

Course 1/4 : Law of Trusts

Knowledge Objectives:

- Understand basic trust concepts and terminology
- Understand different approaches to classifying types of trusts
- Understand requirements to create an express trust
- Understand how trusts are terminated and when they can be varied
- Understand how trusts can be used by an individual
- Appreciate nature of trusts for non-personal (commercial) purposes
- Understand how trusts can be used to achieve charitable purposes
- Appreciate the nature and scope of trustee duties and powers
- Understand how trustees are appointed and replaced
- Appreciate nature and consequences of breach of trust
- Understand the difference between a trust and a power of attorney
- Understand distinction between express, resulting and constructive trusts
- Appreciate the importance of drafting to the validity of a trust and the trustee's ability to administer the trust assets
- Appreciate the distinction between trusts governed by the Quebec Civil Code and common law trusts
- Identify applicable legislation and law that governs the creation and administration of trusts
- Apply the concepts learned to a given fact pattern

Skills Objectives:

Trust concepts and terminology:

- Provide a definition and example of an express trust
- Provide definitions and examples of resulting trusts and constructive trusts
- Explain key trust terms

Trust Classification:

- Identify methods to classify trusts
- Describe & distinguish trusts within different classification systems

Creation of an express trust

- Explain the elements required to create a valid express trust
- Identify legal and statutory constraints when creating express trusts
- Analyze a scenario to determine if a trust has been created

Termination & Variation

- Identify the laws and rules that govern whether a trust can be terminated or varied
- Recognize when a trust can be terminated and the steps required to do so

Uses of trusts

- Identify and describe how trusts can be used to meet an individual's personal needs and objectives
- Describe commercial and pension uses of trusts
- Explain the rules that apply to charitable purpose trusts
- Define and identify charitable purpose trusts
- Define and describe non-charitable purpose trusts
- Explain the "cy-pres" power to vary charitable trusts

Trustee Duties and Powers

- Explain the nature and scope of trustee duties and powers

- Explain the nature and scope of liability for a breach of trust
- Describe the defences available to trustees when a breach of trust is alleged
- Identify options for a beneficiary who alleges a breach of trust has occurred
- Describe methods for appointment, replacement, and removal of trustees
- Explain the law that apply to trustees seeking reimbursement for expenses
- Explain the rules that apply for seeking compensation for trustee services
- Explain the rules that apply to contracts for trustee services

Trusts & other Fiduciary arrangements

- Explain the difference between a trust relationship and an agency relationship under a power of attorney
- Explain the rules that govern the creation and termination of a power of attorney

Resulting Trusts & Constructive Trusts

- Describe situations where resulting trusts and constructive trusts can arise
- Identify the potential remedies available

Drafting and Interpreting Trusts

- Recognize when drafting fails to establish a trust
- Explain the relevance of typical trust provisions
- Identify potential consequences of poor drafting

Trusts in Quebec

- Describe the key characteristics of a trust established under the laws of Quebec and distinguish it from a common law trust
- Identify key concepts that apply to the creation, administration, variation and termination of a Quebec law trust.

Applicable Law

- Identify applicable legislation and law governing the creation and administration of trusts in your province

Course 2/4: Taxation of Trusts & Estates

Knowledge Objectives:

- Understand the primary and secondary sources of tax law and how they are created
- Understand the basic taxation of an individual including income from property
- Understand the taxation of capital gains and utilisation of capital losses
- Understand the taxation of trusts and transfers to and from trusts
- Know the requirements to file and complete the T3 Trust and Estate Tax Return
- Understand how beneficiaries of trusts and estates are taxed
- Understand the rules arising on death including the requirements to file and complete the tax return for the year of death
- Understand basic post-mortem tax planning concepts
- Understand the attribution rules and income splitting concepts
- Understand basic concepts of tax planning through trusts and estates
- Know how the tax system is administered and enforced
- Understand how tax laws of other jurisdictions may apply to estates of Canadians
- Identify applicable legislation and law

Skills Objectives:

Canadian Tax System

- Explain how tax legislation is enacted
- Describe the primary and secondary sources of tax law
- Locate and use Canada Revenue Agency publications

Basic Taxation of Individuals

- Explain the basic rules for taxation of individuals
- Describe how income from property and other sources is taxed
- Describe and compare how individuals and trusts are taxed

Capital Gains

- Describe how capital gains are taxed
- Explain the capital gains exemption and the principal residence exemption
- Explain the utilisation of capital losses

Taxation of Trusts

- Explain the tax rules on creation of a trust
- Describe how trusts and trust distributions are taxed
- Identify the special tax rules applicable to trusts

Completing the T3 Return

- Explain the requirement for a trust and estate tax return
- Describe and explain the contents of the T3 Trust and Estate Return

Taxation of Deceased Individuals and the Terminal Return

- Explain how beneficiaries of a trust or estate are taxed
- Explain how individuals are taxed on death
- Describe and explain the contents of the tax returns for the year of death

Post-mortem Tax Planning

- Explain basic post-mortem tax planning concepts

Attribution Rules and Income Splitting

- Understand income splitting benefits and concepts
- Understand attribution rules and anti-income-splitting concepts
- Identify situations where the attribution or anti-income splitting rules apply
- Recognize and explain income-splitting opportunities

Basic Tax planning for Trusts and Estates

- Recognise basic trust and estate tax planning opportunities
- Identify key tax planning strategies

Administration and Enforcement

- Explain Canada Revenue Agency's administrative role and powers to enforce the income tax system
- Appreciate the nature of tax avoidance and tax evasion and the difference

Foreign Jurisdiction Tax Issues

- Identify US estate tax issues
- Appreciate how tax laws of other countries apply to Canadians

Course 3/4: Wills, Trust & Estate Administration

Knowledge Objectives:

- Understand the purpose of a Power of Attorney for Property and how it is created and utilised
- Understand the rules and requirements relating to Personal Directives and Living Wills
- Understand the many types of Wills and how a Will can legally implement a testator's wishes
- Understand the process for taking Will instructions and preparing a Will
- Know the rules relating to estates of persons who die without a Will
- Understand the potential claims that can be made against an estate by family members
- Understand how the law of succession in Quebec may affect estates of persons living elsewhere in Canada
- Appreciate the need to obtain probate and the process involved
- Understand the benefits of probate fee planning
- Understand the role and duties of various persons in administering estates
- Know the steps required to complete the administration of an estate
- Understand how property is managed for others under trusts and statutory authority
- Understand the requirements to keep and pass estate and trust accounts
- Understand how the laws of other jurisdictions can apply to succession of foreign property
- Identify applicable legislation and law

Skills Objectives:

Powers of Attorney

- Explain the need for substitute decision making for property
- Identify the duties and powers that can be exercised by an attorney for property

Personal Directives and Living Wills

- Explain the need for substitute decision making for the person
- Identify the duties and powers that can be exercised by the person appointed to make decisions for the person

Law of Wills

- Identify the requirements for a valid Will
- Explain the different types of Wills
- Describe the types of gifts in a Will

Will Preparation

- Describe role of the solicitor in Will preparation
- Explain the process for taking Will instructions
- Identify the general layout of a Will
- Explain the purpose of specific clauses in a Will
- Describe how Wills may be amended and revoked

Intestacy

- Identify the scheme of distribution on an intestacy
- Describe the problems that arise when a person dies without a Will
- Explain how an intestacy can arise

Claims Against Estates

- Describe the claims that can be made by a spouse or partner under family law
- Describe the claims that can be under dependant's relief legislation
- Explain other claims that may be made by family members

Quebec Issues

- Identify how the law of Quebec may affect the estate of a person resident elsewhere
- Describe the main differences between Quebec law and that of other provinces as it relates to succession of property

Obtaining the Grant of Probate

- Explain the requirement to obtain probate
- Identify the probate fees payable in your province
- Describe the process for obtaining the grant

Probate Fee Planning

- Identify probate fee planning strategies
- Describe the advantages and disadvantages of probate fee planning strategies

Administration of Trusts and Estates

- Describe the role of executor, solicitor for the estate and agent for executor
- Explain the effect of multiple Wills
- Identify issues applicable to insolvent estates
- Identify the unique issues relevant to administration of estates versus trusts

Steps in Estate Administration

- Describe the steps to be taken in administering an estate
- Explain how estate assets are realised and managed
- Identify how estate assets are to be distributed
- Explain the importance of tax clearance and releases

Administration of Trusts and Property held for others under Statutory Authority

- Describe how trusts created under a Will are set up and administered
- Identify the need for a statutory guardian and how one is appointed
- Describe the duties and powers of a statutory guardian
- Explain the rules relating to administration of property of an absentee

Estate and Trust Accounts

- Explain the requirement to keep accounts
- Describe the basic statements and ledgers required to be kept
- Identify when accounts need to be passed and describe the process

Foreign Property and Wills

- Explain the difference between residence and domicile
- Identify movable property and immoveable property
- Describe the importance of identifying the law governing making a Will and the succession of foreign property

Applicable Law

- Identify applicable legislation and law governing the creation and administration of trusts in your province.

Course 4/4: Trust & Estate Planning

Knowledge Objectives:

- Understand the estate planning process
- Understand how the estate plan fits into the client's overall situation
- Know the common problems associated with poor communication
- Explain the problems that may result from failure to consider future events
- Know how trusts are utilized to achieve non-tax objectives
- Understand how trusts are used in tax planning
- Understand the role of tax and estate planning in preserving and transferring wealth
- Understand post mortem tax planning strategies and when they are appropriate
- Understand complex tax issues and traps applicable to trusts and estates
- Know how to plan for incapacity and death
- Understand the tax and legal consequences of death
- Understand how provincial succession laws can impact estate plans
- Understand the rules relating to charitable giving
- Appreciate how estate plans are tailored to suit different family situations
- Appreciate how estate plans are tailored to business owner situations
- Understand the planning needs and opportunities for owner managers
- Understand post mortem tax planning strategies and when they are appropriate
- Understand the different types of life insurance and how they can be used to achieve estate planning objectives
- Understand how US estate tax and US gift tax can affect Canadians
- Understand key offshore planning concepts
- Understand how laws of other countries may apply to Canadian Estates

SKILLS OBJECTIVES

General Skills

- Analyze the client's financial status and overall estate planning objectives
- Identify the steps in the estate planning process
- Explain the advantages and disadvantages of different estate planning strategies and contrast them with one another
- Conduct the six step financial planning process and decide on the critical components of the client's plans and objectives
- Assess the tax implications
- Assess the family law/succession law implications
- Assess estate creation initiatives
- Assess estate conservation initiatives
- Assess retirement and disability considerations
- Assess liquidity issues
- Assess death and equity issues
- Design a financial and estate plan to address the client's objectives
- Recommend strategies for pursuing the financial and estate plan
- Designing the plan to fit the client and avoid common pitfalls
- Describe how unexpected events might disrupt the estate plan
- Explain how the estate plan fits into the client's overall family and financial situation
- Determine whether or not the client (spouse, child, parent, beneficiary) is a US citizen

Planning with Trusts

- Analyze the client's current financial status and financial planning objectives with a view to determining a planning strategy involving the use of trusts

- Examine alternative types of trusts that may apply to support the client's estate planning strategies
- Illustrate to the client the benefits of the use of trusts in estate planning
- Know how trusts are utilized to achieve non-tax objectives
- Understand how trusts are used in tax planning
- Understand complex tax issues and traps applicable to trusts and estates

Trusts for Non Tax Reasons

- Describe the ways trusts can be used to preserve wealth and provide protection
- Identify how trusts can be used to achieve non tax objectives
- Advanced Tax Issues and Traps for Trusts and Estates
- Explain the potential problems arising from the attribution rules and the 21 year rule
- Identify key tax problems often encountered with trusts and estates
- Consider applications for the capital gains exemption.

Charitable Giving

- Identify the client's charitable giving objectives and discuss alternatives for planned giving during life and at death
- Understand the rules relating to charitable giving
- Identify how charitable giving can be incorporated effectively into an estate plan

Creditor Protection

- Identify any current or potential creditor issues and discuss alternative strategies for the preservation of assets

Planning for Incapacity

- Identify the need for planning for incapacity
- Describe how powers of attorney are used in the event of incapacity
- Identify the criteria for choosing a substitute decision maker
- Compare the advantages and disadvantages of selecting particular substitute decisions makers and explain the alternatives to the client
- Assess the client's powers of attorney and health care directives

Probate Planning

- Examine alternative strategies for the efficient and secure transfer of assets inside and outside the will at death
- Show the client alternative strategies and assist him/her in selecting the most appropriate for his/her situation

Will Planning

- Assess the role of a will as critical to true estate planning, whether one views that planning as being aimed at the fulfillment of the deceased's desires relating to estate distribution or as tax minimization
- Explain the benefits of engaging a qualified lawyer to develop a reliable will
- Compare the advantages and disadvantages of various choices for executor and explain the alternatives to the client
- Assess the client's estate liquidity and explain the issues around an estate that does and does not have liquid assets

Estate Tax Planning

- Formulate appropriate estate planning strategies to mitigate the effect of the tax implications at death
- Identify post mortem tax planning opportunities
- Describe the strategies for post mortem planning with closely held corporations including reducing the double tax on property held in a corporation
- Analyze the client's assets and ownership interests and determine those properties that will and will not be subject to probate

- Describe the strategies for post mortem planning with closely held corporations including reducing the double tax on property held in a corporation
- Explain how rollovers and the capital gains exemption can be used to advantage

Family Estate Planning

- Identify issues and planning strategies that are appropriate to the client's family situation and the property to be distributed to family members
- Assess the client's obligations to a current or former spouse or common law partner
- Assess the client's obligations to dependents and other family members
- Identify alternative planning strategies to satisfy the client's legal obligations to family members
- Analyze the client's family situation and discuss and evaluate the client's objectives with respect to family members as beneficiaries
- Identify alternative planning and distribution strategies to meet the client's estate planning objectives with respect to family members
- Identify the planning issues for different family situations, such as marital status, with or without children
- Discriminate among alternative planning strategies and recommend preferred alternatives to the client to address family support objectives, obligations, and family distribution objectives
- Explain the potential estate planning problems that arise from blended families
- Identify issues relating to "uneven" distributions to children
- Identify issues and make recommendations with respect to distribution of a recreational property to family members

Business Estate Planning

- Analyze the client's business structure with a view to determining the extent of his/her interest and ways in which that interest can be preserved for wealth preservation and estate planning purposes
- Examine the applicability of buy-sell agreements in supporting the client's plans
- Illustrate the benefits of a buy-sell agreement and show alternative structures
- Identify and explain key planning strategies for the owner manager
- Explain an estate freeze and identify when it is appropriate
- Describe the importance of business succession
- Consider applications for the capital gains exemption
- Assess the need for life insurance to support the estate plan and (in conjunction with the insurance content of other study units) recommend alternative insurance strategies

US Estate Tax Planning

- Identify the client's US assets and discuss their effect on the client's wealth transfer and estate planning
- Identify situations in which Canadians may be subject to US estate and gift tax
- Describe the planning strategies that may reduce the cost of US estate tax
- Explain the need for specialized expertise to advise on US issues
- Recognize situations in which foreign succession law may apply to Canadian estates

Offshore Planning Basics

- Explain the key offshore planning opportunities and the importance of specialized advice
- Describe the limitations of offshore planning
- Understand how laws of other jurisdictions may affect succession of property