



DEATH & TAXES

Part 1: An Overview of Estate Planning

19 May 2022

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Principal, Nathan Yii Lawyers



House keeping



This is an interactive workshop

- 01** Ask questions via the Q&A
- 02** There'll be lots of quizzes and polls etc
- 03** Participate! Say hello in the chat.

This session is being recorded. Replays available for Premium and VIP subscribers



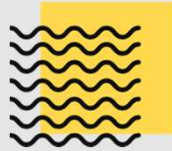
WELCOME

Nathan Yii

Principal Lawyer, Nathan Yii Lawyers



Agenda



What is estate planning?	5 min
Ownership structures	10 min
Testamentary trusts and their uses	20 min
Passing control of discretionary trusts	10 min
Superannuation death benefits	10 min
Tax-effective estate planning tips & traps	



The Four Worlds of Estate Planning



**Bankruptcy
and asset
protection**



**Taxation
and duty**



**Estate
challenge
risk**



**Family
law risk**



Case Study



Sarah, 57 and Ben, 60

They each wish to leave their assets to the survivor and then equally between their children when both have died.



Angela, 30

A medical surgeon, in a stable relationship and has a young child, Harry.



Brian, 27

Does not have a stable job.



Catherine, 22

Still in university and is being supported by Sarah and Ben.

Sarah & Ben Ownership Structure

Sarah

- Family home: \$2m
- Shares: \$1m
- Cash: \$1.5m
- Motor vehicle: \$100k

Ben

- Listed securities: \$10k

Joint

- Bank account: \$20k

Family Discretionary Trust

- Medical premises: \$2m
- Angela operates her practice out of this property

Self-managed Super Fund

- Cash and shares
- Sarah: \$500k in accumulation
- Ben: \$600k in pension phase



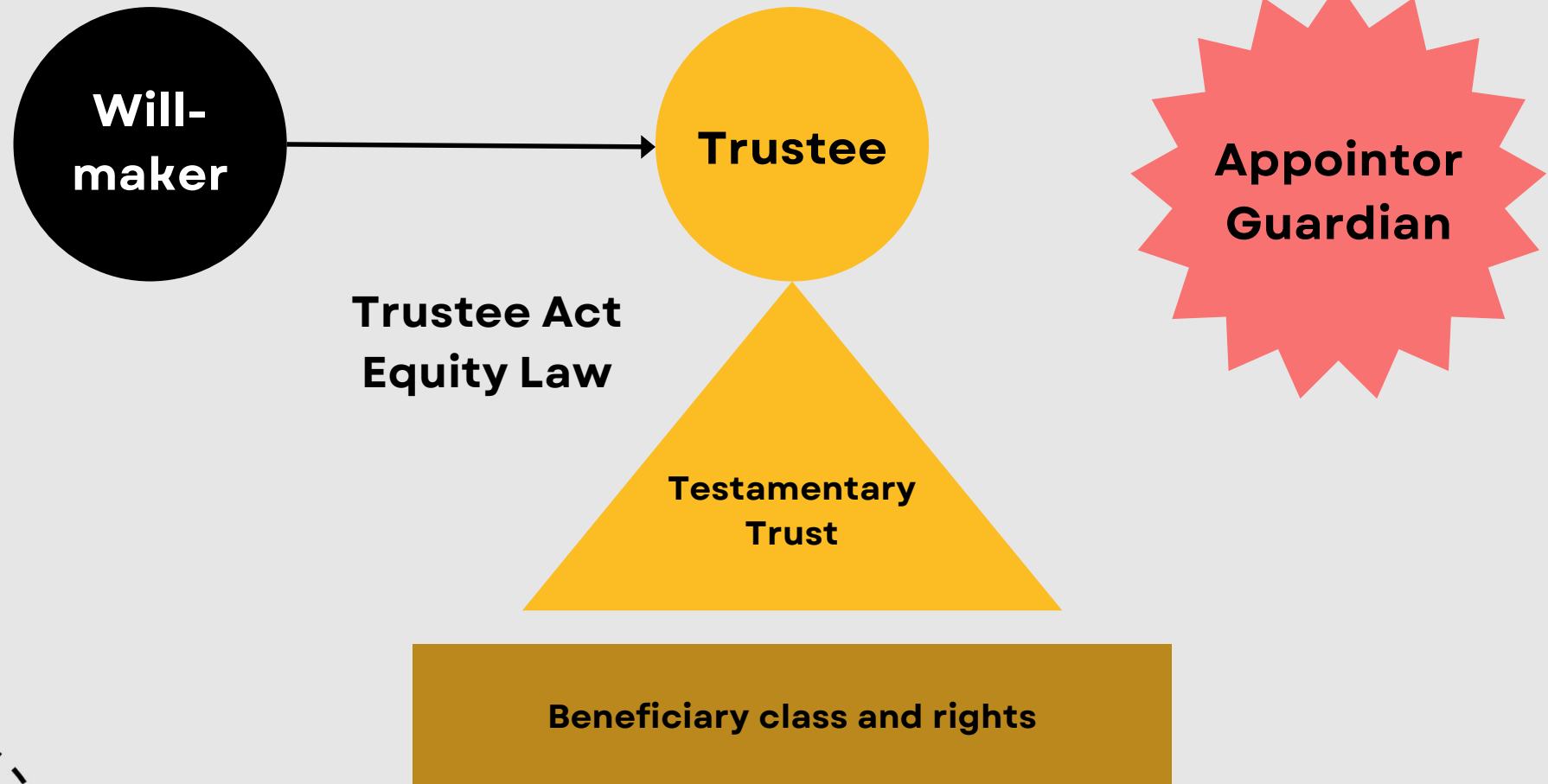
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Assuming Ben has just passed away, which of the following assets **DO NOT** automatically form part of his estate? (Multiple options possible)

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Testamentary Trusts



Testamentary Trusts



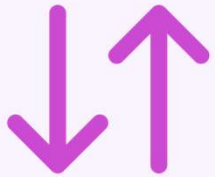
What is it?

- Takes place at death
- Created by a will

Why have one?

- Asset protection - bankruptcy
- Taxation - flexible income distributions
- Family law - potentially better protection
- Other control mechanisms built in

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Put the following events relating to testamentary trusts in order.

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Common Types of Testamentary Trusts



Discretionary
testamentary trusts



Rights of occupation



Life interests



All-needs protective
trusts



Capital reserved
testamentary trusts



Special disability
trusts

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Income from testamentary trusts is always taxed at penalty rates if distributed to minor beneficiaries.

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Taxation of Trusts

Div 6 ITAA36



Normally, income distributed to minor beneficiaries: Div 6AA

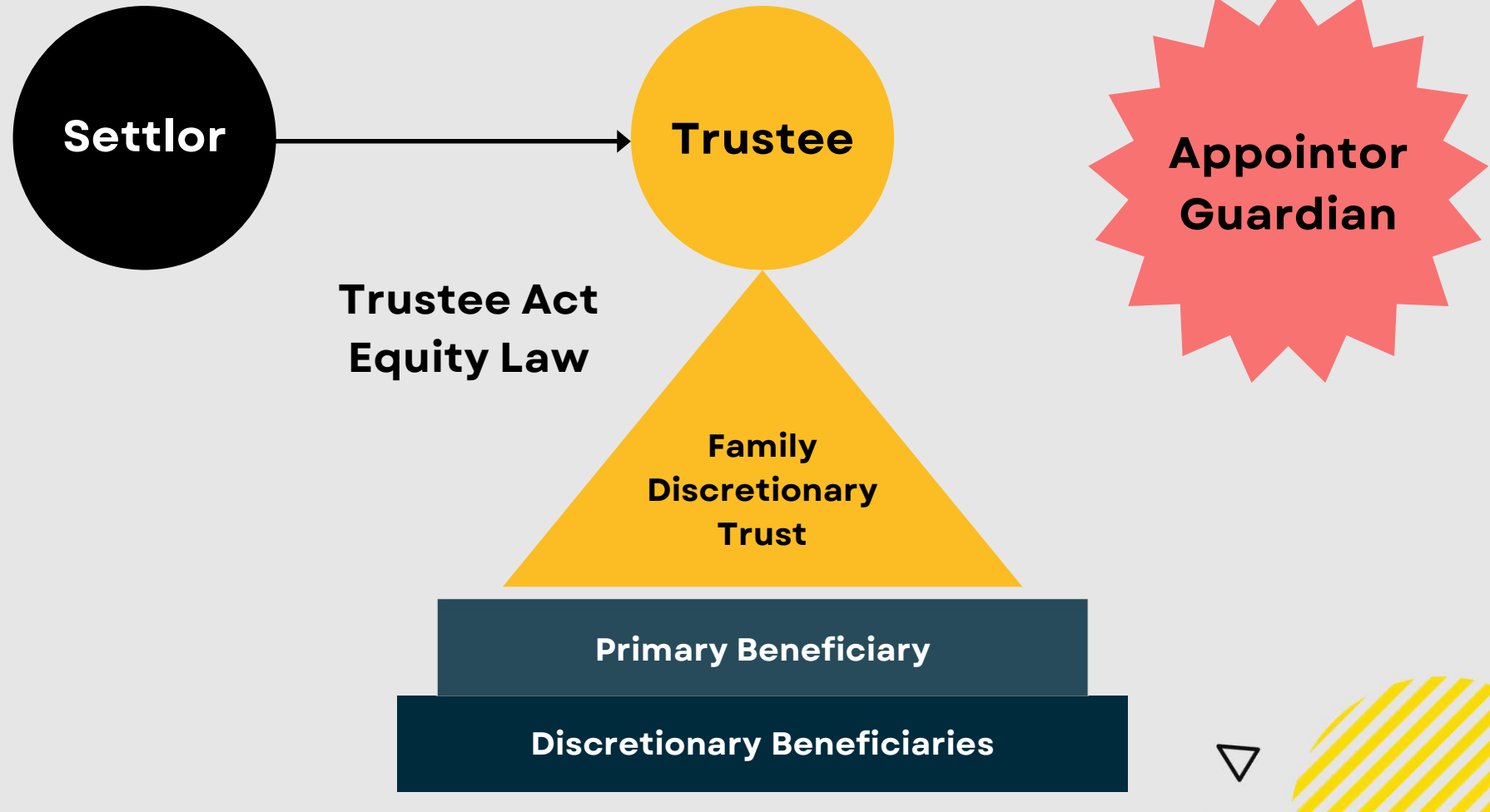
- Taxable income to “prescribed persons” (including minor beneficiaries)
- First \$416 tax-free per financial year
- Balance: taxed at penalty rates

Income from deceased estates to minor beneficiaries: s 102AG(2)(a)

- “Excepted trust income” in relation to a beneficiary of the trust: minors taxed as adults
- Includes income from deceased estates
 - Tax-free threshold: \$18,200
 - Marginal tax rates after



Family Discretionary Trust





Passing Control of a Family Discretionary Trust in the Estate Plan



**Terms of trust
important**



**Appointment
and removal/
resignation
procedures**



**Transfer of
corporate
trustee
shares**



**Generally, no
resettlement
issues**

No CGT
(see TD 2012/21)

No duty



**Don't forget
loan
balances**



Superannuation Death Benefits

Who can super be paid to, and how?

What's the tax?

**Who are the most tax-effective
persons to receive it?**



Payment of Death Benefits

Binding death benefit nominations (BDBN)

- Binding direction on the trustee
- Choice of recipients: SIS dependants and tax

Read the deed

- Who?
- How?
- Procedure



Payment of Death Benefits Eligibility and Tax



Compulsory cashing requirement

“as soon as
practicable”
r 6.21(1) SIS Regs



Who?

Dependants
s 10 SIS Act

LPR (estate)



Form and manner rr 6.21 & 6.22 SIS Regs

Lump sum
Pension



Tax s 302-195 ITAA97

Death benefits
dependant

“Tax dependant”

Payment of Death Benefits Recipients Summary

Who	SIS dependant	Tax dependant	Form and manner
Spouse / domestic partner	YES	YES	Lump sum or pension
Minor children	YES	YES	Lump sum or pension
Adult children – financial dependants	YES	YES	Lump sum or pension**
Adult children – non financial dependants	YES	NO	Lump sum
Financial dependants and inter-dependants	YES	YES	Lump sum or pension
Estate	YES r 6.22 SISR	Look through	Lump sum

Q & A



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What was your #1 takeaway from today's session?

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Current as at May 2022.



Live virtual

Thursday, 26 May
12.30pm AEST

Trust Year-End Planning

with King Tan

Special Counsel, Coleman Greig Lawyers



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