FQPS Academy

SQE1 · FLK2 · TRUSTS LAW · 2026 – 2027

Trusts Law for the SQE

Trusts

from the three certainties
to tracing, step by step



Find the trust, then the duty

FQPS Academy – SQE Prep

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The Ultimate SQE Success Guide.✳

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Most trusts questions ask two things: is there a trust, and who owes what?

What is This Guide?

A practical route through **Trusts Law for SQE1**, in the order a question tests it: the **three certainties**, formalities and **constitution** (Re Rose, Strong v Bird, Choithram v Pagarani), beneficial interests and **Saunders v Vautier**, charities and purpose trusts, **resulting trusts**, the **family home** and proprietary estoppel, fiduciary duties, trustees' appointment, investment, **maintenance and advancement**, breach, strangers, tracing and remedies. One page of rules, a decision tree and three worked examples.

Who This Guide is For?

- SQE1 candidates sitting FLK2 in 2027
- Anyone who mixes up the fixed and discretionary trust tests, or s 53(1)(b) and (c)
- Candidates who learnt the case names but not the rule each one decides
- Paralegals in private client and property teams who meet trusts every day

Why It Matters?

Trusts questions reward an order of work. Most wrong options state a real rule at the wrong step: a test for the wrong kind of trust, a formality for the wrong property, an exception that needs a fact the question does not give, a limit from the wrong date. Run the steps in order and most answers follow.

How Trusts Law Is Tested

Trusts Law is an **FLK2** subject. From January 2027 it sits in **session 1** of FLK2, with Wills and the Administration of Estates, Land Law and Solicitors Accounts. A question gives you a gift, a will, a home or a trust in trouble and asks: is there a trust, who owns what, and who must account to whom?

Area	The SRA's four assessment areas	In this guide
1	Express and implied trusts	Chapters 2 to 5 (pages 05 to 14)
2	The fiduciary relationship	Chapter 6 (page 15)
3	Trustees' duties, powers and liability	Chapters 6 and 7 (pages 16 to 18)
4	Equitable remedies	Chapter 7 (page 19)

How much of the paper

The blueprint gives Trusts Law **14 to 20%** of FLK2. Our specification checklist has **41** lines for it.

Which law

The law in force four calendar months before the first day of the window: **11 September 2026** for January 2027 and **12 March 2027** for July 2027.

The question format

Single best answer: five options and "only one correct answer". Closed book, so know the tests by heart.

Cases the specification names

Re Rose, Strong v Bird, Choithram v Pagarani and Saunders v Vautier, by name. Expect the others as rules, not names.

Important: how this guide states case law

We checked every rule against a primary source read on 13 November 2026: legislation on legislation.gov.uk, and judgments on the National Archives' Find Case Law or the Supreme Court website. Where an older case is not online there, we give the rule as a later court stated it, and cite that judgment and paragraph.

Sources: SRA SQE1 Assessment Specification, Trusts Law assessment areas and FLK lines, session map and blueprint (as reproduced in the FQPS SQE1 Specification Checklist, January 2027). Accessed 13 November 2026.

Trusts Law on One Page

TICK THE BOX WHEN YOU CAN STATE THE RULE AND ITS SOURCE

RULE	KEY WORDS	PAGE	DONE
Creating a trust			
The three certainties Fail one and the trust fails (Legg v Burton [68])	**Intention, subject, objects**	05	☐
Fixed trust objects Of the beneficiaries at distribution (Re Ahmed [116])	**Complete list**	06	☐
Discretionary trust objects McPhail v Doulton (as stated in Jennings v Appleby [17], [20])	**Is or is not; workable**	06	☐
Legal estate in land Or void for that purpose (LPA 1925 s 52(1))	**Deed**	08	☐
Declaring a trust of land Manifested and proved (s 53(1)(b))	**Signed writing**	08	☐
Disposing of an equitable interest The disposition itself (s 53(1)(c))	**Signed writing**	08	☐
Perpetuity period Instruments from 6 April 2010 (PAA 2009 ss 5, 15)	**125 years**	11	☐
Ending a trust early Saunders v Vautier; full age is 18	**All adult, together entitled**	11	☐
Trustees and their powers			
Trustees of land TA 1925 s 34(2)	**Four at most**	16	☐
A minor as trustee LPA 1925 s 20	**Void**	16	☐
Retiring without replacement Or a trust corporation (s 39)	**Deed; two remain**	16	☐
Beneficiaries' direction No nominee to appoint (TOLATA 1996 s 19)	**All adult, absolutely entitled**	16	☐
Investment Suitability, diversification, review, advice (TA 2000 ss 4, 5)	**Standard investment criteria**	16	☐
Maintenance (income) TA 1925 s 31(1)	**Discretion; income at 18**	17	☐
Advancement (capital) Whole for trusts from 1 October 2014 (s 32)	**Whole share, or one half**	17	☐
Prior interest Of a person in existence and of full age (s 32(1)(c))	**Consent in writing**	17	☐
Breach and remedies			
Limitation: breach of trust From accrual; future interests from possession (LA 1980 s 21(3))	**6 years**	18	☐
No limitation period Against the trustee (s 21(1))	**Fraud; property kept**	18	☐
Relief by the court And ought fairly to be excused (TA 1925 s 61)	**Honestly and reasonably**	18	☐
Impounding Of the beneficiary (s 62)	**Instigation, request, written consent**	18	☐
Exemption clauses Armitage v Nurse (as stated in Sofer v SwissIndependent [42])	**Not fraud or dishonesty**	18	☐

2 The Three Certainties

An express trust needs three certainties: of **intention**, of **subject matter** and of **objects** (Khan v Mahmood [46]). They come from Knight v Knight: the words must be "imperative", the subject certain, and the objects certain (as stated in Ieropoullos v Wilson [30]). "A failure in any respect causes the gift to fail. So too with trusts" (Legg v Burton [68]).

Certainty	The test	Points to know
Intention	Did the settlor intend to impose an **obligation**? Imperative words, not precatory ones. "Precatory language is that which merely expresses a wish or desire" (Lorenz v Caruana [11]).	No need for the word "trust". "Informal language can be sufficient and the necessary intention can be inferred from conduct" (Pleshakov v Sky Stream [48]). The test is objective: the words used, in context (Shah v Shah [13]).
Subject matter	Both the **property** and each beneficiary's **share** must be certain.	A trust of part of a fungible mass need not be segregated, if the mass is identified and the share is certain (Pearson v Lehman Brothers [70]). Hunter v Moss: 50 of 950 shares, not specified or set aside (as stated in Pearson [69]).
Objects	**Fixed** trust: a **complete list** of the beneficiaries must be possible (Re Ahmed & Co [116]). **Discretionary** trust: can it be said of **any given person** that they **are or are not** in the class? (McPhail v Doulton, as stated in Jennings v Appleby [17]).	The class must also be **administratively workable** (page 06). A purpose trust needs a different analysis: is it charitable? (page 11).

If a certainty fails

The trust fails. With no intention there is simply no trust (page 07). Where the objects fail, as with an unworkable class, and the settlement does not say what happens to the property, it goes back to the settlor on **resulting trust** (Jennings v Appleby [31]; page 12).

How to use this in the exam

Test the three in order: words, property and shares, then people. Stop at the first failure and say what happens to the property.

Sources: Khan v Mahmood [2021] EWHC 597 (Ch); Ieropoullos v Wilson [2023] EWHC 2814 (Ch); Legg v Burton [2017] EWHC 2088 (Ch); Lorenz v Caruana [2025] EWCA Civ 606; Pleshakov v Sky Stream Corporation [2021] UKPC 15; Shah v Shah [2010] EWCA Civ 1408; Pearson v Lehman Brothers Finance SA [2011] EWCA Civ 1544; Re Ahmed & Co [2006] EWHC 480 (Ch); Jennings v Appleby [2026] EWHC 1161 (Ch). Accessed 13 November 2026.

Certainty of objects

First decide what kind of trust it is. In a **fixed** trust the settlor fixes who takes and in what shares. In a **discretionary** trust the trustees choose who, from a class, takes what. The test differs, and so does the effect of a gap in the evidence.

	Fixed trust	Discretionary trust (and powers)
The test	**Complete list**	**"Is or is not" (the given postulant test)**
In the words of the court	"a fixed trust is only valid if it is possible to draw up a complete list of the beneficiaries at the time of distribution" (Re Ahmed & Co [116])	Valid "if it can be said with certainty that any given individual is or is not a member of the class" (McPhail v Doulton, as stated in Jennings v Appleby [17])
Conceptual uncertainty (the words are unclear)	Void	Void: linguistic or semantic uncertainty "renders the gift void"
Evidential uncertainty (the facts are hard to prove)	Void: "A fixed trust with conceptual and/or evidential uncertainty is a void trust" (Re Ahmed [116])	Not fatal: finding members is a matter the court deals with "on an application for directions" (McPhail, as stated in Jennings [20])
A very wide class	Fails if no complete list can be drawn up	Void if **administratively unworkable**, a separate requirement (Jennings [20]). Lord Wilberforce's example: "all the residents of Greater London"; but not a discretionary trust for "relatives"

Conceptual or evidential?

"A distinction must be drawn between conceptual and evidential uncertainty" (Public Trustee v Butler [18]). Conceptual: you cannot say what the words mean. Evidential: you know what they mean but cannot prove who fits.

An example of a failed power

In Public Trustee v Butler a power to benefit "deserving" relatives in cases of material hardship was held invalid for uncertainty (Butler [18]).

Unworkable is void

"If a trust is invalid at inception because it is unworkable, it is necessarily void and not voidable" (Jennings [21]). Workability is judged when the trust is created (Jennings [31]).

The same test for powers

McPhail applies the is or is not test to discretionary trusts and to mere powers alike (Jennings [17]). The difference is that trustees of a discretionary trust must distribute; a power may never be used.

Method

Ask three questions in order. Fixed or discretionary? Can the words be understood (conceptual)? For a fixed trust, can every beneficiary be listed; for a discretionary trust, is the class workable? Any "no" and the trust fails.

Sources: Re Ahmed & Co [2006] EWHC 480 (Ch) [116]; Jennings v Appleby [2026] EWHC 1161 (Ch) [17], [20], [21], [31], stating McPhail v Doulton; Public Trustee v Butler [2012] EWHC 858 (Ch) [18]. Accessed 13 November 2026.

Is There a Valid Express Trust?

Our method, built on the rules on pages 05 to 11. Ask the questions in order and stop at the first that ends the tree.

1 **Did the settlor intend to impose an obligation?**
Imperative words or conduct, read objectively (Shah v Shah [13]).

NO → **No trust**
Precatory words only express a wish (Lorenz v Caruana [11]).

↓ YES

2 **Are the property and each share certain?**
A share of an identified fungible mass can be enough (Pearson [70]).

NO → **The trust fails**
Uncertain subject matter (Legg v Burton [68]).

↓ YES

3 **Is it for a purpose rather than for people?**
Unless the purpose benefits ascertainable people (Re Denley).

YES → **Usually valid only if charitable**
Else void, save anomalous cases (Hunt v McLaren [89], [93]).

↓ NO

4 **Do the objects fail the right test?**
Fixed: a complete list. Discretionary: is or is not, and workable.

YES → **The trust fails**
Resulting trust to the settlor (Jennings v Appleby [31]).

↓ NO

5 **Land, with no signed writing to prove the trust?**
A will trust also needs a valid will (Wills Act 1837 s 9).

YES → **No provable express trust**
Look for a constructive trust instead (Hudson v Hathway [118]).

↓ NO

6 **Has the property reached the trustee?**
Or has the owner declared themselves trustee?

NO → **An imperfect gift**
Equity will not perfect it, unless an exception applies (page 09).

↓ YES

7 **A valid express trust**
The beneficiaries can enforce it even though they gave no value (Bowack v Saxton [45]). Adults together entitled to everything can end it (Saunders v Vautier, page 11).

Run it: four settlors

Facts (all invented)	Stops at	Result
"My savings to my son, hoping he will help his sister"	1	No trust for the sister: a wish
A discretionary trust for "all the residents of Greater London"	4	Administratively unworkable: void
Owner says aloud "I hold my house on trust for my niece"	5	No signed writing (LPA 1925 s 53(1)(b))
Owner signs a share transfer but keeps the form and certificate	6	Not constituted; Re Rose does not help

Our method and examples. Sources as on pages 05 to 11.

3 Formalities and Constitution

Two separate questions. **Formalities**: does the law need writing for this trust or this dealing? **Constitution**: has the property actually reached the trustee? A trust can pass the first and fail the second.

What is being done	The rule	Source
Creating or conveying a legal estate in land	**Deed, or it is void for that purpose**	LPA 1925 s 52(1)
Creating or disposing of an interest in land	**Writing signed by the person, or their agent authorised in writing, or by will**	s 53(1)(a)
Declaring a trust of land	**"manifested and proved by some writing signed by some person who is able to declare such trust or by his will"**	s 53(1)(b)
Disposing of an existing equitable interest (any property)	**"must be in writing signed by the person disposing of the same", or their agent authorised in writing, or by will**	s 53(1)(c)
Resulting, implied and constructive trusts	**Not affected by s 53**	s 53(2)
A trust in a will	**The will must be in writing, signed and witnessed**	Wills Act 1837 s 9

Evidence, not validity

Section 53(1)(b) asks for writing that "manifested and proved" the trust, and covers land only. Section 53(1)(c) is stricter: the disposition itself must be in signed writing.

Modern points

Releasing an equitable interest is a "disposition" for s 53(1)(c), and a name typed at the end of an e-mail can be a signature (Hudson v Hathway [53], [181]).

Run it: four dealings (our examples)

An owner says aloud, "I hold my shares on trust for my son"	No writing needed: shares are not land, and s 53(1)(b) covers land only
An owner says aloud, "I hold my house on trust for my son"	No signed writing, so no provable express trust (s 53(1)(b))
A beneficiary tells the trustees by phone that her interest now belongs to her son	Ineffective: the disposition must itself be in signed writing (s 53(1)(c))
The same beneficiary sends an e-mail saying so and ends it with her typed name	Likely effective: signed writing (Hudson v Hathway [181])

Sources: Law of Property Act 1925 ss 52(1), 53(1), 53(2); Wills Act 1837 s 9; Hudson v Hathway [2022] EWCA Civ 1648 [53], [181]. Accessed 13 November 2026.

When equity helps a volunteer

Milroy v Lord: the settlor "must have done everything which, according to the nature of the property … was necessary to be done in order to transfer the property". There are three ways: transfer to the beneficiary, transfer to trustees, or a declaration that the owner holds it on trust. And "there is no equity in this Court to perfect an imperfect gift" (as stated in Hudson v Hathway [91]). A failed gift is not rescued by reading it as a declaration of trust, unless the words can fairly be construed that way (Pennington v Waine, as stated in Shah v Shah [16]).

Exception	The rule	Watch for
Re Rose	"once the donor has done all in his own power to transfer the shares, he will be regarded as holding the legal title to them upon trust for the donee" (Zeital v Kaye [40])	Not if the donee still lacks a document needed to register, such as the share certificate (Zeital [43])
Pennington v Waine	The test is "whether it is unconscionable to allow the donor to resile from his or her gift" (Khan v Mahmood [44]). There is no complete list of factors (Khan [41])	No reliance by the donee and the forms kept by the donor: no constructive trust (Curtis v Pulbrook [45], [46])
Strong v Bird	An imperfect lifetime gift becomes complete when the donee becomes the donor's executor (Day v Harris [116])	A present intention to give, unchanged until death; not a promise of a future gift (Osborne v Osborne [27])
Choithram v Pagarani	A donor who declares himself one of several trustees is bound, as much as a sole trustee: "it would be unconscionable … to allow such a donor to resile from his gift" (as stated in Shah v Shah [15])	"Although equity will not aid a volunteer, it will not strive officiously to defeat a gift"
Gift in contemplation of death	The donor contemplates impending death, the gift takes effect only on that death, and the donor delivers dominion over the property (King v Chiltern Dog Rescue [50])	Strict proof; the courts will not expand it (King [60])

Shares: when does legal title pass?

On entry in the register of members (Companies Act 2006 s 112(2)). The company needs "a proper instrument of transfer" (s 770(1)(a)), and registration may depend on the directors (Shah v Shah [1]).

Once the trust is constituted

A volunteer beneficiary can enforce it: "the fact that a beneficiary has given no value is irrelevant" (Choithram, as stated in Bowack v Saxton [45]).

Method: four questions

1. Which Milroy v Lord route did the owner try: outright gift, transfer to trustees or self-declaration? 2. Was every step done that this kind of property needs? 3. If not, do the facts fit an exception: all in the donor's power, unconscionability, executor, one of several trustees, or a gift on death? 4. If none applies, the property stays with the donor, or their estate.

Sources: Hudson v Hathway [2022] EWCA Civ 1648 [91]; Shah v Shah [2010] EWCA Civ 1408 [1], [15], [16]; Zeital v Kaye [2010] EWCA Civ 159 [40], [43]; Khan v Mahmood [2021] EWHC 597 (Ch) [41], [44]; Curtis v Pulbrook [2011] EWHC 167 (Ch) [45], [46]; Day v Harris [2013] EWCA Civ 191 [116]; Osborne v Osborne [2025] EWHC 455 (Ch) [27]; King v Chiltern Dog Rescue [2015] EWCA Civ 581 [50], [60]; Bowack v Saxton [2020] EWHC 1049 (Ch) [45]; Companies Act 2006 ss 112(2), 770(1). Accessed 13 November 2026.

Worked Example: Five Gifts

Invented facts. **Helen** owns 300 shares in Arden Ltd, a painting, a box of jewellery and a cottage. In 2026 she tries to give them away. She dies in March 2027, having appointed her son **Sam** as her executor. Which gifts work?

What Helen did	Result	Why
Told her nephew Ian, "I now hold 100 of my Arden shares on trust for you"	**Valid trust**	A self-declaration is one of the three Milroy v Lord routes. Shares are not land, so s 53(1)(b) needs no writing; 100 of an identified holding is certain enough (Pearson [70])
Signed a transfer of 100 shares to her niece Nina and handed Nina the form and the certificate; not registered by her death	**Nina takes in equity**	Re Rose: Helen had done all in her own power, so she held the legal title on trust for Nina (Zeital v Kaye [40])
Signed a transfer of the last 100 shares to Nina but kept it and the certificate in her desk; Nina never knew	**Fails**	Not Re Rose: Nina did not have the documents (Zeital [43]). Not Pennington: no reliance, forms kept (Curtis v Pulbrook [45], [46]). A failed gift is not a trust (Shah [16])
Told Sam, "my painting is yours now", but it stayed on her wall until her death	**Sam takes, if proved**	Strong v Bird: an imperfect present gift is completed when the donee becomes executor, if the intention continued unchanged until death (Day v Harris [116]; Osborne [27])
In hospital before an operation, gave her friend the only key to the jewellery box: "keep it if I don't come through"	**Valid if strictly proved**	Impending death in contemplation, a gift conditional on death, and dominion delivered (King v Chiltern Dog Rescue [50]). The courts require strict proof (King [60])

Change one fact

If	Then
Helen had written "I will give you my cottage one day" to Sam	Not Strong v Bird: a promise of a future gift is not enough (Osborne [27]). A cottage is land: a gift needs a deed (s 52(1)). Sam may look to proprietary estoppel if he relied on it to his detriment (page 13)
Before her death, Helen told Sam she had changed her mind about the painting	Strong v Bird fails: the intention must continue unchanged until death (Osborne [27])
Helen had made herself and two others trustees of the shares for Ian, but the shares stayed in her name	Choithram v Pagarani: as one of the trustees she cannot resile; the trust is binding (as stated in Shah [15])
Nina had sold her flat to buy into the company, relying on Helen's promise of the desk shares	Pennington v Waine: the court asks whether it is unconscionable for Helen to resile (Khan [44]). Detrimental reliance makes it far more likely

Our example, invented facts. Rules: LPA 1925 ss 52(1), 53(1)(b); Milroy v Lord (as stated in Hudson v Hathway [91]); and the cases on page 09.

4 Interests, Purposes and Resulting Trusts

Who owns what in equity, and can a trust exist with no human beneficiary at all?

Saunders v Vautier

Beneficiaries who are adults of full capacity and "together entitled to the whole beneficial interest" can end the trust and direct the trustees to hand over the property, even if the deed says otherwise (as stated in Thorpe v HMRC [22]). Not where others still have contingent or discretionary interests (Thorpe [25]). Full age is **18** (Family Law Reform Act 1969 s 1).

The beneficiary principle

"Trusts for purposes or objects are invalid, for a purpose or object cannot sue, but trusts for charitable purposes are valid because they are enforceable by the Attorney-General" (Hunt v McLaren [89]). Valid private purpose trusts are "anomalous" (Re Endacott, as stated in Hunt [93]).

Re Denley

A trust worded as a purpose but "directly or indirectly for the benefit of an individual or individuals" is in general outside "the mischief of the beneficiary principle" (as stated in Hunt [97]).

Perpetuity

The perpetuity period is **125 years** "(and no other period)" for instruments taking effect from 6 April 2010, but not wills made before then (Perpetuities and Accumulations Act 2009 ss 5, 15). The Act does not affect the rule limiting the duration of non-charitable purpose trusts (s 18).

Charitable trusts: two tests

1. A listed purpose	One of the 13 descriptions in s 3(1): poverty; education; religion; health or saving lives; citizenship or community development; arts, culture, heritage or science; amateur sport; human rights, conflict resolution, religious or racial harmony, equality and diversity; the environment; relief of those in need; animal welfare; the efficiency of the armed forces, police, fire and rescue or ambulance services; and other purposes recognised or analogous.
2. Public benefit	Required for every purpose: "it is not to be presumed that a purpose of a particular description is for the public benefit" (s 4(2)). The meaning comes from charity case law (s 4(3)).
And exclusively	A charity is established "for charitable purposes only" (s 1(1)).

Sources: Thorpe v HMRC [2010] EWCA Civ 339 [22], [25]; Family Law Reform Act 1969 s 1; Hunt v McLaren [2006] EWHC 2386 (Ch) [89], [93], [97]; Perpetuities and Accumulations Act 2009 ss 5, 15, 18; Charities Act 2011 ss 1 to 4. Accessed 13 November 2026.

Resulting trusts

A resulting trust sends the beneficial interest back to the person who provided the property. It needs no writing (LPA 1925 s 53(2)). Lord Browne-Wilkinson's two categories in Westdeutsche are the usual starting point (as stated in O'Kelly v Davies [22]).

	Automatic	Presumed
When	"Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest"	A makes a voluntary payment to B, or pays for property put in B's name (or in A and B's joint names)
Examples	A trust fails for uncertainty or unworkability and does not say where the property goes: it reverts to the settlor (Jennings v Appleby [31])	An unexplained gratuitous transfer: "the ordinary presumption of equity" is that the transferee was not meant to take beneficially (Prest v Petrodel [49])
Can it be rebutted?	It arises because the interest is not disposed of. Lord Browne-Wilkinson was "not convinced" it is truly automatic: abandoned property can go to the Crown as bona vacantia	Yes: "this is only a presumption, which presumption is easily rebutted" by the presumption of advancement or by evidence of an outright gift (O'Kelly [22])

The presumption of advancement

Where it applies, the burden is reversed: the claimant "had to disprove the evidential presumption of a gift" (O'Kelly [21]).

Still in force

Equality Act 2010 s 199 would abolish the presumption of advancement, but it is not yet in force: Part 15 starts on a day the Lord Chancellor appoints by order (s 216(2)), and none had been made when we checked. When it starts, it will not apply to anything done before then (s 199(2)).

Not for the family home

The resulting trust assumptions "are not appropriate to the ascertainment of beneficial interests in a family home" (Jones v Kernott [53]). Use the common intention constructive trust (page 13).

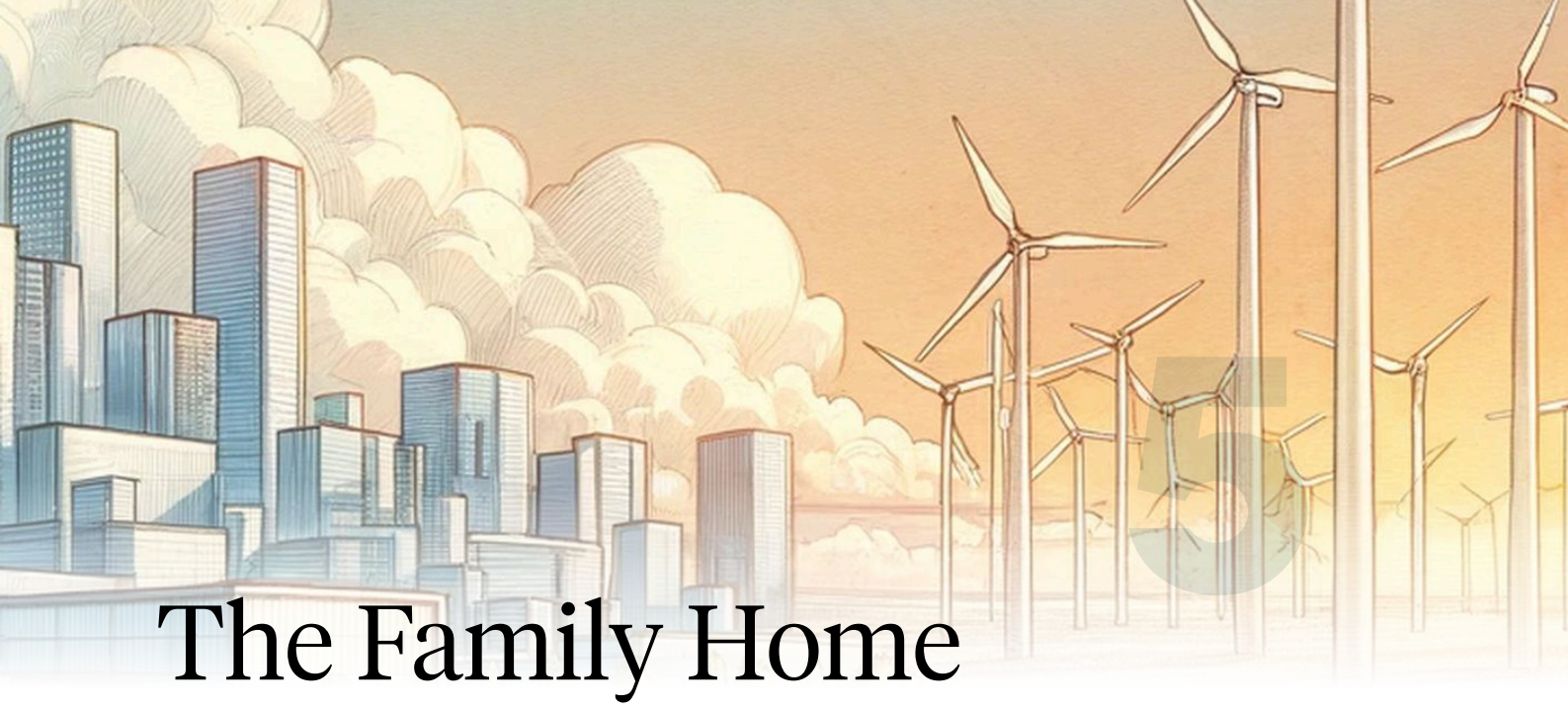
Exam method

Ask: was there an express trust that failed or did not use up the property (automatic)? If not, did someone provide property for nothing in another's name (presumed)? Then: what rebuts it?

Run it: four transfers (our examples)

Dan pays for a flat bought in his friend Eve's name; nothing explains why	Presumed resulting trust for Dan, unless Eve proves a gift
A husband transfers shares into his wife's name and says nothing	Presumption of advancement: a gift, unless he rebuts it
A settlor gives £50,000 to trustees for her son for life, and says nothing about the capital after his death	Automatic resulting trust of the capital for the settlor or her estate when the son dies
A trust fails because its class is unworkable	Automatic resulting trust for the settlor (Jennings [31])

Sources: Law of Property Act 1925 s 53(2); O'Kelly v Davies [2014] EWCA Civ 1606 [21], [22], stating Westdeutsche Landesbank v Islington LBC; Jennings v Appleby [2026] EWHC 1161 (Ch) [31]; Prest v Petrodel Resources Ltd [2013] UKSC 34 [49]; Equality Act 2010 ss 199, 216 (legislation.gov.uk shows s 199 as prospective); Jones v Kernott [2011] UKSC 53 [53]. Accessed 13 November 2026.



The Family Home

Start with the legal title. An **express declaration** of the beneficial shares in the transfer settles the question, unless it is set aside for fraud or mistake (Pankhania v Chandegra [27], [28]). With no declaration, look for a **common intention constructive trust**, which needs no writing (LPA 1925 s 53(2)).

	Joint names	Sole name
Starting point	"equity follows the law and they are joint tenants both in law and in equity" (Jones v Kernott [51])	Sole beneficial ownership. The claimant must show "some sort of implied trust" (Jones [17])
First question	Is the presumption of equal shares displaced, by a different intention when they bought or a later change of intention? (Jones [51])	Did they actually intend the claimant to have **any** interest? An actual agreement, express or inferred; never imputed (Capehorn v Harris [16], [17])
Then the shares	Found from what they intended, expressly or by inference from their conduct. If that cannot be found, each gets "that share which the court considers fair having regard to the whole course of dealing between them in relation to the property" (Jones [51], [52])	

Inferred or imputed?

Inferred: what the parties actually intended, deduced objectively from their words and conduct. Imputed: what the court attributes to them although they had no such intention (Lord Neuberger in Stack, as quoted in Jones [26]). Imputation is a last resort, for the shares only (Jones [47]; Geary v Rankine [19]).

Detrimental reliance

Still needed, also for a later change of shares: an oral agreement alone would "directly contradict two statutory provisions" (Hudson v Hathway [3], [153]).

Proprietary estoppel

A non-contractual promise or assurance about property, relied on to the promisee's detriment. Equity stops the promisor going back on it where that would be unconscionable (Guest v Guest [8], [74]).

The remedy

Start from holding the promisor to the promise (Guest [75]). The promisor may prove that is "out of all proportion" to the detriment (Guest [76]). An early benefit is discounted (Guest [78]).

Sources: Pankhania v Chandegra [2012] EWCA Civ 1438; Law of Property Act 1925 s 53(2); Jones v Kernott [2011] UKSC 53; Capehorn v Harris [2015] EWCA Civ 955; Geary v Rankine [2012] EWCA Civ 555; Hudson v Hathway [2022] EWCA Civ 1648; Guest v Guest [2022] UKSC 27. Accessed 13 November 2026.

Worked Example: the Family Home

Invented facts. **Ana and Ben** bought a house in 2016 in joint names for £300,000. The transfer has no declaration of the beneficial shares. Ana paid the £60,000 deposit; the mortgage was paid from their joint account. They separate in 2026.

Question	Answer	Why
Starting point?	**Equal shares**	Equity follows the law: joint tenants in law and in equity (Jones v Kernott [51])
Does Ana's deposit change that?	**Not by itself**	Unequal contributions alone will not normally rebut it, and there is no presumed resulting trust (Stack v Dowden, as stated in Jones [11], [25])
What would?	**A different intention**	At purchase or later, found objectively from their conduct; Ana bears the burden (Jones [51]; Stack, as stated in Hudson v Hathway [144])
If intention is shown but not the shares?	**A fair share**	Having regard to "the whole course of dealing" (Jones [51])
If the transfer had said 70:30?	**70:30**	An express declaration is conclusive unless set aside for fraud or mistake (Pankhania [27], [28])

Now a sole name: Carl and Dee

Carl owns a flat in his sole name. Dee moves in. Carl tells her, "this is our home, half of it is yours", and Dee spends her savings on a new kitchen.

Any interest at all?	Yes. An express agreement based on their discussions, plus detrimental reliance on it, gives a constructive trust (Lloyds Bank v Rosset, as stated in Oxley v Hiscock [39]). The agreement must be actual, never imputed (Capehorn v Harris [16], [17])
What share?	Here half, as agreed. Had they not agreed a share, the court would find a fair one from the whole course of dealing (Jones [52])
And if Carl had said nothing?	Dee would need to show an agreement inferred from conduct. Rosset doubted that anything less than direct payments to the price would do; Lord Walker in Stack said the law has moved on (as stated in Williams v Lawrence [22]). Detrimental reliance is still needed (Hudson v Hathway [3])

Method: any family home question

1. Is there an express declaration of the shares? If so, it decides the question. 2. Joint names or sole name? 3. Joint: is equal sharing displaced? Sole: was there an actual agreement to share, relied on to the claimant's detriment? 4. What shares: intended, or else fair on the whole course of dealing? 5. If no trust, is there a proprietary estoppel (page 13)?

Our example, invented facts. Rules: Jones v Kernott [2011] UKSC 53; Pankhania v Chandegra [2012] EWCA Civ 1438; Oxley v Hiscock [2004] EWCA Civ 546; Capehorn v Harris [2015] EWCA Civ 955; Williams v Lawrence [2011] EWHC 2001 (Ch); Hudson v Hathway [2022] EWCA Civ 1648.

6 Fiduciaries and Trustees

A trustee is a fiduciary. A fiduciary "must not make a profit out of his trust" and "must not place himself in a position in which his duty and his interest may conflict"; the first rule is part of the second (FHR European Ventures v Cedar Capital [5], citing Boardman v Phipps).

Rule	What it means
No profit	Profits from the relationship are held on **constructive trust** for the principal from receipt (Rukhadze v Recovery Partners [2]). Liability does not depend on fraud or loss (Regal (Hastings) v Gulliver, as stated in FHR [6]). Keech v Sandford: a trustee who took a new lease for himself held it for the infant beneficiary (FHR [8])
Bribes and secret commissions	Held on trust for the principal: a proprietary claim as well as a personal one (FHR [7], [46])
Self-dealing	A trustee who buys trust property from the trust: voidable by any beneficiary, however fair, unless there was fully informed consent (Barnsley v Noble [15], [47])
Fair-dealing	A trustee who buys a beneficiary's own beneficial interest: a separate rule, with a duty of full disclosure (Barnsley v Noble [21])
The only defence	Fully informed consent, given after full disclosure (FHR [5]). It is no defence that consent would have been given if asked (Rukhadze [40])

The court may make an **equitable allowance** for the fiduciary's work and skill (Rukhadze [57]). In 2025 the Supreme Court refused to soften the profit rule (Rukhadze [75]).

Sources: FHR European Ventures LLP v Cedar Capital Partners LLC [2014] UKSC 45 [5] to [8], [46]; Rukhadze v Recovery Partners GP Ltd [2025] UKSC 10 [2], [40], [57], [75]; Barnsley v Noble [2016] EWCA Civ 799 [15], [21], [47]. Accessed 13 November 2026.

Appointment, care and investment

Question	The rule	Source
Who cannot be a trustee?	A minor: the appointment "shall be void"	LPA 1925 s 20
How many trustees of land?	At most **four**; if more are named, the first four able and willing to act	TA 1925 s 34(2)
When can a trustee be replaced?	Dead, out of the UK for more than **12 months**, wishes to retire, refuses, unfit, incapable, or a minor	s 36(1)
Who appoints, and how?	**In writing**: first the person nominated in the trust instrument; if none, the surviving or continuing trustees, or the personal representatives of the last of them. They may appoint themselves	s 36(1)
Extra trustees	Where there are not more than three, but not beyond four	s 36(6)
Retiring	With a replacement (s 37), or without one by **deed**, with the consent by deed of the co-trustees and anyone with power to appoint (s 39). Normally a trust corporation or at least **two** persons must remain	ss 37(1)(c), 39(1)
The beneficiaries	May direct an appointment or retirement in writing if no one is nominated to appoint and they are all of full age and capacity and together absolutely entitled. The settlor can exclude this	TOLATA 1996 ss 19, 21(5)
The court	Appoints where expedient and otherwise inexpedient, difficult or impracticable (s 41). On an application to remove a trustee, its "main guide must be the welfare of the beneficiaries" (Letterstedt v Broers, as stated in Earl of Yarmouth v Ragley Trust Co [139])	TA 1925 s 41; Yarmouth [139]

The duty of care

"Such care and skill as is reasonable in the circumstances", judged by any special knowledge the trustee has or claims, and higher for a professional (TA 2000 s 1). It applies to investing and to appointing agents, and the trust instrument can exclude it (Sch 1 paras 1, 3, 7).

The power to invest

Any investment the trustee could make if absolutely entitled (s 3(1)), but not land other than loans secured on land (s 3(3)). Land in the UK is bought under s 8. The trust instrument can restrict both (ss 6(1), 9).

The duties when investing

Have regard to the **standard investment criteria**: suitability and the need for diversification (s 4(1), (3)). Review from time to time (s 4(2)). Obtain and consider **proper advice**, unless reasonably unnecessary or inappropriate (s 5).

Delegation

Agents may do the delegable functions, but not decide who gets trust assets or appoint trustees (s 11). Never a beneficiary (s 12(3)). Asset managers need a written agreement and a written policy statement (s 15).

Sources: Law of Property Act 1925 s 20; Trustee Act 1925 ss 34, 36, 37, 39, 41; Trusts of Land and Appointment of Trustees Act 1996 ss 19, 21; Earl of Yarmouth v Ragley Trust Co Ltd [2025] EWHC 1099 (Ch) [139]; Trustee Act 2000 ss 1, 3 to 6, 8, 9, 11, 12, 15 and Sch 1. Accessed 13 November 2026.

Maintenance and Advancement

The statutory powers in the Trustee Act 1925, as amended by the Inheritance and Trustees' Powers Act 2014 from **1 October 2014**. The trust instrument can change them.

	Maintenance: income (s 31)	Advancement: capital (s 32)
The power	While a beneficiary is a minor, the trustees may use "the whole or such part, if any, of the income … as the trustees may think fit" for their maintenance, education or benefit (s 31(1)(i))	Pay or apply capital, money or other property, "for the advancement or benefit" of a beneficiary with a capital interest, even a contingent one, in the trustees' absolute discretion (s 32(1))
The rest	Unused income is accumulated (s 31(2)). It goes to capital unless the beneficiary takes a vested interest at 18, but may be spent as income during minority	Advances must be brought into account when the beneficiary becomes absolutely entitled (s 32(1)(b))
At 18	A beneficiary with no vested interest yet is paid the income as of right until it vests or fails (s 31(1)(ii))	The power continues until the interest vests or fails
Limits	For a contingent interest, only if the gift carries the intermediate income (s 31(3))	The **whole** presumptive share; **one half** for trusts created before 1 October 2014, unless the interest was created by using a power after then (ITPA 2014 ss 9, 10). A prior interest: the holder must be of full age and consent **in writing** (s 32(1)(c))
Older trusts	Created before 1 October 2014: the old test, what is reasonable "in all the circumstances" (ITPA 2014 ss 8, 10)	Transferring property, not only money, applies whenever the trust was made (ITPA 2014 s 10(2))

Worked example: the Rowe trust

Invented facts. A trust created in **2019** holds £300,000 for **Zara** if she reaches 25. It carries the intermediate income. No other interests; nothing in the deed changes ss 31 and 32.

Question	Answer	Why
Zara is 15. Can the trustees pay her school fees from income?	**Yes**	Maintenance, education or benefit, as they think fit (s 31(1)(i))
What happens to income they do not use?	**Accumulated**	Invested (s 31(2)); added to capital, as Zara takes no vested interest at 18
Zara turns 18. Who decides about the income?	**Zara takes it**	Paid to her until she reaches 25 or dies first (s 31(1)(ii))
At 20 she asks for £180,000 towards a flat. The maximum?	**£300,000**	The whole presumptive share: the trust was created after 1 October 2014 (s 32(1)(a))
The same trust, but created in 2012?	**£150,000**	One half of the presumptive share (ITPA 2014 s 10)
Her mother has a life interest before Zara's	**Consent needed**	In writing, from her mother as a person of full age (s 32(1)(c))

Our example, invented facts and figures. Rules: Trustee Act 1925 ss 31, 32; Inheritance and Trustees' Powers Act 2014 ss 8 to 10; SI 2014/2039 art 2.

Breach, Strangers and Remedies

Find the breach, measure the loss, then look for a defence. The purpose of the remedy is to put the beneficiary "in the same position as if the breach had not occurred", or to take the trustee's profit (AIB v Mark Redler [64]).

Issue	The rule
Measure	Compensation for "any loss he would not have suffered but for the breach" (Target Holdings, as stated in AIB [73]). Assessed at trial, with hindsight; the loss must flow directly from the breach (AIB [135]). Misapplied money: restore the fund (AIB [134])
Co-trustees	One trustee can recover contribution from another, as is "just and equitable", up to a complete indemnity (Civil Liability (Contribution) Act 1978 ss 1, 2, 6). A trustee who took and used the money must indemnify one who got no benefit (City Index v Gawler [34])
Relief by the court	A trustee who "acted honestly and reasonably, and ought fairly to be excused" may be relieved wholly or partly (TA 1925 s 61). The trustee must prove it (Santander v RA Legal [20])
The beneficiary's part	A beneficiary who concurred, fully understanding what they agreed to, may be unable to sue (Re Pauling's, as stated in Caldicott v Richards [80]). Where a beneficiary instigated, requested or consented **in writing**, the court may impound their interest to indemnify the trustee (s 62)
Exemption clauses	Can exclude liability for any breach "except one of actual fraud or dishonesty" (Armitage v Nurse, as stated in Sofer [42]), including gross negligence (Barnsley v Noble [54])
Limitation	**6 years** from accrual; for a future interest, from when it falls into possession (Limitation Act 1980 s 21(3)). **No period** for a fraud or fraudulent breach the trustee was party or privy to, or to recover trust property the trustee still holds or converted to their own use (s 21(1)). Fraud or concealment: time runs from when it was discovered, or could with reasonable diligence have been (s 32)

The trustee's own costs

A trustee is entitled to be reimbursed from the trust funds for "expenses properly incurred" when acting for the trust (TA 2000 s 31(1)).

Exam method

1. Which duty or term was broken? 2. What loss flows from it, or what profit was made? 3. Who else is liable, and for what share? 4. Does a defence apply: s 61, consent, an exemption clause or limitation?

Sources: AIB Group (UK) plc v Mark Redler & Co [2014] UKSC 58 [64], [73], [134], [135]; Civil Liability (Contribution) Act 1978 ss 1, 2, 6; City Index Ltd v Gawler [2007] EWCA Civ 1382 [34]; Trustee Act 1925 ss 61, 62; Santander UK plc v RA Legal [2014] EWCA Civ 183 [20]; Caldicott v Richards [2020] EWHC 767 (Ch) [80]; Sofer v SwissIndependent Trustees SA [2019] EWHC 2071 (Ch) [42]; Barnsley v Noble [2016] EWCA Civ 799 [54]; Limitation Act 1980 ss 21, 32; Trustee Act 2000 s 31(1). Accessed 13 November 2026.

Strangers and tracing

	Dishonest assistance	Knowing receipt
What it is	An accessory liability: the stranger "dishonestly procures or assists in a breach of trust". The trustee need not be dishonest (Royal Brunei v Tan, as stated in Group Seven v Notable Services [38])	A disposal in breach of fiduciary duty, **beneficial receipt** of traceable assets, and knowledge that they come from the breach (El Ajou, as stated in Byers v Saudi National Bank [66])
The mental element	Dishonesty, judged objectively once the defendant's actual knowledge or belief of the facts is found (Ivey v Genting [74]; Group Seven [58]). "Negligence is not sufficient" (Ivey [62])	Knowledge making it "unconscionable for him to retain the benefit of the receipt" (BCCI v Akindele, as stated in Byers [81]). No dishonesty needed (Williams v Central Bank of Nigeria [35])
Liability	Both are liable to account as if they were trustees, "although they are not" (Williams [9]). So s 21(1) of the Limitation Act does not stop time running against them (Williams [114])	

Tracing in equity

Tracing is "neither a claim nor a remedy": it shows what became of the property; the claim comes next (Foskett v McKeown, as stated in L&S Accounting v Shiloh [42], [102]). Equitable tracing has long needed a fiduciary relationship (Shalson v Russo [103]).

Trust money mixed with the trustee's own	The trustee spends their own money first (Re Hallett); but if they buy an asset and then spend the rest, the beneficiary can claim the asset, or a charge over it (Re Oatway; Lapome v Kemp [15]; Shalson [144])
Lowest intermediate balance	Later payments in do not refill the trust money: the claim is limited to the lowest balance reached (Lapome [15])
Two trusts' money mixed	Clayton's Case, first in, first out, is probably the default, but is displaced "with relative ease" for a fairer result such as sharing rateably (Charity Commission v Framjee [48], [49])
Where tracing stops	An overdrawn account (Shalson [140]); a bona fide purchaser for value without notice (Foskett, as stated in Independent Trustee Services v GP Noble [83])

Equitable remedies are discretionary

Specific performance, "like all equitable remedies, is discretionary", and delay can defeat it (P&O Nedlloyd v Arab Metals [50], [61]). "Equity does not act in vain" (MV Promotions [62]).

Statute

An injunction where "just and convenient" (Senior Courts Act 1981 s 37); damages in addition to or instead of it (s 50). The tort and contract time limits apply to equitable relief only by analogy (Limitation Act 1980 s 36(1)); breach of trust has its own period (s 21, page 18).

Sources: Group Seven Ltd v Notable Services LLP [2019] EWCA Civ 614; Ivey v Genting Casinos [2017] UKSC 67; Byers v Saudi National Bank [2023] UKSC 51; Williams v Central Bank of Nigeria [2014] UKSC 10; L&S Accounting v Shiloh Holdings [2026] EWHC 618 (Ch); Shalson v Russo [2003] EWHC 1637 (Ch); Lapome Ltd v Kemp [2023] EWHC 1564 (Ch); Charity Commission v Framjee [2014] EWHC 2507 (Ch); Independent Trustee Services v GP Noble [2012] EWCA Civ 195; P&O Nedlloyd v Arab Metals [2006] EWCA Civ 1717; MV Promotions v Telegraph Media [2020] EWHC 1357 (Ch); Senior Courts Act 1981 ss 37, 50; Limitation Act 1980 s 36. Accessed 13 November 2026.

Exam Traps

Ten ways a plausible option can be wrong. Check every answer against them.

1. A wish is not a trust

"In the hope that" or "I would like" is precatory. Look for words, or conduct, that impose an obligation.

2. The wrong objects test

Fixed: a complete list, and missing evidence is fatal. Discretionary: is or is not, and the court can give directions on evidence.

3. Section 53(1)(b) or (c)?

(b): declaring a trust of land, proved by signed writing. (c): disposing of any equitable interest, the disposition itself in signed writing.

4. A failed gift is not a trust

Equity will not perfect an imperfect gift, and will not read it as a declaration of trust unless the words allow it.

5. Re Rose needs everything

The donor must have done all in their own power. A donee without the form or the certificate cannot register, so Re Rose fails.

6. Strong v Bird needs the present

An immediate intention to give, unchanged until death, and the donee as executor. A promise of a future gift is not enough.

7. Advancement still exists

The Equality Act 2010 s 199 abolition is not in force. The presumption of advancement still rebuts a presumed resulting trust.

8. Joint names means equal

Unequal contributions do not by themselves displace equal shares, and resulting trust presumptions do not apply to the family home.

9. Half or whole?

Advancement up to the whole share for trusts created from 1 October 2014. Older trusts: one half.

10. Six years, unless

No limitation period for a trustee's fraud or for trust property the trustee still has. Strangers are not trustees for this rule.

Before you choose, ask three questions

1

Is there a trust: express (certainties, formalities, constitution), resulting or constructive?

2

Who owns what in equity, and what may the trustees do with it?

3

Who went wrong, a trustee, a fiduciary or a stranger, and what remedy follows?

Test yourself

Cover the answers and give yourself a minute for each. All names, dates and figures are invented; the law is that of England and Wales.

1 A will leaves £50,000 to Mia "in the hope that she will look after my nephews". Do the nephews have an interest?

Answer. No. The words are precatory: they express a wish, not an obligation (Lorenz v Caruana [11]).

2 A trust gives £100,000 "equally among all my former employees", but the staff records are lost. Valid?

Answer. No. A fixed trust needs a complete list; evidential uncertainty makes it void (Re Ahmed [116]).

3 Trustees may pay income to "any of the residents of Greater London" as they choose. Valid?

Answer. No. The class is administratively unworkable, so the trust is void (Jennings v Appleby [20], [21]).

4 Olu tells his sister, "I hold my flat on trust for you". Nothing is written. Can she prove an express trust?

Answer. No. A declaration of trust of land must be proved by signed writing (LPA 1925 s 53(1)(b)).

5 A beneficiary e-mails her trustees releasing her equitable interest, ending with her typed name. Is s 53(1)(c) satisfied?

Answer. Yes. A release is a disposition, and a typed name can be a signature (Hudson v Hathway [53], [181]).

6 Raj signs a share transfer to Tia and hands her the form and certificate, then dies before registration. Who owns the shares in equity?

Answer. Tia. Re Rose: Raj had done all in his power, so held on trust for her (Zeital v Kaye [40]).

7 A trust holds a fund for Amy (19) and Ben (22) absolutely in equal shares. Both have full capacity. Can they end the trust?

Answer. Yes, together: Saunders v Vautier (as stated in Thorpe v HMRC [22]).

8 A husband puts shares into his wife's sole name and says nothing. Which presumption applies?

Answer. The presumption of **advancement**, though easily rebutted: Equality Act 2010 s 199 is not in force (s 216(2)); O'Kelly v Davies [22].

9 A house is in joint names with no declaration. Kim paid 80% of the price. Starting point for the shares?

Answer. Equal. Kim must prove a different common intention (Jones v Kernott [51]).

10 A trust created in 2012 holds Leo's presumptive share of £200,000. The most the trustees may advance under s 32?

Answer. £100,000: one half, as the trust predates 1 October 2014 (ITPA 2014 s 10).

11 Trustees appoint a 17-year-old as a new trustee. What is the effect?

Answer. The appointment is **void** (LPA 1925 s 20).

12 A trustee negligently lost trust money in 2017. No fraud; the trustee kept nothing. A beneficiary with an interest in possession sues in 2026. In time?

Answer. No. Six years from accrual (Limitation Act 1980 s 21(3)).

Your Trusts Checklist

Tick a line only when you can explain it from blank paper, in order, in under two minutes.

Creating a trust

- [ ] I can apply the three certainties, and the fixed and discretionary tests, including workability (pages 05 to 07)
- [ ] I know when writing is needed: ss 52, 53(1)(a), (b) and (c), and the s 53(2) exception (page 08)
- [ ] I can explain Milroy v Lord and the exceptions: Re Rose, Pennington, Strong v Bird, Choithram and gifts on death (pages 09 and 10)

Interests and implied trusts

- [ ] I can explain fixed, discretionary, vested and contingent interests and Saunders v Vautier (page 11)
- [ ] I can tell a charitable trust from a non-charitable purpose trust (page 11)
- [ ] I can identify automatic and presumed resulting trusts and what rebuts them (page 12)
- [ ] I can run a joint names and a sole name family home case, and proprietary estoppel (pages 13 and 14)

Fiduciaries and trustees

- [ ] I know the no profit and no conflict rules, self-dealing and informed consent (page 15)
- [ ] I can appoint, retire and remove a trustee, and state the duty of care and investment duties (page 16)
- [ ] I can apply ss 31 and 32, with the 2014 dates (page 17)

Breach and remedies

- [ ] I can measure liability and list the trustee's protections and the limitation rules (page 18)
- [ ] I know dishonest assistance, knowing receipt, the tracing rules and the nature of equitable remedies (page 19)

On the day

- [ ] I ask the three questions on page 20, and I have scored twelve out of twelve on the self-test, under time (page 21)

Make the method automatic

STEP 1

Learn the rules

The one-page table on page 04: cover the key words and test yourself.

STEP 2

Find the trust first

Run the decision tree on page 07 before you read the options.

STEP 3

Run the examples

The gifts on page 10, the home on page 14 and the powers on page 17, from blank paper.

STEP 4

Test yourself

The twelve questions on page 21, then the traps on page 20.

STEP 5

Build exam pace

Full-length SQE1 mocks in the 2027 format (2 x 85 questions).

STEP 6

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Trusts rewards an order of work. Each morning, cover the key words column on page 04 and say each rule and its source. Then run the decision tree on page 07 from blank paper.



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