

Express Trusts		Certainties	
REQUIREMENTS TO BE VALID: 1. Vested in Trustee (Perfected or Complete) 2. Three Certainties of Intention, Subject Matter, and Object 3. Settlor Requirements. Do the testator and trustee have capacity? Are they <i>sui juris</i> ? 4. Must be in compliance with formalities.		ANALYSIS STRATEGY 1. Find Certainty of Words: Precatory or not? Intention for trust requires obligation 2. Certainty of Subject Matter: Type Property, amount & value 3. Object: conceptual uncertainty? fixed, power, or discretionary? Evidentiary uncertainty? What powers/discretion does trustee have?	
PERSONAL DECLARATION <i>Legal title remains, equitable title disposed of.</i>		CERTAINTY OF WORDS	
<i>Elliot</i>	Physical transfer is not required for personal declaration, as the transferor because the trustee.	<i>Re Kayford</i>	don't need word "trust" - just sufficient intention.
<i>Glyn</i>	Beneficiary need not know they're the beneficiary.	<i>Hayman</i>	Precatory words (in full confidence) does not create trust. There must be evidence binding T to obligations.
<i>Watt</i>	One can be both a trustee and a beneficiary.	<i>Eastern Trust Co.</i>	Intention must be indicated or can be inferred with reasonable certainty.
APPOINTS THIRD PARTY TRUSTEE <i>Follow rule of conveyance.</i>		CERTAINTY OF SUBJECT MATTER (ASSETS)	
<i>Milroy</i>	Legal title must be transferred to T for trust to be perfected. <u>Doesn't matter</u> if treated like trust prior to death of settlor OR clear intention.	<i>Re Beardmore</i>	Test: Trust will fail if property is not identified with <u>sufficient clarity</u> at the <u>date of the trust</u> . If note: Resulting trust for transferor.
<i>Ratner</i>	If gift is revoked before proper conveyance takes effect, no claim. Verbal agreement insufficient in conveying shares.	<i>Sprange</i>	Beneficial interests declared <u>must be certain</u> in order to raise trust.
<i>Re Rose</i>	RULE: if transferor did everything in power to effect transfer & all that remains is registration, gift considered substantially perfected.	<i>Burke v HBC</i>	Surplus distribution dependent on facts and persuasive methods of argumentation
<i>Mordo v Nitting</i>	If deceased made personal declaration of trust on property, does not pass through estate. Only requires declaration.	CERTAINTY OF OBJECT. <i>Only charitable purpose can exist without a B.</i> Level of Clarity depends on kind of appointing mechanism granted.	
<i>Carson v Wilson</i>	Key: requirement that transferor intended to be immediately and unconditionally bound & had relinquished control of the property	Fixed Trust TEST	Must draw a <u>complete list</u> of <u>all beneficiaries</u> in order for certainty of objects to be valid: <i>IRC v Broadway Cottages</i>
PARTIES DEAL CONTRACTUALLY WITH EACH OTHER <i>Promises between 3 legally enforceable if contract properly constituted</i>		Discretionary Trust TEST	Must be said with certainty that <u>any</u> given individual <u>is or is not</u> a member, with concern to admin. unworkability: <i>Baden No. 1</i>
INCOMPLETE GIFT OF AN ASSET <i>Intention can later be perfected through some method of conveyance</i>		Power Simpl. TEST	Trust is valid if it can be said with certainty that any given individual <u>is or is not</u> a member of the class of beneficiaries: <i>Re Gestetner</i>
<i>Rule in Strong v Bird</i>	<u>If an inter vivos gift is imperfect</u> because the transfer is incomplete, the <u>gift can be perfected</u> if/when donee acquires title to the property in his capacity as the executor of the settlor's estate.	<i>Baden 2</i>	Description of object that tolerates a category of potential beneficiaries of whom it is uncertain whether they meet class description <u>is not allowed</u> .
<i>Hilliard</i>	To vest, requirement of evidence of continued intention.	<i>Re Hays</i>	A power will very rarely fail for administrative unworkability.

Formality Requirements		Constructive Trusts	
<p>DISPOSITION OF EQUITABLE INTEREST FROM SETTLOR TO BENEF. Formalities required by the “statute of frauds” to prevent person with LT asserting that they have ET. BC does not require transfer of ET to be in writing “Equity follows the law” but it also “looks to intent rather than form”</p>		<p>Constructive Trust: constructive trust by courts for an existing (broken) relationship involving assets to be treated as a trust-like association Two aspects of CTs: 1. Institutional (circumstances giving rise to fiduciary relationship; <i>per se, ad hoc</i>); 2. Remedial (proprietary consequence flowing if fiduciary established; UE)</p>	
<p><i>Formality Requirements in WESA</i></p>	<p>s. 37 a will must (a) be in writing, (b) signed by will-maker (c) signed by 2+ witnesses in front of will-makers. s. 40(1) witnesses must be 19+ s. 40(2) witness can receive gift s. 40(3) not invalid merely because witness is/becomes incapable of proving the will.</p>	<p><i>Per Se Fiduciary Previously Recognized Categories</i></p>	<p>Disloyal trustees: <i>Boardmann Keech</i> - lease held on CT for benef Faithless directors and senior officers of company: <i>Canaero</i> Delinquent agents in principle-agent relationships (CL) Solicitors who have wronged clients; overreaching partners Undue influencers who have acquired propert (in position of power) Breach of Confidence, Bribers, Corrupts Officials, Intermeddler</p>
<p>FULLY SECRET TRUSTS Requirements 1. Testator <u>intended</u> the B named is to hold legacy in trust for real B: <i>Ottaway</i> 2. During lifetime, <u>communicated</u> to named B this intention: <i>McCormick v Grogan</i> 3. Named B <u>accepts</u> or <u>acquiesces</u> to testator’s proposal to act as secret: <i>Re Boyes</i></p>		<p><i>Westdeutsche</i></p>	<p>institutional: trust arises from date of circumstances; court merely declares this to be so. Consequences arising are not discretionary CT remedial: judicial remedy; extent to which it operates is in discretion of courts.</p>
<p><i>Ottaway</i></p>	<p>Secret trusts still subject to three certainties, even if requirements met</p>	<p><i>Galambos</i></p>	<p>the relevant time to assess relationship is at time of transaction</p>
<p><i>McCormick</i></p>	<p>Instructions must be communicated before death to allow B to accept</p>	<p><i>Kerr v Barano</i></p>	<p>Can't use CT for injustices in unmarried spouse. Only left with UE</p>
<p>HALF SECRET TRUSTS Requirements 1. Testator must communicate to named B <u>before the will is made</u>: <i>Re Keen</i> 2. Testator <u>communicates</u> identity of real B to B <u>before will made</u>: <i>Blackwell v Black.</i> 3. B must indicated <u>acceptance</u> before the will is made.</p>		<p>Governing AH Test</p>	<p>For FD to arise, in addition to vulnerability from relationship, must: 1. an <u>undertaking</u> by F to act in best interests of alleged B 2. <u>vulnerable</u> to F’s control; <u>not just reliance and dependence</u> 3. interest substantial interest stands to be adversely affected by alleged fiduciary’s exercise of discretion: <i>Elder</i>; GOVERNS key: nature of relationship gives rise to fiduciary duty. p. 62</p>
<p><i>Blackwell</i></p>	<p>Parole evidence allowed to identify B, so long as Testator identified the beneficiaries before the will was made.</p>	<p>UNJUST ENRICHMENT Where (a) property has been accumulated, and (b) title placed solely in D’s name... may use CT to assign title between parties to match their financial contributions. Test in Pettkus</p>	
<p><i>Re Keen</i></p>	<p>Instructions and identity of B must be told to T before will is made.</p>	<p><i>Pettkus v Becker</i></p>	<p>TEST for intervention: (1) enrichment by D; (2) corresponding deprivation by P; (3) causal connection; (4) juristic reason absent</p>
<p>WESA Section 59: Rectification can be used to rectify and give effect to testator’s intention disclosed by extrinsic evidence. (error, misunderstanding, failure to carry out)</p>		<p><i>Soulos</i></p>	<p>TEST for P remedy: (1) D under equitable obligation; (2) assets in hands of D; (3) legitimate reason for seeking P; (4) CT unjust. p.65</p>
<p>REVOCAION: Settlor falls out of transaction once trust perfects (<i>Bill v Cureton</i>) <u>unless</u> (1) he is a beneficiary; and/or (2) he retained power to amend/revoke: <i>Schmidt</i></p>		<p><i>Vanessa v Seguin</i></p>	<p>Unjust enrichment <u>may</u> lead to personal restitution or proprietary award. Focus on assessment of compensation. New method of assessment to calculate damages: Proportion of value that has survived relationship. P must show <u>clear connection</u> between contributions and accumulation of wealth.</p>
<p><i>MetTOPension</i></p>	<p>Can have: only power to <u>amend</u> or power to <u>revoke</u> refer: p. 14</p>		

Purpose Trusts		
PRIVATE PURPOSE TRUSTS <i>Invalid, held as a resulting trust for donor/ donor's estate.</i> Why prohibit: need someone to enforce (<i>Re Astor</i>) "Astor Principle"		Charitable Purpose Trusts that exist for the Relief of Poverty Poverty is relative. Does not mean charity needs to cater only to the destitute - must be directed towards poor/aged/sick. Sometimes circumscribed by public benefit.
Exceptions to the prohibition: Horses, Dogs, Graves & Monuments Graves + monuments valid so long as Trustee is prepared to do task. <u>21 year limit</u>		<i>Planned Parenthood</i> Met the public benefit test, although charity assisted the poor, did not qualify under poverty heading (no means test)
<i>Pentigall</i>	Residuary legatee could enforce. Animals rarely live beyond 21 years.	Charitable Purpose Trusts that exist for the Advancement of Education Education broadly interpreted: research, scholarship, teaching, sports, chess
Exceptions to the prohibition: The Denley Rule "Indirect Beneficiary" (1) purpose trusts + (2) highlighting beneficiaries (allow trustee discretion to carry out) Outside mischief of private purpose trusts (someone to enforce): <i>Re Denlies</i>		<i>Van Society Immigration & VisMin</i> Broad definition of education: doesn't have to be university or even high school. As long as info and training provided in stated matter and <u>genuinely educational purpose.</u>
<i>Kweewatin</i>	If people can enforce a trust, beneficiary principle doesn't apply.	<i>Re Pinion</i> Bad art. Essential to know quality to assess educational ability
Exceptions to the prohibition: Unincorporated Associations or Clubs Gift to members of club as governed by the contract that sets/defines association. Usually lists rules for: purpose, organization, termination, and splitting surplus money		<i>Council of Law Report</i> Non-profit production of law reports qualified. Influenced by the fact that lawyering is a learned profession and law reports provide basic material for legal research, study, and education
Categorization might effect gift: (1) joint tenancy - if left to supervisor or members; (2) gift to official, according to club rules: \$ regulated by club rules. If resign, likely do not get. (3) gift, in trust for, club purposes - <u>invalid.</u>		Charitable Purpose Trusts that exist for the Advancement of Religion Overall it seems now that the Canadian court is going with the more open approach to religion espoused in <i>Church of New Faith</i> , and moving away from <i>Re South Place</i>
<i>Re Retchers</i>	If club ceases to exist, private trust fails. Re: amalgamation w/others	Established Recognition Mass (<i>Bourne</i>), writing of woman eventually give birth to next messiah (<i>Thornton</i>), Scientology (<i>New Faith</i>)
<i>Leahy</i>	Lack of individual beneficiaries + lack of charitable purpose = void.	<i>South Place</i> Absence of worship means that the charitable trust fails
MIXED CHARITABLE AND NON-CHARITABLE PURPOSE TRUSTS Where the main purpose of the gift is charitable, minor/incidental non-charity elements won't invalidate. Law and Equity, s. 47: mixed not void, operates for charitable benefit		<i>Church of New Faith</i> Two criteria around religious purpose for charitable trust can relate: 1. Belief in a supernatural being or principle; 2. Acceptance of canons of conduct correlated to that belief.
<i>Re Dalziel</i>	Amount for non-charitable purpose must be small, otherwise invalid	Other Purposes Beneficial To Community Depends on the <u>general cultural idea.</u> Culturally relevant, court decides. p. 20 for some categories (not exhaustive)
Exceptions to the prohibition: Private Purpose Trusts as Powers Powers of appointment: doesn't require legal persons to be objects for valid trust. Gives trustee <u>power</u> to utilize funds to further an objective. If not exercised: RT.		<i>Native Comm. Society BC</i> First, establish category in Pemsel. Second, find a public benefit: charitable purpose for appreciable section of society; not relatives.
CHARITABLE PURPOSE TRUSTS Have the advantage of CY-PRES rules and "trust will not fail for want of trustees." Be certain in SM and Intention: <i>Chichester</i>		Settlor must have a charitable intention in order for court to apply cy-pres. What was the Paramount objective of testator?: <i>Re Taylor</i> Charitable objects should not be frustrated by admin provisions: <i>Sidney North Saanich</i>
Four Fixed Categories: Pemsel: (1) relief of <u>poverty</u> , (2) relief of <u>education</u> , (3) advancement of <u>religion</u> , (4) <u>other purposes</u> beneficial to community.		1. Trustees do not inherently possess power of cy-pres, court does: <i>Re Fitzpatrick</i> 2. Cy-Pres is an attribute of charitable trusts only and do not extend to private trusts.

Resulting (Implied) Trusts

<p>Re Vandervell's Trust: divided resulting trust into two categories. ART: surplus of trust assets from express trust that has failed or is partially fulfilled PRT: circumstances where there has been a gratuitous transfer of title to property</p>		<p>Unincorporated Associations: CLUBS as a bypass to SPECIAL PURPOSE What happens to money after unincorporated association <u>dissolves</u>? (a) money held on ART by members; (b) money held by members under rules of contract (equity is equality); OR (c) money surrendered to Crown as <i>bona vacantia</i>.</p>	
<p>AUTOMATIC RESULTING TRUST <i>Four main subcategories</i></p> <ol style="list-style-type: none"> transfer of LT to trustees that turns out to be void (ex. uncertainty of objects); transfer of LT in property without disposing fully of the equitable interest in it; transfer of property with a specific limitation which has not occurred - <i>Quistclose</i> surplus of funds after a trust-purpose has been achieved 		<p><i>Re West Sussex</i></p> <p>Surplus funds subject to contract; where did it come from? Collection Boxes: crown as <i>bona vacantia</i> Major donations: if purpose achieved, RT if identifiable donors Entertainment; Raffles: crown, paid for service and/or game Look at contract: ownership by members OR rules of surplus?</p>	<p><i>Hanchett-Stanfld</i></p>
<p><i>IRC Broadway</i></p>	<p>An automatic, resulting trusts will exist where an express trust fails</p>	<p><i>Re Bucks</i></p>	<p>Identifiable contributions held as RT for donor, surplus to crown</p>
<p>Transfers of LT to trustee without disposing fully of all equitable interest The balance of unintended EI is held by the transferee on an RT for the transferor. <i>Re West.</i> Where disposition isn't absolute gift, T holds surplus on RT for estate</p>		<p>PRESUMED RESULTING TRUST: <i>No consideration OR buyer transfers to 3rd P</i> Rebuttable. Three elements: (1) purchase of property in name of another; OR (2) voluntary transfer of property to another; AND (3) no clear evidence of intention</p>	
<p><i>Re Foord</i></p>	<p>Where disposition is absolute gift. T keeps surplus of equitable intrst</p>	<p><i>Pecore</i></p>	<p>Burden of proof on transferee to rebut presumption (reverse Adv)</p>
<p><i>King v Denison</i></p>	<p>Where a gift is subject to certain purposes described in trust, and the whole legal interest is given for satisfying that, surplus on RT to heir</p>	<p><i>Oord PLA s.19(3)</i></p>	<p>Evidence of all enjoying property beneficially can rebut trust. need not be expressed to be for benefit of T to prevent RT.</p>
<p><i>Schmidt v Air Products</i></p>	<p>ART requires an express trust initially, assets treated different per transfer scheme (pension plans attributable to each original plan)</p>	<p><i>Re Vinogradoff</i></p>	<p>The presumption of resulting trust must be rebutted, or there is a resulting trust. Adv. does not apply to grandchildren automatically.</p>
<p>The "Quistclose Trust" Transfer of property subject to a specific purpose which has not been fulfilled. <i>Quistclose trusts</i> are usually categorized as a type of ART that arise in context of <u>loans</u>. Three requirements: (1) transfer of property; (2) subject to a specific purpose, condition, or limitation, (3) which has not been fulfilled.</p>		<p><i>Nishi v Rascal</i></p>	<p>A contribution expressly without condition/requirement <u>is a gift</u>. The presentation of money along with the assertion that it had no conditions or requirements constituted an out-and-out gift intention. (Commercial)</p>
<p><i>Barclays v Quistclose</i></p>	<p>Specific purpose loans create Fid. If not met, \$ belongs to lender (lender preferred creditor)</p>	<p><i>Niles v Lake Rusel v Scott</i></p>	<p>Standard form JA: do not rebut presumption: insufficient evidence. However, <u>express declaration of intention</u> by testator sufficient</p>
<p><i>Twinsectra granted in rem remedy to trace.</i></p>	<p>Three stages of <i>quistclose</i> trust: (1) money advanced, lender has equitable right to see money applied <u>only</u> for purpose advanced; (2) once money applied for purpose, lender is ordinary creditor; and (3) if purpose not carried out, look to intent and terms of agreement. <i>Trace?</i></p>	<p>PRESUMPTION OF ADVANCEMENT <i>Presumed to be an out-and-out gift, but can be rebutted through evidence of intention.</i> Matrimonial Context: BC rule not abolished, but displaced. Only applies for gifts flowing from husband to wife: <i>Re Mailman</i>; also when "common person": <i>Warm Parental Context: Only</i> applies to minors: <i>Pecore</i></p>	
<p><i>Re Westar</i></p>	<p>When specific purpose identified, its segmented for this purpose.</p>	<p>TIME Once given gift, can't revoke. Look to intention at time of trans.: <i>Shepherd</i></p>	
<p>Surplus of Funds after Purpose Achieved ... goes back to T If <u>unknown</u>: RT payable to court for admin simplicity. Can claim proportion: <i>Re Gillingham</i>. Where <u>identifiable</u>: surplus shared rateably among contributors.</p>		<p>ILLEGALITY <i>What happens when the evidence to rebut presumption is illegal?</i> par delictum rule: equity will not relieve those without clean hands: <i>Scheurman</i> IF illegal: presumption RT favours transferor; Adv. favours transferee. p. 32</p>	

The Beneficiary

<i>Schalit v Nadler</i>	Beneficiary cannot take part in management. Beneficiary cannot do the job of the trustee (beneficiary trying to exercise trustee powers)	<i>Saunders v Vautier</i> in <u>discretionary trusts</u> : Rule where feasible, Bs can combine to ‘call trust’, all Bs MUST (1) be identifiable; (2) unanimously agree. : <i>Smith</i> . p.	
<i>Re Bagot</i>	<u>Unless</u> beneficiary acting as trustee's agent. Court has discretion	<i>Buschau</i>	Limit to termination: PENSIONS. Only through PBSA, 1985
DISPOSITION OF EQUITABLE TITLE <i>Sub Trusts & Assignments</i> . IF B assigns or declares a trust of his beneficial title, he holds bare EQ title and the B has the Ben. title. Original B must administer their equitable interest for new B, but may not administer the trust assets, which remains the job of the trustee. B can: (1) assign to 3rd party direct; (2) direct T to hold property for new B; (3) contract for valuable consideration to assign EI to assignee; (4) declare self new T.: <i>Timpson's</i>		DIVISION If trust is divisible and <u>one or more beneficiary</u> are sui juris and absolutely entitled, then they can individually call on T to transfer their portion share of trust property. IF assets are divisible, then divide, unless termination would unfairly impact remaining beneficiaries (value can suffer minor reduction though): <i>Re Sandmans</i> . <i>Re Marshall</i> Land is not divisible; not automatically entitled to call division to land.	
Section 36, Law & Equity Act: requires written document, signed by beneficiary, delivered to trustee, to assign beneficial entitlement from B1 to B2.		<i>Lloyd Bank v Buker</i>	Giving one B controlling stake too high a striation in value of other shares, they could control the company in a way that hurt Bs.
<i>Timpson's</i>	If formalities not satisfied, WESA applies flexibility to uphold testator's intention. If none work, interest of assignee not enforced.	VARIATION OF TRUSTS <i>Sometimes circumstances change that the settlor could not anticipate and changes required in order to benefit beneficiary</i> CL Rule: courts have no power to authorize variation of trust: <i>Chapman v Chapman</i>	
<i>Re Wasdale</i>	Priority among assignees: first in time, first in right. Earlier pref.	<i>Re Steed's Will</i>	When disc. power exists, court can “benefit of the parties interested
Restraints of Alienation: THE PROTECTIVE TRUST <i>Prevents beneficiary from obtaining legal title, calling the trust or disposing of interest, by creating a strong legal incentive</i> . Is there a condition/limitation on the trust? Spendthrift Trust		In general, court will approve where: (1) basic intention will be kept alive by proposed variation (<i>Russ</i>); proposed variation for benefit of incapable Bs (<i>Russ</i>); the goods bargain test applies (<i>Bentall</i>). p. 40	
Typical Mechanism: Give determinable interest to one, on occurrence of determining event , trust property is held on second, discretionary trust in favour of class of benefs. Triggers: B1 attempts to assign EQ to another; bankruptcy; attempt to change interest.		Four Exceptions where courts can vary: administrative terms (management powers), maintenance jurisdiction (direct payments to B if they need money + ok), conversion jurisdiction (realty-personalty), compromise jurisdiction (sui juris)	
<i>Leir</i>	CL voids restraining alienation, <u>but</u> settlor can use protective trust by using a determinable limitation on B's interest through a gift over.	Trust and Settlement Variation Act, s. 1: Court approval of variation on behalf: vested or contingent interests, unborn, unascertained, incapacitated. p. 40	
determinable interest: until, when, as long as, during, etc. defeasible interest: on condition that, but if, subject to, etc.		What counts as a benefit in the statute? <i>Assessment of Benefit Rules</i> (1) benefits the ground targeted by statute; (2) Good bargain test (not elim. of risk)	
TERMINATION Rule in <i>Saunders v Vautier</i> . p. 37! Beneficiaries can terminate (1) beneficiary is sui juris; (2) is compus mentis; and (3) absolutely entitled (title vested)		<i>Re Westin's Settlement</i>	Financial benefits not only consideration in variation for what benefits a minor. Social and education benefits are also important.
<i>Fargey</i>	Equity favours immediate vesting, leans against postponement	<i>Eaton</i>	Basic intention of testator should be kept alive. Benefits incapable.
<i>Re Lysiak</i>	Contingent circ. may be construed as postponement of enjoyment. Presence of gift over suggests interest not vested .	<i>Bentall Corp.</i>	Good Bargain: would a prudent adult motivated by intelligent self interest and consideration of exp & risks the proposal made, accept
<i>Re Carlson</i>	Where will makes it clear asset isn't to be divided <u>until</u> all reach age, can't terminate. Contingent on event, <i>Saunders v Vautier</i> doesn't work	<i>Re Tweedie</i>	Paramount consideration = possibility of unborn realizing a financial benefit. If small, liberal interpretation is appropriate.

The Appointment, Retirement, and Removal of Trustees

<p>Section 2 of the <i>Trustee Act</i> applies to all those acting as trustees. Except as provided in this Act, this Act extends to persons entitled or acting under a deed, will, codicil, or other instrument irrespective of the date of its execution.</p>		<p>GENERAL RULE for removing trustees: Removal requires application: Conroy</p> <ol style="list-style-type: none"> Acts or omissions that endanger the trust property; OR Show want of honesty, appropriate capacity, or reasonable fidelity.
<p>TYPES Can be any person, legal or natural. Might be residency requirements.</p> <ol style="list-style-type: none"> Trustee should be: responsible, level headed, business like approach with capacity for good judgement Public Guardian: legally and physically disabled AND protection of charitable Trustee de son tort: non appointed intermeddler in the affairs of an existing trust Advisors to & Protectors of (Monitors T, appoints objects, can veto) Their supervision needs to be clearly set out. <u>Might be a FD if they have a duty to act.</u> 	<p><i>Conroy v Stokes</i></p>	<p>Removing trustee requires an application to point to an act/ omission that endangered trust property or show want of honest, appropriate capacity, or reasonable fidelity. Criteria for removal: welfare of beneficiary</p>
<p>APPOINTMENT BY SETTLOR Gains through transfer of asset (vesting) or under a will through letter. If multiple trustees = joint tenants (presumption) unanimity req.</p>	<p><i>Re Consiglio Trusts</i></p>	<p>Trustees can be removed when administration of trust has become <u>improbable or impossible due to situation between trustees.</u></p>
<p>SUCCESSION. Where trustee dies, continuance occurs through trustee appointed by: express power to appoint in settlement; general statutory power (<i>Trustee Act</i>); combined beneficiary under principles of <i>Saunders</i>; or court application.</p>	<p><i>Re Newton Trust</i></p>	<p>Court doesn't need to find misconduct to remove trustee. Welfare of beneficiary is of the utmost consideration. Conflicts between co-trustees = legitimate basis to remove</p>
<p>Trustee Act, s. 31 Power of Court to Appoint New Trustee TEST: where it is <u>expedient</u> and <u>practical</u> to appoint and inexpedient to do it without</p>	<p><i>Critchley</i></p>	<p>Five grounds for trustee removal: dishonesty, deception, failure to properly account, failure to file taxes, not prudent investor</p>
<p>Trustee Act, s. 36: if dispute over appointment, can apply to court.</p>	<p><i>Radford v Radford Estate</i></p>	
<p><i>Re Tempest</i></p> <p>Guiding principles for court to consider in appointing trustees:</p> <ol style="list-style-type: none"> wishes of the settlor/testator - especially undesirables persons who do not have ulterior motives persons who will promote and not impede execution of trust. 		<p>Interference with settlor's intentions (to appoint this T) must be well justified. Clearest evidence to show this is the most sensible course. Main guide should be welfare of the beneficiary; non-removal would likely prevent proper execution of trust; not intended to punish, but to protect assets. p. 46</p>
<p>Trustee Act, s. 29 Vesting of Assets in New Trustees Automatic vesting in new trustee with title <u>precluding</u> any necessary formal conveyance or assignment. Instrument of appointment acts as vesting instrument.</p>	<p><i>Bunn v Gordon</i></p>	<p>Consistent antipathy towards beneficiary can be the basis for removing someone as trustee.</p>
<p>RETIREMENT Trustee Act, s. 28 If 3+ trustees, declares wish to be discharged, co-trustees consent, deemed to be retired without appointment of new trustee; (2) things required for vesting in remaining trustee must be done. If retirement fails, fiduciary duty to beneficiary still continues.</p>	<p>RESIDENCY AND TAXATION OF TRUSTS <i>Where is trust resident?</i> Residency: trust ordinary resides where trustee resides. If multiple, where the majority resides. However, note: <i>Garron</i>, 2012 CL residency test: situated in its central management where the control of trust takes place Taxation: laws of where the trust resides applies to taxation. Payment due by trustee, where inadequate, beneficiary must pay (Trustee has indemnity). Once paid, payments to beneficiary are tax free. Usually taken by revenue from trust asset. If little to no revenue, beneficiary to pay taxes.</p>	
<p>REMOVAL UNDER TRUST INSTRUMENT Look for intent in instrument first.</p>		
<p>REMOVAL UNDER TRUSTEE ACT, SECTION 30 A sui juris beneficiary with consent of majority may apply for court to remove trustee.</p>		
<p>REMOVAL OF TRUSTEES BY COURT Court will remove trustees where their continuance is detrimental. Governing criteria: welfare of beneficiaries.</p>		

