

DOWNLOAD PDF THE EQUITABLE PERSONAL LIABILITY OF STRANGERS TO THE TRUST.

Chapter 1 : Liability Of Strangers | Oxbridge Notes the United Kingdom

The chapter also looks at trusteeship de son tort, personal liability in equity for receipt, and equitable liability for assistance in a breach of trust. Access to the complete content on Law Trove requires a subscription or purchase.

Introduction In their book *Text, Commentaries and Cases on Trust* which is actually an excellent book, professors Oosterhoff and Gillette pretty much warn all and sundry to avoid the study of trust law unless they are certified masochists, with the following summary: However, if the trustees still have the property, the beneficiaries have a proprietary remedy as well in that they are entitled to recover the property itself. First, a right in personam or personal action in equity against the recipients, and second, a right in rem, that is, a proprietary action, at law, in equity, or both, to follow or trace property into its product. This, of course, is a matter of immediate and utmost concern to the beneficiary, who retains, as we discussed in *Trust Law in Canada: An Introduction*, an equity-based interest in the trust property. The beneficiary of a trust has no common law interest in the trust property while the trust is ongoing. But the beneficiary does retain a legal interest that is recognized in equity, a legal system which runs parallel to common law in Canada and which ranks higher than common law. Trust is a beast of equity. So the beneficiary has a right "in equity" in the trust property. The common law supports a number of actions to follow misappropriated property and to force its return to the rightful owner for example, conversion, detinue or replevin. Not necessarily so with equity remedies as we shall see. Going After the Trustee Readers will want to acquaint themselves with the notes on trustee liability under the title of Trusts: If the trustee has misappropriated the trust property to their own personal benefit and title, the beneficiaries may trace the property i.e. More often than not, the trustee will have mixed the trust money with their own in a bank account. This became known as the "first in, first out" rule. In that case, the presumption was that the trustee draws his own money out first and is deemed not to draw on the trust money until his own money is spent, no matter in what order the moneys were deposited. In that case, the account balance is divided proportionately. Recovering the Property In some cases, equity will allow a court to return property wrongly transferred by the trustees, to trust beneficiaries. This is known as the recourse of tracing and it is particular to equity. A few points on the tracing remedy: Tracing is only available to those plaintiffs that can show that the property was lost by persons standing in a fiduciary relationship to them. This is not a problem for trust beneficiaries. For more on fiduciaries, please see "fiduciary gains" in *Constructive and Resulting Trusts*. The tracing action can only be taken if the property was specific and "ascertainable" and in which the beneficiary has title, albeit equitable title. Butterworths, , at page It presupposes the continued existence of the money either as a separate fund or as part of a mixed fund as latent in property acquired by means of such a fund. If, on the facts of any individual case, such continued existence is not established, equity is helpless. Thus tracing is impossible where an innocent volunteer spends the trust money on a dinner or on an education or general living expenses. In other words, the property can be traced until bought by someone without notice. Conversely, as long as notice is given along the line of successive purchasers, the beneficiary can trace successfully. Tracing gives the beneficiary a priority over the other creditors of the defendant. This is especially helpful if the defendant has gone bankrupt. The successful tracing action gives the beneficiary two options: In this way, if the property has increased in value, it can be recovered outright. If it has fallen in value, the action can result in judgment for the original value plus the lien on the property as security. Where the property vests in a third-party who has bought or given value to the trustee for the trust property and not knowing that it was trust property i.e. If the third-party has received the property as a gift i.e. Strangers to the Trust The trustee is the first person in the totem pole when it comes to seeking remedies for breach of trust. But if the trustee is bankrupt or without sufficient assets to honour the trust, the beneficiaries have the equity remedy of tracing at their disposal to go after third-parties who may have possession of the trust property. Recall that the purchaser for value, and without notice that the property was subject to a trust, shields the property from tracing. In that case, the only recourse left to the beneficiary is against the trustee.

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We have also covered the situation of a gift of the trust property, which allows for tracing even if the person receiving the gift without notice that it was subject to a trust which the law calls the innocent volunteer and we have said that this is vulnerable to tracing, although the innocent volunteer does not incur personal liability as might other strangers, as we shall see below. The reader may also want to see the discussion of this subject matter under Constructive Trusts. There is yet another possibility available to the beneficiary. The equity remedy of tracing is primarily a means of determining the rights of property. A stranger to the trust can also be held liable to the beneficiary as a "constructive trustee" which creates personal liability above and beyond the trust property. Trustee de son tort Where a stranger interferes, or takes it upon himself to intermeddle with trust matters or to do acts characteristic of the office of trustee, a court may find that person as a trustee de son tort or "trustee of his own wrong. It does require that the stranger was in a position to exercise some control over the trust property usually by the possession and administration of trust property contrary to the trust agreement. Knowing Assistance in a Breach of Trust A person who assists a trustee in committing a breach of trust can be held liable for losses incurred as a result of the breach. In *Re Montague*, [1] 1 Ch. *Re Montague* also established that knowledge at one point in time does not necessarily mean knowledge for life, and that forgetfulness could be pleaded and could deny a finding of constructive trust. Some Canadian cases have held that if the stranger knows of circumstances that would lead a reasonable person to make inquiries, then the stranger could be held liable. Other cases have held that this would only be true if the stranger benefited from the breach of trust. In *Baden, Delvaux and Lecuit v.* At the very least, we can see that courts are increasingly hesitant to impute knowledge from circumstances "where no actual knowledge exists.

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Chapter 2 : Statutes & Constitution :View Statutes : Online Sunshine

It explains the rationale behind equitable liability for 'knowing receipt' of trust property, considers the distinction between 'knowing receipt' and 'inconsistent dealing', examines the nature of a stranger's liability for dishonest assistance in (or procurement of) a breach of trust, and looks at possible reforms of the law in.

Tracing is different from following. The facts concerned a fraudulent investment scheme. Versailles Group plc owned the defendant trading company. Versailles Group plc sought investments from both individuals and banks. Their money would be given to another company, Trading Partners Ltd, again controlled by Mr Cushnie, who would buy goods and resell them. Any money not used to buy goods was to be placed in a bank account. The investors would receive a share of the profits on the goods bought and resold. The defendant company managed the workings of Trading Partners Ltd. In fact, the money received by Trading Partners Ltd was passed to the defendant company but it was not used as agreed. Mr Cushnie eventually floated the company and it was listed on the London Stock Exchange. Eventually, in , Versailles Group plc collapsed as the scale of the fraud involving hundreds of millions of pounds became clear. The claimant in the action was one of the traders that were owed money. The claimant brought two claims. The first is relevant here: This claim was based on Mr Cushnie, as a director, owing fiduciary duties to Trading Partners Ltd not to make a secret profit and not to misuse funds. The claimant said that it was entitled to trace its money through these shares to the eventual recipients the banks. Mr Cushnie had not acquired the shares in Versailles Group plc with any money that had originally been owned by Trading Partners Ltd. That gave rise to a duty to pay equitable compensation only. As Trading Partners Ltd had not provided the money to purchase the shares originally, there could be no tracing of any of their property to be done through to the eventual profit Mr Cushnie made. He accepted substantial bribes for not prosecuting certain individuals. He purchased three properties in New Zealand with the bribes. The Crown brought an action claiming the value of those properties, which were worth HK The properties had increased in value from when Mr Reid had originally purchased them. The Privy Council held that the claimant could trace the bribe into the properties. The Privy Council decided that a recipient of a bribe held the legal title in that bribe, but that equity would insist that the recipient of the bribe should hold the bribe on trust for the person to whom his fiduciary duties were owed. In this case, that was the Government of Hong Kong. It could not be the provider of the bribe as he had committed a criminal act in offering the bribe. The decision was odd in that the Government of Hong Kong was held to be entitled to recover both the bribe and its gain even though it had never enjoyed an equitable interest in the money used in the bribe. It had never had any proprietary interest in the original money which had, as a bribe, been paid to the corrupt employee by a third party. Lord Neuberger MR thought that where the beneficiary did not have any equitable interest in property, he could not pursue a proprietary claim. His claim was limited to that of equitable compensation for the breach of fiduciary duty that the fiduciary had committed by conducting the transaction. This conclusion reflected many earlier Court of Appeal cases.

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Chapter 3 : Tracing and Actions Against Strangers to the Trust |

Recipient of property will be under a personal liability to account to the beneficiaries for the loss to the trust if they dissipated the trust property (or its proceeds) after becoming aware that it was trust property.

The third party stranger will be liable from different type of liability: He is entitled to, a step further, expect performance of the trust obligation from the trustee without deliberate intervention from 3rd party, which might hinder the beneficiary from receiving his entitlement in accordance to the trust instrument. The basis of imposing liability on stranger is akin to a person who intentionally procures the breach of contract and knowingly interfere with the due performance of a contract. Thereby the stranger is liable. Liability as accessory is not dependent upon the receipt of trust property. It is a form of secondary liability arise only if there had been a breach of trust. The firms initiate the action against the club which operate the gamble as well as the bank at which the misappropriate money was being parked. The manager of the breaching-partner had been aware of the cashing of the cheque at the casino and had warned him that his gambling habit was not controlled. Still the CoA held that the bank had not been sufficiently aware that a breach was being committed. Accessory liability involves providing dishonest assistance to somebody else who in a fiduciary capacity has committed a breach of his fiduciary duties. Under contract the revenue from the sales of ticket shall be held by firm agent on trust for the claimant airline. The firm then became insolvent. Defendant was sued as accessory for the breach committed by the firm, since he authorized the misappropriation of the fund. The Privy Council held that what matter is the 3rd party state of mind in finding accessory liability. State of mind of trustee is not relevant, so long as a breach of trust is being committed. Rimer J in that case ruled that the defendant had not assisted in the breach of the trust itself because there is no active of assistance. His lordship warned against the over-refinement of the shades of knowledge required and instead suggested the adoption of the dishonesty test. To inquire whether a person dishonestly assisted in what is later held to be a breach of trust is to ask a meaningful question, which is capable of being given a meaningful answer. To frame the question in the language of knowledge will often leads one into tortious convolutions about the sort of knowledge required, when the trust is that knowingly is inapt as a criterion when applied to the gradually darkening spectrum where the difference are of degree and not kind. Finding of dishonesty will be based on whether a defendant conduct will be considered by reasonable man as being dishonest and b defendant himself realized that by those objective standard his conduct was dishonest. The HoL prefer the combined test because, Lord Hutton think, following the criminal R v Ghosh standard, it would be unjust for the defendant to be held liable for an act which he did not consider as dishonest. Lord Millett dissent and ask for a pure objective standard to be adopted. To equate civil liability with the criminal need for guilt is not appropriate for civil liability. The defendant solicitor in breach of fiduciary duty paid this to the borrower solicitor, Leech, who later failed to utilize the money solely for the acquisition of the property. In first instance, he was not considered as dishonest but simply misguided. Lord Hoffman in Barlow Clowes noted that the HoL in Twinsectra did not inquire into the views of the defendant solicitor about the standard of ordinary honest behavior. Privy Council found liability based on sufficient evidence, because the only possibility of such large sum of money being transferred to the offshore financial institution is that it represent the investor money. The defendant argued that the payment of commission is general market practice. A person who knowingly participate should compensate 3 knowing assistance is equal to economic torts. Tortious liability is not dependent on negligence but knowledge. To use dishonesty will introduce an unnecessary and unjustified distinction between both economic tort and equitable claim 4 his lordship had no difficulties in equating knowledge with dishonesty. But introduction of dishonesty is an unnecessary distraction and conducive of error. If the understanding is intentional wrongdoing and not dishonesty then one should follow the original formulation of knowing assistance. A stranger who receive trust property transferred in breach of trust will not gain priority over the equitable interests of the beneficiaries unless he was a bona fide purchaser for value

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without notice. The charities are innocent volunteer since it does not provide consideration for the gift, and the COA held that the beneficiary under the will is entitled to recover the trust property or its traceable proceeds remaining in their hands. As Millett J in *Macmillian v Bishopgate*: Here in the case, Millett J refused to impose such burdensome duty to investigate the title of shares offered for sales when commercial custom and practice did not require close investigation of the transferor title. He held that the banks which had acquired shares which were held on trust for the plaintiff, having been wrongly transferred as part of the attempt to support the business, were not affixed with constructive notice because the bank had not acted with actual or constructive knowledge that the transferee was not beneficial owner. Then it would be plausible for the beneficiary to pursue a personal action against the stranger rather than a proprietary claim. His liability is fault-based, and rooted in equitable notions of conscience. The trustee are suppose to draw up the inventory for such chattel subject to trust but failed. When the property of the 9 th Duke was release, 10th Duke dissipate some of them. On the death of 10 th Duke the 11th Duke claim that the 10th Duke estate is able to account for the sale of the item that had been sold. But the 10 th Duke is only liable to account for the value of chattel that had been sold with knowledge that it was subjected to the trust. Held that the club was liable to account for the receipt of the client fund. Tracing rule cannot apply because it is no longer possible to trace the proceed, as the money was mixed with its other receipt. Director was imposed with constructive trusteeship, but not the investor. Decision was affirmed in HoL, but this was limited to cases of administration of estate, following the comment by Lord Simonds in *Ministry of Health v Simpson*. The executor in *Re Diplock* had paid money to persons they believed were legally entitled to receive because of their misconstruction of the relevant law, thereby would not be able to reclaim the property vested to the charity. Thereby currently, if the charity had acted in good faith then it would be unlikely that the beneficiary in *Re Diplock* would be successful, since the dissipation would constitute a change of position. Peter Gibson J had formulated the Baden scale of knowledge, based on previous decision as well as the doctrine of notice. The question liability then was one of degree on culpability, rather than the knowledge, although the link remain. But if the liability is found on knowledge then the test would be harsh and unfair. Rather the receipt by stranger must proceed without further inquiry in circumstance in which an honest and reasonable man would have release that money was probably trust money and was being misapplied. Lewison J was considering the relaxation of a freezing order by the claimant to pay for legal defence, after the order was made to protect pension fund from being improperly invest. His lordship noted that in *BCCI* a lower threshold than dishonesty will suffice to impose liability for knowing receipt. He considered that recipient could be liable for failing to make further enquiries on the constraints on the investment powers, as that may well amount to notice. It was suggested that the bad investment by the defendant may themselves constitute notice of a breach of trust. On the facts, the CoA noted that the defendant had been aware that the monies he received had been procure in breach of trust or fiduciary duty by an employee of the claimant. He transfer to creditor an asset, knowing that they were part of a disputed claim that the bankrupt had been in partnership. Although the trustee was not a member of the partnership he was considered to act unconscionably and thereby liable. The court found that Mrs Kohn payment was properly made and there is no breach of fiduciary duty by the director who make the remuneration. Popplewell J opined that her knowledge was not sufficient ot render receipt and retention of the payment unconscionable. The remuneration was no more than reasonable legitimate expectation for the service she render, and that she had been honest. As Lord Nicholls in *Royal Brunei* noted:

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Chapter 4 : Remedies for Breach of Trust Against Trustees |

Liability Of Strangers Revision. The following is a plain text extract of the PDF sample above, taken from our GDL Equity and Trusts calendrierdelascience.com text version has had its formatting removed so pay attention to its contents alone rather than its presentation.

A trustee may be a beneficiary of the land trust for which such trustee serves as trustee. The duty to convey, sell, lease, mortgage, or deal with the trust property, or to exercise such other powers concerning the trust property as may be provided in the recorded instrument, in each case as directed by the beneficiaries or by the holder of the power of direction; 2. The duty to sell or dispose of the trust property at the termination of the trust; 3. The duty to perform ministerial and administrative functions delegated to the trustee in the trust agreement or by the beneficiaries or the holder of the power of direction; or 4. The duties required of a trustee under chapter , if the trust is a timeshare estate trust complying with s. However, the duties of the trustee of a land trust created before June 28, , may exceed the limited duties listed in this paragraph to the extent authorized in subsection The recorded instrument does not itself create an entity, regardless of whether the relationship among the beneficiaries and the trustee is deemed to be an entity under other applicable law. If no such personal property designation appears in the recorded instrument or in the trust agreement, the interests of the land trust beneficiaries are real property. If provided in the recorded instrument, in the trust agreement, or in a beneficiary agreement: A particular beneficiary may own the beneficial interest in a particular portion or parcel of the trust property of a land trust; b. The beneficiaries may own specified proportions or percentages of the beneficial interest in the trust property or in particular portions or parcels of the trust property of a land trust. Multiple beneficiaries may own a beneficial interest in a land trust as tenants in common, joint tenants with right of survivorship, or tenants by the entireties. If a beneficial interest in a land trust is determined to be real property as provided in subsection 6 , then to perfect a lien or security interest against that beneficial interest, the mortgage, deed of trust, security agreement, or other similar security document must be recorded in the public records of the county that is specified for such security documents in the recorded instrument or in a declaration of trust or memorandum of such declaration of trust recorded in the public records of the same county as the recorded instrument. The perfection of a lien or security interest in a beneficial interest in a land trust does not affect, attach to, or encumber the legal or equitable title of the trustee in the trust property and does not impair or diminish the authority of the trustee under the recorded instrument, and parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement or any lien or security interest against a beneficial interest in the land trust. Parties dealing with the trustee of a land trust are not required to inquire into the terms of the unrecorded trust agreement. The power of direction, unless provided otherwise in the trust agreement of the land trust, is conferred upon the holders of the power for the use and benefit of all holders of any beneficial interest in the land trust. In the absence of a provision in the trust agreement of a land trust to the contrary, the power of direction shall be in accordance with the percentage of individual ownership. In exercising the power of direction, the holders of the power of direction are presumed to act in a fiduciary capacity for the benefit of all holders of any beneficial interest in the land trust, unless otherwise provided in the trust agreement. A beneficial interest in a land trust is indefeasible, and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest in a land trust. The power conferred by any recorded instrument on a trustee of a land trust to sell, lease, encumber, or otherwise dispose of property described in the recorded instrument is effective, and a person dealing with the trustee of a land trust is not required to inquire any further into the right of the trustee to act or the disposition of any proceeds. The declaration must be signed by a beneficiary or beneficiaries of the land trust and by the successor trustee or trustees, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain: The legal description of the trust property. The name and address of the former trustee. The name and address of the successor

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trustee or trustees. A statement that one or more persons having the power of direction of the land trust appointed the successor trustee or trustees, together with an acceptance of appointment by the successor trustee or trustees. The declaration must be signed by both the former trustee and the successor trustee or trustees, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain: A statement of resignation by the former trustee and a statement of acceptance of appointment by the successor trustee or trustees. A statement that the successor trustee or trustees were duly appointed under the terms of the unrecorded trust agreement. If the appointment of any successor trustee of a land trust is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable. A person dealing with any successor trustee of a land trust pursuant to a declaration filed under this section is not obligated to inquire into or ascertain the authority of the successor trustee to act within or exercise the powers granted under the recorded instruments or any unrecorded trust agreement. The trust is a land trust governed by this section if a recorded instrument confers on the trustee the power and authority described in s. The recorded instrument or the trust agreement expressly provides that the trust is a land trust; or b. The trust is not a land trust governed by this section if: The recorded instrument or the trust agreement expressly provides that the trust is to be governed by chapter , or by any predecessor trust code or other trust law other than this section; or b. Solely for the purpose of determining the law governing a trust under subparagraph 1. If the determination of whether a trust is a land trust governed by this section cannot be made under either subparagraph 1. The recording of a mortgage, deed of trust, security agreement, or other similar security document against such a beneficial interest that is real property in the public records specified in paragraph 8 c continues the effectiveness and priority of a financing statement filed against such a beneficial interest before July 1, , if: This subsection does not apply to the perfection of a security interest in any beneficial interest in a land trust that is determined to be personal property under subsection 6.

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Chapter 5 : Learn: Equitable Liability of Strangers (by kazzasingh) - calendrierdelascience.com - Remember

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Monday, August 29, Equity and Trusts Answering Problem Questions Advise one of the senior partners in your firm of solicitors on the legal issues in ALL of the following situations: His mother asked the trustees to advance some of the capital fund to Marco ahead of time. Marco consented to this because his mother who squandered it on her extravagant lifestyle. The trust instrument provides that the trustees shall not be liable for any breach of trust howsoever caused. They employ Cost-It Ltd as their surveyors. Walter is one of Cost-its surveyors. He goes to value a development plot for Quickbuild. Walter then tells his friend Victoria about the plot. Tom Bowood is one of the beneficiaries. Clement is a solicitor to the trust. The company business involves selling holiday homes to the public. No homes were actually built. Theo went to the Cayman Islands in March to access the money. Theo died in April In other words, a trustee must provide personal service to the trust. There are various ways in which Horatio and Isabella could go about retiring from the trust and appointing Kerry and Luis in their place. Horatio and Isabella may retire if the trust instrument entitles them to so and if it does not then whenever the court approves an application for retirement. The Trustee Act also details two other modes of retirement. This is of course as long as the trust instrument does not contain instructions to the contrary. Horatio and Isabella may also be able to retire under s39 of the Trustees Act and this will permit their retirement without the appointment of Kerry and Luis. The circumstances in which this can happen are retirement by deed; the trustee must obtain the consent of the other trustees and any person who is empowered to appoint new trustees; such consent must be given by deed and must approve of the retirement and of the vesting of the property in the remaining trustees alone and the retirement will only be valid if two trustees remain or a trust corporation remains after the retirement. If however the retirement was valid then they will only be liable for breaches of trust which occurred when they were a trustee. Horatio and Isabella may also retire from their position with leave of the court. The court may order the retirement of a trustee when exercising its power under s There is also an inherent power for the court to allow retirement. The court will not use this inherent power if it would result in the trust being left with no trustee, and this would not be the case here as there are two trustees to replace the existing trustees and therefore an order of the court may be obtained. It should be briefly considered whether or not Luis and Kerry can be trustees. The general rule is that anyone who has the legal capacity to hold property may be a trustee including corporations and married women. A minor is not capable of being a trustee so as long as Kerry is over the age of majority then it should be acceptable for Luis and Kerry to become trustees. Marco is entitled to an advancement of the trust money under the Trustee Act [2] which provides that trustees may apply capital money for the advancement or benefit of a beneficiary, regardless of whether that beneficiary is an infant or an adult. Furthermore under section 32(1)(c) the trustees will not be permitted to make a payment by way of advancement if to do so would prejudice any person with a prior interest in the fund, unless the person with the prior interest gives their consent in writing to the advancement. Prescribe a particular purpose, and then raise and pay the money over to the advancee leaving him or her entirely free, legally and morally, to apply it for the purpose or to spend it in any way he or she chooses, without any responsibility on the trustee even to inquire as to its application. They have a duty to make enquiries as to how the moneys are actually spent. They have a duty to supervise and oversee what Marco does with his money. If the moneys are not used for the prescribed purpose, and the trustees receive notice of this fact, they will be under a duty not to make further advances to Marco in the future without his first satisfying them that the money will be properly applied. It is unlikely that following the decision in *Re Pauling* that the trustees will be able to evade liability for this breach of trust despite a clause to the contrary. Victoria, Walter and Quickbuild Quickbuild may have a claim against Walter

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for unauthorised profits. This can be established as Walter is working for Quickbuild on behalf of his company Cost-it Limited and therefore is privy to information which is confidential and to a degree has a monetary value. A fiduciary must not place himself in a position where his interest and duty conflict [9]. Similarly a fiduciary must not profit from his fiduciary position. If this does occur then any personal gain attributable to the fiduciary position must be held on constructive trust for the persons to whom the fiduciary relationship is owed, in this case Quickbuild [10]. This is because a fiduciary owes clear and strict duties to administer the assets for the benefit of those entitled to equity to that property or assets. In order to ensure that these duties are honoured in full, there is virtually an absolute bar against the trustee using his position for personal gain. Liability will be imposed on Walter irrespective of any intentional deceit, recklessness, or negligence on his part. It is useful to look at similar situations where the court has imposed a constructive trust on a fiduciary because of a conflict of interest and duty in a business context. Examples include where fees were paid to company directors who hold those directorships because of their legal ownership of trust shares must be held on trust for the beneficiaries [12] and where an army sergeant was held constructive trustee of monies received for escorting vehicles unsearched through army checkpoints. Since the remedy can be tailored to the circumstances of the particular case, innocent third parties would not be prejudiced and restitutionary defences, such as a change of position, are capable of being given effect. The trustee is under an obligation to account as a constructive trustee for any profits received by virtue of the trusteeship. A trustee is under an obligation to account as constructive trustee for any profits received by virtue of the trusteeship. Thus, if Tom and Clement became directors without reliance on the trust shares, they may maintain their substantial fees, even if the shares thereafter help them to maintain their position. If this is the case with Tom and Clement then not only will he hold his directors remuneration on trust for Zebedee and Amma, but any dividends will also pass to the beneficiaries also, as income from the trust property. Similarly if they have behaved honestly and fairly throughout, the court might exercise its inherent jurisdiction to award them a sum by way of equitable compensation. The beneficiaries of Quicksilver may have a claim against Paulo for unauthorised profits. If this does occur then any personal gain attributable to the fiduciary position must be held on constructive trust for the beneficiaries of the Quicksilver trust [23]. This is because a trustee owes clear and strict duties to administer the assets for the benefit of those entitled to equity to that property or assets. Liability will be imposed on Paulo irrespective of any intentional deceit, recklessness, or negligence on his part [24]. It will be enough that Paulo has placed himself in a position where his duty to the trust has conflicted with his own interest. Therefore as Lord-Browne Wilkinson stated: As Paulo is insolvent it will be difficult for Quicksilver to recover their money. However it may be that the beneficiaries of the quicksilver trust have a claim on the racehorse through the equitable remedy of tracing. The trigger for a claim of equitable tracing is that the Claimant must have an equitable proprietary interest in property and only an equitable proprietary interest, [1] therefore beneficiaries under the Quicksilver trust will have such a right. Quicksilver beneficiaries must also show that there was in existence a fiduciary relationship. Thirdly it must be shown that the property of the beneficiaries has been transferred to another person wrongfully as it has here. Fourthly, being a claim in equity, equitable tracing is not possible against a person who is a bona fide purchaser for value of the property [29] , Paulo will not be a bona fide purchaser as he knew that the money he used to purchase the property was not his. In conclusion therefore it is likely that the beneficiaries will be able to trace the money held on constructive trust for them into the race horse that has been purchased by Paulo and this will be very useful to them in light of the fact that Paulo is now insolvent. Theo It is evident that Theo is in breach of trust, however it may be difficult to recover the trust property for the beneficiary as Theo is now deceased. Theo held the money for Super Cash and the prospective purchasers on trust, as this is not his money. However now Theo has died it may be that the strangers to the trust owe a duty to these beneficiaries. Strangers to the trust are persons who are not themselves express trustees of it. While the rule that a trustee or other fiduciary may not profit from that position, the position of strangers is more complex. Only those strangers who inter meddle in the trust will become liable and much depends upon their state of mind when doing so. The stranger to the

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trust may become a constructive trustee because he or she has assumed the duties of a trustee. This is trusteeship de son tort and the essential point is that the person fixed with the liability as a constructive trustee has stepped willingly into the shoes of the original trustees or fiduciaries. In all of the situations referred to in this scenario the strangers to the trust have received the trust property in their possession and therefore will be liable if at all for receipt and dealing. If they actually receive the property into their hands they will be subject to a proprietary remedy; the beneficiaries will be able to recover the property itself from the stranger unless any of the strangers to the trust can show that they are bona fide purchasers without notice [32]. The persons whom Theo purchases the property from in Australia can be said to be bona fide purchasers without notice however his Wife, accountants and bank cannot be said to be. Liability is strict and will be based upon the mere fact of possession of the trust fund, past or present, not upon intentional wrongdoing [33]. This seems to be a case of dishonest assistance [36]. The authorities were fully explored and analysed in the case of *Agip Africa Ltd v Jackson* and then explained clearly by the Privy Council in *Tan*. Of course there are difficulties over the meaning of dishonesty. It is however established only where the defendant knows that the property was trust property or perhaps if he knows that the property belonged to someone else or that he was merely engaged in some dishonest design. It would seem that the accountants would have had to have known where the money had come from and indeed they would have known that some of the money came from uncompleted properties. Undoubtedly, the accountant will attempt to plead that he was merely carrying out his contract with Theo in much the same way as the bank claimed to avoid liability in *Lipkin Gorman v Karpnale* [37], but this will not be enough and if the court establishes that the accountants were materially involved in the fraud or at least did not care about the possibility that fraud was being perpetrated then they will be liable. Therefore the prospective purchasers will have a claim against the wife and the accountants and may be able to recover some of their money.

Plan General Considering general this assignment and the best approach and relevant sources to use, plan of action: To review all books on Equity and Trusts Available 2. Read relevant cases following review of books 3. Do Journal Article search and case search on keywords extracted from findings in books? Search will be carried out on Lexis Nexis; Lawtel; Westlaw. Consider rule in each area and apply to problem question. Question a this is a general question on Retirement of trustees. Will need to research the office of trustee appointment, retirement and removal "how can a trustee retire? Consider if there are any express powers contained within the trust itself. Does the court have to improve the retirement of one trustee and the removal of the others? Question b this is a question dealing with breach of trust. Note that liability for breach of trust is generally strict in the sense that it is enough that the trustee has committed the act or omission which amounts to a breach of trust. It is irrelevant for liability whether the trustee knew he was committing a breach of trust and did so for his own benefit, was reckless as to the possibility of a breach occurring, was negligent of the same or was entirely innocent or honest. If this does occur then any personal gain attributable to the fiduciary position must be held on constructive trust for the persons to whom the fiduciary relationship is owed. A fiduciary must not profit from his fiduciary position.

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Chapter 6 : bits of law | Trusts | Management | Remedies: Against Third Parties

Liability of Strangers - trustee de son tort Anyone who 'intermeddles' in the running of a trust will be viewed as a constructive trustee and thus equally liable as any express trustee, e.g. assuming the office of a trustee.

This means that the formatting here may have errors. This text version has had its formatting removed so pay attention to its contents alone rather than its presentation. The version you download will have its original formatting intact and so will be much prettier to look at. Topic 14 - Liability of Strangers?????? Liability of 3rd parties strangers to trust or fiduciary relationship: Which one you go for is determined by facts of scenario. Recover just losses plus simple interest. Required to reconstitute trust fund from own pockets. If unsuccessful you can sue the recipient of the trust property. If substituted into another asset, take it back and take it completely in isolation from trustees creditors if T becomes insolvent. Their liability is purely personal, so NOT a proprietary claim against them. If T steals it and gives it to??? Prop claim fail so sue son for knowing receipt, and he would have to compensate personally for what he caused you to lose by his actions. Individual assisted a trustee with stealing your trust property. Someone else to sue to get compensated for what they assisted. Just take on character of trustee by virtue of their conduct. Liable as if they were a trustee by virtue of own wrong. Lots of problems and never settled, still problematic and big case law. Beneficial receipt of property - occur in many circumstances: Yes, if circumstances are right. They should be liable for receipt. More negligent than pro-actively dishonest. Led to inconsistent case law. D concealed fraudulent nature of scheme. Reason he had knowledge: Held AT the time initial investment made, nothing to indicate anything untoward was going on. When he did become aware BCCI was fraudulent, could have taken money out.

Chapter 7 : Equity and Trust: Strangers Liability(UoLvp) | Chuan Hui Ling - calendrierdelascience.com

The equitable liability of a stranger as an accessory to a breach of trust is fault-based. It operates as a species of equitable wrong, similar to a common law tort. Much of the debate over the years has concerned the degree of fault which must be demonstrated before an assistor will be held liable as an accessory.

Chapter 8 : Asset Protection Trust Vs. LLC | LegalZoom Legal Info

Personal remedies against a stranger to the trust continues the study of personal actions against individuals who have assisted in the commission of a breach of trust by the trustee. This latter subject builds upon personal actions against the trustee himself discussed in Chapter

Chapter 9 : The equitable personal liability of strangers to the trust - Law Trove

Personal liability of recipients and accessories â€¢ Recipient of misappropriated funds (unless bona fide purchaser for value without notice) will be obliged to return property as soon as he becomes aware of the position.