, and removal of trustees
- Explain the law that apply to trustees seeking reimbursement for expenses
- Explain the rules that apply for seeking compensation for trustee services
- Explain the rules that apply to contracts for trustee services

### Trusts & other Fiduciary arrangements

- Explain the difference between a trust relationship and an agency relationship under a power of attorney
- Explain the rules that govern the creation and termination of a power of attorney

### Resulting Trusts & Constructive Trusts

- Describe situations where resulting trusts and constructive trusts can arise
- Identify the potential remedies available

## Knowledge & Skill Objectives Continued...

### Drafting and Interpreting Trusts

- Recognize when drafting fails to establish a trust
- Explain the relevance of typical trust provisions
- Identify potential consequences of poor drafting

### Trusts in Quebec

- Describe the key characteristics of a trust established under the laws of Quebec and distinguish it from a common law trust
- Identify key concepts that apply to the creation, administration, variation and termination of a Quebec law trust.

### Applicable Law

- Identify applicable legislation and law governing the creation and administration of trusts in your province.

## Summary of Topics Covered

### **1. An Introduction to the Law of Trusts**

The Trust Concept and its Origins  
Trust Definitions  
Some Important Terminology

### **2. Classification of Trusts**

Trust classification – the need to classify  
Methods of Classifying Trusts  
Resulting Trusts as Express Trusts

### **3. The Creation of an Express Trust: Capacity and the Three Certainties**

Requirements for the Creation of an Express Trust  
Capacity  
The Three Certainties  
Effect of not Satisfying One or More of the Three Certainties

### **4. Creation of an Express Trust: Constitution**

What Constitution of the Trust Requires  
Reasons for the Requirement of Constitution of the Trust  
How a Trust is Constituted  
What the Settlor Must do to Constitute a Trust  
Settlor Declaring Self to be Trustee of Property Held by the Settlor

## Summary of Topics Covered Continued...

Effect of Constitution of a Trust  
Can a Settlor be Forced to Constitute of a Trust?

### **5. Creation of an Express Trust: Formalities**

The Statute of Frauds  
Testamentary Trusts

### **6. Creation of an Express Trust: Legal and Public Policy Constraints**

Trusts for Illegal Purposes or Contrary to Public Policy  
Trusts Imposing Conditions that are Contrary to Public Policy  
Conditions that are Uncertain or Impossible of Performance  
Trusts that Defraud Creditors  
Rules Against Perpetuities

### **7. Termination and Variation of the Trust**

Termination under the Terms of the Trust Instrument  
The Rule in *Saunders v. Vautier*  
Variation of Trusts legislation

### **8. Using the Express Trust: Some Common Examples**

Personal Trusts  
Asset (Or creditor) Protection Trusts  
Uses of Trusts in the Commercial Context  
Environmental Reclamation Trust

### **9. Non-Charitable Purpose Trusts**

The General Rule Against Validity of Non-charitable Purpose Trusts  
Purpose Trusts with Unidentifiable Beneficiaries  
The Problem with Gifts to Unincorporated Associations  
Statutory Reform

### **10. Charitable Purpose Trusts**

A Note on Non-profit Activities, Charities, Charitable Purpose Trusts and Taxation  
Problems with Purpose Trusts Addressed for Charitable Purpose Trusts  
Requirements for Charitable Purpose Trusts  
Exclusivity  
The Administrative Scheme-making power and The *Cy-près* power

### **11. Duties of Trustees**

Duties and Powers Compared  
Absolute Duties and Duties to Take Care  
Duties of Trustees  
Exculpation Clauses

## Summary of Topics Covered Continued...

### **12. Powers of Trustees**

- Types of Powers
- Administrative Powers
- Dispositive Powers
- Seeking an Opinion, Advice or Direction from the Court
- Intervention by Courts in the Exercise of Powers by Trustees

### **13. Appointment, Retirement, Death, Removal**

- Appointment and replacement of trustees
- Retirement and Discharge
- Death of a Trustee
- Removal
- Remuneration
- Indemnification

### **14. Breach of Trust**

- Defences to Breach of Trust
- Trustee Liability to Beneficiaries and Liability among Trustees
- Damages for Breach of Trust
- Rights to have Property Returned to the Trust

### **15. Powers of Attorney Compared to Trust**

- What is Agency?
- What is a Power of Attorney?
- Trust and Agency Compared

### **16. Resulting Trusts**

- A Note on Terminology
- Situations in Which Resulting Trusts Arise
- The Presumption of Advancement
- Resulting Trusts and Joint Bank Accounts
- Common Intention Resulting Trusts

### **17. Constructive Trusts and Constructive Trustees**

- Terminology
- Development of the “Institutional Constructive Trust”
- Development of the Remedial Constructive Trust in Canada
- Important Constructive Trust Situations for Persons Involved in the Administration of Trusts

### **18. Drafting and Interpreting Trusts**

- General Points
- The Creation of the Trust
- Termination of the Trust

## Summary of Topics Covered Continued...

Duties of Trustees and Exemption Clauses  
Powers  
Trustees  
Settlor Exclusion Clause  
Specific Types of Trusts

### **19. A Note on the Trust in Quebec**

A Brief Comparison of Common Law and Civil Law  
Difficulties Fitting the Common Law Trust into a Civil Law System  
The Conceptual Approach to the Trust in Quebec  
Some Key Features of the Trust in Quebec