

Case/Concept	Law/Definition
Equity	A means through which the courts can achieve fairness, without requiring strict precedent. Originally very flexible, the modern court of equity now has its own precedent, rules, and remedies.
History of Equity (England)	1066: No unified English law. 12 <sup>th</sup> C: <i>Curia Regis</i> – King’s courts, justice resided in King. 13 <sup>th</sup> C: Writs became inflexible. 14 <sup>th</sup> C: Appeals designated to Lord Chancellor. Established the Court of Chancery. 1873: Judicature Act fused courts of equity and common law.
History of Equity (NZ)	NZ’s judicial body established in 1841, the courts were always courts of common law and equity.
<b>The Trust</b>	
Express Trust	A trust intentionally created by a settlor, which can be determined to exist through the settlor’s objective intention.
Constructive/Resulting Trust	A situation where it was not obvious that the settlor intended to create a trust, but due to their actions/the circumstances, the court infers a trust. Used tentatively.
<i>Inter Vivos</i> Trust	Trust which comes into existence only after the settlor’s death.
Fixed Trust	An express trust where the trustee has no discretion or jurisdiction over to whom the trust property is distributed, nor in what proportion.
Discretionary Trust	An express trust where the trustee can decide which beneficiaries receive trust property and/or in what proportion.
Self-Declared Trust	A trust where the settlor designates themselves as a trustee, eliminating the need for a transfer of legal title.
TABOL	Constructive trust created by equity in circumstances of unconscionable behaviour, or to give effect to presumed intentions.
Steps in Creating an Express Trust	1. The settlor transfers the legal title of the property to the trustee. 2. The settlor transfers an equitable interest in the property to the beneficiary. 3. The trustee owes equitable obligations to the beneficiary. 4. A bi-lateral relationship is created (with express trusts).
Elements of a trust	1. It must be equitable. 2. It provides the beneficiary with proprietary rights (against trustee and third parties). 3. It imposes obligations on the trustee. 4. Those obligations are fiduciary.
Purpose of a trust	Protect property in an insolvency, or from third parties. Ring fence the property from creditors, and give flexibility in managing the wealth.
<b>The Three Certainties</b>	
<i>Knight v Knight</i> [1840]	Certainty of intention Certainty of object Certainty of subject matter.
<b>Certainty of Intention</b>	
<i>Knight v Knight</i>	Distinguishes between the wish of a testator and intention to create a trust. The intention of a settlor is determined objectively.

<i>Paul v Constance [1977]</i>	<p>An intention to create a trust can be inferred from the circumstances.</p> <p>There is no formal requirement for specific words or procedure to be used.</p> <p>The court shall look at the situation as a whole, and objectively determine whether a trust was intended.</p>
<i>Thexton v Thexton [2001]</i>	<p>Mere intention to create a trust is insufficient. There must be substantive steps taken to make the trust eventuate. ‘What is needed is a manifestation of an intention to declare a trust’.</p> <p>Burden of establishing intention lies on the one who alleges a trust was created.</p>
Companies Act 1993 s 149	Requires that, in certain circumstances when a director is buying shares, a fair price must be paid.
<i>Re Kayford Ltd [1975]</i>	Enforces <i>Thexton</i> rule, manifestation of intention is required. Together, intention and subsequent manifestation are sufficient to create a trust.
Property Law Act 2007 s 25(a)	Exception to the general rule; requires that all express trusts which concern land must be made in writing.
<b>Sham Trusts</b>	
Sham Trusts	<p>Exists where a trust appears to be created, but where there is no intention to carry out what the trust states it intends to carry out. A situation where the trust deed is not indicative of the true intentions of the parties.</p> <p>There is a presumption against reading trust deeds as shams, the party alleging a sham bears the onus of proof.</p>
Mutual Intention: Palmer	<p>Test: Whether the settlor had the subjective intention to create a trust.</p> <p>Only the settlor’s intention is relevant.</p>
Mutual Intention: Conaglen	Test: Examine the settlor’s objective intention to ascertain the creation of a trust, but examine the settlor and trustee’s subjective intention to ascertain a sham.
Indicators of Sham Intention	<p>Contemporary evidence at the time the trust was created.</p> <p>Actions of the trustee showing a disregard for their obligation.</p> <p>The use of trust property for another’s benefit.</p> <p>Poor administration.</p>
<i>Official Assignee v Wilson [2007]</i>	<p>Court adopted the Conaglen approach.</p> <p>A sham exists where there is a common intention between the settlor and the trustee to create something other than a genuine trust.</p> <p>The absence of intention to create a genuine trust prevents validity, as it undermines certainty of intention</p> <p>A sham can only arise at the time a trust is created.</p> <p>Common intention requirement is too difficult to prove.</p> <p>The influence of the settlor is inefficient to solely make a trust a sham.</p>
<b>Certainty of Subject Matter</b>	
<i>Re London Wine [1986]</i>	<p>A piece of property in a trust must be specifically identified if it is to be trust property.</p> <p>Trust property cannot come from a homogenous mass.</p>
<i>Re Goldcorp [1995]</i>	Orthodox rule of certainty of subject matter.

	Trust property cannot come from a homogeneous mass. It must be specifically identifiable. A trustee cannot treat alleged trust property the same as the general assets of that trustee.
<i>Hunter v Moss [1994]</i>	If trust property is fungible, identical, and indistinguishable, there is no need for specific designation of the property.
<i>White v Shortall [2006]</i>	Rejected <i>Hunter v Moss</i> approach Where there is a large amount of indistinguishable property, from which the trust property is alleged to exist, there can be a pooled trust over all the property, with the property being held for different beneficiaries, who own the property according to their proportion.
<i>Lehman Brothers [2001]</i>	Followed <i>White</i> . It is not necessary to know which pool of property belongs to this or that beneficiary, only what proportion each beneficiary owns. Only applied to intangible, fungible goods.
Criticism of <i>Lehman</i> and <i>White</i>	LBIE used the trust property as they wished, a trust was declared even though the trustees treated the trust property that same as their general assets. There's not actually one big pool of property is there.
<b>Certainty of Objects</b>	
Fixed trust	An express trust where the trustee has a fixed test of rights. It is known who the beneficiaries are, and in what proportion the trust will be distributed. Test is complete list test. Requires conceptual certainty, and evidential certainty.
Discretionary trust/trust power	Trustees are obliged to distribute the trust property, but are not bound by to whom they must distribute and/or in what proportion. Trustees may be able to select beneficiaries from a possible class. Is or is not test applies. Requires only conceptual certainty.
Fiduciary powers	A power given to a trustee which enables them to act, but does not oblige them to do so.
Complete list test	Requires the ability to make a complete list of all beneficiaries.
Is or is not test	It must be possible to say that any given claimant either is or is not within the class of beneficiaries.
<i>Saunders v Vautier [1841]</i>	Gives the beneficiaries the right to instruct the trustees to transfer the trust property to them absolutely. On applies in cases of fixed trusts. In a fixed trust, the beneficiaries have proprietary rights against the trustees.
<i>McPhail v Doulton [1971]</i>	Created the 'is or is not test' for discretionary trusts. A trust will not fail simply because it is impossible to ascertain every person who is a member of the class.
<i>Re Baden's Deed Trust (No. 2) [1973]</i>	Upheld the 'is or is not test'. Placed burden of proof for showing that an individual is within the class of objects upon the individual alleging that they are among that class. If there is insufficient evidence, the individual is excluded from the trust.

Commentary on 'is or is not' test	<p>Megaw LJ: A discretionary trust with a class of beneficiaries is valid if a substantial number of people can be identified as satisfying the terms of the trust.</p> <p>Sachs LJ: Once conceptual certainty is shown, the court only needs to be convinced that a person is within the class.</p> <p>Stamp LJ: Both conceptual and evidentiary certainty is required to show whether a given person is a part of the class.</p>
<i>Re Beckbessinger [1993]</i>	A discretionary trust is void if the designated class of beneficiaries is so broad as to incur administrative unworkability, or conceptual uncertainty.
Conceptual Uncertainty	Where a class is described so vaguely that it could have multiple feasible definitions. Required for all trusts.
Evidential Uncertainty	Where there is a lack of evidence supporting or disproving whether a person is or is not a member of the class. Only required for fixed trusts.
Whereabouts Uncertainty	Where it is unknown where a beneficiary is. Not a significant problem.
Administrative Unworkability	Occurs when the definition of the beneficiaries are 'hopelessly wide'. Fails both tests.
<b>Constitution of Trust Property</b>	
Three ways to do so	<ol style="list-style-type: none"> <li>1. Transfer it to the trustee at law.</li> <li>2. Transfer the property according to the rules which regulate how such property should be transferred. Gives the trustee a proprietary right.</li> <li>3. Self-declare a trust.</li> </ol>
<i>Milroy v Lord [1862]</i>	<p>The court will not perfect an imperfect gift by interpreting it as a declaration of trust.</p> <p>In order to transfer property, the settlor must do everything necessary to legally transfer the property.</p> <p>Forms the orthodox rule.</p>
<i>Re Rose [1952]</i>	<p>Dismisses <i>Milroy</i> rule as too broad.</p> <p>Equitable title is transferred when the settlor does everything that they must do to transfer the title.</p> <p>If the settlor has done everything, it would be unconscionable to allow him to renege on his promise.</p>
<i>Coithram International SA v Pagarani [2001]</i>	<p>Although equity will not aid a volunteer, it will not strive to defeat a gift.</p> <p>There is no distinction between a case where the trustee declares himself to be the sole trustee, and one where he declares himself to be one of a number of trustee.</p>
<b>Formalities and Secret Trusts</b>	
<i>Inter Vivos Trusts</i>	<p>Takes effect during the life of the settlor.</p> <p>Can be created orally if it only concerns personal property.</p> <p>Must consist of signed writing if it concerns the transfer of land (Property Law Act 2007 s25(2)).</p>
Testamentary/Will Trusts	<p>General formalities outlined in the Wills Act 2007.</p> <p>Basic requirements are a written will, signed, and witnessed (s11).</p>
Wills Act 2007	S 11: Basic requirements for a will.

	<p>S 13: A disposition of property in a will is void if (a) it is to a witness or (b) it is to a witnesses spouse etc.</p> <p>S 14: The HC may validate documents not conforming to the formalities.</p> <p>S 15: Amendments require the same formalities.</p>
Full Secret Trusts	<p>The existence and terms of the trust are not disclosed in the will. The intention to create a trust must have been communicated to the trustee, who must have accepted the office.</p> <p>Creation and acceptance must occur during the lifetime of the will maker, not important whether it happens before or after the will is made.</p> <p>If the trust fails to be made out, the property goes to the person designated in the will.</p>
Half Secret Trusts	<p>The existence, but not the terms of the trust are disclosed in the will.</p> <p>Communication must be done before or at the time of making the will.</p> <p>If the trust fails to be made out, the property returns to the estate.</p>
Requirements of a Secret Trust	<p>Intention, communication, acceptance (<i>Blackwell</i>)</p> <p>Secret trusts are revocable by the testator.</p> <p>The trust is not constituted until after the settlor's death.</p> <p>The burden of proof lies on the party alleging the trust.</p>
Flaws of secret trusts	<ol style="list-style-type: none"> <li>1. They're revocable by the testator until their death.</li> <li>2. The trust is not constituted until after they die.</li> </ol>
<i>Re Young [1951]</i>	<p>A secret trust operates outside the will, the requirements of the Wills Act are not binding upon it.</p>
<i>Page v Page [2002]</i>	<p>The requirements for forming a ST are intention, communication, and acceptance.</p> <p>Trustees must act consistently with a secret trust they're alleging.</p>
<b>Charitable Trusts</b>	
Beneficiary principle	<p>People trusts good, purpose trusts bad.</p> <p>With the sole exception of charitable trusts, there must be someone in whose favour the court can decree. This is to enable the court to enforce the trust, and have someone who can bring a claim that the trustee is acting in violation of the trust. It ensures the trustees act conscientiously. In the case of charitable trusts, the Crown will act on behalf of the beneficiary and enforce a trust.</p>
<i>Morice v Bishop of Durham [1805]</i>	<p>Established the beneficiary principle.</p> <p>Charitable trusts must be singularly charitable, with no other available purposes.</p> <p>Trust void because 'benevolence and liberality' are not terms which limited the trust to a charitable purpose.</p>
<i>Re Astors' Settlement Trusts [1952]</i>	<p>The purpose of the beneficiary principle is that someone must be available to take control of the trust.</p> <p>If no one has the right to enforce the trust, it is invalid.</p> <p>'Maintaining good relations' is not a charitable purpose.</p>
<i>Leahy v Attorney General [1959]</i>	<p>The charitable purpose must be specific.</p>
<i>Re Denley's Trust Deed [1969]</i>	<p>If there are those who could enforce the trust, it will be valid, even if it's not a strictly charitable trust.</p>
Charity	<p>Doesn't have to be a trust.</p>

	Could include incorporated trusts, incorporated societies, unincorporated societies, and companies.
<i>Pemsel [1861]</i>	Defines charity as needing to meet two requirements; 1. Being for the purpose of any of; The relief of poverty, the advancement of education, the advancement of religion, or the advancement of any other purpose beneficial to the community. 2. It must be of public benefit.
<i>Canterbury Development Corporation v Charities Commission [2010]</i>	Upholds <i>Pemsel</i> rule.
<i>Re Collier</i>	A charity cannot be for a political purpose. NZ and Aus Courts are viewing this rule with leniency, they may accept a purpose is charitable if it can be shown to be for the public benefit.
<i>Greenpeace [2014]</i>	Political purpose exclusion should not be applied where the purpose is in the public interest.
Benefits of being a charitable trust	Exception to beneficiary principle. No perpetuity requirement. Tax advantages.
'Blue pencil' rule	Section 61(b) Charitable Trusts Act 1957 Where there is a mixture of charitable and non-charitable purposes in a trust, the court can interpret the trust such as to only apply the charitable purpose. Requires the testator to have had a 'substantially charitable mind'. Strong intention requirement.
What if a charitable purpose cannot be carried out? Two approaches	1. <i>Cy Pres</i> : The Court will find a purpose 'as close as possible' to the original intention. The Court can direct this scheme. Requires the original intention to be 'impossible or impractical' to carry out. 2. Charitable Trust Act 1957 s 32: Same outcome as <i>Cy Pres</i> , but with a substantially lower threshold. Requires the intention to be 'impossible, impractical, or inexpedient' to carry out.