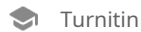


trusts law formative 2 v6.docx



Document Details

Submission ID

trn:oid::27005:84322887

Submission Date

Mar 3, 2025, 10:20 PM UTC

Download Date

Mar 3, 2025, 10:21 PM UTC

File Name

trusts_law_formative_2_v6.docx

File Size





23.7 KB

6 Pages**1,496 Words****8,756 Characters**




13% Overall Similarity

The combined total of all matches, including overlapping sources, for each database.

Match Groups

-  **16 Not Cited or Quoted 9%**
Matches with neither in-text citation nor quotation marks
-  **8 Missing Quotations 4%**
Matches that are still very similar to source material
-  **0 Missing Citation 0%**
Matches that have quotation marks, but no in-text citation
-  **0 Cited and Quoted 0%**
Matches with in-text citation present, but no quotation marks

Top Sources

- 4%  Internet sources
- 8%  Publications
- 8%  Submitted works (Student Papers)

Integrity Flags

0 Integrity Flags for Review

No suspicious text manipulations found.

Our system's algorithms look deeply at a document for any inconsistencies that would set it apart from a normal submission. If we notice something strange, we flag it for you to review.

A Flag is not necessarily an indicator of a problem. However, we'd recommend you focus your attention there for further review.

Match Groups

- 16 Not Cited or Quoted 9%**
Matches with neither in-text citation nor quotation marks
- 8 Missing Quotations 4%**
Matches that are still very similar to source material
- 0 Missing Citation 0%**
Matches that have quotation marks, but no in-text citation
- 0 Cited and Quoted 0%**
Matches with in-text citation present, but no quotation marks

Top Sources

- 4% Internet sources
- 8% Publications
- 8% Submitted works (Student Papers)

Top Sources

The sources with the highest number of matches within the submission. Overlapping sources will not be displayed.

1	Publication	Alastair Hudson. "Equity and Trusts", Routledge, 2021	1%
2	Internet	www.elitigation.sg	1%
3	Internet	www.wrighthassall.co.uk	<1%
4	Student papers	Brunel University on 2023-09-01	<1%
5	Publication	Scott Atkins. "Equity and Trusts", Routledge, 2019	<1%
6	Publication	Iwan Davies. "Security Interests in Mobile Equipment", Routledge, 2017	<1%
7	Publication	Mohamed Ramjohn. "Unlocking Equity and Trusts", Routledge, 2019	<1%
8	Internet	en.wikipedia.org	<1%
9	Internet	wikimili.com	<1%
10	Student papers	University of Essex on 2024-03-11	<1%

11	Internet	beta.bailii.org	<1%
12	Publication	Alastair Hudson. "Understanding Equity & Trusts", Routledge, 2021	<1%
13	Student papers	BPP College of Professional Studies Limited on 2021-08-11	<1%
14	Student papers	University of Kent at Canterbury on 2007-12-14	<1%
15	Publication	Ramjohn. "Sourcebook on Trusts Law 2/e", Routledge-Cavendish, 2019	<1%
16	Student papers	Singapore Management University on 2010-11-04	<1%
17	Student papers	University of the West Indies on 2025-02-18	<1%
18	Student papers	Queensland University of Technology on 2023-07-22	<1%

(a) Three issues are identified.

1. Scope of monitoring the Company's investment decisions

Section 3(1) of the Trustee Act 2000 (TA 2000) grants trustees a general power of investment. However, considering the Board's longstanding independence in decision-making, the trust may include an anti-Bartlett or VISTA clause, which restricts the trustees' monitoring obligations over company investment affairs (*Bartlett v Barclays Bank Trust Co Ltd*; *Zhang Hong Li v DBS Bank (Hong Kong) Ltd*), thereby shielding Ibrahim and his co-trustees' non-intervention of the hazardous investments.

2. Breach of Duty of Care

Assuming no exemption clause applies, Ibrahim is subject to the duty of reasonable care and skill under Section 1(1) TA 2000. This standard requires trustees to act as prudent individuals managing property for others, which they feel is morally obligated to do (*Learoyd v Whiteley*). Section 4(2) obliges periodic investment review, a responsibility accruing to Ibrahim upon appointment.

Although the AI investment predates his appointment, its hazardous nature necessitated reassessment (*Re Chapman*). A prudent trustee would have sought expert advice or mitigated losses incurred (*Speight v Gaunt*). Ibrahim's inaction, implied by beneficiary threats to sue, likely breaches this standard (*Nestlé v National Westminster Bank plc*). His expertise in law may also render his passivity indefensible (*Re Whiteley*).

3. Apportionment of Liability

Ibrahim and his co-trustees' failure to address AI investment losses may breach their duty (*Bartlett*). Liability is presumptively joint and several unless there is divergence in fault (*Townley v Sherborn*). Despite the poor investment predating his appointment, inadequate reasonable mitigation excludes relief under Section 61 of the Trustees Act 1925 (*Santander UK plc v R.A. Legal Solicitors*).

Causation may reduce liability if he proves the AI investment failures were inevitable (*Target Holdings Ltd v Redferns*). Moreover, the co-trustees' experience in telecom might imply greater culpability (*Head v Gould*), potentially lowering Ibrahim's liability if he relied on their judgment (*Re Mulligan*).

(b) This scenario traces £100,000 from the sale of Lila's miniature paintings misappropriated by a storage company director. Tracing identifies substitute assets for proprietary claims, regardless of wrongdoing (*Foskett v McKeown*).

1. Proprietary Base

The storage company held the paintings for Lila, creating her equitable interest in them (*Re Diplock*). As executor, Ibrahim can enforce this interest against third parties unless a valid defence applies.

2. Tracing Process

Tracing enables the identification of substitute assets where the original property is no longer recoverable—the missing paintings (*Foskett*).

Common Law Tracing

The £100,000 directly substitutes for the paintings (*Lipkin Gorman v Karpnale Ltd*).

Common law tracing allows claims to a mixed fund (*Agip (Africa) Ltd v Jackson*) but does not extend to third-party recipients (*Banque Belge pour L'Etranger v Hambrouck*). With the director withdrawing £100,000, only £50,000 remains traceable under common law.

Equitable Tracing

It requires:

1. A fiduciary relationship is satisfied here as the storage company acts as trustee (*Agip (Africa) Ltd*).

2. An equitable proprietary interest, which Lila retained over the paintings and their proceeds (*Re Diplock*).

Since these conditions are met, Ibrahim may trace beyond the initial account.

Specific Transfers

(i) £25,000 to the Friend

Ibrahim may pursue a knowing receipt claim against the friend, necessitating: (1) a continuing proprietary interest in the £25,000, traceable from Lila's £100,000 proceeds through the mixed fund (*Byers v Saudi National Bank*), satisfying here; and (2) knowledge by

the friend that the funds derived from misappropriation, rendering retention unconscionable (*Bank of Credit and Commerce International (Overseas) Ltd v Akindele*), though facts remain uncertain.

The friend may invoke a bona fide purchaser defence, asserting receipt for value (£25,000 debt repayment) in good faith without notice that the received funds are misappropriated (*Macmillan Inc v Bishopsgate Investment Trust plc (No 3)*). Alternatively, a change of position defence may apply if irreversible financial reliance is demonstrated additionally (*Lipkin Gorman*).

(ii) £25,000 to Cryptoassets

The cryptoasset purchase is a direct substitution for trust funds -- the £25,000 from the paintings' sale proceeds (*FC Jones & Sons v Jones*). Since equitable tracing allows claims over assets that have increased in value, Ibrahim may assert a proprietary claim over the appreciated sum of £50,000 (*Foskett*).

The director's friend's loan claim is personal unless secured. While absent evidence of security, Lila's estate retains proprietary priority over the cryptoassets (*Boscawen v Bajwa*).

(iii) £50,000 to Credit Card

Tracing fails in overdrawn accounts as no identifiable asset remains (*Bishopsgate Investment Management Ltd v Homan*). Backward tracing is only allowed where a clear transactional link exists between debt repayment and asset acquisition (*Brazil v Durant International Corp*), which is absent here (*Re BA Peters Plc*). This £50,000 is likely unrecoverable.

(iv) Allocation of residue funds

Total Mixed funds: £150,000: £50,000 from another customer, commingled with Lila's £100,000 in the director's account.

Total Withdrawals: £100,000: £25,000 to the friend, £25,000 to cryptoassets, £50,000 for an overdrawn credit card.

Residue: £50,000.

The lowest intermediate balance rule limits recovery to £50,000, the minimum between deposit and claim (*James Roscoe (Bolton) Ltd v Winder*). Since the £50,000 in the account belongs to another customer, not the director, the honesty presumption (*Re Hallett's Estate*) does not apply to prioritise Lila's trust assets.

Three allocation methods apply:

Contributions: Lila: £100,000; Customer: £50,000. Total: £150,000.

1. *Clayton's Case: First-in, first-out*

It attributes withdrawals to the earliest funds, which is the customer's £50,000.

Withdrawal 1 (£25,000 to friend): deducts from customer's £50,000, leaving £25,000 (customer), £100,000 (Lila);

Withdrawal 2 (£25,000 to crypto): exhausts customer's £25,000, leaving £100,000 (Lila);

Withdrawal 3 (£50,000 to credit card): reduces Lila's £100,000 to £50,000.

Result: Lila £50,000, customer £0.

However, the courts often reject FIFO for unfairness (*Barlow Clowes International Ltd*).

2. *Simple Pari Passu - Equal Proportional Distribution*

Ratio: Lila $\frac{2}{3}$ (£100,000/£150,000), customer $\frac{1}{3}$ (£50,000/£150,000).

Remaining fund: £150,000 - (£25,000 \times 2) - £50,000 = £50,000.

Allocation: Lila: $\frac{2}{3} \times £50,000 = £33,333$; Customer: $\frac{1}{3} \times £50,000 = £16,667$.

Result (rounded): Lila £33,333, customer £16,667

3. *Rolling Charge (rounded)- Proportional Loss Allocation (Barlow Clowes)*

Ratio: Lila $\frac{2}{3}$, customer $\frac{1}{3}$.

Withdrawal 1 (£25,000):

Loss: Lila $\frac{2}{3} \times £25,000 = £16,667$, customer $\frac{1}{3} \times £25,000 = £8,333$.

Balances: Lila £83,333 (£100,000 - £16,667), customer £41,667 (£50,000 - £8,333).

Withdrawal 2 (£25,000):

Loss: Lila $\frac{2}{3} \times £25,000 = £16,667$, customer $\frac{1}{3} \times £25,000 = £8,333$.

Balances: Lila £66,666 (£83,333 - £16,667), customer £33,334 (£41,667 - £8,333).

Withdrawal 3 (£50,000)

Loss: Lila $\frac{2}{3} \times £50,000 = £33,333$, customer $\frac{1}{3} \times £50,000 = £16,667$.

Balances: Lila £33,333 (£66,666 - £33,333), customer £16,667 (£33,334 - £16,667).

Result: Lila £33,333, customer £16,667.

Simplified Rolling Charge (*Caron*): A proportional split only to the final withdrawal £50,000 (Lila $\frac{2}{3}$, customer $\frac{1}{3}$), yielding the same result: Lila £33,333, customer £16,667.

4. Recovery Estimate

Minimum Recovery: £33,333.

Maximum Recovery: £108,333 [£33,333 + (£50,000: cryptoassets + £25,000: returned to the friend, if successfully traced)].

5. Tracing through the company

Ibrahim can pursue a personal claim against the company for its breach and the director's theft, even though tracing the £100,000 doesn't involve the company.

1. Tracing Path Through the Company

The storage company, as trustee, owed Lila a duty to protect her trust paintings (*Royal Brunei Airlines Sdn Bhd v Tan*) and breached this duty by failing to prevent the director's sale, as trustees are required to keep trustee assets secure (*Re Brogden*). Since the director sold the paintings and deposited the £100,000 into his personal account, bypassing the company, tracing through the company is unfeasible. Therefore, Ibrahim must trace from the director's account instead.

2. May the Company Bear Vicarious Liability for the Director's Misappropriation?

10 The company may face vicarious liability for the director's misappropriation if his actions were closely connected to his employment duties and occurred within the course of employment (*Lister v Hesley Hall Ltd*). Here, since the director accessed and sold Lila's paintings, which the company held as trustee, this suggests a link (*Dubai Aluminium Co Ltd v Salaam*) and reflects his wrongdoing is within the course of employment. Still, as he kept the £100,000 for personal gain, it may fall outside his duties, reducing the company's liability (*Mohamud v WM Morrison Supermarkets plc*).

(c) Trustees owe duties of loyalty (*Bristol and West Building Society v Mothew*), care (*Speight v Gaunt*), and prudence (*Learoyd*).

AI Investment

Sections 1 and 4(2) TA 2000 require Ibrahim to review investments after appointment. Failing to reassess the AI lab's risks could violate the prudent trustee standard (*Re Chapman*) unless losses were unavoidable (*Target Holdings Ltd; AIB Group (UK) plc v Mark Redler & Co Solicitors*).

Paintings

Ibrahim bears no liability for the director's theft given absent dishonest assistance or personal fault (*Twinsectra Ltd v Yardley; Royal Brunei Airlines Sdn Bhd v Tan*). He is obligated to recover the misappropriated funds (*Re Brogden*).

Accountability Reflection

Trustees are accountable through fiduciary duties, including the no-profit rule (*Keech v Sandford*) and proprietary remedies (*Foskett*). However, liability is limited if funds are untraceable or losses lack causation linked to the breach. Ibrahim's liability depends on his conduct, not prior breaches or wrongdoings by others (*Nestlé*), and a breach defence applies if he acts reasonably and diligently.