

HUNTER VALLEY FAMILY LAW CONFERENCE

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TRUSTS – WHAT EVERY FAMILY LAWYER SHOULD KNOW

Introduction

1. The word “property” appears in Section 78 Family Law Act 1975 which is in the following terms:

“78(1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of property the Court may declare the title or rights, if any, that a party has in respect of the property.

(2) Where a court makes a declaration under subsection (1) it may make consequential orders to give effect to the declaration including orders as to sale or partition and interim or permanent orders as to possession.”

2. The word “property” is defined in Section 4 Family Law Act 1975 in the following terms:
 - (i) *“Property” in relation to the parties to a marriage or either of them means property to which those parties are or that party is as the case may be entitled whether in possession or reversion.*
3. In the *Marriage of Duff* 1977 3 Fam LR 11211 at 11217 the Full Court said:

*“The word ‘property’ has been the subject of a very large volume of judicial interpretation. A compendious description of it is to be found in **Halsbury**, 3rd ed, Vol 3, par 541 with multiple references to cases. It is sufficient for our purposes to refer to that definition which states: ‘Property is that which belongs to a person exclusive of others, and can be the subject of bargain and sale. It includes goodwill, trademarks, licences to use a patent, book debts, options to purchase, life policies and the rights under a contract.’*

*... but in *Jones v Skinner* (1835) 5 LJ Ch 90 Langdale MR said ‘Property is the most comprehensive of all terms which can be used inasmuch as it is indicative and prescriptive of every possible interest the party can have...’”*

What is a Trust

4. The American Law Institute in the ‘Restatement of Law of Trusts’ has described the trust as:

“A fiduciary relationship with respect to property subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person which arises as a result of a manifestation of an intention to create it.”

(Jacobs Law of Trusts in Australia by Meagher and Gummow, 6th Edition page 3).

5. In Principles of the Law of Trusts 2nd Edition (HAJ Ford and WA Lee) at page 3 the following appears:

“A trust may be defined as an obligation enforceable in equity which rests on a person (the trustee) as owner of some specific property (the trust property) to deal with that property for the benefit of another person (the beneficiary) or for the advancement of certain purposes.”

6. Fundamental to an understanding of trust law is an acceptance of the principle that ownership of property comprises a duality of interests— legal and equitable or beneficial.

Types of Trusts

7. Trusts fall into three categories namely express trusts, implied trusts and constructive trusts. A consideration of implied trusts and constructive trusts follows. Express trusts will be dealt with later in this paper.

8. In Jacobs Law of Trusts in Australia (supra) at paragraph 1201 the following appears:

“An implied trust is a trust which arises by presumption of law in favour of the settlor or his representatives. The circumstances in which such a trust may arise can be grouped under two main headings: first where the settlor has transferred property to trustees but has not disposed of or not wholly disposed of the beneficial interest and secondly where a purchaser of property directs that it be transferred into the name of a third person and there is nothing to indicate that he intended that person to take the property beneficially. In these circumstances the law presumes that the settlor or purchaser as the case may be intended to retain the beneficial interest which he has not disposed of. The term ‘resulting’ applied to these trusts expresses the view that the property comes back to him after it has been given away although in truth the beneficial interest may never have left him. Implied trusts do not need to be evidenced by writing. The provisions of the Conveyancing Act 1919 (NSW) Section 23C; ... as to writing apply only to express trusts.”

9. An implied trust in the first category arises in the following cases:

- (a) Where a settlor transfers the legal interest in property to a trustee without a disposition of the beneficial interest eg as a result of a mistake in drafting a document evidencing a trust.
- (b) A transfer of property to a trustee where the trust has not been stated.

- (c) Where there has been only a partial disposition of the beneficial interest in property eg where there is a life estate granted in property but the remainder interest has not been dealt with.
 - (d) Where an express trust fails eg where the beneficiary predeceases the testator.
10. An implied or resulting trust also arises where property is purchased with moneys supplied by A but the property is transferred into the name of B. It does not matter whether the property is real or personal. In such a case there is a presumption of a resulting trust in favour of A. This presumption is rebuttable by evidence of the intention of the person who supplied the purchase moneys.
11. In *Dyer v Dyer* (1788) 2 Cox 92 at 93 Eyre LCB said:

“The clear result of all the cases without a single exception is that the trust of a legal estate whether freehold, copyhold or leasehold; whether taken in the names of the purchasers and other jointly or in the name of others without that of the purchaser; whether in one name or in several, whether jointly or successive, results to the man who advances the purchase money. This is a general proposition supported by all the cases and there is nothing to contradict it; and it goes on a strict analogy to the rule of common law that where a feoffment is made without consideration the use results to the feoffor.”

(see *Napier v Public Trustee* (WA) (1980) 32 ALR 153 at 158).

Presumption of Advancement

12. When property is purchased by a husband in the name of his wife or by a parent in the name of his or her children and there is no other evidence of the intention of the husband/father at the time of purchasing the property there is a presumption of advancement ie of gift, not of resulting trust.
13. In Jacobs Law of Trusts in Australia (supra) at paragraph 1212 the following appears:

*“A resulting trust is raised in the foregoing circumstances because the court presumes, in the absence of evidence to the contrary that the person paying the purchase money intended to obtain the beneficial interest in the property. But where the legal title is, on a purchase, vested in someone whom the person providing the purchase money is under an obligation to support namely his wife, child or someone to whom he stands in loco parentis there is no presumption of a resulting trust in favour of the purchaser; there is on the contrary a presumption that the property was vested as an absolute gift or as an advancement (see *Re: Kerrigan*; *ex parte Jones* (1946) 47 SR (NSW) 76; *Charles Marshall Pty Limited v Brimsley* (1956) 95 CLR 353; *Martin v Martin* (1959) 110 CLR 297).”*

14. The presumption of advancement applies to the purchase of property in the name of adult children by a mother as well as a father (*Nelson v Nelson* (1994) 33 NSWLR 740). It does not arise where the purchase is in the name of the purchaser's sister, nephew, son in law or grandchild (Jacobs Law of Trusts in Australia 6th Edition (supra) paragraph 1212). The presumption does not arise where a man purchases property in the name of a woman who is not his wife or daughter (*Calverly v Green* (1985) 155 CLR 242).
15. The presumption of advancement is a rebuttable presumption and evidence of the intention of the purchaser is admissible, as is evidence of the circumstances surrounding the transfer. In *Brown v Brown* (1993) 31 NSWLR 582 where a mother purchased a property in the name of her two adult sons the presumption of advancement was rebutted having regard to the circumstances of the mother at the time of acquisition of the property. The mother had contributed virtually all of her assets to the acquisition of the property.

Constructive Trusts

16. In Jacobs Law of Trusts (supra) the constructive trust is defined (or described) as follows:

*“1301 The constructive trust differs in essential respects both from the express and the resulting or implied trust. It differs from the express trust in that it is raised by operation of law without reference to the intentions of the parties concerned and indeed largely contrary to the desires and intentions of the constructive trustee; further a constructive trust arises without the requirements as to writing which statute imposes in respect of express trusts both testamentary and inter vivos. The constructive differs from the resulting or implied trust in that although a resulting or implied trust also arises by operation of law the Courts imply that a trust was actually intended and in the face of evidence to the contrary will discard the implication. In the case of a constructive trust the inquiry is not as to the actual or presumed intention of the parties but as to whether according to the principles of equity it would be a fraud for the party in question to deny the trust. As Cardozo CJ put it ‘When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest equity converts him into a trustee’ (*Beatty v Guggenheim Exploration Co* 122 NE 378 at 380).’ The trust is constructive in the sense that equity construes the circumstances by explaining or interpreting them; equity does not construct the trust it attaches legal consequences to the circumstances. Moreover the constructive trust demands the staple ingredients of the express and resulting or implied trust: subject matter, trustee, beneficiary and personal obligation attaching to the trust property. (*Muschinski v Dodd* (1985) 160 CLR 583 at 613-4 per Dean J).”*

17. In *Muschinski v Dodd* (supra) Deane J said at 616:

“The principal operation of a constructive trust in the law of this country has been in the area of breach of fiduciary duty. Some textbook writers have expressed the view that the constructive trust is confined to cases where some pre-existing fiduciary

relationship can be identified: see eg Lewin on Trusts 16th Edition (1964: Mowbray Ed) page 141. Neither principle nor authority requires however that it be confined to that or any other category or categories of case: cf generally Professor R P Austin's Essay on 'Constructive Trusts' in essays in Equity (Finn Ed) (1985) esp at pp. 196-201; Waters, op cit. page 28ff. Once its predominantly remedial character is accepted there is no reason to deny the availability of the constructive trust in any case where some principle of the law of equity calls for the imposition upon the legal owner of property, regardless of actual or presumed agreement or intention, of the obligation to hold or apply the property for the benefit of another: cf Handbury and Maudsley op cit page 301; Pettit op cit page 55..."

Express Trust

18. Most trusts with which Family Law Practitioners will be concerned will be express trusts the terms of which are set out in a document, usually a trust deed.
19. Writing is not necessary for the creation of a valid trust save as noted hereunder. Trusts of legal interests in personalty may be created orally whether by means of assignment or by means of declaration of trust. Where the subject matter of the proposed trust is an existing equitable interest in personalty and the settlor proposes to transfer the interest to trustees or to make a declaration of trust so as to divest the settlor of all further interest in the property such transfer or declaration must be in writing signed by the settlor or by his agent thereunto lawfully authorised in writing (Section 23C Conveyancing Act 1919 (NSW)).
20. Section 23C Conveyancing Act 1919 is in the following terms:

"23C(1) Subject to the provisions of this Act with respect to the creation of interests in land by parol –

- (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same or by the person's agent thereunto lawfully authorised in writing or by will or by operation of law;*
- (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by the person's will;*
- (c) a disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by the person's will or by the person's agent thereunto lawfully authorised in writing.*

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts."

21. A trust of any legal interest in real property whether freehold or leasehold must in writing.

Essential Elements of a Trust

22. There are four essential elements present in every form of trust namely:
- (i) the trustee;
 - (ii) the trust property;
 - (iii) the beneficiary;
 - (iv) the personal obligation annexed to property.

The Trustee

23. The trustee of a trust may be either an individual or a corporation. The trustee holds the legal or in some cases an equitable interest in the trust property pursuant to the terms of the trust.
24. The trustee is the person in whom there is an obligation to deal with the trust property in accordance with the terms of the trust.
25. The trust obligation attaches not only to the nominated trustee as in an express trust but also to any person in whom the trust property is vested unless that person is a purchaser for value of the trust property without notice of the trust.
26. In Equity a trust will not be allowed to fail for want of a trustee. If no trustee has been appointed or if the trustee dies or in the case of a company it is wound up the person in whom the trust property for the time being is vested will be regarded as a trustee thereof until appointment of a trustee or a new trustee as the case may be.

The Trust Property

27. For there to be a trust there must be trust property. There must be certainty in identification of the property subject to the trust. In general terms all property may be made the subject of a trust. Property may be real or personal. It may be corporeal or incorporeal, tangible or intangible, a chose in possession or a chose in action.
28. Usually a trustee will hold the legal title to trust property although the trustee may hold the equitable interest in property in trust. (see *Comptroller of Stamps (Victoria) v Howard Smith* (1936) 54 CLR 614 at 621-622 per Dixon J).

The Beneficiary

29. A beneficiary may be either a person, a corporation or the trustee of another trust. The trustee may be one of the beneficiaries but cannot be the sole beneficiary. If the trustee is the sole beneficiary the legal interest and the equitable interest in the trust property merge.
30. A valid trust may exist without communication of the trust to the beneficiaries (*Rose v Rose* (1986) 7 NSWLR 679).
31. The beneficiaries may be members of a class (eg children of the marriage of A and B) and may include children not yet born.

Personal Obligation Annexed to the Property

32. The trustee must be under a personal obligation to deal with the trust property for the benefit of the beneficiaries. It is this obligation which gives rise to correlative rights in the beneficiaries. The obligation is expressed in the trust deed creating the trust.
33. The obligation attaches to the trustee in personam. It also attaches to the property which is impressed with the trust, so that if transferred to a third party the third party holds the property pursuant to the terms of the trust. The situation is different however in the case of a purchaser for value without notice of the trust.

Fiduciary Relationship

34. The trustee of a trust stands in a fiduciary relationship to the beneficiaries. In Jacobs Law of Trusts in Australia 6th Edition (supra) at paragraph 202 it is said:

“202 The trust is a fiduciary relation but every fiduciary relation is not a trust. The fiduciary relation exists when a person occupies a position in which he owes a duty not to use that position for the purpose of acquiring an advantage for him or for another over the person to whom he owes the fiduciary duty. Certain relationships have always been considered to be fiduciary. There has never been doubt that a trustee stands in a fiduciary relation to his cestui que trust, or that an executor (or administrator) stands in a fiduciary relation to his beneficiary or that an agent stands in a fiduciary relation to his principal...”

Functions of Private Trusts

35. Private trusts as opposed to charitable trusts and trusts created by statute may be established for anyone of a number of purposes including:

- (a) family trusts established to minimise taxation;
- (b) trusts for the preservation and control of capital beyond death as in trusts where beneficiaries are entitled to distributions of income but not of capital until the vesting date;
- (c) protection of interests of beneficiaries as in discretionary trusts where beneficiaries involved in litigation (family law and other) receive modest distributions of income or no distribution at all. The interests of a beneficiary who is bankrupt may also be protected in this way.

Capacity to Create a Trust

- 36. The capacity to create a trust is coextensive with the capacity to hold and dispose of any legal or equitable interest in property. In general terms any person who is sui juris is capable of creating a trust.
- 37. A testator who disposes of his property by will creates a trust which comes into existence after the executor has completed his duties as executor. The executor holds the assets then in his hands pursuant to the trusts established by the will [*Livingstone v The Commissioner of Stamp Duties (QLD)* (1960) 107 CLR 411].
- 38. A corporation may establish a trust and appoint a trustee if it has power to alienate property.

Interests of Beneficiaries

- 39. In a private trust it is usually the case that the beneficiaries will have an equitable proprietary interest in the trust assets. There are at least two exceptions to this general rule. Firstly there is the case of the beneficiary of an unadministered estate. While the estate remains unadministered that is up to the time that the executor has completed his executorial duties the beneficiary does not have an equitable interest in the assets of the estate. He has only the right against the administrator that the administrator shall administer the estate, preserve the assets and deal with them in accordance with the will or in the case of an intestacy the rules as to intestate distribution (see *Livingstone v Commissioner for Stamp Duties (Q)* supra per Fuller J at 437; per Kitto J at 449). Upon the completion of the executor's duties the executors holds the assets in trust for the beneficiaries named in the will.

40. The second exception is that of a beneficiary under a discretionary trust. The term “discretionary trust” is used to identify a species of express trusts in which the entitlement of beneficiaries to income and/or to corpus or to both is not immediately ascertainable. Rather the beneficiaries are selected from a nominated class usually by the trustee and distributions of income and/or capital are made to the beneficiaries or some of them at the discretion of the trustee. In other words there is no vesting of income or capital in the beneficiaries until the trustee makes a determination that income or capital will be distributed to the beneficiaries or some or other of them.

Duration of Trust

41. A private trust such as a family trust cannot continue indefinitely. There must be a vesting date which means that the trust property must vest in interest within the period prescribed by the Perpetuities Act 1984 (NSW). Before the commencement of this Act the perpetuity period being the period which expired not later than 21 years after the termination of a life or lives in being at the date of the creation of the interest determined when trust property must vest.
42. In New South Wales at this time the practical effect of Section 7 of the Perpetuities Act 1984 is to limit the period of time to 80 years from the date of the creation of the trust.
43. If property does not vest in interest within the perpetuity period the trust is invalid. The effect of this is that the trustee will hold the property in trust for the settlor (a resulting trust).
44. A trust may be established for a definite period of time eg 10 years at which time the property will vest. It may also be established for an indefinite period of time eg the lifetime of a named person.

Rights of Beneficiaries

45. In Principles of the Law of Trusts (supra) at page 54 the authors say:

“Turning to the nature of a beneficiary’s rights to enforce a trust every beneficiary under a trust has standing to claim the assistance of a court of equity to enforce the trust and to compel the trustee to discharge it. At the very least every beneficiary has that claim against the trustee personally to administration of the trust according to certain standards. If the trustee fails in his or her duties so that trust property is lost the trustee would normally be liable in a court of equity to replace the value of the property lost out of the trustee’s own assets. Thus it can be said that a beneficiary has a personal claim against the trustee.”

Beneficiaries Remedies

46. Where a trustee fails or refuses to carry out the trust the beneficiary's usual remedy is to apply to the Court for an order removing the trustee and appointing a new trustee. The trust deed may provide that the Appointor of the trust has power to remove the trustee and appoint a replacement and if this is the case an application to the Court would not be necessary.
47. Where the trustee is in breach of the trust and the breach is serious and/or continuing so that the interests of the beneficiaries are at risk the usual remedy is to commence proceedings and seek the removal of the trustee.
48. Where there is an issue as to the entitlement of the beneficiary eg where the beneficiary alleges property is held on a resulting trust the usual remedy is to seek declarations as to entitlement with consequential relief.

Tracing

49. Tracing trust property is a remedy provided to a beneficiary who has suffered loss as a result of breach of trust. The beneficiary who has suffered loss has a personal right of action against the trustee. If the trustee is insolvent the personal right of action will be of little benefit. In certain circumstances the beneficiary will have a claim in rem that is to say the beneficiary may trace the trust property into the hands of the transferee from the trustee. In Principles of the Law of Trusts (supra) at paragraph 1716 the following appears:

“1716 ... If the trustee attempts to claim any part of the trust property as the trustee's own equity will intervene to restore it to the beneficiaries and if any part of the trust property comes into the hands of a third person not being a bona fide purchaser for value without notice of the breach of trust equity will intervene to restore it to the beneficiaries...”

50. An alteration in the form of the trust property by the trustee or a third party into whose hands it has come will not prevent the remedy of tracing (*Brady v Stapleton* (1952) 88 CLR 322 at 337).

Duties of Trustees

51. The duties of a trustee include:
 - (i) To acquaint himself with the terms of his trust.

- (ii) To get in all of the trust property so that if the property is not in his name it is under his control (*Hallows v Lloyd* (1888) 39 Ch D 686 at 691).
 - (iii) Not to impeach the validity of the trust instrument or the title of the beneficiary.
 - (iv) To adhere to and carry out the terms of the trust.
 - (v) To act impartially between beneficiaries (*Tante v Carlson* (1948) VLR 401).
 - (vi) To invest the trust funds.
 - (vii) To keep and render proper accounts and give full information when required (*Burrows v Walls* (1855) De GM & G 233; 43 ER 389).
 - (viii) To exercise reasonable care in managing the trust (*Speight v Gaunt* (1883) 9 App Cas 1 at 19).
 - (ix) Not to delegate his duties or powers (but a trustee may appoint agents to act for him).
 - (x) To pay and transfer the trust property and the income of the trust to the persons entitled.
52. Whilst a trustee must not delegate his duties and powers he may appoint agents to act for him.
53. A trustee must not deal with the trust property for his own benefit or otherwise profit by the trust. If the trust instrument entitles the trustee to be remunerated for work he does as trustee then he is entitled to be remunerated in accordance with the terms thereof but if the trust instrument is silent as to whether he should be remunerated for his time then he is not entitled to remuneration. He must act gratuitously.
54. Unless authorised by the Court or by all of the beneficiaries (each of whom is sui juris) or pursuant to an express power contained in the trust instrument a trustee may not purchase the trust property either from himself or from his co-trustee or co-trustees (see *De Bussche v Alt* (1878) 8 Ch D 286; *McPherson v Watt* (1877) 3 App Cas 254; *Queensland Mines Limited v Hudson* (1978) 18 ALR 1).

Powers of a Trustee

55. A trustee in the execution of his trust has all the powers conferred upon him by:

- (a) the trust instrument;
- (b) statute;
- (c) the Court.

56. A common question is whether a trustee has the power to sell, lease or mortgage trust property. The answer to this lies in the terms of the trust instrument or if the trust instrument is silent in statute.

57. The power to sell a trust property may be contained either expressly or impliedly in the trust instrument. The primary duty of a trustee is to preserve the trust property in specie for the benefit of the beneficiaries, but in order to carry out the trust it may be necessary to sell the trust property.

58. A power of sale may be implied. The question whether there is an implied power of sale depends upon the proper construction of the trust deed. In Jacobs Law of Trust in Australia (supra) at paragraph 2003 it is said:

“(2003) However it is not always necessary that the duty or power of sale should be expressly stated in the trust instrument. It frequently happens that the nature of the disposition made by the testator or settlor either together with or independently of the nature of the trust property result in the implication of a power of sale.”

59. The Trustee Act 1925 (NSW) does not confer any general power of sale upon trustees.

60. If a trustee is given a power of leasing by the trust instrument, the trustee may resort to powers given by statute to facilitate the lease of trust property but there is no general power to lease conferred by statute. Similarly trustees do not have a power to mortgage the trust property unless the same is given in the trust instrument or authorised by statute referred to in the following paragraph.

61. Section 153 Conveyancing Act 1919 empowers executors and administrators to sell or mortgage the real estate of a deceased person in particular circumstances namely:

- (a) for the purpose of administration; and
- (b) for the purposes of distribution or division amongst persons entitled.

62. The Trustee Act 1925 confers certain powers on a trustee illustrations of which are:

- (i) Powers incidental to a power of sale (Section 26 Trustee Act 1925).
 - (ii) Power to postpone sale implied in every trust for sale (Section 27B Trustee Act 1925).
 - (iii) Power to sell land on terms of deferred payment (Section 28 Trustee Act 1925).
 - (iv) Power of leasing where the trustee has a power of sale with a power to postpone sale (Section 36 Trustee Act 1925).
 - (v) Power to insure (Section 41 Trustee Act 1925).
63. Further in relation to distributions of income and capital to beneficiaries certain powers in relation to minor beneficiaries are conferred by statute. These powers are in addition to any powers set forth in the trust instrument (see Sections 43 and 44 Trustee Act 1925).

Termination of the Trust

64. A trust may be terminated by the exercise of powers of termination or revocation set out in the trust deed, by order of the court or by the authority of all of the beneficiaries being of full age and capacity. A trust will terminate when according to its terms the trust fund must be distributed amongst ascertainable beneficiaries.
65. A trust deed may contain power to revoke or otherwise terminate the trust exercisable by the settlor, the trustee or a third person and the due exercise of the power will terminate the trust.
66. The beneficiaries if sui juris and absolutely entitled may terminate the trust by requiring the trustee to distribute assets to them (*Wilson v Wilson* (1950) 51 SR (NSW) 91 at 94 per Street J).
67. Finally a trust will be terminated when the vesting date arrives. There are usually provisions in the trust deed empowering the trustee to distribute capital on the vesting date and default provisions if the trustee fails to make appropriate determinations by the vesting date.

Appointor

68. In express trusts evidenced in writing there are often provisions concerning a person named as Appointor. The appointment of a person as Appointor itself carries no powers. The trust deed

must specify the Appointor's powers. In most cases the Appointor is empowered to appoint and remove the trustee.

Settlor

69. The settlor is the creator of the trust. It is the settlor who settles property upon the trustee who by accepting the settlement covenants to carry out the terms of the trust.
70. The settlor may be the sole beneficiary of the trust and in that case the settlor can terminate the trust by calling on the trustee to vest the trust property in him.

Secret Trust

71. A secret trust arises when a settlor transfers property to another for the benefit of a third person having communicated the purpose of the transfer to the transferee or in the case of a testator where property is left by will to a person on the understanding communicated to that person that he is to hold the property for the benefit of some third party.
72. In *Voges v Monaghan* (1954) 94 CLR 231 Dixon CJ identified the chief factual elements of a secret trust namely:
 - (i) The existence of the relevant definite intention of the testator concerning the disposition of his property.
 - (ii) The communication of the testator's intention to the executor or beneficiary.
 - (iii) Acceptance either by agreement or acquiescence on the part of the executor or beneficiary.
 - (iv) The making of the will on the faith that the executor or beneficiary will carry out the communicated intention or leaving unrevoked a present existing will.

Protective Trust

73. Section 45 Trustee Act 1925 (NSW) provides inter alia that income may be directed to be held on "protective trust" for the benefit of a person referred to in the section as the principal beneficiary for the period of the principal beneficiary's life or for any lesser period stipulated and the income during the period shall be held upon trust as provided for in the section, save that if during the period of the trust the principal beneficiary does any act (eg assignment of

the right to receive the income) whereby he would be deprived of the right to receive the income the trust will determine and the income becomes payable to others such as the spouse or children of the principal beneficiary.

JOHN R WILSON SC

Selborne Chambers

Tel: (02) 9231 4988

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