

CASE/CONCEPT	DEFINITION/RULE
Trustee's Powers	
Source of the powers	<ul style="list-style-type: none"> - The trust deed. - Trustee Act 1956 s 2(4)
Powers conferred	<ul style="list-style-type: none"> - Powers of management. - Investment - Disposition - Appointing agents - Delegate if absent or incapacitated - Carry on the testator's business.
The Irreducible Core	All of the trustee's powers can be affected by the trust deed, and removed, however there is an irreducible core of powers which the trustee must have. If these are reduced, the trust is void. Equity must be able to enforce the trust.
Trustee's Duties	
List of duties	<ol style="list-style-type: none"> 1. Acquaint with the trust deed. 2. Comply with the trust deed. 3. Take possession of property and safeguard it. 4. Act impartially. 5. Keep accounts/relevant information. 6. Act with due diligence. 7. Fiduciary duties (loyalty, not to profit, proper motives, not to charge). 8 Be active, and act personally.
Remedies	<ol style="list-style-type: none"> 1. Personal liability of trustees to restore the property, compensate the trust fund, and remedy any losses. 2. Personal claims against third parties (dishonest assistance). 3. Proprietary claims against third parties. Done through tracing, but the third party may have a defence.
<i>Re Mulligan</i>	<ul style="list-style-type: none"> - Establishes that the trustees have a duty to act in good faith. - Don't have to treat all beneficiaries equally, but must only consider all relevant information.
Trustee Avoiding Liability	
Exclusion/Exemption Clause	<ul style="list-style-type: none"> - Can be put in the trust deed. - Purports to limit the liability of the trustee. - The clauses don't infringe on the irreducible core, they only apply in the absence of dishonesty.
<i>Spencer</i> Rule	<ul style="list-style-type: none"> - Had an exemption clause saying 'no trustee shall be liable for any loss not attributable to his or her own dishonesty'. - Dishonesty is not a subjective measure.
Test for honesty:	<ul style="list-style-type: none"> - In light of what the trustee knew, did they act in a way that the honest person would have in the circumstances? - Some subjective elements, but mainly the test of the 'reasonable professional'.
Trusts Act 1956 S 73	- Gives the court the power to excuse liability, wholly or partially, for a breach committed by a trustee who acted 'honestly and reasonably'.
<i>Spencer v Spencer</i> [2013]	<ul style="list-style-type: none"> - SGL's exorbitant fees, the offsetting of the debt, and the lack of rent meant they breached their trust. - Exemption clause didn't apply; the trustees did not act honestly.
<i>Clayton v Clayton</i> [2013]	<ul style="list-style-type: none"> - Vaughn Road Property Trust. - The irreducible core consists of ensuring the trustee must act honestly and in good faith.

	- The trustee must not retain powers akin to ownership. If they do so, the trust will be illusory and void.
TABOLs	
Resulting Trusts	
Resulting Trust	- Requires one of 2 circumstances - Seeks to give effect to the common intentions of the trustee.
Type A: Presumed Resulting Trust	- Where A pays for property that is vested and legal title is put in the name of B, there is a presumption that A did not intend to make the gift to B, and that the property is being held on trust for A. - The claimant acquires an equitable interest in the property in the same proportion as their contribution to it. Test: 1. Payment of part or all of the purchase price for property by A. 2. A transfers the property to B. 3. Creates a presumption that A did not intend to entitle B to the property. Can be rebutted, onus on B.
Type B: 'Automatic' (Failure to dispose) Resulting Trust	- Where A transfers B property on express trust, but the trust declared does not extend to the full beneficial interest. - Centred around the idea of some title 'jumping back'. - Presumption that the property goes back to the settlor when they fail to dispose of the property. Can be rebutted. - Also looks to common intention of the parties.
<i>Westdeutsche v Islington London Borough Council</i>	- A claim for compound interest can only be made under an equitable claim. - There was no chance of a constructive trust. - Only possible trust would be a resulting trust. - The bank's claim fails on either point: A. There is no presumption of a resulting trust, the clear intention was the money be the council's property. B. There was no express trust declares. - Intention is essential in ascertaining a resulting trust.
Lord B-W's Fundamental Ideas about Trusts	1. Equity operates on the conscience of the owner of the legal intent. 2. A trustee cannot be a legal title holder unless the conscience of the property holder is affected. 3. In order to establish a trust, there must be identifiable trust property. 4. Once a trust is established, a beneficiary has a proprietary interest enforceable in equity against any subsequent holder of the property, other than a purchaser for value of the legal interest without notice.
Presumption of Advancement	- Exists in a parent/child or spousal/cu/def relationship. - Presumes that property transferred from one party to another was done so as a gift. - Fairly easy to rebut. However, the PRA 1976 s 4 removed this presumption between married and civil union couples.
<i>Crampton-Smith v Crampton Smith</i> [2011]	- Brother/sister sub developer. - The presumption of advancement would apply, however the court thought to apply it would be ridiculous, and found it didn't hold up.
<i>Tinsley v Mulligan</i>	- Lesbian defrauders. - Minority (Lord Goff) – Equity will not aid those who do not come with clean hands. - Lord BW: Agrees with Lord Goff in principle.

	<ul style="list-style-type: none"> - But finds that if you don't need to rely upon your illegal act to make your claim, equity will still assist you. - Milligan did pay for half the house, she did so legally, and that is basis of her claim. - The presumption of advancement therefore applies, and this is a textbook Type A resulting trust, Milligan got half the house.
<i>Re Vandervell (No 2)</i>	<ul style="list-style-type: none"> - Established that Type A is dependent on the intentions of the parties, and Type B is an automatic consequence of a plaintiff's failure to dispose of the property.
<i>Re the Trusts of the Abbott Fund</i> [1990]	<ul style="list-style-type: none"> - Trust to support the 2 daughters. - Resulting trust in favour of those who donated the money. - Affirms a Type B RT.
<i>Re Gillingham Bus Disaster Fund</i> [1858]	<ul style="list-style-type: none"> - Surplus held on trust for the donors. - Other options were entertained; <i>bona vacantia</i>, or <i>Cy Pres</i>.
<i>Air Jamaica v Charlton</i> [1999]	<ul style="list-style-type: none"> - Resulting trust, 50/50 contributors and employer. - The court was just returning money to where it came from.
Contrary Intention	<ul style="list-style-type: none"> - Property is to be held on trust for the settlor, unless the court can find a contrary intention. - Could be if a person or purpose was to be absolutely benefitted, if the purpose has been completely abandoned, or if it can be distributed according to a contract.
Quistclose Trusts	
The Quistclose Trust	<ul style="list-style-type: none"> - Provides a lender of money with a proprietary interest in the loan moneys in the even the borrow goes insolvent. - When a debtor holds money on trust for a creditor.
<i>Barclays Bank v Quistclose Investments</i>	<ul style="list-style-type: none"> - Loan was purely for the purpose of paying dividends to the shareholders. - This is a resulting trust. It is an implied term of the loan contract that the money must be returned to Quistclose in the event it was not used for the purpose for which it was lent. - Mutual intention of the parties was that it was used to pay the shareholders. - Implicit term that if it could not be used for those purposes, it should be returned to the shareholders. - A loan contract can create both equitable and legal obligations.
<i>Twinsectra Ltd v Yardley</i> [2002]	<p>Lord Millet</p> <ul style="list-style-type: none"> - Quistclose trust is a resulting trust. - The 2 trusts argument doesn't work, who is the beneficiary of the first trust? - Beneficial interest remains with the lender, subject to the specified power for what the trust is there to do.
Problems	<ul style="list-style-type: none"> - This trust doesn't really look like a resulting trust. <ul style="list-style-type: none"> - No intention to create a trust which failed. - If the trust only exists after the property is misused, it may be too late. If the money is not available, no remedy.
Best Reasons	<ul style="list-style-type: none"> - A resulting trust because the trust property goes back to the lender when the purpose of giving out the trust property has failed. - The equitable interest jumps back to the lender if something goes wrong.
Constructive Trusts	
What is it?	<ul style="list-style-type: none"> - Arises in circumstances when the defendant knows that they are acting in an unconscionable manner (<i>Westdeutsche</i>).

	<ul style="list-style-type: none"> - It's not about the settlor's intention. D must hold the property for another's benefit because it would be unconscionable of them not to do so. - No specific test, boundaries are deliberately broad.
Difficulties	<ul style="list-style-type: none"> - No clearly specified duties, no trust deed. - These trusts can be bare trusts.
Remedial Constructive Trusts	A constructive trust created at the time of the judgment in the event of unconscionable conduct.
Institutional Constructive Trust	A trust which is said to have arising at the time the potentially unconscionable conduct occurred.
When one might arise:	<ol style="list-style-type: none"> 1. D unconscionably asserts legal ownership of property to which another has contributed (<i>Lankow v Rose</i>) 2. Fiduciary improperly profits from their fiduciary position (<i>Keech, Regal, Sanford</i>) 3. Property has been obtained by fraud/ultra vires action (<i>Westdeutsche</i>).
Type 1	A defendant unconscionably asserts legal title to property to which another has contributed.
<i>Lankow v Rose</i> [1995]	<p>Established Tipping J's 4-part test to see whether a constructive trust will be created over one partner's property.</p> <ol style="list-style-type: none"> 1. Contributions, direct or indirect, to the property. 2. That P expected an interest in the property. 3. That that expectation is reasonable in the circumstances. 4. That D should have reasonably expected to yield an interest to the claimant. <p>- Note: Now largely replaced with the scheme under the PRA.</p>
Limb 1	<ul style="list-style-type: none"> - Financial/formal work, or domestic work. - A causal relationship must exist between the value of the defendant's assets and the work. - Must have either assisted directly in the acquisition or increase in value of the property, or have allowed the other party acquire, improve, or maintain the property or its value. - Contributions made should exceed the benefits gained (<i>Hardie Boys</i>)
Limb 2/3	<ul style="list-style-type: none"> - Claimant must have a subjective interest. - Objective element – what would the reasonable claimant expect?
Limb 4	<ul style="list-style-type: none"> - Objective. - Was it reasonable in the circumstances? - No actual expression does not bar equitable recognition of an objective reasonable expectation (<i>Wilson v Webster</i>)
<i>Harvey v Beveridge</i> [2014]	<ul style="list-style-type: none"> - If the claimant has not contributed at all to the duties, they will have no claim. - Balance between contribution to the property, and amenity gained.
Fiduciary Duties	
Three key relationships	<ol style="list-style-type: none"> 1. Relationships of trust and confidence. Key obligation: loyalty. 2. Relationships of vulnerability. Key obligation: Don't exploit your influence for your own benefit. 3. Relationships involving confidentiality. Key obligation: Don't use the information for own benefit.
Primary duties	<ol style="list-style-type: none"> 1. Loyalty 2. Not to profit or self-deal. 3. Not to act with improper motives or in a conflict of interest. 4. Not to charge for their services.

<i>Keech v Sanford</i> [1976]	<ul style="list-style-type: none"> - Infant's market stall. - A fiduciary's obligations are strict. - The policy behind these duties are to ensure no fiduciary intends to profit from their position. If that ends up being unfair to the fiduciary, so be it. - Removes incentive for fiduciaries to find loopholes.
<i>Bray v Ford</i>	<ul style="list-style-type: none"> - Inflexible rule that a fiduciary is not allowed to make a profit. - Aims to thwart the selfishness of human nature.
<i>Regal (Hastings) v Gulliver</i> [1942]	<ul style="list-style-type: none"> - Cinema case. - The directors were acting in good faith, and in the best interests of the company and their shareholders. - However, by profiting, they breached their fiduciary duty, and are to be held accountable for it. - The rules are strict such as to enforce a single minded dedication to the duty. - The strictness of the rule is justified by the deterrent factor, there is no getting around it.
Fact Based Fiduciaries	<ul style="list-style-type: none"> - Established on the individual facts rather than a particular category. - Joint venture partners are a good example. - The hallmarks of a fiduciary duty are key indicators as to whether one exists.
<i>Chirnside v Fay</i> [2006]	<ul style="list-style-type: none"> - Joint venture partners. - A joint venture generally has a collaborative element. - A contract does not have to set out every particular element of a duty, it can be mutually agreed to, or implied. - Fiduciary duties were owed, Chirnside breached them when he excluded Fay. - Formalities must be adhered to when winding up a joint venture to avoid a breach of duty.
<i>Amaltal Corp Ltd v Maruha Corporation</i> [2006]	<ul style="list-style-type: none"> - Fishing joint venture. - Generally, these companies were 2 separate entities. - Amaltal did Maruha's accounting and tax returns, in this element, they were a fiduciary. - In establishing a duty, don't just look to what the agreement says, look to what the parties actually did. - There are 2 possible situations. <ul style="list-style-type: none"> 1. There is a general fiduciary duty. 2. There is no general fiduciary duty, but a particular element of the party's actions incorporates a duty over that particular element.
<i>Paper Reclaim Ltd v Aoteraroa International Ltd</i> [2007]	<ul style="list-style-type: none"> - Tipping J established a test: Is this the sort of situation where one of the parties should be entitled to impose trust and confidence on the other? Was there anything in particular about their relationship? - A fiduciary relationship will be found where one party is entitled to repose, and does in fact repose, trust and confidence in another.
Distinction between CL approach to relationships and the fiduciary approach	<ul style="list-style-type: none"> - CL approach: Personal freedoms stop where harm to others starts. - Fiduciary approach: Subjugate your personal autonomy to the interests of others.
Breach of Fiduciary Duty	
Possible remedies	<ul style="list-style-type: none"> - Personal Remedies - Proprietary Rights
Advantages of a proprietary remedy	<ol style="list-style-type: none"> 1. Insolvency. 2. Tracing

Categories for breach of duty	<ol style="list-style-type: none"> 1. When a breach of duty involves actually using trust property to make unauthorised gains. 2. Where a breach of fiduciary duty involves using opportunities arising out of the fiduciary position (<i>Keech, Regal</i>) 3. Where breach of the duty does not involve using trust property or opportunities (bribery, fraud etc). The law is undecided as to what remedy is offered.
<i>Attorney General for Hong Kong v Reid</i> [1994]	<ul style="list-style-type: none"> - Reid's conscience was burdened by taking a bribe, he ought to have given it up immediately. - 'Equity looks upon as done that which ought to be done'. - Constructive trust established over the bribe, proprietary rights to trace it, and the proceeds. - Every kind of profit made by a fiduciary is held on trust, giving rise to a proprietary duty.
<i>Sinclair Investments v Versailles Training Ltd</i> [2011]	<ul style="list-style-type: none"> - Ponzi scheme. - There is no proprietary right to assets obtained in breach of a duty unless: <ol style="list-style-type: none"> 1. They are obtained through funds previously owned by the principal; or 2. They are derived from opportunities of the principal. - Policy of why the principal should be favoured over other creditors, the principal cannot be benefitted by a bribe.
<i>FHR v Cedar Capital</i>	<ul style="list-style-type: none"> - There is significant division as to whether a proprietary remedy should be granted. - Simplicity vs uncertainty. - Probs should read 10 – 31 of this case.
Tracing	
Definition	<p>Tracing is an attempt by a claimant to establish a proprietary claim to a specific piece of property by tracing a pre-existing piece of property into it.</p> <ul style="list-style-type: none"> - 'Neither a claim nor a remedy but a process'.
Following	<p>Identifying where one's property has gone, and pointing to it in the hands of whoever has it, focussing on the original property. Involves the same asset.</p>
Tracing	<p>Involves identifying a new asset as a substitute for the old.</p>
Rationale	<ul style="list-style-type: none"> - The traced property represents the value/proceeds of the original property, so it belongs to the claimant (<i>Foskett</i>).
Common Law Tracing	<ul style="list-style-type: none"> - No need for a fiduciary relationship. - 'That's my asset, unless you have a defence you must give it to me. - Defences: <ol style="list-style-type: none"> 1. Equity's Darling: Good faith purchaser for value who took the property without notice of the equitable interest. 2. The defendant's position has materially changed in reliance on this property. - Common law tracing cannot trace into mixtures.
Process of Tracing	<ol style="list-style-type: none"> 1. Trust or fiduciary relationship. 2. Breach arising in equity. 3. Point to the particular original property. 4. Trace or follow the asset/value. <ol style="list-style-type: none"> a. Evidential process. 5. Are there any defences? 6. Remedy <ol style="list-style-type: none"> a. Constructive trust

	<ul style="list-style-type: none"> b. Lien c. Equitable Charge d. Subrogation
<i>Banque Belge v Hambrouck</i>	<ul style="list-style-type: none"> - Bad cheque case. - As the bank accounts were all empty, there was no mixing, therefore common law tracing can work.
<i>Agip (Africa) Ltd v Jackson</i>	- Common law tracing only works if there has been no mixing.
Tracing in Equity	- Requires a pre-existing equitable interest or fiduciary relationship.
Potential Remedies	<ul style="list-style-type: none"> 1. A constructive trust (equitable co-ownership) 2. An equitable lien or charge. - Depends on the initial equitable property right.
Loss of the right to trace	<ul style="list-style-type: none"> - If the particular asset is destroyed, made into a different asset, or cannot be found, the property is lost. - If the property goes to equities darling, tracing cannot extend to that piece of property.
Equitable Tracing: Tracing into Mixtures	
Mixture of 2 Trust Funds/mixture with an innocent volunteer's property	<ul style="list-style-type: none"> - The entitlement of the beneficiary to the property ranks proportionately to the rights of the innocent volunteer. - The Court doesn't want to penalise innocent contributors. - Mixed assets then spent: 2 Approaches <ul style="list-style-type: none"> 1. Claytons Case Rule: First money in is the first money out. Largely disused and discredited. 2. Proportionate Approach. Preferred. - The Court's overwhelming concern is to achieve justice between innocent parties.
Mixture of the trust property with the trustee's own property	<ul style="list-style-type: none"> - The trustee's rights are subordinated to the beneficiary's. - Any misuse of the property must have been the wrongdoer's fault (<i>Re Hallet's Estate</i>). - Cannot claim below the lowest intermediate balance. - Beneficiary can choose whether the trustee's property is subject to an equitable lien or a constructive trust. (<i>Re Oatway</i>).
<i>Foskett v McKeown</i> [2001]	<ul style="list-style-type: none"> - Life insurance case. - Lord Millet: <ul style="list-style-type: none"> • The proceeds of the pay-out are traceable directly from the money Mr Murphy took. • The plaintiffs can assert a proprietary right, and claim 20% of the proceeds. • The insurance policy is a contract; the consideration is the premium payments. As soon as you've contributed to the proceeds of the agreement, there is a claim over all of it. - Hobhouse LJ <ul style="list-style-type: none"> • The final payments are not causally responsible for the payout, because the premiums were paid up to the date Mr Murphy committed suicide without them. • Argument revolves around the intricacies of the contract, not the nature of tracing. • Agrees there's a lien, so a proprietary claim is available. Therefore the plaintiff's should be able to claim a constructive trust, he misses this point. <p>Kayla, remind me to read this case.</p>
Backwards Tracing	

Definition	<p>If money is appropriated in breach of a duty, and used to pay off a debt, backwards tracing says it's acceptable to claim whatever that debt paid off as a proceed of the breach of duty.</p> <ul style="list-style-type: none"> - Generally not seen as possible. The trust property was not actually used to pay for T's asset. - Possibility to make these claims still exist, but very uncertain (<i>Brazil v Durant International</i>)
Money used to improve property	<ul style="list-style-type: none"> - If an errant trustee uses the money to improve their property, the beneficiary can make a proprietary claim. - If an innocent volunteer uses trust property to improve their property, it's more complicated. <ul style="list-style-type: none"> • If the improvements do not increase the value of the volunteer's property, there is no claim, because there is nothing to which B's property can be traced (<i>Re Diplock</i>). • There could be a personal claim, but no proprietary claim. • In many situations, it would be too inequitable to untangle B's property from the improved property, and the property will be deemed to have been lost.
In mixed bank accounts	<ul style="list-style-type: none"> - Generally, the trustee is deemed to have spent their own money first. - Sometimes, the beneficiary will be able to choose into which assets their money has been spent, and claim the most valuable (<i>Re Oatway</i>)
Personal Claims Against Trustees and Fiduciaries	
Possible claims	<ol style="list-style-type: none"> 1. Proprietary claims. Could be brought against the trustee or a third party with no defence. Only works if there is property to trace. 2. Personal claim: Against the trustee. 3. Personal claim: Against third party strangers without a defence.
Will there be liability?	<ul style="list-style-type: none"> - Trustees are liable for any loss caused by a breach of trust. - If the trustee acted honestly and reasonably, the court may excuse liability under s 73 of the Trustees Act. - Liability may also be excused under an exclusion clause.
Remedies	<ol style="list-style-type: none"> 1. Specific restitution. 2. Restore trust fund in cash 3. Equitable compensation 4. Account of profits
<i>Warman v Dwyer</i>	<ul style="list-style-type: none"> - Made a business, stole some of his prior employers business. Defined the 3 stages in the process of stripping profit: <ol style="list-style-type: none"> 1. Define the net profit/gain. 2. Apportionment (only give away profits which are a result of the fiduciary duty). 3. Allowances for skill, effort, or enterprise.
Net Profit/Gain	<ul style="list-style-type: none"> - Ordinary meaning of profit.
Apportionment	<p>Key question: What portion of the defendant's profits are attributable to the breach?</p> <ul style="list-style-type: none"> - Basic causation test – the calculation of profits is essentially an exercise in causation. - Base idea of some of the business opportunity is only existent through a breach of fiduciary duty. - Business also require a degree of skill and effort, and this should be recognised.

	<ul style="list-style-type: none"> - Accountability is confined to gains attributable to the breach (<i>Adlam v Savage</i>) - Aspects to consider: <ul style="list-style-type: none"> • Agency relationship • Employee poaching • Entitlement to local production • Distributorship • Goodwill.v
Allowance for skill, effort, and enterprise	<ul style="list-style-type: none"> - Court can exercise their discretion in awarding the beneficiary something for their efforts. - All relevant circumstances must be taken into account. - The fiduciary must not be robbed. - Courts are not dividing up the profits, or denying the breach occurred. They are acknowledging that the trustee should be acknowledged for the work they have done (<i>Chirnside v Fay</i>)
Test for Breach of Trust	It is a simple ‘but for’ causation test. Reasonable foreseeability and remoteness do not come into the test.
<i>BNZ v NZ Guardian Trust Co Ltd</i>	<ul style="list-style-type: none"> - Guardian did breach its trust obligation to BNZ to NAB. - NAB suffered a loss that would not have occurred but for the breach. - Court of Appeal held that causation in relation to a duty of skill and care in a trust deed should be subject to a reasonable foreseeability test. - If there is no breach of fiduciary duty, and no loss occurs, the but for and reasonable foreseeability test must be applied. - Apply in cases of reasonable skill and care. - Does not apply to: <ul style="list-style-type: none"> • A breach of duty. • Where there is a loss caused to the trust estate. • When the breach is a conflict of interest/breach of an absolute duty. Must be a breach of something like skill and care, where the trustee has discretion.
<i>AIB v Mark Redler</i> [2014]	<ul style="list-style-type: none"> - Dual mortgage case. - ‘But for’ causation case. - Only losses caused by the breach of trust are recoverable. - The Court only replaced the money which would not have been lost if the trustee had acted reasonably, not the full amount. - Should probs read this too.
Liability of Third Parties	
The claim	<p>A third party is personally liable in cases where they breach a duty they take upon themselves.</p> <ul style="list-style-type: none"> - They are liable to account as if they were a trustee, even though they are not. They are a constructive trustee.
When are they liable?	<ul style="list-style-type: none"> - When the third party is conducting themselves in a way which is participating in any fraudulent conduct of the trustee. (<i>Barnes v Abby</i>). - If they take on the duties of the trustee, act as a trustee, and cause a loss, they are liable. - They must either: <ol style="list-style-type: none"> 1. Knowingly receive the trust property OR 2. Dishonestly assist in the breach of trust.
1. Knowing Receipt of the Trust Fund	<ul style="list-style-type: none"> - Not a proprietary claim. Factors: <ol style="list-style-type: none"> 1. Breach of trust/fiduciary duty.

	<ol style="list-style-type: none"> 2. Receipt of trust property/traceable to the third party (they have to receive the property). 3. Knowledge of the breach of trust/fiduciary duty. It should be such that it would be unconscionable of the third party to retain the benefit of the receipt.
The standard of knowledge required	<ol style="list-style-type: none"> 1. Actual knowledge. 2. Knowledge which is obtainable but for shutting one's eyes to the obvious. 3. Knowledge which is obtainable but for wilfully and recklessly failing to make such inquiries as an honest and reasonable person would make. 4. Knowledge of circumstances which would indicate the facts to an honest and reasonable person. 5. Knowledge obtained from inquiries the honest and reasonable person would feel obliged to make, being put on inquiry as a result of his or her knowledge of suspicious circumstances. <p>- There is no dispute that the first three categories constitute knowledge.</p> <p>- In NZ, any of these categories are sufficient to constitute knowledge (<i>Westpac Banking v Smith</i>).</p>
<i>Marr v Parkin</i> [2015]	<p>- Ultimately, whether or not the defendant had knowledge is dependent on the factual nexus of the case.</p> <p>- Largely a reasonable person test, which can incorporate subjective elements.</p>
2. Dishonest (Knowing) Assistance with Breach of Trust	<ol style="list-style-type: none"> 1. The fiduciary/trustee must breach the trust (doesn't have to be dishonest). 2. The third party must assist in that breach. 3. Dishonesty on the part of the third party given their knowledge of the relevant facts.
Dishonesty Standard	<p>- Whether it is subjective or objective is disputed.</p> <p>- NZ approach – objective test, dishonesty means not acting as the honest person would in the circumstances (<i>Twinsectra v Yardley</i>)</p> <p>- Some criticism of this, argument is that dishonesty is a state of mind, therefore the test should be subjective.</p>
<i>Westpac NZ v Map</i> [2011]	<p>- Affirms Lord Millet's objective test.</p> <p>- Lord Millet was backed up in <i>Barlow Clowes</i>.</p> <p>- The test is to take the subjective circumstances of the person into account.</p> <ul style="list-style-type: none"> • It speaks to their expertise, and what sort of knowledge the person would had. • Test is of the reasonable honest person in the shoes of the defendant. <p>- A sufficiently strong suspicion of a breach of trust, coupled with a deliberate decision not to make inquiry results in actual knowledge, and can constitute dishonesty.</p>
SUCCESSION	
Administration Act 1969	
Application	In the event the deceased is intestate, or leaves some part of their estate intestate.
Section 2 – Interpretation	De facto – From the PRA, no romantic connection is required. Personal chattels – Everything apart from real property, money, and tools of the trade.

Section 77 – Succession to real and personal property on intestacy	<ul style="list-style-type: none"> - Outlines to whom and how much of the property goes where. - A surviving partner gets all personal chattels, and \$155,000. - The rest is split. <ul style="list-style-type: none"> • If there are children, it is split 1/3rd for the partner, 2/3rds for the children. • If there are no children, the partner gets 2/3rds, and 1/3rd goes to the parents etc.
Section 77B – Restrictions on succession on intestacy by some de facto partners	<ul style="list-style-type: none"> - If the de facto relationship is longer than 3 years, the partner is treated as a spouse. - If not, they are not, unless: <ul style="list-style-type: none"> • There is a child of the de facto relationship. • The partner has made a substantial contribution to the relationship (determined by the Court finding it would be a serious injustice to leave them out)
Section 77C – Multiple surviving partners	<ul style="list-style-type: none"> - The 155k is split equally between the partners.
Section 78 – Statutory trusts	<ul style="list-style-type: none"> - The property is held on statutory trust, either per capita or per stirpes.
Wills Act 2007	
De Facto Relationship	Defined as per the Interpretation Act, requires a relationship akin to a marriage.
Section 9 – Persons who may make, change, revoke, and revive wills	<ul style="list-style-type: none"> - Must be over 18. - Or must be married, in a de facto, etc.
Section 11 – Requirements for a will to be valid	<ol style="list-style-type: none"> 1. Writing 2. Signed and witnessed 3. Will maker must sign the document, or have another sign it on his behalf. 4. At least 2 witnesses must see the will maker sign the will and be together in his presence.
<i>Re Colling</i>	<ul style="list-style-type: none"> - Old man in hospital case. - Will was invalid, as it was improperly witnessed. - But s 14 diminished issues with formalities such as this.
Section 13 – Witnesses affected by dispositions made to them	<ul style="list-style-type: none"> - Witnesses cannot receive anything under the will they witness, nor can their spouses. - Ways around this: <ul style="list-style-type: none"> • Section 14 • If you can prove the will maker knew of the disposition, approved of it, and made it voluntarily, it will be a valid gift (s 13(2)(d). • If 2 other witnesses validly witnessed the will, it will be valid.
Section 14 – High Court may declare will valid	<ul style="list-style-type: none"> - The High Court has huge discretion under the Wills Act. - They can declare a will valid, even if it does not comply with the formalities. - Subjective test.
<i>Re Brumhall (deceased)</i> [2011]	<ul style="list-style-type: none"> - Woman wanted to change a valid will. - Died before the formalities were executed. - No doubt that she had intended to make the changes, the HC held it to be valid under s 14. - Proof of intent is the critical element.
Section 15 – Changes to the will	<ul style="list-style-type: none"> - Changes may be made, but they must be written or attached to the will, and done in accordance with the formalities. - If you make multiple wills, the last one is the one that counts.

Section 18 – Effect on will of will-maker marrying or entering into a civil union	<ul style="list-style-type: none"> - Typically invalidates the will. - Does not apply if the will was made in anticipation of these events.
Section 19 – Effect of a marriage or civil-union ending	<ul style="list-style-type: none"> - Terminates the will. - Does not apply if the will says it will apply even in these events.
Property (Relationships) Act 1976	
Definition	Relationship property is anything used by both people in the couple.
Section 61 – The choice	Survivor may choose option A or B
Option A:	Survivor accepts a division of property as if the couple had merely separated. They take 50% of the assets of the relationship, and are then deemed to have predeceased the partner, omitting their own claim.
Option B:	Surviving partner forgoes their rights under the divorce, and takes what succession will give them. This option should be taken if the surviving partner owns a lot of the relationship property and does not want it shared with the estate.
Section 62 – Time limit on the choice	<ul style="list-style-type: none"> - Must be made within 6 months. - If it is not made, Option B is the default option.
Section 81 – Presumption that the property of the deceased is relationship property	<ul style="list-style-type: none"> - This presumption must be disproven by the one making the claim. - Joint tenancies are included in this presumption.
Section 85 – De factos of a short time	Same rule as in the Administration At.
Family Protection Act 1955	
Adoption Act 1955	An adopted child is deemed to be a child.
Status of Children Act 1969	Any child born after the 1 st of January 1970 is a child, regardless of whether or not they were born in wedlock.
Section 3 – Persons entitled to claim	<ul style="list-style-type: none"> - Spouse/partner, or children automatically. - Grandchildren/parents claiming is dependent on other considerations having being taken into account.
Section 4 – Claims for maintenance	<p>Will or not is irrelevant.</p> <p>Court only looks at provisions for maintenance and support.</p> <p>All claims must be made within 12 months.</p>
<i>William v Aucutt</i> [2000]	<ul style="list-style-type: none"> - Testamentary freedom must be balanced with the need to provide support. - Support is a much wider test than maintenance. Maintenance is to do with upkeep, support is emotional and moral. - The dutifulness of the family member, wishes of the deceased, and the closeness of the relationship are all relevant factors. - 10% is the upper limit of what a FPA claim will award to a child, a spouse could get around 30%. - This statute does not give the court power to rewrite a will, it is for the Court to provide what is necessary, nothing more. <p>Four main principles were examined:</p> <ol style="list-style-type: none"> 1. The merit of the claim. 2. The past relationship of the testator and the applicant. 3. The extent of the applicant's estate. 4. The strength of other claims.

**Law Reform
(Testamentary Promises)
Act [1949]**

Section 3 – Purpose

Act applies to repay a claimant for work done for the deceased, where there was a mutual expectation of a reward, and that award is not made in the will.

- Court has very wide discretion.
- Could arguably override formalities in the PLA.

Re Welch [1990]

- It is reasonable for a family member to provide love and affection. Such activity will not fall under this act.

- ‘There should be no injustice to other meritorious claims’.
- The promise has to be made for work done.
- No claim could be made under the FPA, because the stepchildren would have to be maintained by the deceased at the time of their death.

The Test

1. Was there a promise for work done??
2. Has it been breached?
3. Is there provision for the person under the will/is the deceased intestate?