

Seminar 1 Asset protection and trusts

1.1 Claims to trust assets

- 1.1.1 What do we mean by trusts as a method of asset protection?
- 1.1.2 Judgments against beneficiaries and the nature of beneficiaries' interests in trust property
- 1.1.3 Proprietary and recipient claims against trust property
- 1.1.4 Claw back provisions in insolvency legislation
- 1.1.5 Impeaching distributions made in fraud on creditors
- 1.1.6 Pauline claims to trust assets
- 1.1.7 Piercing the veil of a trust

1.2 The Cook Islands and so-called asset protection trusts

- 1.2.1 *The International Trust Act (Cook Islands)*
- 1.2.2 A variation on the theme – the Cook Islands' International Relationship Property Trust

1.3 Other jurisdictions

1.4 Assessing asset protection trusts

Seminar 2 Non-charitable purpose trusts

2.1 The beneficiary principle and charitable trusts

2.2 Cayman Islands' STAR trusts

2.3 Other jurisdictions

2.4 The uses of non-charitable purpose trusts

2.5 Assessing non-charitable purpose trusts

- 2.5.1 Enforcing a non-charitable purpose trust
- 2.5.2 On-shore reception of a non-charitable purpose trust

2.6 What about a foundation?

Seminar 3 *Anti-Bartlett provisions and VISTA trusts*

- 3.1 Trustees' duty of supervision and scrutiny in respect of companies the shares of which are held on a trust
- 3.2 Attenuating the duty by provision in trust instrument
- 3.3 Attenuating the duty by legislation: the BVI VISTA trust
- 3.4 Assessing VISTA trusts and anti-Bartlett provisions: the irreducible core of trustee obligations and the attenuation of trustee duties of supervision and scrutiny

Seminar 4 *The problem of settlor control: reserved powers, shams and illusory trusts*

- 4.1 Shams and illusory trusts
- 4.2 Can you pierce the veil of a trust?
- 4.3 Reserved powers in trust instruments and offshore legislation
- 4.4 Protectors and enforcers

Seminar 5 *Jurisdiction, forum and enforcement offshore of foreign judgments*

- 5.1 The Hague Convention
- 5.2 Choice of jurisdiction and/or forum clauses in trust instruments
- 5.3 Establishing jurisdiction over a trustee
- 5.4 The enforcement of judgments made in one jurisdiction against a trustee in another jurisdiction: the offshore "firewall" provisions
- 5.5 Domestic matrimonial property orders and offshore trusts and trustees

Seminar 6 *Beneficiary entitlement to trusts information and documents*

- 6.1 Provision of trusts information and documents to beneficiaries
- 6.2 Trust accounts
- 6.3 Other documents held by a trustee
- 6.4 Company accounts and documents
- 6.5 Reasons for exercise of dispositive power
- 6.5 Letters of wishes

- 6.6 Access to trust documents in matrimonial proceedings
- 6.7 Resisting provision of information to a beneficiary and asserting privilege against beneficiaries
- 6.8 Trustee duty of confidence to third parties and beneficiaries
- 6.9 Problems in pleading breach of trust and trusts information and documents
 - 6.9.1 Threshold for striking out a claim
 - 6.9.2 Distinction between disclosure and beneficiary entitlement to information

Seminar 7 Trustee exercise of dispositive power

- 7.1 The nature of a trustee's discretionary dispositive power
- 7.2 What is required of a trustee to exercise a power of appointment?
- 7.3 Consequences of a trustee's invalid exercise of a power of appointment
- 7.4 The role of protectors in the exercise of dispositive powers

Seminar 8 Mistaken, careless or unreasonable exercise of dispositive power

- 8.1 Rescinding an exercise of dispositive power on basis of mistake or want of care and breach of fiduciary duty
- 8.2 Offshore jurisdictions' response to *Futter v Futter*; *Pit v Holt*
- 8.3 Impeaching an exercise of power so unreasonable no reasonable trustee would so act
- 8.4 Consequences of exercise of dispositive power being found to have been made by mistake, without due care or unreasonably

Seminar 9 Exercise of dispositive power outside scope of power or for an improper purpose

- 9.1 The scope of power rule
- 9.2 The improper purpose rule
- 9.3 Consequences of purported exercise of power *ultra vires*

Seminar 10 Select aspects of trustee duties as to the administration of a trust

- 10.1 Trustee duty in the administration of a trust and management / preservation of trust property**
- 10.2 Trustee duties as to investments**
 - 10.2.1 The duty of care as to investments
 - 10.2.2 Engagement of discretionary fund manager
- 10.3 Delegation and agency**
- 10.4 Trustee duty to enforce obligations or defend claims on behalf of a trust**
- 10.5 Trustee duty when faced with claim to trust assets**
- 10.6 *Guardian Trust* liability and trust distribution in face of claim to trust assets**
- 10.7 Claims challenging the trust and “no contest” provisions in trust instrument**
- 10.8 Court applications: construction of trust provision; surrender of discretion and court approval of trustee decisions**

Seminar 11 Removal and appointment of trustees and/or beneficiaries

- 11.1 Curial power to remove and appoint trustees**
 - 11.1.1 Court’s inherent jurisdiction statutory provisions
 - 11.1.2 Grounds upon which a Court may exercise its power to remove a trustee and appoint a trustee
- 11.2 Trust powers to remove and appoint trustees and/or beneficiaries in a trust instrument**
 - 11.2.1 Character of power to remove and/or appoint a trustee or a beneficiary
 - 11.2.2 Grounds upon which exercise of power of removal and appointment of a trustee or a beneficiary may be impeached
 - 11.2.3 Removing or appointing beneficiaries and the soc-called substratum of a trust
- 11.3 Obligations of a removed / former trustee**
 - 11.3.1 Trust property
 - 11.3.2 Trust information and documents
- 11.4 Former trustee entitlement to indemnity and lien**

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- 11.4.1 General entitlement
- 11.4.2 Statutory entitlement
- 11.4.3 Contractual entitlement

Seminar 12 Trustee liability for breach of trust or breach of duty as trustee

- 12.1 Defining and identifying breach of trust: what is the nature of trustee duties?**
- 12.2 Standing to sue for breach of a trust and the importance of a new trustee**
- 12.3 Equitable compensation as a remedial response to breach of trust**
- 12.4 Interest and loss to a trust estate caused by breach of trust**
- 12.5 The rule against recovery for reflective loss caused by breach of trust**
- 12.6 Limitation periods for claims against a trustee for breach of trust**
- 12.7 The significance of beneficiary acquiescence or involvement in a breach of trust; impounding a beneficiary's interest**
- 12.8 Exclusion or limitation of trustee liability for breach of trust by trust instrument**

Seminar 13 Trustees' fees, costs and indemnities

- 13.1 Trustee entitlement to remuneration**
- 13.2 Trustee entitlement to indemnity from trust estate**
- 13.3 Limiting trustee liability to third parties to trust estate**
- 13.4 Trust disputes: the classification of trustees' costs and trustee entitlement to indemnity including *Beddoe* applications and other pre-emptive costs orders**
- 13.7 Priority to indemnity for costs out of trust estate between past and present trustees and creditors and the problem of a so-called insolvent trust estate**